



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

Guide on Article 3 of Protocol No. 4 of the European Convention on Human Rights

Prohibition of expulsion of
nationals

First edition – 31 January 2021

Publishers or organisations wishing to translate and/or reproduce all or part of this Guide in the form of a printed or electronic publication are invited to contact publishing@echr.coe.int for information on the authorisation procedure.

If you wish to know which translations of the Case-Law Guides are currently under way, please see [Pending translations](#).

This Guide has been prepared by the Directorate of the Jurisconsult and does not bind the Court. It may be subject to editorial revision.

This Guide was originally drafted in English. The text was finalised on 31 January 2021. It will be regularly updated.

The Case-Law Guides are available for downloading at www.echr.coe.int (Case-law – Case-law analysis – Case-law guides). For publication updates please follow the Court's Twitter account at https://twitter.com/ECHR_CEDH.

© Council of Europe/European Court of Human Rights, 2021

Table of contents

Table of contents	3
Note to readers	4
I. Introduction	5
II. Personal scope of application: the definition of “nationals”	6
A. Reference to national law	6
B. Denial or revocation of citizenship and link with Article 8.....	6
III. Specific issues of territorial application	7
A. Overseas territories	7
B. Separatist entity unrecognised by the international community.....	7
IV. The notion of expulsion and scope of protection	7
V. Right to enter one’s own country	9
A. Limits of protection	9
B. Failure to issue travel documents.....	9
C. Cases concerning members of royal houses	9
List of cited cases	11

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 3 of Protocol N° 4 of the European Convention on Human Rights (hereafter “the Convention” or “the European Convention”) until 15 January 2021. 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).

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.

I. Introduction

1. Article 3, Protocol No. 4 guarantees two distinct rights: the right not to be expelled from - and the right to enter - the territory of the State of which one is a national.
2. Protocol No. 4 distinguishes between the expulsion of nationals, which is governed by Article 3, and the expulsion of aliens (including stateless persons), a matter addressed in Article 4.
3. The collective expulsion of nationals is prohibited in the same way as the collective expulsion of aliens referred to in Article 4 of Protocol No. 4 ([Explanatory Report to Protocol No. 4](#), § 20; [Case-Law Guide on Article 4 of Protocol No. 4](#)).
4. The adoption of Article 4 and paragraph 1 of Article 3 cannot be interpreted as in any way justifying measures of collective expulsion that may have been taken in the past ([Explanatory Report to Protocol No. 4](#), § 33; [Hirsi Jamaa and Others v. Italy](#) [GC], 2012 § 174).
5. The expulsion of nationals, whether individuals or groups, is often inspired by political motives ([Explanatory Report to Protocol No. 4](#), § 21).
6. Article 3 of Protocol No. 4 only prohibits a Contracting State from expelling, or refusing an entry to, its own nationals ([Maikoe and Baboelal v. the Netherlands](#), Commission decision, 1994; [Explanatory Report to Protocol No. 4](#), § 29).
7. Article 3 of Protocol No. 4 can therefore be invoked only in relation to the State of which the victim of any alleged violation of this provision is a national ([M. and S. v. Italy and United Kingdom](#) (dec.), 2012, § 73; [Gulijev v. Lithuania](#), 2008, § 51; [Roldan Teixeira and Others v. Italy](#) (dec.), 2000; [X. v. Sweden](#), Commission's decision, 1969).
8. Guarantees provided for by this provision extend only to nationals of a State that has ratified Protocol No. 4. Four States have not ratified Protocol No. 4: Greece, Switzerland, Turkey and the United Kingdom.
9. Expulsion from – or inability to enter - the territory of the State of which one is a national may, in certain circumstances, give rise to an issue under other provisions of the Convention or its Protocols. For example, legislation imposing restrictions on admission to the United Kingdom of citizens of the United Kingdom and Commonwealth resident in East Africa, which discriminated against persons of Asian origin on the ground of race and colour, was found to amount to degrading treatment within the meaning of Article 3 of the Convention ([East African Asians v. the United Kingdom](#), Commission decision, 1973; see also [Case-Law Guide on Article 8](#)).
10. The Court has not to date found a breach of Article 3 of Protocol No. 4 to the Convention.

Article 3 of Protocol N° 4 of the Convention

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.
2. No one shall be deprived of the right to enter the territory of the State of which he is a national.

HUDOC keywords

Prohibition of expulsion of a national
Prohibition of collective expulsion of nationals
Enter own country

II. Personal scope of application: the definition of “nationals”

11. Article 3 of Protocol No. 4 refers only to natural persons who are nationals of a State that has ratified Protocol No. 4, or who may at least claim to be so, on the basis of plausible arguments (*Association "Regele Mihai" v. Romania* (dec.), 1995).

A. Reference to national law

12. For the purposes of Article 3 of Protocol No. 4, the applicant’s “nationality” must be determined, in principle, by reference to national law (*Slivenko and Others v. Latvia* (dec.) [GC], 2002, § 77; *Nagula v. Estonia* (dec.), 2005; *Fedorova and Others v. Latvia* (dec.), 2003; *Shchukin and Others v. Cyprus*, 2010, § 144).

13. Personal circumstances, such as birth on the territory of the respondent State, prolonged residence or the existence of strong family ties, are of no relevance for the purposes of establishing the applicant’s nationality, including in the context of the dissolution/succession of States (*Gribenko c. Latvia* (dec.), 2003; *Nagula v. Estonia* (dec.), 2005; *Shchukin and Others v. Cyprus*, 2010, § 145).

14. The burden is on the applicant to prove that he/she is, or may arguably claim to be, a national of the respondent State within the meaning of the domestic law of that State (*Fedorova and Others v. Latvia* (dec.), 2003; *Nagula v. Estonia* (dec.), 2005), including by exhausting relevant domestic remedies (*L. v. Federal Republic of Germany*, Commission decision, 1984).

15. In the context of the right to enter the territory of a State, paragraph 2 of Article 3 of Protocol No. 4 does not relieve persons who wish to enter of the obligation to prove their nationality of the State concerned, if so required (*Explanatory Report to Protocol No. 4*, § 26).

16. Where the domestic proceedings with a view to recognising one’s citizenship of a given State or obtaining it through naturalisation are pending, this fact is insufficient to trigger the application of guarantees for which Article 3 of Protocol no. 4 provides (*L. v. Federal Republic of Germany*, Commission decision, 1984; *S. v. Federal Republic of Germany*, Commission decision, 1986).

B. Denial or revocation of citizenship and link with Article 8

17. Denial of citizenship for the sole purpose of expelling the applicant may raise an issue under Article 3 of Protocol No. 4. The existence of a causal link between the two decisions can create the presumption that the denial of citizenship was solely intended to make the expulsion possible. In such a situation, the Convention bodies examined whether this presumption was corroborated by the particular circumstances (*X v. Federal Republic of Germany*, Commission decision, 1969).

18. Similarly, in some cases the revocation of citizenship followed by expulsion may raise potential problems under Article 3 of Protocol No. 4 (*Naumov v. Albania* (dec.), 2005), especially where such decision is taken for the purpose of expelling the applicant (*Explanatory Report to Protocol No. 4*, § 23).

19. The Court has also examined issues relating to the denial or revocation of citizenship under Article 8 of the Convention (*Case-Law Guide on Article 8*; the *Guide on Immigration*; *Karashev v. Finland* (dec.), 1999; *Slivenko and Others v. Latvia* (dec.) [GC] 2002; *Genovese v. Malta*, 2011, § 30; *Ramadan v. Malta*, 2016, § 85-89; in the context of terrorism-related activities, see *K2 v. the United Kingdom* (dec.), 2017, § 49-50 and *Ghoumid and Others v. France*, 2020, § 43-44; see the *Guide on Terrorism*).

20. The issue whether or not the applicant has an arguable right to acquire citizenship of a State must in principle be resolved by reference to the domestic law of that State (*Fedorova and Others*

v. Latvia (dec.), 2003). Similarly, the question whether a person was denied a State’s citizenship arbitrarily in a manner that might raise an issue under the Convention is to be determined with reference to the terms of the domestic law (*Fehér and Dolník v. Slovakia* (dec.), 2013).

III. Specific issues of territorial application

A. Overseas territories

21. When applying Article 3 of Protocol No. 4, regard must be had to Article 5 of this Protocol.
22. Paragraph 1 of Article 5 allows the State to indicate the extent to which Protocol No. 4 shall apply to “such of the territories for the international relations of which it is responsible”¹.
23. Paragraph 4 of Article 5 reads as follows:

“The territory of any State to which this Protocol applies by virtue of ratification or acceptance by that State, and each territory to which this Protocol is applied by virtue of a declaration by that State under this Article, shall be treated as separate territories for the purpose of the references in Articles 2 and 3 to the territory of a State.”

24. In *Piermont v. France*, 1995, by virtue of Article 5 § 4, French Polynesia was regarded as a separate territory, distinct from metropolitan France, for the purposes of the references to the territory of a State in Article 2 of Protocol No. 4 (*Piermont v. France*, 1995, §§ 43-44).

B. Separatist entity unrecognised by the international community

25. In *Denizci and Others v. Cyprus*, 2001, the applicants, Cypriot nationals of Turkish origin, were expelled by the Cypriot police to the northern part of Cyprus, the so-called “Turkish Republic of Northern Cyprus” under the effective control of Turkey. They complained that the expulsion was in breach of Article 3 of Protocol No. 4, given that the Republic of Cyprus could exercise authority and control in the southern part only. The Court observed that the applicants had not claimed that they had been expelled to the territory of another State. The Court further noted that the government of the Republic of Cyprus was the sole legitimate government of Cyprus – itself, bound to respect international standards in the field of the protection of human and minority rights. However, the Court considered it unnecessary to determine whether Article 3 applied and, if so, whether it had been complied with, having regard to its finding of a violation of Article 2 of Protocol No. 4 in respect of the monitoring of and restrictions on the applicants’ movements between the northern part of the island and the south, and within the south (§§ 323, 410-411).

IV. The notion of expulsion and scope of protection

26. Article 3 of Protocol No. 4 secures absolute and unconditional freedom from expulsion of a national (*Slivenko and Others v. Latvia* (dec.) [GC], 2002, § 77; *Shchukin and Others v. Cyprus*, 2010, § 144). The wording of this provision does not provide for any exceptions or possibility to impose restrictions on this right.

¹ *Full list of reservations and declarations submitted to the Secretary General of the Council of Europe in respect of Protocol No. 4*

27. According to the drafters of Protocol No. 4, an individual cannot invoke paragraph 1 of Article 3 in order to avoid certain obligations that are not contrary to the Convention, for example, obligations concerning military service (*Explanatory Report to Protocol No. 4*, § 21).

28. Article 3 of Protocol no. 4 does not require that the proceedings with a view to obtaining or recognising citizenship of a given State should have any suspensive effect on the actual execution of the expulsion orders, as, unlike with regard to the complaints under Articles 2 and 3 of the Convention, there is no danger of irreparable damage. Where such proceedings result in a finding that the applicant in fact possesses the nationality of the respondent State, he/she will have the right to enter the territory of that State and will then be able to challenge the consequences of the expulsion (*L. v. Federal Republic of Germany*, Commission decision, 1984).

29. The word “expulsion” should be interpreted “in the generic meaning in current use (to drive away from a place) (*Explanatory Report to Protocol No. 4*, § 21; *Hirsi Jamaa and Others v. Italy* [GC], 2012 § 174).

30. The term “expulsion” means that a person is obliged permanently to leave the territory of the State of which he is a national without being left the possibility of returning later (*A. B. v. Poland* (dec.), 2003; *X v. Austria and Germany*, Commission decision, 1974).

31. The existence of an order for expulsion amounts to a continuing situation for the purposes of the examination under Article 3 § 1 of Protocol No. 4 (*X v. Federal Republic of Germany*, Commission decision, 1969).

32. The following measures, not comprising any formal or substantive expulsion order against the individual concerned, do not amount to an “expulsion” within the meaning of Article 3 of Protocol No. 4:

- a court order, in accordance with the Hague Convention on the Civil Aspect of International Child Abduction, to return a child to a country of which he/she is not a national, and fines imposed by bailiffs in an attempt to enforce this order (*A. B. v. Poland* (dec.), 2003; *Stetsykevych, v. Ukraine* (dec.), 2015);
- a residence ban against, or refusal to grant a residence permit to, a foreign spouse of the applicant (*Schober c. Austria* (dec.), 1999; *Sadet v. Romania* (dec.), 2007);
- an expulsion order against a foreign parent of a minor child, resulting in the child having to leave the country of which he/she is a national and to accompany his/her parent abroad (*Maikoe and Baboelal v. the Netherlands*, Commission decision, 1994);

33. Extradition, the transfer of a person from one jurisdiction to another for the purpose of his standing trial or for the execution of a sentence imposed upon him/her (*I.B. v. The Federal Republic of Germany*, Commission decision, 1974; *X v. Austria and Germany*, Commission decision, 1974), is outside the scope of Article 3 of Protocol No. 4. Indeed, the right not to be extradited by the State of which one is a national is also not guaranteed by any other provision of the Convention or its Protocols (*I.B. v. The Federal Republic of Germany*, Commission decision, 1974; *X v. Austria and Germany*, Commission decision, 1974; *Explanatory Report to Protocol No. 4*, § 21; for more detail regarding relevant principles concerning extradition, see *Case-Law Guide on Article 8*; *Case-Law Guide on Article 2*; the *Guide on Immigration*).

V. Right to enter one's own country

A. Limits of protection

34. A State is not obliged to admit an individual who claims to be a national, unless he can make good his claim (*Explanatory Report to Protocol No. 4*, § 26).

35. An individual's right to enter the territory of the State of which he is a national cannot be interpreted as conferring on him an absolute right to remain in that territory. For example, a criminal who, having been extradited by the State of which he is a national, then escapes from prison in another State, will not have an unconditional right to seek refuge in his own country. Similarly, a soldier serving on the territory of a State other than that of which he is a national, will not have a right to repatriation to his own country (*Explanatory Report to Protocol No. 4*, § 28).

36. Temporary measures such as quarantine should not be interpreted as a refusal of entry (*Explanatory Report to Protocol No. 4*, § 26).

37. Article 3 § 2 of Protocol No. 4 does not relate to measures that affect an applicant's desire to enter a country, but rather to actual deprivations, which may be more or less formal, of an individual's right to enter the country of which he/she is a national (*C.B. v. Germany*, Commission decision, 1994).

38. Where an applicant decides not to return to the country of which he/she is a national in order to avoid being arrested and confronting the justice system, such situation represents a personal choice not to make use of the right guaranteed by Article 3 § 2 of Protocol No. 4 and, thus, does not amount to a deprivation of that right within the meaning of this provision. In other words, the mere existence of an arrest warrant in the applicant's name does not raise an issue under this provision (*E.M.B. v. Romania* (dec.), 2010, §§ 32-34 and 48-49; *C.B. v. Germany*, Commission decision, 1994).

39. The right of a person to enter the territory of the State of which he or she is a national, is not, by its very nature, open to being exercised by third parties (*Association "Regele Mihai" v. Romania* (dec.), 1995).

B. Failure to issue travel documents

40. The authorities' refusal to issue the applicant with a passport does not raise an issue under Article 3 § 2 of Protocol No. 4, in so far as it does not affect the applicant's ability to enter his own country (*Marangos v. Cyprus*, Commission decision, 1997).

41. In *Momcilovic v. Croatia* (dec.), 2002, the Court examined a particular context concerning an applicant's return to his own country namely, following independence and the applicant having spent several years abroad due to the armed conflict which had taken place in Croatia. The authorities' prolonged failure to issue the applicant with the identification documents was not found to infringe his right to enter the territory of his own country: the applicant had in fact been able to do so without those documents. The unlawfulness of such entry had no bearing on the Court's conclusion, as the applicant had not been prosecuted on this ground.

C. Cases concerning members of royal houses

42. In *Association "Regele Mihai" v. Romania* (dec.), 1995, the applicant association, which campaigned for the former king of Romania to be allowed to enter the country, did not have standing to lodge a complaint under Article 3 § 2 of Protocol No. 4 in its own name. Nor was it found

to have a corresponding right to be able to accept into the territory of the State the persons referred to in this provision.

43. In *Victor-Emmanuel De Savoie v. Italy* (dec), 2001, the Court declared admissible the complaint lodged by the head of the House of Savoy in respect of the constitutional provision prohibiting male descendants of the last king of Italy from entering and staying in the country. When depositing the instrument ratifying Protocol No. 4, the Italian Government expressed a reservation, specifying that Article 3 § 2 could not prevent the application of the impugned constitutional prohibition. The case was eventually struck out, since the said provision had in the meantime been repealed, the respondent Government had withdrawn their reservation and the applicant could eventually enter Italy (*Victor-Emmanuel De Savoie v. Italy* (striking out), 2003).

44. In *Habsburg-Lothringen v. Austria*, Commission decision, 1989, the applicants, descendants of the last Emperor of Austria, complained that, by virtue of a law, they were banished from the country if and to the extent that they did not expressly renounce their membership of their royal House and all sovereign rights emanating therefrom. When signing Protocol No. 4, Austria made a reservation to the effect that this Protocol shall not apply to the provisions of the law in issue. The Commission rejected the applicants' complaint as incompatible *ratione materiae* with the provisions of the Convention and its Protocols, finding that the reservation was sufficiently precise.

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 “(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 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://hudoc.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 clicking on the case hyperlink.

—A—

[A. B. v. Poland](#) (dec.), no. 33878/96, 13 March 2003

[Association "Regele Mihai" v. Romania](#), Commission decision, no. 26916/95, 4 September 1995

—C—

[C.B. v. Germany](#), Commission decision, no. 22012/93, 11 January 1994

—D—

[Denizci and Others v. Cyprus](#), nos. 25316/94 and 6 others, ECHR 2001-V

[E.M.B. v. Romania](#) (dec.), no. 4488/03, 28 September 2010

[East African Asians v. the United Kingdom](#), Commission decision, nos. 4403/70 4404/70 4405/70..., 14 December 1973

—F—

Fedorova and Others v. Latvia (dec.), n° 69405/01, 9 October 2003
Fehér and Dolník v. Slovakia (dec.), nos. 14927/12 and 30415/12, 21 May 2013

—G—

Genovese v. Malta, no. 53124/09, 11 October 2011
Ghoumid and Others v. France, nos. 52273/16 and 4 others, 25 June 2020
Gribenko c. Latvia (dec.), no. 76878/01, 15 May 2003
Gulijev v. Lithuania, no. 10425/03, 16 December 2008

—H—

Habsburg-Lothringen v. Austria, Commission decision, no. 15344/89, 14 December 1989
Hirsi Jamaa and Others v. Italy [GC], no. 27765/09, ECHR 2012

—I—

I.B. v. The Federal Republic of Germany, Commission decision, no. 6242/73, 24 May 1974

—K—

K2 v. the United Kingdom (dec.), no. 42387/13, 7 February 2017
Karashev v. Finland (dec.), no. 31414/96, 12 January 1999

—L—

L. v. Federal Republic of Germany, Commission decision, no. 10564/83, 10 December 1984

—M—

M. and S. v. Italy and United Kingdom (dec.), no. 2584/11, 13 March 2012
Maikoe and Baboelal v. the Netherlands, no. 22791/93, Commission decision, 30 November 1994
Marangos v. Cyprus, no. 31106/96, Commission decision, 20 May 1997
Momcilovic v. Croatia (dec.), no. 59138/00, 29 August 2002

—N—

Nagula v. Estonia (dec.), no. 39203/02, 25 October 2005
Naumov v. Albania (dec.), no. 10513/03, 4 January 2005

—P—

Piermont v. France, 27 April 1995, Series A no. 314

—R—

Ramadan v. Malta, no. 76136/12, §21 June 2016

Roldan Teixeira and Others v. Italy (dec.), no. 40655/98, 26 October 2000

—S—

S. v. Federal Republic of Germany, Commission decision, no. 11659/85, 17 October 1986

Sadet v. Romania (dec.), no. 36416/02, 20 September 2007

Schober c. Austria (dec.), n° 34891/97, 9 November 1999

Shchukin and Others v. Cyprus, no. 14030/03, 29 July 2010

Slivenko and Others v. Latvia (dec.) [GC], no. 48321/99, , ECHR 2002-II (extracts))

Stetsykevych, v. Ukraine (dec.), no. 40033/14, 20 October 2015

—V—

Victor-Emmanuel De Savoie v. Italy (dec), no. 53360/99, 13 September 2001

Victor-Emmanuel De Savoie v. Italy (striking out), no. 53360/99, 24 April 2003

—X—

X v. Federal Republic of Germany, Commission decision, no. 3745/68, 15 December 1969

X v. Austria and Germany, no. 6189/73, Commission decision, 13 May 1974

X. v. Sweden, no. 3916/69, Commission's decision, 18 December 1969