



Ad-Hoc Query on Criminal law and foreign citizens

Requested by HU EMN NCP on 23rd June 2014

Compilation produced on 6th November 2014

Responses from Austria, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (18 in Total)

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1. Background Information

The new Hungarian Penal Code (Act C of 2012) as well as the new Penal Execution Code (Act CCXL of 2013) have recently entered into force. The provisions of the new criminal laws contain both newly introduced and long-standing provisions that especially concern foreign nationals. It is our aim to map the similar elements in the criminal law of other Member States in order to be able to compare the different solutions.

Hungary would therefore very much appreciate information (if possible containing both the content as well as the reference to the law) related to the following questions:

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1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this:

- Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'?
- Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)?

2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:

- Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals?
- Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals?
- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration?


3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:

- Is there any criminal coercive measure which is applicable specifically against foreign nationals?
- What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national?

4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code.



We would very much appreciate your responses by **23rd July 2014**.

2. Responses

		Wider Dissemination?	
	Austria	No.	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.

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	<p>Estonia</p>	<p align="center">Yes</p>	<p>1.1. Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'?</p> <p>Penal Code in Estonia does not define the concept of "alien", but according to Aliens Act an alien is a person who is not an Estonian citizen.</p> <p>1.2. Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? Yes. According to Penal Code:</p> <ul style="list-style-type: none"> • § 54. Expulsion, If a court convicts a citizen of a foreign state of an intentional criminal offence and imposes imprisonment, the court may impose expulsion with prohibition on entry for up to ten years as supplementary punishment on the convicted offender. If the spouse or a minor child of the convicted person lives with him or her in the same family in Estonia on a legal basis, the court in its judgment shall provide reasons for imposition of expulsion. Expulsion shall not be imposed on a convicted citizen of a foreign state who at the time of commission of the criminal offence was less than 18 years of age. <p>According to the Estonian Code of Criminal Procedure</p> <ul style="list-style-type: none"> • § 219 If a person has committed a criminal offence in the second degree for which a pecuniary punishment may be imposed and the person does not have a permanent or temporary place of residence in Estonia, an investigative body may, with the consent of the person, substitute the detention of the person as a suspect by a payment covering the procedure expenses, the potential pecuniary punishment and the damage caused by the criminal offence into the public revenues. (According to the Code of Criminal Procedure § 199 (2) the criminal proceedings shall not be commenced if detention of the suspect is substituted for pursuant to § 219 of this Code.)
	<p>Finland</p>	<p align="center">Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this:</p> <ul style="list-style-type: none"> - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? No. - Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? <p>Finnish Criminal Code does not define who should be regarded as a foreigner or as an alien.</p> <p>Yes, a fine or imprisonment for border offence; a fine for a petty border offence; a fine or imprisonment for territorial violation.</p> <p>Criminal Code, Chapter 17 Section 7 - Border offence (563/1998)</p> <p>(1) A person who</p> <p>(1) crosses the border of Finland without a valid passport or another travel document, or otherwise than from a legal point of departure or to a legal point of arrival, or contrary to a statutory prohibition, or attempts the same,</p> <p>(2) otherwise breaches the provisions on border crossing, or</p> <p>(3) without permission stays, moves or undertakes prohibited measures in the border zone, as referred to in the Border Zone Act (403/1947)</p> <p>shall be sentenced for a border offence to a fine or imprisonment for at most one year.</p> <p>(2) A foreigner who is refused entry or deported as a result of the act referred to in subsection 1 or a foreigner who seeks asylum or applies for a residence permit as a refugee in Finland shall not be sentenced for a border offence. A foreigner who has committed the act</p>

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		<p>referred to in subsection 1 due to the fact that he or she has been subjected to trafficking in human beings referred to in chapter 25, section 3 or 3a shall not be sentenced also for a border offence. (650/2004)</p> <p>Section 7(a) - Petty border offence (756/2000)</p> <p>(1) If the border offence, in view of the short duration of the unauthorised stay or movement, the nature of the prohibited act, or the other circumstances of the offence is petty when assessed as a whole, the offender shall be sentenced for a petty border offence to a fine.</p> <p>(2) The provisions in section 7, subsection 2 apply also to acts referred to in subsection 1.</p> <p>Section 7(b) - Territorial violation (756/2000)</p> <p>(1) A soldier of a foreign state or the master of a foreign state vessel or state aircraft, who</p> <p>(1) breaches the Act on Territorial Surveillance (755/2000) in a manner referred to in section 44 of the said Act,</p> <p>(2) breaches the provisions in sections 4 through 9 of the Act on Territorial Surveillance on entry into Finnish territory or staying in the territory, or</p> <p>(3) breaches conditions imposed in a permit issued on the basis of section 10 of the Act on Territorial Surveillance, shall be sentenced for a territorial violation to a fine or to imprisonment for at most one year.</p> <p>(2) In a matter pertaining to a territorial violation, the prosecutor may waive prosecution or the court may waive punishment, if the territorial violation has been immediately interrupted or if the offender has for that reason been refused entry or deported.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:</p> <ul style="list-style-type: none"> - Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? Yes. See above. - Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? Yes. <p>Criminal Code:</p> <p>Chapter 6, Section 5 – Grounds increasing the punishment: commission of the offence for a motive based on race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or another corresponding grounds, and (511/2011)</p> <p>Chapter 11 – War crimes and crimes against humanity (212/2008)</p> <p>Section 1 - Genocide</p> <p>(1) A person who for the purpose of entirely or partially destroying a national, ethnic, racial or religious group or another comparable group</p> <p>(1) kills members of the group,</p> <p>(2) inflicts grievous bodily or mental illness or injuries on members of the group,</p> <p>(3) subjects the group to such living conditions that can cause the physical destruction of the group in whole or in part,</p> <p>(4) undertakes forcible measures to prevent procreation among the group, or</p> <p>(5) forcibly moves children from one group to another,</p> <p>shall be sentenced for genocide to imprisonment for at least four years or for life.</p> <p>(2) An attempt is punishable.</p> <p>Section 2 - Preparation of genocide</p>
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<p>A person who for the purpose referred to in section 1 (1) conspires with another to commit genocide, or (2) makes a plan for genocide shall be sentenced for preparation of genocide to imprisonment for at least four months and at most four years.</p> <p>Section 3 - Crime against humanity A person who, as part of a broad or systematic assault on civilian population, engages in racial discrimination or persecutes a recognizable group or community on the basis of political opinion, race, nationality, ethnic origin, culture, religion or gender or on other comparable grounds, shall be sentenced for a crime against humanity to imprisonment for at least one year or for life. An attempt is punishable.</p> <p>Section 9(a) – Torture (990/2009) (1) If a public official causes another strong physical or mental suffering on the basis of race, national or ethnic origin, skin colour, language, gender, age, family relations, sexual orientation, inheritance, incapacity, state of health, religion, political opinion, political or vocational activity or other corresponding grounds, he or she shall be sentenced for torture to imprisonment for at least two and at most twelve years and in addition to removal from office. (2) Also a public official who explicitly or implicitly approves an act referred to in subsection 1 committed by a subordinate or by a person who otherwise is factually under his or her authority and supervision shall also be sentenced for torture. (3) An attempt is punishable. (4) The provisions in this section regarding public officials apply also to persons performing a public fiduciary function and to a person exercising public power and, with the exception of the sanction of removal from office, also to the employee of a public corporation and to a foreign public official.</p> <p>Section 10 - Ethnic agitation (511/2011) A person who makes available to the public or otherwise spreads among the public or keeps available for the public information, an expression of opinion or another message where a certain group is threatened, defamed or insulted on the basis of its race, skin colour, birth status, national or ethnic origin, religion or belief, sexual orientation or disability or a comparable basis, shall be sentenced for ethnic agitation to a fine or to imprisonment for at most two years.</p> <p>Section 10(a) – Aggravated ethnic agitation (511/2011) If the ethnic agitation involves incitement or enticement (1) to genocide or the preparation of genocide, a crime against humanity, an aggravated crime against humanity, a war crime, an aggravated war crime, murder, or manslaughter committed for terrorist intent, or (2) to serious violence other than what is referred to in paragraph 1 so that the act clearly endangers public order and safety, and the ethnic agitation also when assessed as a whole is aggravated, the offender shall be sentenced for aggravated ethnic agitation to imprisonment for at least four months and at most four years.</p> <p>Section 11 – Discrimination (885/2009) A person who in his or her trade or profession, service of the general public, exercise of official authority or other public function or in the</p>
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		<p>arrangement of a public amusement or meeting, without a justified reason (1) refuses someone service in accordance with the generally applicable conditions; (2) refuses someone entry to the amusement or meeting or ejects him or her; or (3) places someone in a clearly unequal or otherwise essentially inferior position owing to his or her race, national or ethnic origin, skin colour, language, sex, age, family ties, sexual preference, inheritance, disability or state of health, or religion, political orientation, political or industrial activity or another comparable circumstance shall be sentenced, unless the act is punishable as work discrimination or extortionate work discrimination, for discrimination to a fine or to imprisonment for at most six months.</p> <p>Chapter 47 Section 3 - Work discrimination (885/2009) An employer, or a representative thereof, who when advertising for a vacancy or selecting an employee, or during employment without an important and justifiable reason puts a applicant for a job or an employee in an inferior position (1) because of race, national or ethnic origin, nationality, colour, language, sex, age, family status, sexual preference, inheritance, disability or state of health, or (2) because of religion, political opinion, political or industrial activity or a comparable circumstance shall be sentenced for work discrimination to a fine or to imprisonment for at most six months. Section 3(a) – Extortionate work discrimination (302/2004) If in the work discrimination an applicant for a job or an employee is placed in a considerably inferior position through the use of the job applicant's or the employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall, unless a more severe penalty is provided for the act elsewhere in the law, be sentenced for extortionate work discrimination to a fine or to imprisonment for at most two years.</p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? Chapter 17, Section 8 - Arrangement of illegal immigration (563/1998) (1) A person who (1) brings or attempts to bring to or transport through Finland a foreigner without a valid passport, other travel documents, a visa or a residence permit, (2) arranges or, as an intermediary, provides transportation for a foreigner referred to in paragraph 1 to Finland or (3) gives to another person a passport, other travel documents, a visa or a residence permit that is false, forged or issued to someone else for use to enter the country, shall be sentenced for arrangement of illegal immigration to a fine or imprisonment for at most two years. (650/2004) (2) An act which, when taking into account in particular the motives of the person committing it and the circumstances pertaining to the safety of the foreigner in his or her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangement of illegal immigration. Section 8(a) - Aggravated arrangement of illegal immigration (650/2004)</p>
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			<p>If, in the arrangement of illegal immigration,</p> <p>(1) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person or</p> <p>(2) the offence has been committed within the framework of a criminal organisation referred to in section 1a, subsection 4 and the offence is aggravated also when assessed as whole, the offender shall be sentenced for aggravated arrangement of illegal immigration to imprisonment for at least four months and at most six years.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:</p> <p>- Is there any criminal coercive measure which is applicable specifically against foreign nationals? N/A</p> <p>- What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national?</p> <p>Criminal procedure Act: The defendant may use his or her own mother tongue in criminal proceedings. The court appoints the translation services as well as a public legal aid attorney or an advocate for the defendant.</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. National Code of Judicial Procedure includes two provisions which are exclusively applicable to foreign nationals: Chapter 12, Section 4 A foreigner who, under the law of his or her home state, is not competent to exercise his or her right to be heard in a trial, may nonetheless exercise his or her right to be heard in a court in Finland if, under the law of Finland, he or she is competent to do so.</p> <p>Chapter 17 general provisions on evidence Section 3 (571/1948) (3) If, in a given case, foreign law should apply, but no information is available on its contents, Finnish law applies instead. (165/1998).</p>
	<p>France</p>	<p align="center">Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this:</p> <p>- Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'?</p> <p>There is no separate concept of 'foreigner' in the French Penal Code. However, the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA) (art. L. 111-1) specifies and determines precisely the terms at issue. These terms are applied also in national criminal law.</p> <p>- Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)?</p> <p>Judicial entry ban is a sanction set out by the French Penal Code (art. 131-30, 131-30-1 and 131-30-2) which is specifically and exclusively applicable to foreign nationals. It can only be issued against a foreign national guilty of committing a crime or an offence. Certain categories of foreign nationals, because of a long period of residence in France or the existence of strong family ties (marriage,</p>

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			<p>children), cannot be sentenced to entry ban.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:</p> <ul style="list-style-type: none"> - Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? No. - Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? No, although trafficking in human beings is a criminal offence which is committed, in most cases, against foreign nationals. - Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? <p>Marriages of convenience, false declarations of parenthood, the employment of foreign nationals who do not hold a work permit and, only in specific cases, facilitation of unauthorized entry and stay of foreign nationals are criminal offences, subject to criminal penalties. Such criminal penalties had been introduced with the intention to suppress and prevent illegal migration. However, these penalties are laid down in the CESEDA or the Labour Code and not in the Penal Code.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:</p> <ul style="list-style-type: none"> - Is there any criminal coercive measure which is applicable specifically against foreign nationals? No. - What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national? <p>If the suspected/accused person is a foreign national who does not understand French, he/she is entitled, in a language he/she understands and until the conclusion of the criminal proceeding:</p> <ul style="list-style-type: none"> - To be assisted by an interpreter. The interpreter can also assist the suspected/accused person during the interviews with his/her lawyer, when they are in direct relation to any interrogation or hearing; - To the translation of any documentation essential to the exercise of his/her defense and to the guarantee of the fairness of the trial. <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code.</p> <p>A number of provisions exclusively applicable to foreign nationals are set out in the French Penal Procedure Code:</p> <ul style="list-style-type: none"> - Foreign detainees are entitled to the assistance of diplomatic representatives and consular officials of their country of origin (subject to reciprocity by their country of origin) to ensure respect for their rights or interests (art. D. 264 of the Penal Procedure Code); - A foreign national sentenced to a temporary or permanent entry ban as an additional penalty may ask for the abolition of the sentence (art. 702-1 to 703 of the Penal Procedure Code); - A foreign national sentenced to an entry ban may be granted release on parole either with the abolition of the sentence at the end of the measure or subject to the execution of the entry ban (art. 729-2 of the Penal Procedure Code).
	<p>Germany</p>	<p align="center">Yes</p>	<p>1. Foreigner-specific crimes are not covered by the German Penal Code. These are – depending on the crime – regulated by the corresponding special laws, especially by §§ 95 - 98 German Residence Act, §§ 84 – 86 German Asylum Procedure Act. The definition of a foreigner therefore is not found in the German Penal Code. In point of fact the so called German Criminal Law Pertaining to Foreigners shall only be applied if the German Residence Act is relevant to the foreigner. This on the other hand is determined in</p>

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			<p>accordance with § 1 German Residence Act. Insofar the behaviour of a foreigner is linked to the penalty standards covered by the German Residence Act, the perpetrators shall only be considered to be Non-Germans as laid down in § 2, section 1 German Residence Act.</p> <p>- Yes: e.g. § 95 German Residence Act: Prison sentence or a fine for foreigners because of illegal entry of the country or illegal stay in the Territory of the German Federal Republic. Furthermore criminal acts carried out by a foreigner can also be punished with expulsion/deportation, §§ 53 – 55 German Residence Act.</p> <p>2. In the German Penal Code there are no crimes that can only be carried out by foreigners. This can only - as described above - be regulated by §§ 95 ff, German Residence Act.</p> <p>-§§ 95 ff, German Residence Act: e.g. illegal entry of the country or illegal stay in the country, obtaining a residence title whilst giving incorrect information, false information for the determination of the identity</p> <p>-§§ 96, 97 German Residence Act: smuggling of foreigners in various circumstances.</p> <p>-§§ 95, 96 German Residence Act</p> <p>3. No, because the German Code of Criminal Procedure does not differentiate between national and foreign perpetrators and/or suspects.</p> <p>-The foreigner is to be provided with the services of an interpreter at the latest before the conclusion of the criminal proceedings should the foreigner not be in command of the German language, § 163 a, section 5, German Code of Criminal procedure. The same applies to the main proceedings of the penal proceedings, § 187, Judiciary Act.</p> <p>4. n/a</p>
	<p>Hungary</p>	<p>Yes</p>	<p>1. There is no separate concept of 'foreigner' in Hungarian criminal law, however, laws on entry and stay of non-Hungarian nationals (Act I of 2007 on the Entry and Residence of Persons with the Right of Free Movement and Residence, Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals) specify and determine precisely the terms at issue. These terms are applied also in national criminal law.</p> <p>Expulsion is a criminal punishment specifically applied to foreigners, which is regulated by the Hungarian Penal Code (Act C of 2012) as follows:</p> <p>Section 59 (1) <i>Perpetrators of citizenship other than Hungarian, whose presence in the country is not desirable, shall be expelled from the territory of Hungary. Persons expelled shall leave the territory of the country and may not return for the duration of the term of expulsion.</i></p> <p>(2) <i>Persons granted asylum may not be expelled.</i></p> <p>(3) <i>Expulsion may be imposed upon a person who has the right of free movement and residence or a person with the right of residence in the territory of Hungary under permanent resident or refugee status only in connection with the commission of a criminal offense that is punishable by imprisonment of five or more years.</i></p> <p>(4) <i>Expulsion may only be imposed upon a person sentenced to a term of imprisonment of ten years or more:</i></p> <p>a) <i>who has been residing in the territory of Hungary legitimately for not less than ten years; or</i></p> <p>b) <i>whose right to family union would be injured;</i></p> <p><i>provided that the presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety.</i></p>

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		<p>Section 60 (1) <i>Expulsion may be ordered for a definite term, or permanently.</i></p> <p>(2) <i>The minimum duration of a fixed-term expulsion shall be one year, its maximum duration shall be ten years.</i></p> <p>(3) <i>Permanent expulsion may be imposed upon a person who was sentenced to a term of imprisonment of ten years or more, and presence of the perpetrator in the country is assessed as posing a potential and considerable risk to public safety taking into account the severity of the criminal offense, the nature of the act and the connections of the perpetrator. A person with the right of free movement and residence may not be expelled permanently.</i></p> <p>(4) <i>The duration of expulsion shall begin when the sentence becomes enforceable. The period of time of imprisonment served shall not be included in the duration of expulsion.</i></p> <p>(5) <i>Upon request, the court may release a person subject to permanent expulsion from the effect of such expulsion if such person is deemed worthy and if ten years have passed since the expulsion.</i></p> <p>2. Previously, there was one criminal offence specified in the Hungarian Penal Code that could be committed exclusively by foreign nationals. This criminal offence was first defined namely as ‘illegal stay’, later on it was known as the ‘violation of an entry ban’. Since 1 January 2013, though, Hungarian criminal law does not contain the provision criminalizing the aforementioned acts, conducted by foreign nationals. Consequently, a criminal offence that can be committed exclusively by foreign nationals currently does not exist in Hungary.</p> <p>Trafficking in human beings is considered as a criminal offence typically committed against foreigners in domestic criminal law (Section 192 of Hungarian Penal Code), however, this type of crime may not be committed to the detriment of foreign persons, exclusively. On the other hand, it is often the case that the victim is a foreigner deprived of his/her freedom of liberty and is transported to the territory of Hungary. Hungary bears its own strategy for the suppression of this phenomenon.</p> <p>The following criminal offences had typically been defined in the Hungarian Penal Code with the intention to suppress and prevent illegal migration:</p> <p><i>Human Smuggling</i></p> <p>Section 353 (1) <i>Any person who provides aid to another person for crossing state borders in violation of the relevant statutory provisions is guilty of a felony punishable by imprisonment not exceeding three years.</i></p> <p>(2) <i>The penalty shall be imprisonment between one to five years if human smuggling:</i></p> <p>a) <i>is carried out for financial gain or advantage; or</i></p> <p>b) <i>involves several persons for crossing state borders.</i></p> <p>(3) <i>The penalty shall be imprisonment between two to eight years if human smuggling is carried out:</i></p> <p>a) <i>by tormenting the smuggled person;</i></p> <p>b) <i>by displaying a deadly weapon;</i></p> <p>c) <i>by carrying a deadly weapon;</i></p> <p>d) <i>on a commercial scale; or</i></p> <p>e) <i>in criminal association with accomplices.</i></p> <p>(4) <i>Any person who engages in preparations for human smuggling is guilty of misdemeanor punishable by imprisonment not exceeding</i></p>
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		<p>two years.</p> <p><i>Facilitation of Unauthorized Residence</i></p> <p>Section 354 (1) <i>Any person who provides aid for financial gain to a foreign national to reside unlawfully in the territory of:</i></p> <p>a) <i>any Member State of the European Union;</i></p> <p>b) <i>any State that is a party to the Agreement on the European Economic Area; or</i></p> <p>c) <i>any other country whose citizens are enjoying the same treatment as nationals of States who are parties to the Agreement on the European Economic Area;</i></p> <p><i>if such foreign national is not a citizen of any of these states, is guilty of misdemeanor punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.</i></p> <p>(2) <i>Any person who provides aid for financial gain to a foreign national to reside unlawfully in the territory of Hungary shall be punishable in accordance with Subsection (1), insofar as the act did not result in a more serious criminal offense.</i></p> <p><i>Abuse by Establishing Family Ties</i></p> <p>Section 355 <i>Any person over the age of eighteen years who enters into a family relationship for financial gain for the sole purpose of obtaining a document verifying the right of residence, or consents to a statement of paternity of full effect is guilty of a misdemeanor punishable by imprisonment not exceeding two years, insofar as the act did not result in a more serious criminal offense.</i></p> <p><i>Unlawful Employment of Third-Country Nationals</i></p> <p>Section 356 (1) <i>Any person who employs:</i></p> <p>a) <i>a third-country national on a regular basis or frequently without authorization to undertake gainful employment; or</i></p> <p>b) <i>a substantial number of third-country nationals at the same time without authorization to undertake gainful employment;</i></p> <p><i>is guilty of a misdemeanor punishable by imprisonment not exceeding two years.</i></p> <p>(2) <i>The penalty shall be imprisonment not exceeding three years for a felony:</i></p> <p>a) <i>if the offender employs a third-country national without authorization to undertake gainful employment under particularly exploitative working conditions;</i></p> <p>c) <i>if the third-country national employed without authorization to undertake gainful employment is the victim of trafficking in human beings.</i></p> <p>(3) <i>For the purposes of this Section:</i></p> <p>a) <i>'particularly exploitative working conditions' shall mean particularly exploitative working conditions as defined by the Act on the Admission and Residence of Third-Country Nationals;</i></p> <p>b) <i>'substantial number' shall mean at least five persons.</i></p> <p>3. There is no typical criminal coercive measure set out in the national Act on Criminal Proceedings (Act XIX of 1998 on Criminal Proceedings) that is applicable specifically against foreign nationals. There is, however, a measure, applicable specifically in case of a foreign defendant that is namely the <i>security</i>, which is set out by the following provisions:</p> <p>586 (1) <i>Upon the request of a defendant living abroad, up to the filing of the indictment the prosecutor, thereafter the court may permit the deposit of a security in case the crime is punishable not severely than eight years of imprisonment. In such a case the procedure may be conducted in the absence of the defendant. No security is allowed if the result of the crime was death.</i></p> <p>587 (1) <i>If the court pronounces the defendant guilty, or decides to apply penalty without going to trial, the security shall be transferred to</i></p>
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		<p><i>the state when the decision becomes final.</i></p> <p><i>(2) If the court imposes a fine, applies forfeiture of property or obliges the defendant to pay the costs of criminal proceedings, the security transferred to the state shall be expanded to execute such dispositions.</i></p> <p><i>(3) Upon the imposition of a definite sentence of imprisonment, the security shall be repaid to the convict after the sentence has been served. No other measures may be taken to execute other punishment.</i></p> <p><i>(4) The security shall be refunded to the defendant in full, or, in the case of several criminal offenses, in proportional parts,</i></p> <p><i>a) upon the partial termination of the investigation,</i></p> <p><i>b) if the court has partially acquitted the defendant or partially terminated the procedure against the defendant.</i></p> <p><i>(5) The security shall be refunded to the defendant proportionally, if the amount of security exceeds the imposed fine, the applied forfeiture of property or the determined costs of criminal proceedings.</i></p> <p>The Hungarian Act on Criminal Proceedings, in case of a foreign defendant, provides the foreigner with the right to use and speak the mother tongue and the right to consular correspondence. In the latter case the consular officer, bearing the same foreign nationality as the defendant or witness, may be present during the interrogation. The consular officer may authorize a defence lawyer to undertake the protection of the accused foreign defendant.</p> <p>In addition, in case the witness is a foreigner, the following special provision applies:</p> <p><i>Section 71 (8) If the conditions set forth in the act on the admission and stay of foreign citizens are otherwise not fulfilled, the prosecutor and the court may make a motion to the responsible authority to issue a permission for the admission and stay of the foreign citizen, and in consideration of this foreign citizen his/her relative, whose testimony may hold evidence which presumably would not be available otherwise.</i></p> <p>In addition, the following provision sets out rules regarding the possible reason for exclusion from a criminal procedure:</p> <p><i>Section 170 (6) No investigation may be launched on the forgery of public deeds (Section 274 of Penal Code), if the forged or falsified travel document or the authentic travel document issued to the name of another person is used by a foreign citizen to enter the territory of the country, provided that an immigration control procedure may be instituted. This provision shall not apply, if an investigation procedure must be started against the same foreign citizen for the commission of another criminal offence as well.</i></p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code.</p> <p>Among the principles relating to the detention of foreign nationals on the one hand there are theses which in line with the European Prison Rules are not set specifically/exclusively on foreign persons, but they may potentially be applied to foreign recipients, on the grounds of their nature. Such a principle for instance is the aforementioned prohibition of discrimination and the principles of freedom of religion and freedom of conscience. On the other hand, there are also principles relating to criminal penitentiary which are typically applicable to foreigners. Such principles involve the principle of free choice of language (mother tongue) and the right to diplomatic or consular correspondence. In addition, the statutory provisions relating to non-resident citizens are summarized under a separate subtitle in the new Penal Execution Code (Act CCXL of 2013 about the execution of the sanctions, the measures, some compulsory provisions and the misdemeanor closing) as follows:</p> <p><i>Provisions on convicted non-Hungarian citizens</i></p> <p><i>Section 207 (1) The competent diplomatic or consular representation according to nationality (hereinafter referred to as competent</i></p>
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		<p>representation) shall be notified without delay about the admission to a prison of a convicted non-Hungarian citizen (hereinafter referred to as convicted foreigner). The notice shall only be omitted upon the expressive written request of the convicted foreigner. If the convicted foreigner has multiple foreign nationalities, his/her choice of representation shall be notified.</p> <p>(2) The convicted foreigner shall be informed in a language known by him/her about whether an international agreement allows for the transfer of the execution of imprisonment.</p> <p>Section 208 Upon the request of the convicted foreigner the teaching of Hungarian language, as well as programs shall be made available during incarceration, as far as the penal institution's possibilities allow it, through which information can be gained on the national, historical and moral values around which the Hungarian society is organized.</p> <p>Section 209 When placing the convicted foreigner, it shall be ensured as far as possible that among the inmates there is a person knowing and speaking both Hungarian and the language of the convicted foreigner. Convicted foreigners shall not be placed together if there is a national, historical, religious or ethnic conflict among them.</p> <p>Section 210 (1) Costs of the interpretation and translation concerning the rights and obligations of the convicted foreigner on the enforcement of the imprisonment (hereinafter referred to as the interpretation costs) shall be borne by the penal institution.</p> <p>(2) If the convicted foreigner requests interpretation not related to the enforcement of imprisonment, the institution provides that at the expense of the convicted foreigner.</p> <p>(3) The provisions of the Act on Criminal Proceedings shall apply concerning the interpretation costs incurred in the criminal proceedings against the convicted foreigner.</p> <p>Section 211 The convicted foreigner and the member of the relevant foreign diplomatic representation keep contact in accordance with the International Convention on Consular Relations, and the agreements between the relevant states, taking into account the provisions of this Act. A contact can only be established with the consent of the convicted foreigner.</p> <p>Section 212 (1) In case the convicted foreigner or his/her representative requests the transfer of the enforcement of the imprisonment to another state, the application shall be submitted to the Minister responsible for justice through the Hungarian Prison Service.</p> <p>(2) In case the enforcement of the imprisonment is transferred to another state, the penal institution shall apply the rules for expulsion accordingly.</p> <p>Section 213 (1) The penal institution shall notify the competent foreign representation without delay, if – according to the knowledge of the penal institution – a guardian or trustee should be appointed for the convicted foreigner.</p> <p>(2) The penal institution immediately notifies the competent foreign representation about the death of the convicted foreigner.</p> <p>Section 214 The penal institution shall immediately inform the regional immigration authority competent at the place of the decision-making first instance court about the expected release from prison of the convicted foreigner thirty days before the convicted foreigner's expected release, or if the remaining time of the imprisonment is less than thirty days, at the latest on the working day following the receipt of judicial notice, or if the date of the release justifies it, the notification shall be done immediately.</p> <p>Section 215 The penal institution notifies the competent foreign representation and the Hungarian Prison Service about the convicted foreigner's release from prison or his/her transfer to another state, and in case of release the authority keeping the passport is also notified at least three days before the release. Upon the expressive written request of the convicted foreigner the competent foreign representation is not notified.</p>
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	<p>Italy</p>	<p>Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this: Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'?</p> <p>No, it does not. In the Italian Criminal Code no difference is made between a foreigner and a national (for immigration purposes). However, the definition of foreigner is contained in Article 1 of the Consolidated Act on Immigration (Legislative Decree No. 286/1998) whereby foreigner refers to any non-EU national, and to stateless persons, in compliance with European regulation and the Schengen Agreement and Convention.</p> <p>Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)?</p> <p>The Consolidated Act on Immigration provides for the deportation (expulsion) of foreigners from national territory - intended as a criminal sanction in the cases specified in Articles 15 and 16. Article 15 includes, inter alia, crimes against the personhood of the State, devastation, reduction to slavery and sexual abuse. Under Article 16 deportation is intended as a sanction in lieu of detention; it can be ordered by the judge for TCNs who have to serve prison terms, or the remainder of prison terms, not exceeding two years.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this: Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals?</p> <p>Until recently, Article 10-bis of the Consolidated Act on Immigration provided for the offences of illegal entry and illegal stay in national territory, and Article 61(1)(11-bis) of the Criminal Code provided for the aggravating circumstance of illegal immigrant status: that is to say a heavier punishment was inflicted if a crime was committed by an irregular TCN. By Law No. 67 of 28 April 2014, the Parliament enabled the Government to decriminalise this crime (illegal entry and illegal stay) within eighteen months from the coming into force of such Law. And by decision No. 249/2010, the Constitutional Court stated that the aggravating circumstance of illegal status is unconstitutional.</p> <p>Article 14(5-ter) of the Consolidated Act provides for the crime of violation of a expulsion order issued by a Questore (Police Commissioner) and the crime of avoidance of the obligation for a TCN to undertake an "Assisted Voluntary Return Programme".</p> <p>Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals?</p> <p>Trafficking in human beings is punished under Article 601 of the Criminal Code as a crime typically committed against foreigners.</p> <p>Article 12 of the Consolidated Act on Immigration punishes anyone facilitating the illegal entry and illegal stay of foreigners. Article 22(12) of the Consolidated Act provides for the crime of exploitation of illegal labour (that is, the employment of irregular TCNs).</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings: Is there any criminal coercive measure which is applicable specifically against foreign nationals?</p> <p>There is not any in the Code of Criminal Procedure. However, Article 14 of the Consolidated Act on Immigration sets out that undocumented TCNs who are meant for non-immediately enforceable deportation are to be detained at the Centres for Identification and Expulsion (CIEs). If the TCNs meant for non-immediately enforceable deportation have identification documents (passport or other), detention at CIEs may be replaced by the following measures: a) delivery of current passport or other equivalent document, to be returned at the time of departure; b) obligation to stay at a given location, to be easily reached; c) obligation to appear at a given local police office on given days at a given times.</p> <p>What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign</p>
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			<p>national?</p> <p>During a criminal proceeding there are no difference of treatment between an Italian citizen and a TCN, except for the assistance by language and cultural mediators.</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. Law No. 354/1975 on the Penitentiary System does not include any provisions exclusively applicable to foreign nationals. Yet, under Article 35 of Presidential Decree No. 230/2000, foreign nationals have the right to communicate with the diplomatic authorities of their countries of origin when coercive measures are enforced. Moreover, due to possible difficulties of interaction, the support of language and cultural mediators must be provided.</p>
	<p>Latvia</p>	<p>Yes</p>	<p>1. No, there is no such definition of foreigner in Criminal Law. There is additional sanction (could be sentenced as additional to deprivation of liberty or a fine): expulsion from the Republic of Latvia which is applicable solely to a citizen of another state of person which has permanent residence permit in another state.</p> <p>2. No, according to Criminal Law provisions there is no such criminal offence that can be committed exclusively by foreign nationals. Unlawful conveyance of a person across the state border could be a criminal offence that most likely can be committed exclusively against foreign national but since there is stated that this crime can be committed against person it means that it could be committed against anyone. Illegal crossing of state border, unlawful conveyance of a person across the state border, ensuring the possibility of residing illegally in the Republic of Latvia are criminal offences that are with the intention to suppress and prevent illegal migration.</p> <p>3. There is stated in Criminal Procedure Law if a court releases from arrest a person who is a third-country national who does not have the right to reside in Latvia, the court shall, without delay, notify the competent authority thereof, which has the right to detain the third-country national. A foreigner has a right to request that the diplomatic or consular representation of his or her country is notified of his or her detention. The criminal proceedings shall take place in the official language. If a person who has a rights to a defence, a victim and his or her representative, a witness, specialist, expert, auditor, as well as other persons who a person directing the proceedings has involved in the criminal proceedings does not speak the official language, such persons have the right to use the language that such persons understand during the performance of procedural actions, and to use the assistance of an interpreter free of charge, whose participation shall be ensured by the person directing the proceedings. The initiation of criminal proceedings shall not be permitted, and initiated criminal proceedings shall be terminated, if such criminal proceedings are directed against a foreign national or stateless person regarding illegal crossing of the State border, and such foreign national or stateless person has been forcibly deported from the Republic of Latvia regarding such criminal offence.</p> <p>4. In the Sentence Execution Code of Latvia is stated that the administration of a deprivation of liberty institution shall, within 21 days after it has received an order from the judge on execution of the judgment, notify the foreign citizen convicted in Latvia or a person whose</p>

Ad-Hoc Query on Criminal law and foreign citizens


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			<p>permanent place of residence is not Latvia of his or her right to express his or her will to serve the sentence in the country of his or her citizenship or the country of his or her permanent residence. The legal consequences of transferring a person for serving of the sentence in accordance with the provisions of the Criminal Procedure Law shall be explained to the convicted person.</p> <p>The Latvian Prison Administration shall, on a regular basis, however, not less than once in every four months, send information to the Ministry of Justice regarding foreign citizens who are serving their sentence of deprivation of liberty in a deprivation of liberty institutions in Latvia.</p> <p>The correspondence of convicted persons with institutions of the United Nations Organisation, the Human Rights and Public Affairs Committee of the Saeima, the Ombudsman's Office, the Prosecutor's Office, courts, advocate, as well as the correspondence of a convicted foreign citizen with the diplomatic or consular mission of his or her residence country, which is authorised to represent his or her interests, shall not be subject to examination. The correspondence of convicted persons with institutions of the United Nations Organisation, the Human Rights and Public Affairs Committee of the Saeima, the Ombudsman's Office, the Prosecutor's Office, courts, advocate, as well as the correspondence of a convicted foreign citizen with the diplomatic or consular mission of his or her residence country, which is authorised to represent his or her interests, shall be covered from the funds of the deprivation of liberty institution.</p>
	<p>Lithuania</p>	<p align="center">Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this:</p> <ul style="list-style-type: none"> - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? <p>No, the Criminal Code of the Republic of Lithuania (CCRL) does not provide a definition of the concept 'alien', though this concept is used in the text (according to the definition provided by the Law on the Legal Status of Aliens, "alien" means any person other than a citizen of the Republic of Lithuania irrespective of whether he is a foreign citizen or a stateless person"). The CCRL also uses the concept 'third-country national'.</p> <ul style="list-style-type: none"> - Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? <p>No.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:</p> <ul style="list-style-type: none"> - Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? <p>No.</p> <ul style="list-style-type: none"> - Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? <p>Article 2921 of the CCRL stipulates liability of an employer for employment of third-country nationals illegally staying in the Republic of Lithuania (with a view to implementing provisions of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals). The employer is punished by a fine or by arrest or by imprisonment for a term of up to two years.</p> <ul style="list-style-type: none"> - Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? <p>Article 291 of the CCRL stipulates liability of persons for illegal crossing of the state border (an alien who illegally enters the Republic of Lithuania with the intent of exercising the right to asylum or is, in accordance with the established procedure, subject to expulsion to the</p>

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		<p>state from whose territory he illegally crosses the state border of the Republic of Lithuania or to the state whose citizen he is shall be released from criminal liability). A person who illegally crosses the state border of the Republic of Lithuania is punished by a fine or by arrest or by imprisonment for a term of up to two years.</p> <p>Article 292 of the CCRL stipulates liability for unlawful transportation of persons across the state border. This offence is punishable by a fine or by arrest or by imprisonment for a term of up to six years. A person who unlawfully transports aliens across the state border for mercenary reasons or where this poses a threat to human life is punished by imprisonment for a term of four up to ten years.</p> <p>Article 300 of the CCRL stipulates liability of a person who produces a false document, forges a genuine document or stores, transports, forwards, uses or handles a document known to be false or a genuine document known to be forged. Such a person is punished by a fine or by arrest or by imprisonment for a term of up to three years. A person who produces a false identity card, passport, driving licence or state social insurance certificate or forges a genuine identity card, passport, driving licence or state social insurance certificate or stores, transports, forwards, uses or handles an identity card, passport, driving licence or state social insurance certificate known to be false or a genuine identity card, passport, driving licence or state social insurance certificate known to be forged is punished by arrest or by imprisonment for a term of up to four years. A person who commits the mentioned acts, where this incurs major damage, or produces a large quantity of false identity cards, passports, driving licences or state social insurance certificates or forges a large quantity of documents is punished by imprisonment for a term of up to six years.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings: - Is there any criminal coercive measure which is applicable specifically against foreign nationals? No. Proceedings regarding the offences committed by citizens of foreign countries and stateless persons are conducted in the territory of the Republic of Lithuania in compliance with the Code of Criminal Procedure of the Republic of Lithuania (Article 5 of the CCPRL). - What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national? The participants in criminal proceedings who do not understand Lithuanian are ensured the right to make statements, give evidence and provide clarifications, lodge applications and complaints, and speak in court in their native language or in a language which they understand. In all these cases, as well as when provided access to the case file the participants of the proceedings have the right to an interpreter in accordance with the procedure established by this Code. Documents of the case file to be served, in the cases specified by this Code, on the suspect, the accused or the convict, also on other participants in the proceedings must be translated into their native language or into another language which they understand (Article 8 of the CCPRL); the prosecutor forthwith notifies the fact of imposition of a detention on a citizen of another state to the Ministry of Foreign Affairs of the Republic of Lithuania and, if the detainee so requests, to a diplomatic mission or a consular post of his state (Article 128 of the CCPRL); the suspect or the accused is also entitled to notify the consular post (Articles 21 and 22 of the CCPRL).</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. The legal status of aliens serving a sentence is determined by laws of the Republic of Lithuania regulating the rights, freedoms and responsibilities of such persons while staying in the Republic of Lithuania, international treaties of the Republic of Lithuania, laws of the</p>
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			<p>Republic of Lithuania and the court judgment (Article 10 of the Penal Code of the Republic of Lithuania). Convicted aliens serving an imprisonment sentence have the right, with the mediation of the Ministry of Foreign Affairs of the Republic of Lithuania, to maintain contacts with the diplomatic missions and consular posts of their states and with international organisations (Article 109 of the PCRL).</p>
	<p>Luxembourg</p>	<p>Yes</p>	<p>1. No. The Luxemburgish Criminal Code does not have a definition of “foreigner” or “alien”. Seen that the legal system is integrated the definitions of “foreigner” (article 3 (a) of the amended Law of 29 August 2008 on free movement of persons and immigration), “European Union citizen” (article 3 (b)) and third-country national (article 3 (c)), “third country national” (article 572-2 1) of the Labour Code), “third country national in irregular situation of stay” (article 572-2 2 of the Labour Code) are applied by the criminal judges. Criminal law is based on the principles of legality and prior definition of criminal offences. This means that criminal offences sanction illicit conducts and are not based on the nationality of the accused . The Criminal Code does not have any criminal offence in regards to foreigners in irregular situation or in violation of immigration law. These criminal offenses are established in the amended Law of 29 August 2008 (article 139, 140, 141 and 142). In the Labour Code the criminal offences are against the people who employed irregular staying third country nationals (articles 572-5 (1) and L. 572-6) so it is not limited to third country nationals because they can be applied to any person (EU, EEA or TCN) residing in the Grand Duchy of Luxembourg. The same happens in regards with Chapter VI of the Criminal Code on “Racism, revisionism and other discriminations (articles 454, 455, 456, 457, 457-1, 457-2 and 457-3) which sanction any kind of discrimination based on the origin of a person, his/her skin’s colour, sex, sexual orientation, family situation, age, health condition, handicap, mores, political and philosophical opinions, union activities, or membership or non-membership, actual or supposed, of a specific ethnic group, nation, race or religion. Articles 455 and 456 cover also legal entities.</p> <p>2. As mentioned in answer 1 the following criminal offences against foreigners (EU and EEA citizens as well as third-country nationals) are established by the amended Law of 29 August 2008:</p> <p>Section 1 – Illegal entry and stay</p> <p>Art. 140. An alien who has entered onto, or stayed in, Luxembourg territory without fulfilling the legal conditions, or who has remained there after the expiry of the authorised period, or who fails to comply with the conditions of his/her authorisation, shall be liable to a term of imprisonment of between eight days and one year or/and a fine of between EUR 251 and EUR 1 250..</p> <p>Art. 141. An alien who knowingly makes false statements to the competent authority, or who knowingly produces falsified or incorrect documents in order to enter onto the territory or to obtain an authorisation to stay, a residence permit or a work permit or a renewal of the residence permit or work permit, shall be liable to a term of imprisonment of between one month and two years or/and a fine of between EUR 251 and EUR 3 000..</p> <p>Section 2 – Violation of expulsion decisions</p>

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		<p>Art. 142. Any alien who, having been removed or expelled, returns to the country despite having an entry ban into the territory shall be liable to a term of imprisonment of between six months and three years or/and a fine of between EUR 251 and EUR 3 000.</p> <p>Expulsion is not a criminal offence. It is an administrative offence as established in article 116 of the amended Law of 29 August 2008. It is the violation of an expulsion decision that is a criminal offence.</p> <p>-There are not criminal offences that can only be committed against foreigners. Trafficking of Human Beings as a criminal offence established by article 382-1 (1) of the Criminal Code as amended by Law of 9 April 2014 does not require that the victim has to be a “foreigner”. This disposition covers any “person” who is a victim of human trafficking. Article 382-1 (2) establishes the aggravated criminal offence of human trafficking.</p> <p>Criminal offences to reduce irregular migration: Trafficking of Human Beings is not a typical offence to reduce irregular migration because the protected legal right is the human being and not the entry and stay on the territory. Also, the criminal offence can be committed even if the victim entered the territory legally. However, articles L. 572-5 (1) and L. 572-6 of the Labour Code which transposed the Sanction Directive tackle the issue of employing third-country nationals in an irregular situation of stay under aggravated circumstances. Nevertheless, the dissuasive effect of irregular migration is only indirect because the use of irregular migrants affects directly competition. Article L. 572-5 (1) establishes that the fine will be increased from EUR 2 501 up to EUR 20 000 per third country national and/or 8 days up to one year of imprisonment when the employer had:</p> <ol style="list-style-type: none"> a. employed third-country nationals in an irregular situation of stay and this situation is repeated in a persistent manner; b. employed simultaneously a significant number of third-country nationals in an irregular situation of stay; c. employed third-country nationals under particularly abusive labour conditions; d. employed third-country nationals in an irregular situation of stay who s/he knows that are victims of trafficking of human beings; e. employed third-country national minors in an irregular situation of stay. <p>Finally article L. 572-6 establishes as additional penal sanctions to the employer who employed third-country nationals in an irregular situation of stay:</p> <ol style="list-style-type: none"> a. interdiction up to a maximum duration of three years to practice a professional or social activity which had served directly or indirectly to commit the offence; b. the temporary closing up to a maximum duration of 5 years or the definitive closing of the business or establishment used to commit the offence. <p>3. There are not specific coercive measures foreseen by the Criminal Procedure Code established for third-country nationals. The main practice in regards with foreigners who do not have an employment and domicile in the Grand Duchy of Luxembourg can be put in prevention detention. The Criminal Procedure Code establishes a legal presumption of risk of absconding in these situations (article 94 al. 2 1) and al 3).</p> <p>Foreigners benefit from all the fundamental guarantees established in the Criminal Procedure Code as the Luxemburgish nationals. Also,</p>
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			<p>the foreigner can be assisted by a translator in a language know by him/her (articles 70, 86 (1) and 190 (1)) if s/he does not speak any of the official languages of the country (Luxemburgish, German and French). Also the translation of documents in a language that s/he understands is authorized. It is important to mention that the DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 on the right to interpretation and translation in criminal proceedings is applicable.</p> <p>4. There are not exclusive disposition for foreigners in the execution of judgments. As mentioned above Criminal Law is based on the principle of non-discrimination and it only sanctions violations to positive law and not based on nationality as it is explain in DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 22 May 2012 on the right to information in criminal proceedings which if it was not transposed by Member States is applicable since 2 June 2014.</p> <p>Consular assistance is guaranteed not only by the directive mentioned above but also by the Vienna Convention on consular relations of 24 April 1964 (Article 5 e) and article 36 a), b) c)) and article 235 of the grand-ducal regulation of 24 March 1989 on the administration and internal regime of prisons.</p> <p>In prison foreigners are to be treated in the same conditions as the rest of the prisoners and can benefit from any education and training program and any other benefits offer by the prison as well as access to medical, dental, psychological and psychiatric treatment.</p>
	<p>Netherlands</p>	<p>Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? No, the definition of 'alien' is set out in article 1 of the Aliens Act</p> <p>- Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? No, article 1 of the 'Aliens Act'.</p> <p>- Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? No</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:</p> <p>- Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? Article 197 of the Penal Code lays down a maximum penalty of six months imprisonment for any alien who has been declared 'undesirable alien' or has received an entry ban and is still in the territory of The Netherlands. Undesired aliens and aliens with an entry ban (criminal aliens) are not allowed to stay in The Netherland. They have to leave the The Netherlands immediately.</p> <p>- Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? No</p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? No</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:</p> <p>- Is there any criminal coercive measure which is applicable specifically against foreign nationals? No</p>

Ad-Hoc Query on Criminal law and foreign citizens


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			<p>- What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national? The right of a legal counsellor en the right to a translator.</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. Penitenciaire beginselenwet (Pbw). Penal execution code, article 9 states that alien detention is executed in a detention facility. Article 56.3 states that detainees are informed about their right to have inform the representative of their country about his or her detention.</p>
	Portugal	Yes	<p>1. No.</p> <p>2. N/A.</p> <p>3. According to the Article 187.º of the Act n.º 29/2012, 9th August, “Violation of the measure of entry interdiction”: 1—The foreign citizen who enters national territory during the period in which he/she was interdicted to entry is punished with a prison penalty up to 2 years or a fine up until 100 days.</p> <p>2—In case of conviction the court may accessorially decree, by a duly grounded judicial decision the removal of the foreign citizen, in accordance with the arrangements of article 135.º.</p> <p>3—Without prejudice of the arrangements of n.º 1, the foreign citizen may be removed from national territory in order to fulfil the remaining entry interdiction period according to the proceeding in which he/she was removed.”</p> <p>The kind of fundamental rights or benefits provided by the state to a foreigner are the same given to the national citizens.</p>
	Slovak Republic	Yes	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this:</p> <ul style="list-style-type: none"> - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? <p>No.</p> <ul style="list-style-type: none"> - Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? <p>In accordance with the Article 65 (1) of the Act 300/2005 Coll. (Criminal Code) the court may, if it is required in the interest of the safety of persons or property or in any other interest, impose the sentence of expulsion from the territory of the Slovak Republic on the offender who is neither a national of the Slovak Republic nor the person who has been granted asylum status.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this:</p> <ul style="list-style-type: none"> - Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? <p>In accordance with the Article 354 (1) of the Act 300/2005 Coll. (Criminal Code) any person who crosses the State Border using violence or the threat of imminent violence shall be liable to a term of imprisonment of three to eight years; Article 348 (1c) of the Act 300/2005 Coll. (Criminal Code) any person who obstructs or substantially impedes the execution of a decision taken by a court or other public authority, by residing, without permission and without a serious reason, on the territory of the Slovak Republic despite having been imposed the sentence of expulsion from, or sentence of prohibition of residence on, the territory of the Slovak Republic.</p>

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		<p>- Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? No.</p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? In accordance with the Article 251a of the Act 300/2005 Coll. (Criminal Code) any person who illegally employs another person who resides in the territory of the Slovak republic in violation with act, a special regulation or an international treaty, in spite of having been sanctioned for the same or similar offence during the last twenty-four months, shall be liable to a term of imprisonment of up to 2 years. In accordance with the Article 335 of the Act 300/2005 Coll. (Criminal Code) any person who, either directly or through an intermediary, gives, offers or promises a bribe to a member of a foreign parliamentary assembly, judge or official of an international judicial institution recognised by the Slovak Republic, or a representative or employee of an international, supranational, intergovernmental organisation or institution with which the Slovak Republic has a contractual relationship, or to a person in a similar position in connection with the performance of his function, or gives, offers or promises a bribe for the same reason to a third party, shall be liable to a term of imprisonment of two to five years. In accordance with the Article 179 of the Act 300/2005 Coll. (Criminal Code) any person who, by using fraudulent practices, a trick, restriction of personal freedom, violence, threatened violence, threat of grievous bodily harm or other forms of coercion, by accepting or offering monetary payment or other benefits in order to get approval of a person on whom another person depends, or by misusing his powers, or abusing of defencelessness or other vulnerable position, entices, transports, harbours, hands over or takes over another person, even upon his consent, for the purposes of his prostitution or another form of sexual exploitation, including pornography, forced labour or domestic slavery, slavery or practices similar to slavery, bondage, taking of organs, tissues or cells or other forms of exploitation, shall be liable to a term of imprisonment of four to ten years.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings: - Is there any criminal coercive measure which is applicable specifically against foreign nationals? No. - What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national? N.A.</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. According to the Article 75 of the Act n.475/2005 on the Execution of the Prison Sentence : (1) When allocating the foreigner to a prison establishment, the foreigner is instructed about the right to contact the diplomatic mission or the consulate of the country in which he/she resides; the stateless person is instructed about the right to contact the diplomatic mission or the consulate or the international bodies which are responsible for the protection of his/her rights. (2) The facility instructs the foreigner and the stateless person about his/her right to be visited by a representative of the authorities mentioned in (1). (3) The representative of the authorities mentioned in (1) can bring him/her the foreigner newspaper, magazines or books as stated in Article 35(1).</p>
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			<p>(4) The facility is obliged to instruct the foreigner or the stateless person about his/her rights, obligations and conditions of the prison sentence in the language he/she understands.</p> <p>(5) The foreigners and stateless persons are provided medical treatment according to the particular legal norm.</p> <p>(6) The facility immediately informs the consulate of the country of the foreigner's residence about the allocation of the foreigner in prison if the foreigner asks for it.</p> <p>(7) When allocating the foreigner to a prison establishment, he/she is accommodated together with foreigners of the same nationality or speaking similar language if possible in order to be able to communicate in a language they can understand.</p> <p>According to the Article 93 (Common Provisions) of the Act n.475/2005 on the Execution of the Prison Sentence :</p> <p>(1) The facility and the General Directorate may waive the collection of caused and raised expenses in relation to the prison sentence</p> <p>a) Of the condemned person who was expelled to his/her country of origin or another country or of a foreigner who does not reside in the territory of the Slovak republic and does not have there any property which might be punished by its execution or the execution of the decision.</p>
	<p>Slovenia</p>	<p>Yes</p>	<p>1. Slovenian Penal Code does not define who should be regarded as a foreigner but our National Act on Criminal Proceedings with Commentary defines who should be regarded as a foreigner in Article 522.</p> <ul style="list-style-type: none"> - By definition the foreigner is a person who is not a citizen of the Republic of Slovenia. - There are no sanctions exclusively applicable to foreign nationals. <p>2.</p> <ul style="list-style-type: none"> - No such offences exist. - No such offences exist. - We quote Article 308 of Penal Code: Prohibited Crossing of State Border or Territory <p>(1) Whoever crosses the border of the Republic of Slovenia by force, or enters its territory illegally armed with weapons, shall be sentenced to imprisonment for not less than three months, and not more than three years and punished by a fine.</p> <p>(2) The same punishment shall be imposed on an alien who does not possess a residence permit for the Republic of Slovenia, or if he stays in its territory in the manner as referred to in the preceding paragraph, or resists a legal removal therefrom.</p> <p>(3) Whoever engages in the prohibited transit of aliens, without leave to enter or remain in the Republic of Slovenia, across the border of the Republic of Slovenia, or whoever transits aliens or helps to conceal them, or whoever is engaged in assisting a group of two or more such aliens to cross the border or the territory of the state against payment, shall be punished by a term of up to five years of imprisonment and by a fine.</p> <p>(4) An official who, by abusing his official position or rights, enables an alien illegal entry to the territory of the Republic of Slovenia or illegal stay therein shall receive the penalty referred to in the preceding paragraph.</p> <p>(5) If a disproportionate property benefit has been gained for himself or a third person by the perpetrator committing offences referred to</p>

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		<p>in paragraphs 3 or 4 of this Article, or if he acquires a work force without rights, or poses a threat to human life or health, or commits such acts as a member of a criminal association, he shall be sentenced to imprisonment for not less than one and not more than eight years and punished by a fine.</p> <p>(6) Whoever gains over or collects people with a view of illegal transfer, provides them with forged documents or transportation, or organises illegal transfer in any other way, shall be sentenced to imprisonment for not more than five years and punished by a fine</p> <p>(7) The above paragraph shall also apply to criminal offences committed abroad, if the country where such offences have been committed has adopted, like the Republic of Slovenia, the common international legal obligation of preventing such criminal offences, regardless of where they are committed, and has determined such acts in its law in the same proper way as criminal offences. If the criminal offence has been committed in the territory of the European Union, in the application of paragraphs 2, 3, 4 and 5 of this Article the citizens of its Member States shall not be considered aliens.</p> <p>3. - No such provisions exist. - Apart from all the rights applicable foreigners have right to translation during procedure as well. Relevant provisions of Criminal Procedure are quoted:</p> <p>Article 7</p> <p>(1) Charges, complaints and other submissions shall be filed with the court in the Slovenian language.</p> <p>(2) In those areas in which members of the Italian or Hungarian national minority reside, members of these national minorities shall be allowed to file submissions in the Italian or the Hungarian language if these languages are used as official languages of the court.</p> <p>(3) A foreigner who has been deprived of freedom shall have the right to file submissions with the court in his language; in other cases foreign subjects shall be allowed to file submissions in their languages solely on the condition of reciprocity.</p> <p>Article 8</p> <p>(1) Parties, witnesses and other participants in the proceedings shall have the right to use their own languages in investigative and other judicial actions and at the main hearing. If a judicial action or the main hearing is not conducted in the languages of these persons, the oral translation of their statements and of the statements of others, and the translation of documents and other written evidence, must be provided.</p> <p>(2) Persons referred to in the preceding paragraph shall be informed of their right to have oral statements and written documents and evidence translated for them; they may waive translation rights if they know the language in which the proceedings are conducted. The</p>
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		<p>fact that they have been informed of their right, as well as their statements in this regard, should be recorded in the minutes.</p> <p>(3) The translation shall be done by a court interpreter.</p> <p>Article 9</p> <p>(1) Summons, orders and other written material shall be served in the Slovenian language.</p> <p>(2) Those courts in which the Italian or Hungarian language are in official use shall also serve summons in the Italian or Hungarian language. Court orders and other written material shall be served in the Italian or Hungarian language only where the procedure is conducted in both official languages. Participants in proceedings may waive having court orders and other written material served on them in the Hungarian or the Italian language. The waiver should be recorded in the minutes.</p> <p>(3) A person who has been deprived of freedom shall be served the written material referred to in the first paragraph of this Article in the language which he uses in the proceedings, unless he has waived the right to translation consistent with the second paragraph of the preceding Article of this Act.</p> <p>4.</p> <p>The only provisions related to foreigners are provisions regarding expulsion. If this sanction takes place. Police shall conduct it in accordance with Return Directive.</p> <p>Some other provisions related to foreigners are quoted below:</p> <p>1. Personal Application</p> <p>Equal Application of the Penal Code</p> <p>Article 4</p> <p>(1) If not otherwise determined in this Penal Code, the Penal Code shall apply equally to all adults irrespective of the fact whether they are citizens (hereinafter, the citizen) of the Republic of Slovenia or foreign citizens (hereinafter, the foreign citizen).</p> <p>(2) The criminal law provision, which exceptionally refers only to the citizens of the Republic of Slovenia, shall not apply to the citizens of other European Union Member States and other aliens.</p> <p>(3) If the criminal law provision applies exceptionally only to the aliens, it may determine when the citizens of other European Union Member States shall not be considered aliens</p>
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			<p>Who Committed a Criminal Offense Abroad</p> <p>Article 13</p> <p>(1) The Penal Code of the Republic of Slovenia shall apply to any foreign citizen who has, in a foreign country, committed a criminal offence against the Republic of Slovenia or any of its citizens, even though the offences in question are not covered by Article 11 of this Penal Code.</p> <p>(2) The Penal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but was not extradited to the foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country, in which the offence was committed..</p> <p>3. Territorial Application</p> <p>Application of the Penal Code of the Republic of Slovenia to Any Person Who Commits a Criminal Offence in Its Territory</p> <p>Article 10</p> <p>(1) The Penal Code of the Republic of Slovenia shall apply to any person who commits a criminal offense in the territory of the Republic of Slovenia.</p> <p>(2) The Penal Code of the Republic of Slovenia shall also apply to any person who commits a criminal offence on a domestic vessel regardless of its location at the time of the committing of the offence.</p> <p>(3) The Penal Code of the Republic of Slovenia shall also apply to any person who commits a criminal offence on a domestic civil aircraft in flight or on a domestic military aircraft regardless of its location at the time of the committing of the offence.</p> <p>Application of the Penal Code of the Republic of Slovenia for Specific Criminal Offences Committed in a Foreign Country</p> <p>Article 11</p> <p>The Penal Code of the Republic of Slovenia shall apply to any person who, in a foreign country, commits</p> <ul style="list-style-type: none"> -a criminal offence under Article 243 of this Penal Code or any other criminal offence, which according to the international agreement has to be prosecuted in all signatory states, irrespective of the location where it was committed, and -criminal offences under Article 108 and Articles 348-360 of this Penal Code.
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		<p>Application of the Penal Code of the Republic of Slovenia to Citizens of the Republic of Slovenia Who Committed a Criminal Offense Abroad</p> <p>Article 12</p> <p>The Penal Code of the Republic of Slovenia shall be applicable to any citizen of the Republic of Slovenia who commits any criminal offence abroad other than those specified in the preceding article.</p> <p>Application of the Penal Code of the Republic of Slovenia to Foreign Citizens Who Committed a Criminal Offense Abroad</p> <p>Article 13</p> <p>(1) The Penal Code of the Republic of Slovenia shall apply to any foreign citizen who has, in a foreign country, committed a criminal offence against the Republic of Slovenia or any of its citizens, even though the offences in question are not covered by Article 11 of this Penal Code.</p> <p>(2) The Penal Code of the Republic of Slovenia shall also be applicable to any foreign citizen who has, in a foreign country, committed a criminal offence against a third country or any of its citizens if he has been apprehended in the territory of the Republic of Slovenia, but was not extradited to the foreign country. In such cases, the court shall not impose a sentence on the perpetrator heavier than the sentence prescribed by the law of the country, in which the offence was committed.</p> <p>Special Conditions for Prosecution</p> <p>Article 14</p> <p>(1) If, in cases under Article 10 and indent 1 of Article 11 of this Penal Code, the criminal procedure has been initiated or discontinued in a foreign country, the perpetrator may be prosecuted in the Republic of Slovenia only by permission of the Minister (hereinafter, the Minister) of Justice with the notice, under which conditions the prosecution shall not violate the double jeopardy.</p> <p>(2) In cases under Articles 12 and 13 of this Penal Code, the perpetrator shall not be prosecuted:</p> <ol style="list-style-type: none"> 1) if he has served the sentence imposed on him in the foreign country or if it was decided in accordance with an international agreement that the sentence imposed in the foreign country is to be served in the Republic of Slovenia; 2) if he has been acquitted by a foreign court or if his sentence has been remitted or the execution of the sentence has fallen under the statute of limitations; 3) if, according to foreign law, the criminal offence concerned may only be prosecuted upon the complaint of the injured party and the latter has not been filed.
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Ad-Hoc Query on Criminal law and foreign citizens

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			<p>(3) In cases under Articles 12 and 13 the perpetrator shall be prosecuted only insofar as his conduct constitutes a criminal offence in the country where it was committed.</p> <p>(4) If, in the case under Article 12 of this Penal Code, the criminal offence committed against the Republic of Slovenia or the citizen thereof does not constitute a criminal offence under the law of the country where it was committed, the perpetrator of such an offence may be prosecuted only by permission of the Minister of Justice of the Republic of Slovenia.</p> <p>(5) If, in all other cases except the cases referred to in indent 2 of Article 11 and paragraph 4 of this Article of this Penal Code, the criminal offence is not punished in the country where it was committed, the perpetrator may be prosecuted only by permission of the Minister of Justice and with the proviso that, according to the general principles of law recognised by the international community, the offence in question constituted a criminal act at the time it was committed.</p> <p>(6) In the case under Article 10, the prosecution of a foreign person may be transferred to another country under the conditions provided by the statute.</p>
	<p>Spain</p>	<p align="center">Yes</p>	<p>The responses provided below are based on the Spanish Penal Code currently in force. However, the Draft Organic law reforming the Penal Code is currently under consideration.</p> <p>1: - No - Expulsion -a measure not involving the deprivation of liberty- as a possible substitute for penalties involving deprivation of liberty in certain circumstances (Article 89 or 109 of the current Penal Code).</p> <p>2: - No - Yes, in articles 312.2; 314; 318 bis (the latter article does not expressly mention the term «foreigner», but it is implicitly understood and is directly related to the criminal offence defined therein). Article 312.2: employing foreigners without work permits in conditions that prejudice, suppress or restrict their rights that are recognised by laws, collective agreements or their contracts. Article 314: seriously discriminate in public or private employment on the grounds of membership of a nation. Article 318 b: 1. Anyone who, directly or indirectly, promotes, aids or facilitates illegal trafficking or illegal immigration of people from, in transit to or to Spain, or to another European Union country, shall be punished by imprisonment of four to eight years. - Yes, Article 318 bis.</p> <p>3. The Criminal Procedure Act does not contain any coercive measures that specifically apply to foreigners. Article 489 of the aforementioned Act stipulates that no Spanish national or foreigner can be detained except in the cases and in the manner prescribed by law.</p>

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			<p>4. Articles 89.1; 96.3.2; 108 and 177 bis.1 -for both national and foreign victims- and Article 318 bis of the Penal Code, in which no explicit mention is made to the nationality of the offender.</p>
	<p>Sweden</p>	<p>Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this: - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? There is no specific definition of "alien" in the Swedish Penal Code or in the Swedish Aliens Act (2005:716).</p> <p>-Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)?</p> <p>Expulsion is a criminal punishment specifically applied to foreigners, which is regulated by the Swedish Aliens Act in Chapter 8a. From 1 September 2013, new procedures apply for examining residence permits for persons expelled on account of a criminal offence or the cancellation of such expulsion orders. Under the new procedures, matters of residence permits for persons expelled on account of a criminal offence are only examined in the ordinary migration process - i.e. in the first instance by the Swedish Migration Board - and the Government no longer examines these matters. An alien who has been expelled on account of a criminal offence can apply to the Swedish Migration Board for a residence permit (on grounds of protection or other grounds) and for cancellation of the expulsion order.</p> <p>The new examination procedures do not limit the Government's right to grant clemency in the case of an expulsion order imposed by a general court for a criminal offence. However, clemency is for use in purely exceptional situations. Moreover, the new procedures mean that residence permit matters can only be examined in the ordinary migration process. An alien who has been expelled on account of a criminal offence and who wants to apply for a residence permit should therefore contact the Swedish Migration Board.</p> <p><i>Chapter 8</i></p> <p><i>Expulsion on account of criminal offences</i></p> <p><i>Section 8</i></p> <p><i>An alien may be expelled from Sweden if he or she is convicted of an offence that is punishable by imprisonment. An alien may also be expelled if a court sets aside a suspended sentence or probation that has been imposed on an alien and imposes another penalty.</i></p> <p><i>An alien may, however, only be expelled if he or she is sentenced to a more severe penalty than a fine and</i></p> <p><i>if, in view of the type of act involved and other circumstances, it can be assumed that he or she will be guilty of continued criminal activity in this country or</i></p> <p><i>if, in view of the resulting damage, danger or violation of private or public interests, the offence is so serious that he or she should not be allowed to stay.</i></p>

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		<p><i>Section 9</i></p> <p><i>Expulsion on account of criminal offences is ordered by the court handling the criminal case.</i></p> <p><i>Section 10</i></p> <p><i>When a court decides under Chapter 34 of the Swedish Penal Code to change a penalty to which an alien has been sentenced in addition to expulsion, the court may also issue the decision on expulsion that arises out of the change in the penalty.</i></p> <p><i>Section 11</i></p> <p><i>When a court considers whether an alien should be expelled under Section 8, it must take into account the alien's ties to Swedish society. The court must pay particular attention to</i> <i>the alien's personal circumstances,</i> <i>whether the alien has any child in Sweden and, if so, the child's need of contact with the alien, the nature of the contact in the past and how it would be affected by the alien's expulsion,</i> <i>the alien's family situation in other respects and</i> <i>how long the alien has been in Sweden.</i></p> <p><i>An alien who is a refugee and who needs a haven in Sweden may only be expelled if he or she has committed an exceptionally gross offence and it would entail serious danger to public order and security to allow the alien to stay here. Expulsion may also take place if the alien has engaged in activities in Sweden or abroad that have entailed a danger to national security and there is reason to assume that he or she would continue with such activities here.</i></p> <p><i>An alien who holds a declaration of refugee status shall be deemed to be a refugee in need of a haven in Sweden unless it is obvious that he or she is no longer a refugee in such need.</i></p> <p><i>Section 12</i></p> <p><i>An alien may be expelled under Section 8 only when there are exceptional grounds, if he or she had been in Sweden on a permanent residence permit for at least four years when prosecution was initiated or if he or she had at the time been resident in Sweden for at least five years. This also applies to a national of another Nordic country who had been resident here for at least two years when prosecution was initiated and to an alien who has a right of permanent residence in Sweden.</i></p> <p><i>The provisions of Section 7a, second paragraph also apply to expulsion under Section 8.</i></p> <p><i>An alien may not be expelled if the alien came to Sweden before he or she attained the age of 15 and had been here for at least five years when prosecution was initiated.</i></p> <p><i>Section 13</i></p>
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		<p><i>A judgment or order of expulsion on account of criminal offences issued by a general court shall contain a prohibition against the alien returning to Sweden for a certain time or for an unlimited time. In a judgment or order subject to a time limit, the alien must be informed of the day on which the prohibition expires. In the judgment or order, the alien must also be informed of the penalty that a breach of the prohibition may entail under Chapter 20.</i></p> <p><i>Section 14</i></p> <p><i>If the Government finds that a judgment or order of expulsion on account of criminal offences issued by a general court cannot be enforced or if there are some other special grounds why the order shall no longer apply, the Government may set aside the order wholly or in part. In connection with this, the Government may also make a decision regarding a residence permit and work permit. If the judgment or order of expulsion is not cancelled, the Government can, in cases referred to in the first paragraph, issue a temporary residence permit and work permit. The expulsion order may not be enforced while the permit is valid.</i></p> <p>The Act concerning Special Controls in Respect of Aliens (1991:572) contains provisions on expulsion on grounds of national security and on account of anticipated criminal activity under the Act on Criminal Responsibility for Terrorist Offences (2003:148). Under the Extradition for Criminal Offences Act (1957:668), only non-Swedish citizens may be extradited. However, a Swedish citizen can be extradited to the EU or the Nordic countries under the European Arrest Warrant Act or as regulated in the procedures that apply to the Nordic states.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'.</p> <p>There are no such criminal offences in the Swedish Penal Code.</p> <p>- Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals?</p> <p>In the Swedish Alien Act, Chapter 20, there are the following criminal offences that can be committed only by aliens. Chapter 20. Penalty provisions, etc.</p> <p><i>Section 1</i></p> <p><i>A fine shall be imposed on an alien who is staying in Sweden intentionally or through negligence without having the prescribed permit and without the alien having applied for such a permit or a person in charge of a preliminary investigation having applied for a temporary residence permit for the alien pursuant to Chapter 5, Section 15.</i></p> <p><i>In the case of minor offences, prosecution under this Section shall only be initiated if this is called for in the public interest.</i></p> <p><i>Section 2</i></p>
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			<p><i>An alien who is staying in Sweden intentionally even though he or she did not have the right to return to Sweden according to an enforced expulsion order under Chapter 8a, Section 1 or 5 shall be sentenced to imprisonment for at most one year or, if the offence is minor, to a fine.</i></p> <p><i>The provisions in the first paragraph are not applicable if the alien has fled to Sweden for the reasons referred to in Chapter 4, Section 1, 2 or 2a.</i></p> <p><i>In the case of minor offences, prosecution under the first paragraph shall only be initiated if this is called for in the public interest.</i></p> <p><i>Section 3</i></p> <p><i>A fine shall be imposed on an alien who intentionally or through negligence is employed in a position or conducts an activity that requires a work permit without holding such a permit.</i></p> <p><i>Section 4</i></p> <p><i>An alien who intentionally passes an outer border under the Schengen Convention in an impermissible way shall be sentenced to a fine or imprisonment for at most one year.</i></p> <p><i>- Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals?</i> <i>Yes, human smuggling and organization of human smuggling, in the Swedish Alien Act, Chapter 20</i></p> <p><i>Section 8</i></p> <p><i>Any person who intentionally assists an alien to unlawfully enter or pass through Sweden, a Member State of the European Union or Iceland, Norway, Switzerland or Liechtenstein shall be sentenced for human smuggling to imprisonment for at most two years.</i> <i>If the offence is to be regarded as gross, the sentence shall be imprisonment for gross human smuggling for at least six months and at most six years. In judging whether the offence is gross, special attention shall be paid to whether the act</i> <i>was carried out in return for compensation,</i> <i>was carried out as part of an activity that involved a large number of persons or</i> <i>was carried out in forms that entail mortal danger for the alien or was otherwise carried out in ruthless forms.</i></p> <p><i>If the offence is regarded as minor the sentence shall be a fine or imprisonment for at most six months.</i> <i>An attempt or preparation to commit an offence under this Section shall be adjudged according to the provisions of Chapter 23 of the Penal Code.</i></p> <p><i>Section 9</i></p>
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		<p><i>Any person who, for financial gain, plans or organises activities designed to enable aliens to travel to Sweden without passports or the permits required for entry into Sweden shall be sentenced for organisation of human smuggling to imprisonment for at most two years. If the offence is gross the sentence shall be imprisonment for gross organisation of human smuggling for at least six months and at most six years. In judging whether the offence is gross, special attention shall be paid to whether the act involves the systematic exploitation of the vulnerable situation of aliens or involves mortal danger or other ruthlessness in relation to the aliens. If the offence is regarded as minor the sentence shall be a fine or imprisonment for at most six months. Any person assisting an alien to travel to Sweden without a passport or the permits required for entry into Sweden shall be sentenced for complicity under paragraphs one to three. This provision is applicable if the accomplice realised or had fair reason to assume that the journey was organised for financial gain through a said activity.</i></p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration?</p> <p>No, not in the Swedish Penal Code, but besides the above mentioned criminal offences in the Swedish Alien Act, Chapter 20, the following exists.</p> <p><i>Section 5</i></p> <p><i>A person who intentionally or through negligence has an alien in his or her employment even though the alien does not have the prescribed work permit shall be sentenced to a fine or, in aggravating circumstances, to imprisonment for at most one year. Sections 12–14 are applicable to the imposition of a special charge.</i></p> <p><i>Section 6</i></p> <p><i>A fine or, in aggravating circumstances, a sentence of imprisonment for at most six months shall be imposed on</i> <i>a person who intentionally or through negligence does not make a report prescribed in an ordinance issued pursuant to this Act,</i> <i>a person who knowingly supplies incorrect information or knowingly fails to mention a circumstance of importance in a report or in a case concerning an application under this Act or an ordinance issued pursuant to this Act.</i></p> <p><i>Section 7</i></p> <p><i>Any person who intentionally assists an alien to remain unlawfully in Sweden, a Member State of the European Union, or Iceland, Norway, Switzerland or Liechtenstein by hiding the alien or by some other such action shall, if the act has been committed for financial gain, be sentenced to prison for at most two years or, if there are mitigating circumstances, to a fine. An attempt to commit an offence under this Section shall be adjudged according to the provisions of Chapter 23 of the Penal Code.</i></p>
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		<p>- Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:</p> <p><i>The Swedish Code of Judicial Procedure (SFS 1942:740)</i></p> <p><i>Chapter 11 Section 3 An alien who is incompetent to engage in legal proceedings according to the law of his homeland is nevertheless entitled attend to his legal proceedings in Sweden if he is competent to do so according to Swedish law.</i></p> <p><i>Chapter 21 Section 3 --- Foreign nationals or a person who is resident outside the Realm may not act as defence counsel if this is inappropriate having regard to the security of the Realm. ---</i></p> <p>- Is there any criminal coercive measure which is applicable specifically against foreign nationals? In terms of criminal coercive measures applicable specifically against foreign nationals, the following could be applicable:</p> <p><i>The Swedish Code of Judicial Procedure, Chapter 24, Section 2: Any person suspected on probable cause of an offence may be detained regardless of the nature of the offence if: 1. his identity is unknown, and he either refuses to provide his name and address or he provides a name and address that can be assumed is false; or 2. he does not reside in the Realm and there is a reasonable risk that he will avoid legal proceedings or a penalty by fleeing the country. (SFS 1987:1211)</i></p> <p>- What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national?</p> <p>Swedish law, in case of a foreign suspect who is under arrest or in detention, provides the foreigner with the right to consular correspondence and written information about that right.</p>
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			<p>The following is often also applicable in the case of a foreign party.</p> <p><i>The Swedish Code of Judicial Procedure, Chapter 5, Section 6</i> <i>If a party, a witness, or any other person who shall be heard by the court is incapable of understanding and speaking Swedish, an interpreter may be engaged to assist the court. If a suspect in a criminal case is incapable of understanding and speaking Swedish an interpreter shall be engaged at hearings in the court.</i></p> <p><i>If an public interpreter for the language in question serves at the court, he shall be assigned. Otherwise, the court shall assign a suitable person to assist as interpreter in the case.---</i></p> <p>Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code.</p> <p>Act on Imprisonment (Swedish Code of Statutes 2010:610) Chapter 3, Section 4</p> <p>The Prison and Probation Service shall withhold one-tenth of the remuneration referred to in Section 3 for leave and release purposes. In special cases the Prison and Probation Service may authorise the use of withheld remuneration for some other purpose. Withheld remuneration shall be paid to the prisoner no later than when he or she ceases to be deprived of liberty.</p> <p>With regard to a person sentenced to expulsion, remuneration withheld in accordance with the first paragraph may be used to pay for a journey referred to in Chapter 19, Section 1 of the Aliens Act (2005:716).</p>
	<p>United Kingdom</p>	<p>Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this: - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'?</p> <p>The general criminal law applies to UK nationals and foreigners alike save for provision that creates nationality extraterritorial jurisdiction and even there the modern trend is to include foreign nationals living in the UK. There are specific immigration offences that apply to the conduct of foreigners seeking entry onto the UK (see below). The only definitional provision relating to a person status as a foreigner or alien would appear in immigration law (see below).</p> <p>- Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)?</p> <p>In relation to UK sentencing legislation and guidelines, these apply equally to everyone. There may be some offences, such as document</p>


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		<p>offences, which can only be committed by foreign nationals but the only thing relating to disposals which applies solely to foreign nationals is the condition of a conditional caution which requires the person to leave the country.</p> <p>There is full Home Office guidance on conditional cautions with foreign national conditions - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/257967/cautions-offenders.pdf. In brief, an adult conditional caution is an out of court disposal (a way of dealing with an offender without going to court) that can be used instead of prosecution in cases of certain types of offending. A conditional caution allows criminal proceedings to be halted while the offender is given time to comply with the terms of a conditional caution. If they fail to comply, the criminal proceedings can be reinstated for the original offence. Section 134 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 provided for foreign offender conditions to be attached to a conditional caution. Foreign offender conditions aim to get the offender to leave the UK within a specified time period and prevent them from returning to the UK for a specified time (normally five years).</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'.</p> <p>There are no general criminal offences that apply specifically to foreigners</p> <p>Within this:</p> <p>- Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals?</p> <p>No – other than immigration offences (see below)</p> <p>- Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals?</p> <p>No</p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration?</p> <p>Yes. There are a number of criminal offences which are “immigration” offences see for example sections 24 to 27 of the Immigration Act 1971. There are in fact 14 immigration acts of Parliament, most if not all of which contain criminal offences.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings:</p> <p>- Is there any criminal coercive measure which is applicable specifically against foreign nationals?</p> <p>The general criminal procedural law applies to foreigners and UK nationals alike. See above on Conditional Cautions with foreign offender conditions</p> <p>- What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign</p>
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		<p>national?</p> <p>As far as rights are concerned the general criminal substantive law and procedure do not distinguish between foreigners and British citizens. Foreign nationals are provided with interpretation if required for the purposes of fair trial. There is no distinction between foreigners and British citizens in terms of legal aid. Anyone accused of crime in E&W can receive legal aid, if eligible, regardless of nationality</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code.</p> <p>In relation to prisoners, there are two schemes which apply solely to foreign national prisoners (FNPs) which aim to make sure that FNPs who have no entitlement to remain in the UK should be removed from the country at the earliest opportunity. Brief details are set out below, but for context it is important to understand how prison sentences are served. A standard determinate sentence provides for automatic release at the half way point of the sentence with the rest of the sentence served on licence and under supervision in the community, with the possibility of recall to prison if the licence conditions are breached. When the court imposes an indeterminate sentence, it sets the minimum term, or tariff, which must be served in full before consideration can be given to the prisoner's release, and that decision is not automatic but based on the risk presented by the offender. If released, an indeterminate prisoner is also released on licence and subject to supervision and recall (for a life sentence the licence lasts for the rest of the offender's life and for other indeterminate sentences the licence last for at least 10 years). The purpose of the licence period is to allow for the safe reintegration of the offender into society. For FNPs who have no entitlement to remain here the intention is that they should be punished but then removed at the earliest opportunity.</p> <p>The Early Removal Scheme (ERS) allows the Secretary of State to remove FNPs serving determinate sentences, who are confirmed by Immigration Enforcement (IE) as liable to removal from the UK, to be removed from prison and the country up to a maximum of 270 days (9 months) before the half-way point of their sentence – provided that a minimum of a quarter of the sentence has been served in prison. ERS is mandatory and all determinate sentenced FNPs, who are confirmed as liable to removal, irrespective of sentence length, offence type or county of origin, will be considered under the scheme.</p> <p>The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 introduced the Tariff Expired Removal Scheme (TERS) for indeterminate FNPs; those serving a life sentence or other indeterminate sentence. The scheme allows the Secretary of State to remove from the UK indeterminate FNPs once their tariff, or minimum term, date has expired, whether or not the Parole Board has directed release.</p> <p>Under this scheme, indeterminate FNPs still have to serve the minimum tariff set by the sentencing court but once the tariff period has been served, and if IE has confirmed that there are no barriers to their deportation from the UK, their removal can go ahead without having to wait for the Parole Board to release them.</p> <p>All FNPs who IE confirm as liable for removal/deportation from the UK must automatically be considered for removal under the</p>
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			<p>appropriate scheme. The limited reasons why the removal power should not be exercised include cases where the prisoner faces outstanding criminal charges in the UK or still owes large sums of money under an outstanding confiscation order. Refusal may also be considered where, for example, there is evidence of plans to evade immigration controls and return to the UK to commit further serious offences or where the offender has committed terrorism related offences. But in the majority of cases there will be no reason not to exercise the power.</p>
	<p>Norway</p>	<p>Yes</p>	<p>1. Does the definition of 'foreigner' appear in the general part of the national criminal law/code? Within this: - Does the national Penal Code define who should be regarded as a 'foreigner' or 'alien'? No, this is defined in the Norwegian Immigration Act of 15 May 2008, § 5 (section 5) The penal code applies for all, regardless of citizenship.</p> <p>- Are there any sanctions in place which are specifically and exclusively applicable to foreign nationals (punishment or other measures)? No, but in regards to expulsion and other means of being denied legal entry, this of course is only applicable for foreign nationals.</p> <p>2. Please, specify those criminal offences in the national Penal Code, which are related to 'foreigners'. Within this: - Does the national criminal law set out any criminal offence that can be committed exclusively by foreign nationals? - Does the national criminal law set out any criminal offence that can be committed exclusively against foreign nationals? As indicated in quest. 1 the Norwegian Penal Code applies to everyone equally. There are some offences that are more likely to be imposed on or to foreign nationals, but they are not designed that way. The same is the effect regarding entry to the realm without legal base for such entry.</p> <p>- Is there any criminal offence which had typically been introduced and defined in the Penal Code with the intention to suppress and prevent illegal migration? Again, not in the criminal code, but there are offences that are closely connected to foreign nationals. One of those is the crime of entering Norway after the foreigner has previously been expelled.</p> <p>3. Please, describe those provisions specifically applicable to 'foreigners' which are set out in the national Act on Criminal Proceedings: - Is there any criminal coercive measure which is applicable specifically against foreign nationals? - What kind of fundamental right or benefit is provided by the state in case the criminal proceeding is to be conducted against a foreign national? N/A</p> <p>4. Please, describe those provisions exclusively applicable to foreign nationals, which are set out in the national Penal Execution Code. N/A</p>

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