

# **EXPULSION DUE TO OFFENCES UNDER THE CRIMINAL CODE**

A brochure on immigration law



**Jussbuss**

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We would like to thank those people who have been involved in adding their valuable contributions to the make-up of this brochure.

If you would like further information or if you have any questions, you will find contact information for Jussbuss at the back of this brochure.

## **TABLE OF CONTENTS**

INTRODUCTION .....	2
WHAT IS EXPULSION? .....	2
GROUND FOR EXPULSION .....	3
PROPORTIONALITY ASSESSMENT.....	6
BRIEF NOTES ABOUT PROTECTION AGAINST RETURN.....	10
BRIEF NOTES ABOUT THE SCHENGEN INFORMATION SYSTEM (SIS) .....	10
BRIEF NOTES ABOUT EXPULSION OF EEA CITIZENS .....	11
SUMMARY OF PROCEEDING .....	12
PROCEEDINGS .....	13
ANNULMENT OF PROHIBITION TO ENTER .....	15
SHORT-TERM VISIT .....	15

## **INTRODUCTION**

The brochure will deal with those cases in which a person can be expelled because he or she has been convicted. Cases in which a person may be expelled for a breach of the Immigration Act will not be dealt with in this brochure. In these cases a person will be entitled to free legal aid and can contact a lawyer. The prior notice and the formal decision will contain details of what the person is being expelled for.

In this brochure, the Norwegian Directorate of Immigration [Utlendingsdirektoratet] has been abbreviated to UDI, and the Immigration Appeals Board [Utlendingsnemnda] to UNE. The UDI is the body that makes decisions. The UNE is the appeals body, and deals with the final processing of the case if an appeal is lodged.

## **WHAT IS EXPULSION?**

An expulsion decision means that a person has to leave the country and may not return within a given period of time. This is called “prohibition to enter”. The prohibition to enter can be 2 years, 5 years, 10 years or permanently (forever).

Expulsion is thus different to *rejection*, where a person just has to leave the country but is not banned from returning.

Expulsion is also different to the *departure deadline* (see page 12). If a person has been given a departure deadline he or she must leave the country. The departure deadline alone does not mean that a person will be banned from returning.

### **Who can be expelled?**

Norwegian citizens, or persons born in Norway and who have lived in the country ever since, cannot be expelled. The general rule is that a person also cannot be expelled if he or she has protection against return.

Other persons may be expelled if there are grounds for expulsion. Nevertheless, a person cannot be expelled if an expulsion would be a disproportionate measure. This means that a review of proportionality can lead to expulsion not being possible, even if grounds for expulsion exist.

## GROUNDS FOR EXPULSION

The table on the next page gives an overview of the most common grounds for expulsion when the criminal law has been broken. A person can also be expelled for other reasons. Below is an explanation of the table.

### **Residence permit in Norway:**

What a person can be expelled for depends on the Norwegian residence permit that person holds. When using the table, the starting point should be the relevant residence permit in column 1, and then that row should be followed to the right to see whether it constitutes grounds for expulsion. The public authorities distinguish between three different residence permits:

- *With no residence permit:* For example, a visa, visa-free entry or illegal residence.
- *Temporary residence permit:* Permit issued by the UDI for one year or more. For example, this may be on the basis of protection, family reunification, study or work.
- *Permanent residence permit:* Residence permit unlimited in time. This may be given after a person has had temporary permits for three years in Norway.

### **Penalties in Norway:**

The items considered grounds for expulsion are shown in column two. Breaches of the Criminal Code can lead to various sanctions, such as unconditional and conditional imprisonment, compulsory mental health care, compulsory care, remand or fines.

The term "prison tariff" is used to mean the severity of the punishment a person *could* be given for the crime committed, and not how severe a punishment that person actually *has* been given. There is also a deadline for how long after the criminal offence a person can be expelled. The starting point for this date is after *completion* of sentence. This is indicated in the table. If this deadline has expired, a person cannot be expelled unless the UDI has sent prior notice before the deadline.

### **Sentences abroad:**

A person may also be expelled from Norway on the basis of something which that person has been convicted of abroad. The third column

indicates what constitutes grounds for expulsion as regards convictions abroad.

<b>A residence permit in Norway</b>	<b>Sentence in Norway</b>	<b>Sentence abroad</b>
<p>With no residence permit (Immigration Act § 66)</p>	<p>Offences that can lead to prison time, or prison sentences for offences punishable by Norwegian law.</p> <p><b>or</b> violations of the penal code §§ 323, 326, 334, 339, 362 <b>or</b> 373, or Chapter 18</p>	<p>Offences that can lead to prison time, or prison sentences for offences punishable by Norwegian law.</p> <p><b>and</b> sentenced less than 5 years ago</p>
<p>Temporary residence permit (Immigration Act § 67)</p>	<p>Prison tariff of more than 1 year</p> <p><b>or</b> sentenced for a breach of the Criminal Code § 182 (1), § 231 (2), § 237 (3), § 262 (1), § 263, § 305, § 374 1.pkt or § 380 <b>and</b> sentenced less than 1 year ago</p> <p><b>also</b> if sentenced for a breach of the Criminal Code §§ 168, 189 (2), 271 (1) or Chapter 18</p>	<p>Prison tariff of more than 1 year</p> <p><b>and</b> sentenced less than 5 years ago</p>

<p>Permanent residence permit (Immigration Act § 68)</p>	<p>Prison tariff of 2 years or more</p> <p><b>or</b> sentenced for a breach of the Criminal Code §§ 182 (1), 231, 237 (3), 262 (1), 263, 305 or 374 1.pkt <b>and</b> sentenced less than 1 year ago</p> <p><b>or</b> sentenced for a breach of the Criminal Code Chapter 18</p>	<p>Prison tariff of 2 years or more</p> <p><b>and</b> sentenced less than 5 years ago</p>
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*See the explanation of the table on the previous page.*

## **PROPORTIONALITY ASSESSMENT**

If grounds for expulsion exist (see pages 3-4), an assessment will be made as to whether expulsion is proportionate. No one may be expelled if it is disproportionate personally to the foreign citizen or to that person's immediate family. This means that there should be a balance between the grounds for expulsion and the way expulsion will affect the person being assessed for expulsion, and his or her immediate family. The deportation must also be within the framework of The European Convention on Human Rights, Article 8.

In the proportionality assessment, therefore, the seriousness of the situation, that is the seriousness of the offence, should be weighed up against the impact expulsion will have personally on the foreign citizen and any family. The assessment is based on three factors: The seriousness of the offence, importance personally to the foreign citizen and to that person's family.

Below is a more detailed description of factors that may be significant to the assessment. The list below shows just a few of the factors that may be relevant.

### **Seriousness of the offence**

Here, the level of seriousness of the offence is regarded as depending on the circumstances of the case. The more serious the crime is regarded as being, the more will be required before any expulsion decision can be regarded as disproportionate. The factors considered will include:

- *Prison tariff*: The severity of any sentence the person could have been given for the crime committed, not the severity of the punishment the person actually has been given. The tariff shows how seriously the authorities regard the type of action to be.
- *Actual length of sentence*: The severity of the sentence a person actually has been given. If the prison term is short in relation to the tariff, this will indicate that the offences have not been considered to be too grave, meaning the offence could be regarded as less serious.
- *Previous criminal offences*: If a person has previously committed some criminal offence, this could be taken into consideration.
- *New criminal offences*: If a person has committed new crimes after having received advance notice of expulsion, this may also be taken into

consideration. However, if a person has *not* committed any new offences, this may show that that person has changed his or her ways, and that the risk of that person committing new offences is reduced. This may indicate that there is less of a need for expulsion.

- *Risk of recurrence or positive development*: If there is a risk of a person breaking the law again, this might influence the evaluating of whether the matter is deemed serious. If a person has done something about the factors that contributed to the offence, for example by breaking away from a criminal environment, attending school or becoming free of drugs, this ought to be emphasised. This may indicate that the person wants to change his or her behaviour, and therefore that the offence will not be repeated. The need for expulsion will thus be reduced.

- *Aggravating or mitigating circumstances*: This relates to the specific circumstances of the case and would be the same as the aggravating or mitigating circumstances in the criminal proceedings. These would be mentioned in the sentence the person has received.

### **Importance to the foreign citizen personally**

The assessment is based on the degree of affiliation the person being assessed for expulsion has for Norway, and how great a link he or she has to his or her home country. The factors considered will include:

- *Age when the person came to Norway*: The younger the person was when he or she came to Norway, the stronger the connection to this country will be considered to be. This can put the person in a stronger position in the proportionality assessment.

- *How long the person has been here with a permit*: If the person has been in Norway for many years, this indicates that that person has a strong attachment to the country. In that case, more should be required for expulsion.

- *The extent to which you have participated in the community*: If the person has attended school in Norway, worked, learnt Norwegian and created a social network, this indicates that that person has integrated and has a stronger connection to Norway. This may indicate that additional factors would have to be in place for expulsion.

- *Family*: If the person has family, spouse, partner or children in Norway, this will mean that, as a starting point, he or she has a strong attachment to the country. The strength of this association will depend on how long

the person has lived with the family and how much contact he or she has. If the person has children, consideration will be given to whether the person has custody, how long he or she has lived with the child and, if they do not live together, the amount of interaction there is will be of significance. The stronger your connection, the more will be required for expulsion.

- *The date at which the family was established:* If the family was established before the criminal offence, there may be an expectation of continuing with family life in Norway. This can put the person in a stronger position in the proportionality assessment.

- *Balancing up against association with the home country:* The connection the person has to Norway will be balanced up against the association the person has with his or her home country. A starting point would be how long the person has been away from the home country. Even if the person has been away a long time, he or she can be considered to have an association with the home country if he or she has travelled there a lot, has family and relatives there, speaks the language or has been educated there. If the person has no association with the home country, the authorities ought to be made aware of this.

- *Possibility of returning to Norway:* If the person intends returning to Norway after having been expelled, he or she must have grounds to apply to be here. This can be difficult in some cases. If the person cannot return to Norway, a time-limited expulsion decision will last forever in practice, and it will not be possible to reunite a family. If the person does not have grounds for returning to Norway later, he or she must make the authorities aware of this.

### **Importance to the family**

If the person is expelled, the family could be split up. Consideration of the family is something that should be emphasized in the assessment of whether expulsion is lawful. The factors considered will include:

- *How much contact the person has with his or her family in Norway:* The more contact there is, the worse it will be for the family to lose touch if a family member is expelled. Among other things, an assessment will be made as to whether a person is still living with a spouse or partner. If a person has children, whether the person lives with the child, has parental responsibility, has shared custody with the other parent, and associates with the child a lot if they do not live together, will all be looked into.

The more contact there is, the more will be required for expulsion to take place.

- *Possibility of continuing family life in the home country of the expelled person:* This will include the association the family has to the home country. Whether the family comes from the same country, whether the spouse or children have visited the country, whether they know the culture, whether they can speak the language, the children's ages and whether they have been educated in Norway will all be investigated. It is important that the immigration authorities are informed about what would make it difficult for the family to move to the home country of the expelled person.

- *Family health:* Sometimes illness or other health conditions mean that the family is dependent on staying together. There may be children with special needs, or a parent who is unable to take care of the child or children alone. It is important that information about this is given to the immigration authorities, to enable them to take note of this in the assessment.

- *Possibility of returning to Norway:* Also, it would be important for the family whether it will be possible for the expelled person to return to Norway, or whether a time-limited expulsion will become permanent in practice. If a person sees that it will be impossible to apply for a residence permit in Norway later, this might indicate that expulsion is too great an interference in family life, because the separation will be permanent in practice.

### **About children in particular**

The child's best interests must be taken into consideration in all cases concerning children. A child will be affected if one of its parents is assessed for expulsion. It is important therefore for the immigration authorities to be told if the person has a child in Norway and how the child will be affected by a decision to expel.

### **Summary**

Since the circumstances of each case are different, it is difficult to know the outcome of a proportionality assessment. The factors we have listed are among those that will be assessed. In any appeal, it is important to provide information about this, and any other information that is believed to be of significance to the case. It is important that the person obtains the

relevant documentation, such as birth certificate, medical certificates, proof of education or work experience etc. If anything changes during the proceedings, it is also important that the person informs the immigration authorities along the way. If the person perceives that there are elements that have not been taken into consideration in the decision from the UDI or UNE, the immigration authorities ought to be made aware of this. Juss-Buss can be contacted if any help is required to assess this.

## **BRIEF NOTES ABOUT PROTECTION AGAINST RETURN**

The general rule is that a person cannot be expelled and ejected from the country if that person is protected against return. A person is protected against return if that person risks being sent to an area in which there is a well-founded fear of persecution or a real danger of losing his or her life, being subject to torture, inhumane or degrading treatment or punishment. The same applies if the public authorities want to send someone to a location in which there is a risk of being sent to an area of that type.

This will be similar to the assessment done in asylum cases. It is the situation as at the date on which the person is scheduled to be expelled that will be crucial.

If the person believes that he or she will be subject to such treatment on being returned to an area, that person should try to provide evidence of this risk. It may be helpful to consult with a body such as Amnesty International, the Norwegian Organization for Asylum Seekers (NOAS) or the UN High Commissioner for Refugees (UNHCR).

## **BRIEF NOTES ABOUT THE SCHENGEN INFORMATION SYSTEM (SIS)**

If a person is expelled from Norway, the immigration authorities will assess whether that person should also be entered into the SIS. In practice, the general rule is that the person will be entered into the SIS. When someone is entered into the SIS, the expulsion will apply to all Schengen countries. The duration of the expulsion will be the same as for that person's expulsion from Norway.

If a person holds a residence permit for another Schengen country, it is important that the immigration authorities are made aware of this. A person may run the risk of the permit being withdrawn, but this is an

assessment undertaken by the country in question. In these cases a person is entitled to see any information that is sent from the Norwegian authorities to the country that has issued the residence permit.

If a person is a citizen of a Schengen country, he or she cannot be entered into the SIS.

**The Schengen** countries are: Belgium, Denmark, Estonia, Finland, France, Greece, Iceland, Italy, Latvia, Lithuania, Liechtenstein, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Switzerland, Sweden, the Czech Republic, Germany, Hungary and Austria.

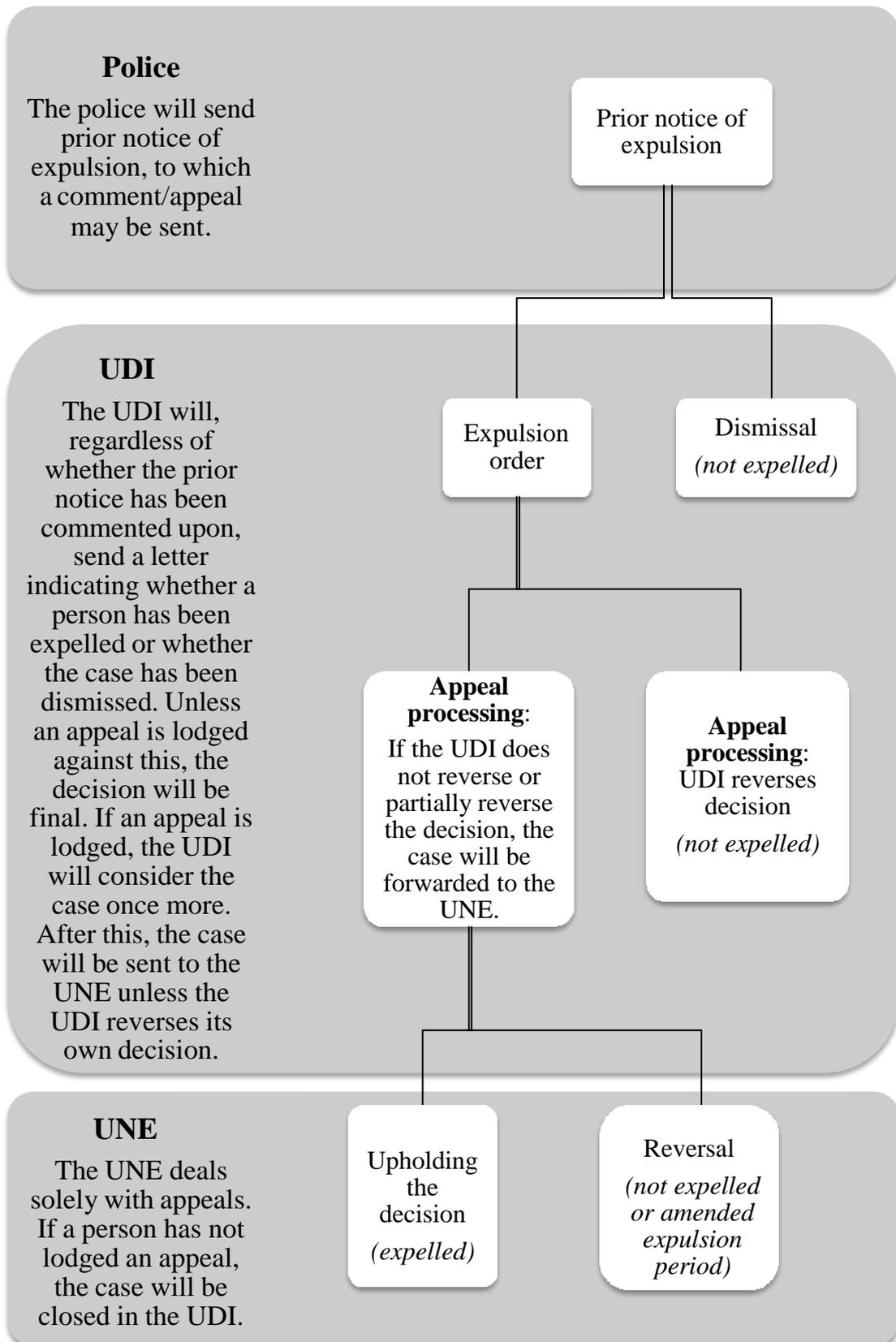
## **BRIEF NOTES ABOUT EXPULSION OF EEA CITIZENS**

An EEA citizen is a national of an EEA country. Having a residence permit in an EEA country is not sufficient to make a person an EEA national.

More will be required if an EEA citizen is to be expelled. EEA citizens may only be expelled in the interests of "public order and security". A proportionality assessment will also be conducted here. The elements of the proportionality assessment are the same as those mentioned on pages 5-8 of the brochure. It is important to have these included in any appeal.

Member countries of the **EEA** are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey and UK.

## SUMMARY OF PROCEEDING



## **PROCEEDINGS**

The schedule on the previous page shows a brief outline of an expulsion case. A person will always be given prior notice before being expelled. This will allow that person to submit comments within a given deadline. After that, the UDI will either make a decision or dismiss the case. If a decision to expel is taken, and if the person appeals against this decision, the UDI will consider the matter once again. Nevertheless, the UDI may choose not to expel and the person will be given a decision to this effect. If the UDI believes that there are still grounds for expulsion, the decision will be sent to the UNE. The UNE will make the final decision.

### **Further opportunities to appeal**

After a final decision by the UNE, a person may bring the case before the courts. A lawyer may be found at [www.advokatenhjelperdeg.no](http://www.advokatenhjelperdeg.no).

### **Further details about deadlines**

**Deadlines for comments:** The prior notice will contain a deadline for submitting comments. A comment will be included in the assessment when the UDI determines whether or not to expel. In the back of this brochure, you will find a leaflet explaining how you can write a response to an expulsion notice.

*Deadline for appeals:* The UDI's decision will contain a deadline for appeals. If an appeal is not lodged within the deadline, this means that the decision is final and the person concerned will have to leave the country. Once the decision is final, the opportunity to appeal will be lost.

*Deadline for leaving the country:* The decisions from the UDI and the UNE will both include a deadline for leaving the country. This is the deadline by which a person must leave Norway. If the person is unable to have implementation postponed (see the following section), any stay in Norway after this deadline will be illegal.

*Deadline for request for deferred implementation:* This deadline will be contained in the decision by the UDI. Applying for postponed implementation means that a person requests permission to stay in Norway until the case has been fully processed. If a person is granted deferred implementation, that person can stay in Norway until he or she potentially receives a new deadline for leaving the country. The person will then retain the rights he or she had from the previous permit while awaiting the decision. If the person is not granted deferred implementation, he or she still has an obligation to leave the country within the deadline. There is therefore a risk of illegal residence even i

the period between the expiry of the departure deadline and a response to a request for deferred implementation.

### How to write an appeal

As mentioned previously, a person can comment on the prior warning before a decision, and can also appeal to the UDI after the decision has been made. Below is a suggested format for an appeal. It would be wise to start with the contents of pages 5-8 concerning the proportionality assessment. Any supporting documentation of the declarations being made should be submitted, including medical certificates, testimonials from previous employers, marriage and birth certificates. It is also important that the person's reference number (DUF number) for the appeal should be included. You will find this number on all letters from the UDI.

<p><i>Your local police office</i> <i>Their address</i> <i>Their postcode</i></p>	<p><i>Date</i></p>
<p><i>Your Name</i> <i>Your address</i></p>	
<p>Reference number (DUF number): 1234 56 789</p>	
<p>APPEAL AGAINST THE DECISION ON EXPULSION –CITIZEN OF <i>HOME COUNTRY</i> - <i>FIRST NAME</i> - <i>LAST NAME</i>- <i>DATE OF BIRTH</i></p>	
<p>With reference to a decision on expulsion made by the UDI on <i>date</i>. The appeal deadline was set at <i>date</i>. The appeal has thus been filed on time. I also request deferred implementation of the decision.</p>	
<p>I would like to put forward information concerning the proportionality assessment. I would ask that the following be taken into account:</p>	
<p><i>-information on the seriousness of the offence</i> <i>-information on the importance to you personally</i> <i>-information on the importance to your family</i></p>	
<p>Yours sincerely,</p>	
<p><u><i>(signature)</i></u> <i>First Name Last Name</i></p>	
<p><i>Attachment 1: Title</i> <i>Attachment 2: Title</i> <i>Attachments...</i></p>	

You have to complete the items marked in *italics* yourself.  
All attachments are marked with attachment number, name and DUF number.

## **ANNULMENT OF PROHIBITION TO ENTER**

Application may be made for annulment of the prohibition to enter. The term "annulment" is used here to mean that the prohibition to enter is removed.

The principal rule is that an application for annulment can be made 2 years after having departed Norway. An EEA citizen may apply for annulment 1 year after having departed Norway. The application must indicate any new circumstances that make it disproportionate to maintain the prohibition to enter (see page 5). The situation must have significantly changed since the person was deported. It would be an advantage if the person in question has not had any personal influence over these changes.

An annulment of the prohibition to enter is not the same as being granted a residence permit in Norway. If a person wishes to return to Norway, that person must apply for the annulment and for a new residence permit.

An application for annulment of prohibition to enter must be sent from the Norwegian embassy in the home country or some other country in which the person is legally resident. The applicant must attend in person at the embassy.

### **Annulment of prohibition to enter the Schengen Area**

Application may be made for annulment of the prohibition to enter the Schengen Area (see page 10). This means that the registration in the SIS will be deleted, but the person in question will still be unable to enter Norway. In the application, the person applying must show that he or she has a requirement to travel to, and a connection with, a Schengen country. Evidence must be produced of this requirement and connection. The application should be sent to the Schengen country/countries for which the annulment of prohibition to enter is required.

## **SHORT-TERM VISIT**

A person who has been deported may apply for a short-term visit 2 years after having departed Norway. An EEA citizen may apply for a short-term visit 1 year after having departed Norway. This must be in connection with a special event, such as a funeral.