

EXPULSION OF EEA CITIZENS

A brochure on immigration law



Jussbuss

This brochure has been published by Jussbuss. The brochure was last updated in November 2017 by the Immigration Law Group.

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.

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1. INTRODUCTION

This brochure concerns expulsion of EEA citizens. If you are from a country that is not party to the EEA Agreement (see point 3.1), other rules apply to you. Jussbuss has also published a brochure about the rules that apply in such cases, please visit www.jussbuss.no for more information about this.

In this brochure, the Norwegian Directorate of Immigration [Utlendingsdirektoratet] has been shortened to UDI, and the Immigration Appeals Board [Utlendingsnemnda] to UNE. The UDI are the ones who make the first decision in an expulsion case. The UNE is the appeal body, and makes the final consideration of the case, if you choose to appeal.

2. WHAT IS EXPULSION?

If you are expelled from Norway, it means that you have to leave the country and may not return within a given period of time. This is called “prohibition to enter” (see point 4.4). It is punishable to return to Norway before the entry ban has expired. This can lead to imprisonment.

Expulsion therefore differs from a *rejection of entry*, where a person just has to leave Norway, but is not banned from returning.

Expulsion also differs from the *departure deadline* (see point 6.2). If you are in Norway and your application for a residence permit has been rejected, you will be given a deadline for leaving the country. If you have been given a departure deadline, you must leave the country before the deadline expires. If you only have been given a departure deadline, you are not expelled, and you are not banned from returning.

3. EEA CITIZENS

3.1 Who are EEA citizens?

An EEA citizen is a national of a country covered by the EEA Agreement. If you have a residence permit in an EEA country, but you are a citizen of another country, you are not considered as an EEA citizen.

As of November 2017, the following countries are in the EEA:

Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Ireland, Iceland, Italy, Croatia, Cyprus, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, United Kingdom, Sweden, Switzerland, Czech Republic, Germany, Hungary and Austria.

Which countries that are covered by the EEA Agreement changes occasionally. For an updated list, please visit <https://www.udi.no/en/word-definitions/eueea-national/>

If you are a Norwegian citizen, you cannot be expelled from Norway.

3.2 Right of residence for EEA nationals

The EEA Agreement initially states that all citizens of EEA countries should be free to move between the EEA countries. An EEA citizen is therefore entitled to reside in any EEA country.

The general rule is that you can only stay in Norway as an EEA citizen for three months. If you want to have a right of residence beyond that, you must have grounds for staying. For example, you may work or study in Norway, or live in Norway with close family members who have a right of residence as EEA citizens. *Close family members* are considered to be your parents, your spouse/cohabitant and children/grandchildren.

When the UDI is assessing whether the conditions for expulsion have been met in your case (see point 4), it matters if you have a right of residence in Norway, and for how long you have had this. After five years of continued right of residence of Norway, you qualify for what is called permanent right of residence. If you have a permanent right of residence, the UDI must have stronger grounds to expel you. If you have been here with a right of residence for ten years or more, the UDI must have even stronger grounds before expelling you.

4. THE CONDITIONS FOR EXPULSION OF AN EEA CITIZEN

Three conditions must be met in order for it to be legal for the authorities to expel you. These three conditions are called the main condition, personal conduct, and proportionality.

An expulsion decision will be a restriction on the right to freedom of movement within the EU/EEA-area. This is a right that all EU/EEA-nationals enjoy. Restrictions on this right are only lawful, if they are strictly necessary. Therefore the authorities must give your case fair consideration before they can expel you, and they have a general duty to give thorough justification as to why they believe expulsion is a necessary measure in your case.

Below we will review the three conditions, so that you will know what to write in your appeal.

4.1 The main condition

The fundamental condition for expulsion is that expulsion must be made on “grounds of public order or safety”. This condition will be met if you have been convicted of a criminal act, and it is usually in such cases the authorities will consider expulsion.

The UDI will only consider whether or not you have been convicted for something that is punishable by law. They will not take into consideration the fact that you think you have been wrongfully convicted. Jussbuss does not work with criminal law, but if you have questions regarding your criminal case, you can get in touch with the Norwegian Criminal Cases Review Commission (see point 10).

Criminal convictions are not the only thing that can justify expulsion “on grounds of public order or safety”. If the authorities believe you are addicted to narcotic substances, or if you suffer from a serious mental illness, this can also be expulsion “on grounds of public order or safety”. However, the authorities can only use this as grounds for expelling you if you were addicted or mentally ill before you came to Norway. If this does not apply to you, you must point this out in your response.

4.2 Personal conduct

Expulsion on grounds of public policy or public security can only be based on the “personal conduct” of the person concerned. In assessing this, the UDI will consider whether or not they believe that there is a possibility that you will commit new crimes. Also, the criminal conduct you have been convicted for must be considered sufficiently serious so that expulsion is deemed a necessary measure.

When the UDI considers whether or not these conditions are met in your case, they will consider two things. Firstly, they will look at how many offences you have been convicted for, and secondly, they will consider the seriousness of these crimes.

When the UDI considers how serious a crime is, they will first and foremost look at the maximum amount of prison time you could have received for this type of offence. The length of your particular sentence is also relevant. If you have been convicted for only a few offences, and if the maximum sentence for these crimes is low, the crimes may not be serious enough to justify expelling you from Norway.

In your appeal, you can try to prove that this condition is not met in your case. In order to do this, you must focus on all the things in your particular case that can imply that the crimes you have been convicted of are not very serious. If you received a short prison sentence, you must point this out in your response.

In addition, you must try to prove that it is not likely that you will commit further crimes in the future, for instance because your behavior has changed, or because you have attended behavioral therapy courses in prison. If you have become abstinent, or if there was a special reason why you committed the offense you are punished for, this is also relevant information to include in your response. In this context, it is also relevant if you have broken out of a criminal environment that has been the cause of your criminal acts. If you have never been convicted for anything in the past, this can also imply that it is unlikely that you will commit further crimes, so this is also something that you can include in your response.

When the UDI is assessing whether the conditions for expulsion have been met in your case, it matters if you have a right of

residence in Norway, and for how long you have had this (see point 3.2) Therefore, it is advisable to document the basis for your right of residence. For example, you may document that you have been studying or working, or that you have lived here with close family members who have a right of residence as EEA citizens. You can document your right of residence in several ways, such as tax cards, work contracts or papers from the school you have gone to.

4.3 The proportionality assessment

Even if the fundamental condition and the condition regarding your personal conduct are met, the UDI still cannot expel you if this is a "disproportional measure", meaning that expulsion is a too strict reaction in your case, all things considered.

When the UDI considers whether or not expulsion is a disproportional measure, they will first and foremost look at *how serious the crime or crimes you have been convicted for were*, and compare this with *the strength of your ties to Norway*. If you have close family members living in Norway, the UDI also has to take into account how your expulsion will affect them.

The threshold for expulsion is low. In other words, to avoid expulsion, it is usually crucial that you can prove to have very strong ties to Norway. Below is an overview of the most relevant factors in the assessment.

The seriousness of the crime

When considering how serious the offences you have been convicted for are, the UDI look at the specific circumstances of your case. If the UDI believes that the offense is serious, you must usually be able to prove you have very strong ties with Norway, to avoid expulsion. The UDI will in particular consider:

- Maximum sentence: How severe punishment you might have received for the offense you are convicted of. The maximum sentence indicates how serious the authorities generally consider this type of offense.
- The length of your sentence: How severe punishment you actually received. If you received a short penalty in relation to

the maximum sentence you could receive, it indicates that there were specific circumstances in your case that made the crime less serious.

- Mitigating circumstances: The specific circumstances of the case that make the offense less serious are called mitigating circumstances. You can refer to what is stated in the judgment about this. If confessed that you had committed the offense, and otherwise assisted in the investigation and trial, you should point this out in your appeal.
- Aggravating circumstances: The specific circumstances of the case that make the offence more serious are called aggravating circumstances. The UDI might look at what is stated in the judgment about this.
- Risk of recurrence: The UDI will assess how great the risk of recurrence is in your case and take this into account. They will review whether you have been convicted in the past. In the same way as in the assessment of personal circumstances (see point 4.2), you should try to prove that you will not commit new offenses. If you have never been convicted in the past, you should include this in your response. The UDI will consider it as a risk of recurrence if you have committed a new offence after you received a notice of expulsion (see point 6 on the procedure).

Connection to Norway

When the UDI considers how strong your connection is to Norway, they will as a general rule only take into account periods when you have been here legally (see point 3.2). If you have not had a right of residence, the UDI will often conclude that your ties to Norway are weak, even if you have lived here for a long time. However, even if you have not had a right of residence, it is still very important that you give the UDI a thorough account of your connection to Norway in your response.

The following points are relevant to include in your response:

- How old you were when you arrived in Norway: The UDI holds that the younger you were on arrival, the stronger your connection is to Norway.
- What kind of right of residence you have (see point 3.2).
- How many years you have lived in Norway.
- How integrated you are into Norwegian society. You can write about jobs you have had here, and if you have been educated here this is also relevant. You can also include any voluntary work, hobbies, social connections, whether or not you speak Norwegian, as well as anything else that can imply that you are integrated into the Norwegian society.
- Your health: If you have health issues, expulsion might be a disproportional measure. This is particularly relevant if you receive treatment in Norway that is unavailable in your home country. You should try to document your health issues, for instance with a medical certificate. You should also try to provide documentation of any treatments you are receiving for your illnesses.
- Family in Norway: The primary consideration for the UDI will be your spouse, cohabitating partner, and children under the age of 18, but if you have other family members living here this can also imply that your connection to Norway is strong. If you have children residing in Norway, it is very important that you point this out in the response to the notice of expulsion. It is also very important that you provide documentation of custodial rights or visitation rights. Such documentation can be custody or visitation agreements, and, if your children are visiting you in prison, you can include transcripts from prison visitation journals.
- When the family life was established: If you became a family after you should have realized that you could be expelled, your family life in Norway is not considered worthy of protection. In cases like this, it is easier for the UDI to expel you, even if you have family living here.

Other ties to Norway may also be relevant, such as friendships, relationships, etc.

Connection to your home country

If your connections to your home country are strong, expelling you will often not be a disproportional measure. The UDI will look at how old you were when you left your home country, whether or not you have visited your home country, and if so how often. The UDI will also take into account whether or not you have family living in your home country and whether or not you speak the language. If your ties to your home countries are weak, it is very important that you inform the UDI about this in your response to the expulsion notice.

The consequences of expulsion for your family members

When the UDI considers expelling you, they must take into account how your expulsion will affect your family living in Norway. The UDI will first and foremost consider how the expulsion will affect your close family, which includes your children, spouse and cohabitating partner, but it is also relevant how the expulsion affects other family members.

Expulsion is not necessarily a disproportional measure even if your family will be separated as a result of the expulsion. The UDI will consider whether or not it is possible for you and your family to continue your family life in your home country. If your family members do not have a strong connection to your home country, this should be included in your response. UDI will consider whether your family members are from the same country as you, whether they have visited the country, whether they know the culture and the language, and the age of the children and whether they go to school in Norway.

In addition to this, the UDI will consider how the expulsion will affect your family. It is therefore relevant if you have custodial rights or visitation rights for your children, or you provide for your children or spouse. It is also relevant if any of your family members have health issues.

The child's best interest

The UDI must always consider the best interest of your children. This means that the UDI has to pay particular attention to how the expulsion will affect any children you have. The UDI will consider how old your children are, how attached they are to you, and whether they have other adult caregivers living in Norway.

It is important that you elaborate on what kind of relationship you have with your children. If you have the main responsibility for the children, and/or some of the children have special needs that make it necessary for you to live with them, you should point out in your response. You can document your relationship with your children by submitting a visitation agreement or a visit journal from prison, if you get visits from you children while you are imprisoned.

If your children are over the age of seven, or if they are mature enough to form opinions of their own, they have the right to be heard. This means that the child itself or others have a right to say what they think of your expulsion and what it will mean for the child. This can for instance be done by attaching a letter from the child to the expulsion response, describing what he or she feels about the expulsion and how it will affect him or her.

How the expulsion affects your children, will not be emphasized to the same extent if your children are over the age of 18.

4.4 Prohibition to enter

As mentioned, expulsion means that it is illegal for you to return to Norway for a certain period of time, and sometimes for the rest of your life. The ban on entry is usually set at two, five, ten years or for the rest of your life, but the UDI can also determine another period of time.

When the UDI is to decide how long you are expelled from Norway, they consider this based on the same factors as mentioned above. They look first and foremost on how serious the offense you are convicted of, and if there is a risk of recurrence. If you have been expelled from Norway before, you will usually get a longer entry ban than you got the first time.

Furthermore, the UDI will assess what connection you have to

Norway. In this assessment, it is especially important if you have children. If you have children in Norway who you have contact with, it is important that you include this in your response, and try to document your contact.

5. PROTECCION AGAINST EXPULSION (NON-REFOULEMENT)

The authorities must always consider whether it is safe to return you to your home country before they can expel you. The main rule is that you are protected against expulsion if you risk being sent to an area where you either:

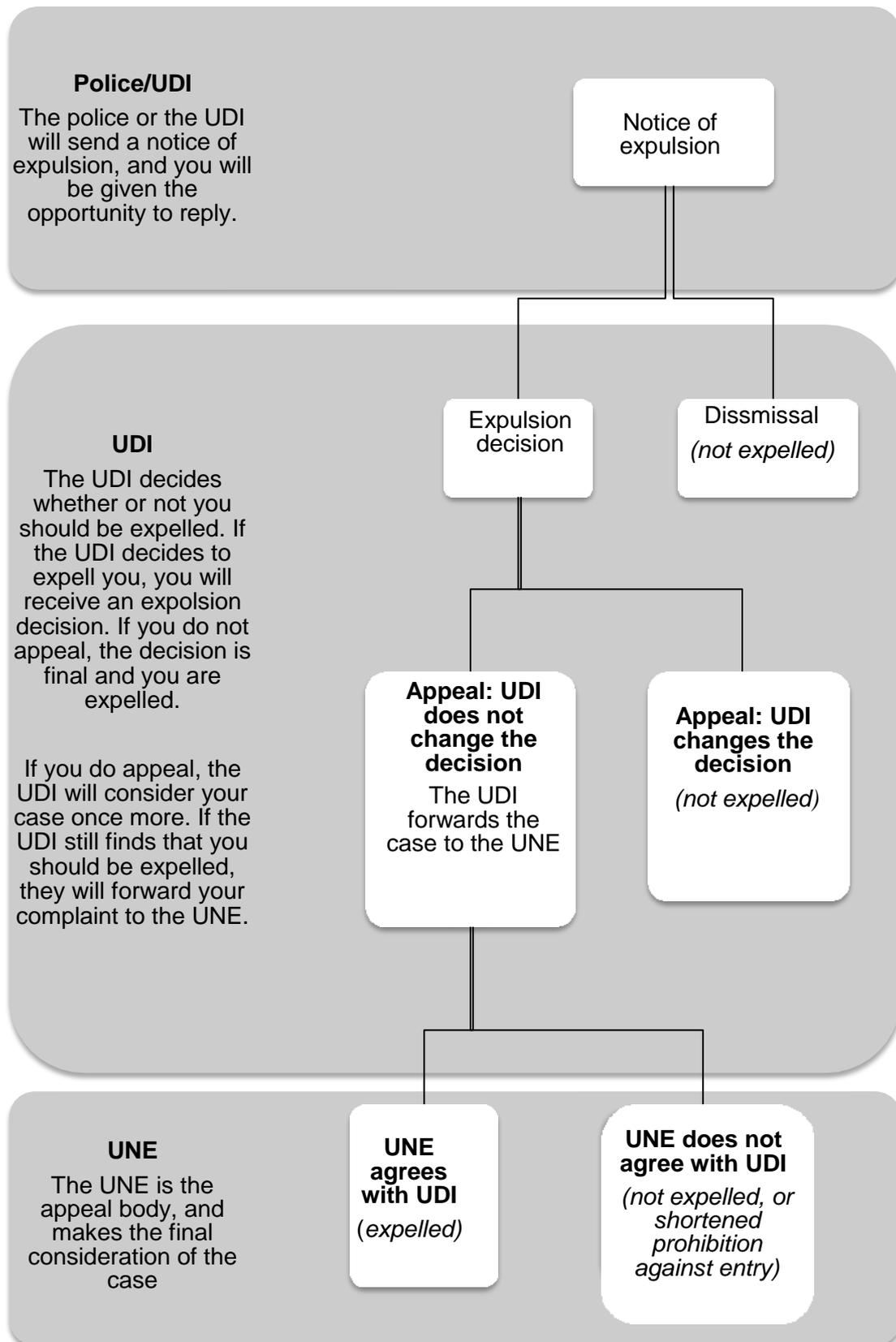
- ... have a “well-founded fear” of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, or
- ... are in a "real danger" of losing life, being subjected to torture, punishment or being subjected to inhuman or degrading treatment. The same applies if the government wishes to send you to a place where there is a danger that you may be forwarded to such an area.

This assessment is similar to the assessment in asylum cases. It is the situation at the time of the expulsion that is crucial.

The Norwegian authorities assume that other EEA countries take care of their own citizens, so it is very rare for EEA citizens to be protected against expulsion on this basis.

If you are wondering if any of this is relevant to you, it may be useful to contact the Norwegian Organization for Asylum Seekers (NOAS) (see point 10 for contact information).

6. PROCEEDINGS



6.1 Overview of the proceedings

The schedule on the previous page shows a brief outline of an expulsion case. The first thing that happens in an expulsion case is that the police or UDI sends a *notice of expulsion*.

If you receive a notice of expulsion, it means that the police or the UDI are *considering* expelling you. It does *not* mean that you are expelled. You will not be expelled before UDI may choose to make an expulsion decision.

If UDI intends to expel you, and you receive a notice of expulsion, you have the right to state your opinion of the matter. In your response, you must try to explain why you think it is wrong to expel you (see point 4 on expulsion terms).

In the notice you have received from the police or the UDI you will find a deadline for responding to the notice. If you are unable to respond within the deadline, you should still send in your response. The UDI can consider your statements, even if it has arrived late. But in that case, you should try to explain why you were unable to deliver it on time.

The reply is delivered to your local police station or to the UDI. If you are in prison, your contact officer can help you with faxing your response to the police, or with sending the response to the UDI by post.

The next thing that happens is that the *UDI will consider whether or not you should be expelled*. If you have not responded to the notice of expulsion, the UDI will only look at the documents the police have sent them. It is therefore very important that you respond to the notice of expulsion, so that the UDI can also take into account your statements when considering whether to expel you.

If the UDI finds that you should not be expelled, they will **dismiss** the case.

If the UDI finds that you should be expelled, you will receive an expulsion **decision**.

If you receive an expulsion decision, it means that you are expelled. But before the decision is final, you will have the opportunity to **appeal**.

In your appeal you must explain why you think you should not be expelled, as you did when you answered the notice of expulsion (see point 4 regarding the conditions for expulsion). You should try to document your statements. We have included an example of what a response can look like, see point 7.

If you receive an expulsion decision from the UDI, you will usually receive a **deadline** of three weeks to appeal the decision, starting from the day you received the decision. If you find that it is difficult to respond within the deadline, you should send a **suspensory appeal**. In the suspensory appeal, you write that you wish to appeal, and that you will include your opinions within a short period of time. You will usually get two more weeks to respond. On our website you will find an example of what a suspensory appeal can look like, please visit www.jussbuss.no. You can also call the UDI to request a new deadline (see point 10 for contact info).

If you do not complain within the deadline, the decision will be final. When the decision is final, it means that you are expelled, and you no longer have a right to state your opinion before the decision is final. Therefore, it is very important that you reply within the deadline, if you believe you should not be expelled.

Even though the deadline has passed, you can still file a complaint and hope that the UDI will consider your statements. If so, try to explain why you did not respond within the deadline.

If you responded within the deadline, but find new information or documentation that you did not submit when you first sent the complaint, you may submit this to UDI, even if the deadline for appeal has expired.

If you appeal the decision, the UDI will consider your case once more. If they still find that you should be expelled, they will *forward your case to the UNE*.

UNE will make the final decision in the case. UNE considers UDI's decision and your appeal, and assesses whether or not they think

it is right to expel you. If UNE agrees with you that you should not be expelled, they make a new decision to not expel you. The expulsion case is then closed.

If the UNE agree with the UDI, and find that you should be expelled, they will make a new expulsion decision. This decision is final, and you have no right to appeal the decision. UNE can nevertheless decide that you should be prohibited to enter Norway for a shorter period of time than the UDI first decided.

When the decision is final, you do not have a right to appeal. If you still believe it is wrong to expel you, you can nevertheless try to send UNE a letter explaining why you think the decision is wrong. This is called **a request for reversal**.

There is no certainty that UNE will consider your request, but they might agree with you, and redo the decision. This almost only happens in cases where you have new information or documentation, that has not been presented during your previous communication with UDI/UNE.

After the case is final, it is also possible to *bring the case to the courts*. If you want to do this, you can find a lawyer at www.advokatenhjelperdeg.no. Keep in mind that it may cost a lot of money to bring a case to court.

6.2 Departure deadline and deferred implementation of the decision

Expulsion decisions from UDI/UNE will include a departure deadline. If you don't leave Norway within the deadline, the authorities have a right to escort you out of the country with force, and you may have to pay the cost of this.

If you want to appeal the decision, you can ask for deferred implementation of the decision. If the UDI say yes, you can stay in Norway until your appeal has been considered by UNE. If the UDI says no, you must leave Norway within the deadline.

7. HOW TO WRITE A RESPONSE/AN APPEAL

As mentioned, you have a right to respond to a notice of expulsion, and you have the right to appeal a decision on expulsion.

Beneath is a suggestion as to how a response/an appeal may look like. When you write your response/appeal, you should look at what is said in point 4 about the conditions for expulsion, especially what is said under point 4.3 about the proportionality assessment. You should try to document your statements, and submit documents such as medical certificates, certificates from previous employers, marriage certificate, birth certificate and visiting journal from prison.

You should also include your reference number (DUF-number) in your response/appeal. You will find your reference number in every letter you receive from the UDI.

Your local police office
The address of this police office
The post number of this police office

Date

Your name
Your address

Reference number (DUF-number): xxxx xx xxx

APPEAL/ RESPONSE TO NOTICE OF EXPULSION – CITIZEN OF YOUR HOME COUNTRY – FIRST NAME, LAST NAME – BORN YOUR DATE OF BIRTH

I refer to the expulsion decision/notice of expulsion of *date*. The appeal/response deadline was set at *date*. The appeal/response is therefor filed on time.

I have stayed in Norway on basis of my *work/family/studies* since *date*.

I wish to give some comments relevant to the proportionality assessment. I ask that you consider:

- *information about your personal conduct and possibility to commit new crime*
- *information about how the expulsion affects you*
- *information about how the expulsion affects your family.*

I also ask for deferred implementation of the decision

Regards,

(signature)
First name last name

Attachment 1: Title
Attachment 2: Title

You must fill in what is marked with italics yourself.
All attachments should be marked with attachment number, name and reference number.

If you want advice on how to or what to write in the reply/appeal, please contact Jussbuss. Our phone number is 22 84 29 00. As there are time limits for writing your reply and appeal, please contact us as soon as possible after receiving notice of expulsion/expulsion decision.

8. LIFTING A PROHIBITION AGAINST ENTRY AND SHORT TERM VISITS TO NORWAY

If you have been expelled from Norway, but you nevertheless wish to travel here, you can apply to have the prohibition against entry lifted. If the UDI says yes, this means that you are no longer expelled from Norway.

As a general rule, you can first apply to have the prohibition against entry lifted one year after you left Norway. In your application you must show that there are new circumstances in your case, which indicates that it is disproportionate that you should still be expelled (see point 4.3).

It is also possible to apply to have the prohibition against entry lifted for a short-term visit to Norway. In order for the UDI to say yes to the application, you have to show that you need to be in Norway for a special occasion, such as a funeral.

The application must be sent from the Norwegian embassy in your home country, or another country where you have a residence permit. You must meet in person when you apply.

9. LEGAL SOURCES

The main rules for expulsion of EEA citizens are covered in paragraph 122 and 124 of the Immigration Act.

If you want to learn more about the rules for expulsion, you can take a look at UDI's circular RS 2010-122, where you can find detailed descriptions of how UDI assesses various types of offenses, etc.

These and other relevant sources of law can be found at www.udiregelverk.no

10. CONTACT INFORMATION

*The Norwegian Directorate of Immigration [Utlendingsdirektoratet],
UDI:*

Postboks 2098 Vika
0125 Oslo
Tlf.: 23 35 15 00

The Immigration Appeals Board [Utlendingsnemnda], UNE:

Postboks 2108 Vika
0125 Oslo
Tlf.: 21 08 50 00

Police immigration [Politiets utlendingsenhet]:

Postboks 8102 Dep.
0032 Oslo
Tlf.: 22 34 24 00
Faks: 22 35 37 00

*The Norwegian Criminal Cases Review Commission
[Gjenopptakelseskommissjonen]:*

Postboks 8026 Dep.
0030 Oslo
Tlf.: 22 40 44 00
Faks: 22 40 44 01

Jussbuss:

Skippergata 23
0154 Oslo
Tlf.: 22 84 29 00
Faks: 22 84 29 01

*Norwegian organisation for asylum seekers [Norsk organisasjon
for asylsøkere], NOAS*

Torggata 22,
0183 Oslo
Tlf.: 22 36 56 60