



Doc. 13351

07 November 2013

Monitoring the return of irregular migrants and failed asylum seekers by land, sea and air

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

Following a steady increase in the number of forced returns of irregular migrants and failed asylum seekers, and in view of the risk of ill-treatment during these forced returns, there is an urgent need to draw up common standards on removal procedures by land, sea and air and on monitoring these procedures.

These standards would, *inter alia*, cover the procedures to be followed in order to prepare people for removal, the information to be given to them, expert medical opinions and appropriate training for escorting staff, with particular attention being given to pregnant women and vulnerable people.

Finally, member States should co-operate with Frontex and set up a co-ordinated and effective system for monitoring forced return programmes.

1. Reference to committee: [Doc. 12771](#), Reference 3826 of 23 January 2012.

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A. Draft recommendation²

1. The removal of irregular migrants and failed asylum seekers is an integral part of migration management policy and border control. According to the 2013 annual risk analysis by the European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union (Frontex), there are approximately 300 000 third-country nationals living irregularly in Europe who have been ordered to leave, up 17% on the previous year.
2. Given this situation and the inadequacy of the provisions concerning forced removals and more particularly the monitoring procedure as such, the Parliamentary Assembly believes that there is now an urgent need to reinforce the human rights dimension of returning irregular migrants and failed asylum seekers.
3. The Assembly notes that forced removals are primarily governed by the human rights standards under the European Convention on Human Rights (ETS No. 5), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), as well as the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its optional protocol (OPCAT) and the Twenty Guidelines on Forced Return adopted by the Committee of Ministers in May 2005.
4. The Assembly also refers to the European Union Returns Directive (2008/115/EC) which entered into force in 2010 and provides, *inter alia*, that “clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well-managed migration policy”.
5. The Assembly is aware that in spite of a number of conventions and legal texts, member States have still not succeeded in drawing up common rules on protecting people who are to be removed by land, sea or air and monitoring the relevant procedures.
6. The Assembly is concerned that people held awaiting returns are especially vulnerable and are not always properly informed, including in a language that they can understand, about their rights, the legal process and the decision-making system in the country where they are held. It should be underlined that the transit phase is the most critical phase of the removal process. It is often then that the greatest risks of ill-treatment occur due to the use of coercive restraining measures, which have, on occasion, resulted in death.
7. The Assembly therefore recommends that the Committee of Ministers instruct a relevant committee of experts to:
 - 7.1. draw up common rules applicable to all States covering human rights safeguards to be put in place during the return process, by land sea and air, and more particularly to cover:
 - 7.1.1. the procedures to be followed in preparing people for their removal, and the information to be given to them, including a set time limit for informing returnees of a pending removal;
 - 7.1.2. the standardisation of risk levels involved in the removal;
 - 7.1.3. the use of restraint techniques and coercive measures;
 - 7.1.4. the content of training programmes for the various stakeholders;
 - 7.1.5. medical examinations and the role of medical staff accompanying returns;
 - 7.1.6. independent, neutral, transparent and effective monitoring procedures with a clearly defined mandate to oversee the entire removal procedure from start to finish;
 - 7.1.7. the procedures to be followed upon a completed return mission and also after unsuccessful returns, including compulsory reporting;
 - 7.2. define a system of compulsory vocational training for escort staff and independent monitors;
 - 7.3. propose minimum safeguards for returnees once they arrive in the country to which they are being returned and measures necessary to determine what becomes of migrants who disappear on arrival;
 - 7.4. draw up specific guidelines for removals of children and vulnerable groups, in particular pregnant women and people suffering from serious illnesses.

2. Draft recommendation adopted unanimously by the committee on 1 October 2013.

8. The Assembly invites Council of Europe member States to:
 - 8.1. comply with international standards on forced returns, ensuring that the right to appeal is included;
 - 8.2. implement an effective and co-ordinated system for monitoring forced returns by air, sea or land at national level, and co-operate fully with international monitoring mechanisms;
 - 8.3. take all necessary measures to ensure that, when working in co-operation with Frontex, human rights concerns are fully taken into account, and that effective systems of monitoring are put into place. This is particularly important in the context of single or joint return charter flights involving more than one member State.

B. Explanatory memorandum by Ms Virolainen, rapporteur

1. Context and scope of the report

1. This report is based on two motions for a resolution: "Flights of shame in Europe" (Doc. 12926) tabled by Ms Strik and others on 25 April 2012 and "Effective and fair returns of irregular migrants and failed asylum seekers" (Doc. 12771) tabled by Mr Clappison and others on 22 September 2011. Both motions highlight the need to evaluate the human rights dimension of returning irregular migrants and failed asylum seekers to their countries of origin.

2. Global geopolitical upheavals, economic instability, high unemployment levels and the ever-increasing numbers of people attempting to enter Europe, be it for asylum or employment purposes, pose a big challenge for Europe. According to the European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union (Frontex), the number of detected illegal border crossings rose from 104 000 in 2009 to 141 000 in 2011. The huge influx of migrants is testing States' border control management and prolongs the processing time for decisions of stay or return, thus putting a strain on the effectiveness of the system.

3. In 2012, nearly 300 000³ irregularly staying third-country nationals were ordered to leave the territory of a European Union member State.⁴ 159 490 people were effectively returned. Of these, 82 630 people were forcibly removed.⁵ Unfortunately, it is very difficult to obtain precise information as to the exact number as the European Union member States are unwilling to disclose the relevant figures.

4. Removals take place either by sea, land or air and are the responsibility of each member State and the authorities responsible for enforcing them. The practice of carrying out returns varies depending on the country in question. In most cases, returns are organised and carried out by the police,⁶ in other cases by the border guards⁷ or by a private contractor, as in the United Kingdom. Since 2004, joint enforced returns have been organised by Frontex, following a Council Decision of 29 April 2004.⁸

5. These returns, involving multiple countries, destinations and returnees, pose a particular problem as it is very difficult to establish which country is responsible for the removal and its different stages. The general standards and provisions in force regarding forced removals are currently deemed insufficient or too unspecific for a process involving such serious risks. Despite some recent co-operation efforts,⁹ there are no harmonised deportation procedures.

6. A multitude of incidents have shown that many of the removals are conducted under unsatisfactory conditions and that deportees have often suffered ill-treatment, which in some rare cases has resulted in death.

7. The aim of this report is to look at the process of returning irregular migrants and failed asylum seekers, and in particular the existing human rights standards for carrying out returns. For this purpose, I would like to examine the different stages of the return process and the parties involved, as well as ways of ensuring that member States' human rights obligations are met. The final aim is to identify common guidelines and standards in conformity with the values of the Council of Europe which could serve as a recommendation for guaranteeing a minimum level of protection of returnees and the people involved in the removal procedure.

8. In order to have as full a picture as possible of the situation, I conducted a fact-finding visit to the detention centre in Metsälä, Helsinki (Finland), met representatives of public authorities and non-governmental organisations (NGOs) and organised a hearing on "Effective and fair returns of irregular migrants and failed asylum seekers: protection of fundamental rights and dignity of returnees" (Geneva, 26 November 2012). I also observed a forced return flight from Helsinki (Finland) to Istanbul (Turkey), which gave me an insight into how a forced removal is carried out.

3. This is an underestimation as data for 2012 was unavailable for France, the Netherlands and Sweden.

4. Frontex Annual Risk Analysis 2013, p. 44.

5. In 2012, this amounted to 82 630 people according to the Frontex Annual Risk Analysis 2013.

6. For example, Denmark, Finland, France and the United Kingdom.

7. For example, Greece, Egypt, Morocco and Turkey.

8. Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more member States of third-country nationals who are subjects of individual removal orders (2004/573/EC).

9. The European border surveillance system, known as "Eurosur", the police forces of 17 European Union countries and Norway are currently involved in exchanging operational information in order to improve operations.

2. Legal and judicial scope

9. The removal procedure is governed by domestic legislation, EU law and international law. The EU member States are bound by the minimum guarantees set out in the EU Return Directive (No. 2008/115/EC) adopted in June 2008, which came into force at the end of 2010. Human rights standards also apply.

2.1. The EU Return Directive

10. The Amsterdam Treaty gave the European Community the right to take measures to combat irregular immigration, including repatriation.¹⁰ Since then the European Union has developed a policy under which the removal of irregular migrants and failed asylum seekers is essential for the credibility of a common migration and asylum law and policy.¹¹ In 2004, the European Union adopted The Hague programme, which recommends that the Commission develop “an effective removal and repatriation policy based on common standards for people to be returned in a humane manner and with full respect for their human rights and dignity”.¹² In 2008, the European Union adopted the Return Directive. When adopted it was criticised by many, including the United Nations Human Rights Council for allowing excessively lengthy detention. At the same time, its aim of creating uniform standards for the return procedure was welcomed.¹³

11. The Return Directive states that “clear, transparent and fair rules need to be fixed to provide for an effective return policy as a necessary element of a well-managed migration policy”.¹⁴ Coercive measures and the limits to their use are defined in Articles 8.4 and 8.5. Detention is justified only to prepare the return and/or carry out the removal process (Article 15).

12. The removal process is addressed in Chapter II of the Directive, where it is also referred to as “termination of illegal stay”. Member States are obliged to issue a return decision to all third-country nationals staying illegally on their territory. In this connection, the Directive has been criticised for failing to explicitly mention fundamental human rights obligations as laid down in the European Convention on Human Rights (ETS No. 5).¹⁵

13. Article 8.4 stipulates that removal may be enforced, but such measures must be carried out in accordance with fundamental rights and with due respect for the dignity and integrity of the returnee. Before accepting the Directive, the European Parliament tried to add additional binding standards to this provision, and reference is made to Council Decision 2004/573/EC¹⁶ on the organisation of joint flights and the appended common guidelines on security provisions. Effective monitoring is also called for, but there is no mention of what the relevant mechanisms are or should be.¹⁷

14. Several studies have been conducted on the EU return policy and many of them have stressed that the focus is on effectiveness and efficiency rather than on the human rights of the returnees.¹⁸

2.2. The Council of Europe

15. The Council of Europe has a large number of relevant instruments. The first is Article 3 of the European Convention on Human Rights, which prohibits torture and inhuman and degrading treatment or punishment. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126) and its Articles 2 and 7 deal respectively with the right of members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to visit places of detention and the possibility for the committee to carry out visits when circumstances so require.

10. Amsterdam Treaty, Article 63.3.b.

11. Sokol Dedja, “Human Rights in the EU Return Policy: the Case of the EU-Albania Relations” in *European Journal of Migration and Law* 14 (2012), 95-114, p. 95.

12. The Hague programme: Strengthening freedom, security and justice in the European Union, p. 6, Official Journal of the European Union (2005/C 53/01); see also Anneliese Baldaccini, “The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Return Directive” in *European Journal of Migration and Law* 11 (2009), p. 3.

13. Press release, “UN experts express concern about proposed EU Return Directive”, 18 June 2008.

14. Return Directive 2008/115/EC, preamble, paragraph 4.

15. A. Baldaccini, op. cit., p. 7.

16. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0573:EN:NOT>.

17. A. Baldaccini, op. cit., pp. 7-8.

18. S. Dedja, op. cit., p. 97.

16. The Parliamentary Assembly has adopted many texts on the issue, including [Resolution 1788 \(2011\)](#) “Preventing harm to refugees and migrants in extradition and expulsion cases: Rule 39 indications by the European Court of Human Rights”, [Resolution 1742 \(2010\)](#) “Voluntary return programmes: an effective, humane and cost-effective mechanism for returning irregular migrants”, [Resolution 1741 \(2010\)](#) “Readmission agreements: a mechanism for returning irregular migrants”, [Resolution 1707 \(2010\)](#) on the detention of asylum seekers and irregular migrants in Europe, [Recommendation 1645 \(2004\)](#) on access to assistance and protection for asylum seekers at European seaports and coastal areas and [Recommendation 1547 \(2002\)](#) on expulsion procedures in conformity with human rights and enforced with respect for safety and dignity.

17. In May 2005, the Committee of Ministers adopted Twenty Guidelines on Forced Return¹⁹ originating from Assembly [Recommendation 1547 \(2002\)](#) cited above. The main purpose of this code of conduct is to group together “the various guidelines developed by different bodies within the Council of Europe in one pragmatic text to be used by governments when developing national legislation and regulations on the subject”. It should also be a “useful source of guidance for those directly or indirectly involved in expulsion measures”. The Guidelines apply to procedures leading to the expulsion of non-nationals unlawfully present on the territory of one of the Council of Europe member States. Refusals to enter national territory at a border are not included in their scope.

18. The CPT has also developed guidelines²⁰ for this purpose, which, together with the Twenty guidelines, will serve as a basis for the proposal of common standards and guidelines to be made in this report.

2.3. Other international law

19. In this context, I would also like to draw attention to the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), adopted by the United Nations General Assembly in 2002 and in force since 2006, which institutes a system of unannounced and unrestricted visits to places of detention, with the emphasis more on prevention than reaction, as well as to the International Labour Organization (ILO) conventions on migrant workers (Nos. 97 and 143) and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

20. Given the aim of this report, it is necessary to examine first of all the role and involvement of the various parties in the removal process, and the role and responsibility of the sending and receiving States in the case of returns by air, land or sea, and to look at the conformity with human rights of the treatment of returnees during the removal process, in order to put forward proposals with a view to harmonisation at European level. Such harmonisation might take the form of regional standards covering the issue of protecting returnees against inhuman and degrading treatment, thereby guaranteeing them special protection as a vulnerable group.

3. The removal process

21. The removal of irregular migrants and failed asylum seekers is an integral part of each State’s migration management policy and border control. However, such repatriations must be balanced by respect for universal human rights and returnees must be treated in a humane and dignified manner.

22. People awaiting or in the process of removal are especially vulnerable and are not always properly informed about their rights, the legal process, the decision-making system and the culture, climate and language of the country where they are being held. Some will have experienced trauma in their own countries and undergone difficult journeys from their countries of origin, during which they may have lost loved ones and may have experienced exploitation, and long periods of detention with uncertainty about their future. The removal is usually divided into the pre-return, return and post-return phases. The pre-return starts when a return decision is issued by the national authorities. According to Article 7 of the Return Directive, the returnee should have an “appropriate period” to leave the host country. In member States outside the European Union, the practice varies depending on national legislation. Bilateral agreements are the most commonly used technique for regulating migration, such as, for example, the agreements between France and Senegal. EU member States may use their own bilateral agreements or may rely on EU negotiated agreements.

19. [CM\(2005\)40 final](#) and Addendum and [CM/Del/Dec\(2005\)924/10.1](#).

20. CPT Guidelines on deportation of foreign nationals by air, www.cpt.coe.int/en/annual/rep-13.htm#deportation.

3.1. Voluntary returns

23. The most dignified and humane way of removing migrants is through voluntary returns. Acting of one's own free will is basic for the respect of human rights. This also reduces costs for the enforcing State.²¹ According to an Assembly report on "Voluntary return programmes: an effective, humane and cost-effective mechanism for returning irregular migrants" from 2010, a voluntary return, including reintegration assistance, costs a third of a forced return.²² The Return Directive stipulates that the member State can give the returnee between 7 and 30 days for voluntary departure after the removal decision has been made. However, the Directive allows member States to refrain from this procedure if the returnee is deemed to pose a threat to national security.²³

24. In [Resolution 1742 \(2010\)](#), the Assembly urges member States to make fuller use of the practice of voluntary returns and to co-operate with the International Organisation for Migration (IOM). In [Recommendation 1926 \(2010\)](#), the Assembly recommends that the Committee of Ministers invite one of its intergovernmental committees to prepare guidelines on assisted voluntary returns which could usefully complement the Twenty Guidelines on Forced Returns. This recommendation was unfortunately not followed up by the Committee of Ministers.

25. The use of assisted voluntary return programmes varies depending on the country. According to an EU study from 2011,²⁴ Germany conducted 17 612 forced returns in 2009 but only 3 107 voluntary returns. The number for Switzerland during that same period was 5 421 forced and 1 793 voluntary returns. In Finland, 2 411 return decisions were made in 2011 but only 259 of these were voluntary.²⁵

26. In accordance with the Finnish Government's 2011 programme to speed up the return procedure for failed asylum seekers, the Ministry of Interior has launched a project to consolidate the system of voluntary returns and amended the legislation accordingly. The aim is to offer failed asylum seekers or people whose asylum has been revoked the chance to return voluntarily to their country of origin or residence. The Finnish authorities have gained experience of this process in a joint project between the IOM and the Finnish Immigration Service.

27. The IOM assists with some 20 000 to 30 000 voluntary returns annually through its Assisted Voluntary Return and Reintegration programmes. The success of these programmes is dependent on the co-operation of migrants, civil society and the governments in host countries and countries of origin.²⁶

28. The Director of the Finnish Immigration Service said in an interview in the Finnish Swedish-language daily *Hufvudstadsbladet* on 30 October 2012²⁷ that voluntary returns can be a safer option for irregular migrants. When the police are involved in forced returns they will automatically hand over the returnee to the authorities of the country of origin. The current system does not provide for monitoring of the returnee once returned. Improving and developing the practice of voluntary returns is a very important step in respecting the human rights of migrants and it should be used whenever possible.

3.2. Forced returns

29. Once it has been established that voluntary return is not an option, the forced return procedure sets in. Article 9 of the Return Directive includes a provision allowing for member States to postpone a removal, for example when there is a risk of refoulement or when the returnee's physical or mental state does not permit his or her removal.

30. However, this is not without problems. In a report from 2011, the European Union's Fundamental Rights Agency (FRA) notes that in cases where a person has been ordered to return but the removal cannot be enforced, the Return Directive and other EU policy documents do not provide for a mechanism to put an end to situations of legal limbo deriving from protracted non-removability.²⁸ Amnesty International Finland also

21. A. Baldaccini, op. cit., p. 7; see also Frontex Annual Risk Analysis 2013, p. 44.

22. [Resolution 1742 \(2010\)](#) "Voluntary return programmes: an effective, humane and cost-effective mechanism for returning irregular migrants", and [Doc. 12277](#).

23. Return Directive, Article 7.4.

24. "Comparative Study for Best Practice in Forced Return Monitoring", 2011, p. 22.

25. Figures provided by the Finnish Police, Helsinki District.

26. www.iom.int/cms/return-assistance-migrants-governments.

27. HBL, "Många asylsökande åker frivilligt hem igen", 30 October 2012 (in Swedish).

28. "Fundamental rights of migrants in an irregular situation in the European Union", 2011, p. 7.

underlines the risk of creating such a legal limbo in its comments on a government proposal to amend the Finnish Aliens Act.²⁹ According to FRA, “following the evaluation of the Return Directive planned for 2014, the European Commission should propose amendments to the directive to ensure that the basic rights of persons who are not removed are respected”.³⁰

31. The process of removal varies depending on the country. In Finland, for example, the returnee is called to the police station for an interview, where the police will make an assessment to determine the procedure that best fits the purpose.³¹ While awaiting removal, the returnee is placed in the Metsälä Detention Unit in Helsinki, or in police prison if the 40 places in that unit are full.³² The CPT has criticised Finland for the lack of places.³³ In the Netherlands, people awaiting removal are placed in much larger units. In France, Belgium, Germany and Switzerland, the holding unit is in the vicinity of the airport. However, facilities for people awaiting removal are often unsuitable, such as those available in Geneva (Switzerland) which do not have their own waiting and preparation areas, so returnees cannot be separated from other passengers.

32. Removals can be organised either by the host country or, for EU members, in the form of a joint flight, as provided for in Council Decision 2004/573/EC. This sets out common guidelines for pre-return, the flight itself, transit and arrival. It also includes provisions for failed removal procedures.³⁴ The returnee is escorted from the holding unit on board the vehicle of transportation and is the responsibility of the host country until handed over to the authorities in the country of origin. Transits are among the most critical phases of the removal procedure and this is usually where cases of ill-treatment may occur.

33. In addition, according to Amnesty International in Finland, failed removals incur very risk-prone situations and the common standards and guidelines for removals should include consideration for these situations.

3.2.1. The use of force and cases of ill-treatment

34. Coercive and restraining measures are only to be used if the returnee constitutes a danger to him or herself or to the people involved in the removal process. If properly trained, the authorities and the escorting staff are aware that in difficult situations they are always in a position of strength. According to the CPT Guidelines, the force and the means of restraint used should be no more than is reasonably necessary. For security reasons, the removing authorities may also decide to separate family members.

35. Without going into detail, I would nevertheless like to outline some of these cases. First that of Mr Samson Chukwu, a Nigerian asylum seeker, who died in Switzerland from positional asphyxia. No criminal proceedings were brought against the police officer responsible. Mr Aamir Mohamed Ageeb, a Sudanese national, died in Germany from asphyxiation. No charges were brought against the border police. Mr Marcus Omofuma, a Nigerian national, died in Austria from suffocation and, once again, no charges were brought against the three police officers involved. Another Nigerian asylum seeker died recently in Zurich in the course of a forced return procedure.

36. As for the other member States, it is worth pointing out that the United Kingdom has no policy on the appropriate level of restraint and no system for monitoring the use of restraint. In total, I was informed about nine cases where death occurred during a forced return procedure, in Austria, Belgium, France, Germany, Hungary, Switzerland and the United Kingdom.

3.2.2. Monitoring forced returns

37. Independent observers present during the entire removal process is an important tool in preventing cases of ill-treatment and in ensuring that the member States respect their human rights obligations. As an independent body under the Council of Europe, the CPT has already monitored one return flight and has since 2003 developed guidelines for the deportation of foreign nationals by air.

29. Amnesty International's comments on the proposal to amend the Finnish Aliens Act, 2013, p. 4.

30. “Fundamental rights of migrants in an irregular situation in the European Union”, 2011, p. 11.

31. Interview with Mr Jussi Lammi, an escort officer in the Finnish Immigration Police.

32. Pekka Nuutinen, Director of the Metsälä Detention Unit.

33. As a result, Finland has decided to build a second detention Unit in Konnunsuo, but the construction date has yet to be confirmed.

34. Council Decision 2004/573/EC, Sections 1-6.

38. In Denmark, the ombudsman has been responsible, since 1 April 2011, for monitoring the return of illegally staying refugees to third countries.³⁵ Forced returns may be accompanied or simply observed. In the latter case, it is the police who escort the returnee. Monitoring covers the period from the return decision up to arrival in the receiving country. The ombudsman endeavours to ensure that the police respect the person's rights as fully as possible and only resort to force where absolutely necessary.

39. In the Netherlands, where, according to the Dutch Refugee Council, incidents of excessive force being used on returnees are rare, an independent commission oversees the entire forced return process and guidelines are in place for the authorised use of force.

40. In France, monitoring only occurs during the pre-return stage or if a return attempt fails, either because of a last-minute legal intervention or because the pilot or crew on a commercial flight refuse to take the returnee. In the latter case, the returnee is sent back to a detention centre where one of the five NGOs contracted by the Ministry of Interior is present. According to France Terre d'Accueil, one of the approved NGOs, returnees regularly report excessive use of force by police escorts during attempted removals.

41. In Belgium, monitoring is carried out by the Immigration Office of the Home Affairs Federal Public Service, in co-operation with the police, the social inspectorate and the Finance Federal Public Service. Irregular migrants are usually held in closed centres where the initial period of detention is two months. This period may be extended by the minister or his or her representative. Belgium has six closed centres, including a transit centre located in the transit zone of Brussels airport. Irregular migrants who refuse to leave of their own free will are escorted to the aircraft by the police. The police only enter the aircraft when a person has refused more than twice to get on board.

42. In Switzerland, according to a report by the National Commission for the Prevention of Torture (CNPT), different forms of restraint are used: wrist and ankle restraints, and sometimes even a boxing helmet to ensure complete immobilisation and to prevent the detainee harming himself or herself.

3.3. Readmission agreements

43. Forced returns are problematic in cases where the country of origin refuses to accept the returnee.³⁶ In such cases, the host country is obliged to take the returnee back. This is usually the case when the identity and nationality of the returnee have not been properly established, but refusal can also be based on other arguments. To avoid this situation, the European Union has signed readmission agreements.

44. Readmission agreements are signed between the European Union and non-EU countries. They set out clear obligations and procedures for the authorities of non-EU countries and of EU States as to when and how to take back people who are irregularly residing in the European Union.³⁷ These agreements, viewed as purely technical in nature by the European Commission, do however have certain human rights implications.³⁸ As a result, the Commission, after a review of its readmission agreement policy in 2011, decided to issue a set of recommendations to the member States reminding them of their international human rights obligations.³⁹ However, in the review, the Commission does not change its focus, which is on the effectiveness of returns.⁴⁰

45. The European Union has signed readmission agreements with several non-EU Council of Europe member States.⁴¹ However, an article concerning the readmission agreement between the European Union and Albania concludes that there is evidence that the readmission agreements do not include sufficient provisions to protect the human rights of returnees. In the case of Albania, returns are carried out by member States despite the fact that Albania is not always able to comply with the minimum standards set out in the agreement. In a situation of this kind, the "safe third country" principle overrides human rights considerations.⁴²

35. Non-EU member States.

36. The Finnish Police are currently involved in a project with the aim of facilitating the identification of undocumented immigrants.

37. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/immigration/return-readmission/index_en.htm.

38. For further comments, see Ms Strik's report on readmission agreements: a mechanism for returning irregular migrants (Doc. 12168) and Resolution 1741 (2010).

39. European Commission Communication, Evaluation of EU Readmission Agreements, COM(2011)76 final, p. 10.

40. S. Dedja, op. cit., pp. 97-98.

41. Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", the Republic of Moldova, Montenegro, Russia, Serbia, Ukraine, Georgia. The most recent was signed with Armenia on 19 April 2013.

42. S. Dedja, op. cit., p. 114.

46. The human rights implications of readmission agreements are an issue that needs to be looked at more specifically by the Assembly in the future, in particular the practice.

4. Parties involved in the removal process

47. The parties involved in the removal process include publicly or privately contracted escorts, coordinators of joint return flights (Frontex), border guards and police, accompanying medical staff, flight captains, airport management, airline staff and border police at arrival points. Added to these are lawyers and NGOs that help with or take care of the appeal procedure against the return decision.

4.1. The returnee

48. The removal process is very difficult for the returnee, who may suffer from trauma connected to the reason for applying for asylum in the first place or from the process of entering a country illegally. If the asylum process has taken a long time, the person might already have grown attached to the country of residence and formed relationships. When a removal decision is taken, the returnee may have to wait in the holding unit for a long time before it is executed.

49. The returnee has several rights, one of the most important being the right to appeal the return decision. This right could delay or postpone the return, thus placing extra stress on the returnee, who is already in a vulnerable situation. In order to respect the returnee's human rights and human dignity, it is important to ensure that the appeals process is properly facilitated and not unnecessarily prolonged.

50. Once the removal decision has been taken, the removing authorities should notify the returnee of the time and date of removal. For one reason or another, the authorities might decide to withhold this information. The director of the Metsälä Detention Unit and a member of the CPT have confirmed to me that returns where the returnee knows the date of departure well in advance are usually easier than those where the timing is not known. One suggestion for a joint standard would be to introduce a time limit for notifying returnees of the date of departure.⁴³ This allows for the necessary preparations involved in repatriation.

51. Here it is also important to note that some returnees are convicted criminals, for whose return criminal legislation is in place. This legislation differs from the legislation concerning the return of irregular migrants.

4.2. The role of escorting staff

52. The removal process involves a lot of human suffering and difficult aspects which may also become heavy burdens for escorting staff. In rare cases, deportees may also act in a threatening manner, resulting in risks for other parties involved in the return. There are reported cases of injuries to escorting staff, and even deaths. In this connection, it is important to emphasise the need for proper training and support for people involved in removals. Belgium has a system of coaching in place for new escorting staff and in the Netherlands and in France, limits are set on the length of time a person may work as an escort.

53. The United Kingdom has outsourced its removal process to a private contractor, but many removals are organised by the police and some by border guards.

54. According to my information, differences of attitude are noticeable from one lead escort to another regarding the use of full restraint or more flexible measures. This usually depends on their experience. Exchanges of information and experience between lead escorts in different countries should therefore be encouraged.

55. Some experts have criticised returns managed solely by the police. It is important to ensure that different professionals are involved in the removal process as a whole. Belgium, for example, involves social workers and psychologists in removals. This could be an example for other countries.

4.3. The role of other staff (medical staff, captain of the aircraft, cabin crew)

56. All transport carriers are bound by their own safety rules. For return flights, the safety of staff, passengers, the escorts and the returnee is the responsibility of the captain. If the captain considers a returnee to be potentially disruptive, the return may be halted even before the plane is boarded. It is therefore important

43. In [Recommendation 1547 \(2002\)](#), the Assembly suggests setting the time limit at 36 hours.

to establish good co-operation with the airline and ensure proper training for its staff to ensure an effective and fair return. Any incident that further prolongs the removal causes stress for the returnee as well as for the removing authorities.

4.4. The role of Frontex

57. Frontex is responsible for co-ordinating the activities of border guards in maintaining the security of the European Union's external borders. States nevertheless retain their sovereign decision-making powers in terms of asylum and removal and are responsible for the part of the border on their own territory. The final decision is a matter for the States themselves. Frontex's main role is to help ensure common standards and a high level of efficiency. Its role stops at the border.

58. In this context, I would like to pay tribute to the excellent report by Mr Mikael Cederbratt on "Frontex: human rights responsibilities" (Doc. 13161) in which he refers to the concerns expressed regarding respect for human rights and the lack of transparency, and puts forward proposals for measures to improve the democratic scrutiny exercised by the European Parliament, and human rights training for those taking part in Frontex operations.

59. Frontex is responsible for organising joint enforced return flights. This means grouping together non-EU returnees from several member States. The returnees are transported on a single flight to the State in charge of organising the flight. There they board an aircraft and travel together to the destination airport in a third country.⁴⁴ The return flight can have multiple stops along the way. Frontex acts as an intermediary, co-ordinating with the national authorities taking part in a joint return flight. However, Frontex does not have background information on individual returnees. Personal data processed by the agency is limited to that required for the purpose of a joint return operation and is deleted no later than 10 days after the end of the operation.

4.5. The role of supervisory bodies

60. The CPT has always recommended implementing a system of independent national structures able to make regular visits to places such as prisons or police stations. The entry into force in June 2006 of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) provided a fresh perspective on the supervision of places of detention and the prevention of torture. This treaty set up the Sub-Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), which has very similar powers to those of the CPT. However, the treaty also invites States acceding to the protocol to establish, at domestic level, National Prevention Mechanisms (NPMs) with extensive supervisory powers in places of detention.

61. There is very positive interaction between the CPT and the NPMs, and hence with the SPT. The NPMs are often better placed to continue monitoring removal procedures and the conditions in which migrants and refugees live and how they are treated in detention centres.

62. Since 2011, the NPMs have been authorised to accompany irregular migrants during flights, which makes it possible to see whether returnees are treated humanely. Within its mandate, the CPT has had the opportunity to observe returns for longer, but the first flight observation operation was only organised in 2012.

63. However, the work of the supervisory bodies stops once the returnee has been handed over to the authorities of the country of origin. At present, escort personnel and supervisory bodies have no mandate beyond this point. This represents a legal vacuum to be filled, particularly as the CPT and the NPMs have noted that conditions on arrival may be worse for failed asylum seekers and irregular migrants than for convicted prisoners. Returned failed asylum seekers are often rejected by the local population and/or their family, and live in total isolation.

64. NPM and Frontex representatives met in Belgrade in June 2012 under a joint European Union–Council of Europe venture known as the European NPM Project to discuss the role to be played by each party in combating ill-treatment and torture occurring during removals by air, sea or land. This exchange of views highlighted the increasingly important role conferred by member States on Frontex, even though States retain sovereignty in these matters. The role played by Frontex is becoming increasingly complex. With regard to joint flights, a number of questions are raised, especially regarding the responsibility for and monitoring of flights,

44. www.frontex.europa.eu/operations/return.

including the sharing of responsibility between Frontex and member States. It is admittedly very difficult, when several States are involved in a return flight, to determine who is responsible and which country is tasked with monitoring.

65. In view of the above, it was suggested at this exchange of views that further consideration be given to the establishment and improvement of communication between the different parties. It was specifically proposed that an official responsible for communication be appointed in order to keep the NPMs in the arrival country informed, at all stages and at all times, of the prospective use and scheduling of joint flights.

66. In conclusion, it is essential that the torture prevention systems take charge at national level, particularly in the case of recurrent or systematic ill-treatment, and that they be given the authority to carry out ad hoc visits and to monitor joint flights carried out and initiated by member States and Frontex.

4.6. The role of NGOs

67. The various NGOs also have an important role to play in the return procedure. In many countries, they offer support to the returnee in the form of counselling, interpretation and legal assistance. NGOs often have regional offices in the countries of origin and their role in helping during the post-return phase should also be considered.

68. After receiving information from NGOs, lawyers and individuals indicating that there might be problems with forced returns from Finland, Amnesty International Finland decided to look into the issue. As no external body was monitoring the practices and consistently gathering information related to removals (although the Parliamentary Ombudsman deals with individual complaints), Amnesty initiated a project in order to gather information by interviewing deportees after failed removals, as well as lawyers and key officials. As a result, Amnesty has contributed to the establishment of a special external monitoring body in Finland for removal practices and has informed the Ministry of the Interior that there is an inadequate internal monitoring system within the police authorities responsible for removals.

5. Protection of returnees against ill-treatment and torture during the removal process

69. The aim of this report is to find an appropriate and proportionate balance between the use of security measures and ensuring that returnees are treated humanely and with dignity. In the current climate, the balance has unfortunately become skewed in favour of security over dignity. This, coupled with the vulnerability of returnees and a potential lack of accessible and effective legal remedies against any ill-treatment during removal, makes the removal process a period fraught with risk.⁴⁵

5.1. Scope and applicability of standards in matters of removal

70. The geographical scope of regional standards covers all Council of Europe States, and these standards should apply to all stages of the removal process, namely from the time the returnee is picked up at the detention centre, through the transfer to the embarkation point, the time spent in the port or airport holding area, the time of boarding the aircraft or ship and the flight or crossing, right up to the time of handover, on arrival, to the authorities of the country of destination.

71. The same applies to protection standards concerning transport, which must cover removals by air, sea or land. In order to guarantee and enhance the protection of returnees' fundamental rights during the procedure, it is essential to take two major lines of action: first of all, lay down guidelines or common regional standards on the removal procedure and the protection of returnees against risks of ill-treatment or torture, and second, reinforce supervisory mechanisms, particularly the national agencies tasked with monitoring the risk of ill-treatment and torture of people deprived of their liberty during the removal procedure.

5.2. Standards applicable to all parties

72. The risk analysis conducted by the removing authorities before the removal determines the way in which a person is removed. Laying down guidelines or common regional standards on the forcible return process and the protection of returnees against risks of ill-treatment or torture would be useful to all parties involved and to the bodies responsible for monitoring the removal process. It would ensure transparency and coherence in a

45. Council of Europe report on the 8th thematic workshop of the European NPM Project, Geneva, March 2012 (Note 5).

procedure which is currently open to abuse. Furthermore, these standards would be unique because they would cover both the deprivation of liberty, from the time the person is taken to the holding centre until his or her arrival in the country of origin, and the procedure and all issues concerning removal.

73. These standards should cover all stages of single and joint forced returns. First of all, efforts should be focused on standardising risk levels and security measures, such as the use of force, the carrying of weapons, etc. During my fact-finding visit, mention was also made of the need to carry out medical examinations to check that the person in question is fit to travel by plane, and to provide adequate medical equipment in all transport and holding areas used during the removal. I was also able to see that escort personnel were systematically debriefed and submitted a written report on the procedure. This presupposes appropriate conduct on the part of escort personnel. To this end, it is essential that all the parties concerned (escort personnel, airline staff, flight captains, border guards, operational and monitoring teams) are given human rights training, that the training they receive also alerts them to intercultural aspects and that they are given the opportunity to attend language classes.

74. Another factor to be taken into account and which must be included in standards is the preparation of returnees for the return. Here, it is imperative to ensure the systematic use of interpreters and enable returnees to inform their family or friends of their return. It is also important to pay special attention to vulnerable groups such as children and women. Keeping children in detention centres should be avoided at all costs and I welcome the preparation of a report on this important issue in our Assembly.⁴⁶

75. In this connection, and following an exchange of views with the CPT, I have prepared a list of procedures and steps to be complied with during joint flights. The list is divided into four sections: before the flight; in the holding centre; during the flight; and upon arrival.

76. Before the flight, it is important for those accompanying the returnee to have as much information as possible regarding the flight, the person or persons concerned, whether it is a voluntary or forced return, and the situation and background of the people in question. To this end, there must be information meetings with all the parties involved in order to obtain all the required information on the person being returned.

77. When the parties concerned arrive at the holding centre, one of the first steps to be taken is to find out whether the person in question is aware that he or she is to be returned, and whether the return is voluntary or not. The parties accompanying the person must have full knowledge of his or her medical file and if no medical personnel are available, steps must be taken to acquire the required information.

78. Returnees must be able to recover their personal effects and checks must be made to ensure that they have been told of the possibility of an appeal before the aircraft doors are finally closed.

79. Most criticism of these joint returns relates to the way in which returnees are treated during the transfer between the holding centre and the airport, or indeed during the flight. In the case of a voluntary return, the returnee should be accompanied and unrestrained during transfer or the flight. Unfortunately, we were informed of a few cases in which returnees were restrained to such an extent that they were almost unable to breathe, even though they had shown themselves to be co-operative. Obviously, it is a different matter when the returnee is being forcibly returned and is showing signs of rebellion. Nonetheless, respect for human dignity presupposes a civil attitude and respectful treatment in all cases.

80. Once on board, those accompanying the returnee should ensure that his or her baggage is stored in the hold. Returnees should not be handcuffed or restrained so as to allow a degree of freedom of movement. Depending on the length of the flight, they should be served a meal, making sure that they are not given hot water or food that is too hot, if they are in an excessively nervous or aggressive state.

81. On arrival, in order to avoid returnees being stared at and to protect them as much as possible, it is recommended that they should be the last to leave the plane. In some countries, the authorities will board the plane to fetch them. It is important to ensure that they are treated well when being handed over. Returnees must be informed of the possibility of submitting a complaint on leaving the aircraft if they so wish.

46. Immigration detention of children (Rapporteur: Ms Tinatin Bokuchava, Georgia, EPP/CD).

82. It must also be underlined that any recourse to force during any part of the removal procedure amounts to an unsuccessful return. There should be clear guidelines on the use of force and it should be based on absolute necessity only. However, these instructions cannot be satisfactorily applied unless the escort personnel and the parties concerned have attended appropriate training to make them aware of the risks and problems.

6. Putting in place effective monitoring of the removal procedure

83. In accordance with international law, each member State has an obligation to prevent inhumane or degrading treatment of people through efficient legislation and other necessary measures. One essential preventive measure is the monitoring of authorities that have the right to deprive a person of their liberty. In this regard, the CPT has stated that forced returns pose a serious threat to the exercise of human rights.

84. It is essential to establish who is responsible for monitoring in the case of joint returns with several stopovers and who is entitled to intervene without breaking the law, particularly in the event of blatant ill-treatment. Experience shows that situations vary from State to State, particularly where the forcibly returned person puts up resistance. In most cases, it is the police and the government which intervene. These divergences have highlighted the need for harmonisation, by way of a treaty, of the security measures to be taken or authorised, particularly where force is used.

85. In order to prevent human rights violations during returns, it is essential to involve independent, neutral and effective monitoring procedures for the full duration of the removal process. A source of concern is the absence of independent observers on charter flights, where, according to some NGOs, the degree of restraint used is greater than on commercial flights, because there are no witnesses.

6.1. Suggested standards for the monitoring procedure

86. In a publication of 10 November 2011 entitled “Comparative Study on Best Practices in the Field of Forced Return Monitoring”,⁴⁷ the International Centre for Migration Policy Development (ICMPD), jointly with the Directorate-General Justice, Freedom and Security of the European Commission, examines best practices of forced return monitoring in EU-27 as well as Iceland, Norway and Switzerland. On the basis of its findings it issues a set of recommendations for the monitoring procedure. The study concludes that “the system in place must comply with the minimum requirements” and “must be effective and transparent in ensuring that returnees are treated in a manner compliant with national and international human rights standards (effective) and the accountability of the process (transparent)”.⁴⁸

87. The study sets out a series of recommendations to help member States develop a system that takes the above-mentioned principles into consideration:

- 1) The monitoring organisation should be different from the enforcement authorities.
- 2) Monitors should automatically be informed of impending return operations.
- 3) Existing funding opportunities should be maximised.
- 4) Co-operation between all stakeholders should be facilitated and encouraged.
- 5) Comprehensive forced return monitoring should encompass all phases from pre-return to arrival/reception in the destination country.
- 6) Monitors should be able to decide what cases to monitor on the basis of agreed criteria.
- 7) Observation duties may go beyond monitoring the interaction between officials and returnees to include additional tasks.
- 8) Team leaders of all stakeholder groups “on the ground” should consistently liaise to identify, prevent and de-escalate problems, especially but not exclusively where monitors have no intervention powers.
- 9) Authorities should use monitoring reports as guidelines for systematic improvement.

47. http://ec.europa.eu/home-affairs/doc_centre/immigration/docs/studies/Forced%20Return%20Monitoring%20Study%20Final%20Report.pdf.

48. *Ibid.*, p. 7.

10) For joint returns:

- The lead country (or those countries returning the biggest group of people on the flight), should be responsible for nominating a monitor. Joint return operations that cover a big group of returnees should be monitored by several monitors.
- Monitors should draft a common monitoring report (per return operation), addressed to Frontex, which should help the organisation to further develop guidelines and standards for implementing joint return operations against which future monitors should evaluate the return operation. In the interest of transparency Frontex should report annually to the European Parliament on the findings of monitors and actions it has taken as a result of their findings.
- In the longer term, a pool of monitors across EU member States should be established, trained especially to monitor joint flights against the guidelines set up by Frontex and based on international human rights law, EU fundamental rights etc.⁴⁹

88. According to a report by Amnesty International Finland, national legislation should define the aim and scope of monitoring, including why monitoring is organised and what kind of action monitors should take based on the findings. The monitoring body should examine the legality of the return and how the police respect their instructions. These observations should be weighed together with existing international standards, recommendations and best practices.⁵⁰ In this regard, Amnesty International Finland also underlines the importance of paying attention also to the States' responsibility to establish effective internal monitoring mechanisms in order to prevent torture. One of the external monitoring bodies' key tasks should be to monitor the effectiveness of the internal monitoring mechanisms (for instance making sure that reporting is properly conducted after each removal operation and that regular analysis of the operation reports by superior officers and monitoring bodies takes place).

6.2. Who should monitor?

89. National Prevention Mechanisms against torture, at Council of Europe member State level, and the CPT, at regional level, have both begun monitoring the question of returnee treatment during the removal process for risks of ill-treatment or torture, in accordance with their respective terms of reference.⁵¹ However, these agencies have an extensive mandate and a wide geographical area to cover – namely all places where individuals are or might be deprived of their liberty. The removal process is only one of the many subjects for which these monitoring agencies are responsible. In some States,⁵² additional monitoring bodies have been set up in this field under the Return Directive, Article 8.6, while other States have opted to rely on their respective NPMs to discharge this duty. It is imperative to consolidate the NPMs and the preventive monitoring agencies working at regional and international level, such as the CPT and the United Nations Sub-Committee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (which is also mandated to conduct monitoring in Council of Europe member States which have ratified OPCAT), supplying additional resources to enable them to discharge this task efficiently⁵³ without adversely affecting their other monitoring commitments.

90. It is necessary here to assess the relevant costs, taking account of the requisite human and financial resources for ensuring effective monitoring of the removal process. A number of NPMs and other supervisory bodies are often prevented from carrying out their mission because of the lack of such human and financial resources. States should consider the possibility of remedying this situation.

91. For all returns, the onus should be on the returning State (in the case of single returns) and/or Frontex (in the case of joint returns) to systematically notify the NPMs in the relevant departure and arrival States well in advance, so that they can monitor the removal. Furthermore, in the case of joint flights, it is essential for NPMs to be informed of any protection standards, security regimes and implementation strategies pre-agreed by the member States and Frontex early on in the planning stage, so that they can monitor the removal.

49. Ibid., pp. 7-10.

50. Amnesty International Suomen lausunto: Luonnos hallituksen esitykseksi eduskunnalle laeiksi ulkomaalaislain ja eräiden siihen liittyvien lakien muuttamisesta, 2013, p. 6 (in Finnish).

51. OPCAT and CPT.

52. For example, Estonia and Poland.

53. For further details, see the Council of Europe report on the 8th thematic workshop on the European NPM project regarding the monitoring of the removal process and the role of NPMs, Geneva, March 2102 (Note 4).

7. Conclusions

92. The EU Return Directive puts the emphasis on effectiveness of returns rather than consideration for the rights of the returnee. This focus is a result of the migration management policy, where the aim is to make it clear that those entering the European Union illegally will be sent back. However, effectiveness cannot take precedence over member States' human rights obligations.

93. As monitoring systems vary greatly from one European country to another, it appears essential to create common standards applicable to all States and also to create harmonised rules for monitoring and monitors

94. The content of common standards (for single and joint enforced returns) could cover:

- standardisation of risk levels related to forced return operations and the corresponding security measures, such as the direct use of force;
- voluntary returns should always be preferred over forced returns and the same standards should apply regardless of how a person is returned;
- acceptable/unacceptable restraint techniques, including use of chemical restraints and accompanying safeguards;
- acceptable behaviour of escorts, independent monitors and other relevant stakeholders;
- the type of escort equipment allowed on board;
- common training curricula for the different stakeholders: escorts, accompanying clinicians, airline staff/captain, border guards, etc, and between the operational and monitoring teams;
- adequate preparation of deportees prior to removal, for example: use of interpreters to explain the situation; use of cultural mediators; notification of families; adequate detainee notification: no "surprise tactics" used;
- appropriate and adequate selection of escort staff: transparent and open selection procedures; mixed gender, multi-disciplinary teams; interculturally aware escorts with language skills or accompanying interpreters; adequate and clear discipline procedures for violations by stakeholders, etc.;
- medical expertise: systematic independent medical "fit-to-fly" examinations on an individual case basis before removal; medics to accompany deportees; medical examinations after any failed removals as a matter of course; medical records on all health aspects concerning the deportation; adequate medical equipment in all transport and holding areas used during the removal; subject to medical monitoring/oversight;
- clear policies for failed removals: systematic debriefing of staff and detainees, written records, medical examination, etc;
- specific guidelines for removals of children and vulnerable groups, in particular pregnant women and people suffering from serious illnesses.

95. The CPT and the International Centre for Migration Policy Development have created extensive lists of criteria for monitoring returns. The lists serve as a good basis for harmonised procedures. In this regard, I would like to underline the importance of ensuring the same level of professionalism regardless of the country providing the monitoring body. On joint flights, the monitors could, for example, consist of ad hoc groups of monitors from different countries.

96. The content of harmonised rules for monitoring and monitors could cover:

- the above-mentioned criteria as defined by the International Centre for Migration Policy Development;
- all parties should ensure total independence of the monitoring bodies. In this regard it would be important to keep the monitoring and the enforcing body separate;
- monitoring bodies and their observers should be informed well in advance of the return and be allowed to monitor all stages of the return, starting from the return decision;
- local embassies and/or NGOs with branches in the country of origin could be tasked with monitoring the returnee upon arrival in the country of origin;
- the monitoring bodies should also be given the right to assess the quality of the internal monitoring of the returning authorities;

- the procedures to be followed upon completed return missions and unsuccessful returns, including compulsory reporting.