



The return of persons found not to
be in need of international
protection – an international law
perspective

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The myths

- Efficient return policies bring down the number of arrivals. No empirical evidence. Ex Germany.
- The majority of asylum seekers go underground if they know the departure date.

Main rule!

- ” The efficient and expeditious return of persons found not to be in need of international protection is key to the international protection system as a whole”
- UNHCR ”emphasizes that the credibility of individual asylum systems is seriously affected by the lack of prompt return of those who are found not to be in need of international protection.”

UNHCR Executive Conclusion on the return of persons found not to be in need of international protection No. 96 (2003).

”Persons not in need of international protection”

- After due consideration of their asylum claims in fair procedures do not qualify for refugee status based on the 1951 Convention or other international obligations or national law.
- Other international obligations: ECHR, UNCAT, CRC....
- But also Art 8 ECHR: ”the possible interference with the returnee’s right to respect for family and/or private life is proportionate and in pursuance of a legitimate aim.” CoE Twenty Guidelines

Exception: non-returnables

- "Unsuccessful asylum seekers who cannot be returned through no fault of their own should have timely access to some form of lawful residence and legal status"
- Alternatives: "limbo" irregular situation without rights, socio-economic benefits or work permit – right to a durable solution
- Use of non-EU harmonized statuses

Possible obstacles to return

- Authorities in the country of return do not co-operate with redocumentation and readmission
- Problems establishing nationality and identity
- Compelling humanitarian reasons: vulnerable group (sick, elderly, children, victim of torture, single women) or long-term resident.
- Technical obstacles: logistically, physical, waiting for decision on spouse's claim, medically unfit to travel,

What is forced or voluntary

- Voluntary return -take place without harassment, arbitrary detention or physical threats (UNHCR's Handbook on Voluntary Return)
- Voluntray return is absence of refusal to return (IOM)
- Grey zone: "compliance pressures" - "The host country should take mesaures to promote voluntary return, which should be preferred to forced return"
(Guideline 1 CoE Twenty Guidelines on Forced Return) - practical assistance, inforation nad incentives or transportation costs

How to enforce forced return in a manner compatible with international law

- Removals should be in accordance with human rights norms and enforced with respect for safety and dignity
- Legal framework: UNCAT, ECHR, CoE Twenty Guidelines on Forced Return, IATA/CAWG Guidelines for Deportation and Escort, CoE Recommendation No. 99(12) on return of rejected asylum-seekers, UNHCR ExCom Conclusion 65 XXII.

Safeguards in the case of supervised/forced return

- **Detention** should only be used as a last resort in full compliance with human rights law: Art 5 ECHR, *Shamsa v Poland* (2003), Art 9 ICCPR.
- Individual assessment of each case: objective reasons to why the returnee would not comply,
- Where other measures have failed: e.g supervision, periodic reporting, bail, surrender passport, stay in designated place.
- Procedural safeguards for deprivation of liberty: established by law, information to returnee, access to lawyer, as short period as possible, legal remedies, conditions of detention.
- Obligation to release if no removal (detention only justified as long as deportation proceedings in progress) *Chahal v UK* (1996), *Caprino v UK* (1978)

Safeguards cont.

- First, assist to organize return-family, work, information of date of return. Withdrawal of socio-economic benefits risk violate human rights.
- Limit the use of force, no physical violence, proportionate, medication only based on medical decision (Art 5 Convention for the Protection of Human rights and Dignity of the Human Person with Regard to the Application of Biology and Medicin 1997).
- "In respect of a person deprived of his libety, recourse to physical violence which has not been made **strictly necessary** by his own conduct diminishes **human dignity** and is in principle an **infringement** of the right set fort in Art 3" *Berlinksi v Poland*, ECtHR 20 June 2002

Safeguards cont.

- Dignity of returnee, safety of other passengers, crew and the returnee.
- Escorts (state employees or private contractors) adequately trained in proper use of restraint techniques, intercultural communication, stress management, legal and medical aspects of removals,
- Gender.

Monitoring of returns

- CoE Twenty Guidelines: "Member States should implement an effective system for monitoring forced returns."
- Accountability
- Full documentation
- Effective and independent investigation if the returnee lodges a complaint