Implementation report on the Return Directive

2019/2208(INI) - 02/12/2020 - Committee report tabled for plenary, single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted an own-initiative report by Tineke STRIK Greens/EFA, NL) on the implementation of the Return Directive.

Under Article 19 of the Return Directive (2008/115/EC), the Commission is to report on its application every three years, starting from 2013. It released its only evaluation report in 2013, based on a meta-study of return policies in 31 states.

Stressing the lack of recent implementation reports from the Commission, Members called for an updated assessment to be carried out.

This report, highlighting several gaps in the implementation of the Return Directive, is not intended to substitute the still overdue fully-fledged implementation assessment of the Commission.

General observations

Members stressed than an effective return policy is one of the key elements of a well-functioning EU asylum and migration policy. However, they underlined that not every return decision is followed by swift return and readmission procedures.

Member States were called on to allocate adequate capacity, including human resources and sufficient training, to authorities responsible for taking and implementing return decisions, and in doing so to invest in the quality of their decision-making and implementation.

Return decisions and voluntary departure

The Commission was called on to:

- continue considering voluntary returns as the preferred option over forced returns and to encourage Member States to develop an effective framework for access to voluntary return programmes;

- continue to provide funding for and increase the resources available to assisted voluntary return programmes to ensure sustainable returns and reintegration.

Procedural safeguards

Members stressed that the directive requires return and entry-ban decisions and decisions on removal to be individualised, clearly justified. There should be a need to guarantee the right to effective remedy, including by providing proper and accessible information and legal aid, including appropriate funds for the provision of legal assistance.

Entry bans

The report noted with concern the widespread automatic imposition of entry bans, which in some Member States are enforced alongside voluntary departure. It stressed that this approach risks reducing incentives for voluntary return. The length of an entry ban should be decided on an individual basis, taking into account all relevant circumstances and interests. National practices on the length of entry bans are far from harmonised, despite the fact that they have an effect in other Member States as well. The obligation

to consider individual circumstances, humanitarian reasons and the right to family life should be strengthened in order to protect the proportionality principle and fundamental rights.

Risk of absconding and detention

Noting differences in the transposition into national legislations of the definition of the 'risk of absconding', Members stressed that this has led to detention being imposed in a systematic manner in many Member States. Therefore, there is a need for harmonisation in the definition and implementation of objective criteria to establish the risk of absconding.

Members stated that detention must remain a measure of last resort and be prescribed by law and be necessary, reasonable and proportional to the objectives to be achieved, that it must last for the shortest time possible and that the decision to impose detention always has to be based on an assessment of the individual circumstances, in which the interests of the individual concerned have been taken into account.

Member States should offer viable community-based alternatives to detention, which have a less negative impact on migrants, especially children and vulnerable people.

Detention of children

Members noted that a significant number of children are still detained in the EU as part of return procedures. They stressed that children should never be detained for immigration purposes, and detention can never be justified as in a child's best interests.

Member States are called on to:

- provide adequate, humane and non-custodial alternatives to detention;

- carry out proper handovers of child protection services among national authorities to ensure that returned children are taken care of and have access to national child protection services.