Implementation report on the Return Directive

2019/2208(INI) - 17/12/2020 - Text adopted by Parliament, single reading

The European Parliament adopted by 512 votes to 134, with 49 abstentions, a resolution on the implementation of the Return Directive.

The Commission evaluated the implementation of the Return Directive only once (in 2014), despite the legal obligation to report on its implementation every three years from 2013 onwards. Members called on the Commission to carry out this evaluation, which should have been done in 2017, stressing the importance of a common evidence-based approach to guide coherent policy making and well-informed public discourse.

General observations

Concerned by the decrease in the number of return decisions that have been enforced since 2015, Members recalled that an effective return policy is one of the key elements of a well-functioning European asylum and migration policy.

However, they stressed that not all return decisions are followed by rapid return and readmission procedures. According to Parliament, the effectiveness of the Return Directive should be measured by referring to the return rate as well as by the sustainability of returns and implementation of fundamental rights safeguards, the respect for procedural guarantees and the effectiveness of voluntary return.

Identification of returnees and the need to obtain the necessary documentation from third countries has been identified by the Commission as one of the main reasons for non-returns.

Members stressed the need to strengthen cooperation between Member States on return and the need to improve relations with third countries as part of a constructive dialogue on migration. Member States should help the Commission to conclude European readmission agreements coupled with EU parliamentary scrutiny and judicial oversight.

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

The resolution stressed that the Return Directive requires return and entry-ban decisions and decisions on removal to be individualised, clearly justified with reasons in law and in fact, issued in writing, and complete with information about available remedies and the relevant deadlines. It stressed the need to guarantee the right to effective remedy, including by providing proper legal assistance.

Unaccompanied children should not be returned unless it can be demonstrated that it is in the child's best interests.

Entry bans

Members noted with concern the widespread automatic imposition of entry bans, which in some Member States are enforced alongside voluntary departure. They stressed that this approach risks reducing incentives for voluntary return.

The situation of a person may vary during the period imposed by an entry ban and that a person may find themselves at risk of persecution in the country they have been returned to. Member States are called on to lift the entry ban on the basis of humanitarian considerations in such cases. They reiterated that an entry ban should not be automatically applied, but should instead be based on an individual assessment taking into consideration the best interests of the child and the right to family life, the right to family reunification and the principle of proportionality.

Risk of absconding and detention

Noting differences in the transposition into national legislations of the definition of the 'risk of absconding', Parliament stressed the need to harmonise 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

A significant number of children are still detained in the EU as part of return procedures. Members 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.