



Recommendation 2028 (2013)¹

Final version

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

Parliamentary Assembly

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 Directive (2008/115/EC) on common standards and procedures in Member States for returning illegally staying third-country nationals, 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 return 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 or 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 covering:

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;

1. *Text adopted by the Standing Committee, acting on behalf of the Assembly, on 22 November 2013 (see Doc. 13351, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Virolainen).*



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- 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.
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.