

Commission statement – Prolongation of detention by Member States of illegally staying third-country nationals beyond the 18-month time limit in violation of the Return Directive

European Parliament Plenary session – 17 April 2014

Janez POTOČNIK, European Commissioner for Environment:

Commissioner for Home Affairs, Cecilia MALMSTROM, could not be present at today's plenary session.

The return directive provides that after 18 months, administrative detention must be stopped and only lesser restrictions can be applied. In our recent communication on EU return policy, we noted that before the return directive was adopted the maximum length of detention across Member States (MS) varied significantly and in at least 9 of them there was no provision on how long returnees could be detained. The return directive has led to an overall reduction of detention periods across the EU. Detention time has increased in 8 MS but decreased in 12 of them. **All MS, including Greece, now has legislation enforced which respects the maximum period provided by the directive. The only exception is the UK which decided not to opt in and still allows unlimited detention.**

The Greek State Legal Council concluded in an opinion last month that it is possible to impose a further obligation on non-cooperating returnees to remain in a centre. The Commission is concerned about the practical effect of the opinion on Greek administrative practice. According to a preliminary Commission analysis, the wording of the opinion is ambiguous and it remains to be seen if it will be used by the Greek administration as a basis for practices compatible with the directive or not.

The return directive does not prevent issuing measures such as residence restrictions for returnees released from detention. The important point is the nature of these measures. Once the restriction reaches the level of deprivation of liberty, they would have to be considered as *de facto* detention.

The Commission will ask Greece about the practical applications and consider further steps once this has been clarified.

Regarding the general detention conditions in Greece, the Commission is constantly monitoring on the Greek action plan on asylum and migration.

Greek authorities have already closed some detention centres mentioned in the MSF report (Pagani, Palio, Helinko, Propyrogos, Tyhero, Pereus, Vena) with the support of the European return fund. Some modern centres have been opened and some other facilities have been renovated. However, there is still room for improvement.

The MSF report primarily described an alarming situation in the Komotini detention centre. The Commission has already sent an enquiry to the Greek authorities to know how the substantial support received by Greece under the Return Fund to improve the detention conditions in the centres.

The Commission has regularly visited the centres in the region of Athens, most recently in March, and is ready to go back to Komotini and to other centres to check the situation.

Regarding possible infringement procedures to ensure mutual trust between the Commission services and the MS, a degree of confidentiality is essential. **The Commission therefore does not comment on ongoing or planned infringement procedures. But the Commission will not hesitate to take appropriate steps if necessary.**

The Commission will follow up on all shortcomings identified in our recent implementation report on the return directive. In the context of the overall monitoring of the implementation of the directive and in particular in the context of the Greek action plan on Asylum and Migration, we will pay particular attention to those provisions of the directive which relate to the detention of returnees, safeguards and legal remedies as well as the treatment of minors and other vulnerable persons in return procedures. **The new Schengen evolution mechanism will provide further opportunities to examine and assess the practices of MS in these areas and check if the MS are fully complying with the directive and international Human Rights standards.**

Hubert PIRKER, MEP:

The problem with lengthy detention is down to a lack of clarity on country of origin identity or on whether the third country will take the person back. The return directive established very clear rules as to why somebody can be detained and for how long. The Commission stated in March 2013 that the impact of the return directive is positive: the maximum time are being complied with overall. The UN praised the EU measures. 30% reduction between 2008 and 2012. But there is also a discrepancy between the decision to return and the actual implementation.

In Greece: **until 2012, Greece was very much affected by massive illegal immigration. We looked at centres there, some were new and in excellent conditions, but others were identified as problematic because of the huge flows that had to be dealt with. We asked for them to be closed and that is what happened. The support measures of the EU have had an impact and what we were critical in the past is now not problematic anymore.**

Cecilia WIKSTRÖM, MEP:

The Greek seat for the Council today is empty. This is scandalous and unacceptable.

The Council in Greece has now decided to indefinitely increase time limits for detention. The article 15 of the directive said that a detainee can be held for 6 months which can be extended to 12 months. That should only happen in very special cases as a last resort. MS are obliged to follow the rules. **The decision taken by the Greeks comes at a time when many people have been held for a maximum period of time because they were detained in 2012 and for me it is crystal clear that this decision runs counter to the EU legislation.** Greece must release these detainees who have already been held for so long or this people have to be allowed to leave the country if they don't meet the international criteria. **There is a risk that now more countries will follow Greece's example and that is why it is important for the Commission to properly look into this and put a stop to these practices.** They are terrible practices. **We are talking about human beings, not about criminals.** These are people who are confused, lost, looking for support from the EU.

Franziska KELLER, MEP:

In 2008, when the return directive was adopted here, it was very much criticized. Latin American leaders called it a "directive of shame". The directive allows for an excessive

detention of irregular migrants: they can be put in prison for 18 months, not for a crime, but for the simple offense of staying in the EU without permission. And now we are informed that these excessive rules are not being implemented properly by the MS. **Greece is obviously using tricks for detaining migrants even longer than the maximum of 1.5 years. This could affect several thousands of people.**

What is the Commission going to do against this breach of European law and will it take effective measures to end this?

From the recently published evaluation report on the return directive by the Commission, we learnt that other MS are not even sticking to the low standards of the return directive. One member state prolongs detention unlawfully. A fourth of all MS has no mechanism for monitoring return procedures. Only one half of all MS has special detention centres.

The Commission has not even one case started in infringement procedure. Can the Commission explain that? What steps are you going to take against MS that are obviously in breach of European law?

The evaluation omits very important questions. How long are migrants being *de facto* detained? Why did the Commission not provide any information on this?

Nikolaos CHOUNTIS, MEP:

Greece regularly has to go for inhuman measures to solve the problem. That is what the recent decision taken by the Legal Council in Greece is part of. It is also the reason why the Greek Government took 7000 migrants under illegal situations into detention. This is a breach of national and community legislation.

The answer the Commissioner provided was vague. We need something more detailed to help us. The European institutions must pay heed to those who are calling for a revision of the Dublin Convention which is responsible for people being detained this way.

Mario BORGHEZIO, MEP:

We must recognize that we have philosophical pronouncements by the Court of Justice. However, let's not forget that we have got a major challenge facing the South and East European countries. **According to the Italian authorities, there are 600 000 people are waiting in Sub-Saharan Africa ready to invade Europe, possibly along the Italian coast.** We are in the frontlines of these migrations. The mafia is involved in this. Jean Raspail talked about an "invasion" in the 1970s. That is exactly what is going to happen. In the next Parliament, there is going to be more of us and we are going to say this. **Legislation is a source of shame and you are the ones who are betraying the European cause.**

- Blue card from Cecilia WIKSTRÖM:

Mr. Borghezio, are you not ashamed of speaking this way about people who are coming to look for shelter in Europe because they are fleeing war and persecution?

6 million Syrians: these are not criminals. They are nurses, doctors, civil engineers.

Northern European countries are sharing the burden: Germany is welcoming this people and is offering new opportunities and protection for them. What are you doing for them?

Mario BORGHEZIO, MEP: You are the cowards. Europe is falling down on the job.

Georgios PAPANIKOLAOU, MEP:

Greece has done as much as they could on the migration front over the past years. We have been in the eye of the storm. The south of the EU is under pressure, the whole region is in a state of upheaval. **Greece has made full use of the EU funding. We have built new detention centres. Some detention centres were not working well but there has been efforts made from Frontex.**

New authorities and services have been created from scratch and are working well. Greece continues to need solidarity from European countries. **Europe has not done everything they could have. They have not made all the necessary changes to Dublin II.** We do not have a fair burden-sharing.

We need an integrated migration policy with a fair burden-sharing and that places all MS on an equal footing in regards to the respect of people's fundamental rights.

Jean LAMBERT, MEP:

I was one of those who negotiated the return directive. The section on detention was a very difficult one. Results are not necessarily to be proud of. But the directive is clear: any detention shall only be maintained as long as removal arrangements are in progress and executed with due diligence. People have to be informed of what is happening and if that is not the case, they should not be held in detention. UNHCR has raised questions about the changes going on in Greece.

We also have some issues here in terms of the follow-up to the Stockholm program and what we are doing that actually helps maintain returns sustainable in terms of preparation, prospects and follow-up to find out what actually does happen to people on return. We have reports of people being tortured in their return to Sri Lanka for example. We need to focus also on those who cannot be returned, either because of the lack of cooperation of the country of return, the situation in that country and those who are stateless. **We have to avoid deliberately making people destitute and potential victims to the criminals that prey on the vulnerable.**

- Blue card from Georgios PAPANIKOLAOU, MEP:

The very reason of the problems: no proper integrated approach on policy and returns. There are difficulties with Turkey as well. We have to make sure that the readmission agreements are implemented.

Jean LAMBERT, MEP:

We need an integrated approach indeed.

Marie-Christine VERGIAT, MEP:

Regarding the Greek decision, is it really a legal decision? All the efforts have been made to prolong the period of detention. **There is not any kind of "invasion of migrants". But the use of this vocabulary is betraying our values.** The UN is condemning this decision.

We want to see more solidarity and condemnation of these decisions. The return directive gives us the opportunity to remedy this.

Commissioner, what do you mean when you say that the UK opted out of this directive? If yes, then the Commission has to act on this.

Philip CLAEYS, MEP:

There is a reason why migrants are being held longer: the country of origin refuses to take them back or many illegals themselves refuse to cooperate and refuse to go back. Everything must be done to avoid this kind of situations in the future. The Commission is doing the opposite. **The rules are such that the rights of illegal immigrants trump the rights of MS and EU citizens.**

The 18 months of detention must be capable of being extended rather than us simply penalizing the country seeking to combat illegal immigration. The EU has divorced from reality.

Oldřich VLASÁK, MEP:

We have to understand the reasons why the illegal immigrants are coming here. They are fleeing from wars and poverty and looking for better lives. But at the same time they are illegal. Some MS went overboard, that is a great shame. We have to understand that these are human beings and they need their human rights to be protected at all times. At the same time, it is easy to condemn countries like the UK and Greece, but there are more illegal immigrants coming to those countries than in other countries.

The Commission proposes to prepare guidelines for the MS, which should help going forward.

Hélène FLAUTRE, MEP:

These people have spent a number of years in Europe, have worked illegally and built their life in the EU. One day, because their papers were not in order, they had to deal with violent procedures. That leads to many breaches of the law.

The returns directive is allowing incarceration of people as a kind of administrative management of migrants in the EU. The idea was to have guarantees that the time and conditions of detention be a last resort procedure. But this is not being respected in several MS.

We should not hesitate to take infringement measures against the MS. We should be unequivocal against these MS. Their behavior is shameful for the EU.

Andrew Henry William BRONS, MEP:

There is a principle in English civil law: "to one who is willing, no harm is done".

These illegal immigrants were not kidnapped in their own countries by wicked Europeans who then brought them to Europe and incarcerated them for 18 months or more. They chose to enter in an EU country illegally and then avoided being repatriated. Presumably, they are free to return to their country of origin but refuse to do so. Illegal immigrants, we've heard, are usually given a piece of paper ordering them to leave. If their stay is a long one, it is usually because of extensive court actions to avoid repatriation. But while we are talking about a breach in return directive, we heard in Liban on the 31st of March that in 2012 only 37% of those given a return's decision eventually left. The other 63% remained.

Janez POTOČNIK, European Commissioner for Environment:

I would like to express the Commission's commitment to do everything in our power to bring all MS in line with the requirements of the directive. **Our eyes are focused on the Greek case, where potentially the problem really exists.**

We are constantly monitoring in all the cases what is happening in all MS. There is a support done through the European return fund.

There are no infringements yet, but we monitor MS and dialogue with them has already resulted in quite a lot of cases in positive changes. We have launched a few pilot cases, so there is a kind of pre-infringement monitoring that the Commission is doing. If necessary we will not shy from opening the infringements.

I have also heard that you were not satisfied with the situation on the ground and how the Commission is handling the problems and that some of the replies in my opening speech were weak. I will pass this message on to my colleague Commissioner Malmstrom and see what can be done.