



Evangelische Kirche  
in Deutschland

**PRO ASYL**  
Förderverein PRO ASYL e.V.

Documentation of the European Conference

## **Monitoring forced returns/ deportations in Europe**

24./25. September 2007 in Frankfurt/Main

In cooperation with:



EVANGELISCHE KIRCHE  
IN HESSEN UND NASSAU

**Diakonie**   
Bundesverband

**Diakonie**   
in Hessen und Nassau



**Churches' Commission for Migrants in Europe**  
Commission des Eglises auprès des Migrants en Europe  
Kommission der Kirchen für Migranten in Europa



The major airports in the European Union are increasingly becoming the focal point for jointly planned and implemented forced returns. Non-governmental organizations criticize the fact that the growing number of joint deportation charter flights has resulted in a grey area, which gives rise to a lot of questions. How can the enforcement of human rights norms be guaranteed in conjunction with these deportations? What is the common basis, what are the regulations and limits for the use of coercion when border officials of various states are involved in deportations? What regulations are binding? What loopholes are there?

Over the past years there have been cases of mistreatment and death in connection with deportation flights in a number of EU states. Ten deaths just between 1998 and 2001 in the Member States of the Council of Europe clearly illustrate how problematic the situation is. The death of the Sudanese citizen Ageeb in 1999 during his deportation from Germany led to somewhat improved regulations on the part of the government and to more transparency regarding deportation measures. Against this tragic background non-governmental organizations must remind governments again and again that there can be no room for grey areas within the constitutional legality of the European Union.

It is the responsibility of the states to ensure that common and binding humanitarian standards are respected and incorporated into European regulations. The draft of the so-called “Return Directive” of the European Commission in September 2005 provides for such regulations; however, it is very controversial. One main aspect of Germany’s EU Council Presidency was –

in addition to finalizing readmission agreements – the drafting of a regulation which facilitates forced returns across Europe and in the process largely disregards the protection of refugees. In view of these developments it is especially important that non-governmental organizations in the European Union play a part in ensuring that humanitarian standards are observed and further advanced in deportation procedures.

Projects to monitor forced returns are in place at two German airports (Frankfurt/Main and Düsseldorf). Their purpose, as monitoring systems, is to contribute to more transparency in the entire realm of forced returns. It is important to critically observe deportations, as they are carried out, to recognize problems that arise and to participate in the ongoing discussion.

Non-governmental organizations work to ensure that intensified deportation efforts within the European framework do not lead to a lowering of existing standards and to a situation in which the most rigid course of action in one EU country serves as a model for others. Ways must be found to set up an effective system of monitoring deportations in as many states as possible. For this it is necessary to set up a network of NGOs in contrast to government collaboration. In addition to increased dialogue among NGOs, avenues of dialogue between governmental and non-governmental players must be supported and developed further.

Dr. Ralf Geisler  
Evangelische Kirche in Deutschland

Günter Burkhardt  
Pro Asyl



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Programme:	24th September 2007
13.30–14.00 h	Arrival, registration, coffee
14.00–15.00 h	Words of welcome Presentation of the programme Brief introductions all around <b>Dr. Ralf Geisler, EKD (Hannover)</b> <b>Bernd Mesovic, Pro Asyl (Frankfurt)</b>
15.00–16.00 h	Developments at the EU level in the area of deportations and EU charter flights; a critical appraisal <b>Doris Peschke, CCME (Brussels)</b> <b>Richard Williams, ECRE (Brussels)</b>
16.00–16.30 h	Coffee break
16.30–17.30 h	Presentation of the projects in Düsseldorf and Frankfurt <b>Sabine Kalinock, Deportation Monitoring (Frankfurt)</b> <b>J. Vorneweg/K. Asboe, DW Rheinland (Düsseldorf)</b> Questions and discussion
10-minute break	
17.40–19.15 h	Presentations of specific areas of concern in the participating countries <ul style="list-style-type: none"> <li>• Austria</li> <li>• France</li> <li>• Luxembourg</li> </ul>
15-minute break	
	<ul style="list-style-type: none"> <li>• Spain</li> <li>• United Kingdom</li> </ul> Moderation: <b>Nele Allenberg, EKD (Berlin)</b>
19.15–19.30 h	A look at tomorrow's agenda
19.30–20.00 h	Supper
Beginning 20.30 h	Evening together at leisure



**Programme: 25th September 2007**

8.00–9.00 h	Breakfast
9.00–9.30 h	<p>Introduction/Current situation:            How are countries acting jointly at the EU level with respect to deportations?            To what extent are NGOs working together at this time?            Existing possibilities: EU budgetline deportations?            Input: <b>Kathrin Hatzinger, EKD (Brussels)</b>  <b>Richard Williams, ECRE (Brussels)</b></p>
9.30–11.00 h	<p>Discussion:            How can cooperation between NGOs from different countries be improved in the future?            What assistance is necessary and from whom?            What resources can the NGOs themselves make available?            What are their interests? What is their main focus?            What are the differences? What do they share in common?            What are the possibilities for exerting influence at the EU level?            Future possibilities: EU budgetline deportations            Input: <b>Doris Peschke, CCME (Brussels)</b>            Moderation: <b>Katharina Wegner, DW der EKD (Berlin)</b></p>
11.00–11.30 h	Coffee break
11.30–12.00 h	<p>Concluding remarks            Moderation: <b>Bernd Mesovic, Pro Asyl (Frankfurt)</b></p>
12.00 – 12.30 h	Drive to Frankfurt Airport
12.30–13.30 h	Visit to the deportation area at Frankfurt Airport and possibility of directing questions to the Federal Police.
13.30 h	End of the conference

## Minutes of the conference: Monitoring forced returns/ deportations in Europe

24th September 2007

**Participants:** Nele Allenberg (EKD Berlin), Karin Asboe (Diakonisches Werk Rheinland Düsseldorf), Caroline Bolatti (CIMADE Paris), Luis Cerdán (CEAR Valencia), Nadine Conrady (Red Cross Luxembourg), Ralf Geisler (EKD Hannover), Danica Göller (DWHN Frankfurt/Main), Katrin Hatzinger (EKD Brussels), Bernd Mesovic (Pro Asyl Frankfurt/Main), Helen Muggerridge (The Refugee Council London), Doris Peschke (CCME Brussels), Sabine Kalinock (Deportation Monitoring Frankfurt/Main), Karin Knogl (Caritas Vienna), Robert Oellinger (Caritas Vienna), Stella Schicke (Deportation Monitoring Frankfurt/Main), Uli Sextro (DWHN Frankfurt/Main), Joachim Vorneweg (Deportation Monitoring Düsseldorf), Marie Weber (ai Mainz-Wiesbaden), Katharina Wegner (DWEKD, Berlin), Richard Williams (ECRE Brussels)

### **Introduction and presentation of the program by Ralf Geisler and Bernd Mesovic and the participant introductions**

**Ralf Geisler (EKD, Hannover)**

Ladies and Gentlemen,

I cordially welcome you at the beginning of our conference on monitoring forced returns, respective forced deportations, in Europe. I do this in the name of the Protestant Church in Germany (EKD) which initiated this conference together with Pro Asyl. I am responsible for migration issues and relations with foreign congregations in Germany in the church office of the EKD in Hannover.

It is my hope that after the meeting has ended we will have established some arrangements for cooperation and networking between our institutions on monitoring forced returns all over Europe. It is time to strengthen such cooperation as a first response by civil society to the increasing numbers of joint deportation flights where it is doubtful if human rights standards are observed.

Now I would like to say thank you very much to the colleagues of Diakonie of the Protestant Church in Hessen and Nassau for having done a lot of work in successfully preparing and organizing this conference. But I would also like to say thank you to all of you for attending the meeting which is essential if we are to achieve our goals. So I wish you fruitful discussions and a positive outcome to the conference.

The background to the conference today is linked to the fact that in a few EU states people have died during deportation by air in the last few years. Although the European border police have worked together for years and undertake joint deportations by charter, there has been a frequent use of excessive violence. In this respect the incidents of death are, presumably, only the tip of the iceberg. The last reported death in Spain shows that there is still, apparently, no awareness of the problem and that the regulations concerning the use and the limits of coercive measures are either not clear or not adequately communicated and carried through in many EU states.

**Bernd Mesovic**  
**(Pro Asyl, Frankfurt/Main)**

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The judicial response to such occurrences has also been very similar in EU states. PRO ASYL has twice been an observer of court cases that dealt with cases of death during deportation and found that it normally takes a long time before the case is brought to court. The explanations and excuses used by officials are also very similar in EU states. Responsibility is split up into many parts and passed down through the hierarchy and in the end the person, often operating with very vague regulations, gets away with a very light penalty. In Germany in particular the second case of death led to a certain rethinking.

The guidelines that regulate the use of force during air deportations have been improved. Meanwhile two monitoring projects have been launched in Frankfurt and Düsseldorf. Non-governmental organisations hope that deportation procedures will not take place in unobserved “no-go-areas” and that the mere fact of observation has a preventive effect with regard to the use of inadequate and illegal restraints. This conference will offer the opportunity to examine experiences to date and to check if similar models might be useful in other countries as well. In conjunction with greater cooperation between EU states concerning deportations, the question also arises as to how non-governmental organisations can cooperate in this field.

## Round of introductions by participants

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**Caroline Bolatti:** Legal advisor in the prisons for deportations „Vincennes“ and „Dépot“ in Paris.

**Richard Williams:** ECRE EU representative, whose focus is on legal aspects of the Return Directive.

**Marie Weber:** ai-volunteer in the deportation center in Ingelheim/ Germany.

**Helen Muggeridge:** UNHCR-monitor of returns of Afghans at Heathrow Airport for three years, and now working for the Refugee Council in London.

**Doris Peschke:** General Secretary of the Churches' Commission for Migrants in Europe, an ecumenical agency advocating for migrants' and refugees' rights at the EU institutions

**Nadine Conrady:** Project Monitor since August 2007, and an advisor concerning refugee issues.

**Luis Cerdán:** CEAR-representative in Valencia and interested in information concerning the monitoring projects already in existence, particularly in view of the death of a Nigerian citizen during his expulsion at Madrid Airport in June 2007.

**Robert Oellinger:** Head of Caritas Vienna with responsibility for social and legal advice and for asylum matters.

**Karin Knogl:** Head of Social Services at Vienna Airport, responsible for advice and support service.

**Karin Asboe:** Professional advisor for refugee questions in the Diakonisches Werk Rheinland, member of the Airport Forum in Nordrhein-Westfalen.

**Katrin Hatzinger:** Legal consultant of the EKD in Brussels, interested in guidelines for forced returns and in networking between NGOs.

**Nele Allenberg:** Legal consultant of the EKD in Berlin, interested in networking with NGOs.

**Katharina Wegner:** Legal consultant of the Diakonisches Werk in Germany (Berlin), interested in current monitoring projects and European networking.

**Joachim Vorneweg:** Deportation monitor at Düsseldorf Airport.

**Stella Schicke and Sabine**

**Kalinock:** Deportation monitors at Frankfurt Airport, interested in networking with other European countries.

**Uli Sextro:** Former deportation monitor at Düsseldorf Airport, was present at two special EU charters and interested in better NGO-networking, especially with respect to the operation of EU charters.

**Danica Göller:** Former deportation monitor at Frankfurt Airport, is interested in networking between NGOs and in practices in other European states.

In the late 80s and 90s the European Member States agreed on joint policy approaches to asylum and migration as the European Union did not have competence in this field. Their decisions were focused on removing people from Member States as well as strengthening restrictions, as at that time an overwhelming number of people was arriving in the EU countries. To assess asylum claims seemed not to be possible when borders between East and West opened in 1989; the number of persons certainly posed a challenge. Against this background EU Member States resorted to the restriction of asylum and developed the Dublin Convention to determine which state is responsible for an asylum application.

In 1998 the EU started to negotiate with third countries about readmission agreements to take back their nationals and third country nationals as well. In negotiation mandates, which were not public at the time and which had been agreed upon by ministries alone, third country nationals, who are readmitted to another country which is not their own, would be defined by having links to that country, e.g. they had stayed in that country for a period of more than six months. In 1999, a general clause was adopted that the EU should include readmission agreements in all bilateral agreements with the group of African, Caribbean and Pacific States (ACP).

In 1999 the new EU Treaty<sup>1</sup> (Amsterdam Treaty) entered into force in which shared competence of the EU institutions in the field of migration and asylum was begun. So only as of 1999, the European Parliament had to be at least consulted on measures in this field, and the European Commission and Member States had a joint right to launch initiatives. Decisions had to be taken in the Council of Ministers unanimously between the then 15 Member States. Germany and France launched an initiative with a joint paper which marked the end of the zero-immigration policy and led to initiatives on asylum and immigration agreed at the Tampere Council in October 1999. After the attacks on the World Trade Center in September 2001 security concerns dominated migration policy. Subsequently, removal of third country nationals perceived as a potential security risk was an argument which led to a number of initiatives in this area at the EU level. The Council decision on the recognition of expulsion orders of other EU Member States was followed by a number of technical decisions on the responsibility for deportation on the basis of an expulsion order of other EU Member States. This decision means that one Member State has to recognise the expulsion order by the other EU Member States, even if this particular person might have received a positive asylum decision or protection in this country.

While the Council of the European Union had agreed in Tampere on a fairly balanced programme in the field of migration and asylum to be developed from 1999–2004, it became clear that after 2001 the balance was no longer as obvious. Far more decisions were adopted concerning restrictions while decisions with a more human rights-based approach were more difficult to agree upon. The Council of Ministers decided on 24th April 2004 on the joint organisation of removal flights, but no common standards were

## Presentation of the development on EU-level concerning return policy

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**Doris Peschke**  
(CCME, Brussels)

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<sup>1</sup> See Amsterdam Treaty: [http://www.eurotreaties.com/amsterdam\\_treaty.pdf](http://www.eurotreaties.com/amsterdam_treaty.pdf).

agreed upon. This leaves open questions concerning the joint charters: What is their legal basis? Who is in charge and which standards apply? Which officials from which country need to be or are authorised to participate? The decision is not specific on these questions.

We should keep in mind that all decisions in the field of removals are taken as part of “the fight against illegal immigration”.<sup>2</sup> Another topic which should not be forgotten regards joint border controls. While Member States are hesitant to share competence with other Member States, they have agreed to set up a coordination body and some joint operations. This approach is based on the perception that a person with no resident status has crossed the borders illegally.

Frontex, the European Union’s border agency charged with coordination and facilitation collaborates with national EU border guard units. They are much in the media with controls in the Mediterranean Sea, but they also participate in EU charters as observers. Legally they do not (yet) have a mandate for removal operations. After the consultation on the EU return policy based on the Green Book of the European Commission in 2002, the European Commission proposed a draft directive on “Common Standards for Return” in September 2005. This directive does not tackle the matter of who is expelled from EU Member States, but only addresses the actual removal procedures. This directive is currently being negotiated in the European Parliament and the Council of Ministers, respectively, and it is the first directive which requires a co-decision between Council and Parliament according to the stipulations of the Treaty of Nice.

In the negotiations in the European Parliament, some improvements have been suggested compared to the Commission’s draft, e.g. to allow for judicial review and having an ombudsman for removal decisions and procedures. However, there is still wide discretion for EU Member States to detain persons, and concerning the introduction of a re-entry ban – so far only applied by few Member States – to be imposed following a deportation, which is of considerable concern.

In addition to the decisions and directives, and as part of financial instruments in the area of migration and asylum, a Return Fund has been in principle agreed upon between the EU institutions. Preparatory actions were funded in 2005 and 2006; some of the joint removal operations (EU charters) from Germany were funded under this Return Budget Line. The European Parliament Committee has announced that they will freeze the Return Budget Line until agreement on the Return Directive has been reached.

Some crucial questions remain: Persons who have crossed an EU border illegally may indeed be in need of protection and eligible for asylum. The perception of irregular migration is not the same as the reality of migrants in irregular situations. It is a duty to remind the institutions that illegal border crossing is not the same as illegal stay.

<sup>2</sup> See Tampere text: [http://www.europarl.europa.eu/summits/tam\\_en.htm](http://www.europarl.europa.eu/summits/tam_en.htm).

Another important question: In what does the EU invest; what is the balance of funding for refugee protection, integration of migrants compared to removals, border security and restrictive measures such as in the area of visas?

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There are so many national readmission agreements that it is nearly impossible to get an overview of all of them. ECRE is concerned that some might lead to chain refoulement.

At the EU level, readmission agreements have been signed with all of the countries of the Western Balkans.<sup>3</sup> Those agreements were reached in exchange for concessions, an inducement that the EU also successfully used when negotiating readmission agreements with Russia and the Ukraine. Negotiations with Marocco are still going on after many years.

Funding: until 2007 15 million euros for preliminary actions on returns.

In 2005 the European Commission proposed a Directive setting common standards on returns. Germany immediately signalled its opposition to the proposal, claiming that the safeguards included in the Directive would slow down the process of returns, whereas it wanted to make it easier to send people back. Just before the Commission published its proposal, a group of NGOs led by CCME and CIMADE produced a set of nine principles on returns. These had proved a useful base for advocacy towards the EU parliament (EP). Negotiations on an EP report on the Directive were long and difficult. Unfortunately, the report adopted by the LIBE (Committee on Civil Liberties, Justice and Home Affairs) proposed a maximum detention period of 18 months, in spite of NGO opposition, led by Amnesty International and ECRE.

Commission proposal for a returns directive:

Positive elements

- A) Voluntary return should take priority over forced return<sup>4</sup>
- B) Consideration is given to family unity

Negative elements

- A) Return decisions give no guarantee of suspensive effect on judicial remedy
- B) There is no definition of transit zones

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### The return directive: comments on the background

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**Richard Williams**  
(ECRE, Brussels)

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<sup>3</sup> Former Yugoslavian countries.

<sup>4</sup> In the context of this Directive, ECRE prefers the term "mandatory return with consent" to "voluntary return", because it only concerns people who are "illegally in the territory".

- C) People may be sent to third countries which they have never visited (i. e. transfer, not return)
- D) Return decision and the removal order can be issued together, the proposed 4 week period to prepare for return is not enough
- E) The obligation to impose a re-entry ban of up to 5 years when issuing a removal order
- F) No right to housing if removal order is suspended
- G) People may be detained for up to six months

Concerning the return fund, the European Parliament has said it will only release the annual disbursements of the Return Fund once the Council has agreed to the Directive that sets common standards on returns.

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## Comments by other participants

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The European Parliament's suggestion that there should be an ombudsman shows consideration is given to human rights issues. It is foreseeable that an ombudsman might be able to look into national procedures. Furthermore the ombudsman should have the opportunity to make unannounced visits to detention centres, to collect information about joint flights and ask personnel about their qualifications.

Adoption of the Directive could lead to a serious downgrading of standards in a number of Member States. In France there is limit of 32 days for detention. The Directive does not rule out the detention of children, and, if the Parliament's proposal on the maximum period of detention is accepted by the Council, the new Directive could lead to children being detained for up to 18 months. A similar situation exists in Spain where persons can be held in immigration detention for 40 days.

In Luxembourg, it is possible to detain refugees up to three months; and where the person refuses to cooperate with authorities, even for 12 months. The situation in Austria is similar, where a detention is permitted up to a maximum of 10 months. Germany is one of the countries with the longest maximum period of detention, at 18 months. But there are also lots of cases of people released because the maximum period has been exceeded.

A positive aspect of the proposal is the provision for judicial review of detention. The idea of an ombudsman should be supported, especially if they are allowed to look at national procedures. Gaps in the proposal include safeguards for people who are seriously ill and who will be unable to access adequate medical treatment in the country of destination.

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The Düsseldorf Airport Forum was founded in July 2000 in response to accusations in the press about abuse during deportations. At the very beginning the Federal Police suggested a non-binding meeting of different interested parties. The aim was to avoid criticism in the future. The idea was further developed into the concept of a committee where Federal Police, authorities and NGOs are all represented.

The result of the first talks was the suggestion to employ a monitor. Since 2001 a part-time post has been financed by Nordrhein-Westfalen. The work of the deportation monitor has – until now – been accepted very positively by all sides. The post was financed initially through regional funding for social care for refugees, and since 2005 by the Nordrhein-Westfalen Ministry of the Interior with its budget for deportations.

The Airport Forum in Düsseldorf is composed of members from: The Federal Police, the Ministry of the Interior of Nordrhein-Westfalen, local government, the Central Authority for Foreign Nationals, the Protestant and Catholic Churches, Diakonisches Werk, representatives of charities, ai, the Nordrhein-Westfalen Board for Refugees, Pro Asyl and UNHCR. There is generally only one representative of each organisation who attends meetings. The function of the Forum is to identify problems and criticism in connection with deportations, to clarify and to find solutions. Deportation monitor's experiences are discussed as are questions and criticisms from lawyers and refugee initiatives. Representatives from the Forum and the deportation monitor were present for all EU charters from Düsseldorf.

Advising is done by the Ministry of the Interior and other governmental organisations.<sup>5</sup> To benefit effectively from experiences, deportation monitoring needs publicity, which is provided through the Forum. The internal work of deportation monitoring takes place on a confidential basis. To ensure transparency for the public domain the deportation monitor writes a yearly report which is presented in a press conference. The Federal Police in particular always use this opportunity to stress the importance of the work.

The Düsseldorf deportation monitor, on behalf of the Forum, defines this work as being present at as many deportations as possible and observing the proceedings. In the last year there were about 3,000 deportations from Düsseldorf Airport. This means Düsseldorf Airport ranks second after Frankfurt. Particular to Düsseldorf Airport are regular mass deportations to Istanbul, Belgrade and Pristina. There continue to be frequent Nordrhein-Westfalen deportations from Köln/Bonn Airport and from smaller airports which are not monitored.

## Germany

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**Karin Asboe**  
(Diakonisches Werk Rheinland,  
Düsseldorf)

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**Joachim Vorneweg**  
(Deportation Monitor,  
Düsseldorf Airport)

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<sup>5</sup> As the public agency we mean here the public authority responsible for aliens and the district government.

Deportation monitors mention repeatedly that one of the central problems is health. A point of criticism is, for example, the certification of fitness to fly, which is provided by a general practitioner, which is unsuitable, particularly when there are psychological problems and the possibility of re-traumatisation.

The job of a deportation monitor ends at the aircraft door, even when a Federal Police official is appointed as escort. In the opinion of the deportation monitor information for deportees about the chances of help in the destination country is only occasionally possible.

The person concerned only gets a limited chance to communicate with the officials. From the Federal Police side there is not much communication with the deportee, particularly if they have been in custody pending deportation. There have been cases in the past where the person concerned had appealed and the Federal Police had not been informed about this. Often the deportee can neither communicate to say their farewells in Germany nor inform people in their destination country about their arrival, nor make contact with a personal representative. In this respect an exchange of information is very helpful and the deportation monitor hopes the opportunities for this will be increased in future.

The deportation monitor introduces him- /herself to the person concerned by name and function. Some people simply turn away; others use the opportunity to ask questions, express wishes and needs, or want to have a mediator with the Federal Police.

A deportation monitor does not have the authority to interrupt a deportation on his/her own initiative. If something unlawful happens during the deportation process, the deportation monitor has the right and the duty to point it out and address it directly to the responsible person. On the whole it required a long time to establish good working conditions at Düsseldorf Airport. The Federal Police accept the job of the deportation monitor, as they also benefit from having a neutral observer. The use of unnecessary physical force was not observed in the year 2007. Proportionate physical force is sometimes used to stop deportees from taking steps against their deportation.

**Karin Asboe**  
**(Diakonisches Werk Rheinland,**  
**Düsseldorf)**

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Since the introduction of deportation monitoring in Nordrhein-Westfalen the following has changed:

As a result of deportation monitoring it was found out that deportees often have no cash at all. On the one hand this can lead to difficulties in their home countries, and on the other hand this can result in resistance to deportation. To avoid this problem the Protestant and Catholic Churches pro-

vide a fund to offer financial support in particular cases. Since February 2004 there has been a ruling on pocket money by the Ministry of the Interior in Nordrhein-Westfalen, which states that the respective public authority responsible for aliens ("aliens office" for short) pays out € 50 to aid return if the person concerned is penniless. A similar ruling was already in place in Rheinland-Pfalz and since then one has been introduced in the Saarland.

Problems that arose repeatedly due to inadequate preparations by the local aliens office were documented by the deportation monitor. The deportation monitor and representatives of the Federal Police together with the Ministry of the Interior produced a "checklist" which was presented through a ruling to the aliens office to avoid these problem situations. Critical elements in the past were:

- Medication, that was not brought along, or not supplied in the morning.
- Insufficient medical examinations in preparation for the deportation in cases of serious illness.
- The packing of clothes in bin bags.
- Important documents were not packed and the person concerned was not always given enough time to pack.
- Early morning collection of the deportee was often followed by very long waiting and delay.

Also new is that during the three-week course arranged by the Federal Police for security escorting personnel, the deportation monitor is included in the programme. He/she introduces his/her work and the Forum and discusses any resulting questions with the course participants.

In Frankfurt the initiative to set up deportation monitoring came from public pressure especially from the churches and Pro Asyl. Deportation monitoring has existed since May 2006 in the form of two part-time positions. This is financed with funds from the Protestant Regional Assembly Frankfurt, the Limburg Diocese, the Diakonisches Werk Hessen-Nassau and the UN Refugee Support Group Germany. The composition of the Forum differs from that in Düsseldorf. The Federal Police are the only state body in the Frankfurt Forum, which meets approximately four times a year and to which the monitors have the duty to report. The Ministry of the Interior, which participated in the preliminary meetings, wants to be kept informed, but does not attend meetings. At the moment the other members of the Forum are: Protestant Regional Assembly Frankfurt, Diakonisches Werk Hessen-

**Sabine Kalinock**  
**(Deportation Monitor,**  
**Frankfurt Airport)**

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Nassau, Limburg Diocese, Caritasverband Frankfurt e.V., Caritasverband for Limburg Diocese e.V., Commissioners office of Catholic Bishops in Hessen, amnesty international, Hessen Refugee Board, Pro Asyl and, as regular guests, the Protestant and Catholic pastoral care providers at the airport.

The main tasks of the deportation monitors are:

- Observing the deportation of people who have entered the Federal Republic of Germany and Dublin II cases.
- Being a contact person for church parishes and refugee initiatives during “problematic” deportations.
- Cooperating with social services and pastoral care in prisons holding people in custody pending deportations.
- Functioning as a go-between for everyone involved in the deportation (Federal Police, medical personnel, airline personnel, lawyers etc.).

In Frankfurt there is a group of about 60 officials dealing with deportations. The deportation monitors have free entry to all the rooms in which people who are to be deported may be found. Information about the deportees can either be obtained from the Federal Police or from the deportees themselves. Unlike Düsseldorf, in Frankfurt there are mostly single deportations on scheduled flights. In the year 2006 about 6000 people were deported from Frankfurt Airport. The deportation monitors try to be there especially when families, ill people or people for whom one or two deportations have already failed are deported.

Prior to the introduction of the post of deportation monitor, deportations were sporadically observed by church social services for passengers in Protestant pastoral care. Their understanding was to help out with money, offer pastoral care, or to be there during escalating situations. When the deportation monitors started their work it was planned that the church social services take on further social components, while the deportation monitors concentrate on observing the total process. But in practice it turned out that this strict separation, in part due to time considerations, is almost impossible.

The recurrent central problems during deportations are similar to those at Düsseldorf Airport. Here health problems are also a major issue. People are deported although they are in poor health or traumatised. Certificates confirming fitness to fly are sometimes given without a doctor’s examination. Information about current health problems is sometimes not passed on to the Federal Police. The doctors that accompany deportees are poorly or totally unqualified for the health problems in question. Doctors have repeatedly behaved inadequately or unacceptably, for example by making

racist remarks. Another problematic area is the separation of families, if particular family members, for example for health reasons, are not able to fly.

People also regularly arrive at the airport without cash to pay for any further travel in their home country and they arrive without any luggage despite sometimes having been in Germany for years. As a result of the experience of the deportation monitors it has now been arranged that such people can be given a small amount of “pocket money” which is being made available through church funds. The longer term aim is for Hessen and other Federal regions to institute a ruling on this.

Another difficulty is the failure of aliens offices to provide food and drink. After early morning collection there is often no provision of food or drink for many hours – even for families with small children. For these situations emergency provisions can be supplied thanks to church donations.

The behaviour of the Federal Police towards the deportation monitors is not free of conflict. The Federal Police have expressed doubts about the “neutrality” of deportation monitoring. In the view of the Federal Police the job definition limits it to observation, which means merely to be physically present. Even informing deportation monitors about planned actions is seen as problematic. The deportation monitors often receive insufficient information about the previous history of the deportee, although this depends on the official in charge. The observation ends generally at the aircraft steps, which is unfortunate because many of the acts of resistance happen in the aircraft.

The particularly weak point in Frankfurt has been the refusal by the Ministry of the Interior to participate in the Forum. Many of the problems observed concerned officials other than the Federal Police. A visit by the Ministry of the Interior has been planned.<sup>6</sup> A positive point is that the first yearly report will be presented at a press conference at the end of November, with the agreement of the Hessen Ministry of the Interior.

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<sup>6</sup> The visit took place in February 2008. The Ministry of Interior is willing to consider participation in the Forum in future.

## Austria

### Robert Oellinger (Caritas, Vienna)

At the beginning of the 90s only few people were deported and only very few were in custody pending deportation. Since then there have been more restrictions on people in custody prior to deportation. The maximum time spend in custody in Austria is ten months within a two-year time span. Until 2003 people in custody prior to deportation were assisted by the Caritas, Volkshilfe and Diakonie. At the moment support is provided by the Human Rights Association of Austria. Visiting rights are restricted to one visit a week.

It is positive that a lot of rejected asylum seekers have received temporary permission to remain in Austria<sup>7</sup> where deportation was not possible for legal reasons<sup>8</sup> or not practically possible, as for example, in the case of Angolans.

Generally there are no detailed figures for deportation. In 2006 there were about 4000 people deported from Austria. About one fifth of them were asylum seekers, a lot of them with a criminal background.

Since the maltreatment of Mr. Bakari<sup>9</sup> in particular, the Advisory Board on Human Rights<sup>10</sup> that is made up of members of the Ministry of the Interior, has done even more intensive checks concerning police behaviour. The Advisory Board on Human Rights has access to prisons prior to deportation and to every place where police are involved.

Caritas Vienna advises and supports about 1,000 people per year in connection with “voluntary” return. They offer initial help and assistance with visa and document requirements.

<sup>7</sup> Referred to as subsidiary shelter.

<sup>8</sup> Not for reasons based on the Geneva Convention, but on the European Convention on Human Rights.

<sup>9</sup> Mr. Bakari was maltreated in a warehouse by police personnel, after he had resisted deportation in April 2006.

<sup>10</sup> „The Human Rights Advisory Board of the Federal Ministry of the Interior was set up because of repeated referrals to the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Eleven members belong to the Human Rights Advisory Board and as many back up members, their independence is legally instituted by the Security Police Law Amendment 1999.

The Human Rights Advisory Board inspects the actions of the security executive with the purpose of ensuring human rights standards, and carries out ongoing planning and concept work on the basis of which it makes proposals to the Federal Interior Minister to improve matters.

To secure an area- wide evaluation of the actions of the security executive, six commissions of human rights were set up to check the behaviour of people who work for the security executive.

[http://www.menschenrechtsbeirat.at/cms/index.php?option=com\\_content&task=blogcategory&id=82&Itemid=65](http://www.menschenrechtsbeirat.at/cms/index.php?option=com_content&task=blogcategory&id=82&Itemid=65), [19.11.2007]

Prior to deportation people in Vienna are held in cells within the transit area. This applies only to single people, never to families. The public and the social services do not see much of these activities as separate access to the aircraft is used. Problematic deportations are not done from the airport building but only by bus. No one is allowed on the bus other than the police. The consultant only has access to people who were declined entry, that means to people who remain in transit, often in Dublin II cases.

If someone resists deportation, or if there have been several attempts, the procedure is quickly aborted. The people concerned will then be kept in custody prior to deportation and the next time taken directly to the aircraft by bus. The chairman of the Human Rights Association (Verein Menschenrechte) has access to charter deportations.

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**Karin Knogl (Caritas, Vienna)**

**describes the work of the social services at the airport in Vienna**

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CIMADE has been given access to all French deportation custody centres by the French Ministry of the Interior. The organisation is financed in part by the social services, and daily access is guaranteed. The experience of the last three years has shown that a growing number of foreigners, including whole families, are deported from France and the use of force plays an increasing role during these deportations. CIMADE's legal work is mainly that of filing appeals of detention orders. Joint flights are also a matter for their attention.

At the moment police checks are also carried out in the streets. In addition the hindering of a deportation is now a criminal offence and the aliens office systematically brings charges against the deportees. In the recent past people have more frequently jumped from windows in an attempt to avoid arrest.

Deportations are organised by the Prefectures and their implementation is carried out by the French Police. The COTEP (Compagnie de Transfert d'Escorte et de Protection) is responsible for transport to the airport; at the airport the PAF (Police Aux Frontières) takes over responsibility for the actual deportation.

During transport and their stay at the airport deportees are not allowed to make telephone calls and they often have not had time to bring clothes with them. Medical care is available only when there is a medical necessity. What standards are used is not known. CIMADE itself has no direct access to the deportees at the airport. The Red Cross is present when asylum seek-

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**France**

**Caroline Bollati (CIMADE, Paris)**

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ers arrive, as well as sometimes when there are deportations by Euro charter, and the ANAFE (Assistance Nationale d'Assistance aux Frontières pour les Etrangers) looks after the rights of those asylum seekers.

CIMADE knows of no guidelines for the implementation of deportations. Since the aliens offices have begun to organise deportations more vigorously, the potential for the use of force against people prior to deportation has increased. CIMADE is mainly interested in networking with other countries with respect to Euro-charters, as these are particularly important in France.

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## Luxembourg

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**Nadine Conrardy**  
**(Luxembourg Red Cross)**

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The Red Cross in Luxembourg administers three accommodations for asylum seekers and, because of the size of the country, knows almost everybody prior to deportation. In 2006 523 people asked for asylum in Luxembourg. Luxembourg only started to deport people in the year 2001, and between 2001 and 2006, 552 people were deported (179 of those in 2006). The countries of return were mostly those in ex-Yugoslavia and Eastern Europe; individual people were deported to the former Soviet Union and Africa.

In July 2007 the Luxembourg Parliament decided to set up a system for monitoring deportations. In the previous 4 or 5 years there had been a call for such a post. Only after a public discussion about the unlawful administering of medication during deportations, did the Foreign Ministry finally acquiesce. Since August 2007 the Red Cross has been responsible for the monitoring of deportations with two full-time employees and one voluntary employee. The use of additional voluntary assistance is planned.

An adviser accompanied a deportation by charter to Sarajevo and to Pristina. The observation continued throughout the whole process from collection until landing in the home country. Single deportations to Haiti have been observed from the prison to the airport.

So far there has not been a separate building for holding deportees in Luxembourg. At the moment men are located in a special section of the prison. The construction of a custody centre for 100 people is being planned. This will be mainly for single deportees. Families will only be held under special circumstances and then for not longer than 72 hours. A few organisations including the Red Cross, have visited prisoners twice a week prior to deportations since the beginning of 2007.



There is not a systematic approach to observation and escorting during deportation. Police, the Foreign Ministry and the Red Cross have differing interpretations of the task. Up to now monitoring has taken place at the request of authorities. The Red Cross would like to decide for itself when and what to observe. More talks are planned with the government about the monitoring process, as the government would like to adjust and restructure deportation monitoring to be in line with the Twenty guidelines on forced returns of the Council of Europe.

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Media pressure is very high to remove people who do not have legal status. Currently Lord Triesman is pursuing his goal to unlock countries which are reluctant to accept returnees. 23,000 asylum applications in the UK today represent the lowest number of applications since 1993.

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## United Kingdom

**Helen Muggeridge**  
(The Refugee Council, London)

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The UK Refugee Council has no trust in the asylum procedure because it does not share the government's point of view about the integrity of the asylum system.

In 2006 3,000 persons were removed. At present, administrative deportations are accompanied by more legal safeguards.

People are often detained before deportations and are taken into custody in their houses early in the morning. Private companies are paid by the government to carry out removals but there are serious problems of accountability and no interest in human rights. The guidelines for removals are published by the Home Office.

In the media criticism has been expressed by the "National coalition against deportation campaigns", and "Medical Justice". An Australian NGO has looked into the deportation of persons who are seriously ill. In the past, two people died after their deportation to Iraq.

For NGOs in the UK there is no way to monitor the behaviour of the security officials during the removal. The only opportunity for monitoring is in conjunction with voluntary returns to Afghanistan. Concerning the effectiveness of a monitoring system in the UK, the Refugee Council London thinks that it is necessary to be accepted as an NGO in order to guarantee successful intervention during the monitoring of voluntary returns.

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## Spain

**Luis Cerdán (CEAR, Valencia)**

During 2006 the government repatriated 97,715 immigrants; 46,277, of these were returned to their countries of origin. The total number of repatriated persons was 5.48 % higher than in 2005, and of these 97,715 individuals, 21,163 were returned, 18,892 returned voluntarily and 11,383 were victims of expulsions.<sup>11</sup>

In recent years there has been growing concern in Spain, in the European Union and the Council of Europe about the lack of transparency and certain aspects relating to expulsion procedures, which are being used more and more frequently to deport ever-increasing numbers of aliens. The often arbitrary action taken by security forces and authorities, the prolonged detention of aliens subjected to forced -and in numerous cases unjustified- repatriation, failure to respect the rights acknowledged in international laws and treaties, as well as the use of force in executing such procedures, has generated a critical awareness of and growing demand for what has been called a “humanization” of these procedures, i.e. establishing certain minimum conditions to be fulfilled in all cases.

In fact, in 2001 the Council of Europe passed on a set of recommendations to the Member States, one of which stipulates that the “following must be prohibited outright” during expulsion procedures: “use of any means which may cause asphyxia or suffocation (adhesive tape, gags, helmets, cushions, etc.) [...] use of restraints which may induce postural asphyxia [...]”.<sup>12</sup>

On 9th June 2007, the death of Osamuyia Aikpitanhi, a 23-year-old Nigerian deportee, during the flight from Madrid to Lagos put this issue back on the political and media agenda, although the regulations issued by the Ministry of the Interior for the removal of deported immigrants by air prohibit the use of gags. The preliminary autopsy report, made public on 11th June by the High Court of Justice of Valencia, revealed that the immigrant “had been gagged” and “had slight contusions”.

There is a document dating from 2005 with the letterhead of the Ministry of the Interior and the Directorate General for Police entitled *Procedimiento para el traslado por vía aérea de nacionales de terceros países sobre los que hayan recaído resoluciones de expulsión*.<sup>13</sup> The “material resources” which police officers may use include disposable restraints and metal handcuffs, but not gags.<sup>14</sup> However, the SUP (Police Officers Union) spokesman has stated that most of the police officers who carry out expulsions are unaware of this document and that it merely constitutes a set of recommendations. Following Osamuyia’s death, the Ministry of the Interior issued and made public another internal draft paper in July 2007, which was modified in September, after the harsh criticism from the civil society and the media. This draft paper contains the security measures and standards in expulsion procedures by air or sea, which the police have to respect. Nevertheless, nothing is said about monitoring.

<sup>11</sup> These figures were provided by the Government to the Presidents of the Autonomous Regional Governments at the Presidents’ Conference that took place on 12 January 2007. Source: EFE Agency.

<sup>12</sup> El País, 13 June 2007, [www.elpais.com](http://www.elpais.com).

<sup>13</sup> Procedure for the removal by air of third country nationals subject to expulsion orders.

<sup>14</sup> El País, 13 June 2007, [www.elpais.com](http://www.elpais.com).

Basic procedures:

**1. Border rejection:** the Spanish Aliens Act (Ley de Extranjería) states that any person who is refused entry to the country at a border post shall be returned to their point of origin as soon as possible. The above shall apply both to aliens who have already been formally prohibited from entering Spain and to those who do not meet the requirements laid down for entry.

**2. Return:** Unlike the above, this presupposes that the alien has already entered Spanish territory, but it also applies to “those who attempt to enter the country illegally” (for example, those who are intercepted at sea).

**3. Expulsion:** Art. 57 of the Aliens Act states that when offenders are aliens and commit offences that are classified as very serious or serious, as set out in paragraphs

- a) illegal presence in Spanish territory,
- b) working without having obtained a work permit,
- d) failure to comply with public security measures,
- e) involvement in activities contrary to public order,

of Art. 53, instead of being fined, they may be expelled from the country and subject to the corresponding administrative enquiry. An alien may also be expelled if he or she has been convicted for a crime sanctioned with a prison sentence of more than one year, unless the criminal record of the person concerned has lapsed.

The preferential expulsion procedure shall apply in the cases set out in paragraphs a) and b) of Art. 54.1, as well as in those set out in paragraphs a), d) and f) of Art. 53. In these cases, once the person concerned has received written notification of the well-reasoned proposal of the expulsion decision, he or she has only 48 hours in which to make declarations and submit documents. This procedure entails a situation of total defencelessness, despite formally maintaining the guarantees provided for in the law. The speed with which this procedure is carried out and its immediate execution usually lead to *faits accomplis*, in which jurisdictional control is delayed for years and ends up being meaningless. In the case of illegal presence, according to Art. 63, when the alien provides proof of previously having applied for a temporary residence permit on the grounds of settlement in Spain, the body responsible for processing the expulsion shall continue to do so, where applicable, through the ordinary procedure.

This regulation does not affect refugees, who shall be subject, where applicable, to the provisions laid down in Art. 19 of the Aliens Act, which refers in turn to the Geneva Convention. The most serious problem, from the point of view of this group, concerns those aliens allowed to stay in Spain, according to the provisions laid down in the very deficient forms of complementary protection of our legislation. Due to the difficulties involved

in renewing their documentation, these aliens find themselves in an illegal situation with no guarantee of not being returned to their countries of origin.

Although the *non-refoulement* principle should be the basis of the protection of refugees and asylum seekers, there have been some cases of secret expulsions of asylum seekers in Ceuta and Melilla.

The walls of Ceuta and Melilla have been one of the points of the discussions concerning forced returns, as CEAR and other NGOs have proved that collective forced returns without any legal provisions have taken place in the past two years.

CEAR has criticized the fact that many of these expulsions are in violation of provisions of Art. 3 of the ECHR, as the individuals were expelled to a country such as Morocco, which could lead to torture or to cruel, inhuman and degrading treatment.

The application of these procedures has been denounced by NGOs such as CEAR, since legal assistance is usually non-existent in those situations. The lawyer is not provided with all the information, the persons affected are sometimes forced to use an interpreter in a language which they are not fully in command of, the expulsion is not always reported to the Consulate and access to the courts for the purpose of lodging appeals is hindered.

There's no formal access for NGOs and monitoring is hindered in detention centres and during expulsion procedures.

On 9th April 2007 a Supreme Court ruling stated that the government cannot expel aliens simply because they find themselves in an irregular situation. This ruling confirmed various verdicts of the High Court of Justice of Cantabria which protected immigrants against whom the government had issued orders of expulsion because they lacked the necessary papers.<sup>15</sup>

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<sup>15</sup> This Supreme Court ruling pointed out that the principal sanction provided for by Spanish legislation is the fine: "As a more severe sanction [...], expulsion requires a specific cause other than or in addition to mere illegal presence, since the latter is sanctioned [...] with a fine". In other words, in order to apply expulsion to an immigrant, the Government must henceforth provide other reasons for expulsion in addition to illegal presence. Alien law experts have stated that one of these reasons could be that the alien does not have adequate lawful means of support. El País, 13 April 2007, [www.elpais.com](http://www.elpais.com).

## CEAR's proposals

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**Conception of expulsions:** Expulsion as an administrative penalty should only be considered for the most serious offences. CEAR has always argued that it is not the most suitable measure in cases of illegal presence. However, and in spite of the fact that the Aliens Act provides for a fine as an alternative to expulsion, the government automatically opts for this procedure.

**Essential guarantee:** In any expulsion, return or border rejection procedure, the Government should always guarantee the principle of *non-refoulement*.

**Other indispensable guarantees:** Legal aid and the assistance of an interpreter must be available, as well as access to effective judicial protection and communication with the appropriate consulate.

**Individualized analysis of cases:** International Law prohibits collective expulsions; each case should be studied individually.

**Right of asylum:** Access to the asylum procedure must always be provided and the principle of *non-refoulement* respected.

**Performance:** There should be a performance protocol known to National Police Corps officers which guarantees the physical integrity of deportees and ensures that they are expelled to their country of origin.

In short, CEAR believes that expulsion procedures should only be used in exceptional cases and that the above mentioned guarantees should be respected during the course of such procedures.

In Spain there has been a growing concern regarding deportation for several years. Since June 2007 and the death of a young Nigerian, there is special interest. Expulsion procedures are dealt with in an edict. The regulations governing police activities are not public but in April 2007 it became known that regulations concerning restraint measures were published in a protocol from 2005. Minimum standards have become law.

But still, there are many grey areas without monitoring and no access for NGOs, even in detention centres. Nevertheless there are many reports of abuse, especially sexual abuse in detention centres.

In Spain, people can be detained for a maximum of 40 days at one time, but the total time is often exceeded because of earlier detentions. Another reason could be that some police stations used facilities other than detention centres.

Until September 2007 30,000 people had been removed, most of them to Morocco and Algeria. In 1992 Spain signed an agreement with Morocco, which is a transit country for a lot of people. Since then many non-Maroccan nationals have been removed to Morocco. Many of them were stranded in Western Sahara or in the desert. Furthermore they were denied access to asylum procedures.

**25th September 2007****Discussion**

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It has been clearly established that EU Member States cooperate quickly when dealing with the subjects of return and the fight against illegal migration. Their requirements are dependent on governmental interests. The status of the guidelines for returns however is still that of recommendations in the Legal Commission of the European Parliament.

The experiences in Frankfurt and Düsseldorf encourage the establishment of similar monitoring projects in other European countries and building acceptance of them. Apart from the two monitoring systems already in place, there is a growing need for this at other German airports with many deportations. Europe-wide it has been established that private security companies are increasingly used to escort flights. This needs to be examined in more detail as in such cases there seems to be less concern for the human rights of the deportee compared to government officials being involved. Relevant social organisations must campaign for the establishment of monitoring systems and work on increasing public awareness of this issue.

The participants are of the opinion that Europe-wide standards are important. Even when there is no use of force, it is necessary to monitor who is being deported and whether the deportation process is being carried out legally or not. It is seen as problematic when countries like France or the U.K. act as organisers of charter deportations.

It is seen in a critical light, that in Austria the monitoring mechanism for returns (Menschenrechtsbeobachter) seems dubiously close to the government which provides the funding. There is a conflict here between the independent monitoring of returns and the expectations of the state with regard to deporting large numbers of people. The funding of an independent monitor must not be linked to government interests. The term monitoring refers to observation before, during and after a deportation. In each context it must be clear as to how monitoring is defined. The precise definition of the term has to make specific reference to air deportations.

There are already a number of EU projects, but only very few of these deal with the subject of returns, in other words, fall into the funding category Return Budget Line.<sup>16</sup> In the years 2007–2013 the figures show growing financial support. In 2005/2006 there were a total of 38 EU-projects in the Netherlands, Portugal, Germany, Belgium, and Italy; 2006 saw projects in Denmark, Sweden, the Netherlands, Malta, Austria, France, Spain, Italy, Germany and Belgium. In Denmark, for example the Board of Refugees is in contact with the countries of origin. Most of these projects are ongoing and for this reason there are no reports as yet. A requirement for receiving funding is that at least two EU Member States cooperate on a project. Parliamentary agreement on the budget proposal has still not been obtained. Lists of project participants are available on the internet.<sup>17</sup>

<sup>16</sup> The new Household Line was accepted by the European Parliament in December 2006 to finance measures concerning migration that supplement the General Program "Solidarity and control of the migration streams" for the period between 2007–2013 and offer additional solutions for the problems in conjunction with the migration streams. For these preliminary actions there are in total 15 mill Euros available. The new "Preliminary Measure: control of migration – practical solidarity" includes different components that concern the following aspects: return of illegal immigrants, engagement with returnees and information about immigration and acceptance policy. With the return component the preliminary return measure 2005 and 2006 is being continued in the third year. European Return Funds will be available until 2008. The aim of this component is to support particularly those Member States whose migration control systems experience enormous pressure at particular borders. The engagement component was in reply to the demand of the European Parliament for cooperation in the preliminary measure. The proposals will include the following tasks: 1. Support in conjunction with the immigration policies and 2. return; social and professional reintegration for the repatriated and preparation of an information campaign on the subject of "illegal immigration".

<sup>17</sup> [http://ec.europa.eu/rapid/pressReleasesAction.do?rapid=2004\\_2007/return/docs/projects\\_2006\\_en.pdf](http://ec.europa.eu/rapid/pressReleasesAction.do?rapid=2004_2007/return/docs/projects_2006_en.pdf).

In monitoring projects at airports it has to be clarified how the work and experiences of those involved can be presented to the public. From both the governmental and the non-governmental sides there should be a joint interest in the monitoring project and its presentation to the public.

Appointed officials must become aware of the need for an end to the use of excessive force and for the avoidance of the use of physical force in general. Training must include human rights issues, humane treatment, and the question of fringe groups.

Work remains to be done on the establishment of joint, reviewable and binding human rights standards during deportation in the EU. Luxembourg's project is an example of "best practice", because the "Twenty guidelines on forced returns" have been passed into law. In addition, the German "check list" in use in Nordrhein-Westfalen should be translated into different languages and circulated in different countries.

Discussions should also be held with Frontex to establish special standards which must be fulfilled. These standards must include the themes of human rights and human dignity.

## Overview of the situation in European countries

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**Sabine Kalinock, Danica Göller**<sup>17</sup>

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Austria

Bulgaria

France

Germany

Luxembourg

Spain

Switzerland

United Kingdom

<sup>17</sup> Sabine Kalinock is a deportation monitor at Frankfurt Airport, Danica Göller was a deportation monitor at Frankfurt Airport between 2006 and 2007.



Legal basis	Organisation/Procedures	Overview of the situation in Austria
<p>Federal law on the duties of the “Alien Police” (Fremdenpolizei), the provision of documents for aliens, and the issue of entry permits. (Fremdenpolizeigesetz – Alien Police Law 2005-FPG) BGBl.I No.157/2005 § 46. (1) Aliens who have been refused a residence permit (Aufenthaltsverbot) or have a deportation order (§§ 53, 54 and § 10 Asyl G 2005) that may be enforced can be expelled by the Public Security Forces on the order of the authorities.</p> <p>Conditions are that:</p> <ol style="list-style-type: none"> <li>1. the supervision of the departure is seen as necessary for the maintenance of public order and security,</li> <li>2. the aliens did not fulfil their duty to leave the country in the allotted time,</li> <li>3. there is the suspicion, based on certain facts that they will not fulfil their duty to leave the country,</li> <li>4. they have returned despite having been barred from re-entry.</li> </ol>	<p>For deportations by air which are escorted by public security officials, only specially trained persons are deployed. These officials come from either the Gendarmerie Task Force (GEK) or Special Task Groups of the “Landesgendarmeriekommandante” (SEG).</p>	

Standards	Access during deportation	Deportations per year
<p>Guidelines for the organisation and implementation of deportations by air (scheduled flights) of the Federal Ministry of the Interior, Head Office for Public Security, No.19.250/42 – GD/99. Detailed specifications!</p> <p>Restraint methods:</p> <ul style="list-style-type: none"> <li>• have to keep breathing unrestricted,</li> <li>• permissible: attaching hands and legs to a seat for example with binding ropes, Velcro or belts,</li> <li>• coercive measures must be proportionate. Art.3 European Convention of Human Rights, – use of nappies during restraint is never permitted,</li> <li>• use of adhesive tapes, sticking plaster and similar materials is never permitted.</li> </ul> <p>Medical practice: A “fitness to fly” certificate is necessary for each deportee. It has to be issued within 24 hours of the flight.</p> <p><a href="http://www.menschenrechtsbeirat.at">www.menschenrechtsbeirat.at</a> (a committee close to the Federal Ministry of Interior – BMI, that also deals with deportations).</p>	<p>The airport social services have no access to deportations.</p> <p>Since 2001 a Human Rights Observer has had access to charter deportations (see <a href="http://www.verein-menschenrechte.at">www.verein-menschenrechte.at</a>). His role is regarded as highly controversial.</p>	<p>2005: 4,277 people 2006: 4,090 people</p>

<b>Departure points/ Destinations</b>	<b>Problem areas</b>	<b>I. Charter flights II. EU joint charters</b>
Vienna	<p>There are certain problems with the way the Human Rights Observer works.</p> <p>Documented abuse of one deportee after an aborted deportation in Vienna on 7th April 2006. (derStandard.at, 20.04.2006)</p>	<p>It is reported that in 2005 about 30 people were deported on eight charter flights. (Salzburger Nachrichten)</p>

**Overview of the situation  
in Bulgaria****Legal basis**

Deportations in Bulgaria are under the authority of the Migration Service at the Ministry of the Interior. The legal basis for this is the Aliens Act. Deportations are one of the measures of coercion open to the authorities relating to foreigners residing in Bulgaria illegally.

**Organisation/Procedures**

Standards	Access during deportation	Deportations per year
	<p>No NGOs monitor deportations.</p> <p>On the basis of an agreement with the Migration authorities the Bulgarian Helsinki Committee is allowed to monitor prolonged detention. The Bulgarian Helsinki Committee believes that this agreement could be a good basis for monitoring expulsions.</p> <p>Tracking the process could help to prevent illegal expulsion.</p>	<p>The Bulgarian Helsinki Committee knows of only one refugee that was deported on the grounds of threatening national security and public order.</p>

<b>Departure points/ Destinations</b>	<b>Problem areas</b>	<b>I. Charter flights II. EU joint charters</b>
Sofia airport		There is no official information about charter flights. On the basis of informally collected information there were several Nigerians who were deported together.

Legal basis	Organisation/Procedures	Overview of the situation in France
<p>CESEDA, Book V: Law on immigration, residence and the right to asylum. (CESEDA, Livre V: Les mesures d'éloignement, Titre II: L'expulsion)</p>	<p>Implementation:                      Border Police or National Police with escort and protection duties.                      (COTEP – Compagnie de Transferts d'Escorte et de Protection)</p>	

Standards	Access during deportation	Deportations per year
<p>Aviation regulations: The pilot has the right to refuse to fly for reasons of security.</p> <p>No other criteria or standards known to CIMADE.</p>	<p>A few years ago the Red Cross had access to deportations by charter flights up to the door of aircraft. This did not arise as a result of their own initiative but at the request of the government. This practice has been abandoned.</p> <p>The Red Cross has been criticised for giving deportations a “humanitarian façade”, since they were only allowed to observe but not to intervene.</p>	<p>In 2006 12,386 persons were deported from France.</p>



Departure points/ Destinations	Problem areas	I. Charter flights II. EU joint charters
<p>Departure point: Paris/Roissy</p> <p>Destinations 2006:</p> <ol style="list-style-type: none"> <li>1. Romania</li> <li>2. Algeria</li> <li>3. Morocco</li> <li>4. Turkey</li> <li>5. Tunisia</li> <li>6. China</li> <li>7. India</li> <li>8. Mali</li> <li>9. Bulgaria</li> <li>10. Pakistan</li> </ol> <p>Note: this data only refers to people CIMADE had contact with, mainly those in custody pending deportation.</p>		<p><b>I.</b></p> <p>2006 charters to Romania exclusively: in total 943 people; 1 charter to Bulgaria with 43 people, 1 failed attempt to China (this was refused by China).</p> <p><b>II.</b></p> <p>9.03.2004, Charter to Kosovo and Albania, organised by Benelux.</p> <p>27.04.2004, Charter to Togo and Cameroon, organised by F, NL, B, 10 people.</p> <p>16.06.2004, Charter to Romania and Bulgaria, organised by F, NL, 90 people.</p> <p>29.09.2004, Charter to Romania, organised by F, B, I, E, 75 people.</p> <p>26.07.2005, Charter to Afghanistan, organised by F, UK, 40 people.</p> <p>22.09.2005, Charter to Romania, organised by F, E, I, 75 people.</p> <p>24.09.2005, Charter to Nigeria, Toga, Benin, organised by D, NL, F, UK, B, M, CH, 27 people.</p> <p>23.11.2005, Charter to Cameroon, organised by F, D, NL, 22 people.</p> <p>30.11.2006, Charter to Togo and Cameroon, organised by E, D, E, CH, PL, L, 35 people.</p>

## Overview of the situation in Germany

### Legal basis

The legal basis for deportation is described in the second paragraph of the law of residence.

This describes who can be served with a deportation order and how this is enforced.

**§57 Law of Residence (AufenthG): “Zurückschiebung”** (forced return within a period of 6 months after illegal entry) states that people who enter Germany illegally should be returned within the following six months – either to the country that has a duty to take them on the basis of multilateral agreements – or to another country outside the European Union for which the person has a valid entry permit.

**§58 Law of Residence: “Abschiebung”** (deportation) states that people who enter Germany illegally or no longer have a valid residence permit are legally bound to depart.

**§58 II No. 3 Law of Residence** states that a foreign national who may receive a judicial sentence of at least one year can lose their residence permit and can be deported. Suspicion or concrete evidence of planning a criminal offence within a member state’s territory is also grounds for deportation. The specific conditions are “... serious and acute danger to the public (or national) order and security.”

**§71 III No. 1 Law of Residence** specifies the jurisdiction of the German Federal Police.

### Organisation/Procedures

The implementation of a deportation order is on the instruction of the aliens office concerned. They follow the guidelines of the Ministry of the Interior of the relevant German state. They cooperate with the Federal Police Head Office which provides administrative assistance and functions as a central coordinating and decision-making bureau on matters of individual deportations.

The Federal Police at the airport take over responsibility for deportees from the police, or staff of the aliens office who have transported them there. If deportees are “accompanied”, security forces fly with them to their country of origin. Normally federal policemen, who have undergone special training – in rare cases officials of the state police – undertake this task.

Some airlines provide their own security services.

Standards	Access during deportation	Deportations per year
<p>Best-Rück Luft refers to the federal regulations governing the return of foreign nationals by air (principle: “no removal at any costs”). Best-Rück Luft names permissible restraints. Permissible “means of bodily force” are shackles and handcuffs made of steel, plastic or Velcro strip, the “body-cuff”, as well as special head and bite protection.</p> <p>During restraint measures, care has to be taken that breathing is not restricted. The use of an integral helmet and of gags is specifically forbidden. There is also a ban on using medication during deportation without medical reason.</p> <p>These regulations are in part a reaction to the death of Aamir Ageeb in 1999.</p> <p>The information and criteria catalogue regarding “questions concerning the involvement of doctors during returns” which was produced by a working group of state delegates and representatives of the Federal Medical Association has been used only by the Ministry of the Interior of Nordrhein-Westfalen through its edict of 15.12.2004.</p>	<p>Since August 2001 there has been a deportation monitor at Düsseldorf airport.</p> <p>Since May 2006 deportation monitoring has been in place at Frankfurt Airport.</p> <p>At Munich Airport the church-run Travellers Aid has had access to deportations for many years. They take on social support functions and pastoral tasks.</p>	<p>In 2006 13,060 people were deported from German airports. Of those 8,119 were unaccompanied, 4,941 accompanied by security forces. 235 were accompanied by medical personnel. The number of deportations fell by about 20% from the previous year.</p>

Departure points / Destinations	Problem areas	I. Charter flights II. EU joint charters
<p>2006</p> <p>Frankfurt: 6,035</p> <p>Düsseldorf: 2,082</p> <p>München: 1,482</p> <p>Berlin-Tegel: 1,267</p> <p>Hamburg: 715</p> <p>Stuttgart: 558</p> <p>Berlin-Schönefeld: 537</p>	<ul style="list-style-type: none"> <li>• transparency of the whole deportation process,</li> <li>• maintaining humanitarian standards,</li> <li>• deportation of sick people,</li> <li>• deportation of people without funds,</li> <li>• behaviour of doctors and the way certificates of “fitness to fly” are issued,</li> <li>• separation of families,</li> <li>• deportation to regions in crises.</li> </ul>	<p><b>I.</b></p> <p>Most charter flights leave from Düsseldorf Airport (destinations: Belgrade, Pristina and Istanbul). There are also charter flights from Hamburg Airport and Baden Airport (near Karlsruhe).</p> <p>From Frankfurt Airport there are only occasional charter flights.</p> <p><b>II.</b></p> <p>13.09.2004 Charter to Benin, Burkina Faso and Togo, organised by D, CH, B, 14 people from D.</p> <p>14.9.2005 Charter to Nigeria, Togo, Benin, organised by D, NL, F, UK, B, M, CH, 27 people, 15 from Germany.</p> <p>23.11.2005: Charter to Cameroon, organised by F, D, NL, 22 people from Germany.</p> <p>24.04.2006 to Benin, Guinea, Togo</p> <p>19.09.2006 from Hamburg-Fuhlsbüttel to Togo, Benin und Guinea organised by D, NL, F, M, A, CH</p> <p>30.11.2006 from Düsseldorf: Charter to Togo and Cameroon, organised by F, D, E, PL, CH, L, 35 people.</p> <p>15.02.2007 from Hamburg to Cameroon and Ghana. Organised by D, I, L, PL, E, CH, 28 people, 12 from Germany.</p> <p>25.04.2007 from Düsseldorf to Togo and Cameroon.</p>

Legal basis	Organisation/ Procedures	Overview of the situation in Luxembourg
<ul style="list-style-type: none"> <li>• Immigration law (28.03.1972) (new law in progress).</li> <li>• Asylum and subsidiary protection law (5.05.2006).</li> </ul>	<p>Decision making: Ministry of Foreign Affairs and Immigration.</p> <p>Procedures: Police of the Ministry of Foreign Affairs and Immigration.</p>	

Standards	Access during deportation	Deportations per year
<p>Twenty guidelines on forced return (European Council, September 2005).</p>	<ul style="list-style-type: none"> <li>• several NGOs have access to the deportation centre,</li> <li>• monitoring of deportation since August 2007 (by the Red Cross),</li> <li>• up to October 2007: observation from the refugee's accommodation to arrival in Sarajevo and Pristina (charter), total: 11 persons (2 families and 3 single persons),</li> <li>• observation from the detention centre to the airport (1 single person, destination: Haiti).</li> </ul> <p>Until now (2007) monitoring took place when officials informed the Red Cross. The Red Cross now aims to decide for itself which deportations to monitor. In future monitoring is to be carried out in line with the guidelines of the Council of Europe of September 2005.</p> <p>According to Parliament human rights observers should have access to all deportations and independent doctors should be present.</p>	<p>170 people in 2006 (including 81 individuals).</p>

Departure points/ Destinations	Problem areas	I. Charter flights II. EU joint charters
<p>Luxembourg Airport</p> <p>Destinations (persons):  Montenegro (40),  Kosovo (39),  Albania (28),  Serbia (26),  Bosnia (10),  Guinea (5),  Lithuania (4),  Macedonia (4),  Nigeria (3),  Russia,  Moldavia,  Armenia,  Belarus,  Benin,  Columbia,  Morocco,  Turkey,  Mali,  Cameroon,  Israel (1)</p>	<ul style="list-style-type: none"> <li>Monitoring of deportation is relatively new in Luxembourg and not yet systematized.</li> </ul>	<p><b>I.</b> 2007: Charter flight from Luxembourg to Sarajevo and Pristina.</p> <p><b>II.</b> Luxembourg participates in joint EU-charter flights: no official information about figures.</p> <p>Luxembourg participated in joint deportations from German airports:</p> <ul style="list-style-type: none"> <li>30.11.06, Charter from Düsseldorf to Togo and Cameroon;</li> <li>15.02.07, Charter from Hamburg to Cameroon and Ghana.</li> </ul>

## Overview of the situation in Spain

### Legal basis

The legal basis is the Law 4/2000 of 11.01.2000 “Concerning the rights and liabilities of aliens in Spain and their social integration”. The first “tightening” of this law was the Law 8/2000 of 22.12.2000. The second “tightening” was the Law 14/2003 of 20.11.2003 (which also increased sanctions for illegal entry). In addition there is the Executive Order to implement the above laws, in a royal edict 2393/2004 of 30.12.2004.

Art. 57 of the Aliens Act states that when offenders are aliens and commit offences that are classified as very serious or serious, as set out in paragraphs a) (illegal presence in Spanish territory), b) (working without having obtained a work permit), d) (failure to comply with public security measures) and f) (involvement in activities contrary to public order) of Art. 53, instead of being fined, they may be expelled from the country, subject to a corresponding administrative enquiry. An alien may also be expelled if he or she has been convicted of a crime punishable with a prison sentence of more than one year, unless the criminal record of the person concerned has lapsed.

In Spain the responsibilities and operation of the so-called “centres of detention” are set out in a legal regulation.

The edict of 22.02.1999 is still in force. Amongst other things this specifies: no prison; 40 days maximum stay in detention centre; only on the orders of a judge; medical and social supervision; free and non-restrictive discussion with a lawyer (only visual control, no acoustic monitoring or recording); visits from anyone for a limited period.

### Organisation/ Procedures

A special unit of the police, drawn from within alien and immigrant affairs departments of the Commissariat of Police, is responsible for the implementation of the expulsion or deportation orders and all functions including accompanying the deportees. (Brigadas y Secciones de Extranjería y Documentación de las Comisarias de Policía).



Standards	Access during deportation	Deportations per year
<p>An internal document from the Ministry of the Interior and the highest authority of the National Police (Dirección General de Policía) of the year 2005 is entitled: "Action for the carriage by air of citizens of third-world countries who have a deportation/ eviction decision". This document allows restraints such as handcuffs, shackles and binding ropes. Not permitted: the use of a mouth gag.</p> <p>According to information from CEAR, a spokesperson of the Police Union stated that most civil servants who deal with deportations would not even know of the above document and it provides recommendations only.</p> <p>As a reaction to the death of the Nigerian Osamuyia Aikpitanhi during deportation in June 2007 a 26-page document with appendix was issued: "Regulations concerning conduct of officials during deportation and escorting prisoners by air and/or sea". The document stresses the adherence to human rights and fundamental freedoms without conditions. Police officials should have training courses on forced returns and get, if necessary, regular further training. The escorting doctors have to have the complete health documents of the deportee at their disposal, and the police officials have to know of all relevant health problems of the person concerned. As restraints it mentions: straps, binding rope, "headgear or equipment" (for the protection of the deportee, to avoid self inflicted harm if he/she resists deportation) and foot shackles. During the use of those restraints the human dignity and physical integrity of the deportee must not be violated.</p>	<p>There is no formal access for NGOs and monitoring is obstructed in detention centres.</p> <p>CEAR (Comisión Española de Ayuda al Refugiado – Spanish commission for aid to refugees) has a high interest in networking.</p>	<p>The Ministry of the Interior gives official figures for deportations at 11,567 in 2006, an increase of 5.14 % from 11,002 in 2005. The main countries were: Romania, Morocco, Brazil, Algeria, Colombia, Ecuador, Bolivia and Bulgaria.</p> <p>According to figures from the Spanish Ministry of the Interior, 28,522 non-nationals were expelled from the country in the first half of 2007. That means there were 28.7 % more than at the same time in the previous year. This number is made up as follows: 13,504 cases of refusal of entry at the border, nearly double the figure of the year before; 5,290 deportations based on the Immigrant and Asylum Law, 25 % more than the previous year; 6,876 people were sent back after trying to enter the country by avoiding border controls.</p>

Departure points/ Destinations	Problem areas	I. Charter flights II. EU joint charters
<p>In most cases: Barajas Airport/Madrid.</p>	<ul style="list-style-type: none"> <li>On 9 June 2007 a 23-year-old Nigerian died during the flight from Madrid to Lagos. Although the regulations issued by the Ministry of the Interior prohibit the use of gags, the preliminary autopsy report revealed that he “had been gagged” and “had slight contusions”. Lack of knowledge of the regulations (recommendations) by the officials and lack of proper checks (e.g. no independent monitoring) lead staff to act in an uncontrolled way.</li> <li>Securing the legally guaranteed services of a legal advisor, access to legal materials, notification of the respective consulate.</li> <li>The walls of Ceuta and Melilla have been one of the points of criticism concerning deportations, as CEAR and other NGOs have proved that collective deportations, without any guarantees and legal provisions, have taken place there in the past two years.</li> <li>CEAR has denounced these expulsions because they are carried out against the provisions of Art. 3 of the European Convention on Human Rights (ECHR), as the people were deported to a country such as Morocco, where they could face torture or cruel, inhuman and degrading treatment.</li> </ul>	<p>On 22 September 2005, Spain along with Italy and France organised the first joint flight for removals of illegal immigrants. It was a flight to Bucharest. 125 Rumanians were expelled.</p> <p>On 19.10.2005 Spain and Italy organised the second joint flight for removals to Latin America. 129 people from Ecuador and Colombia were expelled. 79 of them were expelled from Spain and 30 from Italy.</p> <p>At the end of November 2006, there was a joint flight from Düsseldorf to Togo and Cameroon. Participating states were France, Luxembourg, Spain, Switzerland and Germany</p> <p>Apart from that it is said that Spain participated on 15.02.2007 in the EU joint deportation from Hamburg to Cameroon and Ghana.</p>

Legal basis	Organisation/ Procedures	Overview of the situation in Switzerland
<p>The new Federal Alien Law (Ausländergesetz, AuG) of December 2006 deals in §69 and following paragraphs with the deportation from Switzerland.</p> <p>A joint project team (Project Passenger 2) in its report supported the idea of establishing a standardized nationwide legal basis for coercive measures. The draft of the “Law on coercive measures” (Zwangsanwendungsgesetz, ZAG) was presented in December 2004 and has been debated in Parliament.</p> <p>The ZAG regulates at a federal level the use of force by police during deportations. In Section 2, Para 5ff. the coercive measures are specified:</p> <ul style="list-style-type: none"> <li>• handcuffs and shackles, binding bands;</li> <li>• not permissible: all restraints that restrict breathing especially integral helmets and mouth gags.</li> </ul> <p>A special head and mouth protection (helmet) that is in the Conference of Cantonal Boards of Justice and Police Directors (Konferenz der kantonalen Justiz- und Polizeidirektorinnen und -direktoren, KKJPD) regulations is not mentioned in ZAG. The use of police dogs is also permitted. The police can also use coercive measures against minors. Not permitted is the administering of anaesthetics and sedatives by force. Private security services can be authorized to use measures of coercion during deportations.</p> <p>The main dispute has arisen around the permissibility of the use of tasers (electric shock guns). In September and December 2007 and in March 2008 the National Council (Nationalrat) decided in favour of using tasers in opposition to the decision of the Council of States (Ständerat). The National Council has thus ignored warnings about the health risks of tasers, even the potentiality of death resulting.</p> <p>The Conciliation Conference (Einigungskonferenz), consisting of members of the National Council as well as the Council of States, again decided in favour of tasers.</p> <p>Finally, on 18.03.2008 the Federal Council (Bundesrat) passed the ZAG including the use of tasers.</p>	<p>The organisation that accompanies deportees is composed of members of the Cantonal Police Corps. The first special training courses for deportations took place in November 2002 and January 2003, respectively. Only police personnel who passed that course are allowed to carry out deportations.</p>	

Standards	Access during deportation	Deportations per year
<p>There is an agreement between the KKJPD and the Confedrate Justice and Police Department (Eidgenössisches Justiz- und Polizeidepartement, EJPD) about the “handling of escorted deportation by air”. The aim of the agreement is to coordinate the cooperation between the cantons and the Federation. Art. 5 of the agreement states that there are four levels of deportation: from unaccompanied single deportation on a scheduled flight (Level 1) up to deportation in a Lear Jet (Level 4).</p> <p>Furthermore there are regulations concerning forced return by air (KKJPD-regulations).</p>	<p>Nothing is known about access by NGOs during deportations. It is assumed that there is no regulated and ongoing access.</p> <p>The organisation “Augen auf” is an organisation which generally follows up maltreatment of detainees by the police and documents it. Direct observation of deportations is not known.</p> <p>The Swiss Organisation for Aid to Refugees (Schweizerische Flüchtlingshilfe, SFH) demanded in its statement concerning the ZAG the introduction of human rights observers.</p> <p>These should be neutral and accompany and document all forced returns. This would not only give security to the person concerned, but would also give “reassurance to the officials involved”.</p>	<p>Federal Office for Migration statistics for asylum in 2006:</p> <ul style="list-style-type: none"> <li>• returns third country: 458,</li> <li>• returns home country: 735.</li> </ul> <p>Main destination states: Serbia, Nigeria, Turkey, Georgia, Iraq, Somalia.</p>

Departure points/ Destinations	Problem areas	I. Charter flights II. EU joint charters
Zürich/Kloten	<p>Article 13 (administration of medication). This unclear regulation can be interpreted to mean that giving sedatives to enforce deportation is permissible. It was criticised in the 2003 report by the European Committee for the Prevention of Torture (CPT) but the article has not been amended.</p> <p>In future ZAG Art. 18.1 will clarify this by stating that medication is not to be used to facilitate deportation.</p>	<p><b>II.</b></p> <p>Switzerland has apparently participated in joint EU charter flights. Complete information is not known. On EU charter flights from German airports Switzerland is said to have participated in the following (compare with Overview Germany):</p> <p>13.09.04, Charter to Benin, Burkina Faso and Togo.</p> <p>14.09.05, Charter to Nigeria, Togo and Benin.</p> <p>23.11.05, Charter to Cameroon.</p> <p>19.09.06, Charter from Hamburg-Fuhlsbüttel to Togo, Benin and Guinea.</p> <p>30.11.06, Charter from Düsseldorf to Togo and Cameroon.</p> <p>15.02.07, Charter from Hamburg to Cameroon and Ghana.</p> <p>10.09.07, Charter from Hamburg to Togo.</p>

## Overview of the situation in the United Kingdom

### Legal basis

1971 Immigration Act and seven subsequent amendments (up to April 2007) and 30 “Statutory Instruments”.

1971 Immigration Act, Section 13 (April 2007) describes the requirements for the arrangement of a deportation.

A new amended version of the law is planned for 2008.

In general “enforcement orders” are regarded as too long-winded and time-consuming.

### Organisation/Procedures

The Home Office is responsible for deportation orders and custody pending deportation through the Director of Enforcement of the Immigration and Nationality Directorate.

Police can be called on, but certain Immigration Service employees (Arrest Teams) can order custody pending deportation.

Procedures: Transportation and the accompaniment of deportees are dealt with by the Immigration Service, in conjunction with private companies through a network of 32 offices.

There are contracts with GSL UK Ltd to transport detainees to and from detention centres.

Until 2005 there were contracts with Loss Prevention International Ltd for the escort of deportees on flights, especially those whose behaviour was difficult or disturbing. But because there were delays of up to eight to ten weeks in arranging overseas escorts, other suppliers for in-flight escorts have been used.

Standards	Access during deportation	Deportations per year
<p>There is a National Operations Diary 2004; this is a statement of the costs of deportations. The employees of private security companies escorting deportees have the option of using unspecified restraints.</p> <p>The House of Lords advised, in its recommendations for the EU return policy (Article 10), using adequate and proportionate restraints that respect the human rights and dignity of the individual, in accordance with the Common Guidelines 2004/573/EC.</p>	<p>The National Coalition of Anti-Deportations Campaigns (NCADC) organizes campaigns for the people concerned and supports other organisations.</p> <p>There is no organisation in the UK that has access to deportations.</p> <p>The Refugee Council has a serious interest in networking and cooperation to promote its aim of greater transparency and responsibility in these areas.</p>	<p>From 2004 to 2005 12,110 people left the country, of which about 9,000 were deported.</p>

Departure points/ Destinations	Problem areas	I. Charter flights II. EU joint charters
<p>Heathrow and Gatwick airports, no detailed data available.</p> <p>Destinations in 2003/2004</p> <ol style="list-style-type: none"> <li>1. Kosovo, Serbia, Montenegro</li> <li>2. Czech Republic</li> <li>3. Albania</li> <li>4. Afghanistan</li> <li>5. Romania</li> <li>6. Jamaica</li> <li>7. Poland</li> <li>8. Pakistan</li> <li>9. Turkey</li> <li>10. Iraq</li> </ol>	<ul style="list-style-type: none"> <li>• High numbers of deportations of rejected asylum applicants (first applications).</li> <li>• Deportations with emergency travel documents.</li> <li>• A lot of self-inflicted injuries, even deaths in custody pending deportation.</li> <li>• Deportation of unaccompanied minors.</li> </ul>	<p><b>I.</b></p> <ul style="list-style-type: none"> <li>• 08/2003–03/2004: 44 charter flights to Kosovo, Czech Republic, Poland, Afghanistan, in total 2,120 people.</li> <li>• 02/2006–05/2007: 69 charter flights to Eastern Europe, in total 578 people. 18 joint charters to Afghanistan, in total 418 people. Several joint charters to Iraq.</li> </ul> <p><b>II.</b></p> <p>Charter flights organised from UK since 2003 to:</p> <ul style="list-style-type: none"> <li>• 2x Afghanistan (together with F),</li> <li>• 2x Romania (once with F and once with B and F),</li> <li>• Kosovo (together with B, F, NL).</li> </ul> <p>Participation in charter flights to:</p> <ul style="list-style-type: none"> <li>• Romania (Org: IR),</li> <li>• Cameroon (Org: NL),</li> <li>• Nigeria (Org: I).</li> </ul> <p>European charter: Togo and Benin (Org: D, with F and NL).</p>



## Commentary on the current situation regarding standardising proceedings for joint deportations from the European Union

### Trial and error ...

In June 2007 a Nigerian died during an attempted deportation from Spain. In the subsequent investigation it was found that he had a mouth gag – which was the ultimate cause of his death. This happened at a time when regulations concerning deportation were roughly nine pages long, although how widely these regulations were circulated to responsible officials is not known. It appears, however, that they were not generally seen as binding.

As a result of his death new regulations were introduced at the end of September 2007: “Regulations concerning conduct of officials during deportation and escorting of prisoners by air and/or sea”. This is a 26-page document with appendix. Additional mandatory training of officials who will be involved is to follow.

Two people died in France during deportation by air: one in December 2002 and the other one in January 2003. The cause of death was given as the PA-phenomenon (positional asphyxia phenomenon). This leads to death by suffocation through lack of oxygen, caused by extreme physical exhaustion combined with high oxygen consumption during periods of severe physical restriction of breathing and thoracic movement.

This is particularly the case when deportees are held, lying on their stomach and possibly with their lower legs or knees pressed into the area of the thoracic vertebrae. What standards were in force in France at that time and how they were applied is not known. It is still unclear what standards are adhered to in France today.

Back in May 1999 a young Sudanese man died of the aforementioned PA-phenomenon during an aborted deportation from Germany. The regulations used at that time by the Federal Border Police (BGS – now the Federal Police: Bpol) were about ten pages long; the section about the use of coercive measures was about half a page. After this death deportations were stopped until new regulations<sup>19</sup> were finalized; these were implemented in April 2000. They contain 30 pages of regulations, some of which are detailed and which specify methods of restraint that may or may not be used. Since then officials involved with air deportations are required to have several weeks of mandatory training and routine further training.

Uli Sextro<sup>18</sup>

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<sup>18</sup> Uli Sextro was deportation monitor at Düsseldorf Airport between 2001 and 2005.

<sup>19</sup> Regulations on the return of foreign nationals by air (Best.-Rück Luft), April 2000.

This (by no means complete) list of deaths during attempted air deportations shows that the regulations for carrying out deportations were changed substantially only after people had lost their lives. In the light of the previous deaths, the most recent death in Spain in June 2007 is even more incomprehensible, because the risks, especially with respect to the PA-phenomenon, were known.

A more detailed examination of the guidelines and methods in each European country shows that standards vary widely. Some countries have issued binding and detailed regulations in response to deaths during deportation, whereas other countries regard stricter regulations as less important. This impression was supported by the overviews of different countries prepared for the conference “Monitoring Forced Returns/ Deportations in Europe”.

Apart from the fairly independent development of standards in EU member countries and Switzerland (which is also being taken into consideration), considerable efforts have been made towards organising joint deportations since the end of the 1990s. What then are the standards and regulations in use on these joint deportation flights?

### **Principles:**

“Collective expulsion of aliens is prohibited.”

Article 4 Protocol 4 of the European Convention on Human Rights

“Collective expulsions are prohibited.”

Chapter II, Article 19, 1 of the Charter of Fundamental Rights of the European Union

### **Chronology of developments in the European Union:**

Joint deportations by different European countries are not a new development. As long ago as 1995 and 1997, joint deportations were carried out by the Netherlands, France and Germany. Deportees were regularly escorted by the organising country. The differing national conditions and methods of implementation became more and more problematic. As a result a search began for ways to increase cooperation on deportations at the European level.

Discussions in 2001 between the Benelux States and the Federal Republic of Germany led, for example, to the formulation of the “Check list for planning and implementing charter arrangements”. With closer collaboration, information about different national regulations, norms and – in so far as they existed – standards, became more important.

“Member States should be allowed to remove a person despite his or her (physical) resistance. Yet it must be clear that coercive measures have their limits. The physical integrity of the returnee during the removal is of utmost importance. The returnee’s psychological condition must be respected. Standards are needed concerning the intensity of coercive measures. As far as removals by air are concerned the IATA/CAWG Guidelines on Deportation and Escort could provide the basis for developing EU provisions on escorting and use of restraints.”<sup>20</sup>

The EU Commission was aware that standards were required, but they referred only to the IATA/CAWG Guidelines which, again, are very general and refer back to national laws and regulations.

#### 9. “Use of Restraints in Flight

9.1 The use of restraining devices with regard to deportees on aircrafts should be limited to actual need, and must conform to both the laws and/or regulations of the State and applicable operator policy. Departing States and operators are to ensure that their policies, and any changes to their policies, on the use of restraints are made known to each other.

9.3 Sedatives or other drugs may be administered as a restraining device only when their use complies with applicable legislation and the operator’s policy ...”<sup>21</sup>

The “Return Action Program of the EU-Council of 28.11.2002” finally made clear that facilitating repatriation and return policies were seen as an essential part of the measures to fight illegal entry.

An example for this is the “Initiative of the Federal Republic of Germany regarding the adoption of a Council Directive on assistance in case of transit for the purposes of removal by air” published on 9th January 2003 in the official journal of the European Community<sup>22</sup>. The aim was to regulate the rights and duties of the respective participating countries during transit. Through this initiative and later through the EU Council Directive there was unfortunately no further clarification of, nor any reference to other regulations with respect to the use of coercive measures. It only stated:

<sup>20</sup> Communication from the Commission of the Council and the European Parliament on a Community return policy on illegal residents. Brussels, 14.10.2002, COM (2002) 564 final, p. 18.

<sup>21</sup> IATA/ Control authorities working group: Guidelines on Deportation and Escort, October 1999, p. 8.

<sup>22</sup> Official Journal of the European Communities, 09.01.2003, C 4/4: Initiative of the Federal Republic of Germany regarding the adoption of a Council Directive on assistance in case of transit for the purposes of removal by air.

Art. 5 (1): “The requested Member State shall take all the assistance measures necessary from landing and the opening of the aircraft doors until it is ensured that the third-country national has left. This relates to the following assistance measures in particular:  
[...] c) using legitimate force to prevent or end any attempt by the third-country national to resist transit;”<sup>23</sup>

The urgent need for action was reinforced by the deaths in December 2002 and January 2003 (see above) of two deportees who died in France of the PA-phenomenon.

In 2003 the French Centre for the Rationalisation of Return Arrangements was created to establish joint regulations for the implementation of forced returns. In January and March experts met in Brussels at the invitation of the EU Commission. As a result of this process the EU Commission’s Committee for Immigration and Asylum presented the “Joint guidelines for security regulations during joint air returns”<sup>24</sup> in June 2003.

Section 3.2 of the subsequently published guidelines, dealt with the “use of coercive measures” and stated:

“b) Coercion may be used on individuals who refuse or resist removal. All coercive measures shall be proportional and shall not exceed reasonable force. The dignity and the physical integrity of the returnee shall be maintained. As a consequence, in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped following the principle ‘no removal at all cost’;  
e) [...] the use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security.”<sup>25</sup>

On the one hand it is a positive development that these guidelines were introduced at all and that the fundamental principle of the Best-Rück Luft was accepted in negotiations. This principle of “No returns at any price” is particularly helpful for the participating officials who have to make decisions in extreme situations about if and when to stop a deportation.

On the other hand it is only a small step in the right direction. Deportees have been and remain at considerable risk, owing to the non-binding character of the guidelines, the partly unclear formulations, the different handling of the coercive measures and the differences in the restraints used and techniques applied in EU states. Another critical issue is the watering down of the absolute ban on using medication during forced deportations in paragraph e). From now on medication can be administered – without medical reasons – if this is necessary for “flight security”. Such situations should not occur at all, if the fundamental principles are adhered to.

23 Official Journal of the European Communities, 09.01.2003, C 4/5.

24 European Commission, Head office for Justice and Internal affairs – Committee for Immigration and Asylum DG JAI/A2/CK D(2003).

25 Official Journal of the European Union, 06.08.2004, L 261/28: Council Decision of 29th April 2004 on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (2004/573/EC). Annex: Common Guidelines on security provisions for joint removals by air. L 261/33.

In the second half of 2003 the Italian EU Council Presidency started further initiatives to 'Europeanize' forced returns. The above mentioned guideline on assistance in case of transit for the purposes of removal by air took effect on 25th November 2003, and a decision was initiated by the EU Council concerning the organisation of joint flights for the return of third-country nationals who were illegally resident in the sovereign territory of two or more Member States.

As stated in a press release from the Netherlands Ministry of Justice, the first jointly planned "Euro charter" to Togo and Cameroon took place on 26th May 2004. The participating nations were Germany, the Netherlands, France, Great Britain and Belgium. In total 44 persons were deported, 18 to Togo and 28 to Cameroon.

*Question from member of Parliament Petra Pau (PDS): "How many deportations were realised within the so called Euro-Charter in 2004 and which joint regulations and rules exist for the implementation of such Euro-Charters?"*

*Reply from the Assistant Secretary of the Federal Ministry of the Interior, Fritz Rudolf Körper "... inform you, that the expression 'Euro-charters' is not defined. I assume that the expression refers to return arrangements in which several European states are involved. In this sense Germany took part with 61 deportees in 2004."*

On 27th May 2005 the Prüm Convention between Belgium, Germany, France, the Netherlands, Austria and Spain was finalized.<sup>26</sup>

In Art. 23 of the Prüm Convention it states:

"Assistance with repatriation measures

- (1) The Contracting Parties shall assist one another with repatriation measures, in compliance with the EU Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals, from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders and EU Council Directive 2003/110/EC of 25 November 2003 on assistance in case of transit for the purposes of removal by air. They shall inform one another of planned repatriation measures in good time and ... Contracting Parties shall together agree on arrangements for escorting those to be repatriated and for security.
- (2) A Contracting Party may, where necessary, repatriate those to be repatriated via another Contracting Party's territory. A decision on the repatriation measure shall be taken by the Contracting Party via whose territory repatriation is to be carried out. In its decision on repatriation, it shall specify the conditions for implementation and, if necessary, also impose on those to be repatriated such measures of constraint as are allowed under its own national law."

<sup>26</sup> The purpose of the 27.05.2005 convention was to further the cross-border teamwork, especially for the fight against terrorism, cross-border crime and illegal immigration". The primary objective of this convention is to improve the exchange of data and information between the signatories. The Prüm Convention has been criticised from the beginning. It is argued that the participating governments had bypassed democratic controls when signing this convention and had thus, for example, evaded control by the Europe Parliament. Since then nine other EU countries have signed the convention. For further reading on this subject see: Prof. Dr. Holger Hoffmann, FH Bielefeld: „Europäische Entwicklungen im Bereich Migration/Asyl, December 2006–2008“, Manuscript, July 2007, p.1ff.

In July 2005 a meeting of the G5 states (Great Britain, Spain, France, Italy and Germany) took place, which backed a reinforcement of joint action against illegal immigration as follows:

“The Agreement proposes, among other things, joint flights for third-country nationals, as announced by the French Minister of the Interior [...]. The suggestion for joint deportations was originally made by his Spanish colleague [...] The Italian Minister of the Interior [...] announced that the start of the new joint flights would be ‘a question of days’. Deportees from the same countries of origin are to be collected in the G5 states and then jointly returned to their home countries.”<sup>27</sup>

Not only within the EU, but also in the Council of Europe the subject of “deportations” has been on the agenda for a long time. In Ruth-Gaby Vermot-Mangold’s report of September 2001 “Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity”,<sup>28</sup> the author dealt critically with deportation practices in different European states. This report called for detailed and binding standards for deportation procedures and contained appropriate specific proposals. Thus, for example, the report dealt with the treatment of deportees, named particular groups worthy of special protection, demanded a standardized and ongoing training of appointed officials and defined the rights of deportees in relation to the deporting state.

On 20th October 2004 guidelines drafted by the Ad hoc Committee of Experts on the legal aspects of territorial asylum, refugees, and stateless persons (CAHAR) were presented to the Council of Europe concerning custody pending deportation and implementation of forced deportations (“Draft guidelines on forced return in conformity with human rights”). These were accepted by the Committee of Ministers of the Council of Europe in May 2005.<sup>29</sup> Although these guidelines are only very general in nature, it is the first time that an official document at the European level recognizes the necessity of effective monitoring of deportations.

<sup>27</sup> Rheinische Post, 06.07.2005.

<sup>28</sup> Council of Europe. Report: Committee on Migration, Refugees and Demography, Rapporteur: Ruth-Gaby Vermot-Mangold, “Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity”, Doc. 9196, 10.09.2001.

<sup>29</sup> Twenty guidelines of the Committee of Ministers of the Council of Europe on forced return. CM(2005)40. See appendix.

“Guideline 20. Monitoring and remedies

1. Member states should implement an effective monitoring system of forced return operations as this constitutes an important guarantee against the risk of abuse”.

The remarks in the appendix of the guidelines offer a detailed description of deportation monitoring which requires access to all areas of the deportation process and opportunities for intervention, in addition to the need for documentation and reporting. These Council of Europe Guidelines could be helpful in bringing about necessary political discussions.<sup>30</sup> Effective monitoring of deportations should become standard in Germany and Europe sooner rather than later.

In order to achieve this, non-governmental organisations in the Member States must also be open to this concept. The Joint Proposal of August 2005, in which all the participating organisations demanded an independent monitoring regimen,<sup>31</sup> will certainly have a beneficial impact on discussions between NGOs at the European level.

In paragraph 6 it states:

“[...] you should, apart from that, arrange independent observation structures for forced deportations. These could, for example, include the appointment of observers or an ombudsperson, who could arrange impartial and detailed inspections at all levels, to get to the bottom of any complaints.”

In addition to the Council of Europe and the many NGOs at the EU level, Manfred Weber, who reports to the European Parliament on “deportation guidelines”, also supported the “creation of the post of ombudsperson responsible to the European Parliament for the return question”.

Paragraph 16a (new) of the Weber Report states, among other things:

2. “The European Parliament Ombudsman for return shall have the following rights and tasks:
  - a) to conduct unannounced inspections at any time;
  - b) to collect information and reports on joint removals and where appropriate make recommendations;
  - c) to ask Member States at any time for information or clarification on the return process.”<sup>32</sup>

<sup>30</sup> The Guidelines of the Council of Europe were declared binding in Luxembourg; on this basis deportations from Luxembourg are monitored by an independent NGO, the Luxembourg Red Cross. The relevant Act of Parliament is included in the Appendix.

<sup>31</sup> Joint position on deportations of irregular migrants and rejected asylum seekers from August 2005. See Appendix

<sup>32</sup> Draft Report, Manfred Weber: Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, KOM(2005)391 – C6-0266/2005 – 2005/0167(COD), 16.06.2006, p.21.

The position of an ombudsperson is defined in his report as follows:

“The ombudsman of the European Parliament will be a competent and powerful partner during the process of deportation. His duties and authority will enable him to deal with possible worries, complaints, and questions that can arise during the deportation or in its context. All the participants in the deportation, non-governmental organisations, state bodies and the deportee in question are free to address him.”

However, such a position also requires corresponding and functioning structures on site in each Member State. Without these structures the position of an ombudsman will stay largely ineffective on a day to day basis. The European Council also called for such structures in its guidelines:

“8. The monitor will document each removal operation and regularly report to a mixed committee composed of officials and NGO representatives. He or she will furthermore deliver regular information to the authorities. Hence, the monitor sensitizes the authorities involved with regard to the problems related to removal. The monitor regularly attends training sessions for the federal police.”<sup>33</sup>

Furthermore the return guidelines mark another step towards standardization of the deportation standards. The draft text states in Para. 10 “Deportation”:

1. “Where Member States use coercive measures to carry out the removal of a third-country national who resists removal, such measures shall be proportional and shall not exceed reasonable force. They shall be implemented in accordance with fundamental rights and with due respect for the dignity of the third-country national concerned.
2. In carrying out removals, Member States shall take into account the common Guidelines on security provisions for joint removals by air, attached to Decision 2004/573/EC.”<sup>34</sup>

<sup>33</sup> Twenty guidelines of the Committee of Ministers of the Council of Europe on forced return. CM(2005)40. Addendum, p 26.

<sup>34</sup> Proposal for a Directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals. Brussels, 01.09.2005, COM(2005) 391 final, p. 17.

<sup>35</sup> Amnesty International: Deportation of “irregular” migrants. The human rights perspective. Notes from the European office of amnesty international on the draft of the guideline on common norms and procedures in Member States concerning the deportation of illegal third-country nationals. KOM (2005) 391 final, May 2006.

This passage demonstrates once again, that with regard to the implementation of the ‘duty to depart’ at the EU level, the present draft only gives imprecise recommendations and does not consider binding regulations. Yet even this compromise is still disputed today, as clearly shown by the continuing discussions about the guideline.

This fact is severely criticised by different NGOs, who have expressed their opinion about the draft guideline. Amnesty international points out in its response, among other things: <sup>35</sup>



“We regret that the draft of the guideline, contrary to the Commission’s announcement, does not specify what ‘coercive methods’ are and we request the Member States and the European Parliament to set clear parameters on the coercive measures permitted. The guidelines of the Council of Europe concerning deportations were established to give states clear instructions on how deportation can be implemented, using effective means while also preserving a person’s dignity. The guidelines mention particularly dangerous coercive methods that are not permitted and outline the training that the officials handling deportation have to have.”<sup>36</sup>

The draft of the guideline has been discussed for more than two years in EU committees, but it has not progressed beyond this present stage. Currently negotiations between the European Parliament, the Council of Ministers and the EU Commission are taking place. The basis for these negotiations is the aforementioned Weber Report, which was accepted in September 2007 by the responsible European Parliament Committee, along with a suggestion from the Portuguese EU Council Presidency in summer 2007. A decision and vote is planned for May 2008. Observers think it possible that the whole discussion will lead to nothing and the draft of the guideline will be shelved.<sup>37</sup>

This view is also supported by various NGOs, like CIMADE, who take the position that no outcome is better than a bad compromise. Finally, in this context, one has to mention the “European Agency for Management and Operational Cooperation at the External Borders” (Frontex), which was founded in 2005. It has its office in Warsaw and, in the future, will also be responsible for the coordination of European charters.

Frontex was founded through the Council Regulation (EC) No 2007/2004 of the Commission of 26th October 2004 and took up its work in May 2005. According to the Regulation the agency shall support and coordinate the work of the Member States in the following areas:

- Protection of the external borders (Para. 3 Frontex Regulations),
- Ongoing training of the border police (Para. 5 Frontex Regulations),
- Organisation of joint deportations (Para. 9 Frontex Regulations).

During the aforementioned Euro charter deportations, Frontex had observer status. Taken together with national structures, Frontex will surely play a more important role in the organisation and implementation of Euro charters in the future.

<sup>36</sup> Amnesty International, p. 12.

<sup>37</sup> Holger Hoffmann, *ibid.*, p. 10.

### **Current situation and possible developments:**

After the first Euro charter from Hamburg on 18th September 2006, 35 people were deported from Düsseldorf to Togo and Cameroon on 30th November 2006 by police authorities of different European countries. The deportees came from Germany, Spain, France, Poland, Luxembourg and Switzerland. On 14th February 2007 28 people were deported from Hamburg to Cameroon and Ghana; 12 deportees came from Germany, the others from Italy, Luxembourg, Poland, Spain and Switzerland. The Federal Police coordinated this third flight within just five months.

On 25th April there was a further “collective flight” that deported 26 Africans to Togo and Cameroon. Prior to the flight they were resident in eight different EU countries. The participating states on this fourth joint charter since September 2006 were Germany, Spain, France, Luxembourg, the Netherlands, Poland, Italy and the Czech Republic. All in all a total of 121 people have been deported in this manner. Some of these activities were clearly financed by the EU – out of a fund for “preliminary actions”. An official “returns fund” is supposed to be available from 2008 onwards and will be one of the supporting tools in the management of the “migration streams”.

The total coordination of all Euro charters from Germany and of joint deportations organised by other European states with German participation is the responsibility of the Federal Police Directorate in cooperation with the German federal states.

The joint deportations mentioned above were arranged in the context of one of the EU facilitated return programmes. With “returns” the EU finances “preliminary actions for return management”. Officials of the participating countries have taken a positive view towards current procedures and methods. The German Ministry of the Interior has made it clear that it also wants to increase joint returns.

The project report of the four charters carried out to date states in conclusion:

“At the end of the project, decisions will also be made about further procedures with regard to the intelligence won during the project. Subsequently, the final report with suggestions for the further development of joint removals is to be presented to the EU Commission, the participating states and the European Border Agency.”

It would be desirable if these discussions did not, once again take place behind closed doors, but in the open and included different social groups and international organisations in order to obtain a critical analysis of the charter flights to date with respect to human rights issues.

## Standards and Monitoring:

The EU guidelines mentioned above do not meet German standards as clearly established in Best-Rück Luft in more than one respect, nor do they meet the standards of some other EU countries.<sup>38</sup>

- The Best-Rück Luft determines that deportations should not take place if “fitness to fly cannot be determined beyond any doubt”. The EU guidelines on the other hand see only the right – but not the duty – of the responsible Member State, to refuse a deportation, “if owing to the deportee’s state of health it would threaten the security and human dignity of the deportee”.

The Austrian guideline even provides for an obligatory fitness to fly check within 24 hours of the commencement of travel. In the German context this certification should be no older than four weeks. Unfortunately there are no binding guidelines on this.

- As previously mentioned, the core of the Best-Rück Luft and of other EU countries` regulations are found in the EU guidelines, but they are less detailed and specific. An example of this is, for instance, what types of restraints are permitted when using physical force: Best.-Rück Luft gives a comprehensive list of all permitted restraints and excludes others explicitly (integral helmet, methods for keeping the mouth closed, cushioning that limits breathing). On these points the EU guidelines are considerably less explicit. They state only that the deportee has to be “free to breathe” when force is used. Care has to be taken that the deportee “stays in an upright position” to ensure unrestricted breathing.

In view of the unclear situation described here there must be a critical appraisal of all previous joint deportations with participation of different EU countries, especially the four joint EU collective charters in the context of the return project “Joint organisation and implementation of collective flights for returns of third-country nationals”.

During both of the collective deportations from Hamburg, representatives of the Protestant Church had access to procedures.

Both EU charters that flew from Düsseldorf were observed by the local deportation monitor with the support of members of the FFINW.<sup>39</sup> In a briefing prior to the deportation, the federal police stressed that German standards would be adhered to, that there had been talks with the other participating countries and that officials had cited the EU guidelines as the basis for procedures.

<sup>38</sup> Compare: Proposal of federal parliamentary group Bündnis 90/Die Grünen: „Consideration of humanitarian standards during forced returns“, *ibid* 16/4851.

<sup>39</sup> The Airport Forum in Nordrhein-Westfalen (FFINW) was founded in 2000. It is constituted of both governmental and non-governmental organisations with the objective of monitoring the deportation process in NRW critically. It usually meets every three months. The deportation monitoring was set up as a neutral reporter for the members of the FFINW at the end 2001.

It is a problem that these guidelines are not very specific, which leaves the participating countries much room for interpretation. This is illustrated by two examples from the charter deportations observed at Düsseldorf:

1. Fitness to fly: The documentation about the state of health of the deportees differed greatly. Some health dossiers were supplied in full and for other deportees there was no information at all. This does not necessarily mean that these persons had no health problems. The guidelines are very unclear on this important point.
2. Coercive measures: The use of restraints during coercive measures varied widely as did the implementation and the circumstances of the operation.

Both examples of problem areas underline the absolute need for binding and specific standards for future EU charters. The following basic minimum standards have to be implemented:

- The basis for joint and binding regulations for the implementation of deportations within the framework of EU charters should be regulations which describe in detail what is permitted and, above all, what is not permitted. General regulations, as for example in the IATA documents, are not sufficient and not very helpful to the officials involved.
- The officials involved require intensive training. Furthermore they should have compulsory refresher courses. Initial training and additional courses should in particular include information about different cultures and cultural behaviour. The officials involved should have intercultural competency.
- The appointed officials should work with a supervisor. This ongoing support is a precondition for work in the area of deportation.
- During deportation the life and health of deportees should not be endangered.  
**In case of doubt the deportation must be aborted.**
- The following are not allowed under any circumstances:
  - the use of adhesive tape, integral helmets or gags,
  - any head, throat or chest contact restraints that could cause breathing to be restricted,
  - all restraints that force the person concerned into a posture that restricts breathing,
  - administration of medication by force.

- In order to administer medication prescribed by a doctor, appropriate qualifications are necessary. It is never acceptable for the escort or security officials to administer medication.
- State responsibilities must not be delegated to non-governmental bodies. The appointed officials have to display their name, grade and service number in clear sight. The officer in charge should be clearly in evidence.
- It should not be permitted to take money from the deportee which leaves him/her below a certain amount, as yet to be established. The amount left should be calculated in such a way that further travel of the deportees to their home or region is guaranteed.
- There must be a written report on the deportation. If the deportation was aborted, the reasons given must indicate whether the measures were connected to the actions or utterances of the deportee or other people.
- The sole purpose of deportations is to remove someone from the country, not to break the will of the deportee. The right to verbal expression should never be denied.
- As the deportee is under the complete control of governmental bodies, these must take full responsibility. If the deportee suffers bodily injuries with lasting physical or psychological consequences which are due to the actions of escorting personnel – there are no mitigating circumstances.
- The administration of medication by a physician without a medical indication has to be considered as wilful bodily harm; the act must be prosecuted and the physician's certification withdrawn.

The implementation of joint and binding standards requires an effective monitoring system. Both the European Council and the Weber Report see this as an effective tool to ensure that the human rights and the security of everyone involved are guaranteed. Other options of documentation have the disadvantage of potentially being provocative, for example the use of video recording.

Real transparency is only possible through independent deportation monitors supported by appropriate structures.

“9. All those participating in the monitoring process, whether state officials or representatives of NGOs agree that monitoring has contributed to making the process of removal more transparent, thereby decreasing the use of force and violence during the operations. At the same time the implementation of international human rights standards has improved.”<sup>40</sup>

Deportation monitoring requires certain conditions to work effectively. It needs to be accepted by all parties dealing with deportation; this applies particularly to the police officials involved. If they do not understand the spirit and purpose of deportation monitoring, the whole process is doomed to failure. It needs unlimited access to all areas of deportation. Information about the deportation and the deportee must be available in advance. Clearly it must also have the right to intervene in the ongoing process, if something is obviously unlawful, or when new information appears that necessitates reconsidering the whole procedure. These interventions are carried out by the superior officer of the officials involved.

Finally, deportation monitoring needs a formal committee which legitimizes it and to which it must also report. The forums in Frankfurt and Düsseldorf serve as examples of this.

These forums, which should be created locally, could be the foundation for the position of an ombudsperson who is responsible to the European Parliament. Practice shows that random visits cannot always solve structural problems adequately. The permanent and critical observation of the whole process over years is far more effective and enduring. Building these structures obviously also requires sufficient and long-lasting funding. Possibly the necessary funding could be taken out of the EU's future return allocations. In principle the funds of the European Council have been allotted for the next few years. However these particular funds have been kept in reserve through a decision of the budget committee of the European Parliament, until an agreement on deportation guidelines has been reached.

<sup>40</sup> Twenty guidelines of the Committee of Ministers of the Council of Europe on forced return. CM(2005)40. Addendum, p. 26.

## At whatever price? – The shady side of European deportation politics

The Nigerian Osamuyia Aikpitaui died during deportation at Madrid Airport in June 2007. His death was the result of maltreatment at the hands of the Spanish police responsible for his deportation. This is a sad reflection of deportation practices in Europe.

It was the eighth death to occur during deportation in a European airport within the last 15 years. The list attached shows only the deportations that ended in death that happened in the last critical phase before departure from the airport. The list does not claim to be complete or to throw light on all aspects of this topic. Clearly cases in which death occurred during custody prior to deportation or between collecting the deportee and transportation to the airport are no less significant.

By the time they arrive at the airport or during that difficult time just after arrival it becomes clear to the person concerned, that the deportation is going to take place and has not been stopped for administrative or legal reasons. Sometimes active resistance is a last attempt to avoid return to the home country. This stressful situation is without precedent for both the deportee and the officials.

All the persons that died had already had their deportation aborted on previous occasions. So the use of coercive measures and restraints such as shackling was justified on these grounds. A Swiss official did not hesitate to gag Khaled Abuzarifeh whose previous deportation had been aborted because of his shouting.

The coercive measures clearly show that excessive force and degrading restraint methods were used with the object of deporting the persons concerned – at whatever price. Officials of the German Federal Border Police used the method known as “Hogtiefesselung” on Amir Ageeb while he was still being held in custody. This type of restraint requires that the hands and the feet respectively be tied and these then be tied together behind the back. Amir Ageeb was then left immobile in a face-down position. This type of restraint is illegal in many other countries where it is regarded as a form of torture. At that time it was still permitted in Germany as long as it was not used as an “ultima ratio”.

**Stella Schicke**<sup>41</sup>

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<sup>41</sup> Stella Schicke was a deportation monitor at Frankfurt Airport from mid March 2007 to the beginning of 2008.

Even a doctor considered the gagging of Khaled Abuzarifeh to be permissible because he did not recognize that one's capacity to breathe through the nose can be restricted under stress. With two exceptions, the deaths of the people mentioned above occurred in the aircraft at the very latest. In the case of Mariame Getu Hagost his restraint ended there, but he fell into a coma on the way to hospital and died a few hours later. Khaled Abuzarifeh, who was bound to a wheelchair, suffocated in a lift on his way to the aircraft.

This shows that immediate and full investigations are indispensable. In some cases it is apparent that criminal prosecutors refused to charge the police with misconduct. In the case of Arumuyan Kanapathipillai it is not known if French officials started prosecution proceedings at all. The Public Prosecutor's Office in Frankfurt/Main did not bring the case of Kola Bankole to court since the man's death had almost certainly not been caused solely by the restraints that restricted his breathing. According to the Public Prosecutor the officials were not aware of Bankole's heart problems, so they could not be regarded as culpable. The Public Prosecutor's Office also stopped proceedings against the four officials who hogtied Amir Ageeb in his prison cell. The reason given was that it could not be established that his physical well-being had been seriously compromised.

The presentation of the facts and in particular of the careless or deliberate actions of the accused was hindered in many respects, as was the attempt to establish a causal connection between the maltreatment and his subsequent death.

In some cases there was a long gap between the occurrence of death and the start of legal proceedings. In the case of Amir Ageeb nearly five years passed before the border police who were directly involved in his death were brought to trial in Frankfurt/Main. In the end the long duration of the proceedings was seen as a mitigating circumstance at the time of sentencing.

In the case of Marcus Omofuma three medical opinions were required to refute a fourth medical opinion that "saw a causal connection between the death and taping of nose and mouth, but without the level of certainty required in a court of law". Two years passed between the events and the beginning of the trial.

In the Ageeb trial the police officials were charged with manslaughter. According to witnesses the Federal Border Police were "acquiescent" in the face of his pain and suffering and thus they acted deliberately. Their case was eventually transferred to the regional court in Frankfurt/Main for trial by jury as there was sufficient suspicion of bodily harm having been inflicted and resulting in Ageeb's death during their official duties, and this would lead to a higher sentence.



Additional reasons given for the delay in the Ageeb trial were missing evidence and the Federal Ministry of the Interior's restrictions on testimony given. In the explanation of the court decision, the "organisational chaos" of the Federal Border Police was seen as a mitigating circumstance in the case.

The deportation of Osamuyia Aikpitaui took place under similar circumstances. Here the officials found themselves under enormous pressure as his time in custody was coming to an end, and so his deportation was implemented by four officials from the Aliens Police who did not have the necessary training. Normally a special unit is responsible for deportations by air. During both of these deportations there were structural failings, caused by inadequate organisation, officials lacking the qualifications necessary in the area of forced returns, imprecise orders, inadequate checks that orders are carried out and a lack of sanctions. The officials in operative functions are (deliberately) left to take whatever measures they deem necessary, which leads to unsupervised and improper conduct by some individuals.

The way deportations are implemented is influenced by the involvement of a number of different participants. There is the regulatory authority that prepares everything for the deportation and has to give vital (sometimes life-preserving) information to the enforcement authority. This includes adequate knowledge of the deportee's state of health, and that in turn requires effective cooperation between the authorities and the doctor in attendance. Such cooperation was not in evidence in the case of Kola Bankole, as the border police officials had no knowledge of his heart condition.

The annual reports by the deportation monitors at the airports in Düsseldorf and Frankfurt/Main show that excessive use of force such as that described above did not occur in the cases they observed.

The presence of a neutral observer alone, however, cannot guarantee that deportations follow humane principles and mistreatment is eliminated. The developments in Germany after the death of Amir Ageeb have shown that active cooperation and the exchange of information with everyone concerned, along with fundamental structural changes and a continuing increase in awareness of the responsibilities towards deportees have a positive influence on the entire procedure.

**Deaths during deportation procedures****Stella Schicke**

<b>Name</b> <b>Nationality</b> <b>Ethnicity</b> <b>Time of death</b>	<b>Departure Point</b> <b>Destination</b> <b>Air carrier</b> <b>People involved</b>
Arumuyan Kanapathipillai Tamil 1991	Paris/ Rossi (France)
Kola Bankole Nigerian 30.08.1994	Frankfurt/ Main (Germany) Lagos (Nigeria) Federal Border Police (BGS)
Khaled Abuzarifeh Palestinian 03.05.1999	Zurich/ Kloten (Switzerland) Cairo (Egypt) Swiss Air Airport Police
Marcus Omofuma Nigerian 01.05.1999	Vienna/ Schwechat (Austria) Via Sofia (Bulgaria) Destination airport unknown Aliens Police

Cause of death – Circumstances	Legal outcome	Political and administrative outcome
Cause of death unknown; bound to seat with masking tape.		
Heart failure; plastic tape binding hands and feet, forearms fixed to upper leg, belted around thorax and gagging with mouth/nose plaster, injected with sedative.	No charges of manslaughter be- cause the restraints that restricted breathing did not lead to death. Counsel for the prosecution said bodily forced and binding are al- lowed if the force used is propor- tionate. The officials had no knowl- edge of heat disease. Doctor found not guilty of failing to render assis- tance as the BGS were held as pri- marily responsible for deportations.	Since November 1994 the BGS has not been allowed to use restraints which cover the mouth of the de- portee.
Positional asphyxia; (mechanical suffocation), use of plaster.	Verdict of not guilty for the three policemen accused of manslaugh- ter. Doctor sentenced to three months imprisonment (suspended). Conviction upheld in the federal court. The compensation awarded to mother and brothers overruled by the Cantonal High Court in Zurich.	Report of the European Committee against Torture advised suspension of deportations. The advice was ig- nored as guidelines were being pre- pared and were nearly in place.
Suffocation; thorax bound with, adhesive tape, mouth/ nose plaster.	Conviction of the three participating policemen, who were sentenced to eight months for manslaughter in es- pecially dangerous circumstances.	Convicted officials return to work after a period of suspension. Widespread political protests par- ticularly against the Minister of the Interior Schlögel (SPÖ) for tolerat- ing use of unlawful restraints on people during deportation.

<b>Name</b> <b>Nationality</b> <b>Ethnicity</b> <b>Time of death</b>	<b>Departure Point</b> <b>Destination</b> <b>Air carrier</b> <b>People involved</b>
Amir Ageeb Sudanese 28.05.1999	Frankfurt/ Main (Germany) Khartoum (Sudan) Lufthansa BGS Unscheduled landing in Munich because of death
Ricardo Barrientos Argentinian 30.12.2002	Paris/ Rossi (France) Buenos Aires (Argentina) Air France
Mariame Getu Hagos Somalian 16.01.2003	Paris (France) Johannesburg (South Africa)
Osamuyia Aikpitanhi Nigerian 09.06.2007	Madrid (Spain) Lagos (Nigeria) Iberia Aliens Police Unscheduled landing in Alicante because of death

Cause of death – Circumstances	Legal outcome	Political and administrative outcome
<p>Positional asphyxia; use of integral helmet, arms fixed to the backrest and legs to the seat, the upper part of the body pressed down on the knees.</p>	<p>The three BGS officials were convicted of grievous bodily harmed resulting in the death during official duties. Charges of grievous bodily harm during official duties levelled at the four officials who used “Hogtiefesselung” were eventually dropped.</p>	<p>The Federal Ministry of the Interior stopped deportations until June 1999. Best-Rück Luft regulations (2000) were introduced and included compulsory training for returns.</p>
<p>Suspected cause of death: heart failure; bound with adhesive tape and handcuffed to the seat, upper part of body pressed down on knees.</p>	<p>Court decision: policemen were instructed to restrict deportee’s movement. Accidental death seen as result of heart disease.</p>	
<p>Course of death unknown; bound with adhesive tape and handcuffed to the seat, upper part of body pressed down on knees, fell into a coma, died shortly afterwards.</p>	<p>Inquiry into manslaughter charges.</p>	<p>Temporary suspension from work for the three officials that escorted Hagos.</p>
<p>Suspected cause of death: heart failure; gagging and binding (inside of mouth).</p>		<p>Internal police inquiry, new regulations were introduced and included compulsory training for returns.</p>

## Deportation Monitoring Luxembourg



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Dépôt : M. Xavier Bettel

Date : 03.07.2007

Heure d'actualité des groupes DP  
sur les procédures d'asile



### MOTION

La Chambre des Députés


- considérant les situations précaires dans lesquelles se déroulent les éloignements forcés des demandeurs d'asiles ;
- considérant l'absence d'observateurs indépendants lors des procédures d'éloignement ;
- considérant les recommandations du CAT (Comité contre la Torture des Nations Unies) à l'adresse du gouvernement luxembourgeois dans son dernier rapport ;


invite le Gouvernement à :

- autoriser la présence d'observateurs des droits de l'homme ou de médecins indépendants à l'occasion de tous les éloignements forcés.

  
(H. Grothens)

  
(Felix BRAZ)

  
(N. Nezar)

  
(N. Nezar)

  
(Xavier Bettel)



**TWENTY GUIDELINES  
ON FORCED RETURN**

September 2005

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**Guideline 20. Monitoring and remedies**

1. Member states should implement an effective system for monitoring forced returns.
2. Suitable monitoring devices should also be considered where necessary.
3. The forced return operation should be fully documented, in particular with respect to any significant incidents that occur or any means of restraint used in the course of the operation. Special attention shall be given to the protection of medical data.
4. If the returnee lodges a complaint against any alleged ill-treatment that took place during the operation, it should lead to an effective and independent investigation within a reasonable time.

## COMMENTARY

### Paragraph 1:

1. The first paragraph is built upon the idea that effective monitoring of removal operations reinforces the accountability of those responsible for implementing.
2. Various possibilities exist to monitor removal operations. In some member states, an independent form of monitoring has been organised.
3. For instance, an NGO provided the Working Party on Expulsion Procedures with the following explanation on how it undertakes the monitoring of removal operations:
  4. “Usually the staff of the office in charge of the removal monitoring receives timely information about the removal operations that are being scheduled for a near future. Having received these pieces of information the monitor might decide to discuss the removal in advance with the police officers and state representatives involved. Already at this stage the monitor might be able to deliver important information about the returnee’s situation.
5. The actual process of monitoring starts when the returnee is handed over by the authority for aliens to the police for transportation by air and generally ends with the take-off of the plane. However, if the removal is carried out by an official governmental flight the monitor can also enter the plane and might sometimes even be able to accompany the flight (to date the monitor has done so once). In these situations the monitoring period even extends to the arrival in the country of destination.
6. The monitor is visible and approachable for the returnee but generally does not take any action on his or her own initiative unless considered necessary to ensure the proper process of the removal and to safeguard the observance of the deportee’s rights. The monitor has access to all areas used for removal operations. While the operation takes place the monitor seeks to conduct a constant dialogue with all participants, in particular with the police officers who carry out the removal.

7. If necessary the monitor will point at changes in the returnee's situation which might lead to the removal being inadequate or illegal. It is also possible for the monitor to organise contact with lawyers, e.g. in situations where the removal order is still under judicial review. If the deportee so wishes the monitor organises contact with the airport chaplaincy for pastoral care. In practical terms, the monitor sees that the returnees receive proper catering before and during the flights and organises proper storage of the returnee's belongings. The state authorities have ordered by decree that a small amount of cash (€ 50) can be offered to returnees without means in order to provide them with the necessary means to reach their regions of origin. The monitoring service makes sure that the cash is handed out to the returnees and might provide similar financial means from its own resources.

8. The monitor will document each removal operation and regularly report to a mixed committee composed of officials and NGO representatives. He or she will furthermore deliver regular information to the authorities. Hence, the monitor sensitises the authorities involved with regard to the problems related to removal. The monitor regularly attends training sessions for the federal police.

9. All those participating in the monitoring process, whether state officials or representatives of NGO's agree that monitoring has contributed to making the process of removal more transparent, thereby decreasing the use of force and violence during the operations. At the same time the implementation of international human rights standards has improved."

10. Although the return operations should, insofar as possible, be conducted in a transparent and open manner, there are limits to monitoring by the media which it may be important to recall. Indeed, where the presence of the media is envisaged to ensure full transparency of the deportation operation, the requirements of the presumption of innocence (Article 6(2) ECHR) and of the right to respect for private life (Article 8 ECHR) should be taken into account. The need to guarantee the presumption of innocence of the concerned persons may justify imposing restrictions on the media who may be tempted to reveal the name of the officers having taken part in a deportation, where a criminal procedure is launched against them after allegations of ill-treatment. In the case of "*Wirtschafts-Trend*" *Zeitschriften-Verlags GmbH v. Austria*, the European Court of Human Rights concluded that the application of an editor was manifestly ill-founded and therefore inadmissible, in a situation where he was fined for having revealed the

name of officers accused of being criminally liable for the death of an expelled asylum-seeker from Niger. The Court said that although “the subject-matter of the present article was an issue of public concern and was part of a political debate on the lawfulness of deportation practices in Austria”, however, the report “also contained information on criminal proceedings against the police officers, which were pending at an early stage”. Observing that “the applicant company was not prevented from reporting about all details concerning the issue except for the full name of the police officer”, the Court noted that “the disclosure of his full name did not add anything of public interest to the information already given in the article that could have outweighed the interests of the person concerned in non-disclosure of his identity”; it concluded that the imposition of a modest fine to the editor for having unnecessarily published the name of the police officer concerned did not constitute a disproportionate interference with his freedom of expression (Eur. Ct. HR (3rd Sect.), “*Wirtschafts-Trend*” *Zeitschriften-Verlags GmbH v. Austria* decision of 14 November 2002 (Appl. No. 62746/00)). The principles applicable are summarized in the Recommendation Rec(2003)13 of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings, adopted by the Committee of Ministers on 10 July 2003 at the 848th Meeting of the Ministers’ Deputies (see especially principles 2 (Presumption of innocence) and 8 (Protection of privacy in the context of ongoing criminal proceedings)).

### Paragraph 2:

The monitoring devices referred to are diverse. The authorities could consider installing video cameras to monitor the most sensitive areas where the return operation takes place, especially the corridor leading to the tarmac. The most delicate phases could be videotaped, especially the departure from the holding centre where the returnee has been detained, the travel towards the airport, and the boarding of the aircraft. Although the risk of such views are partial and not capable of fully representing the reality, the advantages such video recording presents, also in the event of false allegations of ill-treatment, must be weighed against the possible lacunae or disadvantages.

**Paragraph 3:**

1. The third paragraph provides for the removal operation to be fully documented. A practical way to achieve this is to ensure that a complete report be submitted to the hierarchical superiors of the officers in charge. In this report, each significant incident should be described and precisely located in time. Any significant action taken by the escort, concerning especially the use and removal of means of constraint, should be described, and the member of the escort responsible for the decision and the implementation identified.
2. Medical information collected either before the removal operation, or after a failed attempt at removal, or both (see Guideline 16), may have to be kept in a separate file.

**Paragraph 4:**

The necessity for an effective and independent investigation to be conducted when a returnee lodges a complaint for ill treatment is a requirement of the European Convention on Human Rights, and of its Article 3 in particular.

## 1. European Union

### 1.1 Directives, Decisions

Council of the European Union: Frontex work programme. LIMITE FRONT 24 COMIX 211, 6642/07, Brussels, 22 February 2007,  
<http://www.statewatch.org/news/2007/mar/eu-frontex-work-programme-2007.pdf>

Council Directive of 1 December 2005  
on minimum standards of procedures in Member States for granting and withdrawing refugee status. (2005/85/EC)  
<http://europa.eu.int/eurlex/lex/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>

The Prüm Convention of 27 Mai 2005  
between the Kingdom of Belgium, The Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration.  
<http://www.libertysecurity.org/IMG/pdf/Prum-ConventionEn.pdf>

Council Decision of 23 February 2004,  
setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals. (2004/191/EC)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l\\_060/l\\_06020040227en00550057.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_060/l_06020040227en00550057.pdf)

Council Decision of 29 April 2004  
on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders. (2004/573/EC)  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004D0573:EN:HTML>

Council Directive of 25 November 2003  
on assistance in cases of transit for the purposes of removal by air. (2003/110/EC)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l\\_321/l\\_32120031206en00260031.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_321/l_32120031206en00260031.pdf)

Council Directive of 28 May 2001  
on the mutual recognition of decisions on the expulsion of third-country nationals. (2001/40/EC)  
[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l\\_149/l\\_14920010602en00340036.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_149/l_14920010602en00340036.pdf)

Tampere European Council: Presidency Conclusions, Brussels, 15 and 16 October 1999  
[http://www.euoparl.europa.eu/summits/tam\\_en.htm](http://www.euoparl.europa.eu/summits/tam_en.htm)

European Union: The Treaty of Amsterdam, Brussels, 2 October 1997  
<http://www.eurotreaties.com/amsterdamtreaty.pdf>

---

Brussels, 19.7.2006

Communication from the Commission on policy priorities in the fight against illegal immigration of third-country nationals. COM(2006) 402 final  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0402en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0402en01.pdf)

Draft Report, Manfred Weber: Proposal for a directive of the European Parliament and the Council on common standards and procedures in Member States for returning illegally staying third-country nationals., KOM(2005)391 – C6-0266/2005 – 2005/0167(COD), 16.06.2006

Brussels, 1.9.2005

Proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals. COM(2005) 391 final  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005\\_0391en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0391en01.pdf)

Brussels, 3.6.2003

Communication from the Commission to the European Parliament and the Council in view of the European Council of Thessaloniki on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents. COM(2003) 323 final  
[http://ec.europa.eu/justice\\_home/funding/2004\\_2007/doc/com\\_2003\\_323\\_final.pdf](http://ec.europa.eu/justice_home/funding/2004_2007/doc/com_2003_323_final.pdf)

Brussels, 14.10.2002

Communication from the Commission to the Council and the European Parliament on a community return policy on illegal residents. COM(2002) 564 final  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002\\_0564en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0564en01.pdf)

Brussels, 10.04.2002

Green Paper on a community return policy on illegal residents. COM(2002) 175 final  
[http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002\\_0175en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0175en01.pdf)

(Press release) European Union: Migration Management – Solidarity in Action: New EU financial support to be made available in 2007, IP/07/1035, Brussels, 9 July 2007  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/07/1035&format=HTML&aged=1&language=EN&guiLanguage=en>

## 1.2. Communication

Council of Europe. Report: Committee on Migration, Refugees and Demography, Rapporteur Ruth-Gaby Vermot-Mangold. "Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity", Doc. 9196, 10.09.2001.

Twenty guidelines on forced return adopted by the Council of Europe Committee of Ministers on 20-22 October 2004.

[http://www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/foreigners\\_and\\_citizens/asylum\\_refugees\\_and\\_stateless\\_persons/texts\\_and\\_documents/2005/Twenty%20Guidelines%20on%20forced%20return%2005.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/foreigners_and_citizens/asylum_refugees_and_stateless_persons/texts_and_documents/2005/Twenty%20Guidelines%20on%20forced%20return%2005.pdf)

## 2. Council of Europe

**3. International Law**

Convention relating to the Status of Refugees, 1951 (Geneva Convention)  
[http://www.unhcr.ch/html/menu3/b/o\\_c\\_ref.htm](http://www.unhcr.ch/html/menu3/b/o_c_ref.htm)

European Convention for Protection of Human Rights and Fundamental Freedoms, 1950  
<http://www.uni-potsdam.de/u/mrz/coe/emrk/emrk-en.htm>

Convention on the Rights of the Child, 1989  
<http://www.ohchr.org/english/law/pdf/crc.pdf>

---

**4. Internet article**

Independent race and refugee news network. Liz Fekete: Analysis: Deaths during forced deportation, 3 January 2003  
<http://www.irr.org.uk/2003/january/ak000003.html>

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