1 – Background

Since the end of the year 2002, within the framework of its programmes to fight illegal immigration, the European Union has issued proposals with a view to harmonising European laws on the removal and detention of people with a status as illegal immigrants. A Green Paper (April 2002), followed by a Commission Communication and a Council Action Plan on Returns (November 2002), envisaged restrictive norms and common operational measures in the long term. The Union initially focussed on this second aspect: the Decision on EU charter flights (April 2004), the negotiation of readmission agreements (ongoing since 2000), the Directive on sharing the financial burden of removals, etc..

On 1 September 2005, the European Commission presented a Proposal for a Directive on the return of people residing illegally in the EU.[1] The text submitted by the Commission **aims to harmonise legislation on the detention and expulsion of people in an "illegal" situation at a European level**. It does not seek to protect people, but rather, to improve the effectiveness of expulsion. The idea is to furnish it, in concrete terms for its implementation, with a Fund for returns that is currently being discussed before the European Parliament.

The European Commission then sent its Proposal to the Council and the European Parliament, the two institutions responsible for reviewing its contents and for its subsequent adoption, using the co-decision procedure in this field for the first time. This means that, unlike for previous Directives, the Parliament's opinion is a binding opinion carrying the same weight as that of the Council.
Thus, at present, the Directive is being negotiated simultaneously within the two institutions.

On 12 September 2007, the **Committee on Civil Liberties of the Parliament** (hereafter LIBE committee) voted for a compromise on the report by the German MEP, Manfred Weber (PPE). At present, a vote in plenary session is scheduled for 29 November 2007. The stakes are high for the MEPs who want the text to be agreed at all costs, as this would prove that the co-decision procedure is a reliable instrument and that the European Parliament is capable of negotiating matters as thorny as the fight against illegal immigration with the Council, and moreover, ones involving legislative proposals.

In June 2007, the **Portuguese presidency** proposed a compromise to the Member States and expressed its desire to see the text adopted before the end of its mandate (December 2007).

Subsequently, a conciliation procedure between the two institutions will take place.

[1] Proposal for a Directive concerning common operational norms and procedures applicable in Member States for the return of third-country nationals residing illegally (COM 2005 391 final)

2 – The activity of NGOs

Since August 2005, Cimade, alongside its European partners[2], had proposed a series of "*common principles on the removal of migrants in an irregular situation and rejected asylum seekers*", highlighting the fundamental principles that should prevail in the drawing up of any expulsion policy, "including the future European Directive on returns"[3].
These nine principles include that of detention being an exception that must only be used as a last resort, for which a maximum length that should be as short as possible must be set by the law. Likewise, they include the prohibition of re-entry bans, the principle of voluntary return, the protection of vulnerable people against expulsion, the systematic suspension of expulsion measures against which appeals have been filed...

Later, a campaign for the inclusion in the text of the MEPs of amendments asking for the protection of minors against expulsion and detention was conducted during several months, which was supported by numerous associations and MEPs[5] but did not lead to any results, as the LIBE committee nonetheless voted a text allowing the detention for 18 months of minors accompanied by their families.

The report voted by the LIBE committee is a long way away from respecting the principles defended by NGOs. Worse still, on certain points, particularly the length of detention, it has even hardened the proposal of the European Commission, which proposed a 6-month limit. **Today, it is no longer conceivable to continue expecting the text to be changed in a positive direction, nor for key modifications to be introduced that would allow the needs and dignity of individuals to be respected. This is why we are insistently asking that this text be rejected.**

3 – Contents of the Directive

Although the text has evolved considerably between the Commission proposal in 2005 and the compromise reached by the Committee on Civil Liberties, Justice and Home Affairs (LIBE committee) of the Parliament in 2007, **it is nonetheless still a text that proposes norms that will institutionalise the expulsion and detention of people with an illegal immigration status**.
It appears at a time when standards on the definition and ending of legal residence have not yet been harmonised at a European level, thus laying the foundations for common repression before defining the basis for legal residence jointly.

As is true of the Directives harmonising the right of asylum in Europe, it is a text that does not seek to ratify the best practices, but rather, to adjust to the minimum

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[2] Amnesty International Europe, Jesuit Refugee Service Europe, ECRE, Caritas Europe, PICUM, Human Rights Watch, CCME, Save The Children, Sensoa, Quakers, FCEI, Spanish Evangelical Church
[3] Common principles on the removal of migrants in an illegal situation and rejected asylum seekers
3 campaign site : www.nominorsindetention.org

standards in Member States, that is, to harmonise downwards to the lowest common denominator.

The foundations of the Directive[6] rest on a system inspired by the German system: a very long detention (18 months), expulsion measures involving a systematic ban on re-entry. Protection against expulsion and detention is very weak.

a) Very weak legal protection against expulsion

The Parliament's LIBE committee improved the 2005 proposal very marginally by introducing a slightly wider list of vulnerable categories of people[7]. However, thus defined, these categories are not particularly protected. The text only refers to them insofar as the conditions in which they must be kept during the expulsion period are concerned: vulnerable people must then be treated in a "specified manner".

The LIBE committee states the principles arising from international obligations that Member States are bound to respect; non-refoulement of asylum seekers (1951 Geneva Convention), the best interests of the child (1990 International Convention on the Rights of the Child), the protection of private and family life (article 8 of the European Convention on Human Rights). But there are no specific provisions to guarantee their implementation in operational terms.

Only two categories seem to be granted a degree of protection by the committee; "unaccompanied minors *should* neither be expelled nor detained" and "ill people *must* receive a residence permit for care".

What about other categories? Pregnant women, minors with their parents, people with family links in Europe, victims of torture and slavery? Has the European Union not envisaged any norms for their protection against detention or the violence of expulsion?

b) Excessive length of detention

Detention can be ordered when the person poses the risk that he/she may flee, or a threat to public order. **In its report, the LIBE committee allows detention as a form of "control", which is not aimed at holding people for *the time needed to organise their deportation* (as is still the case in France); but rather, it allows a veritable exclusion, a means of control over undesirable populations. What is laid out in the committee's proposal allows a veritable administrative detention, raising it to the level of a European norm.**
This Directive opens the way for practices that are already taking place in certain countries, consisting in depriving migrants of their freedom, even while their asylum applications or residence permits are being examined, becoming commonplace.

The duration of administrative or judicial detention, which can stretch to 18 months, corroborates this observation. The LIBE committee proposes that detention may be extended to 18 months when a foreigner does not co-operate, or when there are

[6] As proposed by the European parliament's LIBE committee
[7] Minors, unaccompanied minors, handicapped persons, old people, pregnant women, lone parents, victims of torture, rape, or other forms of physical or psychological violence

difficulties in obtaining his/her travel documents, or when the person represents a threat to public order.
When one knows from experience that the expulsion of an immigrant takes place in the 10 first days of detention in the large majority of cases[8], it is evident that the only purpose of using such a lengthy detention is to punish and control. Detention, as defined by the Parliament, represents an institutionalized criminalisation of foreigners in Europe.

c) A systematic penalty banning re-entry into European territory

A ban from European territory for a maximum of 5 years could accompany every expulsion measure. The Parliament proposes not to make such a ban from the territory obligatory, and for it to be possible to withdraw or suspend it for humanitarian or other reasons.

This ban already exists in several European countries (Spain, Germany, Poland...). It can only lead to absurd and unacceptable situations, by banning people who may have established their entire lives in Europe for a very long period, and by inevitably plunging them, and those who may want to return, into illegality. Such a measure would also have the effect of turning any "sans papier" into a person guilty of an offence who would be punished twice, through his/her repatriation and by banning him/her from returning.

4 – Main existing mechanisms for expulsion and detention in Europe

EU Member States have all set up different mechanisms to remove and detain people residing illegally in accordance with their their geographical, political and economic situations. Overall, these systems are hardly fitted within legal frameworks, the norms on detention conditions are not defined, and the length of detention ranges from 32 days to unlimited periods.

The older Member States are traditionally States on the receiving end of immigration flows that have had to organise the arrival of migrant populations for decades and have thus developed and adapted systems for removals since a long time ago. However, in northern European countries, detention has been conceived, above all, as a tool for managing migrations, having a function of "exclusion" and involving long, and even unlimited, detentions (Great Britain, Sweden, etc.).
France represents an exception in this landscape, as it uses a fairly well-framed system with the shortest length of detention in Europe (32 days) and more protection provisions than elsewhere. This system, that hence offers more protection, nonetheless gives rise to many dramatic personal situations.

The countries of southern Europe, apart from coping with inter-European migrations that they experience, are also the gateways into the European Union from its southern side. They face the arrival, particularly by sea, of migrants and asylum seekers coming mainly from Asia and Africa. These countries have developed systems for detention "on arrival", by establishing the systematic detention of people

[8] See the Cimade report « Against the lengthening of administrative detention », 2003

as they come off the boats or after they have been rescued at sea: detention in camps that simultaneously serve as places for identification, for lodging asylum applications, for awaiting their outcome, and for detention while awaiting expulsion. These functions may be alternative or cumulative. Detention conditions in these countries (Italy, Spain, Greece, Cyprus, Malta) are regularly denounced by international organisations and NGOs.

The European Directive whose preparation is underway would also be meant to apply to these places and procedures. It will not prevent the detention of asylum seekers. It will not establish adequate protection norms to prevent the present conditions, which are already deplorable, from becoming even worse.

Eastern European countries that joined the EU in 2004, which, for some, are gateways into the EU as well, have equipped themselves with laws within the framework of their adhesion to the European Union. Poland, Slovakia, Romania and Bulgaria are States that do not have a long tradition of receiving foreigners. At present, they are responsible for managing the entry of migrants travelling across land routes into Europe, and have been receiving funding from the European Union to build detention centres at their borders. The conditions here are deplorable as well, and the periods of detention are unacceptable (up to several years).

5 – Conclusion

This draft Directive opens the way for making a policy for the internment of migrants commonplace. This approach runs exactly contrary to the values that have formed the basis and have allowed the construction of Europe in the wake of the Second World War.

It is the European Parliament's responsibility to defend the fundamental values and liberties that are the foundation of the European project and give it sense. We call on the MEPs to refuse to vote in favour of this draft.

The latter bear a historical responsibility today: to react so as to prevent Europe from descending back into the dark hours of segregation between nationals and undesirables, by making the use of camps and forced expulsion systematic.

By CIMADE - translated from French by Statewatch