

Provisional edition

Readmission agreements: a mechanism for returning irregular migrants

Resolution 1741 (2010)

1. Readmission agreements reiterate and define the obligation to readmit a country's own citizens and set out the conditions under which state parties to such agreements are obliged to readmit citizens of third countries who have passed through their territory. They facilitate and expedite the enforcement of return decisions in respect of irregular migrants and may also function as an incentive for countries of origin or transit to enhance their migration control. Depending on one's viewpoint, readmission agreements can either be considered an important element in the migration management strategies of Council of Europe member states, or as facilitators of questionable return decisions and part of the criticised "externalising of migration control" of European countries.

2. It can be argued that readmission agreements provide transparency, since they clearly state the procedural conditions for readmission prior to the enforcement of a return decision. If implemented with care, the agreements may contribute to reducing the migrant's period of uncertainty or detention by facilitating and speeding up the enforcement of return decisions. Advocates of readmission agreements claim that these are neutral in terms of human rights and merely a tool for the removal of irregular migrants. The stage at which a human rights concern may arise is usually when the decision to expel the person concerned, the return decision, is taken and not when that decision is enforced by way of the readmission agreement, unless the situation in the readmitting country has changed in the meantime.

3. There is, however, a risk that readmission agreements pose a threat, directly or indirectly, to the human rights of irregular migrants or asylum seekers. This concerns, in particular, the risk that the sending or the readmitting country fails to honour their obligations under the Geneva Convention Relating to the Status of Refugees (the 1951 Geneva Convention) and its 1967 Protocol and the European Convention on Human Rights and then uses a readmission agreement to enforce a flawed decision. The return process should be seen as a whole, in which readmission agreements are one important element.

4. The main cause for concern relates to the readmission of third-country nationals. Irregular migrants who are returned to a country which is not their country of origin might risk ending up in an unsustainable situation. There is a risk that third country returnees are subject to so-called chain-refoulement, which means being shuttled back to their country of origin without having had the possibility to submit an asylum application or having had the asylum claim reviewed in any of the countries through which they pass. Some readmission agreements provide for accelerated procedures at borders, which might in effect hinder migrants from submitting an asylum application or give rise to an assessment of poor quality.

5. Statistics on the number of returns enforced with the help of readmission agreements are hard to obtain. States have not assembled statistics or are reluctant to publish them. The situation of returnees is rarely evaluated. This lack of information prevents a thorough evaluation of these instruments.

6. It is essential to negotiate and apply readmission agreements which take fully into account the human rights of the irregular migrants concerned. Furthermore, it is crucial, in order to better understand and evaluate these instruments, to collect data on their effects and implementation. The Parliamentary Assembly therefore calls upon Council of Europe member states to:

6.1. conclude readmission agreements only with countries that comply with relevant human rights standards and with the 1951 Geneva Convention, that have functioning asylum systems in place and that protect their citizens' right to free movement, neither criminalising unauthorised entry into, nor departure from, the country in question;

6.2. comply fully with their obligations under the European Convention on Human Rights and in particular its Article 3, the 1951 Geneva Convention and other relevant human rights instruments and to follow the Council of Europe Twenty Guidelines on Forced Returns when readmitting an irregular migrant under a readmission agreement, or when requesting the enforcement of a decision to return an irregular migrant under such an agreement;

- 6.3 ratify and abide fully and effectively by Protocol No. 4 to the European Convention on Human Rights which, inter alia, prohibits collective expulsion of aliens;
- 6.4 abide by the Council of Europe Guidelines on human rights protection in the context of accelerated asylum procedures;
- 6.5 ensure that, before a readmission agreement is put to use, asylum seekers have had the possibility to submit an asylum application, and the right to an effective remedy with suspensive effect, which implies a review on facts and law by an independent national authority;
- 6.6 verify that, if the member state applies the concept of "safe third country" with regard to asylum seekers whose claims are not assessed substantially, the country of destination is safe for that particular asylum seeker, implying that it will respect the human rights of the person concerned, provide access to a proper asylum procedure and comply with the 1951 Geneva Convention;
- 6.7 include a provision into readmission agreements which requires that a sending country always first tries to return a person concerned to his or her country of origin before requesting readmission by a country through which that person has merely transited;
- 6.8 include a provision into readmission agreements which requires that the requesting country, prior to requesting readmission by a third country, verifies that the readmitting third country will grant the person concerned access to minimum social rights. If this cannot be verified, readmission must not take place and the requesting country shall instead give the person concerned access to such rights as long as he or she stays in that country;
- 6.9 ensure that a readmitted third-country national does not become stranded in a readmitting transit country without the possibility to go back to his or her country of origin;
- 6.10 study the impact of provisions in readmission agreements that provide for accelerated procedures with regard to migrants apprehended close to the border between the parties, with a view to ascertaining whether or not there are questionable practices at borders;
- 6.11 take care that readmission agreements contain appropriate legal safeguards to protect the migrants against any abuse of their human rights and that the agreements are specific about their rights, in particular as concerns vulnerable categories;
- 6.12 ensure that the country of origin of the person concerned will not receive any evidence or information on an asylum claim lodged in the sending country;
- 6.13 ensure that readmission agreements provide for a system under which the implementation of the agreement may be properly monitored and evaluated, and that they provide for a public annual report to be drawn up by the authorities of the readmitting country including, as a minimum, statistical data on the fate of readmitted persons (on issues such as detention, release, expulsion, access to asylum system, etc.);
- 6.14 phase out older bilateral readmission agreements, replacing them with more modern ones which fully respect the Council of Europe's human rights standards;
- 6.15 carry out quantitative and qualitative studies on the functioning and impact of readmission agreements to which they are parties, in readmitting as well as sending countries, in order to ascertain whether they might result in human rights abuses;
- 6.16 ensure that readmission agreements are always made public;
- 6.17 avoid using informal readmission arrangements, or at least ensure that the recommendations set out in this resolution are applied also with regard to such arrangements;
- 6.18 seek co-operation with the European Commission in order to set up adequate monitoring bodies and to coordinate the collection and analysis of statistics in respect of readmission agreements;
- 6.19 set up training schemes for border guards, civil servants and others involved in the implementation of readmission agreements, in both sending and readmitting countries;
- 6.20 consider regularisation programmes as an alternative to the return of irregular migrants, where appropriate.

7. The Assembly invites the European Union to take into account the recommendations made in this Resolution in negotiating and promoting its readmission agreements, ensuring that these are consistent with relevant human rights standards, in particular Article 3 of the European Convention on Human Rights and Article 19 of the European Union Charter of Fundamental Rights, and that they do not induce member states to operate return policies which are contrary to these standards, to make all statistics in respect of readmissions public and to set up a monitoring mechanism with regard to readmission agreements. In particular, the European Union is invited to:

7.1. properly consider the human rights situation and the availability of a well-functioning asylum system in a country prior to entering into negotiations on readmission agreements with that country;

7.2. use its strong bargaining position to negotiate provisions in readmission agreements that safeguard the human rights of the persons to whom they are to be applied;

7.3. include in its readmission agreements as a condition for their application, that an asylum seeker to whom the agreement is applied shall first have had access in the European Union member state to an effective remedy in the sense of Article 13 of the European Convention on Human Rights, and that the agreements shall not be applied until the competent authority has ruled on the asylum seeker's appeal;

7.4. include in its readmission agreements as a condition for their application, that third-country nationals are not sent to transit countries where they might risk facing a situation threatening their human dignity in terms of social rights;

7.5. instruct an appropriate body to monitor the implementation by member states of European Union-brokered readmission agreements and to provide relevant training to the European Union member states;

7.6. co-operate closely with its member states in the collection and evaluation of statistics with regard to the implementation of readmission agreements and ensure that these statistics are made public;

7.7. examine the interaction between the rules of the "safe third country" concept and the implementation of readmission agreements and whether there are any flaws in the system;

7.8. study the impact of the signing of readmission agreements in respect of third-country nationals as a condition for visa liberalisation and co-operation, with regard to the goals of the European Neighbourhood Policy and the international development policy of the European Union.

¹ *Assembly debate* on 22 June 2010 (22nd Sitting) (see [Doc. 12168](#), report of the Committee on Migration, Refugees and Population, rapporteur: Mrs Strik). *Text adopted by the Assembly* on 22 June 2010 (22nd Sitting).

See also [Recommendation 1925](#) (2010).