



ENAR communication

on the

Green Paper on a community return policy on illegal residents

COM (2002) 175 final

Introduction:

The European Network against Racism (ENAR) is an EU wide network of about 600 non-governmental organisations engaged in the fight against racism. One of the aims of this network is to identify discrimination and unfair or unequal treatment of third country nationals in the European Union. The European Union intends to design an area of freedom, security and justice. ENAR welcomes the intention of a common EU policy on immigration specifically aiming to improve the situation concerning discrimination and supporting the establishment of equal rights for third country nationals within the EU. ENAR closely monitors legal developments to raise the voice of civil society in the fight against racism. In this communication ENAR will outline recommendations on the Commission's Green Paper on a community return policy on illegal residents. We would welcome the consideration of the following points and would request the Commission to furthermore actively consult NGOs in the development of immigration policies.

As a general remark, we strongly recommend to use the term 'undocumented', instead than "illegal" whenever persons are concerned. We do believe that human beings, whatever their status, neither are nor can be illegal.

ENAR specifically welcomes:

1. That the EU intends to give priority to voluntary return to all extents possible (as stated in item 2.2. of the Green Paper).
2. The Compliance of legal instruments concerning return policy with the Geneva Convention (1951) and the 1967 Protocol the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights (CFR), including the prohibition of collective expulsions.
3. The understanding that there is an obligation to respect human rights and fundamental freedoms (item 2.4). We appreciate, particularly, the recall of principles stated both in the ECHR and the CFR related to the right of appeal, judicial control and the right to family life.
4. The recognition of forced return as a "very significant encroachment on the freedom" of persons and, consequently, that the establishment of minimum standards on preconditions (item 3.1.2) is requested.

5. The distinction made between ‘mandatory reasons’ for expulsion and ‘other legitimate reasons’ (3.1.2.1, 2nd paragraph).
6. The emphasis put on proportionality of measures, particularly where ‘extreme or unreasonable hardship’ occurs.
7. The intention of the Commission to establish minimum standards for detention and removal.

ENAR remarks and suggestions:

However, while the Green Paper recalls a number of important principles there is much less clarity on their implementation. There is for example no guideline on criteria to be adopted to distinguish between mandatory and optional forced return.

With the following points ENAR intends to strengthen and amend the approach in the Green Paper. After two general remarks we will refer to specific questions stated in this document.

1. General remarks:

- a. We strongly recommend to specifically and appropriately formulate the principle of giving priority to voluntary return in all relevant documents concerning return policy.
- b. The full respect of Human rights and fundamental freedoms is an indivisible obligation of law enforcement agencies in the European Union. The formulation ‘A European return policy should be fully respectful of ...’ under item 2.4. is imprecise and all further document shall use the term ‘must be fully respectful of’.
- c. In order to guarantee the full respect of Human Rights and fundamental freedoms within the EU return policy an independent monitoring institution should be established.
- d. ENAR strongly urges to develop alternatives to detention and to state concretely such alternatives in all relevant legal documents to be established by the European Union Institutions.
- e. We would welcome the development and implementation of a code of conduct for expulsion, detention and removal stating that the full respect of Human rights is guaranteed.
- f. We would like to draw the attention to the fact that law enforcement officials are not regularly held responsible for breaches of human rights or even judged when persons in detention or removal die by force. Mechanisms are strongly needed to hold such officials responsible for such breaches.

- g. ENAR would urge the Commission to take into consideration the history of persons in expulsion. Different approaches seem appropriate for persons with a legal status in the country for a certain period before the person became undocumented.

2. Concerning question under item 3.1.2.1. 'Groups that require special protection' we would strongly recommend to add the following groups:

- a. Minors, on the basis both of ECHR and CFR (right to family life) and of the Convention on the Right of the Child (child's best interest)
- b. Pregnant women, on the basis of the right to a safe maternity.
- c. Persons seriously ill, on the basis of the right to life and health.
- d. Persons at risk in their country of origin or in the country of transit

These groups should not only be particularly protected against expulsion but – even if expelled – persons specified under a., b., c. **should never be detained, in any case.**

3. Concerning the question on 'binding standards on detention' (item 3.1.3.) we urge the Commission to consider the following remarks:

- a. Right of the detained persons to be **immediately** informed in a language they fully understand about the reasons for their expulsion and detention
- b. Right to effective remedies, including **suspension** of removal pending judicial recourse.
- c. Right to **communicate**, and particularly to **contact** diplomatic authorities and human rights protection bodies or NGOs, including the right to use communication means (telephone etc)
- d. Right to full (and, if needed, free) **legal assistance** at each step, including interpretation in a language the person can fully understand.
- e. Full and active **respect of diversity**, including gender, religion or belief, sexual orientation, food prescriptions. This implies appropriate accommodation standards.
- f. **Protection of family union** and the **rights of the child**. This, too, affects accommodation standards.
- g. Recovery of **personal belongings**, including financial means.
- h. Right to **physical and psychological health**, including the right to receive visits of persons of own choice, respect of religious or cultural prescriptions on medical assistance, permanent presence of cultural mediators and any other useful provision.

- i. Time limit for detention **not over 15 days** (an extension can be provided under strict conditions not over 7 more days).

4. Concerning removal (item 3.1.4.) we would recommend the following points:

- a. **Judicial confirmation** and **right to recourse** (with suspending effects) before the removal should be ensured.
- b. The remarks a, c, d, e, g made above under point 3. are equally valid under this item
- c. Training for staff carrying out return enforcement (item 3.4.4.) shall include **training on human rights and anti-discrimination**.

Brussels, 29 July 2002