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Motivations, experiences and consequences of returns and readmissions policy: revealing and developing effective alternatives



Executive Summary

Development of the Return and Readmissions policy across Europe: multilevel analysis

Case Study: **Belgium**

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This document provides a concise summary of the key findings from Belgium. For detailed analysis, evidence, and comprehensive insights, please refer to the full report. The information in this summary should not be considered complete or fully representative of the entire study.

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Historical and Policy Background

Recent years have witnessed a substantial evolution in Belgian policy, legislation and administrative practice with regard to RR Policy. The Belgian government sought to regulate migratory flows by adopting the 1980 Immigration Act and the 1981 Royal Decree. These two pieces of legislation, which are still in force today, have been amended on numerous occasions, reflecting the declared political will to better control migratory movements both on entry to the country and by promoting an active policy of organising returns. The impetus for these policies is multifaceted, encompassing the struggle against terrorism and radicalism, the management of migratory flows, and the alignment of Belgian legislation with EU directives.

The implementation of the return policy advocated by Belgium is centered on the augmentation of returns, initially voluntary and subsequently forced. Successive governments have endeavored to portray the Belgian return and readmission policy as a nuanced balance between efficiency and respect for human rights and humanitarian policy. A pivotal component of the humanitarian policy related to return and readmission is the voluntary return, with the will to encourage voluntary return by improving the collaboration between stakeholders, including local administrations. In the last few years, with the implementation of the Return Directive, the concept of voluntary return itself has evolved considerably. The 2012 law denotes a transition from a voluntary return accompanied by the desire to provide quality assistance and offer sustainable reintegration to a voluntary return conceived as the sole alternative to forced return.

In the wake of the 2016 terrorist attacks in Belgium, two pieces of legislation have been adopted. The principal objective of these legislative measures is to streamline the procedure for terminating a foreign national's residence right that has been in effect for a period exceeding three months, as well as the organisation of their removal for reasons pertaining to public order or national security. Following the enactment of these statutes, civil society actors voiced concerns about the enhanced powers conferred upon the IO, apprehending a surge in arbitrary deportations. The legislation under discussion has been found to empower the IO with the authority to expel without the necessity of prior judicial adjudication, thereby raising questions concerning the balance between individual rights and state security in

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such contexts. It is in this regard that detention is presented as the cornerstone of an effective return-oriented policy.

Furthermore, to reinforce return policies, Belgium has signed no less than 52 readmission agreements, including European, Benelux, bilateral and technical agreements with several African countries. The utilisation of readmission agreements has been demonstrated to facilitate the procurement of necessary travel documents in the event of a forced return. Critics have suggested that these agreements are indicative of return policies that are shaped in the interests of the states themselves. It has been observed that, in contrast to treaties, these non-binding accords do not necessitate parliamentary ratification. Consequently, there is a paucity of concrete information available to the public or Parliament on how they will be implemented.

Human Rights and Monitoring

The Immigration Office (IO), as the Belgian public institution responsible for implementing government policy in relation to the management of migratory flows, plays a pivotal role in the context of immigration. The IO's accountability encompasses the entire detention procedure, from the initial decision to place an individual in a detention facility to the subsequent forced deportation orchestrated and executed by its personnel. The arbitrary nature and opacity of the measures taken by the IO frequently prompts criticism from civil society. The human rights risks posed by the expulsion procedure for foreign nationals are highlighted, in particular the risks at the time of arrest, detention in administrative retention centres, isolation before transfer to the airport, boarding the plane, the flight and handover to the authorities in the country of origin. Furthermore, IO is the subject of censure for its perceived inadequacy in providing adequate safeguards for specific vulnerable groups during the deportation process. These include families with minor children, and more generally, those considered to be in need of protection.

Belgium has been the scene of several tragic cases of deportation, leading to the creation of a specific Commission, tasked with evaluating the practical implementation of the legal and regulatory provisions of the return policy. Although mechanisms have been implemented in response to the recommendations outlined in the report, there is a

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significant gap in the protection of fundamental human rights, particularly about monitoring conditions in detention facilities, the duration of detentions, and oversight of removal conditions.

Policy Effectiveness and Criticism

Notwithstanding the explicit commitment of the Belgian authorities to give priority to voluntary returns and their desire to increase the use of alternatives to detention, detention - presented as an exceptional measure of last resort - remains the final component of the Belgian return policy for those who do not comply with an order to leave the territory voluntarily. The detention of individuals is regarded as instrumental to the efficacy of the return policy, with the quantitative assessment of detainees and actual returns serving as a political instrument that, in principle, is intended to demonstrate the success of the policy in practice.. It is essential to consider this factor when evaluating the number of places in detention centres, which has risen sharply in recent years. In 2022, the capacity of all detention centres was 491 places and the number of places is projected to almost double by 2030 with the construction of four new detention centres, bringing the total to 1,145 places.

Consequently, the authorities are developing legislation to formalise a proactive return policy within the legal framework. This legislative instrument is expected to encompass provisions mandating cooperation by third-country nationals in return procedures, alongside comprehensive individual follow-up of those subject to orders to vacate the territory.

However, despite the implementation of numerous measures aimed at increasing the return of third-country nationals, the number of voluntary returns and forced returns has remained very stable in Belgium in recent years. An analysis of the percentages of arrests, detentions and forced returns over the period 2016-2019 - a period in which a number of measures are being taken to increase the number of returns - shows that while there has been a 19% increase in arrests and a 36% increase in detentions in closed centres, these increases have not been reflected in an increase in the percentage of deportations over the same period, which, on the contrary, has fallen by 20%. This is mainly because the increase in apprehensions and detentions during this period was of migrants in transit, who, for various reasons, are more difficult to remove.

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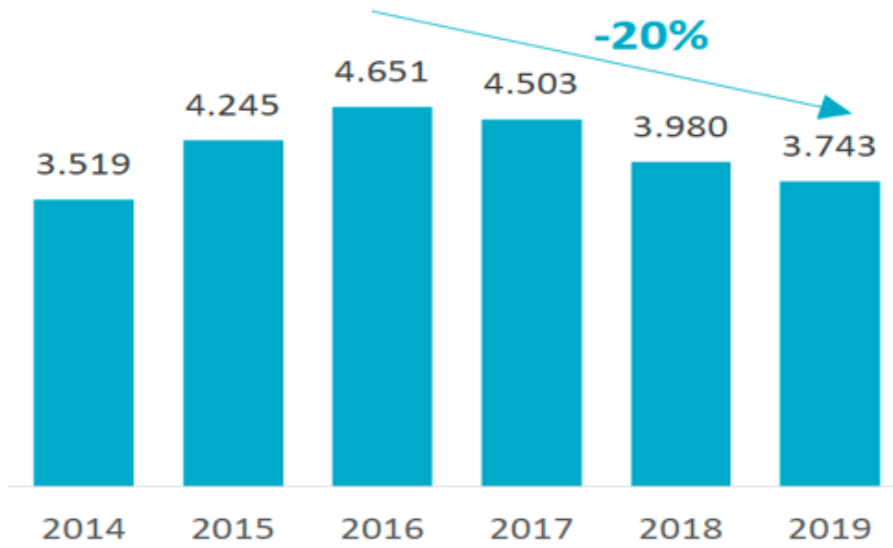
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Number of forced returns



(Source : OE)

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