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



## *Executive Summary*

# RR on the Ground: Implementation of the RR Policy, its Impact, and State Agents' Assessment and Perception

## Case Study: **Sweden**

*Authors: Aida Ibricevic, Zoran Slavnic, Branka Likic-Brboric*

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## Disclaimer:

This document provides a concise summary of the key findings of RR on the Ground (WP4). 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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# Executive Summary – the case study of Slovenia

## 1. (Im)mobility

### Challenges When Implementing Detention

- I. Impossible to identify the detainee/Missing travel documents
- II. The detainee has been in a legal “limbo” situation for the past 10 or 20 years, having established a family; bought an apartment; or started a business - without a regularized status/a valid residence permit
- III. Explaining the complex “deportation chain” and return process to the detainees
- IV. Getting the detainees to accept their return decision
- V. Lack of trust between the migrants and Swedish migration authorities

The most common case of a detainee is the undocumented migrant, who upon “getting caught” working without a valid work/residence permit applies for asylum in Sweden. And I would say many, maybe the majority of people who enter into detention are in some kind of working clothes, building construction clothes, or something like that. And when they come here with their stuff, they have work tools or something like that in their bag. ...When they are caught, and they are taken into custody or detention, this, that I have to say also, many of these people, very many, seek for asylum when they are taken into detention. And the reason for that, I believe, is that most of these people believe that they can make the time in Sweden longer by seeking for asylum, and they also believe that we let them out. Or if we are not doing that, the Migration Court will let them out from the detention, because they are asylum seekers, and that's not true. Absolute majority of these people who seek asylum in detention also stay here from the day they seek for asylum until the decision has gained legal force. And I would say that time frame is approximately three months.

There are cases where the undocumented migrants are tricked by unethical employers into thinking that their paperwork was handled properly, when it was not. The implementing agent expresses frustration that the employer is not punished personally. Instead, the company is forced to close, leaving the option for them to reopen the same enterprise under a different name.

But that's really frustrating because all they have to do, like their company, like XX A.B. is the company. So, I trick people into work. I get them to work with me basically for me, basically for free. And they get caught and everything. It's like coming up to the surface. And they look at you like XX A.B., you're not allowed to continue your business. You have to close that, shut that business down. I just open up a new company and do the same thing. So me as a private person doesn't get any repercussions. It's only the company that has to get shut down. But I just open up a new one [a new company under a different name]: XY A.B. Yeah, XZ A.B and so on. So that's the frustrating part.

Criteria Used to Authorize Detention: i) Risk of absconding, ii) Lack of identifying documents

Non-Detention Preventive Measures: Preventive measure, such as the duty to call-in/register have been proven to be more effective and less costly (for example, during the COVID-19 pandemic), but are not used as much as they could be

Interactions with Stakeholders: i) Each detainee is assigned a legal representative of his/her own choosing, ii) Detainees are regularly visited by representatives of Amnesty International, the Swedish Red Cross, the Swedish Church and other civil society organizations, iii) Detainees are given a mobile phone (without recording devices) to interact with their legal representative and the outside world, iv) Detainees are regularly contacted by their case officer, whether from the Migration Agency or the

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Police, depending on who “owns” the case, v) Detention center staff are responsible for making sure that detainees receive adequate healthcare, such as taking them to their doctor’s or dentist’s appointments

### Criticism of implementing detention

#### I. Issuing detention orders to encourage “voluntary” returns

In Sweden, detention can be issued both by the Migration Agency and by the Police, but for different reasons. The Migration Agency is tasked with handling voluntary returns. If a person with an issued return decision proves to be unwilling to return, his/her case is turned over to the Police for forced return. As reported by Migration Agency staff, detention is sometimes used to “encourage” the person to leave “voluntarily.”

We think that if we put the person into detention, maybe he or she will change his mind and return voluntarily. So, we can do that as long as the case is processed within our agency [the Swedish Migration Agency]. But if the person really says, never, ever am I going back to my home country or the person absconds, so we cannot get hold of the person any longer, we have to, according to the *Aliens Act*, hand over the case to the Police. And they have also the possibility to put the person in detention.

This practice has been recognized and criticized by legal representatives working with individual return cases.

And sometimes I can see that, everybody can see that decisions [on detention] are being made in order to try to push an individual to say, okay, I will voluntarily leave the country. But normally one could not do that.

#### II. Detention orders are not sufficiently individualized

Although the decision to detain a person is always made by two different staff members/case officers at the responsible implementing agency, concerns were expressed that this decision is not appropriately individualized. Swaying more in the direction of detention when making these decisions is brought in relation to the current anti-immigrant political discourse in Sweden.

I think it has to do with also, partly because of the rhetorics in the society and from politicians, that also, you know, is gripping down into the to do the authorities and, you know, this about obeying in beforehand, thinking that this has to do with what the authorities want, or the way the laws will go in the future, etc. I think it has to do with that partly as well. And also, I think it’s, of course, it takes from a Police Officer from a Migration Board employee takes more time to deeply and analyze an individual.

## 2. Rights and Protection

### Tools for Returnees’ Human Rights Protection

- I. Implementing agencies in Sweden abide by Swedish law and this is their main point of legal reference
- II. When dealing with third country embassies implementing agents are concerned with applying the Swedish “Law on Secrecy” (*Offentlighets och Sekretesslagen*, OSL), which protects the privacy of returnees. Implementing OSL is particularly relevant when working with authorities of third countries.

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## Right to Legal Defense

- I. Detainees are appointed a legal representative of their own choosing
- II. There is great variation in the quality of legal representation and some detainees end up with legal representation of questionable quality
- III. Detainees are not given sufficient information about the differences in legal training/expertise between the various lawyers that could represent them

## 3. Living Conditions

Living conditions such as health, housing situation, employment, or education level are not taken into consideration when return decisions are made, since in the words of several implementing agents “the law is the law.” A recent, well-publicized case of a severely disabled migrant detained while in a wheelchair brought to attention the need to consider health circumstances when issuing detention orders.

I think it was about this very senile, handicapped person sitting in a wheelchair in one of the centres. Okay, anyway, he was finally taken out of detention because there were all the other detainees who tried to assist him because he couldn't have any assistance in detention centres. It was a very absurd decision.

## 4. Social Connections

When looking at the family as a whole, usually it is the husband that gets sent to the detention center, while the rest of the family (wife and children) continue living their life outside. When the case is resolved, after all the appeals, they will usually meet at the airport and go back together. The issue of social isolation of married detainees with families is not addressed any differently than those who are single. Children are never detained and are also never left without the parental care of at least one parent, father or mother. In case a person with a return decision has established a family in Sweden, they are directed to return to the home country and then re-apply for family reunification. Similarly, if a returnee has had a job offer while in the process of return, they are instructed to go back to the home country and re-apply for a residence permit based on a valid work contract.

## 5. Compliance and Resistance

Counseling is used to motivate “voluntary” return and increase compliance, while implementing agents often identify with the migrants and their rational calculation.

Because in my opinion, there's actually one question what all the detainees ask themselves and it's the same question you and me ask ourselves when we are in any kind of situation. What is best for me? What is best for me and for my family? And is that they are taken to detention, and they seek for asylum in working trousers. It's just a signal that I think, well, I was caught, but maybe if I seek for asylum, maybe they let me go. Maybe I can work some more. Maybe I can send some money for my family, that kind of things. So, but when they, most of these people, I would say roughly most of these people who come this way to the detention, seek for asylum and they receive a rejection from a migration agency, it's after that decision or after they appeal to migration court, they say, okay, fine, it didn't work. I'll go home. Here's my passport when I can leave.

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## 6. Alternatives to Returns and Readmission

- Concerns expressed over illegitimate asylum claims undermining rationale of the asylum system
- “Whole of government” approach to increase effectiveness instead of regularization alternatives to returns

And the perspectives that I also really, how do you say, like and agree with, concur with, is that we work much more now with a whole government approach. This is something new for Sweden. We've been looking into Norway a lot, like why are they so successful in their return-related works to some really problematic countries. So, and that's something that could also assist the sustainability if we work on projects on the ground with the third country governments and institutions, and also that they are well-informed about the return, but also that the returnees actually have some options to reintegrate.

- Each informant reflected on the current political discourse in Sweden which discourages any discussion of alternatives to return and readmission policies.

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