



Monitoring of Forced Return Flights - Danish Experiences





Background

In 2011 the Danish Government decided to implement the EU Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (The Return Directive), including article 8(6) of the Directive.

In Danish Law this is regulated in § 30 a of the Aliens Act – with effect from 1st April 2011

In Denmark it is the police that are responsible for foreigners' departure from the country when their departure is not voluntary. Before the bill was passed, there was no separate monitoring of police activities in connection with forced returns.



Background

Different types of forced returns:

In Denmark forced returns can be divided into two categories:

- Observed forced return
 - escorted to the airplane and observed departure
 - usually high level of cooperation and no use of means of restraint
 - low risk situations
- Accompanied forced return
 - escorted to the airport of the country of destination, including handover to local officials
 - medium/high level of conflict – use of means of restraint possible
 - high risk situations



How is the monitoring done? (1)

According to the Danish Aliens Act, the monitoring must be of a general nature. Thus, actual complaints about the behaviour of individual police officers are not to be processed as part of the Ombudsman's monitoring activities. Such complaints must be considered by the relevant complaint bodies.

Similarly, the foreigners, whose case the Ombudsman considers as part of his monitoring activities, are not to be notified. Also, the Ombudsman is not allowed to intervene when observing these cases.

However, pursuant to the general provisions of the Ombudsman Act, the Ombudsman may open cases on his own initiative.



How is the monitoring done? (2)

As part of the monitoring activities the Ombudsman:

- observes the forced return flights
- receives copies of the concluded cases on forced return for review
- submits an annual report on his monitoring activities to the Parliament. The report is published

The Ombudsman may:

- Criticise
- issue recommendations, or otherwise state his opinion in a case
- propose changes of the procedures or case processing in connection with the cases on forced returns.



Rights, Standards and Focus Areas (1)

When monitoring Forced returns main issues of concern are the security and dignity of the people being returned

-No one shall be subjected to torture or to inhuman or degrading treatment or punishment

- The use of means of restraint
- Rights and needs of those belonging to vulnerable groups
- The general approach and atmosphere – to be treated with respect and dignity
- ECHR art. 3, UN-CAT, UN-CRC



Rights, Standards and Focus Areas (2)

Standards

- CoE Twenty Guidelines on forced returns (2005)
- CPT standards (par. 27 – 45)
- Frontex Guidelines
- National Guidelines

Focus areas

- 1)Prior contact between the police and the deportees
- 2)Police security assessments of the return operation
- 3)Use of means of restraint
- 4)Unity of the family
- 5)Vulnerable groups
- 6)Aborted forced return operations
- 7)Documentation



From April 2011 to April 2015

The Ombudsman has:

- monitored 53 forced return flights (13 observed and 40 accompanied):
 - 32 of the accompanied flights were regular commercial flights
 - 5 of the accompanied flights were special flights organised by the Danish Police (Serbia and Afghanistan)
 - 3 of the accompanied flights were joint return operations organised by Frontex to Nigeria (2011, 2014 and 2015)
- reviewed 2.092 cases and examined 167 cases



The use of means of restraint (1)

Based on the monitoring of forced-returns since 2011 and the review of cases on forced return of 2011, 2012 and 2013, the Ombudsman has identified 51 cases where the police have used means of restraint.

The total number of cases on forced return in that three year period was 2.108 cases.

The Ombudsman was present during the use of means of restraint in 14 of the 51 cases



The use of means of restraint (2)

In none of these 14 cases did the police act in contravention of applicable Danish law, including Denmark's obligations pursuant to EU law and international human rights conventions.

Based on the documentation in 28 of the remaining cases, the Ombudsman reached the same conclusion.

In the last 9 cases the ombudsman was not able to evaluate the use of means of restraint due to the insufficient documentation in these cases



Conclusions and recommendations

In general, when carrying out forced returns, the Danish police act in accordance with relevant laws and standards.

However, on the basis of the review of the cases of 2011, 2012 and 2013 the Ombudsman has criticised the police for insufficient documentation in the cases on forced return.

The Ombudsman has recommended that the police should begin registering the use of means of restraint and developing statistics on the use of means of restraint.

The Ombudsman has recommended that the use of diaper in connection with forced returns should be used according to the principles governing the use of means of restraint



Questions raised

Based on an accompanied forced-return flight to Afghanistan, the Ombudsman raised two questions:

- One related to the situation where family members decide to split-up in order to avoid being returned.
- The second question related to a practice, where returnees were handed over to private security guards in Frankfurt Airport. The security guards, who had been hired by the Afghan airline, ARIANA, were to escort the returnees to Kabul.

Based on another accompanied forced return flight to Afghanistan, the Ombudsman commented upon the involvement of medical doctors and their role in forced return flights.



General observation

New area of monitoring:

- No clear guidelines on how to do the monitoring, e.g. on how to secure the independence
- No clear standards to be used when monitoring, e.g. the use of diaper and different standards on the use of means of restraint
- Step by step approach trying to tackle the issues as they come – guidelines and standards to be developed through practical experiences
- A need for further exchange of standards and experiences in order to strengthening the quality of the monitoring
- Welcoming initiative to develop a special training for those who are monitoring forced return flights