# Advancing Alternative Migration Governance

## ADMiGOV

# EU Exit Regimes in Practice: Case Studies from the Netherlands, Spain, Germany and Denmark

**(Deliverable 2.2)**

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## Publication information

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# 1. Introduction

Enforcing the exit of irregular migrants from EU Member States, and the EU as a whole, is undoubtedly one of the most politically charged and operationally contested aspects in EU migration governance. By the term exit regime we refer to all the institutions, procedures, and specific measures that are meant to ensure that irregular migrants with an order to leave an EU Member State will exit – one way or another – the sovereign territory of that particular country. In our terminology, an exit regime includes two prevalent forms of ensuring that irregular migrants leave a certain country: 'forced return' (also referred to as deportation, expulsion and forced removal) and so-called 'voluntary return' (which comes in different modalities, mostly differentiated according to the level of assistance that is provided to the migrant). There is a third form, which is often referred to as 'independent return', and is meant to capture irregular migrants who decide to leave an EU Member State without informing and/or drawing on the services of any state or non-state organization that work within the exit regime. Strictly speaking, and in our understanding of it, independent return forms part of an exit regime, as the decision of both regular and irregular migrants to leave a certain Member State independently can be largely influenced by the exit regime which is at work (as well as various other factors). However, this reports concerns the ways in which state and non-state actors actively enforce the exit of irregular migrants.

We use interchangeably throughout the report the terms exit regime, exit system and exit model. In using these terms, we clearly aim to capture the entire continuum of both state institutions and non-governmental organizations that are involved in implementing policies in the field of exit (see Kalir and Wissink 2016). While various state institutions are responsible for administering forced returned, the operation of voluntary return is mostly outsourced by Member States to local and international NGOs as well as to the IOM. Our research and analysis encompass the experience of all these actors and the collaborations between some of them. We paid close attention to the ways in which forced and voluntary returns operate as complementary or opposing approaches according to different actors.

This report aims to document and analyse the experiences and views of those who operate in the most practical ways the exit regime in four different Member States: the Netherlands, Spain, Germany and Denmark. Our point of departure is that the implementation gap in the exit field – between the rules and regulations that prescribe the return of all irregular migrants in EU Member States and the actual realities of there being millions of migrants who reside in EU territory with an irregular status – is in important ways the result of the ways exit regimes are operated on the ground. As documented and explained in D2.1, there is no reliable database at the EU level and most Member States when it comes to the number of irregular migrants within a given state. What we do know for certain is that a substantial gap exists between the number of orders issued to irregular migrants to leave EU Member States and the number of migrants who actually left. Evidently, this gap is partly explained by the fact that irregular migrants often have an obvious interest to evade a return order and remain irregularly in the EU. Yet, it is equally evident that this gap also results from the particular challenges that those who implement return policies confront in trying to expedite and enforce all forms of return.

It is important to flag from the outset that there are as many exit regimes operative in the EU as there are Member States. Given that there is no unified and abiding EU policy on the issue of

exit, it is up to each Member State to establish and operate its own specific exit regime. In the 2020 Pact on Migration and Asylum, as well as in earlier Directives and communications, the European Commission has provided basic guidelines for operating returns in all Member States, yet the implementation on the ground has always been shaped by existing organizational arrangements and cultures. Discretionary power plays an important role in the ways state and non-state actors interpret the 'spirit of the law' or 'bend' it in one way or another according to their own personal, professional and/or ethical viewpoints. It has therefore been the aim of the report to examine these on-the-ground workings of the exit regime in 4 different case studies. In the following section we provide an overview of our methodology, followed by detailed reports on each of the four case studies in which we conducted our research. The report is concluded by highlighting our main findings and pointing at constructive directions in thinking up improvements – and indicators to measure them – when it comes to policymaking and implementation in the field of exit .

A remark on the role of Frontex in the field of exit is due before we move on. As we documented and analysed in D2.1, the European Commission has been investing exponentially in Frontex, by expanding its budget, personnel, infrastructural capacities and mission. Frontex is involved in EU exit regimes both in direct and indirect ways, for example, by playing a crucial role in the implementation of the EU-Turkey Statement or in increasingly assisting Member States to operate Entry at EU borders. In more direct ways, Frontex assists and also coordinates some of the efforts of Member States when it comes to operating forced removals; for example, deportation flights. At the same time, Frontex is currently being sharply scrutinized by the European Parliament, the EU Ombudsman, and the European Anti-Fraud Office.[1] Since the overall role of Frontex in the field of exit is the subject of a separate report (D2.3), in this report we have limited our research to the role of Frontex as seen and evaluated by those who work within the exit regimes of the four Member States which we studied.

## 1.1. Methodology

The report covers four cases studies of the exit regimes in the Netherlands, Spain, Germany and Denmark. The choice for these four case studies was guided by the following considerations. Spain represents a case of a Member State with an EU external border, thus having to implement exit policies in close relation to the effects of its Entry regime. The Netherlands and Germany are both considered by many migrants and refugees to be desirable destinations at the wealthy northern part of the EU. It is therefore interesting to examine whether these two states have gravitated towards a similar implementation of exit regimes or show some important divergences. Finally, Denmark represents a case of a Member State that has recently adopted a more aggressive approach towards the presence of irregular migrants and refugees and is now pursuing a controversial model combining deterrence measures with plans for externalizing asylum processing and refugee residence permits to locations outside European territory, plans which have periodically resurfaced in Northern European politics since the 1980s.

We would have ideally included also a Member State at the eastern European borders, and Poland was our first choice for such an additional case study. Unfortunately, due to a lack of

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[1] See for example: https://www.statewatch.org/analyses/2021/frontex-investigations-what-changes-in-the-eu-border-agency-s-accountability/

funding for field research, we had to settle for 4 case studies in which our ADMIGOV-counterparts could operate the research within the budgetary limitations we faced.

Field research for this report was originally designed to be ethnographic in essence, including interviews with several actors at central state institutions and non-governmental organizations, as well as frequent visits to key sites and daily observations of the work of those who implement exit regimes on the ground. Unfortunately, our research was severely affected by the outbreak of the Covid-19 pandemic exactly at the time that fieldwork was planned to commence in February 2020. We first opted for delaying fieldwork in the hope that conditions would become more accommodating but, in fact, the opposite happened, and face-to-face interactions or field site visits became impossible. Consequently, we resorted to an online qualitative research that was performed mostly by interviewing single actors or conducting a small focus group by having a few members of the same organization present on an online video conference. For the case studies on Germany and Denmark the research team from the University of Copenhagen coupled such interviews with a mixed methods approach working with publicly available policy documents, budgets and reports. This was used to generate two quantitative datasets on exit operations from Germany and Denmark. For both these cases, the datasets allowed for the building of bar charts timelines and scatter graphs visualizing patterns and trends and geographic or chronological dynamics in multi-leveled European exit governance.

In the start of our research, we had no way to assess how long the Covid-19 pandemic would last, and we therefore deliberately opted to leave out the possible effects of Covid-19 on the exit field in our interviews with informants. We believed it was better to understand the field as it had been operating in recent years, rather than to try and capture the impact of the unusual circumstances that were created by the Covid-19 pandemic. Obviously, almost all our interviewees have made references to the pandemic, and to the extent that they explained how it affected them and the exit regime, we have included such information in the report. In hindsight, we now understand that Covid-19 might be of immense importance in reconfiguring the entire return as well as Entry field in the EU for the year to come. It is therefore clear that a follow up study will be required to supplement this report with a clear focus on the impacts of Covid-19.

Access to some of the key state institutions that are charged with implementing exit regimes has proven difficult in our project as in the attempt of numerous other researchers in Europe in recent years (Kalir et al. 2019). Several actors agreed to collaborate with our research but insisted doing so anonymously; something we respected and carefully implemented in this report. Other actors refused our requests for an interview, mentioning one or more of the following reasons: lack of time, the fact that research on the topic had been already conducted, not considering their institution to be directly involved in implementing an exit regime, not having the authorization to collaborate with our research. As for the latter reason, we then always contacted the higher authority which could potentially authorize our research but often had no or a negative response. We have made note of such rejections for collaboration with our research project at each of the case studies in the respective chapters.

Chapters 2-5, on the four case studies, were each written by a separate research team that was based in that country and in charge of field research, analysis, visualizations and the writing up of a sub-report on that specific exit regime. These are the distinctive research teams for the four case studies: the Netherlands (Oomkens and Kalir), Spain (González Beilfuss and Vallbé ), Germany (Geschke and Lemberg-Pedersen), Denmark (Lemberg-Pedersen and Halpern).

There have been marked differences in access to the field in the four case studies, not least due to different effects of the Covid-19 pandemic in each state. This variation accounts for differences in the breadth and depth of each case study as well as for the usage of language and terminology. While we attempted to streamline our use of terminology with respect to the field of exit , some vernacular terms have not always been translatable to a generic term and were thus kept and explained in their particularity. Most notably, access in Spain has been extremely difficult and the sub-report on this case study is therefore significantly less developed.

## 2.   Dutch case study

### 2.1. Introduction

### *2.1.1. Case-study of the implementation of return policies in the Netherlands*

This sub-report for Advancing Alternative Migration Governance (ADMIGOV) deliverable 2.2 includes a case-study into the perceived challenges, efficiency and 'success' of the Dutch exit regime by the institutions and actors responsible for the implementation of return policies. To provide a complete picture of the operative exit regime in the Netherlands, we begin this report with an overview of the actors and institutions that work on exit procedures. Subsequently, we present and analyse the perceptions of interlocutors involved in the implementation of the Dutch return policies.

In our desk research for WP2 (ADMIGOV deliverable 2.1) we found that investments in exit procedures, on EU and national levels, have increased consistently and substantially in recent years, while return rates have not seen a similar sharp rise. Even though the Netherlands belongs to the five EU Member States with the highest verifiable return rates, we found data that corresponded to this general trend on EU level (Oomkens and Kalir, 2020, p. 49 and 61). Similarly, expenses of pre-removal detention facilities and management in the Netherlands steadily grew from around 7 million in 2016 to around 10 million in 2018 with a relatively small effect on the number of forced returns (Oomkens and Kalir, 2020, p. 39; Ministry of Justice and Security, 2021, table 391). Furthermore, we found that voluntary return programs are (slightly) more cost-effective than the operational model for pre-removal detention and forced return (Oomkens and Kalir, 2020, p. 72). In this-report, we supplement our findings in deliverable 2.1 with qualitative data, to better understand how the efficiency and feasibility of the Dutch exit regime is experienced in practice by the actors and institutions that implement it.

On 15 December 2011, the Dutch government integrated the EU Return Directive 2008/115 into the existing Dutch Aliens Act from 2000 (Vreemdelingenwet 2000).[2] The Return Directive obliges Member States to issue return decisions and entry bans against third-country nationals without a permit to stay in the EU, and also includes rules with regard to pre-removal detention. In 2014, the Dutch government authorized a study into the implementation practices and perceived

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[2] Staatsblad van het Koninkrijk der Nederlanden, https://www.eerstekamer.nl/behandeling/20111230/publicatie_wet/document3/f=/vix1f4j71dmi.pdf (11 December 2011). The main purpose of the Return Directive is that illegal third-country nationals leave the territory of the Member States. Parliamentary papers II 2010/11, 32 420, no. 14, p. 2.

effects of the Return Directive in the Netherlands, with a focus on the imposition of an entry ban. The study revealed that employees working in the migration chain experienced a dilemma between efficiency on the one hand and care/diligence on the other hand (Leerkes and Boersema, 2014: 48). This study also pointed out that, according to these employees, the implementation of the Return Directive led to greater professionalism in the return process, although they also experienced an increase in administrative burdens and time pressure (ibid.). Another important finding was the fairly large consensus among employees about how the imposition of an entry ban hardly had any deterrent effect and did not lead to independent returns of rejected asylum-seekers (ibid.: 40). The study concluded that a more extensive study was necessary to better understand if an entry ban coerces returns (ibid.). As of the time of writing our report in 2020, the Dutch government has not commissioned such a study.

In June 2019, another study that had been commissioned by the Dutch government was published on the efficiency of the Dutch return policy (van Zwol, 2019). The purpose of this study was to examine all aspects that influence why third-country nationals who were issued a return decision stay in the Netherlands for long periods of time. The study also looked at possible solutions to long-term residence without permanent right of residence (WODC, 2020). To increase the efficiency of Dutch return policy, the van Zwol study recommended investing in bilateral agreements with countries of origin to increase forced returns, as well as in the provision of financial means to NGOs working on voluntary return and to third-country nationals who decide to adhere voluntarily to a return decision (van Zwol, 2019: 57).

In this case-study we have elicited insights from practitioners in the field of forced and voluntary return with respect to van Zwol's recommendations and, more generally, the pros and cons of the current Dutch exit regime. Remarkably, the van Zwol study only focused on the effective return of rejected asylum-seekers. This is not coincidental, as on EU level and the level of Member States, the return of rejected asylum-seekers is high on the political agenda (cf. Kalir 2017a). However, as some interviewees in this report have pointed out, only a more comprehensive and realistic approach to asylum, migration, and return policy – including the reasons why people migrate in the first place –can alleviate the current deadlock in asylum and return procedures. Alternative legal pathways to Europe for those who are not eligible for asylum but do not see any future perspective in their country of origin, in addition to readmission agreements which are transparent and include legal safeguards for returnees, can in turn lead the way to a more effective, operational, and humane exit regime.

### 2.1.2. Institutions

First of all, to understand how migration and exit policies and their implementation in the Netherlands work, it is of importance to include in this case study the Migration Policy Directorate (DMB) of the Ministry of Justice and Security, which is politically responsible for the development of new policy frameworks on exit (Ministry of Justice and Security, 2020). The Central Organization for the Reception of Asylum-Seekers (COA), the Immigration and Naturalisation Service (IND), and the Repatriation and Departure Service (DT&V), are responsible for the implementation of the policies formulated by DMB.

Second, a thorough analysis of exit procedures and their implementation starts with an inquiry into the views of actors working on entry governance. In the Netherlands, the **IND** is responsible for the procedural entry and admission of all third-country nationals who apply for a permit to stay in the Netherlands. When the IND (and/or a court) rejects an application to stay this automatically stipulates the issuing of a return decision. This return decision in principle requires third-country nationals to leave the Netherlands of their own accord within 28 days[3] – failure to leave within the required period leads to the imposition of an entry ban, which prevents a re-entry into the Schengen Area for a certain amount of time (between 1 and 20 years).[4] A return decision is also issued if a residence permit expires or is revoked by the IND. Furthermore, the Royal Netherlands Marechaussee (KMar) and the Aliens Police (AVIM) are also authorized to issue a return decision to third-country nationals who do not possess a permit to stay in the Netherlands. Such decisions are, for example, issued at the border or during police (street or house) inspections.[5]

When the Aliens Police, Identification and People Trafficking Department (AVIM) encounters a third-country national without a permit to stay during a police inspection or an arrest, the third-country national is identified through a finger scan, application metrics, and information obtained from the DT&V, COA and IND. AVIM checks whether the voluntary departure period still applies to a third-country national. AVIM also checks whether the persons concerned can be sent back to a country of origin, if they have the financial means to travel back to a country of origin, and if it is possible to keep them in pre-removal detention (DJI).[6]

At the COA-shelter, asylum-seekers are obliged to participate in programs aimed at informing, stimulating and raising awareness about return.[7] If the application for a permit to stay concerns an asylum request, a rejection and return decision result in an obligation for the third-country national concerned to leave the COA-shelter (sometimes immediately, most often after 28 days) – unless a lawyer appeals the rejection.[8] The DT&V can assist in obtaining travel documents and/or can refer third-country nationals who meet certain requirements[9] to an Assisted

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[3] Article 27 of the Aliens Law 2000, URL https://wetten.overheid.nl/BWBR0011823/2020-05-14 (accessed 09.08.20). The term to leave the leave the Netherlands can be lowered to 0 days if the IND has reasons to believe that a third-country national will not leave voluntarily; has committed serious criminal offenses; or because the asylum application was ill-founded: Rijksoverheid, 'Terugkeerbeleid', URL https://www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/terugkeerbeleid (accessed 09.08.20).

[4] Article 62 of the Aliens Law 2000, URL https://wetten.overheid.nl/jci1.3:c:BWBR0011823&hoofdstuk=6&afdeling=1&artikel=62&z=2020-05-14&g=2020-05-14 (accessed 09.09.20) and Immigration and Naturaliation Service (IND), 'Inreisverbod, terugkeerbesluit en ongewenstverklaring', URL https://ind.nl/paginas/inreisverbod-terugkeerbesluit-en-ongewenstverklaring.aspx (accessed 09.08.20).

[5] https://www.rijksoverheid.nl/onderwerpen/terugkeer-vreemdelingen/terugkeerbeleid.

[6] Interview AVIM chief of 'immigration affairs and migration crime' (August 2020).

[7] Artikel 19 Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005, URL https://wetten.overheid.nl/jci1.3:c:BWBR0017959&hoofdstuk=V&artikel=19&z=2020-09-18&g=2020-09-18 (accessed 09.09.20).

[8] Artikel 3 Regeling verstrekkingen asielzoekers en andere categorieën vreemdelingen 2005, URL https://wetten.overheid.nl/jci1.3:c:BWBR0017959&hoofdstuk=II&artikel=3&z=2020-09-18&g=2020-09-18 (accessed 09.07.2020).

[9] The IOM for example only provides AVRR to third-country nationals from specific countries and who can obtain their own travel documents: IOM, 'Voluntary Return', URL https://iom-nederland.nl/en/voluntary-return/leaving-the-netherlands and Repatriation and Departure Service (DT&V), 'Ondersteuning bij terugkeer', URL

Voluntary Return Program (AVRR)[10] organised by the International Organisation for Migration (IOM)[11] or by various NGOs working on voluntary return[12] – all funded by the DT&V.

> The voluntary return program provided by IOM facilitates basic pre-departure services such as counselling, an airline ticket, and support for obtaining travel documents. This basic scheme also provides a financial contribution of 200 euros per adult and 40 euros per accompanying child for most countries, in order to be able to meet the initial post-return needs. In addition to this standard scheme, third-country nationals who return independently or via an Assisted Voluntary Return and Reintegration (AVRR) program are eligible for post-return reintegration support via IOM – which includes a maximum of 1800, - EUR per adult, 2800, - EUR per minors returning with their family and 2800, - for unaccompanied minors. This reintegration support is not paid in cash, but is provided in the form of goods and / or services (so-called "in kind" support). The amount can be spent on an income-generating activity, such as starting a business or an investment in an existing business of friends or family. In addition, the support can also be used for training and, if deemed necessary, for housing (van Zwol, 2019: 28).

When an asylum-seeker receives a rejection and a return decision, s/he is invited by the DT&V for voluntary return counselling – even if appeal procedures are still ongoing.[13] During counselling meetings, the DT&V also informs rejected asylum-seekers about the possibility of forced return if there is no cooperation with voluntary return procedures. If a third-country national decides not to adhere to a return decision, for example because s/he declares to refuse leaving voluntarily,[14] or does not go to DT&V return counselling appointments,[15] the DT&V determines that the person concerned does not cooperate with return procedures. This means that the DT&V will start to prepare the forced return of the person concerned.[16]

The DT&V can take various supervisory measures to prevent a third-country national from absconding forced return procedures. For example, by collecting identity- and travel

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https://www.dienstterugkeerenvertrek.nl/ondersteuning-bij-terugkeer/documenten/publicaties/2018/01/22/landenlijst (accessed 09.08.20).

[10] In the Netherlands, this program is called 'Return and Emigration of Aliens from the Netherlands', or the REAN-program.

[11] Vreemdelingencirculaire A3(5), vertrek en uitzetting, https://wetten.overheid.nl/BWBR0012287/2014-04-01.

[12] The Ministry of Justice and Security, 'Ondersteuning bij Terugkeer', URL https://www.infoterugkeer.nl/terugkeerprojecten/overzicht-projecten/index.aspx?select=1&q=&df=01-01-0001&dt=31-12-9999&dctermsType=&kw=&dl=False&SortBy=Datum (accessed 09.08.20).

[13] Vreemdelingencirulaire A3(4.3) and: DT&V, Return and Departure Guidelines, 16 January 2015, p. 31: "The supervisor will then conduct the first departure interview no later than calendar day 10 [after the decision in the general asylum procedure]. (...) If necessary, the supervisor will draw up an LP assignment and submit it to the Laissez Passer department of the DT&V. This department will then, in the four-week departure period, submit the LP assignment to the relevant diplomatic representation, so that a presentation in person can quickly follow."

[14] Afdeling Bestuursrechtspraak van de Raad van State (ABRvS) 23 april 2009, JV 2009/315, ve09000658; ABRvS 20 oktober 2011, JV 2011/503, ve11002603.

[15] The requirement to cooperate with return procedures includes the obligation to accept invitations from the Ministry of Justice and Security for return counselling appointments with the Repatriation and Departure Service (DT&V), see for more information: ABRvS 23 July 2019, 201710140/1/V1, ECLI:NL:RVS:2019:2516.

[16] https://www.vreemdelingenvisie.nl/vreemdelingenvisie/2020/02/leg-mij-uit.

documents[17] or via an agreement that the third-country national concerned will report regularly to the Aliens Police.[18] If the DT&V determines that the person concerned will not comply with the agreed supervisory measures or determines that a lighter means (such as the duty to report) will not prevent him or her from absconding, pre-removal detention can be imposed. This may only be used as a last resort and under strict conditions. For rejected asylum-seekers living in a COA-shelter this means they may receive an unannounced visit from the Transportation Services (DV&O) (and sometimes AVIM) executive officers, to be moved from the COA-shelter. Afterwards, they will meet with a DT&V officer who legally examines if detention pending forced return can be imposed. However, in practice, most asylum-seekers who have exhausted all legal remedies disappear from the COA-shelter before the DT&V can impose a pre-removal detention measure. They are then officially registered to have left the Netherlands 'with an unknown destination'.[19] Most of the times, this group of illegalized migrants goes 'under the radar' of state supervision.

> To reach rejected asylum-seekers living 'under the radar' of state supervision in the Netherlands, the Ministry of Justice and Security launched a new pilot-program at the end of 2018 called the *Landelijke Vreemdelingen Voorzieningen* ('National Aliens Services'). The goal of the LVV is to provide housing, day-care activities, and legal counselling to rejected asylum-seekers to find a durable solution to their situation – this means either legalization in the Netherlands or return to the country of origin. Rejected asylum-seekers who stay in LVV-facilities are obliged to cooperate with legal counselling and/or return procedures. The LVV is a collaboration between the Ministry of Justice and Security, DT&V, AVIM, IND, five municipalities, NGOs working on legal stay, and NGOs working on return).

Forced return may also occur immediately after refusal of entry at the border.[20] Criminal prosecution can be initiated in the event of the use of false travel documents.[21] The number of people in the Netherlands who are refused entry at the border and are immediately deported (or kept in border detention first) constitutes almost half of the total forced return rate.[22] After a decision to refuse entry, the person concerned must immediately leave the country on the basis of Article 5 of the Aliens Act. In order to prevent illegal entry, the person who has been refused entry may be placed in detention pending forced return on the basis of Article 6 of the Aliens Act.

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[17] Vreemdelingencirculaire (A), 8. Bevoegdheden ten aanzien van reis- en verblijfsdocumenten, https://wetten.overheid.nl/BWBR0012287/2021-01-01/.

[18] Vreemdelingencirculaire (A), 10.3.2. Meldplicht in het kader van terugkeer, https://wetten.overheid.nl/BWBR0012287/2021-01-01.

[19] Third-country nationals are registered to have left with 'an unknown destination' at the moment they have left the (asylum) reception centers without notice. See for example: Ministry of Justice and Security, 'APM Analyse: Alleenstaande minderjarige vreemdelingen die met onbekende bestemming vertrekken'. URL https://www.rijksoverheid.nl/documenten/rapporten/2020/03/23/tk-bijlage-apm-analyse-v1 (accessed 6 November 2020).

[20] Art. 3.1 Aliens Act 2000. Admission may be refused if the purpose of the trip is not clear or contrary to the purpose stated during the visa application, if insufficient financial means are available, or if the migrant is a threat to public order or national security. See also art. 2.1. Vreemdelingenbesluit 2000.

[21] Art. 225 Criminal Code.

[22] In 2018, a total of 5.900 third-country nationals were deported. Of the 3.400 third-country nationals rejected at the border, 2.500 were deported immediately and 860 persons requested asylum (Ministerie van Justitie & Veiligheid, 2020: 36 and 44).

The forced return of third-country nationals from the Netherlands is organized in several ways. Most often, forced returns are organized via a regular scheduled service from an airline company such as KLM, which is also used by other passengers, e.g. for holiday or business purposes (de Nationale Ombudsman, 2015). Another possibility is forced return via a so-called governmental flight. These flights are specifically chartered for forced return purposes. Such operations may take place in cooperation with other countries, referred to as Frontex-flights, but it may also occur that the Dutch government charters their own plane. The Frontex-flights are managed and financed by Frontex.[23] The Royal Netherlands Marechaussee (KMar) is responsible for the actual forced return and escorting of third-country national on their flight back to their (assumed) country of origin. The KMar falls under the responsibility of the Ministry of Justice and Security for the performance of its duties under the Aliens Act.[24]

## 2.2. Methodology

For our case study in the Netherlands, we approached all the above-mentioned institutions. Three of them declined or did not respond to our repeated invitation for an interview: the asylum-seekers' reception facility (COA), the Royal Netherlands Marechaussee, and flag carrier company KLM Royal Dutch Airlines. COA declined our invitation for an interview, explaining that "they are only a reception facility that does not facilitate or organize returns like the IND or the DT&V do". In our effort to try again we replied that we were interested to learn more about their return case management. To date, we have not received an answer. Incidentally, we were approached by a COA caseworker, who wanted to talk to us for the sake of this study but asked to remain anonymous. The Royal Netherlands Marechaussee and KLM Dutch Royal Airlines did not respond at all to our inquiry for an interview.

Because of the coronavirus pandemic, some of the planned interviews were postponed from April-June 2020 to July-September 2020. Another implication of the coronavirus pandemic on our fieldwork was that most interviews had to be conducted online. Because most of our interviews were held in Dutch, the quotes in this sub-report are all translated from Dutch to English by the authors. Table 1 on the next page provides an overview of the 17 interviews we have conducted with a total of 21 interviewees.

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[23] See for more information Oomkens and Kalir, 2020.
[24] Article 47 Aliens Act 2000, URL
https://wetten.overheid.nl/jci1.3:c:BWBR0011823&hoofdstuk=4&afdeling=1&paragraaf=1&artikel=47&z=2020-05-14&g=2020-05-14 (accessed 09.09.20); Vreemdelingencirculaire 2000 A3 (6.8), URL
https://wetten.overheid.nl/BWBR0012287/2020-10-01 (accessed 09.09.20).

Table 1. Overview list of interviewees

| | Organization | Interviewee(s) | Position | Date |
|---|---|---|---|---|
| International Level | IOM NL | Pieter Maas | Manager AVRR | 12.5.2020 |
| | IOM NL | Hans van Rhee and Pieter Maas | Counsellor AVRR and manager AVRR | 19.5.2020 |
| National level (Ministry of Justice and Security) | Management Board for Migration Policy (DMB) | Irene Ritman | Coordinating policy officer (asylum, reception and return) | 29.7.2020 |
| | Immigration and Naturalisation Service (IND) | Anonymous | Director and coordinating policy officer (asylum) | 9.9.2020 |
| | Management Board for Migration Policy (DMB) and Repatriation and Departure Service (DT&V) | Rianne Lannoije (DMB) and Peter de Koster (DT&V) | Project leader LVV-program and operational coordinator DT&V | 8.7.2020 |
| | Repatriation and Departure Service (DT&V) | Jannita Robberse and Peter Bosch | Director and coordinating policy officer (return and pre-removal detention) | 7.9.2020 |
| | Custodial Institutions Agency (DJI) | Roger Pellemans | Director | 13.7.2020 |
| | Aliens Police, Identification and People Trafficking Department (AVIM) | Manuel Mulder | Chairman (supervision and admissions) | 7.9.2020 |
| | Central Agency for the Reception of Asylum-Seekers (COA) | Anonymous | Caseworker | 23.9.2020 |
| Local level | Municipality of Utrecht | Jan Braat and Niene Oepkes | Senior policy officers (migration and integration) | 21.7.2020 |
| | Municipality of Amsterdam | Lieselot Spliet | Program manager ('undocumented') | 6.7.2020 |
| | Municipality of Rotterdam | Tim Somers | Advisor on immigration affairs | 7.7.2020 |
| Civil society | ASKV / Refugee Support | Petra Schultz | Coordinator legal and social support team | 22.6.2020 |
| | Dutch Refugee Council | Akke de Hoog | Casemanager voluntary return program | 1.7.2020 |
| | Dutch Refugee Council | Sabine Koppes | Coordinator legal team | 15.7.2020 |
| | GoedWerk Foundation | Josephine Jacobs | Project coordinator voluntary return program | 7.7.2020 |
| | Migration expert | Judith Sargentini | Former Member of the EU Parliament | 23.3.2020 |

## 2.3. Research findings

### 2.3.1. *Estimate of stock of irregular migrants in the Netherlands*

When asked about the total stock of irregular migrants present in the Netherlands, most of our interviewees referred to the latest estimation (2012-2013) made by the Research and Documentation Center (WODC) of the Ministry of Justice and Security, although they also acknowledged that this was an outdated study. This study estimated a total of 35,000 irregular

migrants (or third-country nationals without a residence permit) to be present in the Netherlands. Only the AVIM officer noted that he had a more recent update of about 30,000 to 60,000 irregular migrants, according to a calculation made by the DT&V, IND, the Ministry of Foreign Affairs and the Royal Netherlands Marechaussee. This estimation is based on the number of migrants who left the asylum-seekers centres (COA) with "an unknown destination" (MOB) over a few years. The AVIM officer also stressed that these numbers must be understood as an estimation, because according to him only 10% of the third-country nationals who leave MOB stays in the Netherlands while the rest "walk around Europe".[25] He added that AVIM typically encounters those who remain in the Netherlands in cases of shoplifting or illegal residence. Contrarily, the DT&V director acknowledged not knowing how many persons who leave MOB are effectively in the Netherlands, because the DT&V does not know where they are and it is difficult to find it out.[26] AVIM may encounter 10%, but it is unclear – and probably impossible to know – how many third-country nationals without a permit reside in the Netherlands "under the radar" and never come in contact with AVIM.

In our view, an estimate of the irregular migrant population in the Netherlands based on MOB cannot be reliable, for at least two reasons. First of all, because the term MOB only refers to persons who leave asylum-seekers centres with an unknown destination and does not include, for example, visa-overstayers. Second, because it is remarkable that MOB is used as an indicator to come to an estimate stock of irregular migrants present in the Netherlands, while it is used – in a precisely opposite way – as an indicator for return by the DT&V.[27] This shows that there are currently no reliable data available to come to a fully-fledged stock estimate of irregular migrants in the Netherlands. As argued in ADMIGOV deliverable 2.1 (Oomkens and Kalir, 2020, p. 81), this should be a concern to everyone working in the field of migration policy, because well-researched estimates with clear, traceable origins have proven to be not only feasible, but also essential to an informed, professional and honest political and public debate.

In October 2020, after conducting all of our interviews for this study, an update of the stock population of irregular migrants in the Netherlands was published. The researchers of the WODC concluded that the stock population of third-country nationals without lawful stay in the year mid-2017 and mid-2018 was between approximately 23,000 and 58,000 persons (WODC, 2020). The study was based on apprehension data of AVIM and on registration data provided by IOM. Important to remember here is that this estimate is based on data regarding third-country nationals without permit who are "visible" to the state authorities, while a substantial aspect of the life of this population is evading state authorities.

The operational coordinator at the DT&V pointed out that the estimates of the total stock of irregular migrants in the Netherlands vary widely. At the DT&V itself, about 8000 to 9000 third-country nationals without a permit to stay are "in the caseload of DT&V".[28] The DT&V therefore only works with a small percentage of the estimated stock of irregular migrants in the Netherlands. According the DMB policy officer (asylum, detention, return), this explains why data about return rates only concern asylum-seekers and migrants with a criminal background. She noted that unlike asylum seekers in COA-shelters, there are many other third-country

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[25] Chairman (supervision and admissions) at the Aliens Police, Identification and People Trafficking Department (AVIM).
[26] Director at the Repatriation and Departure Service (DT&V): 26:26.
[27] In the reports of the Ministry of Justice and Security, "MOB" is referred to as persons who leave independently without state supervision: Ministry of Justice and Security, Rapportage Vreemdelingenketen (2018), p 42.
[28] Operational coordinator at the Repatriation and Departure Service (DT&V): 7:58.

nationals without a permit whose location is unknown to the state authorities, and are therefore not in the caseload of DT&V:

> *Now I also have to say that the DT&V only focuses on rejected asylum-seekers and people who fall under criminal law, so we only work on the departure of a very small group. For example, we never actually deal with third-country nationals who fall under regular migration law. These are the people who had a visa for study or for work or for family reasons. There is almost no control on this [group]. So that is a group that you do not see in our departure figures.[29]*

According to the DMB policy officer the reason for this lack of governmental handling of regular migration law is because it is seated in administrative law, which has as a starting point the trust of the government in civilians. Therefore, if a regular permit expires, the Dutch government expects the person concerned to leave on his or her own – although the DMB policy officer also acknowledges that the Dutch government knows that this does not always happen. According to this policy officer, government interference only starts if a third-country national without a permit ends up in criminal law, or when the situation concerns an asylum-seeker that does not want to leave the COA-reception facility or does not want to cooperate on establishing his or her identity and nationality.[30]

In sum, there is currently no fully-fledged and reliable estimate of the stock populations of irregular migrants in the Netherlands. The DT&V and AVIM have a clear overview of rejected asylum-seekers who choose to remain in an asylum-seekers centres after their rejection and of a minority of third-country nationals without a permit who end up in criminal proceedings. In line with what was pointed out to us by AVIM and DT&V, this means that the voluntary and forced return efforts of the DT&V only cover a small percentage of the total of third-country nationals without a permit in the Netherlands.

### 2.3.2. Voluntary return

Since the introduction of the EU Return Directive in the Netherlands in 2011, the DT&V primarily focuses on stimulating voluntary returns. This means that the first meetings between the DT&V and a rejected asylum-seeker or another third-country national without a permit focus on the obligation of the person concerned to leave the Netherlands and the possibility to do so independently or via an Assisted Voluntary Return and Reintegration (AVRR) program.[31] Currently, two-thirds of all returnees in the Netherlands leaves independently or via an AVRR program, while one-third leaves through forced return procedures.[32] These returns are verifiable and registered returns from the DT&V caseload.[33]

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[29] Policy officer asylum, reception and return at the Managing Board for Migration Policy (DMB): 12:00. In a review of these interviews in January 2021, DT&V added: "DT&V also receives cases from AVIM and KMar, which include foreign nationals who have been placed in custody by AVIM and/or KMar. This does not necessarily concern foreign nationals with an asylum background or people who fall under criminal law (VRIS), but also foreign nationals who have been refused at the border, climbers, foreign nationals who are found during labor law checks, foreign nationals who cannot identify themselves in the event of a violation of the public order, address checks based on (anonymous) tips, foreign nationals who are arrested for (small) violations, etc."

[30] Ibid., at 13:10.

[31] Director at the Repatriation and Departure Service (DT&V): 27:47.

[32] Ibid., at 30:00.

[33] Comment added by DT&V in a review of the interviews in January 2021.

In the Netherlands, the DT&V finances IOM to organize AVRR. According to the DMB policy officer, the presence of IOM is important because for some third-country nationals the threshold to go to DT&V is high; meaning they prefer an independent organization such as IOM. IOM engages in voluntary return counselling and provides consultation hours. IOM is allowed to enter the COA-shelters and pre-removal detention facilities. The reason why IOM is also allowed in detention facilities has to do with the administrative (and not punitive) character of pre-removal detention.[34] Third-country nationals remain in pre-removal detention to keep them "available" for their forced return; however, they are still allowed to opt for an AVRR by IOM. Voluntary returns with IOM from pre-removal detention facilities also occur.[35]

Third-country nationals can be referred to IOM by the DT&V, AVIM, the IND, the Dutch Refugee Council, churches, diaspora and embassies. According to the AVRR manager at IOM, the most common referral to their services is by other migrants, because they talk to and inform each other.[36] IOM has agreed certain targets with DT&V regarding the number of returns; however, if these numbers are not met by IOM and there is a good explanation for it (such as the coronavirus pandemic) this will be accepted by DT&V. IOM stays in contact with returnees from the moment of arrival to a year later.

In addition to IOM, DT&V also commissions smaller NGOs to work on voluntary return programming. For this sub-report we spoke to the GoodWork Foundation (GoedWerk), amongst others, which has provided assisted voluntary return programming since 2012. A project coordinator of the voluntary return there told us that the goal of GoedWerk Foundation has changed somewhat over the years. At first, their main goal was to facilitate as much voluntary returns as possible. Currently, their goals focus more on "good and durable returns".[37] According to the project coordinator at GoedWerk Foundation, a durable return is possible when someone can be part of a (support) network of family and friends again in the country of origin and has access to medically necessary care. GoedWerk has an official instrument to measure sustainability quantitively, but in practice, as the project coordinator indicated, "it is much more ensuring to have a good conversation and to see photographs of returnees – so a qualitative approach is better".[38] The DT&V does not engage in post-return monitoring but leaves this up to the NGOs.[39]

### Efficiency/success

There is consensus that the increased focus on voluntary return programming since is an important one, that may lead to more efficiency of return procedures. Overall, this is in line with the conclusions of the 2019 van Zwol study – although this study also pointed out that the possibility of absconding remains present in voluntary return procedures. An example of how voluntary return programs are more efficient than forced return was pointed out to us by the IND policy advisor (asylum). He noted that when a third-country national wants to return

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[34] Ibid., at 9:45.

[35] Ibid., 10:06. In a review of these interviews in January 2021, DT&V added: "Significant numbers of foreign nationals with IOM leave from detention. This has to do with a risk of withdrawal (upon release, these foreign nationals would go MOB; out of state supervision). In the closed setting of detention, these foreign nationals still choose to leave with IOM. The IOM is present in the detention center several days a week to facilitate departure."

[36] AVRR manager International Organization for Migration (IOM), no record.

[37] Project coordinator voluntary return program at GoedWerk Foundation: 11:00.

[38] Ibid., at 15:13.

[39] Operational coordinator at the Repatriation and Departure Service (DT&V): 54:44.

voluntarily, the DT&V has no need to get involved in arranging the return or requesting laissez-passers with countries of origin.[40] The DT&V can of course assist in facilitating voluntary return by, for example, providing identity documents they have in their possession of potential returnees.

At IOM, our interviewees have welcomed the increased focus on voluntary return, as they have now also developed special programs for families and unaccompanied minors.[41] According the AVRR Manager at IOM, the success of voluntary return programs for rejected asylum-seekers depends on whether the asylum procedure was considered fair by the asylum-seeker concerned. The project coordinator of the voluntary return program at GoedWerk Foundation also noted that the increased presence of voluntary return programs is an important one, especially regarding the durability of returns. She pointed out that the most important reasons for third-country nationals (with or without a residence permit in the Netherlands) to return voluntarily are because of family reasons or because they are homesick. In her view, the success of a voluntary return program has to do with listening to the specific needs of people, providing customized post-reintegration support, and never trying to convince people to return or otherwise pressure them.[42] There is a consensus amongst our interviewees that pressure to return and sanctions do not advance the return process.[43]

## Inefficiency/challenges

- The AVRR manager at IOM noted that the increased funding for voluntary return is a welcome development, but the Dutch local and national authorities must ensure there is no overlap in activities between local NGOs and IOM. This is a challenge, because small NGOs now engage in similar activities as IOM. When it comes to requesting travel documents, this is not useful because small NGOs have no experience with this practice.[44]
- Another challenge IOM refers to is a lack of information provision to migrants. Many migrants are not informed about the work of IOM when they come to their first meeting; most of the times migrants think that IOM works with the national authorities on forced returns. IOM believes that better information provision and outreach activities would provide a lot more clarity and reduce suspicion amongst migrants.
- There is consensus amongst our interviewees from IOM, GoedWerk and the Dutch Refugee Council that an increase in the financial means provided to third-country nationals would support their decision to return[45]; this also echoes the conclusion of the van Zwol study. The AVRR counsellor at IOM pointed out that there is a difference in the financial means that he is allowed to promise to third-country nationals from Northern Africa (e.g. Morocco) as compared to third-country nationals from other countries. This sometimes hampers the voluntary return process.[46] According to the project coordinator at GoedWerk Foundation, the average fee of 1800 euros provided to returnees by IOM is not enough to rebuild their life in the country of origin; especially if

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[40] Coordinating policy advisor (asylum) at the Immigration and Naturalisation Service (IND): 27:31.

[41] AVRR counsellor at the International Organization for Migration (IOM).

[42] Project coordinator voluntary return program at GoedWerk Foundation: 7:43.

[43] E.g. senior policy advisor (migration and integration) at the municipality of Utrecht at 41:00 and coordinating policy advisor at the Management Board for Migration Policy (DMB): 55:00.

[44] AVRR manager at the International Organization for Migration (IOM).

[45] This was a recurring theme in our interviews with IOM, GoedWerk Foundation, the municipality of Rotterdam, the municipality of Utrecht and ASKV/Refugee Support.

[46] AVRR counsellor at the International Organization for Migration (IOM).

their intent is to become an entrepreneur. GoedWerk has another approach in Ethiopia, where they have set-up a project called "microcredit" which provides returnees with a loan to set up their own businesses.[47] However, the impact and outcomes of this project were not yet examined.

- Both the DT&V director and the DMB policy officer pointed out that it was impossible to establish the exact relation between an intervention (e.g. alternatives to detention such as the duty to periodically report) and the certainty of a "controlled departure" (namely, returns that are known to the state authorities).[48] However, the DMB policy officer stressed the importance of alternatives to detention because pre-removal detention is an infringement on human rights within the context of an administrative (not a criminal) breach of law. Furthermore, in her experience, working on return is much easier when the person concerned is not kept in detention.[49] According to the DT&V director, one of the biggest challenges to return procedures is the low public trust in return policies. She mentioned that approximately 70% of all asylum-seekers is not in need of protection.[50]

- In her view, subsequent high rejection rates by the IND, together with "nuisances" caused by rejected asylum-seekers in municipalities, result in a low public trust in return policies. The DT&V tries to change this by financing the IOM and local NGOs to work on voluntary returns, and by working together with local authorities on facilitating departures:

    *(...) If aliens want to go back, it may be easier for them to go to an NGO instead of us, like Solid Road, Bridge to Better, or the IOM. That is fine, it's not about us. It is about what we have to do: facilitate returns. So, we pay for it and we hope that the threshold [to return] becomes a bit lower. But we also hope to increase public support, through our connection with the local authorities and the local community.[51]*

- A challenge mentioned by the operational coordinator at DT&V is the voluntary return procedure of third-country nationals with a medical indication. For these persons, it is imperative that the country of origin provides the same medical care as they receive in the Netherlands:

    *Whether we do that as the State or whether we facilitate other organizations in this regard, that is an implementation question, but I think that there would still be an incentive for people, especially elderly people, who would actually prefer to return, but see that medical facilities are an obstacle to not returning.[52]*

- This challenge was echoed in our interview with the coordinator of the legal and social team at ASKV/Refugee Support. In her view, most third-country nationals with a medical indication need more support to take care of themselves in countries of origin:

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[47] Project coordinator voluntary return program at GoedWerk Foundation: 12:00.

[48] Director at the Repatriation and Departure Service (DT&V): 54:45 and Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 57:00.

[49] Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 57:00.

[50] Comment added by DT&V in a review of the interviews in January 2021: "this percentage is indicative for the period in which the interview was conducted (end of 2020). The rejection rate may vary from time to time; this depends on the influx (many persons from safe countries of origin or not."

[51] Director at the Repatriation and Departure Service (DT&V): 1:12:17.

[52] Operational coordinator at the Repatriation and Departure Service (DT&V): 41:00.

*The first few months will probably be fine, but for those who need twenty years of medication it is going to be difficult to make a decision to return. Sometimes I wonder why we spend so much money on counselling and meetings between all the stakeholders [in the field of migration]. I think some people would return right away if we instead gave all this money directly to them.[53]*

- There is a consensus amongst interviewees that it is a challenge that there are many different institutions and actors with different goals working with rejected asylum-seekers in the Dutch "migration field". While some work on legal stay (of rejected asylum-seekers), others work on their return. On both sides there is a strong notion that the other side puts too much emphasis on either return or legal stay, and that this creates "false expectations" amongst third-country nationals about their future perspective.[54] These two opposing directions are taken to be incompatible.[55]
- Along similar lines, the IND director mentioned that, from the perspective of an executive institution like the IND, the fact that rejected asylum-seekers can apply for a renewed asylum procedure and/or other procedures to receive a residence permit after they had received a first rejection was not efficient or effective.[56] The operational coordinator at the DT&V also notes that it is inefficient to have so many procedures, but that there is also no other way, because these procedures are based on important legal safeguards for refugees:

*You also do not want to say, you can only apply for a maximum of three admission procedures, while perhaps in the fourth procedure it turns out that this person is really a refugee. You don't want to risk sending him or her back, so to speak.[57]*

- According to the operational coordinator at DT&V, return procedures become less effective and more challenging the longer a third-country national has lived in the Netherlands: "People who have just arrived are more willing to return than people who have been here for two, three, five, ten years".[58] In the experience of DT&V employees, return decisions are often only made by third-country nationals without a permit who cannot take care of themselves economically anymore, have grown old and want to go back to their family: "For example, in the past two or three years we have seen quite a number of Moroccans and Algerians return. But they were all over 60s, so to speak".[59] The voluntary return program case manager at the Dutch Refugee Council (VWN) notices that fear and shame towards the family are an important obstacle to return for third-country nationals:

*Fears that they will end up on the street in their country of origin, that they will become homeless there (...) "Have I stayed here for those five years, for ten years, fifteen years, and will I really leave without a residence permit?" This fear also comes from shame towards the family. Shame that I did not succeed in Europe, that I return without having built a house in my country of origin*

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[53] Coordinator legal and social team at ASKV/Refugee Support (no time indication).
[54] E.g. Project leader LVV-program Repatriation and Departure Service (DT&V): 28:41, operational coordinator at the Repatriation and Departure Service (DT&V): 31:39, roject coordinator voluntary return program at GoedWerk Foundation: (18:03) and the coordinator legal and social support team at ASKV/Refugee Support (no time indication).
[55] E.g. Senior policy officer (migration and integration) at the municipality of Utrecht: 19:00.
[56] Director at the Immigration and Naturalisation Service (IND): 04:00-07:00.
[57] Operational coordinator at the Repatriation and Departure Service (DT&V): 34:58.
[58] Ibid.: 48:10.
[59] Ibid., at 48:43.

*and without being able to give money to my relatives. That is really something in which people get trapped.*[60]

- According to the advisor on immigration affairs at the Municipality of Rotterdam, the biggest obstacle for return procedures is the current lack of a sound alternative to return in countries of origin as well as the possibility to re-migrate to the EU if the return is not durable; for example if the returnee is not able to find work in the country of origin:[61]

    *(...) return is a realistic option when you have the opportunity to come here again instead of offering barely any facilities. And at this moment we have to say: 'take 1,600 euros from the IOM, the rest you have to manage yourself'. This is not a helpful incentive for someone who is vulnerable, it is very sad. For this reason, we [the municipality of Rotterdam] have proposed to enter into partnerships with two countries of origin [Ethiopia and Morocco]. We want people to arrive at the airport and have someone waiting for them with the returnees' name on a sign and a bed to offer. Especially if you have not been to your country of origin for 15 years. Currently we haven't arranged all these basic [return] conditions outside the EU.*[62]

- Morocco and Ethiopia are the partnership countries referred to by the advisor on immigration affairs at the Municipality of Rotterdam. In cooperation with GoedWerk Foundation, the municipality of Rotterdam aims to support returnees with their reintegration and search for work. The advisor has tried to convince the DT&V director and the State Secretary of Justice and Security of the importance of such programs, but was not able to. According to him, this is an important obstacle to the success and efficiency of return procedures.[63]
- The senior policy advisors at the municipality of Utrecht agree that it is important to build up a network in the country of origin. In their experience, third-country nationals without a permit do not cooperate with return procedures if the state authorities fail to offer support for post-return reintegration.[64]

### 2.3.3. Forced exit and pre-removal detention

Most of the caseload of DT&V is based on the personal files of rejected asylum-seekers the DT&V receives from the IND, although DT&V also receives personal files of third-country nationals rejected at the border by the Royal Netherlands Marechaussee (KMar) and those who come into contact with AVIM.[65] In 2020, there were about 9000 people in the "caseload" of DT&V, and over the past few years they have received around 20,000 new personal files on a yearly basis.[66] In principle, the DT&V first determines if the person concerned will adhere to the return decision and leave independently or via an AVRR program. However, if the person concerned does not show up once or twice for a meeting with the DT&V, the agency perceives this as an indication that there is no cooperation with return procedures. On that basis, the DT&V may decide to impose a pre-removal detention measure and start forced return

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[60] Casemanager voluntary return program Dutch Refugee Council (VWN).
[61] Advisor on immigration affairs at the Municipality of Rotterdam: 17:00.
[62] Ibid., at 18:07.
[63] Ibid., at 21:00 and 22:21.
[64] Senior policy officers (migration and integration) at the municipality of Utrecht: 45:00.
[65] Director at the Repatriation and Departure Service (DT&V): 21:55.
[66] Ibid.

procedures.[67] In addition to detention, DT&V can also impose other "surveillance measures" such as the duty to report or withholding identity documents. In order to ensure more efficient return procedures in case an asylum application is rejected, AVIM and the KMar confiscate the identity documents of migrants who lodge a request for asylum.[68] If a person leaves MOB, DT&V or AVIM will not actively search for this person, meaning a pre-removal detention measure cannot and will not be imposed.[69] The DT&V director, the operational coordinator at the DT&V, and the AVIM officer, have all noted that this is a particular aspect of (humane) migration policies in the Netherlands. The DT&V operational coordinator added that in doing so, the Dutch government accepts a form of undocumented or irregular stay. Notably, right-wing parties in Dutch parliament continue to argue that all "illegal" migrants must be returned to their country of origin, while only a small percentage of them are de facto known to the Dutch authorities.

### Efficiency/success

There is a consensus amongst interviewees that an effective (forced) return policy depends on investing in the relationship with countries of origin.[70] This is in line with the conclusions in the van Zwol study.

### Inefficiency/challenges

- While most of our interviewees believe that pre-removal detention is crucial for operating an overall effective exit regime,[71] they also think that the time span of 18 months is too long. The director at the Custodial Institutions Agency (DJI) commented that 2-3 months in detention is "more than enough" to determine if forced (and in some cases voluntary) return is an option.[72] This was also echoed by the DT&V director and DT&V policy officer.[73] Although in a review of their statements in January 2021, DT&V added that they are not in favour of shortening the maximum detention period because they expect third-country nationals to be less cooperative when shorter detention periods apply.[74] However, at IOM, our interviewees noted that the fact that someone has been in pre-removal detention for two months shows that this person does not want to return and will therefore probably not return at all. They also noted pre-removal detention is no effective sanction or "big stick" for returns, that it is expensive and leads to little results.[75]
- An inefficiency of current return policies mentioned by the DMB policy officer, are the high costs and time inefficiency that come with (imposing) pre-removal detention. To impose a detention measure takes a lot of time – usually 6 to 7 hours. Therefore, assistant officers prefer not to detain migrants for the purposes of removal:

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[67] Anonymous e-mail correspondence with caseworker at the Central Agency for the Reception of Asylum-Seekers (COA) on 19 June 2020.
[68] Director at the Repatriation and Departure Service (DT&V): 38:10.
[69] Ibid., at 42:00.
[70] E.g. coordinating policy advisor (asylum) at the Immigration and Naturalisation Service (IND): 43:46.
[71] E.g. Director at the Repatriation and Departure Service (DT&V): 35:12.
[72] Director at the Custodial Institutions Agency (DJI): 18:21.
[73] Director and coordinating policy officer (return and pre-removal detention) at the Repatriation and Departure Service (DT&V): 45:00.
[74] In a review of these interviews in January 2021, DT&V added: "It is true that that forced return is in most cases effectuated within 2-3 months. As far as the DT&V is concerned, the maximum detention period should not be shortened. A short maximum detention period entails the risk that foreign nationals wait for their release and will therefore no longer cooperate in their return."
[75] AVRR manager and AVRR counsellor at the International Organization for Migration (IOM).

*The assistant officer to whom you say: "you must now place an alien in custody", does not really like to hear that. A pre-removal detention interview is a lot of work. On average, it takes about six to seven hours. They have to hear someone, they have to take all individual circumstances into account, and also to explain why a lighter measure is not possible. In that amount of time they can handle a lot of criminal cases.[76]*

- Whereas most interviewees agree that pre-removal detention can be an effective measure to enforce returns, the operational coordinator at DT&V and DMB policy officer are critical about the pre-removal detention of people for whom the realization of a forced return will be unlikely because of their nationality. Operational coordinator at DT&V:

*Why do you have a number of nationalities [e.g. Moroccan and Algerian] in pre-removal detention, while the question of whether the actual forced return can take place remains a question mark? Only occasionally we receive (identity) documents either because we managed to have them in order [at DT&V], or because the foreign national says at a certain point: "hey, I have had enough of the pre-removal detention, let me return anyway".77*

The DMB policy officer adds to this that "pre-removal detention often leads to nothing, because if you cannot prove the nationality and therefore cannot establish the identity, the foreign national has to be released from pre-removal detention at some point".[78] Thus, an important challenge to effective return policies is the identification of third-country nationals for the purpose of forced return. This was echoed by the operational coordinator at DT&V:

*Well, if we have to be honest, we never receive documents from a number of countries for the purpose of forced returns. So that is the most important bottleneck for us as the DT&V. Therefore, we actually try to promote independent departure, because in this way you not only ensure the return, but also give the migrant a durable return.[79]*

Because of the difficulty to obtain identity documents from nationals from certain countries (for forced return procedures), the operational coordinator at DT&V deems it important that the DT&V facilitates and strengthens their focus on independent and durable returns. He also noted that this would diminish the probability that migrants would re-migrate to the EU again upon return to the country of origin.[80]

- Another bottleneck of return policy pointed out by the DMB policy officer (asylum, reception and return) has to do with rejected asylum-seekers who do not accept the rejection because economic conditions in their country of origin had not been considered during asylum procedures. In her view, this often concerns families with children who were born in the Netherlands, went to school in the Netherlands and/or have never been in "their" country of origin.[81]

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[76] Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 14:05.

[77] Operational coordinator at the Repatriation and Departure Service (DT&V) at 46:28.

[78] Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 27:00.

[79] Operational coordinator at the Repatriation and Departure Service (DT&V) at 21:30.

[80] Ibid.

[81] Ibid., at 28:30.

*In the research by the Van Zwol Committee, which published a report last year, you also see that families do not accept that the economic conditions are not taken into account. "Why is Armenia safe? Do you even know how poor it is?" Then we try to explain: but that is not a criterium [for asylum]. The poverty, that your children cannot follow the same education there as here, is not a criterium. That is something that we are now really looking at: what can we do so that an alien will also understand the message better?[82]*

On the level of resolving this bottleneck in the asylum and return policy, the approach of the national authorities and local authorities diverges. The DMB policy officer (asylum, reception and return), at the national level, is trying to find out how the Dutch government can convey the message of an asylum rejection and a return decision better. Whereas the advisor on immigration affairs at the Municipality of Rotterdam does not take the return decision as a starting point, but the conditions in the country of origin. He considers it more feasible that families will decide to return themselves if the promise of a house, work, and a good school for their children are part of the return process.

- The DMB policy officer pointed out that there is little opportunity to stay in the Netherlands if you are not eligible for an asylum, work or study permit:

*We are also the only country in the world that knows the "coupling principle" (in Dutch: Koppelingswet). It has brought very beautiful things, but it also brings very bad things. In the Netherlands at the moment, it is said: if you have no legal stay, then you cannot do anything anymore. In Sweden, if your asylum application has been rejected, but you have found a full-time job at a minimum wage and annual contract yourself, you will receive a residence permit based on that status. You can still work in Austria, even if you are not legally a resident.[83]*

The operational coordinator at DT&V also sees an issue regarding third-country nationals who are not eligible for an asylum permit yet cannot (be) return(ed). He finds it interesting to understand more what the *Duldung*-policy in Germany could bring for this group.[84] The same bottleneck was also observed by the senior advisors at the municipality of Utrecht on migration and integration. They pointed out that next to asylum, new legal pathways to migrate to the Netherlands are necessary.[85] The AVIM officer to a certain extent agreed with this and noted that the Netherlands could benefit from people that flee from poverty and migrate for economic reasons:

*I think that Europe wants to protect itself against millions of migrants from Africa now the planet is heating up. And the answer, is it right or wrong, is in the future. But as a human being I think, I wouldn't want to live over there when it is fifty degrees. I would go to Finland too. So, my suggestion would be: don't try to stop them, but try to find out a way of how they can be helpful for our economies. Don't see it as a problem, but see it as a solution. The European countries are giving birth to 1.2 children, so in eighty years, we're empty. That's quite a different view on immigrants and labour.[86]*

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[82] Ibid.

[83] Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 37:00.

[84] Operational coordinator at the Repatriation and Departure Service (DT&V): 57:13.

[85] Senior policy officers (migration and integration) at the municipality of Utrecht: 42:00.

[86] Chairman (supervision and admissions) at the Aliens Police, Identification and People Trafficking Department (AVIM): 37:00.

- Another challenge mentioned by the DMB policy officer is conveying the message to parliamentarians and the State Secretary that return can never be conclusive (in other words: it can never be 100% effective):

    *Well, return is inconclusive, this will never change. That is our first assumption... We have had quite a few ministers in recent years, with whom we always start: Return is never conclusive. Return depends on what the person wants and what the government of the receiving country and the government of the sending country wants. So, you have three parties, and all three are very harnessed. As long as someone does not cooperate or wants to cooperate, in the end, I cannot do anything. There are few cases in which we can actually achieve forced return.[87]*

    In 2019, Dutch return policies were reviewed as inefficient and ineffective by the Dutch Ministry of Justice and Security. The DMB policy officer remembers how she and her colleagues received a lot of criticism, after which she tried to explain again how return policies are never conclusive, that the Dutch government must not look at it that way.

- A challenge regarding Dublin transfers was pointed out by the IND policy advisor. He noted a lack of harmonization between Member States and difficulties with the implementation of the Dublin Regulation on EU level. He was critical about the tendency of the European Commission to pressure Member States to implement even stricter rules ( i.e. the proposed EU migration pact), while the current ones are not being fully implemented. He questioned whether this is effective, especially regarding countries that already have difficulties with the implementation of the existent rules:

    *Before proposing new rules, it would be better to find out why the old rules do not work. And if the reason for this is that the old rules are not implemented well, then the existent rules must be managed better.[88]*

## 2.3.4. Partnerships and cooperation

### Efficiency/success

Amongst most of our interviewees, there is a sense that cooperation in the "migration chain" is streamlined and well-coordinated. Through the descriptions of our interviewees' working history, we found there is much professional mobility for bureaucrats within the migration and exit operative and policy model. For example, according to the IND director, the IND, COA, DT&V, AVIM, Foreign Affairs, policymakers are all cooperating well with each other. This is evident in the direct and fast contact between institutions. Since the Covid-19 pandemic it has become even clearer to the IND director how well everyone can find each other online.[89]

### Inefficiency/challenges

- The IND director noted: "what could be perfected are transfers of information from one organization to another – for example between IND, COA and DT&V – to better adjust to each other's work process".[90]

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[87] Coordinating policy officer (asylum, reception and return) at the Management Board for Migration Policy (DMB): 35:05.
[88] Coordinating policy officer (asylum) at the Immigration and Naturalisation Service (IND): 49:28.
[89] Director at the Immigration and Naturalisation Service (IND): 16:03.
[90] Director at the Immigration and Naturalisation Service (IND): 18:48.

- We noticed a general tension between IOM and voluntary return NGOs regarding different expectations about how the voluntary return process should be organized.
- Complex double role of COA: "The COA caseworker has a complex double role as a confidant who both informs and supports asylum-seekers and also passes on crucial information to the DT&V".[91]
- Challenge regarding the partnership between DT&V and IOM: the IOM wants to stay independent and have a relationship of trust with migrants. Therefore, the IOM cannot share all information they have with the DT&V, only the information that concerns the return process:
  *we are only allowed to share information with DT&V that is related to the return of the migrant. If a migrant receives a laissez-passer and s/he does not return, the LP will go back to the embassy, not to the DT&V. If you start sharing information with the DT&V, you do not have added value anymore. You can come to IOM without a fear of being arrested or being handed over to the authorities. We have a trust relation with the migrant, this is a key issue that we have.[92]*

## 2.3.5. Overview of challenges

Challenges for voluntary return

- Competition between voluntary return NGOs carries the risk of a competitive focus on the number of returns instead of their durability.
- There is no conclusive view about what durability is and how it should be measured.
- Lack of financial means and lack of access to good medical care and medicines obstructs the decision to cooperate with return decisions amongst third-country nationals. Another obstruction to cooperate is the lack of sound alternative to return to in countries of origin as well as the possibility to migrate to the EU again if the return is not durable.
- It is important that voluntary return NGOs remain as independent as possible to preserve and gain trust of third-country nationals who have received a return decision. It is therefore important that these NGOs only share information regarding the return process with DT&V. No other personal information must be shared.
- There is a lack of clear information about perspectives for legal stay in the Netherlands. Informing migrants about asylum and return procedures and all the institutions that work in the "migration chain" would be a first step. Another way to look at it is to create alternative legal pathways to legal stay in the Netherlands, as many migrants apply for asylum, while what they are looking for is a job to take care of their family and send remittances home.

Challenges for forced return & pre-removal detention

- Forced return and pre-removal detention are not cost-efficient.
- A lack of ID or passport makes it difficult for DT&V to start forced return proceedings, even though pre-removal detention can be imposed in the absence of an ID or passport – if the legal criteria to impose detention are met.
- There is a lack of cooperation with countries of origin regarding forced returns, whereas there are no cooperation issues regarding voluntary returns to countries of origin.

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[91] Caseworker at the Central Agency for the Reception of Asylum-Seekers (COA): 27:30.
[92] AVRR Manager at the International Organization for Migration (IOM).

- Return policy can never be conclusive or 100% effective, because there will always be third-country nationals without legal stay or countries of origin who do not want to cooperate.
- The lack of alternative legal pathways to the Netherlands makes the asylum procedure ineffective, because migrants who flee for economic reasons and poverty also end up in the asylum procedure. At both the local and national level, some were open to explore a different pathway to regularization (to recognize both "asylum-seekers" and "labour-seekers").
- Forced return and pre-removal detention are costly and only focus on a small percentage of the total estimated stock of irregular migrants in the Netherlands.
- From the perspective of local authorities and NGOs, the lack of cooperation of migrants and countries of origin with return procedures has to do with a lack of political and public understanding into the various reasons why people migrate (e.g. next to war and persecution also work, school, healthcare) and a lack of alternative legal pathways to work and follow an education for migrants who come from low-income countries of origin.

## 2.4. Conclusion

This case-study evaluated the perceived challenges, efficiency and 'success' of the Dutch exit regime by the institutions and actors responsible for its implementation. Our aim has been to provide a detailed account of the perceptions of our interviewees regarding the implementation of Dutch return policies, in order to come to a more thorough understanding of the perceived institutional challenges and successes of the current exit regime.

On the whole, cooperation and data sharing between national and local institutions working on exit procedures in the Dutch context is experienced as effective and clear. However, most interviewees working at national level expressed concern regarding the lack of collaboration and coordination at EU level. Whereas interviewees at the national level pointed to a lacuna in the coordination between EU Member States, they also claimed that Member States cannot be expected to solve this lacuna alone. Instead, they believe this must be managed and coordinated in a top-down fashion at EU level. On the local level, interviewees pointed to close collaboration between some municipalities throughout the EU, that increasingly share knowledge and good practices about dealing with the presence of irregular migrants at the municipal level.

At the national level, there is a consensus about the importance of investing in the relationship with countries of origin as well as the presence of forced return policies to push forward voluntary returns. However, none of our interviewees had any specific idea about whether more and how much should be invested in the DT&V. At the same time, the DT&V grew steadily over the past ten years in budget and personnel, while return rates remain relatively low.

Furthermore, policymaking at EU level proves to be disconnected from the practical reality of national and local institutions in the Netherlands. The proposed EU Migration Pact, for example, suggests extending the maximum length of pre-removal detention to 22 months, while many interviewees at the national level agree that return from detention most often occurs after 2-3 months. This makes the current maximum of 18 months too long and an excessive punishment for an administrative measure. Only DT&V expressed that shortening the maximum length detention could impede on the cooperativeness of migrants with return procedures. However,

with a lack of practical evidence, it remains unclear if this is an accurate line of thinking. Interviewees in the migration field also tended to support the idea of viable alternatives to pre-removal detention.

NGOs working on voluntary return note that their focus has shifted from facilitating as many voluntary returns as possible to ensuring the durability of returns; lifting personal obstacles to return in order to facilitate a so-called 'soft landing' in the country of origin, and preventing re-migration. As our interviewees at the local and civil society levels pointed out, this focus on durability is time consuming and requires a more personal approach, but will yield more durable solutions over the years and prevent re-migration. While on a more individual level different actors expressed a more flexible and pragmatic attitude towards implementing different approaches, voluntary return NGOs doubted if the Dutch government will be willing to shift its focus from high return rates towards a more durable, humane approach.

There is widespread consensus among our interviewees that the increased focus on voluntary return since 2017 may lead to more efficient return procedures. Along this line of thinking, the IOM and local NGOs have called into question the work of DT&V on forced return, mainly regarding the high cost of forced return and pre-removal detention. More generally, they also question whether forced return is a necessary sanction or "stick" to ensure returns to countries of origin. However, DT&V and the national government continue to place emphasis on control and supervision, in order to prevent absconding. While DT&V funds the IOM and various voluntary return NGOs, that are considered more 'approachable' by irregular migrants, differing concerns between these organizations and DT&V sometimes result in tensions regarding funding, privacy, and the autonomy of each organization.

Throughout the interviews, another clear tension emerged between governmental institutions and non-governmental institutions in the way the exit regime is perceived. From the non-governmental perspective, and increasingly also the local/municipal point of view, cooperation of third-country nationals with return procedures can only be possible if there is a prospect of durable re-integration (e.g. housing, work, education, medical care, network of family/friends) in the country of origin. Amongst these actors there was a consensus that sanctions such as pre-removal detention and forced return do not incentivize migrants to cooperate with return procedures, mostly because these sanctions ignore the reasons behind their initial migration to the Netherlands. While from the governmental point of view while voluntary return is always preferred, forced removal and pre-removal detention are perceived as indispensable to the efficiency of return procedures. Notwithstanding, some government employees (on a personal level) question the necessity of the use of coercive measures. The DT&V stressed that regulations which allow irregular migrants to repeatedly apply for residency or restart a new asylum procedure are hindering the efficiency of return. The DT&V would like to see such regulations made clearer and decisive so that return can be executed more efficiently.

The tensions that build up as a result of these differing points of view appear to overshadow a much bigger question: why is there a distinctive focus on the return of rejected asylum-seekers[93] while their main reason to migrate to the Netherlands are often economic? Among interviewees

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[93] For more on the distinctive focus of Dutch authorities on rejected asylum seekers as the main target group within the population of irregular migrants, see Kalir, 2017.

there was a widespread consensus that third-country nationals without a permit to stay, who come (or were sent) to the Netherlands to work and send remittances, are unlikely to cooperate with forced return procedures. However, most of the interviewees believe in the potential of voluntary return programs that focus on durability, i.e. offering the prospect of work and education, to convince a larger group of migrants to cooperate with return procedures.

While the backlog in asylum procedures is high – and Covid-19 appears to add to the accumulation of pending cases – and return rates remain low, pressure from parliament steadily increases to step up forced returns, especially regarding third-country nationals who are on the list of Safe Countries of Origin. However, at the national level there is some recognition that this governmental stance can never result in 100% effectiveness. In the migration field, therefore, signals of discontent point towards the necessity for a more comprehensive approach. Many of the interviewees showed a willingness to work towards alternative legal pathways as one solution for the stay of some rejected asylum-seekers and other irregular migrants in the Netherlands. However, nobody felt there was such willingness in the Dutch government to show more flexibility and take much needed steps towards alleviating the current deadlock in asylum and return procedures. The symbolic politics of the Dutch government, with its focus on increasing return rates, seem to prevent a wider discussion on a more effective, operational, and humane exit regime.

## 3.  Spanish case study

### 3.1. Introduction

According to recent estimates (Gálvez-Iniesta, 2020), by the end of 2019 around 390.000-470.000 irregular immigrants were living in Spain, which account for 11-13% of the total non-EU immigrants. These sole figures show that Spain's exit regime, based on the EU return policy of all third-country nationals staying illegally on Spain's territory, doesn't work. Although Spain's legal framework incorporates individual legal pathways to regularization covered by the exceptions stated in the EU Return Directive, the existence of an important number of irregular migrants who are neither returned nor legalized demonstrates that the basic principles of the return policy are far from being fully implemented in practice. Considering that most of the illegally staying third-country nationals are involved in black-market economic activities and that their presence has been a constant in the last decade, their return would also have an impact on many social and economic sectors.

Like in many other countries, the presence of irregular migrants has many reasons: no legal pathways to enter Spain legally, secondary movements of people, problems to renovate residence permits during the economic crisis, etc. However, similar to the period 2005-2006, in which large numbers of boatpeople arrived at the Spanish coasts, between 2016 and 2018 and in the last months an important increase of illegal entries (Figure 1) has influenced Spain's migration system and its exit regime in many ways.

Figure 1. Number of irregular entries in Spain (2014-15 Nov. 2020)
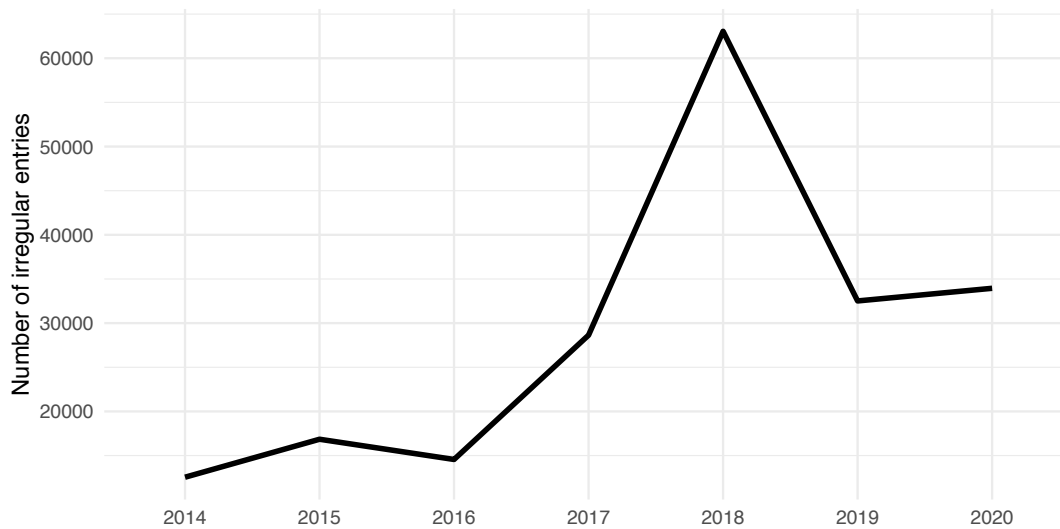


*Source: 'Informes quincenales sobre Inmigración Irregular' (Spanish Ministry of Interior, 2020)*

According to the Spanish legal system, all these people are identified once arrived in Spain and most of them receive so-called devolution orders (órdenes de devolución) after a very short administrative procedure based on their attempt to entry Spain illegally. However, it is important to point out that the location of illegal entries varies due to many factors and stresses reception systems and exit mechanisms of specific places and regions in different ways. As shown in Figure 2, the trend of the last years is clear: illegal entries through the cities of Ceuta and Melilla have decreased significantly, while boat people arriving to the Mediterranean coast (including the Balearic Islands) and, in the last months, to the Canary Islands have increased dramatically. These changes and the arrival of large numbers of boat people to concrete places require adaptable reception and exit systems to avoid their collapse in certain moments.

Figure 2. Distribution of irregular entries by entry point (2014-15 Nov. 2020)
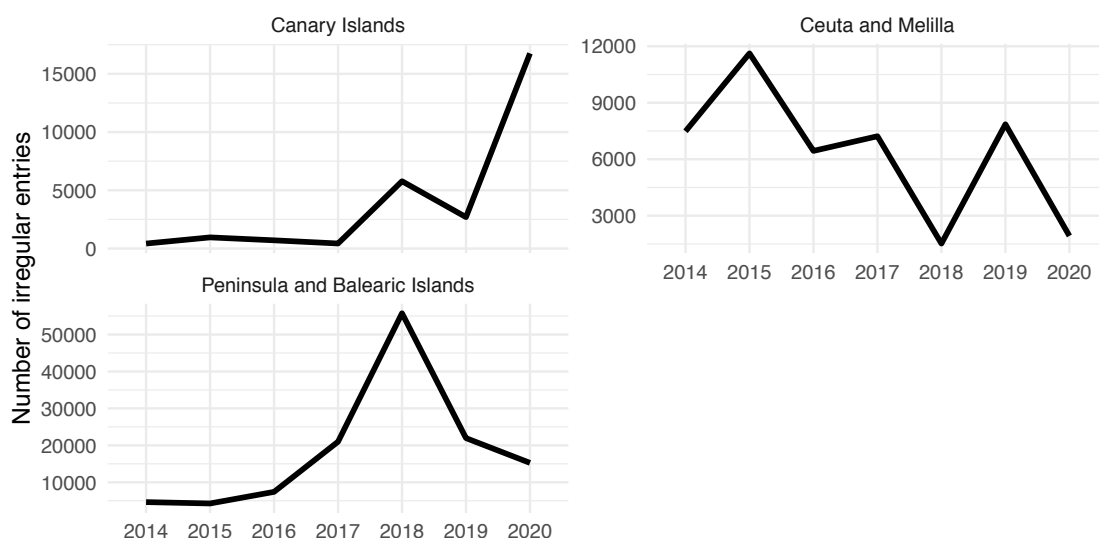


*Source: 'Informes quincenales sobre Inmigración Irregular' (Spanish Ministry of Interior, 2020)*

Apart from illegal entries and so-called devolution orders, the Spanish legal system rules 3 other types of return orders: deportation orders (órdenes de expulsión) for migrants who commit certain administrative infringements (the most important being illegal stay and having committed a crime sentenced with at least one year of imprisonment); return orders (órdenes de retorno) for migrants who are not authorized to enter the country at border crossing points, because they do not comply with all entry requirements; and so-called judicial deportation orders (órdenes de expulsión judiciales) issued by criminal judges to replace prison sentences of more than one year, as ruled in Art. 89 of the Criminal Code.

According to Spain's General Prosecutor's Office, the number of judicial deportations based on Art. 89 of the Criminal Code is not very high: 690 in 2019; 927 in 2018; and 686 in 2017[94]. This kind of deportees may wait to be removed in prisons, detention centres or their own homes. Official data about this instrument are not always clear, but according to the General Prosecutor's Office, in 2019 296 people were deported from prisons and 284 from deportation centres; in 2018, 244 from prisons and 241 from detention centres; and in 2017, 247 from prisons and 250 from deportation centres[95].

Administrative deportation and devolution orders are much more important in terms of numbers in Spain's exit regime. Figure 3 plots the combined number of deportations and devolutions enforced in the period 2014-2019 (the number of return orders remains unknown due to the methodological problems of official statistics). As a general pattern, while the total number decreased until 2016, it grew up again in the following years. However, if we look at administrative deportations and devolutions separately (Figure 4), the data point out a relevant change in the last years. In the beginning of the period, most returns took place through deportations, to the point that in 2014 two thirds of the total returns were of this kind. By 2018, however, the pattern is exactly the opposite: two thirds of returns are made through

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[94] Yearly Reports of the General Prosecutor's Office 2018, 1019 and 2020.
[95] Yearly Reports of the General Prosecutor's Office 2018, 1019 and 2020.

devolutions due to the above-mentioned increase of illegal entries. Although the number of devolutions has decreased in 2019, the conclusion is clear: in the last years Spain's exit regime is increasingly focused on illegal entries and the number of administrative deportation orders has decreased.

Figure 3. Number of enforced devolutions and expulsions (2014-2019).
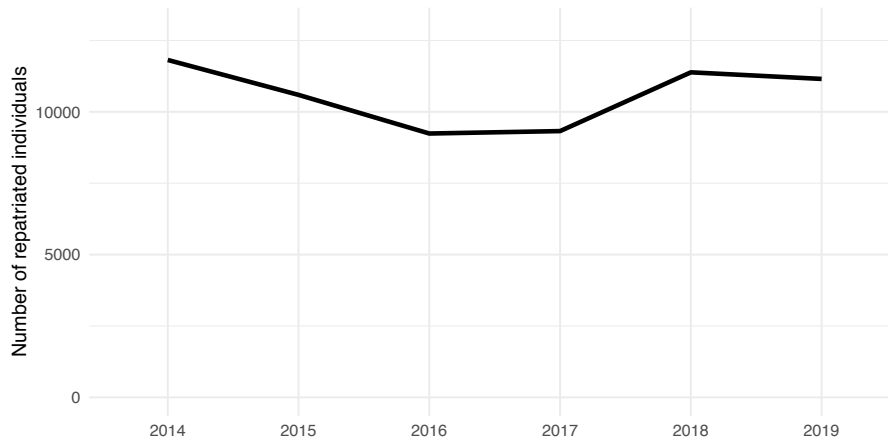


*Source: 'Mecanismo Nacional de Prevención de la Tortura. Informe annual 2019', 2020 (Spanish Ombudsman).*

Figure 4. Distribution of devolutions and deportations (2014-2019).
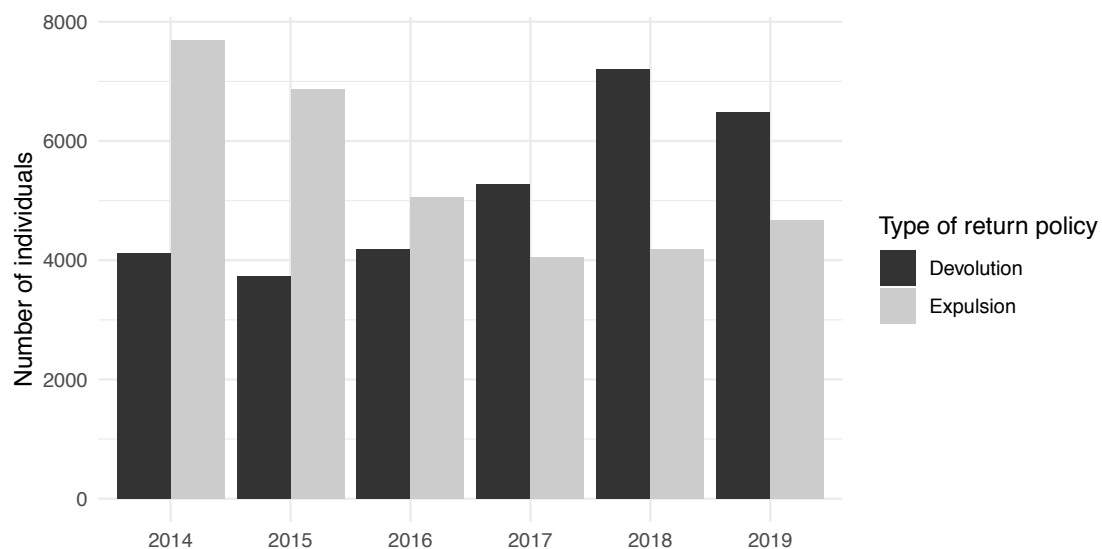


*Source: 'Mecanismo Nacional de Prevención de la Tortura. Informe annual 2019', 2020 (Spanish Ombudsman).*

Spain's exit regime rules pre-removal detention as a way to guarantee the enforcement of all kinds of forced return decisions. As already mentioned, even in the case of judicial deportations, pre-removal detention can take place in detention centres and not prisons. In fact, in the last three years between 250 and 300 convicted criminals awaited yearly with other types of deportees in detention centres to be returned to their home countries.

Seven detention centres are at the moment open in Spain. Some of them have been temporarily closed in the last years to improve their facilities in the context of a governmental plan approved in January 2019 to reform the existing centres and to build a new one in Algeciras. Between May and September 2020 all detention centres remained closed due to the pandemic and the impossibility to enforce deportations to many countries that had closed their borders. The total capacity of Spain's detention centres is about 1500 detainees, but it varies considerably considering which detention centres are closed in each moment. The maximum period of pre-removal detention is 60 days, although the average duration of detention is much lower, so that the total capacity of the exit infrastructure is higher than 9000 (1500 x 6) detainees per year.

Official data show, however, that despite the marked increase in the number of irregular entries in the last years, the number of pre-removal detentions remained quite constant between 2014 and 2018. In particular, the average number of detained persons in this period was around 7500

per year, and the variation across years is rather low ($\sigma = 504$). In 2019, the number of detainees decreased significantly, but mainly because some detention centres remained closed due to improvement reforms.

In addition, as shown in Figure 5 the distribution of detainees by gender is especially uneven, as male detainees represent the vast majority of detained population—above 93 percent. This gender bias is caused by the fact that detention centres have very limited places for women.

Figure 5. Percentage of pre-removal detentions in CIE by gender.
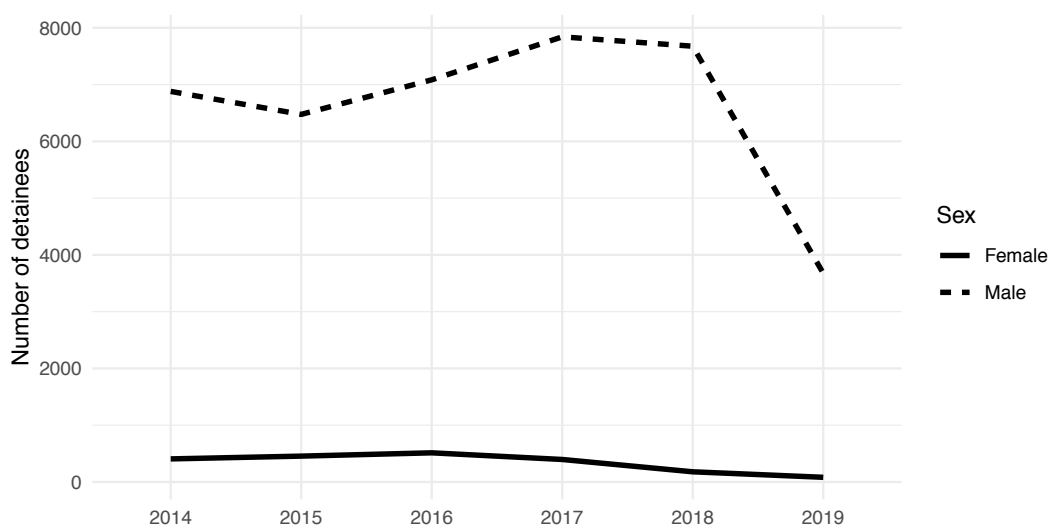


*Source: 'Mecanismo Nacional de Prevención de la Tortura. Informe annual 2019', 2020 (Spanish Ombudsman).*

Regarding the rate of repatriations of detainees in pre-removal detention centres, Figure 6 shows that the "success rate" decreased by 10 points between 2014 and 2016, but increased since then up to 60% in 2018 and 2019.

Figure 6. Rate of repatriation from pre-removal detention centres in Spain (2014-2019).
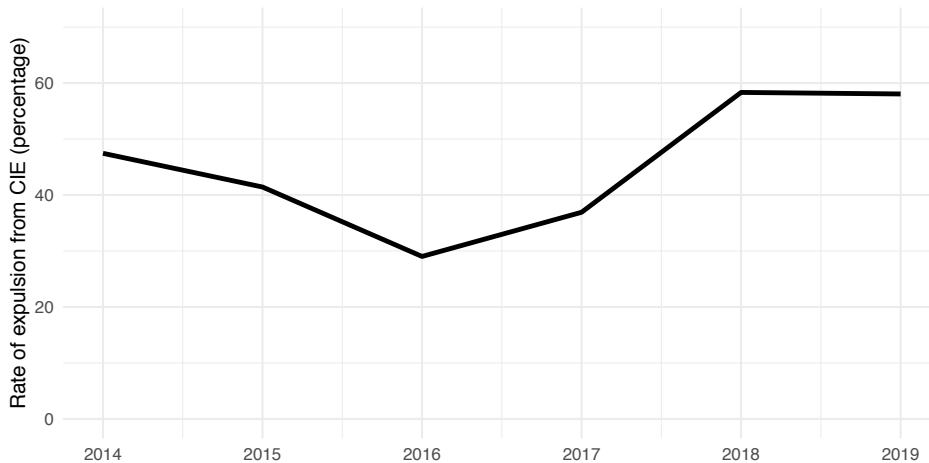


*Source: 'Mecanismo Nacional de Prevención de la Tortura. Informe annual 2019', 2020 (Spanish Ombudsman).*

Looking at the data separately by detention centres, however, a different pattern can be observed for different detention centres. Although we only have data until 2016 for each detention centre, Figure 7 shows that detention centres in Algeciras, Barcelona and Las Palmas present rather low levels of "success rates" (always below 50%), in contrast with those in Madrid, Murcia and Valencia, which tend to return more than 50% of their detainees. The detention centre in Tenerife stands as a particular case, because it presents exit rates below 25% for 2014 and 2016 and an uncommonly high rate (75%) for 2015. The main reason for it is that deportations are not always enforced directly from this detention centre.

Figure 7. Success rate of repatriations by detention centres in Spain (2014-2016).
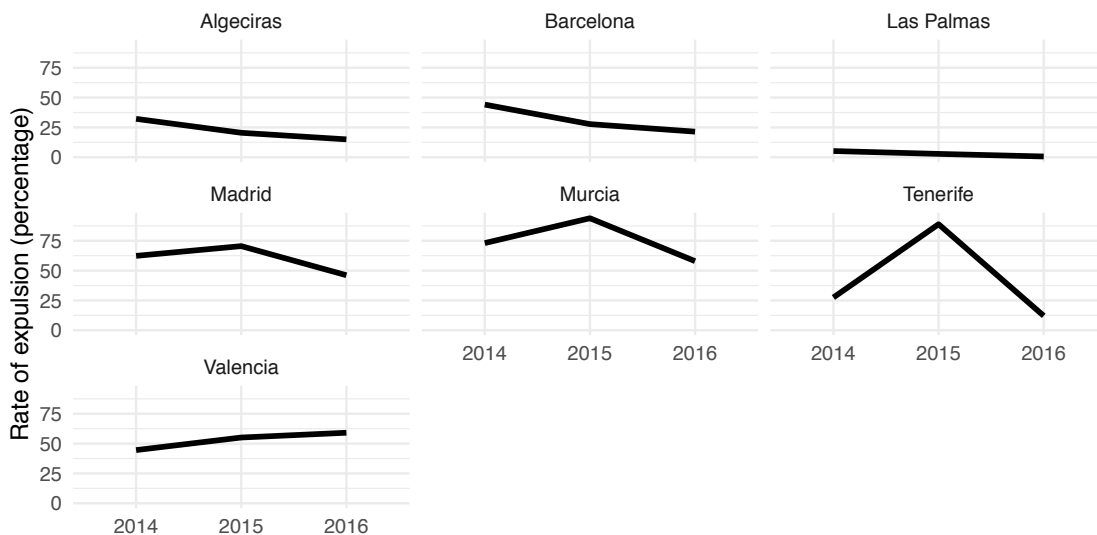


*Source: 'Mecanismo Nacional de Prevención de la Tortura. Informe annual 2019', 2020 (Spanish Ombudsman).*

Many reasons explain these uneven results: the nationality of the detainees, the concentration of some of them (e.g. Algerians and Moroccans in the detention centres of Murcia and Valencia) for an easier deportation enforcement, the presence of more or less detainees from sub-Saharan Africa who have tried to enter Spain illegally and whose deportation is always more difficult, etc. In any case, all these figures show clearly the inefficiency of Spain's exit regime at least in relation to some countries of origins, the strong influence of illegal arrivals, the lack of a reception system for boat people and its arbitrary functioning in a context of vague regulation and uneven implementation throughout Spain's territory.

Spain's exit regime is also composed by a last element that needs to be considered: voluntary return programs (VRP). At the moment there are 3 main return programs that are funded and organized by the Spanish government and implemented by some NGOS and IOM: the Assisted and Reintegration VRP[96] (so-called Social VRP), the Productive VRP[97] and the Additional Support to the Down Payment of Unemployment Money[98]. Three main requirements apply to all beneficiaries of the programs: to have been living at least 6 months in Spain immediately before the application; to sign a non-return agreement for the next 3 years, and not to have a pending exit ban according to Spain's migration legislation. Apart from this, each VRP has additional requirements related to their main purpose.

### 3.1.1. Assisted and Reintegration VRP (Social VRP)

Addressed to migrants in a vulnerable social situation (irrespective of their migration status), it requires a vulnerability report issued either by public social services or an NGO. The program covers transportation costs (tickets + 50€ per person with a maximum of 400€ per family) and 400€ per person (with a maximum of 1.600€ per family) to support reintegration in the country of origin. As shown in Table 2, this VRP was specially used after the 2008 crisis, when it was launched. However, it is also important to consider that the funding of this program is decided yearly by the Ministry of Inclusion, Social Security and Migration with resources of the State Budget and the EU Fund for Asylum, Migration and Integration.

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[96] Programa de Retorno Voluntario Asistido y Reintegración. https://spain.iom.int/es/proyecto-de-retorno-voluntario-asistido-y-productivo-prevap

[97] Programa de Retorno Voluntario Productivo. Programa de Retorno Voluntario Productivo [Productive Voluntary Return Program]. https://spain.iom.int/es/proyecto-de-retorno-voluntario-productivo-para-mali

[98] Ayudas Complementarias al Abono Acumulado y Anticipado de la Prestación Contributiva por Desempleo (APRE). https://extranjeros.inclusion.gob.es/es/Subvenciones/anos_anteriores/area_integracion/2015/retorno_voluntario/index.html

Table 2. Assisted and Reintegration VRP (2009-2019)

| Year | Beneficiaries |
|------|---------------|
| 2009 | 4.022 |
| 2010 | 2.213 |
| 2011 | 2.119 |
| 2012 | 1.568 |
| 2013 | 2.767 |
| 2014 | 2.860 |
| 2015 | 2.352 |
| 2016 | 911 |
| 2017 | 1.317 |
| 2018 | 831 |
| 2019 | 673 |
| **Total** | **21.633** |

*Source: Ministry of Inclusion, Social Security and Migration*

### 3.1.2. Productive VRP

This program aims to support voluntary returns of undocumented or documented migrants from certain countries (Argentina, Bolivia, Cameroon, Colombia, Gambia, Guatemala, Honduras, Mali, Nicaragua, Paraguay, Peru, Dominican Republic and Senegal, although it depends on the concrete call) who want to start a business in their home-country. The program covers transportation and integration costs in the same way as the Social VRP and offers also a training to develop a business plan and between 1.000 and 5.000€ to start the business. As shown in Table 3, 1246 persons have benefited from this VRP. The main reasons for the low number of beneficiaries are the amount of the funding of this program, the limited number of nationalities included each year and the high costs of each return in most cases.

Table 3. Productive VRP (2010-2019)

| Year | Beneficiaries |
|------|---------------|
| 2010 | 99 |
| 2011 | 102 |
| 2012 | 100 |
| 2013 | 151 |
| 2014 | 241 |
| 2015 | 167 |
| 2016 | 58 |
| 2017 | 154 |
| 2018 | 84 |
| 2019 | 90 |
| **Total** | **1.246** |

*Source: Ministry of Inclusion, Social Security and Migration*

### 3.1.3. Additional Support to the Down Payment of Unemployment Money

Since 2008, the Ministry of Labour and Social Security offers legally staying workers from certain countries, which have an agreement with Spain, the possibility to receive a down payment of

their whole unemployment money to support the return to their home-countries. Depending on the received money, they can also ask for an additional support to cover the transportation costs. As shown in Table 4, these measures were used mainly after the 2008 crisis, but are nowadays almost symbolic till the point that there are no data about the last two years although they still exist.

Table 4. Additional Support to Down Payment of Unemployment Money (2009- 2017)

| Year | Beneficiaries |
|------|---------------|
| 2009 | 4.365 |
| 2010 | 2.176 |
| 2011 | 2.539 |
| 2012 | 1.269 |
| 2013 | 932 |
| 2014 | 291 |
| 2015 | 275 |
| 2016 | 83 |
| 2017 | 74 |
| **Total** | **12.004** |

*Source: Ministry of Inclusion, Social Security and Migration*

Two additional aspects are relevant to understand how VRP work in Spain. All programs are implemented by NGOs that work at national level and by IOM, although since 2019 this organization also receives from the Ministry of Inclusion, Social Security and Migration additional funding to run voluntary returns. The funding of each VRP depends on the yearly budget of this Ministry and the concrete requirements to benefit from them may vary each year. In sum, Spain's VRPs are not stable, and their real implementation has decreased significantly in the last years.

## 3.2. Methodology

The fieldwork interviews to analyse the implementation of Spain's exit regime were originally scheduled for April-June 2020. However, due to the corona virus pandemic and the lockdown of Barcelona University and of many official and private institutions most interviews were postponed to July-October. At the same time, it was not always easy to contact all interviewees and to get their consent to collaborate with this study. This has been especially the case with all police officers and members of the Ministry of Interior, who required the authorization of the Secretary of State of Security to be interviewed. Although a member of the Cabinet has been contacted twice in order to centralize and get the necessary permission, we have received no answer and it has been impossible to conduct these particular interviews.

We have conducted the following 11 interviews:

Table 5. Interviewees for voluntary return

|  | Organization | Interviewee | Position | Date |
|---|---|---|---|---|
| NGOs | Fundación **CEPAIM**, Convivencia y Cohesión Social | Sra. Lourdes Bassa | Técnica referente del Programa de Retorno Voluntario de CEPAIM Barcelona | 20.07.2020 |
|  | América, España, Solidaridad y Cooperación (**AESCO**) | Sr. Óscar Contreras | Técnico referente del Programa de Retorno Voluntario de AESCO Barcelona | 27.07.2020 |
|  | Asociación Sociocultural y de Cooperación al Desarrollo por Colombia e Iberoamérica (**ACULCO**) | Sr. Juan Carlos Durán | Coordinador del Área Psicosocial y del Programa de Retorno Voluntario de ACULCO Madrid | 21.07.2020 |
|  | Fundación de Cooperación Bolivia-España (**ACOBE**) | Sra. MªLuz Valdivia | Directora de la Fundación ACOBE | 21.07.2020 |
| Internacional Organization | (**OIM** | Sra. Georgina Lara | Responsable del Departamento de Retorno Voluntario y Reintegración de la OIM España | 23.07.2020 |
| Expert | *Voluntaris en Assessoria Empresarial* (VAE) | Sr. Javier Osés | Representante, Voluntario de VAE | 20.07.2020 |
| Expert |  | Sra. Jara Esbert-Pérez |  | 29.07.2020 |

Table 6. Interviewees for forced return

|  | Organization | Interviewee | Position | Date |
|---|---|---|---|---|
| NGOs | Fundación **Migrastudium** | Sr. José Javier Ordóñez | Lawyer | 09.09.2020 |
|  | **Caritas Diocesana** | Sra. Imma Mata | Lawyer and Director of the Migration Program in Barcelona | 30.07.2020 |
|  | **Servicio Jesuita Migrantes** | Sr. Josep Buades | Coordinator of the Southern Border Program | 20.10.2020 |
| Officials | **Immigration Office of Barcelona** | Sr. David Asunción | Jefe de Sección | 20.07.2020 |

## 3.3. Research findings

### 3.3.1. Voluntary return

Most interviewees work in the main NGOs that implement VRP both in Madrid and Barcelona. In most cases they work directly with possible beneficiaries of the programs, although the representative of ACOBE is the director of this institution. Only one interviewee (Mr. Javier Osés) has experience with the Productive VRP. Interviewees have focused mainly on the Assisted and Reintegration VRP (so-called Social VRP), which helps vulnerable migrants to return to their home-countries.

Their main perception towards VRPs and towards the Social VRP is positive. They do acknowledge that most beneficiaries would prefer to stay in Spain if they had a better perspective. They describe VRP as "last alternative" and some of them refer to the program as having a "bad reputation". However, in the case of the Social VRP they also defend the programs by saying that they put an end to vulnerable situations (in many cases homeless people or people with mental disorders) that have come to a situation that is difficult to solve in Spain. Most of the interviewees do not seem aware of taking part in a "soft deportation" mechanism (Kalir 2017b) of vulnerable people, although some of them admit that in a long-time perspective integration policies should improve the situation of migrants to avoid becoming vulnerable. They insist on the fact that return is voluntary and that they stress this feature of the programs to all potential beneficiaries. However, they also admit that there is a contradiction, because most of them would prefer to stay if their situation could be improved in Spain.

Interviewees do not question the main requirements of VRPs. The agreement not to return to Spain in 3 years is discussed among most of them as it limits human mobility. But it is also in line with the fact that they should not work as "travel agencies" and that return programs have to support conscious mid- and long-term decisions. Some of them advocate for a case-by-case analysis.

Interviewees acknowledge that the implementation of VRPs has improved in the last years and that they work in a more comprehensive and collaborative way, helping each other and referring

cases between their organizations. This network approach is described unanimously as very positive. NGOs that work in Barcelona applaud the initiative of the City Council to create a coordination group with the Voluntary Return Service of the municipality in order to analyse all cases individually. In fact, the NGOs placed in Madrid inform us that they have created a similar group in the capital. NGOs describe also as positive their own process of enlarging their VRP units with different kind of professionals such as psychologists, lawyers and social workers or of using professionals who work in public local institutions. Again, this is specially the case in Barcelona, where SAIER (a local service to support migrants and refugees) is based on the cooperation between the City Council and some NGOs. Those organizations that work with local partners in the countries of origin also describe this relationship as positive.

Interviewees have also listed the following negative aspects of VRPs:

- The fact that they exclude migrants who do not comply with VRP requirements: the requirement to be classified as vulnerable in qualifying for the Social VRP, of holding a regular status in the Down Payment of Unemployment Money, or the requirement of holding a specific citizenship in the case of the Productive VRP or the Additional Support to Down Payment of Unemployment Money. The case of double citizenship is also mentioned by all interviewees as an important burden of VRPs, because holding European citizenship excludes migrants from qualifying for VRP in all cases.
- The fact that all VRPs have limited funding and they depend on yearly calls. Both aspects are mentioned by all interviewees as they limit the number of beneficiaries and impede a continuous implementation of the programs, because returns cannot be managed during some months. Waiting lists, instability of the programs, new requirements are some of the negative consequences mentioned.
- Some shortcomings of the programs to support their beneficiaries. In the case of the Social VRP, the interviewees criticize that the program does not grant an adequate support during the return process. The whole process may take several months since the first contact (between 1 and 2 months since the migrant decides to return), but during all this process a comprehensive approach to the concrete needs of the returnee is not always granted. Interviewees insist on the need for support to face mental disorders or of granting adequate living conditions till the return takes place. This is especially important in the case of homeless people. Interviewees also acknowledge that the psychological and legal support to returnees has to be improved. In difficult cases, in which returnees may apply for international protection or in which gender violence or human trafficking cases may be present, some experts require better support services. Most interviewees mention also professional translators and mediators as one of the important deficits of the programs, as they are not included in the support programs. The need to consider the security conditions in the countries of origin of the returnees is also mentioned as an element of improvement in some countries.
- In the case of the Productive VRP the interviewee with experience in the field mentions the need for better support and monitoring in the countries of origin to improve the success rates of this kind of return.
- Some interviewees mention also that more support of the authorities of the returnees' home countries could also favour the whole return process, both in Spain (e.g. facilitating travel documents) and their countries (e.g. supporting reintegration).

Interviewees have highlighted the following problems during the corona pandemic:

- In a the Social VRP it has been very difficult to grant basic conditions during the whole return process. In the case of homeless people to find a place where to stay safely has been a problem.
- The vulnerability of beneficiaries of the Social VRP has increased in general and applications to return have also increased. Even people who were trapped in Spain during the pandemic have tried to use the VRPs to return home.
- During the state of alarm all administrative proceedings were stopped. Once restarted, the whole system has been stressed. The rejection of many asylum applications has also led to an increase of VRP applications.
- Taking into account the health situation in their home countries, a limited number of beneficiaries of the programs have decided finally not to return. This has happened only in few cases and does not contradict the general trend that most applicants of VRP were in a more vulnerable situation.

### 3.3.2. Forced return

The interviews about forced return have been less fruitful in order to gain knowledge about the real implementation of this policy. The interviewees have shared their opinion about this topic, but the experiences of Imma Mata and David Asuncion are not focused on forced return, while Josep Buada has mainly experience in the Southern borders and Ceuta and Melilla, in a context of illegal entries and push backs practices. However, we consider their insight to be interesting in understanding some of the problems and challenges of Spain's exit regime.

 All interviewees share the opinion that forced return doesn't work in practice. One of them describes a "gap between a very tough legislation and a very difficult implementation, mainly because migrants do not want to return, because it is very difficult to get the required documents and the high deportation costs.  Stricter rules will not improve the situation, because rules are already very strict". Interviewees also admit that pre-removal detention has decreased in the last years, although some point out that deportations directly from police stations have increased in parallel. Pushbacks in Ceuta and Melilla and other illegal practices to avoid migrants reaching Spanish sovereign territory are also mentioned by some interviewees.

 The most important problems mentioned by the interviewees regarding the implementation of forced return are the following:

- The way in which police forces manage illegal entries in Ceuta and Melilla is not in line with international and national human rights standards. Although both the European Court of Human Rights and the Spanish Constitutional Court have recently declared that pushbacks are not illegal and contrary to human rights, the practices described by one of the interviewees are not in line with the rules and values of the EU: push backs incompatible with identification and individual case analysis, practices that avoid that migrants reach Spanish territory, police abuses, etc.

- Migrants are not always aware of having pending deportation orders. The way in which these orders are notified to the undocumented does not guarantee a real knowledge about their existence and a proper legal assistance. Interviewees that support migrants from a legal perspective mention that the latter happens not only in few cases and that

the situation is even worse when migrants are locked in detention centres that are far away from the province where the deportation order was issued.

- Legal assistance during deportation and pre-removal proceedings doesn't always work. One of the interviewed lawyers acknowledges that not all of them take their job seriously and are not always well trained. As a consequence, they not always put the right questions when defending the position of their clients. At the same time, deportation proceedings are sometimes very fast and there are no real conditions to assist illegally staying migrants. Another problem is that most of the migrants understand Spanish to some extent and do not ask for translation, although they really don't understand what is happening.

- Deportation is in many cases hindered by the problems to obtain ID documents of the deportees. Some of them hide their nationality as a strategy to hamper forced return. In other cases, obtaining a valid passport is difficult because Consulates do not cooperate or are not present in Spain, but only in other countries. However, documentation problems are also mentioned by all interviewees as an obstacle to obtain a legal status if deportation fails. Without passport or an ID card (a so-called *cédula de identidad*) there is no way to regularize the situation. Therefor one of the interviewees requires more flexible proceedings to obtain ID documents.

- All interviewees agree on the fact the legal ways to enter Spain are very difficult and unrealistic and that the exit regime is therefore also unrealistic. One of the experts also mentions that t the international protection system is collapsed due to the great increase of applications in the last years and that there is a risk to deport possible beneficiaries of the system.

- The conditions of Spain's detention centres are heavily criticized by the interviewed lawyers. Pre-removal detention is described as "unnecessary psychological torture" by one of them and all of them denounce the bad conditions of these centres and the activities that are organized in them.

- Regarding the institutional safeguards of pre-removal detention, one of the lawyers mentions that most judges lack training and sensitivity to control the real implementation of Spain's exit regime and is in favour of spaces and opportunities to talk about the exit regime's implementation. However, he argues that not all institutional stakeholders make this dialogue possible. Network building with other NGOs is on the contrary easy and works in practice. The recent re-opening of a module for women in Barcelona's detention centre is mentioned as an example of this positive cooperation.

- The problems to get a legal status once the exit regime has failed has been also mentioned by all interviewees. One of them expresses concerns about so-called permanent irregular migrants, who live for decades without a legal status. Although there are different pathways to regularize their legal situation on a singular basis, in practice there are some obstacles: the need of a one-year work contract in the case of the so-called 'social embeddedness?' (*arraigo social)*, the problems to obtain a criminal records certificate in some countries and the already mentioned difficulty to obtain a valid ID in some cases. However, one of the interviewees mentions that in some cases the initiative to regularize some irregular migrants comes from hospitals that are

treating difficult cases and contact NGOs to start the application for a permit based on humanitarian reasons.

- Although the failure of the exit regime is clear to our interviewees, a debate about alternatives has not appeared in most interviews. Only one expert mentions that some years ago the police offered a reduction of the length of the return ban if deportees accepted to return on their own costs. But this practice seems to have disappeared.

## 3.4. Conclusion

In spite of the limited scope of fieldwork, interviewees confirm some of the findings of a quantitative analysis of Spain's exit regime: the system doesn't work, forced return is focused on illegal entries and Voluntary Return Programs help mainly vulnerable people. The exit regime impacts mainly vulnerable migrants who arrive illegally to Spain or fall out of the social system. Deportation affects also irregular migrants with criminal and police records, but in the last years legal entries have stressed and influenced the whole exit regime.

Forced return policies are ineffective in general, although strongly influenced by the bilateral agreements between Spain and some countries of origin. The situation of citizens of Morocco and Algeria is completely different from, for example, those of sub-Saharan Africa or Latin America. The exit system is concentrated mostly to deport the first ones, especially when the capacity of the system is stressed and deportations to other countries are difficult to enforce. At the same time, this policy brings to light the shortcomings of Spain's reception system, that is not able to assist newcomers in other facilities than detention centres.

Forced return policies have also important human costs. The legal safeguards of exit procedures are undermined in a context of illegal entries, limited human and material resources and legal frameworks that leave important spaces to discretion. The fieldwork carried out confirms that some practices related to illegal entries are not in line with the legal framework and that legal assistance or judicial control of pre-removal detention safeguards do not exist in practice in cases of illegal entry of important numbers of migrants. Interviewees have also confirmed the bad conditions of pre-removal detention, as well as shortcomings in the implementation of specific elements of the exit regime such as the notification of deportation orders, the legal assistance to deportees, translation services and the training both of lawyers and judges. The fieldwork has also identified problems to obtain in some cases the ID documents that are required to enforce forced returns.

Spain's case study also shows the importance of legal pathways to help undocumented migrants who are not able to return or be returned. The Spanish legal system offers different mechanisms to regularize undocumented on a singular basis, but the fieldwork has confirmed some of the limitations of these pathways in a context of economic crisis. In parallel, however, local and NGO's initiatives try to induce reforms in some of these mechanisms to find solutions to the abandonment of permanent irregular migrants.

## 4.  German case study

### 4.1. Introduction

The German Residence Act´s Section 50 defines the pre-condition for exit situations when foreign nationals lose their legal status for residence. Deportation is then the enforcement of this legal obligation to return.

22.097 migrants were subjected to forced exit in 2019. An additional 15.962 made returned self-organised and made use of the REAG/GARP funding provided by IOM. Unfortunately, the number of voluntary returns is not reliable, because of a lack in statistical data and further reasons dealt with in chapter 3 and 4. Furthermore, 13.689 migrants have been denied entry to Germany and 2.934 migrants have been subject to refoulement in border regions.

Table 7. Matrix showing number of returnees leaving Germany by Forced and Self-organised exit between 2015-2019.

|            | 2015   | 2016   | 2017   | 2018   | 2019   |
|------------|--------|--------|--------|--------|--------|
| Forced exit | 20.888 | 25.375 | 23.966 | 26.114 | 22.097 |
| AVRR (IOM) | 35.446 | 54.006 | 29.522 | 15.942 | 13.053 |

*Source: IOM (2019)* [99]

Figure 8. Map showing the number of Dublin returnees from Germany in 2019 by country of destination.
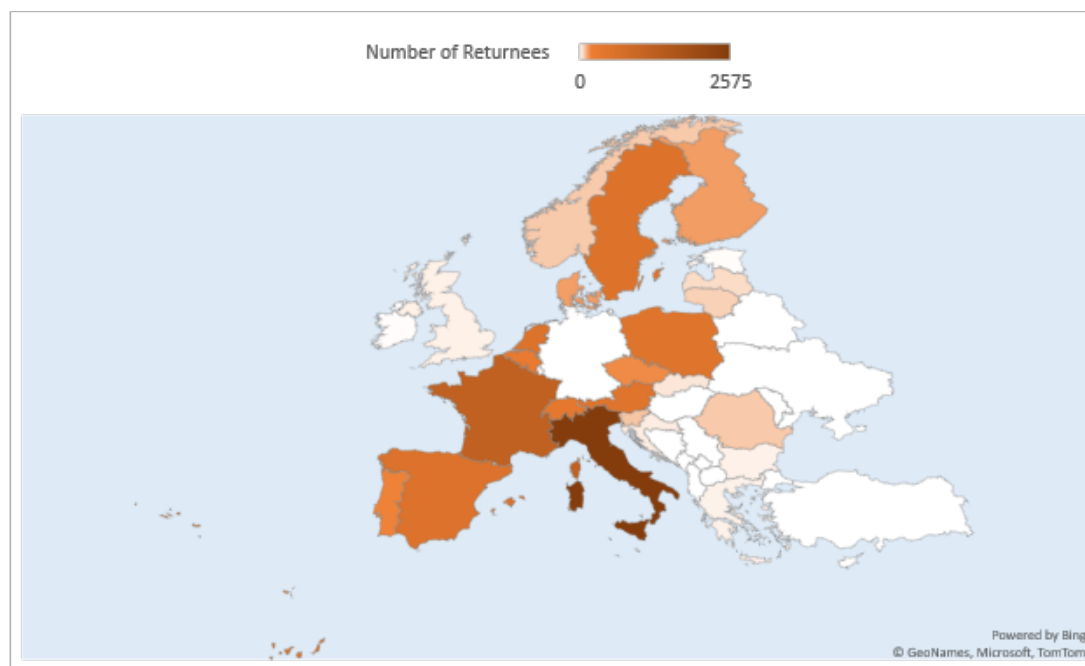


*Source: Deutscher Bundestag (2020)* [100]

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[99] Sources: IOM. Assisted Voluntary Return and Reintegration 2019 Key Highlights. Geneva: IOM; German Federal Police Annual Reports 2015-2019; Federal German Government, Reply to parliamentary question by The Left, 18/7588, 18 February 2016, 18/11112, 9 February 2017, 19/800, 20 February 2018, 19/18201, 19 March 2020.

Table 8. Table showing the number of Dublin returnees by country of nationality.
This list is not exhaustive, showing only the most represented; between them they make up about 75% of the total number given at the top of the table.

| Country of Nationality | Number of Dublin Returnees |
|---|---|
| *Total in 2019* | *8,423* |
| Nigeria | 1,055 |
| Iraq | 804 |
| Iran | 665 |
| Russia | 605 |
| Afghanistan | 582 |
| Guinea | 435 |
| Somalia | 373 |
| Syria | 310 |
| Pakistan | 298 |
| Eritrea | 242 |
| Azerbaijan | 218 |

*Source: Deutscher Bundestag (2020)*[101]

Figure 9. Map showing the number of forced returnees from Germany in 2019 by country of citizenship.
Nigeria, the Balkan states and Russia were the countries which saw the largest numbers of their citizens on return operations, followed by states in the Middle East, North Africa, South Asia and Eastern Europe. Smaller numbers of citizens from other states across Africa and South East Asia were also returned.

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[100] Source: Deutscher Bundestag (2020) Drucksache 19/18201, "answers from the federal government in response to the question asked by minor MP's Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, another MP and the DIE LINKE parliamentary group", p.12 [translated from German] available online at: http://dip21.bundestag.de/dip21/btd/19/182/1918201.pdf, accessed 28/09/2020 (accessed 28/09/2020)

[101] Source: Deutscher Bundestag (2020) Drucksache 19/18201, "answers from the federal government in response to the question asked by minor MP's Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, another MP and the DIE LINKE parliamentary group", p.12 [translated from German] available online at: http://dip21.bundestag.de/dip21/btd/19/182/1918201.pdf (accessed 28/09/2020).
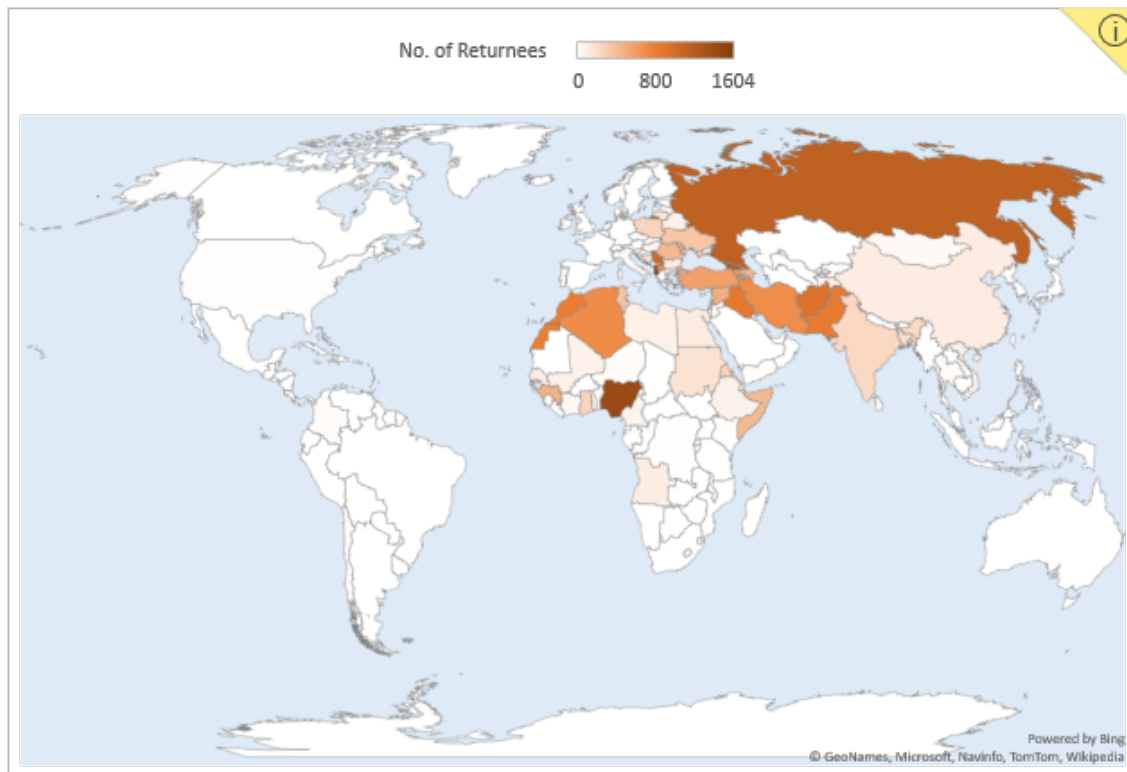
*Source: Deutscher Bundestag (2020)*[102]

In Germany there are two main grounds on which residence permits are based: residential grounds and humanitarian, protective grounds. Accordingly, there is a rigid, substantive and organisational distinction between migration and refuge. Regarding deportation, whether forced or self-organised, both paths have to be taken into account and usually aren't mutually exclusive. For instance, if a migrant´s asylum application is rejected, it doesn't necessary lead to deportation. First, immigration caseworkers assess whether or not the person is eligible to a right to remain, or the existence of other residential norms leading to a residence permit. Nevertheless, although residential norms might lead to a legal status, it is rarely the case. Most people whose asylum application have been rejected aren't eligible to a legal stay based on residential norms and receive a so-called Duldung: a categorization as on a non-punishable illegalised stay, so that one is obliged to leave the country, but the deportation cannot be enforced due to factual reasons (such as unknown identity) or legal reasons (deportation ban for certain regions/countries). Duldung can lead to regularisation (See deliverable D3.3), but it should not be confused with a legal status, as many people with Duldung live under the constant threat of deportation. Irregular migrants experiencing serious cases of hardship can apply for regularisation with a special 'hardship commission'. However, the immigration authorities are not obliged to wait for a decision by the 'hardship commission' before enforcing deportation.

All refuge related reasons are dealt with by the Federal Office for Migration and Refugees (FOMR). This is a centralised structure with headquarters in Nuremberg and numerous outposts

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[102] Source: Deutscher Bundestag (2020) Drucksache 19/18201, "answers from the federal government in response to the question asked by minor MP's Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, another MP and the DIE LINKE parliamentary group", p.5-6 [translated from German] available online at: *http://dip21.bundestag.de/dip21/btd/19/182/1918201.pdf* (accessed 28/09/2020).

all over the country, where so called Deciders assess asylum applications. The FOMR is involved in the construction of a person´s deportability (De Genova and Peutz 2010), but not in the deportation itself. Deportations are solely enforced by central and local immigration offices under state and municipal authority, and police structures. Migrants whose asylum requests have been rejected are obliged to live in shelters under state responsibility, up to a maximum of 18 months (families 12 months), before they are relocated to municipalities, and central immigration offices are responsible for their deportation. Dependent on the federal state, migrants who sought a legal status based on residential norms at local immigration offices are processed and possibly deported by field officers of the respective immigration office – in smaller local offices often assisted by the local police (Landespolizei).

Since "the long Summer of Migration" (Hess et al., 2017), migration governance has undergone significant changes in Germany, including its exit systems. As a federal republic with divided judicial competences between the federal level and sixteen federal states, there is no single exit system, but each federal state has its different organisational structure, different bodies involved in deportation and a distinct distribution of responsibilities. All of them are laid out in the respective *Zuständigkeitsverordnung* (Ordinance regulating the allocation of responsibilities), defining tasks and responsibilities between bodies involved in deportation. There are two dominant types of exit regimes present in one or the other form in a given state:

(a) a centralised structure in which – especially in recent years – units responsible for deportations were separated from local immigration offices and closely linked, partly merged with police structures, and

(b) a decentralised structure in which each local immigration office is responsible for the deportation of migrants registered with them.

This country study focuses on the three federal states of Hamburg, Hesse and North Rhine-Westphalia (NRW) because of the federalised system and structural as well as substantive differences. Hesse represents the model-structure a) of an exit system; Hamburg and NRW represents model-structure b). However, these structures can also overlap at different levels. For instance, when Hamburg deportees exit via Munich, Hamburg authorities must be coordinated by federal police. The differences and similarities between these structures will be explained with each state.

Table 9. Matrix showing the number of forced returns from airports in Germany between 2015-2019.

| Airport | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|
| Frankfurt/Main | 4,098 | 5,452 | 6,756 | 7,909 | 7,311 |
| Düsseldorf | 3,577 | 4,921 | 4,845 | 5,008 | 4,072 |
| München | 3,923 | 2,703 | 2,421 | 2,495 | 2,507 |
| **Berlin-Schönefeld** | 1,161 | 2,028 | 1,703 | 1,345 | 1,289 |
| Karlsruhe/Baden-Baden | 2,155 | 2,712 | 1,807 | 1,059 | 917 |
| Leipzig/Halle | 754 | 2,157 | 913 | 695 | 836 |
| Hamburg | 1,419 | 1,293 | 950 | 885 | 788 |
| Berlin-Tegel | 1,157 | 1,165 | 996 | 802 | 595 |
| Köln/Bonn | 46 | 80 | 235 | 285 | 378 |
| Stuttgart | 181 | 281 | 410 | 310 | 345 |
| Hannover | 202 | 872 | 865 | 238 | 100 |
| Nürnberg | 2 | 1 | 1 | - | 64 |
| Dresden | 1 | 15 | - | 9 | 16 |

*Source: https://de.statista.com/statistik/daten/studie/74041/umfrage/anzahl-der-abschiebungen-an-deutschen-flughaefen/*

Table 9 illustrates that Frankfurt has consistently had the highest level of returns, with Düsseldorf and Munich following. For some of the airports where fewer forced returns take place, with numbers peaking in 2016 before declining. The trend for Frankfurt and Düsseldorf was a steady increase up to 2018, followed by a small decline in 2019, while Munich saw especially high levels of forced return in 2015, then dropped, before increasing slightly from 2017 onwards. Hamburg has decreased throughout the period, to about half the 2015 number. This suggests that return operations have become more concentrated in key hubs during this period.

The legal responsibility and specific tasks in the German deportation system is therefore shared between two levels of government, namely FOMR (the federal level) and the immigration authorities of federal states. The German Federal Police (GFP) is a specialised force responsible for controlling all border crossings, which involves aviation, railway and maritime policing. including the forced border crossings of deportees.[103] (German Federal Police Annual Report 2018). This means that the GFP is present at all German airports. Here, they have specified deportation units responsible which execute forced removals working with local immigration offices (providing administrative assistance) as their jurisdiction ends at the airport. Germany

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[103] German Federal Police Annual Report 2018. Available at:
https://www.bundespolizei.de/Web/DE/Service/Mediathek/mediathek_node.Html;jsessionid=8AFF277A87D07BD853
56E64DAFCE3982.2_cid324#Anchor_7534154

has 16 state police forces and 3 federal law enforcement agencies, one of which is the Federal Police. Due to the federal structure of the Federal Republic of Germany, the 16 federal states (bundesländern) have the authority to maintain their own police forces within their territory, while also having the right to pass legislation and exercise police authority.

Several databases underpin the German exit system, such as the AZR (Ausländerzentralregister, the Central Register of Foreign Nationals), which is operated by the FOMR, as well as the InPol and later InPol-neu (the Information system der Polizei, the Electronic Information System of the Police), operated by the BKA (Bundeskriminalamt, the Federal Criminal Police Office). The AZR was originally established in 1953 and remains one of the largest automated registers for public administration in Germany.[104] It consists of two parts: First, of a general database for people who have been in Germany more than three months, have applied for or gotten rejection to asylum and entry, or have gotten an expulsion order. Second, it consists of visa file with data from foreigners who have applied for visa to Germany from diplomatic missions abroad, both are used by more than 6,000 federal, state, private and civil society partner authorities when it comes to personal data related to residence or asylum tasks. FOMR also supplies AZR data to EUROSTAT. InPol was established as an information system for federal and state authorities in 1972, and replaced by the evolution InPol-neu in 2003. Besides the BKA, state police stations, the federal police and customs authorities have access to data stored in the InPol-neu. While some of these databases are thus organized by public authorities, the tendency is to outsource their organization, maintenance and further updates and evolution to private companies. Thus, while Siemens was awarded the original contract for the InPol database, the InPol-neu was developed through a concept tender given to Mummert Consulting (1995-1999). After which point the system was then developed by Systemhaus and later T-Systems (1999-2001).

The blurred boundaries between public and private actors in the German exit system mirrors dynamics found elsewhere in Europe. This, as is also the case with EU-wide databases, the functionality and purpose of the InPol and AZR databases are points of ongoing political negotiations and discussions (Parkin, 2011; Lemberg-Pedersen, Rübner Hansen and Halpern, 2020). Thus, in 2016, FOMR hired consultancy firm McKinsey on a contract worth €1.8 million, for the writing of a confidential report identifying the challenges of enforcing deportation decisions, and finding solutions. McKinsey recommended more pre-removal detention facilities, more voluntary returns and more dataveillance through the digital tracking of persons registered in the AZR database (Stanley-Becker, 2017; Stavinoha and Fotiadis, 2020).

Before the long Summer of Migration in 2015, prospective deportees were informed about their impending removal, but after October 25, 2015 an amendment to the Asylum and Residence Law (Sec. 59.1) has allowed for the enforcement of deportations without prior notice. According to the amendment, it was now forbidden to announce deportations and the date of a deportation was kept as a secretly. Correspondingly, some of the Bundesländern will require rejected asylum seekers to remain at their residences some nights so as to avoid that people are not at home when unannounced removals are effectuated, typically early in the mornings (Hamburg Interview 1). If authorities find persons likely to avoid deportation orders, they can

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[104] The predecessor of the AZR was originally established by the Nazis in 1938 and called "Ausländerzentralkartei" (it translates literally the same – "Kartei" and "Register" are both translated with "Register"). After 1945, it wasn't used and re-established with minor changes under current name in 1953. In principle, its structure didn't change much. Available at: https://www.antifainfoblatt.de/artikel/von-der-%E2%80%9Eausl%C3%A4nderzentralkartei%E2%80%9C-zum-%E2%80%9Eausl%C3%A4nderzentralregister%E2%80%9C

also ask local courts to decide on the imposition of pre-removal detention. This might be housing, but some Bundesländern have other detention facilities. Hamburg, for instance, has a detention facility with 25 designated places for males only, located right outside the airport. Deportations typically take place early in the morning. Here, officers from the Landespolizei (state police) will enter the accommodation of persons issued a Duldung, order them to pack their belongings, and escort them to a waiting police car. The police officers are mandated to use forced at this stage if people resist, through the use of handcuffs or cable straps. When more than one person is picked up for chartered deportation flights, authorities lease standard travel-busses. The deportee is then transported to the designated airport. At the airport, local immigration officers hand over the deportee to the Federal Police, and in so doing also transfer the legal responsibility to the Bundespolizei.

The Bundespolizei proceeds to place the deportee in a closed-off holding area, where the person and his/her belongings are thoroughly searched, and notifies the relevant airline about the person, and the level of risk assessment assigned to his/her deportation procedure. If a deportation order has already been issued, the person is placed in a closed cell. On chartered commercial airlines, federal officers escort the person onto the place in pre-boarding process before regular passengers arrive on the plane, and sometimes escort them during the whole flight. Other times pre-boarding measures are not necessary, for instance when flights are chartered only for single or multistep deportation routes, either by the German Federal authorities, and in other cases as part of Frontex-supported National or Joint Return Operations. Once more, if persons resist deportation, officers are mandated to use handcuffs or body cuffs, the latter being a belt with handcuffs designed specifically to completely fixate and constrains a person´s ability to move. This kind of escort measures have elicited much controversy. On May 28, 1999, for instance, the Sudanese national Aamir Ageeb died during deportation proceedings from Frankfurt am Main airport to Khartoum via Cairo. Allegedly, this was caused by asphyxiation as three officers sought to restrain him with ropes, bands, and by putting a helmet on his head, all apparently in line with standard procedures at the time. The three officers were charged with voluntary manslaughter, sentenced to nine months of imprisonment on parole, and obligated to pay a fine of €2000 each for Ageeb´s family (RP Online, 2004). The Ageeb case led to revised federal deportation procedures. One implication is that German police officers now receive special training in these deportation escort measures, and receive a diploma as Personenbegleiter Luft (personal air escort, PBL). The training is done in accordance with the confidential Best-Rück-Luft paper produced after the Ageeb-case. In October 2018, the GFB had a pool of 1190 PBL officers (Thomae, Aggelidis and Alt, 2018). In some Bundesländer immigration offices, officers receive such trainings offered by the Department Deportation (GFP) and escort deportees themselves.

In order to secure a deportation, immigration officials are eligible to make use of administrative orders set out in Art. 46.1.4 of the General Administrative Provisions of the Residence Act. In here, the legislator named a non-conclusive catalogue of six administrative orders to further voluntary return:

1. the obligation to regularly report at the immigration office,

2. the obligation to take part in return counselling,

3. the obligation to save up money for ones return through the regular transfer of all non-necessary financial means to a blocked bank account, managed by the immigration office,

4.  the obligation to live in a designated location, or shelter,

5.  the obligation not to leave a designated area,

6.  the obligation to turn in all papers, which might lead to the impression that one is not obliged to leave the country or that one's stay is justified; it applies in particular with regard to the *Fiktionsbescheinigung*[105], after a rejected application to a residence permit.

The named administrative orders are not conclusive, but only have the status of examples. Every immigration office is authorised to implement and create their own administrative orders, as long as they further returns and are in accordance with the law. Administrative orders can be issued by employees in the higher service of immigration offices and aren't in need of judicial approval. In distinction, pre-removal detention[106] is always in need of judicial approval and immigration officials can file a request at the local court. Legal requirements are high, given the double principal of proportionality: since it is the harshest means to secure deportation at hand of the state, there a) must be no other milder means with comparable effect available, and b) deportation must be enforceable within reasonable time.

Pre-removal detention is done in airport transit zones or other facilities where it is possible to make a direct departure (Asylum Information Database, 2018, p. 93).[107] Such provisions are triggered when authorities find that a foreigner have displayed behaviour leading to the expectation that the person will make the deportation difficult or impossible by continually violating his/her statutory obligation to cooperate or by deceiving the authorities regarding identity or nationality" (Asylum Information Database, 2018, p. 93).[108] According to the Asylum Information Database´s 2018 Country Report on Germany, detentions-for-deportation are subject to the same rules as regular pre-removal detention procedures. Hence, a court order is necessary, and the detention can only take place in specialised facilities " (Asylum Information Database, 2018, p. 93). Asylum seekers can also be apprehended, and de factor detained in transit zones of international airports. However, according to the Federal Constitutional Court, being held at the transit zone is not considered detention in terms of the law " (Asylum Information Database, 2018, p. 94.)[109] This even though people are confined within the premises of a dedicated facility for the duration of the airport procedure. Pre-removal detention can be ordered for a maximum period of three months, although it can be prolonged to a maximum of 18 months.  According to Section 62(4) in the Residence Act, the maximum duration of pre-removal detention is 6 months, yet with a possible extension to a total of 18 months, if the person hinders removal. The maximum time limit for the duration of custody pending departure is 10 days. Given court approval, migrants can thus be detained for up to ten days in an airports transit area, or a location near by the respective means of deportation (airport, bus station, land or sea border) " (Asylum Information Database, 2018, p. 96).

In terms of voluntary returns from Germany, Iraq has been the most frequent destination in both 2018 and 2019, and in general there is a high degree of overlap between voluntary return destinations these two years. Only one difference stands out, namely that in 2019, Kosovo was

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105 Prove of provisional right to stay, applied for and not yet decided at an immigration office.

106 Several forms of detention set out in §62 and §63 of the Residence Act and Art. 28 of the Dublin III regulation are subsumed under the term pre-removal detention.

107 Section 62b of the Residence Act

108 Section 62b (1) No 2 Residence Act, available at https://bit.ly/2ISa9hN;

109 Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1516/93. See also Federal Supreme Court, Decision V ZB 170/16, 16 March 2017, available in German at: http://bit.ly/2oRx9B4;

replaced on the top-15 list by Turkey. The number of voluntary returns was in general lower in 2019 compared with the year before.

Table 10. Table comparing number of voluntary returnees from Germany in 2018 and 2019, by country of destination for the 15 most frequent destinations.

| Country | 2018 | Country | 2019 |
|---|---|---|---|
| Iraq | 1,802 | Iraq | 1,755 |
| Albania | 1,557 | Georgia | 1,067 |
| Russia | 1,381 | Macedonia | 1,006 |
| Macedonia | 1,239 | Russia | 946 |
| Serbia | 1,144 | Armenia | 846 |
| Georgia | 1,058 | Albania | 843 |
| Moldova | 733 | Serbia | 821 |
| Ukraine | 719 | Moldova | 683 |
| Armenia | 699 | Ukraine | 680 |
| Azerbaijan | 689 | Iran | 551 |
| Iran | 498 | Azerbaijan | 461 |
| Kosovo | 477 | Afghanistan | 325 |
| Afghanistan | 403 | Pakistan | 324 |
| India | 332 | Turkey | 269 |
| Pakistan | 320 | India | 238 |
| Others | 2,890 | Others | 2,290 |
| Total | 15,941 | Total | 13,105 |

Table 11. Table comparing the number of returnees from Germany in 2019 across three categories: voluntary returnees to country of origin, forced returnees to country of origin and forced returnees to all destinations (including Dublin returns).

| Country of origin | Voluntary return to country of citizenship | Forced return to country of citizenship | Forced return to all destinations (inc. Dublin returns) |
|---|---|---|---|
| Iraq | 1,755 | 30 | 862 |
| Georgia | 1,067 | 1,177 | 1,242 |
| Macedonia | 1,006 | 686 | 728 |
| Russia | 946 | 498 | 1,152 |
| Armenia | 846 | 431 | 573 |
| Albania | 843 | 1,528 | 1,604 |
| Serbia | 821 | 1,007 | 1,038 |
| Moldova | 683 | 461 | 471 |
| Ukraine | 680 | 309 | 353 |
| Iran | 551 | 39 | 702 |
| Azerbaijan | 461 | 232 | 453 |
| Afghanistan | 325 | 361 | 931 |
| Pakistan | 324 | 561 | 833 |
| Turkey | 269 | 429 | 587 |
| India | 238 | 176 | 237 |
| *Total* | *13,105* | *7,925* | *11,766* |

Figure 10. Bar chart comparing number of voluntary returnees from Germany in 2018 and 2019, by country of destination for the 15 most frequent destinations.
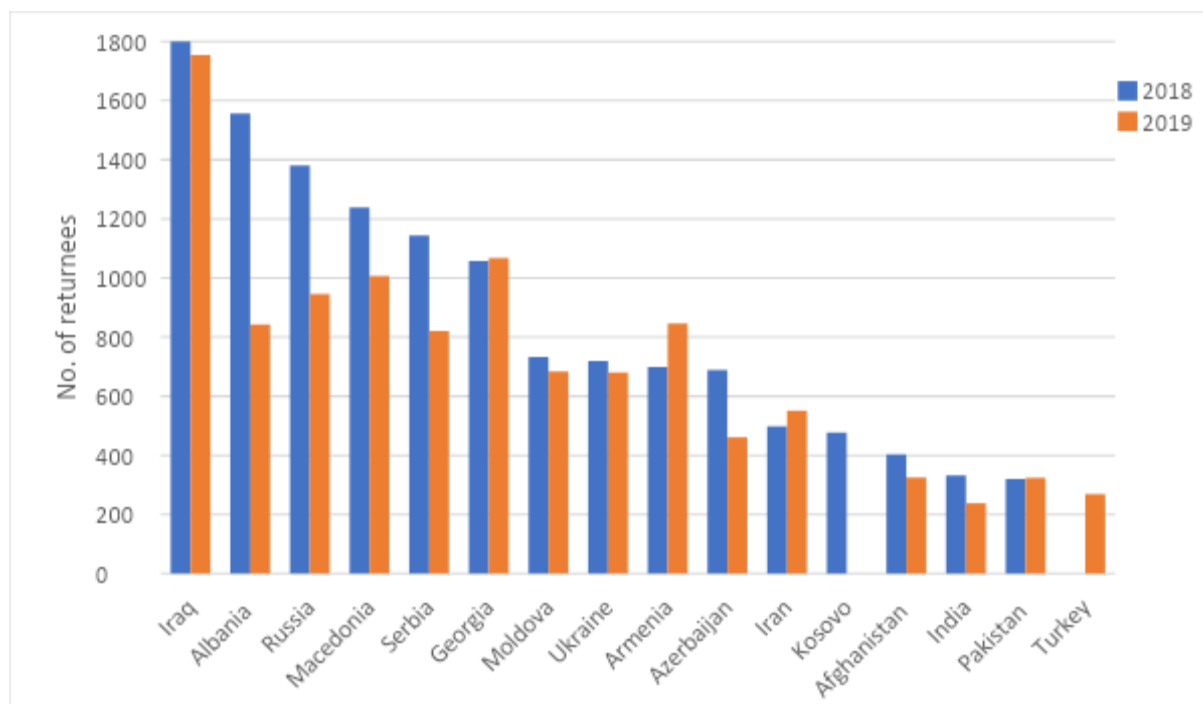


### 4.1.1. Exit System Hamburg

The federal state Hamburg deported 210 migrants in 2019, a significant decrease compared with 2018, where 520 were deported (Deutscher Bundestag 2020, 2019). In Hamburg, the Central Citizens Office (CCO, Einwohnerzentralamt) is a local immigration authority responsible for case-work concerning foreign nationals in Hamburg, and is supervised by the Heanseatic city´s local government. When a person is seen as having exhausted options to avoid return, case-workers from the CCO therefore go to work organizing a return, ordering paperwork from embassies if possible, booking a flight and organizing escorts, and also gets support from the federal police in the form of Amtshilfe. The deportee is then placed into custody by local police (Landespolizei) and the local immigration authority before handed over to the federal police at Hamburg International Airport. Deportations can be executed on the order of the CCO or on orders of authorities from other federal states, using Hamburg Airport as a transportation node. Both kinds of deportations out of Hamburg increased between 2010 to 2015, but has dropped again thereafter.

Table 12. Local and other states´ deportations out of Hamburg.

|  | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|---|---|---|---|---|
| Local | 177 | 206 | 204 | 233 | 410 | 712 | 642 | 564 | 520 | 210 |
| Other states | 259 | 487 | 394 | 325 | 509 | 1419 | 1293 | 950 | 885 | 788 |

*Sources: Jelpke et al. 2017, 2018, 2019; Statista.com.*[110]

Hamburg has an international airport that contains an office of the local immigration authority (Ausländerbehörde), a field office of the German federal police, a reception centre, and deportation detention facilities. Furthermore, the Free and Hanseatic city of Hamburg is a federal state of Germany in its own right, replete with centralised institutions, including a field office for the FOMR. Here the assessments of legal statuses and so-called voluntary return counselling take place. Pre-removal detention were carried out 8 times in the first half of 2018 from Hamburg Airport " (Asylum Information Database, 2018, p. 93).[111]

Table 13. Average duration of pre-removal detention for detainees in Hamburg between January and July 2018.

|  | Detainees | < 2 weeks | 2-6 weeks | 6 weeks – 3 months | 3-6 months | 6-12 months | 12-18 months |
|---|---|---|---|---|---|---|---|
| Hamburg | 123 | 52 | 48 | 23 | n.n. | 0 | 0 |

*Sources: Federal German Government, European Council on Refugees and Exiles (ECRE)*

Following 2016, the Hamburg city parliament passed measures upgrading the local detention facility to hold 25 places, and extending detention periods, upgrades based on new legislation implemented, which, after April 10th, 2018, widened the use of pre-removal detention measures (Hamburger Senat, 2018).

Voluntary returns

In the Hamburg area, an NGO called the Refugee Centre Hamburg works in collaboration with the Worker's Welfare Association, Caritas and the German Red Cross. Among the services they provide are return counselling which includes advice on return support in the form of financial packages available for voluntary returnees. They claim to offer this counselling to people irrespective of residency status (Flüchtlingszentrum website, 2020).

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[110] Drucksache 19/800: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn,Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. (Drucksache 19/485) 2017; Drucksache19/8021: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. (Drucksache 19/7395) 2018; Drucksache 19/12240: Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn, Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE. (Drucksache 19/11873) 2019; Drucksache 19/21406: Antwortder Bundesregierungauf die Kleine Anfrage der Abgeordneten Ulla Jelpke, Dr. André Hahn,Gökay Akbulut, weiterer Abgeordneter und der Fraktion DIE LINKE.(Drucksache 19/21149); https://de.statista.com/statistik/daten/studie/74041/umfrage/anzahl-der-abschiebungen-an-deutschen-flughaefen/ (accessed 28/09/2020).

[111] Federal Government, Reply to parliamentary question by The Left, 19/5817, 16 November 2018, 19

### 4.1.2. Exit System Hesse

The federal state Hesse deported[112] 1.600 migrants in 2019 (Deutscher Bundestag 2020), a minor decrease – following the federal trend – compared to 2018, where 1.711 migrants were deported (Deutscher Bundestag 2019). Thus, in comparison to the other states, Hesse's deportation total was fourth highest after NRW, Bavaria and Baden-Wuerttemberg.

Hesse has around thirty local immigration offices and three centralised offices, embedded respectively in the structure of the *Regierungspräsidien* (regional councils) Kassel, Gießen and Darmstadt. With the new state ordinance issued on the 22nd of June 2018, a far-reaching change in responsibilities was introduced. Beforehand, central immigration offices were solely responsible to deport migrants from state shelters, under state responsibility (everyone processed by the FOMR), and local immigration offices were responsible for everyone registered under residential norms and allocated locally. Thus, if a residential right to stay was denied, it was the local immigration offices responsibility to decide whom to deport and to enforce the deportation. According to the new ordinance, immigration law was re-structured and all "negative" aspects of the law, thus measures terminating residencies and enforcing self-organised and forceful deportations, were allocated with the regional councils. From this point on, local immigration offices were no longer involved in the deportation of migrants. Furthermore, the decision whom to deport and for how long the illegalised status of a Duldung will be prolonged is eventually made by regional councils, too. Local immigration offices submit a proposition, which needs to be confirmed by the respective regional council. Although all deportation related matters were transferred to the regional councils, contact with migrants remained with local immigration office. Hence, the change in responsibilities introduced a far-reaching distinction between administrative officers terminating residencies, rendering migrants deportable and officers eventually deporting migrants.

The central immigration offices units responsible for deportations are coordinated by the state police headquarters department 6 "Returns", as part of the Hessian Ministry of the Interior and Sports. Furthermore, the overall substantive orientation of returns is decided upon by the state department responsible for "Return Management", which answers directly to the state secretary of the Hessian minister of the interior. Due to this structure central immigration offices of the regional councils became – although being structurally separate entities – increasingly mixed with the police department 6 of the state's police headquarters, eventually causing partly an exchange in staff and a rather police-oriented approach to exit .

#### Voluntary returns

With regard to so-called self-organized or voluntary returns, counselling was centralised at central immigration offices and a campaign with about forty retired police officers was launched in 2016, conducting mandatory return counselling. The declared Hessian goal is to increase numbers of soft deportations through a mix between voluntary counselling and financial incentives at early stages of an asylum or residential procedure, paired with mandatory and "goal-oriented" counselling if a migrant is enforceable obliged to leave. Therefore, the state approach can be characterised as a graduated system.

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112 Numbers only include forceful returns, not refoulement and denied entry.

### 4.1.3. Exit system North Rhine-Westphalia

North Rhine-Westphalia (NRW) is the most populated federal state in Germany. According to allocation mechanisms, it receives the highest number of refugees in the republic. In 2019, 6.359 migrants were deported by authorities in NRW, a slight decrease compared to 2018, where NRW removed 6.603 migrants forcefully from German territory.

NRW is divided into five administrative areas, Cologne, Düsseldorf, Arnsberg, Detmold and Münster, each with its own district government and a central immigration office, responsible to deport migrants from state shelters. NRW introduced its so-called "integrated return management" in 2016 as an effort to centralise return competences, in order to increase self-organised and forceful deportations. As part of the integrated return management, the central immigration offices Essen for the District of Düsseldorf, and Coesfeld for the district of Münster, were founded. All central immigration offices answer to department 523: "integrated return management", which is part of the State Ministry for Children, Family, Refugees and Integration (MKFFI). Furthermore, each district government implemented a "Regional Return Coordination" unit, supervising returns enforced by local immigration offices. In distinction to the Hessian exit regime, both local and central immigration offices enforce deportations and police officers are only involved if administrative assistance is requested or to train deportation staff in tactics.

Next to key responsibilities of obtaining passport replacement documents and identification procedures, the federal ministry distributed particular tasks to each central immigration office. On paper, knowledge and best practices in distributed areas are supposed to be gathered with particular offices, who then are able to assist other offices in these fields. Hence, the coordination of deportations by air (Zentrale Flugabschiebung, ZFA) and the centralised coordination of returns (Zentrale Rückkehrkoordination, ZRK) are part of the central immigration office Bielefeld, whereas the central immigration office Cologne is responsible to coordinate transportation in case of land deportations. Furthermore, the central immigration office Essen acts as experts on the deportation of "security relevant foreigners" and migrants judged to be a threat to public safety and order.

#### Voluntary Return

In NRW, return counselling is mostly conducted independent from state structures by NGOs. In recent years, immigration offices increasingly established their own counselling units, justifiably putting into question whether counselling is conducted openly. There is no coherent approach to it throughout the state and each municipality and region handles it differently. Nevertheless, it is a declared goal of the MKFFI and part of the "integrated return management" that the return coordination units of district governments are supposed to engage in this area. What it means in practice still has to be seen, but it probably involves a state sponsored funding guideline for voluntary return and additional regional support programs.

### 4.1.4. Non-State Actors

There are various non-state actors involved in the German exit system. Deportations and voluntary return aren't solely facilitated by state entities, but are – especially in voluntary returns – dependent on civil-society actors, such as NGOs for counselling. Even though there has been an increasing centralisation of exit structures in recent years, offices in states like NRW, in which the enforcement of deportations still rests with local immigration offices, have a long-standing relationship to civil society actors. Often, they are included in round tables, local policy platforms and can negotiate specific ways, for instance to bring prove of mandatory cooperation, which

then are recognised by authorities. Furthermore, civil-society actors and organisations working together with immigration offices, often adopt state terminologies and logics.

Next to return counselling, (especially bigger church related) NGOs are involved in running state shelters for migrants who requested asylum. It often is a collaboration between district or state governments who act as employers and NGOs, employed by state governments to run the day-to-day business of shelters.

**Airlines**

Around 80 percent of all deportations in Germany are enforced by air, most of them unaccompanied on regular flights. Airlines have different policies in how far they cooperate in deportations. Some airlines provide planes for collective charter deportations, whereas other airlines only offer accompanied and unaccompanied seats for deportations on regular flights.

## 4.2. Methodology

Interview partners were chosen according to the beforehand disseminated list of key-actors and structures. Unfortunately, not all agreed to partake in the study and to be interviewed, as explained below. Given the differences in the state's exist systems, actors and entities played a different role in each state. For instance, in local immigration offices in Hesse employees are involved in illegalising subjects and rendering them deportable, but they are not involved in the deportation process itself, whereas in NRW local immigration offices have their own field teams deporting migrants. Thus, this study focussed respectively on entities involved in the actual deportation process.

### 4.2.1. Our interviewees

Table 14. Interviewees relating to Hamburg

| Interview Number | Name | Organization | Method |
|---|---|---|---|
| 1. | Anonymous | Federal Police Officer | In person |
| 2. | Anonymous | Schleswig-Holstein Police Officer | Video-Chat |
| 3. | Anonymous | Escort Officer | Video-Chat |
| 4. | Anonymous | Independent Return Monitor 1 | Video-Chat |
| 5. | Anonymous | Independent Return Monitor 2 | Video-Chat |
| 6. | Anonymous | Independent Return Monitors 3 | Video-Chat |

In order to build our contacts within the police department here, we used a snowballing methodology to build from pre-existing contacts within the region and German asylum system. This proved effective and we were quickly able to secure three interviews, which was satisfactory as it allowed for developing a focus on a smaller region where deportation is not taking place to the same high extent as NRW, for example. We also strived to secure interviews

with police officers with different relations to the Hamburg exit system, so as to gain multiple perspective on police functions. The first interview was conducted in person with a police officer at Hamburg airport. Shortly after this interview, the outbreak of the first wave of the Covid-19 crisis precluded any further face-to-face interviews, so all the remaining ones had to be conducted via video-chat. While this proved effective as an interview medium, the covid-context obviously made impossible ethnographic field visits and observations of the Hamburg infrastructure. In order to compare the discussions with police staff, we then also made contact with three return monitors from an NGO, who on behalf of the federal German authorities conduct independent monitoring of forced returns from Hamburg, and across Germany. After the interviews had been agreed to, conducted, transcribed and approved, we learned that communication was sent out to police staff in the German exit system instructing not to agree to conduct any interviews. Since all interviews had by then already been finalized, none of the participants took steps in contradiction of this communication, but it did make them request anonymity from us, which we were happy to grant.

Table 15. Interviewees relating to Hesse

| Interview Number | Name | Organization | Method |
|---|---|---|---|
| 1. | Norbert Strauch | Head of Immigration Office Kassel | Telephone |
| 2. | Dana Mendoca dos Santos | Caseworker Immigration Office Kassel | Video-Chat |
| 3. | Anonymous | State Department "Return Management" | Telephone Group Interview |
| | Anonymous | State Police Headquarter; Department 6: Returns | |
| | Anonymous | | |
| | Anonymous | Regional Council Darmstadt | |
| 4. | Timmo Scherenberg | Refugee Council Hesse | In Person |

For the study in Hesse, we approached several local immigration offices, of whom the head of the immigration office Kassel replied positively within a few days. He was open to let us interview a caseworker, responsible for procedures terminating stays conditioned by the criteria that we would interview him, too. The interviews were conducted by phone and video-chat. Given Hesse's exit system, in which the three central immigration offices are situated in Kassel, Gießen and Darmstadt, we approached the local immigration offices in these cities. We did so based on the idea that geographical closeness might lead to greater day-to-day collaborations, an exchange in employees and therefore a rather comprehensive understanding of 'how things work in practice' in a given regional area, as well as the impact of changes in recent years. Since central immigration offices and police enforce deportations, we focussed on them and tried to get access. Unfortunately, the Hessian ministry of the interior did not agree to interviews with each central immigration office, but insisted on a joint interview with the respective department at the ministry. Reasons for this will be dealt with below.

In addition to abovementioned state entities, we interviewed the head of the Refugee Council Hesse – an NGO working on legal and durable stay. Refugee councils are present in each state and although they are organised in the umbrella association proAsyl e.V., they operate independently from each other. Furthermore, in some cities (for example Cologne) independent local refugee councils exist, too. The Hessian refugee council supports local initiatives and offers to assist through trainings, financial and substantive support. Refugee councils often act as experts in legislative procedures, in which they comment on proposed legal changes and new laws. They are widely recognised in the field of non-governmental pro-migrant organisations and often support positions opposing deportations in principle.

Hessian organisations offering return counselling only came back to us after we already conducted three interviews with return counselling organisations in NRW and one with an IOM official. It was an unfortunate timing, since we also approached two NGOs, which specialised in the counsel of migrants not identifying as men, in order to get a gender related perspective, too. But due to time constraints, we chose not to further approach or engage with NGOs offering return counselling in Hesse, but to rather focus on central immigration offices and police entities.

Table 16. Interviewees relating to NRW

| Interview Number | Name | Organization | Method |
|---|---|---|---|
| 5. | Anonymous | Central Immigration Office NRW | In Person; Group Interview |
| | Anonymous | Deputy Head Central, Immigration Office NRW | |
| | Anonymous | Deputy Head Local, Immigration Office NRW | |
| | Anonymous | Project Leader, Local Immigration Office NRW | |
| | Anonymous | Deportation Officer Local Immigration Office NRW | |
| 6. | Kathrin Burkhardt | Head Return Management, Local and Central Immigration Office Cologne | In Person; Group Interview |
| | Ilias Bokas | Head of Return Management, Local Immigration Office Cologne | |
| 7. | Anonymous | Desk-worker "Deportation", Immigration Office Cologne | In Person |
| 8. | Anonymous | Deportation Officer, Field Service, Immigration Office Cologne | In Person |
| 9. | Anonymous | Regional Return Coordination, District Government | Telephone |
| 10. | Anonymous | MKFFI, Integrated Return Management and Case Management | Telephone; Group interview |
| | Anonymous | MKFFI, Integrated Return and Case Management | |
| | Anonymous | Higher Executive, Central Immigration Office | |
| 11. | Anonymous | State Refugee Shelter, District Government | Telephone; Group Interview |
| | Anonymous | State Refugee Shelter, NGO: providing social worker and care-staff | |
| 12. | Anonymous | Refugee Council NRW | Telephone |
| 13. | Anonymous | Return Counselling, NGO | Video-Chat |
| 14. | Anonymous | Return Counselling, NGO Diakonie | Video-Chat |
| 15. | Anonymous | | Video-Chat |

NRW is the most densely populated federal state in Germany. Consequently,  paired with local immigration offices also being responsible to enforce deportations, there are numerous entities

involved in NRWs exit system. To receive a more comprehensive understanding of the three main levels involved – local, district and state – and since the (central) immigration office Cologne offered the greatest extent of access, we decided to approach other involved actors, such as district government entities, state shelters and NGOs offering return counselling, within the administrative district of Cologne (similar to the idea in Hesse, to interview actors in a given regional area). The head of the "Return Management" Department of the local and central immigration office Cologne agreed to partake in the study. In line with trends of centralisation present all over Germany, "Return Management" units of the central and local immigration office were recently merged, although formally still operating independent from each other. Thus, staff is allocated respectively, and the local immigration offices "Return Management" department still has its own head, but both departments work together closely in terms of orientation, equipment, training, offices, and so forth. We interviewed the head of the overall "Return Management" department, together with the head of the local immigration offices "Return Management" units. In addition, we conducted an interview with a desk caseworker, organising and coordinating deportations, and a field officer enforcing deportations, of the local immigration office Cologne. All interviews at the (central) immigration office Cologne were done in person.

Next to entities in the administrative region of Cologne, another central immigration office agreed to a joint interview together with the local immigration office, including employees enforcing deportations. The interview was done in person and happened to be a focus group interview.
Unfortunately, the state department responsible for deportations (Ministry for Children, Family, Refugees and Integration), only agreed to let us interview an interlocutor at the central immigration office Bielefeld in a joint interview with the  respective state department. Consequently, we conducted a telephone group interview . Since the interview was only possible in a very late stage, we included findings as the report was written.

To better understand the 2016 implemented migration governance structure, "Integrated Return Management", we interviewed a "Regional Return Coordination" of  a district government in NRW. To further the structural picture, we conducted an interview with a state refugee shelter, run jointly by the district government providing funding and administering it, while  an NGO provides social workers and most of the staff on the ground. In principle, most state shelters are run in their day-to-day business by an NGO, employed by the respective district government, leading to a mixed form of governance involving state and non-state actors.

Besides state entities, or mixed form of state/ non-state entities, we interviewed three return counsellors – one from a secular NGO and two from the protestant NGO Diakonie – and the head of the refugee council NRW.

Table 17. Interviewees who are Federal and Non-State Actors

| Interview Number | Name | Organization | Method |
|---|---|---|---|
| 16. | Anonymous | IOM Germany, Policy and Project Support | Video-Chat |
| 17. | Anonymous | IOM Germany, Counsellor | Video-Chat |
| 18. | Anonymous | Federal Police Headquarters Potsdam, Division 25 - Returns | In Person |
| 19. | Anonymous | FOMR Field Office, Executive | Telephone |
| 20. | Anonymous | FOMR  Specialised Field Office, Executive | Telephone |
| 21. | Anonymous | Decider FOMR Specialised Field Office | Telephone |
| 22. | Anonymous | Decider FOMR Field Office | Telephone |
| 23. | Anonymous | Head of Aviation Security, Airline | Telephone |
|  | Anonymous | Aviation Security, Section Deportations |  |

Besides interlocutors working in entities clearly linked to a federal state, we interviewed two employees of IOM Germany: one conducting return counselling and another responsible for policy and project support in their Berlin headquarters through Video-Chat. Next, we interviewed four interlocutors working in FOMR outposts, two executives and two caseworkers of the higher service eligible to decide on asylum requests. Since the FOMR grew from about 2000 to ca. 8000 people in size since 2015, three of four interlocutors started after or in 2015. Luckily and thanks to the openness of the executives, we were able to interview a Decider, working for the FOMR since the early '90s. All interviews were conducted by phone.

Unfortunately, we were only able to interview an employee of Division 25, responsible for returns of the federal police headquarters, situated in Potsdam. The interview was conducted in person and reasons, why it wasn't possible to talk to other police officers will be dealt with below. The last non-local and non-state structure we interviewed was the head of Aviation Security of an airline and a team member, responsible for dealing with authorities and accompanying the booking and execution of deportations (unaccompanied and accompanied). The interview was conducted via phone.

All interviews in described in this section had to be re-scheduled multiple times due to the Corona virus pandemic.

## 4.2.2. Actors who refused to be interviewed for this study

Table 17. Actors who refused to be interviewed for this study

| Position | Method |
|---|---|
| Immigration Office Giessen | Mail & Phone |
| Immigration Office Darmstadt | Mail & Phone |
| Immigration Office Unna | Mail & Phone |
| Immigration Office Bonn | Mail & Phone |
| Immigration Office Rhein-Erft | Mail & Phone |
| Central Immigration Office Unna | Mail & Phone |
| Central Return Coordination & Central Flight Coordination, Central Immigration Office Bielefeld | Mail & Phone |
| Pre-removal detention Prison, Darmstadt (Part of Police Headquarters South Hesse) | Mail & Phone |
| Regional Council Kassel | Mail & Phone |
| Regional Council Gießen | Mail & Phone |
| Federal Police Inspection Aachen | Mail & Phone |
| Federal Police Department St. Augustin | Mail & Phone |
| Federal Police Station Gießen | Mail & Phone |
| Federal Police Inspection Trier | Mail |
| Federal Police Inspection Frankfurt Airport | Mail & Phone |
| Federal Police Inspection Düsseldorf Airport | Mail & Phone |
| Hessian Riot Police Headquarters | Mail & Phone |
| Police Station Essen | Mail & Phone |
| State Police Unna | Mail & Phone |
| Eurowings | Mail |
| State Refugee Shelter Bonn/ Bad Godesberg | Mail |
| Hessian Refugee First Reception Shelter Gießen | Mail & Phone |

We approached several local immigration offices who either didn't answer (the smaller share) or told us that they don't have the capacities to take part in interviews, receive so many interview and research requests that they decided not to partake in any of these since they don't want to disadvantage anyone, or referred us to the respective state department whom either they consulted or whom we should ask for permission. The greater number of entities involved, immigration offices, districts, size, etc. in NRW, led to a situation in which, for instance, one (central) immigration office  didn't ask for permission at the state level, while another (central) immigration office  most probably notified the state level after the interview, while other offices again asked for permission. Respectively, the central immigration office Unna told us to direct questions at the MKFFI (the responsible state ministry in NRW) and the local immigration office told us that they unfortunately won't be able to partake in the study, since they aren't able to answer all such requests without neglecting their core tasks. The refusals and reasoning came after they had talked to superiors at either district or state level.

Concerning police structures, we mostly focussed on federal and state police involved in deportations at airports, shelters or not randomly involved in the process, but structurally part of it. Therefore, we called all federal police departments in NRW and most in Hesse, while sending them an e-mail request at the same time or mostly shortly after the call in which we tried to get the right e-mail address to send the interview request to. Officers on the phone reacted with a variety of reactions, from great suspicion and mistrust to fifteen, twenty minutes conversations with (maybe genuine) interest. One officer at the Federal Police even told us on the phone (after a fifteen-minute conversation about the project) that personally, he thinks it is an interesting and valuable project, but he feels reluctant to push it in the department, since he would be seen as "the left guy, *again*" (field notes 05.03.2020). Another ground not to take part articulated twice was the Corona pandemic and the respective increase in workload, ranking interviews and academic studies very low in priorities. Eventually, all police offices referred us to their headquarters in Potsdam, after or before they approached it themselves. The press office at their headquarters wasn't very eager to participate and send us an initial rejection, but eventually reconsidered after we extended the possible time period for the interview till June and (over)stressed the consequences of not taking part in the interview – basically that their perspective will become invisible and that there will be an imbalance in who gets a say and voices opinions and who doesn't.  Nevertheless, the federal police headquarters press office and interlocutor in the department responsible for deportations were very decisive that they were the only ones answering questions concerning deportations and that we were not allowed to talk to any other officer. Consequently, it was possible to ask some questions and to get some insights, but unfortunately it wasn't possible to interview street-level officers in different inspections and to gain a more comprehensive understanding of their perspective and actions – as it was the case in Hamburg.

Since Hesse has only three central immigration offices and a deportation-for-detention facility, we approached all four for interviews, hoping to be able to talk at least to one alone – a hope which wouldn't realise. After approaching all offices and bothering them to some extent, we were told by one central immigration office that the Hessian ministry of the interior issued a state decree prohibiting its three central immigration offices to partake in the study. The reason given was that the interest of the study wasn't related in any part with the work of central immigration offices – it is anyone's guess how they came to such an assessment. Unfortunately, we couldn't get the decree (it was described as 'internal only'), but luckily, an interlocutor was so

kind to hand us the contact of the respective person in the ministry. After several telephone calls and e-mails, they agreed to a focus group interview with the responsible department in the state ministry and an interlocutor of the central immigration office Darmstadt. Although we were glad to be able to interview at least higher up state executives, they wouldn't allow us to talk to street-level employees, especially not in a one-on-one situation.

### 4.2.3. Methodology behind quantitative tables and visualizations

Through preliminary snowballing methodology among actors in the German exit system, it was decided to work with a dataset derived from publicly available documents with replies about the German return operations in response to questions fielded by German MPs in the Bundestag. These documents contained information about all chartered return operations from Germany over the course of the year. Included in this was the date, the number of returnees per flight, the destination, the airline, the cost of charter, the departure airport and the number of police escorts also on the flight. This was converted into an Excel file. However, as much of this data contained extremely large variations in numbers, sometimes fluctuating from near zero to several thousands, a methodological choice was made to produce bar representations via a logarithmic scale for the y-values settling on base 5 in order to create scales with values around the clusters in the dataset and with a high value point close the largest numbers in the dataset. This, in combination with the inclusion of data labels on each bar, allowed the building of bar charts demonstrating: The actual size of values; showing that the highest values were dominant; and representing also very small ones. Certain other tables comprise data from different datasets (e.g. Figure 11).

Focus was placed on spotting geographical or chronological patterns and trends in the dataset. In line with the these preliminary findings five regions were created into which the data was categorized: Balkans and Caucasus combines destinations in South East Europe, the Caucasus region and Russia; Asian return operations went to Pakistan, Bangladesh and Afghanistan; West Africa included a number of destinations of which Nigeria was the most frequent, EU comprised of Dublin return operations to countries across the EU zone; North Africa and Middle East included flights to Tunisia, Egypt and Lebanon. Whilst to a certain extent arbitrary, the research team decided to proceed with this categorization due to similarities between operation to the different groups of destination countries. For instance, the countries categorized within the Asian group are closely situation geographically, as are countries in the West African group, and in both cases, there were strong similarities between operations within each category in terms of size/scale of operation and the cost of chartering airlines. Similarly, the Dublin returns to the EU-zone also made for an obvious category, due to the already politically demarcated geographic regionality. In this case, the flights therein were also similar in terms of size and cost.

The Balkans and Caucasus group is a more arbitrarily construed category, although the reasons for maintaining it are important. In the dataset, there were two main clusters of destination countries for German deportations in, respectively, the Balkans of South-East Europe and the Caucasus region of Central Asia. The research team decided to place them in a single category because of similarities in terms of size and cost of operations, and also because both areas in fact represented destinations which are interlinked via a tight and complex web of German multi-stop operations, setting them clearly apart from operations to other regions. Moreover, some of these multistep operations even connected the two areas (f.i. flights stopping in both Albania and Armenia.) To this quasi-geographical category was also included outlying countries, such as Ukraine and Russia which saw return operations similar in scope and costs, and which, at

a geographical level, also create a physical bridge between the two clusters of destinations in the Balkans and the Caucasus.

The final category decided upon was North Africa and the Middle East. Again, this was something of a weak category due to the fact that only three destination countries fall within in it with the bulk of flights going to Tunisia while just two went to Egypt and three to Lebanon. There were fewer returnees on board these flights than the Tunisian operations. However, it was decided to comprise these destinations into an independent category, because they differed sufficiently from all the other datasets in terms of geography, cost and deportees. This methodological choice allows for particularly illuminating visualizations, such as Figure 11.

Plotting these categories into timelines and scatter graphs allowed for visualization of important details, such as the number of deportees on board, single vs two-stop operations, differentiating the costs and volumes of the different airlines contracted by German authorities to different regions. It was also decided to use the data at hand on charter costs and number of deportees, and convert it into a per-returnee cost. Crucially, while the sustainability of exit operations cannot be reduced to economic costs, but must also include a range of other aspects not part of our dataset, such as migrants´ basic rights differentiated according to their life situation and background, as well as the future prospects of re-migration, and collaboration or lack thereof with destination authorities, this particular visualization was kept, since it allowed for several illustrations of potentially unsustainable implications of current German exit governance. Namely the exorbitantly high costs of even extremely small exit operations, the massive differences between operations to different regions and the seemingly inexplicable variations between various airlines contracted for exit operations.

### 4.2.4. The impact of Covid-19 on fieldwork

The Covid-19 pandemic caused a lot of people and structures to be less reachable. Public administrations in Germany are not always up to date with recent technological developments. Therefore, having most people working from home for quite some time, March, April and partly May were hectic months for bureaucracies themselves in which agreeing to and taking part in an interview (understandably) was not a priority. Consequently, after finally reaching prospective interlocutors, they often asked to either come back to them at a later point in time or denied eventually the request, referring to the current chaotic, uncoordinated workflows and high workload due to the pandemic. Therefore, interviews scheduled for March and April were postponed (often with the idea to do them in person at a later stage when infection numbers would hopefully stabilise), or put on hold. Furthermore, means to reach people significantly reduced, having everyone calling and writing e-mails, making it harder to reach someone and not to be told to call again in an hour. At the same time, video or telephone conferences increased at least for group leaders and executives, which I usually had to go through to receive permission to talk to people on the ground floor. I often had to call several times throughout several days, because people with decision power were in meetings or haven't had time to look at what I send to their secretaries. In addition, in nearly every case I made the experience of having the right number, but talking to the 'wrong' person since people were re-allocated to different offices in line with infection protection protocols. Technical knowledge played its part, too, since either technical support failed, or people were working from home but didn't know how, or forgot to activate call forwarding. Bottom line is that it took far more time to reach people than before initially, but once having the right number contact usually worked fine.

Interlocutors were absolutely fine with video-chat, or telephone interviews and there was much flexibility if programs didn't work as hoped and openness despite the mediated form of contact. Nevertheless, especially with regard to emotionally challenging questions, it does make a difference whether or not you talk to someone in person or through the phone, or laptop. Given the situation, it was harder for me to read people, to create an atmosphere of trust and to decide on which language to use with whom. I found it to be especially limiting in non-personal group interviews, where moderation took more space than in personal encounters and people are more inclined to give statements than to engage into a discussion with each other, since the latter would often mean to interrupt the flow of the conversation. It also made it harder to 'read the room' and to direct questions to interlocutors with non-dominant talking behaviours, since those who weren't aware, or not used to pay attention to it, took most of the time and talked a lot – unsurprisingly, dominant talkers were mostly men and non-dominant talkers mostly women. I found it to be a challenge, to balance gender related talking behaviours – not for the sake of gender equality, but to get opinions and standpoints I assumed to be important and interesting, given the persons profile and experience – and to direct questions to the 'right' people in group interviews. Furthermore, it was harder to actually debate matters and issues over the phone than in person. Maybe it was also simply easier to withdraw from a discussion in a group interview.

As most public institutions were closed for the public, it became impossible to use more informal methods in trying to gain access to reluctant actors like police authorities. It was not possible to simply drop by, present our request, give a background, engage with people in person and find our way to someone with decision-power over access.

### 4.2.5. Terminology

The research team decided to use the terms "deportee" and "returnee" interchangeably throughout the report, in order to reflect the varying terminology used by the different institutions and interviewees.

## 4.3. Research findings

In this section we will describe the challenges and problems described by interlocutors in the following categories: 1) employees of immigration offices; 2) employees of the FOMR; 3) Challenges expressed by both immigration offices and the FOMR; 4) civil society actors; 5) an airline; 6) the IOM; and 7) local and federal police.

### 4.3.1. Employees of immigration offices

**A changing and complicated Residence Act, understaffed offices and high fluctuation**

One problem that immigration officials identified in the ongoing amendment and increasing complication of the Residence Act itself. Introduced in 2005, it has been changed countless times and interlocutors describe the increasing difficulties in applying individual legal norms on a given context, since norms partly contradict each other, and the great amount of indeterminate legal concepts causes its interpretation to be very much up to the single employee. Furthermore, EU guidelines and court verdicts play an increasingly important role and national legislation isn't keeping up, leaving it to individual offices and officials themselves to stay up to date. Interlocutors described the Residence Act to become close to impractical in its application. As a consequence, the introduction phase at the immigration office Kassel is currently between nine

and twelve months, and they employed fully trained lawyers in case-working positions to ensure proper application.

A problem tightened by a lack in staff, a lot of lateral entrants and a high fluctuation. The immigration office Kassel employed 52 new staff members since March 2016, half of them lateral entrants while having a total of 62 employees. A situation articulated by employees of other interviewed immigration offices, too. Executives mentioned that it is extremely difficult to train their own employees in recent legal changes, because of a lack in training materials and given the high workload anyway present. In their perspective, state ministries should take more responsibility and offer more training material. A call the MKFFI is slowly following, but so far only a few substantive modules are available. Interlocutors articulated that an increase in staff would help them to overcome described problems in knowledge transfer and to decrease workload in general.

### Challenges enforcing deportations

Interlocutors mention three main problems they encounter regularly when enforcing deportations. All three have been described by central as well as local immigration office employees. Therefore, they apply to both state and municipal shelters.
First, most deportations fail, since the migrant isn't encountered on the day itself, even though deportations aren't announced anymore since 2015. Deportation officers in NRW described no difference between state run and municipal shelters, both in general are run in collaboration between district government and an NGO providing social staff. Officers in Hesse described the collaboration with municipal shelters run by NGOs as partly difficult. They named a conflict of interest between state deportation officers aim to enforce a deportation and NGO staff to be uncooperative, which they ground in a stance against deportations in general. Therefore, they are under the impression that if the sought migrant isn't in his room, but NGO staff know the current whereabouts, such information is withheld from them. This is in sharp distinction to the information given by the interlocutor of an NGO, running a state shelter in NRW, who explicitly told that his staff forwards hunches and ideas of the whereabouts of a sought migrant to deportation officers of the central immigration office.
Second, deportation officers named **resistance** of prospective deportees to be a reason for deportations to fail regularly. Such resistance does not necessarily have to be directed against state officials, but is often expressed in self-harm, directed against the migrant him- or herself. In harming oneself severely, one cannot be deported due to medical reasons. Furthermore, resistance does not need to be physical. Before each deportation on a regular flight, pilots talk to the migrant. If the migrant announces plans to make trouble on board and displays accordingly disruptive behaviour, pilots usually cancel the deportation. Desk workers organising deportations describe it as a problem, since they can only request an accompanied deportation at the federal police, if the person in question has ever displayed aggressive or violent behaviour. Therefore, the category aggressive or violent behaviour softens significantly. An interlocutor told me that she records even instances in which a migrant gets angry (raises his/her voice, throws documents around, etc.) in a caseworker's office about an unfortunate decision or disagreement, in order to request an accompanied deportation. In her experience, the police follow up on this kind of 'risk assessment'.
Third, if migrants have used drugs in the past or say that they used drugs recently, they are briefly checked by a doctor at the airport who issues a fit-for-fly paper. Interlocutors described deportations to be stopped repeatedly, due to drug use or other health related issues, consequently leading to the inability to get a fit-for-fly certificate.

In light of described challenges, Hessian authorities made use of temporary pre-removal detention (*Ausreisegewahrsam*) twice  as a mean to counter these challenges. It is a legal means having significantly lower legal requirements than the ordinary pre-removal detention. Migrants affected of immediate deportation can be taken into custody for a maximum of ten days, close to the location from which the deportation is supposed to be enforced. Therefore, a wing of the police headquarters in Frankfurt was remodelled to serve as a temporary detention facility and migrants, scheduled for deportation on a charter flight to a West-Balkan state, were taken into custody for a period of four to seven days. State interlocutors expressed the wish to have a permanent Ausreisegewahrsam facility, which is discussed politically, but there is no consensus among currently governing parties yet.

The increase in collective charter flight deportations was welcomed by interlocutors of both federal states, since it is easier for police to make use of coercion if no regular passengers are on board and pilots aren't cancelling the deportation due to behaviour generally experienced as aggressive or unpleasant, from either side.
Coming back to not encountering migrants in shelters, interlocutors in Hesse articulated standpoints to challenge jurisprudence regarding Article 13 of German basic law, the constitutional right protecting ones flat from intrusion:

> *The issue with shelters is something we are having too, to a significant extent. It is hard to bypass it. Alone the question, who is holding the domiciliary right? To whom is Art. 13 applicable? For the one who is having the domiciliary right or the one who is accommodated there? There are a lot of insecurities. Which rooms am I allowed to enter, which am I not? And also in this regard, the Orderly Return Act loosened requirements, since I have a right to enter the rooms of third parties now, or mentioned shelters which makes it easier to counter such problems. I still need concrete hunches that the person is present in this or that room.  (State Ministry/ State Police Hesse)*

So far, jurisprudence is quite coherent and firmly articulated that the room in a shelter, in which a person resides, is protected by Art. 13 of the German constitution. Otherwise, officials of the federal state would have the right to enter each room in a shelter to search for the person they seek to deport. Contesting such standpoints is a way to counter situations in which migrants aren't apprehended, given recorded practices to change rooms and beds inside the shelter. Therefore, migrants are not breaking the administrative order of a *Nachtzeitverfügung*, while they remain intangible for deportation officers – a matter I will elaborate upon below after pre-removal detention.

## Pre-removal Detention

Another means controversially discussed and described as difficult in its application, but a very important tool, is pre-removal detention. I will first outline described problems, followed by interlocutors approaches to change and circumvent these.

Interlocutors of both states named a lack in detention places and incoherent jurisprudence based on, in their eyes, judges' "excessive" legal criteria to be the main problems. While Hesse's pre-removal detention facility in Darmstadt is still in construction, currently operational with twenty places and when finished with a maximum of eighty places, NRW has the biggest detention facility in Germany with 175 places. The assessed lack in detention places is contested, since interlocutors of the immigration office in Cologne negated it, while interlocutors from other immigration offices named it to be a key factor.
A problem all interlocutors described is the incoherent jurisprudence, which happens to be one of the two reasons why facilities never operate under full capacity. Each morning, detention

facilities announce the number of available places and migration offices can call to request/ reserve those. Places are distributed based on priorities, such as people regarded to be danger to public order and safety, come first, after which distribution follows a first-come-first-served logic. At this point in time, immigration offices usually didn't apprehend the targeted person and didn't submit the pre-removal detention request to the court, yet. After all places are distributed, officials by far not always encounter all sought migrants and judges regularly deny detention requests. Therefore, only a certain number of the distributed detention places are actually used, as described by one interlocutor:

> If I have 10 places and 50 immigration offices seize someone, then the first 10 will receive a confirmation while the other 40 are told, at 7.31am, that all places are gone. Without a secured detention place, I cannot go to court and say, 'well I cannot promise [that there will be a place available]...' Otherwise I would have to say 'Stockpile detention orders, maybe I get lucky and a place just got free'. No judge would take part in this, which as a consequence leads to the following in our little example: At 7.31am, 40 out of 50 cases are already cancelled, since all places are gone. Out of the ten who got a place, maybe only five are going in front of a court. In three cases detention is ordered, which leaves 7 places idle at the end of the day. (Interview 5)

Another aspect named is the fact that not all federal states are having pre-removal detention facilities and are making use of neighbouring states facilities. According to interlocutors, it leads to them being denied an available place as these are held back for a potential need in directly neighbouring states. Such practice was described with strong emotions of anger, incomprehension and a lack of solidarity.

As further challenges to pre-removal detention were named, depending on the day and time, judges aren't always very versed in the respective field of law. If a migrant, registered to have gone into hiding, is apprehended (by chance), pre-removal detention requests are often filed immediately. Depending on the time and weekday, judges - from all legal fields - might be on standby duty (cf. Vallbé et el. 2019). As a consequence, expertise with pre-removal detention law might not be given all the time and decisions might differ a lot. Interlocutors named the problem of not being able to contest such a court decision as an additional problem.

Next to it, interlocutors in NRW named a lack in knowledge to be a problem, especially in smaller immigration offices who only file a pre-removal detention request once or twice a year. Pre-removal detention needs to meet a twofold proportionality: a) there must not be a milder means with potentially similar effects available, and b) deportation must be scheduled and enforceable in a period of maximum three months, but as soon as possible. Especially the first reason is often named to be an issue, given different understandings of the effectiveness of less severe means such as administrative orders (dealt with below). Whereas immigration officials name all criteria to be met "five times", judges don't follow their argumentation and deny detention requests.

Another point articulated was the great distance to the next detention facility, causing a conflict between working hours and labour rights. Most flights are scheduled in the morning, so field officers are up all night to pick up the detained migrant and to be in time for the flight. Similarly, if a migrant is apprehended and a court ruling confirms pre-removal detention in the afternoon, field officers are back only around midnight. The option to detain migrants in regular state prisons created for a transition period till all states have specialised detention facilities in the Orderly Return Act 2019 (Geordnete Rückkehr Gesetz), has been categorically ruled out by the state ministry NRW – probably since it is legally questionable, given a contradicting EU verdict from 2014 based on a Hessian case, which unequivocally ruled that migrants awaiting

deportation can under no circumstances be held in regular prisons, as pre-removal detention is not supposed to have the character of a penal sentence. In addition, migrants who are under the influence of, or caught with drugs, display 'a-typical' behaviour or have a health issue need to be examined by the doctor of the facility. In the detention facility Büren in NRW, while it is possible to bring people till 9pm, the doctor is only on duty till 2pm.

A particularity only applicable to Dublin cases has been described by one office. The date and time of a planned deportation isn't announced anymore since 2015 and the information was declared to be a state secret in 2019. However, it only applies to a deportation in the close sense and isn't binding for Dublin-cases which officially are termed *Überstellungen* (transfers). The Dublin regulation doesn't address the issue of announcing or unannounced "transfers" either, thus it is within the scope of each (central) immigration office whether or not to inform the migrant beforehand. Coming back to the problem described by interlocutors of one office in NRW, given that deportations can be announced but don't have to, it leads to the situation that earliest in the third try to deport a person, grounds for a detention request at court are justified. The first planned deportation isn't announced. If the migrant isn't encountered, he or she cannot be blamed, since it wasn't announced. Therefore, the migrant is informed about the date at the second try. If not apprehended again, grounds for detention are potentially given.

Described problems in implementation are countered in different ways by immigration offices and officials. In general, centralisation of knowledge and competences has been articulated as a means to counter a lack in it, particularly experienced by smaller immigration offices. Therefore, since in Hesse the three regional councils and the state department are responsible for all deportations since mid 2018, the responsibility to request pre-removal detention lies with them too. It has been articulated as a way to relieve local immigration offices and to ensure deportation, even though there are a number of cases with positive decisions to be processed and implemented – an assessed dynamic present in smaller offices by interlocutors.
Despite great differences in structure and implementation, a similar logic is present in NRW, articulated in the "Integrated Return Management" approach. "Regional Return Coordination" units present in all five districts oversee return implementation of local immigration offices and assist with knowledge if needed. The local immigration office in Cologne chose to implement two teams, respectively part of the central and local office structure, solely responsible for pre-removal detention. Interlocutors named it a luxury affordable due to size and structure.
Next to centralisation and specialisation efforts, interlocutors in Hesse described a rather comprehensive approach/ agenda to eliminate obstacles in the successful implementation of pre-removal detention. Therefore, the respective executives and staff met with judges from the federal court to clarify understandings of legal criteria, their limits and which extent ought to be met. In addition, state officials lobby local courts and judges in order to establish an agreed upon set of standards and to scale down differences in jurisprudence. Nevertheless, interlocutors experience a lot of difficulties/resistance in getting access to local courts and judges.

All interlocutors confirmed administrative orders – originally designed as milder means to secure deportation and avoid detention – to be a key element in implementation but one which is likely to fail in requesting detention successfully. Thus, enforcing administrative orders has a double function, serving as a means to actively generate grounds for detention, as described by an interlocutor:

> We use it [administrative orders] systematically as a preliminary stage to deportation and
> specially to generate a reason to detain people, where we have the suspicion that they aren't
> residing where they are supposed to. (Interview 3)

### Administrative orders as alternatives to pre-removal detention

Administrative orders are widely used as a means to secure deportations and to avoid their cancellation. Interestingly, problems named by interlocutors of the one office were described as working well according to other offices staff. Hence, all issues defined cannot at all be seen as applicable to any other office.

Not knowing the whereabouts of a person has been named a general problem, which administrative orders are only partly able to solve. For instance, interlocutors of one office named a reporting order only as a means to know that the person is still around, while interlocutors at another office described good experiences with it, especially regarding Gefährder. Therefore, for the one office it doesn't solve the problem of not encountering migrants at the day of the deportation, whereas the other office doesn't use it for such a purpose. Interlocutors of both offices stated that it isn't an option to take migrants into custody when they come to report, since no one would follow the order anymore, ethical concerns and the emotional distress it would cause for the migrant.

An interesting contradiction was articulated concerning the so-called *Nachtzeitverfügung* (when people are ordered to reside in their assigned accommodation – mostly used in shelters – at night till the morning, or have to notify if they sleep somewhere else). Interlocutors in NRW articulated that they would like to make use of such an order, although they expressed concerns about turning shelters into 'open' prisons, but in their knowledge it's legally not possible. At the same time, interlocutors in Hesse described it as follows:

> Concerning other administrative orders, we particularly make use of the so called *Nachtzeitverfügung* [nighttime order], where we tell people that they have to stay in their shelters at night and have to sign out if they don't. And if he is violating that order repeatedly, it is a ground for detention. (; State Ministry/ State Police Hesse)

The contradicting views on the legality of Nachtzeitverfügungen cannot be explained due to differences in the respective state systems, since the legal reference frame is on the federal level and state decrees aren't considered/have no legal value in courts.

How to deal with migrants, not deportable (yet), but categorised to be Gefährder - a threat to public order and safety – differs, too. While the one office makes use of reporting obligations as a means to monitor activity and impose state control, another office makes use of the electronic foot shackle. A tool rendered possible as part of the Orderly Return Act, the latest legal changes mid 2019. Although electronic foot shackles are only a legal option if migrants are classified as Gefährder, interlocutors thought of it in a wider context, but ruled it out as a general tool applicable instead of detention, given its extremely high legal requirements.

### Regularisation Mechanisms and migrants living under long-term Duldung

The German Residence Act includes regularisation mechanisms as an acknowledgement of migrants de-facto integration into German society. They are intended to regularise migrants whose stay has been illegalised and who accordingly have been living under Duldung for at least six years in case of families and eight years in case of singles. Furthermore, two particular forms of Duldung – *Ausbildungsduldung* based on vocational training and *Beschäftigungsduldung* based on employment – are regarded as secondary regularisation mechanisms, although they do not protect a person from deportation. Nevertheless, they are – next to full regularisation mechanisms on humanitarian grounds, the factual integration of a foreigner and through a state's hardship commissions – the only other option for a migrant to receive a legal status.

Interlocutors described several problems in their practical application, foremost that eligibility criteria are too narrow and too difficult to meet, while grounds for exclusion are extensive. Thus, according to interlocutors Beschäftigungsduldungen have not been issued once in NRW, while in Hesse there seem to be differing views on it:

> There won't be a person with a Beschäftigungsduldung. I cannot imagine it, since the people who qualify for a Beschäftigungsduldung must have received from any proper working immigration office a legal status on humanitarian grounds. I really would like to see the numbers. I cannot imagine that there was ever a Beschäftigungsduldung issued in my immigration office. Because, as I already said, our decision-making praxis is quite liberal. And those who meet the requirements for a Beschäftigungsduldung are all already holding a residence permit according to §25 [Residence Act]. (Interview 1)

> In Hesse it is nothing uncommon, similar to an Ausbildungsduldung, thus they are granted (Interview 3)

Furthermore, interlocutors articulated different positions on how a regularisation mechanism should look like. Whereas some named, if people are already given the option to do training and to work, it shouldn't be a Duldung, but a legal stay right from the start. Others warned that such an approach would undermine the whole system, because it would encourage unauthorised entries and signals people that they 'just' have to make it to Germany no matter how and will be regularised. Regardless of personal opinion, interlocutors described several actions to counter narrow eligibility criteria and to decrease numbers of long-term tolerated migrants whose stay is considered illegal.

Offices started programs in which they identify youth and young adults with unknown identity holding a Duldung, in collaboration with local welfare offices. Those identified are counselled closely and a perspective towards a legal stay is developed, if migrants meet certain criteria, such as collaboration in determining their identity. However, due to narrow eligibility criteria it is only applicable to a small number of people. In light of the acknowledgement that Germany is a country of immigration, interlocutors voiced their opinion that regularisation mechanisms aren't a viable long-term solution, since it doesn't prohibit people from unauthorised entry and living realities of long term stay under Duldung. To address the current situation, a mix between better accessible regularisation mechanisms, consequent deportations and general amnesties, is seen as a sense making solution for interlocutors in local immigration offices, while interlocutors of entities closer involved in enforcing deportations took a stance against it.

In order to circumvent restrictive eligibility criteria and to decrease long-term stays under Duldung, executive interlocutors of the immigration office Cologne try to further a more perspective oriented approach of caseworkers for either a legal stay, or in acquiring skills potentially useful after deportation. Therefore, they partly extend stays of migrants effectively deportable, for them to conduct trainings before deportations, or suspend deportation efforts if future regularisation is seen to be a feasible option.
It should be noted that one of the Covid-19 effects on the implementation of regularization is that since the pandemic many migrants lost their employment or training place and are thus also at risk of deportation as they now, formally speaking, have no legal perspective for staying in Germany.

One more problem, described and feared by interlocutors, is a consequence of the newly introduced §60b: Duldung for people with unknown identity. It collides with an integrative orientation and application of the Residence Act, since it has clearly defined criteria severely limiting discretion. Problems described by interlocutors were, the auxiliary condition that time

under 60b-Duldung doesn't count for regularisation mechanisms, taking away the idea to develop a perspective, but leaves deportation as the only possible option. Thus, they fear and partly already experience that if a migrant isn't eligible for regularisation in near future, the person will not collaborate in making his or her identity known because he or she is well aware that it can only lead to deportation. It impedes efforts of regularising people, while it creates the structural conditions for new long-term tolerated people.

## Voluntary return

Voluntary return is an area in which civil society organisations involved in return-counselling and immigration offices interact and collaborate to great extent – in various functions dependent on state and region. Having differing views, I will outline challenges and problems identified by state interlocutors. Problems named by civil society actors will be dealt with under aspect D).

One of the main problems identified by interlocutors is the ill-designed database and the unreliability of the inserted data on voluntary return. Every state, district and even town is able to set up their own funding program to further voluntary return, while gathering data on it systematically only began recently. Furthermore, migrants are given a so-called *Grenzübertrittsbescheinigung* (border crossing confirmation) which they are supposed to either hand over to the federal police, or at the German embassy in their country of origin (or destination, dependent on a migrants background). An interlocutor from federal police told me that the return flow is inconsistent, since migrants either don't hand it in at the embassy or it doesn't reach them. Therefore, the database through which funded voluntary returns are monitored is unreliable.

Next to it, interlocutors in immigration offices described two different approaches and ways to deal with voluntary return. On the one hand, they explicitly complained that NGO counselling is too open and that its aim isn't self-organised deportation. A quote from one Hessian interlocutor:

> *Then, in 2017 [after mostly all migrants from West-Balkan countries have been deported] or maybe already in the end of 2016, a project group dealing with this question [how to further increase deportations] came together and concluded, we shouldn't leave the business, the return business to NGOs, because we don't need an independent open return counselling, but a target-oriented one. ( State Ministry/ State Police Hesse)*

Accordingly, regional councils in Hesse and immigration offices in NRW established their own return counselling teams and made counselling a mandatory condition for the prolongation of a Duldung. In addition, state and district return funding schemes are developed to design a more "attractive" offer to particular dominant groups of interest. An interlocutor from an office in NRW told me that NGOs are places in which migrants are often less resistant to voluntary return, than in immigration offices. Hence, they counsel migrants on their basic options and refer them to the respective NGO afterwards, hoping their words to take effect there.

On the other hand, the immigration office in Cologne is trying to get people to leave on their own in offering practical trainings and that people are able to develop skills before deportation, so that they make plans to stay in their country of origin and won't return. It is supposed to increase the emotional bond between the caseworker and the migrant, and runs in line with an orientation, which uses compassion as a tool. In broadening the understanding of return away from simply "booking a ticket", they hope to increase the acceptance of voluntary return as a viable and sustainable option.

### Deported people re-migrate – repeatedly

Interlocutors from all offices described situations in which they deported the same person more than once, some even fairly regular. It accounts especially for Dublin-cases, where migrants are deported to another EU member state. Dublin deportations increased continuously, accounting for half of all deportations enforced in Germany by now. Interlocutors describe it as a great organisational effort, of which they know that half of it will be for "nothing", given the deportation implementation ratio. A situation described by an interlocutor in NRW: "Looking at it just practically, most of our time we are busy sending people from one place to another due to administrative responsibilities." Concerning deportations to neighbouring countries, an interlocutor described the absurd situation that at times, deported migrants are back to the city before he is.

Especially with regard to migrants from West-Balkan states, it has been described a great "problem" in the past by interlocutors – migrants were coming in the beginning of Winter and mostly leaving again in Spring. Measures implemented by the federal government - such as declaring West-Balkan states to safe-third countries, significantly restricting the access to the asylum system, and the following easier and quicker deportation process - paired with state governments actions – for instance, to stop issuing Winter decrees, which forbade to deport people to West-Balkan states in Winter due to humanitarian reasons – showed its effect and numbers decreased, but only to a certain extent.

Interlocutors way to deal with it runs from analogies with games of "cat and mouse", hoping that migrants eventually get tired and stop to come back in the long run, to the wish that the Dublin system will either be reformed or exchanged with a completely different mechanism. However, all interlocutors expressed that they would seriously wish the current system to be changed, soon.

### Technical errors and file mismanagement in the AZR

The Central Register of Foreign Nationals (AZR) is a very unreliable database out of various reasons. An interlocutor described that it doesn't match the complexity of given situations in her everyday work. For instance, when she wants to add a Duldung to a file, she can only choose Duldung but not which one. Furthermore, you aren't able to upload the reasons explaining why you denied a request for a legal status, but only the negative decision itself. It makes it harder to retrace and comprehend for any other, future caseworkers handling the respective person. In addition, the AZR is programmed in a way to check whether or not the wanted entry seems plausible or not. If it doesn't, caseworkers cannot enter the data they wish, making it impossible to include all data. Since offices are working with a separate, internal e-file management system independent from the AZR (which is a shared database, accessible by various state entities), they rather rely on the data displayed by it if it doesn't add up. Otherwise, one has to file a request for the missing data to be included, which was described as a cumbersome endeavour.

Another matter caused by technical problems has been described by interlocutors in Hesse, where the regional councils are supposed to either confirm, or amend a suggested decision made by the local immigration office, regarding an illegalised migrant obliged to leave the country. Since the e-file system isn't that far developed, or better established yet, local immigration offices are supposed to suggest decisions on the prolongation, or termination of stay of people whose files rest with the regional councils. Therefore, local offices are supposed to make a decision without a file, which in practice leads to a system in which the regional council basically tells the local immigration office how to act and what to do regarding a migrant

obliged to leave the country. According to an interlocutor's assessment, it will stay like this as long as the e-file system isn't working properly.

### Changing responsibilities of central immigration offices in NRW

Part of the announced "integrated return management" in NRW is that central immigration offices responsibilities in state run shelters aren't any longer only to deport people, but to counsel them in all aspects of the Residence Act, therefore also to assess if migrants are eligible to a legal stay according to residential norms. Given the change in orientation and purpose, interlocutors of the central immigration office in Cologne described that staff, who had been part of the central immigration office for a long time, experienced difficulties in transitioning. Interlocutors ascribed it to the fact, that central immigration offices staff hadn't been involved in substantive assessments of residential norms so far and that it is a frightening task, given the complexity y of the act and task. As a solution, they merged the return management units of the local and the central immigration office, since the former has a lot of know how in substantial assessments and the material implementation of residential norms. In addition, it served as a means to secure a coherent implementation praxis of both units.

## 4.3.2. Federal Office of Migration and Refugees (FOMR)

The Federal Office of Migration and Refugees assesses grounds for humanitarian protection based on the Asylum Act in hearings, conducted in numerous outposts spread throughout the country. Interlocutors in two offices described various challenges and bottlenecks outlined in this section.

### Disorganisation, too little staff at first and lack of management structures now

A recurrent theme has been the disorganised status of the office from 2015 till 2018. At first, outposts were seriously understaffed, and directives and guidelines changed tasks and orientations of offices weekly. In addition, they weren't passed on according to the internal hierarchy, but horizontally through the ranks. Thus, interlocutors in leading positions articulated how it became harder in time to convey to their staff the ongoing changes between focussing on hearings the one week and on writing notifications the other. Interlocutors in lower levels experienced it as a hectic and disorganised, but not necessarily negative, period. With time, the offices internal structures were sorted out and are described to be functioning well by now. However, an issue which remains is a lack in lower management structures. Accordingly, interlocutors described that – because of the great growth in staff members – dearly needed team leader positions are vacant for more than one and a half years now, although there are suitable applicants. A situation described by interlocutors from staff in other offices, too. Apparently, the reasons for these vacancies are unclear and information is kept tight to the human resource department in Nuremberg. An interlocutor described that you need to know people inside the headquarter to get information, but too often you don't know the right one. A wish for more transparency was expressed in this regard.

### Distinction into Decision Centres and FOMR outposts

A problem attributed to the distinction between Decision Centres and FOMR outposts is the separation between the person who conducts the hearing and the one who decides upon the case. Although it doesn't apply to the great share of decisions made and to all four Decision Centres, it represents a problematic separation. Because of a lack in personal impression, the transcript of the hearing needs to be really thorough, detailed and well written, in order to come

to a decision. A personal interaction with the migrant was described to be part and parcel in assessing the trustworthiness of given statements and reasons. An older interlocutor with a legal background, working for the FOMR for decades described it like this:

> *Of course it is to blame on the masses of proceedings and then one says, alright, there are further criteria to trustworthiness, and we also had trainings about it. For instance, if a Decider confronts the applicant with a contradiction, fairness has been served. This is what they say. It is questionable, I think legally contestable, but the courts are playing along, for years now, but it remains a question. (Decider FOMR Field Office)*

If a Decider experiences doubts about written statements or contents, they are supposed to call up the official who conducted the hearing. However, it remains hard to situate displayed emotions, for instance, to understand why a certain migrant cries if this is noted in the transcript.

## Standardisation of Hearings

Another issue described by an interlocutor is a change away from Deciders specialised on particular countries, towards an increasing standardisation of hearings supposedly enabling every Decider to conduct hearings for every country. Part of described standardisation is a set of basic questions – about twenty – retrievable for each country. Based on the transcripts of the hearings, she assesses that it changes the focus of the interview and furthers a technical, instead of a constitutional understanding. She attributes it to the great number in cases and a lack of interviewing skills and methods of how to lead a conversation. Furthermore, such a set of comparable questions ignores cultural differences, such as whether or not it is regarded as an insult to ask an unmarried woman whether or not she is having children, given the regional context. The same interlocutor situates the strive towards standardisation in line with a loss in the legal understanding of deciding upon a constitutional right, among recently employed, younger, Deciders. A point contradicted by another interlocutor, dealt with next.

## Too little time for hearings

Internally, there are targets in numbers and guidelines Deciders are supposed to meet and orient themselves upon. These targets don't need to be met necessarily, nevertheless they specify a norm and exert control. It leads to a conflict, described by an interlocutor, in which he would wish to be able to take as much time as needed for a hearing and that he isn't obliged to finish it the same day. He bases it on the experience that there are cases, where he feels that it would probably take two working days to properly unpack everything and that it isn't possible in a day, while he has to be done by the end of it. It leads to feelings of discomfort, resulting from a conflict between the time he would need to do justice to the depth of the decision he is about to make, and the structural limitations he experiences. A point I will come back to later.

To feel pressured by expectations of how many hearings and decisions to conclude in a given period of time, articulated in statistical tools, was expressed by several interlocutors. All of them experience it to be better and manageable now (since numbers declined significantly), but especially at the time when the Federal Labour Office has been involved in managing cases and outposts it was experienced as problematic, since making numbers was felt to be the sole focus. Accordingly, reached numbers in hearings and decisions were displayed on the wall like high-scores and actualised each day. A method which doesn't work well with being able to take time to conduct hearings and which was experienced by all interlocutors as troublesome.

### 4.3.3. Problems articulated by both immigration offices and the FOMR

**Federal Structure and Divided Responsibilities**

A matter more present for staff in immigration offices, but nevertheless influencing officials in FOMR outposts, too, is the federal structure of immigration offices. As outlined in the beginning, due to the federalised system and the differing distribution of responsibilities, interlocutors criticised that there are simply too many entities involved, whose authorities partly even contradict each other if they are based in different states. Given the differences in how to proceed if a migrant is apprehended in another state, both offices or none might be responsible, creating a complicated situation in which higher up executives need to figure out who will assume responsibility – each time anew.

Another aspect repeatedly named is that legal changes are introduced before the according guidelines of implementation are ready, while states already issue their own decrees in the meantime, in which they outline the way they would like to see such changes implemented. Thus, by the time the federal bodies publish their guidelines, a variety of state decrees and corresponding practices have already been established and routinised. It leads to different outcomes in similar cases dependent on office and state, making it hard to convey to a migrant a less benevolent decision compared to a decision made by another office in a different state on a similar case. The different practices of immigration offices cause migrants to move – without authorisation – to  other districts or federal states, causing problems in responsibilities. Interlocutors wish for a rather coherent practice and some would like the federal level to assume greater responsibility and not to have it situated on state level, where implementation practices are very much influenced by the political parties in power.

An interesting take has been articulated by interlocutors of the immigration office Cologne, who argue that because of the federal system and the legally guaranteed discretion at hand, it becomes very much a matter of attitude and standing on the local level. They describe police structures as actors, who exert pressure on immigration offices to enforce deportations more strictly. Given the standing, leadership and size of the office, such pressure shows varying degrees of impact. Their answer to it is to change the norm from restriction towards integration in exerting discretion collectively:

> And I think that a lot of times discretion is understood somehow wrong. Discretion doesn't describe the individual caseworker's decision in case x, y. Discretion can be exercised structurally, by giving out and enforcing guiding principles.

Nevertheless, orientation and restrictive or lenient implementation practices are a matter of individual offices. Another office in close distance to the immigration offices Cologne for instance, is well known for its hard-line approach and strict enforcement of deportations. Both approaches are covered by jurisprudence and legal norms.
In order to increase coherence in practices of different (central) immigration offices, both states follow the nationwide trend of centralisation. Hesse centralised almost all decision-making powers over illegalised migrants on the state level and among the three regional councils, while NRW implemented in its "integrated return management" approach on each district level a "regional return coordination" to oversee local immigration offices and push towards a coherent orientation. However, seen from a legal perspective, immigration offices in NRW are still independent in most of their decisions from district and federal levels (except for the binding character of decrees), in distinction to Hesse.

A last point articulated by interlocutors in Hesse concerns foreign policy. Non-European states set conditions for deportations and returns: how many per week/month; transport by land, sea or plane; to which harbours, border checkpoints or airports; etc. Foreign policy is a matter of the federal and not the state level. Therefore, they feel that they are lacking influence in relations to other nation-states and have too limited options to influence agendas. Interlocutors said, they would wish federal actors to exert more pressure on non-European states to take citizens back in greater numbers, maybe even to condition it on aid, funding and other "humanitarian" instruments.

### Distinction into Immigration Offices and FOMR

A closely related issue concerns the structural distinction into immigration offices and the FOMR. Interlocutors in immigration offices said that it is sometimes difficult, since they have to terminate stays and deport people based on decisions they have no knowledge about, or influence upon. In difficult, not clear-cut cases they don't know, they are unable to fully comprehend the grounds for rejections and cannot be sure that all factors have been taken into account, since they aren't trained in Asylum norms. Hence, in cases where a stay on grounds recognised by the Asylum Act has been rejected, they are merely enforcing the decision of the FOMR which is sometimes experienced as illegible and hard to explain to migrant(s) affected.

Interlocutors in FOMR outposts experience a similar lack in knowledge – legally and in practice – regarding immigration offices. There is little knowledge about the work in immigration offices – what they really do. Such a situation is increased since there isn't an inter-authority communication system connecting employees of both structures. If a FOMR employee wants to ask an immigration office employee a question, they have to call the general number available for the public and have to wait in line, and vice versa. They try to circumvent it through informal networks of who-knows-whom, but officially the structural separation accounts for communication, too. Furthermore, an interlocutor from an FOMR outpost told me that even for him, an expert, it is sometimes hard to understand the separation in Refuge and Migration in Germany, and the following distribution of responsibilities and entities involved. He feels a need for a better explanation of the German system to migrants, because if he – a FOMR employee who is a native – doesn't even fully comprehend the immigration system, how is someone who doesn't speak the language (well) and to whom the whole situation, context and structure is new supposed to understand it.

While interlocutors in both structures articulated problems and difficulties coming with the structural separation, it also offers emotional relieve. Interlocutors in FOMR outposts articulated, they are glad that their decision isn't final, since immigration offices are still assessing whether a migrant whose claim they rejected has a right to stay based on residential norms. It resolves emotional distress and serves as a mechanism to divert an otherwise felt responsibility that one's decision might be the reason for deportation. Similar reasoning was expressed with regard to legal appeals, where a judge is either confirming or revoking their decisions. In either case, it serves as a form of absolution from personal responsibility. A matter I will return to further below.

### Determining a person's identity

A problem described as central to interlocutors in both structures concerns inability to determine the identity of a person, enhanced if the person him*herself isn't cooperative or if the consulate isn't playing along. Interlocutors in immigration offices described that their greatest issues are the assessment of whether a migrant collaborated enough to meet the legal

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obligation to do so, if they are in a dead end or whether there are still steps to be taken out of their perspective. In addition, there are feelings of mistrust since out of their experience passports or other identification documents somehow show up the moment a right to remain is in sight. It furthers doubts, whether or not a person has really been to the embassy or simply to the city. Thus, bus tickets aren't enough and a picture in front of an embassy doesn't means that the person actually entered it, etc. At the same time, embassies often don't issue confirmations that a person has been there, or only do so in cases concerning a legal stay and not a deportation. It makes it hard for interlocutors to find the balance between asking a person to do something and believing the person to have done it. Furthermore, it makes it very hard to officially come to the point that employees in immigration offices recognise that there is nothing more to do, and till then people live under the precarious conditions of a Duldung, of being illegalised.

The beforehand mentioned new Duldung for people with unknown identity, according to §60b Residence Act, was meant as a means to pressure migrants to bring by any identification documents if they have some. On the one hand interlocutors named it to show a little effect, while on the other hand it erases all possible discretion towards an integrative approach as there is no perspective for a legal stay, once a person is categorised under §60b.

In order to address the matter of unknown identity, immigration offices partly act as experts for particular countries. It involves for example to invite delegations from embassies to the office and to conduct hearings, in order to identify people as their citizens. Otherwise, if a person isn't registered in police systems or with an assumed home-country and uses an Alias, there isn't much an employee of an immigration office can do.

Concerning the FOMR, interlocutors described two main technical tools at hand to gain indications about the truthfulness of the details given by a migrant. They are able to read-out the metadata of a migrant's phone, thus for instance to which country did they call when and how often, or which geographical locations are saved on the phone. The data derived from technical devices was sometimes experienced as helpful, but very often as rather useless – for example if the phone has been bought in Germany or on route.
In addition, interlocutors described the ability of a conversation-and-text analysis, which is only applicable to Arab speaking migrants. They talk into a phone for about ten minutes and the software recognises probabilities of a person being from a certain region judged on the dialect, for instance based on how popular the given dialect is in that area. Both tools are experienced to be of limited helpfulness and seen as controversial. They might offer clues but are never even coming close to the impression gained in a hearing. Furthermore, given the programming they are prone to deliver misleading or false results; for instance, in cases where there only few comparative language probes were inserted into the programs database.

Next to people with an unknown identity, stateless people represent a special case since there is no coherent praxis established and which way to go is decided in each case anew. Therefore, the immigration office Kassel reached out to the ministry several times but didn't get an answer so far. Interlocutors described especially cases from Palestine to be difficult in practice. It isn't a state recognised by Germany; thus people cannot hold a Palestinian citizenship. At the same time, decisions by the FOMR indicate Palestinian instead of stateless sometimes, making it hard to move forward and bring questions to the fore: Should a passport for stateless people, or refugees be issued? Should it indicate stateless, or Palestinian? Etc. So far, interlocutors described no coherent practice about it, but each office to handle it individually.

**Emotionally difficult and distressing feelings**

Interlocutors of both structures expressed different feelings of distress and situations they experienced as emotionally difficult – regarding themselves and the decisions they make. In contrast to administrator dreams of "emptying" all detention facilities every week via deportations, some police officers described that the very act of removing human beings with families and personal situations represented one of the biggest challenges for the police officers involved:

> …a very key situation is that we have human beings with all their problems, all their behaviour, children, and personal situation on the one hand and the state force, which we have to represent [by effectuating] the forced return in the end. I think, this is one very big point, that should not be forgotten, that police officers, many of them have their own families and children. They have to force other families and children to leave the country, which is not easy to do in a professional way. I think this is one very big task to [do] in a professional but human way. This is quite a big challenge…We try to find out who is able to do this before we let them go with it…and find the right people, and that's the reason we don't take everybody for this return operations. We have specific trainings for these things for the flying staff. But even the staff on the ground have to be sensitive: what has to be done in a very strict way and where it needs to be done more softly and maybe with a little bit more communication. (Federal police officer, Hamburg interview)

A very dominant topic expressed by all interlocutors on the street-level is that they don't tell where they work, or think about it very carefully whom to tell. They fear that if they tell that they work in the area of deportations or decide upon asylum requests, people will judge them and that they have to justify themselves for their job. Feelings of being wronged, categorised as evil, partly even as racist were expressed repeatedly. In particular the years 2015/16 and the scandal around the FOMR executive in Bremen were described as critical points in time:

> It has been similar a few years later, when the whole Bremen affair, this Bremen story came up. There has been a period in which I didn't tell others where I work, like on the train, in a cab, or wherever. A) For my own protection, and B) because I wasn't in the mood to discuss it again, because I just came from a nice encounter, or because my shift was over and it's my private life. I always said that I work for the State Ministry of the Interior or for a Federal Office, or the Federal Ministry of the Interior, or something alike. Because I have been, I have been... uhm, debated so intensely, and time and time again I witnessed how everyone was lumped together. I had nothing to do with Bremen. I don't know what happened there. I work in Rosegarden[113]. But I was [attacked]... 'Ah you. You let all of them enter illegally'. Such things were brought to the table and I can't hold back then, therefore I decided at some point to be cautious about it. I know exactly whom I can tell about it [where I work] and whom I can't. (FOMR Decider)

Interlocutors described that they experience public scrutiny and bad press as wrongful and unjustified attacks against *them* and the office they are part of. They expressed feelings that it is impossible to meet societies criteria, since on the one hand they are supposed to filter out the "undeserving", the people who lie, the "frauds". But on the other hand, they feel heavily criticised for the possibilities given to them and seen as necessary to actually be able to do so, such as reading out mobile devices.

Furthermore, personal life stories were brought up by two interlocutors, demarcating great awareness about the emotional part involved in immigration work. One interlocutor described that he is able to create and uphold a distance, and difference between the life of the migrants

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113 The place has been changed to keep anonymisation.

he encounters and his person as long as there aren't too many similarities, which would make it impossible for him to emotionally distance himself from the impact his actions might unfold:

> *I don't know if everyone does it, but sometimes I wonder if it is a job I am able to do forever. I once said, the moment I am about to have kids I'll stop, because of having applicants with little kids... (…) Morally seen, there hasn't been this one instance where I though, I am done. But I always thought to myself: Family, a child, this is the moment where I'll try to take over other responsibilities in the FOMR, or take a step back, or whatever. (FOMR Decider)*

Another interlocutor described how she is experiencing feelings of unease talking about her work, and that she is reproached with her own background of having been a refugee in her private life:

> *Before 2015, it didn't matter at all. I simply don't like it having to justify myself. I don't want to explain it to them, since in the end they won't get it anyway. Especially not from someone who has been a refugee herself. You know what I mean? It is something different then. [Me: To be confronted with your own biography and that they use it against you?] Exactly, they ask me 'How are you able to this, while you are from a country which is a war zone itself and now it is you who does it'. They don't understand that I am not deporting anyone to a war zone, like Iraq, Syria or Afghanistan, but to countries where people go on holiday. For instance Morocco, or Romania, an EU member state. I don't want to have such discussions, because it leads to me having the feeling that I really need to justify myself. Therefore I tell them I work for the municipality and if they ask where exactly, I tell them immigration office, but leave it at that. The area, the department: No. Other than my parents, my siblings, they know it and it's never an issue. Colleagues of mine are talking to their spouses sometimes, telling them 'the deportation I coordinated has been enforced'. Of course they don't tell any names, but... [Me: It needs to be processed.] Yes, and I don't even do this. I don't even tell them, I deported a family. A family of seven people for instance, or a violent criminal. Because if I start telling them, some point I will deport someone who never did anything wrong, no criminal record, never recorded. He simply has no perspective, no right to remain. Then, I don't want to explain to them: Why, for what reason, wherefore. If it's a criminal perpetrator they tell me I did good, but a family which never did anything wrong. What am I supposed to say? (Immigration Office Caseworker)*

In order to cope with such feelings of unease or distress, interlocutors referred to an assumed legal and social necessity of what they do. They described that it is a legal act which has to be enforced, opening up divisions between refugees in need and criminal migrants whom they deport, or were angry about the fact that they are unable to deport them. The impact of their actions is played down, rationalised and made abstract. Furthermore, interlocutors stressed the point that it isn't them who decides whom to deport next:

> *I like my job. Not because I am deporting people. It is a job comparable to the post office, just different. Everyone is doing his job. We don't act because I myself am going to the cupboard and decide 'This one I am going to deport, or this one.' No, deportations are handed to us, the files are sent over and we simply work them. We work according to the law. (Immigration Office Deskworker)*

Other strategies to deal with emotional distress are to focus in the team on cases, where they deported someone who committed crimes, since it is a norm rarely challenged in public that it is a "good" thing to deport criminals. Through the exchange among each other they confirm their own actions as good, necessary, important and ethical. Interestingly, when asked whether or not they also discuss cases in which the social norm isn't that unequivocal, an interlocutor told me that they don't, since she couldn't tell the personal normative order of here colleagues and was

afraid to be seen as weak, or to create discussions, potentially leading to conflicts among each other about morally right actions at work.

Another approach to shield employees from feelings of unease is to separate the person who renders a migrant deportable, from the one who executes the deportations, as done in Hesse through the redistribution of responsibilities in 2018:

> *I believe, it was pretty much the whole idea behind it, since one is rather personally affected if you are having the people sitting here. And the introduction of central immigration offices – there is no need to fool ourselves – was done exclusively to increase the number of deportations. And this is simply easier if you don't know the people. (Immigration Office Kassel)*

> *Maybe we can link this to one of your first questions: 'Why is there no public traffic in central immigration offices?' Of course it would be conceivable, to tie decisions on Duldung, or similar things and the attached procedures to the regional councils. But it is having reasons for protections. If I say, I have a task I need to fulfil according to rules and regulations, it is sometimes easier if I am a little further away from it. Meaning, I am not having contact, when she is sitting there, crying and the kid is so cute with his big wide eyes and everything is so terrible. But I can really look at the file and assess how to determine it. It is to be judged like this and I can make a just decision to move forward, without having to look at the person, or to issue a Duldung, etc. I believe this is fundamental to justice in decisions... (…) But I am sure, that it makes, I might say, it makes it easier for my colleagues to move forward in the process. [Following addition comes after a brief brake] Of course, without losing from sight that we are talking about people here. (State Ministry/ State Police Hesse )*

> *Interlocutors are well aware that feelings of unease rest in a contradicting, or challenging norm prevalent in societal structures. Therefore, interlocutors in Hesse described how they wish such norms to change towards being in favour of deportations:*

> *One is confronted with personal hostilities, that a lot of times it isn't opportune politically, that within ones private circuit one actually considers: 'Can I say what I do, or should I say that I'm working for the regional council, or interior ministry, or can I actually say that I am doing returns?' This is to say, society's attitude towards this topic in general is difficult, and is making work harder for my employees. (State Ministry/ State Police Hesse )*

Interlocutors are well aware of the emotional burden and conflicts, caused by the actions they fulfil. The reaction is less to become indifferent and simply become cold, but rather to manage experienced emotions and cope with them in referring to "the legal system", the necessity of their actions for "our society" to function and stay at peace, even if they are experienced as uncomfortable personally and socially. They refer to a logic of the greater good.

Next to emotional distressing feelings grounded in one's own actions, interlocutors experienced legal norms to be unjust, too – not in the sense that a person shouldn't leave or be deported, but regarding either the inability to deport who "deserves" it in their eyes, or if there isn't a migrant more deserving to be deported than the one they deport and pity in the moment. Interlocutors described it as frustrating that they for instance cannot deport a migrant with a criminal record, due to underage children or other legal protections. Furthermore, a felt injustice was articulated given the great number of those obliged to leave and those actually leaving on their own being deported. In particular deportation officers of the field service described it as an overwhelming mass of those who are obliged to leave and the little share they are able to deport. The residential system is seen as unable to address this issue and as disadvantaging those "playing by the rules", handing in passports and identification, compared to those who withhold their identity, since the former are deportable whereas the latter aren't. Interlocutors

repeatedly complained about a lack in political will to enforce a harder line, as illustrated in one quote:

> For instance, church asylum, that we don't breach a church asylum. An extra judicial space is created, which privileges the people who enter this space over these, who are even still coming if the immigration office is telling them, this is your date. And this is something I experience as unjust, pretty much as arbitrary. (State Ministry/ State Police Hesse )

Migrants are pitched against each other and merely to seek a safe space is seen as a criminal act and as the creation of an extra-judicial space. Therefore, legal or social norms protecting people rendered deportable and felt deserving of deportation are experienced as unjust. In addition, in describing such actions as disadvantaging other migrants breaks with an absolute, but introduces a relative understanding of the law – not necessarily describing a deportable migrants deservingness to stay, but rather a felling of 'the wrong one has to go'.

### 4.3.4. Matter expressed by civil society actors

**Incoherence in practices and outcomes**

An issue described by interlocutors from NGOs, offering legal counsel (including return counselling), is the incoherence in practice and outcome, dependent on the immigration office. The person's case depends very much on the municipality and immigration office he* or she* is assigned to , leading to different outcomes in similar cases:

> At times it is hard to explain, if someone is allocated to a particular commune and with it there is a completely different outcome on the residence determination procedure, simply given and dependent on the allocation to another commune. It would have been a sure thing here in Winter, but in other circuits it is going to be a deportation. (NGO Counsellor)

The implementation of residential norms and the decision whether or not a person is eligible to an *Ausbildungsduldung* for instance, is highly dependent on the orientation of the office. Even though all requirements are met, it is still up to the individual office to issue an *Ausbildungsduldung* and not a legal right. The same accounts for petition requests, where the implications of a restrictive approach are described as follows:

> It's like I said. The surest things, where you actually think that you wouldn't encounter any problems or that it is a safe bet; [slowly raising her voice] it is pretty shocking that in Autumn it isn't as safe anymore. You couldn't ask them if they could wait out surgery or something like that. A petition request! [further raising her voice with the proclamation] Where the immigration office simply has to agree 'Okay, we wait until the petition is decided upon by the commission.' They don't wait in Autumn. You can file a petition request and the immigration office is telling you 'We heard that you filed a petition request. We are enforcing the deportation now. Yours sincerely, Autumn.' LIKE THAT [shouting]. (INGO Counsellor)

Therefore, interlocutors in NGOs are dependent on the cooperation of the immigration offices they work with and if an immigration office has a restrictive approach, it severely limits the options of legal counsellors at NGOs – theoretically, another way and working towards a right to remain might be possible, but practically, if the office doesn't play along, it simply isn't possible, and the question is reduced to forceful or self-organised deportation.

In addition, there has been a well-established division of labour between immigration offices and NGOs; the former sending the migrants to return counselling and the latter conducting it.

But since the "integrated return management" was introduced in NRW, interlocutors noticed changes:

> *It started to be pursuit heavily in the middle of last year[2019]. The immigration office in Winter set up a return counselling centre, too[114]. They employed four people, in order to conduct counselling. To tell the person 'It's like this and that. A voluntary return ought to happen, or should happen.' And as I said, in Spring they already did it time ago in 2016, but rather when they had to. Meaning, they forwarded the clients to us and only did it themselves every once in a while. But now, it's nothing like that. Now, clients aren't coming to us at all. [Me: Do you get the feeling that the counselling is without any fixed goal or prejudice?] Not really, but that's just a feeling. (INGO Counsellor)*

These changes are in line with the direction of the latest policy package in mid 2019 – the Geordnete Rückkehr Gesetz (Orderly Return Act) – and don't only affect the beforehand implemented distribution of labour, but also the leniency and felt room for leniency of immigration office officials:

> *And this is also a difference. Before the new laws, it would have been possible to talk to, or work something out with the immigration office in Winter. But now they were so strict and said 'No, we cannot do it. Impossible.' Thus, the family was sitting at my desk and I had to organise a return. [Me: You said, 'before the new laws?'] Yes. I believe, and a colleague from an NGO who accompanied the family said it the same way. Who said, before the new laws[115] it would have worked, would have been possible for the family to stay with a little negotiation. Since they were really well integrated, one could have negotiated with that. He also had a job. But this is something being felt generally, also with regard to Ausbildungsduldungen and so on. Now, you can't negotiate any more. The caseworkers stick closely to the law and the family has to leave. (…) Beforehand, it was – and this is what my colleagues describe, too – a little more benevolent. (NGO Counsellor)*

### Residence status influences "voluntary" returns

An interlocutor described that a number of people coming to her for return counselling actually hold a valid residence permit, but one which isn't allowing them to bring their families. Thus, they go back since they feel responsibilities for loved ones left behind and/or cannot stand the fact that their families are somewhere in dangerous situations:

> *Yes, [on question if people who hold a valid residence permit and come for a voluntary return, are unable to bring their families] for instance, I just had a client from Iraq. This is such a tragic story. She has got seven children. The two oldest ones are here in Germany, already of age, and five more in Iraq but also close to... One was still a minor and the others were nearly [of age]... I think 18. She wanted to go back because of the kids, while she had no chance to bring them here – the other five. And now she is actually accepting to go back into a refugee camp in Iraq, where her children are. She knows that her grown-ups are taken care of here in Germany, but she simply doesn't feel comfortable staying here and thus, she is going back. Something which I think is extremely tragic, but she didn't got a chance to bring her children here. That's not okay. And what is she doing? She is going back to a refugee camp. These are the stories which get close to you, where you ask yourself, how can it be that way. But legally seen, there is no option. (NGO Counsellor)*

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[114] The people working there aren't counsellors by training. They are administrative staff, like the rest of the immigration office.

[115] Latest legal change in 2019, the „Geordnete Rückkehr Gesetzt" (Law of orderly return). It was a bundle of changes to various immigration norms, affecting each and every one working with migrants.

### AVR programs

Another problem identified by interlocutors is that AVR programs don't match the realities of the people to whom they are applicable:

> I am not sure how sustainable all of this is. People are laughing often in the consultation, when I come around with all these things which are available. And then they say with a weary smile: 'You don't know Albania,' or 'In Macedonia it isn't like here in Germany.'" (IOM Counsellor)

As a consequence, people, for instance, take the first rate of payments of an AVR program, but don't bring the necessary documents or come back for the second rate a few months later, since they migrated further to another country or did already return to Germany. Furthermore, interlocutors from refugee support organisations in both NRW and Hesse expressed concerns about the political instrumentalization of AVR programs. They feel that groups, for instance Afghans, are threatened with deportation and pressured to leave through AVR as the lesser evil. In consequence it leads to:

> You put people from Afghanistan under pressure by making them decide: 'either you take the money and go back, or you will be deported and got no money and returned.' Under such pressure, some are going back and then it is being said: 'See, last year 500 people left voluntarily to Afghanistan. It can't be that bad there.' (Refugee Council Hesse)

Furthermore, interlocutors remarked that it isn't the financial funding causing people to make use of voluntary return schemes, but forms of coercion and pressure, such as deporting Afghans without any criminal record regularly against publicly given statements that only "criminals" will be deported to Afghanistan. Thus, AVR programs aren't seen as "voluntary" in general, but rather as alternative forms to forceful deportations. Pressure is further exerted through expensive and opulent single deportations to countries, such as Iran or Iraq. Interlocutors don't judge it as efforts to establish deportations to these countries on the grand scale, but as signals from state offices to migrants  in order to create the fear of possibly being next.

### Decrease in collaboration and communication between state entities and civil society actors

A federal police officer expressed the view that NGOs involved in return counselling and voluntary repatriation programs were "doing it wrong" and not being firm enough with the asylum seekers. According to the officer:

> …it's a lot better to consult people that their asylum or their want for asylum is basically hopeless and therefore give them money and tell them, please go back to your country on your own. And clothing also, that they always say, that if you don't go we'll force you to go back. And NGO's don't do that with enough pressure…without the aspect of telling them what else happens…sadly, a lot of the NGOs that working there are consulting in the wrong way, umm, so they are consulting them to stay. Even though the wish or promise they could stay here is not helpful… There is a massive difference between [police and NGOs] because the police have a law they are working from, but the NGO's are basically doing the opposite. (Schleswig-Holstein police officer interview)

Interlocutors describe a change in practices and in legal norms and state decrees, cutting down communication and collaboration with each other and increasing coercion and severity in deportations:

*We notice that there are more harsh deportations. It is a topic, which is keeping us busy for a while now. (…) I think it has a lot to do with an increasing free hand, given by the national and federal level through communicating: 'Main thing is that you deport. We don't care how.' Of course it isn't communicated this frankly and I do not mean to generalise, but legal changes and provisions mirror it, it [to deport] is the highest goal. (…) And I believe such severity is due to it being communicated as the top priority, the political aim and as an immigration office, a central immigration office one has the duty to comply with it. And deportations are more or less problematic in singular cases. (…) What is increasingly happening are deportations of critically ill people. (Refugee Council NRW)*

It is in line with statements articulated by interlocutors of state entities, in which they describe how discretion is limited and the federal government pursues centralisation efforts. A situation expressed by actors in both federal states and linked to ethnic hierarchies:

*I believe that at charter flight deportations violence, better more violence is being used. And then, I don't know it for sure, it is a feeling, I can't prove it statistically. A lot more violence is used at charter flight deportations to West Africa and [on] Dublin [deportations]. The Afghanistan charter flights or so, I would say little was used. I know there is this one report from the ICPT, where violence was used pretty heavy on an Afghanistan charter flight. But that, I would say, systematically, that everyone is being put in bonds or something alike, that violence is used massively, that people are being carried into the plane, or something like that. That is, to my knowledge, with Afghanistan charter flights rather seldom the case. Whereas this is in part with Dublin deportations, or in case of West African charter flights too, where they speak of, for instance...I don't know, let's take a charter flight to Gambia or so: 100 per cent of the people in bonds. The national police declares, in each single case there were indications for it [violence]. (…) But this is something, which rather happens with countries such as Gambia, or Nigeria, and so on, or with Dublin. (Refugee Council Hesse)*

## Incoherent praxis and lack in state structures encouraging an integrative and benevolent orientation

Interlocutors attest that various regularisation mechanisms and other norms linked to the path to legalization of status work completely different, dependent on the office, district, etc:

*The numbers for the statutory settlement of the right to remain are pretty bad. But why. Judging from the number of potential beneficiaries, people who fulfil the temporal requirements, the outcome isn't really great. Whereby I guess there are great, great differences in each federal state. I did this a few months ago for comparison, to look at the different regularisations existent within the norms of humanitarian stay [§ 25 Residence Act]. To see how it is in terms of numbers. I looked which federal states stood out somehow and it seems to be the case that there are single regulations, which are being used by single federal states extensively, while in turn others aren't used at all. I don't know. Thuringia got five times as many cases within the hardship commission, but no [§] 25a cases, or so. There are great regional differences, or regional particularities, where I don't know the reasons for. If it depends on the different decrees, or if it somehow, I don't know, if this is just the way things are dealt with in the respective federal state. If it is due to immigration offices talking to each other in joint meetings beneath the level of decrees, I don't know. I can only look at the numbers and think: Alright, seems that single regulations are managed quite differently. (Refugee Council Hesse)*

Thus, it is hard to say which mechanisms work well since there is no uniform application praxis. They partly link it to a lack in leadership on the state level, as well as a lack in decrees and guidelines which would encourage immigration offices to pursue a benevolent and integrative

interpretation of norms. Thus, state decrees don't cancel such an orientation out, but aren't furthering it either:

> *And talking about the Beschäftigungsduldung [starts to laugh as if we are talking about a bad joke], there is no reason to go into that. Pre-implementation decrees; not even a single case... It is such a crude instrument, it doesn't work at all. What is a shame, is that there has been a [benevolent] decree regarding §25, 5 [right to remain due to humanitarian reasons; Residence Act] in the past. Since a few years it isn't applicable any longer. The most recent one wasn't any good either. And now, in some municipalities, for instance in Wuppertal, §25, 5 was applied quite successfully, while other municipalities don't even have a single case of §25, 5 or so. (…) Unfortunately, the last decree, combined with article 8 of the ECHR [European Convention on Human Rights], wasn't very good, too. [Me: Could you specify that? Especially the combination between the decree from 2012 and §8 of the ECHR] A benevolent immigration office might be able to work with it, but it isn't encouraging [immigration offices] to do so comprehensively. (Refugee Counsil NRW)*

### Central immigration offices with contradictory tasks

Due to a change in tasks of central immigration offices, they are not only responsible to deport people out of state shelters, but also to counsel them according to the Residence Act and to assess whether one is eligible to a  residence permit. Since beforehand and even now, their main focus is to terminate residencies and to deport people, interlocutors expressed doubts about these contradicting tasks in a single office. In consequence, they see priorities to rest with restrictions and measures terminating residencies, while rights to remain and a legal stay are neglected:

> *The central immigration offices are clearly regulatory authorities with a focus on departure and deportation. (…) It is very clear that the focus is to be a regulatory authority and the expertise they seek, lies rather within police responsibilities than in other areas.*
> *In light of this and through the Fachkräfteeinwanderungsgesetz [skilled worker immigration act], where the implementation of central immigration offices, in order to ease the approval procedures, or permission procedures... Against this backdrop I asked in a meeting 'Where do we stand? Is this supposed to be the responsibility of our already existing central immigration offices?' And then it was said 'That would be a little unfavourable, since they are rather dealing with the subject of deportation.' And I am thinking 'Indeed, but it is already combined in state reception shelters.' Therefore, the orientation doesn't fit together at all and you see the consequences. Those affected do not get a rights, but on the opposite site they are enforcing [deportation] measures. But it isn't seen as a contradiction, since okay, it is an authority which needs to set priorities and this is the way things are dealt with... (Refugee Council NRW)*

### Federal-local and bureaucratic challenges

A police interlocutor working with deportations for decades explained the need for a federal component in the German system:

The problem in Germany is that we have like 600 alien authorities. Small ones, midsize and the top ones in the states of Germany. This is part of our federal system. And they decide with our migration authority – this is a federal agency – in asylum seekers things, about illegal stay or not. And they are organise everything, which means pre-return phase. That means, ok, to get passports or identity things from the embassies, and then with that go with an offer to [the federal] authority and say, can you support us from the operational side? (Escort officer interview)

The officer explained the view that the main challenge to conduct efficient return operations as problems with communication between the involved German authorities:

> …a lot of colleagues and me have it not easy. Because it could be much more effective if this task could be a little more centralized [so that] every misinformation can be identified very fast. And when you have a lot of authorities with a lot of information, I think a lot of good information or misinformation goes under the table and it's not that effective like it could be. Yeah, this is from my point of view, the biggest challenge to make it more effective – the communication between several authorities in Germany. (Escort officer interview).

The officer expanded:

> There are so many players at the table – and a lot of emails back and forth…And then you never know if some authorities have their own policy…so you never know, are we on the same page of music or what has happened here? […] This is a non-verbal, non-written thing, that I feel a lot, when I talk to people who are involved in that part of work…For instance, when you have a charter flight, and you announce: `Ok, 50 persons will come.´ Then [the] authority makes a call out for 150 escort officers. So at the day of the return operation, there are 150 officers – and this is their side job, so they get out of their usual jobs, with all the travel costs to get to the main hub – and then the authorities bring 12 [laughs]. So it like `wow this cannot happen´. You give so much power, all the travel costs, and then, 12. (Escort officer interview)

### Focus on identity tighten the application of residential norms

Interlocutors named societal debates, introduced and stressed by the ministry of the interior and high-level politicians from conservative and Social Democrat parties, about identity and determining one's identity as an important factor for a stricter, repressive orientation of the Residence Act. It isn't that much about the individual changes inscribed into the legal text, but about the greater message that identity matters. Due to the legally granted discretion, staff in immigration offices started to focus on clarifying someone's identity even in cases where it isn't legally mandatory. Eventually, it leads to greater restrictions:

> I believe it is. All of it is. Look, you can look at all of it [legal changes and black-letter law] in great, great detail and you can deliberate on how to interpret it up to the nth comma. But within the everyday praxis it only matters conditionally. I think, it was exactly meant to work like this. They explicitly knew that they aren't putting a lot of new things into it, but as lawmakers they talked a complete summer about identity, everywhere. They said: Identity, identity, identity. And it reached the people working inside the authorities and since then, they require [identity documents] for anything and everything, even for things which aren't tied to the law. Meanwhile, it pretty much comes down to identity everywhere. (…) First thing the local immigration office did was, boom, work permit gone - and that is the problem. Or the other funny thing they did, was where they said: Well – and the ministry of the interior covered for that – well, indeed, there are transitional provisions in the norm 60b [withholding the power to withdraw work permits till end of June 2020]. We aren't allowed to do this till the 30th of June. But let's see if we cannot simply use norm 60, 6 instead and simply revoke the work permit this way. Without making use of §60b. We can do this too. And yes, then they revoked the work permit this way. (Refugee Council Hesse)

## 4.3.5. Problems expressed by an airline

### Volatility

Interlocutors named volatility in bookings as a great issue, since they are left with the financial damage although government entities have to pay a cancellation fee:

> *One of the biggest problems in this whole complex is the volatility. We receive x-number of requests, of booking each month and only a fraction of them is happening and we are having a no-show quota of about 65 percent – especially with unaccompanied. Often these are Dublin transfers, meaning that the issue for an authority to encounter a person is quite often already the reason [for not showing up, JG]. They aren't there and as a consequence, the flight isn't happening as it was planned and besides a cancellation fee, we were the once carrying the risk till now. (Aviation Security Team)*

Volatility and high ho-show quota are an issue experienced by many airlines. In order to address this problem, they started a pilot project – joint venture between airlines and federal police – called "no name bookings", in which federal police is booking seats but only needs to send over the details of the passenger a few hours before departure.

## Federal police

Behaviour of the federal police was repeatedly criticised throughout the interview. According to interlocutors, the federal police is often challenging a captain´s decision to send a migrant off the plane due to security reasons, and with it they challenge the fact that a captain has the highest judicial authority on board. Furthermore, it was described that federal police aren't always complying with the binding guidelines agreed upon, which includes that no one is entering a plane in handcuffs or bonds:

> *Bound by his set of rules, based on EU legislation, which weight greater than national law, the captain is entitled to announce the discharge of the passenger, which is something Dr. Romann [the head of the federal police since 2012] repeatedly denies – meaning that the right of having the last decision rests with the captain. Often, we are having a different opinion than the federal police. Because the federal police, or rather the president of the federal police, likes to state that they are at service to guarantee for safety and order on board. But eventually, our position is that the captain has to decide before that, in advance. That he cannot let it come to a situation in which the police have to (re-)establish the safety on board. This right of last decision is put into question by the federal police again and again. (Aviation Security Team)*

Furthermore, there is a conflict around security and safety. Interlocutors look at situations out of the perspective of safety, whereas federal police are entirely focussed on security. Thus, out of a security perspective police officers could put a person in shackles and it doesn't matter if the person screams, as long as no one is endangered. But seen from a safety perspective, it is something which isn't tolerable for all other passengers, causing conflicts about where to draw the line and to cancel a deportation.

## "Anti-Deportation Industry"

Due to migrants being well connected, interlocutors reckon that they share tactics among each other which might lead a deportation to be cancelled, such as mentioning chest pain right before the start. Interests of the airline and federal police align in such situations, since the airline has to cover most of the costs for empty seats and the federal police is frustrated due to a(nother) cancelled deportation:

> *One realises, now in unpolitical terms, and this is the feedback the federal police is giving us too, the deportees are very well connected. They share [tricks with each other].... There is an entire*

*anti-deportation industry[116] somehow being involved in this and who distribute instructions on best practices to stop a deportation. By saying right before boarding, 'I am having chest pain', no doctor in sight and the moment someone tells the captain that he is having chest pain, the captain isn't allowed to transport him. These are very simple situations which don't even cause some sort of escalation, but a simple rejection, which of course causes extreme frustration on the site of involved authorities. (Interview 23)*

## Bad legal situation

Interlocutors complained about a structural situation, in which it is absolutely clear that the deportation will be cancelled, but police need to present the migrant anyway, since police headquarters and planning otherwise wouldn't agree to an accompanied return in the next attempt.

> *The numbers about rejections by the captain, which the federal police publishes, aren't squared with us. It happens very, very often that a deportee is brought to us, if he is seized he is brought to us. Thus, he is at the plane, ready to board, or he already stated vividly at some point in the return infrastructure that he doesn't want to fly. Often we have the situation that federal police tells the captain before he talks to the deportee, that the person did make trouble already and said he doesn't want to fly, but nevertheless, he has to present him, because only if he has been on board and has been rejected by the captain can he [the police officer] enter the next phase, meaning accompanied return. Therefore, we often are presented with cases in which everyone involved already knows that it will be uncomfortable on board for a few moments, then we will abort and we enter the next phase, the accompanied return. And this is something where we ask, does it have to be like this? To resolve a bad legal situation on the back of the deportee, on the back of the airline and on the back of the already present passengers (Aviation Security Team)*

In addition, it distorts statistics about deportations cancelled by the captain. Such cancellations are nevertheless attributed to the captain, although police already know beforehand that it won't work out and used by the federal police to exert pressure on airlines to be less restrictive in their guidelines.

Another aspect is that interlocutors wish the Dublin system to be abolished and replaced with something which works, so that they don't have to fly migrants throughout all of Europe:

> *[regarding Dublin and that there is a need to entirely reform/abolish the Dublin system] It would be definitely more humane for the people, too. It is just madness. Just the whole situation, to implement a quota [of how many people each state should take in] or... It needs to be looked upon out of a new perspective. The authorities, the immigration offices, they know it too. It is stuck with the politicians... As mentioned, the whole system outlived itself. It is ancient and it is a huge issue inside immigration offices, too. They know how it is, they invest so much work which neither makes sense nor is it expedient. Dublin transfers, these people are coming back, since they have their connections, or something somewhere. It is a very tedious task, for everyone involved. (Aviation Security Team)*

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[116] The term „anti-deportation industry" was made public and spread after it was used in a newspaper interview by the CSU politician and at the time state party leader in Bavaria, Alexander Dobrindt in 2018. His understanding of an „anti-deportation industry" is, migrants are making use of their legal rights and contest decisions in court.

## 4.3.6. Problems expressed by the IOM

### Duality between assisted return and deportations

The interlocutor from IOM stressed that the duality between assisted return and deportations as two sides of one coin, is actually wrong and that it is having a negative impact on assisted return numbers. According to her, people are more likely to leave if they know that they are able to come back easily, or legally. Thus, instead of making it increasingly hard to get to Germany, it actually should be made easier and embedded in greater legal paths:

> And paradoxically this has something to do with, and this is scientifically not even quite undisputed, if people are able to come back to Germany or Europe easily and at any time. Thus, who knows 'I will be able to come back quite easily', is also leaving voluntarily. Therefore, it doesn't make any sense to build ever greater walls and to signal people – and this is the way things are – that once you are out, it will be very hard to get back in. If people would be able to come back to Germany easily and legally, a lot more people would leave voluntarily. It is quite a pity, that these dualities are being stressed so much (IOM Germany)

### German asylum system

The interlocutor articulates that the German asylum system is too narrow, leading to situations in which the needs of vulnerable people are unaccounted for. She traces it back to the overall duality between the "good refugee" and the "bad irregular", the latter being almost tantamount with single men. Out of her perspective and to her knowledge it doesn't match reality and situations experienced by return counsellors. She wishes for a greater acknowledgement of other vulnerabilities, next to the dominant, in society accepted ones, such as to account for the difficult situation of single men, standing representative for a whole family, living in really bad circumstances in state shelters, burdened with high hopes and a lot of pressure. Such vulnerabilities aren't accounted for by the German immigration system – regardless refuge or migration.

## 4.3.7. Problems expressed by local and federal police

### Cancellation of deportation

One police officer from Schleswig-Holstein explained how one challenge to deportations had to do with how people now have to be collected without prior notice (due to the legislative change in 2015):

> They all know that they have to leave but we´re not allowed to tell them the dates when they have to leave. So therefore we drive there on the day when they have to leave, and tell them, now you have to leave [but] the people are not home where they are supposed to be…especially when you have group deportations, the date gets leaked somehow and then they are running away. In Germany, it is allowed for them to work, so if they are working or in school – another problem is that it is only allowed to deport a whole family, so if one family member is not there…It would help a lot if we could tell them, like we did before, "on this day you are going to have to leave or get deported…we have had good experience with that". (Schleswig-Holstein police officer interview)

Another Interlocutor explained that the number of absentee returnees can be quite high:

I would say around 50% to 80% don´t come…This is, for the organising authority, very hard to organise all the people, the staff, around. And you know on the day of return the list will be reduced to nearly 20% of the origin, so this is… but anyway you have to go as a planning authority, you have to go for 100% but you know you have to reduce staff on the day of return… a lot of higher chiefs they don't like it. They want to find a system to make it a little bit clearer that at the day of the return, in advance you have the right count of people. *(Federal police officer, Hamburg interview)*

Maybe you want to, for instance, go to Pakistan and you have on the list maybe 50 people and you organise 100 people of staff. And then on the day there's coming twelve to sixteen Pakistani citizens, then you have to reduce 50% of all staff. And for the taxpayers, cos our travel costs and so on, it's not so well. (Federal police officer, Hamburg interview).

In the end – and this is good, that in a democracy, courts and other things decide that the person can stay for any reason, because new proofs are coming in or whatever happens. And this, I think taxpayers have to live with it. For the authorities it's not nice but at the end what counts is that somebody who wants to go back to a country where somebody has escaped from, for instance. My personal opinion is it's better to prove one time more, a bit deeper, than one time too less. So, and this is the main reasons also I think we have to live with it. And I live good with it because I'm not the guy who [imitates a grumpy voice] oh they have to go home now and it's my job! No, they just have to go out when they have put in every possibility to get their rights. If no court is speaking positive for them, then ok it's done but it's not my personal view – I'm not like Trump! *(Federal police officer, Hamburg interview)*

Another challenge highlighted by several police officers concerns how people resist deportation, coupled with an insufficient number of escorts:

We don´t have any chances at that moment because the flight captain is not allowing us to go onto the place as well. We can then arrest them, to get another flight with escort…so the person gets handcuffed and then into the airplane…but the 2000 special educated escorts are not enough, they have to be two or three people per escort. *(Schleswigh-Holstein police officer interview)*

Deportation escorts, fit to fly, emotional impact:

An officer with experience of deportation escorts explained the normal ratio of officers per deportee:

The ratio is usually three officers to one returnee. It depends on, for instance, you can say on average, if there are 25 returnees, there are 75 escort officers. In average, from the system…. It can be less, it can be a little more. When we have advanced information about some really aggressive persons, you can't stop them by good communication… *(Escort officer interview).*

A police officer working with escort training explained the key points of the training of special educated escorts:

So this for us is a key element in our education, also a key element in the education – our education takes three weeks, it's a three-week basic course. And the main fields are communication skills, intercultural competence, situation training, and of course like control techniques – legal force – but the main goal is to get in contact in a good relation to the returnee. Cos we know this is in situation, anyhow what the law is telling you, this is a situation to go back from a nearly safe environment, not only by security but also by money, by health, to go back to somewhere where it is not like in Germany. And most countries out of Europe are not like Germany or Denmark or Sweden. So this is for the most persons of course a problem. And maybe

those returnees never fly before, because they came by landside and this we try to keep with a good relation in the moment, but communication – that we start to try to understand and give not a good feeling, but a comfortable feeling – on eye level. So this is a key and one of our headlines in the education, or the course, is no return at all costs. So there is always a point where you say, this is too much. *(Escort officer interview)*

Who decides when a deportation has to be stopped? The team of escort officers decides if it's a stop. On scheduled flights. When you're on charter flights, then the aircraft is just booked for this operation, just for – without any paying passengers – and then it's, more effective, you can maybe say ok there's a doctor with you always, and the doctor says ok he or she is fit to fly, this is one point. Then there's no excuse of medical indications and the captain with his took your power [?] usually, it's a charter flight, it's just booked for this operation, so he has not the power to stop it when there is violence in the game. So then that the person goes by legal force is even more possible than for scheduled flights. Scheduled flights, it's always like a key situation is with the pilot in command. *(Escort officer interview)*

When the pilot in command says stop, get out of my plane, then we have to move. No problem. So for the scheduled flights, the team of escort flights says, ok we stop, because there will always come a second chance when a person is not going out by scheduled flight, but the time will come when that person sits on a chartered flight instead. So this is why Germany and the whole of Europe carry out their missions more and more by charter flights. From the authority's side, it's a safer way to return people. *(Escort officer interview)*

You look how the religion is. So for example, if there is Muslims, usually a female escort officer is not then, the escort officers you choose to be with a Muslim cos the intercultural things. And of course, seniority – so we say for instance, a very young officer is not able to handle by arguments and communication and life experience, so well an older returnee with a lot of life experience. So this is how you look and how you mix the teams. *(Escort officer interview)*

It is not an usual police task…it is not like a control situation of hooligans, or a border check or whatever, So sometimes, my personal opinion is, I don't understand why the alien authority decides that a person has to go back… Someone who can get the language skills, who can get a job, pass school, who is doing everything to be part of the society, to pay taxes and so on, this is even – not only I but colleagues as well – we think, it can't be. Because on the one hand, you say you want to integrate people, on the other hand, with this small thing [a specific case where a young man was arrested for a minor fight] what happened is that that person then get out of the country. *(Escort officer interview)*

…of course I think about the future of persons when we bring them back, of course. And I see there are mostly no chances in their countries, to develop for school, for universities, for college, to get jobs – it's not easy. And it will be even worse when you see the UN Migration Report about the increase in population, for instance in Africa, it will be very heavy because those states are not able to avoid social clash, I think. And so this is always in my mind. On the other hand, I say, ok the dynamics in Europe to have peace in the German society, or British or French society – to not give the very very right-wing politicians water on their mills – this is also a big point I think, as a middle party, not left not right, but in the middle – you have to do something. *(Escort officer interview)*

Press relations:

One police officer explained that press relations can pose challenges for airlines when it comes to controversial deportations:

> [We use] all small airlines that have capacity, but they don't want to tell that [because] the airlines are not cooperating with each other…they have to keep it out of the press, also because

sometimes they are flying to Afghanistan and that's not very good when that's in the press. *(Schleswig-Holstein police officer interview)*

According to one interlocutor, more than half of all planned deportations are cancelled, which makes up for about 26 thousand in 2018. Out of these 3.200 deportations were cancelled after the migrant was handed over to federal police officers. Nevertheless, in planning accompanied deportations, police officers are ordering lunch packages, book hotel rooms, etc. according to the beforehand registered number. Furthermore, 1.600 of the 3.200 deportations are cancelled due to resistance:

> *All together, they are about 3.200, of whom 1.600 are registered because they resisted. These are constellations where people are registered as unaccompanied and everything seems fine. You get to the plane and suddenly he is resisting, which is causing the captain to say 'No, I will not take him on board'. Or we even say beforehand it won't work. In the same period 19.000 actions were cancelled and a close to 8.000 weren't seized and delivered. (Federal Police; Section "Deportation")*

She roots the low quota of apprehensions in the situation that there is too little surveillance over the whereabouts of migrants and in the fact that migrants are (mostly) able to leave shelters whenever they want. As a solution, she names pre-removal detention and a greater use of camps and less distribution into municipalities, basically centralisation:

> *But in general, as long as I am having a system in which people are able to leave shelters whenever they want and if I am having no control over who resides where, as long I will encounter the problem of them simply not being there. If one doesn't say now, I want to realise deportation-for-detention on a way, way, way bigger scope, we will have to live with the issue of 'low transfers, low utilisation rates' until it changes. (Federal Police; Section "Deportation")*

> *We got round about 500 plus detention places. If one would use them properly and would empty all detention facilities each week, it should be sufficient. But in reality it isn't working like this and the capacity seems to be too little. And one also has to mention that not all states are making use of pre-removal detention. We would be a lot further, if we could agree on a minimal consensus that at least all federal states will use the instrument pre-removal detention. (Federal Police; Section "Deportation")*

Interestingly, in the interview, she stated that there isn't a need to increase capacities significantly, but rather to make use of it consequentially, in order to raise deportation numbers and the enforcement quota.

## Databases

Another interlocutor explained how his state had created databases of their own for the purpose of identifying detainees to be deported:

> *We have a self-invented database. We are also handling the detention of people and they stay until the decision of the asylum. This is in old military houses, I don't know the word. They live there about 3-4 months, so we're like a hotel in that time so we have a kind of hotel database, so we can see who is living at our houses and we can also look and see that this is the person on this ground, like exactly the houses ground – the bases, did they come to breakfast, to lunch, so we are observing who are in there. So out of this software on the database, it actually grew into all what we needed, so that's why it's self-invented. (Schleswig-Holstein police officer interview)*

On the question of interconnected and interoperable databases, the interlocutor explained:

*sometimes that would be helpful but that will not happen in Germany…It's not possible because we are a federal state, not like Denmark where the police have access to basically everything, or France…[Decentralization] is the base of Germany and it's also not allowed by our laws to change. It's because of the history of Germany that data like that is never getting centralized…but with non-EU countries, we sometimes exchange data in small cases.*

## Pre-removal detention issues

He also explained some implications of changes in German legislation after 2015 when it comes to pre-removal detention facilities:

*I give you an example. Out partners in Hamburg had a mass deportation to Ghana…And the Ghanaians don't like to be deported, so it's very difficult to get them and they resist a lot. So they ordered them to the authority some days before and arrested them. So they had the very problematic people arrested before the flight and then they can, yes, it succeeded very well.* (Schleswig-Holstein police officer interview)

As for the legal basis for pre-removal detention, the interlocutor explained his hope of the kinds of changes this would produce:

*I some ways it got easier…we´ve gotten a basis for arrests. Ok, our problem is that we don't have enough jails for – they are special jails, not for those criminals, special jails for our refugees – and they don't have enough capacity. So, the legal basis for arresting them is very much better, but the capacity to hold them is not, there's no place where we can arrest women…so we leave them free. No choice! Some day next year (2021) there's going to be more capacity. And also, capacity for women, so it's going to get better…so many people will realize that when they don't cooperate like getting onto the place, they´re going to get arrested so they realize, mmm, maybe I should go on my own. (Schleswig-Holstein police officer interview)*

*Real alternatives are not there. The people want to stay here. Sometimes they have family and friends here, so the motivation to go back is very low and the motivation to stay is very high. And sanctions will not change the motivation. Not completely - maybe a little bit but not completely. In the end, if people are not interested in leaving the country, they will always find a way to avoid the forced return day. In the end, if you really want to make sure that people leave the country, you have to pick them up quiet early in the situations, and don't let them go until the flying day. I think it is quiet hard, but I don't see any other effective measures. (Federal police officer, Hamburg interview)*

Collaboration with Frontex:

*[We collaborate with Frontex] concerning courses, for instance, the escort leaders are educated by Frontex…It is a one-week course, and they come from all over Europe, I mean, all Schengen-associated countries to get the same knowledge and the same skills to carry out those operations. And yeah, the education in Europe is totally different, so for instance, in Germany it is a three-week course [while] other countries, smaller countries, they have just three days, or what? That is not sustainable. We give a licence and every two years there´s a refresher course for a couple of days, to see the people and talk to people to give them new knowledge, give them new skills and talk about past operations…And this is very important. And then we talk about stress – cumulative stress and what is stress about? What is stressing you? And when you are stressed, the returnee is stressed as well and how do you get along with your own personal stress in a stressful situation? So this is also a big part. This is my experience with Frontex (Escort officer interview).*

Frontex´s forced return monitors:

*They are educated by the IMCPD, this organization in Vienna. And they get a 5-day course, they get introduction about return operations…because the monitor is not only there for the persons who will be returned, but also for the escort officers in case the person makes an announcement, saying the local immigration officers, for instance, they punish me, they torture me – in a language we don't know, then the monitor can say ok stop, I'm a monitor here, and that isn't on my list…So the monitor is for both sides and for me that's a great instrument. Very important, to make it very transparent, because the monitors come NGOs always and you have to work well because if you don't work good you get a report – and no country wants to have a report on it. (Escort officer interview)*

One officer described in detail the conflictual situations that escort officers seek to avoid, and that monitors can help with:

*We always say, whatever you do, we have to do it under the focus of the monitor so that means that our legal force for instance, when we use legal force with control techniques, not with cuffs, with our techniques like self-defences or whatever – that there must and have to, like, it is in an EU regulation that you have to make the person immobilization. So it's not like punish or push somebody, like a smack in the face or whatever. When you control the person, there must be a technique that must be safe also under the eyes of the monitor, for security reasons. do you know this positional asphyxia syndrome? Positional asphyxia is, imagine you run 400m on a track, full speed and then you lay down and then somebody is sitting on your breast, so you can't breathe any more. And then you breathe out more and more oxygen and get in more and more of this carbo-oxygen. And then there's a point you, if you have immediately oxygen by machine, you can't go back. People go death then and you can see also on internet; PA syndrome, positional asphyxia. So this is what we have to avoid, for instance, in our education as well – the free breath possibility of a controlled person must be sure immediately. And this is also a good thing that you, in former times in history, like 10 police officers are on one body and this is very dangerous. So even if this person is very aggressive, you have to be able to – with your skills, to provide to be able to avoid this PA phenomenon and to control the person without hurt somebody. There are a lot of techniques you can control somebody, fix somebody without hurt him, just block him for instance. (Escort officer interview)*

About medical crises at 30,000 feet:

*Also, we are educated in all these first aid of course, every officer is educated in first aid – but under the conditions when you are under pressure cabin, in-flight phase, not only return phase but also you, as an escort officer it's also important to know something about the environment there. And where is all the stuff if you need it, positioned on the plane. Especially for scheduled flights when you have no doctor with you and so on, and you have the full plane of passengers and there's a medical situation, you know, everybody looks to you. So, ok what's happened there. So you have to be not only in good shape but also well educated, you have to be educated to talk to the other passengers, to calm them down. Cos there's no room to go back, you have to figure it out where you are 30,000 feet high altitude to make the things well. And this is the reason why it takes for our work, three weeks for a basic course. (Escort officer interview)*

Mass deportations on chartered flights:

One interlocutor with experience from escort operations explained the phases of deportations:

*there's a call out from the whole authority who has a license, and then maybe the main hub is Munich – we have to go in the morning by plane… And there's a central meeting of all the escort officers and escort leaders where we are briefing – how many persons will come today, cos there's a list and the list is checked up with the country of return, so they of course get a notification of who will coming, and this must be announced before. And after the briefing there will be a time window of maybe 3-5 hours. All alien authorities who want to drop off returnee, they have 3-5*

*hours to bring them in, because not only returnees from Munich for instance, returnees from Hamburg as well – they come by car with alien authority. So in this 3-5 hours, we call this the pre-departure phase…this is document check, being checked by the doctor about fit to fly, when there are any incidents of for instance, somebody has to use medics for stomach or headache or anything else, the doctor is allowed to give it or to allow it. And all this is clarified and then there is waiting on a gate. And at a gate they get food or drinks or, go to toilet and so on. And the escort officer talks to them – who is a smoker can smoke, who wants to make a phone call can make a phone call, of course – until the last moment. And then there is a call for boarding procedure…on the in-flight phase, then there's catering there but without cutlery and without any glass things, cos we want to avoid any self-injuries and so on – or other things. And then until the country of return is reached…. then the handover procedure is on the door – not the forefield somewhere, at the door and documents like I mentioned, are announced before, the persons are announced before, and then the persons are handed over and then they go by bus in the buildings. That's, then the job from our side is done, in that moment. (Escort officer interview)*

*…most action is in the last moment of before you reach the steps of the plane, that's a lot of – not a lot of – but a small amount of returnees try to get in a physical resistance because they realise of course it's a last moment for them. After that usually it's done, they are not critical anymore, because they think, ok it's done. What we can do is to bring them, or calm them down, is look ok, try to see the life positive, ok in that situation of course you can't give this hint to everyone – but personally I say, ok you can speak maybe good German language, why not go to the embassy, German embassy and try to find a job? [...] So we are not only the police officers in the moment, on the diplomatic way, but also ok, give some hints ok how it can be. OK, not everyone is like this – I'm like this because I'm always interesting in the story. (Escort officer interview)*

The same interlocutor explained the reasons why authorities prefer chartered flights for mass deportations:

*When you see it from the effectivity side of things, chartered flights make more sense. Because Frontex is refinancing it, nearly to 100%, so for every country it's cheap – not cheap but refinanced, so you don't have to spend your own money, for the country. So especially for the smaller ones like Lithuania, the Baltic area and so on. And charter flights and joint return flights means that several nations come to a main hub by connected flights. And by the main hub, all go in the big aircraft and then go in the country of return. (Escort officer interview)*

Another interlocutor saw mass deportations as a possible solution:

*The more effective way would be to do mass deportations with own airplanes with a lot more people at one time, where we charter the whole flight…This started in 2018 after some small tries in 2017, but we started with the bigger way in 2018. We all agree that this is the way to solve this. (Schleswig-Holstein police officer interview)*

*It is a lot more planning of course, with a lot more manpower on the day of deportation. It is much better, these group deportations, they are more effective, but they don't always do it with place. When it is a country that´s with the Dublin deportations, that's about 70% of all our deportations. They also do that with the bus or ferry. Ferry to Sweden! (Schleswig-Holstein police officer interview)*

The interlocutor expressed hope that, from a German perspective, it will be easier to conduct such intra-European deportations because people will lose their right to access asylum procedures if they have been through another country first, singling out Sweden as a case in point:

> *Yes, so for example we have many people from Afghanistan who come to Germany from Sweden because the Swedish authorities depart them to Afghanistan. [translated] so the people come to Germany and want to have asylum. So Germany doesn't accept it because they belong to Sweden. So they bring them to Sweden with the ferry. So in Sweden if you don't detain them and arrest them in prisons, they get on the train and go back to Germany. (Schleswig-Holstein police officer interview)*

## Public-private relations and deportation flights

Another, federal, police interlocutor described another dimension to the challenges with effectuating deportation also related to the kinds of private actors involved, and here particularly certain airlines were references. Thus, it was pointed out that the federal police has especially close relations with Lufthansa and its many daughter companies in and beyond Germany. This apparently makes for more smooth communication channels to resolve situations when pilots are refusing to let deportees on to places:

> *…when it comes to the discussion whether the pilot is allowed to refuse someone at his place, then we have the possibility to go via direct line to Lufthansa, and say `we have a problem with the pilot on flight XXX, he is refusing a deportee, but we guarantee for the security on board, and still want to take this person.´ It is more easy than for example with a case last year with SAS [Scandinavian Airlines], where we had a pilot who said: `no, I don´t take this person with me"…Maybe, he is shouting…Maybe it is a matter of comfort for the passenger on the next row…This is more easy, when you have a contact person in your country, where you can call and discuss the problems. To other airlines, we have the possibility to talk with station managers if they are available on the spot, but if you look at a place like Hamburg airport, it is of course not very small, but even though it is also not the biggest airport, you don't have contact persons from every airline here. They have their handling agents but they are not responsible for the pilots and for their decisions on board. If you need someone from f.i. SAS, you get in contact with someone from Denmark or maybe in Amsterdam, so you can call or send an email, but you don't get someone where you can go. (Federal police officer, Hamburg interview)*

## Deportation difficulties caused by inefficient entry control

A federal police interlocutor working in Hamburg described challenges with effectuating deportations which arise from situations where deportees do not have any documents. This was described as preventing the police from determining the person´s country of origin, and thus to identify the state to which the person can be deported. Such situations, said the officer, illustrate how inefficient entry control can cause deportation difficulties:

> *If possible, of course the first step is to get the fingerprints…but if you don't find people and in many cases if they stay the first time in Europe and you don't have any data in the database - especially if you look at 2015 or the big wave of people - many didn't leave any fingerprints or anything when entering the country… So, it is not completely how the European regulation wants it to be done, but in the end this is exactly what is the case. (Federal police officer, Hamburg interview).*

Moreover, the interlocutor also said that European legislation also could means that more detailed entry control also gives the German state more tools to effectuate deportations even in cases where the country of origin cannot be identified, namely the carrier sanctions binding airlines:

> *…it is quite important for us at the airport, if you look at the incoming flights, to find out if someone is without papers on a plane, and to make the connection between the plane and the*

*specific person, to have the possibility to say, that we don't know from which country he is, but he came with this plane. In that case the airplane is responsible to bring him back where he started, even if he has no paper at all. But this is only possible in specific combinations - not to every country, and especially not if someone is from Europe, then we usually have no specific information. (Federal police officer, Hamburg interview 1)*

## Problems stemming from challenges at the interface between policy level and operational level

One federal police officer working out of a state airport explicitly traced the low number of effectuated deportations back to the lack of political will to collaborate among the EU´s Member States in order to find both common entry and exit systems. Thus, the officer stated:

> *I don't think there's an easy way to make this work better at the moment. I think the key is quite a step before, when people enter the European Union. Then there is a really big work to be done. Because we have, let's call it a not working Dublin system, we have a more or less working border control situation at the external borders, so this would be a real big step to work on this. And to find the common political will to bring people from the southern states, from Italy, Greece, Spain, to all European countries and find common ways of repatriations, this would be very helpful steps. But I think the return operations themselves, is a matter of political will and decisions, single cases, and then of finding and getting the papers for the people, but this is not a European problem, it's a problem with the specific state. (Schleswig-Holstein police officer interview)*

Similarly, it was expressed that the high number of people who are required by authorities to leave, but have not yet done so is likely to remain high for various interacting administrative and political reasons. These include the ease with which politicians can state ambitions and formulate policies demanding more returns, despite the complexity of the real on-the-ground situation where difficulties concern finding people´s countries of origin, effectuating deportations and federal as well as local states´ political and legal priorities complicate matters:

> *Yes, numbers are high. But in the end, and this is one point, which I don´t think will change, it is a question of political will. If you want people to leave the country, then this number will rise. If you say: `officially they have to leave, because they don´t have the right to stay`, but at the same time there are 200 arguments for why they in fact don´t have to leave in the end then we have this specific difference between people who are not allowed to stay, but in fact don´t leave. So there are, I think in every country, specific numbers and a difference between the legal situation on the one hand and the real situation on the other hand. One big point is to get the paper from the people of course, but finding the right country, which nationality does a person have, if he doesn't help you, finding it is very hard work… But it is not all people who don´t have papers, and can't be sent abroad. Sometimes it is a political decision if some state parliament want to force this topic or another state parliament maybe want to force it a little bit less. (Schleswig-Holstein police officer interview)*

An interlocutor working with deportation escorts explained that on "the day of return":

> *…the biggest challenge is to get in contact with the person being return. So, it can be a single person, it can be a family, it can be old persons, injured persons and you have to bring in your own personality to that person…For instance, when the people from the alien authorities whose task it is to bring people from A to the airport, when they are not educated, sometimes the people are very stressed, the return persons, very stressed, because the behaviour of the transportation people is not good because they are not good educated in communication…You know, the staff is maybe security from alien authority, they transport people from A to B, and yep, not good paid job and the qualification of them…I think they are not good experienced in that. And that makes*

*the return persons stressed a lot, and they come in cuffs to the airport. Of course, we can use legal force by using those items [but] if there´s no precondition to cuff up somebody then we´re not allowed to cuff up somebody. That´s a point. (Escort officer interview).*

On the intercultural competences of the deportation escort officers:

*It is very important that the people get good education skills…So this idea of intercultural competence, they like to be abroad, also private. When we get new course participants, we always do [a small interview] in English – we always ask about where you have been in your last vacation, or where you would like to go if you have the money. And unbelievable! They travel all over the world, with backpack, in the jungle somewhere, together with local guides and so on. Unbelievable! Especially the young people do this and that is for us a good sign that they have intercultural competence. This is a main thing, combined with communication skills, that they are open-minded to people in general. (Escort officer interview)*

*But ok, I see it from both sides. I would do the same! Of course. But when I'm from Nigeria, Gambia, Afghanistan I would try to come to Europe. [Try to ask:] where are your grandparents coming from? There is always migration in the whole world…it's the same here for someone, from I don't know, they work for a Turkish restaurant or a Lebanese, because you know he is from Lebanon, and their own people bring them jobs. So for me, that's normal…[We are of course police officers] but it's good to see the opposite side as well, because it is not a control situation where somebody is [crossing for] red light on the street. (Escort officer interview)*

Voluntary returns:

One interlocutor expressed the view that NGO consultations with rejected asylum seekers on voluntary return come too late, and is also done in the "wrong way":

*…mostly they come too late, or very late. So sometimes, [asylum seekers] have lived here for years because they wanted asylum and it got worked on by authorities, so they decided it's now time [to go by themselves]. So it's a lot better to consult people that their asylum or their want for asylum is basically hopeless and therefore give them money and tell them, please go back to your country on your own. And clothing also, that they always say, that if you don't go we'll force you to go back. And NGO's don't do that with enough pressure…without the aspect of telling them what else happens…sadly, a lot of the NGOs that working there are consulting in the wrong way, umm, so they are consulting them to stay. Even though the wis or promise they could stay here is not helpful… There is a massive difference between [police and NGOs] because the police have a law they are working from, but the NGO's are basically doing the opposite. (Schleswig-Holstein police officer interview)*

On alternatives to detention, the officer explained:

*when we take their passports away, that's normal. First we go, we take all papers, identity papers, so they are taking all papers that say anything about their identity. And they also report them to the police. But when the first time someone comes to Germany illegally, they are not investigating. When it comes for the second time, they're going to investigate it, normally they go to jail, to prison. (Schleswig-Holstein police officer interview)*

*We are also searching their mobile phones for clues to their identity…we have a lot of people that took a false identity. So this led to a very successful cooperation with their home countries so they can have the real identities and get real passports so they can deport them with their real identity…It´s very interesting what countries this person is calling. So if the person is saying he's from Syria but he's all the time calling to or from Armenia, he's probably not a Syrian…that's evidence, so we can investigate in the home country. (Schleswig-Holstein police officer interview)*

Another police officer from a different state explained that he viewed voluntary returns as a viable alternative to forced returns/deportations:

> *I just know the offers from the IOM and several other organizations which say if you go back we offer you money […] I know a high number of voluntary return operations or voluntary travelling in their home countries for different reasons. I heard of people who say, ok this is not what I expected in Germany, so I want to go back. OK so this is not a real asylum seeker [laughs] but anyway, a lot of people use this system of voluntary return I think and this is a good thing because you avoid that you are not banned from Germany for the next years. And the authorities try to give you a start point – financial start point for your start in your own country – but money. (Escort officer interview)*

## Countries of destination

The interlocutor experiences countries of destination as uncooperative and as setting too many limits on the number of migrants they agree to let in, as well as the way of transportation and time periods:

> *We are involved in it, too, but countries of destination display a more coherent picture compared to us in terms of rejection or consent. Those who are cooperative in issuing passport replacement documents are usually cooperative when it comes to returns, too. Of course, there also are nations rejecting both areas. And there are states, to which deportations aren't running as smoothly, as they could – looking at it purely technical – where more or less severe obstacles are put in place or taken away. With this I am not only referring to third countries, but to member states too. Take Dublin for instance, Italy isn't very cooperative here... as already mentioned: Timetables, appointments, summer holidays, well, not now please... (Aviation Security Team)*

On the most common destinations:

> *So the biggest amount is I think the Maghreb countries, especially Maroc and Tunisia and of course Nigeria, Ghana, Gambia is not so much – Nigeria is a bigger amount – and Pakistan and Afghanistan. And of course a lot of scheduled flights over the world, can also be to the US, former criminals or whatever, but the major states are like I mentioned – and Russia as well. And it depends, 3-4 years ago we had a lot from Western Balkans – now we talk about Albania is an EU member [laughs]. (Escort officer interview)*

Differences between groups of deportees:

> *…in your risk assessment you know that people from Western Africa sometimes get much easier, much faster become aggressive. People from Afghanistan, Pakistan – they're nearly no violent, physically or verbally. People from Western Africa are sometimes, it doesn't work so well – even in the past when I've brought them back in Dublin cases by charter to Italy – even there, they yeah, they were very aggressive. Not all, but a high amount. When I say a high amount, that means a lot of percentage. That means you know in advance, ok this flights goes to Nigeria, ok maybe you will get trouble because they will be physical aggressive against you… Of course, this is not a normal situation, a return situation, but [some] much easier [become very] aggressive. And I think this is maybe a thing of religion? I don't know. A person who is believing in Buddha will never be aggressive. Usually not. [Also] Lebanon, Turkey and so on, they can be also aggressive. Can be. Not to – this is not my picture, I always know that I have to, and this is my deepest opinion – to see different. (Escort officer interview)*

On Critical Incident Technique:

> *…but also you know you have those police officers and also other police officers… and we do a lot of examinations, they have to pass and if they don't pass they're out. We call this Critical Incident*

*Technique, this is a proved technique where you see if this person is a team player or not? Is he able to go well with critical situations with the returnees, or with the team – maybe in the team you have also disharmony, so how does it work? Is this a person who steps back totally and is passive, or is active? So a lot of points to prove they have to pass. This is good because in three weeks you can see if somebody is able to carry out the job, or is it more a problem, then you have to talk about the problem.*

Another interlocutor differentiated between different countries of origin and their cooperation:

*We need a paper of identification from the original country. So it is in some countries it is easier than others to get these papers. So for example in Armenia they have very good tabled data from people, so it's very easy to get something, but for example from Russia it can take up to half a year. Another option is to bring them to the ambassador and he decides after talking to that person if they can come from that country or not. (Schleswig-Holstein police officer interview)*

*We can't deport someone without having a passport and agreeing with the country that they can go there. There's one exception. In the lands of Kosovo, Serbia, Montenegro, Albania, Macedonia, they can get a laissez passé – a document they can pass into that country. And there is no confirmed identity needed. If the people have a driving license perhaps and there's a name on the license we can say ok, that's your name and with the named driving license he gets the laissez passé and we can get him home to his country. (Schleswig-Holstein police officer interview)*

### 4.3.8. Problems expressed by deportation monitors

Bringing a little transparency to the "black box" of deportation flights:

*My task is – the main objective is bringing a little transparency, more transparency into these kinds of procedures because usually they're just they're not taking place in public. They're very much protected. No press are allowed to be there when deportations take place. No third parties have to be involved according to German law, so it's something like a black box. And the idea is that in cases where there's problematic procedures – when people get hurt, or even die – extreme things happen in these procedures, there's no one there except the people affected and the official actors… and some of the private actors I mentioned before, but they also kind of belong to this whole systematic. So my job is to report what is happening and the main things I do report is where there are problems. (Independent return monitor 1 interview)*

*The main objective is to create kind of transparency – even though the meetings are not in public. They take part behind closed doors, but the main objective is to create at least a kind of transparency. Because… maybe we have to talk about the history of the Fora? And how we even got that monitoring? Cos, in 1999 there was a returnee who died due to the cuffing of the federal police, in a plane from Frankfurt, via Cairo to Khartoum. And the person died and after that there were many voices raised in the NGO's who were discussing in public and they wanted to have like a monitoring. And it had to be independent. So they started to create the Fora. And Düsseldorf was the first Fora that had monitoring in Europe and, yeah. It came after that and all the public discussions about it. So the objective of course is to bring an independent monitor into this black box of deportation. (Independent return monitor 3 interview)*

*And we used to write these monthly reports, that we send to the Fora, but of course we write about every operation we observe. So after writing the operation report, we choose the problematic cases, that we report to the Fora. So once a month we write to the Fora and they meet once every three months, to discuss the cases. So the responsible ministry tries to talk to the responsible officials – to give a simple example, where did the bag get lost? What was wrong, why was a family member missing? And then they bring their reports, their statements, to our questions. And then the whole Fora discusses the single cases, to try to find solutions, discuss the*

*statements, to even to find solutions for like general problems. (Independent return monitor 3 interview)*

Small local plans of monitoring with very different levels of access:

*Of course, it's a process and we find what suits the occasion, suits the purpose of the project and what needs to be in there of course, but we're kind of free, so there's no standards. It's like a little, local plan that grows [...there are] different airports in Germany where monitoring takes place – it's Berlin, Dusseldorf, Hamburg and Frankfurt and with Dusseldorf they also monitor Cologne and in Berlin they monitor both, maybe three at some point. And we compare our projects and we find out that it's very much depending on the local circumstances, you know some get a lot of information, they can talk to the people in a private room without any police being present. They can sometimes they even get information about the procedures before the people come to the airport and they can check up what is happening before… And then other colleagues of mine say, oh I'm very happy if the police are just letting me in and sometimes, I have to fight for each word, each little detail of each procedure because they are more being like something that disturbs the whole procedure. So, we cannot really, there's no standard monitoring in Germany. It's local initiatives trying to store something that is a little more comprehensive. (Independent return monitor 1 interview).*

### Accountability issues

Police interest in collaborating with monitors – up to a certain point.

*…if we take the police as one actor, there is a general interest in avoiding extreme situations. They do not have an interest in producing not only pictures of images to the public that express the police as being violent or something like that, but also in practice they do not have an interest in putting people to harm in some way. And that's why monitoring for them is something that could be interesting. Cos they say, ok we have somebody who is independent and as long as nothing happens they can say, ok we don't do this in a bad or wrong way, we do this according to the rules that are there. So they have an interest in having monitoring. But only to a certain extent, cos as soon as we start criticising or putting things out that are problematic of course, then there's somebody who needs to take responsibility. (Independent return monitor 1 interview)*

Several deportation monitors explained that they often face problems when it comes to transparency about exit operations. For instance, one explained:

*…it´s not only the police, it's all officials. Officials in general. We used to get media requests from time to time, and whenever we get requests, we need to send it to the whole Fora and we need everyone to agree on the request, which is quite problematic from time to time (…) It´s not only our annual report, it's also the report of the For a. So everyone has to agree on what it says (…) (Independent return monitor 3 interview)*

One monitor talked about the massive limitations existing with the current mode of monitoring in the German exit system:

*I think the set of ideas is quite a good one, to create an independent monitoring system – the idea is very good. But what we are allowed to do, is not enough [...] and that we still don't have any regulation by law on the federal level, is quite difficult for us [So] we're not allowed to accompany the flights or we're not allowed to observe when people are taken from their homes, from their apartments, or even from prison – wherever they come from before getting to the airport, that's quite difficult for us that we don't have the possibility of observing there – and we always have to listen to the reports either from the returnees themselves which of course have a subjective connotation – they are personal observations. And same when asking police officers on, how was the flight last week? And they always used to tell us, oh ten or fifteen minutes after the departure,*

*after take-off, everything was quiet, nobody was crying anymore, people were singing, people were playing [laughs] so the picture they give us of a deportation flight is a very special one – and we never have a chance to get our own picture of the situation. (Independent return monitor 3 interview)*

On lacking access to documents about the returnees:

*we don't have the right to look into official documents and we have all the information on returnees – especially when it comes to medical information that would be very helpful. But their main argument is the data protection regulation, the EU regulation that is in place [so] they're not allowed to give it to us. So they always say that and then won't discuss anymore and we always try to say why it would be important for us to have more information which would be also helpful for them, for example when we observe an individual case and we have more information on it, it's also easier to have the whole picture, compared to other individual cases. (Independent return monitor 2 interview)*

On filing complaints and the bureaucratic strategy of waiting it out:

*what we've learnt is that in the critical moment when we report for example, somebody went and gave someone medicine (…) then of course that's a criminal, needs to be punished under criminal law, it's against basic law in Germany, it's bodily harming someone, you know. But the funny – not the funny, but bad thing then is that, there's not a direct response to that in the first place. There's a strategy of prolonging the procedure. You know, I give my report and because it's an acute thing, I do that not following our regular meetings but just giving out that report and saying ok there's something that needs to be fixed right now or needs to be clarified now and we cannot wait for this. And then there's a long time passing, maybe three or four weeks and then there's a letter coming back saying, yeah, we don't know really yet who is responsible, we need to find out who is responsible, yep. We need to wait (…) so that's the first thing, they try to make it a long wait to fight these things, and then the second is they give it to the state prosecutor which is responsible for prosecuting things that are raised against police officers – so this is a control mechanism in Germany – then that's also untransparent. So I don't have access to their document files, I don't have access to anything they're doing. The only thing I get in the end is a message; yes we have checked up on your report – not having interviewed me – and we don't see any bad behaviour here, so we're good and nothing is going wrong. And that's something I learnt over the course of the project. I started thinking these were the crucial moments where we can really make a change and try to show authorities they are being held accountable, but they are pretty much protected from that. (Independent return monitor 1 interview)*

Systemic challenges to monitor reporting:

*Well there are several limitations, but I think the biggest limitation is [that] we cannot mention in our public reports which authority Is responsible for what I report. I can say there was a foreign authority which did a deportation which went completely wrong, but the public wouldn't know if it was Hamburg or SH, or, you know. They cannot track it, which is insane because it's completely, it messes up the idea of getting transparency. The first year I thought, ok this is some kind of test from them to see if I was you know, some kind of activist who tried to construct public reports that were completely false or flawed or, you know, to attack them in some way. So I thought fine, I thought I will try to build trust and work in a good way. But this year again, we talked about it and I raised the concern that transparency isn't going to be achieved if they don't let us… yeah. If we can't mention this. Also, you must imagine it's not only me sitting with the report, writing it up, cos I put in many details and also I'm trying to find a tone which is, yeah, describes what really happens. But what comes out is a report which also went through the hands of the authorities – also the NGO's but you can see this power relations between the authorities and the other actors, with the authorities having the point of you know, we don't have to do it. If we can, we can blow it up at any moment if we don't want it anymore. This makes it really hard for the humanitarian*

*actors to make points, to be strategic, to place information, to write the report. (Independent return monitor 1 interview)*

On NGOs as serving as moral justification for deportation procedures:

*This role, we are accepting that there are deportations and we're saying ok there's good deportations and bad deportations and that's what the reader of the report is learning. And plus, I'm working for an organisation that has traditionally has an image of being humanitarian – it's a church organisation, doing social work in many different areas. Of course, someone from the outside would think, ok if Diakonie is there, deportations cannot be that bad. And that's an interesting way, how deportations are being humanitarianized. It's not just my role that works in this way, but it's a prime example – also there's how the German Red Cross for example, provides services when people are ill being deported. So, they're carrying them in special cars and bringing them up to the airplane, and you know if the Red Cross is involved, somebody from the outside would think, ok that went in a good, humanitarian way; that's related to the practice. And in terms of the discourse around deportation, we can see that many actors try to get this framing going. (Independent return monitor 1 interview)*

On halted or postponed deportations:

*someone could be deported inside Europe and he's refusing as soon as they arrive, refusing to get out of the car – when they meet people like that they say we don't have to try this, we don't have to take this two hours talking to this person, handcuffing, taking violent measures, the pilot in the end says, I'm not taking this person on my plane. What they say then is now, person, you can choose if you want to be placed into detention – because now many people are being placed into detention centres afterward, and the first attempt to deport them they're not placed into detention – so that's something they can – but after, they don't have so many detention places, they're building some but it's not yet. The second this is they can tell people they're going to be placed on charter flights. So the deportations we're talking about right now is deportations on private airplane companies, regular flights, so in some cases they say, ok if you don't want to go now on this kind of plane, you'll be placed on the other plane. (Independent return monitor 1 interview)*

On violence during mass deportations. One monitor said that these operations happen in such a manner that people from an outside perspective would see as violent:

*That's where [...] the deportation unfolds in a way that someone from the outside would imagine like violently. People are cuffed, restricted of their movement in extreme ways, carried by policemen and women to the plane, moving really in the most inhumane ways – that's what we criticise the most is them treating people in these ways [...] In the logic of the administration, it's like a last resort. We gave you the chance of returning voluntarily, you didn't do that. We gave you the chance of going on a private plane without handcuffs, without police, you didn't do that. We're going to put you now on a plane with 150 policemen and women. It does not always escalate completely, that's not true to say. There are mass deportations where people do not take any action to refuse police measures [...] Some carry small pieces of metal, to try to cut themselves, yeah, so they can stay in Germany because of the injury. But then the doctor comes and puts something on it and says they can still fly. So there's suicide attempts in these deportation procedures, which of course are being reported, but they do not lead to the police stopping deportation procedures. Then there's cases where, when people are told they're going to be deported, I witnessed a case where somebody was brought in almost completely naked. He had stayed in detention completely naked and – nobody saw that before... (Independent return monitor 1 interview)*

On child´s right issues during deportations:

*…we have a lot of situations in the past year, with regards to child rights issues […] For instance, when children are together with adults in the waiting area, and they see that somebody starts attacking people, stuff like that […] and has to be handcuffed, body cuffed, everything. Also that people are crying, screaming, different kinds of situations. It can be that it concerns the parents of the respective child, and they have to witness these situations [or] when you have people who come to the airport who try to do a suicide before. So we had one case where somebody tried to cut their veins and they put something around to fix it, and just brought him straight to the airport and then deported that person to Afghanistan. And this was a very difficult situation. And then sometimes we might have officials who maybe over-went with this kind of situation and this reflects in their behaviour that they might comment on this, in our view, in an inappropriate way. So in this case we try to sensitise, or make, ask them to rethink their way of looking at this situation. (Independent return monitor 2 interview)*

On sick and vulnerable people being particularly targeted for deportation:

*we see a lot of deportations happening with people who are ill and we have the impression that that pressure which is on the government to show that they are able to put people out of Germany who are not here legally – that this pressure is actually kind of hitting the weakest, kind of, cos those who are in treatments, those are the ones that need to go to social insurance, take up their allowances, so then the authorities know exactly where those people are and this is very crucial point if you want to do a deportation – you need to know where the person is. Somebody who is normal, who is more connected with people who know how to work around certain things, has an easier time avoiding the measures of the authorities. I cannot prove that in statistical numbers, but we see so many cases of people being ill, it's horrific. (Independent return monitor 1 interview)*

On the role of some doctors as part and parcel of the German deportation system:

*And the role of doctors is interesting because they receive money from the authorities in order to take responsibility for the whole deportation flight. . I had two, no three, cases where doctors at the airport said, no we cannot take this person right now and those were cases where […] it would be really really dangerous. So the most extreme cases they do not take, but many cases I've seen that the doctor says, ok you can talk to me, tell me your problems but I'm going to say you fly anyway because I take the responsibility. There's a clash of the cultures there – the deportation culture and the humanitarian-thinking doctors. what is bad about it is that people who really suffer from severe illnesses and need to be treated here, because for example, the treatment is not available in – where they should go – they're being deported anyway. It's something that has worsened over time. (Independent return monitor 1 interview)*

*[The doctors are in some cases] permanent authority doctors. Authority servicemen, so if somebody needs a blood test because they did something wrong, drove a car or whatever, and they need to be tested then, these kinds of doctors were also people working as regular doctors and then taking out contracts. (Independent return monitor 1 interview).*

*I think it is a very difficult job. Because you also have people brought to the airport who are seriously sick, so sometimes it's, yeah. The, they can only be deported once accompanied by a doctor. So that was what was agreed. And then you have a group deportation, as we mentioned before – up to 150 people and one doctor. So it's kind of, mmm, strange! [laughs] and out of those, there might be 50 medical cases, and out of those cases, you might have 10 serious cases […] And they are also one of the last persons who can also decide that a person is not able to be deported. But they have to make this decision very… they have to discuss it as being a doctor, with the police officers and the others who are involved. So sometimes their profession might be questioned in this situation because of course their job is also to support the deportation in a certain way. (Independent return monitor 2 interview).*

> *…you have one doctor, and this doctor is specialized in one discipline. So, most of them are General Practitioners, so… but a lot of people who are deported suffer in particular from psychological or psychiatric diseases. And they are not specialists in this – you have no psychologists or psychotherapists who are there and who can also consult the medical staff, for instance. Also, when it comes to other very complex diseases, they might not be trained enough in it because of course they can only specialize in a certain field or let's say in two or three maybe. So, everything comes together and it's a very tough job. And one medical doctor and one or two medical assistants is definitely not enough. (Independent return monitor 2 interview)*

On voluntary returns as an authority instrument on the road to forced return:

The police appear to use the threat of chartered returns to try to encourage/condition returnees into cooperating. This leads from the threat of forced return to encouragement of 'voluntary' return, so that the potential of more violent strategies in the future is used at every level:

> *…the first thing when you arrive in Germany in a reception centre, is how and where you can organise your voluntary return, so it's very present from the beginning and people are being told that there are these opportunities and as soon as it starts getting clear that they can't stay in Germany, they can't get asylum and they don't have any other rights to stay, then there's going to be a counselling on return – not on the asylum system, not on anything else, just the return system and it's capacities. It's from the authorities who have this idea of informing people like that. So, it is actually, it is very much part of the deportation regime – it's the first instance and then if people reject to do that, then they say, oh this person's not going to comply with our rules, so we need to deport him. (Independent return monitor 1 interview)*

On the pool of Frontex monitors:

> *The biggest difference between us and them on an operational level, is that they have the possibility to accompany the flights. They observe the entire operation, from the handover in the airport of the deportees, to the arrival in the destination in the country of destination. And I mean, we are claiming to be independent, but those monitors… they are, I means they are paid by Frontex, they are observing for Frontex, they are reporting to Frontex – so the way they observe is a different way. They also, I think they report the single cases and the problematic cases – I guess they report them to Frontex, but they look more on the operational level – to see where you could improve the procedure. (Independent return monitor 1 interview)*

### 4.3.9. Destinations, charters and operations in the evolving German Deportation System

Also the economic, political and humanitarian costs of deportation operations have remained contentious points in the German exit system. A careful look at the statistics surrounding German exit operations in 2019 show that even though there is an overall tendency for the cost of operations to increase in proportion to the number of deportees, there are also wide variations. This operations to the Balkan and Caucasus regions tended to be least expensive, and also as having been turned into the main return zones with the very highest numbers after 2015/2016. By comparison, exit operations to the regions of EU and North Africa/Middle East tended to have low overall costs, but also to return much fewer deportees per flight. As a contrast to this, exit operations to West African and Asian destinations had extremely high costs, relatively speaking, even though also deporting relatively few people (Asian charters tending to have more deportees on board than West Africans). This can be seen in Figure 11:

Figure 11. Scatter graph showing the number of returnees by cost of operation for all chartered forced return flights from Germany in 2019.
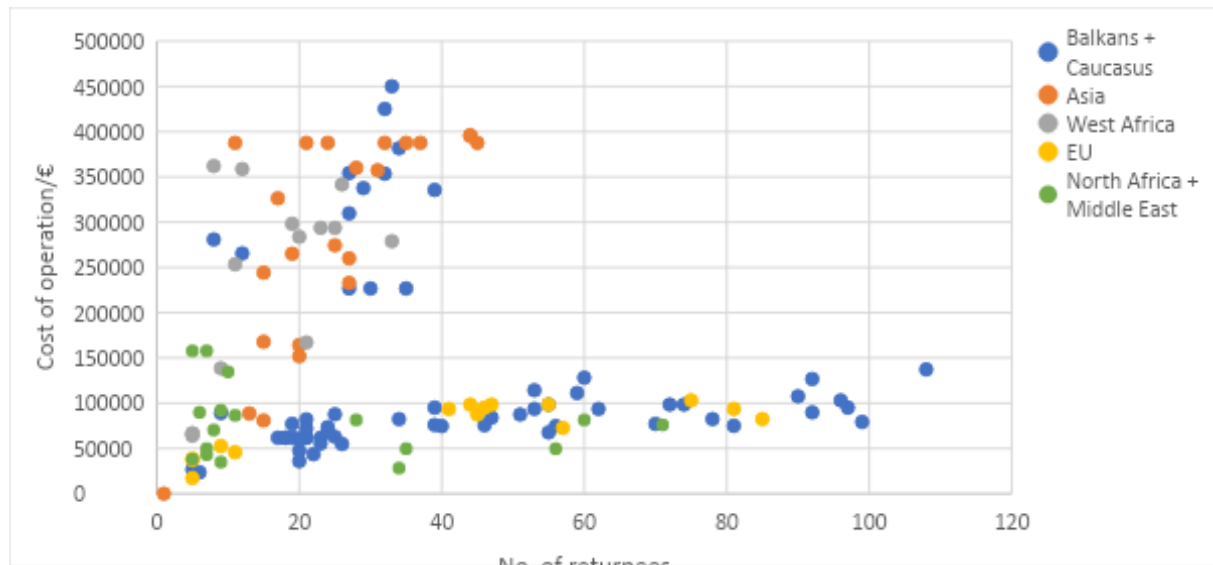


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

Table 18. Details for the ten most expensive per-returnee chartered forced return operations from Germany during 2019.

| Date | Destination | No. of returnees | Cost of charter | Cost per returnee |
|------|-------------|------------------|-----------------|-------------------|
| 17-09-19 | Nigeria | 8 | € 362,050 | €45,256 |
| 17-06-19 | Afghanistan | 11 | €387,605 | €35,237 |
| 16-12-19 | Nigeria | 8 | €280,880 | €35,110 |
| 11-06-19 | Nigeria | 12 | €358,680 | €29,890 |
| 25-03-19 | Nigeria | 11 | €253,438 | €23,040 |
| 16-07-19 | Senegal | 12 | €265,488 | €22,124 |
| 11-09-19 | Ghana | 17 | €326,342 | €19,197 |
| 19-03-19 | Afghanistan | 21 | €387,605 | €18,457 |
| 21-05-19 | Afghanistan | 24 | €387,605 | €16,150 |
| 19-08-19 | Nigeria | 19 | €298,168 | €15,693 |

*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

Table 18 above illustrates that that flights to Nigeria dominate the list most expensive per-returnee chartered deportations from Germany in 2019. This includes the most expensive flight where an extraordinary €45,000 was spent on plane charter for each migrant forcibly returned. By contrast, a single adult asylum seeker in Germany can expect to receive €135 per month as a living allowance (DW, 2017).  Although the flights in the top positions in this table represent costs vastly higher than the amounts typically spent per returnee, those lower down are only incrementally higher than the average figures for the destinations concerned.

Figure 12. Timeline showing date and charter cost per returnee for all chartered forced return operations from Germany during 2019, by region.
Some operations had to be excluded due to lack of cost data; in total, fifteen were left out.
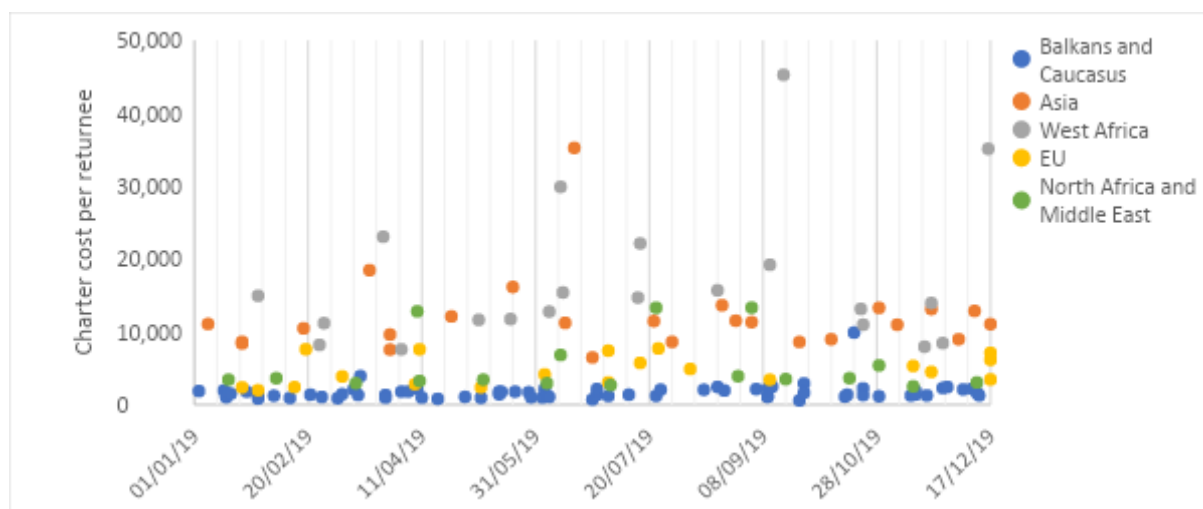


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

Figure 12 above illustrates noticeable inter-regional differences when it comes to the cost of German exit operations when converted into a cost per returnee ratio. On the one hand, there are very frequent and relatively inexpensive exit operations to the Balkans and Caucasus destinations, costing €1-2,000 per returnee. This against, on the other hand, more infrequent and more expensive operations to the EU and North African/Middle Eastern destinations. These cost €3-7,000 per returnee, but on some occasion even over €10,000, and then the slightly more frequent, and very expensive operations to Asia and West Africa. These cost €8-13,000 per returnee, with five operations to West Africa superseding €20,000 one of which even costing close to €50,000. Focusing more in depth on the German exit operations to West African countries, it is possible to differentiate between the different destinations during 2019 in this region, as seen below.

Figure 13. Timeline showing date and number of returnees on chartered forced return operations from Germany to West African destinations during 2019, by country of destination.
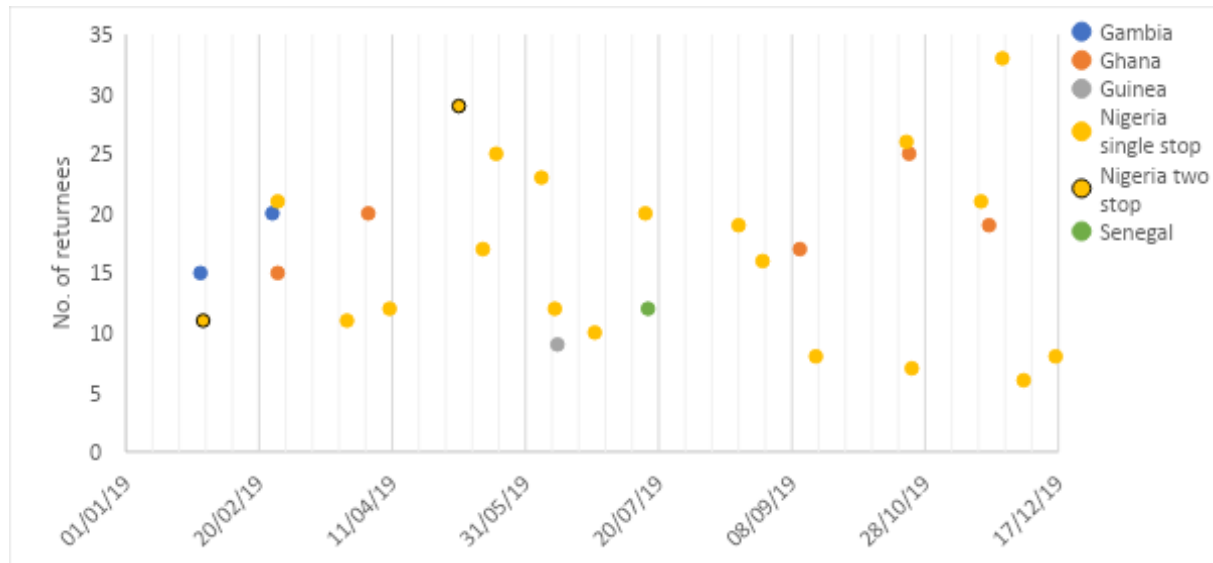


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

Figure 13 is one way of visualizing how the majority of German deportation flights to West Africa in 2019 were to Nigeria, while yet other flights were destined for countries like Ghana, Gambia, Guinea and Senegal. Most flights were single stop, except for two to Nigeria of which one also returned to Ghana, and one to Gambia. The figure also allows attention to the fact that most flights to West African destinations had between 10 and 30 returnees on board, though late in 2019 some flights to Nigeria operated with fewer than 10 returnees on board, as well as one with over 30. Differentiating the data on German exit operations to West Africa along different parameters, it is also possible to break down the statistics into a scatter graph expressing the cost of chartered flights according to airlines, and with attention to the number of returnees on board each return flight, as seen below.

Figure 14. Scatter graph showing number of returnees and cost of charter on chartered forced return flights from Germany to West African destinations during 2019, by airline. In order to produce this scatter graph, some flights had to be excluded due to the absence of cost and airline data in the source document. This corresponded to 8 out of 29 operations.
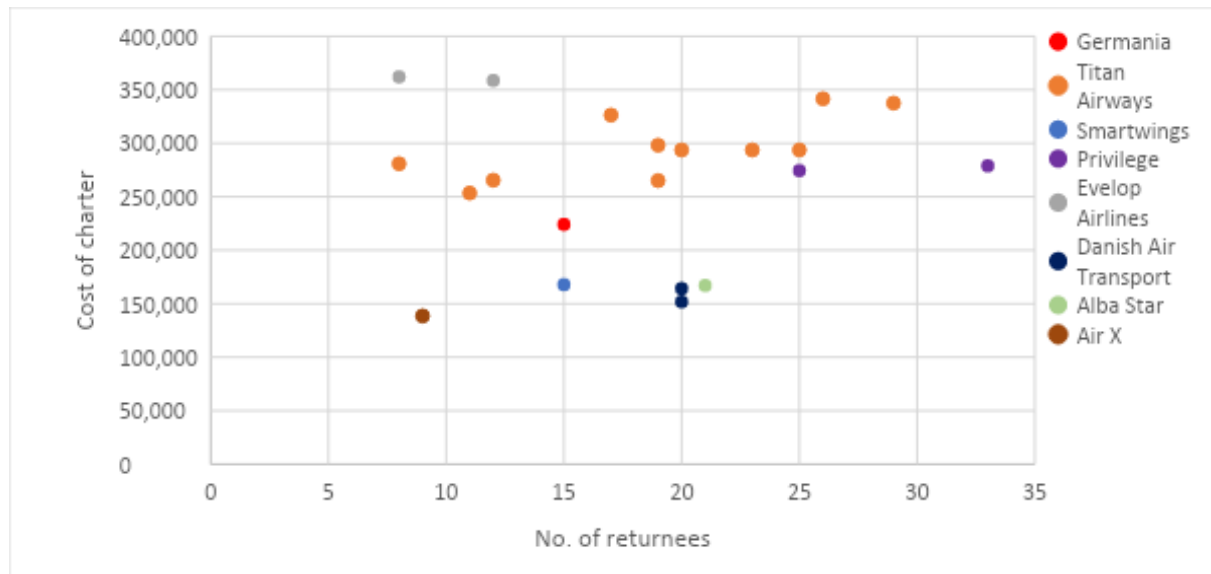


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

As illustrated by Figure 14, the majority of German chartered return flights to the region of West Africa were chartered from the small Titan Airways, who at the same time was also one of the most expensive airlines, even when disregarding the number of returnees on board each flight. Evelop Airlines had the highest cost per charter, even though its two flights also had the lowest number of returnees on board. Alba Star, by contrast, cost twice as little on its one return flight, on which it returned twice as many people. Privilege´s two return flights were among the top five of flight returning most people. None of these costs calculations take into account the conditions for returnees aboard the respective flights, nor the working conditions of deportation escorts or flight personnel. A similar focus can also be applied to German exit operations to the region categorized as North Africa/Middle East, as seen below.

Figure 15. Timeline showing date and number of returnees on chartered forced return operations from Germany to North African/Middle Eastern destinations during 2019, by country of destination.
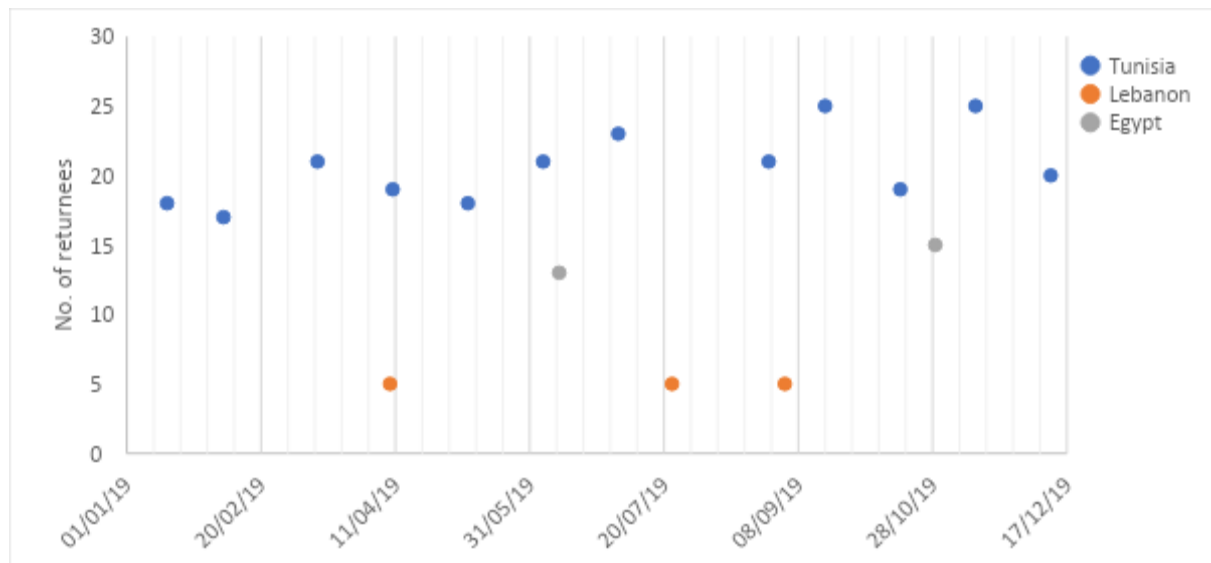


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

As the above figure illustrates, the majority of German exit operations to North Africa/Middle East was to Tunisia, and these operations also had the largest number of returnees on board, averaging around 20 per flight. Only two flights were destined for Egypt, and also had fewer returnees (around 15 each), while only five people were aboard each of the three return flights to Lebanon. No multi-stop return operations were registered to this region. The Bundestag information on German exit operations to this region can be differentiated further, as seen in Figure 16 below.

Figure 16.  Scatter graph showing number of returnees and cost of charter on chartered forced return flights from Germany to North African/Middle Eastern destinations during 2019, by airline.
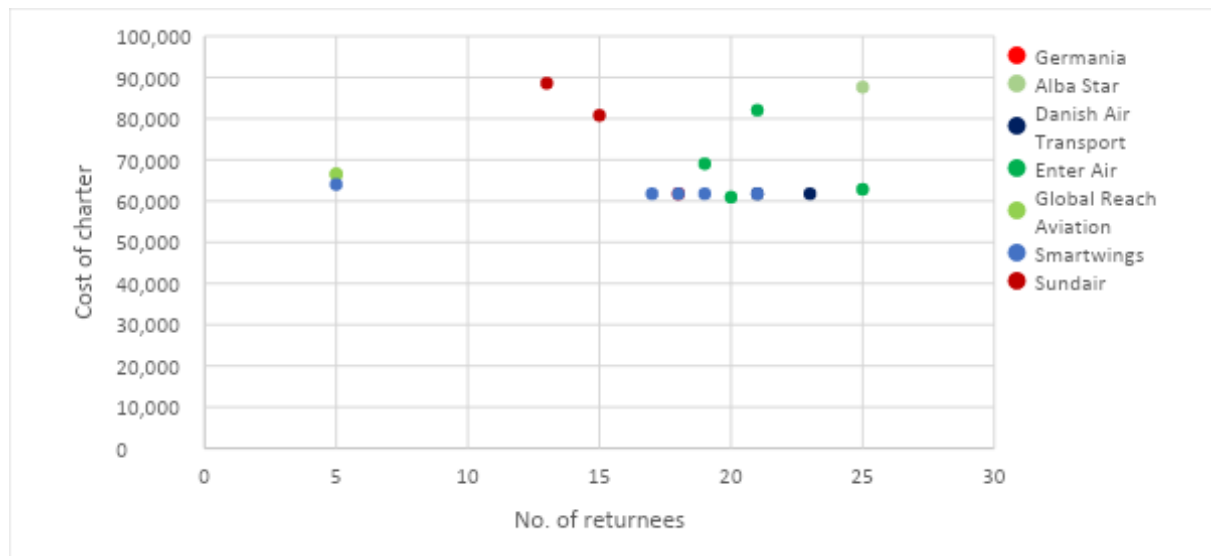


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

The above figure visualizes how Enter Air and Smartwings were the main operators on flights to this region, with four and five operations respectively. There is quite a high degree of similarity in charter costs for operations to this region; all charters cost between €60-90,000. There is an apparent correlation between cost of charter and number of returnees, though Smartwings in particular appear to charge a standard price, which is matched by other airlines including Danish Air Transport, Germania and sometimes by Enter Air. Sundair and Alba Star charged higher rates for their operations; Sundair having been responsible for both the operations to Egypt. None of these costs calculations take into account the conditions for returnees aboard the respective flights, nor the working conditions of deportation escorts or flight personnel. Moving back into an overview of number of returnees at a regional level, the figure below turns its focus to German exit operations within the Schengen area.

Figure 17. Timeline showing date and number of returnees on chartered forced return operations from Germany to EU destinations during 2019, by country of destination.
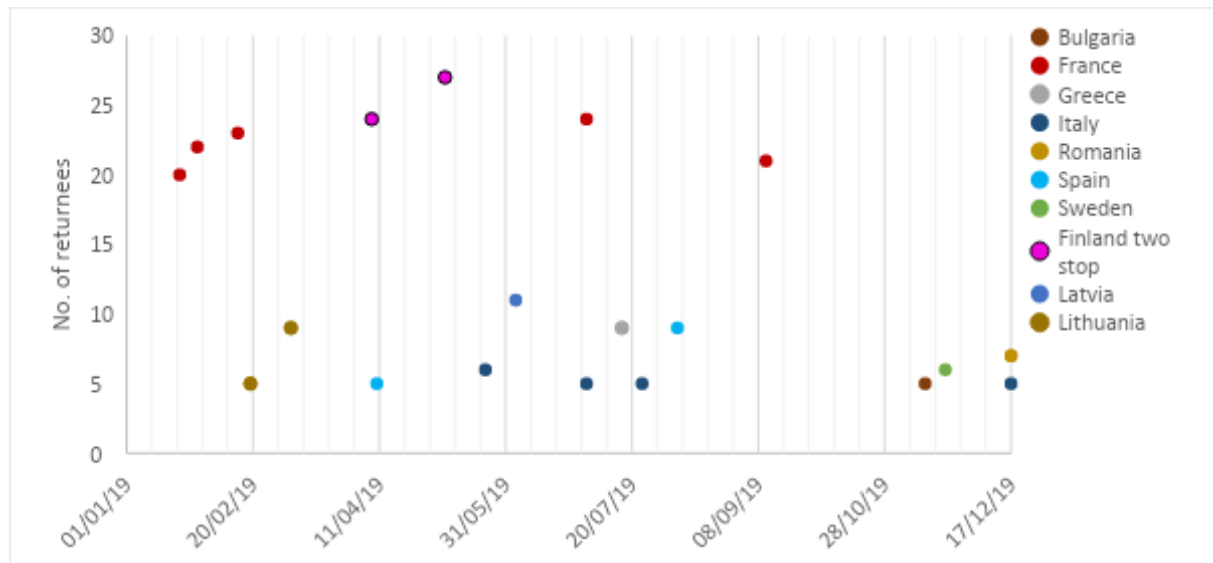


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

The figure above illustrates how, within the Schengen space, the most frequent return destinations for Germany were Italy and France with four and five operations respectively; however, a wide selection of EU countries were represented. French operations were concentrated in the first half of the year and had higher numbers, with 20-25 returnees on board. The two two-stop returns to Finland (also returning to Sweden on one occasion and Norway on the other) exhibited similar numbers. All other operations were single stop, and were quite evenly distributed across the year. These flights had low numbers on board, with just five to ten returnees per operation. Further differentiating this information, the following scatter graph shows the cost, number and airlines of these operations.

Figure 18. Scatter graph showing number of returnees and cost of charter on chartered forced return flights from Germany to EU destinations during 2019, by airline.
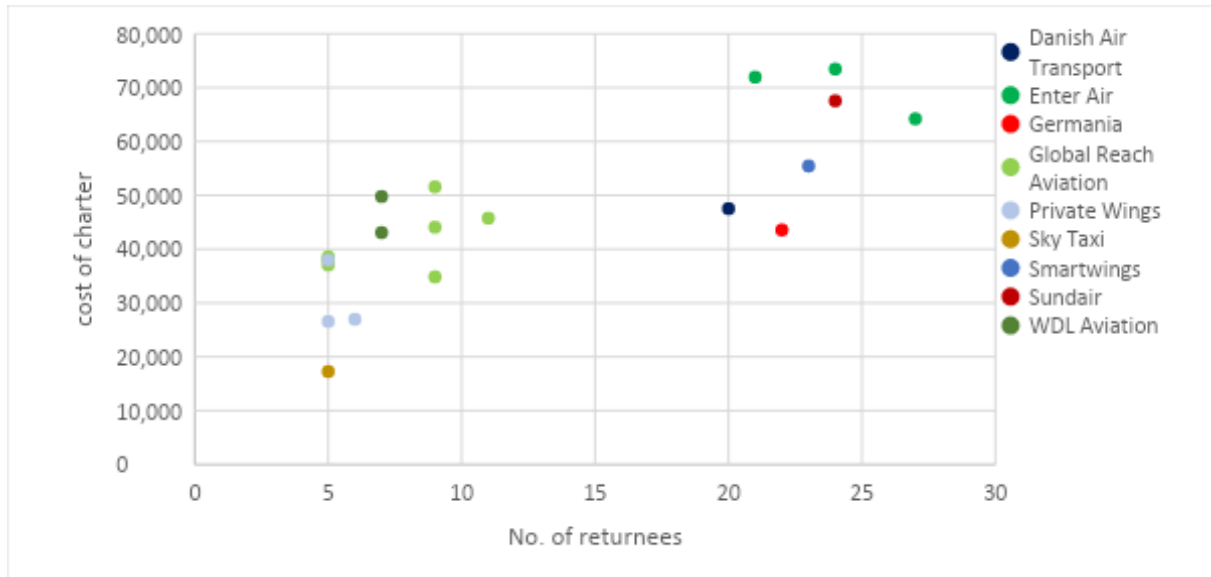


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

In this visualization, one operation to Italy on Budapest Aircraft had to be excluded due to lack of cost data. It can be seen that a wide selection of different airlines were chartered, though Global Reach Aviation was the one most frequently used. The correlation between number of returnees and cost of charter was strong and consistent across airlines. Again, none of these costs calculations take into account the conditions for returnees aboard the respective flights, nor the working conditions of deportation escorts or flight personnel.

Figure 19. Timeline showing date and number of returnees on chartered forced return operations from Germany to Asian destinations during 2019, by country of destination.
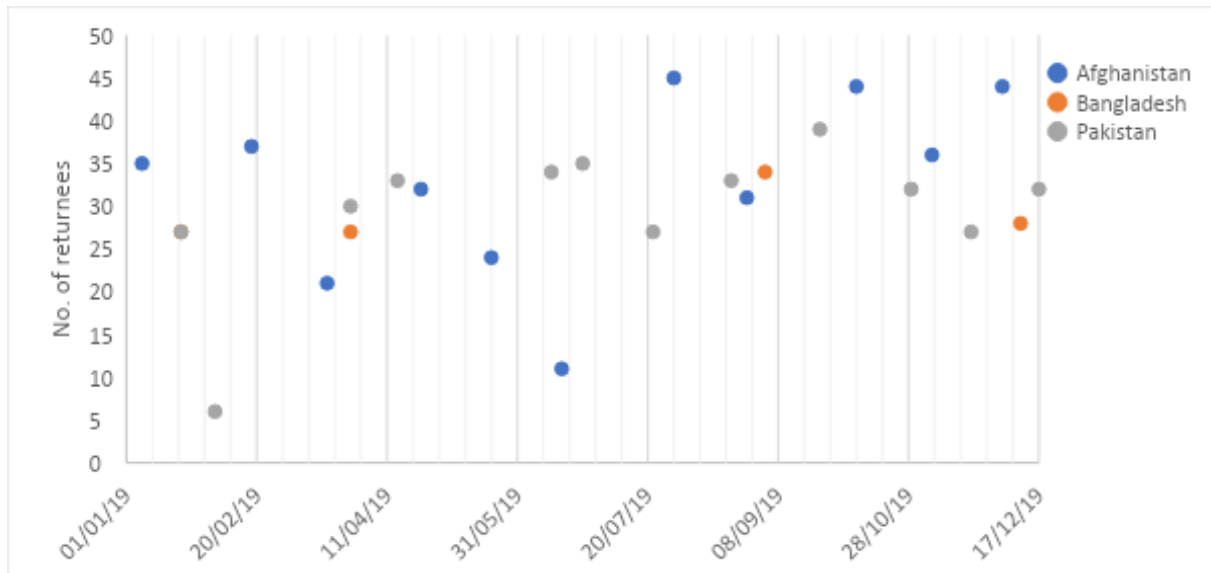


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

Of the three countries in this region, Afghanistan and Pakistan received roughly equal numbers of return operations, with a smaller number going to Bangladesh. Moreover, most operations to this region had between 20-40 returnees on board, though one operation to Pakistan early in the year had just six returnees and one to Afghanistan in June had eleven, while a further three operations to Afghanistan in the second half of the year had over forty. Operations to all destinations were roughly evenly spread across the year and all were single stop operations. In a striking difference to all other German exit operations save for the region of West Africa, the following figure shows the extremely high costs of charters for sometimes very small return flights.

Figure 20. Scatter graph showing number of returnees and cost of charter on chartered forced return flights from Germany to Asian destinations during 2019, by airline.
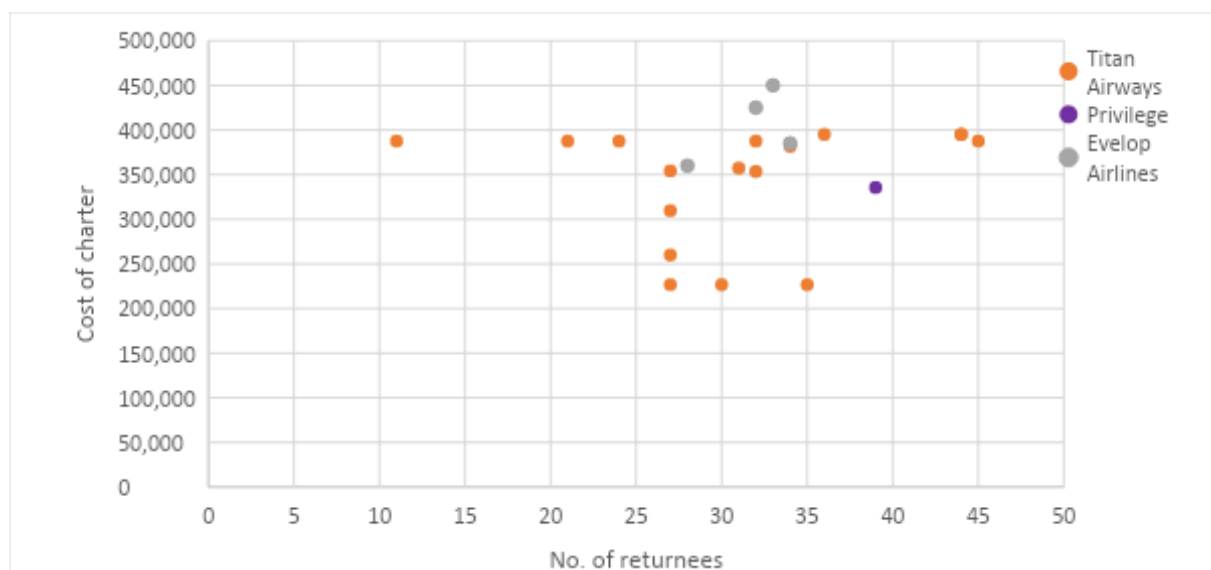


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

This figure visualizes how the vast majority of German chartered flights to Asian destinations were operated by Titan Airways, with a handful from Evelop Airlines and one from Privilege. There is somewhat of a correlation between cost of charter and number of returnees, though Titan tended to charge a flat rate for Afghan flights regardless of numbers. Evelop had the highest rates, charging over €400,000 for some operations; the largest amount paid by Germany for any single operation. One flight chartered from Titan, which returned 11 persons, end up costing around €400,000. The final two scatter graphs (E27 and E28) concern the German exit operations to the Balkans and Caucasus destinations during 2019. They stand out in noticeable ways from the other main return regions for German flights in terms of both volume, as well as a modus operandi that includes a vast number of two-stop return flights.

Figure 21. Timeline showing date and number of returnees on chartered forced return operations from Germany to Balkans and Caucasus destinations during 2019, by country of destination.
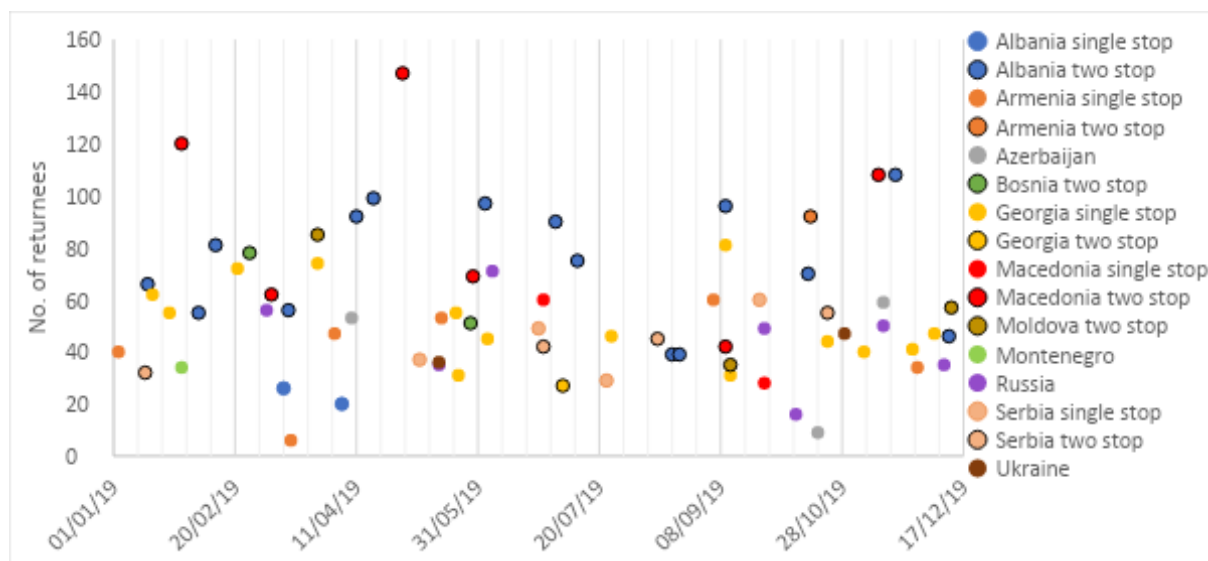


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

The attempt to express the scale and modus operandi of the Balkans/Caucasus route makes Figure 21 more complex than its predecessors. Still, it visualizes the vast scale of German operations to this region, and, crucially, the way in which destinations are interlinked by multi-stop flights. Operations to Albania were among the most frequent, and most of these had a stop-over in Kosovo, though one went on to Armenia. Operations to Macedonia typically had a stop-over in Serbia, while Serbian and Bosnian return operations often included a stop-over in Moldova. Most of these operations had a medium to high number of returnees on board (that is, between 30 and 100 returnees). A few cases transported well over 100 returnees: Three two-stop flights to Macedonia (with around 110, 120 and 150 people), and a two-stop flight to Albania also transported around 110 returnees. Also testifying to the generally massive scale of German returns back along the Balkan/Caucasus route, only four operations had below 20 returnees on board. Operations to all destinations were spread roughly evenly across the year. The Bundestag-information can, along the lines of the other main German return regions, be further differentiated into number of returnees, costs of charter, and airlines, as seen below.

Figure 22. Scatter graph showing number of returnees and cost of charter on chartered forced return flights from Germany to Balkans and Caucasus destinations during 2019, by airline. Five operations had to be excluded due to missing cost and airline data; four were to Georgia and one to Russia.
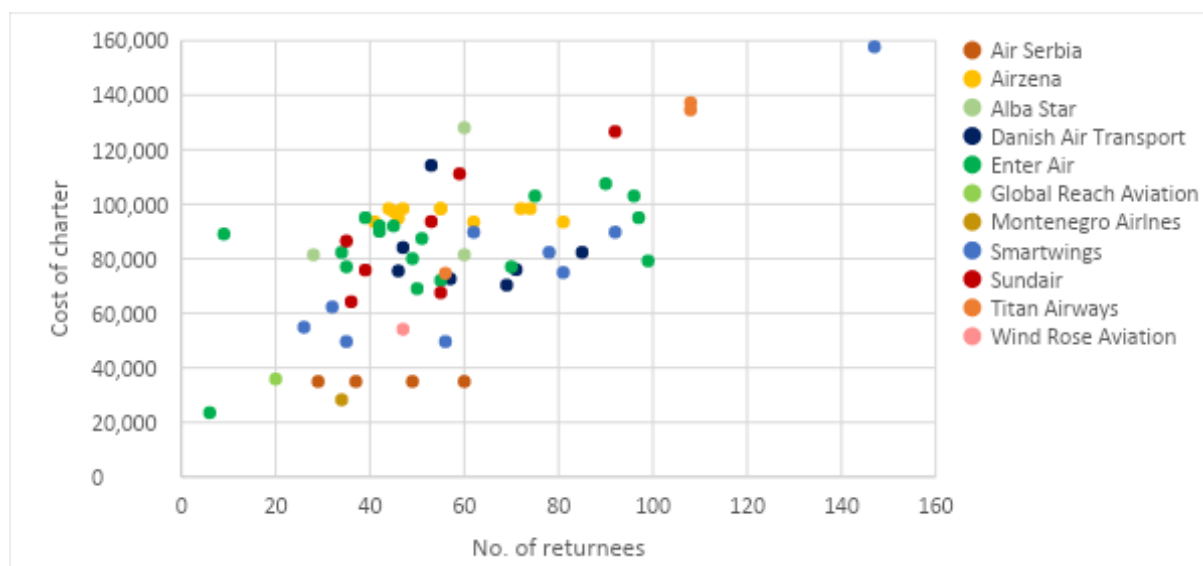


*Source: Deutscher Bundestag (2020) Drucksache 19/18201*

This figure visualizes a strong correlation between cost of charter and number of returnees for most flights to the Balkan/Caucasus region, though a tendency to charge standard rates irrespective of numbers on board can be seen with figures for Air Serbia, Enter Air, Smartwings and Airzena given their horizontal bands on the graph. Enter Air operated the largest number of flights to this region, though a large selection of airlines were represented, eleven in total

### 4.3.10. Analysis

The German exit regime is described by interlocutors with mixed feelings, but overall as working and "successful". Most importantly, interlocutors are very much aware of challenges and difficulties involved in deportations and voluntary returns. They actively seek ways to resolve tensions and to increase efficiency. "Success" was not necessarily defined as being able to deport each and every one legally obliged to leave the country, but not to experience another felt "loss of control" like in 2015/16 and to keep people deportable, till one is able to enforce their deportation. The only aspect seen as a complete failure by all interlocutors, regardless their respective function is the Dublin system. I will outline the perspectives of interlocutors and situate them in light of insights gained in this research.

As dealt with in the previous chapter, interlocutors are well aware of problems and challenges in the distinctive exit systems, but new structures and approaches are developed to address such issues. Accordingly, regarding NRW, the Regional Return Coordination is one of such new entities supposed to further deportations – whatever kind. In the interview, my interlocutor told me that one of their main tasks is to make sure that the stay of people, judged to be a threat to public safety, or deemed undeserving to a legal stay according to internal (changing) criteria, doesn't

stabilise or manifest. It is their job to identify such cases and to make sure to keep or make them deportable:

> *The orientation of protection is the one of the asylum act, but the residence act is configured a little differently. There the question is whether or not we want to keep someone in the long run, or rather if we want to keep someone long-term who isn't willing to integrate into our society. Or to put it differently, the problem is that a protective status entitles someone over time to a permanent residence permit. And this in turn is the orientation of the residence act, to prevent this from happening. Since the person isn't integrated and obviously has no interest in being integrated. And we are at risk that as soon as the protective status runs out, he is eligible to claim a long-term right to residence based on the protective status in line with the residence act, and this is something the legislator doesn't want and we don't want it either. (Regional Return Coordination NRW)*

A position, articulated by interlocutors in Hesse, too:

> *There is no reason to introduce public traffic to the central immigration office, but their main task is to organise the return procedure and to, let me put it like this, they exists to make sure that the stay doesn't stabilise. That is the sole task of the central immigration offices. (State Ministry/ State Police Hesse )*

Conditions were and increasingly are created in which people are kept in the status of deportability. Therefore, the approach seems to be that even though "only" half of planned deportations actually happen, the system isn't failing, as long as people stay deportable. Interlocutors involved in the actual enforcement of deportations articulated situations of a dead-end only regarding a very, very small fraction of deportable migrants. They articulated much hope in increasing the enforcement ratio through pre-removal detention, in Hesse especially temporary pre-removal detention (Ausreisegewahrsam), effects of recent and coming changes in legislation and jurisprudence. Repeatedly, the current situation – the inability to enforce about half of planned deportations – has been described according to a storyline, in which state officials are overwhelmed by and unable to break through structural constraints, but tables are slowly turning, they increasingly gain control and eventually, they will win this "fight" by deporting all who have to go" till only a tiny fraction they aren't able to is left.

It runs similar to the development in recent years, concerning the situation of migrants from West-Balkan countries. The overwhelming share of migrants entering Germany in 2015/16 wasn't from West-Balkan countries - their migration has a different history, different reasons and a different dynamic. However, one political target formulated was to decrease the amount of migrants in Germany and to deport more (effectively). It ran along with stigmatisation, criminalisation of migration and pitting migrant groups against each other:

> *Yes, but it mainly is conditioned by the categorisation implemented since 2015. The one with the so-called Bleibeperspektive [Perspective to stay, JG]. It mainly had the effect that a distinction is being made between refugees. It has been present in the discussion beforehand, too: 'look, Syrians are the good ones'. It's a common understanding, they are coming due to war-reasons, but the others, they don't really got a valid reason' and so forth. And this [logic, JG] was manifested in legislation, where such cluster were developed. As I said, through the distinction into so-called high and low perspectives to stay. Further, it was solidified in judicial terms by excluding the one group completely, from everything, and giving the other earlier access. And it actually had in parts of society the effect to take this categorisation at face-value and to adopt it uncritically. According to the theme, politics knows what it is doing. Hence, the five countries with*

*a high [perspective to stay, JG], they are the good ones with valid reasons. It furthermore leads among those affected, in part, to a similar stigmatisation. Meaning that there were Syrians who said 'What's your problem, I am Syrian and have a right to be here. You don't.' Eventually, to pit groups of refugees against each other worked on several levels. (Refugee Council NRW)*

As described, such categorisations were adapted by great parts of society. Eventually, migrants from West-Balkan states returned self-organised or were deported and their numbers decreased significantly. The phenomenon that a group of migrants comes in autumn, hoping to stay the winter in Germany and to return in spring is still present, but in way smaller numbers. The current situation is described in a similar tone, for instance by a deportation officer:

*One knows that the one or the other is back already, that he will be back, one knows it, even though you don't know where he is, one knows it. It is a stupid slogan, but eventually we'll get them, again. It might sound a little like cat and mouse, but well (…) eventually we'll get them and at some point... Many actually stay in their countries of origin at some point, or in a neighbouring country, or wherever. (Deportation Officer)*

A framework, which has been articulated in various forms by many interlocutors. In the long run, it was described to be working, despite current challenges and problems. The only system described, not to be working at all, is the Dublin system. Interlocutors described the frustration of knowingly "working for nothing", since migrants will come back anyway. They repeatedly voiced understanding for doing so, since being in Germany at risk of deportation seemed still better than having to live on the street without social allowances in Italy or Spain, or being subject of incarceration and serious mistreatment in Hungary or Poland. It was very much agreed that the solution can only be a political one and interlocutors withdrew to a position of mere enforcement, as it is their task, even though they don't see any purpose in it. Nevertheless, the Dublin system isn't working, it's overall share in deportations increased to about 50 per cent in recent years. Reasons for this rise were articulated by a police interlocutor:

*Apparently, the incentive to migrate further inside Europe became greater and since among them are so many citizenships, where deportation to one's home country is extremely difficult, Dublin represents the only option to deport the person out of Germany – which is why an emphasis has been laid on Dublin procedures. Every person I am able to deport through a Dublin procedure is better than being stuck with the person, because I cannot deport him to his home country. As a consequence, immigration offices started to prioritise Dublin cases in order to avoid ending in a situation of 'Deadline passed. Mh, Eritrea. Not possible'. Therefore, Dublin became a priority among immigration offices. (Federal Police; Section "Deportation")*

The Dublin system is widely acknowledged not to function (at all), nevertheless harmonising down lead to a situation of limbo which refers back to the beforehand articulated logic of avoiding a migrant's stay to stabilise and "the question is whether or not we want to keep someone in the long run, or rather if we want to keep someone long-term who isn't willing to integrate into our society. Or to put it differently, the problem is that a protective status entitles someone over time to a permanent residence permit." (Regional Return Coordination NRW) If a migrant isn't deportable due to de-facto reasons and he* or she* cannot be blamed for it, immigration offices ought to grant a residence permit, causing a stay to stabilise. A logic, recently further inscribed into the Residence Act in Article 60b, Duldung for people with unknown identity.

Furthermore, another contested field has been identified to open opportunities for state entities to further deportations:

> *Well, let me put it like this. Since 2015/16 I am looking at it more differentiated. It was a time... I mean I am not having this responsibility for a long time yet, but in terms of casework I am doing this job already for a long time. I experienced the developments of the last 15 years at first hand. And 2015/16 it was a time when [is searching for the right expression, JG] deportations became socially acceptable. One has to stress this point. (Return Management Cologne)*

Deportations are a given for most people in German society. Even though deportation numbers were quite low between 2005 and 2015, the social acceptance of deportations as a proper tool in migration management didn't decline, but felt to become a social norm linked to necessity. It also meant the debate ceased to be about whether or not deportations are a legitimate tool at all, but shifted to questions concerning deportations of whom to where. The latter is a matter of debate and a contested field, in which pro-migrant organisations and state entities fiercely fight against each other about every single inch. It is in line with the Hessian approach to contest limits in deportations more broadly and to challenge jurisprudence and to set social norms.

Given the discrepancy between people legally obliged to leave, compared to deportation numbers and enforcement quotas the German exit system is not successful in meeting the declared goal to deport everyone effectively deportable in theory. Legal changes in recent years, especially since 2015 have shown increased impact in worsening living conditions of migrants without a legal right to stay and furthered options to hold migrants in an insecure legal status. At the same time, possibilities to become eligible for a right to remain were tightened for most groups. Taking a step back and not looking at it from a pure enforcement perspective, but from a socio-political one, it even becomes less "successful". Despite being aware that a considerable number of migrants without a legally acknowledged status will stay in Germany, the focus isn't on integration but on division and keeping migrants deportable. The head of the Hessian refugee council voiced that in his opinion it isn't about  increasing deportation numbers significantly, but on making migrants leave self-organised. In this way it is attempted to reduce the number of migrants seen as "undesired" as much as possible and then to figure out what to do with "the rest".

Interlocutors described several organisational, as well as emotional struggles in enforcing deportations and voluntary returns. Thus, even though pre-removal detention was highlighted as an important tool by some interlocutors to increase deportation numbers, given the rightfully high legal requirements and judicial independence, it will not be an instrument effectively increasing numbers greatly. A tool which would be able to do so, solely seen from an enforcement perspective, might be temporary pre-removal detention, but given the ethical and moral considerations it is politically and societally very contested, and even though available  not used widely in Hesse and NRW.

The current structure creates great emotional conflicts and struggles inside people involved in deportation. Although attempts are being made to diffuse emotional distress - such as in the separation between staff rendering people deportable and staff enforcing deportations - to enable more deportations by curtailing the rights of migrants even further, will probably be only enforceable if socio-political and cultural understandings for a migrants situation are devalued further in society.

## 4.4. Conclusion

The German exit regime fails to a great extent in its self-declared aim to effectively deport illegalized migrants. Around half of all deportations in Germany are executed in cases of asylum seekers to whom the Dublin agreement applies, while a notable number of those who are subjected to forced removal or voluntary return tend to re-migrate back to Germany. State interlocutors attribute the reasons for this failure mostly, almost exclusively, to migrants who go into hiding and resist deportation. The need to dramatically increase the use of coercive measures by the federal police in recent years is also attributed to migrants' conduct, although deportations numbers more or less stayed the same in this period. We therefore like to highlight the need for state interlocutors to acknowledge that a lot of problems rest within their own structures and are homemade. Germany has always been a country of immigration and will stay one for the foreseeable future. Holding on to a system which doesn't acknowledge this fact, but rather tries to uphold rigid distinctions between 'natives' and 'migrants' in regulating access to rights, creates a never-ending situation in which deportations are seen as the *only* viable "solution" - a situation in which political problems in German society are alleged to be fixed by the illusion that the state is able to fully control (im)migration. Consequently, politicians focus on tightening legal norms and furthering repressive acts of law enforcement. Five years after the 2015 so-called "migration crisis", such an approach is now criticised by different state and non-state actors, for it not only failed to solve the "problem", but in fact created multiple forms of illegalisation (Duldungen).

The following are six conclusions that come out of our empirical study into the on-the-ground working of the German exit regime.

### 4.4.1. Accepting long-term migration and enhancing regularisations

Advancing a more humane exit regime in Germany starts with changing the logic of the Residence Act from restriction and exclusion to regularisation and inclusion. Similarly, grounds on which asylum is granted have been curtailed severely in recent decades and a change towards the acknowledgement of more reasons legally justifying protection is needed. Migration policies are very much entangled with constructed threats to security and safety. It leads to a climate of mistrust, which furthers suspicion against non-citizens. A restrictive application of the law in practice becomes the norm, not necessarily due to personal convictions of those who enforce it, but more because officials prefer to stick to a restrictive application to reduce their personal responsibility for "mistakes". The legally enshrined approach to keep migrants' status open and uncertain for a lengthy period of time is not compatible with an integrative focus on effective implementation. Regularisation norms must be more accessible and especially forms, such as the *Ausbildungsduldung* or *Beschäftigungsduldung*, have to become more than a Duldung: a non-punishable illegalised stay. People should be given a legal residence title straight from the start to increase personal security, afford basic rights, and ease access to employment by increasing the security of the work-givers as well. Furthermore, criteria of eligibility to regularisation mechanisms need to be simplified, clear and represent a lower threshold so that less space is created for the discretionary power of officials in immigration offices. Importantly,

regularisation mechanisms shouldn't be linked to particular dates of entry but should be applicable in general.

One of the main aims should be to get people out of insecure illegalised status into secure status, with a perspective and access to their political, social and cultural rights. Although there isn't much experience with §60b yet, it does exactly the opposite and has the potential to lead to another group of long-term illegalised but non-deportable people, who are not allowed to work, not entitled to make use of integrative programs, and whose cooperation would necessarily lead to their deportation. It should be advisable to look into abolishing §60b entirely.

This links to a greater debate of whether or not Germany is a *long-term* immigration country. Currently, a logic of temporary immigration prevails in which barriers to receive limited residence permits and an unlimited residence permit are quite high for third-country nationals, particularly if paired with low qualifications (partly due to a very strict acknowledgement system). Changing the logic of the Residence Act to a welcoming and open application, oriented towards greater regularisation would eventually means to ease criteria of naturalisation, too. While Germany is de-facto a country of immigration, it has one of the lowest naturalisation rates, consistently under 2 per cent. A matter unlikely to change as long as certain groups of migrants are politically framed as undesired and dealt with as such.

The "need" to remove people is placing severe emotional burden and social strains on officials enforcing deportation (cf. Kalir 2019a). This is evident in the overwhelming statements of most interlocutors at the street-level, who also told us that they avoided saying where they work on occasions like social gatherings, taxi drives, random conversations, etc. In order to respect migrants in their basic rights and to relieve the emotional burden from immigration work, there ought to be a critical assessment of the "need" to continuously produce illegalized and deportable people.

### 4.4.2. Develop Alternatives to Detention

One aspect which stands out of our empirical research is that although legislation explicitly opens the option for immigration offices to develop their own administrative orders as a means to avoid detention, we could not find one example for such alternatives besides those set out in Art. 46.1.4 of the General Administrative Provisions of the Residence Act. This is surprising since detention is – next to deportation – the harshest tool at hand of state officials to apply, with severe negative consequences for migrants and their families\communities. In addition, it is a very expensive tool and for those enforcing it also emotionally challenging. According to one experienced executive in a central immigration office, the lack of alternatives is grounded in the very logic with which the system is designed. It is a system that has detention as its ultimate goal. Accordingly, alternatives are merely seen as steppingstones to reach detention, but not as independent and functioning substitutes.

For a better exit regime, immigration offices and state ministries ought to develop alternatives to detention, legally separated from the application of pre-removal detention. There is a need for a thorough examination of the legal, political, as well as ethical understanding of detention as a proper way for dealing with people who lack a legal administrative status.

In addition, data is not systematically gathered on the number of people detained for deportation unlawfully. The only data available is published by independent lawyers, suggesting a high number of cases in which detention was unlawful. This is in line with the incoherent jurisprudence on pre-removal detention, suggesting that more legal trainings of judges in this particular area are due.

### 4.4.3. Abolishing designated camps for sheltering potential deportees

It was argued that migrants need to stay for long periods in designated camps, in order to decrease the possibility of absconding when a deportation is planned. As this didn't prove to be the case, such legal changes need to be reversed. Keeping migrants up to 18 months in designated camps and special shelters, often located in rather remote areas and with a capacity of 200-800 people, is extremely counterproductive to integration and puts additional strains on migrants' lives. It furthermore repeatedly led to situations in which migrants were picked up for deportation by large police force or riot units, due to an alleged need for self-protection given the size of the shelter and a "potential for spontaneous actions of solidarity by migrants". Given that families and other refugees are living in these camps, too, it puts additional stress on everyone's lived environment.

Instead of camps, migrants could be accommodated in decentralised manner in small housing units, embedded in populated and well-equipped areas. Cases should not be handled remotely, but by a case manager who follows a holistic approach, explaining administrative processes to migrants and acknowledging their needs. Furthermore, deportations ought to be announced ahead of time and shouldn't be conducted at night or in early morning hours.

### 4.4.4. Prioritizing voluntary return

While we haven't encountered formal target numbers (quotas) for immigration offices to deport migrants, we have documented how a concerted focus on deportation runs counter to a supposed preference towards voluntary return, especially a sustainable one that doesn't lead to several entry-deportation cycles. Therefore, there should be legal options and greater funding programs to offer trainings for migrants who consider returning. Immigration offices should have the option to extend the stay of a person, in order for the person to be able to visit vocational trainings. In gaining work-related skills, migration out of necessity might be reduced and deportation numbers lowered since migrants might be more open to a voluntary return, given a perspective. Immigration offices should work in closer collaboration with organisations and institutions in migrants' country of origin to ensure sustainable return and reintegration. Furthermore, migrants should have a legally guaranteed right that immigration offices need to await the decision on a filed petition, before being allowed to deport.

### 4.4.5. Decrease number of involved actors, increase transparency and trainings

Each federal state has its own distinctive exist system, causing an overlap in responsibilities and a diffusion in accountability. A system without coherent quality and clear standards is likely to further the abuse of power. It leads to blurred responsibilities between immigration offices located in different states and is even more illegible for migrants. In Hesse, for instance,

deportations are only enforced by central immigration offices connected to police structures, while in NRW each and every immigration office is supposed to deport migrants. Since officials in immigration offices are administrative staff, the training of field deportation officers is up to each office– the same accounts for the range of possible equipment to be used in and for deportation. Paired with a focus on non-violent law enforcement, we believe that de-escalation should not necessarily be a high priority, since it is easier to train staff in how to prevent escalation rather than how to deal with a situation that is going out of hand.

Immigration offices are chronically understaffed, making it more difficult to find time for trainings while keeping up with daily tasks. The diffusion in responsibilities leads to a situation in which transparency becomes blurred and accountability is hard to pinpoint. The deportation regime should be simplified, either by lowering the number of state actors involved in deportation, and/or by instituting mandatory trainings, offered by the federal ministry, with a focus on the prevention of escalation and a test at the end.

Concerning return counselling in voluntary return, we find a similar situation. There is a great variety of actors involved and civil society organisations rightfully fear that immigration offices, which are increasingly taking over the field, don't conduct open-ended counselling but simply pressure migrants to leave. There should be mandatory trainings in this area, too. Whether or not civil society actors and pro-migrant organisations should be involved in such trainings is up to debate. On the one hand, it would give a counterweight to a perspective of law enforcement, yet, on the other hand. Counselling is often embedded in structures of social work and taking part in an exit regime runs counter to the principle that social workers shouldn't be part of such a system. It is hard to find the right balance between addressing the need of migrants for open counselling, since state structures are becoming increasingly dominant in this field, and thus complicit in enforcing deportations.

### 4.4.6. Easier access to (disaggregated) data

One of the main factors to improve and ensure a better exit regime is knowledge about it and the ability to critically assess and discuss it in professional and political circles. Police and immigration structures enforcing deportations are very hard to access and reluctant to give insights into their daily work and operations, while at the same time interlocutors of these entities asked for greater public understanding and support. Thus, enforcement structures should become more accessible to academic research and public scrutiny. Furthermore, official actors should publish disaggregated data on forced removals and voluntary return, and they should make their guiding principles publicly available. The work of immigration law enforcement often takes place in obscure fashion and thus negatively influence multiple aspects: migrants are at greater risk of abuse, enforcement practices are mostly illegible for public scrutiny, and staff enforcing deportations face high emotional burden in applying unclear discretionary power to "get the job done". There is a need for more transparency around immigration and police units involved in deportation as well as in voluntary return.

Databases in this field need to be reformed fundamentally or abolished, for they are currently inaccurate and often misleading. The Central Register of Foreign Nationals (Ausländerzentralregister, AZR) represents one of the largest databases of non-nationals in any

European country. Its existence itself is regularly up to debate and since it is unreliable, its actual use is very much in question. Immigration offices work with their own local, regional or state-wide data processing programs, since the AZR does not offer all the options to include or solicit information that staff encounter in day-to-day situations. It seems urgent that all immigration offices start working with the same data processing application, making it possible to easily pass on e-files if responsibilities shift to another office; instead of gathering data without a particular focus and reason in an unfit database, such as the AZR.

# 5. Danish case study[117]

## 5.1. Introduction

### 5.1.1. The Danish exit system and the EU

Although a Member State of the EU, Denmark has maintained four exception clauses to their membership. These were negotiated between seven Danish parties in 1993, following the vote at the popular referendum on June 2, 1992 where the population rejected the Maastricht Treaty. Of the four Danish exceptions, one concerns supranational collaboration about justice and home affairs issues. After the Treaty of Lisbon entered into force on December 1, 2009, issues like criminal justice shifted from the intergovernmental to the supranational level of governance. This supranational expansion of legislative competences regarding justice and home affairs issues means that Denmark cannot influence new legislation in these areas. Regulations and Directives like those on Qualifications and Returns therefore do not bind Danish authorities.

At the level of legal frameworks, Denmark has negotiated a series of parallel agreements with the EU allowing governments to participate in parts of the Union-wide policies. When it comes to asylum policy, these agreements concern: 1) The so-called Service Regulation 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters; 2) Regulation 1215/2012 (of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters; 3) Regulation 343/2003 on the Dublin Regulation determining countries of first arrival for migrants, and thus, the web of Dublin exit governance (and the revised Dublin III Regulation 604/2013); as well as 4) Regulation 2725/2000 concerning the biometric Eurodac database (and the revised Eurodac Regulation 603/2013) for the effective application of the Dublin system.[118] The Schengen collaboration, including internal and external borders, visa rules and Frontex, has been integrated in the Danish exit system. Because Denmark participated in Schengen before it was made supranational by becoming part of the EU treaties with Amsterdam in 1999, Danish governments decided to still participate in Frontex on an intergovernmental basis.

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[117] The authors´ are grateful to Annika Lindberg for providing helpful comments to this report.
[118] See Agreements between the European Community and the Kingdom of Denmark: 2005/794/EC (Service), 2005/790/EC (i-Regulation), and 2006/188/EC (Dublin and Eurodac).

The Returns Directive (2008/115/EC) has been ratified on a bilateral level, but aspects of it were only selectively implemented in 2011, 2014 and 2018. The Danish government has followed the Directive´s general turn towards forced deportation over voluntary returns (a tendency strengthened with the Commission´s September 2018 recast proposal). Danish governments have pursued the possibility of forcibly deporting unaccompanied minors, while also disregarding the maximum period of detention for asylum seekers, where the Return Directive´s and the Qualification Directive´s (2011/95/EU) threshold of 18 months has been routinely breached. With a legal reform in 2019, the Løkke Rasmussen government proposed harmonizing the Danish legislation to the Directive by revising the Danish Aliens Act´s §37, 8 (Folketinget 2018). This meant that administrative incarceration of a foreigner, according to §36, may only be extended beyond 6 months if special circumstances apply. The upper threshold for this extension is then 12 months, and in line with the Returns Directive´s §15, 6, these circumstances concern either lacking collaboration on the part of the foreigner, or delays in attaining the proper documentation to effectuate the return.

This particular and intricate Danish affiliation to the EU has concrete implications for the country´s politics of migration governance. Thus, Danish police officers participate in Frontex operations, both in and beyond European territory and collaborate with Frontex on knowledge-sharing, National Return Operations (NROs) and Joint Return Operations (JROs) (Stevnsborg, 2013). On the other hand, the same exception has also been interpreted by successive Danish governments as meaning that Denmark is not obliged to follow suit regarding a range of other EU measures, such as the participation in quotas for relocating refugees between the EU Member States, or for resettling refugees from outside the EU, as well as common European standards for entry, asylum and exit conditions.

### 5.1.2. The Danish exit infrastructure

In line with ADMIGOV Deliverable 7.1 concerning the development of building blocks of good migration governance to allow for the development of indicators to assess the Danish exit governance, the Danish exit infrastructure can be seen as comprised by actors, relations, resources, policies and practices. When it comes to the range of specialized actors, within and beyond the national territorial boundaries but also at local, municipal levels, these can form formal relations, for example between the Ministry of Immigration and Integration and International Organizations (IOs), such as the Danish Red Cross or Danish Refugee Council. Others form more informal relations, like when grassroot NGOs, such as Refugees Welcome, Grandparents for Asylum or the Trampoline House, participate in the exit system when they provide non-state funded counselling or communal activities. The research team has strived to analyse this multileveled governance by conducting interviews with several actors involved in these relations.

Resources in the Danish exit system include both those allocated to f.i. operating contracts, but also expertise and experience of staffers in departure centres, prisons, or at the Ombudsman and the Danish police, or in the IOs awarded contracts in the system. These then form practices. Further and crucial resources include the psychosocial health of the population within the exit system, as the cultivation of agency, capability and autonomy can be more necessary for the realization of return decisions than economically cost-intensive control infrastructures, such as

the electronic lock and registration system of Danish departure centres, Saltolog (see section 5.3.1.), or the chartering of airplanes to countries like Afghanistan.

The implementation of policies relies on the material infrastructure of the Danish exit system. It involves the two fenced departure centres Sjælsmark and Kærshovedgård, and the non-fenced centre Avnstrup. Furthermore, prison-structures like Nykøbing Falster Holding Centre, the Ellebæk Centre for Foreigners, and the now-closed Vridsløselille prison have housed rejected asylum seekers not collaborating on their own return. Foreigners convicted of crimes and sentenced to deportation are housed in prisons. Other groups placed in so-called pre-removal detention in the Danish exit system includes illegalized migrants, visa overstayers, unauthorized border crossers and unauthorized workers, such as sex workers.[119] In 2013, the Social Democrat Thorning-government converted part of Sjælsmark military barracks into the first Danish departure centre. This channelled those categorized as deportable from the centres across the country, including the reception centre Sandholm, and into Sjælsmark. However, the military facilities have remained in use, so that adult and child residents hear the shooting or other military infantry exercises outside their windows, often on a weekly basis. In 2016, another departure centre was opened, namely Kærshovedgård, which was converted from an open prison, and is now operated by the Prison and Probation Service. The Prison and Probation Service also operate Ellebæk Prison used for pre-removal detention incarceration.

### Actors in the Danish exit infrastructure

Since 1984, the Danish Red Cross holds a contract to operate about half of the asylum centres in Denmark (5 centres - Centre Thyregod, Centre Sandvad, Centre Jelling, Sandholm and Child Centre Sandholm), as well as the departure centre Avnstrup on Zealand. A handful of municipalities then operates the remaining asylum centres, such as Vesthimmerland (3 centres - Centre Ranum, Centre Holstebro and Child Centre Østrup) and Tønder (3 centres - Centre Hviding, Centre Aaløkke and Child Centre Tønder).

When it comes to the three departure centres, Ikast/Brande municipality operates Kærshovedgaard, which has a capacity of 400 places, the Red Cross operates Avnstrup, which has a capacity of 400 places, and The Criminal and Probation Service operates Sjælsmark, which has a capacity of 400 places. At this point, it becomes somewhat of an arbitrary exercise to separate the Danish entry and exit systems from each other, as people tend to be circulated around, and often-times also back and forth, between these reception, residence, children and departure facilities according to the case and its administrative processing, level of cooperation on own return. While it was not possible to get an interview with the Criminal and Probations Service for this report, the Danish Red Cross was interviewed.

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[119] The Nykøbing facilities are supposed to be put out of commission after a planned expansion of two new wings to the Ellebæk facilities is finalized in 2020.

Figure 23. Mapping the locations and circulations of the Danish exit system.



Until the period beginning with the spring and fall of 2020, where the new Return Agency launched its operations (see Section 5.3.3.).  the Immigration Service was responsible for accommodating asylum seekers, and the control regime on motivation enhancement measures designed to make people return voluntarily, as well as the duty of residence (opholdspligt), permission duty (underretningspligt), and the registration duty (meldepligt) enforced across the Danish centre system.[120] The national police were in charge of preparing return procedures,

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[120] These duties comprise a surveillance regime mandated by the Aliens Act. This included a duty to take residence on a specified location, such as a departure centre, where people have to be back every night at 10:00 pm (§42a, stk. 8-9 - opholdspligt); a duty to receive manual, phone or electronic permission to spend nights outside departure centres

readmission negotiations, and the responsibility for imprisoned people on tolerated stay. Since 2003, besides dealing with the resettlement of UN quota refugees, the International Organization for Migration (IOM) also had a contract to facilitate so-called assisted voluntary return and reintegration (AVRR), returning more than 1,000 persons,[121] while the Danish Refugee Council was contracted to counsel rejected asylum seekers on return. While it was not possible to schedule interviews with the Immigration Service and the Return Agency, the Danish Refugee Council, the IOM and the national police were interviewed for this report.

In accordance with the EU´s Returns Directive (2008/115/EC), the Danish parliament passed law no. 248 of March 30, 2011, §30, stk. 1, which made it the task of the Parliamentary Ombudsman Monitoring Division to oversee the forced returns conducted by the Danish police, except Dublin returns. Before this legislation, no specific monitoring of returns was in place.[122] The institution then produces a report, and requests further data from the authority in question as background information. In the case of deportations, this involves communication with the national police headquarters and North Zealand police responsible for the operations. Since 2018, the Ombudsman has also been drafted by the Frontex Pool of Monitors to oversee National or Joint Return Operations from EU Member States. Between 2011 and 2015, the Ombudsman published annual reports on forced deportations, however, after the shift in 2015 to the Løkke-government, this reporting was stopped, and a smaller section on the issue was included in the Annual Report of the institution. This practice has not been altered since the Social Democrat government came to power in June 2019. The Ombudsman was also interviewed for this report.

Also involved in the Danish exit system are a number of smaller grassroot initiatives and non-governmental organizations (NGOs), where some at times conduct projects through funding from state bodies, while others are wholly independent and based on private donations. For instance, the small organization Refugees Welcome offers free legal counselling and assistance to asylum applicants and refugees, works interest-based at the political level to improve the rights of refugees, and communicate information about refugees in Denmark.[123] At the time of writing, the Trampoline House (TH) is a self-governing institution with a board, a staff of ten persons, and around 200 interns and volunteers. It functions as an independent community centre in Copenhagen working to provide refugees and asylum seekers with support, community and purpose in order to break social isolation and powerlessness. This was done through internships, job training, language classes, medical and psychosocial aid and media campaigns.[124] At the end of 2020, however, TH announced that it was forced to close, due to a combination of lacking application successes and Covid-19. Finally, Grandparents for Asylum is a social movement independent from political parties who work for changing Danish legislation so that the treatment of asylum seekers and refugees becomes more decent and humane. It focuses in

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between 23:00 and 6:00 (§42a, stk.10 - underretningspligt), and a duty to register thrice a week with the authorities for rejected asylum seekers, and 5-7 times a week for people on tolerated stay (§34 - meldepligt).

[121] IOM Denmark. Available at: https://denmark.iom.int/assisted-voluntary-return-and-reintegration-avrr

[122] The Monitoring Divisions visits places of detention, such as prisons, psychiatric wards and certain social institutions, but also asylum centres and deportations. See Ombudsmanden.dk "Tilsyn med udsendelser". Available at: https://www.ombudsmanden.dk/ombudsmandensarbejde/ombudsmandens_sagstyper/tilsyn/tilsyn_med_udsendelser/.

[123] Refugees Welcome website. "Om Refugees Welcome". Available at: https://refugeeswelcome.dk/om-os/

[124] Trampoline House website. "About Trampoline House". Available at: http://campcph.org/about-trampoline-house

particular on the long stays in asylum centres, departure centres and other detention facilities.[125] For years, these three organizations, but also several others such as Black Lives Matter Denmark, have visited, engaged with and assisted people during their stay the Danish exit system. In their dealing with the system´s dynamics and implications they therefore occupy extra-institutional roles in the multi-levelled governance of Danish exit, and, through their particular perspectives and goals, have specific experience and knowledge about its functions. All three were interviewed for this report.

## 5.2. Methodology

The Danish case study was conducted between February 2020 and November 2020. The interviews covered 10 persons with different institutions, positions and experiences with the Danish exit system. The authors made many interview and information requests which were not successful. This impeded access to crucial data about the development and functions of the Danish exit system.

For instance, several requests for an interview with the Danish Doctors Association about its members´ participation in Danish forced return operations were rejected by the Association, which stated that the issue falls outside its area of expertise. This despite the fact that the Association on its own website has published "Guidelines about doctors´ participation in forced returns", last updated in June 2019, in which it generally recommends its members to participate in such operations.

Unsuccessful interview requests were also sent to the Immigration Service, the Return Agency, the National ID Centre, the Prison and Probation Service, and local headquarters of the Red Cross at the departure centres Sjælsmark, Kærshovedgård and Avnstrup - although a central deputy from the organization kindly agreed to an interview. Moreover, requests for information about private contractors in the Danish asylum system were also not successful, since consisting only of referral to the New in Denmark-website. Here, however, are only listed selected contracts from municipalities, other public actors and humanitarian and international organizations, thereby leaving out many contracts for consultancies, biometrics, security and surveillance. Requests to the police and the Ombudsman for detailed information about the dates, destinations and commercial airlines involved in Danish return operations were not answered in time for the publication of this report. Similarly, a request to the Danish police for a complete overview of Danish return operations since 2012 only resulted in an overview from 2016, with the stipulated reason that no statistics were kept from before that point in time. This underscores the point made by Oomkens and Kalir in ADMIGOV Deliverable 2.1 (Legal and operational infrastructures of exit regimes in the European Union) about the challenges with mapping EU exit regimes, namely that the massive differences in access to information between EU institutions and Member States, as well as between different Member States impede attempts to create overviews. And this in turn hampers attempts to develop indicators for sustainable exit policies in the future.

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[125] Bedsteforældre for Asyl website. Præsentationsfolder maj 2019. Available at:
https://www.bedsteforaeldreforasyl.dk/filer/BfA%20Folder%20maj%2019.pdf

Still, the report produces an in-depth overview of Danish exit practices, created via a wider research approach than interviews, namely thorough desk research, including statistical analyses. It was decided to base the latter on datasets derived from publicly available documents from sources such as The Ministry of Immigration and Integration, The Ministry for Foreigners and Integration, The Agency for International Recruitment and Integration, and websites from regeringen.dk, New in Denmark and politi.dk. This information was used to generate maps, logarithmic scales, bar charts and matrices. One important delimitation of the statistical analyses is the lack of access to complete lists of Danish return chronologies, destinations, actors and operations; much of the available data remains highly incomplete and fragmented. Lists of, for example, Top-10 countries of nationality, on the other hand, were commonplace.

Press coverage was sampled in relation to central events, dynamics and discussions in the Danish exit system in major daily newspapers. The latter includes outlets, such as Ritzau, Politiken, Berlingske Tidende, Kristeligt Dagblad, Information, Jyllandsposten, Altinget, Ekstra Bladet, BT, as well as the English-language The Local. The former includes institutions, such as The Parliamentary Committee on Immigration and Integration, The Ministry of Immigration and Integration, The Agency for International Recruitment and Integration, the Parliamentary Ombudsman, Nationalt Udlændingecenter. Other sources included documents and reports from organizations, such as Danish Red Cross, Danish Refugee Council and Refugees Welcome.

Successful requests resulted in the following eleven interviews mentioned in table 19.

Table 19. Conducted interviews for Danish case study.

| Interview Number | Organization | Method |
|---|---|---|
| 1. | Danish Refugee Council, Director of the Asylum Department (Danish Refugee Council interview 1) | Video-Chat |
| 2. | Danish Refugee Council, Team Leader Return Counselling (Danish Refugee Council interview 2) | Video-Chat |
| 3. | Police Superintendent, Danish Return Division (Danish Police interview 1) | In person |
| 4. | Police Superintendent, Danish National Police (Danish Police interview 2) | Video-Chat |
| 5. | Folketingets Ombudsmand, Head of Monitoring Division (Folketingets Ombudsmand Interview 1) | Video-Chat |
| 6. | Folketingets Ombudsmand, Legal officer (Folketingets Ombudsmand Interview 2) | Video-Chat |
| 7. | Danish Red Cross, Deputy Officer, East Region (Danish Red Cross Interview) | Video-Chat |
| 8. | IOM Denmark, Return and Reintegration Officer (IOM Denmark Interview) | Video-Chat |
| 9. | Spokesperson, Trampoline House (Trampoline House Interview) | Video-Chat |
| 10 | Spokesperson, Refugees Welcome (Refugees Welcome Interview) | Video-Chat |
| 11. | Volunteer Psychologist, Grandparents for Asylum (Volunteer Psychologist Interview, GfA) | In person |

Follow-up interviews were conducted with Danish Refugee Council (Danish Refugee Council 3 + 4), with the Spokesperson from Refugee Welcome (Refugee Welcome 2), and further mail correspondence concerning specific policy documents and themes was also done with the officers from the Danish police and Folketingets Ombundsman. Certain developments, such as the legislative proposal to realize an extra-territorial exit system were launched after interviews had been finalized, and the analysis of that development has therefore primarily been done through analyses of institutions, media discourses, and policy and legislative drafts.

The Covid-19 pandemic meant that all except two interviews (with the police superintendent from the Danish Return Division and the Volunteer Psychologist, GrA) had to be conducted online through video-chat. This made ethnographic fieldwork and field visits impossible. Moreover, several state agencies failed to respond, or excused themselves by reference to the impact of the Covid-19.

Also influencing the collection of data was the coincidence that shortly after the team started collecting data in the spring of 2020, the Danish exit system underwent a potentially massive

reconstruction, which was finalized formally, if not in practice, two months before the study was to be completed. The combination of this restructuring and the Covid-19 pandemic meant that the new Return Agency cannot meaningfully be said to have commenced operations at a scale that can be studied. Yet, at the same time, several of the actors interviewed no longer feature in the Danish exit system. While this posed a specific and large challenge to the study, the authors restructured the research design in order to take this development into account, based on the perspective that the expertise, experience and breadth of the different actors interviewed, in combination with a thorough desk research, allows the present study to provide as detailed and up-to-date assessment of the present state, and future trajectory, of the Danish exit system.

## 5.3. Research findings

### 5.3.1. A systemic turn towards deportation

Figure 24. Map showing top 10 countries of return for rejected asylum seekers from Denmark in 2019.
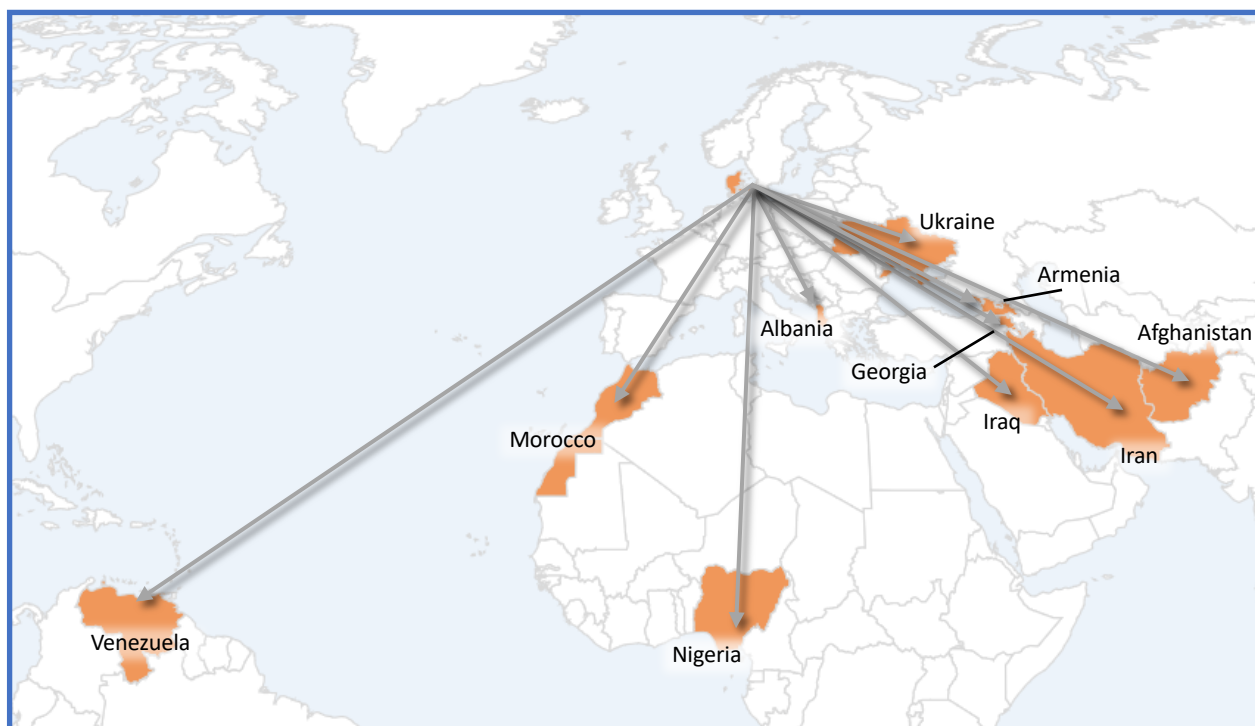


*Source: The Agency for International Recruitment and Integration (Styrelsen for International Rekruttering og Integration) 2020.*

The increasing involvement of the Prison and Probation Service and the post-2013 reconfiguration of the Danish asylum system towards pre-removal detention in prison-like facilities illustrate how Denmark has been a frontrunner in the global tendency towards a "deportation turn" (Gibney, 2008). This is enacted through "crimmigration" systems, that is, where governments blur the boundaries between immigration, deportation and criminal law (cf. Menjivar, Cervantes and Alvord 2018; Suarez-Krabbe, Lindberg and Arce-Bayona. 2018).

Although this deportation turn has been observable across Western governments for a decade, in Denmark, first the Social Democrat Thorning-government up to February 2015, then the Liberal-led Løkke-government after June 2015, and finally, after June 2019, the Social Democrat Frederiksen-government, have increasingly framed exit policy as following a so-called general "paradigm shift" in Danish asylum politics, where protection can only be temporary. This was explained by Peter Skaarup from Danish People´s Party as: "We are turning the entire policy on this area around, from today where it is about integration, to being about return." To this effect, the granting of de facto protection status in Denmark was changed into a temporary status that could be revoked by authorities. This has had profound consequences for the functionality of the Danish exit system.

One case in point concerns the Danish exit policy towards Somalia, which had hardened during the 2010s, but this development was paused following the November 2011 ECtHR-verdict in the case *Sufi and Elmi v the United Kingdom*, where the court found that the plaintiffs faced a violation of the ECHR´s Article 3, in other words the risk of ill-treatment or killing, and so refoulement.[126] In Denmark, 91 rejected Somalis were granted asylum and family reunifications following the verdict, but when their residence permits expired four years later, the Immigration Service rejected extensions, and instead launched five trial cases. Facilitating this Danish reversal of exit policy to Somalia were two majority ECtHR-decisions (*KAB v Sweden* in 2013 and *RH v Sweden* in 2015) finding that even though the situation for returnees to Mogadishu was serious, fragile and unpredictable, it did not necessarily rise to a level breaching Article 3 (Tan, 2021). In September 2016, the Refugee Appeals Board conducted five trial cases, and arrived at the conclusion that there were improvements of the situation in Somalia to the degree that returns could be resumed. Following this, the Immigration Service wrote out to Somalis residing in Denmark, announcing that "We are considering to revoke your residence permit." This was followed by a controversial fact-finding report about Somalia, co-authored by the Immigration Service and Danish Refugee Council. The report partly confirmed the government´s desired possibility of returns, but it also warned in stark terms against the security situation and perspectives for returnees. While the Immigration Service pointed to passages in the report opening up for returns, Danish Refugee Council pointed to passages underlining the dangers (Graversen, 2018; Jensen and Nørgaard Pedersen, 2017). More controversy ensued when it was found out that the fact-finding mission had in fact never left the airport in Mogadishu due to security concerns. Experts observed that while the Refugee Appeals Board and Immigration Service-recommendation for returns were based on an assumption that conditions had improved in Somalia, they did not specify *from what level of security* this improvement had been, nor what the prospects were that the improvement would be *stable over time* (Patscheider, 17.2.2017). If resident Somalis did not complain about the decision in their case (to the Refugee Appeals Board in the case of the applicant, and to the Foreigners Board in the case of the applicants´ families), they were to leave Denmark within 30 days.

Accordingly, later in 2016, the Immigration Service then moved to revoke or reject the residence permits of Somali refugees and their families, most living many years in Denmark, and process them for exit (New in Denmark, 2016). 1,200 cases were screened, out of which 220 had gotten

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[126] See the European Database of Asylum Law, available at: https://www.asylumlawdatabase.eu/en/content/ecthr-sufi-and-elmi-v-united-kingdom-application-nos-831907-and-1144907-0

asylum (§7.2) between 2002-2011, and thereafter temporary extensions. The remaining 1,230 persons had gotten asylum after 2012, while persons who received asylum after 2015 were not part of the screening. However, due to the lack of an official readmission agreement between Denmark and Somalia, a crucial issue remains as to what Danish authorities will do if Somalis residence permits are rejected, other than placing them in departure centres, such as Sjælsmark, Kærshovedgård, or Avnstrup, given that the Danish implementation of the Returns Directive now prohibits the previous practice detaining them for indefinite periods of time.

Closed prisons such as Ellebæk or Nykøbing are only to be used in cases with a real prospect of return, yet, the power of deciding which cases fall within that category, and thus in which cases prison facilities can be used, has previously been determined by the police, and will now reside with the Return Agency. Consequently, in August 2017, after a freedom of information-request, the national police informed that 351 rejected Somalis had gone underground, instead of leaving voluntarily for Somalia, or taking residence in the departure centres and other facilities. A total of 1,976 rejected asylum seekers of different nationalities had gone missing in the same time period of one and a half years. The national police simply assumed that most of these had left the country by their own volition, once again illustrating the ambiguity of the categorizations (Patscheider, C.S., 20.8.2017). Media reports during 2017 revealed secret Danish returns of 10 people to Somalia, following negotiations for a small agreement with local Somali authorities, a delegation of which had been invited to a week-long stay at a hotel in Copenhagen. At the same time, the Somali EU Ambassador rejected the presence of any readmission agreement with Denmark, and then started making counter-demands involving the release of a mental patient of Somali descent. This illustrates how negotiations about returns in the Danish exit system can evolve in arenas with little transparency, especially when involving conjunctions of political pressure for returns and countries with poor internal security situations, and risks of violations of those to be returned (Barret, 2017; Kristiansen, Bæksgaard and Patscheider, 2017).

Table 20. The potential for return for rejected asylum seekers in departure position in Denmark, on 7.1.2020.

| Status | Countries of return | No. of rejected asylum seekers |
|---|---|---|
| Total | 63 | 1,112 |
| No development | 13 | 644 |
| Limited return possibilities | 16 | 160 |
| No challenges to return | 34 | 241 |
| Other | 1 | 67 |

Source: politi.dk.

Table 20 illustrates how the Danish police has categorized and cross-referenced the status of negotiations with so-called countries of return, with the number of rejected asylum seekers residing in the Danish exit system. The categorization of countries as posing no challenges to return or as offering only limited return possibilities corresponds to the presence of, respectively, readmission agreements and narrow, sometimes secret, return arrangements.

### 5.3.2. Saltolog and the biometric control system

The departure centres Udrejsecenter Kærshovedgård and Udrejsecenter Sjælsmark use the so-called Saltolog system to register residents´ duties to stay and report themselves to authorities. The technology works via a keycard with fingerprint biometric data, to be used at so-called reporting stands, and also at carousel gates placed at the camp´s outer perimeter. The former registers residents´ presence, which is a condition of cooperation set by the authorities and thus of crucial importance for their respective cases. The latter register when residents arrive and leave the centres. It is a stated goal of authorities that all residents should be biometrically enrolled, but in some cases where this is not possible due to an inability to scan a person´s fingerprints, a barcode-card with photo and a chip are used instead. In order to open the gates, these residents have to use hand scanners, while the centre personnel – the Prison Probation Service - scans the card (Ministry of Immigration and Integration, 2020a).

According to an answer from the Ministry of Immigration and Integration to the Parliamentary Committee on Immigration and Integration, the Saltolog-data extracted and construed from the residents´ concerns both entry/exit from the departure centres, but also concerns their movement through all doors inside the centres, such as rooms, halls and cantinas. These are registered in an event-log, which the centre operator can access data from, and which is exported to one State IT-server (the Salto Server). From this server, a filtration is done so that less data is exported onwards to another State IT-server (the Salto database), which only has information about residents´ entries and exits, and their registrations on stands for reporting. If people are found to have acted in breach of their duties, the data registered via the Saltolog system can have serious consequences for their case handling, such as the opening of a §60 police case in the local precinct, and punishment under the penal code. The biometric data registered in the Saltolog system is therefore a key component in the Danish exit regime, as it forms the ground for detaining a person to be found in non-compliance with his or her own return. At times, however, the system has not worked properly in centres such as Kærshovedgård. Thus, until August 1, 2020 the Prison and Probation Service was responsible for notifying the Immigration Service about breakdowns in the systems. In such cases, it is up to the Immigration Service to make sure that people are not wrongfully charged with breaking the duties measured by the system, and linked to the sanctions regime. The Immigration Service has informed Parliament of a series of breakdowns in the departure centre Kærshovgård, but also informed to be "unaware" and "not remembering" any collection of similar incidents in departure centre Sjælsmark (Ministry of Immigration and Integration, 2019).

### 5.3.3. The new Return Agency

A larger institutional reorganization of the Danish exit system has taken place since April 2020, when the Social Democrat Frederiksen government announced the formation of the Return Agency (Hjemrejsestyrelsen) placed at the National Aliens Centre (NUC) HQ in Birkerød, with some 250 employees. The explicit goal of the new Agency is to make more people without legal residence permit leave Denmark.

Several actors in the Danish exit system perceives the launch of the Return Agency as the result of longer-spanning and complementary interests on the part of the Frederiksen government, such as the desire to increase the volume of deportations and returns, centralize authorities and

tasks previously outsourced to NGOs and international organizations, remove the police from return planning, and streamline the asylum process towards return (See also Ministry of Immigration and Integration, 15.4.2020). Thus, already in 2019, the Frederiksen government centralized authority by moving asylum-related tasks from the Ministry of Justice to the Ministry of Immigration and Integration. This included a cancellation of the IOM return and reintegration contract, of the Danish Refugee Council contract for counselling rejected asylum seekers, and the Danish police´s preparation and negotiations concerning returns or readmission agreements with the authorities of other countries. At the same time, after August 1, 2020, the Prison and Probation Service must report any breakdowns in the Salto-system to the Return Agency, and ICT officers from the Immigration Service, and from private companies have been consulting the new Agency with building a new database.

The IOM tasks were also transferred first to the Immigration Service, and later, in 2020, to the Return Agency, which also took over the DRC tasks (Ministry of Immigration and Integration, 13.9.2020). The Danish Minister for Immigration and Integration, Mattias Tesfaye (the Social Democrat) explained the latter transfer of responsibilities via reflections that Danish Refugee Council are fine when it comes to helping refugees, but that what was needed now, according to the Frederiksen-government, was a thorough man-marking of rejected asylum seekers to ensure that they left:

> *A firmer hand is needed when rejected asylum seekers must be returned…Danish Refugee Council are excellent to help refugees. But the rejected asylum seekers are exactly not refugees. That is why the task is misplaced with them, and why we are now cancelling it. Today rejected asylum seekers are left too much to themselves. That is no good. In the future they will be man-marked by the Return Agency, from the moment they get a rejection, and right until the moment they step into the airport and into a plane home* (Ministry of Immigration and Integration, 26.6.2020).

Most of the police tasks regarding the planning of readmission and deportation agreements were also moved to the Return Agency, though the responsibility for enforcing deportations, and the security in departure centres on Zealand and Jutland, remains with the police. Also transferred to the Return Agency were the enforcement of peoples´ obligation to report where they stay, and when they plan to be somewhere else, via, respectively, opholdspligt (duty of residence), underretningspligt (permission duty), which formerly resided with the Immigration Service. Similarly, the meldepligt (registration duty), formerly controlled by the Northern Zealand Police, was also transferred to the Return Agency. The secretariat of the Refugee Appeals Board has also been transferred to the Agency, and the concrete plan is to post a Return Agency officer right outside the door of the Refugee Appeals Board, in order to immediately launch return procedures when people come out following a rejection. Inventing a whole new discursive category, the Director of the Return Agency, Claes Nilas, talks of facing a challenge of "long-term stayers" (*langtidsopholdere*), a newly invented category that appears to refer to people without realistic prospects of being returned, but which have remained in detention facilities for years (Straka, 2020).[127] Several of the actors interviewed described the subsumption of the Refugee

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[127] Claes Nilas, the new Director for the Return Agency, has previously functioned as a civil servants for several government ministers. In the end of the 1980s, he was the secretary for the minister of justice Erik Ninn Hansen, whose ministry in the Conservative Schlüter government was found by the Ombudsman, to illegally halt family reunification for Tamil refugees (the "Tamil Case"). This led to a Court of Impeachment of Ninn Hansen, who was

Appeals Board under the Return Agency as problematic, because it effectively places the only appeal remedy available for rejected asylum seekers – a remedy that is already challenged on its independence since only a "court-like" construction that includes a representative of the Ministry of Immigration and Integration - under the auspices of the Return Agency, whose overall goal is to return and deport people.

In terms of technological infrastructure, other transferred tasks included the coordination of the Saltolog registration and biometric systems used at Sjælsmark and Kærshovedgård departure centres, which took place in September 12, and November 1, 2020, respectively.[128] Also placed under the Return Agency is the National ID-Center, the primary task of which is to counsel and support Danish authorities in relation to the authentication and control of immigrants´ identity through investigations of concrete documents, analyses of ID-documents, patterns of abuse and fraud, as well as through a biometric team, working on the verification of fingerprints and facial recognition. The Centre is also associated with a number of international networks, such as the European Fingerprint Working Group (EFP-WG), the Digital Imaging Working Group (DIWG), the American-led Facial Identification Science Working Group, as well as the European Association for Biometrics (EAB) and the Biometrics Institute, which are lobby organizations where authorities, commercial actors, researchers and interest groups discussing research, investment and development and ethical guidelines.[129]

On November 30, 2020, the Danish Minister of Integration and Immigration, Mattias Tesfaye, sent a new Departure Legislation to civil society hearing. Even though the proposal noted as its foundation "trust, transparency and predictability", it also invoked as a foundational underpinning, the motivational enhancement and deterrence regime as an explicit aim. Among the initiatives it suggested were: Granting the authorities permission to data mine foreigners´ mobile and smartphones, even without consent, in order to identify them, their internet behaviour and visits, as well as their family communications and relations, so that Danish authorities can decide between potential countries of return (Ritzau, 3.10.2020). The Return Agency will establish early contact, before the final rejection, and maintain a pervasive presence throughout the detention facilities in the Danish exit system. Also, foreigners who do not uphold their duties of permission and registration can have their belongings and valuables confiscated after a week (as opposed to currently 3 months). Foreigners deemed uncooperative will lose their access to education and activization in their centre of residence. Communication between foreigners and authorities will be digitized.

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found guilty, while Nilas went free. It ultimately led to the fall of the Conservative government. In 2011 came the "Stateless Case", which involved an irregular practice concerning the access to citizenship of young stateless persons born in Denmark on the part of the Ministry of Integration, where Nilas served as the Head of Department for the Minister, Birthe Rønn Hornbech. During a Commission Inquiry, Rønn Hornbech claimed to have been sidetracked by her civil servants, while Nilas claimed to have acted on ministerial orders. Nilas was eventually found to have committed offences of such a character, giving the public a basis for holding him to account. Remarkably, the Liberal Party-Løkke Rasmussen government decided against sanctioning Nilas, degrading him only to another agency in the immigration area, the Styrelsen for International Rekruttering of Integration. And in 2020, Nilas was then promoted again, this time by the Socialdemocratic government to spearhead the new Return Agency (see Dandanell, 17.08.2015; Geist, 22.12.2015).

[128] Already in 2016, tasks from the National Foreigner Center (NUC) were moved to the North Zealand Police and the Foreigner Center Northern Zealand (UCN) and its new headquarters in Birkerød.

[129] See National ID-Centre website. Available at: https://nidc.dk/da/Om-Nationalt-ID-center.

Asylum applicants will be offered a cash fee of DKR 20,000 if they decide to withdraw complaints and appeals about their case to the Refugee Appeals Board within 14 days after the first instance rejection. Foreigners must sign a "return contract" with authorities, guaranteeing their cooperation. Return support will be offered for cooperative persons, but quickly graded down depending on lack of cooperation. As the Ministry formulates it: "*Those foreigners, who do not cooperate on their own return will feel the consequence of this faster*". This will take the form of losing return benefits, the right to education and activization and to enter the country. A member of each family with legal residence will be offered a "go prepare"-trip paid by the Danish state, in order to assess housing and schooling. While this extends the required departure date for the rest of the family with 90 days, the family member who goes to prepare will, generally, not be allowed back to Denmark again. Foreigners serving crime sentences in the Danish prison system up to four months, can be released after two-thirds of the sentence, if the possibility for enforced return arises, and then on the day of the return (Ministry of Immigration and Integration, 30.11.2020).

### 5.3.4. Levels and functions in the Danish exit system

There are several levels in the Danish exit system. A group of people in the system are placed in a category labelled "manifestly unfounded" (*Åbenbart Grundløse*) applications. These are processed through a minimalized assessment process, where it is possible for Danish Refugee Council to nominate cases to enter the formal asylum processing procedure, while the rest are assessed as insufficient to do so, and therefore rejected administratively. Moreover, another group of people may have travelled through other EU Member States on their way to Denmark. The Danish police registers all asylum applicants with photo and biometrics (fingerprints), and conducts searches across the Eurodac and the Europol databases. Based on alerts in these systems, the Danish authorities may choose to activate the Dublin Regulation. Formulated in 1990 with the Dublin Convention, it stipulates that for asylum applications to be processed in Denmark, Denmark must also be the first country of arrival in the EU. If not, Denmark may choose to return the applicants to that country via the so-called Dublin returns.

Increasingly, commercial actors feature in the Danish exit system. In 2013, for instance, the global consultancy company McKinsey was contracted to conduct an analysis of housing in the Danish asylum system (*analyse af asylindkvarteringen*). It produced a report with the controversial recommendation that several large asylum centres for over 1000 persons could be created. The controversy stemmed from the fact that no Danish centres existed with such a volume, but also because of the purely economic justification given for this policy change, which would, by all counts, have massive humanitarian implications. The report was thus premised on viewing the asylum centres as self-sustaining economic eco-systems isolated from the surrounding society. Focusing on the "economically optimal choice", namely that "*full own production*" of certain services would only become *"competitive on pricing, when the volume of residents reached levels above 1000 persons per year.*" The consultancy also noted that "*Even the largest existing centres (with capacity of appr. 750 spots) are not competitive with the observed market prices, when it comes to child education, and special health and social benefits and administration.*" (McKinsey, 2013, 4).

The McKinsey-recommendations were ultimately not realized, and caused media controversy, but the general inclusion of such actors in the asylum and exit system has continued unabated, with similar crucial contracts. In 2017, for instance, two other consultancy companies, Rambøll and Implement Consulting Group were also contracted to conduct an analysis and recommendations for effectivizing the asylum system, including the exit structures. It listed its purpose of analysis as "efficient operation," meaning "To effectivize the accommodation system within the framework of the existing organization, for instance by analysing the asylum centres operating expenses, including taxation." Then followed "service levels," that is; "To make the accommodation system cheaper by adjusting the service level, including by benchmarks." And finally; "structures," that is; "To adjust the structures for the accommodation system and increase its robustness, including by identifying potential for exploiting upscaling advantages and create more flexibility." (Rambøll and Implement, 2017, 1)

The ambition of reducing costs through "service adjustments," is illustrative of the expressly depoliticized character of the analysis, because the consultancies noted that they did not try to recommend any *particular* service level, bracketing that as "political assessment." (Rambøll and Implement, 2017, 4-5). However, at the same time, the choice to bypass analysis of service levels, or reflecting on alternatives to f.i. the practice of accommodating asylum in centres, as opposed to regular housing, is of course in itself already a political choice. The same is the case for the consultancies' point that the inclusion of more centre operators (such as local municipalities) would "*limit the possibilities for large-scale and co-operation advantages [stordrifts- og samdriftsfordele], and thus an optimal centre structure*" (Rambøll and Implement, 2017, 6). In extension of the controversial McKinsey report a few years earlier, Rambøll and Implement stated that system operation could be organized efficiently within an interval from 300-400 to 700 spots per centre, although "*The upper limit can likely be higher, but there are no operative experiences here*." Notably, the two consultancies concluded such "likelihood" and "optimality" of large-scale centre populations even though they also noted a "completely identical assessment" among operators of "a higher level of conflicts – and a bigger need for staffing needs – if the centres reach above a certain size." (Rambøll and Implement, 2017, 19). The growing reliance on commercial consultancies for economic effectivization of an intimately humanitarian practice, such as the Danish asylum and exit system, has ramifications. This can be seen within the context of a general roll-out of neoliberal programmatic governance in the Danish asylum system, including in exit structure individualizing responsibility within these systems to those confined to reside in them. This, however, depoliticizes their marginalization within an exclusive consensus that facilitates the technocratisation of policy (Syppli Kohl 2020, 179; Bak Jørgensen 2020, 2, 16).

If people receive a rejection of their asylum claim from the Immigration Service, they may choose to appeal it to the Refugee Appeals Board. Denmark does not grant asylum seekers access to independent courts, and the Refugee Appeals Board is therefore only categorized as a "court-like" organ. Having long been a site for political contestation, its members and who gets to appoint them have varied greatly, for appointees made by the Ministry of Foreign Affairs and Danish Refugee Council, to the current situation where it consists of three members, the head, a judge, and two members appointed by, respectively, the Lawyers Association, and the Ministry for Immigration and Integration. The appeal meeting typically involves the asylum seeker,

although there are cases where the applicant does not show up, his/her lawyer, paid by the state, the three Board members, a representative from the Immigration Service and an interpreter. If the asylum seeker also gets a rejection here, there is no further appeal options, and the case is transferred to the police. Only if crucial, new information, such as personal conditions or developments in the deportation destination, surface after the decision, will the case be re-opened. It is, however, far from uncommon that cases are re-opened, and an original rejection decision is turned around. In 2019, the Board reversed the decision in 16% of the cases involving spontaneous asylum seekers.

Another "court-like" body is the Foreigners Board (Udlændingenævnet) which, based on §46a in the Aliens Act, deals with complaints and appeals about decisions concerning family reunification, permanent residency permits, administrative rejection and decisions on return as well as visas made in the first instance by the Immigration Service. The Foreigners Board also deals with complaints and appeals concerning decisions on labour residence permits and decisions based on the EU-rules about the free movement of workers in the EU, by the Board for International Recruitment and Integration.[130]

The Refugee Appeals Board may choose to run principled trial cases, in order to maintain or reconfigure the authorities' view on reasons for asylum, protection and the prospect of returns to specific regions or countries. Such trials have in recent years concerned people of Somali, Syrian and Iranian descent, and have changed the assessment of areas in their countries as improved to an extent, which allows returns.[131] Thus, after four trial cases where the Refugee Appeals Board found that Syrians with §7.2 and §7.3 protection status in Denmark no longer faced obstacles for return to Damascus, the government issued a press release to the effect that 900 Syrian cases would be reassessed (Regeringen, 28.6.2020). However, casting doubt over this government´s return target, media inquiries into the case processing of Syrians from the Damascus Province showed that out of 18 cases between June 2019 and 2020, the Refugee Appeals Board had followed the Immigration Service-withdrawal of protection status only in four cases. By comparison four other cases had been sent return to the Service, while 10 decisions had been reversed (Redder, 14.8.2020). For those people whose cases aren't appealed, sent back or reversed, and for whom the rejection is therefore perceived as final by the authorities, a date for departure is determined in the decision. Thus far, the Danish police has categorized those rejected asylum seekers as in departure position ("udsendelsesposition").

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[130] Foreigners Board website. "Om Udlændingenævnet". Available at: https://udln.dk/da/Om_os.
[131] See the Refugee Appeals Board website. Available at: https://fln.dk/da/English.

Table 21. Table showing the number of rejected asylum seekers in "departure position" in the Danish exit system, 2015-2019, by most frequent country of nationality.

| Nationality | 2015 | 2016 | 2017 | 2018 | 2019 |
|---|---|---|---|---|---|
| Afghanistan | 123 | 110 | 107 | 40 | 54 |
| Armenia | 25 | 43 | 14 | 15 | 21 |
| Georgia | 6 | 5 | 2 | 33 | 20 |
| Iraq | 78 | 89 | 144 | 126 | 142 |
| Iran | 163 | 181 | 256 | 425 | 427 |
| Myanmar | 36 | 42 | 20 | 21 | 21 |
| Russia | 136 | 59 | 17 | 22 | 31 |
| Stateless | 87 | 96 | 97 | 151 | 40 |
| Syria | 6 | 15 | 18 | 13 | 21 |
| Unknown | 12 | 11 | 4 | 65 | 36 |
| Other | 721 | 503 | 266 | 278 | 309 |
| Total | 1,393 | 1,154 | 945 | 1,189 | 1,112 |

Source: Styrelsen for International Rekruttering og Integration, 2020

Figure 25. Line graph showing the number of people in "departure position" in the Danish exit system between 2015-2019, sorted via the most frequent country of nationality.
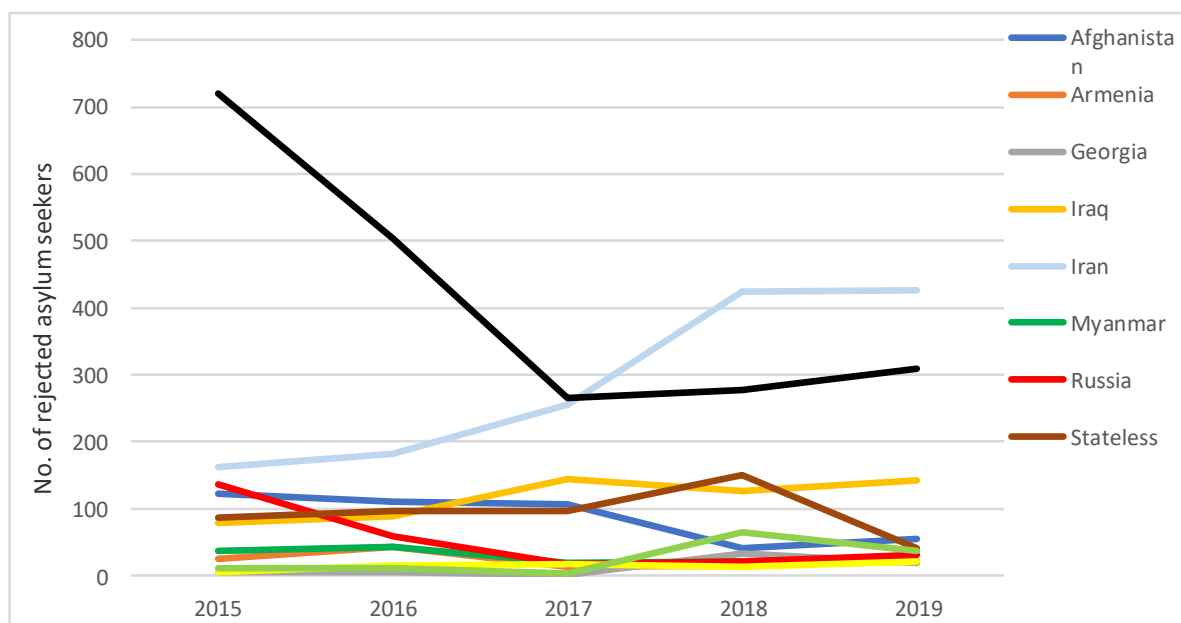


Source: politi.dk.

The table and figure above illustrate how the total number of people in "departure position" in the Danish exit system fell between 2015 and 2017, then rose again in 2018, where it remained the year after. It also transpires that the number of Iranians, Iraqis and stateless people to be deported have increased, while those categorized as Afghans and "Others" have fallen. For both figures, an important qualification is that the yearly numbers do not necessarily reflect the amounts of applications for that year, since many people inhabit this category for prolonged periods of time, even if they are eventually deported or returned.

## Credibility and Country of Origin-information

A recent report from a Danish NGO working with asylum seekers in Denmark, Refugees Welcome, has cast a critical spotlight on the underexamined, but pivotal role that authorities´ assessment of asylum seekers´ *credibility* can have massive impacts on asylum cases, and thus also on the facilitation of exit decisions and operations. Crucially, authorities´ processing of asylum and protection claims revolve around assessments of peoples´ credibility. This relates both to their claimed identity, and documentation of it, as well as of the conditions in their country of origin, which prevent return. As to the former, authorities focus on the chronology of the story, details about time, names, events, dates, common sense and logic, consistency between interviews and information given to lawyers and the Refugee Appeals Board, physical and psychological reactions, general background information and consistency with other stories from the same area (Clante Bendixen, 2020, pp. 22-23).

Within the Immigration Service, the Country of Origin (COI) Information Division has been tasked with preparing and publishing country reports assessing conditions in countries and regions. The information used for these COI-reports is most often coming from the Immigration Service and the Ministry of Foreign Affairs, but also organizations such as Danish Refugee Council, the UNHCR, Freedom House and Amnesty International provide input to them. At times, the Immigration Service and Danish Refugee Council produced the reports together. It is supposed to be based on travels to cities, areas or countries necessary to assess asylum claims in general, and involve interviews with local people, such as organizations, journalists or lawyers, but also official institutions like embassies and ministries. These reports then form part of the basis for the decisions in the Refugee Appeals Board.[132] The COI-reports have been much debated in Denmark. Critics have argued that authorities do not do proper research, or force the hand of report-authors (Skærbærk, Bæksgaard and Patscheider, 2017). These charges have been exacerbated in the cases of Somalia where, despite the fact that the final report assessed that conditions had improved to the point where Denmark could resume returns, it was revealed that a Danish 2015 delegation had found the security situation so poor that they had not left the airport in Mogadishu, after spending only one day there, while another report was produced after spending seven days in Nairobi, the capital of neighbouring Kenya (see Section 5.3.2). Similarly, it was found that for a 2014 COI-report about Eritrea, the Danish delegation had not entered the country, but only interviewed regime-affiliated persons from a neighbouring country. That report was published despite protests from several of its co-authors, which were subsequently let go from the COI Division. Further, several of the sources used in the COI-report

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[132] See Ny i Danmark website "Country Reports". Available at: https://www.nyidanmark.dk/en-GB/Words%20and%20Concepts%20Front%20Page/US/Asylum/landerapporter.

went public, arguing that their statements were misrepresented in the report´s conclusions, and used to justify a political agenda of launching returns. Ultimately, the critique led the Danish authorities to disregard their own report, and grant all Eritreans asylum (Geist and Koch Stræde, 2014; Lange Olsen, 2014). On top of this, a general critique from immigration lawyers has been that the Danish authorities do not cast a wide enough net when researching conditions, and so do not often enough invoke supplementary COI-information.

## The sanctions regime and exit practices

Motivational enhancement measures were first introduced into the Danish Aliens Act´s §§34, 36, 40, 41 and 42 in 1997, in order to condition voluntary departures. It has since then become a stable, if very controversial and debated, part of the asylum and exit system. Among the most commonly used in the Danish exit system are; requirement of catered food instead of own cooking, removed right to work, duty of particular residence in departure centres, duty of permission to be elsewhere, and duty to register, limited access to health care, revoked legal assistance to asylum procedure (Suarez-Krabbe, Lindberg, and Arce-Bayona, 2018, p.8). These measures can be branched out into more particular tools of control, such as isolated incarceration or the confiscation of cooking equipment from centre residents, but their general rationale is the attempt to influence the decision-making of asylum seekers so that they, against their initial preferences, decide to leave the Danish asylum system voluntarily.

Problematizing the notions of forced and voluntary decision-making, this is connected to the tendency to treat people in the exit system as quasi-criminals through blurred boundaries between immigration, deportation and criminal law; in other words, the crimmigration trend. Indeed, as the report on the Danish exit system by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) illustrates, the Danish exit infrastructures of detention and internment can be prison-like to the extent that they offer worse conditions and lack the transparency otherwise part of the actual Danish prison system. Such blurred regimes traversing the boundaries between motivation, control, and coercion have serious consequences, and differently so, for different segments of the population managed within the Danish exit system. Thus, it has been pointed out that in combination with the lack of a systematic screening for trauma and health, the deliberate speculation in abandonment and negligence performed in places like Sjælsmark, exposes victims of generalized violence, posttraumatic stress disorder, and sexual torture to the compounding of harms with pervasive social, emotional, physical and psychological consequences (Amit and Lindberg. 2020; Canning, 2015).

The motivational enhancement practices are also connected to deterrence policies more generally, meaning practices designed with the purpose of making a country, in this case Denmark, less attractive for prospective asylum applicants (Webber, 2006). The justificatory relation between motivation and deterrence at times appear mutually reinforcing, even circular. Thus, even if motivational enhancement measures do not make people leave of their own account, it is intended that the poor conditions they suffer will deter future applicants, along the lines of the simplistic push-pull model for migration. This model was originally developed to deal with labour migration, but has since then been promoted by political circles to account also for the much more complex cases of displacement, asylum seeking and refugeehood (de Haas,

2011; Thielemann, 2004). In the case of such justifications, the policy is thus one expressly and intentionally using the worsened conditions of some people within the legal responsibility of the state to send messages to other people, not yet within the state system.

It is worth noting that the deterrence rationale has also been extended as a justification for a range of measures targeting people who have already been granted humanitarian stay or asylum, such as the so-called *integration benefit*, which cut in half the payments to refugees, thus lowering it from the previous level, which was on a par with citizens. The Integration Benefit was introduced in 2015 by the incumbent Venstre-government, with the explicit justification that it would motivate people to return, and deter prospective immigrants from arriving. This illustrates the collapse of integration policy into border control and return policy, something that was reinforced in 2019, when the incumbent Social Democrat government redubbed the integration benefit to the "*self-sufficiency and home travel benefit or transitional benefit*", but maintained its status as the lowest form of social benefit in the Danish welfare system (Redder and Kellermann Hansen, 12.4.2020).

### Monitored, ensured and own returns

Some rejected asylum seekers depart by their own accord or collaborate with the Danish police about the process. Up until 2020, the Danish police who were responsible for planning the return in collaboration with the returnee, including signing documents confirming intent to leave, preferences for airport and time of arrival, as well as obtaining the required personal and travel documents. In recent years, if the Danish authorities have not been able to return a rejected asylum seeker for at least 18 months, special cases may lead to a temporary residence permit, provided also that the police assess the person to have collaborated on own return, including signing documentation of intent to leave. However, this provision in the Danish legislation has not been used since 2012, and before then was only used in very few cases each year. In many cases, rejected asylum seekers do not want to collaborate on their own return, and therefore do not sign documents about intent to leave, or assist authorities in determining their identity. A reoccurring problem here has been the unclear definition of "collaboration" on the part of authorities, combined with the police practice to maintain the likelihood of all return cases to succeed, even after many years of failure. In these cases, the Immigration Service has been responsible for launching motivational enhancement measures and the police would transfer the person to the departure centres Sjælsmark, Kærshovedgård, and recently, for some families, Avnstrup. In other cases, and to "motivate" return, people have been placed in closed prison facilities, such as Ellebæk, Nykøbing or the now-closed Vridsløselille.

Table 22. Table showing historical data for different categories of returnees from Denmark, 2016-2019.

| Year | Rejected asylum seekers | Dublin returnees | Pre-asylum dropout | Refused asylum processing | Illegal stay | Total |
|------|------|------|------|------|------|------|
| 2016 | 492 | 2,201 | 773 | 63 | 1,104 | 4,663 |
| 2017 | 606 | 1,018 | 187 | 43 | 1,168 | 3,022 |
| 2018 | 504 | 574 | 241 | 65 | 1,361 | 2,747 |
| 2019 | 448 | 474 | 189 | 41 | 1,674 | 2,826 |

*Source: Dansk Politi., 2020*

As Table 22 shows the number of rejected asylum seekers have been stable between 2016-2019, while other categories, such as Dublin returnees and those dropping their right to apply in the pre-asylum phase have fluctuated much more. The former noticeable drop can be explained by the massive collaboration problems between EU Member States, while the drop in manifestly unfounded can be explained by the arrival of people during the "long summer of migration" following 2015. The number of people charged with 'illegal stay' has steadily increased from 2016 to 2019. Facing penalties such as fines and deportation from Danish territory, these people live under extremely precarious conditions, working below minimum wage in the service-, food-, construction- or agricultural sectors, and living in what the police refers to as "nests", such as apartments shared with many other "illegal stayers" (Herschend, Gotfredsen and Valentin, 2017). Since a rejection from the Danish authorities means that their fingerprints are also plotted into the common-European databases, such as EURODAC and thus the Entry-exit System, it leaves them with few other options than travelling to the country they escaped, or going underground. Estimates of people residing and working irregularly in Denmark vary a great deal and suffers from a lack of data and accessibility, with the Clandestino Project in 2008 estimating between 1000-5000 irregular residents in Denmark, while the Rockwool Foundation in 2018 estimated the number to be around 25,900 and rising. This number, however, also included those working illegally, may have counted some people twice (i.e. those persons charged with both illegal stay and illegal work), and it may also include people no longer residing on Danish territory. Moreover, the Danish police has claimed lacking evidence for the alleged tendency of rising numbers (Oomkens and Kalir, 2020; Larsen and Skaksen, 2019; see also Rigspolitiet, 2018).

Figure 26. Bar chart over categories of returnees from Denmark, 2016-2019.
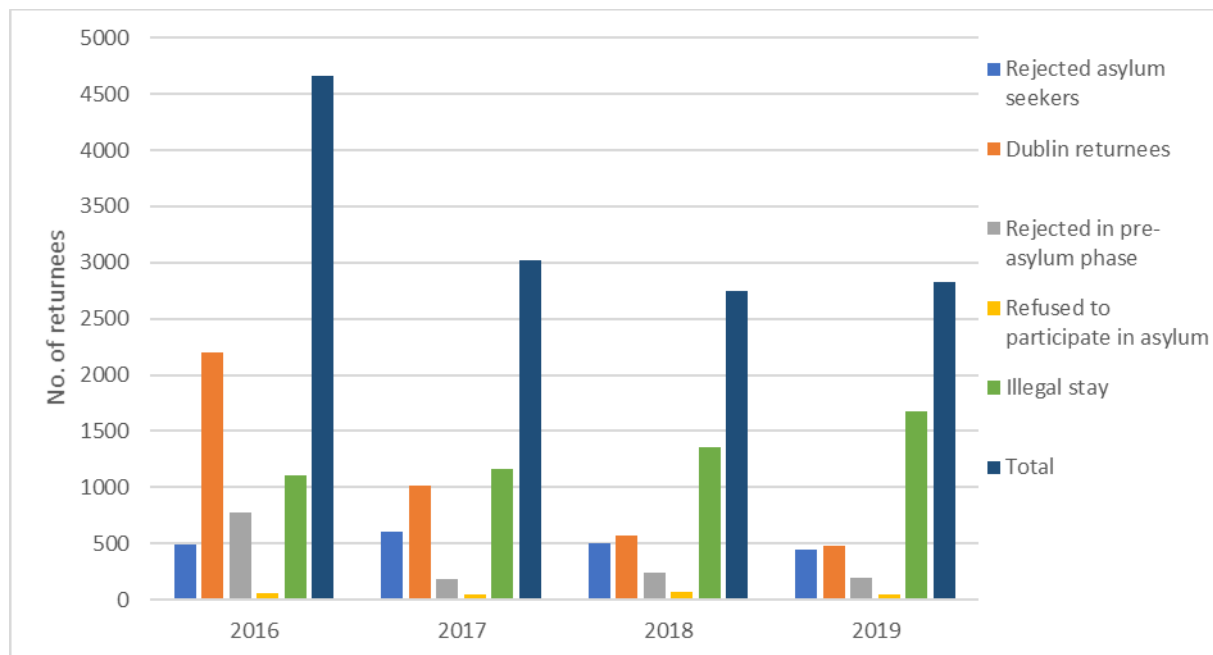


*Source: Politi.dk.*

However, the statistics produced about deportations and voluntary returns in the Danish exit system make use of unclear categories about voluntariness. In the context of pursing meaningful indicators, this makes it impossible to ascertain the number of people who choose to do so, in which way they choose to do so, or even to what extent their choices are conditioned by authorities´ constraining their range of options. In effect, then, the Danish practice of data categorization in the exit system makes it difficult to distinguish between forced and voluntary returns.

This also transpires from the police categorizations of three central forms of exit in the Danish exit system: The first category is *accompanied return* ("ledsaget udsendelse"), which the police defines as cases where police officers accompany a foreigner out of the country, typically by airplane, and either all the way to the destination country, or to a transit destination. These are typically forced returns, but can according to the police also mean that the escort is requested by the foreigner, the airline or a transit country. The second category is called *ensured return* ("påset udsendelse"), and encompasses cases where police officers monitor a departure out of the country, such as the boarding of a plane or a ship. Ensured returns will typically be forced, but can also be voluntary. The third category can be translated to return of own accord ("selv udrejst"). The two latter are treated as forms of voluntary return.[133]

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[133] See Danish Police website. Available at: https://politi.dk/statistik/udsendelser

Table 22. Table showing number of rejected asylum seekers by country of nationality and method of departure from the Danish exit system, 2018.

| Nationality | Accompanied departure | Ensured departure | Own departure | Total |
|---|---|---|---|---|
| Iraq | 0 | 83 | 5 | 88 |
| Afghanistan | 62 | 4 | 9 | 75 |
| Georgia | 1 | 56 | 9 | 57 |
| Iran | 2 | 41 | 1 | 44 |
| Albania | 1 | 24 | 1 | 26 |
| Morocco | 12 | 13 | 0 | 25 |
| Serbia | 0 | 15 | 0 | 15 |
| Armenia | 0 | 14 | 0 | 14 |
| Bosnia | 0 | 12 | 0 | 12 |
| Russia | 1 | 8 | 8 | 17 |
| Others | 32 | 71 | 12 | 115 |
| Total | 111 | 341 | 36 | 488 |

Comparing Table 21 with Table 22, shows a massive discrepancy between the number of people categorized as in "departure position" (1,189) and how many are actually returned for 2018 (488). While Iraq was the most common destination for returns, Afghanistan saw the largest number of deportations, that is, accompanied departures.

Moreover, the problem of data categorization is illustrated by the noteworthy change of practice whereby the Danish police dropped the category "forsvundet/skønnet udrejst" (disappeared/presumed departed) which also covered those leaving the exit system in order to go underground, and continue living in Denmark. Following criticism that authorities and politicians ignored the conditions of such irregular stays, by simply assuming that people had left the country, the Danish police stopped using this category in the early 2010s.

However, parliamentary questions have been asked since this development did not go unnoticed. Whilst this category had been the largest in the annual Danish statistics, it was suddenly reduced to 0 between 2013-2019, after this reshuffling of data categories. For instance, in 2008, 589 persons were noted as falling in this category, while only 71 were categorized as accompanied or ensured returns.[134] By comparison, the category "selv udrejst" (own departure), which implicitly covers the same category, was in 2019 the smallest with just 36 persons. Yet, after 2013, the Danish authorities seem to have simply divided the category across the remaining categories with no further explanation given, while that of ensured departure was the largest with 341 persons. This Danish practice provides a national example of the general European problem of non-systematic and standardized statistics and conceptual categorization, caused by a tendency to play "Number Games" in public, mediatized discourses, by invoking extremely uncertain, and incomparable, figures (Vollmer, 2017). However, there is a lack of

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[134] Spørgsmål 169 af Rosa Lund (EL) til Udlændinge og integrationsminister Mattias Tesfaye (S). Udlændinge- og Integrationsudvalget (UUI) Alm. Del. Samling: 2020-21. Available at: https://www.ft.dk/samling/20201/almdel/UUI/spm/169/svar/1729248/index.htm.

corresponding attention to the institutional and political production of numbers and conceptual categories in asylum systems, as well as a disregard of the linkages between unsuccessful or even counterproductive policies, and the production of irregular, deportable populations (Kraler and Reichel, 2011; see also ADMIGOV Deliverable 2.1: 25-26).

Data about 2019 published by the Nationalt Udlændingecenter illustrate that when it came to ensured departures, more took place at the start of the year with close to 250 per month, before stabilizing around 200 per month, finally dropping below that number at the end of the year. Accompanied departures consistently tallied around 15 per month, while own departures were around 8 per month. As the two following figures illustrate, the overwhelming majority of returns were labelled by the police as falling under the "ensured" category, with only a small fraction being either "accompanied" or "voluntary". It should be noted that according to the police´s own definition, both accompanied and ensured departures can be both voluntary and forced, further complicating any comparison.

Table 23. Table showing total returns by month and method of return from Denmark in 2019.

|  | Accompanied departure | Ensured departure | Own departure | Total |
|---|---|---|---|---|
| jan | 16 | 242 | 7 | 265 |
| feb | 15 | 231 | 2 | 248 |
| mar | 17 | 257 | 11 | 285 |
| apr | 10 | 200 | 4 | 214 |
| mar | 15 | 195 | 5 | 215 |
| jun | 13 | 190 | 8 | 211 |
| jul | 16 | 193 | 6 | 215 |
| aug | 14 | 200 | 4 | 218 |
| sep | 8 | 213 | - | 221 |
| okt | 19 | 226 | 11 | 256 |
| nov | 16 | 178 | 9 | 203 |
| dec | 16 | 144 | 2 | 162 |
| Total | 175 | 2.469 | 69 | 2.713 |

*Source: Nationalt Udlændingecenter 2019. There is a discrepancy of 9 persons between the numbers of Eurostat, and Nationalt Udlændingecenter*

Figure 27. Pie chart showing the proportion of returnees by method of return from Denmark, 2019.
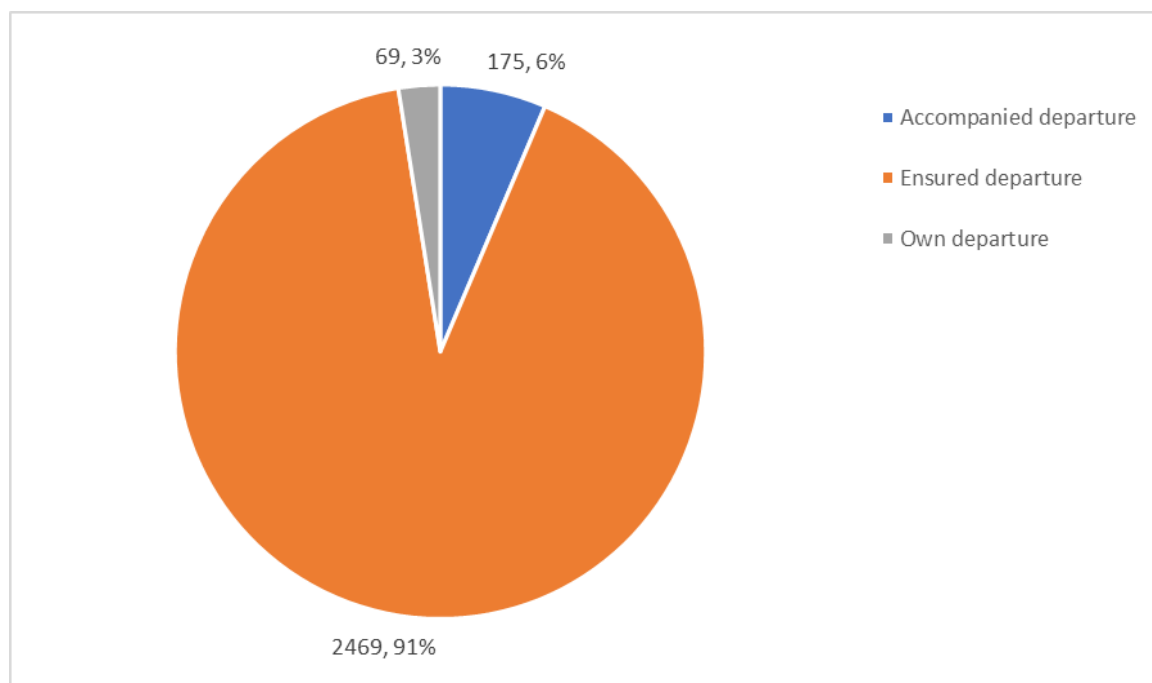


Also worth noting is that the Danish numbers of voluntary returns are consistently much lower, than almost all other EU Member States, save Slovenia and Portugal even taking into account proportionality to population and country size. Thus, while, according to Eurostat, the Danish numbers from 2016-2019 were 185, 120, 60, and 60, the Estonian were 370, 495, 610, and 880, the Irish were 160, 175, 200, and 255, Luxembourg with 295, 305, 205 and 155. Other countries had much higher numbers, such as Sweden with 9,375, 7,005, 5,965 (2019 missing), Netherlands with 18,420, 14,850, 15,510 and 14,120, and Spain with 905, 1,310, 830 and 885. These numbers indicate that while voluntary returns constitute high proportions of the overall number of returns in countries like Latvia (86%), Austria (73%) and Sweden (70%), the proportion of Danish returns which were voluntary was only 8% according to the Danish authorities providing the statistics to Eurostat.[135] This low rate of participation in voluntary returns appear very problematic given that it is precisely this kind of voluntariness that the sanctions regime of motivational enhancement and deterrence measures is supposed to facilitate. Yet, despite several Danish governments claiming that these measures motivate people to leave voluntarily. Denmark consistently scores at the lowest level when it comes to voluntary returns compared to states with less pervasive sanctions regime. At the same time, it also seems clear that these numbers also reflect the lacking transparency when it comes to the production and

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[135] These numbers derive from Eurostat, but such comparisons are problematized by the generally low and sometimes inconsistent quality of the data provided by Danish authorities. Thus, while Eurostat was informed of 60 voluntary returns taking place in both 2018 and 2019, other documents from the Danish authorities set those numbers to be, respectively, 36 and 69. Still, even with this qualification, the Danish number on voluntary returns stands in stark contrast with most other EU Member States. See Oomkens and Kalir, 2020, p. 76.

categorization of statistics in the Danish (and presumably other) asylum systems, when it comes to people going underground, or not reporting their own departures (See also Section 5.4.3).

When it comes to the long-term sustainability of voluntary returns of rejected asylum seekers, studies have pointed to the need for Danish policies to adopt more transparent, dignified, contextual and holistic focus, instead of one-size-fits-all approaches. Despite the massive political and economic growth of return programs, very little systematic evaluation and monitoring of these are being done (Whyte and Hirslund, 2013). A reoccurring problem appears to be reluctance on the part of people in the exit system for collaborating with their own return. The scale of this issue remains unclear due to lacking transparency of the data collection and categorization practices by the Danish authorities.

### 5.3.5. "Transfers" to extra-territorial Danish asylum processing outside Europe

A legislative reform launched very recently by the Social Democrat government has the potential to supervene and reconfigure the Danish exit system drastically. It concerns the export of all asylum application processing outside Danish territory, to camps beyond Europe in so-called third countries. Only UN quota refugees would then be allowed to remain in Denmark. The EU-Turkey statement and Australian "Pacific Solution" with extra-territorial camps on the islands of Nauru and Manu have been cited as sources of inspiration - despite scandals about abuse, rights violations, and in the latter case many reports of child abuse, sexual harassment, corruption and soaring costs, which have surrounded them (Lønstrup, 2016; cf. Evershed et al, 2016).

The plan is an example of "externalization policy" of remote control, a kind of policy drive that aims at decoupling border policing and/or asylum processing from the territorial borders of a sovereign state, by exporting it elsewhere through (Bialasiewicz, 2012; Lemberg-Pedersen, 2012;). Its functionality, and pervasive implications for human rights deterioration has been dealt with extensively in the research literature (Lemberg-Pedersen, 2013; Lemberg-Pedersen, 2017; Moreno-Lax, 2017). This includes analyses of the political cross-fertilization of similar ideas between geographical regions such as Australia, America and Europe (Hyndman, and Mountz, 2010; Mussi, and Feith Tan, 2017; Zaiotti, 2016) , the evolution and contentious discussions about externalized migrant camps between EU Member States (Noll, 2003; Hansen, 2007). Other work has examined the policy´s continuity with colonial policies during and after the transatlantic slave trade, whereby "slave trade refugees" were deported to colonies such as Sierra Leona and Libera (Lemberg-Pedersen, 2019; Adderley, 1999).

Proposals for extra-territorial exit and containment control are not new in the Danish context, but have been emerging with increasing frequency in the last half of the 2010s. It was launched by the Social Democrats in 2016, then formulated as a 2018 election campaign proposal, before the Frederiksen government launched a legislative proposal in early February 2021.[136] But before this, a very similar version was put forth by Liberal Alliance soon-to-be Minister of Foreign Affairs, Anders Samuelsen, who in 2014 stated that "we will make a little piece of Denmark in Jordan, Lebanon or Israel"(Gjertsen M.N. and M. Kaae, 2014). That same year, the Danish Peoples Party launched a proposal to immediately send all asylum seekers to asylum camps in African countries, such as Kenya, paid for by Danish development aid. Only UN quota refugees

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[136] Forslag til Lov om ændring af udlændingeloven (Indførelse af mulighed for overførsel af asylansøgere til asylsagsbehandling og indkvartering i tredjelande.

should to a limited degree be allowed to stay in Denmark (Jessen and Arnfred, 2014). However, even earlier, circles in Danish and European ministerial bureaucracies also promoted similar ideas of extra-territorialization and externalization. Thus between 1986 and the mid-2000s, Danish, Dutch and British governments put forth similar - and similarly controversial – proposals revolving around camps in North Africa and Eastern Europe, to which European states could send asylum seekers. The terminologies used to describe these structures varied from 'processing centres' by the Danes, 'reception centres' by the Dutch and 'regional protection areas' by the British (Secretariat of the Inter-governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, 1994, pp. 6-9 and 51-55).[137] The Blair government´s so-called *New Vision for Refugee*, '*If we only had to concern ourselves with torture, inhuman and degrading treatment that happens in the UK, we could remove anyone off the territory without obligation…refoulement should be possible and the notion of an asylum seeker in the UK should die*' (UK Government, 2003). Common for all of these proposals, though, was the refusal of non-European states to participate in such plans, and fierce critique of neo-colonialism and avoidance of responsibility.

The content and details of the most recent Frederiksen-government version of this externalization idea has faced several inconsistencies, and also seems to have changed over time. It has therefore been difficult to assess for both stakeholders in the Danish exit system, civil society actors and the general public. When the deputy Henrik Sass Larsen first described the plan in 2016, supported by his leader Mette Frederiksen, this was through a campaign suggesting to "seal off" the EU´s external borders, and then collect all asylum seekers in camps in North Africa, "doing the humanism there." He mentioned Algeria, Libya and Jordan as candidates for such Danish camps (Gjertsen, 2016), although all three countries quickly rejected this idea. Any asylum seekers who manage to arrive in Denmark on their own, would have to be "sent back" to the camps. This idea was framed as countering a "broken" asylum system, and "brutal" human smugglers in the Mediterranean, and Sass Larsen also suggested that the UNHCR would be responsible for the operation of such extra-territorial camps which were to be implemented at an EU-level. Both the EU and the UNHCR, however, expressed strong criticism of these plans (see Section 3.6.7). From 2017, the small consultancy firm Migration Management Advice was contracted by the Social Democrat Party to prepare the policy launch of the extra-territorialization of Danish asylum policy to so-called third countries outside Europe. The consultancy included former Immigration Service employees known for recommending the closure of asylum processing on Danish territory. The contract included policy advice, analyses in the member magazine, and smaller and larger presentation events. Shortly after the launch of the project, company staffers co-authored praise of the political, which in turn was referenced as expert support to the policy by Social Democrat politicians (Birk, 2018; Pedersen, 2018). This development thus illustrates how aspects of policy-development, presentation and campaigning can be outsourced to consultancy actors, and how processes which earlier took place within parties and governments, are increasingly taking place outside political structures (Jørgensen, 2018).

The externalization plan has changed repeatedly in formulation, content and scope. In 2016, the extra-territorial facilities were labelled "enormous refugee cities" (*enorme flygtningebyer*), then

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[137] United Nations Third Committee, Summary Record 39th meeting. UN General Assembly forty-first session, (Summary Record 1986). Distr. General A/C.3/41/SR.39; United Kingdom Government, New Vision for Refugees (White Paper 2003).

later "asylum camps" (*asyl-lejre*), after which point references were to "reception centres" (*modtagecentre*) emerged, before interviews surrounding the 2021 reform proposal talked about a test case with a "mini-centre" (Gjertsen, 2016; Hummelgaard, 2016; Klarskov, 2021). Another observable change concerns the context given for the plan: The 2016-version was explicitly justified by reference to an "unprecedented" number of Syrian arrivals, which was claimed to undermine the likelihood of integrating any refugees. Yet, despite the fact that the number of asylum seeker arrivals to Denmark in 2021 was the lowest in several decades, not least due to the covid-19 closure of mobility, the plan was still heralded as the only possible solution, now with reference to cynical smugglers and the impossibility of integrating refugees. Across the shifting justifications, then, the extra-territorialized exit and asylum processing system touted by the Frederiksen government is thus intimately tied to an anti-integration policy stance towards refugees.

Another crucial ambiguity has concerned the issue of whether asylum seekers would be allowed to apply for asylum in Denmark from these facilities. Thus, in 2016, Sass Larsen commented that asylum applications could be possible, but that it would then be up to each Western country to determine how many (Gjertsen, 2016). However, he also stated that: "…*if 95 percent of the world´s refugees already live in camps in regions of origin, then it is not the biggest problem when it comes to the financing of these camps, to also put the last five there*" (Thobo-Carlsen, 2016). This puzzling double-message persisted in the following years, creating further confusion about the details of the plan also within the government party itself. Thus, in January 2021, the Social Democrat Minister of Development, Flemming Møller Mortensen, stated in an interview that the extra-territorial facilities would mean "a risk that a few people are standing at a gate" and that Denmark would then have to assume responsibility, so that people with urgent protection needs could apply for asylum and be granted protection on Danish territory (Klarskov and Larsen, 2021). Already the day after, the Minister for Immigration and Integration, Mattias Tesfaye, went out and corrected his colleague stating that: "*the goal is zero asylum seekers*" on Danish territory (Davidsen-Nielsen, 2021). This goal would then imply a radical reconfiguration and upscaling of the Danish exit system and its infrastructure.

### 5.3.6. Debates and criticism of the Danish exit system

#### Health and death during Danish deportation procedures

On November 20th 2017, an early-morning deportation from the Sjælsmark departure centre went terribly wrong. After police had collected a 34-year-old Algerian man, Resa Arafi, forced him into a car and driven him to Copenhagen Airport, he resisted powerfully when escorted on to the commercial Air France plane he had boarded at 5:54 a.m. alongside his four police escorts. In the following days, an eye-witness told a newspaper that the "officers were too rough, when it happened, and I still think so. Man, they were rough those officers. It was violent" (Olsen, 2017). Besides being pacified by the four police officers, the Arafi had been placed in a body cuff, and also had a helmet put on his head, after having resisted deportations twice before. In the Air France plane, at 6.25 a.m., Arafi was then placed on a stretcher, given an oxygen mask, and transported to an ambulance waiting by the plane. Several witnesses were in deep shock, including a high school girl who "couldn't stop crying." After being placed in artificial

coma, two days later, at 15:13 on November 22, at the Rigshospitalet, Arafi was pronounced dead.

An official investigation was launched immediately by the Independent Police Complaint Authority (Den Uafhængige Politiklagemyndighed, DUP). After 21 months, the Complaint Authority, later followed by the State Prosecutor (Statsadvokaten) and the Director of Public Prosecutions (Rigsadvokaten), concluded that the Danish police officers did not act in violation of the law, and that there was no basis for assuming that the officers exposed the man to violent behaviour (Ritzau, 2019). This followed news reports in November 2019 that the Council of Coroners (Retslægerådet) had found the cause of death to be "*Cardiac arrest with consequent oxygen deficiency due to brain damage, which has resulted in pronounced fluid build-up in the brain, and suppression of it*" (Dahlin, 2019). It was also found that Arafi had swallowed two razor blades before the deportation, but the Coroners´ report did not find anything indicating that this had been the cause of death. Citing "excited delirium", the State Prosecutor stated that the cause of death had not been the police officers´ use of force (Herschend and Goos, 2019). The term delirium, however, has been criticized by the lawyer representing the family of the Algerian man, and internationally, for being a term used by authorities to explain deaths in police custody. The case was returned to the Complaint Authority for a re-examination of the basis for a complaint. The tragic case of Arafi´s death was an urgent reminder of the implications of enforcement and health issues in Danish exit policies. While no other deaths have been registered during Danish deportations, critics have argued that the case of Arafi illustrates the severe implications of a policy seeking to enforce deportations at all costs.

## Medical dilemmas in the Danish exit system

In 2017, responding to a failed deportation, where a 21-year-old Afghan man's resistance meant that the Turkish Airlines captain refused to take off, Martin Henriksen from Danish People´s Party proposed that Danish authorities should be able to sedate deportees: "We are working on making it easier for authorities to forcible return rejected asylum seekers. It is absolutely horrible, that rejected asylum seekers kick, shout and scream in order to avoid being deported. That is why I believe that giving them some sedative, should be an option" (Pedersen, 2016). However, while sedating deportees to ensure returns is illegal in the Danish exit system, a grey zone emerges with deportees who are already on medication or tranquilizers due to existing medical conditions, and such doses are administered or increased during the return operation (see Section 5.4.4.2.).

The Danish Doctors Association has followed their Swedish and Norwegian colleagues in issuing general guidelines advising against their members participating in Danish forced return operations, first in July 2014, and since then updated repeatedly, latest in June 2019. The direct reason for the recommendations in 2014 was a case where a mentally ill man, Aziz, was deported to Afghanistan. The police had informed him that he would be pacified via a body belt and could be both tied and put in a helmet during the operation if he resisted. Moreover, he was informed that he would get medicine for a week, and that the sedative, Stesolid, would be brought on the plane for intravenous injection, if the need for that should arise, even if against his will. A doctor was paid a fee by the authorities to accompany him during this deportation. The doctor justified his participation by saying that he did not see it as violating the Hippocratic

Oath; that is, the doctor´s pledge, but that this pledge in fact compelled him to participate in the deportation in order to "ease the deportee´s difficult situation with empathy" (Hartling, 2014). Other cases emerged in 2013, where doctors or nurses had participated in deportations. The ensuing debate led the Chairwoman for the Danish Doctors Association to write that "Doctors are not police officers." In 2014, the Danish Nurses´ Association also decided to recommend to their members that "Nurses should not assist with forced returns of asylum seekers," and the vice chair voiced a need for political clarification of procedures, because her Association´s members experienced different standards depending on whether they talked with the Prison and Probation Service, the National Police, Danish Red Cross or municipalities (Sygeplejeetisk Råd, 2021; Thorup, 2014). The Social Democrat spokesperson on immigration- and integration lamented the medical professionals´ decision, and commented that it could be an option for Danish authorities to hire doctors from abroad instead (Lauridsen, 2014). In its 2019 guidelines, the Doctors Association states that

> participation in forced returns can raise questions about the doctors´ scientific independence, just as there can be raised doubts about whether the doctor in an assessment and/or treatment situation unequivocally will act in the best interest of the patient […] If a doctor on the request of the police participate in the transport of forcefully rejected persons, doubts can arise about whether the loyalty of the doctors lies with the police or with the persons that the doctor must see and treat during this. In cases where doctors against the advice of the Doctors Association decides to participate in transport of forcefully returned people, the doctor must ensure that the participation unequivocally has the purpose to assist persons, who are in need of medical assistance during the transport. The participation of the doctor must never result in the doctor treating a person without the persons voluntary, informed consent.[138]

The way in which the Doctors Association discourages its members to participate in forced return operations, but still offers guidelines for members who nevertheless participate, therefore reflects the fact that a handful of Danish doctors have refused the Association´s recommendations, and have continued to accept requests from the Danish police to participate in deportations. Based on Freedom of Information requests in December 2016, a Danish newspaper revealed that these doctors had participated in over 20 realized or failed forced return operations between 2014 and 2016 – and had been paid doctor fees amounting to more than €37,000 (Dahlin, 2016; Ugeskriftet.dk., 2016).

### Deterrence and motivational enhancement

Successive Danish governments have been involved in the development of the Danish exit system, and in line with the deportation turn, a recurring target has been to increase the number of voluntary returns and deportations from Denmark. A means to that end has been formulated explicitly as the deterrence of certain immigrants from either coming or continuing to reside in the country (Hathaway and Gammeltoft-Hansen, 2015), a rationale that the liberal Løkke-government based its election campaign on before assuming power in the summer of 2015. This kind of deterrence logic has since then been resumed under the 2019 Frederiksen government, whose Minister of Integration, Mattias Tesfaye, has stated opposition to EU

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[138] Danish Doctors Association website (authors translation): Vejledning om lægers deltagelse i tvangsudsendelser. Available at: https://www.laeger.dk/vejledning-om-laegers-deltagelse-i-tvangsudsendelser.

burden-sharing schemes for refugees on the grounds that it will function as a pull-factor for more refugees.

Such deterrence logic thus views migration, entry and exit according to a simplistic push- and pull-model: War or poverty work as push-factors for migration, whereas protection works as a pull-factor. Consequently, this simplistic logic goes, by lowering the standards of the Danish asylum and exit systems, the Danish state can motivate rejected asylum seekers to leave Denmark. Organizations like the Institute for Human Rights, Danish Refugee Council and Save the Children have argued in opposition that deterrence policies can generate massive socioeconomic barriers for policy-making, both in terms of entry and the paths towards integration, but also in terms of exit and the paths towards sustainable returns that do not jeopardize the rights of returnees, nor lead to destabilization or re-migration.

One subset of the deterrence logic has evolved in the Danish exit system, namely the motivational enhancement-measures. In the words of then-Minister of Immigration and Integration, Inger Støjberg (Liberals), life in the departure centres was to be made "intolerable" for the residents (Suarez-Krabbe, Lindberg, and Arce Bayona, 2018; Suarez-Krabbe, and Lindberg, 2019). Her successor, Tesfaye, continued this line of thinking, and stated specifically about pre-removal detention that:

> It is the government´s clear view, that foreigners without legal residence have a duty to leave the country as fast as possible, just as they have a duty to collaborate with authorities. In this context, administrative detention in line with the Aliens Act §36 can be a useful and at times crucial tool if there are risks that the foreigner will disappear or obstruct a return (Ministry of Immigration and Integration, 29.9.2020b).

It is worth noting that this expansion and increasingly intricate use of motivational enhancement tools in the Danish exit system has proceeded despite a 2007-report by the Danish police, which, in relation to rejected asylum seekers from Iraq, stated that "*The motivational enhancement measures have, however, no real effect […] with a view to facilitate voluntary returns to Iraq*" (Klingsley, 2007). Yet, since the mid-2000s, the deterrence rationale has been used as a justification for a series of measures, sanctions and conditions in departure centres. These have included bans on own cooking, confiscated allowances replaced by funds only to be used for necessary food and medicine, insufficient funds for public transport or new clothing, enforced duties of residence, of permission to be elsewhere, and incarceration in designated departure centres or detention facilities. Earlier, people had to register thrice a week at designated locations, but lately people in f.i. Avnstrup have been required to stay in the centre every night.

### Conditions in prison facilities in the Danish exit system

The conditions in the Danish exit system have been the subject of long-standing and substantial debates. In April 2019, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) conducted a follow-up visit to Denmark to monitor the implementation of recommendations after a 2014 visit. Special attention was paid to establishments for detained migrants in terms of treatment, material conditions and health care (CoE 2019, 4). The Committee visited the Nykøbing Falster Holding Centre and the Ellebæk Centre for Foreigners. The former had 24 single rooms occupied by male adult deportable

migrants. The latter housed rejected asylum seekers not collaborating on their own return, and a few asylum seekers whose applications had been categorized as "manifestly unfounded". The Centre had five detention units for men and one for women. The CPT noted that in 2018, around 1,100 migrants had been admitted to Ellebæk and stayed on average 32 days, although there were many examples of much longer periods of detention. The average stay at Nykøbing was 3-4 weeks with frequent and much longer exceptions lasting several months (CoE, 2019, 53).

The CPT offered a scathing criticism of the conditions in these Danish departure centres, categorizing the conditions as some of the worst in Europe (Ritzau, 7.1.2020). Noting that the residents of these facilities were neither suspected nor convicted of crimes, it found it "unacceptable" that the two migration detention centres were "clearly prison-like" and places where "prison rules applied to all detained migrants" (CPT, 2019). The CPT report cited a lack of toilets, inadequate health facilities, belt fixations, a strongly limited access to fresh air, wrongful solitary confinement of people found to have a mobile phone, and disciplinary sanctions only being communicated in Danish. Thus, the material environments of both Ellebæk and Nykøbing were found to be "very carceral and oppressive" and "clearly inappropriate for the administrative detention of migrants" (Ibid., p.90; see also Henvendelse fra civilsamfundet, 9.6.2020). They were, in fact, found to be in a "deplorable state of repair" with broken wardrobes, flaking paint, graffiti and unprotected electrical wirings, and filthy shower bathroom with benches covered with mould. Moreover, the CPT also found it "regrettable" that detained migrants had very little access to open air, particularly the case for female migrants at Ellebæk who had only 30 minutes per day, while most men had 1,5 hours of access, similar to the conditions in Nykøbing (Ibid., p.56). Also, the general health and mental care facilities in both centres were found inadequate, since not allowing for comprehensive medical admission screening or regular psychological assistance, but instead only for the most urgent of care, where qualified interpreters were often lacking during medical sessions (Ibid. p. 60). The Committee also noted as "regrettable" that migrants found to have mobile phones on several occasions had been detained for at least 15 days in solitary confinement, even though such strict prison rules ought not to apply to detained migrants (Ibid. p.64).

### Children in the Danish exit system

The Sjælsmark departure centre too has faced significant criticism, in particular of the conditions for children and families with children. Discussions have raged in Danish media and at the political level from 2017 onwards. Petitions emerged from the child-focused organization Børns Vilkår, and the Trampoline House initiated the so-called People´s Movement for Asylum Seekers´ Futures, which led to a "Citizen Proposal" (borgerforslag) via 50,000 signatories forcing the parliament to discuss removing children from Sjælsmark (Citizen Proposal to Parliament, 2018; Hergel, 29.10.2017). Also, in December 2018, the Parliamentary Ombudsman entered the discussion via the publication of a note on the conditions in Sjælsmark: "Children in Sjælsmark departure centre live under difficult conditions" in which it was stated that unrest, loneliness and lacking overview characterized children's daily lives to a significant degree (Folketingets Ombudsmand, 20.12.2018). Still, the Ombudsman concluded that the conditions generally speaking were not in violation of international conventions, such as the United Nations Convention on the Right of the Child (CRC), the Convention Against Torture and the European Convention on Human Rights (ECHR). Moreover, avoiding the conclusion that the centre was

designed to have detrimental effect on the bodies and minds of children and their parents residing there, the note instead featured the formulation that "conditions for children in Sjælsmark departure centre are appropriate for significantly making the upbringing of children difficult and for limiting their opportunities for natural development and life-realization" (Folketingets Ombudsmand, 20.12.2018, 1). A key element in this assessment from the Ombudsman was, however, the time-frames of the children's´ stay in the centre, since it noted that rights violations might occur if children stayed longer in the centres. And less than half a month after the December-note, a news item was published by the institution on January 8, 2019, where it noted that several children had resided not 13 months, but rather 20 months in the centre. This, however, did not lead the Ombudsman to alter the original assessment of the conditions in Sjælsmark (Folketingets Ombudsmand, 8.1.2019).

Still, criticism of the conditions for children persisted. After a feature from the Newspaper Altinget revealed that Sjælsmark had produced 56 notifications about serious mistreatment of children ("børnesager"), the Conservative mayor of Hørsholm municipality, hosting Sjælsmark, explained that the cases concerned stronger and more socially vulnerable cases than usual (Lessel, 24.1.2019). Similarly, a local Social Democrat head for the Children- and School Committee in the municipality expressed being shaken over the conditions, and said that if any other public institution had received that many child notifications, it would have been closed on the spot. He argued that the best interest of children ought to be prioritized higher than national asylum and immigration politics, and that children should not be placed in the centre, as it was not fit for children with its prison-like conditions (Lessel and Søgaard, 8.1.2019).

At the same time-period (between December 2018-January 2019) Danish Red Cross conducted their own examination of the conditions in Sjælsmark, as two psychologists screened 26 families with all in all 56 children. At that point, one third of the children had lived in the centre for over a year. The survey results showed that the psychological well-being of the children was markedly worser than with comparable age groups outside the centre, including significant symptoms of psychological failure to thrive. They noted that 61% of the children possible fulfilled the criteria for a psychiatric diagnosis, and that, compared with a 2010-survey, twice as many of the Sjælsmark children were in high risk of psychological conditions, compared to children having just arrived at the Danish asylum system. The report concluded a real risk that the children stagnated in their development, and that their current symptoms would become chronic. The Red Cross recommended on this background that families with children should not be moved to Sjælsmark departure centre until just before their return. But it also noted a lacking political majority behind such a solution, and therefore tabled six more concrete recommendations about offers to children living there (Danish Red Cross, 2019, pp. 4-5).

Following the fierce debates, however, the political situation changed, and in December 2019, the Ministry of Immigration and Integration announced that all families with children were to be moved out of Sjælsmark to a third, and new, departure centre called Avnstrup. Originally, the timeframe for this transfer was set to the spring 2020, but was delayed in part because of the Covid-19 situation in conjunction with the institutional reorganization surrounding the launch of the Return Agency (Ministry of Immigration and Integration, 12.12.2019). By the end of August 2020, 48 families with a total of 89 children completed the move (Møller and Barfoed, 1.9.2020), however, several media reports indicate that despite the improved physical structures, especially

children are still suffering psychologically from isolation. Moreover, despite assurances to the contrary, families were still not allowed to prepare their own food, months after the move (Hergel, 25.11.2020; Jensen, 10.10.2020). This quickly led to protests from the families at Avnstrup, who demanded access to live a normal life, including housing outside the confines of camps (Lindberg, 2020).

### Attempts to deport unaccompanied minors to Afghanistan

Since the late 2000´s successive Danish governments have largely without success pursued different policy initiatives aiming at deporting unaccompanied Afghan minors or youth from the Danish asylum system. Since 2018, this was pursued in partnership with the Norwegian Right-government, but before this the main venue was the European Commission-funded pilot project, the European Return Platform for Unaccompanied Minors (ERPUM). Besides Denmark, the pilot had the participation of Norway, Great Britain, the Netherlands and Belgium, while several countries, such as Finland, declined to join. It was coordinated by the Swedish Migration Agency. Despite the Danish exception to its EU membership relating to Justice and Home Affairs, freedom of information-requests by Danish journalists revealed that Danish governments had been among the prime organizers of ERPUM (Quass and McGhie, 2012).

The ERPUM participants justified the pilot by referencing an alleged "massive influx" of unaccompanied minors from Afghanistan, and the need to protect these from the dangerous journey to Europe, using deportations as a deterrence mechanism showing the futility of such journeys. ERPUM was built on the disjunctive phrasing in the Returns Directive (2008/115/EC) §10.2, stating that children were to be returned to their families *or* adequate reception facilities. This therefore opened up for the return of unaccompanied minors *even if* their families could not be traced. In Denmark, this facilitated the 2010 legal reform (L37) of the Danish Aliens Act, whose §9c3.2 stated:

> *An unaccompanied alien under the age of 18 whose application for a residence permit under section 7 has been refused if there is no reason to assume that the alien will be without any family network or without any possibility of staying at a reception and care centre and will in fact be placed in an emergency situation upon a return to his country of origin or former country of residence. The residence permit cannot be renewed beyond the alien's 18th birthday.*

This effectively lowered the threshold of protection barring deportation of unaccompanied minors, since before the legal reform, the Danish Aliens Act stated that a residence permit could be issued to an unaccompanied alien, "if there is reason to assume that in cases other than [persecution and refoulement] the alien will in fact be placed in an emergency upon a return to his country of origin".[139] This wording preceding the 2010-reform thus acknowledged that returned minors could experience emergencies beyond those of persecution and *refoulement*, barring Denmark from forcibly returning them. At the time, the legislative proposal was fiercely criticized by the Social Democrat-led opposition. But when the Social Democrat Thorning government came into power in 2011, the project was continued and deepened. Both Liberal and Social Democrat Danish government argued that the legal reform opened up for the deportation of unaccompanied children to Afghanistan, even if the tracing of their families was

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[139] Danish Aliens Act 2009

unsuccessful. Presumably, in such cases, the children were to be sent to unspecified "reception facilities" (Lemberg-Pedersen, 2018a; Lemberg-Pedersen, 2020; Lemberg-Pedersen and Chatty, 2015).

However, despite multiple family tracing workshops and coordination meetings, the pilot was discontinued in 2014 after failing to meet its goals, managing to trace only 34 out of 148 Afghan families to unaccompanied minors, and to return no children to their families (ERPUM, 2014). Moreover, it had generated massive media attention and criticism (McGhie and Quass, 5.9.2012), including that the consistently poor experiences with tracing the families of Afghan unaccompanied minors meant that the real core in the project appeared to be the construction of the deportation orphanages, whereby states could navigate around the difficulty, whilst still holding up the promise of family reunification as a goal. To this, the UN refugee agency (UNHCR), UNICEF and Human Rights Watch also pointed out a number of serious questions, including how long children were supposed to remain in such facilities and what kind of security provisions they would have (The Children´s Council and Save the Children Denmark, 2012; UNICEF Netherlands, 2012; UNICEF, 2015).

The policy drive to deport unaccompanied minors illustrated a general policy problem in the Danish exit system, and across EU Member States and Frontex policies as well; a lack of provisions for post-deportation monitoring. This is a problem long acknowledged, but still not resolved either in Danish or in EU politics (Blondel, Preiss, and Seiller, 2015; c.f. Danielsen and Seeberg, 2006; Forced Migration Review mini-feature, February 2017) . Thus, young returnees to Afghanistan risk forced recruitment, targeted attacks and life-threatening conditions with attacks on schools, cultural institutions and civic centres (Schuster and Majidi, 2013; Schuster, 2013; Majidi, 2017). This was also illustrated by the tragic case of the Vazari-brothers, one of whom was a minor when Danish authorities deported them to Kabul in 2015, and who was found dead in Kabul by his brother, after they had been separated shortly after arrival (Hvilsom, 12.10.2015).

The deteriorating general security situation in Afghanistan also posed difficulties for the Danish policy, since mortar and suicide bomb attacks targeted several of the institutions that the governments had pointed to as illustrating improvement legitimizing returns, such as the EU´s police mission, the IOM headquarters, health and school facilities, as well as other international institutions. Despite the failure of ERPUM, the Løkke-government persisted in pursing the goal of deporting unaccompanied Afghan minors in collaboration with the Norwegian Right-government, until its fall from power in 2019. The current Frederiksen government had, as of 2020, not yet expressed a view regarding this deportation measure. Minister Tesfaye has expressed concern with reference to the case of the Vazari-brothers in the context of returns to Afghanistan in general, but has not commented on the failed pursuit of the ERPUM pilot, nor the Løkke Rasmussen government´s collaboration with Norway on similar deportation orphanages in Kabul. However, the return legislation proposal tabled in November 2020 refers to "reception and reintegration-provisions" and notes that this scheme includes unaccompanied minors, who have received a final rejection on asylum and temporary residence under §9c3.2.

### Critique of externalization plans

The Frederiksen-government originally launched the plan to deport all asylum seekers to extra-territorial camps outside Europe as part of an EU-wide collaboration. However, no other EU

government agreed to this plan, and it has repeatedly received stark criticism from the European Commission. Migration Commissioner Ylva Johannsson has commented that the Union will never follow such as a policy, since states´ responsibility to process asylum applications on its own territory, is a fundamental duty that cannot be exported (Albrechtsen, 18.9.2020). Also the UNHCR protested the Frederiksen-proposal. Having already voiced criticism of similar British plans of the Blair government in 2003 (Lemberg-Pedersen, 2015a), it reiterated its concerns and also expressed surprise about its involuntary inclusion in the plan. A spokeswoman emphasized the need for "solidaric solutions", and that the plan to seal off borders and deport asylum seekers to regions of origins represented the opposite of such international solidarity (Damkjær, 2018).

The proposal also faced wide criticism from humanitarian organizations, such as Amnesty International, the UNHCR, Danish Refugee Council and Danish Red Cross (Duncan Gram, 5.2.2018). The challenges it faces include the lacking ability to identify countries willing to host such camps and assume the Danish responsibility for asylum processing; unclear delimitation of jurisdiction under which such facilities will operate, and thus also about which authority would hold responsibility for rights protection. Moreover, the focus on closing the Mediterranean route operated by "cynical smugglers" disregards how irregular route-making is fuelled by the closure of legal escape routes, and also that, according to the IOM, around three times as many irregular migrants die before they ever reach the Mediterranean. Then there is the risk that the fear of being deported to extra-territorial camps will push asylum seekers away from ever registering in the Danish system, so that the policy seems to create powerful incentives for the very irregularity that it claims to solve. Finally, many organizations and commentators have focused on the vast humanitarian and basic rights implications of a camp system designed to contain people on the run, as well as an infrastructure required to continuously deport asylum seekers from Danish territory.

Countries willing to host the Danish asylum processing have also been in extremely short supply. After the start of the Social Democrat campaign in February 2018, Tunisia refused participating the idea, followed by Morocco, and later Libya and Egypt (Mansø, 6.2.2018; Ritzau, 7.2.2018) and according to minister Tesfaye, a string of other countries in the Middle East and Africa also followed suit. In a January 2020 parliamentary consultation, Tesfaye explained that there were still no countries agreeing to host the camp and pointed to the existence of considerable challenges (Holst, 20.1.2020). Half a year later, Minister of Foreign Affairs, Jeppe Kofod, announced that the government was creating a so-called "migration ambassador" under his Ministry, including an 11-person task force from the Ministry of Immigration and Integration (Ministry of Foreign Affairs, 10.9.2020; Ravnborg, 10.9.2020). The explicit goal of this ambassador is to realize the plan to export asylum centres outside the EU. The creation of the position of an ambassador specifically tasked with migration issues represents an entrenchment of the Social Democrat prioritization of anti-immigration policy as an overarching foreign political goal at the expense of a range of other policy areas. At the same time, the migration ambassador position also represents an attempt to accelerate the perceived slow, or non-functioning, negotiations about readmission agreements, hitherto conducted by the Danish police.

In February 2021, an agreement had still not been made, although the minister claimed to have discussions with a handful of countries, and also expressed the possibility of piloting a project with a "mini-centre" (Klarskov, 24.1.2021). However, regardless of the critique and continuing difficulties, the Frederiksen government sent out a legislative proposal to fundamentally reform the Danish Aliens Act in early February. and in particular its §5, to allow for the "transfer" of asylum applicants to third countries. With the introduction of this concept, the proposal then distinguishes between four slightly different categories relevant for the Danish exit system, namely transfer, rejection, expulsion and return (*overførsel*, *afvisning*, *udvisning* and *udsendelse*). A prominent component in the legislative proposal is therefore *the extra-territorial linkage of entry and exit policies*, which means that the plan requires a massive upscaling of Danish forced return and exit practices. Thus, in the proposal, the government states that for those in "transfer-position", incarceration can be enacted beyond the duties imposed via §34,1 in order to ensure the possibility for return via pre-removal detention" in order to avoid non-cooperation or other barriers to their enforced transfer to the extra-territorial camps.[140] The proposal thereafter states that after "a final decision of transfer", asylum seekers will have no legal right to remain in the country, that is, even if their asylum case is still ongoing.[141] The Return Agency will be in charge of preparing the "transfer", and the police with effectuating it. In the legislative proposal, the government also notes that while the Refugee Appeals Board will be in charge of complaints and appeals, but that this responsibility will not concern the asylum case, but instead only concern processual decisions about whether the transfer can be enacted or not.[142]

The Task Force of the Migration Ambassador also produced a legal analysis accompanying the reform proposal. It laid out two models for extra-territorial asylum facilities, one which included the exercise of Danish authority, and one that included the transfer of such exercise to the host country authorities. The Task Force assessed its government´s proposal as feasible, but also noted that for both models, the Danish authorities´ use of force during the forced transfer to a third country can lead to the incurring of Danish jurisdiction, and thus responsibility for violations, in line with the European Convention on Human Rights (ECHR), and its Article 3 (the ban against torture, inhuman or degrading treatment) (Ministry of Immigration and Integration, January 2021, Notat: 2-3). Moreover, in line with similar statements from the European Commission, the Task Force also warned that the other EU Member States can object to the Danish plans and understand the policy as Denmark suspending its participation in the Dublin Regulation. This, in turn, could close down for Danish Dublin returns to other Member States (Ministry of Immigration and Integration, January 2021, Notat: 5-6). This is perhaps the reason why the Frederiksen government recently claimed to be discussing collaboration on the idea with the United Kingdom and Norwegian governments, instead of other EU Member States, although any reciprocal acknowledgment of collaboration from the governments of these countries has as of yet not been given.

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[140] Forslag til Lov om ændring af udlændingeloven (Indførelse af mulighed for overførsel af asylansøgere til asylsagsbehandling og indkvartering i tredjelande, p. 29.
[141] Ibid., p. 30.
[142] Ibid., pp. 16-17.

## 5.4. Research findings – interviews

The following sections make use of interview data to map, compare and analyse perceptions about the implementation of the Danish exit regime among various actors placed centrally within it. They describe how they see the procedures working, what works well and what does not, which partnerships between state authorities and institutions, civil society, NGOs and commercial partners characterize the system.

The section is divided into the following main themes and challenges related to them: Contracts on what can be called "the Danish market for exit ", dilemmas in state-organization partnerships, contracts negotiated between police and airlines, and private security details in return operations (4.1-4.1.3.); independent safeguards (4.2); the grey zone between voluntary and forced returns and the sanction regime of "motivational enhancement" (4.3-4.3.2.); psychosocial health, pre-removal detention and the role of medical professionals in exit systems (4.4-4.4.2.); the blurred interests between operational, political and private networks (4.5); collaborations with Frontex (4.6); the role of information and transfer of competences to the new Return Agency (4.7); alternatives to the current Danish system (4.8); and, finally, issues arising from the Covid-19 pandemic (4.9),

### 5.4.1. Tenders and contracts on the Danish market for exit

Various actors bid - or consider to bid – on tenders for certain practices related to the Danish exit system, published by the Ministry of Immigration and Integration. This illustrates the marketization dynamics in this part of the asylum system. These contracts may include a wide range of activities covered by a wide range of actors, ranging from return counselling, reintegration counselling, but also contracts for operating departure centres, for providing the infrastructure for the Saltolog database, such as the biometric scanners placed in the centres, as well as for consultancy products, to name a few. On the practice of return counselling, an officer from the Danish Refugee Council explained:

> *Well, Immigration Service announces the tender and last time they had a meeting for everyone who was interested. And then there's a deadline and let's think, last time it was a few weeks before they made the decision. Then there's a waiting period where all others who have made a bid for it may protest three […] [For the last contract, other candidates included] Danish Red Cross. For the meeting we went to for information about the tender, IOM also participated, but we know that they did not make a bid. And then there was this language school in Aarhus that also made a bid. So only three [other, sic] organisations… I think we had about a month, to make the bid. And I think I spend all my working time in that month. Then some of my colleagues, they didn't spend as much time. But it's time consuming.* (Danish Refugee Council interview 4).

Also using as a point of departure the case of return counselling, and its proximity to the controversial "Motivational Interviewing"-practice desired by Danish authorities, an IOM Denmark officer explained the intricacies through which different organizational guidelines are also influencing which tenders are pursued by organizations, and which they prefer not to get involved in:

> *Well, there were a number of factors, including quite formalistic ones regarding the contract, which made it impossible to apply as an international organization. But when I read the tender*

*materials, I noted that – without remembering the wording – that you could under the terms of the tender, you could be asked to provide counselling to people who were asked to return to areas where IOM as an organization would not arrange returns. So I saw that as a policy – a very clear policy issue – to ask people to return to an area where we as an organization would not be able to arrange any returns for operational or security reasons […] I haven´t witnessed the [Danish Refugee Council] counselling, but I saw the call – it was open as a tender, to who wanted to provide this counselling – and it was my impression that this was motivational. It was about assisting people, I don't know about convincing, but assisting people in arriving to the conclusion that it was best for them to return […] We have worked with both the Red Cross and the Refugee Council on counselling and they do both provide some very important input to the migrants. But then of course it's up to the NGO itself to define how closely it aligns to the government. Because of course if you work with the government on such a contract, you are also doing what the government asks you to do, since that's why you bid for it.* (IOM Denmark interview).

According to one DRC officer, at times, organizations may prepare bids to government or EU tenders more out of desperation, than of core competence:

*…you have to be either quite sure or quite desperate, when you do it. Because it is time consuming. So I think we will, if it's something that we think, this is really what we do and it's really important for us to be part of, then we will make a bid. Also if we have the time for it. But of course, there might be situations where there isn't a lot of funding, where you might apply a little bit more out of what you normally do.* (Danish Refugee Council interview 4)

When it comes to contracts for the operation of centres, another competitor on the local market is the municipalities. As the Refugees Welcome spokesperson formulated it:

*Well, the municipalities are the obvious competitor because they're already doing it. At one point the municipalities were running more than half the camps and the Red Cross were getting worried about that. And I think that's one of the reasons why the Red Cross have been so meek and careful of not criticising and not putting down their foot and not shouting too much about new regulations and unfair rules and all that, because I think they were really getting scared of losing the contract altogether at one point. Yeah. And I thought, back when, there was one point when the Red Cross were running all the camps. But then the municipalities were invited to make a bid and a few of them won it*. (Refugees Welcome interview)

In this manner, authorities may use the threat of withdrawing contracts as a tool to silence criticism from, or in other ways control actors, such as the Red Cross. While NGOs and IOs may enter the state-induced competitive market for such contracts, at the same the state authorities also seek to control how such contracts are realized through continuous monitoring. That in itself instantiates a derivative market, namely for consultancies. The Head of the Asylum Division from Danish Refugee Council explained that they had collaborated with several private contractors and consultancies, such as Rambøll and Realise, but only after requests to do so from the Immigration Service:

*…when we got the latest contract, Danish Immigration Service wanted there to be biannual evaluations of how we do our work, in order to continuously learn from the experience and also continuously think about how we do it. So, it was actually them, the Immigration Service, that requested that and they actually paid this consultancy. Before this contract we had another contract, also for three years. They had hired Rambøll to make an evaluation of the counselling service. The counselling service at that time was provided by us and the Danish Red Cross. It*

*wasn't really a very thorough evaluation that they made – I was present at some of the centres when they made interviews, not really well planned and … but I think they knew this consultancy from other jobs, I know they also work for the Ministry and do know a lot of stuff on integration.* (Danish Refugee Council interview 3)

However, according to Danish Refugee Council-officers, the competitiveness of the market for such contracts also, at times, turned departure centres into test grounds for such actors to prepare contract bids:

*Well, I was at Kærshovedgård when they came to interview asylum seekers. And they had not before arriving there, they had not organised anything, they had no interpreter, so they could only speak with those who spoke English or Danish. And I think they managed to speak with three or four persons. We pointed them to the asylum centres where they could speak with people. I don't know if it was a bit more organised from the side of the centre in terms of organising who they could speak with. But at Kærshovedgård it was not, and it seemed quite random […] I think the purpose was to – it was before the tender. So [for Rambøll] it was to work out how to make the tender, I think. Which elements were relevant, which were not, should they make a tender at all, or not.* (Danish Refugee Council interview 4)

The quality of external contractors on the market for exit contracts varies greatly. The 2013 McKinsey report on the Danish asylum system was mired in controversy due to its insistence on based on decontextualized economic calculations maximizing the economic output of asylum camps by upscaling them to hold 1000 people. Important to note, though, is that these calculations were premised on a political premise where the beneficial economic consequences of the centres had to be achieved without integrating them with the surrounding local communities. As such, outsourcing processes can be a way to entrench political priorities. And once enacted, some such partnerships might also generate their own perpetuation. Thus, even though collaborations with f.i. Rambøll or Realise were originally a condition set by the Immigration Service, the external input as well as the possibility for future collaborations on tenders meant that the DRC thereafter decided of their own accord to expand collaboration with Realise, including in regard to the market for exit contracts:

*Rambøll was hired for a specific job from the Immigration Service. We were just as one of the contract holders, evaluated […] And Realise was also something the Immigration Service wanted…but it's been very useful for us to have this external part facilitate our meetings and our structure. So, they have a great knowledge on anthropology and stuff like that, so that works really well. So, we have actually decided ourselves to continue to work with them, cos it has added value to our work and to the evaluations that we make […] We've had some focuses on how to approach those who are very vulnerable and persistent in not wanting to leave the country, who've been here for many years and are not cooperating. Methodologies for how you approach them, how you - is there another way to work with them, other ways to have counselling? They've helped us with that as well, training with our counsellors.* (Danish Refugee Council interview 3)

However, granting private companies or consultancies access to vulnerable populations in the exit system forced to reside in the departure centres present several problems. First, it appears irresponsible if authorities allow for-profit actors to prepare models and bids by experimentation on centre-populations. Second, the insertion of such consultancies as monitoring devices applied towards other actors in the system, such as NGOs, places a specific organizational perspective,

rather than qualitative experience, in the centre of policy-making processes. A spokesperson from Refugees Welcome explained:

> *DRC has a counselling contract. They get money from state to do independent counselling of asylum seekers. And they do it in a good way, and they try to protect rights. But when the state hires Rambøll to check how the DRC is doing the counselling I get worried. How do they asses what is efficient? You basically have a commercial consultancy agency overseeing consultations between a legal counsellor and a rights-holder. If it was my organization, I would not allow that! It is not their business! I would be worried that it works like a spy inserted into the system, so Immigration service can read reports from Rambøll about how Danish Refugee Council is working […] I think it is extremely risky to have such consultancy groups interfering in processes about human rights and international law. The danish government has a political interest in moving things in a certain direction, to save money, and appeal to their voters. These consultancies know how to manage statistics in order to show certain results that the politicians want to hear. So, it can be a kind of manipulation of data and facts* (Refugees Welcome interview 2).

The spokesperson from Refugees Welcome also noted another example of commercial relations with bad consequences for those in the exit system:

> *There is this bus-line from Allerød to the Sandholm and Sjælsmark [respectively, asylum and departure centre]. And suddenly the bus company hired G4S to do the ticket control instead of doing it themselves. You used to enter the bus and there would be like 3 people on board, because it is a small route. But now, there will be three guys in black uniforms looking kind of like a squat team, and they check every single passenger after every stop. Because they know asylum seekers don't have any money. Rejected people don't get any pocket money, and are not allowed to take a job. So, of course the chance of cheating on the bus is high. It not formally part of the exit system, but it is informally of course. It is a situation provoked by the state. People are stuck and forced to cheat on this bus. They could give cheap transport cards to asylum cards, the Trampoline House tried to lobby for this, and they also used a huge part of their budget to pay for such tickets. But instead you have this case of militant surveillance on the bus* (Refugees Welcome interview 2).

A case where the lines between public and private interests are more blurred is the Social Democrat Party´s contracting of the smaller consultancy company Migration Management Advice to support and disseminate their plans to externalize Danish asylum practices outside Europe represents yet another example of blurred public-private relations in the exit system. This company was contracted by a political party, but then accompanied it when it assumed the power of government. A DRC officer professed a certain bewilderment about the actual role occupied in the exit system by this particular consultancy and its relation to certain authorities or government: "*I think that´s in return procedures [and] it´s not a partner for us […] I´m not even sure it´s a partner for the authorities. It´s more a partner for the government level politicians. But I actually don´t know.*" (Danish Refugee Council interview 3). When such consultancy actors are granted an advisory role for policy-makers, they also stand to gain future contracts from the political responses to the advice contracted from them. There are, then, cases where smaller or larger consultancies have begun to play more of a role in the Danish exit system. In doing this, they can occupy problematic double roles where they create demand and platforms for the services they themselves provide. Conversely, this structure can also mean the loss of incentives to offer advice countering a government´s preferred policy – even if such policies are widely experienced as counterproductive and harmful by those working in the

Danish exit system (Lemberg-Pedersen, 2013; Lemberg-Pedersen, 2018b; Stavinoha and Fotiadis, 2020).

### 5.4.1.1 Partnerships between state and organizations

An officer from the Danish Red Cross explained how the organization, despite receiving a large proportion of its annual budget from the Danish government contract for various centres in the Danish asylum system, tries to still maintain an independent voice:

> *Yes, we have a decent dialogue with them, all the time. So there's many occasions, weekly, where we ask the government, the Agency, how to deal with this case. And usually, it's not a problem. But then we also have… in our organisation it's called [advocacy] where there's structure which we don't believe in cos it's hampering human rights. Then we make that clear to the government. Then we pay for the lobbying campaign or whatever you call it, to push that narrative in the society outside to say, this should be differently. But in general, in cases, on case-based issues, we take this dialogue with the government. And it's being solved proper. So no, we're not restricted in making adjustments or speaking up about our belief, but it should be in the right way and with decency and so on, cos we're still in the contract.* (Danish Red Cross interview)

Exemplifying how the partnership with different governments leaves room for an organization like the Red Cross, the deputy gave the example of the Red Cross being contracted in 2019 by the incumbent government to operate a departure centre:

> *Avnstrup [departure centre] is a new kind of thing, after the election in 2019 it was clear that there was a two step back, or maybe a half step back on who do we treat at least families who are in the position of their case has been rejected, they're not allowed to stay here and if they should take a stay in a departure centre, so how do we treat these kind of families at least […] So after that election, Avnstrup came into – it was clear in December the Minister called our general secretary, Anders Ladekarl and they agreed to, that Red Cross would like to run such a centre. So that's historical because previously it's been a task that, where the operator should be [the Prison and Probation Service] – the operator who also runs prisons. So, this was a new thing that the minister here asked the Red Cross directly.* (Danish Red Cross interview)

A volunteer psychologist expressed an impression that the Danish Refugee Council, while being a serious and proper actor on refugee issues, has nevertheless changed in its outlook, so that much more focus is now placed on pursuing contracts and partnerships with the governments, especially abroad, although the asylum department is still trying hard and being "courageous":

> *…they work properly with it, I think they did. But they are also more interested in being on a good level with the minister, so it's – now it's a company, which they are very engaged about, financing. I think they are too willing to go where the ministry want. They have their leadership, the people who decide that they have been very eager about this, going, to work abroad. The money is going abroad there. And people in Denmark they feel, it's ok as long as we support somebody abroad, and they don't come to Denmark. So that's the deal.* (Grandparents for Asylum interview).

The spokesperson from the Trampoline House expressed her view on the important role that the Danish Red Cross can play when it comes to the case of the children in Sjælsmark:

> *I actually think that the Red Cross has a big say and they don't make use of that often enough, in my opinion. But when they do, they should be applauded. And they did that with the kids in Sjælsmark […] When their report came out, it was kind of like the hammer on the nail. Everybody*

*had been screaming - individuals, activists, journalists, NGOs - that the way the rejected children were treated was so inhumane and that it had to be stopped. So when the Red Cross finally released their report and made recommendations on how to improve the life conditions for the kids, it had a big impact. And they should be applauded for that. But when the Red Cross most often doesn't speak up but remain silent, it is because they are caught in the dilemma between being hired by the state to do the job of running the asylum centres and remaining apolitical at the same time. They are in the difficult position of having to implement policies and regulations from above. But TH has had a good working relation with the red Cross over the years, especially with their care unit in Sjælsmark that we collaborated with closely in regard to helping children and families from Sjælsmark who came regularly to TH and voiced their difficulties and struggles to us. TH would communicate these difficulties to the case unit staffers, who would then present them to the Prison and Probation Service. This was effective in the sense that the Prison and Probation Service would listen to Red Cross, but not to an NGO like TH.* (Trampoline House interview).

However, the Trampoline House staff also hears how many refugees have ambivalent experiences with the Red Cross, which can be explained by reference to the organization´s partnership and role as the biggest operator of centres in the asylum system in general:

*The camp system is a system of separation or exclusion, right? You're excluded from society in the camp until Immigration Service has determined whether you have the legal right to stay or not – and that can take years as we know. And because the Red Cross is hired by the state, they have to follow new government policies and restrictions and implement them in the accommodation asylum centres and thus becomes part of upholding what some people think is an unjust asylum system. What I hear from people living in the camps is that some of them have come across amazing Red Cross workers during their months or years in the centres; Red Cross staffers working their butts off to help them with different things. But people also complain about some Red Cross staffers being insufficiently trained for the job, totally worn out, completely indifferent, or worse being harassive or racist. And then there is the problem of rules and regulations in the camps that very often are not explained properly by staffers to the camp residents and end up seeming arbitrary and unfair.* (Trampoline House interview)

Asked whether people living in the asylum centres understand the difference between the Red Cross and the Danish state, a Red Cross deputy answered:

*Yeah, they do, or at least that´s what they´re telling us so I need to believe that, and I tend to. But yes, because right now, the task is sort of divided, very transparent for them. They know about their case, we have nothing to do with their case (…) They know that. So they´re telling us, just how it is to be in that process, how does it feel to be a person living in uncertainty for the future, being a person unable to convince the government and so on (…) Sometimes they speak also about their relations and story – through the Mediterranean Sea, boat escapes and so on. But we´re not in a place to go into…So they know out task – we´re there as a humanitarian organisation and they know that.* (Danish Red Cross interview)

Social life in the exit system faces many barriers, but according to the spokesperson from Trampoline House most people are quite attentive to the different actors and levels in the system. Yet, even if there is awareness that an organization such as the Red Cross is not involved in policy-making or drafting legislation, they do make decisions with pervasive impact on the daily lives of people in the detention facilities:

> *I think [people in the camps] can distinguish between [the Immigration Service, the Red Cross and the police]. The people in the deportation camps, they can definitely distinguish because they have experienced what a police-run camp is like, as opposed to a Red Cross one. So at that point you realise what the difference is. But I think on a daily basis, many people think that the camp system is like a barrier, you know, one more barrier. First it was like a number of physical borders, now there are these psychological, or conceptual, or structural borders people have to cross. The Red Cross is one of them, through their administration of the camp system…I think people are aware that the Red Cross is not the policy makers, but I know that people find them to be decision makers, because they make decisions about your everyday life in the camp. They're the ones who recommend whether your kids should be granted a public school-spot, or whether you can move to another room, you know. People are very much aware of that.* (Trampoline House interview).

She continued to describe that the Trampoline House staff "have a fruitful dialogue with the Red Cross":

> *I believe TH can be of more help and act in the best interest of the users of TH if we have a good relationship with the Red Cross and maintain a good dialogue […] There has been periods where the relationship was a little strained and that did not benefit the TH users at all. To most asylum seekers, the Red Cross is one of the many Danish authorities that manages and administrates their lives. So many asylum seekers mistrust the Red Cross and often experience not being listened to, misunderstood, or treated unfairly. Because of our good relationship with the Red Cross, TH can act as a facilitator and help communicate residents' viewpoints, complaints, and wishes to Red Cross personnel if the communication has gone all wrong. Not always, but most often this results in a positive dialogue on how to accommodate some of the changes that the resident is asking for.* (Trampoline House interview)

The spokesperson from Refugees Welcome also voiced reflections about the dilemmas arising from organizations like Danish Red Cross and Danish Refugee Council entering into partnerships with governments, whose goals differs clearly from the humanitarian ethos of the organizations:

> *I think they're seriously trying to do the right thing. They work for humanistic values and justice and protecting vulnerable people. They both do that seriously. They don't always do it in the right way in my view. And they put themselves in a very difficult situation between two chairs sometimes – I'm happy I'm not in their shoes sometimes! It's much easier to be completely independent like we are. But I also understand what they do sometimes […] What they say is, that they work with the system and in the system as part of the system because that's their way of influencing things in a better way […] And they're having a positive effect on the whole system for refugees and asylum seekers. And I agree, I think they do that. But they also, they're being used by the state to… to defend the state's policy somehow – to legitimise what's being done, because it's being done in their name and by them sometimes, so it looks really nice from the public that – asylum camps, they're being run by the Red Cross and that's a humanitarian organisation and they're working for the – I mean, if it was G4S running the asylum camps everybody would be much more suspicious and much more like, yeah, what is going on and maybe we should check up on this?* (Refugees Welcome interview)

The spokesperson from Refugees Welcome underlined that many people have good experiences with the Red Cross in general, but when it comes to their involvement in the exit system, and departure centres like Sjælsmark and Kærshovedgård (at the time, the Avnstrup move wasn't finalized) things become more difficult:

*…the really terrible things and the things I think we should criticise the Red Cross for being part of, is the deportation camps. And also the things that have been going on to try to help the long stayers, the people who are stuck. First it was the Red Cross who have this counselling service about returning, now the DRC have it, which I think is better, but it's still a kind of weird job to give to an NGO in a way… of course, it's good to give people advice and talk to them about going home, and we do that a lot too, that's important. But when you do that on a contract with the government, it becomes a little bit of a strange situation in the refugees' eyes. They see, ok you're doing this as part of your job, you get paid by the government to ask us to go home, to help us to go home! So, is this you speaking or is this the government speaking?* (Refugees Welcome interview)

### 5.4.1.2 Contracts between police and airlines

The airline tickets for Danish exit operations are made through a general government contract with the US-based air broker, or travel management company, Carlson Wagonlit (CWT), or through Frontex. With respect to CWT, this government contract is seen as "a good deal" for the police:

*CWT is the company we call when we need tickets – also we can get tickets from Frontex, you probably know that, but we called CWT and they have a deal with Turkish Air making it possible, for example, if we don't use tickets, they can just put the ticket back and we will get the money back. It's a good deal. So, when, for some reason, they choose – it's rare – but if they ask us to leave the aeroplane because he's shouting too loud […] we can just return the tickets, cos we have this cooperation with them. I think it's much easier.* (Danish police interview 1)

Before the Return Agency took over the preparation of return operations, Danish police officers would act as go-betweens linking travel management company and airlines:

*…for example, with Turkish Air, I put up a meeting with sales management and Turkish Airlines and Carlson Wagonlit, and I was present of course, and there we tried to sort out a kind of deal, a way to do these kinds of things because at that point, this was two or three years ago, Turkish Airlines was very hard to deal with. They did not understand the whole concept of forced returns. But I put them together and they made some kind of, I can´t remember the name of the contract, but they made a contract, making it possible to ease up this cooperation, not just for Turkish Airlines, but for CWT, so it´s much easier for them to book tickets and so on.* (Danish police interview 1)

Through the general operator contract the Danish police uses a small selection of airlines to buy tickets for returns. One police officer explained that Turkish Airlines is the main airline contracted "because they´re good and they´re cheap and their distribution net is very wide." (Danish police interview 1). The cultivation of personal networks appears as the prime modality to ensure return operations, both in relations to state authorities (see section 4.5), and when it comes to public-private partnerships and contractual relations:

*Turkish Air, Qatar Air, a lot of different airline companies. The ones we work with on an everyday basis, I take meetings with them cos I want to operate some kind of relationships with them. In my opinion, a lot of things is very much easier when we do things in the relation rather than complete strangers each and every time. So, I know who they are, they know who I am and we can call each other. (Danish police interview 1)*

The police officer also explained that such informal relations can make many aspects of return operations "easier". He gave as an example that it could be used to get separated rooms in Istanbul, which he described as more dignified conditions for returnees, without, however, reflecting on the kinds of risks involved in people being exposed to Turkish police behind closed doors:

> It's made a lot of things possible, also much easier also on the part of making sure that all of this is carried out as dignified for forced returns as possible. Then you can use rooms for staying in when you are in Istanbul – you don't have to sit out in the open so maybe you can be in a separated room. For his protection, because, yes, it's more dignified. (Danish police interview 1)

When it comes to chartered airplanes, the Danish authorities also make use of a limited number of companies. These include Danish Air Transport, The Great Dane, Titan and Blackbird. Danish Air Transport is the only one with its own fleet of airplanes (Danish police interview 1), which makes their price estimates more predictable, and so they end up with two thirds of the contracts. The prices differ greatly between destinations, and a major reason for this is the insurance price:

> …a big part of it is the insurance. I think the overall price of insurance when you want to fly to Baghdad, Kabul, Mogadishu [laughs] it's expensive. But I know it's a bit part, it's very expensive. And also of course the length of it, miles is also a part, but the insurance I think is a big part. (Danish police interview 1).

### 5.4.1.3 Private security detail during return operations

When it comes to the security detail for Danish delegations travelling to assess the possibility of deporting people back to insecure areas, special security companies are consulted:

> Yes, we have in some parts of the world, For security reasons, we have a cooperation with [a Swedish company] handling the security for not only Danish people but Canadian, Swedish, Norwegian diplomats who have business in [the country]. And they're also, when we're there – cos we send out [people to the country] – they're handling our security also. This is a contact established to make it possible to go to [the country], otherwise it's, I don't know, but I think it's probably one of the most dangerous countries to go to in the world. (Danish police interview 1)

SRS also handles the security for the Danish police itself when in this particular country, the returns to which have been debated fiercely in Danish media for some years. The police officer´s description of the standard mode of a return operation to this country does not diminish discussions about the safety of people deported there:

> Yes, when we're there, we always try to leave with the same aeroplane, so we have 55 minutes there, and then you have to be at the same aeroplane back to Istanbul, for example. But if for some reason the aeroplane is delayed, or don't fly, then it's [a Swedish company] who handle our security and drive us to […] the UN camp which is the area the airport is located in. UN has the overall security responsibility [there] and then we stay there until the next plane […] But [the Swedish company] seem very capable. And also yes, if there´s…US special forces are there too [laughs] (Danish police interview 1)

## 5.4.2. Independent safeguards in the exit system

As regards the Ombudsman´s monitoring of return operations, a deputy from Danish Refugee Council reflected on the launch of the Ombudsman´s role as monitoring the return operations conducted by the Danish police. The development was largely seen as positive. Yet, a subtle, but distinct point was also made, namely that the positive impact was something that happened "especially in the first couple of years" leading to the question whether the institution has changed since then:

> …when the role started with the Return Directive in, I'm not sure, 2011 or whatever, I think then in the beginning it was very very useful and we had the opportunity to input a lot through the Ombudsman with our experiences […] especially in the first couple of years, they made a lot of recommendations to the police about how to go about the role and especially how to document each flight and use of force and to document the necessity of using force and so on. So, I think it's a good way of doing it, I definitely think the Ombudsman is a very important role, because as you probably know, I mean the Ombudsman in Denmark has a very strong position. (Danish Refugee Council interview)

Still, the Head of the Monitoring Division from the Ombudsman explained the limitations on his institution´s involvement, which are specific to the Danish asylum system.

> …the set-up is that there is a certain board, a Refugee Appeals Board, which deals with those cases and which is the final instance. There is a specific rule saying you cannot bring those cases to court, which is an exceptional thing in Denmark because you can usually bring those cases to court but, you cannot when you come to those specific types of cases. And also, there's a clause in the Ombudsman's Act, saying that the Ombudsman cannot deal with those cases on the basis of complaint. He can however, raise a case on his own initiative, and that happens quite rarely, I think. (Folketingets Ombudsmand interview 1)

Asked if this leads to difficulties in terms of how to monitor cases in the Danish exit system, the Head replied:

> Mmmm, well, I don't know if you can call it difficulties. The fact of the law is that you cannot bring those cases to court. And some people say this is, that this is a political matter. And is this politically a bad thing? Does it go against the rule of law, some people might say that.. And others think that this is a better way to deal with it because the people who are in this board, they are experts – and there's a judge at the head of the Refugee Appeals Board, so in actual fact, the rule of law is secured in the same way as if you could bring the case to court. (Folketingets Ombudsmand interview 2).

The Ombudsman does not monitor all return operations from Denmark, but only a small proportion of them, around 10 per year and a few more Frontex returns, as well as around 50 cases of written documentation (Folketingets Ombudsmand interview 1+2). This led one of the interviewees from the institution to offer the following reflections:

> So, one might ask the question if it is sufficiently effective if we don't participate in all of them. But I think you have to remember that the police are actually trying to learn from the things that we say to them, that is our general impression. That when we have a dialogue with them about various things […] in the beginning our main point of debate, was whether they are good enough at bringing written documentation for what happened. If they used force for instance, do they write down specifically enough […] We want that kind of details in the written report. And in the

*beginning they were not that good at – it was a fairly superficial report we received*. (Folketingets Ombudsmand interview 1)

A key focus point for the Ombudsman monitoring concerned whether the Danish police´s actions is without unnecessary use of force and proportionate to the legitimate task at hand. This was explained by the Head of the Monitoring Division:

> *It is an individual evaluation. Sometimes we ask questions to the police, is this necessary? Sometimes if you have an return operation that's being abrupted, that's not ended, perhaps because they put up a fight in the airplanes, so the airplane crew don't want you - err, the police – to continue. But afterwards, the police might still be using force. They have this gear they put on them, and if they still have this gear on afterwards, we might ask, is that really necessary in this situation? So we do sometimes ask questions about this, and expect the police to have an explanation about why did they use force in this specific situation.* (Folketingets Ombudsmand interview 1)

Asked about the role of the Ombudsman in the Danish exit system, the spokesperson from Refugees Welcome explained the limitations circumscribing this parliamentary watchdog, when it comes to conditions in the departure centres or during deportations:

> *…the role of the Ombudsmand is not to judge whether the decisions are correct or not, or whether the policy is fair or not, but to see if the law is followed and if the different offices in charge […] are performing their task in a correct way. So they are just overlooking. They can only – they can interfere on their own if they have a suspicion, or if they hear about a story in the news or something […] And they don't have a regular system of surveillance like they have in other, with the other state offices, or municipality decisions.* (Refugee Welcome interview)

A legal officer from the Ombudsman said that the return monitoring task is extremely focused and can be separated from the case processing of asylum claims:

> *We don't dive deep, if you can say that, into the case regarding whether asylum seekers should be granted asylum. We monitor the return aspect and that is after the decision of asylum has been decided.* (Folketingets Ombudsmand interview 2)

Asylum seekers themselves often do not perceive such a clear-cut division between their asylum application and their enforced return, among other things because some of their reasons for claiming asylum may concern their unwillingness to return to their country of origin due to what they believe to be objective risks. The challenges with this narrow Ombudsman-focus were explained by the Refugee Welcome spokesperson:

> *…the huge issue with many of these things, is whether the decision was right or wrong, if the decision is well founded, if the facts have been assessed in the right way, if it makes sense what they have decided to do. And the Ombudsmand has no power over that, he can't have any opinion on that […] So with the deportations, he can kind of see, was there any abuse of this person. Did they follow the rules about warning and the physical issues about the plane, and who was in charge of the different situations […] If you resist – if you don't collaborate with the police, they can use force in a quite extreme way actually and still not break the law or the human rights. So yeah. It's not very often that the Ombudsmand can give criticism, or say that this was too much, or something. In some cases he has done, and then even when he does that, the police or the state or whoever he is accusing of violating something, they can just say well ok, we have read your report and… we'll think about it! [laughs]* (Refugees Welcome interview).

A staffer from the Danish Red Cross, however, reflected on the importance of the Ombudsman-report concerning the conditions of children in the Sjælsmark departure centre.

> We were waiting with curiosity on the Ombudsman's conclusions, but then it sort of didn't say anything, right? So then we said, well we need to say something, how to deal with this issue. (Danish Red Cross interview)

On one level, then, the Red Cross eagerly awaited the Ombudsman-report on the matter, but on another level, there was internal recognition within the organization that they themselves also had to formulate an opinion. Despite the vagueness of the Ombudsman-critique, both the Danish Refugee Council, the Red Cross, Refugees Welcome and the Trampoline House recognized the existence of a temporal threshold for detention, which, if crossed, could constitute disproportionate harm. The possibility of such a conclusion therefore rendered the Ombudsman-critique (potentially) more poignant:

> …in that evaluation, the report, of Sjælsmark, [the Ombudsman] stated that this is not against human rights, but the duration and time might in the future inflect that conclusion. So he was sort of…and I stated that to my chain of command as well, so we need to be aware of that…he didn't state what is the timeframe here before it goes into being against humanitarian law or human rights law. But he stated at the moment he couldn't see anything […] But that was with the BUT, because he was looking into how long they had been staying there. So that was a sort of a door he left open there, because evaluating this structure, in this centre, two years – is that too long for children growing up in these centres? It might be, he might come to the same conclusion, but he opened the door to that he might not come to the same conclusions. And that was interesting. (Danish Red Cross interview).

As for the reasons why the Ombudsman opted for such a vague critique, the Red Cross deputy speculated that a waning influence and respect for the institution among Danish politicians had led it to tread more carefully, and tone down its criticism:

> Well, the overall role is so important […] but when you dive into it, there´s also a cultural thing here. So previously, he´s being listened to because that is an organ which is acknowledged by the parliament, right? But we´ve also seen that politicians more freely speak against the Ombudsman´s recommendations…It could have been interesting if he…it´s a hypothesis, right? But if in 2019, he said you need to rethink [Sjælsmark] because you are going against international law with this departure centre. Would that have been acknowledged by the government at that time? (Danish Red Cross interview)

The volunteer GfA-psychologist also expressed dissatisfaction with the Ombudsman´s activities in current Danish asylum politics, reflecting on what she perceived as the diminishing political power of the Ombudsman institution in Danish politics:

> I think he has not done this properly. He should have been much more engaged in that. In Denmark, very often I have some questions to the Ombudsman during the years, questions he should have reacted to. And then he's sent it back to the ministry official and they have sent an answer in and he didn't do anything about it. So I think the Danish Ombudsman, he's not respected by folketinget more […] it's interesting we have a new Ombudsman now, let's see what he'll do. But the other Nordic countries, they have all – they have agreed to put the convention of children into the law. And we don't do that in Denmark. And in those countries, the Ombudsman,

*he is in a much safer situation to stick his neck in front, yeah.* (Volunteer Psychologist, GfA interview)

The duality embedded within the Ombudsman-institution of both having its mandate for monitoring determined by Parliament, but also being ignored and at times delegitimized by the very same Parliament, then stands out as the difficult institutional cross-hair that this institution navigates in the Danish exit system, at least as perceived by other actors in the Danish exit system. Finally, the Country of Origin (COI)-reports have been much debated in Denmark. Critics have argued that authorities do not do proper research, or force the hand of report-authors. For instance, the cases of COI-reports for Somalia and Eritrea were discussed fiercely in Danish media and political circles, with several of the experts used as sources challenging the representation of their input. Independent experts have criticized reports as biased, and there are even cases where the authors from the COI-unit itself told of political and institutional pressure to produce conclusions which would allow authorities to accelerate forced returns. The co-production of reports between authorities, such as the Immigration Service, and Danish Refugee Council is a peculiar construction where authorities, on the one hand, are criticized for using the humanitarian organization to push through restrictive interpretations, while the DRC on the other hand argues that they provide counter-balance to authorities.

Concerning the COI-reports, the spokesperson from Refugees Welcome reflected both on the organizational reasoning and the risks involved in such partnerships:

> *…the [COI] reports, they're really questionable – the factfinding reports that they help to do. Because when you see examples of these reports, one of them was very controversial about Somalia. It was made in 2015, and then it was used to revoke permits, it was made between Immigration Services and DRC, they made a factfinding mission to Somalia, where they could not leave the airport because Somalia was so dangerous! […] These reports, they never have a clear recommendation about what to do, but they have different chapters describing different issues and situations within the country and then it's up to the Immigration Service and in the last, the Refugee Appeals Board to make the decision based on those facts. And then you saw what Immigration Service was doing with the report that they had written half of and DRC had written the other half – or they made it together. Immigration Service was using parts of the report to withdraw the residence permits for lots of Somalis who already had a residence permit in Denmark […] And DRC was saying in the media and everywhere, we don't agree with this interpretation, because if you look at the other side of this report, the next page of the report actually – it will say the opposite. […] And if you talk to DRC about it, they will say, we know that it's a risk and it's something we're very unhappy about. But we still think that when we participate in these factfinding missions, the result is better and more serious.* (Refugees Welcome interview)

### 5.4.2.1. Post-deportation monitoring

The actors interviewed agreed that, in general, there is very little monitoring of how returnees fare after being deported. The Ombudsman only monitors up until the deportee leaves the flight after landing, and while several IOs and NGOs are involved in support to returnees, in the form of reintegration programs, those are distinct from post-deportation monitoring and only coincidentally linked. Among other things, this is because not all people deported qualify for such programs, in particular if people have not followed authorities´ suggestions to withdraw

asylum applications or collaborate on their own return. As one Danish Refugee Council officer explained:

> I mean, we're not reporting on, recording those things, recording how people are doing. The monitoring part is actually the authorities who do that. And so they may go on monitoring missions and they may visit some of the returnees, but it's not something that has been an issue, it's not something we're recording on and it's not data that we have available, how people are doing after a period of time. But it's something that I think we would like to know more about – we're very much looking into how can we make our counselling better. And one of the ways to do that is to know how people are doing after they return. (Danish Refugee Council interview 2)

Similarly, another Danish Refugee Council officer explained that the level of post-deportation monitoring is, at best, fragmented, and highly dependent on collaborating organizations and authorities. Even if cases where ERRIN and Danish authorities are involved, such as Afghanistan, the monitoring done appeared to be taking place rather coincidentally:

> It depends on whether they are deported forcefully. Often we don't know – there are people being deported that we don't know about, maybe they haven't wanted counselling, because it's a voluntary thing. But if they are part of the program, if they do get reintegration support, then we might know something along the way from the partner, depending on which country they're going to – some countries have programs with the authorities and we don't necessarily get so much information. Other countries, we are the ones who have the cooperation with the local partner. But if you use Afghanistan as an example, it's program that's under ERRIN and it's the Danish authorities who have a contract with ERRIN, this big network of member states. And we might get information once in a while, but not necessarily. But they are then followed by the local reintegration partner, for about a year. They will make a reintegration plan with the partner and the plan will be approved by the Ministry of Integration and they will do some monitoring along the way. (Danish Refugee Council interview 1)

Some potential was perceived, however, for using existing reintegration programs, to upscale post-deportation monitoring tools:

> Our Somalia program is one of the programs that we know the most about because it's DRC, so we're able to make a better report on [tape is muffled, two seconds], people who are returnees, who have integrated and who have been there for some time, function as mentors for people who are about to return, or just got back. And I think that's interesting and important to have credible voices who can assist and who can tell about what to be aware of, what's difficult and who can give some good advices as well. So we would like to follow up a bit more systematically. (Danish Refugee Council interview 2)

As for reintegration support programs, a Refugee Council officer noted as positive an increasing tendency to develop these, since "For many years there hasn't been any [reintegration programs]" (Danish Refugee Council interview 2). Danish authorities work through the European Reintegration Network (ERRIN), consisting of 15 country authorities, where several actors, such as Caritas Belgium, the ICMPD and Office Francais de l´Immigration et de l´integration (OFII). These make contracts with reintegration partners in the countries to which people are returned. Danish Refugee Council do not have contracts with ERRIN, but instead with European Reintegration Support Organizations (ERSO). This works so that the Danish Refugee Council "...ask them [ERSO] to make the introductions and then we will make, as DRC, a contract directly

with the partner, the reintegration partner." However, as the officer noted; "…some of the reintegration partners are in both networks, but the Danish authorities want us to use ERRIN first and foremost, so if a partner is in both ERRIN and ERSO we have to go through ERRIN…" (Danish Refugee Council interview 2).

An IOM officer explained how, in 2016, many hundreds decided to withdraw their asylum applications and travel back to countries like Iran, assisted by the IOM. However, because of the Danish rules, only those having applied for asylum before joining the reintegration program ended up being eligible for such support. And while many travelled back from Denmark, according to the IOM officer, the lacking Danish support probably meant that many more who could have did not. The unprecedented migration situation around 2015-2016 therefore exposed some gaps and inflexibility in the Danish exit system:

> *you basically hadn't had that situation before in those numbers. So the return system was maybe running a bit behind this group. So I think that's also another thing I would be expecting from this return law, that you actually lay down the foundations of who gets support, when, how, why, Instead of having different… too many different things, too many different programs done at different intervals, but rather have something that is more consistent.* (IOM Denmark Interview)

The inflexibility of the Danish exit system is also linked to the problems of data categorization, standardization and thus the quality necessary for construing indicators. According to the IOM officer the Danish police has focused only on registering the voluntary returns of rejected asylum seekers, thereby missing out on other categories travelling with the IOM in other countries, such as irregular migrants, visa overstayers, homeless people and so on. The officer saw this as partly resulting from Danish exit policies being aligned with the dominant political discourses of asylum seekers taking advantage of the welfare state, and the need to return people who have stayed in the asylum centres for many years:

> *…one challenge we've seen in the past, has been this very Danish approach to having very limited programs, for a specific period of time, for a specific nationality and in most cases also limited to people that applied in the past for asylum. And in Denmark, they have put in this eligibility criteria to avoid that people would come to Denmark and apply for asylum just in order to get support…And I think that by limiting the people you want to get into your return program, you also – although there might be a point in a few cases, to avoid misuse of the program, you actually end up putting so many limits that you get fewer applicants than you want. Because if you have spent years in Denmark in an asylum centre for example, you would be eligible…But then if you focus on those that have been in Denmark for many years, they effectively can't see themselves in the country any longer – and those that have recently arrived can't get the support. I think that has been a limitation and we have pointed that out in our reports as well. Cos you can't really control who applies and who doesn't. It doesn't really depend on who you want to apply* (IOM Denmark Interview)

The politicized Danish approach is then in part responsible for the data gaps, which in turn both makes the Danish voluntary return system less effective than other European countries, but also makes standardized comparisons and evaluations of the Danish exit system impossible, problems that the IOM hoped would be improved with the new Return Agency:

> *…the fact that we were able to arrange 200 returns [to Iran], because they were all voluntary – they came to us to receive assistance – is not really registered anywhere. Because they were not*

*rejected…The police has had a mandate for some things, then you've had return programs with IOM…You have Dublin transfers… so you have all these different categories of persons, but there hasn't really been a consolidated attempt – to consolidate the figures. And make anybody responsible for keeping the statistics. But one could hope that maybe the Return Agency is going to have the power to do the statistics and show, who is it that returns, who returns from Denmark, where do they go to, what reintegration support do they get, how many of them do get support?* (IOM Denmark Interview)

### 5.4.3. Voluntary and forced returns

Up until 2020, the peculiarity of the Danish legal and institutional set-up meant that unlike some other EU Member States, the IOM return and reintegration programs were for asylum seekers, but not for irregular migrants, including visa overstayers, or people who have become homeless. An officer from IOM Denmark explained the organization´s underlying rationale for having participated in the Danish set-up with return and reintegration programs.

*This is not just about removing people, as you would do in forced return. In forced return your focus is just on, get people out of the country. But for voluntary return, that point of view – you recognize that people have left for a reason. You may see it, from the point of view of the authorities as not very well founded. But still, they have left […] It's not an error to leave your country – of course you can always migrate regularly. And that is what we would recommend. And if they leave their country regularly, or maybe they leave it for the wrong reasons – maybe somebody has given them lies, because they don't have a way of earning money, they can't support their family where they are. It doesn't really help that you just return them to where they came from, cos then you're back at zero. But if you assist them, then you actually have a way to address this.* (IOM Denmark interview)

As for the sustainability of the IOM voluntary returns, the organization works with internal thresholds, which when crossed, can pause return operations.

*…ultimately it's the person's own decision. That being said, IOM also has internal regulations on where we can arrange returns, or not. There might be regions where for a longer or shorter period of time, we freeze returns because we consider that we might not be able to facilitate a safe return. But that's not really a standpoint in relation to the asylum cases as you would maybe see in Denmark, but rather an operational issue, if we cannot guarantee that we can facilitate it properly, we might stop operations for a longer or shorter period of time.* (IOM Denmark interview).

This operational issue connects to the experience of a spokesperson from the Trampoline House, who discussed difficulties with accessing IOM assistance to repatriations of asylum seekers rejected in the Danish system:

*I've had some contact with the IOM in Copenhagen. When people have their case rejected, they can choose whether they want the Danish national police to take care of the repatriation or whether they want to hand that over to the IOM. So, some people choose for the IOM to handle it. But my experience is that if you go to the website of the IOM it says that they help people to repatriate and that they have agents on the ground who can welcome you at the airport and help you get back to your region or hometown, and help you resettle financially somehow. But whenever I've contacted them on behalf of a TH user, I've always gotten the answer that "Oh no, in this particular country we can´t offer repatriation outside of the capital." So, in my experience, I*

*don't think the IOM is as present around the world as they could be.* (Trampoline House interview)

A police officer offered his general reflections on the balance between forced returns to insecure and unsustainable situations as a last resort, and then the preferred option of voluntary returns coupled with reintegration support and perspectives for the future:

> *I think it's… we also use the word – I don't know if it's the right word? Sustainable. We want them to go home and we want them to be able to make a living in their home country. Because we know that if we just kick them out and do nothing else, they'll just return and we'll have the same problem six months later. So for Denmark and for us it's very important that we do it as sustainable as possible. That's why I know the Danish Foreign Minister and others are in cooperation with NGO's around the world, to try to make some kind of, they'll get some help when they return. Not necessarily in money, but in favours […] Overall I think it's very important that we try the best we can, that it's the last resort to use forced return. I know in fact, it's very, something they give a lot of thoughts in their home country too – can they make a living here, are they secure? Can their family be here, can they live with, sustain, survive here? In Kabul, if you're just put on the streets with nothing, not contacts, no anything, you're very likely to get in the hands of the wrong people and then maybe be a safety risk for the government.* (Danish police interview 1)

Yet, several actors acknowledge that political and institutional categorizations make it difficult to distinguish clearly between voluntary and forced returns. Thus, commenting on the police categories "ledsaget" (accompanied) and "rejst selv" (roughly, returned by own accord), an IOM officer reflected:

> *…'rejst selv', that's the [category that the police has] at least unofficially confirmed as being the voluntary group, which is fine insofar as IOM returns are included in this group. But it is also a bit of a paradox that you would have a group definition but you couldn't actually be sure where these people are. You have a category of people that nobody but IOM might have been involved in, you wouldn't even have heard of unless you got a phone call from them saying, hi I'm back home! So it's a bit of a strange category […] They have this category called 'ledsaget'. But even for that category, it says in the definition, that while most are genuine forced returns where the police officer travels with them, it doesn't necessarily have to be that way. Because it could also be cases where the person has asked to be accompanied. So you have some very blurry categories, which makes it very difficult to speak about forced and voluntary returns.* (IOM Denmark interview)

Similarly, a police officer also acknowledged that the category of "voluntary return" is a politically convenient category glossing over disagreements about when people really leave of their own accord, and when they are compelled to do so. For instance, on so-called voluntary flights from Denmark to Turkey and onwards, the Danish police actually does escort returnees on the first leg of the journey. This leaves ample room for contestation of the category of voluntary returns:

> *…in our perspective, if they go on the aeroplane freely, they are voluntary. But many other perspectives say, they really don't want to go, and if [the only other alternative] is forced return are they actually voluntary then? But that's the way the police look at it, but you can find a lot of other organisations that say […] they're unvoluntary return, it's not forced return because we're not using force. They are leaving by themselves, but is it voluntary? That's the question. Some*

*organisations would say no they're not, but in our perspective they are*. (Danish police interview 1)

The officer described that when it comes to Dublin returns from Denmark an across Europe, most of them are voluntary returns - in the sense that when given a choice between that on the use of force during deportation, they choose the former:

> *…almost all of them [are voluntary]. Yes some of them don't want to go back to for example, Italy, because they think the service is terrible down there, compared to Denmark! But given the choice to be forced returned or voluntary returned, they choose voluntary. It's a small part, it's actually rare that we use forced return on Dublin returns*. (Danish police interview 1)

Reflecting on the usefulness and coherence of data and categorization practices in the Danish exit system, the spokesperson from Refugees Welcome said:

> *I think the categories are very very unclear and it makes it hard to understand what is going on, to make complaints, or to make recommendations, since you don't really know what's going on. I was just looking into the Danish and EU way of categorizing, and it is not the same, and that represents a problem when Denmark sends its data to the EU […] To do anything about a system, you have to know what is actually happening, how things are right now. And with these figures, we don't know how many people disappear from systems, how many move between system, and we don't know what happens after rejected asylum cases because only a small percentage ends up with positive decision or deportation. So, we have a large group of people that we don't really know anything about, and this seems to be the case across all of Europe. […] The problem with the unclear definitions of Danish categories is that we don't know how much force is being used, how many are really voluntary, under pressure or with force, really against people´s will. To start any kind of discussions about what works, we have to know these definitions. (Refugees Welcome interview 2).*

On the spokesperson´s view, the preceding years may have given rise to more collection of data, but this should not be confused with increased levels of transparency:

> *In many ways, there has been less information about things during the last 5-10 years, it has been harder to obtain information about f.i. humanitarian residence permits, parts of which used to be publicly shared in short anonymized versions. But now they are not. So despite the easier access to electronic data, it is quite another thing for the authorities to want to give access to all data to the public* (Refugees Welcome interview 2).

Reflecting onwards about the Frederiksen-government´s legislative proposal aimed at extra-territorialize all Danish asylum processing to camps in non-European country, the RW spokesperson said:

> *It seems that Denmark would contract another country (African) which would then register everything, and then they are in charge of the data. And if, say, Burkina Faso would do that, then it would probably be less amounts of data, and also less easy to control and compare. Because Denmark has a very high level of data registration! So, outsourcing it could make the data less trustworthy.* (Refugees Welcome interview)

### 5.4.3.1 Motivational enhancement-measures

The Director of the Danish Refugee Council´s asylum department explained that in the organization´s view, there are massive amounts of empirical data speaking against the impact claimed by the government as legitimizing the range of motivational measures which have been designed to induce people to return:

> *What we have commented on, was the various duties that are imposed on rejected asylum seekers. You have this duty to report, the duty to stay at a specific place and the duty to inform the operator if you're not staying there. And all the consequences of not fulfilling those duties. Those kinds of things we obviously comment on because they're very intrusive to the rights of the asylum seekers.* (Danish Refugee Council interview 3)

> *One [form of immigration detention] is called 'motivational' I think you would translate it into? Motivational detention. And it's basically on the assumption that by detaining people, they will cooperate, so they can return to the country [...] where the authorities would not otherwise allow them into the country. Now this is an old saga, but we and the police used to say very openly – they don't say it anymore – but it's our very clear experience that this form of detention does not work. That people would rather stay 7-8 months in detention than return to Iran or Iraq, for example*. (Danish Refugee Council Interview 1)

Another Danish Refugee Council officer explained further, invoking the incarceration of different groups of rejected asylum seekers in the departure centre Kærshovedgård:

> *…we've seen examples from Kærshovedgård, I don't know if it was last year or the year before, where all of a sudden the police came and detained I think it was nine Iranians to try to motivate them to cooperate. And they were sitting in Ellebæk for a number of months and then they were all sent back to Kærshovedgård. So we know that it doesn't motivate them [...] Right now that's particularly Afghans and Somali nationalities. Iraqis are also detained but they cannot be deported very easily, if at all, and they will sit for six to eight months and then be released.* (Danish Refugee Council Interview 2)

A Red Cross deputy working in the departure centres reflected on the systematized use of motivational measures through the invention of sites like Sjælsmark, and the humanitarian dilemma of operating a centre designed to want people to leave:

> *I wouldn't say NGO but [that we are rather] an IO because we're working together with the state and government so we're not totally non-governmental [...] we are on a contract with the government, to run these camps. And in these contracts, we cannot work against the overall theme here, in the departure centres, where… you cannot stay here. So, we cannot work against that. So then you can ask, but aren't you working against that when you're creating nice activities, social frameworks, so then it will be even harder for families to travel outside cos now they're feeling alive and as a whole human again. Cos you made sure that these social bonds could be connected again. And these bonds would be ruined if they left, right? But no! My answer to that would be no, it's not against the overall theme because being able to take the overall huge decision for your future, you need to stand up each day, you need to have some sort of… yeah, I think you get my point here, you need to be a whole person to take these very important decisions for your family.* (Danish Red Cross interview).

> *So, is the system working? Well, obviously not. Because when the decision was made to build these sort of departure centres, [...] the politicians there thought it would take only two to three*

*weeks for the family to take the decision to go home. After two to three weeks of having a stay there in a departure centre… they would be forced to looking into ok this is not a future so they would be forced to leave. So, the reality was that from the beginning of summer '17, the first family to move in there is still living there! But now just moving to Avnstrup. So, I would lie and be not honest if I was to say that the overall political decision to build these departure centres, is working […] Because gathering all the people with the state of mind I've just talked about, this life status, collecting them all and putting them together, that's sort of give this synergy effect right? That we're all in a bad place at the moment.* (Danish Red Cross interview)

A spokesperson from the organization Refugees Welcome, also expressed the view that the consequences of motivational measures involving prison facilities, such as Ellebæk or Nykøbing, are counterproductive:

*If it was like, now we have the papers ready and we're leaving in three days, so now we go and get this guy in this camp and keep him until we leave to make sure that he's coming with us on the plane – everybody would accept that. But they* never *do that, it's not how they work. I mean, 90% of all detentions in Ellebæk and Nykøbing Falster Arrest are without any kind of neutral or obvious reason. It's just to put pressure on people to change their mind about collaborating or it's this weird idea they have that if they don't trust their identification, if they don't think they're telling the truth about who they are, people will be able to think more clearly after a few months in Ellebæk Prison [laughs] But I mean, staying in a hell place like Ellebæk is not doing any good to anybody. It's not helping on people's memory to admit who they are or where they come from and it's not persuading people to collaborate about returning voluntarily. And [the authorities] should be able to recognise that after all these years of doing the same thing over and over again. They should have noticed by now that it's not working. The only thing they get out of it is sick people, traumatised people, people who give up their last hope of maybe doing something about their own situation.* (Refugees Welcome interview)

A spokesperson from the Trampoline House went further and explained some of the cascading side-effects that the rigid motivational enhancement regime has for the daily lives of families with children in the departure centres:

*It´s getting very detailed, but I think it´s an interesting discussion: One of the rights that are taken away from you when you move to the departure centres, is the cash allowance and the possibility to cook your own meals. So you are served cafeteria food three times a day, right? And people are complaining about this and saying that it's impossible to uphold family life when you can't cook your own meals and gather around a dining table. The food is horrible. You're deprived of any self-determination and so forth. A result of this policy is that you are not allowed to have microwaves or refrigerators in your own room because you don't need them. The thinking behind the motivational measures is that you'll get all you need, all your nutrition from the cafeteria. But there are families with infants and very small children, who need food, small snacks, in between cafeteria meals and that's not possible. It's a very rigid system. And some families are on medication that needs to be kept cool. Some families can apply for permission from the nurse in Sjælsmark to have a refrigerator in the room for milk for small kids or for their medication – but the nurse can also take that privilege away from you if you stop taking that particular medication, right? And then there are numerous accounts of the Prison and Probation Service just entering people's rooms and removing refrigerators from one day to another! So, my question to the Integration Minister is: "If the Prison and Probation Service doesn't want to provide refrigerators for the families, are they allowed to obtain refrigerators on their own? I mean, if I can collect 300*

*donated refrigerators, can we move them into people's rooms in Sjælsmark?* (Trampoline House interview).

The spokesperson from Refugees Welcome also described the paradoxical consequences of the regime, based on her conversations with the staff from Sjælsmark and Kærshovedgård:

> *…the deportation camps are even worse because they are run by professional staff members from the Prison and Probation Service. But they are […] completely unqualified for that job even if they are professionals. And it was very clearly put forward in some interviews with staff members in Kærshovedgård back [who] said, look we have been trained to re-socialise people, to get people back into society, to make life as normal and productive for people as possible, to […] stay healthy and prepare themselves to go back out into the normal life. That's our job, that's what we're doing here. And now, we're told we have to do the exact opposite! […] to take away the kitchens and sports facilities and everything, and the purpose of this camp is to make life as boring and intolerable as possible, to make people leave. So what is our job now? […] I mean, the people who live in Kærshovedgård and Sjælsmark, they hate the staff. And that's horrible, because normally I think people working in the Danish prisons are OK people. They're not bad, violent or aggressive people, I think they're good at conflict handling […] but the asylum seekers, they hate the staff because they're treating them like criminals and they're not criminals.* (Refugees Welcome interview).

## 5.4.3.2 "Motivational Interviewing"

Also located on the boundary between forced and voluntary returns is the practice of "Motivational Interviewing". This is a practice originally developed to fight drug abuse, but which since then has found its way into the asylum systems of countries like Sweden and also Denmark. Danish authorities have accordingly been promoting it for some years, including the newly founded Hjemrejsestyrelsen, and before that the Immigration Service. At a general level, an officer from IOM Denmark reflected upon the difference between providing information, and compelling people to follow a government priority of increasing returns:

> *[Information] has always been an important point for us, like I said before – we do not do motivational interviews because we do not see it as our function to motivate people to return. We see it as our function to provide information on what is accessible, what can you get, how can we assist, these kinds of things. And then it's up to the beneficiaries to decide themselves on whether to return or not.* (IOM Denmark Interview).

While motivational interviewing denotes a specific practice, there are a number of related interview techniques and tenders revolving around return counselling. As a deputy from the Danish Red Cross explained:

> *Because the Danish Refugee Council up until now – you probably read that they [just lost the contract] Yes, so they have been the actor doing the conversation with the parents, what would it take for you to go back home. We have not been doing that task since 2018, we lost that task. So previously we were the ones doing that conversation at these centres, counselling it's called by the government, right? Home travel counselling. But we're asking the questions sometimes in the vicinity of the direct questions, because there's others having that task.* (Danish Red Cross interview)

## 5.4.4. Psychosocial health in the Danish exit system

Several actors commented on the health conditions in the Danish exit system. According to Danish Refugee Council officers, there can arise cases where local DRC offices say no to assisting with a return and reintegration. In the following case, the local office finally did assist the woman, but only after much delay and confusing primarily caused by the Danish authorities´ decision to deport her to Somalia despite a serious medical condition:

> We had a case last year with an elderly woman to Somalia who also had some health issues, and our office… I don't know the case details but just an overview, but our office said no they could not support her because that would be crossing the red lines that we have for who can actually have a safe and dignified reintegration. She was sent out anyways, she had family in Denmark who was helping and supporting her. And she needed actually, there is the possibility for extended medical assistance for people who have those needs – but only if you are part of a program…
> (Danish Refugee Council interview 4).

Such cases, a Refugee Council officer explained, quickly amount to situations where "if we don´t help them, they will be returned anyway" (Danish Refugee Council interview 3). Her colleague continued:

> It's difficult, and it's something that we're always discussing. How to do and what to do. We will sometimes pressure our colleagues if it's the DRC at the other end, to assist the people anyway, cos we know they are going back and we find they will be more vulnerable without assistance. It's one thing if they cannot be returned and really don't want to be returned. But it's something we are continuously discussing. But I also understand it from the other side. In the receiving end, if it's a person that our colleagues on the ground would assess that that person would have many problems on return, be it health problems, no network or even persecution of some sort in the country, I understand that they have to say no, this is not something we can be part of. That can create many problems for their donors if they are seen as helping somebody who cannot be returned. So, we do have discussions quite often about that. (Danish Refugee Council interview 4)

The volunteer psychologist explained that there have been several cases in the Danish exit system, where mothers to small children are married to men who have residence permits in Denmark, while they themselves do not. She explains of a supervision she did with such a family in the spring of 2020:

> And I know in Kærshovedgård, there are maybe two other mothers. And one of them has her child in [location], so she uses most of her time in the weekend on travelling. And another in Kærshovedgård, she is lucky that her child is not that far away. So, the family picks her up so she can breastfeed the child for some time. And one day the child had to go into the hospital, and she wanted to go with the child of course. But then she did not go into Kærshovedgård in time, and then she has been in prison several times because of that. (Volunteer psychologist, GfA interview).

### 5.4.4.1 Health and pre-removal detention

A volunteer psychologist with decades of experience working in Danish asylum centres, acknowledges the Danish Refugee Council´s (now stopped) contract for return counselling was sufficiently attentive to issues of health and psychological well-being. However, she described the protracted waiting and control regime of the Danish asylum system as "a more discrete way

to traumatize people, to take away their last hope." She explained some of the biggest mental health challenges of the system:

> *It was at a systemic level. Because the families are – or all asylum seekers, are isolated from society. I think that was the biggest problem. They were isolated from the society for years, and often moved to another asylum centre, where they lost the connections they had already. And people who are refugees, have lost everything before they came to Denmark, and meet lots of problems. And when you move them very often – now they are moved maybe every eight months across the country – every time they lose the relationship they build up. And then the children – finally, they don't want to build new relationships, because they know they will lose them […] they build up small connections inside the asylum centre, small relationships. And they lose everything when they move, and they have to start – they are exhausted when they have to start again.*
> (Volunteer psychologist, GfA interview)

The psychologist noted that after new legislation in 2015, a tendency in the Danish asylum system to try and harmonize the conditions of children inside and outside the system came to an abrupt halt. Thereafter, children whose families had received a final rejection were transferred to the new departure centres. Speaking about the scandals surrounding child cases from Sjælsmark (the interview was before the Avnstrup transfer), she explained how, instead of reacting to over 50 reports of child maltreatment in the camp, several governments have pursued legislation to remove children from asylum seeking families in the exit system, and place the children in foster care:

> *You know about Sjælsmark, yes? The children there are not allowed to stay in Demark. And they have been exposed – they´re not covered by the child laws in Denmark. Now, Red Cross can refer them to Hørsholm Kommune, and in 2018, they tried more than 50 times to refer children, and there were maybe 200 children. So obviously something was wrong. And Hørsholm them they were not able to cover this, and they would have to have accept from the Immigration Service […] And now, they will just jump over all those steps […] and say, now we will be able to take children away from their families. And the question was only brought up because Ombundsmanden said that there is some missing link here, you are working without a law about it. Now they´re trying to build it to put out this suggestion, where nobody can see why it´s necessary.* (Volunteer psychologist, GfA interview).

According to the spokesperson from Refugees Welcome, the psychosocial implications of a detention and incarceration regime designed to motivate voluntary return actually exacerbated psychosocial trauma:

> *People who stayed here five years, or ten years, they will never ever sign a contract about going home voluntarily. It's out of their mind, it's beyond their ability. They are so destroyed in their mental state somehow, that they're not even able to face it. People who have been living underground are actually easier to persuade to go back voluntarily, because they've, even if they've been living a very hard life, living on the streets and sleeping on a new couch every day, or surviving outside and not having enough food always, all these things – they still were in charge of their own life. So they're not so mentally broken down as the ones who have stayed a long time in Ellebæk or Kærshovedgård. So you can forget about them, they will never go back. So it's a crazy policy, in my view.* (Refugees Welcome interview)

From the Trampoline House, the spokesperson described a situation where:

*…within the Danish asylum system and deportation system there are doctors and nurses assigned to what is called the health clinics. But I hear really bad things about the health clinics to be honest. Not the individuals working there necessarily, but the waiting that people have to endure as it can take weeks to get beyond the nurse and actually meet the doctor. There's a joke among camp residents that whenever you consult the health clinic and whatever your medical problem is, you're always told to go back to your room, drink a glass of water and take an Advil, you know, have a Panodil. That seems to be the universal cure to any illness or disease in the camps.* (Trampoline House interview)

*I know a family that the police tried to forcibly deport. In order to prevent her kids from being sent back home to the country she feared so much, the mother tried to commit suicide by taking an overdose of pills and she was later admitted to a hospital with very caring personnel. But that was after the fact. In fact, the police officers who escorted the family to the airport after the mum had taken the pills and started to lose consciousness, didn't believe her and ignored her, said she was faking it and that they didn't think there was anything wrong with her until she passed out. I think it's very problematic that it's the medically untrained police personnel – responsible for carrying out the forced deportations most often using force and meeting resistance from the other deportation camp residents – who gets to decide if a deportee is sick or not. This policy has to be changed.* (Trampoline House interview).

A spokesperson from Refugees Welcome reflected on the plans to launch an extra-territorial exit system, where people would get no prospect of staying in Denmark, not even during the assessment of their asylum claims. The prediction expressed was that this would mean more pre-removal detention – but also that more people simply going underground in Denmark or elsewhere, instead of registering in the asylum system in the first place.

*Basically, you would have to incarcerate people straight after their arrival, otherwise they will disappear. That would be a natural consequence. Nobody would want to stay in the open camps. I think people will stop applying for asylum, and I think that is the purpose of the whole thing. If they know what the consequences are, they will not do it. Why would people apply for asylum if they know that the best possible option is to get deported to , say, Rwanda, and maybe get residence there? They call it a more humane asylum system, but it is the biggest hypocrisy I have ever heard of. It is the opposite. It is actually taking away peoples´ right to ask for asylum in practice. The purpose is to scare people away from asylum seeking to Denmark. And to make sure that people go directly to Sweden or Norway, because if they go through Denmark it is dangerous for them, because they can get incarcerated and deported. It will make people go underground. But the politicians don't care. Otherwise, they would have shut down the two deportation camps. Because that is the main result of these camps. Politicians are happy to see people disappear out of the system. It is not their problem unless they are registered inside the system* (Refugees Welcome interview 2)

### 5.4.4.2 Health during forced return operations

A Danish Refugee Council officer reflected on the role of doctors in detention or deportation practices, and whether it generates complicity for the systems of power that place people in such conditions to begin with:

*I know it's very controversial, I mean, the Danish Medical Association as far as I know, have had different opinions on this over the years. I'm not quite sure what their approach is at the moment, but I think that we would say that it's better to have a medical, medically trained person – doctor*

*or nurse – there, because the person will be deported in any case, you know. So, the medical person should be there to make sure things happen in an appropriate manner […] I think you have to be very clear what the involvement, what involvement we are talking about. Because if a person is detained in Ellebæk they could be there for several months. I would find it a bit strange if the doctors would not come and talk to them.* (Danish Refugee Council interview 1).

Medical professionals feature at several junctures in the Danish exit system: They are supervising in the detention facilities and the closed prisons, they make fit-to-fly statements, assess whether medication is available and within what price range, in the country to which people with health conditions are deported. However, the standards of practice surrounding junctures, such as fit-to-fly statements are sometimes not that transparent. Asked about which criteria the police use to decide whether or not to conduct fit-to-fly check, an officer from the Ombudsman replied:

*Well… we sometimes wonder ourselves. We're not quite sure. But of course, if people have health issues which are not just negligible but are of a more severe character, then you will often find that they do make sure to get some kind of medical investigation. But sometimes what they do is simply call the nurse in the place of detention and ask her if there's anything to say and about what sort of medicine should that person be given, how often it should be handed out, etc. And, but they don't get any deeper knowledge about that person's condition. And sometimes they do get a more thorough information. And I'm not, I'm not sure I can state in which cases they do one thing and in which cases they do another thing. It's one of the things which we focus on, is what is their line in these cases? Do they have a specific line they follow, because we're not sure of that.* (Folketingets Ombudsmand interview 1)

Asked about the use of sedatives during return operations, the Folketinget Ombundsman officers noted that it is against the law to make people unconscious in order to carry through a return operation. However, according to them, cases do occur where people are being calmed down in connection with operations, typically extension of existing prescriptions to the returnees:

*What usually happens is that they, police has been instructed by the nurse or doctor at the detention place on what kind of medicine this person should be given, and then they follow those instructions…*

*Usually the police would administer the medication. Sometimes the alien themselves would do it.* (Folketingets Ombudsmand interview 1 + 2)

The volunteer psychologist expressed the view that doctors could be allowed to participate in procedures within such systems, but only if the person wants the doctor along and gives express consent. "If his health situation is that bad that he is scared of his deportation, of the flight. If he is confident in you as a doctor, confident that you can continue his treatment, then you can participate." (Volunteer psychologist, GfA interview). On the risks with working in prison facilities such as Ellebæk, she said:

*…they are the doctors in prisons, that are brought before [people are deported]– Ellebæk as an example […] I think, they're not doing it properly, to my opinion. And both about the psychiatric situation and the somatic situation. [It´s] the risk of a doctor who is working alone in a different environment. With lawyers or with polices, policemen, they become adapted to the situation. And they become adapted to the ethics of the situation. I think they are in danger there. Doctors at Risk, we call them […] It's the situation which doctors had in countries where they participated*

*with ordinary forms of torture because doctors had to participate to see that they didn't die from it. To stop it when it was close to be too much. And I think those doctors working too close to this, they are doctors at risk in Denmark. And our association should be very very careful about supporting them in documenting what's happening*. (Volunteer psychologist, GfA interview).

She recounted an episode where she managed to see the journal from a hospital from which a person was deported, straight after having been hospitalized for two weeks:

*And in that journal, I can see the doctor in that hospital, and he was willing to participate in the deportation! It´s…I don´t understand that. And the doctor came to the patient and told them, the deportation will take place in this and this way and you will have your medication. And we bring, if you become too anxious, I have medication, sedatives, so I can give you an injection, so that you don't have to be that scared during the flight. And if you stop breathing, I have this tool used for people who are during operation, to do the breathing for them. I have this, so you cannot die during the deportation. So that means the doctor was prepared to give him sedatives. He was prepared that he would stop breathing*! (Volunteer psychologist, GfA interview).

Asked whether the stance of the Danish Doctor´s Association is sufficient when it comes to the issue of doctors collaborating with authorities on board deportation flights, she said:

*No, no. we have pushed them 20 times, 30 times… First, I tried myself, and then I had support from four or five colleagues. We have tried several times. They never did. They did in Norway and Sweden. IN Norway particularly, they told doctors, you are not allowed to participate on those flights. Simple. You're not allowed. And in Sweden they did the same. And then we managed to force the Danish medical association to do the same – you should not participate in this. And then we found out that the police used a small private group of doctors who had formed a private firm, they could contact this and find a doctor who was willing to participate*. (Volunteer psychologist, GfA interview).

### 5.4.5. Operational, political and private connections

One police officer commented on the blurred boundaries between operational and politically dictated issues; While the Danish police clearly prefers to portray their own position in the exit system as one only in charge of operationalizing policies, the officer still acknowledged that many times, the boundary between political and operational cannot be drawn clearly:

*As I wrote to you, we only work on the operational level. But the border between the operational level and the political level [laughs]… yeah, there is no border! Because everything is political when you are dealing with returnees and different countries around the world, then it's always based on politics.* (Danish police interview 2)

Often, the Danish and other European governments are involved in negotiations where the issue of return is linked to other policy agendas. These processes may involve processes of "tactical issue linkage," where return policy is linked to issues like trade, security and development policy. In such tactical processes, one party may use its political and economic power to ensure the transfer of its political priorities to the host country, thereby gaining remote control over its policies. Moreover, the party may also separate questions concerning policy from those concerning implementation and operation through parallel negotiation tracks. Police officers may thus be sent on the latter missions. Policy press releases, like the EU-Afghanistan Joint Way Forward-statement illustrates that European governments and the EU can threaten to cut

development and other forms of aid, unless countries accept to receive deportees (European External Action Service, 2.10.2016). A Danish police officer explained how Frontex "tried to be a little bit involved" in this arrangement; "But still it was on the operational level. But as we talked about before, the difference between the operational level and the political is very, very thin. I think they were a little bit politically involved in this arrangement." (Danish police interview 2).

In extension of this point, a civil servant from an Afghan ministry explained to one of the authors in 2018 how the Danish and Norwegian governments attempted to deport unaccompanied minors to Kabul (see also Section 3.5.6) by bypassing criticism from the Afghan Ministry of Refugees and Repatriation (MoRR), UNHCR and Save the Children, by instead coordinating with the President´s Office, and linking the discussion to a series of other policy areas as well, such as collaboration on anti-terrorism and anti-smuggling efforts. This followed earlier attempts which involved threats to withdraw development aid from the protesting MoRR, and allocate it to other ministries, or to International Organizations (IOs) instead (Lemberg-Pedersen, 2015b, pp. 30-31).

For the Danish police officers, trying to preserve their operations as almost policy-free zones, the result is an impression that it is often other countries´ authorities often "want to talk about EU policy". Thus, an officer remembered how, some years ago, this blurredness had made very difficult a police trip to Bangladesh in order to organize joint Frontex returns:

> …we tried to send a group to Bangladesh to – just to get some contacts there and talk about how we would work in Frontex together, a lot of countries in Frontex together. And at the time when they arrived in Bangladesh, this working group, they only had a mandate to talk about the operational level, but of course the Bangladesh authorities, they wanted to talk about EU policy and so on. Because now they were facing ten persons from ten EU countries! And therefore, it is difficult to work in a very political area and you have to stay on the operational level. (Danish police interview 2).

At the same time, several police officers were also very clear that many aspects of their work on returns cannot be formalized as such, because it depends on close interpersonal relations. For instance, the Danish Fogh-government signed a readmission agreement with Iraq concerning rejected asylum seekers.  In 2011, however, the agreement was de facto suspended by another Iraqi government, who put down as a condition for accepting forced returns, that people were in the possession of Iraqi passports or laissez-passer issued by Iraqi representations, and that travel documents should only be issued if people leave for Iraq voluntarily (Ministry of Immigration and Integration, 4.12.2017). A police officer explained that for such countries, where Denmark does not have a readmission agreement, all relies on personal relations:

> …a lot of my work has been with foreign governments, representatives, for example from [a country in the Middle East]. I had a very good relation with some of the generals in [the capital] and made it possible for us to start returning criminals back [there]. Which just five or six years ago has seemed impossible to do, but now it´s actually possible. And that´s only because I managed to make good relations there, I been there quite a lot of times – I have been there a lot. And it requires that you use time and effort to build up relations. I try to help [the new Danish Return Agency] build up these relations with [countries], wherever we have good relations […] I can text on WhatsApp and get a permission to enter [a country in the Middle East] in two weeks. And that´s mainly because we have good relations. (Danish police interview 1)

The cultivation of personal relationships is then seen as a way to navigate around politically stalemates at an intergovernmental level:

> *Some parts it's very political – actually, it's very political everywhere! But some parts of the world, the police who's handling, the passport police, who has the responsibility to receive returnees – and if it's the case, I have a very good chance to strike a deal with them, based on good relations. Not paying them a lot of money! Cos we never do that, it's very important to say that – but paying them a lot of respect. For example, when they have their Eid festivities, I sent him a letter of congratulations to him and his family, and he was very overwhelmed with that. I think it's the way to do it*. (Danish police interview 1).

### 5.4.6. Danish involvement with Frontex

Since 2018, the Danish Ombudsman has been part of a couple of Frontex Agency´s return operations per year, since the institution responded for calls from the so-called Pool of Monitors. As explained during the interview, the process is one where Frontex publishes a list of planned return operations, whereafter organizations and institutions, including the Danish Ombudsman, can write the Agency and express an interest in participating. But it is then Frontex who "will pick out who they want". If the Ombudsman gets picked by Frontex, the staffer in charge is then responsible for contacting the escort leader, get more specific details including the number of returnees. Once the operation is over, a report will be sent to Frontex´s Fundamental Rights Officer. However, according to the Ombudsman officers, there are distinct differences between Danish and Frontex return operations – and problems with the latter:

> *When we participate in a de- a forced return operation in Denmark, prior to the operation, we receive the entire case file from the police and as of that, we can assess whether or not there are vulnerable groups or some other things that we should be focusing on during the return operation (…) But, when we do the Frontex operation, we usually only get a list of the aliens and perhaps a few remarks regarding illness or other medical issues (…) And, again another thing that differs in the Frontex operations, from the national operations, is that the national operation is usually only one alien – maybe a family in some cases, often being deported using commercial flights. But regarding Frontex, it's usually a larger number. I think Morten's operation to Russia – that was about 45 aliens. And you're only one monitor, so it's very hard to be, to be monitoring everything that could be relevant, because you can only be at one place and you don't have all the necessary information*. (Folketingets Ombudsmand interview 2).

Also, when it came to the original Frontex drafting of the Ombudsman institution into the Pool of Monitors, the former institution had some reservations:

> *We had a bit of a problem in the beginning, in 2017, because we thought that the… what would you call it? The terms of participation were not very clear. So the Ombudsman sent a letter to the Frontex and asked for clarification on various points and before we received that clarification, we didn't actually participate in any of the operations. And we did receive a clarification, and I think the impression was that they did clarify in some ways in some areas, but in other areas the clarification was not as great as you could have hoped for.* (Folketingets Ombudsman interview 1)

Frontex features heavily in the EU discourses and policy-making on returns, and the Border and Coast Guard has received unprecedented amounts of economic support, lately also coupled with more political authority. However, from the perspective of the Danish police, Frontex is also a

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problematic actor. One police officer described a domino effect in EU exit policies, where the European Commission decides on a policy of increased returns, and therefore puts pressure on Frontex to meet targets for upscaled operations. Frontex, in turn, reacts by forwarding that pressure onto individual countries, which, however, find themselves in very different situations, both when it comes to number of returnees, existing agreements and national and geopolitical contexts. As the officer explained:

> *[Frontex is] struggling hard because the Commission says what they have to do and also sets some goals for them, how much they should provide, how many effective returns they should have done every year, so of course they are struggling hard to achieve this."* According to the officer, Frontex then tries to *"put the same hat on every country. [But] the return situation is going to be different in Denmark and in some other countries. And the scale we are working on...Denmark is a very small, tiny little country compared with the big players – Germany for example, or some of the other countries. [Also] we have very small numbers of returns, and most of the returns from Denmark are on a voluntary basis. And until this year here, the voluntary returns was [sic] not included in some of the options that Frontex provided. That's something quite new, that they're dealing with voluntary readmission.* (Danish police interview 2)

> *At least they try! [to collaborate] [laughs] They really want to have a lot of cooperation between the EU countries, but they also have a lot of problems I think. Because we are not having the same kind of problems. There's a big difference between the problems we are facing in Denmark and the problems they are facing in Italy, Greece, Spain, the countries in the southern part of Europe. And therefore, I think it's difficult for them to make arrangements and to provide opportunities for all of us.* (Danish police interview 2).

The politically directed focus on a quickly expanding toolbox for upscaling return operations, flowing from the Commission to Frontex and onwards to Member States can have an adverse effect on some of the smaller EU countries, such as Denmark:

> *Because there are so many opportunities in Frontex, then it's difficult for a small country like Denmark, to have resources enough to go into everything they are providing in Frontex. Because our organisation is very small. We have, or had, maybe 100 persons total that were involved in return. And then if 10 or 12 of them should be involved in the administration of all the opportunities coming from Frontex – to give answers, to fill in different forms and so on – then you spend a lot of time just answering Frontex.* (Danish police interview 2)

Repeatedly in the interviews with police officers, the Danish perspective was formulated as "if it made sense, we would use it", but that most often, the proliferating Frontex toolbox on exit does not make sense in a Danish context. An example given concerned the posting of Return Specialists on Danish territory:

> *We can have Return Specialists come to Denmark, but that would take a lot of work, just to have them here. Speaking English, making sure he understands. We'd have to have someone sitting beside him and then there's the work about his salary, we have, there's a lot of work back and forth. And I can do that, normally – I can book tickets from Frontex. It's very easy! So, why should I have a return specialist sitting here, who doesn't understand the Danish papers that's in front of him. There's some security paper where we talk about this guy, about his illness, a lot of different things, but it's in Danish.* (Danish police interview 1)

Another case in point is the Joint Return Operations. Whilst a highly profiled modus operandi from the Frontex Agency itself, several Member States, including Denmark, made only very little use of it. Thus, Denmark only returned about 30 persons through JROs over the last 4 years. A police officer explained that Frontex wants Denmark to do Joint Returns, but;

> *…it is just not possible for us to meet them […] But my problem is that in regards to [capital of country x], the Generals say that you can take a chartered air flight but you can only come with eight or ten persons. If I want to use Frontex, they are saying, yeah but, we will pay it but then you have to ask if Sweden or Finland or Norwegians want to be part of it too. And the Norwegians will say, oh we have five and that's not really the deal with [capital of country x] if we can only come with eight. So they're not leaving very much room for us to go with Frontex […] seeing this strictly from a Danish point of view, it´s just much more practical using our bilateral agreement and fly out there.* (Danish police interview 1)

According to the police officer, when the political drive to upscale exit s from the EU takes the form of a pressure to enter into joint operations involving ever-more Member States, it has both practical and economic costs:

> *…if I have two who´s going to Nigeria, I can charter a flight, [Frontex] would pay it, 400,000 kroner to get to Austria to Vienna, to hook up on a Frontex flight from Vienna. It's all paid! But these two guys, I can send them on a flight for 20,000 kroner […] In a Danish perspective, it is a waste of money. Even though we are paid, it is a lot of money, a lot of effort. We also have to use a lot of resources from here if we want to go to a Frontex flight somewhere in Europe to hook up there, you have to use a lot of these guys to do that. It's expensive to do that. Again, Frontex is paying, but not their salary, and you have to go to, when they arrive afterwards, they have to be home for a long time because they have made too many work hours…So seeing this strictly from my perspective, Frontex is just not desirable.* (Danish police interview 1)

A police officer commented on the explosive growth of Frontex, but stated that this had happened without the development of a corresponding legal frameworks, and cited this as a reason for scepticism about Frontex´s ability to deliver on the many political promises about border control and returns made by the Commission in a sustainable way:

> *Frontex is also just an entity working on the operational level, They don't have any political power to do anything Frontex are really trying to – or the mandate they have – is just growing and growing. And they are dealing with all areas now in returns and borders. But maybe they have given the muscles, but they don't have the legislation to […] I don't know how I should put it. I don't think the EU legislation and the arrangements between the EU and 3rd countries, it's not in place. It's not possible to deal with the situation as it is now, they just waste a lot of resources at the moment, EU wants Frontex to do a lot of things now, but they can't.* (Danish police interview 2).

### 5.4.7. Information, gaps and the Return Agency

In general, several actors within the Danish exit system comment on the lack of transparency and complications with understanding the various categorizations and statistics produced by the authorities. For instance, an IOM officer explained that:

> *Also, because if you look at the police figures in the past, the police has mostly occupied itself with rejected asylum seekers, which means they have mostly calculated those, and not necessarily*

*those that withdrew their asylum application [...] And as you know, there's been a very large discussion – continues to be a discussion – on returns to the Islamic Republic of Iran. But the fact that we were able to arrange 200 returns [in 2016], because they were all voluntary – they came to us to receive assistance – is not really registered anywhere. Because they were not rejected.* (IOM Denmark interview).

The new Return Agency has cast the roles and functionalities of the Danish exit system into uncertain territory, both due to institutional transfers, reconfigurations, but also because the process has been delayed and contemporaneous with the Covid-19 crisis, which has had an impact on the exit systems of all EU Member States. However, on top of this, several actors expressed confusion or lack of knowledge about exactly what it is that the new Agency will do. This spills over into lacking access to information on the part of the people in the Danish exit system. Besides this, and due to government decisions, in Denmark, irregular migrants have not had access to the IOM´s voluntary return programs. One officer from IOM Denmark expressed it like this:

*…if the public doesn't know what is happening, doesn't know where people are going to, then how will the people who are asked to return be able to access information. If they don't get this information, then how can they decide? How can they know what applies to them?* (IOM Denmark interview).

To this he added some reflections about the information gap surrounding the new Return Agency:

*Well of course I am not completely unbiased in this … [laughs]. But I can't comment on the work of the return agency because effectively I don't know much about it. I'm sure you've seen what is available on webpages about the agency, and you don't really find any information on the number of the returns they carry out, who do they give reintegration – that kind of things, so effectively I don't know [...] I would assume that information will be available later, it´s just that I don´t see it now, so it´s hard to comment on what it is they do.* (IOM Denmark Interview)

A Red Cross officer also experienced lacking transparency about the role, function and direction of the new Agency, but also predicted that the Red Cross would continue its government contract:

*We haven't heard anything about their task, their aim, their way of working. Nothing. But that's going to be interesting cos they're going to be out there at the centres. And we have had questions from the employees, to what extent do Red Cross acknowledge their work and do we still work at the centres if this goes in totally the wrong directions. Well, the overall answer to our employees is, we are in places that it's hard. So, it's hard to imagine that we won't be there in the future.* (Danish Red Cross interview)

Folketingets Ombudsman officers also professed lacking knowledge about the Return Agency and the new division of labour it will bring to the Danish exit system, but they did note the urgent need to determine this, not least to find out to which extent their institution is to monitor some of the Agency´s new functions:

*…also we don't know to what extent are we going to be monitoring [the Return Agency], because part of their work is also interesting to us. I mean, do they have enough medical information*

*before they finish their part of the work, for instance? So we might need some type of collaboration, but it hasn't been decided yet…*(Folketingets Ombudsmand interview 1)

Based on the announcements from the Ministry of Immigration and Integration, as well as the Prime Minister, the Red Cross officer viewed the lacking renewal of some of Danish Refugee Council´s exit contracts, as well as the replacement of the police, as a way to centralize and limit the number of different actors that asylum seekers will encounter, in order to compel more to leave Denmark:

> *The overall aim from the Return Agency – and that's just me, predicting something – will be, make people go. But how? That's going to be interesting to follow, and I don't have a clue. So, I have teachers now as employees – will they be fired? Because we don't want any adults being taught any more, unless they sign a contract saying they will leave in 3 months and for that you will get lessons, lectures and you will get activities and you will get money. But you need to sign here first. That could be one way it will go. But we don't know yet. And that's to be honest, I have no clue in which direction it will go. So, at the moment we're waiting, and we welcome them at the centres, because that's our task and our contract and it could develop in many directions. But the aim is clear, what they are there for. Danish Refugee's being fired and the Agency is also taking over the task from the police […] So they're sort of limiting the actors working with the asylum seekers in order to make even more go. So, let's see what happens if it works there. Because it's going to be hard, I've been – I know these families from Sjælsmark, I've been working with them for three years now. I have a hard time to see what should make them leave. I really do.* (Danish Red Cross interview)

As for the reasons behind the creation of the Return Agency, a police officer with decade-long experience conducting returns also commented in the centralization move identified by many of the actors observing the new Return Agency. He offered another reason, from his perspective as a police officer, namely that the Danish government was probably interested in releasing police officers for ordinary police work, instead of asylum politics:

> *…it´s easier to release some of the officers doing what, in the politicians´ mind at least, is not police work. I think they´re right. This is not police work, but it has been in the police (…) for many many years. And now they choose to just put it all together in the Return Agency. And actually, it makes sense, for some parts.* (Danish police interview 1).

The police officer explained that after the advent of the Return Agency, the police role in planning deportations has been downscaled from facilitating and planning returns, to "just get the job" from the Agency on the floor above at the HQ in Birkerød:

> *Yep, now we just get the job. The Return Agency is saying we need to go to Georgia, is this possible? And can you take him or her, the family, to Georgia? When we have the job, [the Return Agency] sends a piece of paper saying, please help us with this, you will go to the man in prison, typically he is in prison and you will talk with him and tell him that the case is now you have to go back to Georgia and now it's the police task to make sure that it happens. And then it's our job to make it as dignified and sustainable as possible, that's our main focus when we have this talk.* (Danish police interview 1).

Moreover, the police officer also identified several points of concern in the transition towards the Return Agency, namely the risk of loss of expertise:

*A lot of very very skilled people, who used to make these cases, used to handle these criminal foreigners, they are just sitting here now [sighs] It's actually a shame. And now we are trying to make it work for the Return Agency, they can ask for help and take a policeman that's used to work with these cases up – they're just upstairs – and the new men in the Return Agency can learn from the police in a period and not, possibly not be super-good at his job, but better. It takes years to be super-good and requires that you are able to make good relations with the foreign embassies in Denmark and abroad.* (Danish police interview 1).

Another police officer noted that a combination of the institutional transfer and the Covid-19 restrictions had meant that "it is almost impossible to get a plane for persons to Afghanistan or Bangladesh, so I think they haven´t started this area yet." Once it starts, then, the working arrangement for "påset" returns is supposed to be that the Danish police

*…are following that person from the prison to the airport. And at the airport, then the new agency, the Return Agency, they are taking over the responsibility. And they are responsible that the person has the travel ticket and also that the travel documents are clear and ready to go. The police are only there to secure that the persons are leaving. And of course if the person makes any resistance at the airport, they take over and they would going to be a forced return.*" (Danish police interview 2)

He also expressed additional nuances, besides the risk of losing expertise during the transition. These pertained to the difficulties experienced by the Danish police officers due to the transition of authority in the set-up with the new civil and politically appointed Return Agency staff:

*I think that for some of the police officers who are now working for the return agency, I think it's very difficult for them. Because they have a lot of knowledge of the job they are doing. It's now doing by someone else (…) now you are only doing transport, before that you were arrange every, all kinds of interviews and talks with the embassies and so on. Now, from having a very broad contact – you're having a contact with a lot of people – you are just a driver. So, I think it has affected them a lot.* (Danish police interview 2).

However, from the perspective of the spokesperson from the Trampoline House, the transfer of the responsibility for negotiating readmission agreements from the Danish police to the Hjemrejsestyrelsen could represent an improvement of practice:

*…if I have understood it correctly, it will no longer be the national police responsible for negotiating repatriation agreements but the new Danish Return Agency. Which I think is an improvement because the police officers, in my experience, are very aggressive towards the rejected asylum seekers and not trained to conduct these crucial diplomatic negotiations, don't have the qualifications to determine if a government is able to provide safety for a returnee or deportee. So I think it's an improvement that this responsibility has been taken away from the police and handed over to the Return Agency. I hope there will actually be some personnel in the agency who know a little about conflict zones and the political situation around the world.* (Trampoline House interview).

An IOM representative (whose organization had just lost a decade-long contract for return and reintegration) explained that at this early stage there is very little information about how the Return Agency actually works. One point of concern, however, is that the processing of asylum applications and of return decisions are now effectively put under the same Agency. As

applicants before have been unclear about the boundaries between case handling and returns, the IOM officer predicted that this could risk being exacerbated:

> We know in the past from the people we have worked with that some of them have maybe not been completely clear on who takes the decision their asylum cases for example, and who does their return. And I don't know if this might continue, if you effectively have an agency under the ministry of integration, you also have the Danish immigration service that does the asylum decision – if people will be able to make a distinction between the two. (IOM Denmark interview)

## 5.4.8. Alternatives to the current exit system

As for alternative ways to structure the Danish exist system, the volunteer psychologist suggested a much more thorough health and psychological screening as a fundamental starting point for the asylum system, including exit operations:

> Well, I think when we have received people who have left their countries because it was too dangerous to be there, we have to put much more energy in the (psychological) evaluation on their situation […] I think they're working much more sincere with this in Sweden and Norway, the way they are treating them if they have bad health condition, in a psychological situation – they are much better educated in those countries for working with refugees than we are in Denmark. Because as long as it has been inside the Red Cross situation, doctors and psychologists and social workers outside, have not received the same sort of training as in Norway and Sweden. (Volunteer psychologist, GfA interview)

The police officers interviewed did not offer any reflections in support of the claim that detention of migrants facilitates voluntary returns. In fact, in their experience, detention facilities, such as Ellebæk were mainly there "to make sure we have them in our custody to send out." Asked whether detention-for-voluntary departure is an effective measure, another police officer answered:

> No! [laughs] that is my personal view. I don't think it is – I haven't seen any statistics showing something else […] I think it doesn't work because people who have stayed here for years, I think that's not a threat for them to get six months imprisonment. They know from their lawyers that we cannot keep them for more than six months so they can see an end to the custody […] they have tightened the legislation a little bit in the last three or four years. But I don't see that it has changed the situation very much. The way we have handled the persons in our custody. And I don't think we have used the possibility of taking some of the persons in custody to motivate them to travel, it has been very few persons we have done that with for the last three of four years. (Danish police interview 2)

While neither police officer offered reflections on issues like health, mental or psychosocial aspects of the Danish exit system, this picture changed when it came to some of the other actors. Thus, the deputy from the Red Cross described his organization´s approach as having changed from a singular problem-solving approach to a more holistic and family-oriented one. As he put it: "do I say to my employees: `you need to force them to go out?´ This is not the overall aim. The overall aim is to make the parents take responsibility for their present." According to him, such more holistic approach is now to be implemented in the new Avnstrup departure centre. It is described as revolving around three elements:

> *[M]eaningful, safe and worthy daily basis both for adults and also children. So that is the overall aim, for the whole department. For Avnstrup, it would be also to work with family unit, meaning that you need to perceive the family as a whole and also working with the family as a whole. Previously we tending to work with the problem, as we saw it […] But we sort of acknowledge that we need to… we did that many years ago, but we've now written that into our framework in Avnstrup that when we see certain problems, you need to work with the family as a whole.*
> (Danish Red Cross interview)

From the perspective of the Danish Refugee Council, there are several available alternatives to the current exit regime:

> *…a lot of asylum seekers in Denmark, especially in Sjælsmark and Kærshovedgård, have been here for many years. And they get kind of stuck and broken down. So, for them to return back home broken down, lost their skills – haven't been able to use them, haven't been able to take care of their families as they would have, that doesn't work, that doesn't help […] So we have sent a letter to the minister with suggestions on how to make that better, and that involves having a normal life until the day you can return. And by normal, being able to cook for yourself, being able to go to work, and all those things that you would do. So, we think that those are better alternatives, that you are better able to take care of yourself and not so frightened maybe, when you have to go back. And then also to look at what people need in order to actually have a better chance of a more successful reintegration. 20,000 is not enough. So, we think there might be alternatives where you build up people and you assist them with what they actually need.* (Danish Refugee Council interview 4).

The spokeswoman from the Trampoline house also focused on providing people with dignity and resources, since otherwise their return or deportation would only be a short-term success, their life after deportation would be extremely difficult, and could just feed into re-migration. She added about the counter-productivity of detention and incarceration as motivational tools for voluntary returns:

> *In my experience, most of the people who manage to leave Denmark before they are forcibly deported don't go back to their country of origin, they go somewhere else. I know very few people who have voluntarily returned to the country of birth after being rejected. But of the ones I do know, only the very resourceful are doing somewhat okay. Most are struggling to even make ends meet and fear local conflicts and corruption. But they all appreciate experiencing freedom and not being afraid of being picked up by the Danish police anymore. So I would argue that any repatriation policy should focus on preparing returnees well; of giving give people the information, the tools, the financial means, and the education to resettle. Instead of locking up people for years and years in Kærshovedgård, Sjælsmark, or Avnstrup, give people a high school degree or vocational training and a bunch of money and say, you're rejected, but here you go. The longer people are kept in the destructive departure and deportation centres, the more they will be broken down mentally and physically and the less they are likely to leave.* (Trampoline House interview).

Despite being positive about the transfer of readmission negotiations from the police to the civilian Return Agency, the Trampoline House spokesperson still expressed both reservations and hope about the Agency´s approach-to-come:

> *I think it's a new attempt to deport rejected asylum seekers, to find different ways of doing it. And the big question is, are they going to be reproducing a story where there's constant tightening of*

*rights and living conditions or are they going to take a different, more holistic approach to it.* (Trampoline House interview).

As for more concrete hopes for an alternative and more sustainable exit policy in the future, under the auspices of the Return Agency, the Trampoline House spokesperson said:

*I hope the Return Agency will consult the many different NGO's, researchers and refugee/migrant activists out there. Consult them, really do the research. Because if you have a choice between deporting people by force and giving people the tools and the courage and the time to leave when they are ready, then the last scenario is by far what would suit a so-called social democracy with a welfare state like the Danish. Forcible deportation doesn't belong in social democracy. It would suit all the Scandinavian welfare countries to come up with a different model.* (Trampoline House interview)

*What Trampoline House has been arguing for many years is that the Danish asylum system is producing clients for the Danish welfare system. By the time you get asylum – if you are lucky enough to get it – you have endured so many years in pacification, isolation, victimisation, infantilization, and criminalisation that you feel so marginalized and broken down that you most likely will not able to uphold a job and sustain yourself. You basically produce clients to go on welfare with the current system. In TH, we would argue that a much better asylum system is to allow asylum seekers and rejected asylum seekers to live in normal housing, get an education or work, and to participate in society until they are granted asylum or are ready to leave. Right now, TH can only offer the last two: the opportunity to leave the camp in the daytime and visit TH, as we pay for your transport, to capacity build and become part of a community.* (Trampoline House interview)

One best practice model, suggested by the Refugees Welcome spokesperson, was the Jelling centre in Jutland, and its model of a small, well-kept centre, close to public transport, that integrates people in the local society, while focusing on skill development, and recruiting skilful staff. In her words:

*And what I don't understand is why all, the rest of Denmark doesn't copy Jelling because it's quite easy [laughs] It's not a secret what is working! It's not a miracle. Well, first of all the houses are quite nice. It doesn't seem like the houses should have been torn down 20 years ago and was made for something else. And it's very close to a train station, it's very close to a small town. It's using the kindergarten and the school of the local inhabitants, normal Danish people. So, the children are mixed with local people. And the staff have been there for a long time and have chosen this kind of work, and they love it. They don't take it as a kind of temporary job between things and they understand something about this kind of work. They're trying to make this place a good place. And the refugees, or asylum seekers, they feel at home in that place. They feel respected and part of a local community, they get to know local people and they feel like they have a life and they're part of something. It's actually quite easy! [laughs]* (Refugees Welcome interview)

Another concrete suggestion was voiced, namely temporary scholarships for newly arrived asylum seekers, linked with a return and readmission program:

*…What would it take for people to go back home? Maybe something like a Fulbright scholarship, you know? Denmark should offer rejected asylum seekers something similar to a three-year Fullbright scholarship in Denmark: You would get legal residence for three years, Denmark would pay for you to study and learn, and equipped with an education or an occupation, something that*

*can actually provide your livelihood 'back home' it would probably seem easier to return to your country of origin. So, it's really about giving people the tools to see a future for themselves. But to send people back with less than when they arrived is not only cruel, but impossible.* (Trampoline House interview)

## 5.4.9. Barriers from Covid-19

Around April and May 2020, the Danish police described a situation with an almost complete halt to returns because of _Covid travel restrictions:

*Right now it's Covid-19, there is … it's a big problem. Big parts of the world are still closed because of the disease. So that's a big part of my daily work is trying to establish contact with, I have a really good working relation with, for example, Turkish Air. So we have to find out if, can we work together in Return Operations, and what kind of specifications do you require from us? Covid-19 tests? And so on. So we are in the process right now, trying to, cos there is actually a lot of people right now who wants to leave Denmark but it's, until now it's been impossible cos there haven't been any aeroplanes, but I have hope now. Turkish Airlines, they're really stepped up and tried to open up a lot of their old destinations and yeah, I hope it's possible to send them out with Turkish Air, so they can come home to their families and so on.* (Danish police interview 1).

The same pattern applied to Dublin returns, which, although occurring, were at a much lower level than before:

*"…mainly in Europe there's been Dublin Returns. And I imagine it's only been about 5% of what we used to do that's possible right now. But slowly it's going to be better. There's some African destinations that's been opened now by Turkish Air."* (Danish police interview 1)

Also in May, the move of rejected asylum seeking families from the departure centre Sjælsmark and to the new Red Cross-operated Avnstrup centre was affected by the covid-pandemic (it would be three more months before the families could move):

*Everything has been postponed because of Corona. The families were promised that they would be moved to centre Avnstrup in May. Avnstrup is also a horrible camp, but it would be run by the Red Cross, not the Prison and Probation Service Kriminalforsorgen, turned into a family centre for rejected families, and redesigned so it would meet some of the Red Cross report recommendations. But then, the moving was delayed because of the Corona pandemic – and the children are still in Sjælsmark without school for two months, without any activities, without being able to go anywhere. So, in fact they're in worse state than they were prior to this governmental promise to move them.* (Trampoline House interview).

A police officer also foresaw certain problems arising for future return operations in the years to come:

*I hope there will be a normalisation at some point, but I can see a lot of problems because we cannot force anybody to take a test in Denmark, right now. And I can imagine when there is a vaccine, we cannot force anyone to take a vaccine – especially not a vaccine cos there is a lot of, what do you call it? Side effects. It is even worse and… I think we can see a picture right now with these countries saying, yeah you can come but you gotta make sure he's tested, or at some point, that he's vaccinated, before entering our country. And it's very reasonable, I think. But it's going to give us headaches.* (Danish police interview 1)

The officer perceived Covid-19 as something which will feature in return negotiations for years to come:

> *A lot of these countries is under pressure from the West. And now they have a legit excuse and I think it was really – if it was me, I would use it. Yes, you can come, but make sure he's tested. And of course, if there is a Covid Tree at some point, of course, he's going to be tested for that. Yes. So, I think many years from now, we'll have to cope with disease on the plate of different tasks you have to work with.* (Danish police interview 1)

## 5.5. Analysis of findings

The following section synthesizes the interview findings, in order to approximate the perceived "success" or efficiency of the current Danish exit regime. It is structured so that it follows and summarizes the main points of Section 4, whilst also relating these to the ADMIGOV Deliverables.

### 5.5.1. Tenders and contracts on the Danish market for exit

During rushed and competitive processes for contract tenders, authorities impose agendas via competition for contracts, such as the operation of centres, or for counselling or motivating people to return. Yet, not all organizations feel comfortable with such partnerships, and at times, they may enter the bids more out of a lack of funds, fear of losing contracts or desperation than core competence. This also means that many different commercial actors, including larger consultancy companies enter the market, often on the request of the Immigration Service, at times inserted in order to monitor and structure organizations with considerably more experience and expertise with practices in the Danish asylum and exit system. But this can lead to varying standards, and there have apparently been cases where authorities allow such actors to test sampling methods among centre populations, in order to prepare bids for tenders. Another example includes a political party contracting a consultancy company to prepare and disseminate an exit policy project used for election campaign purposes, and later for government policy-making.

**Dilemmas in partnerships**

Larger organizations claim to have mostly good working relations with authorities and that this can lead to positive results, such as the transfer of child families to a new Red Cross-operated departure centre, Avnstrup. However, it is also acknowledged that such partnerships can place organizations themselves in ambiguous roles when it comes to the people forced to live in the Danish exit system. And while understanding the perspective of the larger organizations, smaller NGOs and grassroot initiatives not depending on contracts from authorities view such market relations as more problematic and ripe with deep dilemmas; while acknowledging their positive impact and important voices, several expressed a perceived risk that organizations change towards cultivating ministerial relations and economic interests, rather than speaking on behalf of people placed in the exit system. In this manner a risk is that organizations allow themselves to be instrumentalized by the Immigration Service to legitimize questionable aspects of the system, such as fact-finding missions used in returns. Even if they aren't policy-makers, they are still decision-makers with massive impact on the possibilities of vulnerable people in the exit

system. At times it is therefore difficult for people living there to see where the organization interest stops and the state agenda starts.

## Operational planning and costs

On a more operational level, the Danish police works with CWT as a main travel management company, much like other public institutions and universities in Denmark. Before the Return Agency, the Danish police was instrumental in setting up these exit operations between airlines and companies like CWT. Through this contract, the Danish police has been using a small selection of airlines, focusing on cheap tickets and wide reach. Once more, personal relations have been key to negotiate such deals, all the way down to conditions in airports during operations, such as isolated rooms for deportees. The police were also involved in negotiating contracts and prices for chartered planes, again involving a small number of companies, including Danish Air Transport, The Great Dane, Titan and Blackbird. Crucial for the price is the cost of insurance, where many of the destinations most pursued at a political level, are the most costly ones due to volatile or deteriorating security situations.

## Private security companies during returns

When it comes to private security companies in Danish exit system, multiple information barriers made it impossible to form a comprehensive overlook. However, Danish police explained how it was necessary to contract private security contractors for some deportation destinations, both for fact-finding missions, but also for protecting Danish police officers until they could leave after having escorted deportees to certain countries.

### 5.5.2. Covid-19 repercussions

The Covid-19 pandemic lead to an almost complete halt in Danish return operations, which is perpetuated with every new lockdown, either in Denmark, or in destination countries. This also applied for so-called Dublin returns, where only about 5% of operations resumed. Danish police officers viewed Turkish Airlines as particularly helpful in trying to reopen deportation routes. Other consequences of the pandemic included a massive delay in the otherwise high-profiled transfer of child families from the Sjælsmark to the new Avnstrup departure centre. By some accounts, this situation left them in a worse state than  necessitated the move to begin with. As for the deportations, a Danish police officer predicted that Covid-19 will impact readmission negotiations for years to come, and possible give destination countries – usually being pressured by Western countries – a bargaining chip to resist, or ask counter-demands.

### 5.5.3. Independent safeguards in the exit system

Several actors expressed the view that it was important that the Ombudsman had been assigned the role as monitoring forced returns. However, the Ombudsman institution themselves were explicit about the limitations that this work is also circumscribed by, such as the fact that the monitoring is kept distinct from the asylum case at hand, deportees´ perceptions of risks by being returned, that only a small proportion are directly monitored, while a larger proportion are monitored in terms of documenting reports. Here, a distinct concern expressed by several non-state actors, as well as organizations working within the asylum system, is the way in which the Refugee Appeals Board, processing appeals from rejected asylum seekers, has been

subsumed under the new Return Agency. The Ombudsman staff seems to perceive return collaborations as accompanied by a good dialogue with the police. Several non-state actors, however, noted that in recent times the Ombudsman has not picked up all cases possible, has seemed to opt for more vague critique, for instance of the conditions of children in the departure centre Sjælsmark, and seems less potent compared with countries like Sweden and Norway. Several speculated that this could be because the very institution of the Ombudsman is facing increasing political pressure and disrespect, and that in Danish asylum policy any critique of authorities is likely to yield massive political response.

### 5.5.4. The grey zone between voluntary and forced returns

The peculiarity of the Danish set-up for voluntary returns makes it difficult to compare with other EU Member States, not least because the Danish police categorization does not register voluntary returns as a distinct category, but instead includes it within two blurred categories - "ensured" and "own return." The former category, however, also include some level of non-voluntariness, as people are escorted by police to the plane while the latter category appears paradoxical, since it is uncertain where those included in it actually are. Moreover, some non-state actors, like the IOM, work with thresholds for which countries they will arrange voluntary returns to, or not. From the experience of the Danish police officers, it is clearly preferable that forced returns are only a last resort, since it tends to lead to re-migration and insecurity, and does not solve the underlying causes. Police officers also expressed an understanding of views seeing threats of forced returns, or other motivational regimes, as leading to returns, which might therefore not be completely voluntary, after all. Non-state actors have many experiences of authorities using detention, duties to register and report, confiscating refrigerators and enforcing no-cooking rules to motivate people to leave voluntarily. Across the board of all interviewees, however, there was a clear experience that such measures do not work. It leads to paradoxical situations, where departure centres are designed so as not to offer good living conditions, in order to make people want to leave. While isolated attempts at improvement, such as playgrounds for children exist, it only exacerbates the massive contradictions of such spaces, in particular when it comes to spaces like Ellebæk and Nykøbing, where people are incarcerated in order to facilitate deportation. In general, it is seen as creating animosity between staff and desperate residents, but not increased initiative for returning voluntarily.

### 5.5.5. Psychosocial and health challenges with the current system

Non-state actors perceive that they face particular dilemmas when it comes to aiding in return operations, whilst ensuring the psychosocial health of those involved, given that authorities many times have opted for deporting people regardless of whether assistance is available. These cases are always discussed. Also, several actors describe how the exit system does not take family structures sufficiently into account, including the separation of child families. The protracted limbo of life in asylum or departure centres is described as a subtle way of traumatization, having to do with the constant tearing down of social ties due to constant transfers between centres. The conditions of children in Sjælsmark, which yielded a massive over-representation of child notifications to the authorities are highlighted by almost all actors as exemplifying the unsustainable human cost of a system geared towards return, but not towards the best interests of the child. Similarly, according to non-state actors, decisions on

whether people in the system are in need of medical assistance are too often left to people without medical expertise. On the other hand, doctors within the deportation operations against the recommendation of the Danish Doctors Association also risk normalizing the authority priorities, at the expense of the best interests of those deemed deportable.

### 5.5.6. Blurred boundaries between political, operational and personal interests

The Danish police officers were acutely aware of the highly politicized field within which they are supposed to discharge operational tasks. The border between the operational and political level does not exist. This political motivation is also perceived as part of Frontex and its involvement in deals, such as the EU-Afghanistan Joint Way Forward statement, or Frontex negotiations with Bangladeshi authorities, which is quickly lifted from the operational to the political level, and often involves other policy areas than migration. A distinct feature, it seems, is that personal relations between civil servants and operational officers form a substantial backbone to more informal readmission arrangements, a feature of the Danish exit system, which is now transitioning into the operations of the Return Agency.

### 5.5.7. Danish involvement with Frontex

The Danish exit system is linked to the operations of Frontex in several ways. First, for a couple of years, the Danish Ombudsman has received a few contracts from the Agency for monitoring deportation flights from EU Member States via the Pool of Monitors. The Ombudsman staff were, however, clear in pointing out information deficiencies and other challenges with Frontex operations, as well as having some clarification requests pending with the Agency. As for the Danish police, they perceive the Frontex Agency as trying to collaborate, but also as a problematic actors, since it is channelling an EU-level political desire to increase returns onto widely different national contexts, where many instruments aren't relevant, or consuming too much time or resources. Frontex is perceived as having been given the muscles, but not the legal clarification required. In such a context, it often makes more sense to pursue bilateral Danish agreements, rather than Frontex channels.

### 5.5.8. The new Return Agency

Currently, the Danish exit system is going through a transitional phase after the launch of the new Return Agency. This has left all actors interviewed unsure and confused about the future format, actors and priorities of the system. Several actors experience an almost complete lack of information from the new Agency, despite having been intimately involved, and being knowledgeable about, the intricacies of return politics, programs and operations. At the same time, some non-state actors express that removing return negotiations from the police to a civilian institution could represent a step forward, a view also seconded by a police officer. However, all interviewed also perceive the new Agency as being tasked with increasing returns from Denmark. Several express concern that it falls to the Return Agency to inform applicants about the prospects of their appeals to the Refugee Appeals Board ending up successful, whilst at the same time also being responsible for payments to those choosing not to apply for asylum. As for the market for Danish exit contracts, the new Agency has conducted a centralizing movement, whereby several actors have lost contracts, and thereby limiting the number of different actors that people in the exit system will get in contact with. For some of the people

working with the system for many years, this represents an abrupt change, and the almost universal lack of knowledge about the operations of the Return Agency, besides the political ambitions of more returns, permeates the Danish exit system.

### 5.5.9. Plans for an extra-territorial Danish exit system

As is the case with the newly launched Return Agency, also the February 2021 legislative reform proposal tabled by the Social Democrat Frederiksen-government illustrate that Danish exit policies appear to be in a state of near-constant flux. Thus, the institutional reconfiguration following the formation of this Agency faces an even wider change with the extra-territorial legislative proposal. While this proposal came out after the finalization of interviews, analysis of the proposal, policy documents and political statements and discourses in Danish exit policy over the last decades illustrate that the plan faces pervasive challenges, First, even with the legislative proposal, the form, content and scale of the plan continues to be uncertain, as does its realism given the opposition from the European Commission and other EU Member States. Moreover, naming a host country still appears not to be possible for the government, and claims of collaboration with the UNHCR have also been refuted by the organization itself. The government´s own Task Force working to realize the extra-territorial camps has pointed to a number of serious qualifications, including the ban against refoulement, the right to family life, vulnerable groups, and uncertain assurances of standards and legal responsibility between Denmark and the yet-unnamed host state. At the level of EU-policy, a real risk seems to be that Denmark would have to leave the Dublin Regulation and its return system, in order to realize the plans. Whether or not this implication sets in, it illustrates that the proposed policy seems designed to deepen the already existing fractures between EU Member States, by favouring sending responsibility in orbit to other countries, and thus speculating against common-European solutions. When it comes to the collection and production of statistics necessary to development meaningful indicators, it seems clear that externalizing containment and exit practices to other governments and regimes can also yield much less accurate data, complicating the kind of comparisons necessary to build indicators for good migration governance  Indeed, as this is already the with the EU numbers, this development would only exacerbate an already existing problem. At a general level, the plans also risk exacerbating other existing problems pointed to by the actors in the Danish exit system, such as a drastic upscaling of forced returns of those to be "transferred," which in the legislative proposal is directly linked to an upscaling of the use of pre-removal detention and incarceration, only now for people entering, rather than exiting, the Danish asylum system. Furthermore, the lack of an appeal body independent from government ministries also become further entrenched, if the Refugee Appeals Board is to approve of such transfers, and is not allowed assessment of the asylum case. Putting aside the question of the plan´s realism, it seems to create powerful incentives for people not to enter the Danish asylum in the first place, and to escape any extra-territorial camp structures. Moreover, it could replicate and widen the many challenges with incarceration in the current Danish exit system, but also act as an accelerator of migrants´ irregular and precarious modes of existence.

### 5.5.10. Alternatives to the current exit system

Several actors interviewed brought forward suggestions for improving the Danish exit system. These ranged from a much more systematic and mandatory health screening early on in the

asylum process, which was seen as useful both for potential integration, but also for awareness of how people will fare in the exit system, and ultimately in return operations. All interviewees expressed a need to move away from pre-removal detention practices, as these were inefficient at best, and counter-productive at worst. The reasons given for this lacking effect varied from a police officer´s view that lawyers told people that they could not be kept long, to non-state and organization actors, describing how people enduring motivational enhancement measures in Sjælsmark, Kærshovedgård, and especially in Ellebæk and Nykøbing break down, and lose their initiative and ability to take care of themselves and their families. Both for children and adults, this risks aggravating mental traumas to the point of chronic conditions. Several actors therefore suggest alternatives, such as being able to leave the camps and centre, and build a life of their own. In the centres, seemingly small activities, such as being allowed to cook your own food hold an immense importance, but also the ability to go to work and being integrated in local communities, as opposed to being isolated. Other suggested scholarships coupled with temporary residence permits followed by return to educational or other institutions, the main point again being the cultivation of people´s resources, rather than the stripping of their agency, since this increases the likelihood that they themselves want to try and return. However, several expressed doubts whether the new Return Agency would approach the field with an open mind for such suggestions, even if they could be aligned with the Agency´s goal of increasing return.

## 5.6. Conclusion and policy recommendations

The 2015 Sustainable Development Goals, the 2016 New York Declaration, and the 2018 Global Compacts on Migration and Refugees provide policy-oriented frameworks for developing modes of governance for the EU in the area of exit politics. These are both normatively and instrumentally informed, reflecting the two sides of the concept of governance. Synthesizing these frameworks results in a series of cross-cutting goals for a sustainable policy on exit , such as; the fundamental rights and freedoms of migrants, and accordingly, developing solutions spanning short-, medium- and long-term capacity to protect. In the EU as a whole, as well as in Denmark, this requires rethinking the existing exit governance, and the partnerships between various actors involved.

The ADMIGOV Deliverables 7.1 and 2.1 have taken steps to provide such synthetic measures by developing indicators of good migration governance (Oomkens and Kalir, 2020; Pasetti, 2019). Deliverable 2.1 identified relevant datasets of existing ideas of indicators and then, from that, by developing a conceptual framework of elements and dimensions of good migration governance. Epistemologically, however, any indicator must necessarily refer the empirical data gathered to, first, certain, agreed-upon standards, here represented by the SDGs, the NYD and the Global Compacts, but also, second, to certain inevitable contexts in which "things are to get done." The latter Deliverable offered an inventory of current EU exit policies along the parameters of length/conditions of pre-removal detention, investment in exit operations, and the estimated "success rate" of exit regimes across Netherlands, Germany and Spain, and then the country case for the current report - Denmark.

Accordingly, this report has sought to disentangle the complex ensemble of actors and partnerships in the Danish exit governance system, identifying both the multi-levelled processes at work, its different phases, geographic places and material spaces. Moreover, the report´s

focus on the recent launch of the Return Agency, and the proposed return legislation, also illustrates that aspects of Danish exit policies are currently in the policy formulation phase more than in the implementation phase, which several interviews also confirm. Although local contexts may differ, overall, these Danish policy reconfigurations can be seen as following a centralist trend in some ways, since it removes important competences from non-state actors and some state authorities, and then gathers them in the Return Agency. However, at the same time, the institutional structure of the new Agency still appears shrouded in uncertainties and speculation, and the critique of the proposed return legislation must be expected to lead to further contestation and possibly some changes. In the following, recommendations for transforming the Danish exit system according to the policy-oriented frameworks for good migration governance are derived from the interviews and the synthesized analysis. These are then meant to inform the development of indicators relating to the system´s actors, relations, resources, policies and practices.

### 5.6.1. The best interest of the child

Despite a decade-long Danish policy drive to deport unaccompanied minors to orphanages in Kabul, the best of interests of the child, and authorities´ ability to protect these through the Service Legislation has been lacking in the Danish exit system. A risk is that this lacking focus on irreparable harm done to children in the exit system continues under the new Return Agency and its accompanying legislation. Similarly,

- **Policy recommendation 1** – Safeguarding against irreparable harm to children in the Danish exit system necessitates the full implementation of the Convention on the Rights of the Child (CRC) and the best interest of the child into the Danish asylum legislation. Minors must not be forced into serial displacement within and through the Danish system.
- **Policy recommendation 2** – Danish authorities must halt unsustainable attempts to force through deportations by threatening to defund institutions in non-European countries unless adult or minor deportees from the Danish exit system are accepted.

### 5.6.2. Pre-removal detention

In general, the detention and incarceration of people who have committed no crime, and are often traumatized by the reasons for, or process of, flight, is highly problematic, and continues to have multiple implications, which are counterproductive to the stated aim of fostering trust and systemic transparency. In particular, the sanction of 18months of prison if a person fails his/her duties of residence, permission and registration is disproportional. All actors interviewed state that detention- and incarceration-for-deportation does the opposite of ensuring return, besides the fact stated by the CPT report, that it constitutes grave rights violations.

- **Policy recommendation 3** – Preserving individual agency and motivation to return voluntarily requires exploring other options than detention centres, such as housing in the surrounding community. Centres should be invoked as a last resort, and it is then crucial that they are integrated with, and not isolated from, local communities, in order to allow for both individualized and community-based purpose with life.

### 5.6.3. Impartial and humane procedures

The 2020 legislative proposal´s aim of launching return procedures quickly after rejection decisions faces a series of problems caused by contextual factors which aren't recognized by the authorities or new legislation involved. First, the vision of speed does not take into account that many decisions are actually reversed after appeals or, second, that different people with different backgrounds and situations will respond differently to such pressure. Third, the envisioned launch of return procedures, sanctions and guidance can have harmful and counterproductive consequences if based on the assumed efficiency of motivational enhancement and deterrence measures, something recognized by all interviewed actors across the Danish exit system, as well as independent monitors. The remarkable low ratio of voluntary returns from Denmark compared with almost all other EU member states, also raises serious questions about the effect of the wide-spread use of motivational enhancement and deterrence measures. Fourth, as several interviewees also recounted, many cases are stalled not because of rejected asylum seekers, but because countries of origin refuse to accept their returns.

- **Policy recommendation 4** - Effective Danish exit policies must leave behind fixed assumptions about the effect of motivational enhancement and deterrence as starting point, and instead implement individual case processing, taking the contextual factors of each person´s case into account, including the lacking prospect of return.
- **Policy recommendation 5** - Country of Origin (COI)-reports must be prepared independently from government political ambitions, adequately reflect the sourced expertise and reference updated international standards and findings.

### 5.6.4. Post-deportation monitoring and reintegration support

When people´s residency permit is expired they cannot qualify for return support, which may marginalize and endanger, for instance, families returned to unfamiliar territory. Hastily imposed graded cuts to return support determined by the degree of people´s cooperation risks compounding harms to the most vulnerable groups, who are typically those most challenged in cooperating with authorities. If they are returned to areas they are not familiar with, and also lack sufficient support, this may aggravate their position, and thus the very purpose of return support. Transnational educational scholarships launched while people are still within the Danish system could be a more promising strategy.

- **Policy recommendation 6** – Danish authorities should develop a mechanism for post-deportation monitoring, especially of vulnerable groups, and irrespective of whether they were found to cooperate on their own return and qualify for support.
- **Policy recommendation 7** - Reintegration support should be offered to groups in search of support and counsel for returning, along clearly delimited categories, rather than only to rejected asylum seekers.
- **Policy recommendation 8** – Support for return should always aim at fostering resources through education, agency and ability so that people are able to navigate returns in a long-lasting and sustainable manner. This precludes collapsing support into sanctions trying to motivationally enhance faster return.

### 5.6.5. Voluntariness, forced returns and departure centres

The Danish categorization of forced versus voluntary returns ("ensured" and "own") fails to adequate differentiate between voluntary and forced returns, as well as for the implications for psychosocial health of the motivational enhancement and deterrence regime. At present, psychosocial health is protected only at a fragmented manner that does not take individual circumstance and family structures into account, such as how duties of registration exacerbate the separation of families separated within and outside the exit system. More frequent medical expertise is needed within the system, especially in contexts of a continued political insistence on motivational enhancement and deterrence measures, the detrimental psychosocial consequences of which must be monitored closely.

- **Policy recommendation 9** – Holistic, family-oriented health screenings and continuous interventions are necessary to monitor a safe and efficient exit system
- **Policy recommendation 10** – The Danish exit system must avoid counterproductive motivational and deterrence measures leading to the pacification, desperation and psychosocial harm of people.
- **Policy recommendation 11** - A comprehensive and standardized psychosocial health and trauma-screening must be implemented at an early stage in the Danish asylum system. The data of this screening must then form the basis of health interventions also in the exit system, and feature prominently in any decision-making processes concerning possible sanctions.

### 5.6.6. A transparent, fair and open-ended system of entry/exit

A range of new or proposed measures, such as (pre-final decision) return counselling, dataveillance of asylum seekers´ internet and phone, or the plans to pay people if they forfeit their right to complain and appeal to the only available authorities, namely the only "court-like" Refugee Appeals Board risks inducing distrust in the system. Payments to nullify own rights in effect places economic penalties on those who want to exercise their rights, and whether or not people accept this payment, it risks doing irreparable harm to the trust in the system. Coupled with the recent integration of the Refugee Appeals Board into the auspices of the Return Agency, and its clearly stated agenda to boost returns may lead to people escaping the exit system, which amounts to the opposite of an ordered and efficient mode of governance. In order to preserve a basic relation of trust and compliance with the Danish exit system as such, it is crucial that the system is not perceived as biased, pressuring or untrustworthy by those exposed to it.

- **Policy recommendation 12** - Transparent case-handling concerning, and firewalls between, people´s asylum claims and renewals, engagement with appeal bodies, and authority attempts to trace families and counsel about return must be maintained. It is therefore crucial that the Folketingets Ombundsman monitoring responsibilities towards the Return Agency is quickly and clearly determined.
- **Policy recommendation 13 -** Authorities are not perceived as offering economic incentives for those people who agree to forfeit their rights and either not launch or drop out of the asylum application process.
- **Policy recommendation 14 -** An appeal court wholly independent from government ministries or agencies should be introduced into the Danish exit system.

## 5.6.7. Frontex collaborations

The Danish involvement with the Frontex Agency has been fragmented and limited. The two institutions involved, the police and the Ombudsman, both express scepticism regarding the relevance of the Frontex tools for their needs, as well as concerns about the threshold of information they are provided with.

- **Policy recommendation 15** - Relations with actors such as Frontex needs to be tailored to national needs and contexts, and operational and legal standards in such collaborations should take into account the fundamental rights of people in the exit system, rather than only pre-determined uniform targets of increased and faster returns.

## 5.6.8. Plans for extra-territorial exit system

The Frederiksen government´s plan to export all asylum processing, and granting of protection, outside Danish and European territory is a newer variant of decade-old Northern European plans to avoid responsibility for asylum seekers and refugees. It faces deep opposition both in those regions experiencing most refugees, with the European Commission and among EU Member States, and would reconfigure the exit system in numerous ways, and accelerate and expand most of the biggest problems with the current system.

- **Policy recommendation 16 –** Attempts to construct an extra-territorial exit system must be abandoned on the grounds that it can fracture international solidarity and EU collaboration; massively upscale pre-removal detention and thus create incentives for avoiding the Danish asylum system and engage in irregular and dangerous mobility, and entrench and increase risks of abuse and violence, psychosocial and health vulnerabilities, precarious existence, and the lacking ability to appeal to independent complaint mechanism.

# Conclusion of the entire report

The chapters on the implementation of exit regimes in each of the four case studies have provided numerous insights and specific recommendations; some of them have to do with the particular historical and contemporary context in which the exit regime of each country operates, while others point in more encompassing generic directions. In conclusion to this extensive report, we elicit the main crosscutting issues that come out of the four case studies.

**International collaboration between Member States on EU level**

Interlocutors working at the national level of EU Member States highlight a lack of collaboration and coordination at EU level. There appears to be very little organized cooperation between Member States although some irregular migrants clearly move between countries in the EU. Frontex is seen as the main channel for enhancing some collaboration across Member States – for example, in organizing and/or supporting chartered deportation flights – but on the whole there is a widespread sense that more can be done by way of sharing knowledge, experience, data, and resources. At the same time, several interlocutors also express that although Frontex has been given financial muscles, the Agency often seek to apply uniform standards and

practices the relevance of which may vary greatly between the exit contexts of different Member States.

Also, recent attempts to regulate the field of exit by the EU are not seen in a positive light by many interlocutors. The most salient example herein is the move taken up in the proposal for a recast of the Return Directive to increase the maximum time limit for detention to four months under the border procedure, which could lead to a maximum time period of 22 months in detention for rejected asylum seekers at the border.

In our case studies, state actors who implement detention and forced removal have widely declared that pre-removal detention is not effective beyond a time span of 2-3 months. In fact, some interlocutors went as far as saying that lengthier detention terms are counterproductive to the probability of a successful return. There seems to be an odd divergence and a lack of feedback between EU policymaking and the experience of those implementing return on the ground in Member States.

**International collaboration with receiving countries outside the EU**

Not having the full collaboration of destination countries to which irregular migrants are to be returned from EU Member States is seen as one the most fundamental obstacles towards a more effective exit regime. In this respect, it is telling that the EU is not having blanket agreements with many destination countries. Instead, different Member States have negotiated bilateral agreements with certain countries and not with others.

**Voluntary return is preferable yet budgets go massively to boost forced removal**

In all four case studies, and in an emphatic manner, both state and non-state actors consider that voluntary return is not only cheaper and more humane but also proves to be more effective in convincing irregular migrants to return and in promoting a more sustainable form of return. However, in a sharp contrast to this prevalent view, the realities on the ground in all four case studies attest to the fact the budgets are and have been mostly allocated to the reinforcement of forced return. Admittedly, there seems to be a consensus about the need to retain forced return as a sanction that applies to irregular migrants with a serious criminal background. It is also widely believed that the threat of forced return contributes to the promotion of voluntary return, as potential returnees evaluate the risk and harm involved in being forcefully deported; thus, considering more positively collaboration with voluntary return programs.

Notwithstanding, it is unclear to many of our interlocutors how and why budgets are allocated steadily towards forced return. Many believe that forced return has a more symbolic function, as mentioned above, and it can legally remain as a potential tool while in practice more resources are channelled towards voluntary return. It is also unclear why more budgets are allocated to reinforce forced returns while studies and lived experiences fail to find a correlation between increased investment in forced return and the efficiency of this policy measure. In this respect, our case studies reconfirm and reinforce the conclusion of the ADMIGOV deliverable 2.1 where such a link between investment and "success rate" has proven ungrounded and driven by political will rather than scientific evidence (Oomkens and Kalir 2020).

Several interlocutors point out the need to create viable alternatives to pre-removal detention and sanction regimes designed to deter people from staying in Member States, which are being

considered not only damaging for the chances to work constructively with irregular migrants towards their return, but also – and most importantly – inhumane and disproportional.

**Durability of voluntary return**

State institutions which supervise voluntary return programs, as well as organizations that implement them, have noticed a shift in recent years from numbers towards sustainability when it comes to the understanding and operationalization of voluntary return. Implementers of voluntary return programs mention that there are no explicit demands from them to facilitate a fixed number of returns per time period or contract (although some did mention there were such expectations and a risk of not getting another contract in case of not meeting these expectations). Instead, there is more stress on ensuring that return is followed up by a successful reintegration in countries of origin in ways that diminish the chances for remigration. Herein, implementers highlighted the need to have more resources available for pre-return training of returnees and for accompanying closely the process of reintegration once return has been operated. Currently, there seems to be little monitoring supervision from the side of the EU when it comes to the assessment of successful post-exit reintegration and the building of a reliable database.

It should also be noted that non-state organizations implementing voluntary return stressed the disruptive effects of forced return on their work with some of the potential returnees. Working on voluntary return with irregular migrants often in vulnerable situations, can be a long and delicate process. If this process is interrupted by occasional attempts by state authorities to detain and/or deport irregular migrants, this can have a devastating effect on the potential returnee. In other words, the sanction of pre-removal detention and forced return might induce some irregular migrants to collaborate with voluntary return initiatives, but it may also incentivize people to leave exit systems and go underground  Moreover, sanctions become disruptive once people are in the process of considering and/or working on their voluntary return.

**Intense focus on rejected asylum seekers and non-recording of irregular migrants**

Most interlocutors in all four case studies acknowledged openly the impossibility of returning all irregular migrants who reside in their respective country. This realization, however, seems to be eclipsed by policies determined to achieve strict enforcement. Many interlocutors believe that more policymaking should be directed towards alternative legal pathways as an important complementary measure to forced and voluntary return. It is, however, the case that most interlocutors admit that the exit regime is shaped by a particular political climate that leaves little or no space for thinking in the direction of increased legalization of status for irregular migrants.

As a result, a tension is being produced between the drafting of stricter policies and the lived realities of unmatched implementation. This leads some actors who feel the pressure to enhance return, both forced and voluntary, to resort to more extreme practices and views. For example, some interlocutors would like to see stricter procedures that would not allow irregular migrants to repeatedly apply for residency or restart a new asylum procedure when they face forced return. A vicious cycle is forming as legal pathways are narrow and asylum becomes the only

means for all types of migrants and refugees to secure a legal status in Member States. This, in turn, feeds an entrenched 'culture of disbelief' among several interlocutors who blame asylum seekers for being economic migrants, and thus favour an even more restrictive framework.

There is a notable tendency among EU Member States to primarily target rejected asylum seekers for deportation in a belief that a failure to deport them projects on the credibility of the entire asylum system as a measure of the state to exercise its international obligation and national sovereignty. One consequence of this tendency is that less attention is paid to the vast majority of irregular migrants, who never applied for asylum. Consciously or not, states are engaging in the non-recording of the larger part of the population of irregular migrants, possibly in recognition that these are economically active and law-abiding members in society (cf. Kalir and van Schendel 2017). If the goal of exit regimes is to become effective in realistic terms, it might be due to reconsider, on the one hand, the overdetermined focus on rejected asylum seekers, and, on the other hand, the development of legal pathways for irregular migrants who reside in Member States.

**Clarity and simplification of regularization procedures**

Following on the abovementioned point, several interlocutors highlight the fact that current exit regimes are intricate in their operational structures and procedures. This clearly has some bearings on the efficiency of the return process, but it also hampers the attempts of those irregular migrants who look to regularize their status. Information appears to be obscure and scattered in ways that make it inaccessible to many irregular migrants who are unaware about their rights and ways to apply for regularization.

Furthermore, regularization itself as a migration management tool appears to diverge widely in its application across the case studies. The Netherlands and Denmark are adamant on not offering pathways to regularization to failed asylum seekers or other irregular migrants who cannot be deported. Spain seems to be more lenient on enforcing a strict exit regime, showing openness towards the regularization of irregular migrants who are socially and/or economically integrated in society. Germany has installed the Duldung to offset some of the legal hazards caused to irregular migrants whose deportation cannot be processed, while also offering paths to regularization to rejected asylum seekers who are interesting to German employers.[143]

**Transparency**

In working on this deliverable it once again became evident that a lack of transparency and a 'culture of secrecy' often characterise the institutions in charge of exit regimes. As academic researchers, funded by the European Commission to conduct this project, we were struck by the many difficulties we encounter in getting access to data as well as to conducting interviews with key actors. We thus reiterate a recommendation that has been aired by the final report of WP1 and echoed by deliverable 2.1 in this WP: there should be a way to measure the transparency/obscurity that is maintained by public offices in charge of the delicate field of mobility management in the EU and Member States. A clear structure for the application for

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[143] For for more on regularization as a migration management tool in advancing alternative migration governance, see ADMIGOV deliverables D3.3 and D2.7.

access to conduct research should be installed and a level of accountability in cases of rejecting such access should be identified.

**Training**

Several state and non-state actors admit performing their job in this delicate field of return with little or no specific training. Alarmingly, some judges and lawyers confess having no specialized knowledge in the field, which often leads to crucial decisions being taken without a due professional legal process as expected in democratic liberal states. In addition, agents in charge of pre-removal detention and forced deportation are also not always trained in the wider sense of developing sensitivities to all sorts of potential infringements of irregular migrants' human and fundamental rights. Given that return policies are often applied to some of the most vulnerable people in our societies – at times with grave physical and psychosocial health issues – it is of the highest importance that all actors who interact with potential returnees shall undergo a professional training in their respective field.

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