

Return Migration

Policies & Practices in Europe



IOM International Organization for Migration

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The study includes data on return migration collected from a variety of sources. While efforts have been made to collect comparable data, the concepts, definitions and data sources used by different countries vary widely, rendering comparisons among them difficult. Further, not all data requested was available for all countries included in the study. Many of the data on assisted voluntary return have been drawn from IOM offices in the respective countries, and are operational statistics collected mainly for project development and management purposes, which are then consolidated into a central database. Due to the timing of publication, the country chapters cite operational statistics from individual offices prior to their yearly reconciliation in the central database.

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Return Migration: Policies and Practices in Europe

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INTRODUCTION

This report is an extensive compendium of information on migrant return policy, legislation and practice by the European Union (EU) Member States, the ten acceding states due for EU membership in May 2004, and Norway and Switzerland. It has been prepared by the International Organization for Migration (IOM) and draws on a variety of sources, including governments, IOM, IGC and ICMPD. The data derives mainly from government records and IOM's programmes and research.

The report was commissioned by the Netherlands' Advisory Committee on Aliens Affairs, and is intended to put the return issue in the wider context of the Netherlands' Presidency of the EU from July to December 2004. The addition of Norway and Switzerland helps complete the comparison across wider Europe.

Return¹ migration has in the past decades emerged as a critical element of many governments' migration policy – an integral part of effective migration management, alongside strong border management and timely and fair asylum processes. It is seen by many as the cornerstone of any successful strategy to prevent or deter irregular migration and residence in EU States.

Return of migrants unable or unwilling to remain in a host country² – such as rejected asylum seekers, stranded migrants or persons in irregular situations – can help maintain the integrity of asylum systems and regular immigration programmes. As such, it supports states' sovereign right under international law to determine who should enter and remain on their territory, and under what conditions.

Effective migrant return can also be important for maintaining productive bilateral relations between countries of origin, transit and destination. Experience has shown that involuntary³ and voluntary returns are interlinked and have a mutually reinforcing effect. A number of European states have found that voluntary return has been most successful where involuntary return is also resorted to.

Assisted voluntary return (AVR) is increasingly seen by most governments cited in the study as the preferred return option, proving to be more cost effective, humane, and conducive to good relations among all players, also at other levels such as trade and cultural exchange. In the last decade, the number of states in Europe implementing assisted voluntary return programmes has increased substantially. Today, there are more than **20 AVR programmes** operating out of 18 countries in Europe compared with only four programmes ten years ago. The earliest AVR programme was the German REAG programme, commenced with IOM in 1979. The Dutch, Belgian, Swiss and other programmes followed thereafter, in various manifestations. The Finnish Government even includes AVR in its MOI guidelines on expulsion and forced return orders, to ensure its availability as an alternative to the enforcement processes.

Experience has also shown that additional “investment” by returning states in reintegration support in countries of origin is likely to render the return most sustainable with flow-on benefits

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such as encouraging other irregular migrants to return home voluntarily and incentivizing returnees to stay home. This in turn encourages destination countries to expand their approaches and address root causes of irregular migration, working in partnership with countries of origin to find mutually beneficial solutions.

Despite similarities of experience between states, there is no harmonized EU approach to either involuntary or voluntary return, although there are a number of EU instruments related to return, admittedly not legally binding. These include the obligation under the 1990 Dublin Convention to readmit rejected asylum seekers who have entered the territory of another Member State – which in itself would call for a more consistent expulsion strategy across countries. The Schengen *Acquis* also obliges Member States to expel foreigners without permission to remain. The EC's 1994 Communication on Immigration and Asylum Policies also identified the return of those in irregular situations as one of the key elements in combating irregular migration. There is generally a consistent effort by the EC to establish norms for ensuring cooperation of countries of origin of irregular migrants. Readmission Agreements feature as one key strategy, both as a component of EU framework agreements and in bilateral arrangements; as do carrier agreements, for which the European Council Directive offers some standard provisions.

Common cross-border arrangements under the Schengen Agreement and the Dublin Convention are also compelling governments in the region to adjust any new approaches to return migration in the direction of greater standardization. The Schengen Information System (SIS), for example, is relevant for monitoring attempted re-returns of persons expelled or deported.

Among the biggest obstacles to a more harmonized approach are the widely varying definitions used by governments in the field of migration; a feature which is reflected also in this study. Other obstacles include differing approaches to the amount and type of incentive for returnees to reintegrate and stay home, or the preparedness of host governments to open avenues of legal migration to counter the lucrative business of smugglers.

Past EC deliberations in the context of the EC Green Paper (2002), the hearing on a Community Return Policy, and the resultant EU Communication on *A Community Return Policy on Illegal Residents* (COM 2002: 564), based themselves on a wealth of experience and commentary by governments, NGOs and international organizations, but took a more narrow approach to return by limiting the policy to “illegal migrants”. In reality, a very high proportion of persons participating in voluntary return programmes in Europe over the last decade have been refugees and persons with temporary protected status following crises/conflicts in their home regions (notably Bosnia and Herzegovina, Kosovo, Afghanistan and now increasingly Iraq).

Return is increasingly also an important issue for the acceding states, given their role in securing the outer borders of the EU, and the fact that all of them have become recipients, even destinations, for irregular migrants. Alongside strengthened migration legislation and management capacities along their borders, expulsion of irregular migrants, and enhanced asylum systems, these states have also opened up AVR programmes in recent years to cope with the increasing numbers of asylum seekers and other migrants in irregular situations, either stranded en route to Western Europe, or returned by neighbouring countries under bilateral agreements.

EU-funded capacity building programmes like PHARE are consolidating partnership approaches between the current EU Members and the future Members. All states studied are tightening their migration controls, both at borders and within their territories, but at the same time increasing their voluntary return capacities.

Despite the vast amount of material available, there remain large gaps in information and a paucity of evaluative material to enable full conclusions to be drawn across countries about generic best practices. Differing definitions from state to state, e.g. relating to “expulsion”, “detention”, “irregular migrant”, “voluntary” or reintegration, or even on costing of return activities, hamper any serious effort to compare practices across states. A number of definitions are offered in the endnotes to this introduction, as derived from IOM’s working glossary (and substantially reproduced in the *Migration Acquis Handbook* edited by P.J. van Krieken, 2001).

There is also an urgent need for more systematic comparative research to both capture the lessons learned and gauge the cost-benefit outcomes of tried return programmes. These data would be critical for any serious efforts at harmonizing return policies across Europe.

For these reasons, the report is not as complete as the authors would have wished, but at the same time it can serve as a highly informed guide on how and where to fill these gaps through future research.

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NOTES

- Return** refers broadly to the act of going back from a country of presence (either transit or destination) to the country of previous transit, or origin. There are numerous sub-categories of return which can describe the way it takes place, e.g. voluntary, forced, assisted or spontaneous return; as well as sub-categories which can describe who is participating in the return, e.g. repatriation (for refugees).

Voluntary return is based on an informed decision freely taken by the individual

Assisted voluntary return includes organizational and financial assistance for the return and where possible, reintegration measures offered to the individual.

Involuntary, or non-voluntary, or forced return: Return that is not undertaken by the individual voluntarily. These terms, together with “deportation”, are used interchangeably throughout the text. IOM is prevented by its Constitution from engaging in, or facilitating, the forced return of migrants, or any escorting, or transit assistance services related thereto.
- It may be useful to describe the types of migrant return now occurring in Europe, and locate the narrower debate on return of irregular immigrants more precisely on that palette. Returns from Europe broadly occur in three different ways (regardless of status in the country of destination):

Voluntarily without compulsion (migrants deciding at any time during their sojourn to return home on their own volition and cost);

Voluntarily under compulsion (persons at the end of their temporary protected status, or rejected for asylum, unable to stay and choosing to return on their own volition; also within government and other programmes providing assistance);

Involuntarily, as a result of, or anticipating, no legal status in the country (the authorities deciding, usually by law, on forcing, frequently also escorting, the migrant home).

The first category of returns usually occurs spontaneously, without the organized assistance of governments or other concerned agencies such as IOM; and eludes the government statisticians. It can also occur within an organized return programme providing return and sometimes reintegration assistance. The second and the third, usually involve the intervention of governments or their implementing partners. The second has proven in many ways to be the more acceptable and durable solution, particularly when it takes place within an assisted voluntary return programme – largely for all the reasons outlined in the above first paragraph in this section.

EXECUTIVE SUMMARY

The report covers the policies, laws and practices in return migration – both involuntary and voluntary – of the current 15 EU Member States (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, UK), the ten acceding states (Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia), and Norway and Switzerland. The 27 country chapters attempt to cover the same ground in a systematic way, as far as possible following the below sequence and format for involuntary return and voluntary return respectively:

- Policy
- Legislative Instruments and Provisions
- Administrative and Procedural Arrangements
- Statistics
- Best Practices and Lessons learned

The statistics offered by the report reveal some interesting trends in and across the involuntary/voluntary divide. Return rates vary and fluctuate from state to state, with no consistent upward or downward trend. They have increased in states like the UK, and decreased in e.g. Germany, both in direct proportion to the trends in asylum claims (up in the UK and down in Germany) and in response to stronger migration controls.

Stricter social welfare policies by states like Denmark also seem to have impacted the numbers of asylum seekers. On the other hand, the Netherlands has found that a tightening of procedures has still not led to a noticeable increase in returns, and is now looking for new ways of inducing persons without legal residence to return on their own volition. The acceding states generally have fewer returns, as a reflection both of the lower application rates and more nascent nature of their return policies. This is changing, as the focus of interest shifts eastward, and the central and eastern European countries strengthen their migration management practices.

While assisted voluntary return (AVR) continues to account for the much smaller percentage of overall returns (10-20%), it is steadily increasing and expanding to new countries. The ratio between involuntary and voluntary returns tends to be dramatically reversed when there are specific post-crisis return programmes – such as for Bosnia and Herzegovina, Kosovo, Afghanistan, Iraq, particularly in states with large return numbers. For example, in Germany in 1998 more than 270,000 persons received voluntary return assistance compared to approximately 35,000 who were forcibly returned.

There are also the largely un-registered numbers of returns that occur voluntarily without assistance. Sweden, for example, reports that in 2002, compared with 8,328 persons in irregular circumstances returning on their own volition, the government only deported 921 persons.

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Alongside the steady growth in general AVRs, new AVR programmes are also being established (e.g. Ireland in 2002, UK's VARRP in 2002, Spain in 2002, Norway's VARP in 2002). In the case of the acceding countries, AVR programmes are becoming more self-sufficient and less fully dependent on external funding (Hungary, Slovakia and Czech Republic).

All the states cited in the report confirm that assisted voluntary return is many times more cost effective than involuntary return, although there is a lack of actual comparative costings. The UK's evaluation of its AVR programme (VARRP) in 2002 found that the programme was both significantly cheaper than enforced removals, and covered a wider range of countries of origin.

The majority of persons returned are still rejected asylum seekers, although that is changing, particularly in the accession countries, which are of greater interest as transit countries, or countries of return for Western Europe. Belgium, too, has found in 2003, that more than 50 per cent of its AVR cases are generally persons in irregular situations, who have not been registered in the asylum system. More and more governments are widening the target group for AVRs.

The report reveals both the similarities and divergences of approach towards return. But, while most of the states studied are tightening migration control measures, they are also increasing assisted voluntary return activities, and strengthening reintegration measures to ensure greater sustainability of return.

Besides IOM's lead role in AVRs, the cooperation of NGOs, such as the Norwegian People's Aid in Norway, or Refugee Action, YMCA and NERS in the United Kingdom, is critical for many of the programmes at both ends of the return spectrum.

INVOLUNTARY RETURNS

It is evident that most EU governments are struggling with how best to implement involuntary returns, and many states report difficulties in achieving them. Only a minority of irregular migrants issued orders to leave a European country are actually returned. For instance, Ireland reports that the number of persons actually removed is considerably lower than the number of removal orders issued in that country (364 compared to 1,979 in 2001). In Belgium in 2000, 13,563 expulsion orders were issued but only 3,002 persons actually removed. Sweden has established a special "Removals" unit in the Swedish Migration Board, to better enforce removals of rejected asylum seekers and others unable to remain in the country.

Many of the obstacles to return are well known. Migrants disappear before they can be returned, or they may have no documents, making it difficult for the authorities to identify them and the country they should be returned to. Countries of origin may for economic or other reasons not wish to cooperate in the return of their own citizens. Although return is often seen simply as a matter of removing the migrant from a given territory, other problems may arise if the return is not sustainable, and those subject to removal simply re-migrate to the country from which they have returned.

In some cases, it is evident that a significant number of returns are not to the migrant's country of origin but to a neighbouring country, often according to a readmission agreement.¹ In Belgium, for example, the majority of removals in 1998 (56%) were not directly to the migrant's country of origin. Similarly in Austria in the same year just over a quarter of those who were returned were not returned directly to their country of origin (IOM, 1999: 27).²

All states are using a mixture of tools to try to achieve higher numbers of involuntary returns. Measures taken include:

- Introducing or extending the number of places in detention centres for persons awaiting removal; in some countries such as the UK this includes using prisons, whereas in others such as Sweden this is forbidden;
- Providing information about return options as early as possible in the asylum process;
- Accommodating rejected asylum seekers in return centres both to prepare and induce them to accept that return is their only option;
- Working more closely with countries of origin to try and ensure their cooperation in identifying and accepting their nationals for return;
- Enhancing reintegration assistance and other measures to make return more sustainable;
- Strengthening legislation with respect to returns and extending the number of readmission agreements to a broader range of countries;
- Ensuring that asylum seekers are given information earlier in the procedure about the likelihood of expulsion if their application is rejected;
- Reducing or removing welfare benefits from rejected asylum seekers (e.g. Netherlands);
- Toughening border management to combat irregular immigration.

Carrier sanctions have become a common practice across most countries; as have readmission agreements, targeted almost exclusively at involuntary returns. Many governments are fingerprinting asylum seekers and/or irregular migrants returned involuntarily (e.g. UK, Ireland, Poland, Latvia, Denmark); and have strict rules about identifying a deportee in travel documents and prohibiting return to the country of destination for a specified period (up to ten years in the Czech Republic; up to five years in Poland); many allow voluntary return to mitigate that prohibition (from five to three years for Poland). Finland's new law of 2003 introduced some restrictions and increased penalties for carriers.

It is difficult to assess the impact of all these measures in the absence of reliable data or evaluations of individual programmes. For example, it is reported that "there is no comprehensive evaluation of the Dutch involuntary return policies available" (see section on the Netherlands).

National return trends are varied, and there is neither a uniform upward nor downward trend. Across Europe the number of persons returned has been increasing in countries such as the UK and decreasing in countries like Germany. Identifying "best practices" is difficult given the absence of reliable and comparable return data.

There are marked differences between states, in terms of the numbers of persons returned, which are likely to reflect both differences in policy approach and the scale and nature of irregular migration in the country of destination. Southern European countries, for example, have tended

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to provide greater opportunities for irregular migrants to participate in amnesties than northern European states, and given less priority to returns. Southern European states also receive far fewer asylum claims than northern European states and therefore have far fewer failed asylum applicants to return. The amnesty currently being offered to some asylum seekers by the Netherlands government will be accompanied by a strict enforcement of forced returns of those not eligible for the amnesty.

There are also clearly discernible differences between EU and non-EU countries. Generally speaking, the number of persons returned from non-EU European countries appears to be much lower than for EU countries, which partly reflects the fact that these countries have only recently introduced policies and procedures for achieving returns, and have generally received fewer asylum applications than EU countries.

Nonetheless, as the number of failed asylum applications has increased considerably in recent years in central and eastern Europe, there has been a significant rise in the number of returns. For example, in the Czech Republic, one of the countries receiving high numbers of applications, expulsions rose from 730 in 1993 to 2,307 in 2000. In the first half of 2001, the Border and Aliens Police issued expulsion notices to foreigners and 1,700 were expelled.

Developing a common policy approach to involuntary returns in Europe will be a considerable challenge given the widely differing experiences and laws of the states in managing returns. Enforcement of immigration law is an area where governments tend to define their sovereignty regarding migration management most forcefully; and well entrenched sovereign approaches are difficult to change in favour of a more common, multilateral approach. Some practical steps have been proposed, for example in the European Council Directive on the responsibility of carriers to remove foreigners refused entry at the border, which is expected to be implemented in mid-2004.

VOLUNTARY RETURNS

While all states cited are resorting to voluntary return as a more humane and cost-effective alternative to forced return, the practice differs widely. Most allow for unassisted voluntary return, i.e. where the migrant is encouraged to return of his/her own volition, with some states offering inducements such as mitigation of the customary time-limited prohibition on re-return. The option of not having a removal stamp in the passport also works as an incentive. As stated earlier, the numbers of such voluntary returns are generally not known, or recorded (see however Sweden's report of higher voluntary returns than forced ones in 2002). More research on this would definitely benefit any future planning on return migration.

But it is the assisted voluntary return programmes (AVR) that demonstrate the greatest divergences of approach among European states, notwithstanding their widely proclaimed success. Not all assisted voluntary return programmes provide pre-return information and counselling, financial incentives or reintegration assistance. Where there are cash or other incentives, or reintegration support, they vary in approach and amount.

Most returning states also do not monitor the effectiveness of the return programmes, or evaluate the impact and possible follow-up measures. A number of the states cited are now investing more in “profiling” potential returnee caseloads, to understand motivations and needs better, and factor this information into future return planning (e.g. UK, Switzerland, Ireland, Netherlands). There is also generally more investment in both incentives to return and reintegration support at the return end.

There is a high degree of convergence across many of the states studied on the issue of what are the emerging “best practices” among them in the area of assisted voluntary return. Most agree that the following have proven to be critical to any successful voluntary return:

1. Voluntary return is preferable to forced return – and more cost effective.

While most EU states have tightened migration controls, they agree that voluntary returns work and are generally more preferable than forced returns – both in terms of humaneness and cost effectiveness, although they do not provide detailed comparable costings. Many immigration laws make some provision for persons issued an expulsion or removal order to choose the option of voluntary return, but this is different from actively providing for assisted voluntary return.

In many cases, assisted voluntary return has not been enshrined in law, but rather takes the form of administrative, operational agreements with partner agencies such as IOM, NGOs and others. Finland, for example, has an agreement with IOM, whereby persons who are no longer allowed to remain in the country, and are without means, may avail themselves of IOM’s AVR services.

But this is changing, as more governments are tending to formalize AVR options in their laws. France has, exceptionally, allowed for assisted voluntary return for decades, with its 1945 Ordinance on the conditions for Entry and Residence of Foreign nationals in France. Portugal’s 1998 Aliens Act makes provision for assisted voluntary return specifically in cooperation with IOM. More recently, the 1999 Danish Act on Repatriation encourages and facilitates voluntary return through information, and identifies a broad migrant target group for AVR. With increased numbers of rejected asylum seekers in the past few years, Denmark introduced a Statute in 2003 to support the voluntary return of asylum seekers. The UK Nationality and Immigration Act of 2002 includes provisions to expand assisted voluntary programmes, following the conclusions of the Home Office’s earlier White Paper (“Secure borders, safe haven”) that voluntary returns are key to the UK Government’s efforts to return rejected asylum seekers.

2. Early information/counselling prior to return; and as an aid to the return decision.

Most of the programmes surveyed routinely include some form of information and counselling to potential and confirmed voluntary returnees – as a comfort-raising and pre-orientation strategy; and to help the decision to return voluntarily. The Dutch found in recent years that by increasing and geographically expanding access to information/counselling among migrant communities, the number of voluntary returns did increase. Key to their mobile, decentralized information delivery approach was the fact that asylum applicants could be informed early in the procedure about voluntary return options, and that a negative decision would result in expulsion. This approach will be strengthened under new provisions in 2004.

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The Danish Act on Repatriation of 1999 (in force in 2000) specifically targets information as a means of facilitating voluntary return of foreigners, regardless of their legal or illegal status. A number of evaluations of voluntary return have been undertaken in Europe – e.g. by the UK Home Office, a special Norwegian MOI working group, the Swiss Federal Office for Refugees the Danish Refugee Council and the European Commission – and confirmed the importance of information for preparation of the potential returnee, spurring on voluntary return and contributing to its sustainability.

Increasingly, governments like the UK, Sweden and Finland are offering this service to potential returnees, while they are still in the asylum system, or in reception centres, or already in the expulsion process. Sweden assigns social workers to all asylum applicants, to aid them through the asylum process and advise them of their voluntary return options. Hungary is considering further engaging border guards around the country to inform persons in refugee centres about AVR possibilities (using IOM forms). Italy espouses the importance of training/counselling in reception centres.

3. Close cooperation and teamwork among Ministries, NGOs, IOs and migrants.

This was identified by a number of states as critical to effective planning and implementation of returns, and is being actively pursued by e.g. Belgium, the Netherlands and the United Kingdom. There needs to be more cooperation particularly among affected Ministries in the future.

4. Cooperative approaches between country of origin and country of destination.

The Netherlands has been a strong advocate for closer cooperation with countries of origin; and in 2000, along with IOM, played a strong role in establishing a consultative process between a number of EU Members and the three south Caucasus states (the “Cluster” process). This revolved around joint approaches to managing returns, reintegration and the technical capacity building to support these and migration management generally.

Readmission agreements are seen by European states as a useful framework for consensual approaches to return; and most countries surveyed now have a number of such agreements. They are, however, limited in scope, because of their main focus on facilitating involuntary returns. The pros and cons of such agreements have been amply discussed in reports by governments, IOM, ICMPD, IGC and others. One of the “cons” clearly is the need for capacity building of transit and origin countries to be able to fulfil their end of the agreements. Since the *quid pro quos* surrounding such agreements are often negotiated outside their formal frameworks, there is scanty detail provided by governments on the individual agreements and how they are working.

IOM has recommended in the context of the EU deliberations on a Community Return policy, that such agreements should cover assisted voluntary return as well, in the spirit of true joint ownership of migration management among all countries concerned. There may also be merit in ensuring more consistency of approach across EU countries, to avoid potential competitiveness among states offering incentives for country of origin cooperation within such agreements.

There may equally be merit in discarding the individual agreement approach for broader cooperation agreements that cover the full range of elements that make return sustainable – including those oriented towards development, trade and cultural exchange.

5. “Profiling” of irregular migrant populations in the country of destination.

Some governments cited in the report advocate the need to better understand the “profile” of potential returnees in order to plan and tailor voluntary returns in a more sustainable way. A number of current EU Member States – notably the UK, Netherlands, Belgium, the Nordic countries and Germany – have undertaken surveys of specific migrant communities (e.g. Somalis, Afghans or Roma), and in some cases complemented these with surveys in the migrants’ places of origin (e.g. Somalia) to better plan realistic return strategies that match individual needs with available reintegration options at home.

6. Incentives to return – particularly voluntary return.

These have taken a variety of forms, with mixed results. Monetary incentives, particularly at the return end of the spectrum have served the dual purpose of (a) ensuring the returnee collects the money, and (b) monitoring by the returning government that this has actually happened. When this is a one-off, singular event, it does not necessarily guarantee that the returnee remains in the country of return.

There is evidence from IOM’s studies of AVR programmes that money alone is often not considered by migrants to be sufficiently compelling to choose the voluntary return option. A recent analysis of Belgian AVR experiences by IOM Brussels shows that in that country at least, voluntary return is only seriously considered as an option by irregular migrants after they have spent some time in the country, and exhausted any other options. It is considered a last resort by newcomers. Ireland also found in 2002 that fewer than 10 per cent of Afghans on temporary stay in the country took up the cash incentive to return home voluntarily; and Luxembourg attempted a cash-incentivized AVR programme in 2000/2001, which ultimately failed.

Other incentives have involved longer term investments in sustainable reintegration projects to leverage job-generation, employment and security at least for one year, (e.g. the well publicized Kosovo programmes supported by Switzerland, Germany and others), particularly in post-crisis scenarios. Germany has derived some good models from its vocational training programmes in countries of origin, particularly when they involve the local population as well. Italy also has had favourable experiences with information/counselling strategies to prepare migrants in reception centres for voluntary return.

Return of Qualified Nationals programmes (RQN), as they have been implemented in Bosnia and Herzegovina and Afghanistan, have been used at times to encourage further large-scale return.

One cautious note was struck by a number of governments: that cash incentives for returnees should not become the trigger for competition among returning states – and “shopping around” by the returnees.

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7. Return is likely to be more sustainable where there is supplementary longer term reintegration assistance at the return end.

Most governments surveyed place a high premium on sustainability of return; and now invest in some form of reintegration support. The UK has anchored provisions for reintegration assistance to returnees in its new Immigration Act of 2002; and provides for small loans for some returns. Some governments still seem reluctant to offer such assistance, in case it becomes a pull factor and encourages more irregular migration. They also believe countries of origin should be legally bound to accept their returnees without any added financial incentives.

8. Voluntary return should be offered to a larger beneficiary group than just rejected asylum seekers.

There have been inconsistent approaches to this across states. While some, like Germany, have from the outset taken a broad approach to eligibility for AVR support, and made it available to irregular migrants across a wide spectrum, others have focused their voluntary return programmes on rejected asylum seekers or specific national groups. This is changing. One of the best examples of that is the Danish Act on Repatriation which specifically targets residents granted “humanitarian” permits and other immigrants wishing to return home. One of the marked changes over the last ten years has been the growth in the number of programmes being targeted specifically in favour of victims of trafficking.

As a general conclusion, it would appear to be less difficult to identify “good practices” in assisted voluntary return than on the involuntary return side. A range of programmes have been tried and tested, and found successful in terms of achieving more humane alternatives to forced returns, a better basis for broader good relations with countries of origin and some sustainability of return.

IOM had earlier suggested to the European Commission in the context of its deliberations and hearings on a European Return Policy that there may be sufficient commonality of approach and experience in this area, as yet relatively un-hampered by entrenched and divergent national laws, to establish some common denominators for a workable European policy.

But there is still a need for more evidentiary material to corroborate the generally held belief by the states cited in this study that AVRs are ultimately more effective and cost-efficient than forced or involuntary returns.

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NOTES

1. Readmission and Readmission Agreements: “Agreements (usually bilateral) which address procedures for one state to return irregular migrants to their home state or a transit state”.
2. *The Return of Irregular Migrants: The Challenge for Central and Eastern Europe*, IOM, 1999.

AUSTRIA

1. INVOLUNTARY RETURN

1.1 POLICY

Austria does not consider itself to be a country of immigration. The migration regulations accordingly deal mainly with foreigners who stay temporarily for the purpose of employment as so-called *Gastarbeiter* (guest workers). Austria has a quota system, which allows for a limited number of foreigners to enter the state, according to labour market needs. Austrian migration policy can be described as somewhat restrictive and labour-market oriented.

As Austria is surrounded by a belt of safe third countries, the authorities can call on the Schengen Treaty and the safe third country provisions to return persons without authority to remain. This means that all refugees entering Austria by land can be re-directed across the border to the first safe country of entry to apply for asylum.

Migrants from third countries can, however, be expelled if not in possession of sufficient means to sustain themselves or are not gainfully employed in Austria, which means there is no reason for their continued residence in the country as guest workers. Asylum seekers are exempt from this provision once they are recognized as refugees, but their residence permit can easily be revoked if the authorities deem that the situation in their country of origin has improved.

It is only in recent years that human rights have been taken into consideration in these practices, under Austria's legal obligations under the Geneva and Dublin Conventions. Austria has come under repeated pressure from a number of key players in the international migration community for its restrictive legislation and programme implementation.

With a view to strengthening measures to detect fraudulent asylum claimants and speeding up their exclusion from the asylum reception system and their immediate expulsion, the current government presented in 2003 an amendment of the existing asylum legislation. The new Asylum Act, adopted in October 2003, further restricts the conditions under which asylum seekers are accepted as refugees, or remain, in Austria and implicitly opens the way for easier expulsion and deportation.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- The Geneva Convention of 1951 and New York Protocol of 1967 as incorporated into Austrian law via the Convention relating to the Status of Refugees (FLG I No. 55/1955, amended by the Protocol relating to the Status of Refugees (FLG I No. 78/1974);

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- The Federal Law Concerning the Granting of Asylum (Asylum Act) of 14 July 1997 (FLG I No. 76/1997), as amended by the FLG I No. 4/1999, FLG I No. 41/1999, FLG I No. 196/1999, FLG I No. 82/2001, FLG I No. 126/2002;
- Federal Law Concerning the Entry, Residence and Settlement of Aliens (Aliens Act) of 14 July 1997 (FLG I No. 75/1997) as amended by FLG I No. 86/1998, FLG I No. 158/1998, FLG I No. 98/2001, FLG I No. 142/2001, FLG I No. 69/2002, FLG I No. 126/2002 and FGL I No. 134/2002;
- Schengen Agreement and Dublin Convention – incorporated into domestic law, the former via FLG III No. 90/1997, as amended by FLG I No. 128/1999;
- Security Police Law (*Sicherheitspolizeigesetz*) of 1991 with its amendments.

The two main legislative texts for the regulation of forced return are the Austrian Aliens Act of 1997 with its amendments and the Foreigners Act of 1997 with respective amendments. At the end of October 2003, the Austrian Parliament passed an amendment of the Asylum Act, which will come into force 1 May 2004.

The Austrian People's Party (ÖVP) and the Austrian Green Party (*Die Grünen*) announced that they would challenge the new law at the Constitutional Court, for not being in compliance with the Austrian Constitution. UNHCR, several NGOs and other stakeholders in the field of migration have criticized the law for its restrictive character.

The new Asylum Act foresees several changes, amongst them:

- Provisions for instating a quick pre-screening procedure to accelerate the asylum determination procedure, which means that claims will be examined and a first decision on whether asylum seekers are granted asylum or are expelled, or their claim is admitted for further examination, will have to be taken within 72 hours. The law foresees in this context the establishment of special “first contact” reception centres (*Erstaufnahme-Zentren*);
- In case of appeals following a negative asylum decision, it is no longer possible to present new case evidence, and the appeal will be judged only on the initially submitted information. This provision will not apply to traumatized refugees;
- Asylum seekers who are not able to maintain themselves will not have a legitimate claim for financial support from the state;¹
- Expulsion and deportation of asylum seekers will be possible despite pending appeal decisions.

Under Article 33 of the Aliens Act, aliens may be expelled by administrative order if they are unlawfully resident in Austria. The lack of financial means for self-maintenance is a ground for expulsion, as well as illegally entering Austria, prostitution, working without prescribed permits, or where the migrant's presence is deemed to be a threat to public security and order. According to Article 40, expulsion orders are enforceable after becoming legally binding.

If petitioned, expulsion can be postponed for three months to give the person the possibility to settle his/her personal affairs.

Rejection at the Border

The most important tool to prevent illegal entry is rejection at the border (*Zurückweisung*) as laid down by Article 52 of the Aliens Act. Rejections may be enforced, among others, if a residence ban has been enacted, or the foreigner attempts to re-enter Austria despite a prohibition on re-entry (Article 52 (1)), or the migrant does not avail of sufficient means to maintain him/herself (Article 52 (4)). The rejection may be marked in the rejectee's passport.

Push Back

If a foreigner evades border controls and is detected within a period of seven days, he/she may be pushed back (*Zurückschiebung*) according to Article 55 of the Aliens Act, if he/she transited through any of Austria's surrounding safe third countries. A stamp with the words "push back" may be placed into the rejectee's passport to prevent future re-entry.

Administrative Expulsion Order

Rejection of asylum claims is tied to expulsion and immediate departure from Austrian territory. Article 33 (3) stipulates: an expulsion order may be enforced before it becomes legally binding and the expelled foreigner must depart promptly. Yet the authorities can decide at their own discretion, when to enact an expulsion. The authorities must also take into consideration the expelled foreigner's family ties, as extenuating circumstances.

Austrian legislation distinguishes between expulsions of foreigners without residence permits (Article 33 of the Aliens Act), expulsions of foreigners with residence permits (Article 34 of the Aliens Act), expulsions of foreigners with a settlement permit (Article 35 of the Aliens Act) and the residence ban.

Residence Ban

Article 36 of the Aliens Act allows a residence ban (*Aufenthaltsverbot*) to be imposed on aliens who are deemed to:

- Constitute a threat to law and order or public safety;
- Contravene with their presence other public interests, as specified by Article 8 of § 2 ECHR.

A residence ban has to be enacted by an individual order. According to Article 37 of the Aliens Act, it is basically at the authorities' discretion when a residence ban may be imposed. It can be imposed for an unlimited period (in cases of serious criminal offences and/or trafficking) or up to five years (for sham marriage) and generally to a maximum period of ten years.

Judicial Order of Expulsion

Courts for criminal affairs have no power to enact expulsion orders. All administrative law matters have to be decided by the administrative authorities. Yet most criminal charges permit expulsion or banishing of the convicted criminal non-national.

Deportation

Deportation is the fulfilment of a residence ban or expulsion order. According to Article 56 (1) of the Aliens Act a deportation is justified if:

- Supervising the departure is considered necessary to ensure public law, order and/or security;
- The rejected person has not departed voluntarily and within the prescribed time;
- The authorities deem it possible that the migrant will abscond;
- The foreigner has returned to federal territory in contravention of a residence ban.

This shows that nearly every departure can be enforced, although in principle a foreigner should leave voluntarily on expiry of his/her residence permit and receipt of an expulsion order. The deportation may be marked in the deportee's passport, according to Article 56 (4).

Under the currently still effective legislation, deportations are not enforced during the asylum procedure (Article 21 (2) of the Asylum Act). Under the new legislation coming into force on 1 May 2004, deportation of asylum seekers awaiting the outcome of their appeal will be possible.

The Security Police Law (*Sicherheitspolizeigesetz*) of 1991, as amended in 2002, prohibits gagging and forced medication, and stipulates under Article 29 strict adherence to proportionality. Any measures, for example, to calm down a deportee on a standard commercial flight must be in proportion with his/her resistance.

If physical resistance cannot be overcome while respecting standards of proportionality, enforcement of the deportation has to be postponed, and the deportee has to be escorted on a chartered flight by a physician, an independent human rights observer and three escorting officers.

Detention

According to the Aliens Act, section 53 (1) and (2), persons subject to rejection may be ordered to stay in a designated area such as a holding room at a border control building, or in a means of transport in order to ensure enforcement of the rejection. Rejections and deportations are acts of immediate command or compulsion undertaken by the administrative authorities (*verfahrensfreie Akte*) without requiring an individual administrative order, as is the case with expulsions and residence banishment orders.

Asylum seekers applying at the airport may be detained in the airport's transit zone while awaiting the decision of the Federal Asylum Office. Those persons whose application has been rejected on grounds of inadmissibility or manifestly unfounded claims are detained at the transit zone up to the moment of enforcement of their deportation.

Detention is possible also during the application determination procedure on grounds of illegal entry or illegal residence of applicants who entered illegally by evading border controls. In order to enforce their departure, they may be detained in prison cells or in police station cells. The law allows for a maximum of six months' detention in these cases. The migrant may file a complaint with the Independent Administrative Senate if the detention exceeds this respite or is otherwise considered unlawful. Applicants with a provisional residence permit may also be detained if the outcome of their application is likely to be negative and a deportation has to be enforced.

Under Article 61 of the Aliens Act, rejectees and any foreigner subject to leave the territory of Austria may be apprehended and detained to enforce the obligation to leave and reduce any risk that expulsion may fail.

The maximum length of detention pending deportation is two months, which may be extended to four months in special cases. According to Article 69 (6) a foreigner may be detained for a maximum of six months within two years. A detention period of a maximum of 14 days to enforce deportation is nevertheless possible.

However, Article 69 (1) also stipulates that the authorities are obliged to work towards a detention period that is as short as possible.

Austrian legislation on aliens also foresees under Article 66 the possibility of “more lenient measures”, according to which the authorities may refrain from detention pending deportation if they have reason to believe that their objectives may be achieved by the use of other means. With the explicit consent of the alien, the authorities may order him/her to take accommodation at a designated address and report every second day to the relevant authorities. In case of non-compliance with this order, the alien may be ordered detained. In this case, the law allows in accordance with Article 69 that the maximum time for detention be doubled.

Minors are usually not detained but treated under Article 66, which stipulates more lenient measures for this group, unless the authorities have reason to assume that the objective of an order for detention pending deportation cannot thereby be achieved. According to Article 66, the minor shall be placed in premises specified by the authorities.

Illegal Entry

Most asylum seekers enter Austria illegally. They avoid border controls and apply within the country for asylum, in order to evade a push back or rejection at the border. The Aliens Act stipulates under Article 55 that foreigners who evade border controls and are found within seven days can be pushed back.

Austrian legislation imposes penalties on persons assisting illegal entry of migrants. This also includes -cases where assistance is provided for humanitarian reasons. Under the law, a person can also be charged for providing aid to migrants residing illegally in Austria. A person can also be charged for renting an apartment to undocumented foreigners and for soliciting the services of a trafficker who facilitates illegal entry into Austria.

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Under Article 104 of the Aliens Act, persons facilitating illegal entry on a gain basis may be sentenced to up to one year imprisonment or fined. Any person convicted of trafficking in migrants or smuggling refugees into Austria, and who has been already sentenced for such an act in Austria or elsewhere, may be sentenced to imprisonment for a period of up to two years.

Gross offences against the law can be punished with imprisonment from six months to five years, and up to ten years if a trafficked migrant dies, or where migrants have been smuggled repeatedly or in larger numbers.

Migrants in these circumstances are not punished; they may be granted temporary residence if they cooperate as witnesses against the traffickers.

Carrier Sanctions

In regard to carrier sanctions, the amendment FLG I No. 142/2001² specifies precautionary measures to be implemented by carriers. Article 53 (3) of the Aliens Act stipulates that carriers are obliged to provide the border control authorities with identification (name, date and place of birth, address and nationality) and entry document details (type, validity period, issuing authority and date of issue) of their passengers. This data is to be accessible to the border authorities for a respite of ten days.

This does not apply to passengers who do not need a visa and who satisfy the obligation to carry necessary documentation. Article 103 stipulates that, where the carrier did not comply with its obligation to inform the border control authorities, it may be fined EUR 3,000 for each illegally entering passenger. The fine may be rescinded if the carrier arranges at its own expense the immediate return of the migrant. Where the asylum seeker's application is decided positively and asylum granted, the carrier is refunded any paid fines.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Once an asylum application has been rejected in the last instance, the rejectee is ordered in the rejection notice to leave the country promptly and voluntarily. In cases, where it is deemed that rejectees may abscond, detention is possible and applied. In practice, detention is often imposed as a precautionary measure to ensure the enforcement of the removal of rejectees.

Institutions Responsible for Involuntary Return

The overall responsibility for forced return lies with the Ministry of Interior, whereas enforcement of the removal process falls under the competence of the Austrian Aliens Police (*Fremdenpolizei*).

Operational Steps for Involuntary Return

Escorts

Deportees who resist their deportation are escorted by police officers. In 2002, three escorting police officers were charged for the death of the Nigerian asylum seeker Marcus Omofuma, who

had been handcuffed, gagged and tied to his seat during an aborted attempt to deport him. He was suffocated on 1 May 1999. This is the first time in Austria that guilty verdicts have been handed down in the death of a rejected asylum seeker, according to ECRE a significant ruling.³

The Security Police Law was amended in 2002 and prohibits gagging and forced medication under Article 29 and stipulates strictly the adherence to a proportional treatment of deportees who resist their deportation physically.

Following Omofuma's death, Austria instated a human rights advisory council with members from the Ministry of Interiors and representatives of NGOs. In 2001, the Austrian Human Rights Advisory Council criticized the detention conditions for asylum seekers in Austria. The council found that medical and psychological assistance to detainees was not adequate and interpreters were lacking.⁴

Chartered Flights

Deportees are usually removed on commercial flights. In practice, deportations on chartered flights are possible but are rarely organized, as they are deemed to be too expensive.

Framework Agreements with Countries of Origin or Transit

According to Article 59 of the Aliens Act, the Republic of Austria may conclude in accordance with the Federal Constitution reciprocal transfer agreements with third countries. Readmission Agreements are negotiated and concluded within the framework of the European Union existing bilateral agreements.

Currently Austria has agreements with Benelux, Bulgaria, Croatia, Czech Republic, France, Germany, Hungary, Italy, Poland, Slovenia, Switzerland, Liechtenstein, Tunisia, Estonia, Slovak Republic, Romania, Lithuania and Latvia.⁵ Austria has also concluded a transit agreement with Kosovo.

These readmission agreements regulate only the involuntary return of the country of origin's nationals and foreigners. They refer to foreigners in general and no distinction is made between refugees and other foreigners.

Many readmission agreements concluded by Austria include a three-month respite, during which Austria is obliged to file a request for transfer. As the inadmissibility procedure can take several months before the Federal Asylum Office renders a decision, the Austrian authorities are increasingly requesting readmission before completion of the asylum procedure to meet the time limits stipulated by the relevant agreements.

Austria's readmission agreements do not differentiate explicitly between voluntary and involuntary return. However, the focus lies on involuntary return, including detailed provisions in regard to police escorting deportees.

Problems in identifying and documenting returnees are reported in regard to Chechnya, due to the fact that Russia does not recognize Chechnya as a State. Forced return to China is also difficult. Many Chinese have identical names and therefore the process of identifying the migrants is lengthy and difficult.

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There is no information available on the use of EU standard travel documents in the process of forced returns.

Costs

The costs of implementing expulsions are not available.

Passport Stamps

According to Article 56 (4) of the Aliens Act, the enforcement of a deportation may be indicated in the travel documents of the deportee. The legislation provides also for the possibility to stamp the passport of foreigners in case of pushbacks, rejections, and residence bans.

The authorities decide at their own discretion whether to stamp the expelled migrants' travel documents or not.

Detention

Applicants, who come via an airport or directly from their country of origin and file an asylum application at the border, can be detained upon arrival at the airport throughout the duration of the determination procedure. No detention order or legal protection are necessary for the detention, as the Ministry of Interior deems that asylum seekers should stay voluntarily at the designated airport facilities.⁶

The facilities at the airport transit zone consist of units designed for 56 persons and are guarded by the police. The maximum detention period generally does not exceed 40 days. Applicants who are refused by the Federal Asylum Office are also kept in the airport transit zone. Detainees are generally held in police holding rooms (*Polizeigefangenenhaus*) and rarely in State Prisons (*Justizanstalt*).

In 2000, the cities of Linz and Bregenz started to operate a more open model of detention: foreigners who showed good behaviour pending their removal have been rewarded with less strict detention procedures. Their cells have been left unlocked for a certain period during the day and they have had access to leisure and cooking facilities. The Ministry of Interior is considering installing more such "open units".⁷ Generally, detainees are held in closed facilities.

Fingerprinting

According to Articles 35 and 36, the asylum authorities are expected to register all necessary records, including fingerprints and photographs of all asylum seekers who are at least 14 years old.

The authorities are empowered to carry out all necessary measures to establish the personal identity of the asylum seeker. In case the asylum seeker does not quickly comply with the relevant notice to be photographed and fingerprinted, the authorities may exercise direct powers of command and constraint, insofar as such measures do not violate the physical integrity of the asylum seeker.

Records are to be deleted ten years after the dismissal, rejection, withdrawal or discontinuation of an asylum application, or whenever the person concerned has acquired the nationality of one of the EU Member States.

Illegal Entry

In May 2001, Austria and the Czech Republic agreed along the lines of the Schengen Treaty to establish a joint contact office at the border to combat illegal migration between both countries. Austria has signed similar agreements with Czech Republic, Hungary, Poland, Slovakia and Slovenia stating the parties' agreement to join efforts in fighting organized crime, regulating border traffic and coordinating asylum issues.

Social Welfare Benefits

In 2002, the Austrian Government denied federal care to persons subject to "absolute" exclusion. To this group belonged nationals of Armenia, Azerbaijan, Georgia, Serbia and Montenegro, Macedonia, Nigeria and Turkey, whose claim was rejected in the first instance.

The second group of nationals from India, Pakistan, Bangladesh, Bosnia, Croatia, Macedonia, Montenegro and Serbia, Albania, Armenia, Georgia, and Russia was only entitled to benefits if they were minors and therefore in need of special protection. Serbs from Kosovo, Chechens from Russia and Kurds from Turkey were exempted from this practice. The underlying aim was to confine federal support to those asylum seekers unable to support themselves, but with a realistic prospect of being granted asylum.

In regard to this practice, it should be noted that detained rejectees who cannot be removed have to be released after the legally permitted maximum period of six months detention. No residence permits are granted in these cases, which means that failed asylum seekers depend on the discretion of the relevant district. Not all districts provide for failed asylum seekers and rejectees, who thus depend on the assistance of private organizations.

This practice has recently been challenged by a decision of the High Court, which ruled that asylum seekers who cannot maintain themselves are to be supported accordingly by the Federal State. The new amendment to the Asylum Act, expected to come into force on 1 May 2004, opposes this Court decision.

1.4 STATISTICS ON INVOLUNTARY RETURN

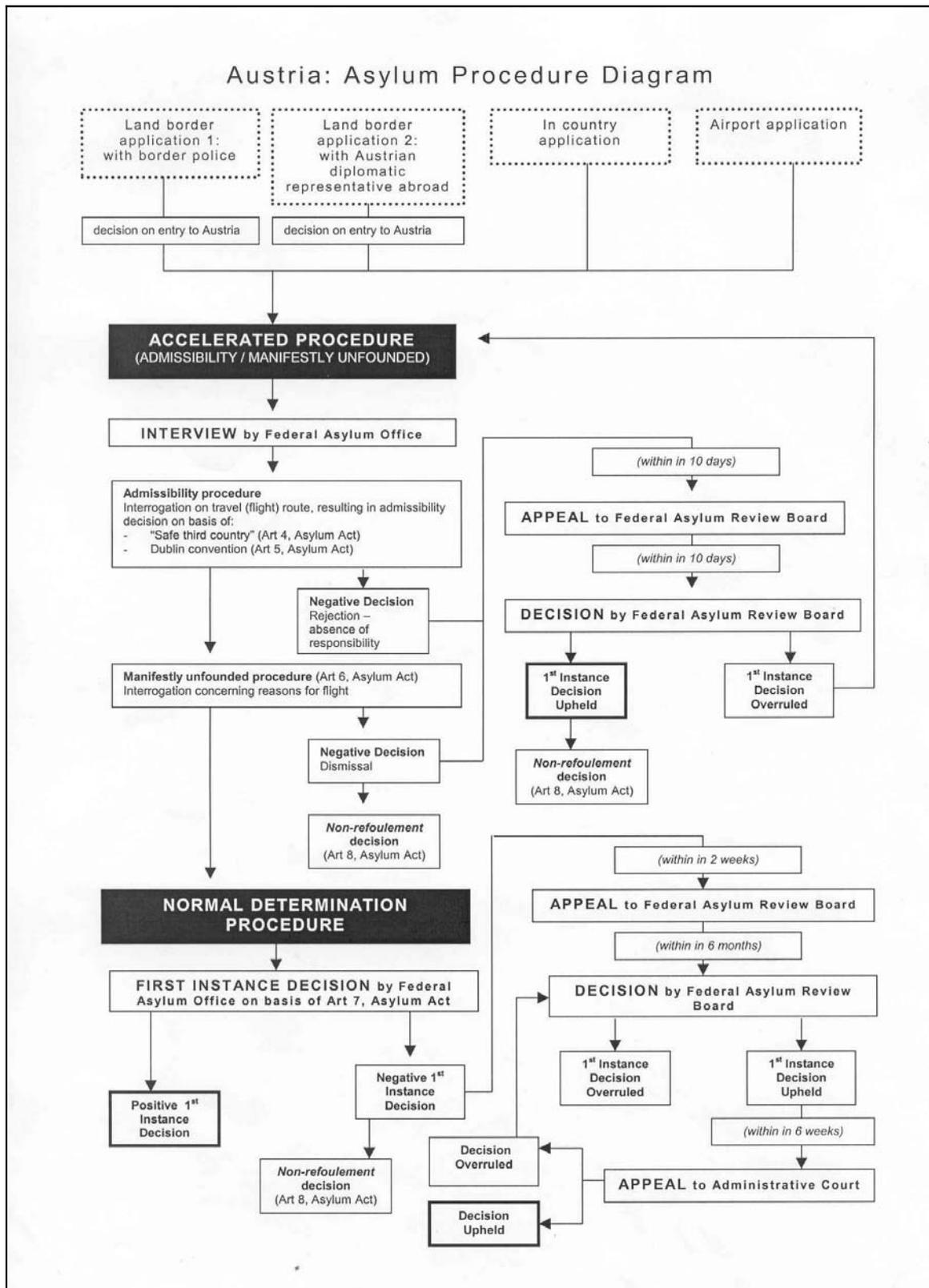
TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Deportations
2000	8,935
2001	8,324
2002	6,842
2003 (up to October)	5,622

1.5 BEST PRACTICES AND LESSONS LEARNED

No information available.

FIGURE 1



Source: ECRE – Legal and Social Conditions for Asylum Seekers and Refugees in Europe, 2003 – Austria

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

As an alternative to forced removals, the Austrian government offers assistance to facilitate voluntary return. The basis of assisted voluntary can be found in the 1991 *Bundesbetreuungsgesetz* (Law on Federal Social Care), which establishes the overall guidelines for federal care programme for asylum seekers. Article 12 of this law states that the Ministry of Interior can provide financial assistance to people whose asylum application has been rejected or refugees who want to return voluntarily to their country of origin. As a minimum, this financial assistance provides for the cost of travel back to the country of origin or other country of residence. In order to facilitate assisted returns the non-governmental organization, Caritas, implements a programme funded by the European Refugee Fund (ERF) and the Ministry of Interior (MOI).

In accordance with the obligation to provide assistance to migrants who wish to return to their home countries, an agreement on assisted voluntary return between IOM's office in Vienna and the Austrian Ministry of Interior has been in place since June 2000, although IOM has been implementing AVR programmes in Austria since 1996. This generic programme on Humanitarian Voluntary Return provides return and reintegration assistance to rejected asylum seekers, asylum seekers who have withdrawn their applications and other migrants who have been issued with or are liable to be issued with a deportation order.

Special return and reintegration programmes may also be implemented when circumstances warrant them. Since April 2003, IOM Vienna has been entrusted with the implementation of a project on the "Coordination of the Assistance for Voluntary Return to Afghanistan," which is financed by the European Refugee Fund and the Austrian Ministry of Interior, and promotes the return of qualified Afghan nationals. This project aims at establishing linkages between return counselling in Austria and the logistics of the return and arrival in the country of origin.

The Austrian government has also considered other avenues of voluntary return assistance, and in October 2002 it commissioned a private German agency, European Homecare, to provide return counselling in the refugee camp *Traiskirchen*. Between October and December 2002 a total of three persons were returned via referral through European Homecare. In addition European Homecare obtained return documentation for nine returning migrants, who were assisted to return by IOM Vienna.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Interior has overall responsibility for voluntary return policies and works in cooperation with IOM and NGOs such as Caritas and the Red Cross, towards the implementation of these policies.

Return Migration: Policies and Practices

NGOs and some *Landesflüchtlingsbüros* (country refugee offices) may also provide counselling on returns, then refer cases to IOM to organize the return. Nine such return counselling centres exist. In addition four NGOs (*Caritas 7 Zentren, Volkshilfe, Diakonie, Verein Menschenrechte*), the European Homecare (private) and one centre in *Traiskirchen* may also provide return counselling.

All AVR departures and flights in Austria are organized by IOM Vienna.

In regard to the Afghanistan Return Programme, the office of the UN High Commissioner for Refugees provides country information updates, which cover issues pertinent to Afghan returnees, and include issues such as the current security situation in Afghanistan as well as general repatriation and reintegration advice.

IOM cooperates with the Intervention Centre for Victims of Trafficking (*LEFÖ-IBF*) in providing assistance to victims of trafficking found in Austria who wish to return to their home country.

Operational Steps for Voluntary Return

Individuals seeking assistance with their voluntary return to the country of residence may approach IOM directly or be referred to IOM by NGOs and state bodies. IOM Vienna organizes the return by providing assistance before, during, and after the return.

TABLE 2
AUSTRIAN HUMANITARIAN RETURN PROGRAMME

Eligible Beneficiaries:	<ul style="list-style-type: none"> • Asylum seekers whose application have been refused; • Asylum seekers who have given up on their application; • Other migrants who have been given an administrative order by the responsible authorities to leave the territory of Austria or who fulfil all pre-conditions to receive such an order.
Budget:	EUR 1,014,402.95 (this includes travel costs for AVR via IOM, return counselling by NGOs and European Homecare)
Funding Source:	Ministry of Interior
Movements to Date (end 2003):	Since 1996, over 3,500 migrants have been assisted in returning to more than 50 countries.

Programme Services

- Pre-departure assistance: information dissemination in cooperation with partner agencies.
- Transport assistance: departure assistance, transit assistance.

Assistance for Voluntary Return to Afghanistan

Any return counselling centre, which provides counselling to refugees in Austria, may implement this programme. There are nine state bodies (*Landesflüchtlingsbüros*) providing counselling to refugees and four non-governmental organizations (*Caritas with 7 centres; Volkshilfe, Diakonie and Verein Menschenrechte*), as well as European Homecare and another private centre. The target group are Afghan citizens in Austria, who wish to return home and for whom return has a meaningful purpose. The reintegration measures offered contribute to the success and sustainability of the return and a new start for the returnees, and this is an important aspect of the programme.

Between April and December 2003, 38 Afghan nationals had returned under this programme. Fourteen persons have also been registered to return in January 2004. Returns are usually accompanied by questionnaires to follow-up and monitor the reintegration process.

Outside the return and reintegration assistance provided for asylum seekers and other irregular migrants, IOM Vienna also cooperates with concerned partners to facilitate the return of special groups of migrants in need of return assistance, such as trafficking victims and unaccompanied minors. IOM cooperates with the Intervention Centre for Victims of Trafficking (*LEFÖ-IBF*) on many issues relating to trafficking, including return assistance, and assisted one victim of trafficking home in 2002. In cooperation with the relevant authorities in Vienna and the rest of the country, IOM also facilitated the return of 14 girls from Bulgaria and 12 minors from Romania in 2002, who were found working in prostitution or begging in Vienna. Since September 2002, however, the return of minors to Bulgaria has been discontinued because of poor reception facilities in Sofia.

Non-IOM Implemented AVR

The assisted voluntary return programme operated by Caritas provides pre-departure assistance including legal and social counselling, temporary accommodation and initiatives to assist reintegration, such as vocational training and financial assistance. Post-arrival assistance is only available to vulnerable groups, who, for instance, need assistance in finding family, jobs and accommodation. In particularly needy cases, persons may receive approximately EUR 1,450 towards reintegration.

The Association for Democracy in Africa also operates a specific assisted voluntary return programme with funding from the European Refugee Fund, which focuses on return and reintegration assistance to African nationals through counselling, vocational training and travel assistance.

Framework Agreements with Countries of Origin or Transit

See section on involuntary return.

2.3 STATISTICS ON VOLUNTARY RETURN

Statistics for IOM Implemented AVR

Between 2001 and 2002 the number of people assisted by IOM Vienna to return to their home countries, increased by over 100 per cent – from 427 to 878 returnees. The main countries of return in 2001 were the Federal Republic of Yugoslavia (149),⁸ Iran (60) Bosnia and Herzegovina (29), Romania (24), and Armenia (21), while the most common countries of return in 2002 were

Return Migration: Policies and Practices

Armenia (59), the Russian Federation (51), and Macedonia (72). A further 37 Afghan nationals returned in this year, two of whom returned under the programme for the Return of Qualified Afghans. Close to one thousand were assisted in 2003, many to the Kosovo province, Turkey, Moldova, Iran, and Afghanistan.

On the whole, the diversity of countries of origin has increased from 36 countries in 2001 to 49 destinations of humanitarian voluntary return from Austria in 2003.

TABLE 3
GENERAL STATISTICS ON VOLUNTARY RETURNS
(VERIFIED BY BORDER GUARDS)

Year	Number of Assisted Voluntary Returns
2000	1,541
2001	3,411
2002	2,791
January – October 2003	1,791

TABLE 4
GENERAL STATISTICS ON VOLUNTARY RETURNS
(NOT VERIFIED BY BORDER GUARDS)

Year	Number of Assisted Voluntary Returns
2000	1,051
2001	1,020
2002	1,271
January – October 2003	1,076

2.4 BEST PRACTICES AND LESSONS LEARNED

Lessons Learned

Four developing trends that IOM wants to build on and/or strengthen are:

- Regional migration processes, which can benefit from IOM assisted return services in a regional context and/or as part of a comprehensive approach to migration management;
- An increased recognition, by all concerned states, that origin, transit and destination countries need to discuss and cooperate on return, readmission and reintegration, in order to find fair, effective, and durable solutions;
- A growing call for specialization of assisted return projects, with greater attention to migrant counselling, reintegration and monitoring; and
- The need for donor-funded return projects that facilitate return among “Southern” or origin countries.

Cost Effectiveness Analysis

AVR programmes are considered to be more cost effective than forced return in view of the fact that the average cost of counselling, flights, pre-departure accommodation and reintegration assistance only amounts to approximately EUR 415 per person. The average cost per person of enforcing an expulsion order is thought to be much higher than this.

TABLE 5
AVERAGE COSTS, BY COUNTRY:
01 JANUARY – 11 DECEMBER 2003

Country of Origin	Average Cost in Euro
Afghanistan	479.02
Albania	254.82
Algeria	440.68
Argentina	596.78
Armenia	340.78
Azerbaijan	346.89
Bangladesh	528.37
Belarus	303.57
Bosnia and Herzegovina	218.04
Brazil	506.70
Bulgaria	284.35
Cameroon	521.00
China	526.91
Ecuador	648.95
Egypt	495.61
Estonia	380.45
Georgia	362.23
Ghana	677.80
India	401.57
Indonesia	524.00
Iran	275.16
Iraq	275.96
Jordan	326.16
Kazakhstan	604.69
Kenya	448.90
Kyrgyzstan	658.42
Lebanon	526.90
Libyan Arab Jamahiriya	278.39
Lithuania	326.03
Macedonia, FYR	226.48
Moldova	261.84
Mongolia	659.62
Morocco	328.80
Nepal	508.05

Return Migration: Policies and Practices

TABLE 5
AVERAGE COSTS, BY COUNTRY:
01 JANUARY – 11 DECEMBER 2003

Country of Origin	Average Cost in Euro
Nigeria	532.08
Pakistan	485.68
Romania	289.93
Russian Federation (Europe)	463.41
Sierra Leone	586,37
Sri Lanka	475.61
Syrian Arab Republic	282.81
Tunisia	492.12
Turkey	207.26
Ukraine	270.49
Uzbekistan	596.99
Venezuela	453.00
Viet Nam	642.93
Yugoslavia	219.20

Note : Figures refer to cost of AVR. Prices vary, depending on travel period and availability of airline seats

Source: IOM Vienna.

NOTES

1. The High Court ruled recently that the Federal authorities have to provide for asylum seekers who cannot maintain themselves.
 2. In October 2001, the Constitutional Court quashed the case of an airline, which carried 12 irregular passengers and was fined EUR 36,000 under the original provision laid down in the amendment FGL I No. 108/2001. The Court found that the provision did not specify sufficiently the carrier's obligation to provide information and was unconstitutional. As a result of this ruling, Article 103, which detailed the procedure for fines was suspended and had to be amended. Later in the year, the respective amendment FGL I No. 142/2001 "repaired" Article 103 of the Aliens Act and came into force on 1 January 2002.
 3. *ECRE – Legal and Social Conditions for Asylum Seekers and Refugees in Europe*, 2003, p.15.
 4. *World Refugee Survey 2002* at <http://www.worldrefugee.org>.
 5. Recent rulings of Austria's High Court with regard to Slovakia, Hungary and the Czech Republic, as well as cases where the Independent Federal Asylum Review Board turned down decisions by the Federal Asylum Office have undermined the assumption that Austria's neighbours can be deemed as safe countries, *ECRE – Legal and Social Conditions for Asylum Seekers and Refugees in Europe*, 2003
 6. *ECRE – Legal and Social Conditions for Asylum Seekers and Refugees in Europe*, 2003, p.6
 7. *Schubhaft in Österreich*, Michael Berger, *Schubhaft-Sozialdienst*, Wien/Caritas AusländerInnenhilfe und Volkshilfe Österreich, April 2002.
 8. Primarily to Kosovo.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Austria signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Austria also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

BELGIUM

1. INVOLUNTARY RETURN

1.1 POLICY

Rising numbers of asylum applications and several incidents relating to migration have sparked off a new debate on migration needs in Belgium. In 1999, the Government responded with an immigration programme focused on: the creation of a status for persons displaced by war; the acceleration of the asylum procedure; reform of the nationality law to encourage integration of migrants; a campaign of regularization; expulsion of undocumented migrants not eligible for regularization; and reformation of the administration and institutions responsible for immigration.

As a result in 2000, the government tightened the asylum regulations with a new law that came into force in January 2001¹ and introduced a three-week campaign to legalize undocumented migrants. In March 2000, the law on naturalization was reformed. The naturalization regulations were relaxed, allowing all foreigners legally residing in Belgium to become Belgians without a check on their “desire to integrate”. With this, Belgium has introduced some of the most liberal legislation on nationality in the European Union. In line with its programme and in pursuance of a “last in, first out” policy, the length of the asylum procedure was reduced from an average of three years (in 1999) to one year.

The unfortunate case of a young Nigerian woman, Sémira Adamu, who died during a deportation process,² and the removal of a five-year-old girl to the Democratic Republic of Congo in October 2002, whilst her mother was in Canada, were given nationwide press coverage, questioning the authorities’ practices and decisions. These incidents have led to a more sensitive practice regarding forced return. For Belgium, the detention and removal of failed asylum seekers does not constitute a policy priority. Emphasis is rather placed on voluntary return in the context of a predominantly administrative (and not criminal) legislation on asylum.

In 2003, the Belgian immigration policy was as ever dominated by control and restriction of inflowing migration aligned with the EU harmonization of immigration, as well as by efforts to integrate foreigners residing legally in Belgium. The current coalition government, as well as the Flemish and Walloon population, are divided over the debate on the introduction of the right to vote for non-EU nationals.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

Forced return is regulated by the *Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers* (Immigration Act of 15 December 1980)³ and the *Arrêté Royal* (Royal Decree) of 8 October 1981.

Return Migration: Policies and Practices

Removal

The provisions of the Immigration Act regulate the removal of aliens in Belgium. In regard to asylum seekers: applicants notified of the final rejection of their application are ordered to leave Belgian territory within 5 days on their own volition. If they overstay this respite, they are considered to be illegal residents and are subject to detention and subsequently removed.

In addition, Article 80 of the Act states that all general principles of Belgian criminal law, contained in Part I of the Belgian Criminal Code, are applicable to offences against the 1980 Immigration Act.

Detention

According to the Immigration Act, detention applies to any person who:

- Tries to enter Belgium at a point of entry without being in possession of the required identity and travel documents – such a person may be detained in a location situated in the border area while awaiting a decision to enter Belgium or awaiting removal (Article 74 of the Immigration Act);
- Stays illegally in Belgium – he/she may be detained when his/her removal has been ordered (Article 7 of the Immigration Act); and
- Has been ordered to leave the country and has failed to do so within the set time limit (Article 27 of the Immigration Act).

The 1992 Police Act (article 34, paragraph 4) further stipulates that the Police may also detain persons who cannot prove their claimed identity, for the period necessary to check their identity, and for a maximum of 12 hours. Under Article 74(7) of the 1980 Immigration Act, the police may detain foreign nationals who do not have the necessary residence or identity documents for a period of 24 hours, awaiting a decision of the Minister of Interior or the Immigration Office about their status. When contacted by the Police, the Immigration Office will check whether the claimant has any legal residence status in Belgium. Those who do not may be detained and if possible removed.

With regard to asylum seekers, the following categories can be detained:

- Asylum seekers arriving in Belgium, who apply for asylum at the port of entry, without being in possession of the required identity or travel documents – these may be detained in a location situated in the border area, while awaiting a decision to enter Belgium or awaiting removal (Article 74(5) of the Immigration Act);
- Asylum seekers who have entered Belgium legally, but whose legal permission to stay has expired, may be detained when their asylum application has been found inadmissible by the Minister or the Immigration Office (Article 74(5) of the Immigration Act).

The issue of detention of unaccompanied minor children is currently still under discussion. In order to prevent trafficking in children, the Belgian authorities investigate as a precautionary

measure, persons who collect unaccompanied children, who presented valid documents at the port of entry.

The initial maximum period of detention is generally two months. If the refusal of residence is final, detention may be prolonged by two additional months by the Minister or the Immigration Office, and by another month by the Minister. The maximum period of detention is thus five months. The period of five months may be extended to eight months for reasons of public order and national security. The Minister may extend further the detention period on public order or national security grounds. At the end of the maximum detention period, detainees, who are placed in closed centres (*centres fermés*) and cannot be repatriated or removed, are to be released with the order to leave the territory of Belgium.

Detention is subject to review by the Committals Division (Council Chamber) of the Criminal Court. The court can only check the legality of the decision to detain. Detained foreign nationals may lodge an application with the Committals Division of the Criminal Court with jurisdiction for the place where they reside, or where they are found or detained.

The Committals Division is required to deliver its decision within five working days from the date on which an appeal is lodged, after hearing the submissions of the foreign national or his/her counsel and the opinion of the King's Prosecutor. If the Committals Division fails to deliver its decision within this period, the foreign national has to be released. If the Committals Division decides that the foreign national should not remain in custody, he/she will be released as soon as the decision has become final. The Minister of Interior may order the foreign national to reside in a designated place either until removal has been carried out, or until the appeal has been processed, in order to prevent the possibility of absconding.

Illegal Entry

Under Article 77 of the Immigration Act, illegal entry and residence, as well as aiding such actions, is punishable with imprisonment of eight days to three months and/or by a fine of EUR 1,700 to 6,000. Yet Belgian law exempts from this provision all cases where help or assistance to foreign nationals has been provided out of humanitarian concern. Cases of repeated acts within a period of three years may be sentenced with penalties of imprisonment for one month to one year and/or a fine of EUR 6,000 to 30,000.

In regard to aircraft carriers, the Immigration Act stipulates that they, together with the illegally entered migrant, pay any expenses related to housing, residence and health care. For this, a daily amount is requested, which is normally paid without any difficulty. The carrier can be also required to pay the removal costs. This only applies to asylum seekers who have made their claim at a point of entry. The carrier will also pay an administrative fine (EUR 3,750) for having carried an inadmissible person to Belgium.⁴

Trafficking

Particular emphasis has been placed in Belgium on actions against organized crime, especially in regard to trafficking of human beings and illegal prostitution networks. This has also led to the development of special protection programmes, including the granting of temporary residence permits, for victims and witnesses.

Return Migration: Policies and Practices

Under the Immigration Act, Article 77 bis, human trafficking is punishable with imprisonment of one to five years. In addition to the penal sentence, traffickers have to pay a fine of EUR 500 to 25,000. Paragraphs 2 to 4 of Article 77 bis increase the sentences to 10 to 15 years imprisonment, a fine of EUR 1,000 to 100,000 and the loss of civic rights in specific cases, such as organized group activities.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

Under the responsibility of the Ministry of Interior, the Immigration Office, in cooperation with the police, is responsible for implementing forced returns. A special unit within the Airport Division of the Federal Police carries out all forced removals, with or without an escort.

Operational Steps for Involuntary Return

In the case of forced return of larger groups, the Belgian authorities mostly charter flights. Initially, the Immigration Office chartered private aircrafts. After public and media discussions about the use of charters, and difficulties encountered by the authorities in some cases, one of the private airline companies concerned announced its decision to cease collaboration with the Belgian authorities. Since then, only aircraft of the Belgian Air Force have been chartered.

Charter flights have been used since 1999 for the removal of illegal immigration, including failed asylum seekers. The initial basis for the use of a charter flight was the necessity to remove illegal aliens who, on a number of occasions, had refused to be removed on a commercial flight.⁵

In 2002, there were 17 charter flights to Kosovo, Africa (Conakry, Guinea and Duala, Cameroon), Macedonia/Turkey (a combined flight) and Romania. There have also been two joint charter flights with the Netherlands to Kosovo. The organization of these flights was not the result of a combined initiative, but of the offer made by the Dutch authorities to fill any remaining available seats on their charters. Both the Belgian and the Dutch authorities provided escorts in these cases.

Some carriers are less or not at all willing to cooperate, according to the company. For example, SN Brussels Airlines refuses to take removed aliens on board its flights to Kinshasa. Air Algiers only accepts one ordinary removal on Mondays and one escorted removal on Fridays. For airline companies such as LOT, Tarom or Aeroflot, the presence of removed foreign nationals has become part of their business.

Framework Agreements with Countries of Origin or Transit

Apart from the existing Benelux Agreements, Belgium has signed readmission agreements with Poland, Slovenia, Romania, Bulgaria, Estonia, Latvia, Lithuania, Croatia, Albania, Hungary, Slovakia, Serbia and Montenegro and Ukraine.

The Readmission Agreements are based on a standard Benelux agreement module. The format of this standard agreement has been changed lately, but still covers the same target group. The

agreement concerns nationals of the agreement-signing countries (Benelux on the one side, and the country of origin on the other side) and/or third-country nationals, who have entered one of the Benelux states via another partner state, or who have a regular permit to stay in one of the Benelux countries. The agreement provides only for forced returns. Voluntary returns are not regulated by the agreements.

Despite existing readmission agreements, the lack of valid documentation creates a major obstacle in the return process. Experience has shown that readmission agreements in themselves are not an efficient means of preventing or minimizing documentation problems. According to the Belgian authorities, the decisive factor in the readmission process, is the willingness to cooperate of the Consular representatives of countries of origin in Brussels and/or the policy in the countries of origin. Sometimes, in case of missing travel documents, a gentleman's agreement can be negotiated whereby the authorities would apply the rules of the agreement. Therefore, a change in consular staff in Brussels may often lead to an improvement or deterioration of the situation related to documentation by the country concerned.

The EU travel document is used for nationals of countries who have an agreement on their use with Belgium. The "EU removal document" is currently used for removals to Romania, Albania, Kosovo and Bulgaria and, on an informal basis, for removals to Nepal and Guinea. It has also been used in the past for removals to Poland. The Annex 9 removal document is also used for people who are refused entry by air. However, according to the Belgian authorities, one of the practical problems in using this document is the identification of the carrier bringing the person to Belgium. Often, travel and/or identity documents have been destroyed before the migrant reaches the immigration control checkpoint. To prevent this difficulty, the Federal Police now checks identity documents at the arrival gates of flights considered potentially problematic.⁶

While the Belgian government has formally adopted a policy not to use financial pressure as a means of gaining the cooperation of countries of origin, diplomatic channels are often used successfully to resolve documentation problems.

In March 2001 the Belgian Minister of the Interior and his French counterpart met in the southern Belgian town of Tournai to sign an agreement on cross-border police and customs cooperation. This agreement was the result of an incident of September 2000, in which 45 Kosovars were allegedly "dumped" on Belgian territory by a French police unit. The agreement establishes a joint police station, initially staffed with about 20 police officers from the two countries, for the purpose of exchanging information on illegal immigrants. France has already signed similar agreements with Germany and Spain.

There are no transit agreements between Belgium and relevant transit countries. The transit of rejected migrants is regulated through existing readmission agreements. A person who has to be sent to a third country, can transit one of the Member States of the agreement, if this facilitates the return of the person to the country of destination. Further, transit regulations with countries, for which there are no readmission agreement, are either based on the Convention of Chicago or on administrative agreements or Memoranda of Understanding (which are negotiated at the Belgian level and not on the Benelux level).

Return Migration: Policies and Practices

Prosecution and Detention Procedures

Generally there are three possible forced return schemes:

- Forced return accompanied by two or four escorting police officers or sometimes immigration officers;
- Unaccompanied forced return – the deportee is not accompanied on the aircraft but his/her travel documents are given to the aircraft commander and upon arrival, the commander will hand over the documents to the authorities in the country of destination;
- Forced returns of groups of returnees are arranged on chartered flights and are always escorted by police officers.

The first removal attempt organized by the Immigration Office is always on an unescorted basis, unless there are indications that the person may pose a threat to public order or security. When the removable alien refuses to cooperate, the second removal attempt organized by the Immigration Office is always conducted with the assistance of an escort. As a general rule, the number of escorts will equal the number of removed foreign nationals plus one. In the case of long distance removals, one or two additional escorts will be included.

Following the death of a Nigerian deportee during an escort in 1998, Belgium initiated a comprehensive programme to improve the organization and effectiveness of its deportation actions. The programme included enhanced selection and training of escort officers, as well as the adoption of detailed guidelines for forced removals. It introduced the possibility of lessening restraints when cooperation from the person being removed is secured. More emphasis was also placed on enhanced communication with the deportees, the aircraft crew (who are often unfamiliar with removal practices), the antecedents of the deportees, and among the escort officers prior, during and after the removals.

Detention

According to the law, rejected asylum seekers, migrants residing illegally in Belgium and criminal migrants who have committed minor offences are detained in a so-called *centre fermé* (closed centre) pending their removal. Rejected asylum seekers and irregular immigrants are not detained in prisons in Belgium. Belgium avails itself therefore of six facilities. These closed facilities provide accommodation for asylum seekers whose applications are being processed and those who are to be removed, as well as irregular migrants.

The “inadmissibles” centre at Brussels National Airport (opened 1996), Transit Centre 127 at Brussels National Airport (opened in 1988),⁷ Centre 127 bis in Steenokkerzeel near Brussels National Airport (opened in 1994),⁸ the Centre for Illegal Immigrants Merksplas (opened in 1993), the Centre for Illegal Immigrants Bruges (opened in 1995), and the Centre for Illegal Immigrants Vottem (opened in 1999).⁹

Stamps in Passports

The entry ban of a person being forcibly returned depends on the reason for the deportation. Where an alien receives the order to leave the country, the administrative decision is deleted from the register as soon as the person has left the country (or the Schengen territory).

Re-entry is possible, if the migrant fulfils the following entry conditions:

- Possession of valid entry documents – depending on the person’s nationality this can be identity card, passport and/or passport and visa);
- The migrant stay does not exceed a maximum duration of three consecutive months (or a cumulated period of stay which does not exceed three months in a total period of six months) – this provision does not always apply to EU and EEA nationals;
- Financial means of living must be given – Belgium foresees about EUR 50 per day. The relevant amount is to be guaranteed either in cash, through valid credit cards, on bank accounts, or by a Belgian citizen and/or a foreigner with an indefinite stay permit standing surety for the visitor;
- The migrant must have a valid reason to come to Belgium – if the reason is deemed to be unfounded, entry can be refused;
- There has been no Royal Decree for expulsion or a Ministerial Decree for Removal in the migrants records for the past ten years;
- The person applying for re-entry does not pose a danger to the public order, national security or public health.

Re-entry of nationals, who have to apply for a visa following forced removal, is subject to repayment of previous removal costs. Only on payment of the removal costs will a visa be issued. This provision pertains only to non-EU and non-EEA nationals, who apply for a visa for a period of less than three months.

In order to keep a record of the relevant migrants and allow Embassies and Consulates to ask for reimbursement, these persons’ data are inserted into the national police database (the so-called *central signalment bulletin*). Persons who have or are granted the right – either by law, by a decree, or other international regulations – to stay in Belgium for a period longer than three months (e.g. for work, studies, family unification, etc.) do not have to pay back the removal costs.

Where an alien has been removed on grounds of a Royal Decree for expulsion or a Ministerial Decree for Removal, re-entry is not possible for a period of ten years, unless the Decree is not suspended or annulled. Forced removals on the basis of such decrees are only executed against foreigners who have committed an offence that cannot be considered a minor offence. The data of these migrants are inserted into the Schengen Information System. Deported migrants will have a stamp in their travel document indicating their deportation.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Forced Returns	Rejection at Borders	Total
2001	5,722	5,622	11,344
2002	7,451	4,138	11,589
2003 (until August)	5,147	2,257	7,404
Total	18,320	12,017	30,337

1.5 BEST PRACTICES AND LESSONS LEARNED

Deportation

The government is currently looking into amending the law in regard to deportation. According to the amendment an appeal to the Supreme Administrative Court would automatically suspend deportation for an additional five days to give the court time to consider the appeal. In 2002, Belgium was found to have violated Section 4.e of the European Convention on Human Rights (prohibiting collective expulsions of aliens) and Sections 5.1 and 5.4 (rights to liberty and security) by the European Court of Human Rights during the deportation of Slovak Roma asylum seekers in 1999.

The Belgian authorities deported 70 persons to Slovakia after these had been summoned to the police station and spontaneously detained and forcibly returned without the possibility of even obtaining information on their right to lodge an appeal. Belgium had to pay costs and damages (EUR 19,000) to the families, who brought the case before the court. Other actions for damages are expected.

Reduction of Social Benefits as a Means of Hampering Asylum Abuse

Until 2001, social benefits (minimum income, paid in cash) were distributed to asylum claimants through reception centres organized by the Federal Ministry of Social Welfare or by NGOs such as the Red Cross. These benefits were provided to asylum claimants with no other residence status in Belgium, pending the examination of the admissibility of their claim. Benefits for all other asylum claimants were provided through welfare bureaux at a local level.

The provision of social benefits in cash was considered by the Belgian authorities to be one of the factors attracting asylum applicants to Belgium (it was believed that cash benefits were often used to reimburse smugglers). The increase in overall numbers of asylum seekers had the consequential effect of increasing the numbers of people to be removed after an unsuccessful application for asylum had been made. Therefore, the government decided in 2001 to offer only assistance, in kind, in reception centres. Moreover, asylum seekers who have introduced a petition for judicial review to the Council of State and who are – as a result of a decision of the constitutional Court of Arbitration¹⁰ – eligible to further benefit social assistance, will be able to obtain these benefits only in centres designated by the federal government. In general, social welfare benefits are not available to people residing in irregular situations in Belgium.

Fingerprinting

Belgium fingerprints all foreign nationals who cannot be identified. The Belgian authorities consider that fingerprinting is a valuable tool to establish a foreigner's identity and to detect possible repeat asylum claims in Belgium. Yet, the system is limited through the absence of a European integrated identification device, which would enable the Belgians to check whether foreign nationals have made asylum applications or applications for status in other countries. The Belgian government authorities believe that Eurodac (i.e. the EU's system for the comparison of fingerprints of asylum applicants and illegal migrants) will not completely solve this problem.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Voluntary return policies in Belgium are extremely well developed and form part of a three-pillared government approach to immigration, the other two being asylum reform and regularization campaigns.

In general, asylum seekers are informed of the possibility of voluntary return from the moment they seek asylum in Belgium. The modes of return may be independent or voluntary with assistance from government agencies, NGOs or IOM, or may fall under the mechanism to promote development through return migration i.e. programmes and projects through which migrants are supported in order to contribute to the development of their country of origin, either by a return or through other means. This section will deal mainly with the mechanisms on voluntary return.

The “Return and Emigration of Asylum-seekers from Belgium” programme (REAB) was launched in 1984 on the basis of an agreement between IOM and the Federal Ministry for Social Integration, in cooperation with the Ministry of Interior, the Ministry of Foreign Affairs and the State Secretariat for Development and Cooperation. The REAB agreement signed between the Belgian government and IOM provides the means for an effective Voluntary Return policy according to IOM’s principles and mandate. The programme is open to three categories of immigrants – asylum seekers, those who have withdrawn their asylum applications and those stranded migrants who fall under the Government of Belgium’s financial support. It consists of pre-departure counselling, organization of return travel and possible financial aid.

Since 2001, with a view to improving return and reintegration assistance, mechanisms were established to facilitate consultation between concerned federal government ministries, NGOs, refugee councils, reception centres, local authorities and IOM. The aim of these measures, including the establishment of the Centre for Voluntary Return and Development (CVRD),¹¹ is to promote the development and implementation of new projects in support of the general programme, Return and Emigration of Asylum Seekers from Belgium (REAB), and to expand its return and reintegration activities.

In addition to the general REAB programme, country-specific assisted voluntary return programmes have been implemented in the past to facilitate returns to Afghanistan, Kosovo, Bosnia and Slovakia.

The legal basis for assisted voluntary return programmes can be found in the law governing the Public Centre of Social Assistance, (*Loi organique sur les Centres publiques pour l’Aide sociale* – CPAS) of 8 July 1976. According to Art 57(2) (paragraph 2.2) of this law, persons who have asked for return assistance through IOM are entitled to receive benefits from CPAS. This applies to persons whose asylum applications have been dismissed and who have received assistance from CPAS since they were ordered to leave the country.

Return Migration: Policies and Practices

Furthermore, according to a Circular Note by the Ministry of Interior dated 10 October 1997, foreign nationals who, owing to circumstances beyond their control, cannot leave Belgian territory in accordance with an expulsion order, may also seek assistance from IOM.¹²

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Social Integration manages the REAB programme, which is implemented by IOM in cooperation with its partners. The Ministry also ensures the consultation and coordination between concerned government ministries (Social Integration, Foreign Affairs, the Interior, Development Cooperation), NGOs, reception centres, local authorities and IOM. IOM operates this programme in close cooperation with a network of over 50 operational partners from all the regions of the country, including NGOs, public institutions and local administrations of municipalities and cities. This wide network of different partners makes it easier for the migrants to access the programme near their place of residence and through the most suitable counterpart (NGOs or public institutions).

Operational Steps for Voluntary Return

The IOM-implemented REAB programme offers guidance and financial support to facilitate returns for three categories of immigrants:

- Asylum seekers who have withdrawn their application;
- Asylum seekers whose application have been rejected;
- Third country nationals who receive or may fall under the assistance of the government, and wish to return to their own country or emigrate to another country that has granted them an entry visa.

TABLE 2
SPECIAL PROGRAMME FOR THE VOLUNTARY REPATRIATION OR
EMIGRATION OF ASYLUM-SEEKERS FROM BELGIUM (REAB)

Eligible Beneficiaries:	<ul style="list-style-type: none">• Asylum-seekers who have withdrawn their application;• Asylum-seekers whose application have been rejected;• All foreign migrants (recognized refugees and EU citizens excepted) who receive or may fall under the assistance of the Government of Belgium, who request to return to their own country or migrate to another country that has granted them an entry visa.
Budget:	The Ministry allocates a yearly budget of approximately EUR 3,000,000
Funding Source:	Ministry for Social Integration
Movements to Date (end 2002):	Since 1984, REAB has assisted nearly 25,000 migrants to return to 125 different destinations and reintegrate.

Recognized refugees can only access the programme if they renounce their refugee status.

When a migrant decides to register for voluntary return, he/she can refer to the IOM office in Brussels or to one of the IOM partners in the country. As defined by the REAB agreement, each applicant must sign a declaration stating that he/she is willing to return voluntarily. In addition, migrants belonging to Category a) must sign a declaration to voluntarily withdraw their asylum request; migrants in Category b) have to present a copy of the negative answer to their request for asylum; those in Category c) have to prove they are stranded in Belgium, as corroborated by a social report (written by IOM or the partner during the counselling).

REAB returnees also have to sign a declaration stating that they will not return to Belgium for a period of five years. The travel documents of voluntary returnees are not stamped.

Programme Services

- Pre-departure assistance: information dissemination, counselling in cooperation with partner agencies.
- Transport assistance: transport, documents and formalities, baggage assistance, transit assistance and onward transportation in the countries of origin.
- Financial assistance: reinstallation grant of maximum EUR 250 per adult and EUR 125 for those up to 18 years old to cover initial expenditures in their countries of origin.
- Vulnerable cases: The REAB programme provides for migrants with specific needs, medical and non-medical escorts to the final destination in countries of origin.
- Others: countries of origin actions, as identified and decided by the government.

TABLE 3
STATISTICS ON ASSISTED VOLUNTARY RETURNS

Year	Number of Voluntary Assisted Returns
2000	3,182
2001	3,545
2002	3,221
January – September 2003	2,098

2.3 BEST PRACTICES AND LESSONS LEARNED

For many years, REAB was regarded primarily as a movement or transportation programme. Rising numbers of asylum seekers and developments in EU immigration approaches to deal with emergency inflows and temporary protection have had an impact on the programme. In response to these changes IOM, together with its partners, has made efforts to change this traditional perception of REAB as a “movement” programme and adopted measures to give more priority to pre-departure and post arrival reintegration activities.

Return Migration: Policies and Practices

In the past year, the REAB programme has started to move towards this new approach, increasing the assistance offered to the migrants and improving its network of partners. This restructuring of the programme has already shown to meet the needs/requests of the migrants, by providing a more suitable and flexible AVR system.

The practice of informing applicants at the beginning of the asylum procedure of the possibility of voluntary return has contributed to the success of the scheme in Belgium.

Why Programmes Have or Have Not Worked

The issue of assisted voluntary return is increasingly becoming politicized, and social/political events are impacting more and more on its implementation. During the first seven months of 2003, new socio-political tensions in Belgium had an effect on the REAB programme and the decision of the migrants to return voluntarily (especially those at the end of the asylum procedure). Protests held by Iranian, Chechnyan and Afghan asylum seekers in 2003, together with the absence of a temporary protection system, have created a sense of uncertainty in the migrant community about whether regular procedures are the best to follow.

As a result of these protests, some migrants hoped that their immigration status would change and opted to “wait and see” what impact these events would have on Belgian immigration policies. Talk in July 2003 of a possible regularization of persons with pending asylum applications encouraged these aspirations. A similar attitude was experienced during the May 2003 election period, when migrants were waiting for possible changes in the migration policies of the new government before taking any decision to return.

Nevertheless, in addition to the general positive aspects of any AVR (cost effectiveness, dignified return etc.), the REAB programme can rely on the fact that all sections of the Belgian society – international organizations, NGOs, Diaspora and governmental organizations – are part of the REAB network and are involved in its implementation. This broad coalition, coupled with the emphasis on the voluntary nature of the programme, presents a persuasive riposte against critics of AVR programmes.

Cost Effectiveness Analysis

The cost per capita of a REAB case in 2003 is approximately EUR 1,050 covering the entire process, indicating the whole cost charged to the Ministry of Social Integration for assisting a migrant to voluntarily return. Considering the fact that this amount includes costs incurred by IOM to organize and manage the programme and all its operational aspects including tickets, travel documents, training of public officials in Belgium and information sessions for migrants and social workers, grants etc., it can certainly be said that REAB is a very cost effective programme.

NOTES

1. Amendment of the 1980 Aliens Act, effective 3 January 2001 on the benefits of asylum seekers.
 2. Five police officers must stand trial in connection with the death of a Nigerian asylum seeker, Semira Adamu, who died as police tried to subdue her in a plane during an attempt to repatriate her in 1998. In March 2002, a court ordered five police officers to stand trial for her death. Three officers face charges of assault and battery and involuntary manslaughter for reportedly pushing Adamu's head into a pillow just before take off. Two officers supervising the repatriation who watched as she was forcibly placed on board and strapped into her seat were charged with negligence. Adamu's death in September 1998 caused a public outcry in Belgium that forced the resignation of then interior minister Louis Tobback.
 3. In particular Article 7 Section 2 and 3 and Article 27.
 4. Based on this, some 25 carriers have signed a protocol with the Belgian authorities determining the conditions of these fines. Under these protocols, the Belgian government agrees to apply a reduced and digressive system of administrative fines, as long as the carriers check systematically all travel documents of their passengers to Belgium. The Protocol also determines issues of control at the boarding gate in the airport of origin, and issues of information and assistance to the company with the identification of travel and immigration documents.
 5. In the case of Kosovo, the use of charter flights was due to the lack of any commercial flight.
 6. This practice is also common e.g. in Germany, the Netherlands and the United Kingdom.
 7. Used for asylum seekers arriving at Brussels National Airport and lodging an asylum application at the border control post
 8. Used for asylum seekers whose claim has been found inadmissible by the Aliens Office and who have filed an (administrative or judicial) appeal, failed asylum seekers and illegal immigrants. This centre has specific provisions for families.
 9. The facilities in Bruges, Vottem, Merksplas or Steenokkerzeel also host failed asylum seekers.
 10. Court of Arbitration No. 43/98, 22 April 1998, *Belgian State Gazette*, 29 April 1998, para. B.37.
 11. In 2003, the new Minister for Social Integration replaced the CVRD forum with consultations held and directed by the cabinet itself.
 12. "Circulaire relative aux étrangers qui, suite à des circonstances extérieures et indépendantes de leur volonté, ne peuvent provisoirement pas donner suite à un ordre de quitter le territoire pris à leur encontre dans le cadre de la loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers" (points b and d).
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Belgium signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Belgium also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

CYPRUS

1. INVOLUNTARY RETURN

1.1 POLICY

Both legal and illegal migration flows have grown significantly over the last few years in the entire Mediterranean region; and the forthcoming enlargement of the EU will directly affect Cyprus.

The island's location, en route to the traditional receiving countries and a portal for migrants from Syria, Turkey and Lebanon, has rendered the management of irregular migration and counter trafficking pressing issues, also in anticipation of accession. This is expected to have a direct impact on the rates of asylum applications, as well as smuggling and trafficking flows.

According to government reports, some 2,356 clandestine immigrants were arrested at the border or nearby from 2000-2002 (in 2000, 1,449 persons were detected; in 2001, some 182 persons and in 2002, 725 migrants). 2,640 irregular immigrants were arrested in the country in 2001 and 2,350 persons in 2002. The main countries of origin of these groups were Syria, Iran, Turkey, Sri Lanka and Iraq.

While the estimated legal foreign work force in Cyprus is about 15,000, some 150 foreigners are arrested every week for working on the island without permits.¹ Foreigners seem to account for 30 per cent of Cyprus's prison population. There are an estimated 3,000-5,000 immigrants without documents on Cyprus. About 1,200 foreign women, mostly from Russia, Romania and the Ukraine, are employed legally in 70 cabarets. However, it is also reported that some of the women being brought into Cyprus as cabaret dancers are subsequently forced into prostitution.

Located on major routes of irregular migration flows, Cyprus has had to manage the direct consequences of several incidents involving the smuggling of irregular migrants on unseaworthy vessels destined for the coasts of Greece – southern Crete, and originating from Libya, Syria, Turkey and countries around the Black Sea. As a consequence, the island has increased its coast guard patrols to keep boats carrying migrants away. The country has come under some criticism for turning away vessels in spite of their poor condition and overflowing passenger numbers.²

The issue of long detention periods for apprehended irregular migrants also came under scrutiny when 16 migrants detained in a Larnaca jail for illegal immigration went on a hunger strike to protest their prolonged detention.³ This incident prompted the country to reconsider its legislation on migration specifically with respect to third-country nationals, and bring in several amendments to the Aliens and Immigration Laws, in conjunction with other measures in the field of migration.⁴

Return Migration: Policies and Practices

In 2000, Cyprus introduced a new asylum law, and in connection with that, established a Refugee Authority, which took over the examination of asylum claims and all responsibilities for granting asylum from UNHCR; previously the latter had been responsible for the asylum application procedure. The law was amended in 2002 to incorporate the non-refoulement principle into Cypriot asylum legislation.

Asylum applications can be submitted at entry points and are handled by the Migration Department, which then submits an assessment to the Refugee Authority. When the Refugee Authority took over asylum determination in January 2002, there were 1,144 requests (about 1,302 persons) and 592 requests pending, of which 214 were rejected. At the end of that same year, Cyprus hosted about 1,700 asylum seekers and about 90 recognized refugees. UNHCR remains responsible for claims (five in 2002) in the northern part of the island.

In its continuing efforts to counter the effects of irregular migration, Cyprus has also concluded several readmission and cooperation agreements with neighbouring countries and with Italy.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The legal acts regulating forced migration in Cyprus are:

- The Constitution of the Republic of Cyprus;
- The Aliens and Immigration Act Cap. 105 as amended by the laws of 1974-1998;
- The Aliens and Immigration Regulations of 1972 and 1998;
- The Asylum Law of 2000 (including the Dublin Convention provisions; and for the granting of temporary status in case of mass influxes), and its amendment of 2002 (incorporating the non-refoulement principle);
- The Combating of Trafficking of Persons and Sexual Exploitation of Minors Law of 2000;
- The Penal Code.

Entry for foreigners⁵ into the Republic of Cyprus is possible on the following legal grounds:

- Permit for transit;
- Working permit and self-employer working permit;
- Permit for students;
- Tourist visa;
- Claim for asylum.

Any person contravening the obligations arising from their stay permit status or having no legal grounds to stay in Cyprus, are considered to be illegal immigrants and are subject to expulsion and forced return. The Chief Immigration Officer (Minister of Interior) has the authority to order detention and expulsion in those cases.

Foreigners may be refused entry if they do not avail of their own means of financing their stay and departure from Cyprus upon expiry of their stay permit. They may also be refused entry if they are mentally handicapped, suffering from a contagious or infectious disease, convicted of murder or an offence for which they were sentenced to imprisonment, or if they are prostitutes or living on the proceeds of prostitution.⁶

Foreigners whose stay permit is not renewed must leave within 14 days from the date of advice that their residence permit will not be renewed. Illegal migrants are ordered to leave immediately.

Foreigners may also be ordered to leave, when the reason for their stay expires, e.g. at the termination of a working contract. In these cases, the Ministry of Interior orders their expulsion, which comes into effect 15 days after the date of notification. The Minister of Interior (Chief Immigration Officer) may also order the detention and deportation of a person in breach of their visa conditions or having previously been deported from Cyprus.

In the case of rejected asylum seekers, the responsible authorities may order expulsion, once a final decision of rejection of asylum applications has been reached. Expulsion, which in Cyprus is an administrative act, as is the case in most countries in this study, may be ordered either by Border Officials or the Refugee Authority.

Any person who contravenes the legal provisions of the Republic of Cyprus commits an offence and may be fined Cyprus £ 1,000 and/or imprisoned for a period up to 12 months. Unlawfully resident migrants who are apprehended are liable to a fine of Cyprus £ 5,000 and/or a sentence of imprisonment not exceeding three years.⁷

Deportation

According to the Immigration and Aliens Act, expulsion may be enforced on aliens, who:

- Are classified *persona non grata* on the territory of Cyprus;
- Pose a threat to public order and national security and/or infringe public morals;
- Are members of an unlawful association as defined by the Penal Code and who have been previously deported;⁸

A foreigner who is expelled from Cyprus shall be removed to his/her country of origin or to any other place as determined by the Council of Ministers with the consent of the other government. Furthermore, the Council of Ministers shall determine a custodian for the placement of a foreigner's movable or immobile possessions until the deportee may make relevant arrangements.

Notwithstanding the legal provisions, the Chief Immigration Officer may, at his discretion, refuse entry to a foreigner arriving by sea and who has no legal grounds to stay, to leave the Republic of Cyprus on the same vessel on which he/she would have come to the island.⁹

Deportees are not liable for the costs incurred by their removal.

Return Migration: Policies and Practices

The deportation of an alien is an administrative act and is subject to Section 146 of the Constitution. According to Section 146, a foreigner may lodge an appeal against a deportation decision with the Supreme Court. In this case the order is suspended.

Rejected asylum seekers who cannot be deported, may be granted a six months renewable residence permit.

Migrants may appeal against expulsion orders, beginning first with the Chief Immigration Officer, then moving to the Commissioner of Administration and lastly to the Supreme Court to have an order rescinded.

Detention

The Aliens and Immigration Act stipulates that a foreigner, who is staying unlawfully on the territory of Cyprus or is awaiting deportation may be detained on the order of the Chief Immigration Officer.

The Refugee Act foresees that asylum seekers may be detained on the following grounds:

- To ascertain their identity;
- To ascertain the facts upon which the application is based;
- To protect public order and national security.

An immigration officer or the Refugees Authority may order detention for an initial period of eight days. Detention exceeding this period is subject to a court decision; the court may order subsequent eight days, up to a maximum detention period of 32 days.

Generally, the laws throughout Cyprus prohibit arbitrary arrest and detention. Respective arrest warrants have to be issued by courts. No person may be detained for more than a day without referral of the case to the courts for extension of the period of detention.

A foreigner lawfully resident in Cyprus may not be expelled except for reasons relating to national security, public order or morality. If this occurs, the person is able, under Article 1 of Law 18 (III) of 2000, to appeal and have his/her case reviewed by the competent authority.

Trafficking

In 2001, Cyprus signed the UN Convention against Transnational Organized Crime and its Palermo Protocol on preventing, combating and punishing trafficking in human beings, especially women and children.

Article 157 of the Penal Code prohibits prostitution-related activities including the procurement thereof, and:

- Inducing a woman to prostitution in Cyprus or elsewhere;
- Inducing a woman to leave Cyprus to work in a brothel elsewhere.

Article 156 provides for punishment in case of maintaining a brothel and, under Article 165, for any act that makes it possible to live off the earnings of prostitution, or for soliciting for immoral purposes in a public place.

Law No. 3 (1) Combating of Trafficking in Persons and Sexual Exploitation of Children of 2000, prohibits sexual exploitation of adults for profit, if the exploitation is accomplished by the use of force, violence, threat of life, or fraud or through any other action which comes through the abuse of power or other pressure forcing the concerned person to give in to pressure or any ill-treatment.

The law also aims to protect children from sexual exploitation. According to the legal provisions, following actions are prohibited and punished:

- Inciting or compelling a child to participate in any sexual activity (Article 3 (1) (d)); and
- The exploitation of children for prostitution or participation in other sexual practices; or
- Exploitation for pornographic shows and materials, which includes also the sale, distribution, and possession of such materials (Article 2).

Under this legislation, victims of trafficking have the right to sue for civil damages.

Article 2 of the Penal Code prohibits “any act that facilitates the entry into, transit through, residence in, or exit from the Republic for purposes of sexual exploitation”. Trafficking of human beings for the purpose of sexual exploitation, or instigating, assisting, allowing, participating, or contributing to such acts may be punished with imprisonment of up to ten years and/or a fine (Article 5). In case the victim is a child, the Penal Code foresees punishment by imprisonment of up to 15 years.

Carrier Liability

Included in the amended Aliens and Immigration Act.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Operational Steps for Involuntary Return

Most deportations relate to foreign nationals, who are suspected of having violated existing laws, whether they are convicted or not of the suspected offence. Under the provisions of the Aliens and Immigration Act, non-nationals may be expelled with immediate effect, if the authorities deem it necessary for reasons of public interest.

Institutions Responsible for Involuntary Return

Asylum and protection policy, trafficking in human beings and the sexual exploitation of minors, and illegal migration, fall under the competence of the Cypriot Ministry of Interior.

Return Migration: Policies and Practices

The Director of the Department of Social Welfare is the Patron of Victims of Exploitation, as provided by Article 10 of the Law. The Patron of Victims of Exploitation has the duty to hear and consult the trafficked and exploited victims, take measures for the investigation of the cases reported to him/her as well as the prosecution of the offenders, etc.

Expulsions and deportations are either ordered by the Refugee Authority in case of failed asylum seekers, or for any other alien by the Chief of the Immigration Office, which falls under the competence of the Ministry of Interior. The Chief Immigration Officer (Minister of Interior) has delegated his power to order detention and deportation to the Director of the Civil Registry and Migration Department.

Deportations are executed by the Immigration Unit of the police, which arrests, detains and departs unlawful migrants.

Escorts

Deportees are only escorted to their destination by the police where the captain of the carrier requests it.

No stamp or other indication is placed in the passport of the deported person, and no statement is required of the deportee that he/she will not attempt to re-enter the country.

Chartered Flights

No information available on the use of chartered flights.

Framework Agreements with Countries of Origin or Transit

The Cypriot Minister of Interior stated during a Ministerial Meeting of the Justice and Home Affairs Ministers of the Candidate Countries at the EU Council of Ministers that he was in favour of a:

multilateral framework of action to promote Cooperation in the field of asylum and protection, as well as in relation to preventive measures against illegal immigration and also supports a parallel framework of bilateral cooperation with EU Member States and other Candidate Countries with the same aim.¹⁰

On 2 December 2003, Cyprus signed a cooperation agreement with Bulgaria to fight terrorism, organized crime, illegal migration and human and drug trafficking.

In August 2002, Italy and Cyprus concluded a bilateral agreement to combat illegal immigration. This was the first readmission agreement with an EU Member State. The agreement also provides for the repatriation of irregular immigrants. Cyprus and Italy also cooperate closely in the framework of the Adriatic Initiative to combat illegal immigration. An agreement with Sweden was signed shortly afterwards.

Cyprus also signed an interim agreement with Syria to cooperate in countering irregular migration to Cyprus from Syria, in 1999. According to the agreement, only Syrian business people, qualified professionals, student or tourists, who can prove sufficient financial means are allowed

to enter Cyprus. The agreement was concluded to stop immigrants from arriving as tourists and working illegally in Cyprus.¹¹

In the same year, an incident involving smuggled migrants on their way to Greece, who were landed on the Cypriot shores by their smugglers, finally led to a similar agreement with Lebanon.¹²

In 2002, Cyprus started to re-discuss its existing readmission agreements with Syria and Lebanon, to finalize them according to the EU Model readmission agreements. By October 2003, the agreement with Lebanon had been signed and the one with Syria was in the final stages of negotiation.¹³

In 2001, the Republic of Cyprus had also established contacts with Portugal, Rumania and Egypt with a view to negotiating readmission agreements.¹⁴

Costs

These are reported in the table at the end of the chapter.

Detention

There is a 120-bed detention facility for undocumented asylum seekers and migrants. However, according to USCR, foreigners were still being detained in jails at end 2002, as this facility had not yet started operations by then.¹⁵

The US Committee for Refugees also reported in its 2003 country report, on approximately 95 asylum seekers stranded in the Sovereign British Areas (these British bases occupy about 98 square miles in Cyprus).¹⁶ This remaining group is mostly composed of rejected asylum seekers (mostly Iraqis who cannot return to Iraq) who are not allowed to settle in the SBAs or Cyprus.

Prosecution

Cyprus police officers have undergone training on border control issues touching upon trafficking for sexual exploitation of adults and children. Forgery detection equipment as prescribed by the Council Recommendation 398Y0617 (01), dated 28 May 1998, and new equipment for the Port and Maritime Police and the Police Air wing, have been acquired.

Cyprus has established a coastal radar system, and acquired additional patrol boats and helicopters. It has also set up the European Image Archiving System FADO. These enable Cyprus to operate its external border control in compliance with the Schengen provisions.

Cyprus has also extended its cooperation with neighbouring countries, to better implement existing domestic legislation and combat irregular migration, including trafficking.¹⁷

Return Migration: Policies and Practices

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Returns	Costs in Cy £
2000	3,908	35,650
2001	4,017	100,885
2002	3,400	102,400
2003*	3,734	240,000

* Approximate figures for this year.

Note: Up to 2002 most of those returned were migrant workers from countries in the Middle East, the former Soviet Union and Asia; the sudden increase in the costs involved in 2003 could be due to an increase of overstayers not in possess of return tickets and irregular migrants who required escorting.

2. ASSISTED VOLUNTARY RETURN

There is no specific voluntary return policy and consequently there are no structured assisted voluntary return programmes operating in Cyprus.

NOTES

1. Migration Information.
 2. A Human Rights Report on Trafficking of Persons, Especially Women and Children, The Protection Project, March 2002.
 3. “Cyprus and Syria clamp down on illegal immigrants”, Reuters, 20 April 1999.
 4. Statement by the Minister of the Interior of the Republic of Cyprus, Mr. Christodoulos Christodoulou at the Ministerial Meeting of Justice and Home Affairs Ministers of the Candidate Countries in the margin of the Council of the EU Ministers for Justice and Home Affairs Brussels, 16 March 2001, http://pio.gov.cy/news/special_issues/special_issue040.htm.
 5. Foreigners are all persons who are not nationals of Cyprus, except British and Irish nationals.
 6. “The legislation relating to aliens and immigration in Cyprus”, Andreas Pavlakis in *Migrazioni internazionali e piccoli Stati europei: dalla storia all’attualità*, Editor Ercole Sori.
 7. Ibid.
 8. Centre for International Legal Studies, Salzburg, Austria: International Immigration and Nationality Law, George Yiangou, *Cyprus*, Section 4 – Editors: Dennis Campbell and Susan Meek, Kluwn Law International 2002.
 9. George Yiangou, *Cyprus*; Section 4.
 10. Statement by the Minister of the Interior of the Republic of Cyprus, Mr. Christodoulos Christodoulou at the Ministerial Meeting of the Justice and Home Affairs Ministers of the Candidate Countries in the margin of the Council of the EU Ministers for Justice and Home Affairs Brussels, 16 March 2001.
 11. “Cyprus and Syria clamp down on illegal immigrants”, Reuters, 20 April 1999.
 12. When Cyprus tried to return the migrants to Lebanon, gun boats initially prevented the Cypriot police boat from docking. After this, Cyprus sentenced the 29 illegally entered migrants to 45 days jail for unlawful entry, and concluded an agreement with Lebanon. Lebanon agreed to do more to prevent transiting of migrants. Cyprus has, since then, significantly improved its border monitoring system. Source: “Cyprus jails 23 boatpeople as deterrent”, Agence France Presse, 21 January 1999, and “Lebanon pledges clampdown on illegal immigration”, Xinhau News Agency, 22 January 1999.
 13. Statement of Mr Takis Hadjidemetriou, Coordinator for Harmonisation, in the first Euro-Mediterranean Parliamentary Forum on Migration, Le Meridien – Limassol, 20 October 2003.
 14. Justice and home affairs in the EU enlargement process – Cyprus; Justice and Home Affairs of the Republic of Cyprus official website, http://www.cyprus-eu.org.cy/eng/09_position_papers/chapter_24.htm.
 15. US Committee for Refugees, *World Refugee Survey 2002* and *World Refugee Survey 2003*.
 16. Ibid. The British base was created under the Treaty of Establishment in 1960 and spans some 98 square miles of land in Cyprus.
 17. Permanent Mission of the Republic of Cyprus to the Organization for Security and Cooperation in Europe, Vienna; *Cyprus Situation Report on the Trafficking in Human Beings*; PC.DEL/662/02; 5 September 2002.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Cyprus signed the UN Convention Against Transnational Organized Crime on 12 December 2000, and ratified the Convention on 22 April 2003. It signed the Trafficking Protocol on 12 December 2002, and ratified the Protocol on 6 August 2003. Cyprus also signed the Smuggling Protocol on 12 December 2002, and ratified this Protocol on 6 August 2003.

CZECH REPUBLIC

1. INVOLUNTARY RETURN

1.1 POLICY

The issue of international migration movements, and particularly immigration, represents a new area of debate for the Czech Republic. There are generally two reasons for this: the country's experience in the last centuries has clearly been one of emigration; and in its early days in the 1990s, the Republic mostly offered a passageway further west for large numbers of irregular migrants, who would generally not stop there longer than necessary. According to Tychtl, at least one third of irregular migrants in the Czech Republic was found to leave the territory on the same day of their entry.

Since the Republic's establishment in 1993,¹ and up to mid-2001, 241,000 foreign nationals have been detained either crossing the Czech Republic's borders illegally or attempting to do so, many with invalid or no travel documents. Over 50 per cent of all those claiming asylum in the Czech Republic seemed to disappear from refugee centres to continue their journey westwards. Drbohlav² estimates that of the large number of irregular migrants found in the Czech Republic in 2000, about 100,000-140,000 were transit migrants.

From 2000 onwards, however, the Czech Republic has increasingly become a destination country as well, for both regular and irregular migrants. At the end of 2000, the number of irregular migrants in the country was estimated at between 295,000 and 335,000. Asylum applications also grew to a peak of 18,082 (ranking ninth in Europe, ahead of e.g. Norway or Denmark) in 2001, when the Asylum Act 35/1999 was amended. In 2002, the stock of immigrants legally residing in the Czech Republic peaked with more than 231,000.

Currently, Drbohlav estimates the number of foreign immigrants in the Czech Republic at between 400,000 to 500,000 (both documented and undocumented).

The changes brought about within the structure of the Foreign and Border police, and heavy investments³ in improving Czech border controls in reflection of the country's approximation endeavours, have resulted in a substantial reduction of irregular migration through Czech territory (see the table on cross border apprehensions). Nevertheless, the high number of those entering legally and then overstaying their visa remains an issue for the administration: in 2000, for example, there were 22,355 apprehensions resulting from violations of conditions of residence.

Also in light of the above, Czech migration policy has been evolving over time. Following an initial decade of quasi "passive"⁴ and ad hoc approaches, a number of significant changes have been brought about more recently, starting with the introduction of the new twin Acts on the

Return Migration: Policies and Practices

residence of foreigners and on asylum, and the initiatives engendered by the approximation drive.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- The Foreigners' Residence Act No. 326/1999, (Chapters 10, 16 and 17 on the Stay of Aliens on the Territory of the Czech Republic; and Chapter 11 Article 124 to 129 for detention conditions; the Act also introduces carrier sanctions) entered into effect in January 2000. This Act gives precedence to international treaties regulating the stay of third-country nationals on Czech territory over national provisions. The Act was amended in 2001.
- Refugee Law 498 of 1990, following the country's accession to the Geneva Convention in 1989, amended by Acts No. 317 of 1993 and 150 of 1996.
- Asylum Act (Act 325 of 1999) entered into effect on 1 January 2000, introducing the "safe third country" principle and the "tolerated status" for unsuccessful asylum seekers appealing to the High Court of Justice. Significant amendments to the Asylum Act came into effect in February 2002, under which asylum seekers can apply and then stay in the country; most notably, a one-year interval must occur from the time of submitting their application to when they are allowed to work in the Czech Republic.
- Between April 2002 and summer 2003, decisive steps were taken (mostly by the Ministry of Interior, through the Department for Asylum and Migration Policy) towards fully harmonizing the whole Czech legal framework on migration with that of the EU.

Removals

In the Czech Republic there are two types of expulsion: administrative and by Court of Law (usually issued for criminal offences (Act 140/1961)).

An administrative expulsion of a foreigner is provided for in Chapter 10 of the Act on Residence of Aliens. It refers to the termination of an alien's stay in the country, including the specification of a time by which he/she must leave the country and the length of time during which the alien cannot re-enter the Czech territory. The police terminate an alien's stay by issuing an exit visa. If such a person is then found (through e.g. identity checks) not to have complied, *de-facto* "obstructing the execution of an administrative authority's decision", an administrative expulsion procedure is undertaken, or a fine imposed. The expulsion may include administrative detention.

During the procedure, the alien is notified of the possibility of resorting to voluntary return.

Those subject to administrative expulsions are transported by the Aliens and Border police (according to Section 128 of Act 326/1999) to a border crossing and expelled. In 2002, the

Aliens and Border Police imposed administrative expulsion on 12,700 foreigners. Of these only about 12 per cent were enacted, 348 of these appealed against the decision, while the others may only have had their documents stamped. Such decisions were made largely on the grounds of overstaying in the Czech Republic and also illegal crossing of a national border.

The judicial expulsion of foreigners refers to an expulsion sentence imposed in a criminal procedure by a court with regard to one or several offences for which the person has been convicted, according to the provision of Sec. 57 of the Penal Code (Act. No. 140/1961 Coll.). According to this legislation, the court may impose an expulsion sentence as an independent punishment or together with another sentence. In cases where the police escort a foreigner to his/her country of origin or permanent residence, the expulsion is in effect a deportation.

Among the 1,481 foreigners who were actually removed in 2002 on the basis of an administrative expulsion decision, Ukrainian citizens predominated (937), followed by the nationals of Moldova (198) and Armenia (46).

Also in 2002, the courts imposed expulsion sentences according to the provision of Sec. 57 of the Penal Code as stand-alone punishments or together with other sentences on 1,429 foreigners – 668 more than in the previous year.

Detention

Detention conditions are covered in Chapter 11 Article 124 to 129 of the Aliens Law. Most irregular migrants are apprehended when trying to cross the border out of the Czech Republic. In 1998, about 75 per cent of those apprehended had no travel documents. Most of these are detained at the Balkova Detention Centre, for up to 180 days, to establish their identity and to obtain new travel documents from relevant consular authorities, since if they are not claiming asylum, they are expected to leave the country upon their release.

The two detention facilities operating in 2001 registered a total turnover of 8,000 in the first six months of that year. Another three facilities were opened in 2002, one in northern Moravia, one near Prague airport, and another one for the detention of families, or mothers with children. This has brought the total capacity to 720 places.

Overstayers are liable to administrative detention, if apprehended and are placed in one of the five specific foreigners' detention centres. These facilities, established between 1998 and 2002, are under the responsibility of the Aliens Police (Police Internal Act). Since their establishment, about 18,475 foreigners have been processed through these facilities, with 17,827 released, 4,894 expelled and 246 others "readmitted" under respective agreements with neighbouring countries.

As mentioned, there is an increasing tendency of those administratively detained to claim asylum, triggering a lengthy review procedure, which avoids the issue of leaving the country; while in the past those claiming asylum were released from detention and could reside in the country and work without a permit, this is no longer the case. With the February 2002 Asylum Act amendments, asylum seekers are no longer allowed to leave the detention centres while their application is being processed.

Return Migration: Policies and Practices

Illegal Entry

Border apprehensions due to illegal border crossings by foreign nationals have decreased substantially since 1993.

TABLE 1
BORDER APPREHENSIONS

1993	1994	1995	1996	1997	1998	1999	2000	2001*	2002
41,765	18,832	17,132	21,179	27,325	42,957	30,377	30,761	10,349	12,632

* January to June only. Statistics on illegal border crossing may also include multiple attempts by an individual.

Irregular migrants transiting through the country used to originate mostly from countries in the Balkans, Romania and Bulgaria. More recently they are also from Ukraine, Moldova, and Asian countries such as Afghanistan, Sri Lanka, Pakistan and China. Many of those apprehended while attempting to cross the border illegally⁵ then claim asylum (about 26% of all asylum claimants in 2001). The number of people claiming asylum seems to be proportionally related to the number of people apprehended while attempting to cross the border illegally.

The increase in asylum applicants is matched by large numbers of disappearances from refugee camps and repeated attempts to cross the borders towards Western Europe (previously towards Germany, but more and more towards Austria). These disappearances amounted to 8,384 in 2001 and in 2002 – 7,797 out of total applicants 8,480.⁶ Ukrainian asylum seekers comprise the largest group, in conjunction with nationalities quoted earlier, as well as Vietnamese, Russians, and more recently also Slovaks.

Smuggling and Trafficking

TABLE 2
REPORTED CASES OF SMUGGLING AND TRAFFICKING

	1997	1998	1999	2000	2001*
Total Illegal Border Crossings	29,339	44,672	32,325	32,720	11,657
Of Whom Smuggled	6,627	9,884	7,680	6,963	2,248

* January to June only.

The Czech Ministry of Interior statistics reported above seem to suggest that of the total numbers of irregular migrants transiting through the national territory, those smuggled number around 20 per cent. A large number of those being smuggled are intercepted at the borders with Germany and Austria.

In addition to the many Czech women allegedly trafficked abroad, the country is reportedly a destination for trafficked victims from Russia, Ukraine, Moldova, Bulgaria, Romania, etc.

The Czech Republic acknowledges its responsibility in combating trafficking and smuggling in human beings. It has signed but not yet ratified the UN Convention against transnational organized crime, while the three Protocols to the Convention have not yet been signed.⁷

There are, among other vulnerable groups within the flows of irregular migrants, non-negligible numbers of unaccompanied minors; however this vulnerable group can only be formally assisted by the state when they enter the asylum system. Between 1998 and 2001, about 200 to 350 minors applied for asylum every year⁸ – well in line with overall trends among asylum seekers generally.

Carrier Sanctions

According to the 1999 Aliens Law a minor offence is committed by:

- A carrier who transports into the state territory an alien without documents entitling him/her to be granted leave to enter; and
- A provider of accommodation who fails to meet obligations pursuant to this Act (Article 156).

In the case of carrier sanctions, the penalty imposed by the police will be equivalent to “25 times the Subsistence Minimum for Personal Needs” which will increase to 50 times for repeated breaches.

In the case of accommodation, a penalty of 12 times the Subsistence Minimum expenses for personal needs is applicable, which rises to 25 times the amount in the case of repeated breaches. Penalties are payable within 30 days.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

These are the Aliens and Border Police Service, the Courts, the Ministry of Foreign Affairs.

The Department of Refugees Facilities manages the 12 refugee centres currently operating as residential refugee facilities, plus two reception centres; this department is also responsible for the return of rejected asylum seekers and those terminating the asylum procedure.

The institutions dealing with asylum procedures are the Department of Asylum and Migration Policies (formerly the Department of Refugees and Integration of Foreigners), through the Reception Centre at Vysni' Lhoty. Prospective applicants have to manifest their wish to apply when crossing the Czech border to the Alien and Border Police; rejected applicants can make a submission for judicial review at the High Court. In the case of unaccompanied minors (under 18 years of age) with no legal guardian, the Department of Social Legal Protection of Children, within the Ministry of Labour and Social Affairs, can act as the guardian. Such unaccompanied minors are often housed within the facilities of the Ministry of Education, Youth and Sport.

Return Migration: Policies and Practices

Rejected applicants can apply to the Head of the Refugee Facilities Management Department for voluntary return assistance. They can apply only once; those without a valid travel document receive a Temporary Travel Document from the Aliens Police to leave the country. Those that do not apply for voluntary return or for tolerated status, fall under the Aliens regime and have to legalize their stay in the country.

Operational Steps for Involuntary Returns

An alien found on Czech territory beyond the validity of his/her exit visa, can be subject to administrative expulsion, often entailing administrative detention. During these procedures, the apprehended alien is also informed of the possibility of availing of assisted voluntary return, either through the Ministry or through IOM. Return measures are taken only by the Aliens Police, with travel documents obtained through the Ministry of Foreign Affairs, often with the use of police escorts. An Entry/Residence prohibition stamp with a validity of up to ten years is affixed in the passport.

Framework Agreements with Countries of Origin or Transit

Readmission agreements have been concluded with neighbouring countries (Germany, Poland, Slovakia, Austria) and with Hungary, Romania, Bulgaria, Croatia, France, Slovenia and Canada. Negotiations are ongoing with Moldova, Serbia and Montenegro, along the lines of the *Aquis Communautaire*. According to the Comprehensive Monitoring Report on the Czech Republic's preparations for EU membership, further efforts are required to conclude remaining bilateral cooperation and readmission agreements, including with Slovakia, to limit border crossings.

Readmission agreements concluded along EU lines include three parts: (a) readmission of own nationals; (b) readmission of third-country nationals and (c) police transit. Readmissions can be implemented either informally at the border or more officially through a formal request. A general commitment exists to readmit Czech nationals through the visa free regime with Belgium, Netherlands, Hungary, Luxemburg, Belarus, Bulgaria, Denmark, Estonia, Cyprus, Chile, Cuba, Iceland, Israel, Lithuania, Latvia, Germany, Norway, Poland, Romania, Russia, Greece, Singapore, Slovakia, Slovenia, Sweden and Switzerland. To date, the proportion of those accepted back by the Czech Republic is greater than those it has been able to return through such agreements.

1.4 STATISTICS ON INVOLUNTARY RETURN

See table of persons returned within the framework of readmission agreements:*

TABLE 3
STATISTICS ON INVOLUNTARY RETURN
Persons Returned within the Framework of Readmission Agreements*

	1995	1996	1997	1998	1999
Returned	287	2,547	3,168	3,818	2,363

* From the Department of Immigration and Protection of the State Borders of the Ministry of Interior, quoted by Pavel Tychtl; most irregular migrants readmitted from the Czech Republic are sent to Slovakia.

The Czech Ministry of Interior lists the numbers of expulsions annually from 1993, which amounted to 730 in that year to over 3,000 in 2002.

TABLE 4
EXPULSIONS

Year	Number of Expulsions
2000	2,307
2001	3,019
2002	3,270
Total	8,596

While the number of administrative expulsion orders has gradually increased, their implementation by the police authorities is still low. Often, this is due to lack of cooperation with some of the countries of origin and the difficulty therefore of obtaining travel documents for returns and, in the case of distant countries of origin such as India and China, lack of financial means for airfares.

1.5 BEST PRACTICES AND LESSONS LEARNED

The Ministry of Interior and the Aliens and Border Police are currently considering best practices on the basis of experience accrued since 1993.

2. ASSISTED VOLUNTARY RETURN

2.1 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

AVRs can be carried out both by the state through its Ministry of Interior – the Department for Asylum and Migration Policies, the Asylum Facilities Administration and the Directorate of the Aliens and Border Police – as well as IOM. All expenses for the return are covered by the Czech Republic. Voluntary return is often availed of also as an alternative to administrative expulsion, at least for those willing to return home.

Operational Steps for Voluntary Return

For AVRs implemented by the Ministry of Interior, assistance is available to asylum seekers withdrawing their applications. They have 24 hours to apply for return assistance (ticket and transit money) usually by land transportation, and not always to the country of origin.

Return Migration: Policies and Practices

Czech Assisted Return Programme by IOM

TABLE 5
CZECH ASSISTED RETURN PROGRAMME BY IOM

Eligible Beneficiaries:	<ul style="list-style-type: none">• Asylum seekers who withdraw their application for asylum;• Asylum seekers whose applications for asylum have been refused;• Destitute aliens without the financial means to organize their return.
Funding Source:	Ministry of Interior
Movements to Date (end 2001):	1,335 migrants have been assisted to return to some 20 countries.

* Building on the regional programme (GRPCE), the Protocol was signed in 2001.

Programme Services

- Pre-departure assistance: information dissemination and counselling through partner NGOs, cash grants of US\$ 50 per person.
- Transport assistance: transport, documents and formalities and transit assistance of US\$ 5 per person.

Other support measures are implemented in parallel (e.g. enhanced information dissemination, workshops and capacity building activities for government counterparts, partners and social workers).

A special project for the Return and Reintegration of Rejected Asylum Seekers and Irregular Migrants from the Czech Republic to Georgia is currently being implemented as part of a three-year programme. It envisages the provision of reintegration assistance (and re-qualification grants), counselling and referrals to employment opportunities available upon return.

Framework Agreements with Countries of Origin or Transit

IOM Prague and the MOI signed an MOU on 26 September 2001. The Ministry, through the Aliens and Border Police, informs IOM Prague about cases awaiting return in detention or in asylum centres. NGOs offer AVR on behalf of IOM Prague.

2.2 STATISTICS ON VOLUNTARY RETURN

TABLE 6
STATISTICS ON ASSISTED VOLUNTARY RETURNS

Year	Assisted by MOI	Assisted by IOM	Total
2000	492		492
2001	449	635	1,084
2002	474	620	1,094
2003	568*	270	838*

* First half of the year only.

2.3 BEST PRACTICES AND LESSONS LEARNED

The importance of asylum applicants being given advice by the authorities on the availability of assistance for their voluntary return cannot be underestimated.

In the case of IOM's AVR, reliance on partner NGOs for pre-departure counselling contributes to the credibility of the programme, both vis-à-vis the applicants and their respective embassies. The two agencies implementing AVR are currently working out complementarities and the division of tasks, also in anticipation of the possibility of accessing EU programme support later in the year.

IOM's assistance is often relied upon for the more sensitive cases, or long distance returns (such as in the case of 50 Chinese migrants assisted in 2002), because of the Organization's presence and assistance at the airports, and special attention to the needs of vulnerable groups, such as victims of trafficking, in the countries of origin.

NOTES

1. Source of data: unpublished translation by IOM Prague of the annual report for 2000 on the “Migration on the Territory of the Czech Republic” as prepared by the Ministry of Interior, in cooperation with the Ministry of Foreign Affairs, Ministry of Labour, and Social Affairs, Ministry of Industry and Trade and Ministry of Justice.
 2. Dusan Drbohlav, “EU and US Approaches to the Management of Immigration”, Migration Policy Group, May 2003.
 3. Including *inter alia* a grant from the German government.
 4. Dusan Drbohlav, *ibid*.
 5. Pavel Tychtl, Country Report, Czech Republic.
 6. Zpráva, 2003.
 7. Comprehensive Monitoring Report on the Czech Republic’s preparations for membership.
 8. Gladisova, IOM, 2003.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: The Czech Republic signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 10 December 2000, but has not yet ratified the Protocol. The Czech Republic also signed the Smuggling Protocol on 10 December 2000, although it has not yet ratified this Protocol.

DENMARK

1. INVOLUNTARY RETURN

1.1 POLICY

Danish migration policy has, over the last decade, become more and more restrictive, focusing currently on limiting inflows while strengthening integration of those already in Denmark.

The Danish government announced in June 2002, that its migration policy aims at complying with international refugee conventions, but also on limiting the number of in-flowing migrants, while strengthening and encouraging the capacity of migrants already legally in Denmark to support themselves, in order to integrate better and reduce the burden on the social welfare system.

In 2002, Denmark recorded a strong decrease in asylum applications. In comparison to 2001 (12,512) the number of asylum claimants dropped by 51.5 per cent to some 6,068 asylum seekers.¹ This decrease is, according to ECRE, not only a result of the positive political changes in some of the traditional refugee origin countries for Denmark (e.g. Afghanistan),² but also a result of the new restrictive Danish legislation and migration policy.

Amendments to the Aliens Law, effective since 2002 and 2003 seem, in fact, to have discouraged potential asylum seekers. Thus, the trend of decreasing asylum applications continued in 2003, where the number of asylum seekers is lower than for the same period (January to September) in 2002 by 26 per cent.³

The Danish government has some reservations about EU policy in the field of immigration and asylum, so the instruments adopted at EU level in this field do not generally apply in Denmark. Yet, in regard to investigation and tracing of asylum seekers and illegal migrants, the Danish government consented to introduce the EURODAC system, which requires the negotiation and ratification of intergovernmental agreements between Denmark and other Member States.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Aliens Act No. 226 of 8 June 1983, and its subsequent amendments, provide the main legislative body for forced return.

Law 367 of 6 June 2002 provides:

- Removal of the right to remain in Denmark during a process of appeal after a decision of expulsion for aliens falling under the EC rules;

Return Migration: Policies and Practices

- A definition of intentional assistance to unlawful entry or stay in Denmark.

In 2003, Denmark amended its Aliens Act with Law 291 of 30 April 2003 pertaining to forced return of asylum seekers. This amendment, in line with the more restrictive attitude in Danish migration policy, includes changes to the procedure for granting humanitarian residence permits, as well as new measures to facilitate the return and deportation of foreigners from Danish territory, and the use of detention.

The Law came into force on 1 May 2003 and stipulates:

- Whereas under the previous legislation an application for a residence permit for humanitarian reasons had suspensive effect, provided an appeal is lodged immediately after the negative decision, the new law foresees suspension only being granted if the application is lodged within 15 days following the first instance of rejection;
- The police now have the authority to detain migrants and rejected asylum seekers, who are not seen to be cooperative on their departure from Denmark. The detention is subject to judicial control, but the detention period is not limited;
- Previous legislative procedure required the approval of a court, whenever the police transferred bio data to the authorities of the countries of origin or transiting countries;
- Cooperative rejectees may be granted an incentive one-time assistance of DKK 3,000 (approx. EUR 400).

Danish laws also permit the repatriation of foreign nationals with residence permits (*repatriering*), while implementation of laws aiming to repatriate foreign nationals without residence permits (*frivillig udrejse*) was actively pursued in 2003.

Expulsion

The Aliens Act foresees that asylum seekers whose application has been rejected in a final decision must leave Denmark immediately. The decision to remove failed asylum seekers forcibly, if they do not leave voluntarily, is made simultaneously with the decision to reject their application for asylum. There are three types of expulsion orders for foreigners lawfully staying in Denmark with different procedural and legislative implications:

- Order to leave based on criminal action – such expulsion orders are generally issued by a court in connection with a criminal conviction;
- Withdrawal of residence permit where the grounds for granting residence have ceased, or conditions of residence permission are otherwise not fulfilled;
- Expulsion based on **maintenance**-related grounds – such expulsion is decided in accordance with the social welfare legislation in cases where aliens become dependent on long-term welfare benefits. The competence of decision lies with a Directorate under the Ministry of Social Affairs and is subject to the provisions of the Act on Active Social Policy.

Administrative Expulsion Orders

Under the Danish Aliens Act, Section 25, administrative expulsion orders can be issued for (a) reasons of national security, (b) violation of the Criminal Code or Customs Act or violent behaviour against national authorities and (c) illegal residence or work without permit.

The most common reason for expulsion is (c). With the 1998 amendment decision, the administrative expulsion is accompanied by an entry prohibition of one year and can be issued according to Section 32 (4) of the Aliens Act if:

- The alien resides or works in Denmark unlawfully (Section 25 a) (2) (i) of the Aliens Act;
- Means of maintenance are insufficient to stay in Denmark and to provide for return to country of origin (Section 25 a) (2) (ii) of the Aliens Act;
- Other reasons of public order, security or health which require the alien's expulsion (Section 25 a) (2) (iii) of the Alien Act.

Regardless of whether the expulsion is of an administrative or judicial kind, the decision must take into account family ties and other relevant factors as stipulated under Section 26 of the Aliens Act.

Judicial Expulsion Orders

A court can take a decision to expel a foreigner who has been convicted in a criminal trial. The judgement must stipulate the length of an entry prohibition according to section 32 (1)- (3) of the Aliens Act. The expulsion provisions are based on proportionality between the alien's length of residence and the seriousness of the crime and its punishment.⁴

Expulsion on Economic Grounds

An expulsion order issued on grounds of insufficient means of maintenance and long-term reliance on social benefits is subject to the decision of the social authorities in compliance with the Social Policy Act. Continued residence is possible for third-country nationals only if they can provide for themselves without relying on social welfare.

Law No. 367 of 6 June 2002, effective since 1 July 2002, regulates social and economic conditions for refugees in Denmark. The law foresees that only aliens who have resided for at least seven years in Denmark within the last eight years are entitled to receive the full range of social benefits.

Refugees who have been in the country for less than seven years are entitled to only 50-70 per cent of the social welfare benefits. The underlying concept is to discourage asylum seekers from coming to Denmark and to encourage the in-country refugees and migrants to bear part of the state burden by earning their own means of sustenance, thereby integrating more easily into Danish society. This provision applies also to Danish citizens.

Return Migration: Policies and Practices

Detention

Changes to the Aliens legislation introduced in 2002 the possibility of detaining applicants at all stages of the asylum procedure. Detention can thus be ordered under the following circumstances:

- Upon arrival if the police deems the detention necessary to enforce a potential refusal of entry (return on grounds of the safe third-country concept or transfer under the Dublin Convention);
- For asylum seekers whose claims are processed under the accelerated procedure for manifestly unfounded cases;
- Prior to enforcement of the removal of foreigners convicted of a criminal offence and ordered deported;
- For asylum seekers who do not cooperate in the examination process of their claim by for example not disclosing their identity, or rejectees who attempt to obstruct the removal process, or adopt a violent or threatening behaviour towards personnel in charge of reception or similar centres;
- For rejectees pending their removal in order to ensure enforcement of the deportation.

Deportations

In order to provide for accidents that occur in the enforcement of expulsion orders and judicial intervention, such as attempted suicides, Danish legislation makes it possible for the Minister of Interior to grant an exceptional residence permit, based on humanitarian grounds (Aliens Act Section 9(2) (2)). The residence permit, however, is temporary and usually restricted to a period of six months. While extension is legally possible, in practice this permit is very rarely extended, in order not to give deportees further incentives to seek ways of obtaining a residence permit.

Deportations cannot be enforced, and in cases where aliens have stayed for at least 18 months and cooperated during the entire time with the enforcement of their deportation, a temporary residence permit may be granted on exceptional grounds (Aliens Act, Section 9 (2) (4)) by the Immigration Service. This regulation is difficult in regard to nationalities where it is not likely that the enforcement of the deportation is possible in the near future.

Refusal at Borders

Under Danish law, a claim for asylum may be deemed to be inadmissible either on safe third country grounds or on the basis of the Dublin Convention. Refusals of entry on third-country grounds in 2002 amounted to eight cases. In fact, refusals of entry on safe third-country ground are very rare and generally only happen at Copenhagen Airport.

Illegal Entry

The Danish Aliens Law stipulates under Section 59 (5) that “any person is liable to a fine or imprisonment for up to two years, who assists intentionally an alien in unlawful entry, transit through or stay in Denmark.

The same provision applies to: any person, who intentionally assists an alien in entering Denmark for the purpose of illegally entering from another country, or who intentionally assists an alien in entering illegally or transiting illegally through another country, or assists, on remuneration, an alien in staying illegally in another country.

The employment of migrants who do not hold a valid working permit may attract a fine or a prison sentence for up to one year.

Incentives to Voluntary Departure

Under Section 42 a) (7), the Aliens Act provides a tool to encourage uncooperative asylum seekers to cooperate with the Danish authorities. This provision has been included in the amendment of 1998, Law No. 437 of 1 July.

According to this regulation, there is considerable leeway to compel foreigners to cooperate by depriving them of the usual monthly allowance and reducing food delivery. Lodging and health services are hereby not affected.

These measures, however, are applied only in a limited way and only for asylum seekers who do not cooperate in the procurement of relevant travel documents.

Under the new amendment to the Aliens Act Law No. 291, rejectees may be granted a one-time financial incentive amounting to around EUR 400 if they show to be cooperative in the removal procedure.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Danish police are responsible for implementing both voluntary and involuntary return of asylum seekers. The police offer support for rejectees who do not have their own means to return, and deal with those who prove to be uncooperative in the removal process.

Escorts are coordinated by a special unit of the Danish National Commissioner of Police.

Operational Steps for Involuntary Return

Rejected asylum seekers subject to removal have to leave Denmark immediately. However, this order to leave immediately is not enforced in the strict sense of the time limit immediately set. Arrangements for voluntary departure, where asylum seekers do not avail of their own means to pay for the return, are under the responsibility of the Danish police, who enforce the removal at their own discretion. There is a certain leeway in the enforcement of the removal process and voluntary return in regard to the order of immediate departure.

Forced removals are implemented on commercial flights. Chartered flights have been used only on very few occasions in the past.

Return Migration: Policies and Practices

Carrier Liability

The carrier that has brought to Denmark an asylum rejectee, or any other person to be removed, bears the responsibility of ensuring that he/she leaves Denmark and must pay the costs involved.

The Aliens Act also stipulates that the person responsible for facilitating unlawful entry into Denmark is liable to a fine and must refund the state all expenses related to the asylum seeker's stay and return.⁵ This provision does not apply to asylum seekers who entered Denmark from a Schengen country.

Escorts

The only carrier that cooperates in the removal of unescorted failed asylum seekers is the national airline SAS. Other carriers accept only escorted removals, or limit removals to one deportee per flight. These are usually arranged per person by the special unit under the Danish National Commissioner of the Police, unless the deportees are not families with children, and generally require fewer escorts.

Framework Agreements with Countries of Origin or Transit

In May 2002, Denmark signed a readmission agreement with Serbia and Montenegro, which came into force on 8 March 2003. Another readmission agreement was signed with Armenia on 30 April 2003. Based on this agreement, the first for Armenia, the Danish authorities are planning to return some 100 rejected Armenian asylum seekers, who have resided for a lengthy period in Denmark.

At the Elsinore Meeting of 24 September 2003, hosted by the Danish Minister for Refugees, Immigration and Integration Affairs, the Ministers of the Nordic countries and representatives from Albania and the countries of Former Yugoslavia, agreed to enhance their cooperation in regard to return and readmission to combat irregular migration and trafficking. The Nordic countries expressed their satisfaction with the good cooperation with relevant countries in regard to return and readmission.⁶

Denmark has generally not developed a specific return policy based on readmission agreements. Except for the multilateral readmission agreements Schengen and Dublin Convention, and bilateral agreements between the Nordic countries (1957) and Germany (1954), Denmark has concluded readmission agreements rather on request from other countries. Although there is among some political groups support in-country for a *quid pro quo* approach to countries of origin in regard to financial development aid, Denmark currently does not exert any financial pressure on countries of origin.

Additional readmission agreements have been reached with Lithuania (1992), Estonia (1993), Latvia (1996), Slovenia (1997), Bulgaria (1997), Sri Lanka (1998) and Romania (1999). An agreement was also entered with the Turkish authorities concerning the transit of failed Iraqi asylum seekers from Northern Iraq who return voluntarily. The agreement had limited success, among others because of the sensitivities of the Iraq situation; and Denmark is now assisting voluntary return of Iraqis via Jordan.

The Nordic Pass Union, which is in effect part of an intra-Nordic mobility scheme for citizens residing in Finland, Sweden, Norway and Denmark and as of 1965 in Iceland, regulates the

exemption of passports for citizens travelling within this area, as well as working and residence permits. It does not regulate the question of expulsion and leaves the issue of protection of negative decisions with the relevant national authorities and at the level of domestic legislation and administration.

All parties to the agreement have the right to request the return of foreigners who have transited through Finland, Sweden, Norway, Iceland and Denmark. Such a request has to be made not later than within a month of the authorities awareness of the aliens' presence on the territory, and the return must be completed not later than within six months of the illegal entry.

With the joining of Finland, Sweden and Denmark in the Schengen Agreement, the Nordic Passport Control Agreement was modified in the late 1990s to allow for the three countries to adapt to the Schengen requirements.

The EU and the Annex 9 removal documents are used occasionally and specifically in connection with escorted deportations.

Costs

Information on expulsion costs is currently not available.

Detention

In practice, detention is widely used when the applicant's identity and/or travel route is not established, as per the changes in the legislation. Police may now also detain asylum seekers who are not cooperative in the examination of their asylum claim and/or their removal.

According to Section 36 of the Aliens Act of 1983, asylum seekers may be further detained if the police consider that alternative measures (deposit of travel documents at the police station, provision of bail, stay at accommodation determined by the police, report to the police as determined by the authorities) are insufficient to ensure that the applicant does not abscond, and hinder thus the removal process. Foreigners detained on grounds of criminal activities are not subject to this provision and are treated differently.

The police, being responsible for all return-related activities can detain a foreigner on the above-mentioned grounds for an initial three days. Only a court can prolong detention thereafter for a period of four weeks. Further prolongation is subject to judicial review every four weeks. Thus there is no maximum detention period, except for asylum seekers processed under the manifestly unfounded procedure, who cannot be detained for more than seven consecutive days.

There are no official statistics on the number of detainees. In practice, detention is widely used at all stages of the asylum procedure. According to ECRE, detention seems to be applied routinely to certain nationalities or categories of asylum applicants, including those, whose cases are processed under the accelerated procedure for manifestly unfounded claims.⁷ This seems to apply for Russians and nationals from the Baltic States. Courts generally seem to follow the police decisions, which results in a situation where the majority of asylum seekers are detained at some point of the examination of their application.

Return Migration: Policies and Practices

Detention Facilities

A detention centre has been built next to the Asylum Reception Centre Sandholm, which is situated North of Copenhagen. The Sandholm Detention Centre specifically hosts failed and detained asylum seekers. As the detention centre for failed asylum seekers is generally not considered suitable for families with children, a special department has been established at the Sandholm Detention Centre solely for the purpose of accommodating families.

However, in the past, reports of recurring incidents of violence and unbearable constraints of privacy in collective cells have caused the Commissioner of the Police to issue instructions requiring that police officers pay particular attention to alternative and less restrictive measures than detention when families are involved.

There are also short-term detention facilities at the Copenhagen Airport. Police Detention Centres are used only exceptionally, and in cases of accelerated removals to Germany or Sweden under agreements made under Article 12 of the Dublin Convention. In regard to accelerated removals to Germany, minors are held in youth hostels close to the German border.

Denmark has no holding rooms in reporting centres for asylum seekers or in centres in which asylum applications are considered, or prisons with dedicated facilities. In the case of criminal asylum seekers, detainees may be held in prisons under the provisions of the Aliens Act.

Since February 2003, the Sandholm registration centre also hosts failed asylum seekers who do not cooperate with the police during the removal process. In these cases, asylum seekers are deprived of their “pocket money” and are normally required to report regularly to the police as specified.

Entry Bans⁸

The Aliens Act stipulates the following entry bans:

- Three years if sentenced to suspended imprisonment or sentenced to imprisonment not exceeding three months;
- Five years if sentenced to imprisonment exceeding three months, but not exceeding one year;
- Ten years if sentenced to imprisonment exceeding one year but not exceeding two years;
- Permanently, if sentenced to imprisonment exceeding two years.

Social Benefits

Under the new Law No. 367, migrants whose applications have been refused because they have been convicted of a serious crime will no longer be entitled to receive social benefits. They will be ordered by court to stay at the Sandholm Centre or are obliged to report to the police on their whereabouts on a regular basis and at a specified time. In case of contravention, these foreigners are detained.

Rejected asylum seekers are entitled to receive social benefits until they finally leave the country. The financial benefits of uncooperative asylum seekers can also be removed and substituted with groceries (“luncheon box scheme”, in Danish *madkasseordning*).

Fingerprints

Law No. 291/2003 allows the Police to submit fingerprints or personal pictures, when arranging removal of foreigners, to the authorities of their home country or any other country without the authorization of a court. This was the case under the old legislation.

1.4 STATISTICS ON INVOLUNTARY RETURN

Statistics on involuntary returns are currently not available.

1.5 BEST PRACTICES AND LESSONS LEARNED

The government realized that the tools available to the police in the enforcement of removals were insufficient, and therefore instated a Working Group on the Removal of Rejected Asylum Seekers and of Aliens expelled by Court Order. The working group concluded a report, which included some recommendations that were worked into the legal amendments to the Aliens Act adopted in 2003 (for example Laws No. 291 and 367).

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Danish police have the responsibility for implementing all returns, and the level of compulsion applied depends largely on the willingness of the individual to cooperate in facilitating their return. Unsuccessful asylum seekers are encouraged to return to their country of origin independently, and where they are not in a position to do so, the police may facilitate their return. If the individual refuses to cooperate, the police can adopt a more forceful approach.

Denmark is committed to the principle of humane and orderly returns, and has adopted a number of measures to this end. The guiding principle of voluntary return is the Danish Act on Repatriation, which was adopted by the Danish Parliament on 2 June 1999, and entered into force on 1 January 2000. The overall purpose of the Repatriation Act is to give foreigners residing in Denmark the best information possible to facilitate their decision to return voluntarily, and to support such an initiative. A statute on the voluntary return of rejected asylum seekers came into effect in May 2003.

The law applies to foreigners with residence permits on humanitarian grounds and other immigrants who wish to return to their home countries. Persons who have been reunited on the basis of family ties with an alien falling under one of these three categories are also included. Citizens of the Nordic and EU countries, as well as nationals of countries in the European Economic

Return Migration: Policies and Practices

Area, are explicitly excluded from this programme. The current return scheme gives refugees and immigrants the opportunity to obtain counselling and apply for financial support towards their return and resettlement in the country of origin or former country of residence.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Refugees, Immigration and Integration Affairs (commonly known as the Ministry of Integration) is responsible for formulating all immigration policies, and its Immigration Service determines whether to grant asylum, residence permits or permits for family reunification.

The Ministry of Integration is responsible for providing individual counselling to aliens who wish to return voluntarily, and has subsequently entrusted this task to the Danish Refugee Council (DRC). This includes information about the asylum procedure, the Danish Repatriation Act, expulsion and rejection rules, provisions of the Dublin Convention, implications of return and the situation in the home country. The DRC also provides counselling about practical arrangements for the return (e.g. travel plans and freight transportation) and can assist in obtaining the necessary travel documentation.

Whenever necessary, the DRC also assists aliens in their relations with the municipalities, which are responsible for granting financial support towards reintegration at home. This includes contacts with local authorities on individual cases, as well as drafting, submitting and following up on applications for financial support on the aliens' behalf.

The Ministry of Integration also involves IOM in planning voluntary return projects, and implements such projects in coordination with the Danish Red Cross, the Danish Immigration Service and the National Commissioner of the Police. IOM also receives AVR applications from the Danish Refugee Council on an ad hoc basis.

Operational Steps for Voluntary Return

An asylum applicant who wishes to terminate his/her application, or who has received a negative asylum decision, may contact the Danish Refugee Council directly for return and reintegration assistance, granted according to the provisions described below. Potential returnees may also approach the National Commissioner of the Police or the Danish Immigration Service for return assistance. The National Commissioner of Police or the Danish Immigration Service will forward the AVR application to IOM for return arrangements. The Danish Refugee Council may also forward AVR applications from refugees to IOM on a case-by-case basis.

In addition to the generic assistance for voluntary return, a number of country specific return programmes have been implemented by IOM. In the past, a successful return programme was implemented with the cooperation of the Danish Immigration Service, the Danish Red Cross and the Danish Emergency Management Agency, for Kosovo nationals whose temporary protection status in Denmark had lapsed.

An assisted return programme was also initiated in August 2002, which provided financial assistance of up to DKK 20,318 per adult and DKK 6,773 per minor child, for Afghan nationals who had applied for asylum in Denmark by 1 November 2002. It is reported that about 60 per cent of Afghan asylum seekers applied for this programme.

Upon submission of an application by the potential returnee, municipalities may grant return benefits, the amount of which varies according to the alien's financial means. Financial support for return is made up of two components – return benefits and reintegration grants, which may only be granted once. An appeal may be lodged with the Social Appeal Board, if the municipalities reject an application for return assistance. In principle, negative decisions by the Appeal Board cannot be further appealed, but the Board may exercise discretion in certain cases. The government reimburses 75 per cent of the repatriation benefits and 100 per cent of the reintegration allowance to the municipalities.

In general, assistance for repatriation includes:⁹

- A one way ticket to the home country;
- Freight costs for personal belongings (max. 2 sq. m. per adult and 1 sq. m per child);
- A cash grant of up to DKK 20,318 per adult and DKK 6,773 per minor child;
- A grant of up to DKK 11,288 per adult to purchase professional equipment and transport the equipment;
- A transportation grant of up to DKK 11,288 for professional equipment already owned by the repatriate;
- The cost of a year's worth of health insurance, if no public health insurance is available in the home country;
- The payment of prescribed medicines brought from Denmark and limited to a year's consumption period.

In special cases, if one member of the family returns to the home country ahead of the others, the family members remaining in Denmark may be granted housing benefits until they return. These benefits are limited to a maximum period of 12 months.

Migrants who came to Denmark on the basis of family reunification are entitled to return benefits only if they return together with the person they were reunited with. However, this does not apply in cases of divorce or separation, death of the person, or if the person wishing to return came to Denmark as a minor to be reunited with his/her parents.

Reintegration Allowance

Upon submission of an application for reintegration, municipalities may grant a reintegration allowance, which is paid monthly for a maximum period of five years. Eligible beneficiaries of this grant are persons who:

- Cannot cover their reintegration needs by other means;
- Have a permanent residence permit in Denmark;
- Have held a residence permit in Denmark for a minimum period of five years;
- Are over 65 years of age, or over 55 years and considered unable to provide for themselves, or have been granted a disability pension regardless of age.

Return Migration: Policies and Practices

The monthly amount of reintegration allowance is established by the government, and according to figures set in 2001, provides the following benefits:

- Group 1 – DKK 700 per month (e.g. Viet Nam and Pakistan);
- Group 2 – DKK 1,000 per month (e.g. Rwanda and Sri Lanka);
- Group 3 – DKK 1,400 per month (e.g. Turkey, Jordan, Macedonia and Morocco);
- Group 4 – DKK 1,500 per month (e.g. Bosnia and Herzegovina, Iraq, Yugoslavia, Lebanon, Afghanistan and Somalia);
- Group 5 – DKK 2,700 per month (e.g. Chile and Iran).

Initiatives for Migration and Development

Aliens who return may apply for employment within a development, reintegration or reconstruction project in their home country, if there are any. Consequently, the Ministry of Foreign Affairs has an obligation to inform the Ministry of Interior and the Danish Refugee Council of all new projects initiated by the Danish authorities in the countries of return.

Exploratory (“Go-and-see”) Visits

The Repatriation Act does not include provisions for exploratory visits to the country of origin, however an alien planning to return to his/her home country for a limited period of time for such a visit may, upon submission of an application to the municipality, receive social benefits during the period spent in the home country. Municipalities must obtain advice from the Danish Refugee Council before taking a decision on the application.

Right to Return

Refugees who have voluntarily returned to their home country may apply to return to Denmark within a year. Upon application, the initial one-year period may be extended for another year. Persons whose residence permits are based on family reunification with a refugee may also apply to return to Denmark within the first year, provided, that this right is exercised along with the main applicant.

In cases of re-entry, the municipality may in particular cases require a reimbursement of all previously provided financial support. This is mainly applicable in cases, where it is considered that the repatriate did not make a serious attempt of reintegration or gave incorrect information.

Framework Agreements with Countries of Origin or Transit

See section on involuntary returns.

2.3 STATISTICS ON VOLUNTARY RETURN

Between 1984 and 2001, about 3,200 refugees and immigrants chose to return voluntarily to their countries of origin. The number of returnees significantly increased in 1996, 1997 and 1998, a trend mainly attributed to the high number of returning Bosnian refugees following the Dayton Peace Accord. The subsequent rise in the number of returnees during 2000 and 2001 could be attributed to the new possibilities for return provided by the Repatriation Act.

In 2002, 170 persons departed Denmark under the assisted voluntary return programme, including 55 Bosnians, 43 Somalis and 24 Kosovars.¹⁰ It was reported that this figure represented a lower level of returns than in previous years, as a result of a 40 per cent decrease in the funding provided by the government. In the previous year, 224 migrants were assisted to return to their home country.

Statistics on IOM-Implemented AVR

FIGURE 1
AVR NORDIC COMPARISON :
2002 AND 2003

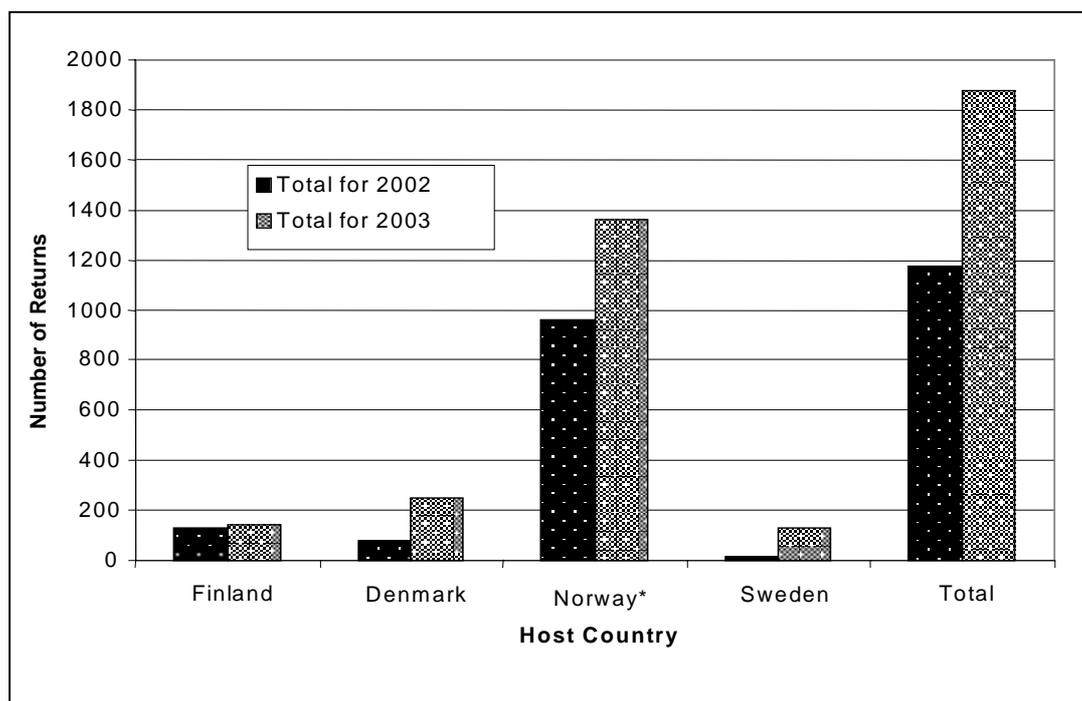
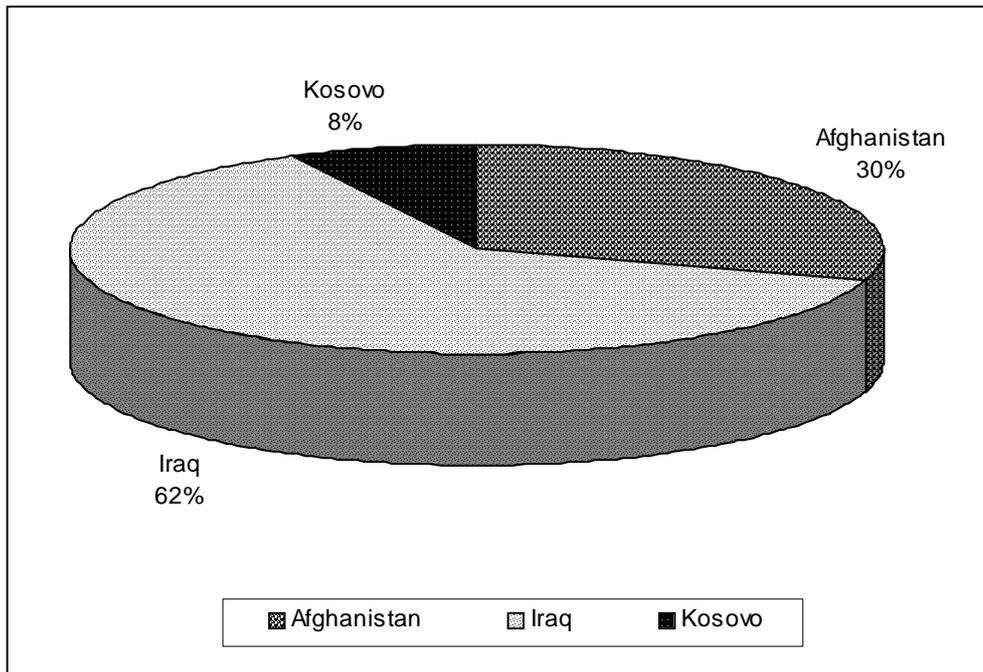


TABLE 1
AVR STATISTICS FOR DENMARK

Year	Number of Assisted Voluntary Returns
2000	1,312
2001	118
2002	135
January – November 2003	236

Countries of Return – 2003

FIGURE 2
AVR RETURNEES BY COUNTRY OF ORIGIN



2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

The Danish Refugee Council has conducted several evaluations covering both individual projects and the general voluntary return programme as a whole. These evaluations have proven the importance of formulating return projects on the needs of refugees and bolstering these activities with information campaigns and cooperation with concerned organizations. The situation in the country must also be taken into consideration, especially in relation to security and the possibilities of effective reintegration.

Best Practices and Lessons Learned

- Counselling, information, job and training assistance are important to both integration and return/reintegration processes in the Nordic countries, but governments have learned that IOM can bring added value by serving not only as a transportation facilitator but also as a neutral link between the targeted Diaspora and these government services;
- Additional information and assistance, such as country of origin information and job referral are preferred over “cash offers”. For example, when the Danish government made a cash-offer to Afghans in September 2002, it became apparent that they would only be able to reach less than 10 per cent of their target group because of the lack of supplementary return and reintegration services;

- Co-funding in EU projects should be planned well in advance with the Nordic governments, due to their slow and consensus-based decision making process.
- The possibility of low numbers of returns should be considered when counting travel costs as part of the national co-funding. Nordic governments often over-estimate their return numbers.

Why Programmes Have or Have not Worked

- Programmes which include information activities that reach the target group directly and in their native language, for example through information meetings and the use of multipliers in information distribution, tend to increase participation in the programme.
- The target group often prefer job referral and other reintegration services to “cash-offers”.
- Programmes based on cooperation between different organizations in the host country (legal advice, advice on social benefits) are effective in enabling the target individuals to make an informed decision about their return.

Cost Effectiveness Analysis

Rough estimates have been made for AVR costs to Iraq and to Afghanistan, according to assistance components determined by the Danish government, on advice by IOM:

- **Iraq:** US\$ 4,200/capita, including reintegration grant and some cargo costs. Cargo costs for Iraqi returnees will rise as the cargo has not been sent but is stored in Denmark with monthly additional costs for storage. Costs may vary, depending on the changing prices of flights and on changes in the amount of reintegration grants.
- **Afghanistan:** US\$ 5,000/capita, including reintegration grant and cargo costs (cargo sent directly to Kabul, no storage in Denmark).

In general, IOM’s voluntary return programme can be more cost-effective when compared to deportations. In addition, significant cost savings may be realized e.g. in social security payments and in travel and escorting expenses.

NOTES

1. *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2002*, Geneva, March 2003, <http://www.unhcr.ch>.
 2. ECRE Country Report 2002, Denmark.
 3. *Asylum Trends and Levels in Industrialized Countries*, January to September 2003, Geneva, 28 November 2003, <http://www.unhcr.ch>.
 4. “With reference to the ECHR, Article 8, the Danish Supreme Court has stated that the demand for proportionality is crucial and that the attachment to Denmark must carry considerable weight in the decision of expulsion” – quoted from “EU and US Approaches to the Management of Immigration”, Denmark, Migration Policy Group, May 2003.
 5. The transport sanction rule is provided for by the Aliens Act under Section 59 a with the amendment No. 686 in 1986.
 6. Press release of the Danish Ministry for Refugees, Immigration and Integration Affairs, <http://www.inm.dk>.
 7. ECRE Country Report 2002, Denmark, p. 8.
 8. Aliens Consolidation Act No. 608, 17 July 2002.
 9. Based on 2002 figures.
 10. Danish Refugee Council.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Denmark signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but as yet, and ratified the Convention on 30 September 2003. It signed the Trafficking Protocol on 12 December 2000, and ratified the Protocol on 30 September 2003. Denmark also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

ESTONIA

1. INVOLUNTARY RETURN

1.1 POLICY

Estonia's geographical position at the border of Western Europe led to an increase in the number of migrants transiting its territory, mostly illegally, in the 1990s. Most asylum movements transit Estonia on their way westwards to Sweden and Finland, but also to other Nordic countries.

However, in comparison with its Baltic neighbours, the number of asylum seekers and the impact of irregular migration to or through Estonia have been relatively limited, in large measure because of a restrictive asylum policy and a highly developed border guard system at the border with Russia. As Estonia lies north of the main land transit route, it has not become a regular transit country for irregular migrants. A large number of the migrants residing unlawfully in Estonia are persons who took up residence during the Soviet period, before 1 July 1990, and did not have their legal status determined by the time of Estonian independence.

At the beginning of the 1990s, Estonia, like the other two Baltic States, did not have the relevant legal provisions or administration to distinguish between irregular migrants and asylum seekers. Apart from the difficulties related to establishment of a reception system, the Estonian authorities had to tackle the logistical requirements of rejected asylum seekers returning to their countries of origin (in most cases Iraq and Afghanistan).

Similarly, the removal of migrants to Russia as a safe third country was generally difficult, because of the absence of other legal options. Estonia detained rejected asylum seekers for lengthy periods and under conditions that did not comply at all with international standards. Furthermore, a strict detention policy was seen by the authorities as an effective deterrent to human trafficking and smuggling across the country's territory.

In this period, Estonia faced international pressure from human rights organizations, as well as its neighbours, but was also offered assistance to establish suitable detention facilities and minimum basic assistance for rejected asylum seekers. An expulsion centre was established in Harku (30 kilometres south of Tallinn) in early 2003. According to the Estonian Expulsions Department, the capacity of this centre should be increased from six persons to at least 15, although this is not reflected in the state budget as yet.

Generally, migration and refugee issues were considered in the past to be of marginal relevance in Estonia. The late introduction of refugee legislation (in 1997) and limited budgetary allocations (given limited available resources) to migration management issues seem to confirm the lower political priority still accorded these issues to date.

Return Migration: Policies and Practices

Due to its recent economic and social problems, Estonia has been in urgent need of international help to set up an asylum system. Progress has been made in more recent years in adopting the conditions set forth by the EU *acquis* on asylum, mainly through the help of Finland and Sweden, as well as under the EU PHARE Horizontal Programme. Since 1997, the total number of asylum applications were 83 (2003 inclusive), of whom four were granted refugee status, while subsidiary status was given to nine persons.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The legal acts regulating forced migration in Estonia are:

- Geneva Convention of 1951 and the New York Protocol of 1967, to which Estonia became party in 1997;
- The Estonian Constitution, of which Section 123 states that *[i]f Estonian law or other acts are in conflict with foreign treaties ratified by the Riigikogu, the articles of the foreign treaty shall be applied*. The Constitution does not include any specific provision on asylum;
- Refugee Act of 18 February 1997, in force as of 9 July 1997 and complemented by Governmental Regulation No. 39 of 18 February 1998;
- Aliens Act of 8 July 1993, effective since 12 July 1993, with its subsequent amendments;
- The Obligation to Leave and Prohibition of Entry Act, adopted 21 November 1998, effective since 1 April 1999, with its amendments, effective since 12 July 2001;
- Visa Regulations;
- The Code on Criminal Procedure and the Law on Administrative Offences, adopted on 8 July 1992 and in force since 1 August 1999, the Criminal Code, and in regard to illegal migration also: the Border Guard Act, the Border Regime Regulation and the State Border Act.

Expulsion

According to Article 3 of the amended Obligation to Leave and Prohibition on Entry Act, in force since 12 July 2001, an alien has to leave Estonia whenever expressly provided for in the law, when his/her legal status stay expires and is not extended, and where he/she has no other legal basis for stay.

Thus, an expulsion order shall be issued to any alien residing in Estonia without a legal basis for his/her stay (Article 7) and shall oblige him/her to leave in the shortest possible time, or to legalize his/her stay in Estonia pursuant to the procedure provided for in the amended Obligation to Leave and Prohibition on Entry Act (Article 4).

Any order to leave includes a warning about forced removal, where the person fails to comply with the order (Article 7), unless he/she can present “good reasons” for not complying with the order, i.e. factors which obstruct or make departure impossible and are not within the control of the alien. In these cases, the alien must be able to prove the validity of the obstacles, and the execution of the expulsion will be suspended for the time of existence of those reasons.

Obstacles to the implementation of an expulsion may be: illness; political turmoil, civil war or a natural disaster in the country of origin; lack of cooperation of the authorities of the country of origin in the execution of removal or identification of migrants who lack travel documents.

The legislation does not recognize the processing of an application for a residence permit or an extension thereof as a valid reason to justify suspension of the removal. Estonian law renders the issuance of an expulsion order obsolete, where the concerned alien leaves within 15 days of expiry of his/her residence permit.

The terms of execution of the order to leave depend on the situation. Under Article 8 of the Obligation to Leave and Prohibition on Entry Act of 2001, an order to leave issued to an alien staying in Estonia without legal grounds shall be executed after the stipulated period (15 days from the date of issue of the order). Yet, any alien who stays in Estonia unlawfully after his/her residence permit has been revoked or has expired shall be removed after the sixth day following the date of issue of the order.

In order to ensure some proportionality, the issuing authority must consider, when ordering expulsion, the foreigner's length of stay in the country, and his/her social and cultural ties to Estonia; and allow sufficient time for the organization of the departure.

While in the past, expulsion orders were issued by an administrative court, the Amendments to the Obligation to Leave and Prohibition on Entry Act transfer the competence for expulsion orders to the Citizenship and Migration Board (CMB) attached to a Ministry of Interior.

Aliens may lodge an appeal to a court against a decision to refuse to extend, or to revoke, their residence or work permit, or an order to leave Estonia. According to Article 13 of the Obligation to Leave and Prohibition on Entry Act, an appeal against a decision to issue such an order or to ensure compliance with an order, may be filed with an administrative court pursuant to the Code of Administrative Court Procedure, within ten days of notification of the order or decision.

Deportation

An alien shall, according to Estonian legislation, be deported from the territory of Estonia, if:

- He/she fails to carry out an order to leave the country or follow the instructions without an acceptable justification;
- He/she has no legal grounds for remaining in Estonia, or upon revocation of those grounds, where the departure of the alien is a matter of national security, public health or morality, or the protection of law and order.

The expulsion is carried out in these cases within 48 hours of the authorities' decision. That is, when the order to leave is issued, a person has to leave voluntarily within six days. If that does not happen, and a person is detained, then expulsion has to be executed within 48 hours. In practice however, it is not always possible to expel so quickly, and persons are kept longer in detention.

Return Migration: Policies and Practices

Detention

Aliens who entered the country unlawfully, or are residing within Estonia unlawfully, may be taken into administrative custody for a maximum period of 48 hours. The Refugees Act provides for possible detention of asylum seekers during the accelerated asylum determination procedure. Under Article 9, it stipulates:

[a]n applicant is not permitted to leave a border checkpoint during expedited processing of an application except in order to turn back upon withdrawal of his or her application for asylum.

The Refugee Act Amendment of 1999 provided also for the establishment of a primary reception centre for illegally arrived asylum seekers, where they are required to stay for an initial interview and during the accelerated procedure. It may only be left temporarily for a preliminary interview or to receive urgent medical treatment.

This centre was established in Harku, south of Tallin, in early 2003. Foreigners who suffer infectious diseases, whose identity has not been established, who pose a severe threat to public order and security or are under a criminal procedure, but may not be arrested, may be placed under custody and may not leave the centre, if placed there. Another facility has been established for asylum seekers in Illuka (150 east of Tallinn).

Migrants who cannot immediately be expelled from Estonia, may be placed in Harku and detained until the removal can be executed. Removal of detainees should be implemented within 48 hours, if possible. Where removal is not possible after this period of time, an Administrative Judge, upon the application of the CMB, may order the extension of detention for a period of up to two months. If removal is still not possible, the Court may prolong the detention period, revising its decision on a bi-monthly basis until removal is finally possible. The court may also rule at any time that the detainee is released and the deportation order or arrest under the provisions of the Criminal Code is annulled.

Illegal Entry

If a foreigner infringes the provisions laid down under the Aliens Act, he/she incurs liability in accordance with the Code of Administrative Offences, in force since 1 August 1999. Illegally resident migrants are fined the equivalent of up to 100 days wages or are subject to an administrative arrest of up to 15 days.

Aliens who are requested to leave but fail to do so, will be fined the equivalent of up to 150 days wages or be subject to administrative arrest of up to 20 days. Repeated offences (once or twice in one year) are charged a fine of up to 200 days wages or an administrative arrest of up to 30 days.¹ While a maximum fine can be up to 300 daily wages, it has not been applied yet, (maximum amounts charged have been around EUR 400).

The Criminal Code further provides for sanctions regarding the forging, stealing, hiding or destruction of legal documents or stamps. These offences are punished either with a fine, or

administrative arrest or imprisonment of up to one year; and in case of offences motivated by the intention to obtain rights or to avoid obligations, by imprisonment of up to two years.

Carrier Liability

Under the Estonian Visa Regulations of 1998 and the Aliens Act, carriers are sanctioned for transporting migrants without valid travel documents or the required entry permits onto the territory of Estonia. The carrier is obliged to return such persons at its own expense and cover any costs incurred by their stay (Section 2 of the Government Decree No. 255). There are no fines implemented against carriers, which transport an insufficiently documented passenger.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

According to Section 1, Article 14 of the Obligation to Leave and Prohibition on Entry Act, the Citizenship and Migration Board (Ministry of Interior) can issue expulsion orders to asylum seekers and refugees. The police are responsible for detention and the arrangement of the departure.

The law provides that foreigners who entered Estonia illegally may be expelled without a judicial order of expulsion. In these cases, the expulsion is organized and executed by the Border Guard and and/or the responsible police officer.

The Border Guard holds the main responsibility to combat organized criminal activities at Estonia's borders. In 1998, a unit was established within the Border Guard to analyse illegal border-crossing activities and elaborate adequate measures. In its efforts to fight illegal entry, the Estonian Border Guard cooperates closely with the Police Department, the Security Police Department and the CMB.

The Travel Document Assessment Centre, established in 1999, collects data on forged documents and issues guiding and study materials to support the work of the Border Guards and other law enforcement organs.

Operational Steps for Involuntary Return

Aliens are detained as soon as the administrative judge has ordered the deportation of the person concerned. Articles 18 and 19 of the Obligation to Depart and Entry Ban stipulate that expulsion shall be completed within 48 hours of the alien being detained. In the case of delayed removal, the court may prolong detention for a maximum period of two months or in case of further obstacles for an indefinite time (Article 25).

If a person to be expelled is being ordered into administrative detention, or if a foreigner is to be detained or imprisoned, or if an alien who is detained or imprisoned is to be expelled, expulsion shall be completed within 48 hours after the administrative detention has been served.

Return Migration: Policies and Practices

However, in practice, the expulsion of an alien may take from one day to up to three years. The period of time in which the removal can be executed depends largely on the availability of travel documents, cooperation between Embassies and the Estonian authorities, as well as the alien's willingness to cooperate in the removal process. The Citizenship and Migration Board stamps the travel documents of those expelled or otherwise returned, in accordance with a standard format laid down by the Ministry of Interior. In the case of expulsions, re-entry is barred for ten years.

Where travel documents are missing, the CMB applies for documents in cooperation with the Ministry of Foreign Affairs to the Embassy of the respective country of origin.²

Estonian legislation does not regulate the legal or social situation of rejected asylum seekers that cannot be returned for technical reasons, though they may be granted a temporary residence permit in accordance with Article 14 (4) 3) of the Obligation to Leave and Prohibition on Entry Act where the principles of an international agreement apply (e.g. UN Convention against Torture and Other Inhuman or Degrading Treatment or the ECHR) pursuant to the Aliens Act (Article 12)).

Such a temporary residence permit may be issued for a period of up to five years and may be extended. If the person concerned has resided in Estonia for at least three years within the last five years, he/she may be granted permanent residence, and allowed to work, or to receive state unemployment benefits for up to six months (less than EUR 100 per month).

Escorts

Occasionally (once or twice a year) escorts are used – to date supplied by the police and in future by the Border Guards.

Chartered Flights

Chartered flights have never been used, also in view of the limited capacity of the detention facilities in Estonia.

Framework Agreements with Countries of Origin or Transit

As of 30 June 1995, there is a mutual readmission agreement among the three Baltic countries, which does not differentiate between refugees/asylum seekers and irregular arrivals.

Estonia and Finland have an agreement on the readmission of persons entering their territories irregularly, which came into force on 3 October 1996. The agreement's preamble refers specifically to the 1951 Convention and its 1967 Protocol.

The preambles of the respective readmission agreements with Norway (11 May 1997) and Sweden (2 May 1997) refer to the 1951 Convention and the 1967 New York Protocol.

Estonia has concluded further readmission agreements with Iceland (entered into force on 1 May 1997), Slovenia (7 October 1997), Switzerland (1 March 1998), Italy (3 March 1999), Germany (1 March 1999), France (15 April 1999), Austria (1 September 2001), Spain (7 February 2000) and Croatia (28 April 2001).

In addition, Estonia has concluded visa-free agreements with Denmark (1 May 1993), France (1 March 1999), Portugal (18 December 1999), Malta (1 January 1998), Cyprus (11 June 1998), the Benelux countries (1 July 1999), Ireland (1 May 1996), Israel (7 October 2001), Greece (4 December 1999), Slovakia (7 November 1997), Romania (16 April 1999), the Czech Republic (12 December 1993), and Hungary (28 May 1992). These agreements on the mutual abolition of visa requirements mostly do not contain references to asylum, but often include provisions on involuntary return, the readmission of third-country nationals and stateless persons, as well as their return to the transit destination.

The existing agreements also provide for the protection of personal information. With regard to the financing of readmission, the transportation expenses are paid by the parties to the agreement.

Estonia is pursuing a readmission agreement with the Russian Federation. A draft border treaty with Russia (as for Belarus, Ukraine and other CIS countries) on terrestrial and maritime borders is still to be concluded, but the Estonian initiative has so far been met with little response. Nevertheless, working relations between the Estonian and Russian border guards are good. There seems to be a practice, where Estonian border guards can return irregular migrants to Russia, if they can prove clearly that the migrant concerned has arrived from the Russian side. The highest rate of refusal for entry occurs at the Russian border, despite the fact that there is no readmission agreement.

A common problem is the identification of migrants to be returned under readmission agreements. The problem relates to third-country nationals. Like other receiving countries, Estonia has faced situations in the past where persons to be returned under a readmission agreement were not accepted, and the other party brought forward various excuses to avoid readmission of their nationals.

Costs

No information is available on the cost of deportations, however costs can vary widely depending on the means of transport available, e.g. escort to the border, train or flights.

Detention

In the light of missing legislative provisions, the international condemnation of the Estonian detention practices in the early 1990s and the unwillingness of some Administrative Courts in Estonia to prolong detention of asylum seekers, the Estonian government was compelled to focus on detention, the establishment of proper legislation and a national asylum procedure. In general, asylum seekers are not detained.

Rejected asylum seekers can be detained in the Harku centre, south of Tallin. According to Article 161 (2) of the Law on Imprisonment, persons to be expelled shall be segregated from prisoners.

Foreigners may also be detained in police station cells, but not for more than ten days.

Detainees have no possibility to see relatives or representatives. They have limited possibilities to post mail or make phone calls.

Return Migration: Policies and Practices

The Estonian prison system is overcrowded, the conditions are very poor and there are no special areas for minors or families, although the amended Administrative Offences Act and the Act on the Execution Procedure foresee these.

Asylum seekers may also be held in custody under certain circumstances at the reception centre established in June 2000 and situated some 200 kilometres from the capital in a little village close to the Russian border. Generally, escape from the centre constitutes an administrative offence and is punished with imprisonment of 30 days. In the past, migrants who attempted to escape were placed in a specially designated area within the Tallinn prison, which is run by the Ministry of Justice.

Persons detained at the border are kept at the border checkpoint and if possible transferred by the Border Guards to the country of origin within 24 hours. Occasionally, these persons stay at an airport holding room or in the guestrooms of the international carriers.

In the past, Estonia faced different problems with foreigners who had been placed in detention pending their deportation, mainly because of the absence of a receiving country. This was often the case with CIS citizens who had not obtained the relevant national passport; or in the case of transits en-route to the country of return, when permission is upheld and it becomes impossible to execute the expulsion. In these cases, foreigners had to apply for legalization of their stay and for a temporary residence permit, in order to be released.

Prosecution

Under the Refugee Act, asylum seekers are fingerprinted, and the fingerprints recorded in the Police Board registry. While migrants rejected at the borders are not fingerprinted, their travel documents are scanned through the registries of criminals in the Baltic database.³

In the absence of identification documents, foreigners are fingerprinted. Their data is entered, as that of illegal migrants, in a database. A computerized network has been installed to enable the relevant authorities to track migrants entering the country, as well as to combat forged documents.

The Citizenship and Migration Board stamps, in accordance with a standard format laid down by the Minister of Interior, the travel documents of expelled migrants. These are barred from re-entering Estonia for ten years.

The exchange of information concerning irregular immigration, including information on asylum seekers, statistical data and their analysis among Estonia and other countries, has improved significantly in recent years. The reduction of irregular entries to Estonia may be attributable also to extensive cooperation by the border guards with the country's neighbouring countries and the increasing efficiency of border monitoring activities.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Departed Foreigners Following the Issuance of Expulsion Orders					
	1995	1996	1997	1998	1999
Number of Persons	1,770	1,220	881	857	765
Expulsions					
	1995	1996	1997	1998	1999
Number of Persons	216	102	51	35	27

In 2002 there were 235 expulsion orders and in 2003 (January to October) 153.

1.5 BEST PRACTICES AND LESSONS LEARNED

Under the PHARE Horizontal Programme, Estonian officials received extensive support in the implementation of the EU *acquis* requirements on asylum. The project consisted of a series of round table meetings, workshops and study visits to identify and address gaps and needs in the Estonian legal system, and in its institutional structures and capacities in regard to asylum.

Estonian officials have benefited from a number of expert meetings on asylum-related practices, amongst them the exchange of knowledge and practices in the field of expulsion and mandatory repatriation of rejected asylum seekers.

Estonia, Russia and Finland have concluded a border guard cooperation protocol in order to enhance the exchange of information on irregular immigration and strengthen their fight against human smuggling. In addition to this, the German Border Guards (BGS) have provided monthly overviews on illegal migration and document forgery. Estonia also participates in the European Union Council meetings of the working group on illegal immigration (CIREFI). In 1999, Estonia, Latvia and Russia jointly established an initiative focusing on the detection and discovery of illegal immigrants, their routes and methods.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Since 1922, the government of Estonia has supported destitute migrants who wish to return to their home countries by providing return assistance under the Migration Fund. The Fund was

Return Migration: Policies and Practices

originally established to assist Russian-speaking migrants to return to their home country, and it is now administered by the Citizenship and Migration Department.

In addition to assistance provided under this Fund, the Estonian authorities have worked with IOM to facilitate the voluntary return of irregular migrants and rejected asylum seekers. Past programmes have included the Voluntary Return of Stranded Migrants in Transit, which has also operated in the other two Baltic countries, Lithuania and Latvia, since 1998.

There is no specific legal basis for assisted voluntary return programmes, although there is some scope to provide assistance for unaccompanied minors to be reunited with members of their family in the country of origin.

According to Section 67, paragraph 2 of the 1992 Child Protection Act, the Social Services Department has an obligation to look for a child's parents or other family and determine the child's possibilities for return to the home country. However, there is no experience of returning unaccompanied minors using this mechanism.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Citizenship and Migration Department administers the Migration Fund, which provides financial assistance to irregular migrants wishing to return to their country of origin.

Until 2002, IOM operated a separate assisted voluntary return programme for rejected asylum seekers and stranded migrants in transit, in close consultation with the migration authorities and NGOs. A total of 17 migrants were thus assisted between 1999 and 2001.

IOM has also established contacts with concerned local and international organizations, such as the Estonian Red Cross and UNHCR, in order to create a network of IOM partners in Estonia.

Operational Steps for Voluntary Return

Programme Services

Pre-departure counselling; verification of the voluntary nature of return; assistance with travel documentation; arrangements for return travel, transit assistance if applicable; reintegration assistance; escorts, including medical escort for sick migrants; and coordination between national authorities, international organizations and NGOs. In particular, cooperation with the Population Movement Coordinator of the Estonian Red Cross was quite successful in ensuring the efficient delivery of travel and counselling services to returning migrants.

The amount of reintegration assistance granted to each migrant was US\$ 50, children included (maximum of two per family). This allowance could be increased to US\$ 70 where necessary. IOM endeavoured to facilitate return travel as quickly as possible.

All returns were carried out using regular flights, often requiring transit through third countries, usually Russia (Moscow). Migrants would be assisted in groups of five to ten, and escorted to the capital, or final destination, whenever logistically possible. Specialized medical escorts would also be made available where required. Where group returns were not possible, migrants returned alone, with transit assistance from IOM offices in Moscow, Kiev, Prague and Vienna.

Non-IOM Implemented AVR Services

In addition to the IOM-implemented assisted voluntary return programme, the Migration Fund may also provide financial support to facilitate the return of those irregular migrants from countries in the former Soviet Union. In 2002, the Fund had a budget of EEK 4.5 million (EUR 28,723), three million of which was allocated for the provision of financial assistance. Each returnee receives approximately EEK 7500 (EUR 479) towards repatriation assistance.⁴ Stranded migrants or rejected asylum seekers from non-CIS countries are not eligible for such assistance.

Framework Agreements with Countries of Origin and Transit

See section on involuntary return.

2.3 STATISTICS ON VOLUNTARY RETURN

Between October 1998 and December 2001, 17 stranded migrants were successfully returned from Estonia to their countries of origin including Russia, Azerbaijan, Armenia, Pakistan, Georgia, Moldova, Ukraine, Albania, India, and Gambia. The majority of returnees were males aged under 30.

Costs

During the IOM AVR programme implementation, the average ticket cost amounted to US\$ 500 per capita.

2.4 BEST PRACTICES AND LESSONS LEARNED

Two fact-finding missions to identify the need for voluntary return programmes from Estonia were conducted by IOM in 1999, which concluded, upon consultation with government authorities, that there was a need for Assisted Voluntary Return support, in light of the then growing number of irregular migrants stranded in Estonia. While in the past most return assistance was given by IOM through its Regional Office in Helsinki, a local office was opened in Tallinn in early 2002, to further the initial work carried out by the Helsinki regional office.

Overall, the numbers of stranded migrants and voluntary returnees in Estonia are significantly lower than in Lithuania and Latvia, because Estonia's location makes it a less popular transit destination than its Baltic neighbours. Nevertheless, with accession to the EU in May 2004, it is anticipated that Estonia will be considered an attractive country of destination rather than merely a transit point. Estonia's participation in a regional assisted voluntary return programme could

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represent a cost effective measure to assist stranded migrants, while consolidating the region's capacity to tackle irregular migration through cooperation.

Why Programmes Have or Have not Worked

Although the number of migrants in need of return assistance from Estonia is relatively small, the authorities argue that the need for voluntary return assistance is likely to increase in the future, as the number of asylum seekers and rejected asylum seekers increases.

NOTES

1. A day's minimum official wage used to be approximately EUR 2.60, now it is around EUR 4; average monthly salaries in Estonia being around EUR 300-400).
 2. It is reported, that a migrant originating from the Federation of Russia applied for a copy of his birth certificate with the Russian Consulate in Spring 1998 and received it only in 2000. During the entire time and also after he had received the copy and still at the date of reporting, in 2002, he was in detention. The Russian Federation does not generally accept the return of its nationals without a valid birth certificate, and removal was in all that time not possible. Dr Joanna Appap, *Immigration Law and Human Rights in the Baltic States, Comparative Study on Expulsion and Administrative Detention of Irregular Migrants*, IOM, p. 71.
 3. Stolen identity documents and identification numbers of vehicles are compared through the stolen vehicle database.
 4. Joanna Appap, *Immigration Law and Hum Rights in the Baltic States: Comparative Study on Expulsion and Administrative Detention if Irregular Migrants*, IOM September 2002.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Estonia signed the UN Convention Against Transnational Organized Crime on 14 December 2000, and ratified the Convention on 10 February 2003. It signed the Trafficking Protocol on 20 September 2002, but has not yet ratified the Protocol. Estonia also signed the Smuggling Protocol on 20 September 2002, although it has not yet ratified this Protocol.

FINLAND

1. INVOLUNTARY RETURN

1.1 POLICY

Historically a country of emigration, it was not until the early 1980s that Finland became a regular net recipient of immigrants. Until the early 1990s, Finland's immigration policies were primarily concerned with security. However, socio-economic and political changes, such as the break-up of the Soviet Union and Finland's membership of the EU, led to significant changes in the way migration is managed. These developments coincided with an increase in immigration to Finland in the mid-1990s, particularly as a result of the conflicts, following the break-up of Former Yugoslavia. Since then, the rate of immigration to Finland has increased rapidly.

At the end of 2002, the population of foreign nationals in Finland stood at 103,682, some 22,250 of whom were refugees, predominantly from Romania, Slovakia, Bosnia, Bulgarian and Russia.¹

While these figures are modest by European standards, they have had considerable impact on Finland's immigration policies.

In general, the practice of granting refugee status, based on the definition in the Refugee Convention, remains limited; and the majority of refugees are accepted on humanitarian grounds, established quotas or family reunification. Of the 3,400 applications for asylum received in 2002, for instance, only 14 were granted asylum, 600 were granted residence permits, while about 500 were given residency for family reunification purposes. A further 750 were accepted under established annual refugee quotas, which included nationals from Afghanistan, Sudan, Iraq, Iran and Turkey.

Finland, like other EU Member States, has over the past decade, sought to formulate immigration policies that encourage the entry of labour migrants to meet the demands of its labour market, while streamlining asylum procedures to prevent unwarranted entries. An amendment to the Aliens Act in 2000, for example, revised the accelerated or fast track asylum application procedure applicable when: (a) the applicant makes a new application for asylum after receiving a negative decision on an earlier application, and bases the application on the same grounds; (b) an applicant arrives from a safe third country of asylum;² (c) the Dublin Convention or the readmission provisions of the Nordic Passport Control Treaty are applicable; or (d) the application is considered to be manifestly unfounded.

In March 2003, new immigration regulations were introduced in a proposed Aliens Act. This Act has not yet been implemented, but contains measures to detain asylum seekers in detention centres rather than police cells or local prisons, provides for new financial penalties on carriers

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transporting undocumented migrants, and restricts the conditions under which parents of unaccompanied asylum seeking minors would be permitted to join their children.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

Immigration legislation in Finland over the past decade has been adjusted to reflect current policy concerns. The 1991 Aliens Act, which is still in force, has been amended about 20 times, leading to inconsistencies, and a new Aliens Act is currently under discussion. Although there have been some antecedents,³ the 1991 Aliens Act is the prevailing law governing the status of aliens, i.e. non-Finnish nationals in Finland, and includes *inter alia* provisions on the entry, residence, detention and expulsion of aliens.

Grounds for Refusal of Entry

According to Section 37 of the Aliens Act, a person may be refused entry if s/he:

- Does not meet the precondition for entry, e.g. a valid passport or visa, is prohibited from entering Finland or is deemed to be a threat to public safety;
- Does not hold the required work permit;
- Refuses to provide the necessary details on his/her identity or journey, or deliberately provides incorrect information;
- Is liable, based on a prior conviction, to commit a crime for which the statutory punishment is a year's imprisonment or more;
- May, on account of previous activities, be assumed to engage in sabotage, espionage or illegal intelligence-gathering activities in Finland or in activities that may endanger Finland's activities with a foreign state.

A non-national whose continued residence in Finland would require a residence permit, but has not been issued with one, may also be refused entry. Individuals whose residence in Finland is based on their nationality of an EEA country may only be refused entry where they are considered to be a threat to public order, safety or health.

Grounds for Deportation

The most common ground for deportation from Finland is the rejection of an asylum claim. Decisions on involuntary return are guided by the principle of non-refoulement established in the Geneva Convention on Refugees and incorporated into the Finnish Aliens Act. Outside the ambit of this principle, an alien who has been resident in Finland may be deported from Finland, under Section 40 of the 1991 Aliens Act, if s/he:

- Remains in Finland without the proper permit or passport (i.e. illegal residence);
- Is unable to support him/herself during a temporary visit to Finland;
- Has committed a crime for which the statutory punishment is a year's imprisonment or more;
- Is deemed to be a danger to the safety of others; or
- Has engaged in or may, on account of previous activities, be assumed to engage in sabotage,

espionage or illegal intelligence-gathering activities in Finland or in activities that may endanger Finland's activities with a foreign state.

According to the same provision, refugees and individuals whose residence in Finland is based on their nationality of an EEA country may only be deported if they stay in Finland without the required residence permit, if they are considered to be a threat to Finland's national security or public order or if they have been convicted of a grievous offence, for which there are no longer grounds for appeal.

Illegal residence is the most common ground for expulsion in Finland and is usually applicable to persons who have overstayed their visas or residence permits, or following the rejection of an application for, or the annulment of, a residence permit. A residence permit may be revoked if an applicant provides false information on his/her application, or where the purpose of residence changes e.g. students and cases of divorce, where the foreign national has stayed in Finland for less than two years and there are no children involved.

The Aliens Act amendment that came into effect in 1998 combined into one process the handling of resident permit refusal and expulsions, thus cutting down on processing delays. The Aliens Act amendment which took effect in May 1999 allows for the Directorate of Immigration to take an expulsion decision, when asylum or residency applications are rejected, in cases where asylum seekers either withdraw their application, or when their application is no longer valid, or where legal grounds for expulsion exist.

Obstacles to Expulsion

In deciding whether a foreign national may be deported, certain circumstances are considered obstacles to removal, particularly if the individual has established links in Finland. Since 1999, an obligation has been introduced, through an amendment of the Alien's Act, to assess all relevant circumstances when taking the decision to deport an individual. As a minimum, these should include length of residence, parent-child relationships, family ties and other bonds in Finland. A ruling by the Supreme Administrative Court in the late 1980s further argued that the list of obstacles to exclusion are non-exhaustive and may include other factors such as work, studies, knowledge of the Finnish or Swedish language or the need for medical treatment in Finland.

In accordance with the principle of non-refoulement, Section 41 of the Alien's Act provides that no one may be deported from Finland to a country where he/she will be subject to persecution on grounds of race, religion, nationality or membership of a social or political group, or to a country from which s/he could be sent to such a country.

Conditions of Re-entry

The Directorate of Immigration may prevent an individual who has been deported or refused entry to Finland from re-entry for a maximum of five years or until further notice. This entry prohibition order may be revoked entirely or for a limited period following a change of personal circumstances or for important personal reasons.

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Prohibition on re-entry decisions are based on a comprehensive evaluation of the foreigner's situation. Matters considered include the length and purpose of stay in Finland, ties to Finland, family life protection and a child's best interest. While the duration of the re-entry prohibition is normally two years, it can be longer in cases where a person continually abuses the Finnish asylum system. AVR cases are not exempt from this prohibition, however the Ministry of the Interior is currently considering the practice of encouraging AVR by lifting the prohibition from those who wish to return voluntarily.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Interior is responsible for the overall administration of immigration affairs, while its Immigration Department supports political decision-making through the development of legislation on immigration and nationality, and thus greatly influences policies on entry, residence and removal, as well as the granting of asylum and citizenship. Decisions on asylum applications, residence and work permits are made by the Directorate of Immigration, a subsidiary of the Immigration Department.

Deportation decisions are made by the Directorate of Immigration in accordance with Section 42 of the Aliens Act and upon the recommendation of the police. Decisions may also be taken without this recommendation, in cases where national security or Finland's foreign relations are under threat.

Among others, the Ministry of Justice is responsible for drafting guidelines for immigration law and policy, judicial administration and enforcing immigration decisions.

Other agencies involved include the Frontier Guard, involved in protecting the external border and carrying out checks on persons crossing the border, and the Police Department, which may also carry out these duties when working as passport control officers, but also executes deportation orders.

The office of the Ombudsman for Aliens may also make representations on behalf of the individual concerned in cases of deportation, pursuant to Section 42 of the Aliens Act.

Application of Expulsion Procedures

Until recently, the Directorate for Immigration would not bother taking an expulsion decision in cases where asylum seekers withdrew their application or disappeared. However, following the case of a large group of asylum seekers from Central Europe who withdrew their application only to renew it some time later, the Directorate now applies expulsion decisions in all cases of application withdrawal. In that case, the applicants could not be so quickly removed as there was no expulsion decision in conjunction with the first application.

Operational Steps for Involuntary Return

According to Article 38 of the Aliens Act, an order to refuse entry into Finland shall be enforced as soon as it is ascertained that the individual's entry or residence cannot be permitted. Exceptions may be made where there are compassionate or humanitarian circumstances, such as serious health problems relating to the individual concerned or a family member, or changes in the country of origin, that could lead to refoulement if return was enforced.

Individuals who have been refused entry may lodge an appeal against the decision, however the decision may still be enforced where it is considered the appeal will cause undue delay.⁴ In such cases, the individual is encouraged to submit an appeal to a Finnish diplomatic mission abroad.

If the outcome of the asylum application is negative, following an examination by the Directorate of Immigration, a concurrent decision is also made to refuse entry. The local police inform rejected asylum applicants and persons whose residence permits are not renewed of the unsuccessful decision, which invokes the obligation for the individual to leave the country immediately.

There is no official regulation or practice with regard to police advice on the possibility of returning voluntarily. In any event, the police and border guards control the removal of persons from Finland. Departures are controlled even if the person leaves voluntarily. Control methods and guidelines are issued by the MOI.

If the alien does not leave Finland voluntarily, the Directorate of Immigration will begin the process of deportation, on the recommendation of the police. In general, persons due to be deported may not leave the country independently. The police enforce all deportation orders, and where necessary escort the individual to his/her country of origin (usually 2-3 escorts). If no escorts are needed, the police send the person's passport or travel documents to the Frontier Guard, who is responsible for exit control. Where a person fails to report at the border crossing point, the border guard informs the police immediately so that a warrant for apprehension can be issued.

Administrative guidelines however, permit foreign nationals who have lived in Finland for a reasonable period of time to make their own arrangements, unless there is reason to believe the individual might abscond or obstruct deportation.⁵ Deportation may be deferred for a certain period of time or to allow an asylum seeker to lodge an appeal. Under Section 62 of the Aliens Act, a deportation order may only be enforced eight days after the decision has been served, in order to allow for appeals.

Regarding escorting, the police comply with Finnair's safety guidelines and rely on their own staff, or trained security guards. Only returns to Estonia and Russia are implemented either by land or sea.

Charter flights are used occasionally. IOM arranged several charter flights to return Polish and Slovak asylum seekers in the summer of 2000. The majority of deported persons are rejected asylum seekers.

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Prosecution and Detention Procedures

Certain precautions may also be taken to investigate whether a foreign national may be granted entry to Finland, or where a decision to enforce and an expulsion order is pending. This may include an obligation to:

- Report to the police at stipulated intervals until a decision has been made;
- Surrender his/her passport or ticket to the police;
- Post a bond set by the police;
- Inform the police of an address where s/he may be reached.

An individual awaiting removal may be detained if there is reasonable cause to believe that s/he will hide or commit a criminal offence in Finland, or if his/her identity is yet to be established.⁶

The legal provisions for detention are to be found in the Finnish Aliens Act Chapter 7, Section 46, which states:

If there exists a reasonable cause, with regard to an alien's personal and other circumstances, to believe that he will hide or commit criminal offences in Finland, or if his identity has yet to be established, he may be placed into detention. A person less than 18 years of age may not be placed in detention without first hearing the social welfare authorities or the Ombudsman for Aliens. Whenever an alien is placed in detention, his case is to be processed expeditiously.

A new law on the establishment of a detention centre for foreigners taken into custody under the Aliens Act came into force on 1 March 2002. Prior to that, detained asylum seekers were kept in police cells and county prisons. The detention centre was opened in July 2002. Usually, detention lasts from a few days to some weeks, but can last up to a few months. Detention cases have to be taken to a court hearing every two weeks. The District Court decides whether the asylum seeker should be released or kept in detention.

Persons under 18 may not be detained without consulting the social welfare authorities, or the Ombudsman for Aliens.

The specific period of detention is not prescribed in the Aliens Act, although it does recommend that cases of detained persons be dealt with expeditiously. According to a study conducted in 1999 on the detention of asylum seekers in major Finnish cities, about 14 per cent of asylum seekers were detained, mostly on arrival, and detention times varied considerable between Helsinki (a few months) and other cities (up to a week).⁷ Finnish courts usually review detention cases within four days of the initial detention, and every two weeks thereafter.

Framework Agreements with Countries of Origin or Transit

Previous provisions on the readmission of asylum seekers have been replaced since the Dublin Convention came into force in 1997.⁸ Outside the EU, readmission agreements have been concluded with Estonia (1995), Latvia (1996) and Lithuania (1997). These agreements are part of a series of treaties on readmission, cooperation, and the abolition of visa-requirements, which make up the Baltic Agreements.

Other readmission agreements have been concluded with Bulgaria and Romania, and these agreements, together with the Baltic Agreements, are governed by EU recommendations on readmission agreements.

Although there is no agreement with Russia, procedures for readmission to Russia are established in the Ministry of Interior's Instruction on Enforcement of Refusal of Entry and Deportation.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURNS

Year	Number of Involuntary Returns
2000	2,482
2001	1,736
2002	2,867
2003	Figures not yet available

1.5 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

The Finnish police have recently received some negative publicity and criticism in the national media regarding their deportation proceedings. This has led to an internal investigation by the Minister of Interior.

The inquiry was initiated after members of a Ukrainian family had been given medication against their will during their deportation last summer. The Interior minister initiated an internal investigation into the police proceedings in this case after considerable media outrage over police conduct. Investigation results issued on 21 November 2003, showed that the police had not breached the Ministry of Interior's guidelines and recommendations in this deportation case. However, a clarification regarding the use of medical personnel during deportation proceedings was added to the Ministry's deportation guidelines.

Finnish authorities⁹ stress that implementation of removals has become more effective, and the costs lowered, following recent efforts to strengthen national coordination (through periodic meetings among officers to discuss operations and practices conformity) on removals.

Why Programmes Have or Have not Worked

Involuntary deportations are often carried out by police officers, who have little training and experience in such matters. People who have been deported against their consent are also more likely to be determined to return to their host countries as asylum seekers. There are some cases

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in which people have applied for asylum in Finland two to three times, although official statistics are not available.

Cost Effectiveness Analysis

Involuntary returns can involve prolonged legal battles and stays at reception centres, which are very costly compared to voluntary return services provided by IOM. Additionally, an overwhelming majority of asylum seekers in Finland receive a negative decision, and the cost of enforcing the removal runs into the millions. In 2002, for instance, about 2,300 of the 3,400 asylum applications were refused.¹⁰ In 2002, it was estimated that the cost of deporting an unsuccessful asylum seeker, usually with two escorts from the police department, was over EUR 2 million.

TABLE 2
EXPENSES OF POLICE REMOVALS:
2001-2003

Year	€	€/person
2001	1,300,000	1,239
2002	2,100,000	872
2003 (est.)	2,350,000	No information available

Source: Finnish Ministry of Interior.*

* Voluntary Return of Asylum Seekers Working Group suggestions on arranging voluntary returns in Finland (abbreviated translation from the Finnish language by Harri Kiviniemi), Finnish Ministry of Interior, 2003.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Finland closely adheres to UNHCR principles in its refugee policy, including returns of rejected asylum seekers. This means that the return must be voluntary, and must occur in dignity and under safe conditions; and in this respect the Finnish government has implemented a number of assisted voluntary programmes, in cooperation with IOM. The components of assisted return migration schemes have been extended from post conflict emergency orientation (e.g. the Humanitarian Evacuation Programme, which evacuated over 1,000 Kosovo Albanians from Kosovo) to focus more on sustainable return, including services such as information and assistance upon return (e.g. upgrading or providing skills towards effective reintegration or reconstruction in the country of origin).

The general trend has been the implementation of specific projects to address the current immigration situation in Finland. Some of the major assisted voluntary return programmes have included the Return and Reintegration Programme for rejected asylum seekers implemented in

1999 and again in 2000; the Kosovo Humanitarian Return Programme, and successive phases of the DRITA and RAFIN programmes.

DRITA II was a Comprehensive Support Programme for the Return and Reintegration of Kosovo Albanians in Finland, which operated in 2000. The project's objective was to create a comprehensive model for the voluntary return and smooth reintegration of Kosovo Albanians into Kosovo. The realization that the unfavourable employment situation in Kosovo presented obstacles to voluntary return, led to the development of DRITA III.

DRITA III concerned the Return and Occupational Reintegration of Kosovo Albanian Refugees from Finland, and was implemented in 2001. It had six components including: (a) pre-departure training; (b) special support for vulnerable groups; (c) assisted return to Kosovo; (d) support of Employment Schemes in Kosovo; (e) support with Social Reintegration; and (f) continuous promotion of cooperation between European Nordic countries in their efforts to support voluntary repatriation to Kosovo.

RAFIN III was launched in 2001 to provide Information, Counselling, Return and Reinsertion Assistance for Asylum Seekers Currently Residing in Finland. Participants were provided with counselling and financial support prior to their departure from Finland, reception upon their arrival, and individually tailored arrangements for further support, including monitoring and follow-up in their countries of origin, wherever possible. RAFIN III returnees from Finland returned mostly to Lithuania, Czech Republic and Russia.

At present, the Finnish government also operates a repatriation scheme for refugees with permanent residence, which is coordinated by the Ministry of Labour. IOM also provides general AVR assistance to other migrants, in cooperation with the Ministry of Interior, police, reception centres and municipalities. Since 2002, IOM has also been implementing a programme on Return of Qualified Afghans funded by the Ministry of Foreign Affairs. It forms part of a general framework to facilitate the return of qualified Afghan nationals and aims to assist skilled Afghan nationals residing in Finland, who are interested in contributing to the reconstruction of their homeland.

Provisions for return and reintegration are discussed under the proposed Aliens Act, although the repatriation assistance granted by local authorities is governed by a Decision of the Council of State (Section 7 of Decision No. 512 of 1997). Return assistance may be granted towards reasonable travel and removal expenses and to assist returnees in settling into their homelands. The government also reimburses escort fees if IOM has recommended the use of an escort (e.g. for handicapped returnees). IOM provides information, counselling, return and assistance to asylum seekers currently residing in Finland, who wish to voluntarily return to their countries of origin.

Some of the key agreements and guidelines in support of AVR include the following:

- Decision-in-principle between the Ministry of the Interior and IOM.
The Ministry of the Interior and IOM made a decision-in-principle regarding the voluntary return of foreigners in 1997. According to the agreement, a foreigner may use IOM's services if he/she is without financial means and has received an expulsion or deportation order. It also

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specifies which government officials are responsible for return expenses depending on the foreigner's legal status in Finland. The agreement was meant to offer the foreigners a humane and dignified way to return.

- The Ministry of Interior guideline on implementation of expulsion and deportation orders, (*Sisäasiainministeriön käännättämisen ja maasta karkoittamisen täytäntöönpano-ohje*), issued on 31 July 1998, Document No. 2/011/98.
- The Ministry of Interior decree regarding centralization of the police's asylum investigation, detention and implementation of removal-from-country orders, (*Poliisin turvapaikkatutinnan keskittämistä, ulkomaalaislain nojalla tehtävää säilöönottoa ja maastapoistamispäätösten täytäntöönpanoa koskeva määräys*). Issued on 2 July 2002, in Document No. SM-2002-1454/Tu-41, this decree permits the use of IOM services when the foreigner wants to return voluntarily.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

Government officials and social workers refer interested parties to IOM, which works in cooperation with local NGOs such as the Refugee Advice Centre and the Finnish Refugee Council. These in turn also offer assistance on returns for asylum seekers.

Operational Steps for Voluntary Return

According to general government guidelines on return, assistance may be granted when:

- The returnee is a refugee;
- Repatriation is voluntary;
- Repatriation is deemed safe;
- The returnee has a precise address in his/her homeland;
- The returnee's travel documents are in order;
- The returnee's affairs in Finland are in order.

Return of Qualified Afghans Programme (IOM-RQA)

This programme aims to boost the reconstruction, capacity building and development process in post-conflict Afghanistan through the progressive transfer of know-how of Afghan expatriate professionals to their home country. The RQA Programme aims to facilitate the short- and long-term employment, return, and reintegration of an estimated 1,500 skilled and qualified Afghan nationals currently residing outside Afghanistan by the year 2004.

In coordination with state authorities, provincial authorities, and local and international bodies working in Afghanistan, IOM places these experts in jobs critical to the country's reconstruction and sustainable development efforts. In addition to this, 500 persons under the project will be awarded a self-employment grant to start their own business.

It is expected that the project will enhance the infrastructure necessary for reconstruction, and contribute to the longer-term stability and development of Afghanistan. In addition, the granting of awards for start-up of small businesses may in return help to generate additional employment opportunities for the local workforce and returnees.

TABLE 3
RETURN OF QUALIFIED AFGHANS PROGRAMME (IOM-RQA)

Eligible Beneficiaries:	Afghan holders of a Bachelor's degree or a professional qualification. General knowledge of local culture and languages.
Funding Source:	European Refugee Fund and the Finnish Government (Ministry of Foreign Affairs)
Assistance to Date:	<p>Six persons have returned to Afghanistan from Finland since January 2002 through RQA-Finland programme.</p> <p>So far, 23 RQA job offers have been made to RQA applicants in Finland. 15 job offers have been rejected by the applicants.</p> <p>Due to the low number of qualified applicants and low job acceptance rate, RQA Finland project has also supported the recruitment, return and placement of 20 RQA candidates from Pakistan.</p>

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with the government counterparts and partner agency; travel arrangements, coordination with origin country missions.
- Transport assistance: departure assistance, transit assistance as necessary.
- Post-arrival assistance: reception and onward transportation as appropriate; some reintegration assistance.

In addition to these programme services, RQA Finland also provides returnees with job placements in their countries of origin.

IOM Helsinki provides the following services:

- AVR form processing and review of travel documents;
- Booking arrangements on commercial or charter flights and notification of itinerary and tickets;
- Arrangement of relevant transit procedures and transit visas/visa waivers;
- Provision of escorts in those cases where returnees would number five or more (separate escort fee);

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- Confirmation by IOM one week before departure of accessibility to final destination for each returnee (security clearance, weather related conditions);
- Provision of IOM-assisted passenger bags, for immediate identification of returnees at transit points;
- Meeting returnees upon disembarkation at selected airports and assisting in arrangements such as customs procedures;
- Arrangements and provision of onward in-country transportation in selected countries;
- Provision of a monthly activity report and periodic invoicing on expenses incurred.

Required Additional Services

Depending on the country of destination, the following additional services are required and will be coordinated by IOM Helsinki:

- Overnight board and lodging in selected countries, where in-country journey cannot be undertaken on the day of arrival;
- Reception assistance upon arrival in the country of origin.

Optional Services

In addition to the basic services outline above, the following optional services are also available at extra cost if desired, and are coordinated by IOM Helsinki:

- Assistance in obtaining travel documents (passports, visas etc.) for the returnees;
- Medical escorts, when necessary;
- Arranging transportation of returnees' personal belongings (for ex. 200 kg – 2 cubic meters) from designated pick up point in the Nordic countries to selected countries of origin as cargo freight. This also includes airport processing of freight and where necessary its storage and release to returnees upon their arrival;
- In cooperation with the relevant IOM office, in-country onward transportation of cargo, in conjunction with returnees to agreed drop off points for final destination in selected countries;
- In cooperation with the relevant IOM office, reintegration Payment Processing; including the payment of a one time installation/reintegration grant to each returnee in the amount defined by the host country.

Framework Agreements with Countries of Origin or Transit

See section on involuntary returns.

2.3 STATISTICS FOR VOLUNTARY RETURN

FIGURE 1
AVR NORDIC COMPARISON :
2002 AND 2003

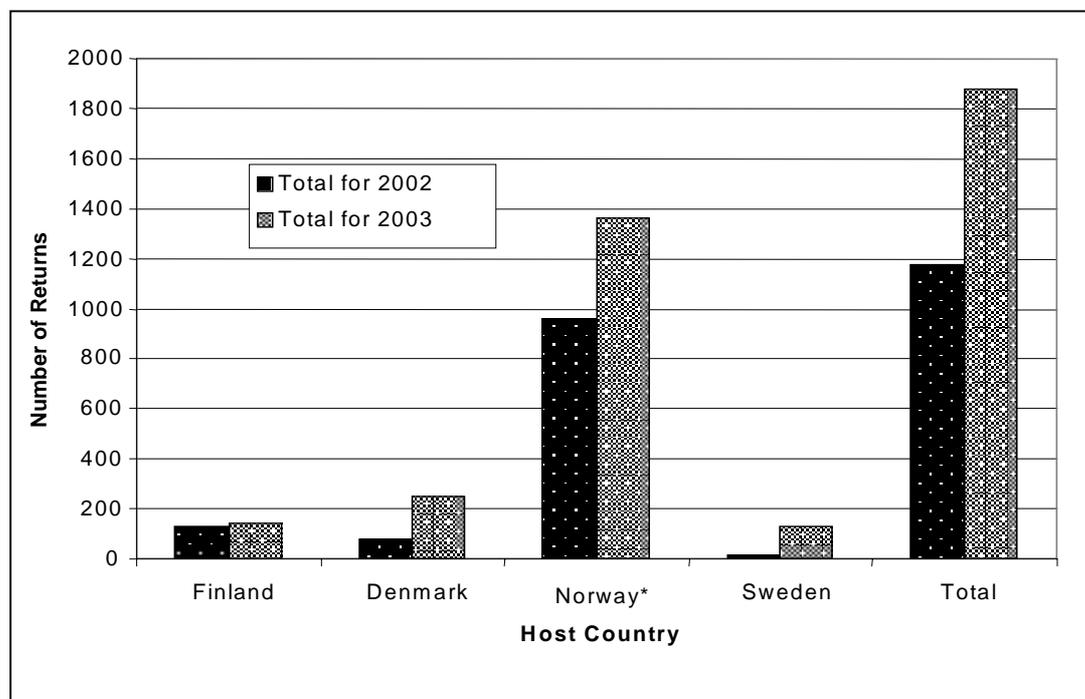


TABLE 4
AVR STATISTICS FOR FINLAND

Year	Number of Assisted Voluntary Returns
2000	1,827
2001	204
2002	131
2003 (January – September)	120

Finland received an unusually large number of manifestly unfounded asylum applications from Poland and Slovakia in the summer of 2000. The government asked for IOM's assistance in returning these people and several charter flights were arranged, which explains why the figures for 2000 were unusually high.

These figures include all assisted voluntary returns from Finland that were facilitated by IOM.

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Six persons have returned to Afghanistan from Finland since January 2002 through the RQA-Finland Programme.

TABLE 5
COMPARATIVE SUMMARY OF
INVOLUNTARY/VOLUNTARY RETURN STATISTICS

Year	Involuntary Return	Voluntary Return
2000	2,482	1,827
2001	1,736	204
2002	2,867	131
2003	Numbers not yet available	120 (January 03 – September 03)

2.4 BEST PRACTICES AND LESSONS LEARNED

- Counselling, information, job and training assistance are important to reintegration processes;
- Effective cooperation between IOM Helsinki and the local IOM office in the country or area of return is essential;
- Finding and strengthening NGO partners in the country of return is important;
- Creating networks around the return migrant, consisting of different kinds of organizations;
- Co-funding in EU projects should be planned well in advance with the Nordic governments due to their slow and consensus-based decision making;
- Creating networks around the return migrant, consisting of different kinds of organizations;
- The formulation of return projects is made easier when the numbers and needs of returnees have been surveyed.

Why Programmes Have or Have not Worked

Assisted voluntary return can be viewed as a more durable solution than involuntary return. Assistance provided before and during return strongly enhances the returnees' chances of a successful reintegration back in the country of origin. However, a very small number of asylum seekers are currently offered or aware of the AVR option available to them, which explains why the number of IOM returnees from Finland in recent years has been very low. The absence of information campaigns targeted towards concerned groups and government authorities to promote the programme may be partly responsible for this.

Cost Effectiveness Analysis

IOM's voluntary return programme can be extremely cost-effective. An overall comparison with enforced deportations is planned, particularly with respect to cost savings made for example in social security payments, travel and escort expenses.

NOTES

1. Statistics Finland – http://www.tilastokeskus.fi/tk/tp/tasku/taskue_vaesto.html#Foreigners. Figures for refugee refer to the period 1973-2002.
 2. A safe third country is defined according to Article 33(a) of the 1991 Aliens Act as a country, which complies, without geographical restriction, with the Geneva Convention on Refugees, the International Covenant on Civil and Political Rights, and the UN Convention Against Torture.
 3. E.g. Aliens Act 1983.
 4. Ministry of Interior, Instruction on Enforcement.
 5. Ibid.
 6. Section 46, Aliens Act 1991.
 7. J. Streng, *Detention of Asylum Seekers in Some Cities in Finland*, Publications by the Ombudsman for Aliens, February 2000.
 8. The only existing readmission agreement was the 1957 Nordic Passport Control Treaty, which, among others, regulated the readmission conditions of asylum seekers to Sweden and Denmark.
 9. Voluntary Return of Asylum Seekers Working Group's suggestions on arranging voluntary returns in Finland (abbreviated translation from the Finnish language by Harri Kiviniemi), Finnish Ministry of Interior, 2003.
 10. Statistics Finland.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Finland signed the UN Convention Against Transnational Organized Crime on 12 December 2000, and ratified the Convention on 10 February 2003. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Finland also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

FRANCE

1. INVOLUNTARY RETURN

1.1 POLICY

While immigration has always been an important part of French history, the migration debate in France today is increasingly focused on security issues at national and international levels. As in other parts of Europe, there is a growing concern with demographic issues, integrity of national borders, changing cultural identity, strains on the welfare state, and public safety and security.

Security is increasingly a key aspect of the French debate on immigration and asylum. French policy is currently focused on measures to combat illegal migration, e.g. through better border control, as well as on protecting the welfare state from fraudulent asylum seekers.

The French Ministry of Interior has identified as a priority the consolidation of irregular migration control measures along three major trajectories: mobilization of police forces at the borders, use of other security forces and strengthening border police collaboration.¹ The French Parliament voted on a new law on national security in 2003.

On 19 November 2003, France adopted a new asylum legislation, which tightens the conditions for asylum and emphasizes faster asylum determination and more effective removal procedures. On 26 November 2003, the 1945 Ordinance on conditions of entry and residence of foreigners in France was amended by Act No. 2003–1119 relating to rules on immigration, foreigners' stay in France and nationality.

A removal policy exists both for illegal residents and rejected asylum seekers. According to estimates by the *Group d'information et de soutien des immigrés* (GISTI) – a French non-governmental organization – only 10-15 per cent of the non-nationals subject to removal are actually removed. This figure includes rejected asylum seekers. There are however no official statistics available.

The French government has, in this regard, taken the lead on a project to rationalize expulsion measures, in particular by means of “group returns” and has started talks with Germany and the UK on the possibility of “European joint flights”.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- The 1951 Geneva Convention and 1967 New York Protocol;

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- The 2 November 1945 Ordinance on conditions of entry and residence of foreigners in France, as amended by Acts of 1981, 1984, 1986, 1989, 1992, 1993, 1994, 1998, 2000, 2002 and by Act No. 2003-1119 of 26 November 2003, relating to the rules on immigration, stay of foreigners in France and nationality (*Loi No.2003-1119 relative à la maîtrise de l'immigration, au séjour des étrangers en France et à la nationalité*);
- The 27 March 1982 Decree on Condition of Entry into France;
The 25 July 1952 Act concerning the establishment of the OFPRA (*Office français de protection de réfugiés et apatrides* – the first instance asylum determination body in France), as modified by the 11 May 1998 Act (the Asylum Act). Following this Act, all provisions pertaining to the right of asylum have been transferred from the Ordinance of 2 November 1945 to the Act of 25 July 1952, defining the status of the OFPRA, which was therefore renamed the Asylum Act;
- Schengen Agreement and Dublin Convention – incorporated into the French Constitution by the Constitutional Act of 25 July 1993, whereby asylum applications submitted in France may not be examined, if they fall within the scope of these agreements;
- Decree of 19 March 2001 relating to centres of administrative detention;
- Additional Protocol to the 25 November 1991 Protocol (Sangatte Protocol) signed between France and the United Kingdom, which came into force on 5 June 2001 – and created additional control offices managed by representatives of the two states.

The New Asylum and Immigration Law

The new laws on asylum and immigration, adopted on 19 and 26 November 2003 respectively, will come into force on 1 January 2004 and introduce several important changes to combat illegal entry and residence, the abuse of asylum procedures, while also respecting fundamental freedoms and rights such as the right to family life, freedom of marriage and of movement.

The Asylum Law will be amended through provisions to accelerate the asylum determination procedure, the introduction of “safe country” and “safe third country” concepts, and the new protection status of “internal asylum”.

According to the new law on asylum, the *Office français de protection des réfugiés et apatrides* (OFPRA – French Office for the Protection of Refugees and Stateless Persons) will need to speed up its asylum determination procedure and deliver a decision within two months. The average processing time in the past was 7.1 months per case; but it often took up to two years, mostly due to the increasing numbers of those seeking asylum during the 1990s in France and elsewhere in Europe. The OFPRA did not have the necessary capacity to cope with the increased numbers of cases.

In the past, French legislation did not contemplate the notion of “safe country” nor of “safe third country”. These have been introduced into the new Asylum Act, with a view to speeding up removals to the countries concerned.

The new legislation also foresees the introduction of a so-called “internal asylum” system. Internal asylum will apply to those persons who are in need of protection and whom the French authorities deem may be best protected within the borders of their country of origin by a regional or an international body.

The new Law No. 2003-1119 of 26 November 2003, relating to the rules on immigration, stay of foreigners in France and nationality, introduces *inter alia* a new subsidiary protection form and further provisions to improve existing detention and expulsion regulations.

Subsidiary protection gives migrants in need of protection residence in France for a year. This new status will be granted to migrants, who may be threatened in their country of origin but are not covered under the Geneva Convention. The residence permit will be renewable but vested with lesser rights than when granted under political asylum.

The maximum detention period for non-nationals pending deportation will be increased from 20 days to 32 days.

Under the new law, applicants for tourist visas (not required for nationals of the US, the European Union/EEA, and Japan) must be fingerprinted, and the prints stored in a database located in Paris. According to the Ministry of Interior, this will discourage the widespread abuse of the three-month tourist visas providing easy entry but not involving exit monitoring. With stepped-up deportation efforts focusing on overstayers and the undocumented, the French government expects an increase in deportation numbers.

Expulsion – Administrative Expulsion Order

a) Rejection at the Border

Legislative grounds for rejection at the border are laid down in Article 5 of the 2 November 1945 Ordinance on the conditions of entry and residence of foreigners in France. Competence for rejecting non-nationals at the border lies with the national police and customs officers. Asylum seeker cases are referred to the Interior Ministry.

Foreigners may be refused entry according to Article 5, when they:

- Lack valid travel documentation;
- Avail of no or insufficient means to maintain themselves during the time of their stay;
- Pose a threat to public order and security or have been subject to an enforced expulsion or interdicted entry order (*interdiction du territoire français*).

According to Article 35 of the 2 November 1945 Ordinance on conditions of entry and stay of foreigners in France, asylum seekers can apply for asylum at the border. While their application is assessed through an accelerated procedure to determine whether manifestly unfounded or otherwise, their entry is withheld, and they are held in so-called waiting zones at the port of entry. In those cases where the application is not refused, asylum seekers are granted a provisional residence permit.

Return Migration: Policies and Practices

b) *Return to Border*

The *arrêté préfectoral de reconduite à la frontière* (order to be returned to the border), as stipulated by Article 22 of the 2 November 1945 Ordinance on conditions of entry and stay of foreigners in France, is issued by a Prefect in cases of:

- Illegal entry or unlawful stay on the territory of France;
- Refusal or withdrawal of a residence permit;
- Use of forged and falsified documents.

Foreigners may lodge an appeal against the *reconduite à la frontière* order within 48 hours if they are notified in person (a receipt must be signed), or seven days if they are notified by mail. The legislative provision implicitly foresees a tolerance respite of one month, which (by interpretation) would give the asylum seekers sufficient time to arrange departure.

In practice, where documents have been forged or falsified, return to the border is never implemented, as document fraud is a criminal offence and thus subject to the Penal Code and punishment. The usual form of expulsion, which accompanies criminal offences is the interdicted entry order (*interdiction du territoire français*), which is a judicial expulsion order.

Article 39 of the new Law No. 2003-1119 of 26 November 2003, which amends Article 26 bis of the 1945 Ordinance, will introduce return to the border on grounds of a Council Directive 2001/40/CE of 28 May 2001. It can be enforced *ex officio* by the administrative authorities and negates the foreigner's right of appeal against the order. Expulsion orders issued by one EU Member State are mutually recognized by all Member States. Where the migrant has been subject to, or has evaded, removal from another EU country, he/she will be automatically removed from French territory.

c) *Expulsion*

Arrêté d'expulsion – an administrative order of expulsion is issued in cases where the presence of an alien represents a particularly grave threat and disturbance to the public order. French legislation hereby distinguishes two different cases:

- *Cas d'urgence absolue* (absolute emergency) – Article 24 of the Ordinance of 2 November of 1945 and
- Where the presence of the alien constitutes a threat for the national security or public order – Article 25 of the Ordinance of 2 November of 1945.

The expulsion order is a preventive measure and does not have the force of a sanction, but rather a policing measure that aims at securing law and order. In practice, expulsion has been mainly applied to non-nationals convicted of a crime and sentenced to imprisonment; and has been implemented after they served their sentence. When the expulsion order becomes legally binding, any residence permit expires *ex legge*.

Judicial Order of Expulsion

The judicial order *interdiction du territoire français* (ITF – entry ban) is legally embedded in the Penal Code. In addition to a penalty, the court may order the expulsion of an alien, which explicitly prohibits return for a limited time or for lifetime. This is also known as the *double peine* (double penalty) problem.

The legislation provides for an ITF in the following circumstances:

- For illegal entry or undocumented stay and accompanied by up to one year of imprisonment and a maximum fine of approximately EUR 3,800 and a re-entry ban of up to a maximum three years;
- In an attempt to evade a refusal of entry, an order to be returned to the border, or an expulsion order; or an attempt to re-enter France after an ITF has been ordered (this can be sanctioned with imprisonment of up to three years and a re-entry ban of up to ten years);
- For trafficking in persons, which is additionally fined and sentenced with imprisonment and an entry ban of up to ten years;
- For criminal offences such as the employment of undocumented foreigners, sexual aggressions, acts of torture and barbarity, crimes against humanity, etc.

An ITF may be ordered for a period of one, three, five or ten years or for lifetime. Once the time limit for re-entry has expired, legal entry to French territory is possible.

However, the administrative authorities may still expel a sentenced foreigner in cases where the court refrains from an ITF order; e.g. foreigners who have served their sentence may still be expelled and deported upon release from detention.

Deportation

According to Article 12 of the Asylum Act (*loi du 25 juillet 1952 sur l'asile modifiée*), asylum seekers whose claim is in the process of determination may not be expelled and deported before a final negative decision has been given.

Detention

The legal basis for detention is the Ordinance of 2 November 1945 on entry and stay of foreigners, as amended by the Act of 1998. There are no specific regulations for unaccompanied minors. According to this Ordinance, upon arrival on French territory, asylum seekers may be detained until a decision on their application is made by the OFPRA, but no longer than 12 days.

The new legislation on immigration extends the period of detention for undocumented foreigners from 12 to 32 days. As the French legislation understands detention as a measure to enforce forced return, the prolonged detention period of 32 days is supposed to give the authorities sufficient time to identify the non-national, and to arrange for the return to the country of origin or to a safe third country.

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a) *Detention at “zones d’attente”*

The Ministry of Interior can deny asylum seekers the right to enter French territory if the asylum application is manifestly unfounded (Article 35 in the 2 November 1945 Ordinance on entry and stay of foreigners, as amended by the 6 July 1992 Act on “waiting zones” at entry ports). Aliens may thus be detained at the point of entry, if they do not hold valid travel documents in so-called waiting zones (*zones d’attente*). Detention cannot exceed four days (twice 48 hours) in these cases.

The detention period cannot be less than 24 hours, in order to avoid possible arbitrary removal decisions. A detention period of 48 hours may be extended in special cases for further eight days, subject to a decision by the court (*Tribunal de Grande Instance*) responsible for the arrival location.

In cases where more time is needed to verify an applicant’s identity and to consider whether removal is necessary, the court may decide to extend the detention period further. However, an asylum seeker may not be detained for longer than a total period of 20 days and if the removal is not enforced, he/she must be admitted into French territory.

The 27 December 1994 Act extended the concept of waiting zones to railway stations open to international traffic. According to this provision, aliens may be detained in waiting zones at ports, airports and railway stations for the time *necessary to determine whether the claim to asylum is manifestly unfounded or not*, but not exceeding a maximum period of 20 days.

b) *Detention at “centres de rétention administrative”*

Detention at *centres de rétention administrative* (CRA – detention centre) is determined by the Prefects (the Government Office Regional Directors) and needs no court decision (Article 35 bis of the Ordinance of 2 November of 1945 on the entry and stay of foreign nationals in France as modified by Act 2000 (in force since 16 June 2002)).

An asylum seeker may be detained for 48 hours pending removal. The detention period may be extended by a maximum five days and under certain circumstances by a further five days. Extensions are subject to a court decision. The detention period can be prolonged in particular, if the concerned person:

- Lacks valid travel documents;
- Does not disclose his/her identity;
- Resists removal.

c) *Detention at “locaux de rétention”*

According to the 19 March 2001 Decree relating to centres of administrative detention, French law allows for detention of non-nationals in holding rooms; these are mostly situated within police stations. The maximum period of detention is up to two days.

Removal

The legal basis for removal is contained in Articles 26 bis, 31 bis and 32 bis of the 2 November 1945 *Ordonnance*. In most cases the state bears the financial responsibility for removal.

Illegal Entry and Stay

The 1998 Penal Code regulates illegal entry or unlawful residence. While under the previous *Debré* Law of 1997, the harbouring of rejected asylum seekers and illegally entered migrants could be sanctioned, the 1998 Law cancelled this provision.

In line with its aims to combat trafficking and illegal migration, the current government included the following in its new law on national security, (*Loi No. 2003-239 du 18 mars 2003 sur la sécurité intérieure*):

- Prostitution may lead to a prison sentence of up to six months and a possible withdrawal of residence permit – this law aims at combating organized prostitution rings and human trafficking;
- Foreigners with a short-term residence permit convicted for threatening the public order may be expelled and accompanied to the border – this procedure is known as *double peine* – double penalty; it is motivated by the threat that the offender represents for public security – and has until now only applied to non-nationals convicted of criminal offences such as drug abuse, trafficking or murder;
- The interdiction of settling on public or a private property with “a motor vehicle” – public security forces may seize the vehicle and suspend the driver’s licence for a maximum period of three years.

Article 28 of the Law No. 2003-1119 amending Articles 21 and 21 bis of the 1945 Ordinance on illegal residence and entry stipulates:

Any person directly or indirectly facilitating or attempting to facilitate entry or stay of foreigners in France may be sentenced to up to five years of imprisonment and fined EUR 30,000.

The same fines and sentence are applicable to any person who infringes the provisions laid down in the Palermo Protocol² on the facilitation of illicit entry or stay of migrants by land, air or sea in one of the signatory countries.

As per Art. 28 II (1 to 6), the law provides for the following sanctions:

- Entry ban for five or more years;
- Suspension of driving licence for five years or more and twice the time for repeat offences;
- Temporary or indefinite withdrawal of the authorization to carry out international transport services;
- Confiscation of the means of transport; all expenses incurred by the confiscation measure are to be borne by the convicted person;

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- Five-year ban or more on professional or social activities which have led to the infringement of the law. Any violation of these sanctions will be punished with imprisonment of two years and a fine of EUR 30,000;
- ITF ban of ten or more years according to Articles 131-30 to 131-30-2 of the Penal Code.

Close family members and ascendants or descendants of illegally entered or unlawfully resident foreigners are exempted from these sanctions, except for spouses of the offenders, as well as all persons who act under physical or moral threat.

Under Article 29 of Law No. 2003-1119, infractions are punished with ten years of imprisonment and EUR 750,000 of fine if the offence:

- Is committed by members of organized groups;
- Is committed in circumstances that lead to death or harming of the foreigner;
- Exposes a foreigner to transport, working, lodging conditions that are incompatible with human dignity;
- Is committed by a means of transport that is reserved to airport or harbour zones;
- The sanction separates non-national minors from their family or removes them from their habitual surroundings.

Foreigners convicted under one of the sections mentioned may be sanctioned with ITF for life.

Carrier Liability

Following a decision at the European level, France has been sanctioning carrier companies, that transport illegal migrants since 1990. There have also been cases of boats run aground before arriving at the destination in order to avoid payment of a fine.

The new Law No. 2003-1119 amends the 2 November 1945 Ordinance provisions in regard to carrier liability.

Article 27 of Law No. 2003-1119, stipulates that carriers may be charged with a maximum fine of EUR 5,000 per illegally entering passenger. Carriers may also be fined for carrying illegally transiting passengers. Prior to the amendments, legislation stipulated that carriers may be sanctioned with a fine of EUR 1,500 per passenger (Article 20 bis of the Ordinance of 1945). The fine is reduced to EUR 3,000 if the carrier establishes and applies a data system, which can transmit relevant data to the French border authorities.

In the case of unaccompanied minors, the fine has to be paid immediately. The Minister of Interior may decide to reimburse part of or the entire sum.

If the carrier fails to pay the fine, this will be increased to EUR 6,000 or EUR 10,000 per passenger.

These provisions are not applicable in cases where the passenger had provided valid documents at the point of embarkation.

The provisions under this law, however, are also applicable to vehicles transiting countries that are not party to the 1990 Schengen Agreement. Transport agencies carrying passengers not in possession of valid travel documents are fined a max of EUR 5,000 per passenger.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The overall responsibility for forced return lies with the Ministry of Interior, whereas removal enforcement falls under the competence of the DLPAJ/DCPAF Directorate of Civil Liberties and Legal Affairs/Central Border Police Directorate. The Police have powers to detect and apprehend failed asylum seekers, with a view to their removal, as appropriate.

Asylum applications are in the first instance examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). If the application is rejected (over 80 per cent of the cases examined), the asylum seeker may lodge an appeal with the *Commission de Recours pour les Réfugiés* (CRR – Refugee Appeal Commission). If new elements are produced after a negative decision by the CRR, the file may be reopened on request of the applicant and judged anew by the *Conseil d'Etat*, the highest administrative court in France. While the state does not provide free legal assistance, this is sometimes available through several non-governmental organizations.

Appeals automatically suspend removal (Article 32 bis of the 1945 Ordonnance). However, where a file is “re-opened”, the appeal will not have a suspensive effect and must be claimed separately.

A final negative decision on a residence permit or asylum application is accompanied by a request to leave the country voluntarily within one month (*Invitation à Quitter le Territoire*). When this time limit expires, an expulsion/deportation order will be issued and can be implemented immediately.

Expulsion/deportation orders can be appealed through the Administrative Court, with suspensive effect, within 48 hours if the decision is notified during custody by the police, and seven days if the decision is notified by mail. A decision must be taken within 48 hours in both cases. In practice, due to the high number of cases pending, Administrative Courts take several months to rule on such cases.

Rejected asylum seekers who cannot be returned, may in some cases be granted territorial asylum,³ otherwise they are left without any kind of documentation or residence permit.

Social benefits are not removed before the expulsion order has been implemented.

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Operational Steps for Involuntary Return

Escorts

As a general rule, for difficult removal operations, there are two escorts per deportee.

Chartered Flights

Generally, carriers may and do refuse deportees who demonstrate resistance when embarking on the aircraft.

Following a series of difficulties encountered during removal on commercial flights and an incident in early 2003 during which one deportee died, France nowadays effects most removals collectively through special charters.

In line with the government's decision to increase the number of deportations, several charter flights were organized during the first quarter of 2003. In early March, some 54 persons were forcibly returned to Senegal and Côte d'Ivoire, accompanied on a charter flight by 89 French escorts (*Gendarmerie*) and four German officials.⁴

Three weeks later, 55 nationals from Côte d'Ivoire and ten Senegalese were deported on a carrier departing from Roissy Airport. On 27 March 2003, Spain and France operated a joint deportation flight to Romania for 70 Roma. At the beginning of April, four deportees were removed on a joint British and French flight to Afghanistan.

Charter flights were already being used throughout the 1980s for removals to Romania, Mali, and Mauritania. In the past, France has conducted joint charter flight operations with Germany, the Netherlands, Spain and the UK. However, since detailed negotiations are necessary with the countries of origin, the implementation of such operations has proven problematic for France on issues of jurisdiction and the use of escorts.

Therefore, the French government has taken the lead on a project to rationalize expulsion measures, in particular by means of "group returns". France has entered into talks with Germany and the UK on the possibility of "European joint flights", also in light of the emerging EU policy on return of illegal residents, which encourages joint removal operations.

Accordingly, the French Ministry of Interior, which holds overall responsibility for removals, plans to organize monthly meetings to work out (a) best legal procedure; (b) operational constraints (security rules during flights, composition of escorts, requests to transit third countries etc); and (c) diplomatic constraints (issue of consular/EU *laissez-passer* documents, reception by the authorities of the country of destination, etc).

Among EU Member States, France – like Germany, Belgium and the Netherlands – faces the most difficulties in removing rejected asylum seekers.

Framework Agreements with Countries of Origin or Transit

France has concluded readmission agreements with Germany, Austria, the Benelux countries, Spain, Italy, Poland, Portugal, Slovenia, Sweden, Switzerland, Romania and Senegal. Negotiations with Mali and China are under way.

France does not use the EU removal document, as according to French experience the use of this document has not proven successful in the past, because of its low acceptance rate by other governments.

France appears less prone to remove rejected asylum seekers to its former colonies and to those countries with which France maintains cultural links or major trade relations.

Readmission agreements cover both voluntary and involuntary return, however in practice countries of origin are not keen to accept those being returned involuntarily.

Costs

Information on the costs of implementing deportations is not available.

Passport Stamps

Except for the entry ban of up to ten years or lifetime, which is included in the judicial expulsion order *interdiction du territoire français* (entry ban order), France has not set up a general system to stamp passports of deportees. If a migrant is forced to leave the country, the expulsion order will mention a prohibition on re-entry to the territory for a certain period (from a few months to up to ten years, depending on the situation). Once this period is over, the migrant could apply for the necessary documentation to re-enter France regularly. During the re-entry prohibition period, he/she can apply for a reversal of the order according to a procedure defined in the Ordinance of 1945.

Detention

In cases where an undocumented migrant is not ordered to leave the country at the time of arrest, he/she is taken into custody at the nearest police station. A claim is lodged with the responsible public prosecutor, who will decide prosecution on grounds of unlawful residence. If the prosecutor decides against prosecution, the OFPRK may decide on expulsion and detention. The foreigner can lodge an appeal within 48 hours, during which period a deportation cannot be enforced.

Where persons have been apprehended, although they had been ordered to leave, the OFPRK decides on detention measures.

Aliens who have been convicted of a criminal offence and have served their term can be taken into detention custody upon release from prison. In practice, the police does not intervene in the case of released aliens, and remain in France, although they are subject to expulsion.

Most detainees are released. The reasons for the non-enforcement of deportation include:

- Deportation order reversal;
- Court's denial to extend the detention period;
- Expiry of the order respite;
- Illness.

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After being released, the migrant is obliged to leave the country promptly. After seven days from the date of release, should he/she be caught while still in France, he/she may again be detained.

Detention Facilities

The previously widely differing practices on detention conditions have been harmonized nationwide by the Decree of 19 March 2001 relating to the centres of administrative detention. The Decree allowed for the establishment of holding rooms (*locaux de rétention*) in addition to detention centres (*centres de rétention administrative*). Holding rooms can be located at local police stations.

Detention centres are not considered by law to be prisons and have to be separate units. Detainees should be allowed to move freely within the detention facilities; however, due to the unsuitability of detention premises in many of the police stations, detainees often end up being in confinement.

There are 22 detention centres in France. Some are specifically designated to hold detainees waiting to be removed, such as in Arenc (near Marseilles). According to Article 35 bis of the 2 November 1945 Ordinance on entry and stay of foreigners in France, modified by the 1998 law, these centres only detain those migrants ordered to leave and suspected of absconding.

There are 122 waiting zones (*zones d'attente*) established at official ports of entry (airport, railway station and seaport) in France. Waiting zones are primarily basic accommodations, often integrated into the police premises. They are not prisons or prison authority buildings, and fall under the responsibility of the local authorities (Ministry of Interior, Direction Centrale de la Police aux Frontières – DCPAF).

Foreigners who arrive without valid travel documents are held in the custody of the border police in waiting zones, pending an expedited decision on admission to French territory. Persons can be detained for between four and eight days, whether there is an administrative or a court detention order. As waiting zones are only meant to be transitory facilities, their conditions are poor. Families are usually detained at a hotel near Airport Roissy.

The average time spent by asylum seekers in waiting zones increased from 2.9 days in 1997 to seven days in 1998. This protracted period can be explained by the increase in the number of asylum seekers in 1998. As waiting zones are not equipped for longer stays and larger numbers of persons, the extension of the average processing time has also led to a degradation of the conditions in the facilities.⁵

Sometimes, detainees are not accommodated in administrative detention centres but receive a house arrest order. Persons who cannot be removed immediately to their country of origin or destination may be liable to house arrest. The duration of such detention depends on how quickly the logistics of return can be worked out, and can vary considerably.

Fingerprinting

Details on rejected asylum seekers arrested during a random identity checks by the Police or at the border by an immigration officer, are included in the Schengen Information System (SIS). SIS registration generally facilitates identification of arrested rejectees, when they come to

notice subsequently (for example after release, pending further enquiries), and can therefore contribute to a smoother removal process. SIS registration of rejected asylum seekers can also be useful in identifying rejectees subsequently applying for asylum in any other European state.

1.4 STATISTICS ON INVOLUNTARY RETURN

The Ministry of Interior statistics do not distinguish between asylum seekers and other irregular migrants in France. In 1997, 28 per cent of expulsion orders (all categories) were implemented, whereas this percentage fell to 20 per cent in 1998. As a result, a Ministry of Interior Circular dated 11 October 1999 requested Prefectures to increase random identity checks and to improve the implementation of expulsion/deportation orders.

Yet in 2002, fewer than 20 per cent of expulsion orders were implemented.

1.5 BEST PRACTICES AND LESSONS LEARNED

No information available.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Although no specific assisted voluntary return programmes exist in France, a legal basis for assisted returns can be found in the 1945 Ordinance on the Conditions for Entry and Residence of Foreign Nationals in France, as amended by subsequent laws. This legislation provides foreign nationals with four different types of voluntary return mechanisms, although they are not used much in practice. These include the following:

Public Assistance for Reintegration (*Aide publique à la reinsertion* – APR)

This procedure, implemented since 1984, allows foreigners staying in France on a regular basis (with a valid residence permit) to return to their home country to carry out a project with a reintegration purpose.

Invitation to Leave the National Territory (*Invitation à quitter le territoire*)

This concerns third-country nationals, who must leave the country due to rejection of a residence permit request or extension, or the rejection of an asylum application. The Prefect delivers the document and informs the third-country national that he/she is entitled to assistance from the

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Office for International Migration (*Office des Migrations Internationales* – OMI) in respect of travel arrangements and a repatriation allowance.

Repatriation for Humanitarian Purposes (*Repatriement humanitaire*)

Based on a Circular by the Ministry of Social Affairs dated 14 September 1992, third-country nationals and their families living in precarious conditions, who wish to return to their country of origin may be entitled to repatriation assistance on humanitarian grounds.

Local Development/Migration Programme (*Programme Développement Local Migration*)

This programme was launched in 1995 to facilitate the creation of individual enterprises by the returnees. The implementing agency is the Ministry of Foreign affairs in close cooperation with the Ministry of Social affairs through the OMI.

Generally, voluntary return assistance consists of:

- Payment of the cost of transport;
- Administrative assistance with the organization of the departure;
- Provision of financial assistance per adult and per minor child.

Measures for the return of specific nationalities may also be adopted, such as the programme established in 1999 to facilitate the return of Kosovars, which has been modified to address the return of Afghan nationals in 2002-2003.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Social Affairs, through the Office for International Migration, is responsible for implementing assisted voluntary return programmes.

Operational Steps for Voluntary Return

As a rule, asylum seekers in the application process are not informed about the possibility of voluntary return until a decision on their asylum application has been made. The reasoning behind this practice, according to the French Office for Refugees and Stateless Persons (*Office Français de Protection des Réfugiés et Apatrides* – OFPRA) is that to raise the issue before a decision on asylum has been made would be in contravention of its mandate. Consequently, the option of voluntary return is only raised when an invitation to leave the territory has been made, following an asylum application rejection.

If a migrant leaves the country voluntarily, it will be possible for him or her to re-enter France again with valid documentation, although more difficult to obtain the required visa.

Programme Services

- Invitation to leave the national territory (*Invitation à quitter le territoire*)
The assistance consists of the payment of EUR 153 per adult and EUR 50 per minor child, transport costs, administrative costs incurred in organizing the departure and if necessary, payment for food and lodging in Paris prior to departure. OMI also provides additional services to facilitate the returnees' socio-economic reintegration on a case-by-case basis.
- Humanitarian repatriation
Assistance to every destitute foreigner who wants to return to the country of origin or another host country of choice but is unable to do so. The Ministry of Social Affairs administers the process and 250 foreign nationals a year apply for this scheme. The assistance consists of the payment of EUR 153 per adult and EUR 50 per minor child, transport costs, administrative costs incurred in organizing departure and if necessary, payment for food and lodging in Paris prior to departure.
- Local Development/Migration Program (*Programme Développement Local Migration*)
Nationals from Mali, Mauritania and Senegal are entitled to submit proposals within six months after their return (they should have stayed in France for at least two years prior to their return to the country of origin). The assistance consists in technical support for the conception of the project, training for the returnee, financial support for the implementation, up to EUR 3,600, and support for 12 months' monitoring.

Other AVR Programmes

Outside these programmes, a country-specific AVR programme for Afghan nationals has been operational since 2002. Any Afghan citizen, as defined by Afghanistan Law, who resides in France may be eligible for assistance under this programme, irrespective of his/her legal status.

Financial Assistance and Other Benefits

- Travel costs (to the final destination in Afghanistan) and excess luggage costs (up to 60 kg/person), including administrative costs to arrange for travel.
- In order to facilitate reintegration, a EUR 2,000 repatriation package is given to Afghans returning under the Agreement.

Framework Agreements with Countries of Origin or Transit

A tripartite agreement was signed among the French government, UNHCR and the Afghan Transitory Administration for the return, voluntary or forced, of Afghan nationals living in France. This agreement was signed in 2002, effective from March 2003.

2.3 STATISTICS ON VOLUNTARY RETURN

Public Assistance for Reintegration (*Aide publique à la Reinsertion – APR*)

- According to OMI statistics, from 1984 to 1998, 32,862 migrant workers (representing a total of 73,595 persons with their relatives) returned to their country of origin. This flow has been decreasing since 1998.
- Only 50 beneficiaries returned under this programme in 2000.

Invitation to Leave the National Territory (*Invitation à quitter le territoire*)

- Beneficiaries: around 10,500 to date, and 602 in 2000.

Humanitarian Repatriation

- Beneficiaries: 1,629 to date, and 214 in 2000.

Local Development/Migration Programme (*Programme Développement Local Migration*)

- On 31 December 1999, the French authorities approved 49 micro-projects in Mali and 20 in Senegal.

2.4 BEST PRACTICES AND LESSONS LEARNED

Why Programmes Have or Have not Worked

Successful initiatives to promote the voluntary return of rejected asylum seekers in France have been limited. Between 1991 and 1998 a programme to assist the voluntary return of removable foreign nationals only benefited about 20 irregular migrants and unsuccessful asylum seekers. Another programme, which was also established in 1991 targeting primarily rejected asylum seekers, initially succeeded in attracting a number of Romanian, sub-Saharan African and Algerian asylum seekers, although this number has been steadily declining as of the late 1990s.

Up to 1998, about 750 foreigners returned through this programme each year, whereas in 1999 the figures decreased to 651, and 643 in 2001. Low rates of uptake among eligible target groups were also recently reported by OMI during the European Commission Refugee Fund Conference, in regard to the Voluntary Return Programme of Assistance for returnees to Mali, Senegal, Romania and Moldova, which assisted approximately 680 returnees in the last five years.⁶

NOTES

1. Circular No. nor/int/c/02/00178/c, 09/24/2002.
 2. See UN Protocol on Trafficking, (Palermo Protocol), December 2000.
 3. Territorial asylum has been introduced into French legislation by the Act of 11 May 1998. Section 13 of the Asylum Act stipulates: “*in consistency with the national interest and after consultation with the Ministry of Foreign Affairs, the Ministry of Interior may grant territorial asylum to an alien who may prove that his life or freedom are at risk or that he fears treatment contrary to Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms*”. The conditions and criteria for territorial asylum are not defined further and the granting of territorial asylum is left to the discretion of the Minister of Interior. After a final rejection, the OFPRA can suggest to the Minister of Interior the granting of territorial asylum, even though the person concerned does not fall under the provisions of the Geneva Convention and/or the French Constitution. In practice, this residence permit is granted only very rarely (in 2001, granted to seven persons).
 4. Interior minister Nicolas Sarkozy announced that there would be one charter flight a week from then on.
 5. ECRE and Danish Refugees Council – *Legal and Social Conditions for Asylum Seekers and Refugees in Europe, 2003*.
 6. Presentation by Martha Breeze, OMI, ERF Conference in Brussels, October 2003.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: France signed the UN Convention Against Transnational Organized Crime on 12 December 2000, and ratified the Convention on 29 October 2002. It signed the Trafficking Protocol on 12 December 2000, and ratified the Protocol on 29 October 2002. France also signed the Smuggling Protocol on 12 December 2000, and ratified this Protocol on 29 October 2002.

GERMANY

1. INVOLUNTARY RETURN

1.1 POLICY

With the change of government in 1998, Germany acknowledged for the first time that it was an immigration country. This paved the way for necessary legal reforms and the development of appropriate political concepts in the field of immigration. As a result, the Act on Nationality was passed and the Green Card programme for highly skilled immigrants was introduced.

The Süßmuth Commission on Immigration was set up and entrusted with the task to write a concept on Migration and Integration in Germany, for the first time reconciling refugee and asylum matters with labour migration and integration, also considering International and European Law. Based on this report the Ministry of Interior drafted a consolidated Immigration Act.

In mid-December 2002, just two weeks before the immigration law was to come into force, the German Constitutional Court blocked it by invalidating a controversial vote on that law in the *Bundesrat* (Upper House of the German Parliament). The law proposed to include provisions for regulations on international labour migration, asylum procedure, compulsory departure from Germany, family reunion as well as the integration of ethnic German emigrants (*Aussiedler*) and Jewish migrants from eastern Europe.

In early 2003, the German Cabinet decided to reintroduce the bill without amendments. In May, the *Bundestag* (Lower House of the German Parliament) decided in favour of the bill against the votes of the German Christian Democrats (CDU). In June 2003, the *Länder* governed with a majority held by the CDU also voted in the *Bundesrat* against the proposed Act and referred it to the Mediation Committee.

The status of the Immigration Act is currently uncertain, and one option is that only parts of the previously adopted Immigration Act will be ratified. In the absence of a resolution, the legal provisions of the Foreigners Act of 1990, the Asylum Act, the Ethnic German Emigrant Act and the Recruitment Stop Exemption Decree remain valid.

In general, German immigration policy has been equivocal. On the one hand, based on the experience of the Second World War, the German asylum practice is amongst the most liberal in Europe; on the other hand a number of restrictive measures and security considerations dominate the public policy and debate. The focus is now mainly on the integration of lawfully residing foreigners in Germany and the management of migration.

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The German public debate on migration policy is dominated by a fear of foreign infiltration (*Überfremdung*), high unemployment of resident foreigners and Germans alike, illegal migration and illicit work; and it distinguishes clearly between wanted and unwanted migrants. Highly skilled labour migrants are welcome, whereas other migrants are perceived as “burdensome” for the welfare state, despite the fact that asylum seekers have no right to work in Germany. The conservative parties make use of this situation in election campaigns and to block substantial immigration reforms.

Critics of the German migration policy feel that key considerations for improving the protection of certain immigrants such as vulnerable groups or people in need of special protection are being neglected. The vulnerability of unauthorized immigrants has increased as a result of a predominantly restrictive policy. Supporters of a more restrictive migration policy argue, on the other hand, that the decrease in asylum applications is proof of successful migration management.

Expulsions, deportations and readmission agreements are important tools for the enforcement of the German migration policy. To this effect, the Ministry of Interior has stated:

The effective execution of the obligation to leave the country is a cornerstone of a credible policy on foreigners which seeks both to integrate foreigners living in our country permanently and lawfully and to restrict further immigration from outside the European Union and the European Economic Area. The Federation and the Federal Länder give priority to voluntary returns, which are assisted in various ways. However, the tool of forced returns cannot be dispensed with completely, but is used sparingly.¹

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

German law differentiates between (a) refugees, (b) EU citizens and EEA nationals and (c) third-country nationals. Therefore the residential status of aliens is regulated by different rules contained in the following laws and decrees:

TABLE 1
IMMIGRATION AND ASYLUM LEGISLATION

Refugees	EU Citizens and EEA Nationals	Third-country Nationals
<ul style="list-style-type: none"> • Article 16a of the Basic Law • Asylum Procedure Act + refugee determination procedure + status during this procedure 	<ul style="list-style-type: none"> • Federal Statute on Entry and Residence of Nationals of the Member States of the European Economic Community – freedom of movement of EU citizens and EEA nationals who are gainfully employed 	<ul style="list-style-type: none"> • Aliens Act • Recruitment Stop Exemption Decree

TABLE 1 (cont.)
IMMIGRATION AND ASYLUM LEGISLATION

Refugees	EU Citizens and EEA Nationals	Third-country Nationals
<ul style="list-style-type: none"> • Aliens Act + Geneva Convention refugee status + temporary protected and other humanitarian statuses after refugee determination • Statute on Measures Related to Refugees Admitted in the Framework of Humanitarian Relief Actions – quota refugee status • Federal Statute on Homeless Aliens – homeless aliens status (displaced persons of WW II and their descendants) 	<ul style="list-style-type: none"> • Regulation on Freedom of Movement, 1997 – freedom of movement of EU citizens not gainfully employed 	

Source: Expulsion and Detention of Aliens in the European Union Countries, B. Nascimbene (Ed.).

The main legal instruments are the Aliens Act (1990) and the Asylum Procedure Act (1982). The Aliens Act, adopted on 1 January 1991, comprises a set of rules regulating the conditions of entry and residence. The main tenets of this Act are (a) to support integration of long-term residents and (b) to control immigration.

Following the longstanding guiding political principle that “Germany is not an immigration country”, the Aliens Act of 1990 for the first time established some clear legal grounds for the residence status of aliens lawfully residing in Germany. *Discretionary provisions were replaced by provisions giving foreigners legal entitlements under clear-cut circumstances*, thus improving their integration.²

As the *Länder* are responsible for implementing the Aliens Act, the Federal Ministers of Interior, with the consent of the *Bundesrat*, established a set of administrative regulations according to which the *Länder* interpret the Federal Aliens Act. In addition, the Conference of Ministers of Interior meets regularly to discuss refugee, asylum and immigration matters, and decide on respective measures and decrees. Its working groups on refugees and return, composed of different state ministries, regularly deal with migration and return and coordinate their administrative and executive approach.

During the 1980s and 1990s, the number of asylum applications increased drastically and led to the adoption of the Asylum Procedure Act in 1982. This act was amended substantially in the course of Germany’s asylum reform (1993) and has been effective since then. The major change

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was the introduction of the safe third country of origin concept into German Constitutional Law. As a result, the number of asylum seekers has dropped considerably.

On the basis of the Aliens Act and Asylum Procedure Act (revised version from 1993), direct rejection at the border and expulsion to third countries are possible based on the safe third-country concept. Further, the so-called Airport procedure allows asylum applications to be processed while the migrant is detained at the airport. If rejected, the applicant is repatriated immediately and without having legally entered Germany. In this case, the Federal Border Police (BGS) implement the deportation of rejectees.

Rejection at the Border

Section 18(2) of the Asylum Procedure Act states that permission to enter shall be refused by the border authorities (*Bundesgrenzschutz – BGS*) in cases where the asylum seeker “enters from a safe third country”. All EU countries as well as other European countries where the application of the Geneva Convention and the European Convention on Human Rights is ensured are deemed to be “safe third countries”. A list of non-EU countries was approved by the Parliament. So far, this list includes Norway, Poland, Switzerland and the Czech Republic.

Accelerated Airport Procedure

Under Section 18a of the Asylum Procedure Act, a special accelerated procedure for airport cases is applied to asylum seekers coming from “safe countries of origin”, or without valid passports. The list of “safe countries of origin”, approved by Parliament, includes Bulgaria, Ghana, Poland, Romania, Senegal, Slovakia, the Czech Republic and Hungary.

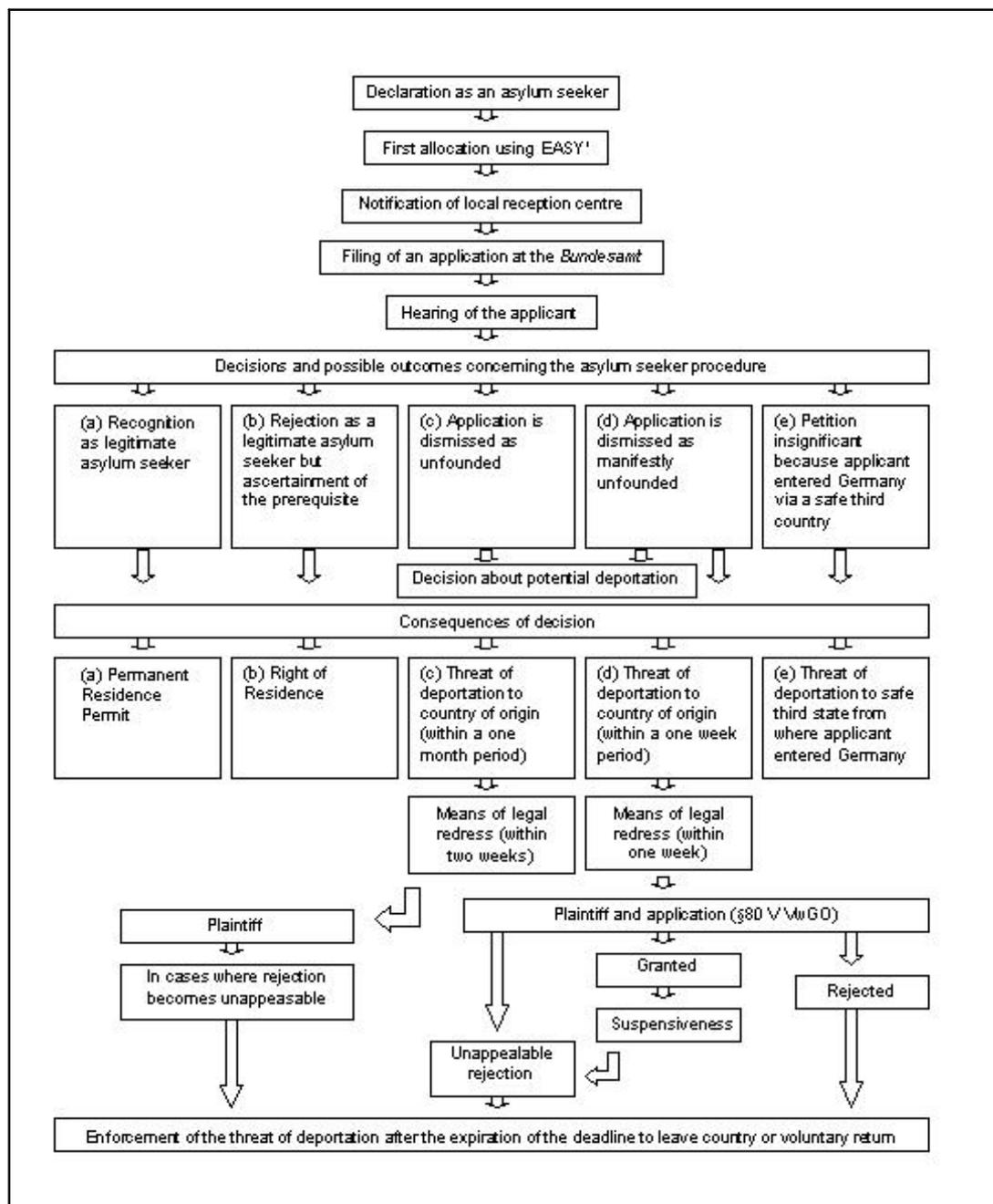
In these cases, applicants awaiting a decision on entry into the country are detained at the airport, provided it has sufficient capacity to accommodate them. Usually, they stay in special premises within the airport’s transit zone. Unaccompanied minors may also be required to stay there, but they are usually taken care of by social workers. An official of the Federal Office interviews applicants for the Recognition of Foreign Refugees, with the assistance of an interpreter wherever necessary. The Federal Office must reach a decision within two days of submission of the application, otherwise the applicant will *ex lege* have the right to enter the federal territory.

If the Federal Office rejects the claim as manifestly unfounded, entry is refused. The applicant may, however, file an appeal with the administrative court within three days, with suspensive effect. The administrative court (*Verwaltungsgericht*) must reach a decision within 14 days and, if it does not, the applicant may enter the country. There is no provision of free legal aid.

Full and Provisional Asylum

Persons granted refugee status under Section 16a of the Constitution (including quota refugees) receive unlimited residence permits. Those protected against refoulement under Section 51(1) of the Aliens Act receive temporary residence permits (*Aufenthaltsbefugnis*) valid for two years and which can be renewed. After eight years in Germany – i.e. from the time they applied for asylum – they may be granted an unlimited residence permit. Both categories are considered as Convention refugees, though Section 51 of the Aliens Act and Section 2 of the Asylum Process-

FIGURE 1
FLOWCHART OF THE GERMAN ASYLUM SEEKER PROCEDURE



EASY is the abbreviation for *Erstauffassung Asyl*, the initial asylum screening process.

Source: Unofficial translation of a diagram in an information brochure by the Federal Office for the Recognition of Foreign Refugees (Bafl - Bundesamt für die Anerkennung ausländischer Flüchtlinge), *Operational Structure of the German Asylum Process (Ablauf des deutschen Asylverfahrens)*, May 2003.

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ing Act differentiate between the so-called *großes Asyl* (extended or full asylum) and the *kleines Asyl* (provisional or restricted asylum).

Refugees whose cases are processed under 16a of the Constitution and are granted asylum are entitled to unlimited residence permission, access to integration measures and working permit. Whereas, refugees not granted asylum under 16a receive only limited right of residence and have no access to integration measures, they are allowed to work.

According to the Aliens Act (Section 33) the Federal Minister of the Interior may decide to receive specific aliens in Germany for reasons of international law or on political and/or humanitarian grounds. These aliens do not file individual asylum applications and are usually admitted according to a defined quota. The German law hereby distinguishes between quota refugees (*Kontingentflüchtlinge*) and civil war refugees.

Quota Refugees

In the early eighties and the nineties, Vietnamese “boat-people” and Jewish immigrants from Russia respectively were able to come to Germany as quota refugees. These groups of migrants are granted unlimited residence.

Status for Civil War Refugees

In 1993, a status was introduced under Section 32a of the Aliens Act specifically for persons fleeing war and civil war situations. This status, which requires a previous agreement between the Federal government and the *Länder* on payment of housing and welfare costs for those granted temporary protection on this basis, was not used until 1999 due to the lack of such an agreement. However, in April and June 1999, the Federal government and the *Länder* agreed to receive a total of 15,000 refugees from Kosovo on this basis.

The granting of this status is dependent upon the person not applying for asylum, or withdrawing his/her application. Persons granted the status for civil war refugees are issued with a temporary residence permit, which is renewable.

Temporary Deportation Waiver

Under the Aliens Act, the Ministry of Interior of each *Land* may order a temporary deportation waiver for groups of aliens, either on the basis of international law or on humanitarian grounds. The deportation waiver is ordered for a maximum period of six months. If the Ministry of Interior of a *Land* wishes to extend the validity beyond six months, the agreement of the Federal Ministry of the Interior is required. This procedure only applies to groups and not to individual refugees. In March 1996, the Ministries of Interior of the *Länder* decided during their conference that no *Land* would order a temporary deportation waiver on its own without the agreement of the majority of the other *Länder*. No groups have benefited from this deportation waiver since March 1996. The new Immigration Act adopts this regulation.

Temporary Toleration (*Duldung*)

According to the Aliens Act, the Federal Office for the Recognition of Foreign Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*)³ bases its decision of approval or denial of asylum on the questions of whether an asylum seeker faces:

- Torture;
- The death penalty;
- Any violation of the rights set out in the European Convention on Human Rights.

If the Federal Office considers that such a risk exists, the asylum seeker is automatically granted a *Duldung* (temporary toleration) by the Aliens Office.

Duldung (as stipulated in the Aliens Act, Section 55 and 56) does not entitle the migrant to a legal right of residence. It is merely a regular suspension of the deportation order, which, nevertheless, remains valid sometimes for periods of ten years or more. Under certain circumstances and after prolonged residence in Germany, the *Duldung* may be converted into a limited residence status.⁴ Under the new Immigration Act, the *Duldung* would no longer exist, but is replaced by a final decision on the legal right of residence, if a deportation cannot be executed.

In addition, aliens may benefit from the so-called “longstayers regulation” (*Altfallregelung*). According to this, certain aliens who have had tolerated residence or who could not be returned for a long period of time may be granted residence permits, under certain conditions.⁵

In the past, an average of about 50 per cent of rejected asylum seekers managed to remain in Germany on the basis of other forms of residence criteria or a *Duldung*.

Deportation

The Aliens Act provides that aliens, including refugees, who do not, or no longer hold the necessary residence authorization or have lost their residential status otherwise (...), fall subject to the duty to leave federal territory.⁶ Where deportation has been ordered, the residence authorization expires *ex lege*.

German law differentiates between three grounds for deportation:

- Must-deportation – this applies to cases of specified grave criminal sentences or particularly dangerous offences;
- As-a-rule deportation – this follows the same reasoning as the must-deportation but leaves an administrative leeway for exceptional cases;
- Discretionary deportation – the Aliens Office makes a discretionary decision on a case-by-case basis in accordance with the Aliens Act.

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Expulsion

According to the Aliens Act, expulsion must be ordered and carried out, where aliens do not undertake to leave the federal territory voluntarily, despite enforceability of this requirement. This occurs when the Aliens office deems that the alien will not obey the order and leave within the mandated period, or his/her departure has to be supervised. Reasons for expulsion are deportation, the lack of a passport, the attempt to deceive an Aliens Office or an obvious reluctance to leave. Aliens might also be expelled if they are unable to cover their subsistence costs and those of their dependants without drawing on social welfare (unless only temporary).

Detention

Detention may be ordered as a preparatory measure (*Vorbereitungshaft*) when the deportation order has not yet been issued, but where it is deemed that deportation can be enforced more easily if the aliens are detained. According to the law, preparatory detention requires a court decision and must not exceed six weeks.

Detention is also ordered to enforce an existing deportation order (*Sicherungshaft*). This applies to rejected asylum seekers:

- Who, without informing the Aliens Office, have changed their address after the time set for departing the country voluntarily has expired;
- Who have not responded to a summons by the Aliens Office regarding their deportation;
- Who have tried to avoid deportation;
- Who are suspected of possibly avoiding deportation.

The mere refusal to cooperate in obtaining travel documents is not a valid and legal reason for imposing a detention period. In the past, there had been attempts to introduce coercive detention for migrants, but this was defeated.

Detention must be ordered by a court and must be reviewed every three months. The migrant is to be released if deportation is not feasible within three months for reasons beyond the alien's control. In case of detention pending deportation, German law provides for a preliminary duration of six months, which may be extended to a maximum of 18 months to enforce the obligation

TABLE 2

THE NEW IMMIGRATION ACT – KEY POINTS

The new Act on Residence, gainful Employment and Integration of Aliens summons for the first time all relevant rules and regulations on the rights of residence and the rights of work for aliens in one law.

Labour Migration

- Permanent residence permission from date of admission for highly qualified persons and new business entrepreneurs based on an individual evaluation and without a set quota on the number of aliens to be admitted under this category.

TABLE 2 (cont.)
THE NEW IMMIGRATION ACT – KEY POINTS

- Admission of economically active immigrants based on a points system – the more qualified the alien is and the more his qualifications are requested on the German labour market the higher is his score.
- Priority given in the selection process to candidates from acceding countries and the planned seven-year transition period preceding the freedom of movement on the labour market could thereby be structured on a more gradual basis.
- Recruitment of labour migrants for a limited period of up to five years. On expiration of residence and working permit the labour migrant will have the possibility to apply for extension.
- Foreign students who have completed their studies in Germany will be able to obtain a working permit subject to the approval of the labour-market administration.
- Planned integration of residence and working permit. All aliens who are legally admitted would be granted a working permission – this does not include asylum seekers.
- The existing four different titles of residence (*Aufenthaltsbefugnis*, *Aufenthaltsbewilligung*, *befristete/unbefristete Aufenthaltserlaubnis* and *Aufenthaltsberechtigung*) are to be reduced to two: limited and permanent residence permit. The new regulations on residence foresee that residence is classified according to the grounds for residence and no longer according to legal titles (i.e. gainful employment, education, family reunification, humanitarian reasons).

New Institutions

- Transformation of the existing Federal Office for the Recognition of Foreign Refugees into the Federal Office for Migration and Asylum. The tasks of the office were to be:
 - Coordination of the flow of information on labour migration between the Aliens Offices, the labour administration and the German representations abroad;
 - Administration of the point based migrant selection system;
 - Running of a central migrant database;
 - Running of a central information database on all countries and areas relevant for asylum and migration;
 - Coordination and co-funding of integration measures;
 - Coordination and implementation of the European Refugee Fund in Germany;
 - Recognition/rejection of asylum applications;
 - Promotion and facilitation of voluntary return of rejected asylum seekers and irregular migrants.

Further, an independent board of experts for migration and integration, the Migration Council, has been instated within the Federal Office for Migration and Asylum. The board produces a yearly migration report based on expert opinion reports on migration flow developments and the national reception and integration capacities.

Asylum

- Temporary status for all asylum-seekers persecuted for gender-specific reasons and for persons persecuted by individuals in their home countries. Refugees as defined by the Geneva Convention (*kleines Asyl*) would be given complete access to the labour market. Refugee status would be re-evaluated three years after being granted.

Forced Removal

- No freedom of movement in Germany for persons facing compulsory departure. These persons would be housed in detention centres. Furthermore, the misleading of immigration authorities regarding personal identity or citizenship would be considered a crime.

TABLE 2 (cont.)
THE NEW IMMIGRATION ACT – KEY POINTS

<p><i>Family Reunion</i></p> <ul style="list-style-type: none">• Standard age for children (non EU-citizens) admitted to Germany within the framework of family reunions: 12 years. The maximum age would be set at 18 for children immigrating together with their parents, as well as for children who have an adequate knowledge of the German language and for highly qualified labour migrants. <p><i>Integration</i></p> <ul style="list-style-type: none">• Target group: new and early migrants (with up to six years of residence in Germany) would be entitled to participate in language and general orientation courses. The Federal Office for Migration and Asylum funds and the first part, the respective Federal State (<i>Land</i>) the second of the average six months language training. Non-participation could be sanctioned and successful participation rewarded with more rapid naturalization.

to leave. In practice, the average detention period differs from *Land* to *Land*. Berlin, for example, has its own deportation jail and a satellite court to speed up the process.

Aliens who cannot be forcefully removed are generally released after six months. Rejected applicants who cannot be deported for reasons beyond their control may, under certain conditions, be granted a residence permit according to Section 30 (3) and (4) of the Aliens Act.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

At the federal level, the Ministry of Interior is responsible for migration. It treats all political and legal subjects that override *Länder* responsibility. The Federal Office for the Recognition of Foreign Refugees, which comes under the authority of the Federal Ministry of Interior, is the agency responsible for the recognition and granting of asylum.

The *Länder* are responsible for implementation of the federal law and administrative regulations, which the Federal Minister of Interior issues with the previous approval of the *Bundesrat*. The *Länder* cover provisions and reception of refugees and asylum seekers, but delegate the actual implementation and financing to the districts. The German Aliens Offices, which are generally established as part of the town or district authorities, decide on the renewal of residence permits, and expulsion and deportation of rejectees.

However, differences in practice exist among the *Bundesländer*. In Mecklenburg – Vorpommern and Saarland, for example, the *Landesamt für Asyl- und Flüchtlingsangelegenheiten* is responsible for those aliens that have not been placed in a *Commune* yet as well as those scheduled for collective charter flights; and the local *Ausländerbehörde* is responsible for all other aliens. In Niedersachsen, however, the local *Ausländerbehörde* is responsible for deportation, except for Vietnamese and Kosovar deportees, where the *Landeskriminalamt* is in charge.

The police implement the deportation. Generally, it is the *Länder* police that accompany the rejected alien to the aircraft carrier. Where the officials expect physical resistance or in case of criminal migrants, the rejected alien is escorted on the flight either by the *Länder* police or by the Federal Border police (*Bundesgrenzschutz – BGS*).

The BGS Directorate for Border Protection (*Grenzschutzdirektion – GSD*) in Koblenz is entrusted with the task of procuring travel documents for specific countries of origin and for the removal of groups of rejectees via chartered flights. The BGS, the Customs Authorities, the Bavarian Police Service and the Hamburg and Bremen waterway police services are entrusted with the task of combating illegal entries into Germany at the various borders.

There is close cooperation among the *Länder* Ministries of Interior and the Federal MoI. Cooperation between the *Länder* is increasing, especially when it comes to filling up charter flights. Whenever there is a need for problem-solving that overrides the *Länder* authority, the *Länder* Ministries of Interiors refer to the Federal Ministry of Interior. A working group for forced return and one for voluntary return meet twice a year. The Federal MoI, which is represented by the officers of the Migration Section, only has guest-status, as the implementation of voluntary return and involuntary return measures are within the *Länder*'s competencies.

Twice a year, in spring and autumn, the Ministers of Interior of all *Länder* and the Federal Minister of Interior meet in order to deal with all subjects relevant to their portfolios. Migration is one of those subjects.

Operational Steps for Involuntary Return

Aliens applying for asylum to the Aliens Office (*Ausländerbehörde*) are referred for registration to a reception centre. Formal applications for asylum must be submitted to the local branch of the Federal Office for Recognition of Foreign Refugees allocated at that reception centre. In cases where the applicant has entered Germany via/from a “safe third country”, the local branch of the federal office will automatically issue a decision on inadmissibility and, in those cases where it is feasible, order return to the third country.

Each case must be processed by the Federal Office in accordance with the provisions of the Asylum Procedure Act, which provides for a personal interview with the asylum seeker. The local branches of the Federal Office in the reception centres carry out these interviews. Interpreters are available where necessary, and a range of NGOs provide asylum counselling. Legal assistance, however, may only be provided by lawyers.

Asylum seekers whose applications are rejected for being manifestly unfounded have to leave the federal territory within one week.⁷ All other rejected migrants are obliged to leave within a period of one month. Where rejectees do not obey, they will be forcibly removed. The deportation is generally executed by the *Länder* police or by the local police.

Rejectees are picked up without advance warning any time after the mandated time to leave the territory has expired. Some *Länder* handle this with flexibility. In fact, it is possible for the relevant Aliens Office to withdraw the order of expulsion even after the time to leave the country has expired. Where the rejected migrant decides at any point during or after the asylum process

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to return voluntarily, IOM may upon application support an Assisted Voluntary Return (AVR) under the REAG/GARP programme. The underlying principle is that voluntary return is more humane and has advantages for both sides over expulsions.

When rejectees abscond, the Aliens Office issues a deportation search warrant that is entered into the police and BGS database. Once the illegal migrant is picked up, he/she is detained and deported accordingly.

Prosecution and Detention Procedures

In case of forced removal, the deportee's passport is stamped in order to make sure that the person does not re-enter Germany. The period of exclusion from re-entry to Germany after deportation is unlimited, and the various *Länder* exercise their discretion in applying this principle.

But even within each *Bundesland*, it is at the discretion of the local *Ausländerbehörde* to decide case by case. A person can apply to re-enter, but will be subject to intensive scrutiny on a case by case basis, and the chances of obtaining permission to return are very low. In Hamburg, for example, the following factors are taken into account: (a) how long ago the alien was deported; (b) What the alien has been doing in the meantime; (c) Whether the *Bundesland* has been reimbursed the deportation costs by the alien?

Persons refused admission at point of entry, or migrants leaving the country voluntarily, do not get a stamp in their passports. Their bio data is registered and relevant records taken into consideration in case of a future application for visa.

In case of voluntary return and compulsory leave, the Aliens Office issues an official departure note, which is stamped by the BGS or by the respective authorities at the last Schengen border. The stamped document is returned subsequently to the Aliens Office as a proof of departure.

The proposed Immigration Act had stipulated under Section 61 in regard to the enforcement of departure that the *Länder* may establish collective facilities, which host rejectees ordered to leave but unable to be deported due to missing travel documents.

The following *Bundesländer* have already established the so-called *Ausreisezentren* (departure centres):

- Bavaria – established in 2002 in Fürth. The Ministry of Interior of Bavaria plans three more facilities. Bavaria was the only *Land* which amended its Reception Act (*Landes-Aufnahmegesetz*) to provide the legal basis for the departure centres, while the other *Länder* issued decrees to establish these facilities. The deportation centre with 50 places has been in operation for a year and is deemed to be highly effective because it increases the voluntariness of departure and, at the same time, sends a pre-emptive signal. Approximately 20 people have left Bavaria via the deportation centre.
- Lower Saxony – No *Ausreisezentrum* exists but Niedersachsen does have a *Zentrale Anlaufstelle für Asylbewerber* (central place of refuge for asylum seekers), where asylum seekers, whose applications are most likely to be rejected in the near future are placed and counselled.

- Northrhine-Westphalia – started a pilot project and established a centre in May 1998, which was closed in October 1999. The pilot project was discontinued because it was too expensive to run. Furthermore, counselling provided by NGOs such as the Red Cross and local authorities proved to be ineffective, and many aliens simply left the *Ausreisezentrum* after a day or so. Also, its location in the same building as the asylum home (*Asylantenheim*) caused some problems among the inhabitants.
- Rhineland-Palatinate – an *Ausreisezentrum* has been established in Trier with 80 places. It gives a signal that Rheinland – Pfalz is willing and capable to try new strategies to combat the problem of deporting foreigners with indeterminate nationality. *Abschiebehaft* is considered to be the last instrument and the *Ausreisezentrum* is less encumbering. Since the Centre was established in April 1999 a total of 152 people have stayed there. The nationality of 61 could be solved, 16 of them left Germany voluntarily, and eight persons were deported.
- Saxony-Anhalt – since January 2002 a provisional centre has been established.

The purpose of the centres is to gather rejectees' dependent on public assistance and to encourage them to leave voluntarily where possible, and to accelerate the provision of travel documents. Rejectees are kept in these facilities until they decide to return voluntarily or the country of origin readmits them. If the latter is the case, the deportation is implemented immediately. According to NGOs assisting rejectees, these facilities have proven to be neither cost effective nor effective in regard to repatriation numbers. Still the *Länder* argue that they have a deterrent effect on rejectees, which as such should encourage their willingness to leave the country voluntarily.

Framework Agreements with Countries of Origin or Transit

Germany agrees bilaterally on readmission with countries of origin, but also relies generally on the common approach of the EU to negotiate readmission agreements with third states when negotiating trade and association agreements.

In addition to the Schengen Agreement, Germany has readmission agreements with all neighbouring countries of origin. Germany is surrounded by countries of origin that fulfil the requirements of the safe third-country concept.

German readmission agreements cover only the legal grounds and modalities of implementation for cases of forced return of nationals, third-country persons and stateless persons, as well as the transit of persons subject to the safe third-country concept, and stateless persons. Voluntary return is not covered by readmission agreements.

The Federal Ministry of Interior argues voluntary return does not require a specific legal regulation or the involvement of the state. In fact, Germany does not cover repatriation under its existing law. The Federal State and the *Länder* finance programmes supporting voluntary return, which are mostly implemented by IOM or by NGOs, as well as by the *Länder* themselves.

Readmission agreements are negotiated and concluded by the Federal Ministry of Interior, although representatives of the *Länder* are also involved in the negotiations. The *Länder* have particular difficulties in enforcing return of nationals to some countries of origin with which

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agreements are negotiated. The standard agreements, which are based on the EU model, are thus amended by the relevant *Länder* requirements.

The German modus for concluding readmission agreements differs from the standard EU model inasmuch as the legal rules and technical details laid down in the Implementing Protocol are combined in one single document, both for illustration and to avoid repetition of legal points.

Generally, the German standard protocol for implementing the readmission agreement requires that an application for readmission includes information about the means of proving an illegal entry. In addition to that, and as far as this is possible, it requests information on:

- Personal data (first and last name, date and place of birth, nationality, last domicile in the country of origin);
- Reference number and place of issuance of the last identity documents;
- Day, time, place and kind of illegal entry;
- Need for care or medical assistance due to illness or age – this is information that the migrant may give at his/her discretion;
- Necessary security and safety measures;
- Language proficiency and information if an interpreter is required;
- A suggestion about whether, where and when the rejected alien shall be returned.⁸

The cooperation between German police authorities and judicial authorities, as well as social services and associations and the authorities in the country of origin or emigration depends on provisions in international agreements and on the actual practice. Cooperation clearly takes place within the framework of the EU and the Council of Europe. At the bilateral level, however, the effectiveness of cooperation depends on the state of political relations between Germany and the country of origin.

See tables for current Readmission and Transit Agreements in Annex.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 3
DEPORTATION AND FORCED REMOVAL STATISTICS:
1996-2001

	Refusals of Entry	Deportations	Forced Removals	Total Forced Returns (Deportation and Forced Removals)
1996	94,154	31,761	27,249	59,010
1997	88,269	38,205	26,668	64,873
1998	60,091	38,479	31,510	69,989
1999	57,342	32,929	23,610	56,539
2000	52,257	35,444	20,369	55,813
2001	51,054	27,902	16,048	43,950

Source: *Bundesgrenzschutz, Jahresberichte* (Federal Border Guard, Annual Reports)

Asylum numbers have decreased in recent years because of a general decline in applications for asylum.

TABLE 4
DEPORTATIONS BY NATIONALITY: 2001

Nationality	Number of Persons
Turkey	4,121
FR Yugoslavia	3,635
Poland	2,745
Ukraine	2,171
Romania	1,705
Bulgaria	1,248
Latvia	867
Viet Nam	734
Russia	734
Moldova	717
Other	9,225
Total	27,902

Source: Federal Border Guard (*Bundesgrenzschutz, BGS* – www.bundesgrenzschutz.de).

TABLE 5
FORCED REMOVALS BY NATIONALITY: 2001

Nationality	Number of Persons
Romania	2,394
Afghanistan	1,476
Moldova	1,238
FR Yugoslavia	1,002
Iraq	898
India	822
Turkey	818
Armenia	731
Russia	525
Ukraine	498
Other	5,646
Total	16,048

Source: Federal Border Guard (*Bundesgrenzschutz, BGS* – www.bundesgrenzschutz.de).

Return Migration: Policies and Practices

TABLE 6
REFUSALS OF ENTRY BY NATIONALITY: 2001

Nationality	Number of Persons
Poland	12,029
Czech Republic	6,498
Switzerland	6,029
FR Yugoslavia	5,752
Ukraine	3,304
Turkey	2,304
Slovakia	1,600
FYR Macedonia	1,480
Italy	1,460
Lithuania	1,375
Other	9,223
Total	51,054

Source: Federal Border Guard (*Bundesgrenzschutz, BGS* – www.bundesgrenzschutz.de).

1.5 BEST PRACTICES AND LESSONS LEARNED

Assessment and Evaluation

The Conference of Interior Ministers and Senators set up a working group of State Secretaries, which discussed and developed solutions to the problems associated with forced repatriation. Their report was submitted in May 2000.

The following obstacles to successful forced removal were identified:

- Rejectees often are not willing to cooperate. They do not disclose their identity and origin, hoping thus not to be removed;
- Rejected asylum seekers or persons who were ordered to leave abscond;
- Rejected migrants destroy their ID documents and pretend to be nationals of states which are known to present legal or factual obstacles to enforcement of the expulsion;
- Deportees refuse to cooperate by exerting physical force, so that the aircraft captain refuses to take them on board;
- Countries of origin fail to cooperate, or the procedures to obtain travel documents are lengthy;
- Authorities in the countries of origin refuse to accept provisional travel documents, issued by their Consular Offices in Germany.

The report's recommendations included the following:

- Improvement of the dialogue with relevant countries of origin at all levels;
- An agreement on best practices with countries of origin with which Germany has concluded formal readmission agreements;

- The conclusion of readmission agreements;
- In the context of readmission, the application of sanctions against a country of origin, which fails to cooperate, by withholding development aid;
- The greater use of small charter flights and direct flights;
- Group visits to the embassies of the countries of origin with rejectees to obtain travel documents collectively;
- Improvement of cooperation between the Federal Office for the Recognition of Foreign Refugees and the Federal *Länder*;
- Establishment of departure centres;⁹
- Improvement of cooperation with German diplomatic representatives abroad.

According to the Ministry of Interior, these recommendations have been adopted and are being implemented successively in the *Länder*.

Experiences at the *Länder* Level

The experiences of individual *Bundesländer* have shown that cooperation among the *Bundesländer* has proven to be successful and should be further strengthened. Collective screening (*Sammelvorführungen*) by diplomats to determine the nationality of foreigners who have lost or purposely destroyed their ID documents, has proven to be both cost effective and time efficient. Secondly, charter flights to e.g. Kosovo have been organized collectively to share costs and to fill up seats.

Also, the establishment of a central authority to organize passport replacements within the *Bundesland* has worked well in the past. For example, centralizing the Passport procedure, and creating a central *Ausländerbehörde*, is deemed to be both cost effective and time efficient in Hessen. Bavaria centralized its passport-obtaining procedures in 1998.

In general, direct involvement of all parties is more effective, i.e. establishing and maintaining direct contacts to the embassies, and counselling those wishing to return home has proven to be very helpful.

Problems have arisen with the public health officers who have to issue certificates of travel-worthiness (*Flugtauglichkeitsgutachten*) for deportees. They often feel that it is their duty as a doctor to include an assessment of the medical conditions in the country of destination, although that does not fall into their jurisdiction and has been assessed during the trial. This leads to a conflict of interest between the migration and public health officers. Nordrhein – Westfalen, for example, has established a working group to solve this conflict of interest and communicate better the responsibilities to public health officers. In Bavaria, “posttraumatic stress dysfunction” (*Posttraumatische Belastungsstörung*) is increasingly used as a reason to stay in Germany beyond a deportation order. Bavaria is trying to combat this by staffing its health department with specialists, but resources are limited.

A major issue faced by the deportation authorities in Bavaria, for example, is the lack of cooperation between countries. Some countries blatantly refuse to cooperate (e.g. Ethiopia) and others (e.g. China) make unrealistically high demands about the evidence required to show that an individual is indeed a citizen of that country.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Germany has a long history of voluntary return, having established, in collaboration with IOM, the AVR model for other programmes around Europe some 24 years ago.

In 1979, the German federal government, in cooperation with the *Länder*, established the Return and Emigration of Asylum Seekers (REAG) Programme, implemented by IOM, to facilitate the return or onward migration of asylum seekers who wished to voluntarily return to their countries of origin or resettle in a third country. Since then, over 546,000 people have been assisted to return to over 110 countries under this programme, making it one of the longest running and most successful assisted voluntary return programmes in Europe. Between 1995 and 2003 alone some additional 43,404 persons have resettled in the United States of America, and between 1998 and 2003 some 2,890 went to Australia, while 4,131 resettled in Canada.

Over the years, the voluntary return programmes have been further bolstered by reintegration assistance programmes, which seek to ensure the sustainability of returns. To this end, the Government Assisted Repatriation Programme (GARP) has, since 1989, supplemented the REAG programme by providing additional financial assistance to voluntary returnees from specific countries. The programme has been successfully implemented for returns to, for example, the Former Yugoslavia. Today, some 36 countries are included on the GARP-payment list.

The success of the programme is attributable to the commitment of the German government to promoting voluntary return as a more humane, sustainable and cost effective alternative to forced returns. New measures were adopted in 2001 to streamline the programme and make it more flexible. The REAG and GARP programmes were merged into a single programme on voluntary return and reintegration (REAG/GARP) following the centralized location of both programmes in the Ministry of Interior, which allowed funding to occur through a single ministry. (Previously, REAG had been the responsibility of the Family Ministry.) The programme became more universal and no longer distinguished between the general programme and special country programmes such as for the Former Yugoslavia.

REAG/GARP was also expanded to include illegal immigrants and victims of trafficking alongside the traditional target group of rejected or accepted asylum seekers and refugees. No GARP assistance is paid in the case of illegal immigrants.

To further promote voluntary return, additional reintegration grants have been offered on a temporary basis, frequently by certain *Länder*, districts and cities. Information activities relating to assisted voluntary return have been expanded, as have special support programmes for vulnerable groups, such as the sick and elderly. Financial and medical support arrangements for the country of origin, as well as training and labour reinsertion measures, also for the local home community, have helped make voluntary return more viable and sustainable.

Immigration laws in Germany foster the principle of voluntary return. According to Section 50 of the pending Immigration Act,¹⁰ an obligation to leave the federal territory is established in the absence of a residence permit or when an existing permit expires. Foreigners are subsequently required to leave the country immediately or where applicable, by the end of a specified period, not exceeding six months. Under Section 58 of the Act, a foreigner shall be deported if he/she fails to voluntarily comply with the obligation to leave the country.

Despite the legal obligation on foreigners to voluntarily leave the country upon cessation of any right of residence, there is currently no right to assisted voluntary return, and returning migrants are expected to do so independently. Provisions for assisted voluntary return are not explicitly embodied in law, but are rather dependent on established return programmes agreed by a number of Federal government and *Länder* ministries and special decrees and regulations. Aliens already in custody pending deportation, for example, are no longer eligible to apply for voluntary return; this to make sure that migrants do not wait until the last minute before applying for voluntary return.

Nevertheless, some legal provisions have been made in the past to cover reintegration assistance, such as the 1986 Act on Reintegration Assistance for House Building subsequently revoked in 1993. Existing legislation on reintegration assistance includes the Act to Promote the Preparedness of Foreign Workers to Return, which provides nationals of countries with which Germany has concluded agreements on labour migration (including Turkey, Morocco and Tunisia) the right to information and advice on return, occupational reintegration and the possibilities of establishing new businesses.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

A number of ministries are responsible for AVR programmes in each of the Federal States. The leading agencies are usually the Ministry of Interior, Ministry of Health and Social Affairs, Ministry of Justice (in regard to rejected asylum seekers) and the Ministry of Economic Cooperation and Labour Administration (for programmes supporting professional reintegration or starting small businesses). International organizations such as IOM are responsible for the implementation of return programmes, together with specialized government agencies like the Central Placement Office (ZAV) and NGOs.

The Federal Office for Asylum (BAFL) has recently been made responsible for overall coordination of the return programme. This has led to the creation of the Central Information and Return Office (ZIRF) in Nuremberg. BAFL plans to gradually take over all available government funding resources for AVR on a national level and coordinate the implementation and funding of all return programmes of all Federal States. Among others, BAFL is responsible for administration and payment of funds approved under the schemes to promote voluntary return.

Operational Steps for Voluntary Return

Following the expiration of a residence permit, the local Foreign Office officially informs the foreigner of the termination and requests that he/she leaves the country. A number of organizations, including the Foreign Office, Social Security Office, UNHCR or civil society actors such as churches, counselling agencies and NGOs provide advice on return and reintegration programmes and the current situation in the country of return. Any of these organizations may file an application for voluntary return assistance with IOM under REAG/GARP on behalf of the potential returnee.

IOM assesses the eligibility of applicants, and if they meet the programme criteria, calculates financial assistance to be provided, assists in obtaining travel documents and makes other logistical arrangements relating to the travel, such as flight bookings, transit arrangements, and disbursement of an allowance for out of pocket expenses during travel. IOM also disburses return assistance grants. Participation in this programme must be voluntary, and the departure intended to be permanent. If voluntary returnees re-migrate to Germany, to stay permanently, IOM attempts, on a case-by-case basis, to retrieve the funds expended on the former returnee.

Eligibility Criteria – REAG/GARP Programme

- Recognized refugees;
- Foreigners residing in Germany who are allowed to stay under international law or for political or humanitarian reasons;
- Former Vietnamese contract workers;
- Victims of forced prostitution or trafficking in human beings;
- Other foreigners living in Germany willing to return, and who have asked for asylum;
- Those in the asylum process;
- Those whose asylum application is insignificant or manifestly unfounded;
- Those whose asylum application has been finally rejected, or where the asylum application procedure has been discontinued;
- Other foreigners of Afghan nationality or nationals from Serbia and Montenegro (including Kosovo), as long as they entered Germany before 31 December 2002, as well as Iraqi nationals who entered the Federal Republic of Germany before 1 April 2003;
- Foreign spouses and children of persons leaving Germany can also be supported through the REAG/GARP Programme;
- Unaccompanied minors can be assisted through the REAG/GARP Programme if at least one parent or legally appointed guardian gives his or her written consent to the transportation, and minors are collected at the destination by a person with written permission of the parents.

REAG (without GARP)

A prerequisite in all such AVR cases is the willingness of the competent Aliens' Office to issue a border-crossing certificate, which is then useful in tracking the actual return of the person.

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with voluntary agencies.

Where an escort is required, e.g. for disabled or sick persons, transport costs can be covered by IOM when a statement of willingness to cover costs is provided by the funding agency. IOM can offer its inexpensive flights to any escort.

- Transport assistance: travel formalities in coordination with partner agencies, baggage allowance in exceptional cases, and transit assistance. Travel allowance up to EUR 100 per adult and EUR 50 for children under 12 years, if approved by IOM prior to departure.

Reintegration grants are provided for returns to the countries below:

- Serbia and Montenegro (including Kosovo, except minorities), Iran, the Russian Federation, Sri Lanka, Syria, Turkey, Ukraine, Georgia and FYR of Macedonia: EUR 250 per adult and EUR 125 per child under 12 years of age (max. EUR 750 per family).
- Algeria, Angola, Armenia, Azerbaijan, Bangladesh, Burkina Faso, Cameroon, China, DR Congo, Eritrea, Ethiopia, Ghana, India, Jordan, Lebanon, Liberia, Nepal, Nigeria, Pakistan, Sierra Leone, Somalia, Togo and Viet Nam: EUR 200 per adult and EUR 100 per child under 12 years of age (max. EUR 600 per family).
- Afghanistan, Iraq and Kosovo (minorities): EUR 500 per adult and EUR 250 per child under 12 years of age (max. EUR 1,500 per family).

Persons Eligible for the Special Migrants Assistance Programme (SMAP)

- Asylum seekers and refugees, as well as their dependants and other persons accompanying them, who cannot be assisted through the REAG Programme;
- Aliens whose application for admission to Germany have been rejected;
- Ethnic Germans and emigrants of German origin;
- Aliens in specially justified cases of need (e.g. when the responsible embassy offers no support);
- Foreign workers and students;
- Persons who have attained German citizenship and would like to return to their native country;
- German employees (teachers and integrated experts, for example) and students, emigrants;
- Persons in practical training, attending lectures at university, or working as *au-pairs*;
- Staff members of national and international relief organizations or other comparable groups or persons;
- IOM can also provide inexpensive air tickets, if necessary, for German spouses and children.

Some 10,725 migrants had been assisted under SMAP by the end of 2003.

Programme Services

These included flight arrangement at IOM's special fare prices. Flight costs were covered by the migrants themselves or any other entity before departure.

Berlin Occupational Reintegration of Kosovars (BORK)

The aim of the project was to facilitate the return of Kosovars by promoting occupational reintegration. The project also took into consideration the broader interests of the home communities

Return Migration: Policies and Practices

of the returning migrants by incorporating unemployed local residents into the project. As an integrated scheme for direct assistance for returnees, this project provided reintegration assistance in the form of salary supplements, grants for the self-employed and upgrading of qualifications for returnees from Germany as well as for local residents.

Programme Services

The project provided financial assistance for an amount of up to EUR 3,067 for returning Kosovars who found employment in Kosovo, established themselves as micro-entrepreneurs or needed to have their qualifications upgraded in order to find employment.

The financial assistance was granted for one family member of a returning family. The direct beneficiary was the employer, who hired a returnee, the micro-entrepreneur or the institution offering vocational training to the returnee. The pre-conditions were: guaranteed employment for a minimum of one year (six months in the case of vocational training) and the payment of local standard wages. IOM conducted two unannounced inspections of the workplace during the duration of sponsorship.

Other Return and Reintegration Assistance Programmes

In addition to the regular return and reintegration schemes such as REAG/GARP, the German government has conducted a number of projects to promote vocational training and encourage more return of asylum seekers. Since 1986, vocational training has been provided in the service industries (i.e. hotel and catering), and other technical and medical sectors to facilitate the reintegration of young Turks upon their return home.

Between 1992 and 1997, pilot programmes were also developed for Bulgaria, Poland and Romania to encourage the return of former asylum seekers. These were designed to provide vocational training for the establishment of small enterprises, not only for the returning refugees but also for the local population. Two vocational colleges providing training in engineering and information technology were established in rural districts in Poland. They have since 1994 been handed over to the Polish authorities, who have continued to manage them successfully. Similar centres established in Romania and Bulgaria respectively train some 700 and 600 students annually and were also transferred to the local authorities in the late 1990s.

Some *Bundesländer* have also established their own successful assisted return programmes. Hamburg, for example, which hosts the largest Afghan population in Germany (some 18,000), has been running a special programme for Afghan nationals since the beginning of 2003. It supplements the REAG/GARP programme by: (a) paying each adult EUR 800 towards repatriation (half the amount for those under 12); (b) further subsidizing costs of substantive baggage; and (c) offering a 20 per cent surcharge to those whose residence permit status is above “exceptional leave to remain” (i.e. at least an *Aufenthaltsbefugnis*). In addition, Afghans over the age of 65 receive a 20 per cent top-up of this. The programme has been well received, although the total number of people returning has been small (ca. 57 persons between August and October 2003). More people are taking advantage of the programme in 2004.

Rheinland – Pfalz established a centralized voluntary return information desk to inform about REAG/GARP and their own programmes. The return programme consists of financial contributions of up to EUR 1,800 for allowances in-kind or up to EUR 260 per person or EUR 520 for a

family. Moreover, language tests to certify German language skills can be paid for, and a letter of reference written for any voluntary work undertaken. It is possible for those whose return date has been set to gain some further work experience beforehand.

Other *Bundesländer* do not have separate programmes but they top-up the GARP/REAG money for aliens from certain countries. For example, Berlin offers a supplement for transport of furniture (*Möbeltransportkosten*) to aliens from Former Yugoslavia. The amount varies according to the individual case. Bosnians who entered Germany before 15 December 1995 are also eligible for a top-up of EUR 180 (adults) or EUR 90 (minors). Nordrhein – Westphalen tops up (doubles) the REAG/GARP amount for foreigners from the following countries: Serbia and Montenegro, Afghanistan, Iraq and Kosovo. Saarland may offer a supplement of EUR 3000-5000 at the discretion of the *Landesamt*, where foreigners have additional travel costs in their country of origin or need expensive medicine.

Bavaria is currently testing some programmes, including: a compact job training programme of two-three months to equip foreigners with the necessary skills to find work in their home countries; a return advisory service (*Rückkehrberatung*) to prepare potential returnees for job searches at home; and several communal projects in Munich.

These are a few examples of how Germany, particularly at the state level, is experimenting with voluntary return-related incentive schemes. Nevertheless, concerns continue to be raised by some about the potential encouragement that programmes of this kind could give foreigners about coming to Germany.

Some *Bundesländer* do not implement their own programmes. They include Brandenburg, Hessen, Mecklenburg–Vorpommern, Niedersachsen, Sachsen and Schleswig – Holstein.

Framework Agreements with Countries of Origin or Transit

Germany has a number of transit agreements with the border police of Schengen and other European countries to facilitate voluntary returns, e.g. through visa-free transit, and passage by both land and air, particularly for returns to Former Yugoslavia (see Annex). In November 1999, for instance, a Memorandum of Understanding regulating aspects of voluntary and forced returns was agreed between the Federal Minister of Interior and the United Nations Interim Administration in Kosovo on the return of Kosovars from Germany.

2.3 STATISTICS ON VOLUNTARY RETURN

TABLE 7
STATISTICS ON ASSISTED VOLUNTARY RETURN REAG/GARP:
FIGURES 1998 TO 30 NOVEMBER 2003

Year	REAG	GARP
1998	192,359	93,548
1999	47,699	40,506
2000	67,953	60,263
2001	12,851	8,073

Return Migration: Policies and Practices

Since 2002 statistics have no longer been separated between REAG and GARP.

TABLE 8
STATISTICS ON ASSISTED VOLUNTARY RETURN
REAG/GARP: FIGURES 1998 TO 30 NOVEMBER 2003

Year	Number of Assisted Voluntary Returns
2002	11,774
January – November 2003	11,072

2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

The success of voluntary return programmes in Germany can be evaluated by the number of people who have participated in the scheme and returned to their country of origin. Since the inception of the REAG programme, over 546,000 people have returned to their home countries with the assistance of IOM. The high volume of voluntary returns, when compared to the figures for forced return, has attested to the success of these programmes.

Voluntary return is generally held to be more cost effective than forced return, although the savings vary from country to country and depend on certain logistical details, such as destination, whether chartered or scheduled flights are used, and whether the police accompanies deportees on flights or not.

Lessons Learned

The emphasis placed by the German government on reintegration assistance has contributed to the success of its voluntary return programmes, particularly those initiatives that also include the local population in vocational training and other job-generating programmes in the country of origin. Such community reintegration programmes can help to prevent re-migration by promoting sustainable socio-economic re-adjustment of the returnees. Through their inclusion of the community at large, they also partly contribute to improving some of the socio-economic conditions that prompt migration in the first place.

In order to strengthen the reintegration opportunities of migrant workers returning to their countries of origin, the Federal government has established a Coordination Agency for the Promotion of the Reintegration of Foreign Workers, which helps strengthen/upgrade vocational qualifications and capacities to establish new businesses in the country of origin. It has done this with the support of the business sector.

ANNEXES

ANNEX 1 – LIST OF READMISSION AGREEMENTS
BETWEEN GERMANY AND COUNTRIES OF ORIGIN OF ASYLUM:
OCTOBER 2003

Countries	Effective Date
Albania	1 August 2003
Algeria	(1 November 1999)
Benelux	1 July 1966
Bosnia and Herzegovina	14 January 1997
Bulgaria	15 January 1995
Denmark	1 June 1954
Estonia	1 March 1999
France	22 January 1960 After ratification in France
Hong Kong	17 February 2001
Serbia and Montenegro	(1 December 1996) abrogated
Serbia and Montenegro	1 April 2003
Croatia	22 April 1997
Latvia	1 February 1999
Lithuania	1 February 2000
Morocco	1 June 1998
Macedonia	Not yet ratified by Macedonia
Norway	18 March 1955
Austria	15 January 1998
Poland (financial aid assistance)	14 April 1994
Poland (Protocol of technical terms)	29 September 1994
Rumania	1 November 1992
Rumania (Readmission of stateless persons)	1 February 1999
Slovak Republic	20 May 2003
Sweden	1 June 1954
Switzerland	1 February 1994 effective date applied since 1 February 1996
Czech Republic	1 January 1995
Hungary	1 January 1999
Viet Nam	21 September 1995

Return Migration: Policies and Practices

ANNEX 2 – TRANSIT AGREEMENTS (FORCED RETURN)

Countries	Effective Date (Provisional Application)
Bulgaria – Transit for third-country nationals	30 April 1997
Macedonia – Transit for Yugoslavian nationals to Kosovo	(11 October 1999)
Albania – Transit for Yugoslavian nationals to Kosovo	(1 April 2000)
Belgium, France, Italy, Luxembourg, the Netherlands, Poland – Readmission of persons with unauthorized residence (<i>unbefugtem Aufenthalt</i>)	1 May 1991

ANNEX 3 – TRANSIT AGREEMENTS (VOLUNTARY RETURN)

Countries	Effective From
Macedonia – Transit for Yugoslavian nationals to Kosovo	11 October 1999
Albania – Transit for Yugoslavian nationals to Kosovo	1 April 2000
Austria, Croatia Switzerland, Slovenia – Transit to Bosnia and Herzegovina	1 July 1996
Albania, Bosnia and Herzegovina, Italy, Croatia, Austria, Switzerland, Slovenia, Hungary, the Netherlands, Luxembourg – Transit to Yugoslavia	20 April 2000
	11 August 2001

NOTES

1. Federal Ministry of the Interior, *Policy and Law Concerning Foreigners in Germany*, 2000, p.122.
 2. Ibid.
 3. This Federal Office is the first instance decision-making body in the asylum procedure, and is under the jurisdiction of the Federal Ministry of the Interior.
 4. The majority of refugees from the Former Yugoslavia were granted a *Duldung*. In the case of Kosovo Albanians brought to Germany under the UNHCR Humanitarian Evacuation programme, these civil war refugees (Section 32a of the Aliens Act) were granted a three-month temporary residence. After the temporary residence permissions had been extended twice for a period of three months, this status was replaced by the temporary toleration admission (*Duldung*). Kosovo Albanians, who came spontaneously to Germany and applied for asylum obtained permission to stay pending the examination of their claim. In practice, very few were granted asylum, and rejected applicants were granted a *Duldung*. Those who entered Germany illegally and did not apply for asylum were also granted *Duldung*.
 5. Under the last *Altfallregelung* in November 1999, rejected asylum seekers who had come to Germany before 1 January 1990 (or before 1 July 1993 for families with at least one minor child) could apply for a residence permit provided that they had work, had not been sentenced for any criminal offence and did not originate from Bosnia and Herzegovina or the Federal Republic of Yugoslavia (including Kosovo).
 6. *Expulsion and Detention of Aliens in the European Union Countries*, Bruno Nascimbene (Ed.), p. 247.
 7. During this week, the rejected alien may lodge an appeal with the administrative court. NGOs criticize the deadlines attached to this procedure (known as the “accelerated procedure”) as too short and unconstitutional. It is often difficult to find a lawyer who will take on an appeal at such short notice, or produce any useful information in support of the case. Free legal assistance is only granted to applicants whose cases are deemed to have a chance of success. Source: ECRE.
 8. However, neither the existence of the agreements referred to nor the fact that the number of immediate removals accounts for about two thirds of the number of illegal entries, justify the conclusion that existing readmission agreements serve their purpose. Rather practical problems result from the detailed regimes governing proof of identity of the person to be readmitted and the latter’s illegal entry into the returning state.
According to Hailbronner and Häußler, receiving countries can easily block the readmission by merely applying strictly the conditions set forth in the readmission agreement. Therefore the effectiveness of readmission agreements is closely tied to the practice of readmitting countries. They suggest that this can be solved by introducing or adding rules that establish the evidentiary burden in favour of the returning countries.
Expulsion and Detention of Aliens in the European Union Countries, Bruno Nascimbene (Ed.), p. 230/1.
 9. This suggestion is not supported by all *Länder* and is questioned in regard to its suitability/appropriateness.
 10. Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (also known as the Immigration Act), June 2002.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Germany signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Germany also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

GREECE

1. INVOLUNTARY RETURN

1.1 POLICY

Greece is experiencing growing migratory pressures and has been transformed in recent years from an emigration to an immigration country.

This trend first appeared in the early 80s, with a gradually increasing inflow of immigrants, both regular and irregular. The geographic position of the country and its extensive land and sea borders offer easy access to migrants attempting to enter the country in irregular ways.

To address this, an Immigration (Foreigners) Law was passed in 1991 mainly to provide the legal basis for decrees to discourage the irregular entry of foreigners to Greece. According to the Law, foreigners could not enter the country without a work permit that provides the basis for issuance of a residence permit. Under the Law of 1991 (No. 1975/1991), a special police force was created for the efficient control of the border (Law No. 2458/1996 amended the Law of 1991).

The asylum-related provisions of this Law, in particular, established a general asylum framework to allow the Greek state to regulate significant, practical details through Presidential Decrees. A number of such decrees constitute the main body of current Greek refugee law. These are Presidential Decree 61/99 issued by the Ministry of Public Order and Presidential Decrees 189/98 and 266/99 issued by the Ministry of Health and Social Insurances.

The numbers of irregular immigrants continued to rise during the 1990s. This prompted a public debate about migration that led the Greek authorities to reform the legal framework. In 1997, the Greek state adopted legal measures to regularize irregular migrants and expel those not admissible through the regularization programme. Relevant legislation was enacted in November 1997, through Presidential Decrees 358 and 359, allowing irregular immigrants to apply for legal status. Despite massive expulsions, and the creation of the special police force for stricter border controls, irregular migrants continued entering Greece.

To address this, a second regularization process was enacted in 2001, regulated by the new Immigration Law No. 2910/2001, and consequently amended by Laws No. 3013/2002 and 3202/2003. Law No. 2910 and its amendments attempt to reorganize and update the legal status of migration in Greece, addressing issues related to the entrance and settlement, including integration, of new immigrants, while at the same time containing articles applicable to those already resident in Greece. This development can be seen in the light of efforts by the European Union to harmonize its immigration policy.

Return Migration: Policies and Practices

The 2001 population Census indicates some 800,000 foreigners out of a total of 10,946,080 inhabitants. This figure includes regularized immigrants and refugees. The number of asylum seekers is rather small if compared with asylum applications in other European Union Member States.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

There are three main instruments establishing and regulating Greek immigration policy. The first is Law No. 1975/1991 of 4 December 1991 Entry- Exit, Stay, Work, Deportation of Aliens, Procedures of Recognition of Aliens – Refugees and Other Provisions that makes special provisions on refugee protection and granting of refugee status to asylum seekers. This law was amended by Law No. 2452/1996 of 31 December 1996, particularly regarding the “recognition and care of refugees” and “procedure of recognition of refugees” (Articles 24 and 25).

Presidential Decree 61/1999 further regulates significant details and procedures related to “the refugee status recognition procedure, the revocation of the recognition and deportation of the foreigner, entry permission for members of the refugee family and mode of cooperation with the UNHCR representative in Greece”.

The second, Law No. 2910/2001 Entry and Residence of Aliens in Greece, Acquisition of Nationality through Naturalization and Other Provisions, relates to immigration and citizenship issues. Laws No. 3013/2002 and 3202/2003 amended Law No. 2910/2001. This Law and its amendments are not applicable to the citizens of the European Union, asylum seekers and refugees (Article 2).

Removals

With respect to asylum seekers, removals are regulated by Law No. 1975/1991 as amended by Law No. 2452/1996. Presidential Decree 61/1999 also establishes more detailed procedures to this effect in accordance with the 1951 Geneva Convention. According to Article 6 of Presidential Decree 61/1999, recognized refugees who have withdrawn their refugee status under the provisions of Article 1c of the Geneva Convention may be deported, if the provisions of Articles 32 and 33 of the Geneva Convention are satisfied.

According to Article 2 of Presidential Decree 61/1999, asylum applications are considered within three months of the date of their submission. If asylum is denied, the asylum seekers may appeal within 30 days from notification of the rejection decision, to the Minister of Public Order for reconsideration who, within 90 days, issues, on recommendation by a six member committee, the final decision.

Any final rejection is notified to the asylum seeker with the order to leave the country at the earliest possible time on his/her own volition (Article 3). In exceptional cases, the Minister of Public Order may, particularly for humanitarian reasons, approve the temporary stay of rejected asylum seekers, until their departure from the country becomes possible (Article 8). If the foreigner violates laws related to residence in Greece, it is possible, instead of being deported, to be given a time limit of 15 days to depart from the country.

Rejected asylum seekers who are allowed to stay temporarily for humanitarian reasons are granted medical-pharmaceutical and hospital care, or other socio-economic assistance to cover their immediate living needs (Presidential Decree 61/1999, Article 25).

Law No. 2910/2001 amended by Laws No. 3013/2002 and 3202/2003 regulates these issues as well. Residence permits may be revoked, leading to the expulsion of those affected within 30 days, as decided by the Secretary General of the Region on recommendation of the Ministry of Public Order or the Ministry of Health and Welfare. Following are the grounds for expulsion:

- National security and public order;
- Protection of public health;
- Violations of obligations under the immigration act;
- Presentation of forged documents to the authorities;
- Revocation of work permit or of the permit to undertake an independent economic activity.

Irregular foreigners are also subject to expulsion when apprehended, with no timeframe specified.

Deportation can be **administrative** or **judicial**, reflecting the nature of the decision notified to the concerned foreigner. Administrative Deportation is ordered by the police authorities and can be temporarily suspended on humanitarian or health grounds by the Secretary General of the Region. Judicial Deportation, on the other hand, cannot be revoked under any circumstances.

The Head of the local police can order an **Administrative Deportation** in the following circumstances:

- The concerned third-country national has been convicted for at least one year for crimes against the Constitution, treason against the country, crimes related to trade of drugs, money laundering, exploitation of prostitution, trafficking of migrants, etc;
- He/she has violated the provisions of the Immigration Act;
- His/her presence is deemed dangerous to the public order and health.

Where the foreigner refuses to return to the country of origin, he/she may be removed by the police on the decision of the Secretary General of the Region.

Judicial Deportation is ordered by the judicial authorities, i.e. courts and judges, and enforced by the police.

Those regular foreigners whose residence permit has expired, or irregular ones who seek to benefit from the regularization programme cannot be expelled for not having a residence permit, until a final decision about the granting or not of such permit is reached (Article 68).

Detention

There are no clauses regarding detention in the relevant Immigration Acts, with the exception of a provision under Article 44, paragraph 3 regarding foreigners who, if subject to deportation, are detained if considered dangerous to the public order, or likely to escape.

Return Migration: Policies and Practices

Article 25 of Law No. 2452/1996, in an amendment of the provisions of Law No. 1975/1991, regulates the stay of asylum seekers in “waiting zones” upon their arrival at a point of entry of a port or airport. It also called for the establishment of “Temporary Stay Centres” for asylum seekers. Presidential Decree 266/99 further regulated the set-up of these facilities.

Illegal Entry

Articles 3 and 4 of the 1991 Immigration Act stipulate that legal entry/exit into/from the country take place through designated sites and under police control, on presentation by the foreigner of a passport and/or other travel document with a Greek consular visa, if applicable.

According to Article 50 of the same Act, foreigners who entered or are trying to enter or leave the country illegally are subject to a penalty of approximately EUR 1,500 and a sentence of three months’ imprisonment. If the police or the judiciary authorities are looking for the individual concerned because of violations of tax or foreign currency laws, then the penalty and sentence may be doubled. Individuals concerned may appeal to the Judicial Authorities against imposed fines/sentences.

Article 49 specifies that where foreigners are apprehended at the border, and are included on the list of “undesirable foreigners”, they must leave the country immediately, otherwise they are expelled or sent back to their country of origin or to a third country that will admit them. Those individuals, who have already entered illegally, and are included on the list of “undesirable foreigners”, are subject to at least three months imprisonment and a fine of approximately EUR 3,000. Any appeal filed to relevant judicial authorities does not revoke the sentence.

Individuals who transport by sea, air and/or land foreigners whose entry to Greece is not allowed, and/or facilitate their transport once in Greek territory and provide them with accommodation, are subject to at least one year’s imprisonment and a fine of EUR 3,000 up to 14,000 for each foreigner they assist.

* UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Greece signed the UN Convention Against Transnational Organized Crime on 13 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 13 December 2000, but has not yet ratified the Protocol. Greece also signed the Smuggling Protocol on 13 December 2000, although it has not yet ratified this Protocol.

Smuggling

Under the 2001 Immigration Act, smugglers are sentenced to imprisonment of at least two years for each irregular migrant they transport. In addition, a fine of EUR 14,000 to 24,000 can be imposed; and transport means are confiscated unless the owner can prove that he/she was unaware of the purposes of the transport.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Immigration laws define administrative procedures and provide for the issuance of Presidential Decrees, Ministerial Decisions and procedural instructions issued by competent Ministries and relevant authorities.

Institutions Responsible for Involuntary Return

The Ministry of Home Affairs, Public Administration and Decentralization has primary responsibility for migration issues. Other competent authorities include the Ministries of Foreign Affairs, Justice and Public Order. In addition, the police, the Courts, the General Secretary of the Region and the Regional Immigration Committee established in every regional foreigners and immigration directorate are all involved in facilitating involuntary returns.

According to Article 9 of Law No. 2910/2001, the Regional Immigration Committee is established to opine on whether a foreigner should be granted a residence permit or have it renewed. An Immigration Committee is established in every “Regional Foreigners and Immigration” Directorate. Residence permits are issued, renewed and recalled by the General Secretary of the Region on the basis of the opinion of the Committees. The issuance of residence permits no longer falls within the competence of the police authorities.

The Immigration Committee is composed of three members, two employees of the “Regional Foreigners and Immigration” Directorate (one being the head of the service) and one representative of the police authority. The Secretary General of the Region appoints the members of the Committee – both regular and alternate – and the secretary and his alternate through the issuance of a resolution. The same process is followed to appoint as Chairman of the Committee the Head of the “Foreigners and Immigration” Directorate, as well as a rapporteur, along with his/her alternate, without voting right, from among the employees of the “Foreigners and Immigration” Directorate.

Procedures to enforce expulsion are set by a Decision of the Minister of Home Affairs/Public Administration and Decentralization, the Minister of Foreign Affairs, the Minister of Justice and the Minister of Public Order. It is the competent police Director that orders the expulsion.

Operational Steps for Involuntary Return

Irregular migrants apprehended at entry points and those in police custody, are escorted by the police when deported. There have been some cases of mass deportations effected following police orders and with the use of police escorts. For this purpose, the state authorities charter buses and bear the relevant costs.

As a rule, deportation expenses have to be borne by the foreigner. If the latter cannot provide these, the state will cover them. If the foreigner in question entered the territory upon a letter of guarantee by a third person, the latter will also be responsible for covering the expenses (50/50 with the foreigner). An employer engaging a foreigner without a work permit must bear his/her deportation expenses. Carriers and travel agents are responsible for subsistence and removal costs for foreigners they have transported to Greece.

Return Migration: Policies and Practices

Framework Agreements with Countries of Origin or Transit

Greece has signed readmission agreements with Bulgaria, Croatia, France, Hungary, Italy, Latvia, Lithuania, Romania and the Russian Federation.

It has also concluded cooperation agreements with neighbouring states to combat, *inter alia*, irregular migration. These include a Police Cooperation Agreement signed with Albania and Turkey respectively, which also contain a Readmission Clause.

All these agreements cover issues related only to involuntary returns.

Prosecution and Detention Procedures

In the case of an Administrative Deportation, the foreigner concerned has 48 hours to present his/her objections to the decision.

If the foreigner is considered dangerous, the decision may include the order for his/her detention, which cannot exceed three months. In this case, the foreigner shall be detained on the premises of the appropriate police authority. Objections to detention can be lodged before the President of the Administrative Court. The latter may decide to convert the detention into an order to leave the country within 30 days. The foreigner may appeal against the deportation decision within five days to the Secretary General of the Region, who must decide within three days. The appeal can result in a suspension of the decision.

The Secretary General of the Region may temporarily suspend deportation on humanitarian or health grounds. The Secretary General of the Region where a foreigner resides may temporarily suspend his/her administrative deportation, following a relevant application or *ex officio*, if the suspension is prescribed for “humanitarian reasons, force-majeure or public interest, such as on exceptional grounds regarding the foreigner’s family, life or health.”

The above decision of the regional Secretary General is to be preceded by a non-binding opinion of the Regional Immigration Committee responsible for providing opinions on foreigners’ applications for residence permits (Article 9 of Law No. 2910/2001). The law does not provide for the duration of the suspension of deportation.

Similarly, deportation of those who denounce or bear witness against acts of procurement of prostitution may be suspended pending the final decision on the acts denounced; and the foreigner is provided with a temporary residence permit.

If immediate deportation is not possible, the Secretary General of the Region may issue a decision allowing the foreigner to stay in the country, with a decision imposing restrictive terms.

Judicial Deportation

If the execution of a foreigner’s deportation is not possible on any grounds whatsoever, especially if the foreigner’s life is in danger, this dangerous situation is to be certified by the competent police authority. The Public Prosecutor may then bring the case before the Court (three-member Court of Misdemeanours – Magistrate’s Court) to decide on the actual suspension of deportation, before or after the completion by the foreigner of any sentence that may have been imposed.

After completion of the sentence, the same court may, on the above-mentioned grounds, grant the foreigner the right to temporarily reside in Greece until departure is possible. The foreigner's residence is subject to police control measures. The law does not specify any limits regarding the length of the foreigner's residence.

Expulsion cannot be enforced on:

- Minors whose parents legally reside in Greece;
- A parent of a Greek minor;
- Persons older than 80 years of age.

Detention

If the foreigner is considered dangerous, the expulsion or deportation decision may include the order for his/her detention, which cannot exceed three months. In this case, the foreigner shall be detained on the premises of the appropriate police authority that bears responsibility for the safety of such special premises.

Asylum seekers generally remain in "the waiting zone" of the point of entry where they arrived for the whole period of examination of their asylum application. This cannot exceed 15 days. The waiting zone is considered to be the area that extends from the point of embarkation/disembarkation to the point of passport control.

Eleven reception facilities for asylum seekers, the so-called "Temporary Stay Centres" have been established throughout Greece, including in selected border areas.

2. ASSISTED VOLUNTARY RETURN

There is no specific voluntary return policy and consequently no structured assisted voluntary return programmes operating in Greece. Nevertheless IOM has effected some assisted voluntary returns on an ad hoc basis for the Greek government, e.g. to Afghanistan.

HUNGARY

1. INVOLUNTARY RETURN

1.1 POLICY

Hungary is located astride the main land routes connecting Western Europe and eastern Europe. Its steady economic growth and close political and economic ties with Western Europe make it both a destination and transit country for migrants.

Channels for legal migration are limited, so many migrants (most from neighbouring eastern or south eastern European countries) enter Hungary illegally. In the late 1980s and end of 1990s, illegal entries in the country frequently accounted for over 40 per cent of all entries, although in some years in the 1990s the percentage of illegal entries was less than 10 per cent.¹

The number of asylum seekers in Hungary has grown rapidly since 1993, reaching 11,499 by 1999. The lowest number of recorded asylum seekers was in 1996, when 1,259 asylum applications were filed.² In the first three quarters of 2003, there were 1,904 asylum applications.³

In an attempt to effectively deal with the problem of illegal entries and the asylum demands of a large number of foreigners, Hungary adopted new laws in recent years and reinforced its border control and aliens policing management.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The most crucial legislation of recent years is the Act on the Entry and Stay of Foreigners (Aliens Act), which was adopted by the Hungarian Parliament at its session on 29 May 2001, and outlined provisions regulating the entry, residence and expulsion of foreigners. According to Article 2 of the Act, a foreigner refers to any person “who is not a Hungarian national or a stateless person.”

The law provides the aliens police authorities with the power and responsibility to make decisions on expulsion and/or departure of a foreigner. There is no appeal against such decisions obliging a foreigner to leave the country in the administrative procedure, but an application may be made for judicial review of the decision by the court.

Where a foreigner in Hungary has been refused permission to remain in the country, he/she must leave the country within 30 days, and when the behaviour of the person is considered to severely endanger public order, the person has an obligation to leave within 15 days.⁴

Expulsion from Hungary, Prohibition of Entry and Stay

Article 32 of the Act states:

1) In order to protect the sovereignty of the state, national security, constitutional order and public security, expulsion for aliens policing purposes and the prohibition of entry and stay, or – when the foreigner is staying in an unknown location or not in the territory of Hungary – a **prohibition of entry and stay** shall be ordered against a foreigner, who fits any of the following descriptions:

- a) Pursues an activity endangering the constitutional order or security of Hungary or participates in an organization pursuing such activities;
- b) Participates in a terrorist organization or is involved in the smuggling of firearms, explosives, radioactive materials or narcotic drugs or is a member or proxy of an organization of this type, and who participates in the illegal trafficking of materials and equipment required for the manufacturing of arms of mass destruction, or who manufactures or possesses drugs or psychotropic substances for commercial purposes;
- c) Organizes or facilitates the illegal entry, exit (crossing of the border) or stay of persons or groups or is engaged in the smuggling of migrants;
- d) Regarding whom Hungary has a commitment under an international agreement or within the framework of international cooperation to enforce prohibition of entry and stay;
- e) Has been sentenced by a court to at least a year's imprisonment for committing a deliberate crime sanctioned by Hungarian law;
- f) Against whom a Member State of the European Union has ordered a prohibition of entry and stay.

2) **Expulsion** for aliens policing purposes or prohibition of entry and stay may be ordered against the foreigner who:

- a) Violates or attempts to violate the rules of entry and exit;
- b) Violates the rules of stay;
- c) Performs work or pursues any other income earning activities in Hungary without the prescribed official permit;
- d) Provides false data or false facts to the authorities in order to obtain authorization of entry or stay;
- e) Has failed to reimburse the costs paid him/her by the Hungarian state as an advance under the condition of repayment;
- f) Has (or could) with his/her entry and stay violated or endangered national security, public security, economic order, public health or the human environment;
- g) Has failed to pay the fine validly imposed on him in the course of a procedure for violation of administrative regulations;
- h) Has applied for authorization to enter or stay with a view to living with his/her spouse but has failed to live with the spouse or it may be presumed that he/she provided pecuniary benefit in order to be married (marriage of convenience);
- i) Has been returned to the authorities of another state without an expulsion order pursuant to an international agreement.

Article 33 provides that aliens police authorities shall be entitled to issue orders of expulsion and prohibition of entry and stay. Foreign Ministry of the country should also be involved in cases laid down in Article 32 (1) (a) to (e) and (2) (a) and (f), etc.

Period of Prohibition of Entry and Stay

According to Article 33, the prohibition of entry and stay may be ordered for a maximum of five years, and may be extended by a maximum of an additional five years. When the reasons for ordering prohibition of entry and stay have ceased, the prohibition shall be immediately cancelled.

The Office of Immigration and Nationality in the Ministry of Interior is empowered to make decisions on prohibition of entry and stay, and on cancellation of prohibition. In any case, the returnees are not requested to sign a statement declaring no intention of re-entry into the country.

According to the Act, the fact of return may be entered in the passport of the foreigner. When necessary, the visa already issued shall be invalidated and be cancelled.

Government Decree

For the implementation of above-mentioned Act, the Hungarian Government issued Government Decree 170/2001. The Decree (in Article 63) stipulates that escorts shall be used to execute deportations.

The foreign national ordered to be deported shall be escorted to the frontier of Hungary. If allowing the deported person to travel by air without safeguards is likely to jeopardize aviation safety, or if transferred under treaty (readmission agreement), the deported person shall be escorted to the country of origin or another state liable for admission.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

At the central government level, the Office of Immigration and Nationality of the Ministry of Interior is the government agency responsible for making decisions and carrying out tasks relating to the monitoring of aliens, such as detention and expulsion. The Office is also responsible for ensuring cooperation within and among relevant government agencies for involuntary returns of foreigners.

According to the Aliens Act, the Aliens police are responsible for the implementation of its provisions, which include measures for the expulsion of irregular migrants and unsuccessful asylum seekers.

Operational Steps for Involuntary Return

In the case of expulsion, the passport of the foreigner concerned will be stamped. If the person

Return Migration: Policies and Practices

concerned does not have a passport, the relevant Embassy will be contacted for issuance of a passport or a special travel document.

While a decision is made to remove an alien from the country, the social benefits for the alien would still remain before and after the decision is made until the actual removal.

In the case of expulsion and prohibition of entry and stay, the period of prohibition of entry and stay shall be noted in the passport or other travel document of the person concerned. But if the person leaves the country voluntarily, such note of expulsion and prohibition of entry and stay in the passport or other travel document may be exceptionally foregone.

Detention and other Law Enforcement Measures

According to the Act of 2001 on Entry and Stay of Foreigners and Government Decree 170/2001 (Article 61), irregular migrants and rejected asylum seekers are liable to be detained. Migrants may be detained to enforce immigration regulations or for the purpose of preparing expulsion. The maximum period of detention cannot exceed 12 months.

The Office of Immigration and Nationality of the Ministry of Interior is empowered to take action on matters of detention and compulsory confinement.

For compulsory confinement of a foreigner, the designated place may be his/her place of abode, the domicile or place of abode of the sponsor inviting the foreigner, or the accommodation provided by the sponsor, the medical institution providing care for patients for the duration of treatment to prevent severe damage to health, etc. The foreigner can also be placed in a community hostel.

The place designated for compulsory confinement of an unaccompanied minor shall be a children's institution, a reception centre for unaccompanied minors, or commercial or private accommodation maintained under contact (Article 61 of Government Decree has detailed provisions on confinement).

If a foreigner has seriously or repeatedly violated the codes of conduct of the place of compulsory confinement, or has failed to report as instructed, the immigration authorities may order the detention of the person.

Framework Agreements With Countries of Origin and Transit

Hungary has concluded bilateral readmission agreements with about 20 countries, among them Romania, Ukraine, Switzerland, Bosnia and Herzegovina, Austria, Slovakia, Czech Republic, Poland, Croatia, Slovenia, Bulgaria, Moldova, France, Italy, Portugal, Macedonia, Latvia, Albania, and Germany. Readmission agreements cover both involuntary return and voluntary return.

Cases based on readmission agreements are not supposed to be referred to IOM, as persons without the right to enter and stay in Hungary and from countries that have signed readmission agreements are returned to their countries of regular residence by the government. The border guards and police are responsible for organizing such movement of return in a quick and cost effective manner. Nevertheless, there have been a significant number of migrants returned with the assistance of IOM. IOM only deals with voluntary return cases.

Under the readmission agreements, migrants have been returned to Albania, Bulgaria, Czech Republic, France, Germany, Italy, Latvia, Macedonia, Moldova, Poland, Romania, etc. from 1993 onward. In the period 1993-2002, there were more than 700 migrants returned under the Assisted Voluntary Return programmes.⁵

For those countries with which Hungary has not concluded readmission agreements, any return from Hungary needs to gain the agreement of authorities of the countries concerned. IOM has successfully assisted many cases of voluntary return in this regard.

1.4 STATISTICS ON INVOLUNTARY RETURN

The number of expulsions have, over the years, far exceeded those of voluntary returns from the country. In 1998 alone, 22,553 aliens were issued an expulsion order,⁶ although the number of actual deportations appears to be much lower, as expulsion figures for 2003 indicate.

As of November 2003, the number of expulsions were as follows:

TABLE 1
STATISTICS ON INVOLUNTARY RETURN
(AS OF NOVEMBER 2003)

Destination	Number	Destination	Number	Destination	Number
Albania	5	Algeria	3	Belarus	1
Israel	1	Libya	1	Mongolia	7
Russia	3	Bulgaria	5	Bangladesh	1
Egypt	5	China	8	Macedonia	1
Germany	1	Armenia	1	Syria	2
Greece	1	Netherlands	1	Iran	1
Poland	1	Moldova	1	Italy	1
Canada	1	Turkey	6	Saudi Arabia	1

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The government supports and implements, in cooperation with IOM, programmes for assisted voluntary return. The beneficiaries of the voluntary return programmes are rejected asylum seekers, asylum seekers awaiting decisions by the Hungarian authorities, and other foreign nationals in Hungary who wish to return voluntarily to their respective home countries and need assistance.

Return Migration: Policies and Practices

As a country due to join the EU in May 2004, Hungary has tried to bring its migration policies and practices in line with those of EU countries. Legislation to this end has been passed in recent years. The Act of 2001 on the Entry and Stay of Foreigners governs the rights and obligations in matters concerning the entry and stay of foreigners.

Article 32 of the Act of 2001 on Entry and Stay of Foreigners also provides that “the aliens police authorities may waive the expulsion of a foreigner if the foreigner undertakes to leave the territory of Hungary voluntarily”. This provides the legal basis for voluntary return of foreigners. Before this law was adopted, Hungary and IOM had already reached agreements on implementing assisted voluntary return programmes.⁷

By choosing voluntary return, those foreigners with sufficient means and resources could leave the country by themselves. Those needing assistance for document processing, transportation, medical and other assistance could seek help available to them under the assisted voluntary return programme. As IOM has cooperated with Hungary’s Ministry of Interior in carrying out assisted voluntary returns in the last decade, the returnees were able to obtain assistance from IOM.

According to Article 34 of the Act of 2001 on the Entry and Stay of Foreigners,

The foreigner may be returned to the territory of the country from which he/she arrived or which is under an obligation to readmit him/her or where the foreigner resides, or to any other state which the foreigner is entitled to enter. The measure of return is not subject to legal remedy under public administration regulation.

If the person due to return is stateless, in theory he/she shall be returned to the place from which he/she arrived or to a state willing to admit the person. In practice, it is hard to return a stateless person due to the fact that such a person often does not disclose the place from which he/she arrived; and it is not easy to find another country to accept a person who obviously prefers to stay in Hungary.

Article 35 of the Act of 2001 on Entry and Stay of Foreigners deals with new arrival of migrants, who are not authorized to stay and are obliged to return to the country from which they arrived. The Article states:

- 1) The foreigner arriving by air, water, rail or road shall stay, in accordance with the instructions of the Border Guard, in a specified location of the border area or the airport or on the vehicle that will carry or return him/her or he/she shall board another departing vehicle of the company subject to the obligation to transport him/her back.
- 2) When return cannot be implemented immediately, the foreigner arriving by water, rail or road, shall be under the obligation to stay in a designated part of the border area or the airport for a maximum of 48 hours from the time of his/her arrival. The foreigner having arrived by air is obliged to remain at the designated area for a maximum of eight days from his/her date of arrival.

- 3) When the foreigner cannot be returned within the period specified under paragraph (2), the rule governing expulsion for aliens policing purposes shall be applicable to the foreigner.

These paragraphs define the timeframe for the stay of a foreigner before returning to the place from which he/she departed. In all cases, the person concerned still has the option to choose voluntary return.

Although this Act mentions that foreigners may “leave the territory of Hungary voluntarily”, it lacks detailed provisions on its implementation. Despite this, there are Memoranda of Understanding (MOU) between Hungary’s Ministry of Interior and IOM on Cooperation in the Field of Voluntary Assisted Return of Migrants. To date, three MOUs have been signed. These Memoranda provide the basis for cooperation between IOM and the Hungarian authorities in implementing voluntary returns.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

In Hungary, the assisted voluntary return operations started in 1993. On 27 May 1994, the first MOU was signed between IOM and the National Police Headquarters Chief Directorate of Public Security, Department of Police Administration. This Memorandum and its subsequent MOUs formalized implementation of the assisted return programmes for unsuccessful asylum seekers and other migrants in an illegal situation in Hungary who wished to return voluntarily to the countries of their origin.

As the MOUs officially confirm the Hungarian assisted voluntary return programme (HARP), it has been acknowledged as one of the legal instruments for addressing illegal migration in Hungary.

Operational Steps for Voluntary Return

In the MOU of 21 February 1997, voluntary return refers to the voluntary return of a person to the country of which he/she is a national. If such return is impossible, or if the person is stateless, he/she will be expected to return voluntarily to the country of his/her former habitual residence or a country willing or obliged to receive the person.

Voluntary return programmes aim not only to assist the actual return actions of the person, but also to support his/her reintegration during the initial period following return or his/her immigration in the case of being admitted to a third country. The cash allowance for voluntary returnees is usually US\$ 50 per person, or US\$ 60 for a person travelling with a child.

Beneficiaries of the voluntary return programme include the following three categories of persons:

- Asylum seekers whose application for refugee status has been rejected by competent authorities in line with national procedures;

Return Migration: Policies and Practices

- Asylum seekers who have renounced their pursuit of refugee status;
- Other foreigners who were obliged by the competent alien police authorities to leave the territory of the country as a consequence of violating the law on foreigners' entry and stay in Hungary, or against whom the conditions of ordering such obligation exist.

In implementing voluntary return programmes, the government and IOM respect the provisions of relevant international instruments and Hungarian law and regulations in regard to the collection, processing and use of personal data. Disclosure of data to third parties can only be made with the consent of the person concerned.

Joint Consultative Commission

To facilitate implementation of the return programmes based on the MOU, relevant Hungarian authorities and the IOM field office in Hungary formed a Joint Consultative Commission. The Commission comprises authorities from the Hungarian Ministry of Interior, Office of Refugees and Migration Affairs, Aliens Police, Border Guard and a representative of IOM. IOM forms the secretariat of the Commission; and the Commission meets when necessary and with the following tasks:

- Monitor and analyse experience and new developments in the field of return;
- Advise on feasibility and merits of new initiatives;
- Regularly review the implementation of ongoing activities and programmes;
- Examine cooperation modalities with governmental and non-governmental organizations dealing with return of migrants.

Practical Procedures

Within the voluntary return programme managed by IOM in cooperation with Hungarian authorities, the practical procedures for implementing voluntary return are defined in the MOUs.

The relevant authorities of the Ministry of Interior undertake to (1) inform potential beneficiaries of their legal status and the possibilities available to them under the programme; (2) inform the IOM office in Hungary of the person who may benefit from the programme; (3) give the IOM office in Hungary a comprehensive description of the current legal status of the person. The Ministry of Interior will take responsibility for any coordination needed among governmental authorities.

IOM's responsibilities are multi-faceted. IOM is responsible for (1) providing potential beneficiaries with information on programme options as soon as possible; (2) counseling potential returnees on practical issues, informing them of the conditions in the countries of origin; (3) if voluntary return is decided, arranging valid travel documents for travel; (4) providing transportation assistance and other related service if needed; (5) as required, providing assistance for initial reintegration of returnees into their communities.

In implementing voluntary returns, IOM widely distributes information sheets, posters, flyers and brochures in different languages. The voluntary return application forms are prepared in Hungarian, English, Chinese, Greek and Bengali. While it is not possible for each and every

migrant to understand the language on the form, IOM staff members try to explain to the migrants if there is a need to do so.

IOM makes an effort to tailor its activities to the needs of the returnees. Although the majority of returnees have been male adults, there were cases involving minors and old persons needing special assistance from departure to arrival. For such cases, IOM would provide an escort. IOM data (up to November 2002) shows over 95 per cent of the returnees assisted by IOM over the past years have been single males aged between 18 and 40.⁸

The Office of Immigration and Nationality in the Ministry of Interior can decide on prohibition of re-entry and stay of the voluntary returnees. The reasons for such decisions and lengths of prohibition are similar to those of involuntary returnees (expulsion). The Office may cancel such prohibitions if the reasons for the prohibition cease to exist. The returnees are not requested to sign any statement declaring no intention of re-entry into the country.

Framework Agreements with Countries of Origin or Transit

See section on Involuntary Return.

2.3 STATISTICS ON VOLUNTARY RETURN

Since 1993, IOM has assisted 3,589 persons to return voluntarily to their respective countries of origin or third countries that agree to accept them.

The following tables show the number of returned persons in recent years and breakdowns of destinations:

TABLE 2
STATISTICS ON ASSISTED VOLUNTARY RETURNS BY IOM

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Number	217	326	337	391	46	281	952	458	236	204

TABLE 3
DESTINATION OF ASSISTED VOLUNTARY RETURNEES:
1993-2002

Destination	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Albania	38	5	20	50	2	3	23	7		2	150
Algeria	2	9	1		4	6	15	4	3	1	45
Angola					1						1
Armenia		3		1		7	14	29	2	3	59
Azerbaijan										2	2
Bangladesh					1	2	74	23	1	5	106
Belgium			1								1
Belarus		1						1		1	3

Return Migration: Policies and Practices

TABLE 3 (cont.)
DESTINATION OF ASSISTED VOLUNTARY RETURNEES:
1993-2002

Destination	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Bosnia and Herzegovina					8	26	56	59	29	1	179
Bulgaria	46	101	58	43	7	56	49	16	8	3	387
Cameroon							2				2
Czech Republic		1	2					1			4
China		1				5	54	49	15	23	147
Colombia				1		1	1				3
Congo						1					1
Cuba									1		1
Cyprus						1					1
Dominica									2		2
Ecuador											-
Egypt	2	4	7	47	1	14	27	12	6	6	126
Estonia						2					2
Ethiopia		1									1
France	2	1				1					4
Gambia											-
Georgia			1		3	1				1	6
Germany		1	9		1	1					12
Ghana							1	1		1	3
Greece						1					1
Holland				2		1	2				5
India	0					22	45	34	36	1	138
Iran	1	3					2	3	1		10
Italy		2		1		1					4
Israel											-
Jamaica										1	1
Jordan								2	3		5
Kazakhstan										2	2
Latvia			3						1		4
Lebanon	4	2	4	6	1	7	3	4			31
Libya									1		1
Lithuania			4	2					2	1	9
Macedonia			9	18	3	58	44	11	13	16	172
Mali										1	1
Moldova		8	5			5	37	57	3	14	129
Mongolia	1	7	2			6	8	11	10	11	56
Morocco	5	11	6	4	2			3	3		34
Mozambique			1								1
Nigeria	1		3	1					1		6
Pakistan	1	2		1		7	8	5	4		28
Philippines						2	19	5			26
Peru			2	2				6			10
Poland	3	29	6	3	2	11	1		1	2	58

TABLE 3 (cont.)
DESTINATION OF ASSISTED VOLUNTARY RETURNEES:
1993-2002

Destination	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total
Romania							1				1
Russia		43	18	5		1	4	8	4	1	84
Senegal									1	1	2
Somalia							2	1			3
Spain				1							1
South Africa								1			1
Sri Lanka	1				1		3	2	20		27
Sudan		1		1							2
Sweden		1				1					2
Syria			3			2	4	4			13
Tunisia	2	2	9			5		5	1		24
Turkey	102	87	160	200	9	22	48	68	60	54	810
Viet Nam	3			1		1	1	25	4	7	42
USA	3			1		1					5
Uzbekistan							1				1
Yugoslavia			3								3
YU Kosovo							403	1		43	447
Total	217	326	337	391	46	281	952	458	236	204	3448

Until mid-December 2003, the number of assisted voluntary return cases has been 200. The total number of assisted voluntary returns from 1993 to mid-December 2003 was 3,589. The above table is the breakdown of destinations with corresponding assisted voluntary returns.

The Hungarian government pays the costs relating to the voluntary return programmes. For the year 2003, the Hungarian Parliament granted approximately US\$ 150,000 to the Ministry of Interior for AVR purposes.

It should be noted that the cost of expulsion of an alien is much higher than the cost of voluntary return. In 2003, the cost of implementing AVR was about US\$ 700 per person. In terms of transportation and escorts in the implementation of an expulsion case, the estimated cost is four times higher than that of voluntary return.

2.4 BEST PRACTICES AND LESSONS LEARNED

The effectiveness of the AVR programme is dependent on the close level of cooperation between IOM and the relevant Hungarian authorities. With a view to making more migrants aware of the benefits of assisted voluntary return programmes, it is considered to further engage Border Guard Units all over the country in sharing information at refugee centres, and providing IOM information materials on AVR to potential beneficiaries.

NOTES

1. IOM Rapid Assessment of Assisted Voluntary Return in Hungary (HARP), November 2002, p. 23 which contains information from Hungarian Ministry of Interior (Immigration and Nationality Office).
 2. Ibid, p.13.
 3. UNHCR “Asylum level and trends” released on 1 December 2003.
 4. The aliens police authorities have the power to judge the behaviour of migrants and implement the provisions.
 5. IOM Rapid Assessment of Assisted Voluntary Returns in Hungary (HARP), November 2002, p. 11.
 6. See *Facilitating the Return of Irregular Migrants: the Challenge for Central and Eastern Europe*, by Technical Cooperation Centre for Europe and Central Asia, IOM, 30 September 1999, p. 63.
 7. Three Memoranda of Understanding (MOUs) were signed between the Ministry of Interior of Hungary and IOM respectively on 27 May 1994, 21 February 1997 and 16 October 2000.
 8. IOM Rapid Assessment of Assisted Voluntary Returns in Hungary (HARP), November 2002, p. 6.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Hungary signed the UN Convention Against Transnational Organized Crime on 14 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 14 December 2000, but has not yet ratified the Protocol. Hungary also signed the Smuggling Protocol on 14 December 2000, although it has not yet ratified this Protocol.

IRELAND

1. INVOLUNTARY RETURN

1.1 POLICY

Like Italy and Spain, Ireland found itself transformed overnight from a traditional emigration country into a migrant-receiving country. As a country with a previous record of high unemployment and low standard of living, Ireland generally did not attract high immigrant numbers, and maintained a somewhat closed immigration policy, aimed at discouraging immigrants, to protect its labour market and the homogeneity of Irish society.

Changes in its economic situation in the 1990s, which saw a period of high economic growth and an expansion in the labour market, brought with them changes in the immigration debate. Instead of protecting the labour market from in-flowing migrants, the government was confronted with labour shortages, not only in the highly skilled sectors but also at the lower ends of the job market. Concurrent with the steady growth of the Irish economy and the country's increasing living standards, Ireland now attracted not only EEA citizens and EU Member State nationals, but also an increasing number of asylum seekers and third-country nationals.

Current immigration debates reveal concerns about being swamped by a wave of asylum seekers and irregular migration; and these concerns have determined the Irish approach to migration management. Between 1992 and 2002, for instance, the number of asylum applications rose from some 40 to 11,634 cases.¹

Aligned with the EU policy on migration, Ireland adopted a number of measures to better manage its migration requirements. Therefore, in less than a decade a series of consecutive legislative reforms and amendments have been undertaken to tackle the migration in-flow. In regard to involuntary return, the Irish government has established the following aims for its migration agenda:

- Confront possible abuse of the asylum process by persons who are seeking to enter the state through the asylum process for purposes other than to seek refugee status;
- Increase the number of annual deportations, particularly in relation to those who do not obtain refugee status. Significant increases have been achieved in recent years in this area;
- Enhance the operation of the state's Readmission Agreements with Poland, Romania, Bulgaria and Nigeria for the purpose of increasing the number of deportations;
- Support and enhance the capacity of the Garda National Immigration Bureau to monitor and track non-nationals who are the subject of deportation orders with a view to their removal from the state; the better coordination of activities aimed at more effective execution of deportation orders and generally combating trafficking in illegal immigrants.²

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The legal basis for managing migration in Ireland is laid down in the following laws:

- Aliens Act of 1935 and subsequent orders made pursuant to the Act from 1947 to present;
- European Community Act of 1972;
- Irish Nationality and Citizenship Acts 1956, 1986 and 1994;
- Refugee Act 1996 as amended by Section 11 (1) of the Immigration Act 1999, Section 9 of the Illegal Immigrants (Trafficking) Act 2000 and Section 7 of the Immigration Act 2003;
- Dublin Convention Order 1997;
- Immigration Act 1999;
- Illegal (Immigrants) Trafficking Act 2000;
- Immigration Act 2003.

In order to meet the above described goals, the Republic of Ireland enacted in September the Immigration Act 2003, which is an Act to Make Provision in Relation to the Control of Entry into the State of Non-nationals, to Amend the Refugee Act 1996 and to Provide for Related Matters.³

The amendments introduced by the Immigration Act 2003 provide in essence for:

- Carrier sanctions, to improve controls on illegal migration into Ireland – carriers are required to carry out basic checks to ensure that passengers boarded for carriage into the state from outside the Common Travel Area (UK, Northern Ireland, the Channel Islands and the Isle of Man) are in possession of valid entry documentation;
- The legal obligation for a more active cooperation of asylum seekers, who abandon their application – obligations include notifying changes of address, responding to correspondence about asylum applications, turning up for asylum interviews, reporting to immigration authorities as required, and generally keeping in touch with the relevant refugee status and immigration control bodies to make clear one's intention to actively pursue an asylum application;
- Accelerated processing of manifestly unfounded asylum applications including those from safe third countries;
- Legal measures to improve the processing of applications from asylum seekers entering Ireland from a safe third country, including countries party to the Dublin Convention.

The consolidation of the existing legislation in a new Immigration and Residence legislation is currently in progress. According to the Ministry of Justice:

This new legislation will create the framework for a streamlined immigration system which will provide for the entry into the country of non-nationals with a view to supporting the social and economic goals of Irish society and the needs of Irish citizens, having regard to the protection of national security and public order and the capacity of the State to integrate non-nationals.⁴

Forced Removal

The legal basis for removal in Ireland is the Immigration Act 1999, Section 3, amended by Section 10 of the Illegal Immigrant (Trafficking) Act 2000.

Rejected asylum seekers may lodge an appeal within 15 working days from the date of the decision. A dedicated specialist tribunal, the Refugee Appeals Tribunal (RAT) hears these appeals. Asylum seekers whose applications are deemed manifestly unfounded must submit appeals within ten days.⁵

On Refugee Convention claims, an appeal goes from the Refugee Agency Commissioner (RAC) to RAT, and there is thus only one level to which an appeal may be made. However, in effect, there is an additional stage in the process, in the form of the application for “temporary leave to remain” (TLR). This is normally called “Humanitarian Leave to Remain” – HLR – and is referred to in official correspondence informing of the 15-day time frame. In practice, once the RAT rejects the asylum claim, a letter is sent within four to eight weeks, informing the applicant and giving him/her 15 days to make submissions to the Minister for Justice Equality and Law Reform as to why he/she should not be removed.

In case the rejectee does consent to the deportation within 15 working days of receiving the Ministerial notification, removal is arranged as stipulated under the Immigration Act 1999, Section 3 (4(c)) as soon as practicable. A deportation order ceases to have effect where the deportation cannot be enforced within three months.

The Immigration Act 2003 Section 5 (8 (b)) complements the regulations on deportation by emphasizing the rejectees’ obligation to cooperate in any necessary way to their removal. If migrants refuse to cooperate, they can be fined up to EUR 3,000 and/or sentenced to imprisonment for a term not exceeding 12 months.

Cooperation also includes, according to Section 5, the obtaining of travel documents, tickets or other documents required for the removal and the compliance of the person with any request from the immigration officer, and to be removed, and to sign or provide fingerprints on relevant documentation⁶ for the police.

Detention

Under the Immigration Act 1999, Section 5 (1), a detention order is issued if a non-national:

- a) Failed to comply with any provisions of the order or with a requirement in a notice under Section 3 (3) (b) (iii);
- b) Intends to leave or enter Ireland (or Schengen territory) illegally;
- c) Destroyed his/her travel documents or possesses forged identity documents;
- d) Intends to avoid removal.

Minors are excluded from this provision.

Return Migration: Policies and Practices

According to the 2003 Immigration Act, a person against whom a removal order is in force, who has failed to comply with any provision of the order and who does not comply with any other relevant legal requirement or who is on reasonable grounds suspected of such an offence by a police member or immigration officer, may be arrested either by the Irish police (*Garda Síochána*) or an immigration officer.

The maximum detention period is eight weeks in aggregate (this period, however, can be extended under certain circumstances).⁷ Detention, however, is regarded as a measure applied to enforce deportation. Persons under appeal may apply at the court to be released from detention custody. If the court considers it appropriate, the foreigner may be ordered to: reside or remain in a particular district, report to the police at specified intervals, and surrender any passport or travel documents.

The High Court has a general *habeas corpus* jurisdiction, under the Constitution, to review the legality of any detention. This right may not be abrogated by statute, but statutory provisions may restrict it in specific instances. Section 5(5) of the Immigration Act 1999 stipulates clearly that court proceedings to challenge a deportation order can also entail a challenge to the detention. Yet, the right to challenge the validity of specified decisions, including the decision to detain, under the Immigration Act 1999, the Refugee Act 1996 and the Aliens (Amendment) Order No. 2 is subject to judicial review as provided for under Section 5 of the Illegal Immigrants (Trafficking) Act 2000.

Illegal Entry

Section 2 of the Illegal Immigrants (Trafficking) Act 2000 provides that: a person who organizes or knowingly facilitates the illegal entry of persons into the state can be held liable, on summary conviction, and sentenced to a fine not exceeding EUR 1,500 or to imprisonment for a term not exceeding 12 months, or both.

This provision, however, does not apply to actions undertaken by a person “otherwise than for gain, or to anything done to assist an asylum seeker by a person in the course of his or her employment by a bona fide organization if the purposes of that organization include giving assistance to persons seeking asylum”. The Act does not define or distinguish between smuggling and trafficking.

In case of conviction on indictment regarding the provision of false information or unlawful alteration of identity documents, the court can levy fines up to GBP 60,000 and sentence a person to imprisonment not exceeding three years.

Carrier Liability

As of 19 September 2003, the Carrier Liability Regulations under the Immigration Act 2003 place a greater onus on air and sea carriers to ensure the papers of people on their passenger list have been checked.

Carriers are made liable – reflecting a provision in the EC Directive 2001/51/EC of 28 June 2001 – and sanctioned with a fine of EUR 1,500. Prosecution is not instituted if this fine is paid

within 28 days to the Garda National Immigration Bureau (GNIB). Where carriers are found liable on summary conviction, a fine of EUR 3,000 is due for each offence.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The power to deport is vested in the Minister for Justice. In May 2000, the Irish government instated the Garda National Immigration Bureau (GNIB).

The GNIB is responsible for all Garda operations pertaining to immigration matters in the state. As such, it coordinates all activities leading to the execution of deportation orders, including the identification and monitoring of foreign nationals who are the subject of deportation orders; it directs the operational strategies to combat trafficking in migrants; and the enforcement of immigration law generally.

The GNIB coordinates all operations from point of entry into Ireland, provides for a non-national registration service and the enforcement of the immigration law generally. In addition to this, the GNIB is responsible for strengthening international liaison on relevant immigration issues including with Garda liaison officers abroad.

Since September 2001, the Immigration Unit at Dublin Airport has been an important part of the GNIB. Apart from the Garda officers attached to the GNIB, there are Garda personnel assigned to Immigration duties at all seaports and airports in the country. Garda personnel also perform duty at all Garda District Headquarters Stations outside Dublin and on a random basis along the border with Northern Ireland.

Operational Steps for Involuntary Return

Escorts

The GNIB only considers escorts necessary where deportees are deemed violent. Some carriers, however, do not accept unescorted removals and impose escort requirements (e.g. five *Garda Síochána* escorts for two detainees). Escorts are also necessary where visa problems appear. Otherwise deportees are not escorted.

In order to ensure the unescorted deportee's arrival at port of destination, the GNIB has successfully concluded agreements especially for unescorted removals from hub airports (mainly London and Amsterdam) with a number of national carriers. (The GNIB prefers to liaise with individual carriers than with the International Air Transport Association (IATA)). Under these agreements, deportees are placed on a flight from the Republic of Ireland to the transit point, following consultation with the Immigration Authorities there, who will ensure the actual departure.

This procedure has a definite advantage, according to the GNIB, insofar as the airline staff will usually have a common language with the deportee, and the detainee's concerns can be addressed adequately.

Return Migration: Policies and Practices

Chartered Flights

Chartered flights are used occasionally, as for example in 2002, when a total of 20 deportees were flown to Algeria and Nigeria. Ireland also cooperates with UK authorities in regard to chartered flights. Since November 2002, Ireland has participated in some of the regular charter flights from London to Kosovo.

Extensive use is made of the EU Removal Document, which is accepted by Kosovo, Albania, Romania, Bulgaria and the Czech Republic, though difficulties have been experienced in relation to Algeria, Belarus, Niger and Georgia.

Framework Agreements with Countries of Origin or Transit

Ireland has signed and ratified readmission agreements with Romania (May 2000), Poland (12 May 2001), Bulgaria (28 March 2002) and Nigeria (28 March 2002). These agreements are designed to provide a structured repatriation procedure for the return of the nationals of these countries residing in Ireland without authorization. In practice, the readmission agreements with Bulgaria and Nigeria had been in operation before their ratification.

In the case of Nigeria, the existence of good relations between the Irish authorities and the Nigerian Embassy representatives before the readmission agreement had been signed were of great significance. Thus, the diplomatic or consular officers of Nigeria interviewed returnees within five days of being requested, in order to establish identities and prove nationality. Upon confirmation of nationality, a travel document was issued within four days, so that the removal could be enforced.

The agreements with Bulgaria, Romania and Poland list a number of mutually agreed documents as proof of citizenship, including but not limited to photocopies of passports, military identity cards and identity cards.

While emphasizing its commitment to meeting Ireland's international Treaty obligations, the Irish government considers readmission agreements an effective and important tool in tackling the increased trend in illegal immigration. According to the government, it is not its strategy to link development aid to the successful implementation of readmission agreements.

In general, such agreements cover all returns.

Prosecution and Detention

Under the Immigration Act 2003 (Removal Places of Detention) and Regulations 2003 (SI No. 444 of 2003), the following are "prescribed places" for detention – Castlerea Prison; Central Mental Hospital, Dundrum; Cloverhill Prison; Cork Prison; Limerick Prison; Midlands Prison; Mountjoy Prison; Saint Patrick's Institution, Dublin; Glengariff Parade, Dublin; and Wheatfield Prison, Dublin. Section 5(1) powers do not permit the detention of minors. Furthermore, all Garda stations are considered under the Regulation as places of detention.

Asylum seekers are often (but not always) housed in hostel-type accommodation, including former bed and breakfast establishments, in order to facilitate "direct provision". These are not detention facilities.

1.4 STATISTICS ON INVOLUNTARY RETURN

After asylum applications had risen dramatically from 40 applications (excluding the Bosnian programme refugees) in 1992 to 11,634 in 2002, the number of applications fell for the first ten months of 2003. Monthly applications have plummeted from 979 in January to 496 in October. This was the lowest monthly figure recorded since June 1999, when the total was 453. The October figure of 7,158 signifies a reduction in asylum statistics, compared to 9,560 for the corresponding period last year.⁸

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Deportation Orders	2001	2002 (August)
Signed	1,979	489
Effectuated	364	369

Generally it is to be noted that detailed data are not normally collected or revealed by the national government.

1.5 BEST PRACTICES AND LESSONS LEARNED

Ireland recognized the necessity to access centrally relevant information on all non-nationals and in particular on asylum seekers, in order to better control the in-flow of refugees and unwanted migrants.

Therefore the GNIB has automatic access on its computer system to information on all deportation orders, alien registrations, work permits, visas, and asylum determinations. Information in relation to social welfare payments will soon be available, too.

Fingerprints are kept for asylum applicants, and the GNIB has had access to the Eurodac database since mid-January 2003. There are selective computerized arrival and departure records. The monitoring system at points of entry has recently been enhanced with scanners for passports. This information may be cross-referenced with visas issued, and is accessible to the GNIB.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Irish government's policy on return focuses on providing adequate protection to refugees who satisfy the definition established in the Geneva Convention on Refugees, while ensuring that unsuccessful asylum applicants return to their country of origin, where there is no obligation to offer them protection.

The option of voluntary return is generally preferred over forced removal of persons who no longer have the right of residence in Ireland; and incentives to this end are established in some existing immigration laws and actively promoted.

According to Section 3(4) b of the 1999 Immigration Act, the Minister of Justice has an obligation to inform a person against whom he intends to issue a deportation order that s/he may leave the country voluntarily at any time before the Minister decides the matter, and requires the concerned individual to inform the Minister in writing of the decision to leave and provide details concerning the arrangements for departure.

Statistics on deportation and voluntary return demonstrate that the option of voluntary return has been successfully taken up since the adoption of the Immigration Act, leading to comparable results in voluntary and involuntary returns. There were over 500 voluntary returns recorded in 2002 and over 750 such cases in 2003.

Following the rejection of an asylum claim; and if no application for HLR is made within the specified timeframe, applicants have an obligation to leave the country and cooperate with officials to enforce the removal, and a number of rejected asylum seekers sometimes leave independently.

In general, no advice is provided on the means of return; and before 2001 there were no programmes to facilitate the voluntary repatriation of unsuccessful asylum seekers, although some specific assisted return programmes had been implemented in the past e.g. the return of Bosnian and Kosovar refugees from Ireland and the Return of Qualified African Nationals.

In 2001, the Ministry of Justice, Equality and Law initiated a pilot programme on assisted voluntary returns for asylum seekers and irregular migrants, in cooperation with IOM. Although the programme was initially tailored for Nigerian and Romanian Nationals, two of the largest asylum seeker communities in Ireland, it has now been extended to all non-EEA nationals.

The programme offers assistance in three chronological stages of return – pre-departure, transportation and post-arrival, and includes information dissemination, counselling, medical assistance, travel allowance, return grants, transport assistance, reintegration and monitoring.

Applicants may apply for assistance at any stage during the asylum process, until a deportation order has been issued, thus persons in detention are not excluded from participation. As long as a deportation order has not been issued, Irish authorities will allow the individual to re-enter the country at a later stage, provided the appropriate entry requirements are met, although there is no evidence yet to corroborate these measures.

Recent developments in Irish immigration legislation (Immigration Act 2002), which allow citizenship to be granted to all children born in Ireland, irrespective of the immigration status of the parent, have had significant implications for the families involved. To reduce the severe disruptions to family life, the Irish government has adopted a number of measures, which include accepting representations for residency from undocumented parents with Irish-born children and the initiation of return and reintegration programmes for families with Irish-born children and unaccompanied minors who wish to return to their parents' country of origin.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Department of Justice, Equality and Law Reform, the main department responsible for immigration legislation and policy, funds Ireland's Voluntary Assisted Returns Programme. On the basis of a memorandum, IOM is the leading implementing organization for the programme, and acts in cooperation with refugee agencies, NGOs, community organizations and UNHCR.

Operational Steps for Voluntary Return

Voluntary Assisted Return Programme (continuation of previous AVR to Romania and Nigeria but now open to all Non EEA countries)

This programme is available principally to facilitate the voluntary return of non-EEA nationals, who wish to return to their country of origin, but do not have the means to do so. As a prerequisite, applicants are obliged to withdraw their applications for asylum before departure. Applicants may also include irregular and other destitute migrants in need of IOM assistance.

TABLE 2
VOLUNTARY ASSISTED RETURN PROGRAMME
(CONTINUATION OF PREVIOUS AVR TO ROMANIA AND NIGERIA
BUT NOW OPEN TO ALL NON-EEA COUNTRIES)

Eligible Beneficiaries:	Individuals from non-EEA countries, who have either pending asylum claims or have been refused a declaration that they are a refugee or who are residing in the country without permission.
Budget:	EUR 673,355.14 (including transportation costs)
Funding Source:	Department of Justice, Equality and Law Reform
Assistance to Date (end 2003):	420

Return Migration: Policies and Practices

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with government counterparts and partner agency; travel arrangements, coordination with origin country missions.
- Transport assistance: departure assistance, transit assistance as necessary.
- Post-arrival assistance: reception and onward transportation as appropriate.

Voluntary Assisted Return and Reintegration Programme for Non-EEA Parents with Irish-born Children (Started on 1 November 2003)

TABLE 3
VOLUNTARY ASSISTED RETURN AND REINTEGRATION PROGRAMME
FOR NON-EEA PARENTS WITH IRISH-BORN CHILDREN
(STARTED ON 1 NOVEMBER 2003)

Eligible Beneficiaries:	Up to 250 families with parents who have pending or rejected applications for residence based on the parentage of an Irish-born child and who now wish to return to the parents' country of origin.
Budget:	EUR 808,384.41 (including transportation costs)
Funding Source:	Department of Justice, Equality and Law Reform

Programme Services

This project aims to assist up to 250 families with parents who have pending or rejected applications for residence based on the parentage of an Irish-born child, and who now wish to return to the parents' country of origin. As part of the project, the families will be assisted with their return travel to, and reintegration in, the parents' countries of origin.

Based on a flexible approach, it provides assistance towards the socio-economic reintegration of the families. Assistance is tailored to the families' profiles and the needs of the various family members. Consequently, the type of assistance provided depends on the conditions and opportunities available in the country of origin and may result in initiatives and ideas being developed after return within the timeframe of the project. These activities may include vocational training, job placements, education and language courses for children, information and referral to health services, social security and other services as appropriate.

Voluntary Assisted Return Programme for Unaccompanied Minors Living in Ireland (Started on 1 November 2003)

Programme Services

Through the implementation of this project, IOM is expected to contribute towards the Irish government's efforts at a multi-agency approach to develop and apply good practices to assist unaccompanied minors when voluntary return is deemed to be in their best interests.

TABLE 4
VOLUNTARY ASSISTED RETURN PROGRAMME FOR UNACCOMPANIED
MINORS LIVING IN IRELAND
(STARTED ON 1 NOVEMBER 2003)

Eligible Beneficiaries:	Up to 50 unaccompanied minors, who wish to return to their home country and be reunited with their relatives. The project will include minors of varying nationalities, who are within or outside the asylum procedures within Ireland, and therefore may have irregular status.
Budget:	EUR 131,167.17 (including transportation costs)
Funding Source:	Department of Justice, Equality and Law Reform

The project is implemented in conjunction with the Department of Justice, Law and Equality Reform, with the cooperation of the Health Board, UNHCR, ICRC, the Refugee Legal Service, NGOs in Ireland, legal guardians of the minors, the family members or carers back in the home countries, and the minors themselves.

IOM also works with the Department of Justice, the Health Board, UNHCR and other principal agencies to ensure that unaccompanied minors in Ireland wishing to return to their families in home countries receive special assistance in preparing for their voluntary return and reintegration.

Framework Agreements with Countries of Origin or Transit

The Irish government has concluded a number of readmission agreements as another tool to facilitate returns. To date, these include agreements with Romania, Poland, Nigeria and Bulgaria. Although such agreements are largely intended to enhance the deportation process by providing a structured framework for the return of those who no longer satisfy the conditions of residence, they do contain elements of cooperation towards improving legal migration and migration management, through e.g. labour migration schemes and poverty reduction strategies.

2.3 STATISTICS ON VOLUNTARY RETURN

TABLE 5
STATISTICS ON ASSISTED VOLUNTARY RETURN

Year	Total of Voluntary Returns	Proportion of which were IOM Dublin AVR's
2002	506	101
2003	762	450

2.4 BEST PRACTICES AND LESSONS LEARNED

Lessons Learned

There have been some reported cases of individuals re-entering the country following voluntary departure, which have led to subsequent deportation and to the conclusion that returns were either not completely voluntary or proved to be unsuitable for the returnee. The general Irish AVR programme currently offers no financial assistance, because of concerns that it will act as an incentive to attract other migrants, although other AVR programmes have not reported this trend. Financial provisions may need to be considered in future to ensure the adequate reintegration and sustainability of return.

NOTES

1. Source: Irish Refugee Information Service and UNHCR – *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2002*.
 2. The Asylum and Immigration Process in Ireland, 21 May 2003, www.justice.ie.
 3. Immigration Act 2003, No. 26 of 2003, 14 July 2003 – www.justice.ie.
 4. Important New Developments in Irish Asylum and Immigration Policy, 21 May 2003, www.justice.ie.
 5. The Refugee Legal Service (RLS), which commenced operation on 22 February 1999, assists asylum seekers with legal advice and legal aid at all stages of the asylum process.
 6. The fingerprinting is in Ireland an essential tool to register and identify asylum seekers and foreigners.
 7. Immigration Act 2003, Section 5 (3 (a)).
 8. Sources: UNHCR and OECD – SOPEMI 2002.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Ireland signed the UN Convention Against Transnational Organized Crime on 13 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 13 December 2000, but has not yet ratified the Protocol. Ireland also signed the Smuggling Protocol on 13 December 2000, although it has not yet ratified this Protocol.

ITALY

1. INVOLUNTARY RETURN

1.1 POLICY

Immigration became part of the national debate in Italy during the 1980s as a result of the country's transformation from a traditional country of emigration to a net receiver of immigrants.

Italy's long maritime border and proximity to some of the main asylum sending countries in Europe, such as Albania, led to an influx of undocumented migrants, which still continues to challenge the Italian government. In recognition of the fact that migration needed to be better managed, the issue gained prominence on the national political agenda, and increased in importance with efforts to govern illegal migration within the framework of the EU.

Italy's immigration picture changed further with the new Cabinet, which includes members from the Northern League (which has made its opposition to immigration into a central electoral plank) and the right party National Alliance (which has been aiming to curtail immigration into Italy and deploy a range of enforcement and control mechanisms). Thus, in August 2002, the government passed legislation to regulate immigration, and in September of the same year adopted a decree to provide for the regularization of undocumented immigrants already in the country. There has been a succession of regularization programmes in Italy since the 1980s – 1986, 1990, 1995, 1998 and 2000.

At the same time that regularization takes place, there is widespread support for expulsion of undocumented migrants. The 2002 Immigration Law tightens the conditions for expulsion of undocumented migrants and criminalizes them. Among others, it facilitates deportation and prolonged detention periods and imposes a requirement for all non-EU nationals to be finger-printed when applying for or renewing residence permits.

In fact, the law is a result of the increasingly restrictive immigration policy based on irregularity and high numbers of undocumented aliens. In addition, the ongoing public debate continues to see immigration associated with crime and increasing poverty. But it is also increasingly recognized that Italy's demographic shift – the Italian fertility rate eking one of the lowest in the world – and the increasing need for labour, especially in the North, call for effective migration management.

Italy's migration policy is focused on regulating the entry of migrant workers by a quota system and on combating trafficking. Although refugee assistance is still provided, also by Catholic charity organizations and NGOs, since 2001 Italy has a new integrated system of reception, integration and return in favour of asylum seekers, people under humanitarian protection and refugees. Given the lack of an organic Law on asylum, this system, entitled the National Asylum

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Program (NAP), aims at providing beneficiaries with a comprehensive package of assistance. Initiated as a pilot experiment, NAP has recently been institutionalized by the Bossi-Fini law, and is funded with public resources.

Repatriation and reintegration assistance are part of this new comprehensive system. Reintegration measures are envisaged for vulnerable categories, asylum seekers, people under humanitarian protection and recognized refugees who withdraw their asylum claims.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The legal basis for asylum and immigration in Italy is laid down in the:

- Geneva Convention (1951) and the New York Protocol (1967);
- The Constitution (1948);
- The Aliens Act 28 February 1990 No. 39;
- Presidential Decree No. 136/1990;
- Legislative Decree No. 286 of 25 July 1998 on Discipline Regulating Immigration and Rules on the Status of Foreigners;
- Presidential Decree No. 394 of 31 August 1999, Implementation Rules of the Legislature;
- Decree No. 286 of 25 July 1998 (also known as Framework Law or *Testo Unico*);
- Modifications to the provisions on Immigration and Asylum, Law No. 189 of 30 July 2002.

Since 1990, a number of laws have been passed, including a framework law in 1998, to which major changes were made in 2002. The law concerning asylum procedure continues to be fragmentary. There is actually no law that specifically regulates asylum. In contrast to the law on immigration and aliens, there has been no comprehensive reform of the asylum law.

The 1990 Aliens Act (Martelli Law) was Italy's first comprehensive immigration legislation, which also set out the basic rules for admission and asylum processing. The subsequent Aliens Act of 1998¹ separated for the first time humanitarian and refugee issues from immigration policy. The new law revealed a toughened stance on illegal immigrants, limited immigrant admission through quotas, shifted attention to integration and took into consideration preparations for the Schengen Agreement. Illegal immigration enforcement has since then been actively pursued and has led to an increased number of deportations.

According to Article 3 of the 1998 Law, the government is responsible for issuing a tri-annual planning document (*documento programmatico*). The first planning document of 1998 contained an analysis of the principal areas of intervention and introduced a three-pillar system to respond to the country's migration needs:

- The integration of migrants residing in Italy, particularly the determination of mechanisms and capacities;
- A system of quotas regulating the entry of migrants;
- Restriction of undocumented immigration.

Quota System

The Italian Quota System is based on the desire to limit the number of incoming third-country nationals. The quota system favours specific countries – especially those with which Italy has bilateral agreements. Precedence is given to neighbouring countries because of cultural affinity. Readmission agreements have also proven to be important, particularly with countries of origin of large numbers of irregular immigrants. Recent preferential quotas have been set for: Albania, Tunisia, Morocco, Egypt, Nigeria, Moldova and Sri Lanka. Argentina is currently seen as a special case of affinity and is favoured with a large quota.²

In September 2002, the Amendment of the Law on Immigration and Asylum, known also as the Bossi-Fini³ Law, came into force.⁴ The new Law No. 189 amends the 1998 Immigration Act and introduces new clauses. Some of the most significant changes include: immigrant quotas, mandatory employer-immigrant contracts, stricter deportation practices, amnesty for illegal immigrants who have worked and lived in the country for over three months, and new provincial immigration offices to help manage immigrant worker and family reunification cases. The law also provides for legalization of two types of irregular immigrants: those employed as domestic workers and home-helpers or as dependent workers. These individuals may qualify for regularization.

Although the Bossi-Fini law came into force in 2002, some of its clauses, especially the ones referring to asylum, are not yet applicable. In order to become completely effective, the Bossi-Fini law must be integrated by some implementing rules, which are not expected to be issued before the end of June 2004.

Constitutional Asylum and Asylum Procedure

In Italy, asylum may be granted according to:

- Article 10 (3) of the Constitution which states that:

Any alien who is prevented in their countries from effectively exercising the democratic freedoms guaranteed by the Italian Constitution shall be entitled to asylum in the territory of the Republic, pursuant to the conditions provided for by law.⁵

This article is applied very rarely.

- The Geneva Convention

At present, asylum is granted by a special Commission, the Central Commission for the Recognition of Refugee Status, if the Geneva Convention criteria are fulfilled and if beneficiaries are considered to be refugees for the purpose of Article 1 of Law No. 39/1990. The procedure, until entry into force of the Bossi-Fini implementation rules, is still regulated by the Aliens Act of 28 February 1990 No. 39. This law does not contain any provisions defining the rights of asylum seekers, but rather focuses on processing procedures.

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The Bossi-Fini Law radically changes the procedures to be followed in order to obtain refugee status. For instance, it introduces the National and the Territorial Commissions, which are entrusted with local asylum processing.

The President of the Council of Ministers, following a joint proposal of the Ministries of Interior and Foreign Affairs, issues a decree to appoint the national commission. The national commission is chaired by the Prefect and composed of a director serving the office of the President of the Council of Ministers, a diplomatic service official, an official of the Department of Civil Liberties and Immigration, a director from the Department of Public Security a member of the UNHCR delegation and a member of the National Association of Italian Municipalities (ANCI).

The national commission is charged, *inter alia*, with the:

- Guidance and coordination of the territorial commissions;
- Training of the members of the territorial commissions;
- Collecting of statistical data.

The function of the territorial commissions is to define more rapidly the status of aliens and to approve asylum or refugee status where applicable.

Thus, the new regulations provide for a decentralized, yet centrally coordinated asylum system. Appellants under the normal determination procedure are granted a residence permit if the court has not rendered its decision within six months.

Expulsion

The Consolidated Act on provisions concerning rules on immigration and aliens status. Law No. 286/1998, as amended by Law No. 189/2002 (Art. 12,13,14,15) stipulates the legal ground for expulsion.

There are two types of expulsion orders issued by the prefect (MOI provincial authority):

- The order to leave Italian territory within 15 days; and
- The order to leave with immediate deportation to the border.

Under the 1998 law, expulsion with immediate deportation to the border can only take place where there are serious grounds relating to disturbance of the public order or security.⁶ The same law applies to Italian nationals considered a threat to the public. Expulsion can be contested within a respite of 60 days. Appeals are lodged at the local court or from the country of origin through the consulate.

The 2002 law provides the legal grounds for accompaniment to the border in all cases except for unwanted migrants who overstay the order to leave. The court has 20 days to decide on the appeal. The appeal does not suspend the expulsion order.

The new immigration law also stipulates immediate repatriation even if the rejectee is in possession of valid travel documents. In case he/she lacks such documentation, the rejectee will be placed in specific centres called Temporary Centres. After the maximum duration of 60 days, the rejectee has to leave the territory of Italy within five days, otherwise he/she is charged with a criminal offence.

According to the new law, those aliens who have been expelled and returned to Italy before the respite of five to ten years has ended, face imprisonment. Traffickers face prison sentences of four to twelve years and a fine of EUR 15,000 per trafficked migrant with more severe punishments if they smuggle more than five migrants into the country.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Welfare (MoW) determines annually the quotas for admission of third-country nationals and funds specific projects in favour of third-country nationals. It includes in its Department for Social and Pension Policy a General Directorate for Immigration, which is responsible for:

- Monitoring immigration, including permits, entries, quotas and regularizations;
- Planning the annual quotas for foreign workers in agriculture and tourism;
- Bilateral agreements on migration;
- Assistance in drafting legislation and consultation with the Parliament.

The MoW provides funds for integration measures to local governments, which distribute these according to their own criteria, and coordinates humanitarian initiatives and social integration policy.

The Ministry of Interior regulates migration in general. Both the police, who issue residence permits and Prefectures implement the regularization; and the local Immigration Councils come under the Ministry of Interior's responsibility.

Territorial Immigration Council

The Territorial Immigration Council (*Consiglio territoriale per l'immigrazione*) is composed of a chair (official of the Prefect office) a representative of the local authorities, chamber of commerce, entrepreneurial worker and aliens associations and is entrusted with the task of monitoring the immigration phenomenon, making proposals, giving guidelines for the action of all involved local parties; and it acts as a bridge between the central and local authorities.

In addition, the territorial Immigration Council is a provincial forum, where immigration-related issues and trends are discussed and coordinated with local integration programmes.

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Forced Removal

Under Italian law, the decision to remove (refoulement and expulsion) is in most cases taken by a single administrative authority, in particular by the Prefecture, Chief of Police and Border Police. They are also responsible for the execution.

Refoulement at the frontier, as applicable, is immediately enforceable and falls under the responsibility of the Border Police. Where there is no immigration authority, a Border Police officer takes decisions on rejection or admission of asylum seekers. When in doubt, the officer refers the case to the Border Police Department at the Ministry of Interior. This usually occurs when further information on the case is required, or in case of stowaways. Often, Border Police officials are not adequately trained in the subject.⁷

Operational Steps for Involuntary Return

The Italian government's commitment to fight illegal immigration includes enforcement of expulsion measures for irregular migrants. Once a negative asylum decision has been made and/or an order of expulsion issued, the rejectee has to leave Italy immediately. The migrant has a respite of 15 days to leave the country on his/her own volition.

Expulsion is in many cases enforced immediately with accompaniment to the frontier by the police. In cases where repatriation is not immediately enforceable, the alien subject to a refusal of entry or expulsion measure is held at the nearest "temporary detention and assistance centre". Rejectees can be detained for a maximum of 60 days. If the maximum duration for detention pending removal is reached, detainees are to be released and must leave the country within five days.

The rejectee may appeal against the removal order, but the right of appeal has no suspensive effect on the removal, except in cases where the prefect explicitly awards it. Where a removal order has been given as an alternative to imprisonment, the right of appeal expires.

In Italy, a person can be subject to removal for administrative reasons, as a security measure, as an alternative sanction to imprisonment and for irregularities related to his/her permanence on the territory. Once the migrant has been expelled, he cannot re-enter Italy for a period of ten years. This sanction, however, can be changed by a specific authorization from the Minister of Interior.

Prosecution and Detention Procedures

Detention and the enforcement of expulsion are imposed by the relevant local police (*Questura*), which are under the responsibility of the Ministry of Interior. Refoulement taking place at the border is executed by the Border Police.

Rejected asylum seekers awaiting removal, whose identity is being investigated and who therefore cannot immediately be deported, are placed in Temporary Holding Centres. These are not prisons, but special facilities run by the Red Cross and the Italian police. They have the right to receive free judicial support, in case they choose to lodge an appeal at the court. The appeal

respite is one week from date of notification. Criminal migrants are detained in prisons pending their removal, or deported immediately if possible.

Expelled migrants who stay or re-enter Italian territory after an administrative order to leave face a sentence of six months and up to one year. In the case of a judicially ordered expulsion, migrants who violate the re-entry ban are sanctioned with a penalty of one to four years' imprisonment.⁸ Migrants expelled from Italy receive a stamp in their passport, which should prevent them from re-entering Italy, usually for a period of ten years.

Framework Agreements with Countries of Origin or Transit

Italy's use of bilateral agreements with major immigrant-sending countries has also been instrumental in promoting the immigration dialogue between Italy and the countries of origin, and helped to tackle the problem of illegal migration. Governments are rewarded for implementing policies to prevent illegal migration to Italy, and there is some evidence that this form of managed migration has reduced the flow of irregular migration, especially from Albania.

Italy has concluded readmission agreements with all its neighbouring countries. Readmission agreements were also concluded with countries of origin from which high numbers of clandestine immigrants leave for the Italian shores.

Under its quota system, Italy recently established preferential quotas for Albania, Argentina, Morocco, Egypt, Nigeria, Moldova, Sri Lanka and Tunisia. Further readmission agreements have been signed with Algeria, Austria, Bulgaria, Croatia, Estonia, France, Yugoslavia, Georgia, Greece, Hungary, Latvia, Lithuania, Macedonia, Romania, Slovakia, Slovenia, Spain and Switzerland.

1.4 STATISTICS ON INVOLUNTARY RETURN

Since 1986, Italy has responded to illegal immigration with several regularization schemes. This resulted *de facto* in a decrease of asylum applications.

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Expulsions
1997	5,000
1998	54,000
1999	65,000
2000	Figures not available
2001	58,000

1.5 BEST PRACTICES AND LESSONS LEARNED

There is no information available regarding the assessment or evaluation of forced return practices. However, the Italian position towards forced return has been to call on other EU Member States for equal burden-sharing where possible. Repatriation costs are considered very high, in terms of police resources and logistics. The latest Italian position is to advocate for the creation of EU ad hoc funds for forced and voluntary returns.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Italian government has implemented a number of measures to tackle its sizable population of undocumented migrants, although regularization appears to be the most frequently used means. In the late 1980s, it implemented its first amnesty programme, which legalized some 118,000 irregular migrants. Since then, four more regularization programmes have been conducted in 1986, 1990, 1995, 1998 and 2000. In 1990, the passing of one of its most comprehensive immigration laws, the Martelli Law, highlighted some of its growing immigration concerns and sought assistance at EU level in sharing the burden of patrolling its borders. New immigration laws in 1998, and various amendments in 2002, introduced drastic measures to deal with illegal immigration, such as separating humanitarian and refugee issues from immigration policy, limiting admissions through the use of quotas, and increased enforcement mechanisms which have resulted in more deportations.

Previous initiatives to promote voluntary return have been primarily aimed at encouraging the return of irregular labour migrants, rather than unsuccessful asylum seekers, through the preservation of worker's rights to pension and social security benefits in the case of repatriation.

Such provisions are usually included in bilateral agreements or prescribed by law. Under Article 22(9) of the 1998 Framework Law, third-country migrant workers who return to their country of origin are entitled to a rebate of their social contributions and an additional 5 per cent in interest. Seasonal workers who actually leave Italy after the expiry of their seasonal permit will also be given preferential treatment in future applications for permits.

Apart from regularization schemes, quotas and bilateral agreements as some means of controlling irregular migration, the Italian government has recently made efforts to promote the voluntary return of unauthorized residents through assisted voluntary return programmes. Although it has no comprehensive legislation on such returns, existing immigration laws include provisions for some assisted voluntary return, e.g. Law 286 (Immigration Act 1998), as amended by Law 189 (Immigration Act 2002). Article 32 of Law 198 provides that the Central Service for Asylum Seekers and Refugees, established by the same Act, may implement some return projects through IOM or other national organizations.

The main state-funded voluntary return programme has been the National Asylum Programme, which was established in 2001 by the Ministry of Interior, the National Association of Italian Municipalities (ANCI) and UNHCR, with funding from the European Refugee Fund, to provide a systematic and comprehensive structure to support reception, integration and voluntary return. The assisted voluntary return programme under NAP is implemented by IOM, which provides advice on returns and facilitates the return of asylum seekers, persons with refugee status and victims of trafficking. Under current Italian legislation, such programmes are not open to other irregular migrants.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Returns

IOM is the leading agency entrusted by the Italian government with the implementation of return programmes for asylum seekers, refugees and people under humanitarian protection, in close cooperation with ANCI, the network of Italian Municipalities. The return programme for victims of trafficking (especially women and children) is managed by IOM in cooperation with the Ministry of Interior and a number of counter-trafficking organization.

A number of local authorities and NGOs also operate some return programmes, particularly relating to unaccompanied minors.

Operational Steps for Voluntary Returns

National Asylum Programme (NAP) – Measures for Voluntary Return

TABLE 2
NATIONAL ASYLUM PROGRAMME (NAP)

Eligible Beneficiaries:	<ul style="list-style-type: none"> • Those who have been denied refugee status or any other form of protection as foreseen by Italian law; • Those who have given up the request for refugee status; • Those whose grant for humanitarian protection has expired and longer have the right to stay in Italy.
Funding Source:	Ministry of Interior/European Refugees Fund
Movements to Date (end November 2003):	Since the programme's launch in June 2001, 240 persons have been assisted.

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with partner agencies, including MoI, National Association of Italian Municipalities, UNHCR and other specialized agencies.

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- Transport assistance: departure assistance, documents and formalities, transit and reception assistance as necessary.
- Reintegration assistance: pre-departure grant amounting to EUR 200 per person and a post-arrival reintegration grant amounting to EUR 1,450 per case/family.

A new agreement is due to be signed shortly between IOM and the Italian government for the continuation of assisted returns and reintegration activities.

Through a separate programme, IOM Rome is also assisting the voluntary return and reintegration of women and minors, victims of trafficking, through counselling, legal and medical services, education and/or labour reinsertion assistance.

Framework Agreements with Countries of Origin or Transit

As noted in the involuntary migration section, bilateral and readmission agreements have been successfully employed by the Italian government as a means of managing immigration and facilitating the return of illegally resident aliens.

2.3 STATISTICS ON VOLUNTARY RETURN

Statistics on voluntary returns are not available at present.

2.4 BEST PRACTICES AND LESSONS LEARNED

Evaluation of the Assisted Voluntary Return Programme

Following the establishment of the assisted returns programme in 2001, IOM was requested to carry out research to identify expectations and needs of refugees and asylum seekers. The study also included an evaluation of the psychological aspects of refugees in reception centres with reference to their personal and cultural background and migratory expectations. The outcome of this analysis was aimed at providing adequate training and counselling sessions to officials at reception centres and civil servants as well as operational feedback to all governmental actors involved.

An internal and external evaluation was recently conducted of the IOM Rome-implemented project providing “Assistance for the Voluntary Return and Reintegration of Displaced Persons from the Balkans who have been Granted Temporary Protection in Italy”.

The main findings included the following:

Effectiveness of the Return Mechanism

The decision of the individual to return was not related to the project’s disbursement of financial assistance towards travel or reintegration or other associated support, but was rather influenced by information campaigns and counselling activities, which highlighted the possibility of return.

Sustainability of Return

- Among others, sustainable return programmes depended on long-term reintegration activities, the approach of the individuals concern and economic difficulties and other instabilities in the country of origin e.g. continued ethnic conflicts;
- The most effective tool to achieve durable reintegration proved to professional training of selected returnees;
- Social reconstruction and enhancement of civil society are important for creating a conciliatory and peaceful environment conducive to return.

Lessons Learned and Best Practices

- The development of an information campaign throughout reception centres to promote assisted voluntary return, with emphasis on dignified and secure returns;
- The elaboration, when necessary, of updated information on the conditions in the country of origin, including security/risk zones;
- The designing of training modules for civil servants, social workers and cultural mediators (local administrations, reception centres, Prefecture, Police offices, NGOs, associations, etc.) on the assisted voluntary return programme;
- The importance of providing reintegration grants and monitoring the effectiveness of reintegration schemes after arrival in close cooperation with IOM and local representatives in the country of origin.

NOTES

1. Testo Unico, 286/98, published in suppl. 139/L to the Official Journal 191 on 18 August 1998, Law No. 286, 25 July 1998.
 2. Many Argentinians are of Italian ancestry.
 3. Named after the two centre-right party leaders who proposed the Act.
 4. The section Disposition on the asylum right (Articles 31 and 32) came into force according to Article 34. This section will come into force at the same time as the introduction of the regulation on detention of asylum seekers in identification centres or temporary residence centres.
 5. Decree of the President of the Republic No. 136 of 15 May 1990, *Regulations implementing Article 1 and 2 of Legislative Decree No. 416 of 30 December 1989, converted with amendments, into Law No. 39 of 28 February 1990, regarding the recognition of refugee status* (in *Official Journal* of 1990, No. 132).
 6. Art. 9, paragraph 5, Law 286/98.
 7. ECRE Country report.
 8. A competent judge in a criminal trial always adopts the judicial provision of expulsion, whereas administrative expulsions are issued by the Prefect.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Italy signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Italy also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

LATVIA

1. INVOLUNTARY RETURN

1.1 POLICY

Since its independence, Latvia, like the other Baltic States, has experienced an increase in the number of migrants entering its territory illegally. The country's location, close to the Nordic countries, coupled with an ineffective border monitoring system, has contributed to this trend significantly.

Many migrants crossing the Latvian border illegally en route to Western Europe, including asylum seekers, have found themselves stranded or apprehended in Latvia, which is considered by EU Member States to be a safe third country. Overall, the numbers are relatively low, with up to 400 irregular immigrants a year, and no more than 102 asylum applications in five years.

The absence of legal provisions, experience and expertise in migration management, as well as the difficulties in removing asylum seekers and illegally entered migrants, have posed a major problem for Latvia. With the help of the Nordic countries, and expert organizations like IOM, as well as the EU PHARE programme, which have all contributed to building Latvia's migration management capacities, the country seems to be overcoming the major problems generally encountered by receiving countries and to harmonize its legislation and practice with international human rights standards.

Latvian immigration policy and forced return measures are, as in all three Baltic States, significantly influenced by the EU *acquis* standards. In order to comply with these, a new Asylum Law has been adopted, which came into force in 2002 and introduced temporary protection and alternative status for persons in need of protection.

A new Immigration Law followed in 2002, and has been in force since 2003. The purpose of the new law is:

To determine the procedures for the entry, residence, transit, exit and detention of aliens, as well as the procedures by which aliens are held under guard in the Republic of Latvia and expelled from it in order to ensure that implementation of migration policy conforms with the norms of international law and the State interests of Latvia.¹

The new Immigration Law addresses the issues of (a) maximum period of detention in Latvian legislation and (b) longer periods of detention of asylum seekers – a problem that has been contested by human rights organizations in the past. Whether the legislation will lead to improved practice is a question to be answered over time.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

In Latvia, forced removal is mainly regulated by the following laws:²

- The Asylum Law, as adopted on 7 March 2002 and in force as of 1 September 2002;
- The Immigration Law, as adopted on 31 October 2002 and in force since 1 May 2003;
- Government Regulation No. 175 on Forced Expulsion Order of Aliens and Stateless Persons of 15 March 2002;
- Government Regulation No. 310 on the Order how Persons Cross the Border of the Republic of Latvia of 10 July 2002.

There are two more relevant government regulations (available in Latvian only): Regulation No. 212, dated 29 April 2003 – order of forced expulsion of foreigners, their travel documents and issuance thereof, and Regulation No. 29, dated 20 January 2003 – order on how a person, whose asylum application has been rejected, should be expelled.

Expulsion

Section 41 of the Immigration Law stipulates that foreigners (including asylum seekers) can be expelled from the territory of Latvia through the issuance of an expulsion order, which instructs such persons to leave the country voluntarily within seven days of receipt of the order. Where foreigners do not comply with this order, they are removed forcibly. The order may be appealed at a court within seven days of the date of receipt; and the expulsion is suspended for the time of the appeal process.

According to Latvian legislation, the expulsion of an alien is an administrative act and may be undertaken by the Head of the Office of Citizenship and Migration Affairs or an official authorized by him/her. It can also stipulate a time period during which the expelled migrant is banned from re-entry. The refusal of entry and expulsion order at the border falls under the competence of the Border Guard. The decision on expulsion is taken by OCMA, but executed by the Immigration unit of the Border Guard. While still in the border zone, the Border Guard can take a decision itself.

The Immigration Law also foresees under Article 44:

The Office [of Citizenship and Migration Affairs] in collaboration with the State Border Guard and other public institutions shall control whether an alien who has been issued an expulsion order has voluntarily departed from the Republic of Latvia.

Detention

Latvian Asylum Law refers to “accommodation” as the initial housing of asylum seekers on the premises of the State Police or the State Border Guard, while their application is examined by the Border Guard, and their stay in the reception centres, in order to distinguish it from the term

“detention” as used in the Criminal Code and the Immigration Law. (The Criminal Code deals mainly with provisions re pre-trial detention.)

According to Section 14 of the Asylum Law, asylum seekers applying at the border may be accommodated for an initial examination of their identity for 72 hours at specific facilities at the border checkpoint or at police stations. The same applies for asylum seekers filing a claim for protection in-country (Section 17 of the same Act). Where their asylum claim is not classified as manifestly unfounded, asylum seekers are transferred to a reception centre.

The detention of asylum seekers must be approved by a court (Section 14, Asylum Act) and is only possible if:

- The identity of the asylum seeker has not been ascertained within 72 hours;
- There is a well founded suspicion that the asylum seeker is attempting to misuse the asylum procedure for other purposes;
- It is deemed that the application for asylum is manifestly unfounded; or
- The asylum seeker poses a threat to the public order and national security.

Detainees or guarded foreigners shall be accommodated in specially equipped premises and segregated from criminal convicts.

Section 51 of the Immigration Law stipulates that the State Border Guard may detain a foreigner under the following circumstances:

- If he/she has illegally crossed the state border of the Republic of Latvia or otherwise violated the procedures prescribed by regulatory enactments for the entry and residence of aliens in the Republic of Latvia;
- If the competent state authorities,³ including the State Border Guard have reason to believe that an alien is a threat to national security or public order and safety; and
- In order to implement a decision regarding the forcible expulsion of an alien from the Republic of Latvia.

Cases listed under this provision are subject to removal from the territory of Latvia. Section 54 of the Immigration Law specifically allows for the detention of foreigners described under Section 51 (1) to (3), pending their forcible expulsion, for a period of up to ten days on the order of the Border Guard.

Detention exceeding this period is subject to a court decision, which may order a detention of up to two months. If the expulsion of the persons concerned is still not possible, the court may extend the detention period for another six months. The maximum period of detention may not exceed a total of 20 months. (In the past, there were several persons staying two, three and even more years – now there is a period after which some persons are released from detention, in order to settle their status (legalize in the country). In 2003, IOM Riga assisted a resident of Estonia, who was detained for nine months, because the Estonians did not accept her (she was not a citizen of Estonia, but she was born there, and had a mother and son residing there!).

Return Migration: Policies and Practices

In compliance with Section 53 of the Immigration Law, migrants entering illegally may be detained by the State Police for three hours until they are handed over to the Border Guard, who is the competent authority for such persons.

In practice, any foreigner entering Latvia or attempting to enter the territory of Latvia without valid travel documents and a visa, if required, is considered to be a migrant with no legal grounds for stay in Latvia. The Latvian State Border Guard is an investigating body, which may decide whether to forward an asylum claim for further examination to the Office of Citizenship and Migration, or order expulsion.

Yet, the Immigration Law provides under Section 60:

If an official of the State Border Guard, when taking a decision regarding refusal of an alien to enter the Republic of Latvia, is unable to return him or her immediately back to the country he or she has arrived from, the alien referred to shall be kept under guard until it is possible to do this, but not longer than for 48 hours.⁴

In order to meet accusations of various human rights organizations that Border Guards generally refuse entry, as well as the provisions of the EU *acquis*, Latvia introduced in its new Immigration Law under Section 52 the following provision:

In case of detention the responsible State Border Guard or State Police official has to produce a detention report, which contains all details of the detention case and is to be signed by the detainee.

Illegal Entry

According to Section 284 of the Latvian Criminal Code, illegal entry into the Republic of Latvia is explicitly considered to be a criminal offence:

For a person who undertakes an illegal crossing of a state border without a travel document or authorization from the appropriate institution, the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or a fine not exceeding sixty times the minimum monthly wage.⁵

In case of repeated offences pertaining to the same regulation, the offender may be deprived of his/her liberty and imprisoned for a period of up to five years, or levied a fine of up to 120 times the minimum monthly wage.

The Immigration Law also stipulates in regard to forcible expulsion: in the case of an alien, who has illegally crossed the state border of the Republic of Latvia, the Chief of the State Border Guard or an official authorized by him or her shall be entitled to take a decision within a period of ten days regarding the forcible expulsion of the alien.

Comparable to the French legislation, the Latvian law also imposes “double penalization”. According to Article 43 of the Criminal Code, a foreigner may be sentenced for a criminal offence and be additionally expelled, after he/she has served the sentence.

Trafficking in human beings is punished in Latvia with a penalty of up to ten years and the confiscation of property for the illegal transfer of persons over the border. Latvia has ratified the UN Protocol against trafficking. Assistance to trafficking victims is not specified in legislation, but is often rendered as witness assistance. In reality, almost no assistance to trafficked victims is available, or is generally provided only by IOM and some NGOs.

Carrier Liability

Under the new Immigration Law (Section 21), carriers bringing in passengers, who have no right to enter or transit Latvia, may be requested by an official of the State Border Guard to return the aliens concerned to the country of origin or to a third country.

Expenses related to the detention, custody and expulsion of an alien are to be covered by the carrier. Procedures for determining and recovering such expenses shall be determined by the Cabinet (Section 21 (3)).

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Head of the Department of Citizenship and Migration Affairs or the Head of the local office and the Chief of the Territorial Board of the State Border Guard or his/her Deputy are entitled to decide on the forced expulsion of a foreigner.

Forcible removals are executed by the Border Guard, as stated in the Immigration Law (Section 50(2)) and in compliance with the procedures for forcible expulsion, as determined by the Latvian Cabinet.

The Refugee Affairs Department, a unit of the Office of Citizenship and Migration Affairs, and falling under the competence of the Ministry of Interior, grants or refuses asylum applications in the first instance. Rejections may be appealed before the Refugee Appeals Council, which is under the competence of the Ministry of Justice.

Regarding the identification and provision of missing travel documents, the Immigration Police, the Border Guard, the Office of Citizenship and Migration Affairs, the Consular Department of the Ministry of Foreign Affairs and the National Central Bureau of Interpol all cooperate with the authorities in the country of origin.

(Most CIS countries are considered to be rather slow in confirming the identity of their nationals and in issuing a return certificate, where travel documents are missing. Most of these countries generally need around four to six months for this. The Ukraine and Uzbekistan have even longer processing times). In some cases, Ukrainian migrants have obtained a registration confirmation

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from the Ukrainian authorities, but no valid travel documents were issued. Thus, the Ukrainian authorities did not allow for return to Ukraine. In such cases it may happen, that expelled migrants have to wait for long periods, before they are accepted for return, as is the case with one Ukrainian who has been waiting for over a year, and has still not been removed).

Operational Steps for Involuntary Return

The Immigration Law provides for control of involuntary exit of migrants by the Office of Citizenship and Migration Affairs and the Border Guard, where their claim for protection has failed and they have been issued an expulsion order. Asylum seekers are generally accommodated in reception centres, but expelled asylum seekers, who fail to leave in seven days, may be placed under custody, which means in practice, that failed asylum seekers are *de facto* under custody all the time and thus the removal is executed as soon as possible.

The exact time in which the execution of forced removal is possible depends largely on the availability of travel documents. If the rejectee avails of valid travel documents and has not been subject to criminal prosecution, removal is usually possible within a week.

The removal of foreigners lacking travel documents is more difficult, and the execution of removal may take several months (or even years, as happened in the past), depending on the willingness and cooperation of the consulate of the country of origin.

The new Asylum Law of 2002 does not specifically address this problem, although it introduces the possibility to apply for temporary protection and alternative status in accordance with generally accepted international principles of human rights.

In order to meet the time-consuming and costly problem, which Latvia shares with other receiving countries presented in the study, Latvian Immigration Law provides under Section 45 and 49 for the possibility to issue a Latvian document for exit, where identity documents are missing.

Foreigners are generally expelled in cooperation with the Russian International Airline AEROFLOT, as it is the airline that assures Latvia the cheapest fares. Of all airlines, this is most often used, since it has the necessary connections to relevant cities in the CIS. Even flights to Pakistan, and China stop over in Moscow. There are about seven other carriers (Lufthansa, SAS, Finnair, Lot, CSA, Air Baltic, etc), but the problem is to avoid transit via airports in the EU, as carriers will not accept risk passengers on such routes. Most expulsions take place by train or even cars and buses.

Deportation orders are prescribed in the two Government regulations mentioned above and available only in Latvian. For rejected asylum seekers, the decision can be taken in a single day by OCMA. A person has to leave in five days after receiving this decision. If that does not happen, then OCMA can take the decision of forced deportation in a single day. This decision can be appealed, but the person has to be kept in detention.

Escorts

Only violent rejectees and migrants, who have served a sentence of imprisonment and are expelled afterwards due to the double penalization, are escorted to the country of origin by the Immigration police, which is now a Border Guard unit.

Chartered Flights

Latvia has no need of chartered flights – the groups of persons to be expelled are rarely larger than ten, and never more than 20.

Framework Agreements with Countries of Origin or Transit

Latvia has signed Readmission Agreements with 23 countries: Austria, Belgium, Baltic countries – Estonia and Lithuania, Benelux countries, Denmark, France, Greece, Croatia, Iceland, Italy, Liechtenstein, Norway, Portugal, Slovenia, Finland, Spain, Switzerland, Ukraine, Hungary, Germany and Sweden.

Generally, the agreements concluded with the EU countries and Lithuania are implemented well, whereas Estonia has in the past had some difficulties implementing the agreement. Usually the agreements foresee that readmission may be requested during a period from six to 12 months after illegal entry or rejection. Some of the agreements do not provide for time limits.

Most illegally crossing migrants enter Latvia via Russia or Belarus. Latvia is willing to sign readmission agreements with both Russia and Belarus, as with other Member States of the Commonwealth of Independent States. There are no return agreements signed with these countries. Russia signalled that it is ready to sign such an agreement with Latvia, once readmission agreements have been signed with the countries on Russia's southern border.

To date, a special agreement has been concluded with the Embassy of the Russian Federation concerning the issue of transit visas for expelled foreigners and multiple visas for Immigration Police officers who escort deportees.

Latvia has not concluded specific transit agreements aiming at expulsion, although several readmission agreements also contain transit provisions for the purpose of expulsion.

Costs

The Latvian state budget is limited in regard to expenditures on expulsions. Last year, Latvia spent around US\$ 50,000, only for tickets and escorts.

Detention

Asylum seekers are generally accommodated during the initial examination of their claims either in the facilities of border control points or police cells for a period of up to 72 hours, or if approved by a court for a longer period. If not refused entry on grounds of manifestly unfounded claims or reasons of state security and public order, they are transferred to the nearest reception centre.

Failed asylum seekers, who lose their legal status and do not leave within seven days after rejection of their application, are regarded as illegal migrants under Latvian legislation, and thus detained. Pending their deportation, rejectees are moved from the Mucenieki reception centre to the closed temporary detention centre for illegal migrants in Olaine, some 30 kilometres south from Riga. The Mucenieki reception centre, 20 kilometres east of Riga, is the only asylum centre with a capacity for 100-150 persons, but rarely has more than a dozen asylum seekers residing there. MOI also use the premises for repatriants, police students and women in crisis. IOM also occasionally pays for shelter for returned trafficked victims.

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Asylum rejectees are also detained in specially equipped state police premises, separately from foreigners who are suspected or convicted of criminal offences. There are isolation wards situated within police premises all over the country.

The conditions of detention of asylum seekers are not comparable with the conditions of pre-trial detention or detention pending deportation of criminal foreigners. Yet, the Committee Against Torture, which criticized the generally poor detention conditions in Latvia, expressed concerns regarding the long periods that asylum seekers may spend in detention after rejection of their asylum request.⁶

Prosecution

Fingerprints are taken of illegal migrants and asylum seekers either by the police, the Border Guard or the Centre for temporary detention of illegal migrants in Olaine. The fingerprints are tested and stored centrally in the Latvian State Police Forensic Laboratory LATAFIS, which comes under the competence of the Ministry of Interior. Fingerprints pertaining to asylum seekers are not kept in archives.

Illegal entry is, in practice, not always punished as the Criminal Code stipulates it under Article 248. According to officials of the Immigration Department of the Border Guards, each case is decided individually and taking into account the gravity of the criminal offence.

Stamps

Expulsion orders and entry bans are sometimes stamped into passports of expelled foreigners. According to the Immigration Law, expelled migrants are included on a special, computerized list of aliens prohibited from entering the Republic of Latvia. Since the data of expelled migrants is electronically available, stamps are hardly used.

Expelled persons on this list are prohibited, according to the law, from entering Latvia for a period of one to three years, or five years, or for an indefinite time. The length of the entry ban depends on the seriousness of the offence. In serious cases, the ban is five years.

In the case of minor offences, which are more common, or where the foreigner has relatives or other social ties in Latvia, the authorities impose bans of one to two years, or sometimes even shorter prohibitions of re-entry. There have also been occasions, where no entry ban has been imposed, yet where there was a case to do so.

Moreover, foreigners who have been forcibly removed from Latvia, or the responsible legal person guaranteeing the foreigner's stay in Latvia, have to repay the state of Latvia the expenses incurred by the deportation, before the foreigner may re-enter Latvia. This provision (Section 68) does not apply if the legal person is a relative of first degree and spouse to the expelled foreigner. In these cases, removal expenses are covered by the state.

Social Benefits

Section 28 of the Asylum Law states in regard to the provision of social benefits:

A refugee, who does not have any other source of income will be granted for the first 12 months after he has been granted status of a recognized refugee an allowance to cover his living expenses, as well as expenses related to learning the Latvian language.

Those migrants who have been granted an alternative status shall receive an allowance for 12 months if granted a permanent residence title, and for nine months if granted a temporary residence permit (Section 39 of the Asylum Law).

Asylum seekers, who have been rejected and are awaiting their expulsion in the Mucenieki Asylum Seekers' Reception Centre, receive a daily allowance of LS 1.50 (US\$ 3), as well as emergency medical treatment. Due to the problem of lacking or missing travel documents, failed asylum seekers in Latvia face long periods of detention.

Migrants with illegal status are provided with basic social benefits and do not receive any allowance. At the illegal immigrants centre they are provided with food rations (amounting approximately to US\$ 2 per day). They are accommodated in rooms, which they share with three to five other persons. They have limited access to a telephone and limited possibilities to receive visits from relatives or other persons. Medical aid is provided for emergency treatments.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Number of Issued Expulsion Orders				
	2000	2001	2002	2003
Number of Persons	396	447	423	n.a.
Number of Migrants Rejected at the Border				
	2000	2001	2002	2003
Number of Persons	180	238	n.a.	n.a.
Number of Illegal Migrants Caught				
	2000	2001	2002	2003
Number of Persons	269	271	n.a.	n.a.

In 2002, some 255 foreigners were expelled from Latvia and in 2003, 312 foreigners. Precise statistics by country are not available, but almost 90 per cent of returns take place to the former USSR countries: about 30 per cent to Russia, some 20 per cent to Ukraine, 20 per cent to Lithuania, 20 per cent to other CIS countries and the remaining 10 per cent to other countries, such as Pakistan (ten cases), Turkey, and Spain (one case).

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Since the mid-1990s, the Latvian authorities have provided assistance to irregular and stranded migrants wishing to return to their home countries, particularly to the Russian Federation. Assisted voluntary return programmes were initially developed in response to regular requests to the Russian Federal Migration Service in Riga for financial assistance for returns to Russia. Following consultations with the Latvian authorities, one of the first programmes for assisted voluntary return was initiated in 1997 to assist Latvian residents of Russian origin to repatriate to Russia.

Similar programmes were subsequently operated in the following years, including humanitarian assistance to non-Latvian citizens of Russian descent who chose to return to Russia within the framework of migration agreements between the two countries. The agreement on the Regulation of Migration Process and Protection of Migrants Rights between Russia and Latvia, for instance, enabled the return of approximately 2,000 Russians to their home country between October 1998 and September 1999.

Recent assisted return programmes have been expanded to provide financial assistance to migrants of any nationality who wish to return to their country of origin. A number of assisted voluntary return programmes, such as the Voluntary Return of Stranded Migrants in Transit programme, have been developed through regional cooperation with Estonia and Lithuania.

Between 1998 and 2001 for instance, over 600 migrants in these three countries were assisted to return to their countries of origin, about 200 of whom were returned from Latvia. The programme had its last cases in early 2002, after which no funding was available. MOI urged IOM to attract some funding in order to carry out voluntary returns, to economize on the scarce budget allocations for expulsion.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

IOM works through its regional office in Helsinki, and with local NGOs, international organizations and diplomatic missions to facilitate assisted voluntary returns. In the past, for example, the Sri Lankan Embassy and UNCHR provided assistance to enable the return of stranded Sri Lankan migrants in Latvia.

The Latvian branch of the organization Caritas also assists IOM in conducting interviews with returnees to verify the voluntary nature of the return and to guarantee the safety of their return.

Operational Steps for Voluntary Return

Voluntary Return of Migrants Stranded in Baltic Countries

Programme Services

- Pre-departure counselling;
- Verification of the voluntary nature of return;
- Information on the possibilities for safe returns in cooperation with IOM missions in receiving countries;
- Assistance with travel documentation;
- Arrangements for transit assistance, if applicable;
- Reintegration assistance;
- Provision of escorts, including specialized medical escort for sick and vulnerable migrants;
- Coordination between national authorities, international organizations and NGOs.

The amount of reintegration assistance granted to each migrant is US\$ 50 per adult and US\$ 25 for persons under the age of 18. This allowance may be increased to US\$ 70 where necessary. In practice it is almost always US\$ 50, where some vulnerable cases with children have received US\$ 100.

IOM endeavours to facilitate returns as soon as possible in order to meet the demands of the migrants and provide dignified returns. However, the process is dependent on other factors such as the existing caseload and the availability of travel documents.

All returns are carried out on regular flights and often require transit through a third country, usually Russia (Moscow). For convenience, migrants are returned in groups of five to ten, with escort services provided by IOM, where possible. Where group returns are not possible, migrants return alone, with transit assistance from IOM offices in Moscow, Kiev, Prague and Vienna.

Framework Agreements with Countries of Origin and Transit

See section on involuntary return.

2.3 STATISTICS ON VOLUNTARY RETURN

Between 15 October 1998 and 31 December 2001, 208 persons returned voluntarily under the framework of the IOM operated project. The principal countries of return included Russia, Armenia, Azerbaijan, Georgia, China, Ukraine, Pakistan and Sri Lanka. Small numbers of returns (involving less than ten people) were also carried out, among others, to Viet Nam, Kazakhstan, Belarus, Nigeria, Angola, Moldova and Morocco.

The majority of returnees were male, usually aged under 30, due to the small proportion of women and children held in the reception centres in Latvia.

2.4 BEST PRACTICES AND LESSONS LEARNED

The activities with IOM have enhanced the capacity of Latvian migration officials and NGOs to better manage the process of irregular migration, especially in regard to voluntary return programmes.

NOTES

1. Section 2 of the Immigration Law. Translation into English of the Immigration Law provided by the *Tulko anas un terminolo#ijas centrs* (Translation and Terminology Centre), 2003.
 2. http://www.pmlp.gov.lv/?_p=27&menu__id=23.
 3. This includes, the Director of the Constitution Protection Bureau, the Chief of the State Police or Security Police. In this case, the Border Guard shall be informed in writing.
 4. Translation into English of the Immigration Law by the *Tulko anas un terminolo#ijas centrs* (Translation and Terminology Centre), 2003.
 5. IOM, Immigration Law and Human Rights in the Baltic States, p. 76.
 6. Committee Against Torture, Thirty-first session 10-21 November 2003: Unedited Version of Consideration of Reports Submitted by States Parties Under Article 19 of the Convention; CAT/C/CR/31/3 (Future), 20 November, www.ohchr.org/tbru/cat/latvia.pdf.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Latvia signed the UN Convention Against Transnational Organized Crime on 13 December 2000, and ratified the Convention on 7 December 2001. It signed the Trafficking Protocol on 10 December 2002, but has not yet ratified the Protocol. Latvia also signed the Smuggling Protocol on 10 December 2002, and ratified this Protocol on 23 April 2003.

LITHUANIA

1. INVOLUNTARY RETURN

1.1 POLICY

After the collapse of the Soviet regime, Lithuania became a transit zone and, increasingly, a target country for many migrants crossing illegally from less developed countries of origin, bound westwards for the traditional receiving countries. Lithuania is on a main land route from the CIS to Germany, due to its borders with Belarus and Poland, with the majority of migrants transiting from Asia.

In the past, Lithuania had a higher rate of trafficking than the other Baltic States. In the years before 1997, the number of stranded migrants increased steadily, creating a new problem for Lithuania, which lacked experience in managing such migration flows.¹ Between 1993 and 1997, for example, the number of irregular migrants apprehended by the authorities increased more than tenfold from 119 to 1,382. In 1997, a Foreigners' Registration Centre was established in Pabrade (until that time irregular migrants apprehended had been held under arrest at local municipality police offices). During the summer and autumn of 1997, there was a permanent turnover of some 800 migrants residing in the Foreigners' Registration Centre.

With financial assistance and foreign expertise, mainly under the EU PHARE Horizontal Programme, and with the help of IOM and other international organizations, the once porous frontiers have turned into effectively monitored and guarded borders, preventing entry of uninvited migrants. The time of large-scale smuggling of big groups of migrants (up to 100 persons), as experienced some years ago, seems to have passed.

The flow of illegal migrants appears to have diminished due to stricter legislation for illegal transportation of persons, tighter control on state borders and successful action by the police.²

Lithuania is also gradually changing from a transit country for illegal migrants to a host country of asylum seekers and irregular migrants. In 2002, however, it was still a country of origin, transit and destination for trafficked persons.

Lithuania has a relatively small population, which during the Soviet era had suffered deportations and oppression by the Russian minority, and today is still struggling with poverty and sluggish growth. In these circumstances, asylum and immigration tend not to be a high priority for the government, unless it is relevant for the alignment of legislation to EU standards.

Based on the fear of being overwhelmed with asylum seekers after accession, and the fact that Lithuania will have an external border with non-EU countries, the general perception is that

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immigration laws should be more rigorous. This is driving the enforcement of forced return provisions laid down in Lithuanian legislation.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The legal acts regulating the management of irregular migration in Lithuania are:

- Geneva Convention of 1951 and the New York Protocol of 1967, to which Lithuania became party in 1997;
- The Law on the Legal Status of Foreigners of 17 December 1998 (since 1 July 1999 in force), as last amended on 12 June 2001;
- The Law on the Implementation of the Law on the Legal Status of Foreigners, entered into force on 31 December 1998;
- The Law on Refugee Status adopted on 4 July 1995, and as amended on 15 January 2002;
- Government of the Republic of Lithuania Resolution No. 228 of 28 February 2000 On approving the procedure for arrival of aliens in the Republic of Lithuania, residence in the Republic, crossing it by transit and departure from the Republic of Lithuania;
- Government of the Republic of Lithuania Resolution No. 335 On approving the implementation procedure for decisions ordering departure or expulsion of aliens from the Republic of Lithuania;
- A new immigration law, which will include both laws, currently under preparation and planned to come into force at the time of Lithuania's accession to the EU in May 2004;
- The Order of the Director of the Migration Department under the Ministry of Internal Affairs regarding adoption and implementation of decisions/orders of departure of foreign nationals or their expulsion from the Republic of Lithuania;
- The Criminal Code of 1996;
- Lithuania is not party to the Dublin Convention.

Expulsion

An alien may be expelled from the Republic of Lithuania on the following grounds:

- He/she has failed to comply with the requirement to depart from the Republic of Lithuania within a specified time period;
- He/she has illegally entered the Republic of Lithuania or illegally resides therein.

Grounds for refusing entry into the territory include travelling with false or no travel documents, the lack of sufficient funds for stay or return to the country of origin, a prohibition on entry into the territory or where the individual has committed crimes against humanity, or genocide. Illegal entrants also include individuals who have trafficked irregular migrants through the territory of Lithuania, and irregular migrants who have been previously held at the Pabrade Registration Centre for illegal entry.

Illegal residence includes those who entered the territory illegally, those who arrived legally, but have failed to comply with the conditions of entry stated in their visa, and those who have lived in Lithuania since the Soviet era and have failed to regularize their residence status by becoming citizens of Lithuania.

Migrants expelled on these grounds are requested to leave voluntarily within ten days. After that time, a decision on deportation is taken by the Ministry of Interior (Migration Department) and issued by a Court.

According to Article 20 of the Law on the Amendment of the Law on Refugee Status in the Republic of Lithuania, adopted on 4 July 1995 (amended 29 June 2000):

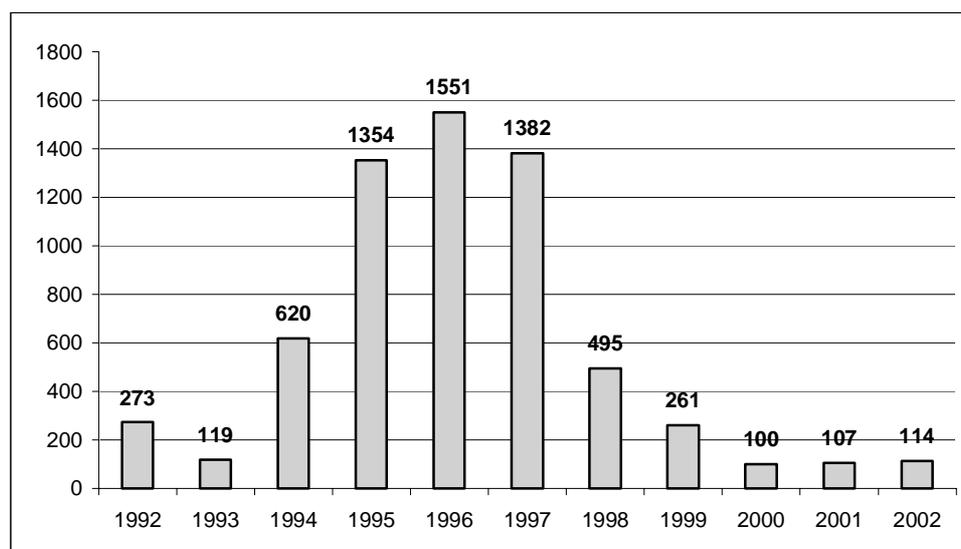
Aliens who cannot enjoy temporary territorial asylum or have not been granted refugee status shall be expelled from the Republic of Lithuania under the procedure established by the Republic of Lithuania Law on The Legal Status of Aliens of the Republic of Lithuania.

Certain factors are considered in taking the decision to expel an individual from the country, the most common being the migrant's time of lawful residence in the country, his/her social relations with the society and country, the consequences of the removal for other family members who reside legally in Lithuania.

Administrative and judicial expulsion orders are to be executed immediately and within ten days, if enforceable.

Detention

FIGURE 1
NUMBER OF ILLEGAL MIGRANTS DETAINED
AT THE ALIENS REGISTRATION CENTRE



Source: State Border Protection Service under the Ministry of Internal Affairs (www.pasienis.lt).

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Under Article 38 of the Law on the Legal Status of Aliens, migrants who have entered the country or are residing there unlawfully may be temporarily accommodated at the Aliens Registration Centre, before their expulsion from the Republic of Lithuania. The Centre provides accommodation for detained illegal immigrants and asylum seekers and can host up to 500 residents.

The police may detain an individual if s/he is unable to verify his or her identity, or there are grounds to believe that the individual is residing in the country illegally or cannot prove the legitimacy of his or her residence.

In 2002, 114 illegal migrants were detained (107 in 2001). 35.1 per cent of those were Vietnamese citizens, 18.4 per cent from India and 11.4 per cent from Turkey.

Under Article 12 (1) of the Law on Refugee Status 2000, asylum seekers may be detained for the following reasons:

- For unauthorized entry into the country;
- Pending deportation;
- To ascertain reasons why an alien has used forged identity documents or destroyed them;
- To prevent the spread of diseases;
- On other grounds provided by the Laws of the Republic of Lithuania.

According to this provision, police authorities may detain migrants who enter the territory of Lithuania illegally for up to 48 hours, in order to investigate their identity, and for other relevant purposes. After these 48 hours, further detention is subject to a court decision, which may order the transfer of the detainee to the Aliens Registration Centre in Pabrade pending a decision on admissibility of an asylum application.

In 2002, the Lithuanian Parliament adopted the amendment to the Law on Refugee Status, rejecting an alternative bill, offered by the State Security Department, which would have made detention mandatory for all asylum seekers.³ According to the amendment, the ruling court has to consider the possibility of measures alternative to detention, by taking into account the circumstances and characteristics specific to the foreigner, including his/her vulnerability, the possible level of threat to public security, as well as other circumstances relevant to the refugee status determination procedure.

These alternative measures include an obligation by the foreigner to report periodically, as specified, to the territorial police to inform about his/her whereabouts. Under the new law, asylum seekers may also reside at an accommodation site offered by an NGO, a Lithuanian citizen or a non-national relative who is legally resident in Lithuania, provided the asylum seeker complies with the obligations stated in the Law on Refugee Status.

Amendments to the Law on Refugee Status stipulate that the period of detention of an asylum seeker may not exceed 12 months.

The Lithuanian Supreme Administrative Court has issued two landmark decisions concerning detention. The first was on 14 June 2002, stating that when a detention period decided by a court expires, the Foreigners Registration Centre must release the foreigner independently. No additional release order by the court is necessary. The second on 10 April 2003 stated that foreigners who cannot be deported on grounds of non-refoulement, may choose their own place of residence and cannot be held in detention.⁴

Illegal Entry

Since July 1997, trafficking and illegal smuggling, as well as harbouring of illegally entered aliens, are punishable by imprisonment under the Criminal Code. However, since 1999, severe penalties are imposed only on organizers of illegal migration. Persons who organize trafficking of migrants or their harbouring or their transportation in the territory of Lithuania can face imprisonment of ten to 15 years and a fine. Lithuania signed the UN Trafficking Protocol in April 2002 and ratified it in June 2003.

The majority of trafficking incidents involve young women brought from other countries to work as prostitutes, or transiting Lithuania. Trafficking was in the past often treated as a problem of illegal immigration, although Lithuanian legislation pertaining to trafficking is generally in alignment with EU and international standards. The existing legislation is not always enforced in a consistent way.

Carrier Liability

Carrier liability is regulated by the Law on the Legal Status of Foreigners, which stipulates that carriers bringing foreigners to Lithuania without proper documentation and permits are responsible to return such persons at their own expense to the country of departure. The state does not reimburse any expenses for the return of foreigners. The provisions are applied in respect to air and sea transport companies.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

According to the Law on the Legal Status of Aliens, decisions on expulsion are taken by the Ministry of Interior, or by an institution authorized by the Ministry. In practice, expulsions are decided by the Migration Department, which falls under the competence and purview of the Ministry of Interior. The expulsion of foreigners with a permanent residence permit, however, is subject to a court decision.

Escorts

Migrants who have been expelled and do not leave voluntarily, are always escorted to the border by the police or to the country of destination.

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Chartered Flights

No information is available on the use of chartered flights.

Framework Agreements with Countries of Origin or Transit

Lithuania has signed readmission agreements with 21 countries: Estonia, Latvia, Slovenia, Ukraine, Switzerland, Sweden, Finland, Iceland, Italy, Croatia, Spain, Austria, Poland, France, Germany, Portugal, Russian Federation, Belgium, the Netherlands, Luxembourg, and Greece.

The readmission agreements concluded with Spain, France, the Benelux and Greece are for the readmission of persons residing illegally in Lithuania, whereas the agreement between Lithuania and Moldova was concluded on the readmission of both illegally resident and illegally entered migrants.

Return under readmission agreements generally needs to be requested within 14 days or one month of the apprehension of the irregular migrant, unless otherwise stated in the readmission agreement. The biggest obstacle to return of unwanted migrants is the lack of valid travel documents.

Only few countries have consular representation in Lithuania, which makes it difficult for the authorities to obtain travel documents for the removal process. In such cases the Migration Department (Ministry of Interior) issues a temporary travel document, which was approved by the Order of the Minister of Interior on 19 June 1997, and which meets the EU *acquis* requirements.

The temporary travel document is a stand-alone document of one page, containing relevant data characteristic of an identity document.

There is no information on existing readmission agreements about whether they are applicable solely to involuntary or voluntary returns. The agreement with the Russian Federation does however specify that only migrants with identification documents can be returned.

Costs

No information available on the per capita costs of enforcing deportations.

Prosecution and Detention

A foreigner who has been expelled from the Republic of Lithuania pursuant to Article 34 of the Law on the Legal Status of Foreigners may be prohibited from re-entering the Republic of Lithuania for a definite or an indefinite period. The period of prohibition is five years, with certain exceptions applicable depending on circumstances, e.g. if the migrant has family in Lithuania.

The order prohibiting an alien from re-entry into the Republic of Lithuania is stamped into the rejectee's travel documents. There is no special request to sign a statement of non-re-entry before departure, however all deportation notifications include a statement about non-re-entering, which all recipients have to sign for the purpose of acknowledging awareness of the decision.

Detention

A 2001 regulation relating to the accommodation of aliens at detention or registration centres requires that asylum seekers are segregated from other detainees, and makes provision for detainees' rights and duties. According to the Lithuanian Red Cross, asylum seekers are still co-mingled with criminal detainees.⁶

In practice, however, only few asylum seekers are detained. In 2002, one asylum seeker was detained, whereas in 2001, 32 asylum seekers were held in detention. Of the 32 asylum seekers, 31 were Afghans, who were held in detention for the maximum period of a year in order to ascertain whether they had used forged identity documents.⁷

The main detention centre is the Aliens Registration Centre in Pabrade. The centre in Pabrade is a closed detention facility. However, as migrants may be detained for 48 hours generally, without a Court decision, they may also be detained at available facilities at the local police station or at the airport.

Conditions in detention facilities are reported to have improved, but are still poor in contrast to the EU standard, due to financial difficulties, and because refugees from different cultures and religions are hosted closely together. The International Helsinki Federation for Human Rights reports that officials have treated persons in custody like criminals, and have used excessive force even in cases where a detainee did not resist.⁸ Health care is also not properly ensured. Generally, the Lithuanian detention facilities do not comply with international standards, and are widely criticized by human rights associations.

Prosecution

In 1999, the Lithuanian government updated the 1997 approved rules on registration of all foreigners, who are banned from entering Lithuania. This computerized list includes foreigners who have committed offences according to Lithuanian legislation and therefore have been banned from re-entry; and is managed by the Migration Department in the Ministry of Interior.

Operational Steps for Involuntary Return

If a foreigner is detained for illegal stay in Lithuania, he/she is held in the Aliens Registration Centre, under guarded supervision, until deportation can be executed. Expulsion orders are enforced immediately, if possible; at the latest within ten days after the decision has been taken, unless there are obstacles to the execution of the removal, such as invalid travel documents, illness, etc. As with other receiving countries, Lithuania faces the problem of migrants who cannot be deported because of the lack of travel documents or an agreement on readmission.

In practice, the Migration Department can review expulsion cases when expulsion is not possible and issue a new decision, e.g. to grant a residence permit on humanitarian grounds if new circumstances are presented.

Article 37 of the Law on the Legal Status of Aliens stipulates:

An order of the Ministry of the Interior or an institution authorized by it for expulsion of an alien from the Republic of Lithuania may be appealed in court within seven days after the date of service

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of the order to the alien. The court will hand down a decision within ten days after the date of filing the appeal.

Yet in practice it appears that, where expulsion is immediately enforced, asylum seekers may face deportation during this period of time.

Financial constraints are another obstacle in the execution of removals. Although the costs of deportation should be borne either by the migrant, where he/she has financial means, or by the hosting legal or physical entity, in practice these costs often have to be paid by the state. Lithuania faces the problem of financing the expenses of commercial flights or other travel tickets to remove expelled foreigners.

Over the past years, protection of the state borders has significantly improved. Border authorities are enforcing the legislation and trying efficiently to prevent the illegal crossing of migrants, who do not fulfil the necessary requirements for residence in Lithuania.

However, in 2002, international and national organizations reported instances where border guards tried to ignore asylum applications in their effort to prevent entry of illegal foreigners into Lithuania.⁵

1.4 STATISTICS ON INVOLUNTARY RETURN

In 2001, out of 342 persons deported, 13 were rejected asylum seekers. In 2002, ECRE reports that removal was executed in 32 cases of rejected asylum seekers.

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Illegal Immigrants Caught	Expulsion Orders Issued	Deported
2000	100	633	345
2001	107	441	342
2002	114	244	312
2003	n/a	n/a	n/a

Source: State Border Protection Service under the Ministry of Internal Affairs (www.pasienis.lt).

About 28 per cent of those deported in 2002 were Russian citizens, 19 per cent were from Belarus, 9 per cent from Ukraine and 7 per cent from Latvia.

1.5 BEST PRACTICES AND LESSONS LEARNED

Recognizing its relative weakness and vulnerability in managing migration, Lithuania has established over the past years several forms of strategic cooperation to enhance its expertise and experience in that area, specifically to combat irregular/illegal migration.

In 1998, it became a member of the International Organization for Migration. Within the framework of the Committee of Senior Officials on Border Guarding of the Baltic Council of Ministers, Lithuania has also embarked on closer cooperation with the border guards of the other Baltic States.

Lithuania has also developed a close cooperation with the law enforcement institutions of its neighbours, Poland, Latvia, Belarus and Russia. There are now regular meetings and consultations at both regional and national levels, to plan and conduct joint operations in combating irregular/illegal migration and exchanging information.

Lithuania cooperates with law enforcement institutions of other countries as regulated by signed agreements on legal assistance and within the EU PHARE Horizontal Programme. Under the latter, a team of French and Spanish judicial experts assisted Lithuania in bringing its immigration legislation in line with the *acquis communautaire*.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

In general, illegal migrants are encouraged to leave the country voluntarily before the date of expulsion, and are notified in their expulsion order of the possibility to leave the country voluntarily within ten days of the service of the order. Faced with high costs of enforcing deportations, the Lithuanian authorities have sought new methods to better manage the return of irregular migrants, and have made efforts to cooperate with IOM in the implementation of an assisted voluntary return programme. Resolution No. 906 dated 28 July 2000 contained in the National Action Plan in the field of Asylum mentions that the Ministry of Interior will work with IOM on voluntary return assistance for unsuccessful asylum seekers.

Although there is no provision for post arrival assistance within the national legislation, a modest repatriation grant of US\$ 50 is given to each returnee, which experience suggests has acted as an incentive for those considering participation in this programme.

Supported by the US and Nordic countries, an effective voluntary return assistance network has been gradually established in the Baltic region, aptly complementing the efforts undertaken since 1994 to strengthen the Republics' Migration Management Capacities (CBMMP).

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With the establishment of the Aliens Registration Centre in Pabrade in 1997, a total of 895 migrants were assisted that year to return via Moscow to five Asian destinations (Bangladesh, China, India, Pakistan and Sri Lanka). Those who had benefited from AVR assistance however could not be eligible for it a second time if apprehended again in Lithuania in an irregular status.

Eventually, the voluntary return assistance structure was extended also to Latvia and Estonia, through the Voluntary Return of Stranded Migrants from the Baltic Countries (SMIBAL) project; at the same time, in view of the dire conditions at the two foreigners reception centres in the region (Pabrade and Olaine in Latvia), IOM engaged in a number of social assistance initiatives, in cooperation with the Lithuanian Red Cross and Caritas Latvia.

The rate of assisted voluntary returns in subsequent years has gradually subsided, with 124 assisted in 2000, 91 in 2001 and 40 in 2002. It is difficult to explain the reason for this decrease, although the implementation of the project has been limited by the lack of funding. In 2003, there was no funding to run the programme.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

Project activities are carried out in close cooperation with national authorities, notably, the Parade Aliens Reception Centre and the Rukla Refugee Reception Centre.

IOM also works in cooperation with concerned local NGOs and international organizations such as the Lithuanian Red Cross and the UNHCR towards the implementation of the assisted return programme.

Operational Steps for Voluntary Return

Aliens wishing to participate in the voluntary return programme are requested to complete a form attesting to the voluntary nature of their return. Those detained in the Aliens Registration Centre may also apply for voluntary return under the IOM programme.

TABLE 2
VOLUNTARY RETURNS OF STRANDED MIGRANTS
FROM THE BALTIC COUNTRIES (SMIBAL)

Eligible Beneficiaries:	Stranded migrants and rejected asylum seekers
Budget:	Approximately US\$ 400,000 (mid-October 1998-2001)
Funding Source:	Governments of Finland, USA
Assistance to Date (end 2002):	Some 455 migrants assisted in their returns from Lithuania since mid-October 1998

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with relevant government authorities, Reception Centres and other agencies.
- Transport assistance: transport, documents and travel formalities; reintegration allowance of US\$ 50 per adult and US\$ 25-50 per children under 18 years of age, an additional US\$ 20, if required, for onward transportation; escorting, where necessary, especially to support returns of vulnerable migrants.

Additionally, several capacity-building measures (training, workshops) are implemented to complement the SMIBAL project.

2.3 STATISTICS ON VOLUNTARY RETURN

From October 1998 until the end of 2002, 455 persons were provided return assistance under the IOM-run programme. Migrants were returned mainly to Russia (98), Bangladesh (68), Pakistan (62), Viet Nam (39), India (36), Ukraine (28) and Azerbaijan (24).

2.4 BEST PRACTICES AND LESSONS LEARNED

Why Programmes Have or Have not Worked

Although AVR is considered to be a more humane method of return, the Lithuanian government has been unable to contribute financial assistance for the implementation of the programme. Hence the AVR programme was unable to operate in 2003. The Lithuanian government intends to support future AVR programmes by co-funding the programme and cover 25 per cent of operating costs.

Cost Effectiveness Analysis

In general, assisted voluntary return is considered to be cheaper than deportations, however, it is not really practical to make comparisons on the cost effectiveness of assisted voluntary returns to forced returns because deportations from Lithuania are mainly carried out to neighbouring countries, i.e. just to the border, which makes it cheaper than covering the cost of transportation to, say, Pakistan and other associated costs of the AVR programmes such as medical escorts and repatriation assistance.

NOTES

1. Between 1992 and 2001, some 6,369 “illegal” migrants were apprehended, with the numbers of arrests peaking in 1995 (1,354), 1996 (1,551) and 1997 (1,382). Source: IOM, Dr Joanna Apap: *Immigration Law and Human Rights in the Baltic States – Comparative Study on Expulsion and Administrative Detention of Irregular Migration*.
 2. Migration Department report: May 2002, BNS news agency, Tallinn, in English, World news www.unhcr.ch.
 3. US Committee for Refugees World Refugee Survey 2003 – Country Report.
 4. ECRE Country Report 2002: Lithuania, p. 160.
 5. ECRE Country Report 2002: Lithuania, p. 161, The US Committee for Refugees reports further: in November that the Lithuanian Border Service expelled 26 Chechen asylum seekers, mostly women and children to Belarus. At the intervention of UNHCR, the group was returned and admitted to the asylum procedure. The expulsion infringed the provisions of the 1951 UN Convention Relating to the Status of Refugees and the New York Protocol of 1967. Chechens, who travelled to Lithuania by transit trains claimed that they were prevented from disembarking and applying for asylum at Vilnius. The Lithuanian Red Cross reported that the Chechen asylum seekers had to pull emergency brakes and jump off the trains outside the town, in order to have their claims registered. World Refugee Survey 2003 – Country Report; US Committee for Refugees.
 6. World Refugee Survey 2003 – Country Report, US Committee for Refugees.
 7. ECRE Country Report 2002: Lithuania.
 8. International Helsinki Federation for Human Rights: OSCE Region Report on Human Rights 2002.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Lithuania signed the UN Convention Against Transnational Organized Crime on 13 December 2000, and ratified the Convention on 9 May 2002. It signed the Trafficking Protocol on 25 April 2002, and ratified the Protocol on 23 June 2003. Lithuania also signed the Smuggling Protocol on 25 April 2002, and ratified this Protocol on 12 May 2003.

LUXEMBOURG

1. INVOLUNTARY RETURN

1.1 POLICY

Immigration has played a significant part in the economic and social development of Luxembourg over the past few decades. To date, 38 per cent of its current population are foreigners, the majority of whom originate from other EU Member States, and about 5 per cent from third countries outside the EU.

As a country with low levels of unemployment, Luxembourg has traditionally welcomed migrants, mainly from within the EU, to meet the demands of its labour market – and more recently also other third-country nationals. Immigration has therefore not been a big issue, and the integration of labour migrants has been actively encouraged, with regularization occurring very soon after migrants' arrival.

The only law that regulates immigration is the 1972 Law on the Entry and Residence of Foreigners, which has undergone very little change since its adoption.

Since the late 1970s, Luxembourg has had an administrative framework to deal with asylum seekers and other foreign nationals, which was different from the way migrant workers were dealt with. In the early 1990s, immigration and asylum procedures in Luxembourg changed with the arrival of refugees from Bosnia and Herzegovina following the outbreak of conflict there.

In order to cope with the influx of new arrivals, the government introduced a temporary protection status, then referred to as humanitarian status, which granted a provisional authorization to reside and work in Luxembourg for six months. This permit could be renewed twice. However, in light of the persistently high levels of asylum applications from other countries of the Former Yugoslavia, this permit was abandoned after some four months, but continued to be available to those able to prove they originated from Bosnia and Herzegovina.

Subsequent refugee arrivals from Kosovo and Serbia and Montenegro coincided with the adoption in April 1996 of a Law on Asylum Procedure, which was later amended in March 2000.

With the passing of the Asylum Law, unsuccessful asylum seekers were supposed to be expelled. But involuntary returns have not been successfully enforced in Luxembourg in recent years. In order to correct this deficiency in the asylum system, a regularization campaign was initiated in 2001, targeting migrants who could prove they were residing in Luxembourg before 1 July 1998 or had been working illegally in the country since 1 January 2000. Nationals from Kosovo were entitled to be regularized if they could prove residence before 1 January 2000. This

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campaign led to the regularization of 2,850 people, mainly asylum seekers, 2,007 of whom were from the Former Yugoslavia.¹ Persons not covered by this amnesty were liable to be deported.

In general, Luxembourg has a very strict asylum procedure, with an annual recognition rate of between 2-5 per cent. Of the 1,073 asylum applications received in 2002, just 4 per cent were recognized as refugees in accordance with the Geneva Convention, while a further 3 per cent were granted residence for humanitarian reasons.² Unsuccessful asylum seekers are encouraged to return by the authorities, but because this obligation does not often lead to actual departures, the government started to actively enforce expulsion decisions in November 2002.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

Generally, the Ministry of Justice may expel migrants residing illegally in Luxembourg at any time during their irregular residence. The defining legal framework for the implementation of involuntary return is the March 1972 Law on the Entry and Residence of Foreigners (henceforth 1972 Aliens Law). This law also provides regulations for medical screening and employment of labour migrants in Luxembourg. Other relevant legal instruments covering immigration and asylum in Luxembourg include:

- The 1951 Geneva Convention on Refugees and its Protocols;
- The April 1996 Law establishing an asylum procedure, as modified by the March 2000 Law on Asylum;
- The August 1996 Law regarding the Entry and Residence of Foreigners in Luxembourg (the 1996 Aliens Law), amending the 1972 Aliens Law;
- The Dublin Convention and the Schengen Agreement.

Expulsion

In accordance with the provisions of the 1972 Aliens Law, an alien may be refused permission to enter Luxembourg or expelled from the territory if the individual:

- Does not hold the necessary travel documents, e.g. passports or necessary visa, where required;
- Is perceived to constitute a threat to security, tranquillity, public order or public health;
- Does not have sufficient means to cover his/her living costs while in Luxembourg; or his/her return travel;
- Is registered in the common list of non-admissible persons under Article 96 of the Schengen Agreement.

Individuals who apply for asylum at the border cannot be turned away, and the border police must forward their claim to the Ministry of Justice, regardless of whether or not they have the necessary documentation to enter the country. In practice, due to the absence of control at land borders, border cases usually only occur at the airport.

Illegal residence is defined by Article 4 of the 1972 Aliens Act as the residence of a person whose stay has exceeded the authorized period. In addition to the above reasons for refusal of entry, the following categories of persons are liable to be expelled if found within the territory:

- Persons who exercise a professional and economic activity without the proper authorization;
- Persons convicted or prosecuted of a crime abroad, and liable to be extradited;
- Persons who provided false information to the authorities upon their arrival, about their identity or country of residence;
- Persons who refuse to submit to the medical screening as obliged by the law, or who are discovered to have provided incorrect information about their health.

Rejected asylum seekers, and those whose period of residence based on a temporary grant of asylum has expired, are also liable to be expelled.

Under Sections 8 and 9 of the Asylum Law, an application for asylum may be deemed inadmissible or manifestly unfounded for the following reasons:

- The applicant has travelled through a safe third country, i.e. a country where the individual:
 - Has already been granted asylum or had the opportunity to make an application for asylum before submitting a claim in Luxembourg;
 - Is protected against refoulement under the provisions of the Geneva Convention;
 - Will not be persecuted for his/her religious or political beliefs or because of his/her race, and where his/her safety and freedom are not threatened.
- When the applicant does not express a fear of persecution on account of his/her race, religion, nationality, membership of a particular social group, or political opinion.

Carrier Sanctions

Following amendments to the Aliens Law in August 1996, carriers bringing aliens to Luxembourg without the necessary travel documents or the required visa are liable to be fined up to EUR 1,200. This fine is waived in cases where the individual makes a successful application for asylum, although in practice, these sanctions have not yet been applied against any carrier.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Justice has overall responsibility for return policies, and the police carry out expulsions. Officials from the Ministry of Interior organize the collection of individuals due to be deported from their place of residence on the day of expulsion.

Return Migration: Policies and Practices

Operational Steps for Involuntary Return

Unsuccessful asylum applicants have an obligation to leave the country voluntarily within a month of receiving notification of their unsuccessful application. This period may be extended to three months in certain circumstances. The rejected asylum seeker is always informed about the possibilities of returning voluntarily to his/her country of origin with the assistance of the government.

Following the negative asylum decision, social benefits such as financial benefits, payment of medical expenses, and language courses may be withdrawn by the government's Commission for Foreign Nationals (*Commissariat du Gouvernement aux Etrangers* – CGE).

If the rejected asylum seeker decides to remain in Luxembourg beyond the period of authorization, he/she is liable to be detained and expelled. In theory, the police may enforce expulsion orders following the rejection of an asylum application, although this rarely happens in practice. Migrants awaiting expulsion may either be detained or collected by the police from their place of residence on the morning of their departure.

Escorts

Every return is organized with an escort from the Ministry of Justice. At least one person from the police department accompanies the returnee to the country of origin.

Depending on factors such as readmission agreements or possession of travel documentation, forced return may be carried out by commercial flights or by special chartered flights. Chartered flights are used particularly to effect group returns, with a maximum of ten individuals per group. Authorities in the country of origin are informed about the returns, including date of return and names of the returnees.

Prosecution and Detention Procedures

Migrants who are apprehended and found to be residing in Luxembourg illegally, without proper documentation or with forged documents, are detained at the Schrassig detention centre for an initial period of a month, which may be renewed twice if necessary by the Minister of Justice. If return has not been organized in that period, the migrant may be released with the expulsion order still in place.

According to Section 15 of the 1972 Aliens Law, an asylum seeker who cannot be removed for practical reasons may be detained at the discretion of the Minister of Justice until removal has been enforced. In practice, however, asylum seekers are not held in detention.

Single male adults and male heads of families liable to removal to another EU country under the Dublin Convention, or individuals who refuse to cooperate with this transfer, may be held in detention centres for a day before removal. During summer 2003, a specific detention centre for families was set up to organize non-voluntary returns of families with children.

Withdrawal of Social Benefits

Regular migrants are not entitled to social benefits, therefore the issue of their withdrawal does not arise. Unsuccessful asylum seekers are only entitled to limited social benefits from the moment of their last negative decision to their forced or voluntary departure.

Framework Agreements with Countries of Origin or Transit

Luxembourg has signed transit and readmission agreements with several countries in order to facilitate the readmission of persons residing illegally on the territory, i.e. persons who do not fulfil the conditions of entry or who no longer fulfil the conditions of residence.

Readmission Agreements have been concluded, together with Benelux countries, with Slovenia, Romania, Bulgaria, Estonia, Latvia, Lithuania, Croatia, Albania, and Serbia and Montenegro. Other agreements also exist between the Benelux countries and France, Germany and Austria, primarily for the return of individuals who entered the territory of the Benelux countries through any of their neighbouring borders.

The agreements are based on a standard Benelux agreement module. The format of this standard agreement has been changed lately, but still covers the same target group. The agreement concerns nationals of the agreement-signing countries (Benelux on the one side, and the country of origin on the other side) and/or third-country nationals, who have entered one of the Benelux states via one of the other partner states, or who have a regular permit to stay in one of the Benelux countries.

In general, the agreements only provide for forced returns, although those for Serbia and Montenegro also cover voluntary returns.

1.4 STATISTICS ON INVOLUNTARY RETURN

It is reported that 44 unsuccessful asylum applicants were deported in 2002. Thirty-five of these were returned to Montenegro, while the remaining nine were sent back to Serbia.³ There were 40 deported cases reported in 2001.

Also in 2002, the Government of Luxembourg made 57 requests to return individuals under the provisions of the Dublin Convention.

1.5 BEST PRACTICES AND LESSONS LEARNED

Cost Effectiveness Analysis

A large proportion of unsuccessful asylum seekers due to be deported abscond, and in cases where the authorities have chartered a plane, failure to locate an individual on the day of departure leads to the cancellation of the flight, leaving the government to pick up the cost of carrier rental. In addition, involuntary returns are always organized with at least one escort from the Ministry of Justice, which costs much more than a voluntary return without escort. Consequently, the current operation of forced returns is not very cost effective when compared to voluntary returns.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The government of Luxembourg has been organizing voluntary return on a small scale for many years, and although there is no specific legal framework regulating voluntary return, those who wish to do so generally receive assistance from the government, in cooperation with government ministries, NGOs and IOM. The basic assistance offered seems to be a significant factor in the decision of those considering returning on an individual basis.

The surge in immigration from the late 1990s onwards, resulting from an increase of asylum seekers from the Balkan region (mainly Kosovo and Montenegro), forced the government to adopt a comprehensive asylum policy and to explore different possibilities for offering additional incentives to voluntary return especially to rejected asylum seekers.

In 2000 and 2001, the Ministry of Family in cooperation with the Development Department and Caritas implemented a special return programme, which included information sessions on reintegration possibilities in the countries of origin. Another component of this programme was some reintegration assistance through the creation of micro-enterprises in the country of origin. While a small number of migrants benefited from the programme, the government discontinued it in 2002, because the impact of these activities on the number of returns was unsatisfactory.

The assistance offered by the government of Luxembourg to voluntary returnees varies according to the time spent in Luxembourg. The minimum assistance comprises a one way-ticket on a commercial flight to the country of origin. Financial aid is available if the residence in Luxembourg exceeds one year, and may amount to the equivalent of three months' financial assistance to migrants in Luxembourg.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Family Affairs is responsible for voluntary returns, and it is well placed to provide this assistance, as it is also responsible for the reception of asylum seekers and therefore has regular contact with the migrants potentially interested in voluntary returns. The Ministry of Family Affairs is only responsible for applications and the organization of the returns, while the Ministry of Justice liaises with officials in the relevant Consulates/Embassies to arrange the necessary travel documentation.

The Government's Commission for Foreign Nationals has since 1972 provided assistance towards the voluntary return of irregular migrants in a precarious financial situation. The assistance offered to asylum seekers is, however, more comprehensive than the one-way ticket offered to irregular migrants who wish to return home (see details below).

In the past and in addition to these government institutions, IOM has also organized the assisted voluntary return of specific nationalities in Luxembourg.

Operational Steps for Voluntary Return

Any rejected asylum seeker, asylum seeker in the asylum process and illegal migrant can apply for voluntary return. Individuals who decide for voluntary return may approach the Ministry of Family Affairs in Luxembourg directly, more specifically the official responsible for his/her file concerning reception and financial assistance during the stay in Luxembourg. The government's Commission for Foreign Nationals also provides assistance on voluntary return.

Asylum seekers, who wish to depart voluntarily, are not requested to sign a statement of non-return.

The authorities generally treat voluntary returnees as regular travellers. However, when large-scale departures are organized (i.e. charter to Podgoriça via Belgrade), the authorities in the country of origin are informed about the numbers and identities of returnees.

The decision to offer financial assistance in addition to the return ticket is taken on the basis of the time spent by the migrant in Luxembourg.

TABLE 1
FINANCIAL ASSISTANCE OFFERED TO MIGRANTS
WHO WISH TO RETURN VOLUNTARILY

Date of Repatriation	Benefits (Adult)	Benefits (Child)
During the asylum procedure	EUR 1,190	EUR 595
Within three months after rejection (i.e. the first negative decision)	EUR 1,190	EUR 595
Within three-five months after rejection	EUR 793	EUR 397
Within five-six months after rejection	EUR 397	EUR 198
Six months after rejection	None	None

A specific programme for the return of Kosovars was initiated in August 1999 with the following programme services:

- A one-off payment equivalent to three times the basic monthly allowance;⁴
- A clothing allowance of EUR 124;
- The transportation of personal belongings, including furniture to Kosovo.

Framework Agreements with Countries of Origin or Transit

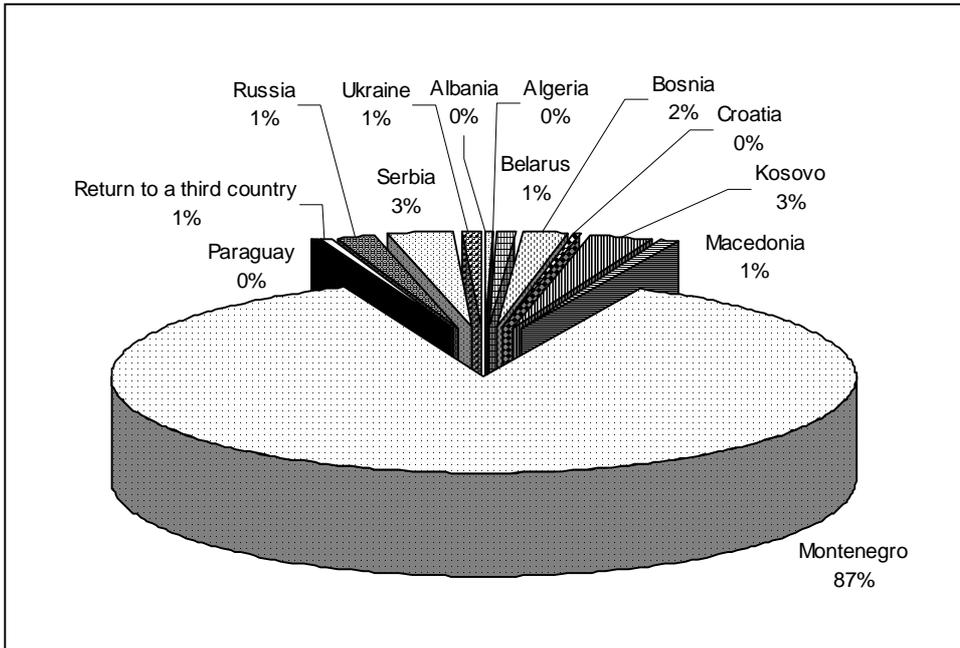
Readmission agreements generally cover involuntary return only, although those for Serbia and Montenegro also cover voluntary returns.

See section on involuntary return.

2.3 STATISTICS ON VOLUNTARY RETURN

In 2003, 603 individuals were assisted in returning to their countries of origin, mainly to Montenegro (524), Kosovo (17), Bosnia and Herzegovina (12), Serbia (17), FYROM (5), Albania (1) and 27 to other countries.

FIGURE 1
AVRs FROM LUXEMBOURG,
BY COUNTRY OF ORIGIN: 2003



Source: Commission for Foreign Nationals, 2003.

TABLE 2
AVRs FROM LUXEMBOURG,
BY COUNTRY OF ORIGIN: 2003

Country of Origin	Number of AVRs
Albania	1
Algeria	1
Belarus	5
Bosnia	12
Croatia	1
Kosovo	17
Macedonia	5
Montenegro	524
Paraguay	1
Return to a Third Country	5
Russia	9
Serbia	17
Ukraine	5

Source: Commission for Foreign Nationals, 2003

2.4 BEST PRACTICES AND LESSONS LEARNED

Why Programmes Have or Have not Worked

Owing to the fact that, for a long time, forced returns were not organized and people could continue to stay in the country without authorization, voluntary return has always been seen by the migrants as the last option. This situation resulted in efforts by the government to provide incentives to return, such as the initiatives in 2000 and 2001 to provide more reintegration assistance to the migrants through provision of skills to establish small businesses.

The failure of the programme to make a significant impact on voluntary returns led to its discontinuation, and the government's decision in recent years to more actively enforce forced returns.

Cost Effectiveness Analysis

Specific resources are dedicated to migration issues within the Ministry of Family Affairs' annual budget, in order to assist migrants to return to their countries of origin or residence. The government of Luxembourg also has a special agreement on airfares with the airline LUXAIR, to make removals more economical. Voluntary returns are organized mainly on commercial flights (with the exception of specific charters for large groups).

Voluntary returns are usually carried out without the provision of escorts and compared to involuntary return, voluntary return programmes are less expensive to operate mainly due to the fact that escorts are not automatically provided.

The amount of financial assistance towards returns to countries of origin rose to EUR 550,112 in 2003, (excluding assistance to those returned to third countries). Financial assistance is given to the head of each household at the time of departure, after check-in at Luxembourg airport. In one illustrative case, the price of eight charter flights, transporting 497 persons was EUR 170,600 (approximately EUR 340 per person), while the cost of regular air fares for 124 persons was EUR 71,246 (approximately EUR 574 per person); thus charter flights would seem to be more cost effective.

NOTES

1. Niessen Jan, Schibel Yongmi and Magoni Raphaelae (Eds.), *EU and US Approaches to the Management of Immigration*, Migration Policy Group, 2003.
 2. ECRE Country Report 2002: Luxembourg.
 3. ECRE Country Report 2002: Luxembourg.
 4. Approximately EUR 273 per adult, EUR 496 per couple, EUR 198 per third adult, EUR 161 for children aged 12-18, and EUR 124 for children up to the age of 12.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Luxembourg signed the UN Convention Against Transnational Organized Crime on 13 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 13 December 2000, but has not yet ratified the Protocol. Luxembourg also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

MALTA

1. INVOLUNTARY RETURN

1.1 POLICY

Managing irregular migration, particularly of persons arriving by boat from the Middle East and Africa bound northwards, preoccupies the Maltese immigration and police authorities. Controlling/patrolling the island's coastline and managing the closed reception centres (hosting up to 800 persons in 2002) heavily engage the country's police and refugee processing resources.

In 2002, the Maltese authorities reported a noticeable increase in the number of irregular migrants and asylum seekers landing in Malta,¹ which is overwhelming national resources, also given the country's high population density (second only to Hong Kong's). That year, a total of 1,542 persons arrived in Malta on board 19 fishing boats – mostly via Libya.² Countries of origin of these irregular migrants vary considerably, most however hail from Africa and the Middle East. Many of the migrants, came in family groups, and had not expected to become stranded on the Maltese shores on their passage further north.

As many of the migrants stranded on Malta eventually seek asylum once apprehended, they are required to stay at reception centres until the Refugee Commission assesses their situation. The Refugee Commission case processing capacity in 2002 was about 30 cases per month (with an overall demand of about five times that number).

1.2 LEGISLATIVE INSTRUMENTS AND PROCEDURES

- As of 2001, asylum in Malta has been regulated by the Refugee Act – Chapter 420 of the Laws of Malta. Prior to its adoption, although Malta had ratified the 1951 Geneva Convention and 1967 Protocol, it applied the geographical reservation of Article 1B(1)(a) of the Convention. This geographical restriction was lifted on 13 December 2001 and after a brief trial period, Malta took charge of the management of asylum seekers in January 2002.
- Immigration Act of 1970 Chapter 217 of the Laws of Malta, and amended in 1972, 1981, 1982, 1983, 1988, 1989, 1990, 1995, 2000 and 2002. Admission requirements are listed in Article 5 of the Immigration Act. Article 22 contemplates deportation orders.

The 2002 amendment envisages lighter administrative procedures on returns; the most relevant provision under this amendment is that of 8 December 2002, illegal migration is no longer considered a criminal offence in Malta. The Immigration Act defines a “prohibited migrant” as

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any person who has not been granted a residence, movement or transit permit, and lands in Malta without leave from the Principal Immigration Officer.

Removal

The most common type of expulsion in Malta is the Removal Order. The Principal Immigration Officer issues a removal order and declares a person a “prohibited immigrant”, when he/she is found illegally on the island, either because of illegal entry, or expiry of the leave to land, or as a result of other circumstances outlined in Article 5 of the Immigration Act. Removal orders can also be issued by the Principal Immigration Officer against any person found guilty of an offence which is punishable with imprisonment of at least one year. In the case of a crime committed subsequently, imprisonment may be at least three months until removal is applied.

A deportation order on the other hand, may be issued against any foreigner by the Minister responsible for Immigration, if it is deemed to be in the public interest, as per Article 22 of the Immigration Act. A person subject to a deportation order may be placed on board a vessel about to leave Malta, and brought to any port outside Malta.

Once the Principal Immigration Officer releases a removal order, the police will ensure its implementation at the earliest opportune time. The person against whom a removal order is made, has a right of appeal, which should be filed within three days from the serving of the removal order, to the Immigration Appeals Board.

A legal counsel may assist any person subject to prohibited migrant status and removal order proceedings. Where destitute persons are unable to meet the costs of such counsel, they will be covered by the Immigration Appeals Board.

Persons subject to removal orders will be sent back to the country of respective nationality, or to the country from which they embarked for Malta. In the case of crew members, they can be sent back either to the country of nationality, or to the country where they were engaged. The Immigration Law however also makes provisions for the Immigration Minister to instruct removal to a country other than that of nationality or of last embarkation.

The Immigration Act applies to rejected asylum seekers, who are removed immediately from Malta, if they have not been granted leave to land upon arrival.

Those removed or deported from Malta are not allowed to return to Malta for a length of time commensurate with the seriousness of the crime for which they were convicted.

Detention

A person against whom a removal order has been issued shall be kept in legal custody until departure, either in prison or in any place appointed for the purpose by the Minister. If the person is detained in prison, he/she will be treated like someone awaiting trial. There is no time limit for detention. Applicants who have applied for asylum after being apprehended in Malta in an irregular situation are detained; only once they are considered eligible for refugee status or temporary protection can they be transferred to a transit shelter.

All irregular migrants who do not opt for return, do not apply for refugee status or are rejected, are kept at the reception centres, which severely constrains the capacity of these facilities. Masters of vessels are expected to detain on board any person arriving on that vessel, whether crew member or passenger, to whom leave to land has been refused (also considered legal custody).

Illegal Entry

Any person contravening the Immigration Act or landing in Malta without leave from the Principal Immigration Officer, is *de facto* a prohibited immigrant and can be taken into legal custody without warrant by the Principal Immigration Officer or by any police officer.

Other situations leading to “prohibited immigrant” status, applicable also to those who may initially have been granted leave to land, include:

- The inability to support oneself and dependants;
- Mental disorder;
- Overstay under the prevention of disease ordinance;
- An offence against ordinances on either White Slave Traffic Suppression, Dangerous Drugs or Prostitution.

Irregular migrants are taken to reception (closed) centres controlled by the police and are given the possibility to apply for refugee status within two weeks, or to return to their country of origin.

Carrier Sanctions

According to the Immigration Act, at the request of the Principal Immigration Officer the carrier shall return a person refused entry under the provisions of the same Act, either to the state from which he/she was transported, or to the state which issued the travel document, or to any other state to which entry is granted. A carrier bringing to Malta a person with no travel document, visa or other special authorization, is liable to pay the Principal Immigration Officer a penalty not exceeding Liri 5,000.

Smuggling and Trafficking

Anybody who aids and assists a foreigner to land, or attempt to land or reside in Malta, or who employs him/her in contravention of the Immigration Act is liable, on conviction by the Court of Magistrates, to a fine of up to liri 5,000, or imprisonment of up to two years, or both. Foreigners found guilty by a criminal court of an offence against any of the provisions of the White Slave Traffic suppression Ordinance will be treated as “prohibited immigrants”. Malta signed the UN Convention Against Transnational Organized Crime and its Trafficking and Smuggling Protocols on 14 December 2000, and ratified the Convention and two of the Protocols on 24 September 2003.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Home Affairs and the Environment, Department of Citizenship and Expatriate Affairs have generally been responsible for return matters. However, the Maltese administrative structure concerning immigration has recently undergone some restructuring, also as a reflection of the latest changes in the Immigration Act.

Operational Steps for Involuntary Return

In 2002, the Maltese authorities reported returning many irregular migrants, mostly to Egypt and Morocco, Nigeria, Ghana, Sudan and Pakistan. Due to lack of direct connections to many countries of origin, and in case of large groups, the Maltese authorities often rely on charter flights, to return migrants to more than one country.

During 2003, around 1,089 immigrants were returned to several countries, including Libya, Egypt, Tunisia, Morocco, Sudan, Eritrea, Ukraine and Russia. Among those returned, many had arrived from north Africa in small boats; some were foreigners found without means to sustain themselves or overstaying their leave to land.

Irregular migrants are documented by the consular services of their countries, at the request of the Maltese government. Only the following countries of origin of many irregular migrants stranded on the island have a diplomatic presence in Malta: Egypt, Tunisia, Morocco, Libya, PLA, Russia, China. For Nigeria, the embassy of reference is located in Libya and for Ethiopia, it is in Italy. As a consequence, procuring travel documents for apprehended irregular migrants has, to-date, been one of the greatest obstacles to the implementation of returns.

Framework Agreements with Countries of Origin or Transit

Malta has made a number of contacts to finalize readmission agreements with countries in northern Africa. A readmission agreement was signed with Italy on 8 December 2001, which includes references to third-country nationals and allows transit in the international area of domestic airports.

Prosecution and Detention Procedures

The names of those foreigners who have been removed or deported from Malta are inserted in a "Stop List" maintained at the ports of entry; the length of time during which the names remain on this list is commensurate to the seriousness of the offence committed (Article 24 of the Immigration Act, Chapter 217 of the Laws of Malta). No stamp is put on the passport of a foreigner being removed for overstaying. Any foreigner who has left Malta under a removal order or has been deported and then seeks leave to land or to land and remain, or reside, is expected to apply for permission in writing and declare his previous circumstances to the Principal Immigration Officer. He/she may be considered guilty of an offence and liable to a fine and/or imprisonment for up to six months. Where no crime was committed the ban period is not envisaged and the person can be authorized to re-enter the country provided he/she fulfils the requirements established by the Immigration Act.

Costs

Information on the cost of deportation is currently unavailable.

1.4 BEST PRACTICES AND LESSONS LEARNED

An asylum seeker cannot seek employment or conduct business (unless specifically exempted by the Minister); asylum seekers must continue to reside in the designated place and report at specific intervals to the immigration authorities. They have access to state education and training in Malta, as well as to state medical care and services.

2. ASSISTED VOLUNTARY RETURN

While the Maltese authorities recognize that persons who reside illegally in their territory should be encouraged to leave voluntarily, state assistance for voluntary return is not envisaged as yet. However, there have been instances where persons who, having applied for refugee status and whose claim did not appear immediately justifiable, have opted to leave voluntarily while their case was being examined.

NOTES

1. Meetings between IOM officials and the Refugee Commission, December 2002.
 2. Interview with Mr Andrew Seychell, Assistant Commissioner responsible for the Immigration Division.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Malta signed the UN Convention Against Transnational Organized Crime on 14 December 2000, and ratified the Convention on 24 September 2003. It signed the Trafficking Protocol on 14 December 2000, and ratified the Protocol on 24 September 2003. Malta also signed the Smuggling Protocol on 14 December 2000, and ratified this Protocol on 24 September 2003.

THE NETHERLANDS

1. INVOLUNTARY RETURN

1.1 POLICY

The Netherlands has traditionally attracted large numbers of foreigners, many without a legal right of entry or residence. This has given rise to considerable public debate about migration in recent years and a stronger focus by successive governments on return migration. The authorities have for some time been concerned with the need to return failed asylum seekers and other migrants in irregular circumstances to their countries of origin or safe third countries.

In 2000, the government introduced the Aliens Act 2000¹ to reform the legal status of migrants through more stringent and shortened procedures for asylum seekers. The aim of the revision was to simplify and accelerate the processing of asylum applications, in order to reduce state-provided benefits and reception costs.

Since then, policy-makers have tried to effectively enforce the Act through removal and repatriation of illegal aliens from the territory, and have anticipated a complementary integration programme for select asylum seekers in 2004. The current government is pursuing a more tightly managed asylum process by announcing new legislation to enable it to deport a large number of long-staying asylum seekers not approved for resident status over the next three years.

Before 2002, the Netherlands experienced several years of high economic growth, which resulted in significant social changes and also saw a reduction in economic activities. Rising public anxiety about immigration, coupled with an insufficiently funded police force, were key determinants of the Dutch immigration policy. In the aftermath of the 11 September 2001 attacks in the USA, and the threat of public security posed by terrorists, public debate on immigration became more radical, and certain categories of immigrants were perceived as potential terrorists.

In the run-up to the general elections in 2003, there were heated public debates on immigration policy, which some critics attributed to an over-emphasis in Dutch immigration law and policy on control, security and restriction, rather than on assessing actual immigration needs.

The stricter immigration policy approach, particularly towards irregular migrants, aims at discouraging potential migrants from entering the Netherlands in the first place and encouraging those who wish to return to repatriate to their countries of origin or to a third country.

In 2000, the Netherlands was the fourth biggest asylum receiving country. Since then, stricter immigration policies have led to progressive reductions in asylum applications. The number of asylum requests in 2001 was 32,579; in 2002, 18,667 and in 2003, 13,400. The asylum approval

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rate during 2002 was about 11 per cent. In 2001, the Netherlands fell to sixth position and ranked only tenth in 2002 on the list of top asylum receiving countries.² The introduction of the new law in 2000 resulted in a drop in asylum applications by more than half to around 20,000 in 2002, from 44,000 in 2000.³

Forced return is regarded as a necessity where rejectees do not cooperate or have committed a criminal offence or are otherwise considered to be a public threat. The stricter enforcement of the Aliens Act appeared to lead to an increase in the number of forced returns from the Netherlands. But in reality the total number of expulsions and supervised departures have continued to decline.

TABLE 1
ACTUAL EXPULSIONS OF ASYLUM SEEKERS

Type of Expulsion	Year			
	2000	2001	2002	2003*
Asylum	2,027	2,112	2,276	1,282
Non-asylum (Including Illegal Migrants)	7,920	7,386	9,739	6,921
Total	9,947	9,498	12,015	8,203

* Figures for 2003 only cover the first eight months.

Source: Note on Return: Measures for a More Effective Implementation of the Return Policy, 21 November 2003, Ministry of Justice, p. 10.

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It is to address these declining numbers that the government is introducing a more comprehensive approach to return in 2004 which, based on a Ministry of Justice policy report in November 2003,⁴ focuses on the problem of long-term asylum seekers. As anticipated above, the government has declared a special amnesty for some asylum seekers whose applications are still under consideration. But this would be accompanied by stricter enforcement of return for those not eligible for the amnesty, improved border control, better promotion of return at various stages of the asylum process, more efficient return procedures and measures at the international level to make the return more effective.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Aliens Act 2000 governing the admission and expulsion of non-nationals came into force in April 2001. The essence of the law is that aliens, who have been rejected and have no further recourse to the courts, can no longer avail themselves of state benefits, and have an obligation to leave the country on their own volition. With the court's rejection of the petition for asylum, reception and all provisions are terminated within a period of 28 days after notification of rejection. The negative decision imposes on the rejectee an obligation to leave the Netherlands. "The policy is based on the principle that (preparation for) termination of reception provisions begins once asylum seekers are legally removable or have no further possible recourse to the courts in the first asylum procedure."⁵

However, a discontinuation of state provisions is not subsequently followed by the aliens' repatriation. The discontinuing of provisions is a result of a rejected asylum petition, but the repatriation is still based on the effort of the rejectee and requires the cooperation of the country of origin as well as the rejectee. It is therefore the person's own decision to opt for repatriation to his/her country of origin or to depart for an unknown destination.

If the foreigner opts for repatriation, he/she can rely on repatriation assistance from the Ministry of Justice. Thus the guiding principle of the Dutch Repatriation policy is that foreigners unable to remain in the country are primarily responsible for their own repatriation.

The Dutch Aliens Act

According to the Aliens Act 2000, a refusal of asylum application is followed by:

- An automatic termination of the reception facilities (no longer any need for a termination decision as under the old legislation);
- Expulsion if the person concerned does not leave the Netherlands of his/her own volition (no longer any need for an expulsion order);
- Eviction from the accommodation centre in order to terminate reception facilities.⁶

To sum up, any person not lawfully resident is required to leave the Netherlands on his/her own volition within 28 days from the day of notification, thus making return the full responsibility of the migrant. The legal obligation to leave the Netherlands commences when lawful residence

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ends. Where a person has never been lawfully resident in the Netherlands, e.g. following illegal entry, this legal obligation arises from the moment he/she enters the Netherlands illegally.

In addition, under the new Law, residence permits are awarded only provisionally. There are two simultaneous asylum categories – temporary status and permanent status. A permit for a fixed period is issued first and application for a permit of indefinite period can be made after three years have elapsed. Hence, the government can revoke the permit if it decides that conditions in the refugee's home country have improved sufficiently to allow repatriation.

Despite the legal obligation to leave the Netherlands once a person has exhausted all channels of asylum, the actual departure cannot be guaranteed simply by means of law. The Ministry of Justice argues that a blend of incentives and restrictions is necessary to ensure effective repatriation, in accordance with the “carrot and stick” principle applied in most EU Member States. The government's aim is to discourage unwarranted applications for asylum and to encourage those who are in the country without the right of residence to leave.

All these provisions will be applied more strictly under legislative revisions in 2004, including increased inspections along the border and stepped-up arrest and detention of foreigners already inside the country and in irregular circumstances. The latter will involve closer cooperation of police forces, more regular checking of foreigners, and detention and expedited expulsion of those with no legal right to remain. There will also be greater scrutiny and possibly rejection of asylum seekers without proper documents.

Ordered and Forced Return

Dutch Law distinguishes between ordered (*de jure*) and forced (*de facto*) return. The former involves the issuance of an official order authorizing expulsion and banning return to the Netherlands, while the latter refers to the actual enforcement of the expulsion order. Nevertheless forced return does not automatically follow ordered return because of the voluntariness of the obligation to leave. Based on research conducted in 1997, it was discovered for instance, that only 22 per cent of the 19,000 unsuccessful asylum applicants who requested to return to their countries of origin, actually did so through government enforcement.

Three-quarters of these were forcibly removed, while the remaining quarter were registered as having left the country at an external border. The remaining 15,000 were not expelled, and it is estimated that a significant proportion of such persons continue to live in the Netherlands without any legal status.⁷ Consequently, forced expulsions are implemented more frequently and serve as an effective deterrent to illegal migrants, if the decline in asylum statistics is to be taken into account.

Under Dutch law, illegal residence is not a punishable offence. However, with the Aliens Law 2000, illegal migrants who do not obey the order to leave and are repeatedly caught can be classified *persona non grata* and face a sentence of up to six months imprisonment, followed by the possibility of an additional detention period.⁸

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The main source of migration policy in the Netherlands is the Ministry of Justice (MoJ).⁹ The Immigration and Naturalization Services (*Immigratie en Naturalisatiedienst* – IND) and the Central Reception Organization for Asylum Seekers (*Centraal Orgaan opvang Asielzoekers* – COA) are the executive governmental agencies under the responsibility of the MoJ.

The COA is responsible for the reception and distribution of basic provisions. Once asylum seekers have been granted asylum, their reception and care fall under the responsibility of the concerned municipality. The COA also implements special training programmes aimed at providing skills perceived to be valuable in the country of origin. The government is considering merging the COA's registration of reception system with the aliens' reporting system of the Aliens Police.

The Dutch National Migration Institute (NMI) provides counselling to asylum seekers throughout the proceedings about the possible consequences of a rejection of the asylum petition, and the aliens' obligation to leave in case of a negative decision.

The Royal Netherlands Military Constabulary (KMar) and the Aliens Police (part of the Immigration Service, *Vremdelingendienst*) enforce expulsions in close cooperation with the IND, concerned municipalities, the Alien Chambers and the Council of State. The Minister for Immigration and Integration also takes some of the responsibility for the work of the Aliens Police and the KMar.

The Immigration Service is part of the police force and is, therefore, under the responsibility of the Ministry of Interior and Kingdom Relations, although it implements the policy drafted by the MoJ. The *Vremdelingendienst* has intensified its supervisory functions in order to achieve improved results in combating illegal immigration and accelerating the repatriation of illegal migrants.¹⁰

In 1999 a collaboration agreement with all involved organizations was agreed upon. Since then, an overall project manager has been appointed, leading to the establishment of consultation and collaboration structures, which include regional interdisciplinary repatriation teams.¹¹

For the future, the government has decided that the Minister for Immigration and Integration should be responsible for centrally managing the coordination and organization of returns. This will require standardized national approaches and linked-up information systems, the costs and logistics of which the government is currently assessing.

Operational Steps for Involuntary Return

Due to the accelerated procedure made possible under the Aliens Act, a growing number of asylum seekers are ordered to leave the country. The Immigration and Naturalization Service decides whether a case is placed in the accelerated procedure or in the regular procedure. In case

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of an accelerated procedure, i.e. where the application is deemed to be manifestly unfounded or does not require extensive research, the application procedure is completed within 48 hours.

This procedure is often applied to illegal migrants who enter the Netherlands via Amsterdam's Schiphol Airport. In accordance with the Geneva Convention on Refugees and the European Convention on Human Rights (ECHR), the case is rejected if deemed manifestly unfounded.¹² The carrier responsible for the rejectee's access to the Netherlands is obliged to repatriate the rejectee, or if the rejectee has valid travel documents he/she is otherwise expelled.

Asylum seekers whose applications undergo the regular procedure are transferred to a reception facility. COA officials inform the asylum seeker directly after his/her arrival about the chances of a negative response on the asylum request and the consequences of a refusal. If the final decision of the IND is negative, the asylum seeker is given a written order to leave the country on his/her own accord within 28 days. The COA terminates within 28 days all provisions, and the asylum seeker is expelled from the reception centre.

In future, it is intended that more asylum seekers at Schiphol Airport, whose identity and claims require further corroboration, be transferred to the removal centre, where the IND will have six weeks to make a decision. Carrier responsibility (including cost coverage) will continue to apply during the "investigation" period.

In practice, the state-driven policy for asylum seekers and irregular migrants is not always consistently implemented. Sometimes, municipalities continue to pay provisions to rejectees, although the IND and COA have ordered their termination. However, according to the MoJ the majority of rejectees actually leave the Netherlands.¹³

An order to leave the territory of the Netherlands, however, does not automatically imply that a rejectee is returned or is deported. As repatriation is the responsibility of individuals, and the prospect of return rarely appeals to them, they sometimes choose to reside without residence permits.

Carrier Liability

Pursuant to Section 65 of the Aliens Act 2000, the carrier transporting a migrant who is refused entry is obliged to return the migrant to the last port of departure. With the implementation of the European Council Directive on Carriers' Responsibilities, in 2004, costs relating to accommodation of an irregular migrant at Schiphol Airport will be recoverable from the carrier.

Legislative reforms in 2004 are also expected to raise the fine against carriers from EUR 2,250 to EUR 11,250 per passenger. Airlines may be required to provide authorities with passengers' travel documents on arrival at Schiphol; and this will entail greater use of biometrics and possible linking of the carrier documentation process and the visa process.

Escorts

Rejected asylum seekers and illegal migrants are in general expelled in groups via chartered aircrafts. In case of individual removal, the rejectee is escorted by police officers on a regular flight.

There is no procedure to check whether rejectees have left the territory of the Netherlands once ordered to leave. In cases where refused migrants have not repatriated via IOM the IND only registers the fact that rejectees have left for an unknown destination. In a recent case involving a group of illegally resident Bulgarian migrants caught working illicitly in the Netherlands, the government was able to work together with the Bulgarian authorities to prevent these persons from returning to the Netherlands, through the withdrawal of respective travel documents by the Bulgarian authorities.

In future, the government will attempt to recover the costs of expulsion of migrants, and to enforce the Schengen provisions more strictly in regard to registering people in the Schengen Information System (SIS), and preventing re-entry of SIS-listed persons for the mandatory two years.

The government is also exploring the need for increased use of biometrics in registering foreigners, establishing a database that is integrated into the immigration system, incorporating biometrics into the visa system, and installing biometric scanning equipment at diplomatic missions abroad.

Detention

According to Dutch law, migrants without a valid residence permit or without proof of identity are liable to be detained. Asylum seekers or illegal migrants who enter the Netherlands via Amsterdam’s Schiphol airport are generally detained at *Grenshospitium*, Amsterdam. Approximately a third of all detained asylum seekers, whose asylum petition is processed by the authorities are transferred from *Grenshospitium* to a reception centre. Another 30 per cent are immediately expelled, if this is possible under the Geneva Convention and ECHR and if the airline responsible for the rejectee’s access to the Netherlands can be identified, or if the rejectees have valid travel documents. The remaining rejectees are released with the order to leave the country on their own volition.¹⁴

TABLE 3
TOTAL NUMBER OF ALIENS WHO HAVE BEEN DENIED ENTRY AT SCHIPHOL AIRPORT
IN THE PERIOD 1997-2002

Category	Year					
	1997	1998	1999	2000	2001	2002
Asylum	4,835	4,406	4,459	4,045	2,661	1,922
Non-asylum	4,019	5,006	5,516	5,978	6,695	6,764
Total	8,854	9,412	9,975	10,023	9,356	8,686

Source: Note on Return: Measures for a More Effective Implementation of the Return Policy, 21 November 2003, Ministry of Justice, p. 12.

Migrants who have been ordered to leave, and who fail to comply with the order, or otherwise reside illegally in the Netherlands, are liable to be detained either in the penal institutions in Tilburg and in Ter Apel or in any other prison.¹⁵

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In 2003, the Netherlands instated special detention centres for rejected asylum seekers pending expulsion at Amsterdam's Schiphol Airport, and two more at Ter Apel. These centres serve to detain illegal migrants and refused asylum seekers, who can be expelled in the short term.

The period of detention is not limited and can be imposed repeatedly. The option to repatriate or to leave the Netherlands for an unknown destination rarely appeals to rejectees, understandably, as they have come to the Netherlands to stay and not to return.¹⁶ Thus, the Netherlands faces a growing number of rejected migrants who continue to reside without authorization. A side effect of the stricter asylum policy and the ordered return has been an increase in the number of homeless asylum seekers and a growth in the irregular job market.¹⁷

Critics of the principle of placing sole responsibility for return on the rejectee argue that the asylum seeker is also made responsible for the unwillingness of the country of origin to readmit its nationals. Although countries of origin are obliged under international law to re-accept their nationals, in practice some rejectees are often not readmitted because of missing identification and travel documents. In light of this, the Dutch authorities have tried to cooperate with relevant countries of origin on the readmission of failed asylum seekers and irregular migrants.

Detainees without sufficient financial means are provided with free legal counsel.

Framework Agreements with Countries of Origin or Transit

The Netherlands does not usually conclude repatriation and readmission agreements independently and often negotiates them either as part of the Benelux or as part of the EU.

In 2002, the Benelux countries prepared readmission agreements with Algeria, Armenia, Azerbaijan, the Czech Republic, France, Georgia, Hungary, India, Kyrgyzstan, Macedonia, Nigeria, the Slovak Republic, Switzerland, and Yugoslavia. They eventually signed readmission agreements with Hungary, the Slovak Republic, and Yugoslavia, although the ratification procedure was not finalized by the end of 2002.¹⁸

An overview of other agreements can be found in Annex 1.

The need for such agreements has arisen out of obstacles presented by the repatriation process, e.g. the reluctance of some countries to accept their returning nationals and cooperate in providing travel documents, where lacking. This process proves to be difficult especially in cases where rejected asylum seekers have committed a serious criminal offence. Some diplomatic missions of countries of origin have expressly stated their unwillingness to assist with forced returns.

Sometimes, the problem arises because of a reluctance of the person to cooperate in establishing his/her identity. This is not only attributable to an unwillingness to leave the country, but also a reluctance to return to the country of origin. Difficulties also arise because of ineffective population registration systems in the country of origin or missing population records. According to MoJ, these persons are subsequently difficult to be removed and actual repatriation impossible, if the provisions of the European Convention on Human Rights and the Convention Against Torture are to be respected.

The need for broad governmental collaboration has been identified, and efforts have been made to address the issue of repatriation with relevant interlocutors on all levels. To this effect, the Ministry of Foreign Affairs has recently appointed a Repatriation Officer. Furthermore, agreements with countries of origin are under negotiation to enable return in cases where only the alien's nationality can be determined.¹⁹ So far agreements exist with Angola and Nigeria.

1.4 STATISTICS ON INVOLUNTARY RETURN

According to government sources, the expulsion of asylum seekers who have exhausted all legal means to reside in the country rose significantly in 2002. Compared to the previous year, 32 per cent of asylum seekers were expelled. On the other hand, the number of expulsions of illegal immigrants went up by 17 per cent.²⁰

In 2002 about 29,000 illegal migrants and 21,000 rejected asylum seekers were deported. By June 2003 another 15,000 rejectees had been expelled.

TABLE 4
OVERALL STATISTICS ON EXPULSIONS, 2002-2003

Type of Return	2002		2003 (August)	
	Asylum	Others (incl. Irregular Migrants)	Asylum	Others (incl. Irregular Migrants)
Address Control*	16,875	5,308	12,289	6,555
Actual Expulsions	2,276	9,739	1,282	6,921
Supervised Departure**	1,537	7,518	1,390	5,543
Other***	570	6,561	276	4,632
Total	21,258	29,126	15,237	23,651

* "Address Control" refers to the process where the police visit the last known address of a rejected asylum seeker or other irregular migrant subject to an expulsion order (i.e. the issuance of an order asking the individual to leave the Netherlands voluntarily within 28 days), to check whether the person has actually departed. If this appears to be the case, the authorities will note down "departure to an unknown destination" in their statistical records.

** Includes departures with IOM.

*** *Inter alia*, the notification to leave the Netherlands after ending alien detention.

Source: Letter to the Parliament of the Minister for Alien Affairs and Integration, 28 October 2003, p. 41-42.

1.5 BEST PRACTICES AND LESSONS LEARNED

Although the country-based asylum policy has become more rigid since 2000, the departures are comparatively low. According to the MoJ, this is due to the fact that many asylum seekers have several procedures pending at the same time.²¹ Under the previous law, aliens had more leeway to object to the termination ruling.²² Thus the termination of provisions and the actual order to leave the country, and eventual repatriation could be significantly protracted. The new provi-

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sions cut down these possibilities. However, there is still a group of aliens who fall under the previous regulations, the so-called **Sequences Steps**.

Another obstacle in the execution of the removal is the fact that asylum seekers, who have stayed for a long period in the country, have already partially integrated into the local community life. The termination of provisions and reception thus provokes protest from non-governmental organizations, unions and citizens, which may delay the termination of provisions.

Assessments and Evaluations

There is no comprehensive evaluation of the implementation of the Dutch involuntary return policies available, although experiences from previous policies have sometimes provided useful insights to inform new strategies. The failure of some readmission agreements e.g. 1992 readmission treaty between Benelux and Slovenia or the 1997 Protocol on Return Cooperation between the Netherlands and Ethiopia, to yield successful repatriations or transit through these countries has led to increased efforts by the Dutch government to explore why such agreements have not worked, and how to better implement existing ones and negotiate new agreements.

Lessons Learned

In regard to involuntary return, the necessity to undertake following measures has been recognized:

- Intensify gate inspections;
- Increase the number of chartered flights;
- Implement a centralized and coordinated approach of presentations at the embassies (replacement travel documents);
- Use language analysis to establish nationality;
- Collaborate with immigration experts in the Netherlands from important countries of origin;
- Negotiate with countries of origin in regard to repatriation.

In order to maintain a credible asylum policy, all provisions and reception have to be terminated once an asylum application has been refused and no recourse to the courts is possible. In practice, the termination of provisions remains problematic both due to slow procedures as well as the practice of a number of municipalities to provide local reception facilities.

In financial terms, the benefits of re-migration remittances, which replace other social security allowances, are estimated to balance the costs of such allowances.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Aliens Act regulates among others, applications for residence and asylum in the Netherlands. It also stipulates measures for the supervision and implementation of its provisions, including the conditions of asylum or residence, processes for appeal, detention, voluntary departure and expulsion.

The underlying principle embodied in the Act is that repatriation is the primary responsibility of persons who no longer have the right of abode in the Netherlands. Such persons are required by law to leave the country of their own volition, usually within four weeks after the period of lawful residence has ended, or immediately if their residence was unlawful.²³ Failure to return within this specified period invokes the probability of expulsion by the Minister of Justice, although voluntary return is preferred and cooperation to this effect is often encouraged.

The Netherlands, like most of the major asylum receiving countries in Europe, is faced with the problem of hosting an increasing number of unsuccessful asylum applicants and has had to come up with innovative methods of removal other than forced return. Consequently, the government has taken several measures to facilitate the process of return and deal with such associated difficulties as the reluctance of countries to accept their returning nationals or the lack of documentation to establish the nationality or identity of returnees.

These measures have included cooperation with the countries of origin through the use of repatriation and acceptance agreements, and also encouraging aliens to return voluntarily, either independently or through assisted return and repatriation programmes.

Assisted voluntary return programmes are increasingly being promoted both because they are more cost effective and a more humane alternative to forced return. Support for facilitated return programmes also rests on the premise that the voluntary obligation of the alien to return needs to be stimulated if it is to result in actual return. Consequently, despite the principle that aliens are responsible for their own return, the Dutch authorities generally support those who opt to return voluntarily by providing return and reintegration assistance.

It is to this end that the Programme for Reintegration or Emigration of Asylum Seekers from the Netherlands (REAN), funded with the support of the Ministry of Justice, has been implemented by IOM since 1992.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Ministry of Justice usually works together with a number of governmental agencies, international organizations and NGOs to facilitate the return of aliens. The Central Reception Organisation for Asylum Seekers (COA) and the International Organization for Migration (IOM) are the main organizations involved in the implementation of voluntary repatriation policy.

Although principally responsible for providing reception and humanitarian assistance to asylum seekers, the COA is also instrumental in the repatriation process through provision of financial support towards education and business initiatives in the country of origin.

For the future, the government has decided to centralize the organization and coordination of the return process under the Minister for Immigration and Integration, and to adopt a standardized national approach, including linked-up information systems.

Operational Steps for Voluntary Return

The Ministry of Justice offers logistical and financial support to those who choose to return voluntarily to their country of origin, or a third country. Repatriation assistance is available to asylum applicants with pending cases, those in possession of a temporary residence permit, or rejected asylum seekers who no longer have recourse to the courts.

With regard to the return itself, officials from the COA conduct interviews with potential returnees, while return or relocation is implemented by IOM.

Programme for Reintegration or Emigration of Asylum Seekers from the Netherlands (REAN) Eligible Beneficiaries

- Asylum seekers and illegal migrants/unauthorized residents of all nationalities who wish to return to their countries of origin but do not have the financial means, and do not have deportation orders pending against them.

In 2003, the programme had an annual budget of EUR 5.6 million, funded by the Ministry of Justice. Services provided by the programme include pre-departure assistance, in the form of counselling and information dissemination in cooperation with partner agencies, and transportation assistance such as help to obtain documentation, facilitating transportation as well as providing transit and reintegration assistance.

The amount of financial assistance provided depends on the individual facts and circumstances of the alien concerned. Three different categories apply with regard to the level of assistance applicants can receive:

- Applicants who did not apply for asylum or a residence permit (illegal entrants) are eligible for the following rates: single person, a maximum of EUR 135; families with up to two chil-

dren, a maximum of EUR 320; for every additional child, a maximum of EUR 45. These amounts also apply to applicants who, with the aid of a sponsor, are able to resettle in a third country.

- Where applicants have applied for asylum, and there is no “suspensory action” in connection with an appeal, the following rates apply: single person, a maximum of EUR 225; families with up to two children, a maximum of EUR 320; for every additional child, a maximum of EUR 45. These amounts also apply to persons whose application for asylum has been rejected and who at the end of the asylum application process have ended up on the streets as illegal entrants. These amounts also apply to applicants who as “independents” (without a sponsor) are able to resettle in a third country.
- In the case of applicants who have received notification of suspensory action or have already been granted some form of residence permit (e.g. on grounds of being accepted as a refugee, on humanitarian grounds, or as a victim of trade in women) the following rates apply: single person, a maximum of EUR 570; families with up to two children, a maximum of EUR 800; for every additional child, a maximum of EUR 90.

Other return and reintegration programmes initiated by the Dutch authorities have focused on specific countries or regions. The Bosnian Reintegration Project, funded by the Ministry of Foreign Affairs, for instance, provides pre-departure, transportation and post-arrival assistance to Bosnian refugees who entered the Netherlands before June 1997. Returnees under this programme are required to renounce their Dutch residence status upon arrival in Bosnia and provide evidence of permanent residence.

A number of return programmes have also been implemented in the past with the aim of facilitating more sustainable return. These include:

- Prepared Return (Pilot Project) – Surveys of Somali and Angolan asylum seekers and refugees in the Netherlands and income-generating opportunities in Somalia and Angola;
- Educated Returns – Counselling asylum seekers within the current curriculum of schools; gathering of information in order to facilitate sustainable return and reintegration;
- Research and Assistance Project – Return and reintegration of rejected asylum seekers from the South Caucasus states and Russia.

Current return and reintegration projects are: return and reintegration to Angola, Afghanistan, Iraq, Return Migration and Health, and the Randstad Return Initiative.

Framework Agreements with Countries of Origin or Transit

The Dutch government has implemented a number of return and reintegration programmes, as discussed above in the involuntary return section, with several countries, all of which include elements of cooperation with the relevant countries of origin and transit.

See Annex for information on countries with whom readmission agreements have been concluded.

2.3 STATISTICS ON VOLUNTARY RETURN

The REAN programme provided return assistance to over 15,000 migrants between 1997 and 2003. In 2003, 3,022 persons were assisted by IOM Netherlands with their departure, mostly to their country of origin, of which 2,906 were assisted voluntary returns and 116 were resettlements. It is estimated that 2,750 individual will be assisted to return in 2004.²⁴

TABLE 5
STATISTICS ON ASSISTED VOLUNTARY RETURN: 1997-2003

1997	1998	1999	2000	2001	2002	2003
826	889	4,136	3,220	1,775	2,194	3,022

Source: Policy Document on Return: Measures for a More Effective Implementation of Dutch Policy on Return, 21 November 2003, Ministry of Justice, p. 20.

FIGURE 1
RETURNS UNDER THE REAN PROGRAMME,
BY COUNTRIES OF DESTINATION: 1995-2001

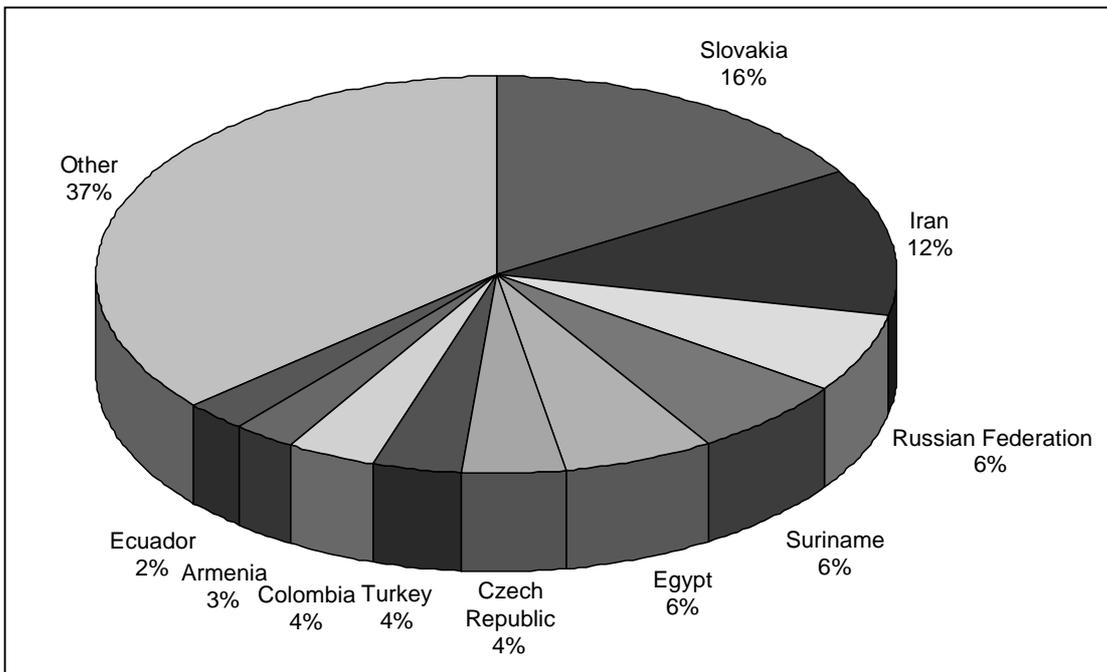


FIGURE 2
 RETURNS FROM THE NETHERLANDS UNDER THE REAN PROGRAMME,
 MIGRANTS BY SEX AND MARITAL STATUS: 1995-2001

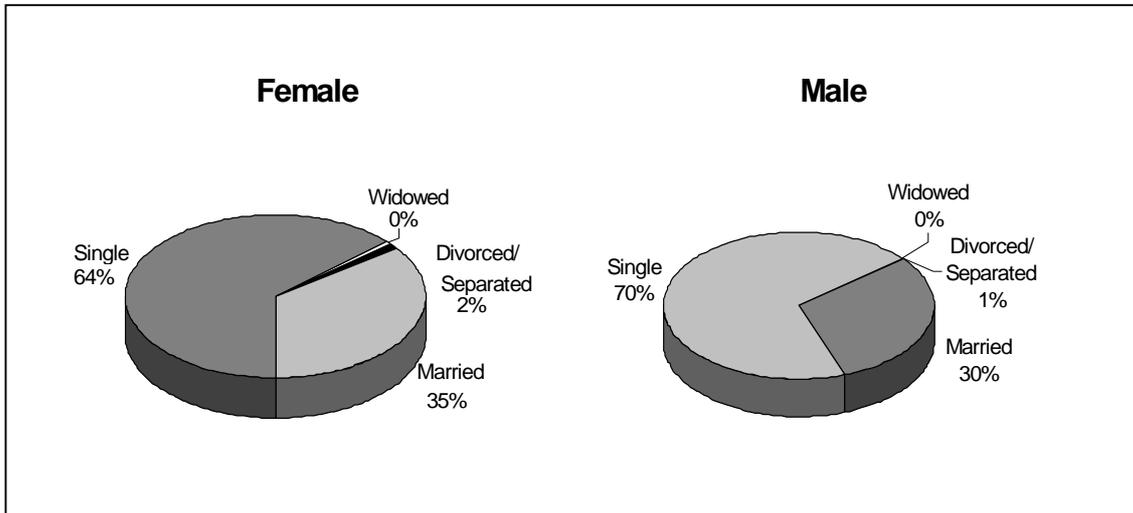


FIGURE 3
 RETURNS FROM THE NETHERLANDS UNDER THE REAN PROGRAMME,
 MIGRANTS BY SEX: 1995-2001

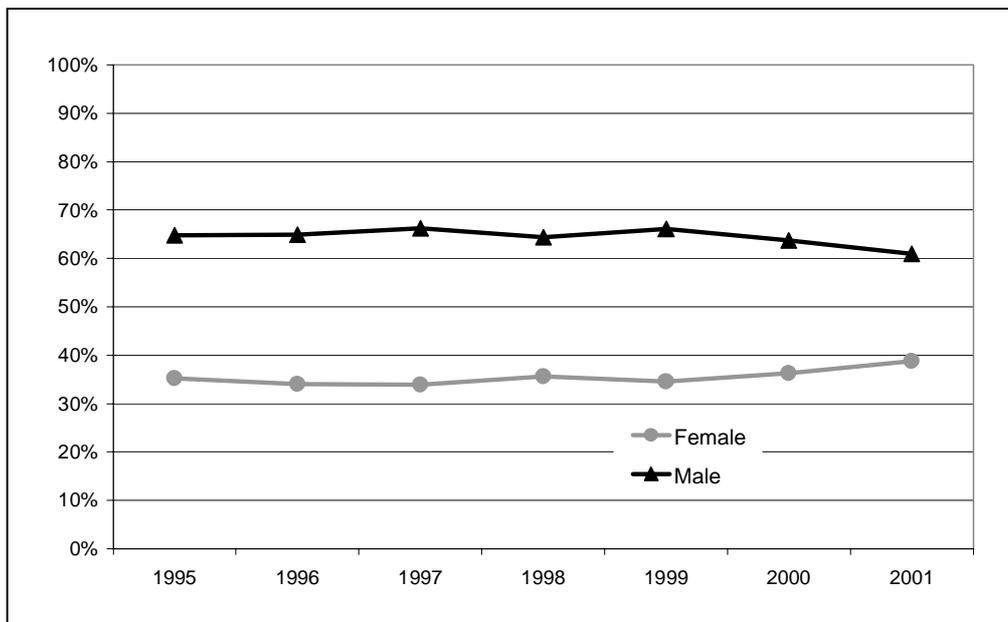
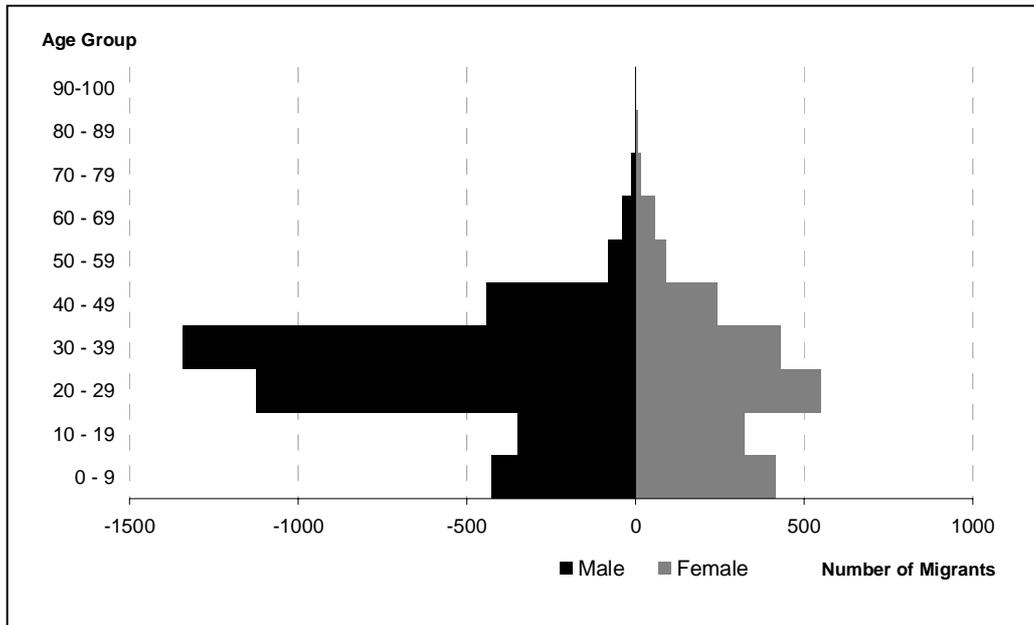


FIGURE 4
RETURNS UNDER THE REAN PROGRAMME,
MIGRANTS BY SEX AND AGE GROUP: 1995-2001



2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

There has been no comprehensive evaluation of the implementation of the Dutch voluntary return policies recently. But some previous evaluations have tended to focus on specific return projects such as the pilot project on the Facilitated Return of Rejected Asylum Seekers from Angola and Ethiopia in February 2000. While in quantitative terms the project was regarded as a failure, asylum seekers who returned under it successfully reintegrated through micro-enterprise projects and counselling.

The Erasmus University in Rotterdam is also currently conducting an evaluation of the IOM Netherlands' project on Return and Reintegration of Rejected Asylum Seekers from the Southern Caucasus and Russia. Detailed information on this assessment is not yet available.

Best Practices and Lessons Learned

The success of return and reintegration programmes run by the Ministry of Justice in cooperation with IOM is evident from the voluntary return of 2,200 foreign nationals in 2002 alone. Voluntary return programmes are seen to be much more cost-efficient than forced return and related detention and expulsion, and are consequently encouraged. Previous return programmes have highlighted some of the issues:

- The importance of providing assistance to those willing to return, including target group-oriented return programmes;
- The importance of individual mediation, as a complement to international or target group-oriented return programmes;
- The importance of securing the cooperation of countries of origin and transit, through mediation, to facilitate repatriation.

The practice of the IND to inform all asylum applicants, during their initial claim for asylum of the possibility of assisted return, and the information campaign accompanying the programme, are examples of good practice that could be adopted in other countries.

Since assisted voluntary return schemes continue to attract relatively low numbers of candidates, despite substantial increases in foreigners required to leave, the Minister of Justice also advocates a different approach to facilitate returns, including early advice to the asylum seekers that a negative application will lead to expulsion. It is hoped that the aliens' desire to return home in a safe and dignified manner will induce them to choose the voluntary option. It could also include the possibility of reducing return assistance in direct proportion to the length of stay of the migrant in the Netherlands, as an inducement to return voluntarily earlier.

To ensure greater efficiency in the delivery of return programmes, as stated above, the government also intends to centralize the administration of returns under the Minister for Immigration and Integration; enhance and inter-link related databases; and invest more in cooperation with other affected states at the foreign policy level.

ANNEX 1 LIST OF FRAMEWORK AGREEMENTS UNDERTAKEN BY THE NETHERLANDS²⁵

Benelux – Established Repatriation and Acceptance Agreements:

- Austria
- Bulgaria
- Croatia
- Estonia
- France
- Germany
- Latvia
- Lithuania
- Romania
- Slovenia

Negotiations are in progress between the Benelux and the following countries (initials in parentheses indicate the chief negotiating country in the process):

- Albania (B)
- Algeria (NL)
- Armenia (B)
- Azerbaijan (NL)
- Czech Republic (NL)
- Federal Republic of Yugoslavia (NL) – signed 2002
- Former Yugoslav Republic of Macedonia (NL)
- Georgia (NL)
- Hungary (Lux) – signed 2002
- India (NL)
- Kyrgyzstan (B)
- Mali (NL)
- Moldova (B)
- Nigeria (B)
- Slovakia (NL) – signed 2002
- Switzerland (NL)
- Ukraine (B)

Negotiations with Switzerland and the FRY are quite advanced.

European Union

The European Union is at an early stage in the R&A negotiations with:

- Morocco
- Pakistan (suspended because of the current situation)
- Russia
- Sri Lanka

Finally negotiations have reached an advanced stage with the following countries (Special Administrative Zones):

- Hong Kong
- Macao

NOTES

1. For the text of the 2000 Aliens Act and the explanatory memorandum, see http://www.ministerievanjustitie.nl:8080/a_beleid/themavreemd.htm (English).
2. *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2002*, UNHCR, Geneva, March 2003.
3. US Committee for Refugees World Refugee Survey 2003 – The Netherlands.
4. *Policy Document on Return: Measures for a More Effective Implementation of Dutch Policy on Return*, 21 November 2003, Ministry of Justice.
5. Update on Repatriation Policy Implementation, Ministry Of Justice, Aliens Chain Coordination Project Desk, 1 February 2002, p.3.
6. Aliens Act 2000 – Brief Explanation, New Aliens Act Project, p. 2.
7. W. Van Bennekom, M. Van Den Bosch, K. Groenendijk and B. Vermeulen, in B. Nascimbene (Ed.), “Expulsion and Detention of Aliens in the European Union Countries”, 2001.
8. The additional detention period is no longer common practice, as the authorities must in these cases grant the rejectees removal. Otherwise there is little leeway for the authorities to justify additional detention.
9. After the general elections in May 2002, the government created a new ministerial position combining immigration and integration affairs. Before then, integration policy belonged to the Ministry of the Interior and Kingdom Relations, while immigration policy was – and still is – under the responsibility of the MoJ.
10. In addition to supervision, the Immigration Police usually carry out the substantial administrative task of processing residence permits. For the period of one year, 2003-2004, the Immigration Police has been released from this task, which has been handed over to the IND; Document of the Tweede Kamer (Second Chamber of the Houses of Parliament) of 20 December 2002, dossier nr 19 637 nr 707 (*Vluchtelingenbeleid; stand van zaken mvv aanvraagprocedure*).
11. As in Germany, there is no centralized information system holding records on aliens. Therefore one of the main problems in the collaboration of all involved authorities and agencies is the lack of information. However, various automation projects are under way to improve the information supply in the asylum process.
12. Although the accelerated procedure was initially designed for manifestly unfounded cases, by mid-2002 it had been applied to at least 60 per cent of all cases in the Netherlands - triple the amount in past years. *US Committee for Refugees World Refugee Survey 2003 – The Netherlands*, June 2003.
13. Yet the MoJ admits that there are no numbers to undermine this estimation, as “the whereabouts remain unknown of those aliens whose reception and other provisions are terminated and of the aliens departing for unknown destinations (...)”. Update on Repatriation Policy Implementation, Ministry Of Justice, Aliens Chain Coordination Project Desk, 1 February 2002, p. 5.
14. *Schubhaft in Europa – Ein Überblick über rechtliche Grundlagen & Haftbedingungen, Schubhaft-Sozialdienst Wien*, 2001.
15. According to non-governmental estimations, approximately 40 per cent of these illegal migrants are expelled. The remaining 60 per cent who are difficult to remove are released again with the order to leave the country.
16. MoJ Update on Repatriation Policy Implementation, p.5.
17. Information based on a conversation with a Dutch migrant expert.
18. *US Committee for Refugees World Refugee Survey 2003 – The Netherlands*.
19. Generally nationalities are easier to be determined than identities.
20. “Number of Asylum seekers plunges in the Netherlands”, *Agence Francais Presse*, 9 January 2003.
21. Asylum seekers receiving a decision by the NDI before 1 April 2001 are subject to a **Step Sequence** termination of provisions. This means that, provisions are discontinued gradually, step by step.
22. Some aliens are subject to Step Sequences 1999, Step Sequences 2000. Former holders of temporary residence permits are still covered by the Care Act, p. 8 MoJ.
23. Aliens Act 2000, Sections 61 and 62.
24. *Policy Document on Return: Measures for a More Effective Implementation of Dutch Policy on Return*, 21 November 2003, Ministry of Justice, p. 20.
25. Annex 1, letter of the Ministry of Justice to the Lower House, dated 1 February 2002.

- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: The Netherlands signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. The Netherlands also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

NORWAY

1. INVOLUNTARY RETURN

1.1 POLICY

Norway faces the same immigration challenges as many other Western European countries, namely a need to manage the growing numbers of asylum seekers, most of whom have unfounded claims, contain the incidence of undocumented immigration and strengthen partnerships with countries of origin and transit of the irregular migration.

There has been a steady rise in immigration over the past 30 years, and a change in the profile of immigrants during that time, with asylum seekers outnumbering earlier traditional waves of labour migrants.

Although asylum applications in Norway have tended to fluctuate over the past decade, the overall increase has been substantial, from 2,271 applications in 1997 to its highest ever level – 17,480 applications in 2002. The majority of asylum claims were from Somali, Iraqi, Russian, Serbian, Montenegrin and Kosovar nationals. Of these just 330 were granted asylum or refugee status, while another 3,000 or so were granted protection on humanitarian grounds. A further 1,200 refugees were accepted in 2002 as part of the resettlement programme operated by UNHCR.

However, over 70 per cent (9,070) of all asylum decisions made in 2002 were negative, while some 3,760 cases were referred to other EU countries under the Dublin Convention.

The practice of the Norwegian authorities, in respect of unsuccessful asylum seekers, has generally been to encourage voluntary departure after a negative decision of asylum has been issued. The ability of the Norwegian immigration system to effectively process claims and enforce decisions has, however, been compromised not only by the volume of applications but also by attempts of the applicants to have unfavourable decisions reversed through appeals. For example, 96 per cent of all initial rejected asylum decisions were appealed against in 2002.

But as stated, asylum is not the only area of migration posing difficulties for the Norwegian authorities. Like most other European countries, Norway is confronted with the general problem of undocumented migrants and associated difficulties of absconding of potential returnees, establishing true identities and the reluctance of countries of origin to accept their returning nationals.

Since 2000, new measures have been introduced to streamline the processing of asylum claims and the appeals procedures, while also ensuring that due process is extended to asylum claimants. In a report to the Storting in 2000, the Immigration Directorate (*Utlendingsdirektoratet* -

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UDI) established new goals to process asylum claims within five weeks, where no additional information was required; while the Immigration Appeals Board, an independent quasi-judicial appeals body, was to issue its decisions in 16 weeks.¹

Given the sharp increase in asylum seeker levels over the past five years, the government introduced in 2003 additional measures targeted towards asylum seekers who are not in need of protection, in order to ensure the effective operation of the asylum system. These include:

- A 48-hour asylum procedure for asylum seekers from safe countries,² as of January 2004, implying that the UDI is expected to decide on the outcome of a claim within 48 hours after it has been registered, or where in doubt decide it in the normal asylum procedure;
- Withdrawal of accommodation in reception centres, as of January 2004, for unsuccessful asylum seekers after expiry of the deadline for departure;³
- Withdrawal of cash benefits provided in reception centres during the initial period of stay, as of January 2004, and the reduction of benefits to individuals to be transferred to countries of first asylum.

Furthermore, the Norwegian government committed itself to cooperating with countries of origin in readmitting its returning nationals, and concluding readmission agreements with those countries to which returns are currently difficult. It is also currently undertaking an assessment of how legislation can be better implemented to process larger groups of asylum seekers e.g. from the Russian Federation, Afghanistan, Iraq, Somalia and Serbia and Montenegro.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

Immigration and asylum procedures in Norway are governed by the 1988 Act Concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Act) and the 1990 Regulations Concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Regulations).

A review of the existing immigration legislation is currently underway, and the government has established a legal committee to present a proposal for a new Immigration Act by July 2004.

Conditions for Entry

Foreign nationals entering the territory are obliged to carry a valid passport or other recognized form of travel document. Unless there is an exception to visa requirements, foreign nationals must have the necessary visa endorsement in order to enter the country.

Grounds for Rejection on Entry

Chapter Five of the Immigration Act contains provisions for the rejection and expulsion of foreign nationals. According to Article 27 of the Immigration Act, a foreign national may be rejected at the border or within seven days of entry for the following reasons:

- Lack of the necessary travel documents (e.g. valid passport, visa);
- A previous expulsion from Norway or another Nordic country and consequently being subject to prohibition of entry;
- Lack of the required work, residence or settlement permit;
- Failure to provide evidence of the necessary means to support his/her stay in Norway and pay for his/her return journey;
- An earlier sentence, as prescribed under Article 29 of the Immigration Act (see below), or grounds for believing that the individual may commit an offence punishable with imprisonment of a term exceeding three months;
- Probability of the person entering another Nordic country from Norway, where he/she is likely to be rejected for entry because of a lack of the required travel documentation or for any other grounds;
- Where national security or compelling social considerations make it necessary.⁴

Exceptions are made where the individual concerned lodges a claim for asylum, in which case the application will be referred to the Directorate for Immigration (UDI) for consideration.

According to Article 17 of the Immigration Act, asylum seekers may be refused entry in the following circumstances:

- There are reasonable grounds for regarding him/her as a danger to national security;
- He/she constitutes a danger to the community following conviction for a particularly serious crime;
- He/she is in one of the situations mentioned in Article 1(f) of the Geneva Convention, relating to war crimes, crimes against humanity and acts contrary to the principles of the United Nations;
- He/she has already been granted asylum in another country;
- He/she has travelled to Norway on his/her own initiative after being granted protection in another country, or after having stayed in a state or area where he/she was not persecuted and had no reason to fear refoulement;
- Another Nordic state is obliged to accept him/her in accordance with the Nordic Passport Control Convention;
- Asylum must be denied on the grounds of compelling social considerations.

Grounds for Expulsion

Article 29 of the Immigration Act stipulates that a foreign national may be expelled from the territory if:

- He/she has grossly or repeatedly contravened one or more provisions of the Immigration Act or has evaded the implementation of an order to leave the country;
- He/she has served a sentence, or has been sentenced for an offence abroad, which according to Norwegian law is punishable with imprisonment for a term exceeding three months, within the last five years;
- He/she has been sentenced, or placed under preventive supervision, in Norway, for an offence

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that is punishable by imprisonment for a term exceeding three months, or has been sentenced to imprisonment on several occasions during the last three years;

- National security concerns warrant an expulsion.

In the first three instances, expulsions will not be implemented if after taking into account the gravity of the offence and the individual's connections to the country (e.g. family), it is considered that the expulsion will be disproportionate.

A foreign national who has a work or residence permit, or a Nordic national who has been resident in the country for more than three months, may only be expelled if the offence is punishable with imprisonment for a term exceeding one year. Foreign nationals, who were born in Norway and have resided in the country continuously, cannot be refused entry or expelled from the country. Those who qualify for permanent settlement may only be expelled in the interests of national security or following the completion or receipt of a sentence for an offence punishable with imprisonment of more than three years.

Prohibition on Re-entry

Expulsion is usually considered to be an obstacle to re-entry. The prohibition may be permanent or for a limited duration, depending on the severity of the grounds for expulsion and an assessment of the individual's personal and family circumstances. In practice, this period generally does not exceed two years from the date of expulsion. In exceptional circumstances, an individual may be granted entry into the country for a short visit before the two years have lapsed, where strong and reasonable grounds exist.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Department for Migration is one of the six departments of the Ministry of Local Government and Regional Development (*Kommunal og regionaldepartementet* – KRD), which is responsible for, among others, issues relating to immigration, minorities, housing, labour market, local government finance and administration and regional development.

The Department for Migration is responsible for the development and coordination of policies, laws and regulations concerning refugees, immigration and integration. It establishes the rules and regulations pertaining to entry to and exit from Norway and questions concerning visa policy, border control, illegal immigration and human smuggling. It is also responsible for facilitating the return of refugee and asylum seekers to their country of origin.

The Department for Migration is responsible for sectors of the Police Department and the Foreign Service dealing with immigration affairs, and manages issues relating to the Schengen area, the European Union and the Dublin Convention. In addition, the Department handles appeals against decisions made by the Directorate of Immigration on applications for Norwegian nationality.

The Immigration Directorate (UDI) is a subsidiary agency of the KRD, and is responsible for implementing the refugee and immigration policies. In June 2000, it took over the role of interviewing asylum seekers from the police, in an effort to ensure adherence to due process of law.

Normally, under the jurisdiction of the Ministry of Justice, the Police Department is responsible for the enforcement of deportation orders and the provision of escorts, and is in this capacity monitored by the KRD.

Operational Steps for Involuntary Return

Rejected asylum seekers are obliged to leave the country voluntarily within three weeks after the negative decision has been issued. Non-compliance initiates deportation proceedings by the police and in certain cases may lead to detention, although asylum seekers are rarely detained as a means of ensuring removal.

Asylum seekers may appeal against the first negative asylum decision, and the appeal must be lodged with the Immigration Appeals Board within three weeks of notification of the decision. Following the final rejection, the individual will be given two weeks to leave the country voluntarily, after which the police can begin deportation proceedings.

Other foreign nationals who have breached immigration regulations and are liable to be expelled under Article 27 of the Immigration Act (see section on “Grounds for Rejection on Entry” above) will be ordered to leave by the Police Department, following a decision by the Immigration Directorate. Appeals against the expulsion order may be made to the Ministry of Justice. Any existing work or residence permits become invalid when the expulsion order is finalized.

Decisions deriving from a breach of the provisions defined in Article 27 of the Immigration Act can be implemented immediately. Where an individual is liable to be expelled because of a failure to renew a work or residence permit before the required time limit, expulsions will only be carried out once the individual has had an opportunity to appeal, and 48 hours after final notification of a negative decision.

Withdrawal of Social Benefits

According to new measures, which came into effect in January 2004, cash benefits and accommodation in reception centres will be withdrawn from unsuccessful asylum seekers after the deadline for voluntary departure expires. Cash benefits will also be reduced from persons who are due to be transferred to their country of first asylum.

Prosecution and Detention Procedures

According to Article 37(6) of the Immigration Act, foreign nationals may be detained or asked to report to the police if they refuse to reveal their correct identity, or there are reasonable grounds to believe that the individual has provided an incorrect identity. The period of detention cannot exceed 12 weeks, unless there are exceptional reasons to further detain the individual beyond this period.

Asylum seekers who have exhausted all rights of appeal may also be detained for up to two weeks or longer if there is reason to believe that he/she will abscond or not leave the country

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voluntarily. However, this rarely happens in practice. The decision to continue with detention has to be made by a court, and detention can be extended twice, for a period of two weeks each i.e. for a maximum of six weeks.

Persons liable for detention are normally held in a special reception centre in Trandum, which is used by the police for cases pending deportation.

Escort and Transit Arrangements

The Police Department is responsible for exit control and decides when escorts are necessary. In assessing the police take the following issues into consideration:

- The need for security on the means of transportation;
- Where repatriation is outside the Nordic passport control area;
- A request by the captain of the carrier for escorts;
- The need to provide assistance (e.g. medical) to the person being returned.

The Police Department makes all decisions on the nature of the escort service to be provided e.g. the distance for which escorts will be required, the number of escorts and the gender composition.

The relevant authorities in countries of transit will also be notified in advance, if the foreign national will use a different means of transport in the transit country, and as security or other reasons dictate.

Stamps in Passports

In certain cases passports may be stamped during an expulsion procedure. Stamps are applied, for instance, where the expulsion is as a result of a criminal act as specified under Article 29 of the Immigration Act (as above, under “Grounds for Expulsion”).

Fingerprinting

According to Article 128(a) of the Immigration Regulations, pursuant to Article 37(4) of the Immigration Act, photographs and fingerprints will be taken where an individual cannot provide details of his/her identity or is suspected of providing false information on his/her identity. Other categories of foreign nationals who may be liable for fingerprinting include those applying for asylum and those over the age of 18, applying for family reunification.

Rejected asylum seekers, whose fingerprints were not taken during the application procedure, are also liable to be fingerprinted. Furthermore, foreign nationals who have had an unsuccessful application for a work or residence permit, or who under the provisions of the Immigration Act are liable to be rejected at the border or expelled from the country, may be fingerprinted. Any foreign national who is expelled or has stayed unlawfully in the country will also be fingerprinted.

All photographs and fingerprints taken pursuant to Article 128(a) of the Immigration Regulations will be stored in the individual’s immigration case file and registered in a special immigra-

tion database for fingerprints in the fingerprint register of the National Bureau of Crime Investigation (Ministry of Justice).

Fingerprints will be erased from the register when the foreign national has been granted asylum or a permanent residence permit, although records may still be held if there are doubts about the individual's identity. Records of rejected asylum seekers, or individuals whose applications for permits have been refused, will be erased after five years.

Chartered Flights

Chartered flights are occasionally used during the implementation of forced returns, to facilitate the removal of large numbers of returnees to the same destination.

Costs

The cost of enforcing deportations in 2003 was estimated to be about NOK 20,000 (approximately EUR 2,300) per person. Due to recent organizational changes within the police department, it is anticipated that deportation costs for 2004 will be lower, although an accurate estimate is currently not available.

Framework Agreements with Countries of Origin or Transit

Existing readmission agreements concluded by the Norwegian government have tended to focus on relations with neighbouring countries. A number of bilateral agreements on readmission have also been concluded, in addition to the 1957 Convention between Denmark, Finland, Norway and Sweden, Relating to the Waiver of Passport Control at the Inter-Nordic Frontiers, which stipulates a right to request the return of asylum seekers who have transited through the above-mentioned states.

The agreement between Norway and the Federal Republic of Germany concerning the Readmission of Persons Who Have Illegally Entered the Other Country, 18 March 1955, obliges contracting parties to readmit their nationals, as well as third-country nationals who entered the territory of the requesting party illegally.

Both countries have their own approaches to the obligation to readmit third-country nationals. Norway's obligations do not apply to Danish, Icelandic, Finnish or Swedish nationals, while Germany applies this principle to refugees and expelled persons of German ethnic origin.

The 1992 Bilateral Agreement between Norway and Lithuania provides for the readmission of third-country nationals who have illegally entered the territory of the requesting party from the territory of the other party.

The Norwegian authorities have also made efforts in the field of technical cooperation with some other Baltic States, although no readmission agreements have as yet been concluded with them.

In order to ensure a more efficient return procedure, the Norwegian government has more recently tried to initiate negotiations with countries where returns are difficult to secure.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Involuntary Returns
2001	5,100
2002	7,108
January – June 2003	3,245

1.5 BEST PRACTICES AND LESSONS LEARNED

No information available.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

In general, the Norwegian authorities prefer voluntary return to forced return as a humanitarian, cost effective and more efficient means of return. Consequently, voluntary return has been promoted in recent years, and the government has cooperated with a number of NGOs and international organizations in providing relevant support to returnees.

Since May 2002, the Immigration Directorate has increased its cooperation with the International Organization for Migration, following the opening of its office in Oslo. IOM is responsible for the implementation of the Voluntary Assisted Repatriation Programme (VARP), in cooperation with local NGOs and the police department.

Some of the programmes previously implemented by IOM and other NGOs have been country-specific, aimed at repatriating large groups of people more efficiently, especially to Bosnia and Kosovo. Current repatriation policies are geared towards promoting more sustainable returns, in light of the trend in recent years for previous participants of the programme to re-migrate to Norway.

Repatriation grants are supposed to be repaid if participants of the programme return to Norway. However, this rarely happens in practice, as returning migrants are often not in a position to repay the grant.⁵ Emphasis has therefore been placed on a goal-oriented approach to return, where financial assistance is tied to projects that encourage reintegration at home.

There is no specific legal basis for assisted voluntary return, although Article 41 of the Immigration Act stipulates that foreign nationals and unsuccessful asylum seekers have an obligation to leave the country voluntarily, immediately or within the prescribed time period.

1.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

Among others, the Immigration Directorate (UDI) is responsible for the administration of the return programme for refugees and rejected asylum seekers. In this respect, the UDI cooperates with relevant NGOs and international organizations involved in providing assistance to persons wishing to return voluntarily to their country of origin.

IOM is one of the chief implementing organizations of assisted voluntary return programmes in Norway. It works in cooperation with the UDI, the Police Department and a Norwegian NGO, Norwegian People's Aid.

Other key actors include the Norwegian Refugee Council, through its Information and Counseling on Repatriation Project (INCOR) the Norwegian Organization for Asylum Seekers (NOAS), the Helsinki Committee and local NGOs in the countries of return.

Operational Steps for Voluntary Return

Voluntary Assisted Return Programme (VARP)

This programme is operated by IOM in cooperation with the Norwegian People's Aid, on behalf of the UDI. IOM is responsible for the overall implementation of the programme, and provides information to applicants, assists in acquiring travel documents and makes the practical travel arrangements. The Norwegian People's Aid is responsible for providing information about the programme in reception centres and by operating a telephone hotline service. Information on the programme is disseminated through brochures and the website of the government and IOM.

Applications to the programme are processed by IOM, who subsequently liaises with the UDI and the police department to secure approvals for the returns. The police department usually provides clearance automatically, although in exceptional cases it may reject an application. If the decision is positive, IOM makes the preparations for return, such as: support in obtaining the necessary travel documents and travel arrangements (tickets and transit). Where necessary, IOM may also make arrangements for post-return assistance, especially where medical assistance is required.

No financial assistance is provided under this programme, although a small stipend may be awarded to cover expenses during long journeys.

Participants of the programme can travel as normal passengers without the involvement of the police or notification of the authorities in the country of return.

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Returns under the programme are only carried out to countries of which the applicant is a citizen.

TABLE 2

Eligible Beneficiaries:	<ul style="list-style-type: none">• Rejected asylum seekers;• Asylum seekers with a pending claim.
Budget (May 2003 – December 2004):	US\$ 4,132,000 (approximately EUR 3,292,000)
Implementing Costs:	Approximately US\$ 1,300 (approximately EUR 1,000) per person in 2003
Funding Source:	UDI

Other AVR Programmes

The Norwegian Refugee Council's INCOR project also provides information and counselling services to those wishing to return to their country of origin. The project was initiated in 1995, with Bosnian refugees as its main target group. It has since been extended to other refugee groups such as Kosovars and Albanians. Follow-up visits are a major component of the programme – as have been conducted to Bosnia and Kosovo recently – in order to use the experiences of previous returnees to formulate future policies.

Exploratory visits have also been carried out to northern Iraq and Afghanistan in order to assess the feasibility of future returns and provide potential returnees with information.

Quarterly newsletters are also produced throughout the year, such as, *INCOR-aktuellet*, and distributed to Kosovars in reception centres as well as the UDI, the KRD and other refugee organizations. The newsletter contains useful information on repatriation and the experiences of others who have returned.

Programme Services

To date, INCOR's repatriation programme has targeted refugees from Bosnia, Kosovo and Albania; and it has recently started to cooperate with the Danish Refugee Council and the Gothenburg Initiative in Sweden on repatriations to Somalia.

Each participant receives approximately EUR 2,000 as a form of repatriation assistance, in addition to travel assistance and pre-departure counselling. Participants of the programme may return to Norway two years after their repatriation.

Since 1995, it is reported that INCOR has provided its services to about 9,000 people, mostly Bosnians and Kosovo-Albanians.⁶

Voluntary Return and Reintegration of Elderly Bosnian Nationals from the Nordic Countries

Since 2000, IOM has cooperated with INCOR on a project for elderly Bosnian returnees considering permanent return to Bosnia, part of a regional initiative between Denmark, Finland, Sweden and Norway, which operated between April 2000 and June 2003. In addition to the

general repatriation assistance, the programme also included a special reintegration component to support the participant in the country of origin, as well as temporary financial assistance, accommodation allowance, legal assistance relating to property claims, and participation in pension and health insurance schemes.

Between April 2000 and June 2003 IOM successfully provided return and reintegration assistance for 154 Bosnian nationals from the Nordic countries, 46 of whom previously resided in Norway.

TABLE 3
TYPE OF ASSISTANCE PROVIDED TO THE BENEFICIARIES OF THE PROGRAMME

Nature of Benefits	Norway	Sweden	Denmark	Finland	Total
Medical Allowance	53	43	32	14	142
Legal Advice Allowance	11	14	1	0	26
Housing Allowance	24	9	6	2	41
Special Housing Allowance	9	12	5	2	28
Home Care Allowance	21	12	6	2	41
Minor Repair Allowance	30	19	8	6	63
Housing Reconstruction Allowance	7	0	0	5	12

Note: Data refers to the period 1 April 2000 to 30 June 2003

Assistance to Support the Return of Qualified Nationals

Within the framework of Voluntary Assisted Return Programme, the Norwegian authorities are also dedicated to the development of a programme to support the Return of Qualified Nationals, as has successfully been implemented in regards to the Return of Qualified Afghan Nationals and earlier, the Return of Qualified Nationals to Bosnia and Herzegovina. IOM's office in Oslo is currently in the initial stages of a similar project, aimed at Iraqi nationals, with the view of providing a basis to facilitate future return and integration into the Iraqi labour market, and contribute to the reconstruction efforts.

Framework Agreements with Countries of Origin or Transit

(See above section on Involuntary Return).

1.3 STATISTICS FOR VOLUNTARY RETURN

Between May 2002 and 31 January 2004, a total of 2,525 persons have been assisted to return to their countries of origin with the support of IOM Oslo. With the introduction of the assisted voluntary return programme in 2002, individuals who would normally have returned home independently can now take advantage of the assistance package offered, and increasingly doing so, causing a significant decrease in "voluntary return" statistics, and an increase in "assisted voluntary return" statistics.

Return Migration: Policies and Practices

TABLE 4
STATISTICS FOR VOLUNTARY RETURN

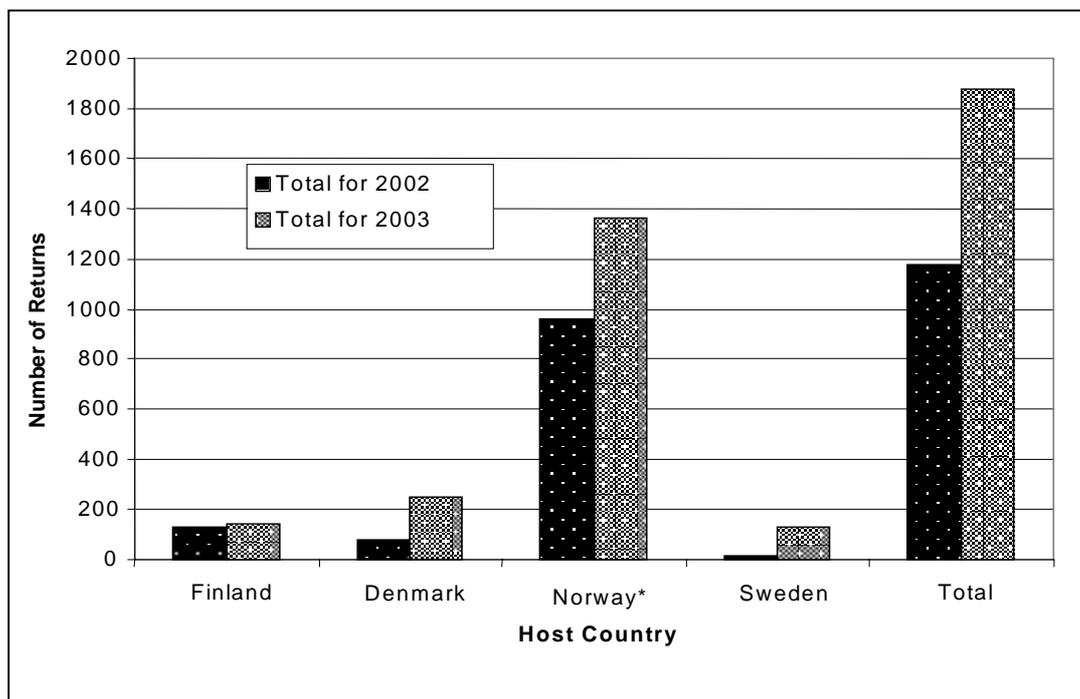
Year	Voluntary Return	Assisted Voluntary Return*
2001	1,001	-
2002	87	957
2003	28**	1,455
January 2004	-	113

* Statistics for IOM-implemented programme, initiated as of May 2002.

** Voluntary return statistics cover the period January – June 2003 only.

Applicants of 78 different nationalities have been assisted under the IOM VARP programme to date. The majority of the applicants originate from Ukraine (12%), Bosnia and Herzegovina (11%), Russia (9%), Croatia (6%), FRY Kosovo (6%), Belarus (5%), Mongolia (4%), Slovakia (4%), Iraq (4%) and Serbia and Montenegro (4%).

AVR NORDIC COMPARISON :
2002 AND 2003



* 2002 statistics from Norway date from May 2002, when IOM formally started offering AVR services.

TABLE 5
STATISTICS ON THE VOLUNTARY RETURN AND REINTEGRATION
OF ELDERLY BOSNIAN NATIONALS FROM THE NORDIC COUNTRIES PROGRAMME

Category	Norway	Sweden	Denmark	Finland	Total
Applicants	109	126	54	26	315
Beneficiaries	46	42	30	15	133
Beneficiaries (Deceased Cases)	8	5	1	0	14
Beneficiaries who Re-migrated to Host Country)	4	1	1	1	7
Not Recommended Cases	19	47	21	3	90
Closed Cases	32	31	1	8	72

Note: Data refers to the period 1 April 2000 to 30 June 2003

1.4 BEST PRACTICES AND LESSONS LEARNED

Lessons Learned

A significant part of INCOR's work focuses on improving the services provided, based on the experiences of previous return exercises. Through this continuous assessment, the following conclusions have been drawn:

- The decision of an individual to return primarily depends on the security and social situation in their country of origin at the time;
- The availability of accommodation and assistance in reclaiming property plays a crucial role, as does the possibility of making a steady income;
- Many returning migrants will need a secure social network of family, friends and the community at large in order to ensure smooth reintegration; and
- Information about the situation in the country of origin, especially on the regions returning migrants want to settle in, is also a deciding factor.

Assessments and Evaluations

In attempting to formulate new policies, the Norwegian authorities are intent on drawing lessons from previous assisted return programmes, and have had recourse to experiences from past return programmes to Bosnia and Kosovo. Following recent reports of previously returned refugees re-migrating to Norway, the Norwegian authorities pledged to evaluate the assisted voluntary return programme and explore ways of promoting more sustainable returns. One of the questions considered included an assessment on whether to rescind residence permits once repatriation assistance has been accepted, as the current policy of compelling returnees who re-migrate to Norway to repay the reintegration assistance has so far proved to be an ineffective deterrent.

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One of the key recommendations which came out of the evaluation of the assisted voluntary return programme advised against the abolition of the right to re-migrate for those who had repatriated from Norway, and suggested that measures were taken to improve the follow-up of repayments of reintegration assistance and to prevent the abuse of funds. Furthermore, it recommended enhanced coordination in the implementation of projects in Norway relating to reintegration assistance and development aid, in order to ensure the sustainability of return. These recommendations have had an impact on current policy discussions on assisted voluntary return programmes.

Cost Effectiveness Analysis

The average cost of implementing AVRs is approximately EUR 1,000 per person, which when compared to the estimated minimum cost of implementing forced returns, NOK 20,000 (approximately EUR 2,300), makes assisted voluntary returns a more cost effective alternative.

NOTES

1. Proposal to the Storting No. 1, 2000-2001.
 2. Although Norway has no list of safe countries per se, it generally considers all Western European countries to be safe.
 3. This provision does not apply to families with children.
 4. "Compelling social considerations" includes for example situations involving a mass influx of immigrants on a scale that might make it impossible for Norway to absorb, or cases where the asylum seeker constitutes a danger for the security of another state.
 5. In June 2001 it was reported that refugees, who had received financial assistance of nearly NOK 18 million (approximately EUR 2 million) towards repatriation had returned to Norway, spurring the Storting's Scrutiny and Constitutional Affairs Committee to call for an enquiry from the KRD – <http://odin.dep.no/odinarkiv/norsk/dep/ud/p10002480/eng/032091-210060/index-dok000-b-n-a.html>.
 6. European Reintegration Network, Country Report Norway – <http://www.reintegration.net/frame.htm>.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Norway signed the UN Convention Against Transnational Organized Crime on 13 December 2000, and ratified the Convention on 23 September 2003. It signed the Trafficking Protocol on 13 December 2000, and ratified the Protocol on 23 September 2003. Norway also signed the Smuggling Protocol on 13 December 2000, and ratified this Protocol on 23 September 2003.

POLAND

1. INVOLUNTARY RETURN

1.1 POLICY

Since the 1990s, Poland has gradually evolved from an emigration country to a transit and now increasingly a migrant receiving country.

In 1991, Poland ratified the 1951 Geneva Convention and 1967 Protocol on Refugees, and subsequently introduced provisions for refugee status in its legislation. The Aliens Act of 1963, which did not include provision for the protection of refugees was accordingly amended in 1997, 2001 and again in 2003. One of the most important changes, which the new Aliens Act introduces, is the tolerated stay permit for persons who cannot be removed.

Given the prospective EU membership and the requirement to adjust Polish legislation to the *acquis communautaire*, the European Union has played a strong role in Polish immigration policy.

The newly evolving Polish immigration policy has been dominated by the need to adapt to the Schengen Agreement and implement its provisions, measures aimed at securing the Polish eastern border, which will in the future be the EU border, the introduction of a visa for nationals from bordering eastern European countries and the adjustment of the asylum policy and legislation to those adopted by the EU Member States and the *acquis communautaire*.

Poland's borders have become increasingly tightly controlled and many migrants have found easier routes westward through other CEE countries. Nonetheless, Poland has accumulated a large population of irregular migrants. Many remain in Poland after the expiration of their visa and either make repeated attempts to move west or settle in Poland.

The Polish government believes that irregular immigration should be combated effectively both at the border and in-country, and has therefore extended the powers of the Polish Border Guards to control the legality of residence. Further steps taken towards harmonizing Polish migration policy with EU standards include amendments to the immigration laws and the regularization scheme coming to an end this year, as well as stricter enforcement of immigration laws through increased numbers of expulsions and deportations.

Since 1 September 2003, the revised Aliens Act and the Law on the Protection of Aliens on Polish territory have been in force, following their adoption on 22 May 2003. With the adoption of these laws, the government also introduced two regularization schemes.

Return Migration: Policies and Practices

The first aims at migrants who have resided in Poland since 1 January 1997 without a residence permit. If they meet the conditions of self-maintenance and proven relations in Poland, they will be granted an initial temporary stay permit of one year and may apply for an extended or permanent residence permit. The scheme started on 1 September and was expected to be completed by the end of 2003.

The second aims at migrants who entered Poland illegally and decided to report to Polish authorities and leave the country by end of October 2003. The regularization scheme foresaw for those migrants coming forth during the “amnesty” (1 September to 31 October 2003), that they would be ordered to leave the country but their names will not be put on the unwanted persons list and they will not be banned from entering Polish territory in the future.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- The Geneva Convention of 1951 and the New York Protocol of 1967, to which Poland acceded on 27 September 1991, and is included in the Asylum Act of 2003;
- The Polish Constitution of 2 April 1997, Section 56.1 of which states: “Foreigners shall have the right of asylum in the Republic of Poland in accordance with principles specified by statute” and Section 56.2: “foreigners who, in the Republic of Poland, seek protection from oppression, may be granted the status of a refugee in accordance with international agreements to which the Republic of Poland is a party”;
- Aliens Act of 25 June 1997, which came into force on 27 December 1997 and replaced the former Law on Foreigners of 1963;
- Aliens Act of 13 June 2003, which came into force on 1 September 2003 – the Aliens Act 2003;
- Act of 13 June 2003 on Granting Protection to Aliens within the Territory of the Republic of Poland – the Asylum Act.

Aliens Act 1997

In September 1997, Poland adopted a revised Aliens Law, which was initiated some two years earlier and gave prospective refugees access to a procedure adjudicating refugee status. It also established an independent council to which asylum seekers can appeal negative decisions by the Ministry of Internal Affairs. The law did not recognize the concept of first asylum or any other form of temporary protection. In 1992, the Polish Border Guards became an independent entity, and in 1997 gained more jurisdiction under the Aliens Law.

Aliens Act 2001

Poland revised its immigration legislation again in 2001 in order to better harmonize its laws with the *acquis communautaire*. The principal aim was, as recommended in the annual reports

of the European Commission for 1999 and 2000, to further secure its borders and tighten the regulations on entry of third-country nationals.

The Aliens Act of 11 April 2001 laid the legal ground for establishment of the Office for Repatriation and Aliens (ORA). The ORA took over relevant migration-related tasks from the Ministry of Interior and the Administration's Department for Migration and Asylum.

The 2001 Aliens Act enabled easier execution of expulsion and carrier sanctions, as well as an accelerated procedure for applications deemed manifestly unfounded based on the concept of "safe third country", which was not applied in the past.

Aliens Act and Asylum Act 2003

From the 2001 Aliens Act, two new laws were derived in June 2003: the Act on Aliens (AA), (regulating entry and stay on Polish territory, under which visa regulations were tightened and the pre-deportation detention period extended, in order to facilitate removals; and the Aliens Protection Act (APA) with the introduction of subsidiary forms of protection, such as the tolerated stay permit. Implementation of the new regulations brought about important changes, such as the legal basis for the first regularization action in Poland.¹

Asylum Applications

According to Article 19 of the Asylum Act, asylum seekers should submit their application when crossing the border. The commanding officers of the Border Guard stations are responsible for handling asylum applications, regardless of whether they are submitted at land borders or at Warsaw's Okcie international airport.

Applications must be processed and decided upon within a maximum six months from the date of submission, unless it is deemed manifestly unfounded, in which case a decision has to be rendered within 30 days (Article 30 of the Asylum Act). In the case of rejection, where enforcement of removal is not possible, the person will be granted a tolerated stay permit.

Article 90 of the Aliens Act specifies that residence and work permits will be automatically revoked when a decision is made to reject a claim for asylum, and all benefits arising from these two permits may also be withdrawn.

Detention

According to Article 40 of the Asylum Act, asylum seekers, persons entering illegally, and those ordered to leave or expelled from Polish territory may all be detained at the border. According to Article 41, minors are exempt from this provision and are treated differently, as well as persons with disabilities or victims of violence.

Detainees are either placed in so-called guarded centres or under "arrest for the purpose of expulsion" in specific holding rooms. Polish law allows for a 48-hour detention period before authorities are required to bring a defendant before the court, and an additional 24 hours for the court to decide whether to issue a pre-trial detention order. Detention may only be ordered by the

Return Migration: Policies and Practices

relevant District Court for a maximum period of 30 days (Article 42 of the Asylum Act). The maximum detention period may be extended for 90 days, where an asylum application is lodged during the detention period or within the time of arrest for purposes of expulsion, starting from the day of submission. The detention may not exceed one year in total.

Polish Law (Article 97 of the Asylum Act) does not permit migrants to be expelled and deported where the provisions of the European Convention on Human Rights apply and such persons are released and granted a tolerated stay permit. Tolerated stay permits are granted initially for one year. In these cases, the migrant is vested with the same rights as any other alien with a fixed-term residence permit.

Minors cannot be expelled without guarantees of adult protection, as per the Convention on the Rights of the Child. The ORA may order an asylum seeker to stay at a specific address and oblige him/her to report to the relevant authorities at specified intervals, according to Article 45 of the Asylum Act.

If there is genuine reason to fear that the foreigner might refuse to abide by the guarded centre's internal regulations, or if he/she has left the centre without permission, he/she may be placed in a deportation jail whilst the expulsion order is enforced.

Where the authorities suspect that the migrant will abscond before enforcement of his/her departure, or he/she has attempted repeatedly to cross the border illegally, he/she may be detained in a guarded centre to ensure the *effectiveness of the proceedings on expulsion* (Article 102 of the Alien Act).

Expulsion

Once the asylum seeker has received notification of a final negative decision, he/she is ordered to leave Poland within 14 days from the date of decision, if he/she has not received an order of expulsion prior to this.

According to Article 88 (1) of the Aliens Act of 2003, expulsion may be ordered where migrants:

- Reside unlawfully on Polish territory;
- Carry out illicit work;
- Do not avail of sufficient means to maintain themselves;
- Are generally considered "undesirable";
- Constitute a threat to the state's security and public order;
- Enter Poland illegally;
- Refuse to leave voluntarily within the given period of respite on the obligation to leave or on refusal or withdrawal of a residence permit;
- Do not comply with fiscal obligations;
- Have served a prison sentence.

Where an expulsion has been ordered on grounds laid down in points 1 to 3, the alien has to leave the territory of Poland voluntarily within seven days (Article 97 of the Aliens Act), other-

wise the respite is 14 days (Article 90), if it is not accompanied by an order of immediate enforceability, as is always the case under point 5. Foreigners who are expelled on grounds of not leaving the territory of Poland in the timeframe specified in the decision on expulsion may also be deported immediately (Article 94).

Article 14 (1) of the Aliens Act also stipulates:

An alien stopped in the border zone directly after having crossed the border involuntarily or contrary to the binding laws may be immediately escorted to the state border of the Republic of Poland.

The expulsion order may also specify the route and place of border crossing, as well as the obligation to stay at a detention facility or other specified place until the execution of the order; and may oblige the alien to report regularly to the relevant authorities (Article 90).

According to Article 92 of the Aliens Act of 2003, an order of expulsion may be issued by the Minister of National Defence, the Chief of the Internal Security Agency, the Chief of the Intelligence Agency, the Commander in Chief of the Border Guard, the Commander in Chief of the Police, the commanding officer of the Border Guard Division, the Governor of Province of the *Voivoda* (provincial) Police headquarters, the commanding officer of the Border Guard checkpoint or Customs Service Agency, by the competent *Voivod* at the aliens residence or location of the breach of law. By contrast, a decision on detention always requires a court decision.

Minors may be expelled, where care will be provided in the country of origin by parents, other adults or competent care institutions in accordance with the provisions of the New York Convention on Children's Rights of 20 November 1989.

Illegal Entry

Illegally entered migrants may be imprisoned and fined. Any foreigner entering Poland with forged documents may be sentenced to imprisonment for up to two years. Foreigners may be fined if they reside unlawfully in Poland; do not present proof of financial means of support; do not leave when required; do not comply with an order to stay in a specified place, or report as required to the authorities; or do not carry proper documentation.

There is a high rate of trafficking both out of, and into, Poland. Extensive networks of foreigners across the region, restrictive legal migration opportunities at home, the push of female migrants, the burgeoning sex industry and the size of the informal sector contribute significantly to trafficking in women in Poland.²

Article 253(1) of the Penal Code of 1998 criminalizes trafficking in persons to the extent of sentencing traffickers caught to a minimum three years of imprisonment. Undocumented migrants are generally expelled and deported within 48 hours (Article 14 of the Aliens Act). This also includes migrants who were trafficked to Poland. According to Anti-Slavery International, *prosecutions for trafficking for purposes other than prostitution are extremely rare*³ and the

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relevant law enforcement authorities seem rather to prioritize the combating of illegal migration rather than victim protection.⁴

Poland signed the UN Convention against transnational organized crime on 4 October 2001, and has ratified the Protocol against trafficking in Persons in September 2003.

Carrier Liability

Articles 135-140 stipulate that carriers permitting entry of persons without valid travel documents, or otherwise not authorized to enter the country, may be required to pay all costs of residence and return to country of embarkation. Carriers may be fined between EUR 3,000 and EUR 5,000 per person if found to be liable for the irregular entry of an individual. The fine may not exceed the total sum of EUR 500,000. These provisions apply also to coaches with the exception of public transport operators conveying people between neighbouring towns along the border.

In 1999, some 226 persons were caught in such irregular situations and up to US\$ 86,000 levied in fines. The most frequently sanctioned carriers were LOT, Lufthansa, SAS, Air France, Swissair and Aeroflot.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

According to Article 16 of the Asylum Act, any rejected asylum seeker is obliged to leave the country within a time specified by the authorities, but not exceeding 30 days.

Expulsion orders can be appealed at the Council on Refugees within 14 days. If the applicant's stay in Poland is legal, further appeal to the Supreme Administrative Court is possible. A separate request for suspension of enforcement of the expulsion order must be filed, and is generally granted. In case of final rejection, the rejectee is obliged to leave within a period not exceeding 14 days.

Asylum seekers who have received a final negative decision may be subject to a deportation procedure, which is initiated by an expulsion order issued by the *Voivod* (Provincial authority) where they live.

Rejected asylum seekers who cannot be deported from Poland may be granted a tolerated stay permit.

Institutions Responsible for Involuntary Return

The Ministry of Internal Affairs and Administration (MSWiA) has promoted a number of bills on Aliens, and played a major role in setting up policy in this respect. The Minister presides over an inter-ministerial team for managing the state borders.

The Polish Border Guard has been entrusted with the legal powers to combat illegal migration and is responsible, together with the *Voivod* Police, for enforcing involuntary return. The Border Guard also participates in Polish migration policy making. As reported by the Migration Policy Group recently – “a turning point regarding the Border Guards was their decision to allow monitoring of the border check points by the Helsinki Foundation with respect to observing right of asylum”.⁵

In order to enhance its efforts to combat illegal border crossing and immigration, the Polish Border Guard cooperates closely with the German Federal Border Guard (BGS). Joint border patrols are common.⁶

Operational Steps for Involuntary Return

By law, expulsions from within the country are carried out by the commanding officer of the responsible *Voivod* Police headquarters, whereas refusal at the border falls under the competence of the Commander in Chief of the Border Guard or the commanding Officer of the Border Guard Division.

Travel documents are not given to the migrant but to the captain of the airplane or transmitted directly to the Polish border, where expulsion is by train. Deportees are also fingerprinted in accordance with Article 124 (2) of the Aliens Act.

Escorts

The Border Guard or the local police may escort deportees on a commercial flight, especially if there is an indication that the migrant will try to abscond or obstruct the removal process in any form. According to Chapters 8-10 of the Aliens Act, an individual will be escorted when he/she does not, in the assessment of responsible services, guarantee that they would willingly leave the country, or when there is an administrative or court order. This happens mainly when the person has committed an offence.

Chartered Flights

In autumn 1998 the Polish authorities organized for the first time a charter flight departing rejected asylum seekers and foreigners to Romania and Sri Lanka. About 300 Roma were arrested and immediately deported to Romania. Updated information on the use of chartered flights since then is not available.

Framework Agreements with Countries of Origin or Transit

Poland has signed a readmission agreement with the Schengen States and bilateral readmission agreements with the following countries – Germany, Bulgaria, the Czech Republic, Romania, the Slovak Republic, Ukraine, Croatia, Moldova, Greece, Hungary, Latvia, Lithuania, Estonia, Slovenia, Austria, Switzerland and Sweden. The movement of persons between Poland and Russia or Belarus is dealt with on the Polish-CIS border under the Act on Legal Relations.

The readmission agreement of March 1991 between Poland and the Schengen states includes an obligation by the states to readmit third-country nationals and stateless people who have crossed the common external border and stayed in the territory of one of these states illegally. It was a natural consequence of fears of an increased inflow of asylum seekers from the CEE.

Return Migration: Policies and Practices

In practice, the agreement between the Schengen states and Poland has not reduced migration, in particular into Germany. On 7 May 1993, therefore, Germany and Poland signed a bilateral modification of the agreement with the Schengen states. As a result, Poland is obliged to accept asylum seekers whose applications have been rejected by the German authorities. Foreigners who had spent over six months lawfully in Germany were exempted from the readmission.

The relevant provisions in this agreement foresaw that the number of foreigners sent back to Poland could not exceed 10,000. Since the modification, 18,000 people were readmitted⁷ between 1993 and 1997. Returned asylum seekers from Germany are informed of the possibility of applying for asylum in Poland, as stipulated in a special agreement between the Ministers of the Interior of both countries.

Poland obtained on a *quid pro quo* basis some DEM 120 million (approximately EUR 60 million) from Germany during the years 1993 to 1996. The financial means were intended to enhance the refugee management system, which also included the establishment of detention facilities and equipment (helicopter protection system, control stations, computers and additional transport facilities) to secure the German-Polish border. It was also agreed that all technical border monitoring equipment was to be supplied by German companies, in order to ensure compatibility with equipment used at the German border and thus facilitate improved conditions for cross-border communication.⁸

The Polish-German project was the basis for later similar agreements with Bulgaria, the Czech Republic, Slovakia, Romania, Ukraine in 1993, as well as Moldova, Croatia, Greece, Hungary and Slovenia in 1994. Poland's visa-free agreements with Lithuania, Switzerland, Estonia and Latvia also contain references to readmission.

The readmission agreement between Poland and Lithuania (July 1998) specifically stipulates in Article 3 that persons "who are subject to refugee status application procedures on the territory of the State of the Requesting Party" will fall within the scope of persons to be returned under the readmission agreement. This provision, however, did not ensure that asylum seekers were protected from refoulement in Lithuania.

Poland has signed additional agreements with Canada, Sweden, Italy, China, Albania, India, Pakistan, Viet Nam, Sri Lanka, Bangladesh, Algeria and Kazakhstan, as well as Russia and Belarus.

Within most of the readmission frameworks Poland enacts returns from its territory either under "regular" circumstances – 90 days while the migrant at issue waits in a detention centre for the administrative decision or *voivoda*; or an accelerated procedure within 48 hours.

Initially, the number of persons readmitted to Poland exceeded the number of persons expelled from Polish territory. Most persons taken back arrived from Germany. Yet, the low numbers were contrary to original German expectations and showed the problem to be smaller than expected. In 1999, Poland readmitted some 2,000 aliens and expelled 6,518 persons from its territory. Thus, the anticipated positive effect of the readmission agreement has not yet been felt. The higher number of expulsions exceeding the readmission figures is generally attributed to improved border control activities.⁹

Costs

As stipulated by law, any expenses related to unlawful residence or overstaying of visa time limits may be borne by the alien or the host who stands surety for the alien, the employer of illicit workers, or the state. Costs include transport, escorting and administrative costs, and are to be determined by the *Voivod* (Article 96 of the Aliens Act).

The estimated cost per capita of deportation transportation and the provision of escorts are not available, however, the budget for deportation for 2004 is PLN 800,000 (EUR 170,000).

Prosecution and Detention

The Polish Border Guard is obliged by law to record in the alien's travel document the cancellation of a visa as well as any expiry of the decision on the obligation to leave the territory of Poland (Article 20 of the Asylum Act). The Aliens Act further stipulates in Article 95 that the authorities who issued the expulsion order shall immediately be informed of the departure of a foreigner served an expulsion order, once the migrant has left Polish territory. Both legal requirements are usually strictly enforced.

The decision on expulsion is recorded in the travel document of a deportee, and the *Voivod* will also be notified of the decision.

Deported foreigners are placed on a list of persons whose stay in Poland is not wanted for a period of five years.

Detention

If a foreigner cannot be expelled immediately, and there is just reason to fear that he/she might avoid an expulsion order, he/she may be detained until the order can be enforced.

There is one "guarded centre", some 60 kilometres south of Warsaw near the town of Lesznowola. The detention centre has been established in the facilities of two former military barracks, and can host some 200 people. The Ministry of Interior and Administration and the police supervise the centre.

Families are accommodated together in the centre, while single men and women are segregated. It has special facilities for mothers and children. In general, detention conditions in the guarded centre are considered less strict than in the deportation jails.

There are about 25 deportation jails, either under the jurisdiction of the *Voivod* Police or the Polish Border Guard. Most of them are located in the main buildings of the police stations of each district.

The practice of detaining foreigners in the Lesznowola centre and deportation jails started in mid-1995. According to the statistics of the Polish Police National Headquarters, 700 non-nationals were hosted in the guarded centre in 1997, of whom 435 were expelled and 265 released after 90 days. Some 296 foreigners submitted asylum applications, while in detention. In 1997, 574 foreigners were detained in the 24 deportation jails, of whom 253 were expelled and 321 released after 90 days – 251 applied for refugee status from there.¹⁰

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Social Benefits

Asylum seekers, who do not have their own means of support, may apply for assistance with accommodation, basic medical care and pocket money in the reception centre. The assistance is withdrawn if the asylum seeker leaves the centre without permission or notification for a period of more than three days, or otherwise breaks the rules and regulations.

Fingerprinting

Upon submission of their claims, asylum seekers must undergo an identification procedure, including fingerprinting (only persons older than 14 years) and photographing. If they refuse to comply with these measures, their applications will not be processed further. While awaiting identification, they can be held for up to seven days in specified places at the border or the airport.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN:
EXPULSIONS*

	1994	1995	1996	1997	1998	1999	2000
Migrants Pushed Back from Germany	3,135	4,064	4,848	4,729	2,710	1,976	2,316
Order of Expulsion	1,843	3,199	5,087	5,707	7,955	8,531	9,226
Executed Orders	n.a.	1,029	3,167	3,794	n.a.	n.a.	n.a.
Migrants Crossing Illegally the Polish Borders	10,907	11,907	10,942	10,109	6,565	5,003	6,201

* Figures supplied by the Polish Ministry of Interior and Administration, Department for Migration and Refugees, 2000.

For the year 2001 to 2002, there are no official statistics on deportation of rejected asylum seekers available, although it is generally reported that deportation numbers have increased, as have expulsions.

TABLE 2
NUMBER OF PERSONS TAKEN BACK AND RETURNED UNDER READMISSION AGREEMENTS:
1993-1999*

	1993	1994	1995	1996	1997	1998	1999
Taken Back	2,679	6,882	9,098	12,813	13,075	10,686	9,455
Of those Polish Nationals	n.a.	3,696	4,982	7,904	8,274	7,869	7,383
From Germany	2,679	6,621	8,632	8,076	7,664	5,432	4,732
Of those Polish Nationals	n.a.	3,469	4,566	3,228	2,931	2,722	2,747
Aliens Returned and Expelled	n.a.	1,024	2,144	3,449	5,166	7,079	6,518

* Polish Border Guard Headquarters – Kaczmarczyk, Pawel: Country Report – Poland, Facts on Migratory Movements.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE PROVISIONS

According to Articles 57 and 68 of the Aliens Protection Act, assistance may be provided to foreign nationals who wish to depart voluntarily from Poland. This programme is only open to asylum seekers who have withdrawn their applications; and the rejected asylum seekers are referred to IOM.

Despite the existing legal basis for assisted voluntary return, only a small proportion of returnees use this mechanism, a fact argued to be attributable to the lack of an agreement with a partner on the implementation of voluntary return programmes.

The Office for Repatriation and Aliens, which is among others, responsible for the repatriation of foreigners will normally cover the cost of transportation back to country of origin, however in recent years, the activities of this department have been severely constrained by a lack of funding. In practice, 85-90 per cent of all decisions on returns in Poland result in escorted deportations, and voluntary returns are very rare.

Failed asylum seekers and other irregular migrants have an obligation to leave the country within 14 days of the issuance of an order to leave. This will be considered a voluntary return. However, it has proven to be difficult to determine whether such individuals have left the country, or to monitor their compliance with this requirement. Data on such returns are hard to obtain.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Office for Repatriation and Aliens is responsible for coordinating the activities of public bodies dealing with the repatriation of foreigner nationals. It also makes important decisions on the status of returned persons, the form of assistance provided to returnees and members of their family and other decisions regarding entry visas, residence, citizenship and penalties against those who breach immigration regulations.

In respect of the repatriation of irregular migrants, the Office for Repatriation usually covers the cost of transportation back to country of origin.

IOM is responsible for the repatriation of failed asylum seekers.

Return Migration: Policies and Practices

Operational Steps for Voluntary Return

Asylum seekers may withdraw their asylum application at any time during the procedure if they wish to leave the country voluntarily, by asking for financial assistance towards return to their home country. Other irregular migrants and failed asylum seekers may leave the country voluntarily within 14 days after notification of expulsion has been served. In such cases, migrants cover the travel costs themselves and are not escorted to the border, hence it is difficult to assess whether they actually leave the country.

The Office for Repatriation and Aliens covers the cost of the cheapest transport back to country of origin. The return of failed asylum seekers is usually financed by IOM.

Migrants who leave the country voluntarily are prevented from re-entering the country for three years, instead of the five-year ban applicable to migrants who are deported.

Framework Agreements with Countries of Origin and Transit

See section on involuntary return.

2.3 STATISTICS ON VOLUNTARY RETURN

No statistics are available.

2.4 BEST PRACTICES AND LESSONS LEARNED

Why Programmes Have or Have not Worked

The inadequate utilization of the assisted voluntary return mechanism, despite its establishment in Polish immigration legislation has been partly attributed to the lack of agreement with relevant partners involved in voluntary repatriation on implementation of the programme.

The activities of the Office for Repatriation and Aliens have been restricted in the amount of assistance it can provide to returnees due to a lack of funding. The fate of this department hangs in the balance as attempts were made to abolish it completely in 2001, when the Polish government faced a huge budget deficit. Its continued existence indicates an appreciation of the work being carried out, albeit with limited success at present, and efforts are being made to boost its role.

NOTES

1. I. Koris, IOM, report to be published.
 2. According to the Polish NGO, La Strada, up to 10,000 women are trafficked yearly out of Poland to the West, and approximately 60 per cent of the 2,500 foreign prostitutes in Poland have been trafficked. Source: <http://freengo.pl/lastrada/page4.html>.
 3. Elaine Pearson, *Human Traffic, Human Rights: Redefining Witness Protection*, p. 212; Anti-Slavery International, 2002.
 4. Poland signed the UN Protocol against Trafficking on 4 October 2001, and ratified it on 26 September 2003.
 5. EU and US Approaches to the Management of Immigration, Hungary, May 2003.
 6. Information supplied by the German Ministry of Interior.
 7. UNHCR Background information on return of asylum seekers, November 1998.
 8. *Abschiebehaft in Polen* Tina Thieme, Leipzig 2002. In 1998 Poland received within the PHARE programme about DEM 25 million (approximately EUR 12.5 million) in order to upgrade its monitoring system and improving the security of its eastern border. In 2003, Poland introduced in this regard, the generally welcome visa obligation for Ukrainian and Russian nationals.
 9. Kaczmarczyk, Pawel, *Country Report – Poland: Facts on Migratory Movements*.
 10. *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern European Countries 1999 – Poland*; Danish Refugee Council.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Poland signed the UN Convention Against Transnational Organized Crime on 12 December 2000, and ratified the Convention on 12 November 2001. It signed the Trafficking Protocol on 4 October 2001, and ratified the Protocol on 26 September 2003. Poland also signed the Smuggling Protocol on 4 October 2001, and ratified this Protocol on 26 September 2003.

PORTUGAL

1. INVOLUNTARY RETURN

1.1 POLICY

Portugal has in recent years quickly evolved from a traditional emigration country to a key immigration country in Europe. This has significantly influenced the government's approach to migration management, which currently has three foci: control and combat irregular immigration, encourage essential labour migration and effectively integrate legal immigrants.

Official asylum statistics in Portugal are the lowest within the EU. In 2002, Portugal received just 180 applications for asylum, which resulted in 14 offers of asylum under the Geneva Convention and 18 residence permits on the basis of humanitarian protection.

Despite these low statistics, Portugal has over the past decade seen a relative increase in its number of resident foreign migrants. Within the five-year period 1996-2001, Portugal witnessed an increase of over 100 per cent of its foreign national population from about 173,000 to over 350,000. By the end of 2003, the number of foreign nationals residing in Portugal was approximately 500,000.

The government's approach to managing immigration during the 1990s was through amnesty programmes, which led to the regularization of 38,000 foreign nationals in 1993 and a further 30,000 in 1996.

These measures were complemented with new legislation on asylum and the treatment of foreign nationals, such as the 1998 Asylum law, Law Number 15/98, which replaced the 1993 Asylum Law,¹ widely criticized for being too restrictive. In the same year, Decree Law Number 244/98 regulating the Entry, Permanence, Exit and Expulsion of Foreigners from the National Territory (Aliens Act 1998) was adopted, and further amended on 25 February 2003, with a new immigration law of the same title, Decree Law Number 34/03 (Aliens Act 2003).

The rationale behind these recent legislative initiatives is to control and combat irregular immigration, part of a three-pronged government approach to managing migration, as mentioned above.

In addition to these domestic changes, the Portuguese government has made efforts to harmonize its immigration policy and legislation with recent EU directives regulating the presence of third-country nationals in the Schengen area. Among others, the 2003 Decree Law regulating the Entry, Permanence, Exit and Expulsion of Foreigners in Portugal incorporates EU directives on the responsibility of airlines that transport undocumented migrants into Portugal and the strengthening of the penal framework to prevent the entry, movement and residence of illegal migrants.

Return Migration: Policies and Practices

Despite these latest initiatives to combat illegal entry and residence, the Portuguese authorities are generally fairly tolerant towards unsuccessful asylum applicants and other irregular migrants. There has been a tendency in recent years to de-criminalize illegal entry and residence, and focus instead on individuals and companies that transport undocumented migrants.² Undocumented migrants may face a fine for entering and staying illegally in Portugal, and are usually not deported until they are deemed to present a threat to public order.

The majority of expulsion cases concern applicants who have been rejected at the border and at airports for failing to satisfy the appropriate entry requirements.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

Legal basis of current immigration and asylum policies:

- The Constitution of the Portuguese Republic;
- The Geneva Convention on Refugees;
- Decree Law Number 15/981998 (Asylum Law 1998) of March 1998;
- Decree Law Number 244/98 (Aliens Act 1998) of August 1998;
- Decree Law Number 34/03 (Aliens Act 2003) of February 2003;
- The EU Schengen Agreement and Dublin Convention;
- Decree Law 34/94 on Provisional Accommodation Centres, of September 1994.

The main legislative instrument, which regulates the expulsion of foreign nationals, is the 1998 Decree Law Number 244/98 (Aliens Act 1998), amended by Decree Law Number 34/03. This Law fundamentally differs from its antecedent, Decree Law Number 59/93, of March 1993, which allowed expulsion for the mere breach of immigration rules.

In general, foreigners cannot be expelled to a country where they are liable to face persecution, and the onus is on the individual concerned to raise the fear of persecution and to prove that this fear is well founded. In accordance with Article 105 of the 1998 Aliens Law, such individuals may be sent to any other country that is ready to accept them.

Rejection at the Border

Under Sections 9-16 of the 1998 Aliens Act, the Aliens and Border Service (*Serviço de Estrangeiros e Fronteiras* – SEF) may refuse entry into Portugal if a person:

- Does not hold a valid passport, travel document or visa;
- Is not permitted to enter according to the Schengen common list or national list of non-admissible persons;
- Does not prove that s/he has sufficient financial means to support him/herself during his/her stay in Portugal;
- Has, within the previous five years, benefited under an assisted voluntary repatriation scheme;
- Has previously been expelled;

- Is perceived as a threat to national or European security; or
- Is an unaccompanied minor under the age of 18, without an appropriate adult to be responsible for him/her during his/her stay in Portugal.

Expulsions from within the Territory

Once inside the country, Article 99(1) of the 1998 Aliens Act provides that foreign nationals will be expelled from the country when:

- They enter or stay illegally in Portugal;
- They act in a manner contrary to national security, public order or public morality;
- Their presence or activities in the country constitute a threat to the interests or dignity of the state or its nationals;
- Their behaviour is an affront to the right of national citizens to participate in politics; or
- They have committed acts, which if previously known by the authorities, would have prevented their entry into Portugal.

Other Reasons for Expulsion

Other circumstances in which a foreign national may face expulsion include when his/her application for asylum has been refused, the right to asylum has expired or the individual has been convicted of a malicious crime.

In the case of an inadmissible application for asylum, Article 15 of the 1998 Asylum Act provides that the applicant should be notified of this decision within 24 hours and the possibility of appeal, after which the individual concerned has an obligation to leave the country within ten days. Failure to comply with this order will lead to immediate expulsion.

An appeal against this decision must be lodged with five days of the notification, which automatically suspends the expulsion order. The application will be re-examined within 48 hours and if considered admissible the applicant will be granted a renewable residence permit for 60 days until a decision has been made.

According to Article 25 of the 1998 Asylum Act, once a final rejection has been made on the merits of the case, the asylum seeker has an obligation to leave the country within 30 days, after which they may be liable to be expelled.

All foreign nationals whose right to remain in Portugal is based on a grant of asylum, are liable to be deported when this right expires. However, such persons may also apply for a normal residence permit, especially if the expiration is due to changes in the home country. Where the cessation of a grant of asylum is brought to light as a result of illegal activities, such as the illegal interference with politics in Portugal, activities which may threaten security or public order, or jeopardize foreign relations, or acts contrary to United Nations principles or treaties to which Portugal is a party, the individual is liable to immediate expulsion.³

Return Migration: Policies and Practices

Non-resident foreign nationals, who have committed a malicious crime, may suffer a penalty of more than six months in jail, or a fine, or may be liable to be deported, according to Article 101 of the 1998 Aliens Act. Resident foreigners are liable to be expelled following the commitment of a crime with a penalty of a year's imprisonment.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Internal Affairs is chiefly responsible for the formulation of immigration and asylum policy, including the regulation of the entry, residence, departure and expulsion of foreign nationals, while the Aliens and Border Service (SEF) is responsible for the implementation of this policy.

Among others, the Ministry of Foreign Affairs may grant certain concessions on entry visas, visas to prolong stay and the temporary deferral of a deportation order. It is also responsible for the negotiation of bilateral agreements on readmission and returns.

Operational Steps for Involuntary Return

An individual who no longer has a right to reside in Portugal has an obligation to leave the territory voluntarily at any time or in the period specified by the SEF. An unauthorized foreign national is usually liable to be arrested for expulsion as soon as possible. Such individuals may either be detained in a Provisional Accommodation Centre or asked to report regularly to the SEF. A deportation order may also be deferred for 10-20 days, and be further prolonged by the SEF in special circumstances. Persons who continue to stay in Portugal beyond this period, or oppose the enforcement of the deportation order, may be detained in a Provisional Accommodation Centre.

Deportations are normally carried out using regular flights, either with or without escorts. Immigration officers provide escort services.

Following expulsion, an individual will be registered in the Schengen Information System or the national list of people prohibited from entering Portuguese territory. Re-entry is possible five years after the date of expulsion, and this prohibition is always applied in practice after an expulsion. The criteria used to implement this decision are based on the expulsion order, which could be of an administrative or judicial nature as foreseen in the immigration law.

Prosecution and Detention Procedures

One of the exceptions to the right to personal liberty and freedom, provided under Article 27 of the Portuguese Constitution, concerns the expulsion of foreign nationals who no longer have the right to remain in the country. This provision allows for the detention of persons who have illegally entered or stayed in Portugal, and are subject to a deportation or extradition order. Asylum applicants are generally not detained while their asylum applications are being determined.

The 1994 Law on Provisional Accommodation Centres further stipulates that Provisional Accommodation Centres may lodge foreign nationals for humanitarian or security reasons, pending the enforcement of a deportation order or to ensure that the individual appears in Court. However, such centres have as yet not been established and when it is necessary to detain a person in order to effect a deportation, persons are detained in normal prisons. A centre within the international area of the Lisbon airport has however been established, and not all foreign citizens served a deportation order are put in prison.

The decision to imprison a deportee is a discretionary act by the SEF on the recommendations of a judge. The period of detention in jail must be restricted to the time necessary to enforce the expulsion. Detention cannot exceed 60 days, and is subject to be examined by a judge every eight days.

Individuals who attempt to enter Portugal through illegal means may also be liable to be detained by SEF for a maximum of five days, while a decision is being made to examine the claim of asylum or expel the individual for failing to satisfy the necessary entry requirements.

Not all foreign citizens who enter the country illegally are asylum seekers, and hence they will be eligible for deportation or the voluntary return programme implemented by IOM and funded by the government of Portugal.

Framework Agreements with Countries of Origin or Transit

An estimated 60 per cent of all expulsions are conducted within the framework of readmission agreements. Such agreements exist between Portugal and Spain, France, Bulgaria and Poland. The agreements with Bulgaria and Poland are part of a multilateral agreement concluded as part of the Schengen Implementation Convention, and is however not as effective as those with Spain and France.

In 2002, the Portuguese government began negotiations on similar agreements with Estonia, Moldova, Ukraine and Romania.

In general, these agreements cover both voluntary and involuntary return, although they may also specify whether it is applicable to a particular type of return only.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Deportations
1999	464
2000	414
2001	259
2002	459

1.5 BEST PRACTICES AND LESSONS LEARNED

Why Programmes Have or Have not Worked

As a result of the tolerance of the Portuguese authorities towards undocumented migrants, immigration regulations are not always applied stringently, and each year only a small fraction of the thousands who enter or reside illegally are detected and served with deportation orders. Of those ordered deported, only a small percentage are actually expelled. In 2000 for instance, just 414 individuals out of 3,271 subject to deportation orders were actually expelled.

Cost Effectiveness Analysis

Compared to the annual budget of EUR 150,000 allocated to the assisted voluntary return programme, the average annual budget for effecting deportations from 1998-2001 was about EUR 470,000, representing a ratio of about 1:3.

The average cost of effecting deportations is estimated at between EUR 5,000-7,000 per person, which covers administrative procedures, cost of transportation and the provision of escorts, while the operation of assisted voluntary returns programmes is about EUR 650 per person.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Portuguese return policy favours voluntary returns over deportation, and a pilot programme on voluntary returns was first initiated by a Cooperation Agreement and Protocol signed in 1997 by the Ministry of Foreign Affairs, Ministry of Interior and the High Commissioner for Immigration and Ethnic Minorities (ACIME).

The 1998 Aliens Act makes provision for assisted voluntary returns, Article 159 of which provides that the government may initiate voluntary return programmes for illegal residents in Portugal, with the cooperation of IOM. Consequently, upon completion of the pilot phase of the programme, the government signed a Protocol with IOM in 2001 with a view to establishing a more permanent voluntary return mechanism. The agreement is subject to annual renewal, and aims to facilitate effective assisted voluntary returns of migrants. The programme receives an annual budget allocation of EUR 150,000 from the Portuguese government, and is open to:

- Refugees and asylum seekers;
- Persons who have been offered temporary protection;
- Legal and irregular migrants who wish to return to their home countries and do not possess the means to do so.

Beyond this generic assisted voluntary return programme, a separate voluntary return and reintegration programme for nationals from Guinea-Bissau was operated by IOM in 2000-2001 with funding from the European Refugee Fund (ERF), established by the European Council Decision in September 2000 and part of a four-year programme running from 2000-2004. This entails the provision of information and advice about voluntary return programmes and the situation in the country of origin, as well as general vocational training and help with the reintegration process, as required.

Besides AVR programmes implemented by IOM, the NGO, INDE (*Intercooperação e Desenvolvimento*), which is active both in Portugal and internationally, has recently initiated an assisted voluntary return programme geared towards nationals from East Timor. Approximately ten beneficiaries have to date received vocational training prior to their permanent return to the country of origin. The funding comes also from the ERF and other national and international funding sources. However, it does not represent a substantive budget.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

IOM is the implementing agency responsible for voluntary return procedures in coordination with the Portuguese Ministry for Interior and the Ministry of Foreign Affairs, and in coordination with operational partners/NGOs, migrant associations, municipalities, hospitals, social security organizations, and diplomatic embassies/consulates for the acquisition of travel documents, when necessary.

The High Commissioner for Immigration and Ethnic Minorities (ACIME) provides information on assisted voluntary returns and makes referrals to IOM.

The Portuguese NGO “INDE”, also implements its own voluntary return programme for nationals from East Timor, outside the scope of IOM.

Operational Steps for Voluntary Return

IOM-Implemented AVR

At present, there are two AVR programmes implemented by IOM:

- “Voluntary Return Programme”, funded by the Portuguese Government; and
- “New Life: Voluntary Return and Reintegration – Integrated Programme for the Return of Guinea-Bissau Citizens with Temporary Protection Status”, co-funded by the European Refugee Fund. Since 2002, the programme has been restructured and given a new name, and as such is open to nationals who fall under the three categories covered by the European Refugee Fund. It also complements the Programme funded by the Government of Portugal.

Potential candidates are interviewed and their data collected and analysed. The request for inclusion in the programme is submitted to the Ministry of Interior (Aliens and Border Service) for

Return Migration: Policies and Practices

approval. The voluntary return is then coordinated with concerned institutional partners. IOM coordinates with the Aliens and Border Service on the logistics of the departure, makes the travel arrangements and coordinates with IOM offices for transit, arrival and assistance. A reintegration allowance of EUR 250 is usually granted.

Returns under the ERF projects are made as part of a year-long programme in accordance with project documents approved each year by the national management authority of the ERF. The eligibility of the candidates for assisted voluntary return is checked against ERF rules and regulations and the specifics of the project document.

Programme for Voluntary Return (PVR)

TABLE 2
PROGRAMME FOR VOLUNTARY RETURN (PVR)

Eligible Beneficiaries:	<ul style="list-style-type: none"> • Persons whose requests for asylum are pending of final decision or are rejected; • Refugees or beneficiaries of temporary protection who wish to return to their country of origin; • Foreigners who find themselves in an irregular situation in Portugal; • The present programme is still extended to other foreigners residing in Portugal without prejudice to the commitments contained in agreements or international obligations of which Portugal is part; • The foreigners already mentioned in the above categories but who are minors could also benefit from the programme provided that: <ul style="list-style-type: none"> • They are accompanied by the person who has paternal power or guardianship; • They present authorization from the person who has paternal power or guardianship in order to enable them to return their country of origin with a view to rejoining them, and are committed to be present at the moment of their disembarkation.
Budget:	Approximately US\$ 245,000 for 2001, US\$ 135,380 for 2002, US\$ 145,000 for 2003.
Funding Source:	Ministry of Interior
Movements to Date (end 2001):	More than 1,400 migrants have been assisted to return since 2001 to nearly 40 countries.

Programme Services

- Pre-departure assistance: information dissemination, counselling and the necessary documentation to ensure safe travel.
- Transport assistance: transport (air ticket for candidate and family, if applicable, to nearest port of entry in country of final destination) and reintegration assistance of EUR 250 per adult granted on a case-by-case basis.

Foreign nationals who benefit from an assisted return programme, will be registered in the Schengen Information System or the national list of people prohibited from entering Portuguese territory. Re-entry is possible five years after the date of voluntary departure.

Non-IOM Implemented AVR

In 1999, INDE established a programme for the return of East Timorese refugees who were trying to return home after the referendum on autonomous rule led to independence. The programme, co-funded by the European Refugee Fund, was strictly aimed at East Timorese nationals established in Portugal. It includes a strong component of counselling in Portugal, with custom-made vocational training, a return ticket (to allow the returnee to change his/her mind and come back – the ticket is valid for one year), a small amount of money, and a “welcome service” in East Timor.

No statistics are available for this programme.

Framework Agreements with Countries of Origin or Transit

Portugal has readmission agreements with several countries, which are implemented directly with the corresponding country of origin. See section on Involuntary Returns.

2.3 STATISTICS ON VOLUNTARY RETURN

TABLE 3
STATISTICS ON IOM-IMPLEMENTED AVR

Year	Number of Assisted Returns
2000	234
2001	362
2002	132
2003	120

2.4 BEST PRACTICES AND LESSONS LEARNED

The establishment of a mechanism with the capacity to deal with the demand of assisted voluntary return, based on a broad network of government agencies and concerned organizations, has been important for the effective implementation of AVR programmes.

Return Migration: Policies and Practices

Assessments and Evaluations

The IOM-implemented programme includes a yearly report containing an evaluation of programme execution, which is undertaken on a regular basis. It is an operational tool for government policy formulation in managing the challenges associated by a growing number of migrants coming into the country.

No external assessment was made of the INDE-run programme, and only personal inquiries made by INDE can give an indication of its effectiveness. INDE's questions have centred on the process (i.e. the quality of the training, quality of the counselling, etc.), and results have generally been very positive.

Within two years, about 120 people returned to East Timor. They had the opportunity to receive training, assistance and support. Some of them had the opportunity to reflect upon their choices, leading to the conclusion that Europe was, at that time, a better place to live.

Why Programmes Have or Have not Worked

For the first time in Portugal, an institutional network exists, with key players working together in the management of migration for various categories of migrants, who are supported in their return and reintegration in their country of origin. Positive synergies have been generated, and the capacity to manage the situation faced by migrants who wish to return has now been developed.

However, the programmes have been hampered by a limited interest in assisted voluntary return on the part of refugees and asylum seekers, of whom there are not many in Portugal. The programmes carried out in 2001 and 2002 targeted nationals of Guinea-Bissau in Portugal and were held back by adverse economic, social and political conditions in that country.

In sum, it can be stated that the limitations of any return programme are directly related to the resources, both human and financial, made available for their implementation. If the incentives are limited, there is a tendency for low adherence to the programme. The majority of the cases served by the programme find themselves without any option to remain in the country and take the decision to return on a voluntary basis.

Cost Effectiveness Analysis

When compared with the per capita costs involved in expulsion procedures, the AVR programme provides substantial financial savings for the Portuguese government. In addition, it also generates valuable political and social capital for the government, as it can identify and respond to the needs of migrants in a human and dignified way. The average cost of an expulsion order is between EUR 5,000 and 7,000, while the average cost of voluntary return is EUR 650.

NOTES

1. Decree Law Number 59/93.
 2. Individuals who enter Portugal clandestinely are subject to a fine of EUR 40, while illegal residents are liable to be fined EUR 655 for staying illegally for over 180 days. Individuals and companies who transport undocumented migrants may be fined up to EUR 2,175.
 3. Article 37 of the 1998 Asylum Law.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Portugal signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Portugal also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

SLOVAKIA

1. INVOLUNTARY RETURN

1.1 POLICY

In 1993, the Slovak Republic became an independent country following the dissolution of the former Federal Republic of Czechoslovakia. Over the years, the country has increasingly received a large number of migrants, who continue to stay on its territory. Among these foreign migrants, the Roma minorities from neighbouring countries constitute a substantial group.

The arrival of foreign irregular migrants in the country began about a decade ago, most of them from Eastern and south-eastern Europe and Asia, using the country as a transit to move further into Western Europe and other central and Eastern European countries. This was reported in a UN document entitled “International Cooperation in Combating Trans-national Crime Smuggling of Illegal Migrants” (E/CN.15/1997/8/Add.1), which stated: “Slovakia considered itself to be a transit State by virtue of the illegal crossing of its borders by migrants en route to destination points in other states within Europe.

The crossings were well organized and yielded high prices per individual.”¹ Over the past decade, there have been thousands of irregular border crossings every year. In 1998, irregular border crossings numbered 8,236 (entry 1,916 and exit 6,230); in 2000, they numbered 6,062 (entry 2,239 and exit 3,823); in 2001 the number soared to 15,548 (entry 4,775 and exit 10,773) and in 2002 the figure was 15,235 (entry 4,982 and exit 10,252).²

The Slovak Republic has agreements with dozens of countries for full or partial visa waivers. Citizens of the following countries do not need a visa to enter Slovakia: Andorra, Austria, Belgium, Bulgaria, Canada, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, Iceland, Ireland, Italy, South Korea, Latvia, Lithuania, Luxembourg, Malta, Monaco, Malaysia, Netherlands, Norway, Poland, Portugal, San Marino, Slovenia, South Africa, Spain, Sweden, Switzerland, USA, the Vatican.³ Although entry visas are not required for these nationals, the number of irregular migrants from these countries is not high.

The number of asylum seekers in the country has remained high over the years. In 2001, there were 8,151 asylum applications. In 2002, asylum applications reached 9,239. In the first nine months of 2003, a total of 6,162 asylum applications were lodged,⁴ mostly by persons who entered the country through Hungary and Ukraine.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Constitution of Slovakia provides that “the basic rights and freedom are guaranteed to every person in the territory of the Slovak Republic irrespective of sex, race, colour, language, faith and religion, political and other views, national or social origin, nationality or ethnic origin, wealth, heritage or social position.”⁵ This guarantees the basic rights and freedom of migrants in the country.

In the last few years, Slovakia has taken active steps to bring its legislation on migration, asylum and border control in line with EU requirements in the context of its candidature for joining the EU. In its 2002 regular report on Slovakia’s progress towards accession, the Commission of European Communities commented that substantial progress had been made in the field of justice and home affairs, which includes migration, asylum and border management.

The following laws, together with other relevant legislation, govern the entry and stay of foreigners and asylum issues:

- The National Council of the Slovak Republic Act on Stay of Foreigners (18 April 1995);
- The Act on Asylum and Amendment of Some Acts (as of June 20, 2002);
- The Act on Stay of Aliens and on Modifications and Amendment of Some Acts (1 April 2002).

Conditions for Entry

The conditions for entry of a foreigner to the territory of the Slovak Republic are stipulated by the National Council of the Slovak Republic Act on Stay of Foreigners in the Slovak Republic issued on 18 April 1995, the Act on Stay of Aliens and on Modifications and Amendment of Some Acts passed by the National Council of the Slovak Republic and entered into force on 1 April 2002, as well as by international and bilateral agreements by which the Slovak Republic is bound.

By law, the entry of an alien is possible only with a travel document and a visa or a travel document and a residence permit. A visa is not required if so stipulated by an international treaty or bilateral agreement, by which the Slovak Republic is bound.

Entry should be through a border checkpoint designated for international tourist traffic during its operating hours, or under conditions provided by an international treaty.

An undocumented alien under the age of 16 cannot enter the country unless accompanied by an adult with a passport in which the minor concerned is registered. Where a visa is required, the alien younger than 16 years needs to be covered by the visa as well.

There are **four categories of visa** issued:

- The airport transit visa entitles the person concerned to stay in the transit area of a public airport while waiting for an air connection named in the air ticket.

- The transit visa entitles the person to transit the country to another third country, if the transit in the country does not exceed five days. The aggregate number of days of multiple transits must not exceed 90 days in six months.
- The short-term visa entitles the person to a single entry or several entries and for the duration of stay specified in the visa. Neither a continuous stay nor the aggregate number of days of multiple stays should exceed 90 days in six months.
- The long-term visa entitles the person concerned to stay longer than 90 days as specified in the visa.

Denial of Entry

The police have the authority to deny entry to an alien in any of the following cases: the alien is an undesirable person, the person could endanger the security of the country or public order, life, health or property; or could violate other rights and liberties; the person could misuse the stay for a different purpose than stipulated by an international treaty, or for which the visa was provided; the person failed to meet his/her financial obligations.

A police officer may record the denial of entry in the travel document of the person concerned.

If an alien has entered or stayed in the country unlawfully, fines can be imposed on the alien ranging from SKK 5,000 to SKK 50,000. The revenue from the fines is an income for the state budget.

Tolerated Stay

Tolerated stay is a legal term used in the Act on Stay of Aliens and on Modification and Amendment of Some Acts, under the section entitled “Tolerated Stay”. An alien can be granted tolerated stay if he/she is not able to leave the country for some reason, and there are no grounds for his/her detention, or there is an obstacle to administrative expulsion. The police may give an alien a permit for tolerated stay for maximum of 180 days upon application by the person.

The police may repeatedly prolong the tolerated stay, where necessary. During the validity of the permit for tolerated stay, the alien is not allowed to engage in business activities. Upon request of a person who has been granted tolerated stay, the police may, after three years of tolerated stay grant a temporary stay permit for the purpose of employment.

Detention

The above-mentioned Act on Stay of Aliens authorizes the police to decide and detain an alien, whose entry into or stay in the country is unlawful. The police may also take a migrant into custody for the purpose of executing an administrative expulsion. The police should inform the person in a language understood by him/her, about options for reviewing the lawfulness of the detention decision. The police should also inform the foreign mission or other authorities of the country of the person’s citizenship.

Return Migration: Policies and Practices

The conditions for detention are strictly prescribed: the person has the right to eight hours' sleep and daily outings in designated areas for at least one hour. He/she may send mail at own cost; order books, daily press and magazines at own cost; and receive visits of a maximum two persons once in three weeks for 30 minutes.

The maximum time for holding foreigners in custody must not exceed 180 days. He/she may lodge an appeal against the detention decision with the court within 15 days of notification of the detention decision; and the court should take a decision within 15 days.

The person detained should be released in the following circumstances: when the grounds for detention expire; when a court decides to release the person; after expiration of the detention period or after the maximum period of 180 days.

The country has such centres in Mevedov and Secovce, etc. The Centre of Police Detention for Foreigners in Medvedov was set up in 1997, and the Centre for Foreigners in Secovce was set up in 1999.

Expulsion

According to the above-mentioned Act on Stay of Aliens, the Slovakian police have the power to decide administrative expulsion of a foreigner, ie. the termination of his/her stay. Following this, the person must leave the country. It is inadmissible to expel several aliens or a group of aliens with one decision. According to Article 56 of the Act "mass expulsion of aliens on the basis of one decision is inadmissible" and "the administrative expulsion of several aliens based on one decision is inadmissible."

In taking a decision on the expulsion, the police may also determine the duration of prohibition of entry of the person. This varies between ten years, five years and one year according to the circumstances. The court may also decide expulsion, if a case is referred to the court (judicial expulsion, according to Penal Code National Council Act No. 85/2000). The police shall record the data on file, when an expulsion decision is made.⁶

An alien can be expelled and prohibited to enter the country for a certain period of time, if:

- The stay of the alien may endanger the security of the country, the rights and liberty of others or in the interests of environmental protection;
- The alien committed criminal acts;
- The alien violated regulations on drugs and psychotropic substances;
- The alien deliberately submitted modified documents;
- The alien contracted a marriage with the aim of acquiring the permit of stay;
- The alien refused to verify his/her identity in a credible way;
- The actions of the alien were contrary to an international treaty or the decision of the Slovak government;
- The alien wilfully gave false information during the procedure on granting a stay permit;
- The alien failed to report the expiration of the stay permit;
- The alien hindered the enforcement of a decision by state authorities;
- The alien repeatedly or in a serious way violated the binding legal regulations.

A foreigner who has been issued an expulsion order is obliged to leave the country within the terms of the expulsion order. The period must not exceed 30 days. The police may order the person to stay at a designated venue until the expulsion decision becomes valid.

Non-Expulsion

According to the Act on Stay of Aliens, a person should not be expelled to a country where his/her life would be endangered on grounds of race, religion, for belonging to a certain social group or for political convictions. A foreigner should not be expelled to a country where he/she was sentenced to death, or it is assumed that in a pending proceeding such penalty could be imposed. Nor should a foreigner be expelled to a country where his/her freedom would be endangered or he/she would suffer cruel, inhumane treatment or torture on grounds of race, religion, social group or political conviction.

But those who have committed grave criminal offences or represent a danger to state security would be expelled in any case.

According to the Act on Asylum and Amendment of Some Acts (Article 47), a person who has been granted asylum or is applying for temporary shelter or is *de facto* a refugee, should not be expelled to a place where he/she would be tortured, exposed to cruel, inhuman or other degrading treatment.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

In Slovakia, the border police and other relevant police agencies and law enforcement agencies in the Ministry of Interior are responsible for making the decision on expulsion and enforcing it.

The Slovak government adjusted its Border and Aliens Police structure in recent years, and in April 2001 the new organizational structure came into force.⁷ The creation of a unified and special nationwide border police makes the police structure more coherent and Shengen-compatible as a safeguard to border security. The Border and Aliens Police Office is responsible for managing all borders in the country, and the regional border and police departments are directly under the command of the chief of this Office.

In 2001, the Office for International Police Cooperation and a Special Branch were set up to combat trafficking in human beings. The Office for International Police Cooperation acts for both the police force and the investigation, and the Special Branch provides relevant information to border police. In April 2002, a National Unit to Combat Illegal Migration was established, and the Unit is tasked with analytical and operational responsibilities.

Operational Procedures for Involuntary Return

Police offices are empowered to decide and expel aliens. If the foreigner concerned leaves the country of his/her own volition, the expulsion has been achieved. Otherwise, the police shall take measures to enforce it.

Return Migration: Policies and Practices

If a foreigner fails to leave Slovakia for reasons such as lack of valid travel documents or funds for travel, within the terms stipulated in the administrative expulsion order, the police shall ensure the execution of the expulsion. In the case of forced return to a country sharing borders with Slovakia, the Slovak police shall transport the person concerned to a border checkpoint and supervise the departure. Assistance will be requested from the foreign country to which the alien is returned, if needed.

Based on an agreement with a country of origin, the Slovak police may transport the alien concerned by air as far as to the territory of the country to which the alien is to be accepted.

Special Cases

Even in cases of expulsion, the Ministry of Interior may allow the entry of an alien if the purpose for seeking entry or stay is a humanitarian one, e.g. visiting a seriously ill relative, or where the re-entry of the alien would be in the interests of the country.⁸

Payment of Expulsions Cost

The cost of expulsion covers boarding and transportation, detention and other related cost.

Expulsion shall be covered in the following ways:

- By the person concerned if possible, through the funds owned by the alien;
- By the person who employed the alien without authorization;
- By the person who arranged the employment of the alien without authorization;
- By the person who pledged to do so in the invitation process;
- By the carrier who failed to meet international transportation requirements;
- By the Ministry of Interior, if all the above-mentioned procedures are not possible.

1.4 STATISTICS ON INVOLUNTARY RETURN

The total number of expulsions in recent years is tabled below:⁹

TABLE 1
STATISTICS ON INVOLUNTARY RETURN*

Year	2000	2001	2002	2003 (November)
Number	1,157	2,437	1,119	1,246

* IOM (Boris, Dininsky), 2003: *Migration Trends in Selected Applicant Countries*, Volume 5 – Slovak Republic, p. 103.

The cost of each expulsion depends on the travel distance per person and the ticket required (air or train, etc). In the period from 1 January to 31 October 2003, Slovakian police spent about EUR 20,000 to implement expulsions.

TABLE 2
COST OF EXPULSIONS

Categories	Tickets	Police Escorts	Ground Transportation Fuel Cost
Cost (EUR)	3,605	13,050	2,595

1.5 BEST PRACTICES AND LESSONS LEARNED

- Well-formulated legislation;
- The importance of proper implementation of legal provisions;
- Cooperation between the Migration office in the Ministry of Interior and the Border and Aliens Police is crucial in ensuring concerted efforts to deal with migration challenges.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The Republic of Slovakia has a clear policy supporting the voluntary return of migrants to their countries of origin.

The Act on Asylum and Amendment of Some Acts (as of June 20, 2002) has a section on “Cooperation with the International Organization for Migration” (Section 44), which identifies the Ministry of Interior for cooperation with IOM in carrying out voluntary returns. “The Ministry shall cooperate with the International Organization for Migration in arranging the movement of aliens who want to return voluntarily to their country of origin or to a third country.”

Before the law was adopted, in August 1998, the Ministry of Interior and IOM had an existing cooperation agreement to provide assistance to unsuccessful asylum seekers and irregular migrants returning to their countries of origin. The above-mentioned Act on Asylum and Amendment of Some Acts further provides the legal basis for voluntary return activities in the country.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Slovak authorities and the IOM office in the country have worked together to assist irregular migrants and unsuccessful asylum seekers in returning to their countries of origin. Such returns are fully based on the wishes of returnees.

Return Migration: Policies and Practices

Operational Procedures for Voluntary Return

The Slovak Ministry of Interior informs IOM of unsuccessful asylum seekers whose application for refugee status has been rejected by the competent authorities, and where the asylum proceedings have been terminated.

In the case of irregular migrants, the Ministry informs IOM of the migrants who need proper documents, transportation and other return assistance.

The Ministry allows IOM to contact potential returnees and inform them of the existence of voluntary return assistance programmes.

Using information from the Slovak authorities, the IOM office contacts potential returnees to assess whether they would like to return voluntarily. Personal data is registered and voluntary return declaration forms are filled by those seeking voluntary return. Language assistance is provided, where needed.

For those who decide to return voluntarily, IOM prepares the relevant travel documentation, and makes transport arrangements. IOM arranges travel tickets, the necessary transit procedures and other logistics for the return. The authorities of the Slovak detention centre or asylum facilities direct the returnee to the point of departure in the country. IOM staff then accompany the migrants through check-in and exit control areas to the gate of departure. As needed, a returning migrant can be provided with pocket money of maximum US\$ 60 for pre-departure preparation and use on the journey.

Assisted voluntary return is usually arranged for those willing to return within 30 days from the day of request by the authorities.

Cost of Assisted Voluntary Return

According to the agreement between the Ministry of Interior and IOM, the Ministry reimburses IOM the cost relating to each successful voluntary return. The reimbursement occurs within 60 days of the departure of the returnee.

In 2000, the total cost of the assisted voluntary return programme was EUR 2,690; in 2001 it was EUR 14,124; in 2002 EUR 21,700; and in 2003 more than EUR 40,000.

There are cases where migrants agree to return voluntarily, and IOM commences the travel arrangement, but the applicants disappear before the actual departure.

Voluntary Return Programmes and Activities by IOM

The assisted voluntary return activities of IOM in Slovakia deal with the actual return and related activities, such as preparing travel documents, arranging tickets and ground service, etc. At this stage, the return programmes do not cover post arrival reintegration assistance. IOM has been working with assisted voluntary programmes in Slovakia since 1996.

The main cooperation partners for IOM are the Migration Office in the Ministry of Interior and Border and Aliens Police offices. IOM staff visit the asylum facilities and disseminate informa-

tion on assisted voluntary return services. Among the five refugee camps in the country, IOM personnel have visited four of them. Direct contacts with migrants prove to be useful.

Migrants also take the initiative to visit the IOM office for assistance. Due to financial constraints, it is not possible for IOM to make frequent visits to these facilities. Some NGOs in the country are informed of IOM's assisted voluntary return programmes; and they may also inform migrants of the existence of voluntary return assistance.

In addition to assisting aliens to leave Slovakia, the IOM office also assists returning Slovak nationals. IOM has helped 81 Slovak returnees from Netherlands and 84 Slovak returnees from Belgium in their reintegration activities in the country.

2.3 STATISTICS ON VOLUNTARY RETURN

The following table shows the number of persons returned with the IOM programmes of assisted voluntary return.

TABLE 3
STATISTICS ON ASSISTED VOLUNTARY RETURN

Year	1996 – 1998	1999	2000	2001	2002	2003 (till Oct.)
Number Returned	99	91	9	46	44	79

The following tables show the destinations of returns out of Slovakia.

TABLE 4
DESTINATIONS OF RETURNEES:
2001

Destination	Number	Destination	Number
Armenia	6	Turkey	4
Yugoslavia	25	Dominican Republic	1
Moldova	1	Belarus	2
Russian Federation	2	Ukraine	1
Bosnia and Herzegovina	2	Macedonia	1
Guinea-Bissau	1		

Return Migration: Policies and Practices

TABLE 5
DESTINATIONS OF RETURNEES:
2002

Destination	Number	Destination	Number
Afghanistan	1	Cambodia	1
Bulgaria	6	Moldova	4
Russian Federation	7	India	10
China	7	Yugoslavia	1
Pakistan	3	Norway	4

TABLE 6
DESTINATIONS OF RETURNEES:
JANUARY TO OCTOBER 2003

Destination	Number	Destination	Number
Moldova	6	India	1
China	57	Russian Federation	8
Afghanistan	2	Lebanon	1
Egypt	4		

The overall expenditure in assisting voluntary returns in recent years is tabled below:

TABLE 7
COST OF IMPLEMENTING ASSISTED VOLUNTARY RETURNS

Year	2000	2001	2002	2003 (till Oct.)
Cost (EUR)	2,690	14,124	21,700	45,302

2.4 BEST PRACTICES AND LESSONS LEARNED

Assisted voluntary return programmes are useful tools in reducing the number of stranded migrants who wish to return home. IOM will continue to cooperate with the Slovak authorities to expand the programmes if funding is secured. Currently, IOM is in the process of discussing with Slovak authorities possibilities for updating the cooperation agreement.

As Slovakia will become a EU Member State on 1 May 2004, the country will likely attract more migrants as a destination. It will need to be prepared to deal with the increased migration-related challenges.

NOTES

1. See paragraph 8 of the UN document E/CN.15/1997/8/Add.1 (8 April 1997).
 2. IOM (Dininsky, Boris), 2003: *Migration Trends in Selected Applicant Countries*, Volume 5 – Slovak Republic, p. 24.
 3. For detailed information, see the webpage: <http://www.slovakia.org/tourism/visainfo.htm>.
 4. UNHCR “Asylum level and trends” released on 1 December 2003.
 5. Article 12 of the Constitution of the Slovak Republic.
 6. For further details, see Part Six of the Act.
 7. Commission of the European Communities, *2001 Regular Report on Slovakia’s Progress towards Accession*, Brussels, 13 November 2001, SEC (2001) 1754, p. 78.
 8. This is provided by the Article 61 of the Act on Stay of Aliens and on Modification and Amendment of Some Acts, which entered into force 1 April 2002.
 9. IOM (Dininsky, Boris), 2003: *Migration Trends in Selected Applicant Countries*, Volume 5 – Slovak Republic, p. 103.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Slovakia signed the UN Convention Against Transnational Organized Crime on 14 December 2000, and ratified the Convention 3 December 2003. It signed the Trafficking Protocol on 15 November 2001, but has not yet ratified the Protocol. Slovakia also signed the Smuggling Protocol on 15 November 2001, although it has not yet ratified this Protocol.

SLOVENIA

1. INVOLUNTARY RETURN

1.1 POLICY

Slovenia's migration policy was largely established at the time of the country's independence in 1991. Prior to this, Slovenian migration policy was part of the federal policy of the Republic of Yugoslavia.

In the past, most migrants and asylum seekers in Slovenia were in transit bound for EU countries. Situated at the edge of the Balkans and bordering Italy, Austria, Croatia and Hungary, the country represented a preferred transit point for westward movement. This has changed, and it is expected that after accession to the EU, Slovenia will evolve more and more from a transit country into a destination country. Since 2001, the numbers of asylum applications and illegal entries have been decreasing, but they still pose a problem for the country, given its relatively small population.

Slovenia is identified by EU states as a safe third country, and transiting asylum seekers can be, and are, pushed back to Slovenia by countries of destination. Thus, despite decreasing numbers of asylum applications and irregular migrants, there continues to be a problem with unwanted migrants returned from other countries. Irregular immigration,¹ particularly trafficking of migrants, is of concern to the government.

Slovenian migration policy has therefore been dominated by border control and measures to restrict immigration and enforce relevant legislation. In addition to this, and in the context of future EU membership and adoption of the *acquis communautaire* requirements, Slovenian legislation has been strongly influenced by EU policies, as is the case for all Acceding Countries.

In general, Slovenia's legislative framework and enforcement thereof have proven to be effective in preventing unwanted immigration and facilitating expulsions, readmission and other constraining measures.²

In 2003, the Slovenian government decided to end temporary asylum for nationals from Bosnia and Herzegovina as of 1 August. All such nationals were ordered to leave the country by 15 August at the latest, as the government deemed that the grounds for temporary asylum no longer existed.³

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- Geneva Convention of 1951 and the New York Protocol of 1967, to which Slovenia became party on 6 July 1992 by succession from the Former Yugoslavia;
- Constitution of the Republic of Slovenia (Official Gazette of the RS, No. 33/91);
- Aliens Act (Official Gazette of the RS, No. 61/99) and Act Amending Aliens Act (Official Gazette of the RS, No. 87/2001);
- Asylum Act (Official Gazette of the RS, No. 61/99) and Act Amending Asylum Act (Official Gazette of the RS, No. 113/2000) and the implementing rules as adopted in September 2002 – the integration decree is still pending;
- Law on Temporary Refuge (Official Gazette of the RS, No. 20/97, No. 67/2002).

Illegal Entry

Persons entering Slovenia illegally may be fined and subsequently served an expulsion order. According to Article 47, migrants residing illegally in Slovenia must leave the country immediately or by a time designated by the Ministry of Interior. Migrants entering Slovenia illegally or residing unlawfully on the territory of Slovenia shall be deported.

[Whereas, a] n alien who has filed an application for an extension of his residence permit or for a further permit in due time shall be permitted to remain in the country until his application has been decided upon, and shall be issued with a special receipt, which shall serve as a permit for temporary residence until the application has been decided upon.

The deadline to leave the country must be determined in accordance with the alien's situation but must not exceed a period of three months.

The Aliens Act stipulates under Article 99 that persons who assist illegal entry or reside illegally on the territory of Slovenia may be fined between SIT 50,000 (EUR 210,000) and SIT 100,000 (EUR 420,000) for minor offences.

Article 249 of the Penal Code prohibits the engagement and payment of third persons assisting in irregular border crossings, or even attempts thereof.

The Slovenian Constitution and legislation include no specific articles on trafficking in human beings. Following a recommendation by the Committee on the Elimination of Discrimination Against Women, the Slovenian government planned to amend the Penal Code by end 2003 to include an article on trafficking as a punishable crime. Proposals have included criminal prosecution for enslavement, the use of force, threat or deception, and smuggling for the purposes of sexual exploitation.

In addition, Slovenia has adopted and ratified a number of international instruments on trafficking, and applies the provisions of a number of international human rights instruments such as:

- The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- The Convention for the Protection of Human Rights and Fundamental Freedoms;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;⁴ and
- The Brussels Declaration on Prevention and Combating of Trafficking in Human Beings.

Expulsion and Deportation

The expulsion of a foreigner requires a court decision. The order has to be issued by the Judge for Minor Offences and is carried out by the border police.

Article 50 of the Aliens Act stipulates that undocumented foreigners residing illegally in Slovenia, who fail to leave Slovenia and/or are expelled, may be deported, if the removal is enforceable. Under this provision, the foreigner is escorted by the police to the state border and directed across the border.

Article 51 specifies that deportation or expulsion may only be executed if it does not endanger the deportee's life or freedom, unless there are well-founded reasons for believing that the migrant's stay will cause a threat to public order and national security, or the alien has been convicted in a court of an exceptionally severe criminal offence, thereby posing a threat to the Republic of Slovenia.

Unaccompanied minors who entered the country illegally cannot be deported to their country of origin and will be temporarily accommodated by the police at the special department responsible for minors, after notifying social services. Asylum applications from unaccompanied minors are processed under a priority procedure, and minors will only be deported to their country of origin or a third country ready to accept them if adequate reception and basic living conditions can be guaranteed.

According to Article 5 of the Social Welfare Act, besides citizens of the Slovenian Republic, aliens in possession of a permanent resident permit are also entitled to receive social welfare benefits. Aliens without permanent residence may also claim certain benefits, but it is unclear how these provisions are implemented in practice, and whether benefits are withdrawn when a decision is taken to expel the individual.

The principle of non-refoulement applies not only to recognized refugees but also to all foreigners.

Detention

Changes to the Asylum Act in 2001 introduced provisions for restricted movement of asylum seekers: Article 27 temporarily restricts such movement, until the final decision is made, for purposes of establishing the identity of the applicant or preventing the spread of contagious diseases, and in cases where a well-founded suspicion of fraudulent claims exists. Due to limited detention capacities, these provisions are rarely applied in practice.

Return Migration: Policies and Practices

Article 56 of the Aliens Act defines both the restriction of movement and the eventual obligation of migrants in irregular situations to leave the country. Migrants who are due to be deported from Slovenia may be detained in the Centre for the Deportation of Aliens, at the Ministry of Interior for a period not exceeding six months, if they cannot be removed immediately. Where detention at the Centre for Deportation is impossible due to special needs, the individual may be provided accommodation at a social security facility, with the agreement of the social security office. Aliens whose identities cannot be established may also be detained in the Centre for Deportation.

Detainees are held at the Centre for Deportation of Aliens under the supervision of the Ministry of Interior until their removal. In special cases where detention in the centre is not possible, detainees may be placed in a social security facility or provided with other adequate institutional care.

Slovenian legislation also provides for detainees to be placed under “stricter police supervision”. This means that detainees may be restricted in their freedom of movement within the premises of the deportation centre. This is applicable to aliens who have been denied entry into the country, and against whom an additional order of expulsion has been issued.

More lenient measure may also be imposed where there is reason to believe the individual concerned will not abscond. In such cases, detention in the Deportation Centre may be replaced by an obligation to report regularly to the police station.

Carrier Sanctions

Under Article 24 of the Aliens Act, carriers which fail to meet their obligation to ensure that passengers entering Slovenia have valid travel documents and an entry permit, are obliged to return the person immediately and at their own expense. Moreover, the carrier has to cover all related expenses until the alien has left the country.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Ministry of Foreign Affairs is responsible for decisions on the entry of aliens and the issuance of visas.

The Ministry of Interior makes all decisions regarding residence permits and the annulment of residence, and is also responsible for making decisions on deportations. The police and border police, which come under the jurisdiction of the Ministry of Interior, are responsible for exercising border control, refusing entry to aliens at the border, issuing visas at the border and implementing decision on the deportation of aliens.

Aliens who cannot be deported immediately are held at the MOI's Centre for the Deportation of Aliens.

Instructions governing the competencies, procedures and cooperation between these bodies are outlined in Chapter 7 of the Aliens Act.

Operational Steps for Involuntary Return

The decision on the annulment of residence specifies a deadline by which the alien must leave the Republic of Slovenia, and deportation before this period is unlawful. The decision on annulment of residence also specifies the period of time during which the alien shall not be permitted to re-enter the country. This period may not be less than one year or longer than five years, and is dependent on the nature and gravity of the circumstances by reason of which the alien's stay in Slovenia is undesirable.

The police, according to Article 50 of the Aliens Act, will enforce the removal of an alien who has been ordered to leave, and escort the individual to the border. The removal is usually carried out immediately or within a few days or weeks of the issuance of the expulsion order.

Major difficulties in the removal process include a lack of documents or readmission agreements between Slovenia and the country of origin. Where readmission agreements exist, deportations are generally less time-consuming and more easily executed, as for example in the case of migrants returned under the agreement with Croatia.

Deportees are always escorted by a police officer or inspector from the point of departure to the country of destination and handed over to the relevant authorities in the respective country of return.

While a deportee will not usually receive a stamp in his/her passport indicating that he/she has been deported, this will be recorded in the police records.

Chartered Flights

No information available.

Framework Agreements with Countries of Origin or Transit

Slovenia follows the practice of the EU and has prepared readmission agreements with all neighbouring countries, as well as with the main countries of origin. These mostly cover involuntary return. Agreements have been signed with the following countries: the Benelux States (1992), Bulgaria (2000), Denmark (1997), Estonia (1997), France (1993), Greece (1996), Canada (1996), Latvia (1998), Lithuania (1997), Macedonia (1999), Poland (1998), Romania (2001), Slovakia (1995), Serbia and Montenegro (2001), Austria (1993), Italy (1997), Hungary (1995) and Croatia (1995).

Additional agreements are in preparation with Switzerland, Albania, Bosnia and Herzegovina and the Czech Republic.

Slovenian authorities report that one of the main difficulties in implementing existing readmission agreements is a general lack of respect by the authorities of countries of origin for the agreements. However, they also report that this kind of problem tends to be solved over time.

Return Migration: Policies and Practices

Difficulties arise also in the execution of expulsion when there are no consular missions for the respective country of origin in Slovenia. In such cases, more time is needed for the issuance of travel documents, particularly where migrants do not disclose their identity.

Costs

Estimates of per capita costs of implementing deportations for travel and escort services are not available.

Prosecution

Migrants who are expelled on a court's decision must leave the country as soon as the judicial decision is effective. The decision, including the period of entry ban is stamped into the alien's passport or travel document.

Detention

Slovenia avails itself of four detention centres – Postojna,⁵ Prosenjakovci, Vidonci and Ljubljana Brnik Airport. There are also facilities at prisons and police stations.

Detention at the Ljubljana Brnik Airport is permitted only for a limited period of time and under the supervision of a court. Persons who do not meet the criteria for entering Slovenia are held there until arrangements for departure are made. In practice, those denied entry are held at the airport only for a few days, mainly due to unavailability of flights.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 1
STATISTICS ON INVOLUNTARY RETURN

Year	Number of Deportations
2000	3,543
2001	3,034
2002	1,737
2003 (until September)	471

1.5 BEST PRACTICES AND LESSONS LEARNED

Every country experiences different problems and needs different solutions to implement and execute removals in the most effective way. Hence, evaluations are constantly undertaken of the return activities with each country of origin, in order to improve the logistics and avoid recurrence of the same operational problems.

Psychological preparation, particularly through enhanced communication with the returnee before and during the return have proven in practice to be of great significance for the escorting police officers. Training for the escorts has been organized, in order to acquaint officials with the

most frequent problems occurring during the removal process, especially in regard to administrative problems encountered at the border and in the handling of disabled and vulnerable deportees.

Within the scope of the EU PHARE Horizontal Programme, the Ministry of Interior is included in bilateral twinning programmes with counterparts from Austria and Germany. In addition, French experts have provided relevant authorities with training and equipment for the recognition of false documents. Slovenia has also developed close cooperation with Austrian and German colleagues.

In 2003, Slovenia concluded a bilateral agreement on cross-border police cooperation with Croatia (in force since April 2003) and prepared similar agreements with Hungary and Austria.⁶

2. ASSISTED VOLUNTARY RETURN

Although there is no specific law on assisted voluntary return, the general policy has been to allow persons issued with expulsion orders to leave the country voluntarily before the decision is enforced. According to Article 47 of the Aliens Act, irregular migrants apprehended in Slovenia will be requested to leave the country voluntarily within a specified period, which cannot exceed three months.

In 2001-2002 IOM Ljubljana implemented a Pilot Assisted Voluntary Return scheme in conjunction with the Ministry of Interior (Government Office for Immigration and Refugees). Assistance was extended to refugees from Bosnia and Herzegovina with recognized temporary protection status, rejected asylum seekers, victims of trafficking and other irregular migrants.

According to the specific needs of the migrants assisted, the returns were operated in cooperation with a number of organizations including UNHCR, Slovene NGOs such as Slovene Philanthropy, Kljuc, Caritas, and the Slovenian Red Cross. Talks are currently underway to establish a longer term, more sustainable AVR framework.

2.1 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

No structured assisted voluntary return programme exists in Slovenia at present, however the Ministry of Interior is in negotiations with IOM on an agreement to implement a formal AVR programme. IOM runs a modest AVR programme in Slovenia, in cooperation with concerned local and international organizations.

Return Migration: Policies and Practices

Operational Steps for Voluntary Return

Any individual who expresses a wish to return voluntarily will be requested to sign the IOM statement of voluntariness. There is no requirement to sign a form about not attempting to re-enter the country again in the future, either legally or illegally.

Programme Services

- Pre-departure Assistance: Information dissemination, counselling, medical assistance, where necessary.
- Travel Assistance: Logistical assistance towards transportation, travel documents and transit assistance.
- Post Arrival Assistance: Inland transportation, medical support, reintegration grant and assistance and follow-up, where funding is available.

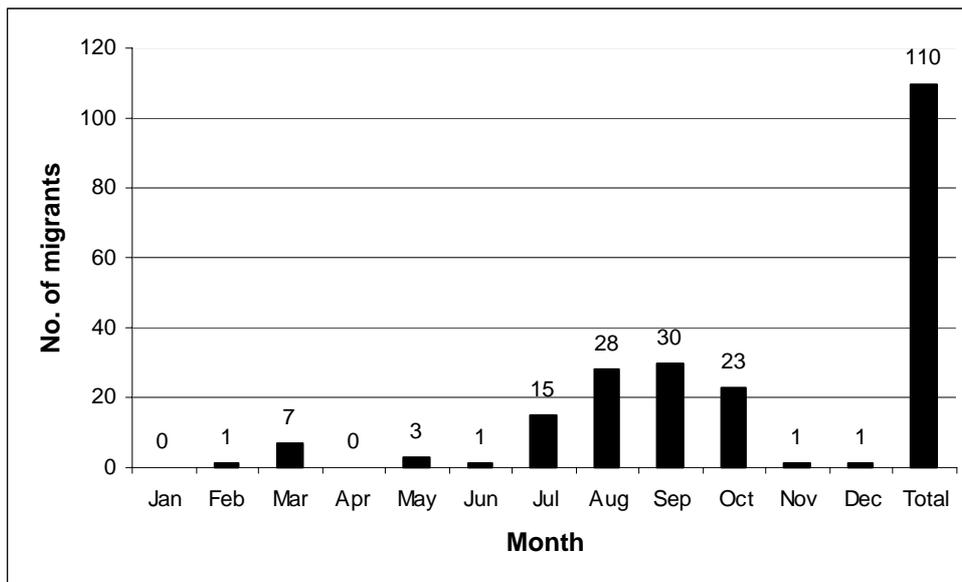
Framework Agreements with Countries of Origin or Transit

See section on involuntary return.

2.2 STATISTICS ON VOLUNTARY RETURN

50 people returned under the IOM-run programme in 2001, more than double the number in 2002 (110 returns). Figures for 2003 are as yet not available.

FIGURE 1
AVR BY IOM LJUBLJANA:
2002 MONTHLY STATISTICS



Source: IOM Ljubljana.

2.3 BEST PRACTICES AND LESSONS LEARNED

- Information from previous return programmes is useful in the operation of new programmes and also for persons considering voluntary return;
- Pre-departure information dissemination and counselling has proven to be effective in preparing returnees for reintegration in their countries of origin;
- Cooperation among government authorities, IOM, NGOs and migrant communities is essential for effective implementation of the programme;
- Adequate reintegration assistance is critical for the sustainability of return.

Why Programmes Have or Have not Worked

Apart from the IOM-implemented assisted voluntary return programme, no other organization runs an AVR programme in Slovenia. Despite the fact that there has been a strong demand for an enhanced AVR mechanism, other organizations have been hampered by a lack of financial support.

At present, the IOM programme cannot operate at full capacity because of a lack of funding and an agreement on the implementation of the programme, although negotiations on this commenced in July 2002.

NOTES

1. About 96 per cent of immigrants coming to Slovenia are from other parts of greater Europe (period monitored: 1997 to 2001), such as Romania, Moldova and Turkey. Most migrants, especially Romanians, transit Slovenia on their way to Italy, where they seek temporary and seasonal work. IOM, *Migration Trends in Selected EU Applicant Countries*, Volume VI – Slovenia. The perspective of a country on the “Schengen Periphery”; Zavratnik Zimic, Simona, Ljubljana 2003.
 2. Comprehensive monitoring report on Slovenia’s preparation for membership. Rapporteur for the European Parliament: Volcic, Demetrio, September 2003.
 3. Due to its cultural and geographic proximity to Bosnia and Herzegovina, Slovenia received and granted temporary protection to approximately 70,000 Bosnian refugees in total.
 4. This agreement was signed but has to be ratified by Slovenia.
 5. The European Committee for the Prevention of Torture visited prisons and detention centres in Slovenia and reported severe conditions in the Postojna detention facility (*JRS Slovenia Annual Report for 2001/2002*).
 6. Comprehensive monitoring report on Slovenia’s preparation for membership. Rapporteur for the European Parliament: Volcic, Demetrio, September 2003.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Slovenia signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 15 November 2001, but has not yet ratified the Protocol. Slovenia also signed the Smuggling Protocol on 15 November 2001, although it has not yet ratified this Protocol.

SPAIN

1. INVOLUNTARY RETURN

1.1 POLICY

Similar to Italy, Spain underwent a quick transformation from an emigration country to an immigration country during the 1990s, making the issue of immigration a matter of national concern. Extensive regularization programmes in the 1990s also brought to light the presence in Spain of significantly larger populations of undocumented immigrants than the central government had previously detected,¹ which prompted the establishment of an institutional framework to manage immigration. These efforts to improve migration management also came at a time when the EU was pressing for measures on the harmonization of immigration policies.

Since early 2000, immigration has become a recurrent theme in political discussion and opinion polls for a number of reasons. These include the increasing xenophobia and media attention around undocumented migrants, particularly following a series of dramatic and tragic events involving irregular migrants.² These developments were accompanied by a succession of legal reforms, all of which have contributed to making immigration a highly contested issue on the social and political agenda. In the 1980s and 1990s, it had been more of a technical and administrative concern.

Two major pieces of legislative reforms in 2000, often dubbed Spain's year of immigration, reorganized existing administrative structures and created new ones, to address the emerging immigration challenges.³

The general perception of immigration is rather negative, and the government faces the huge task of ensuring a balanced immigration approach, which is able to address demographic challenges such as low birth rates, and a growing need for low-cost labour, while not exacerbating the high national unemployment rates and public concerns over a depleted welfare system. The response has, however, been the adoption of more restrictive measures, in alignment with the EU *acquis*.

Spain's migration policy is thus being influenced by two major trends in public opinion:

- The public fear of being overrun by an uncontrollable wave of third-country migrants, which endanger the national welfare system and labour market; and
- Growing xenophobia and acts of violence against migrants.

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Under the so-called Greco Plan, Spain established, alongside the regularization programmes and the work permit system, a labour quota system to respond to short and long-term shortages in the labour market.⁴

On 2 October 2003, the majority of the Spanish Parliament, with a wide-spread consent amongst the ruling party, *Partido Popular* (PP) and *Partido Socialista Obrero Espanol* (PSOE), adopted the legislative reform of the currently still effective Law 8/2000. This is the third reform of the alien's legislation in Spain since 2000. The main changes will target undocumented migrants, and introduce a visa for migrants, who come to Spain in search of a job. The law was expected to come into force after the second reading in the Senate on 1 January 2004. In comparison to previous revisions, no legalization programme is this time foreseen in the Act. The reformed law is in alignment with the restrictive migration policy of Law 8/2000.

The EU agenda influences Spain's migration policy significantly, particularly in focusing on more restrictive, limited entry. The main tendency is to regulate migration flows and control illegal immigration, with less emphasis on integration or naturalization of resident immigrants.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

In 1985, Spain's first alien's law, the Law on the Rights and Freedoms of Foreigners in Spain, mostly approached immigration as a temporary phenomenon, and focused primarily on control over migrants already in the country. Immigrants were seen, first and foremost, as workers who required regulation by the Ministry of Labour.

While the 1985 legislation was more restrictive towards immigration, but weak in regard to immigrant rights, the 1996 amendment to the 1985 law recognized immigration as a structural phenomenon, and acknowledged that foreigners have a set of personal rights.

In January 1998, an initiative was taken to tackle the issue of integration. The Law on the Rights and Freedoms of Foreigners in Spain and their Integration (Law 4/2000) was passed and came into effect in January 2000. This law is notable for the broad political consensus that backed it, for its clear focus on integration and the political and social rights extended to non-EU foreigners, as well as for its recognition of the permanent dimension of immigration.

Most importantly, this law meant a shift from policies focused on controlling immigration flows (*política de extranjería*) to policies that looked more broadly at immigration and integration (*política de inmigración*) for Spain.

Immigration Plan Greco

In 2000, the Spanish government formulated its immigration policy statement with the Overall Programme for the Regulation and Coordination of Aliens' Affairs and Immigration in Spain.⁵ The so-called Greco Plan is a multi-year initiative begun in

2001 and expected to run until 2004. Falling within the Interior Ministry, the Greco Plan includes four basic lines of action:

- A coordinated overall framework for immigration as a desirable phenomenon for Spain within the context of the European Union;
- Integration of foreign residents and their families as active contributors to the growth of Spain;
- Admission regulation to ensure peaceful coexistence within Spanish society;
- Management of the shelter scheme for refugees and displaced persons.

Based on the territorial organization of the Spanish state, and its political and administrative decentralization, the Greco Plan acknowledges the vital role that regional governments play in integrating the immigrant population. Law 8/2000 and the Greco Plan are both explicit in their recognition that the development and implementation of integration policies at the local level will have the greatest impact on integration.

The ruling *Partido Popular* (PP) considered Law 4/2000 too permissive and not in line with the more restrictive lines promoted by the European Union. The party's parliamentary majority after the March 2000 elections enabled it to pass Law 8/2000 to amend the previous legislation. The regulation enacting the law came into force in mid-2001.

Aligning itself with common European policy on immigration and asylum, the law addressed access and control measures, reflected an effort to ensure integration of legal immigrants and limit illegal immigration, and paved the way for the signing of cooperation agreements with the main countries of origin to manage inflows from the point of origin.

A third reform of the Spanish Aliens Law was introduced in October 2003. This law continues to restrict immigration like the previous Law 8/2000. Once the law is adopted after a second reading in the Senate, the main changes will be:

- Introduction of a three-month visa allowing entry into Spain for the purpose of seeking a regular job. Where the job search is successful, the migrant will be granted a temporary residence permit.
- Tightening of the rules on family reunion. The possibility of multiple reunions will be excluded, and the interpretation of the term family is brought in line with EU regulations.
- Additional measures to combat illegal entry. This foresees penal sanctions for traffickers and employers of undocumented migrants, as well as stricter carrier sanctions, where carriers do not cooperate in supplying certain information. The Ministry of Interior will also be granted access to data of local resident registration offices and social security authorities in order to locate undocumented migrants (many of them are registered at the municipalities where they reside illegally, in order to benefit from the health service).

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- The deportation procedure will be accelerated and undocumented migrants residing illegally in Spain will be punished more severely. Illegal entry will generally be sanctioned with a ban of ten years of non-entry.

Forced Return

The legal basis for the powers of detention originate from Act 2/1986 on State Security Forces and Bodies; Act 1/1992 on Protection of Citizen Security; Act 10/1995, the Penal Code; the 8/2000 Alien Act; the 2001 Implementation Rules; the 1994 Asylum Act; and the 1995 Implementation Rules.

Spanish legislation distinguishes between three kinds of removal:

- Rejection at the border with no order of expulsion – immediate removal at the latest within 72 hours;
- Expulsion within the territory of Spain – foreigners in irregular circumstances to depart on their own volition within 15 days of notification;
- Deportation order – which includes a prohibition on re-entering a European Union Member State territory for three, five or ten years – enforced as soon as possible.

Spanish law foresees that return of rejectees or persons without a valid residence permit has to be executed within 72 hours of the order of expulsion. Once this time expires, a judicial decision is required to detain the migrant.

Staying illegally in Spain can be sanctioned with a fine that varies from EUR 300 to EUR 6,000. Once the asylum application is rejected, the person becomes an illegal resident, if he/she does not obey the order to leave. An appeal does not suspend the order to leave, which must be requested specifically and can be granted by a judge.

Detention

A foreigner may be maintained for 72 hours without judicial authorization. An application for *habeas corpus* can be initiated if the detention is considered to be illegal. The maximum period, with judicial authorization is 40 days. Detention is considered to be an exceptional measure and only special accommodation centres, rather than prisons or other premises belonging to the police, can be used for this purpose.

Only a judge can decide upon a detention order exceeding 72 hours. The control authorities must inform the judge about the Centre in which the foreign national will be placed, to enable him/her to carry out any appropriate judicial controls during the detention period. The judge can modify the period of detention at any time, up to a maximum of 40 days.

Rejected asylum seekers are not detained at prisons with dedicated facilities, other prisons or in any other facilities, but in special Removal Centres. Minor children are not housed at the Removal Centres, but placed with the competent agencies of Minors Protection in a special

centre for refugee minors in Madrid. However, after a favourable report from the Public Prosecutor, the judge can authorize the children to stay with their parents if the Detention Centre provides special facilities for families.

Expulsion and Deportation

The legal bases for removal are the Aliens Act 2000; the Implementation Rules 2001; the Asylum Act 1994 and the Implementation Rules 1995. Furthermore, in the context of its policy of combating crime, the government has directly linked its penal reforms with control of immigration, and started to introduce a reform of the Penal Code in 2003.

A number of changes have been introduced:

- Misdemeanour is punishable with a sentence of up to ten years (previous legislation foresaw three years);
- Trafficking in minors is an aggravating circumstance;
- Undocumented immigrants sentenced to less than six years of prison can be expelled from Spain with no right to return for ten years;
- Female genital mutilation is considered a crime;
- In cases of divorce and marriage, Spanish law will be applied to immigrants who cannot do so in their country of origin.

This means:

- Expulsion is ordered for undocumented aliens sentenced for offences punishable by imprisonment, except in exceptional cases (previously: expulsion could be substituted for terms of imprisonment of less than six years, in case of imprisonment exceeding six years: expulsion may be ordered after three quarters of the sentence has been served);
- Expulsion is ordered for undocumented foreigners convicted of offences punishable by expulsion (previously: expulsion may be ordered);
- Ten years' prohibition on return to Spain (previously: three to ten years);
- Up to 12 years' imprisonment for female genital mutilation (previously not considered a crime);
- Four to eight years' imprisonment for trafficking and clandestine immigration (previously: six months to three years);
- Five to ten years imprisonment for trafficking for the purpose of exploitation of trafficked person (previously: two to four years).

Suspension of Removal

Removal is suspended in cases where aliens apply for asylum or for vulnerable persons (pregnant women, elderly, sick persons, etc.) The same applies for foreigners collaborating in investigations concerning trafficking and illegal immigration or other matters of public interest. Forced removal is also suspended for asylum seekers who are rejected but cannot be repatriated due to an unsafe situation in their countries of origin.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

Legal and executive initiatives in regard to immigration are the responsibility of the state institutions of the Spanish central government. Yet measures for integration of immigrants are coordinated to a large extent by municipal and regional bodies. There seems to be no explicit inter-governmental vision of immigration for the main stakeholders.

The year 2000 was marked by the reorganization and creation of new administrative structures and the shift of most tasks to the Ministry of Interior. The intention was to strengthen the government's role as principal stakeholder in the development of migration policy and in migration decision-making. The Spanish central government installed the Ministry of Interior as its main migration management agency. Thus, the Ministry of Interior is responsible for heading a number of key players charged with Spanish migration management:

- The Inter-ministerial Commission on Aliens Affairs (CIAR) – charged with coordination among government bodies at the same level;
- The Permanent Immigration Research Group (OPI) – together with Migration and Social Service Institute (IMERSO) responsible for consulting, information to guide public managers, various stakeholders and research;
- The Forum on the Social Integration of Immigrants (FISI) – institutional network for participation by national stakeholders;
- The Office of the Government's Representative for Aliens Affairs and Immigration – central bodies charged with management and coordination of strategic actions and policies;
- The Superior Council on Immigration Policy – responsible for the coordination among inter-governmental agencies.

The Migration and Social Service Institute falls under the responsibility of the Ministry of Labour and Social Affairs.

The Office of the Government's Representative for Aliens Affairs and Immigration was instated in 2000. Its creation represents not only the first and most important organizational change, but also the most important one on the organizational chart of the Ministry of Interior, given its high-level policy-making role within the Ministry. Its representative has the rank of a Secretary of State and reports directly to the Minister. This Office is a strictly governmental body responsible for formulating government policy on aliens affairs, immigration and the right of asylum, and coordinating and promoting all actions carried out in these fields. The Office is also represented abroad.

The second important change came with the Superior Council on Immigration Policy. The Council is a joint body and represents with its 46 members three levels of government: central, regional and local. It can be seen as the public counterpart of the Forum on the Social Integration of Immigrants.

The Inter-ministerial Commission on Aliens Affairs, installed in 1995, was reorganized and modernized in 2000. The Commission includes 27 members from the Ministries of: Treasury, Education, Culture and Sports, the Prime Minister's Office, Public Administration, Health and Consumer Affairs, and Economics. The increase in size from five to 27 members is significant and could lead to a slow down of decision-making.

Forced return is executed by the Aliens Division of the National Police (border police) and the local police authorities. The border police is also responsible for conducting interviews of asylum seekers applying at the border; while the local Office for Asylum and Refugees conducts the interviews at Madrid Barajas Airport. It is also the Office for Asylum and Refugees which regularly trains border police in asylum law and procedure.

Operational Steps for Involuntary Return

There are currently no financial responsibilities on carriers for removal costs. Escorts are always used for removals by air, in order to ensure safety of the aircraft and minimize disruption for other passengers. There are two escorts per detainee, and the escorts are always police officers.

In addition, Spain has funded transport of immigration staff from countries whose nationals need to be removed, but who hold no valid travel document. The intention (which has proved successful) is that the Immigration Department staff, with a view to satisfying themselves about the individuals' identity, nationality or citizenship, should make on-site enquiries and help identify nationals for forced return. This facilitates issue of travel documents.

Charter flights were used in the past for removals to Romania, Nigeria, Ecuador and Colombia. Charters belong to private companies and Armed Forces aircraft are never used. Joint charter flights have to date been undertaken with France and Germany.

Prosecution and Detention Procedures

In practice, detention of asylum seekers occurs mainly at the border. The relevant authorities are obliged *ex lege* to decide within five days whether to allow or refuse entry into Spain. After five days, expulsion must occur within 72 hours of the decision of rejection.

The travel documents of deported or expelled migrants are stamped to prohibit them from re-entering Spain for a period of three to ten years, depending on the severity of the breach of law, or as determined by a court. There are three categories of breaches. The more lenient ones include failure to renew residence or work permits while more severe ones include the trafficking of human beings.

Framework Agreements with Countries of Origin or Transit

Spain has readmission agreements with Morocco, Colombia, Ecuador, the Dominican Republic, Poland, Romania and Nigeria. These agreements, with the exception of the Nigerian agreement on repatriation also make provision for the inclusion of nationals of these countries on the "preference list" of regular migrant workers authorized to enter Spain every year under a quota.

They regulate labour opportunities and provide for the communication of employment offers, the assessment of professional requirements, travel, and reception. They also work to enhance

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migrant labour and social rights and the employment conditions of the immigrant workers. In addition, the agreements have special provisions for seasonal workers and measures to facilitate their return to their home countries.

1.4 STATISTICS ON INVOLUNTARY RETURN

There are an estimated 200-000-600,000 undocumented migrants⁶ in Spain. According to the Spanish National Statistical Institute (INE) 1.3 million foreigners currently reside in Spain. This effectively amounts to approximately 3 per cent of the total population and is thus far below the EU average.

1.5 BEST PRACTICES AND LESSONS LEARNED

Spain's legal framework has not proven to be as effective as expected in preventing the entry of immigrants. Furthermore, it has led, among others, to a generation of undocumented labour migrants. This is partly due to the fact that, according to Law 8/2000, immigrants are supposed to have an employment contract to enter Spain legally. The reform of Law 8/2000 in 2003 tries to handle this problem by introducing a three-month visa for foreign job seekers, which is transformed on success into a temporary residence permit.

Further, the regularization programmes of 1996, 2000, and 2001 granted initial residence permits valid for one year only. The limited duration and the difficulties in renewing such permits have since forced many immigrants back into an irregular status.

Before 2002, the Spanish quota system channelled legal immigration flows to sectors of the Spanish economy facing a shortage of local workers. The quota system had another effect: many illegal immigrants viewed it as a way to gain legal status in the country. Most applications for a position within the quota system, in fact, came from undocumented immigrants already residing in Spain.

For this reason, the quota system was reformed in 2002. The government's decision to set labour quotas is based on the report of the nation's employment situation by the National Employment Institute (*Instituto Nacional de Empleo*). If it determines that there is no unemployed labour force available for open positions, foreign labour migrants can be considered. In the effort to reduce illegal immigration, the government now only employs foreign workers from their countries of origin and through bilateral agreements with sending countries. Undocumented immigrants in Spain can no longer use this channel to seek work.

The 2002 labour quota – 32,079 workers (10,884 permanent workers and 21,195 temporary workers) – was considered to fail the *de facto* need for foreign labour force. By reducing the quota for temporary workers by almost 10,000 in 2003, in comparison with 2002, the government seems to signal its restraint on labour immigration.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

The presence of unauthorized residents in Spain has traditionally been tolerated. Despite the fact that unsuccessful asylum seekers and other undocumented migrants are obliged to leave the country 15 days after receipt of notification to leave following an in-country apprehension, or 72 hours after an unfavourable asylum decision, many manage to remain in the country in breach of immigration laws.

As in Italy, the Spanish government's initial attempt to better manage its growing population of unauthorized migrants was through regularization programmes during the 1990s. By 2000, the subject of immigration had become firmly established on the political and social agenda, leading to renewed efforts to manage migration through new administrative and legislative structures, such as Organic Law 4/2000 on the Rights and Freedoms of Foreigners in Spain and their Social Integration, which was amended by Organic Law 8/2000. This for the first time briefly mentions AVR and states: "the government will contemplate yearly the financing of assisted voluntary return programmes to persons who may want to apply".

Other migration management strategies have been implemented since then, including the initiation in 2001 of an assisted voluntary return programme. Funded by the Ministry of Labour and Social Affairs, AVR programmes in Spain are not implemented through a central agency. A wide array of government ministries, municipalities, IGOs, NGOs and social service providers are involved in their implementation.

The scope of voluntary return schemes available in Spain is rather limited, since such programmes are still in their infancy. While assistance for voluntary return is available at any stage during the asylum determination process, authorities do not actively promote such programmes at any stage during the process.

Current mechanisms for assisted voluntary return programmes are aimed at persons who:

- Have been offered temporary protection;
- Are recognized refugees;
- Are unsuccessful asylum applicants.

They provide information and guidance to facilitate returns. In some circumstances, reintegration support may also be offered in the country of origin.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

Assisted voluntary return programmes operate with funding from the Ministry of Labour and Social Affairs and are implemented by a number of governmental agencies, municipalities, social services and selected NGOs and IGOs, including the Spanish Commission on Alien Affairs (CIAR), IOM and the Red Cross.

The Institute for Migration and Social Affairs (IMERSO), part of the Ministry of Labour and Social Affairs, conducts the initial screening under the programme and also evaluates assisted voluntary return programmes.

In 2001, the budget available for assisted voluntary return programmes was nearly EUR 140,000.

Operational Steps for Voluntary Return

Under the IOM-implemented programme, an application is considered to be complete when it is accompanied by a social report written by a professional social worker, including details of the applicant's state of vulnerability in Spain. These reports are forwarded to a joint commission comprising the Ministry of Interior and the Ministry of Social Affairs for assessment and approval. Once approved, accepted candidates are contacted by IOM, which then starts making provisions for return. Depending on the implementing municipality, the entire process may take up to three weeks to complete. IOM also monitors the return and reintegration in the country of origin through its missions abroad.

The IOM-run programme does not apply specific restrictions on re-entering, although IOM presents a declaration in which returnees make a "moral compromise" not to return or stay illegally. There are no time restrictions on this declaration. Voluntary returnees are requested to return their health entitlement card before departure.

Return assistance offered by IOM includes transportation assistance and help in obtaining travel documentation. The organization has good working relations with the consulates responsible for issuing travel documents.

The Spanish Commission on Aliens Affairs also runs an assisted voluntary return programme specifically for Kosovo Albanians. The programme provides assistance and funding towards obtaining the necessary travel documentation and travel arrangements, as well as a grant of EUR 385 per adult (over 18 years) and EUR 89 for those under the age of 18.

The Spanish Red Cross also operates an assisted voluntary return programme, which is open to third-country nationals resident in Spain for more than nine months.

Participants of this programme have to abide by the stipulation prohibiting re-entry for three years. It is unclear how this measure is implemented.

Framework Agreements with Countries of Origin or Transit
See section on involuntary agreements.

2.3 STATISTICS ON VOLUNTARY RETURN

Since the beginning of the IOM-implemented AVR programme in October 2003 to the end of December 2003, about 1,000 applicants have submitted completed applications for voluntary return to the selection commission. Of these, 192 applications were approved and have either travelled, or will travel shortly. Twenty-four were placed on a priority waiting list, while 91 were on an ordinary waiting list, due to travel in January. Nine applications were discontinued, either because the applicants withdrew them or they went missing.

The main countries of origin of applicants are Ecuador (498), Colombia (95), Bolivia (88) and Argentina (61). Other principal regions of return include eastern Europe and sub-Saharan Africa.

In addition to these completed applications, the IOM office in Madrid receives on average about 200 phone calls and 50 visits per day for assistance on voluntary return, resulting in an estimated 70 to 100 approved cases from municipalities each week.

Regarding statistics for non-IOM implemented AVR programmes, a statement in the Spanish parliament on 30 April 2003, indicates that the various NGOs operating voluntary return programmes had jointly managed to send home 705 migrants from 1 January 2000 to 30 April 2003.

2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

An initial internal assessment of the IOM-run programme suggests that it is functioning well and applicants are generally pleased with the results. Despite the lack of a comprehensive information campaign promoting the option of assisted voluntary return, there is a high demand for the programme, which receives an average of 100 completed applications per week.

The capacity of the programme could undoubtedly be enhanced if a more coordinated approach was taken – nearly 1,000 applications have been received from September to December 2003, although the budget only provides for 150 candidates each year.

Nevertheless, cooperation between implementing agencies is reported to be satisfactory and the possibility of future cooperation with partners in the countries of origin is also being explored.

NOTES

1. The reform of Law 8/2000 in 2003 foresees a change inasmuch as authorities of the Ministry of Interior will be granted access to data of local resident registration offices and social security authorities in order to pinpoint undocumented migrants. Many migrants are registered in the municipalities where they reside illegally, in order to benefit from the health service.
 2. Constant flow of clandestine arrivals across the Strait of Gibraltar, the racist acts of violence at Ca n' Anglada (Province of Barcelona) in 1999 and at El Ejido (Province of Almeria, Andalusia) in 2000, 20 Ecuadorian undocumented workers killed in a traffic accident in 2001, sit-ins of migrants deprived of their rights in churches in Barcelona in the same year, etc.
 3. Organic Law 4/2000 on Rights and Freedoms of Foreigners in Spain and Their Social Integration, and Organic Law 8/2000 revising Organic Law 4/2000. In addition, four special regularization processes: two as a result of Law 4/2000 (Royal Decree 239/2000 of 18 February 2000) and of Law 8/2000 (Royal Decree 142/2001 of 16 February 2001), another on the implementation of an agreement between Spain and Ecuador, and one based on the ancestors in the implementing article 31.4 of the combined texts of Laws 4/2000 and 8/2000.
 4. Quotas have been used in 1993-1995, 1997-1999 and in 2002.
 5. Approved 29 December 2000 and in force since 30 March 2001.
 6. MigBevölk 600,000 and Migration Policy Group 200,000 (p. 30).
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Spain signed the UN Convention Against Transnational Organized Crime on 13 December 2000, and ratified the Convention on 1 March 2002. It signed the Trafficking Protocol on 13 December 2000, and ratified the Protocol on 1 March 2002. Spain also signed the Smuggling Protocol on 13 December 2000, and ratified this Protocol on 1 March 2002.

SWEDEN

1. INVOLUNTARY RETURN

1.1 POLICY

Swedish migration policy has been characterized for a long time as benevolent and relatively open to immigration. This is reflected also in its legislation regarding refugees and migrants. Sweden's migration management approach tries to balance the need for more orderly/controlled migration with protection of migrants' rights and closer cooperation of countries of origin and transit.

Sweden has long been a desirable place for asylum seekers. In 1992, there were about 80,000 asylum seekers in the country. In 2002, some 33,000 sought asylum in Sweden, the highest number of applicants since 1993 and approximately 40 per cent more than in 2001. In 2002, Sweden ranked seventh within the top-ten asylum countries, whereas in 2001 it was in ninth place, according to UNHCR statistics.¹

As in the Netherlands, the underlying principle of Swedish migration policy and legislation is the concept of "leave on own volition", where rejected asylum seekers are expected to arrange their departure on their own, within two weeks of notification of rejection.

Founded on this principle, Sweden's migration policy aims, in line with EU efforts to create a region of freedom, security and justice,² at:

- Ensuring that migration either to or from Sweden takes places in an orderly manner;
- Safeguarding the right to asylum;
- Maintaining regulated immigration;
- Ensuring that policy measures are characterized by the rule of law, humanity and respect for the human rights of the individual.³

Regarding expulsion and return, Sweden supports the EU's formation of common principles, standardization and routines for practical cooperation in expulsion and return of persons not entitled to live in the EU. The Swedish government specifically "upholds the importance of working with preventive measures alongside repressive measures. This applies both to efforts within the EU and the EU's External connections with third countries."⁴

In this context, Sweden considers the indictment of smugglers and strengthening of border controls in both countries of origin and transit as indispensable measures. Long-term support for adequate migration policy and legislative provisions, and the enforcement of these in countries

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of origin and transit are essential means of converting as many transit countries as possible into secure first asylum countries.

The Swedish concept of “leave on own volition”, however, is only one side of the coin. The Swedish open asylum model, which ensures a relatively high degree of freedom of movement to asylum seekers, is backed by a personal identity card which enables the state authorities to track asylum seekers and prevent migrants in irregular situations from establishing a normal life in Swedish society.

In the September 2002 elections, Sweden’s Social Democrats retained control of the coalition government. Yet, the surprising strength of the Liberal Party, which called for immigrants unable to find work within three months of their arrival in Sweden to be returned, signalled a more restrictive public attitude to immigrants on welfare. About 7.3 per cent of Sweden’s nine million population is made up of non-EU nationals.

This shift in public opinion, and consequently of the political attitude, has been occurring more and more as the numbers of asylum seekers continue to rise in Sweden while the economy faces a downturn, and the costs and taxes to maintain the Swedish “cradle-to-grave” welfare system⁵ increase.

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

- The Geneva Convention of 1951 and New York Protocol of 1967;
- Aliens Act No. 529 of 1989, amended in 1992, 1994, 1995, 1996, 1997, 2000 and 2001;
- The Dublin Convention, which entered into force in Sweden on 1 October 1997;
- Royal Decree on Aliens No. 547 of 1998.

The Aliens Act introduced on 1 January 1997 entailed considerable changes in particular to the categories of persons who have a right to receive protection in Sweden. Swedish legislation on aliens recognizes four main categories of persons in need of protection and offers the following appropriate solutions for them: residence permit on protection grounds; residence permit on humanitarian grounds, temporary protection and asylum.

Amendments to the Aliens Act were adopted on 1 July 2000 to improve the protection of women in family cases, and on 1 July 2001 for residence permits for adopted foreigners.

Expulsions

Swedish law distinguishes four types of expulsion orders with relevant differences in their enforcement: (a) Refoulement at the frontier; (b) administrative expulsion orders; (c) judicial expulsion orders; (d) governmental expulsion orders.

a) Refoulement at the frontier

Foreigners attempting to enter Sweden without proper travel documents, including prescribed visas, are refused at the frontier. Under Chapter 4, Section 2, the police, who are responsible for

enforcement, may refuse entry also to foreigners who do not have sufficient means to keep themselves in Sweden.

All matters to be investigated further, as stipulated by the Aliens Act, Chapter 4, are transferred for further examination to the Swedish Migration Board. This provision applies to:

- Cases of migrants claiming asylum;
- Cases where the migrant has close relatives who applied for asylum in Sweden;
- Cases where a member of the Nordic Passport Control Agreement requests a refusal of entry;
- Cases where an alien has been in Sweden for more than three consecutive months.

In these cases, the migrant has in practice the right to stay in Sweden until granted or refused entry; and the refusal of entry or expulsion made by the Migration Board has force of law, unless the Migration Board does not issue an entry refusal with immediate enforcement. In the latter case, which relates to manifestly unfounded claims, the decision may be enforced, even if it has not acquired legal force.

b) Administrative order of expulsion

The police may expel aliens, who lack formal and non-formal grounds for residing in Sweden and have stayed less than three months in the country, with immediate effect. The Migration Board is responsible for issuing the order of expulsion to aliens, who have stayed for a period of more than three months. In these cases, the Migration Board combines the rejection of application with an immediately enforceable order of expulsion.

Where an asylum application is rejected, the administrative order can be suspended subject to an appeal to the issuing authority, which is generally the Migration Board. If the appeal is approved, the Migration Board may grant a so-called stay of execution for further examination of the case by the Aliens Appeal Board.

Generally, the administrative expulsion order or refused entry may be combined with a prohibition of re-entry according to Chapter 4, Section 14 of the Aliens Act. The re-entry prohibition is normally two years. During this time, the rejectee might be granted special permission by the Migration Board to re-enter Sweden for a short visit. Expulsions on grounds of petty crime or falsified or forged identification documents are sanctioned in practice with four years of re-entry prohibition.

If no timeframe is specified, the expulsion order is in force for the full period of entry prohibition.

c) The judicial order of expulsion

A common court may sentence an alien to expulsion on grounds of a special part of the punishment according to Chapter 4, Section 7 of the Aliens Act. If an expulsion is issued in addition to a criminal sentence, it is normally tied to a re-entry ban of four to five years. Yet, the court may also order an indefinite prohibition of entry.

Return Migration: Policies and Practices

d) Expulsion order issued by a national government authority

In cases where the Appeals Board, independently or together with the Migration Board, hands over a case where national security is endangered, or severe politically-motivated crimes persist, the relevant national government authority will issue an expulsion order, also on application of the National Police Board. These expulsion orders are always combined with re-entry bans for a specified period or indefinitely.

Detention

In Sweden, failed asylum seekers may be arrested only if they are known, or suspected, to have committed a crime, or if they are suspected of intending to abscond. However, there are no separate powers of arrest for asylum seekers, and on the initiative of the Swedish Migration Board, asylum seekers can only be detained temporarily prior to removal.

Chapter 6, Section 2 of the Aliens Act stipulates that aliens over 18 years of age may be detained in a special detention centre in situations where:

- The alien's identity is unclear;
- Detention is necessary for the investigation of his/her right to stay in Sweden;
- It is likely that the person will be refused entry or expelled, or this is necessary to the enforcement of an existing refusal of entry or expulsion order.

In principle, detention under paragraph (c) can only be ordered if there are reasons to presume that the alien otherwise will attempt to evade implementation of the deportation order or will engage in criminal activities in Sweden.

Detention under paragraph (b) is limited to 48 hours. In the other cases, it is limited to 14 days unless there are exceptional grounds to justify a longer period. However, if the refusal of entry or the expulsion order has already been issued, the detention period may last up to two months, and even longer if there are exceptional grounds. Due to the possibility of extending detention on exceptional grounds, there is no limitation on the overall detention period.

The Migration Board runs special detention facilities. Rejected asylum seekers whose deportation cannot be implemented can thus face lengthy detention periods. Decisions regarding detention may be appealed to the County Administrative Court (*Länsrätten*).

In the case of minors, the Aliens Act is rather restrictive – minors may be detained for 72 hours, plus another 72 hours where “special reasons” exist.

The Migration Board does not have the authority to implement such measures directly and must rely on the police. Detention of asylum seekers and aliens as described differs from detention of criminal foreigners, as stipulated by the Swedish Penal Code. When detention is justified on criminal charges, the sanction may include expulsion without a right to re-enter for a period of five years, ten years or for life at the end of the judicial process, if the person is found guilty.

Swedish legislation makes a clear distinction between breaches of the criminal law, and preventive, restraining measures, designed to counteract attempts at avoiding removal, when the grant of a residence permit was denied. However, the extent of powers granted for each situation can be adjusted according to the circumstances.

Detention is subject to review by the authority that has taken the decision to detain. A judicial Court or Tribunal is only involved if an appeal against the detention decision is lodged. The county administrative court reviews appeals. Its decisions can be appealed to the Administrative Appeals Court and exceptionally to the Supreme Administrative Court.

Illegal Entry

Chapter 10, paragraph 2a of the Aliens Act, provides for a sentence of six months (mild cases) and up to two years imprisonment (grave cases) for any person who has facilitated illegal entry to foreigners for gainful purposes, unless this remuneration has only covered the facilitator's real costs. If the number of persons smuggled is large, or if the operation is considered to have been committed in "especially ruthless ways", the sentence can be more severe. Trafficking of people with the intention of exploitation is considered a serious offence.

On 26 November 2003, the Swedish government proposed to the *Riksdag* a Bill on smuggling of human beings and temporary residence permits for injured parties and witnesses. This new amendment will be included in the Aliens Act and is expected to come into force on 1 October 2004.

The Bill foresees that victims of trafficking will be able to remain in Sweden to participate in criminal investigations to facilitate police work in crimes linked to trafficking in migrants. Those granted temporary residence permits have access to all public facilities in the same way as asylum seekers.

According to the proposal, traffickers may be sentenced to a maximum of two years imprisonment. Serious cases of gross smuggling may be punished with a minimum of six months, and a maximum of six years imprisonment. Tougher sentences will also affect persons who engage, for gainful purposes, in the planning and/or organizing of activities to facilitate illegal entry of migrants into Sweden.⁶

Harbouring failed asylum seekers on a non-remunerative basis is not considered a criminal offence, though concealing an alien or impeding by any other means the enforcement of the expulsion order for financial gain may be sentenced to a maximum of one year imprisonment. Likewise, it is not considered a crime to employ illegal migrants or failed asylum seekers who do not have permission to work. Indirectly, however, this will be treated as tax evasion and punished, especially if conducted on a large scale, systematically, or if large sums of money are involved.

Yet it is very difficult for a person to stay in Sweden without the required "personal identity number", and this clearly assists the authorities in tracing those who have entered, remain or worked without authority.

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Aliens convicted of illegal entry are fined according to Chapter 10, Section 1 of the Aliens Act. Migrants returning after they have been deported are sanctioned with up to one year's imprisonment or, under mitigating circumstances, are fined. Migrants who had to escape persecution in their home country and/or minor offences, where the public interest does not explicitly demand prosecution, are exempt from this provision. "There is no possibility in Sweden to sentence an alien to imprisonment or fine, just because he has tried to enter the country illegally. The only possible penalty is the order of refused entry."⁷

Carrier Sanctions

Carriers will not be considered liable if they can prove that they had reasonable grounds to believe that the foreign national had the right to enter Sweden.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Refusal of entry is generally enforced immediately, regardless of any appeal against a negative decision. Refusal of entry and expulsion may normally be enforced before they have acquired legal force, unless the rejectee does not lodge an appeal. An appeal against a negative decision from the Migration Board must be filed with the Aliens' Appeal Board within three weeks.

A suspension of the removal decision has to be requested separately. An appeal does not automatically suspend the order of expulsion. In case of manifestly unfounded asylum applications, the Migration Board might order the immediate enforcement of the deportation, in accordance with Chapter 8, Section 8 of the Aliens Act. Thus the enforcement may be carried out prior to expiration of the appeal period. The only possibility to stop execution in this case is the lodging of a stay of execution.

In practice, suspension is only rarely granted. The final decision rejecting the application for asylum is always accompanied by a deportation order. If the authorities suspect that the rejected applicant will abscond or otherwise try to avoid deportation, the rejectee is placed in detention.

Rejected asylum seekers are entitled to financial support and social benefits until their deportation. This requires, however, that the alien is staying in a residence centre, in a detention centre or at an address known by the authorities. Unsuccessful asylum applicants are expected to cooperate with officials to facilitate their return, and if such cooperation is not forthcoming, the amount may be gradually reduced until it covers basic expenses such as food.

Decisions by the Aliens Appeal Board have legal force for a period of four years. During this period, the migrant may submit a new application, provided she/he can cite new circumstances, for example that the deportation from Sweden is not feasible. Following submission of a new application, the Aliens Appeal Board may grant a residence permit on the basis of the new circumstances. In fact, human rights issues are taken into account during the appeals process.

The rejectee has to leave the country within two weeks on his/her own volition. According to the Swedish Alien's Act, the presumption is that the alien shall leave the country within a certain

time after receiving the removal order. In other words, it is the failed asylum seeker's responsibility to leave the country and bear the expenses for the return ticket, after all appeals procedures have failed, and this clearly affects the view about further action required.

In Sweden, the view is taken that anyone without a "national identity number" will come to light, and active enquiries to detect failed asylum seekers are not normally undertaken. In the Netherlands, if a person is not found at the last known address, it will be assumed that he/she has left the country.

This provision makes it possible for rejectees to abscond. Yet, the lack of a special personal identity card makes it difficult for a migrant to reside in Sweden after expiry of the stay permit. In fact, in 1999, some 75 per cent of all returns implemented by the Migration Board were voluntary returns. The rest of all expelled cases (25%) were handed over to the police, which had to enforce the departure of rejectees unwilling to leave or issue warrants against rejected applicants who absconded.⁸

Institutions Responsible for Involuntary Return

The main responsibility for enforcement of return decisions was transferred from the Swedish police authorities to the Swedish Migration Board (SMB) on 1 January 1999. However, the police can take action when the Migration Board considers there is a risk that a failed asylum seeker will go into hiding or otherwise try to evade deportation.

The overall responsibility for implementation of these cases lies with the Migration Board. The Migration Board can request the police to intervene as appropriate. Yet, the Swedish authorities rely on the assumption that failed asylum applicants will leave on their own volition, given the limited possibilities for unlawfully residing migrants to live a normal life in Swedish society.

The Migration Board instated a special unit, which is responsible for removals, including travel arrangements and securing of travel documents where countries are less cooperative. This centre brings together knowledge, expertise and relevant contacts, which are placed at the disposal of all those involved in the removal of rejected asylum seekers. As such it contributes, according to the Swedish authorities, to an efficient and effective forced migration administration.

Operational Steps for Involuntary Return

Escorts

The need for escorts is assessed on a case-by-case basis (depending on the person's attitude, the security situation, airline restrictions, place of destination, the lack of travel documents and whether there may be concerns about the returnee's re-entry to Sweden).⁹ Escorts, when required, are normally specially trained officials from the Swedish Migration Board, or policemen or officials from the Bureau for Transportation Services, members of the section in charge of removals, within the Police.

Chartered Flights

Chartered flights have occasionally been used for the removal of large numbers of failed asylum seekers, although regular flights are more commonly used. Armed Forces aircraft are never used

Return Migration: Policies and Practices

for removal purposes; removals to countries around the Baltic Sea are usually implemented by boat.

Framework Agreements with Countries of Origin or Transit

Sweden has concluded readmission agreements with all bordering countries: Germany; Poland, Estonia, Latvia and Lithuania. With Germany, Sweden concluded a readmission agreement establishing a mutual obligation to receive certain persons rejected from other countries in 1954. It also concluded a readmission agreement with France in 1991, which contains a section on the readmission of asylum seekers in line with the criteria set out in the Dublin Convention.

The Convention between Denmark, Finland, Norway and Sweden in relation to the Waiver of Passport Control at the Inter-Nordic Frontiers of 1957 contains the right to request the return of asylum seekers who have transited through the above-mentioned states. While the question of retaliatory action against un-cooperative countries of origin has often been debated, Sweden still opposes the use of such pressure.

Costs

Information on the cost of enforcing expulsions is currently not available.

Prosecution and Detention

There are no arrest procedures relating specifically to failed asylum seekers. However, they may be arrested on suspicion of having committed a crime. They may also be apprehended and taken into special custody if they are believed likely to abscond, and if this is likely to impede removal. The duration of detention may vary, depending on the reason for the detention and the age of the detainee.

Illegal migrants may be held in detention only until their identity has been verified, a process that takes between two weeks and two months. Children cannot be held more than three days. Women and children who arrive without identity documents are released into a group home directly outside the detention centre and may visit their husbands/fathers in the detention centre during the day.

Detention

An expulsion order does not automatically imply a stay in a detention facility. This occurs only if an alien is suspected of absconding before enforcement is executed, and/or if an alien is caught by the police in-country after expiry of the leave respite. Detention facilities only host aliens with an expulsion order, not criminal foreigners subject to removal.

Since 1 October 1997, according to the Aliens Act, the Migration Board took responsibility for all aliens matters and thus for all detention facilities. Swedish detention facilities are designed similarly to the Swedish reception centres, so that it is possible to detain also families with children. However, it is not common practice to detain children.

Special detention places are at the disposal of the Migration Board. Detention centres, which are often similar to those for detaining criminal suspects, in terms of the security and facilities available, and are specifically equipped as removal centres. There are also holding rooms in reporting centres for asylum seekers.

Prisons are only used for foreign nationals, who have been convicted of a serious crime by a Swedish Criminal Court and for a crime committed in Sweden. While the Migration Board had, in the past, considered the possibility of using floating centres, this idea was dropped.

An alien held in detention is entitled to a special daily allowance, as are asylum seekers and/or other applicants for residence not placed in detention. Detainees have the same access to medical and health services as any other person applying for a residence permit in Sweden.

Prosecution

In Sweden, identity cards are used extensively to detect unlawful residents.

Asylum seekers receive a special identity document, the so-called LMA card. This personal identity card is issued by the Migration Board and certifies the holder's right to be in Sweden pending completion of the asylum process. The card has a limited validity of up to six months. On presentation of the card, asylum seekers obtain medical consultations and prescribed medicines for a reduced fee.

The card, which contains a photograph, is digitally linked to the applicant's records at the Migration Board. It also contains information on the address of the holder's registered temporary residence, which can be one of the temporary accommodation centres of the Migration Board, as in most cases, but also private accommodation.

The competent authorities have access to all computerized information falling within the realm of their authority. The Migration Board has its own database where all information related to its activities is recorded. The police have access to all data on policing activities and a number of registers required for their work (e.g. registered personal data). Police authorities also have access to European and international information originating from the Schengen Information System and Europol.

Some sanctions can be applied in the case of non-cooperation, such as restricting daily financial allowances (never completely) and social benefits, and sometimes detention.

Fingerprints

All asylum seekers need to have a "personal identity number". The Migration Board keeps a record of both this ID number and the fingerprints of asylum seekers, the latter also being registered in the Schengen database. The Swedish authorities rely on this personal ID number, which is also required of all legally residing foreigners, to allow them to work, have a bank account, rent accommodation and benefit from the Swedish social system. Without this card, it is virtually impossible to live in Sweden; with it, illegally residing migrants will eventually come to light.

1.4 STATISTICS ON INVOLUNTARY RETURN

The Swedish authorities apparently do not make a distinction between voluntary and involuntary return for statistical purposes. However, most Swedish returns are involuntary.

Return Migration: Policies and Practices

In 2000, 4,400 aliens were removed from Swedish territory, whereas in 2001 the total number of effected removals amounted to 4,139 persons.

While statistics on returns for 2003 have not yet been disaggregated, of the 10,201 returnees leaving Sweden throughout the year, 9,421 cases were handled by the Migration Board, and 780 by the police. Most of these were returned to countries of origin, some to EU countries (Dublin Convention) and some to third countries.

1.5 BEST PRACTICES AND LESSONS LEARNED

Asylum seekers receive a daily allowance to cover such basic needs as accommodation, food, clothing etc. This allowance is reduced, where the recipient lives in a reception centre that provides meals. Asylum seekers choosing to live in private accommodation receive a higher daily allowance.

Generally speaking, the option to live in private accommodation, instead of gathering asylum seekers in collective centres, does not facilitate the removal process. The Swedish position is against the general trend to minimize cash payments and closely monitor asylum seekers as a way of making the removals process more efficient.

One important factor in preparing the return is time – “the sooner a removal can be prepared, the better the outcome of attempts to obtain travel documents, etc.”¹⁰

The centralization of all return procedures – from processing asylum applications, providing accommodation and detention facilities, to implementing return – at the Migration Board ensures a streamlined removal process

Assessments and Evaluations

When the return policy was transferred to the Migration Board in 1999, the aim of the Swedish parliament was to return 40 per cent of all unsuccessful asylum seekers. In this respect, government officials regard the first two years under SMB as a success. 8,328 persons returned voluntarily during 2002 under the supervision of the Migration Board. 5,538 cases were transferred to the police, 4,148 of which were disappearance cases and the remaining 1,390 were anticipated to require force for the removal. During the same year, the police implemented 921 removals from country.

Government officials also estimate that the number of escorted cases, along with the costs of forced returns, have decreased since the restructuring. Efforts have been made to minimize implementation costs by e.g. choosing less expensive travel routes. The Schengen agreement nevertheless can tend to increase the number of escorts; and the whole system is ready for further evaluation.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Swedish policies on voluntary return began to evolve in the late 1980s in response to the influx of migrants from conflict-ridden states. The impetus of return migration policies in the 1980s was the government Bill 1988/89:100, and by the mid-1990s, measures for return and voluntary repatriation had been incorporated into migration policies, with the adoption of the government Bill 1996/97:25 – Swedish Migration Policy in a Global Perspective (*Svensk migrationspolitik i ett globalt perspektiv*).

This Bill emphasized the need for a comprehensive and well-planned voluntary return programme, and highlighted the importance of NGOs in implementing such programmes.

In this respect, the then Swedish Immigration Board (SMB)¹¹ continued to work in close cooperation with immigrant communities in Sweden, as well as concerned organizations such as UNHCR, the Swedish International Development Cooperation Agency (SIDA), IOM, the Swedish Association of Local Authorities, various non-governmental organizations and other representatives of Swedish society. Some SEK 5 million were granted to prepare the returns of Bosnian refugees in fiscal year 1997.

The funds were used for special projects and support to voluntary and other organizations for the administration of preparatory programmes and information to refugees in Sweden.

On 1 May 1997, a temporary ordinance was passed to allow certain asylum seekers, whose applications for residence permits had been rejected, to receive allowances to facilitate their return. Under certain conditions, repatriation allowance can be given to persons who have been unable to return to their home country for reasons beyond their control, and this allowance is often granted to nationals of the former Federal Republic of Yugoslavia.

Since the late 1990s, voluntary return migration has been actively encouraged and a number of initiatives implemented to facilitate this. Structural changes within the government agencies dealing with migration included the transfer, in 1999, of responsibility for implementing the return policy to the Swedish Migration Board.

The aim of this move was to change the nature of returns and place the emphasis on voluntary departure. Indeed, the Migration Board only implements returns that are voluntary, which in the Swedish context refers to the agreement of the individual to comply with the obligation to leave the country, so that the removal process does not involve the use of force. This approach is in line with the Board's *modus operandi* that all returns have to be conducted in a humane and dignified manner.

To better facilitate humane and dignified returns, the Migration Board has also implemented a number of assisted voluntary return programmes in cooperation with national and international refugee actors, and also implemented regional return programmes with Denmark and Norway.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The Migration Board of the Ministry of Foreign Affairs (MFA) is responsible for the implementation of all return policies, including assisted voluntary return. The Nordic governments also have a consultation group for refugees (NSHF), and subsidiary working group, on which the Board is represented.

The Migration Board works in collaboration with a range of governmental, NGO and national bodies such as SIDA, Caritas Sweden, the Swedish Association of Local Authorities, the Advisory Office for Asylum Seekers and Refugees, the Social Mission in Stockholm, the Gothenburg Initiative as well as the Swedish Red Cross, in various areas of the return process, from providing advice to actual return and reintegration.

IOM also provides voluntary returns through its AVR programme. Its services with Sweden are mainly limited to special/difficult target group initiatives, such as elderly and medical cases, returns to Bosnia, Somalia and more recently humanitarian returnees to Iraq.

Operational Steps for Voluntary Return

All asylum seekers are allocated a social worker, who provides guidance on the asylum procedure, the different possible outcomes and the option of voluntary return. Following an unsuccessful application for asylum, and a formal notification to the individual of his/her obligation to leave the country, a number of motivation talks are initiated by the assigned social worker to encourage voluntary return. According to the Migration Board, these motivation talks are most successful during the first ten days following the issuance of a negative asylum decision.

When a person who has been refused entry or is in receipt of an expulsion order indicates that he/she is willing to leave the country of his/her own accord, the Swedish Migration Board will assist in organizing the return. A recommendation to begin formal deportation orders is only made where the individual refuses to leave voluntarily.

Non-IOM Implemented AVRs

In general, a person who wishes to return contacts the Swedish Migration Board for return assistance. The beneficiaries of return assistance are:

- Individuals with residence permits;
- Refugees;
- Persons who have been granted residence for other humanitarian reasons;
- Persons accepted as part of the refugee quota.

The programme's services involve information and financial support to facilitate return. Applicants may apply for an allowance and, to receive it, must prove that they are unable to pay the travel expenses. The maximum grant awarded is SEK 10,000 for each adult and SEK 5,000 for each child under the age of 18. The maximum allowance for one family is SEK 40,000.¹²

In 2002, 116 people applied for travel grants and cash support; 80 of these received grants. The largest group came from Bosnia and Herzegovina.

The target groups for return projects in 2002 were largely: nationals from Bosnia and Herzegovina (15 projects), Somalia (12 projects), the Sudan (one project), Eritrea (one project) and Serbia and Montenegro (one project).

In addition to programmes for assisted return, reconnaissance journeys to the country of origin have been explored to allow individuals to understand the current situation in their country of origin. Eight such journeys have been conducted to Somalia, two to Bosnia and Herzegovina, one to the Sudan and one to Eritrea. The purpose of these journeys has, among others, been to gather facts about security, property, health, schools, the situation for old people, situation for women, opportunities for work, etc. Following the journey, factual material has been disseminated to the relevant immigrant communities, organizations and municipalities.

*IOM-Implemented AVR*s

IOM’s current AVR activities in Sweden are limited, because the Migration Board implements the majority of voluntary returns of asylum seekers. The Board usually asks for IOM’s assistance in difficult cases or with specific target groups (most recently with returns to Iraq).

In addition, IOM together with the Swedish Migration Board processes AVR applications from asylum seekers and rejected asylum seekers on an ad hoc basis.

Voluntary Return and Reintegration of Elderly Bosnian Nationals from the Nordic Countries Programme Services

TABLE 1
VOLUNTARY RETURN AND REINTEGRATION
OF ELDERLY BOSNIAN NATIONALS FROM THE NORDIC COUNTRIES

Eligible Beneficiaries:	<ul style="list-style-type: none"> • Applicants must be willing to return to their place of origin (for purposes of registration and social assistance); • Applicants must be eligible for pension benefits in their place of return; • Applicants must have permanent accommodation in Bosnia and Herzegovina; • For returnees with special medical needs, the necessary medical services have to be available and accessible in the country of return.
Funding Source:	Governments of Denmark, Norway, Sweden
Assistance to Date:	Since the programme began in April 2000, 174 returnees received medical and housing assistance, of which 60 were former Swedish residents.

Return Migration: Policies and Practices

- Assistance to access local pension funds and health insurance;
- Medical allowance in special cases to cover additional medical expenses, either on a monthly or reimbursement basis, for a maximum period of two years up to US\$ 480 per beneficiary;
- A monthly accommodation subsidy until the returnee's property is repossessed and/or completely repaired for a maximum period of one year;
- A monthly special housing allowance for elderly returnees who require temporary accommodation and home care services. This benefit is mostly paid out to host families in cases where returnees cannot live alone;
- A monthly home care allowance for home care providers for a maximum period of up to two years;
- Assistance with reclaiming property;
- Minor repairs of houses or apartments, where necessary.

Framework Agreements with Countries of Origin or Transit
See section on involuntary returns.

2.3 STATISTICS ON VOLUNTARY RETURN

FIGURE 1
AVR NORDIC COMPARISON :
2002 AND 2003

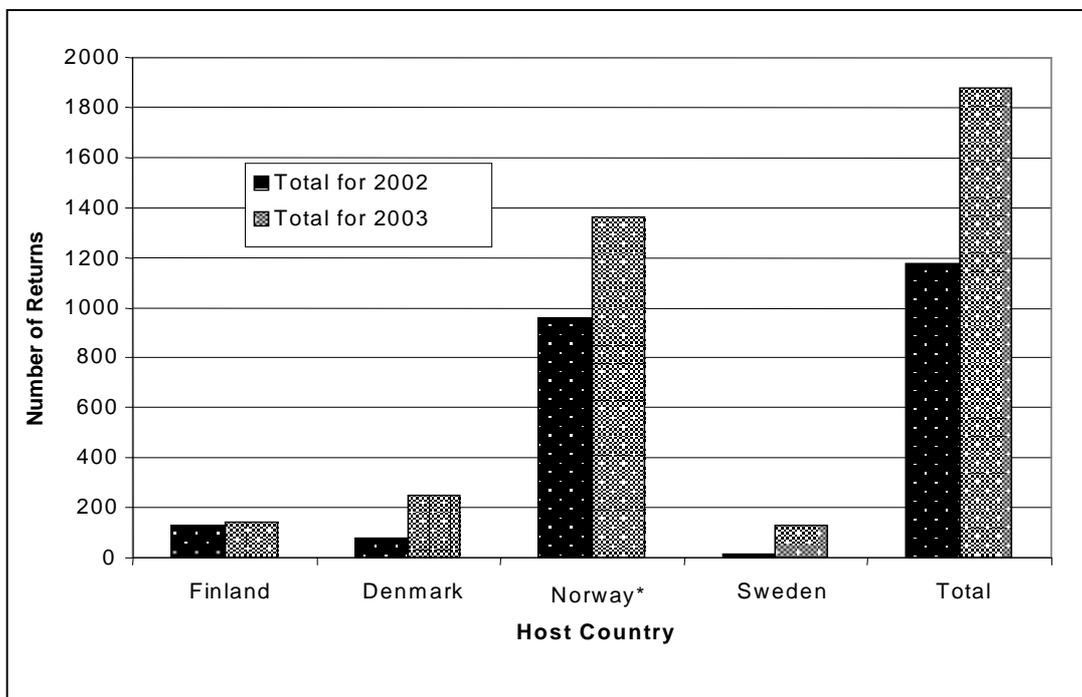


TABLE 2
STATISTICS FOR IOM IMPLEMENTED AVRS

Year	Number of Assisted Voluntary Returns
2000	1,372
2001	50
2002	77
January – November 2003	99

2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

In 2001, the Swedish Migration Board financed a study on voluntary return programmes, which emphasized the importance of maintaining good relations with countries of origin in order to ensure sustainable returns. One of its main recommendations was that contacts with these countries should be facilitated through a better migration management policy with more liberal visa policies, which it was argued eased the pressure of illegal migration.

Following this evaluation, a joint Nordic Seminar was held with officials, researchers and non-governmental organizations (NGOs) in Oslo in November 2002. It was emphasized by all countries, that the decision of the individual to return was more complicated than a simple decision to return or not to return, and involved long-term implications for reintegration and the current security situation in the country of origin, all of which needed to be addressed.

Other recommendations from the Seminar included the need for increased coordination between welfare assistance policy and migration policy, as well as a need for follow-up in the country of origin.

Best Practices

- “Motivation talks” by the Migration Board have proven to be successful in encouraging unsuccessful migrants to return voluntarily;
- As an incentive for voluntary return, and to promote the sustainability of return, Swedish asylum seekers have to undergo an obligatory education or training programme, which includes an initial language course in Swedish and English.

Lessons Learned

- Counselling, information, job and training assistance are important to the reintegration processes;

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- Effective cooperation between IOM Helsinki and the local IOM office in the country or area of return is essential;
- Finding NGO partners in the country of return is important;
- Creating networks around the return migrant, consisting of different kinds of organizations;
- Co-funding in EU projects should be planned well in advance with the Nordic governments due to their slow and consensus-based decision making process;
- Creating networks around the return migrant, consisting of different kinds of organizations is important to encourage and facilitate AVRs;
- The formulation of return projects is made easier when the numbers and needs of returnees have been surveyed.

Cost Effectiveness Analysis

IOM's voluntary return programme is extremely cost-effective when compared to forced deportation proceedings. Significant cost savings e.g. in social security paid out, travel/escort expenses can also accrue. In the case of AVR assistance to Iraq, per capita costs have been calculated at approximately US\$ 1,200 – these exclude reintegration grants or cargo, which are not applicable in the case of Sweden.

NOTES

1. *Asylum Applications Lodged in Industrialized Countries: Levels and Trends, 2000-2002.*
 2. Migration 2002 – Ministry for Development Co-operation, Migration and Asylum Policy, Stockholm, June 2002.
 3. Sweden in 2000 – A Country of Migration. Past, Present and Future.
 4. Migration 2002 – Ministry for Development Co-operation, Migration and Asylum Policy, Stockholm, June 2002.
 5. The Research Group SOM surveyed in October 2002 some 3,700 Swedes. Amongst others, they asked also whether Swedes considered it a good idea to reduce the number of refugees admitted to Sweden. According to the survey, some 50 per cent said yes, while 25 per cent said no, and the remaining 25 per cent had no opinion. The outcomes of the survey are, according to SOM, linked to a more pessimistic view of the country's future. UNHCR News, AP World News, 10 June 2003.
 6. Press release of the Ministry of Foreign Affairs of 26 November 2003 – <http://utrikes.regeringen.se>.
 7. Expulsion and Detention, p. 484.
 8. Expulsion and Detention, p. 486.
 9. From a presentation by Kerstin I.Eriksson, Removals Enforcement Unit, SMB, July 2002.
 10. From a presentation by Kerstin I.Eriksson, Removals Enforcement Unit, SMB, July 2002.
 11. Now known as the Migration Board since July 2000.
 12. Fact sheet 2002, Swedish Migration Board.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Sweden signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified the Convention. It signed the Trafficking Protocol on 12 December 2000, but has not yet ratified the Protocol. Sweden also signed the Smuggling Protocol on 12 December 2000, although it has not yet ratified this Protocol.

SWITZERLAND

1. INVOLUNTARY RETURN

1.1 POLICY

Switzerland is faced with similar migration challenges to those of the larger migrant-receiving states in the EU. It has received some of the highest numbers of asylum seekers in Europe in recent years,¹ the majority of whom do not qualify for refugee status or residence in Switzerland. Therefore return strategies play a critical role in the country's comprehensive approach to managing migration.

Swiss asylum policies are deeply rooted in the 1951 Geneva Convention on the Protection of Refugees, which has been incorporated into the Swiss asylum system. Switzerland's asylum legislation generally seeks to assure protection and support for persecuted and displaced individuals, while offering assistance, particularly return and reintegration assistance, to those who do not, or no longer require protection.

According to the Federal Office of Refugees (FOR), approximately 10 per cent of asylum seekers in Switzerland are recognized as refugees, while the remainder do not fulfil the refugee criteria as per the Swiss Asylum Act. Actual figures per nationality may vary considerably, however. In case of a negative decision, the FOR may still grant a provisional admission where a removal order may be unlawful (e.g. violation of the European Human Rights Convention), or may be impossible to enforce or may be unreasonable (e.g. elderly people, medical cases).

In order to safeguard the credibility of asylum regulations, and to ensure that refugee status is only accorded to those in genuine need, return or repatriation is resorted to as a consequence of unlawful residence after the conclusion of the asylum procedure.

Faced with obstacles associated with the execution of expulsions, such as the lack of travel documentation or the reluctance of countries of origin to accept their returning nationals, and aiming at successful, sustainable return and reintegration, the Swiss authorities generally promote voluntary return by allowing a sufficient period of time for the concerned individual to leave the country voluntarily and by providing various support services. Other cooperative measures have included collaborating with countries of origin and transit, in order to facilitate effective returns.

As with other European states, a further general tightening of the asylum and migration management in Switzerland is expected over the coming years. The 2003 elections yielded a more conservative Swiss Federal Government. While future policy developments are yet to unfold, the recent changes in the government will result in a stricter policy by the Federal Department of

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Justice and Police (FDJP), which is responsible for the Federal Office for Refugees (FOR) and the Federal Office for Immigration, Integration and Emigration (IMES).

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The 1998 Asylum Act regulates the Swiss asylum policy. In addition, there are some supplementing Asylum Decrees, which among others, relate to procedural and financial issues. A new Asylum Act is currently being debated in the Swiss Parliament.

Conditions for Entry

In order to obtain asylum in Switzerland, an individual has to be identified as a refugee. According to Article 3 of the Asylum Act, a refugee is defined as follows:

- Refugees are foreigners who in their native country or in the country of last residence are subject to or have a well-founded fear of serious disadvantages because of their race, religion, nationality, membership of a particular social group or political opinion.
- Considered as serious disadvantages are: a threat to life, physical integrity or freedom as well as measures exerting an unbearable psychological pressure. Flight motives specific to women are to be taken into account.

Furthermore, any person who is threatened or persecuted in accordance with criteria recognized under international law will be granted asylum in Switzerland.

Foreigners seeking asylum in Switzerland can file an asylum application at any Swiss diplomatic or consular office, as well as at border crossings and airports within the country:

- At diplomatic or consular offices: applications will only be considered if the applicant is able to state convincing reasons for flight and demonstrate previous ties to Switzerland.
- Border crossings: an entry will be granted by the Swiss authorities if well-founded fears of asylum-relevant persecution can be demonstrated and if the applicant arrives at the Swiss border without unnecessary stopovers.
- Airports: if a foreign national attempts to make use of a transit stop during a flight for the submission of an asylum application, he or she will be refused entry provided the further journey to the original destination is still possible and he or she can reasonably be expected to continue the journey. The Swiss asylum authorities will, in exceptional cases, examine whether entry to Switzerland may be authorized.

If the entry at the airport is rejected, the Swiss asylum authorities must swiftly decide to which state (third country or country of origin) the rejected asylum seeker is to travel. If the Swiss

asylum authorities, together with the United Nations High Commissioner for Refugees (UNHCR), come to the conclusion that the asylum seeker rejected at the airport is in no way politically persecuted, removal to his native country will be ordered. This means that every refused asylum application by the FOR at the airport will be checked by the UNHCR before the asylum seeker has to leave Switzerland. Within ten days after his removal, the rejected asylum seeker may apply at a Swiss representation abroad for his asylum proceedings to be continued in Switzerland.

Almost 90 per cent of all asylum seekers opt for illegal entry. Upon arrival in Switzerland they file their requests directly at one of the four reception centres of the FOR in Chiasso, Basel, Geneva, or Kreuzlingen.

Grounds for the Termination of Residence

If the asylum application is definitely rejected and no provisional admission is granted, then the person in question has no further right to remain in Switzerland.

Asylum seekers whose requests are rejected, have the right to appeal the decision. In such cases all the relevant facts are re-examined by the independent Swiss Asylum Appeal Commission. The Commission has the final authority to decide whether or not a case was correctly handled according to the Asylum Law. If a negative decision is not appealed or if the appeal is rejected, he or she will be asked to leave the country within a given time limit, usually within eight weeks. Failure to do so results, in principle, in expulsion by the cantonal police. If a person goes into hiding to avoid expulsion he or she will be considered an irregular alien.

Grounds for Expulsion

Accepted refugees cannot be expelled. If a rejected asylum seeker does not leave Switzerland within the given time limit, the removal from Switzerland is effected through coercive measures.

Prohibition on Re-entry

Whether a prohibition on re-entry is enunciated varies from canton to canton and lies at the discretion of the proceeding cantonal authority. Reasons for prohibition on re-entry can include a conviction by a court or an offence. For asylum seekers in general there is no prohibition on re-entry upon leaving Switzerland.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Federal Office for Refugees (FOR), which is part of the Federal Ministry for Justice and Police (EJPD), is responsible for the implementation of the Asylum Law in Switzerland. The FOR examines asylum applications and makes decisions on claims; liaises with the cantons and refugee organizations on the reception and admission of asylum seekers; promotes the voluntary return of asylum seekers, assists in their repatriation and also ensures the implementation of decisions on removal of rejected asylum seekers.

Return Migration: Policies and Practices

The FOR cooperates closely with other host countries, and with concerned organizations working with refugees and migrants, notably the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

The FOR issues all decisions in regard to asylum applications, while the cantons are responsible for their enforcement. Consequently, the cantonal police carries out all expulsions.

The Swiss Asylum Appeal Commission is responsible for handling appeals against asylum decisions.

SwissREPAT, which is part of the FOR, helps coordinate the logistics of involuntary returns (deportations). To support the enforcement of an expulsion, SwissREPAT works in cooperation with the travel centre of the Federal Department for Foreign Affairs (DFA) and the airport police of Zurich, which is part of the cantonal police of Zurich. Under this mechanism, practical and logistical assistance is provided to implement returns at Zurich airport through transportation support for returning rejected asylum seekers and other migrants in irregular circumstances.

Operational Steps for Involuntary Return

When an asylum seeker is informed of the final negative asylum decision, she/he will be given a specified time, usually eight weeks, to leave the country voluntarily. If the person returns in this time limit she/he may qualify, in principle, for return/reintegration assistance. Upon request, the FOR may extend the return deadline up to a maximum of six months in exceptional circumstances (e.g. vulnerable cases such as pregnant women, or returnees, who participate in vocational trainings, etc.).

Where an appeal against a first instance decision has been rejected or has been deemed inadmissible, the various deadlines are applied, depending on the previous stay in Switzerland. Failure to comply may result in forceful expulsion by the police of the canton in charge.

Where an expulsion to a country is deemed unsafe for return, or where it is considered contrary to international law, the decision will stipulate an alternative measure to the expulsion, such as a provisional permission to stay in accordance with Article 44(2) of the Asylum Law. Provisional permits may be granted also in cases where it is deemed that an expulsion would cause extraordinary hardship. Depending on the personal situation of the asylum seeker, a provisional permit may be granted when the asylum procedure has taken more than four years up to final rejection. Factors such as the individual's level of integration and family connections in the asylum country are usually taken into consideration.

Withdrawal of Social Benefits

There are, as yet, no financial penalties concerning the entitlement to welfare benefits, even when a decision has been taken to remove or deport a rejected asylum seekers. Yet measures are currently being discussed, aimed at reducing welfare benefits for those who illegally remain in Switzerland.

Nevertheless, criminal offenders, over-stayers and those who do not cooperate with the asylum authorities, in principle do not qualify for financial return and reintegration assistance. Further-

more, return and reintegration assistance can be obtained only once. If a returnee re-enters Switzerland, there are “pay-back provisions” in place, i.e. the financial return assistance granted will have to be paid back to the Swiss authorities.

Detention Procedures

Individuals who claim asylum at the airport may be detained at airport transit zones for a maximum of 15 days, until the Federal Office for Refugees has made a decision about their admittance. The airport procedure is a preliminary one, which precedes the actual asylum procedure, i.e. at the airport the FOR decides over the admittance to the asylum procedure. This initial decision must be made within 15 days of submission of the application. Appeals on negative decisions may be lodged with the Swiss Asylum Appeal Commission, which must take its decision within 48 hours. Asylum seekers must be granted entry to the asylum procedure if a decision has not been taken after 15 days. When the asylum seeker is deemed unanimously as suffering from persecution in the country of origin by both UNHCR and the Swiss FOR, she/he cannot be sent back to her/his country of origin.

To ensure implementation of an expulsion order a person may be detained up to a maximum period of nine months. Judicial review is mandatory after a certain time of detention (varies from canton to canton), and also in order to secure an extension. Detentions are subject to a monthly review.

Persons liable to be detained may be held at a special detention centre in Basel, at Zurich airport or in a normal prison but separated from ordinary felons. The average detention period is 23 days, although in practice, detention is rarely used with respect to rejected asylum seekers.

The primary reason for detention is the suspicion that the individual might abscond, following issuance of a removal decision. Indeed there have been frequent reports of abscondance in recent years, and it is estimated that approximately 60 per cent of rejected asylum seekers abscond after receiving a negative decision.

TABLE 1
INCIDENCE OF ABSCONDANCE:
2000-2003

Year	Number of Reported Absconders
2000	13,155
2001	8,725
2002	9,186
2003	10,459

Source: Federal Office for Refugees.

According to Article 13(a) of the Aliens Law, the cantonal police may also detain asylum seekers, who do not endue a stay and residence authorization for the following reasons:

- If they pose a threat to public order or national security;
- If their entry into Switzerland contravenes a previously issued entry ban, and they cannot be removed immediately;

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- If they refuse to reveal their identity or have made several claims for asylum under different aliases.

Fingerprinting

In the reception centres asylum seekers undergo a first round of summary questioning concerning their travel route and their reasons for asylum. A record is also made here of their particulars including information regarding their family. In this context they are fingerprinted and photographed by the competent authorities.

Escorts

During the standard enforcement of returns, an individual will be routinely escorted to the airport, where his/her departure will be supervised. Where escorts are deemed necessary, the individual will be escorted through to the country of return.

TABLE 2
RESTRICTIONS APPLIED DURING AN INVOLUNTARY RETURN

Level 1	Deportee unaccompanied	DEPU	Without restrictions of any kind
Level 2	Deportee accompanied	DEPA	Minor restrictions (e.g. handcuffs)
Level 3	Deportee accompanied	DEPA	Increased restrictions
Level 4	Deportee accompanied	DEPA	Complete restrictions (deportation with a chartered flight)

Chartered Flights

Removals are generally conducted on an individual basis, although in certain cases chartered flights may be used to remove small groups of between two and four persons. While according to the authorities, chartered flights represent a last resort, they are being used more frequently due to the increasing reluctance of commercial airliners to carry deportees for security reasons.

Stamps in Passports

Normally, a returnee does not get a stamp in his/her passport when departure is within the specified period of departure. However, where it is necessary to prohibit the re-entry of an individual, the concerned cantonal authority may stamp the passport of the returnee.

Costs of Implementing Involuntary Returns

In 2001, it was reported that individuals deported by chartered flights cost some approximately EUR 16,000 per person (Level 4 passenger), which represents an increase of up to 30 per cent on standard removal costs.² These represent only a small proportion of the total number of removals, however. In the same year for instance, just 49 persons (approximately 2%) out of a total of 2,275 were deported by using chartered flights.

Framework Agreements with Countries of Origin or Transit

According to Article 34 of the Asylum Law, the Swiss Federal Council can designate countries as “safe countries” when they are generally considered to be safe from persecution. The Swiss Federal Council periodically reviews the “safe countries” list.

Switzerland has concluded a number of readmission agreements with its neighbours and other countries, in order to return rejected asylum seekers and undocumented migrants. Readmission agreements have been concluded with Albania, Armenia, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, France, Germany, Hong Kong, Hungary, Kyrgyzstan, Italy, Latvia, Liechtenstein, Lithuania, FYR of Macedonia, Romania, Serbia and Montenegro, Sri Lanka and Sweden.

Transit agreements have been concluded for the repatriation of Serbia and Montenegro nationals with Albania, Bosnia and Herzegovina, Germany, Italy, Croatia, Austria, Slovenia and Hungary. Agreements have also been made with Germany, Croatia, Austria and Slovenia for return of war refugees from Bosnia and Herzegovina.

There is generally no obligation, under the readmission agreements to notify the third country on whether the returnee's asylum application had been refused on formal grounds, and not on merit.

While not party to the Dublin Convention, Switzerland is currently negotiating with the European Union regarding its implementation. The same applies to the Schengen Treaty.

1.4 STATISTICS ON INVOLUNTARY RETURN

TABLE 3
STATISTICS ON INVOLUNTARY RETURN

Year	Number Repatriated to Country of Origin or Third Country
2000	5,346
2001	2,275
2002	2,748
2003 (October)	2,859

Source: Federal Office for Refugees.

Cost Effectiveness Analysis

Compared to the costs incurred by the continued stay of a person liable for deportation in Switzerland, forced returns are generally considered by FOR to be a more cost-effective alternative. Yet, in comparison to voluntary returns, involuntary returns regularly turn out to be much more expensive and less sustainable. Yet the two approaches influence and complement each other.

2. ASSISTED VOLUNTARY RETURN

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

There are well established measures to promote and assist with the voluntary return of rejected asylum. A number of NGOs, federal bodies and international organizations work in close cooperation with the cantons and the Federal Office for Refugees in this respect. The main objectives of providing assistance towards voluntary return, as elaborated by these cooperating agencies are:

- At the international level, to better manage migration, encourage countries of origin to readmit their nationals and improve conditions in these countries to ensure the sustainability of return;
- At the domestic level, to promote orderly and voluntary cost-efficient returns and reduce the need of forced returns;
- To improve conditions for the sustainable reintegration of returnees in the country of origin.

The legal basis for providing return and reintegration assistance is derived from Article 93 of the Asylum Law, which also forms the basis of the Order on Individual Return Assistance and other assisted return regulations. Under Article 93 of the Asylum Law, return and reintegration assistance may include the development of projects in Switzerland (e.g. vocational trainings), in countries of origin or in third countries. It aims at promoting return and facilitating reintegration, through individual assistance such as medical care and financial assistance.

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Return

The FOR works in close cooperation with the cantons and relevant NGOs and international organizations, notably IOM, in order to provide assistance towards voluntary return.

In 1993, IOM Bern was entrusted by the Swiss FOR to set up a coordination mechanism between the cantonal return counselling offices and the FOR. After a successful trial period of several years, this task was eventually taken over as an ongoing established service by a new return assistance unit within the FOR itself. FOR's Return Assistance Unit today coordinates the Swiss return assistance activities. It is responsible for formulating new return assistance policies and administering the Swiss return assistance budget.

The cantons were asked to set-up return counselling offices or to mandate this task to another organization (e.g. Caritas or the Swiss Red Cross). The aim of these counselling offices is to provide comprehensive information on the possibilities of return and the kind of assistance available for the returnees. The cantons have direct contact with individuals within their cantons, who wish to return voluntarily.

Today, IOM Bern co-develops and co-implements assisted voluntary return programmes to specific countries in cooperation with Swiss partners, notably the FOR and the cantonal return counsellors. Through IOM Bern, Swiss return assistance can be dispensed worldwide through the vast network of IOM missions. In addition, IOM Bern supports the FOR and the cantons conceptually and operationally, and offers the following general return and reintegration services:

- RIF (Return Information Fund): The RIF programme provides country of origin information for the cantons and the FOR.
- RAS (Reintegration Assistance Switzerland): This programme offers individual return assistance to individuals after arrival.
- SIM (SwissREPAT-IOM Movements): The SIM programme provides, among other things, the transportation to the country of origin, secondary transportation, medical escort and reception. The organization of return is made in cooperation with the relevant authorities, i.e. the cantonal migration services and SwissREPAT.

SwissREPAT, the movement unit within the Swiss FOR, offers practical and logistical assistance to implement returns at Zurich and Geneva airport through transportation support for returning rejected asylum seekers. Among other things, SwissREPAT is involved also in the operation of voluntary returns, and it disburses travel allowances and financial reintegration assistance to migrants who return voluntarily under the general return assistance programme.

Operational Steps for Voluntary Return

According to Swiss regulations governing return assistance, all persons who have been granted refugee status, persons under temporary protection and asylum seekers at any stage of the asylum process are eligible to apply for assistance to return home voluntarily. Article 64 of the Asylum Ordinance (VO2, 1999), however, restricts the specified list of eligible beneficiaries, by excluding persons who have been refused permission to enter the country, criminals and absconders. Failure to cooperate with the authorities may also limit the possibility of assistance under the scheme.

In general, those applying for return and reintegration assistance must do so within the deadline given for voluntary departure. Two types of return assistance offers are available – an individual return assistance programme and country-specific programmes. The former is available for all those countries which are not on the list of “safe countries”; whereas the latter programmes focus on a temporary basis on specific countries/areas of particular interest in the Swiss migration context.

Individual Return Assistance Programme

Services offered under the individual return assistance programme consist of pre-departure return counselling, assistance in acquiring necessary travel documentation, coverage of travel costs, transit arrangements, and a reintegration grant, depending on the personal situation, on the stay and resident status and on the duration of the stay. An additional financial allowance may also be provided for medical assistance, to facilitate medical care in the country of return. The assistance package consists of a lump sum of approximately EUR 320 per adult and approximately EUR 160 per minor, plus a grant of up to a maximum of EUR 1,675 per case, to establish

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a new business.³ The allowance is awarded on a case-by-case basis. Additionally, financial assistance may be granted to cover the costs of medicines and treatment in the country of return for a period of up to six months.

Country-Specific Return Programmes

As mentioned already, country-specific return programmes are set up to respond to specific situations and are consequently subject to time limitations. Country-specific return programmes have been implemented to Bosnia and Herzegovina, Serbia and Montenegro, Kosovo, FYR of Macedonia, the northern part of Iraq, Sri Lanka, Chile, Somalia and Ethiopia. Currently ongoing are programmes to Iran, Iraq, Turkey, Armenia, Angola and an AVR programme for vulnerable cases to Bosnia and Herzegovina and Serbia and Montenegro including Kosovo.

Within the country-specific return programme for Bosnia and Herzegovina, by the end of 1998, approximately 10,000 individuals had been assisted to return from Switzerland. Under the Kosovo programme, more than 32,000 returnees were assisted by the end of 2000.

The country-specific return programmes typically provide financial assistance, reception and a wider range of other services for the returnees such as domestic transport, temporary accommodation, counselling and advice. Furthermore, country-specific return programmes may include structural aid for the receiving communities. That is, country-specific return programmes, especially larger ones, can provide assistance, both to the returnees and to the resident community. Structural aid projects are financed by the FOR and mostly carried out by the Swiss Agency for Development and Cooperation (SDC) in cooperation with various implementing partners (IOs, NGOs, local or national implementing partners). This was the case, for example, in Bosnia and Herzegovina, where assistance was provided for rebuilding schools and hospitals, the acquisition of new skills, etc.

Return-oriented Projects in Switzerland

Return-oriented training programmes in Switzerland aim to contribute to the asylum seeker's reintegration in the country of origin. Through examining the problems involved with return, the returnees are helped to develop perspectives for life in their countries of origin and to acquire or extend the know-how required to realize their plans. Furthermore, the programmes carried out in Switzerland include measures aimed at preserving the returnees' ability to re-migrate to their country of origin.

The FOR has financed such return-oriented programmes since 1995. They are organized and carried out by the cantonal authorities or by specialized organizations or NGOs. They take the form of a vocational course, which lasts usually four to six months. The courses offered range from wood and metal processing, to construction, tailoring, shoe making, hairdressing, basic nursing care, business management and short-term catering apprenticeships.

Framework Agreements with Countries of Origin or Transit

(See above section on Involuntary Returns.)

2.3 STATISTICS ON VOLUNTARY DEPARTURES⁴

TABLE 4
STATISTICS ON VOLUNTARY DEPARTURES

Year	Number of Voluntary Departures
2000	25,483
2001	3,415
2002	2,870
2003	2,983

Source: Federal Office for Refugees.

2.4 BEST PRACTICES AND LESSONS LEARNED

During 2003, the cost-efficiency of AVR measures became a major subject of discussion and interest in Switzerland. In particular the cost efficiency of AVR activities in general comparison to the cost of implementing the forced return of a rejected asylum seeker, or his/her continued stay in Switzerland has been assessed. Initial analysis clearly shows that comprehensive return packages with generous incentives (housing, cash-for-care, medical assistance, financial assistance, etc.) still turn out to be much cheaper than a prolonged stay in Switzerland or a forced return. Consequently, a recent trend in Switzerland has been to also support vulnerable persons in their voluntary return.

Another lesson learned is that the close cooperation among cantonal, federal and international partners such as IOM is key to successful return and reintegration activities.

Finally, an important lesson emerging in post-conflict situations, is the need to guarantee a rapid and robust support system for the creation of a possible return mechanism within the concerned diaspora, through effective return assistance measures. The option to return should be actively supported, especially in post-conflict situations, otherwise there is a risk that persons in irregular circumstances will be motivated to prolong their stay in Switzerland.

NOTES

1. In 2002, approximately 26,000 individuals sought asylum in Switzerland; in 2003 Switzerland handled almost 22,000 asylum applications. There are approximately 7,200,000 inhabitants in Switzerland.
 2. ICMPD, *Study on Return: A Swiss Perspective*, October 2002.
 3. The financial assistance amounts to CHF 500 per adult, CHF 250 per minor and a maximum of CHF 2,500 per case as a business start-up grant.
 4. These statistics refer to voluntary departures within the set deadline given in the official decision notifying the rejection of an asylum claim.
- * UN Convention Against Transnational Organized Crime and its Smuggling and Trafficking Protocols: Switzerland signed the UN Convention Against Transnational Organized Crime on 12 December 2000, but has not yet ratified it. It signed the Smuggling and the Trafficking Protocols on 2 April 2002, but has not yet ratified them.

UNITED KINGDOM

1. INVOLUNTARY RETURN

1.1 POLICY

Public debate on immigration and asylum in the United Kingdom has intensified in recent years in response to the marked increase in asylum seekers and illegally resident non-nationals. Policy responses have largely focused on how to better manage migration flows by promoting channels for legal migration, and controlling irregular migration, while ensuring that asylum seekers receive adequate protection under the Geneva Conventions.

Between 2000 and 2002, the UK received over 300,000 asylum applications, making it, in absolute terms, the highest receiver of asylum applicants in the industrialized world for successive years. In 2002, asylum applications in the UK accounted for 19 per cent (110,700) of all asylum claims lodged, representing the highest number of applications ever received in the UK.

There has been growing public concern about the rising numbers of unsuccessful asylum applicants or other irregular migrants who continue to reside in the UK, fuelling racial tensions in parts of the UK and forcing the government to reassess its immigration policy.

A number of measures have been implemented to this end since the Labour government came into power in 1997. A government White Paper in 1998, "Fairer, Faster, and Firmer – A Modern Approach to Immigration and Asylum", summarized the policy approach of the new government and argued for a modern immigration system, which would streamline the asylum process by delivering faster asylum decisions, simplifying the appeals process, and making removal arrangements more efficient.

The aim of this new policy approach was to protect the need of genuine refugees, remove the attraction of the UK for economic migrants and encourage migrants, such as visitors, students and businessmen, whose entry benefited the UK.

Several significant overhauls of immigration and asylum legislation followed to rectify the apparent inadequacy of previous strategies to deal with present immigration concerns, beginning with the adoption of the Immigration and Asylum Act in 1999 and, more recently, the Nationality, Immigration and Asylum Act in November 2002.

Included in the 2002 Act were radical new measures to accelerate the removal of violators of immigration laws, streamline channels of appeal and tackle illegal work and organized crime, such as human trafficking and smuggling.

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Concurrently, new measures were also implemented to encourage legal migration, particularly through labour migration programmes, as a means of preventing irregular migration and in acknowledgement of the positive impact such migrants made on the economy. Labour migration systems were reformed to attract not only highly-skilled migrants but also low skilled migrants in response to labour market demands.

The effect of these new immigration policies has been a significant reduction in the number of asylum applications, while migration inflows through legal labour migration channels have increased.¹

1.2 LEGISLATIVE INSTRUMENTS AND PROVISIONS

The UK's asylum and immigration legislation is constantly evolving and in the past decade alone four major immigration Bills have been adopted. One of the earliest legal instruments to regulate immigration in the UK was the Aliens Act of 1905, whose aim was to prevent "undesirable aliens" such as paupers, lunatics, vagrants and prostitutes from entering the UK, and control the number of Jewish settlers fleeing political and economic restrictions in Eastern Europe, particularly Russia.

It was however the Aliens Restriction Act of 1914, which first gave the Home Secretary powers to deport non-nationals.

Under the provisions of the Commonwealth and Immigrants Act of 1962, Commonwealth citizens could also, for the first time, be deported on the recommendation of a criminal court. Provisions on detention and deportation were significantly expanded in 1971 with the adoption of the Immigration Act, which was amended to form the basis of subsequent immigration legislation.

Some of the notable immigration legislation since then has included the following:

The Immigration (Carriers' Liability) Act 1987, which made carriers responsible for ensuring that their passengers travelled with valid documentation and penalized their owners in the absence of such documentation.

The 1990 Dublin Convention, which provided for the removal of asylum applicants who had travelled through other safe third countries (defined as any EU country plus Switzerland, Norway, Iceland, USA and Canada in the 1996 Asylum and Immigration Act) back to those countries.

The 1993 Asylum and Immigration Act incorporated into British law a definition of asylum in terms of the UK's obligations under the United Nations Convention 1951 and the 1967 Protocol relating to the Status of Refugees. Furthermore, it introduced measures for asylum seekers and their dependants to be finger-printed (in order to detect and prevent multiple applications), reduced the obligation on housing authorities to provide accommodation to asylum seekers, and introduced a right of appeal for all unsuccessful asylum applicants and an accelerated appeals procedure.

The 1996 Asylum and Immigration Act among others further curtailed access to housing, removed the benefit entitlement for in-country asylum applicants, created new powers for the arrest of immigration offenders and introduced a white list of countries, which have been deemed safe to return unsuccessful applicants to.

Following the publication of the 1998 “White Paper, Fairer, Faster, and Firmer – A Modern Approach to Immigration and Asylum”, immigration legislation was thoroughly reviewed to incorporate the recommendation of this policy paper, leading to the adoption of the **Asylum and Immigration Act 1999**. The aim of the new law was to reform the immigration and asylum process through a streamlined and flexible approach to immigration control, including new measures concerning detentions and removals.

In 2002, another overhaul of the immigration and asylum system culminated in the adoption of the **Nationality, Asylum and Immigration Act** in November 2002, following the publication of the White Paper, “Secure Borders, Safe Haven: Integration with Diversity” in February 2002, which formed the basis of this latest immigration Bill. Some of its provisions include the speeding up of the asylum application process to avoid long-term settlement, provisions for new reception, accommodation and removal centres, restrictions on the right to appeal and accelerating the deportation of failed applicants.

Removal of Persons Unlawfully Resident in the United Kingdom

All persons who do not have the right of abode in the UK are subject to immigration controls. Such persons will normally require clearance in order to enter and subsequently remain in the UK, and the breach of these conditions makes the person liable to removal. Mandatory return is usually carried out through a deportation order or administrative removal under Section 10 of the 1999 Immigration Act.

Deportation

A deportation order requires a non-UK national to leave the country and authorizes his/her detention until he/she is removed. The person concerned will also be prohibited from re-entering the country for as long as the deportation order is in force and any leave to enter or remain in the country given before the order was made or while the order is in force becomes invalidated.

A person without the right of residence may be issued with a deportation order under the following circumstances:

- Following the determination by the Home Secretary that the person’s deportation is conducive to public good e.g. where he/she has been convicted of a serious offence, or obtained residence through deception;
- Where the person is the spouse or child under 18 of a person ordered to be deported;
- Where the court recommends the deportation of a person over the age of 17, following a conviction of an offence punishable with imprisonment;
- Where a decision to deport a person was taken before 2 October 2000;
- Where an overstayer’s application for leave to remain under the Immigration (Regularization Period for Overstayers) Regulations 2000 is refused after 1 October 2000.

Return Migration: Policies and Practices

According to Immigration Rules paragraph 364, in considering whether deportation is the right course of action, the public interest will be balanced against any compassionate circumstances of the case; and while each case will be considered in the light of the particular circumstances, the aim will be to enforce deportations that are consistent and fair. Deportation will normally be considered appropriate where a person has failed to comply with or has breached a condition of entry or stay or has remained in the country without permission.

Before a decision to deport is reached, the Home Secretary will take into consideration relevant factors including:

- Age;
- Length of residence in the United Kingdom;
- Strength of connections with the United Kingdom;
- Personal history, including character, conduct and employment record;
- Domestic circumstances;
- Previous criminal record and the nature of any offence for which the person has been convicted;
- Compassionate circumstances;
- Any representations received on the person's behalf.

A deportation order is issued if after considering these factors, deportation is still regarded as appropriate. An appeal of a deportation order is permissible under Section 63 of the 1999 Immigration Act, with a few exceptions, e.g. where deportation is in the interest of national security, and a deportation order cannot be invoked against a person who has an appeal pending.

Once all appeal rights have been exhausted, a deportation order is signed, paving the way for an immigration officer to set removal directions.

In some cases, persons who receive deportation orders will be in detention, therefore a deportation notice may be served in person. However, where this is not the case a deportation notice may be sent by post to the last known address.

Administrative Removal

In accordance with immigration rules, non-UK nationals may be removed from the country if: they remain in the UK longer than the period prescribed under their conditions of entry; have breached their conditions of stay; obtained leave to remain by deception or are a spouse or child under the age of 18 of the person being removed. Such persons are usually subject to administrative removal procedures rather than a deportation order.

Factors to be taken into account when deciding whether administrative removal is appropriate include those outlined in paragraph 364 of the Immigration Rules (as above).

Persons subject to administrative removal have no right of appeal in the UK, unless they claim that the decision to remove them breaches their human rights, is racially discriminatory, or contrary to the UK's obligations under the Refugee Convention.

If removal is deemed appropriate, an immigration officer will serve the removal notice either in person or send it by post to the person's last known address. Removal directions are then set, and the Home Office meets reasonable transportation costs. Unlike persons who are removed on a deportation order, those subject to administrative removal may return to the UK provided that they qualify for admission under the Immigration Rules.

1.3 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Involuntary Return

The Home Office and its supporting agencies are responsible for enforcing deportations and administrative removals from the UK. The Immigration Service, part of the Home Office's Immigration and Nationality Directorate (IND), carries out mandatory removals, with the assistance of the Integrated Casework Directorate (ICD) and the police. Deportation cases are usually referred to the Deportations Group in the first instance.

The ICD, the Immigration Service and the police work in close cooperation to identify and apprehend unsuccessful asylum applicants and those who facilitate the entry and stay of illegal migrants. There are currently over 80 police officers working within the Immigration Service, and the increase in police cooperation on immigration enforcement issues has contributed to a more effective and efficient information exchange system.

Operational Steps for Involuntary Return

Generally, removal directions are issued in writing to the person concerned, specifying the date, time, carrier and destination to which the individual is being removed. The cost of removal is usually borne by the Home Office, unless a carrier has been identified as liable for the removal under the Carriers Liability Act.

Certain restrictions may be placed on an individual, with regard to employment or residence, or an obligation to report regularly to a police station, following the issuance of a removal notice. An immigration officer may also order the detention of an individual where it is believed that that person will not comply with removal orders e.g. might abscond. Detention may also be ordered for persons who have been refused entry to the UK or where the person is to be deported.

A person subject to enforcement action may choose to leave the UK voluntarily at any time before the deportation order has been signed, thus bringing enforcement action to a halt. However, once a deportation order has been signed, voluntary departure becomes irrelevant and still carries the implications associated with an actual deportation.

In cases where removal is complicated by the lack of travel documentation or instability in the country of origin, the person's presence will be tolerated so long as they comply and cooperate with efforts being made for their removal. The immigration status of the individual will remain unchanged, although they may be granted leave to remain on humanitarian grounds.

Return Migration: Policies and Practices

Escorts

A risk assessment of the behaviour of a person being removed, as carried out by the Immigration Service, may recommend the use of escorts in cases where there is a risk of violence, or medical care might be needed. Following the decision of the police to discontinue the provision of escorts in the early 1990s, escorts in the private sector have been successfully used since then, under certification procedures prescribed in the 1999 Immigration Act.

Chartered Flights

In recent years, charter flights have been used to facilitate the removal of large groups of unsuccessful asylum seekers, particularly to Kosovo, Albania, Zaire, Czech Republic and Poland. Joint removals have also been carried out between the UK and Ireland to facilitate regular removals to Pristina, while France has recently participated in removals to Kabul.

In exceptional circumstances in the past, Armed Forces aircrafts were used to remove particularly violent or ill people to places where the Royal Air Force operated flights, but this is no longer the practice.

Framework Agreements with Countries of Origin or Transit

In past years, the UK refrained from operating readmission agreements with third countries because of the belief that it made the returns system more bureaucratic. However, the realization in recent years that such agreements facilitated the return of unsuccessful asylum applicants, particularly in light of difficulties posed by the lack of proper travel documentation and the reluctance of some countries to accept their returning nationals, has led to negotiations with countries of transit and origin.

In February 2003, the UK concluded readmission agreements with Bulgaria and Romania; and a similar agreement with Albania is currently under discussion. The government has also held negotiations with a number of countries including Algeria, Afghanistan, China, India, Jamaica, Pakistan, Somalia and Turkey on the removal of third-country nationals through or to their territory, to facilitate the issuance of travel documentation or on the use of charter services for removal.

Within the framework of the EU, the UK has also made efforts to cooperate with relevant countries of origin and transit in the areas of return and readmission, following the recommendations of the Seville and Thessaloniki European Councils. Consequently, recent UK policy on migration management has also been committed to the negotiation of EC readmission agreements and to promoting bilateral agreements, where these are judged to be beneficial.

A number of agreements are also in place with “safe third countries”, mostly within the EU sphere, which have resulted in removals from the UK to Austria and Germany.

Prosecution and Detention Procedures

Powers of detention are prescribed in the 1971 Immigration Act, as amended in the 1999 Act under Section 10 and Section 62 of the Nationality and Immigration Act of 2002. The 1999 Act included provisions for immigration officials and the police to arrest without warrant, detain and search the premises of persons who are illegally in the UK; while the 2002 Act made further provisions to remove illegal residents and extended to officers in the IND other than Immigra-

tion Officers, the authority to detain persons who are in the UK illegally. Nevertheless, the decision to detain an illegal resident is largely determined by the likelihood of removal.

The detention of an illegal resident may be made on grounds that it is necessary to facilitate a removal; and although there is no time limit on the maximum time a person may be detained, where there is no prospect of a person being removed, e.g. for lack of travel documentation or unstable conditions in the country of origin, detention will not continue.

An estimated 1,000 people are detained at removal centres, ports, prisons or police stations at any time, pending removal; and recent changes in the law to extend the powers of immigration officials to detain illegal residents have led to shortages in detention centres, prompting plans for the development of new ones.

Provisions for the management and operation of centres are established in immigration laws; and the UK government's policy since 1994 has been to concentrate immigration detainees in specific prisons e.g. Holloway, Haslar, Rochester, and immigration detention centres such as Campsfield House, near Oxford, Harmondsworth in London and Tinsley House near Gatwick Airport. A reception centre was also opened in Oakington in 2000, near Cambridge, to process asylum applications that had been deemed to be unfounded in an accelerated procedure.

As of June 2003, nearly 1,700 persons were recorded as detained in such detention centres solely under immigration regulations, 1,355 of whom were asylum seekers.²

In an attempt to streamline the detention process, a casework section, Management of Detained Cases Unit (MODCU) has been established with the Immigration Directorate to handle all detained cases.

1.4 STATISTICS ON INVOLUNTARY RETURN

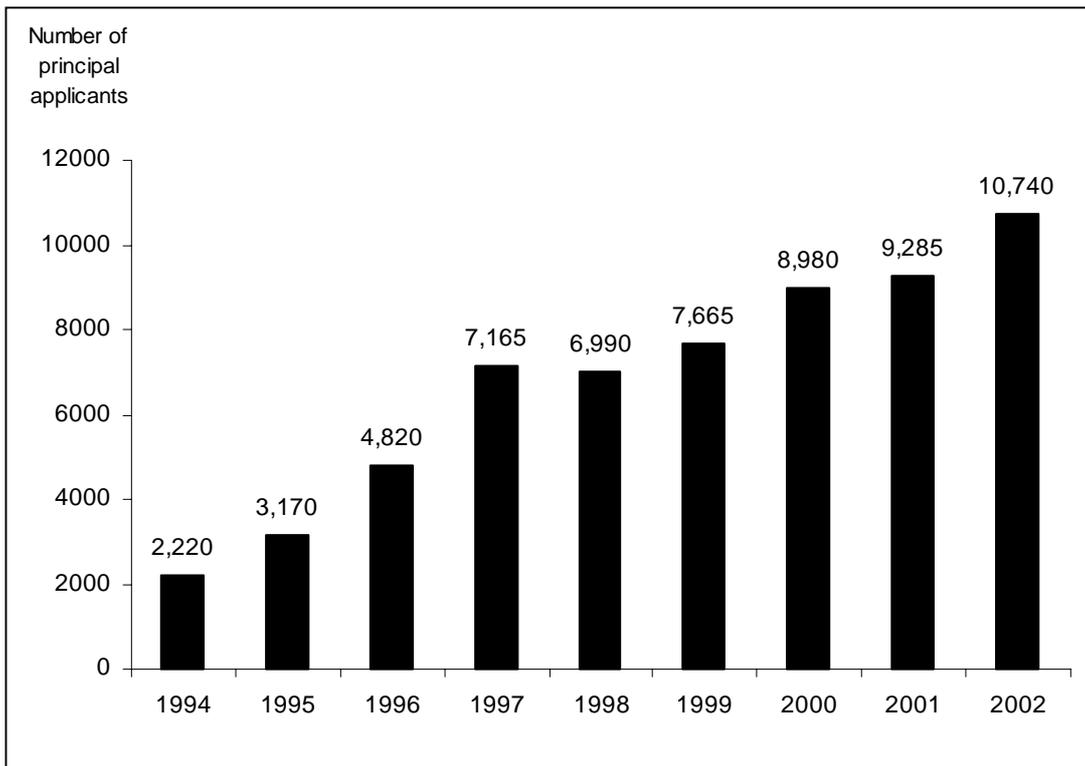
The focus of recent immigration and asylum legislation has also been to effect the successful removal of failed asylum applicants. In 2002, the government's newly established target to deport 30,000 unsuccessful asylum seekers each year only resulted in some 14,000 deportations, and led to a revision of deportation goals. A recommendation by the House of Commons Select Committee on Home Affairs suggested that, where necessary, targets for removal should be realistic and have the aim of promoting sustainable return through promotion of voluntary return.³

Recent asylum statistics reveal not only a reduction in asylum applications but also an increase in the number of removals. A record 10,740 principal asylum applicants were removed from the United Kingdom, or departed voluntarily in 2002, representing an increase of 16 per cent on 2001(9,285). Of these, the number of principal applicants refused entry at port and subsequently removed was 3,730, while the number of in-country enforcement removals rose by 48 per cent to 6,115.

Return Migration: Policies and Practices

The remaining departed voluntarily under assisted voluntary return programmes. The top three nationalities accounting for removals of main asylum applicants in the first quarter of 2003 were the Federal Republic of Yugoslavia, Czech Republic and Poland.

FIGURE 1
RETURN STATISTICS:
REMOVALS AND VOLUNTARY DEPARTURES OF ASYLUM APPLICANTS:*
1994 TO 2002



* Excluding dependants. Data on dependants removed have been collected since April 2001.

Source: Home Office, Annual Asylum Statistics, 2002.

Asylum Removals*

TABLE 1
RETURN STATISTICS:
REMOVALS AND VOLUNTARY DEPARTURES OF ASYLUM APPLICANTS,
BY QUARTERLY PERIODS*

Year	Principal Applicants	Dependants**	Total
Q2 2001	2,325	475	2,800
Q3 2001	2,340	515	2,860
Q4 2001	2,520	500	3,025
Q1 2002	2,445	480	2,920
Q2 2002	2,660	580	3,235
Q3 2002	2,805	850	3,660
Q4 2002 (p)	2,830	1,265	4,090
Q1 2003 (p)	2,620	1,370	3,990
Q2 2003 (p)	3,145	1,135	4,280

Notes: Data rounded to nearest 5 and may not sum due to rounding.

(p) Provisional data.

* Includes persons departing "voluntarily" after enforcement action had been initiated against them and persons leaving under Assisted Voluntary Return Programmes run by the IOM.

** Data on dependants of asylum seekers have only been collected since April 2001.

Source: Home Office, Quarterly Asylum Statistics: 2nd Quarter 2003.

1.5 BEST PRACTICES AND LESSONS LEARNED

The main thrust of recent UK policy has been to explore ways of obtaining a well-functioning and balanced immigration and asylum system, which protects the rights of refugees and also deals with the increasing numbers of unsuccessful asylum applicants in the UK. Hence, new immigration laws have sought to introduce innovative and stricter measures in dealing with unauthorized residents, leading to some successes in how mandatory removals are effected.

In order to tackle difficulties presented by the lack of travel documentation, the Immigration and Nationality Directorate has established a Documentation Unit to deal with documentation problems at an early stage in the procedure to remove a person. Through this initiative, coupled with the efforts by the Overseas Liaison Team, a number of workable solutions have been negotiated with receiving countries. Documentation problems have also been partly resolved with the use of the Standard EU Removal Document, which is used much more frequently and successfully in the UK than in other EU Member States.

Increased cooperation between relevant agencies enforcing removals, notably between the Immigration Service and the police, has contributed towards operational efficiency and improved information sharing. Outside the UK, this form of interagency cooperation has been extended to Europol and other EU Member States, as well as information networks established under Schengen (SIS), even though the UK is not a member.

2. ASSISTED VOLUNTARY RETURNS

2.1 POLICY AND LEGISLATIVE INSTRUMENTS AND PROVISIONS

Voluntary return is commonly promoted in the UK as a more humane and sustainable alternative to mandatory return, leading in recent years to a commitment to assisted voluntary return and reintegration programmes such as the Voluntary Assisted Returns and Reintegration Programme (VARRP). This programme is a new initiative to promote return as well as reintegration, as a follow-up to a similar programme, the Voluntary Assisted Returns Programme (VARP), which did not provide any post-return assistance.

Recent immigration legislation makes provision for the development of assisted voluntary return programmes. The White Paper, “Secure Borders, Safe Haven”, for instance, highlighted the importance of voluntary returns as part of the government’s effort to increase its ability to return failed asylum seekers.

The 2002 Nationality and Immigration Act includes provisions to expand assisted voluntary return programmes. Under Section 58, the Home Secretary may make arrangements to assist people to return voluntarily or help them decide about returning. This could include financial and practical support on and after arrival to help successful reintegration, and to explore and prepare visits for those considering returning.

An April 2003 report by the House of Commons Select Committee on Home Affairs made a number of recommendations to extend the Voluntary Assisted Returns Programme. These included the recommendation for the Programme to be opened up to detainees in Removal Centres, by advertising it in detention centres and otherwise bringing it to the attention of detainees. It also suggested that the Immigration Service advise asylum seekers of the option of voluntary return from the beginning of the asylum process.

Furthermore, in order to avoid people returning to destitution, it was recommended that provisions be made for payment of a modest allowance to asylum seekers who otherwise are likely to be destitute or impoverished on arrival in their country of origin, a provision that currently does not exist.⁴

2.2 ADMINISTRATIVE AND PROCEDURAL ARRANGEMENTS

Institutions Responsible for Voluntary Returns

The Voluntary Assisted Returns and Reintegration Programme (VARRP) is funded by the Home Office and the European Commission’s Refugee Fund and is implemented by IOM, with the support of the NGO Refugee Action. The programme is implemented in cooperation with other refugee agencies such as UNHCR, community organizations and partners in countries of origin or return.

IOM assesses and processes VARP applications and, on an operational level, coordinates the whole VARP programme in the UK. It is also able to liaise with its offices around the world to gather information and plan returns.

Refugee Action operates its service through its London offices and through officials based in Manchester. Its role is to assess the needs of the individual and provide advice before referring interested parties to IOM. Both Refugee Action and IOM are involved in outreach work with potential referral agencies and local community groups.

IND organizes funding and is consulted to confirm eligibility. It also refunds travel expenses.

Operational Steps for Voluntary Returns

Voluntary Assisted Returns and Reintegration Programme (VARRP)

IOM offers assistance to asylum seekers of any nationality who want to return permanently to their country of origin. Those wishing to participate in VARRP may approach IOM directly or may be referred to the organization in the first instance. A VARRP application form will need to be completed, which together with a declaration for voluntary return, will be forwarded to the Home Office.

The Home Office decides whether a VARRP applicant is suitable for return under the programme. If the application is approved, IOM begins pre-departure preparations such as travel and documentation arrangements. Once travel plans have been finalized, the returning asylum seeker will be requested to sign an asylum disclaimer at the airport, prior to departure, and thereby relinquish any outstanding application for asylum in the United Kingdom.

The applicant may decide to discontinue participation in the voluntary return programme with no change to his/her immigration status.

Asylum applicants whose claim falls under one of the following criteria are eligible:

- Waiting for a Home Office decision;
- Refused by the Home Office;
- Appealing against the asylum decision;
- Withdrawn the asylum application;
- Given Exceptional Leave to Remain.

Special consideration is also given to vulnerable individuals such as unaccompanied minors, unsupported young people, single women and women with families, along with those suffering from health or disability problems.

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with partner agencies, travel arrangements, coordination with origin country missions.
- Transportation assistance: departure assistance, transit assistance.

Return Migration: Policies and Practices

- Post-arrival assistance: Reception and onward transportation as appropriate; information/referral services; various forms of reintegration assistance; monitoring and follow up evaluation.
- Others: Gathering and provision of return-related information; management of the Reintegration Fund, which provides financial support for activities that would benefit the returnees.

The budget for VARRP in 2003 was estimated at nearly GBP 4.8 million, funded by the Home Office and the European Refugee Fund. Since the pilot programme started in late 1999, nearly 4,000 migrants have been assisted in returning to some 70 countries.

Variants of the VARRP programme have also been recently implemented in order to encourage the return of specific nationalities. These include the Voluntary Return to Afghanistan Programme (VRAP) for Afghan nationals who wish to return.

Return to Afghanistan Programme (RAP)

Under this programme, the British government offers a resettlement grant to certain categories of Afghan nationals. The grant entitles eligible individuals to a total of GBP 600, and up to a maximum of GBP 2,500 per family to reintegrate into their local community.

Qualifying Criteria

Afghan nationals who, as of 20 August, 2002:

- Had made an asylum claim and are currently awaiting a decision;
- Had had an asylum application refused but were appealing, including those appealing a refusal of their application for extension of their Exceptional Leave to Remain/Enter (ELR/E), or appealing on human rights grounds;
- Have been granted Exceptional Leave to Remain/Enter.

RAP is not open to Afghan nationals who:

- Have had their applications for asylum refused, and have exhausted all rights of appeal, with no leave to enter or remain in the United Kingdom;
- Have withdrawn their asylum application;
- Have been convicted in the UK of a criminal offence and sentenced to imprisonment of at least two years.

Those who do not qualify for RAP may apply for return and reintegration assistance through VARRP.

Programme Services

- Pre-departure assistance: information dissemination and counselling in cooperation with partner agencies; travel arrangements, coordination with origin country missions.
- Transport assistance: departure assistance, transit assistance.

- Post-arrival assistance: Reception and onward transportation as appropriate; information/referral services; various forms of reintegration assistance; monitoring and follow up evaluation.
- Others: Provision of cash grants to returnees.

Explore and Prepare Visits (Part of VRAP)

Under this latest scheme Afghan nationals who have Refugee Status, Indefinite Leave to Remain or Time Limited Exceptional Leave to Remain/Enter the United Kingdom for humanitarian reasons may be assisted in exploring the option of returning to Afghanistan permanently through a temporary “explore and prepare” visit to Afghanistan. This programme began in October 2003, and allows only one applicant per family to return to Afghanistan.

Previous voluntary assisted return programmes have included the **Return and Reintegration to the Somali Regions** Project, implemented by IOM on behalf of the Home Office between November 2001 and November 2002.

TABLE 2
RETURN AND REINTEGRATION TO THE SOMALI REGIONS PROJECT

Eligible Beneficiaries:	The project was open to Somali nationals living in the UK with different asylum status, e.g. asylum seekers and those granted exceptional leave to remain.
Budget:	EUR 778,209
Funding Source:	Home Office and EC/European Refugee Fund

Programme Services

Assessment Phase

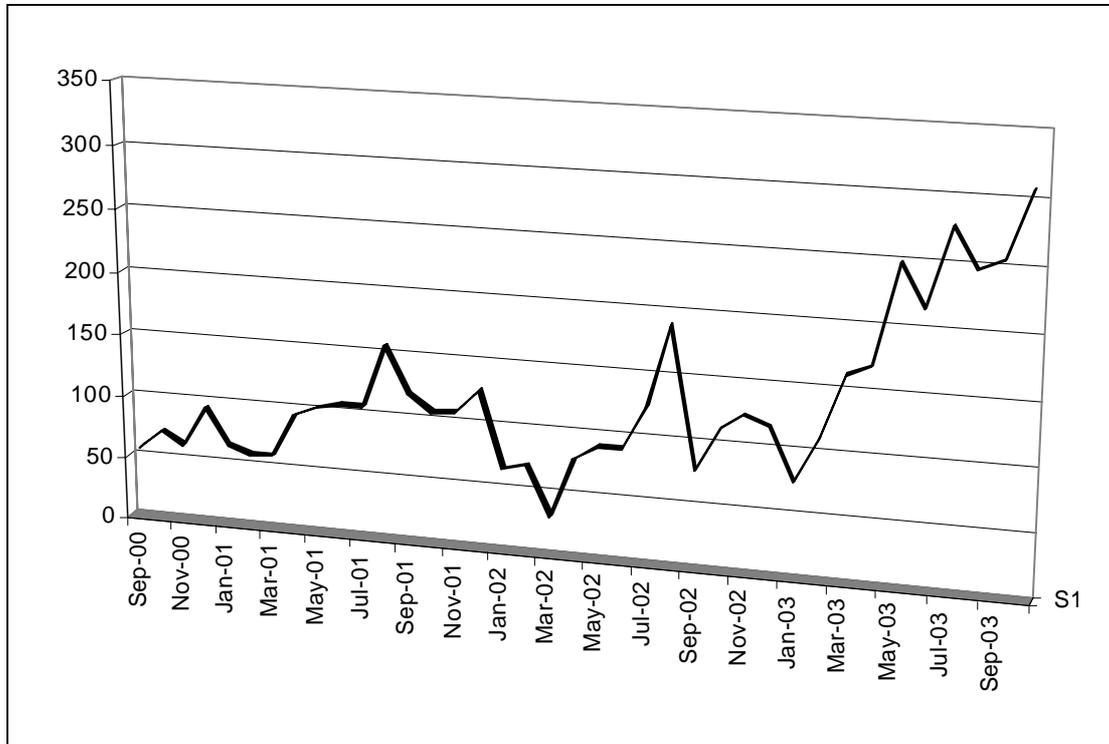
- Generic profiling of Somali Diaspora in the UK;
- Assessment of opportunities available in Somali Regions.

Return and Reintegration Phase

- Pre-departure assistance: Information and advice, return travel arrangements;
- Transport assistance: departure assistance, transit assistance;
- Post-arrival assistance: Assistance at arrival, onward transportation to final destination and provision of reintegration assistance, which includes assistance in finding employment and/or training activities for returnees in the Somali regions.

2.3 STATISTICS ON VOLUNTARY RETURN

FIGURE 2
STATISTICS ON ASSISTED VOLUNTARY RETURN



A total of 4,732 persons were assisted to return under VARP/VARRP between September 2000 and October 2003.

The top five countries of return in 2003 were Albania, Czech Republic, Sri Lanka, Iran and Poland.

2.4 BEST PRACTICES AND LESSONS LEARNED

Assessments and Evaluations

Deloitte and Touche made the following key findings in an external evaluation of VARP conducted in 2002:⁵

- The number of asylum seekers returning was increasing at a slow but steady pace, with a total of 1,033 returns made over the period (against a target of 1,200);
- Albanians constituted the largest group of returnees by far. Although Kosovars and Iranians are the only other nationalities returning in large numbers, returns have been made to over 60 different countries;

- The three organizations involved in assisted return (IOM, Refugee Action and IND) were operating a well-run programme, with effective working relations and clear business processes;
- VARP provided significant cost-savings for IND in comparison with the alternative of removing unsuccessful asylum seekers following completion of the asylum process;
- Asylum seekers were provided with a dignified, timely departure by VARP and achieved return to countries via routes that IND could not access. A high level of user-satisfaction was reported.

The report also recommended that the programme should be developed to increase the number of referrals through a wider range of networks, bearing in mind that more structured methods of service delivery are needed to deal with an expanded service. The failure of VARP to offer assistance towards sustainable reintegration led to the introduction of a reintegration element and the creation of VARRP, after negotiations with the Home Office.

Reintegration has since been developed as a strong component of VARRP, and participants may benefit from job training, education, and where possible employment opportunities and assistance in establishing small businesses.

Following the establishment of the “Briefing Asylum Seekers” project in January 2003, proposals are currently underway to broaden the dissemination of information in order to draw the attention of asylum seekers to the possibility of voluntary return, with the assistance of IOM at the early stages of the asylum process.

An Induction Centre to brief on Asylum, provide advice on asylum and the possibility of voluntary assisted return is currently under development, and expected to be ready for use by January 2004.

NOTES

1. E.g. the asylum figure for the second quarter of 2003 was less than half the figure for the fourth quarter of 2002, i.e. a reduction from 22,760 to 10,585 (Home Office, Asylum Statistics).
 2. Home Office, Asylum Statistics.
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Return Migration Policies and Practices in Europe

Return migration has in recent decades emerged as a critical element of many governments' migration policy – an integral part of effective migration management, alongside strong border management and timely and fair asylum processes. It is seen by many as the cornerstone of any successful strategy to prevent or deter irregular migration and residence in EU states. Yet it is evident that most EU governments still struggle with how best to achieve the return of migrants in irregular situations, and are trying a range of measures to reach some specific targets.

Return is increasingly also an important issue for the acceding states, given their role in securing the outer borders of the EU, and the fact that all of them have become recipients, even destinations, for irregular migrants.

The report covers the policies, laws and practices in return migration – both involuntary and voluntary – of the current 15 EU Member States, the ten acceding states and Norway and Switzerland. The 27 country chapters attempt to cover the same ground in a systematic way, as far as possible following the same format for involuntary return and voluntary return respectively.

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