

Removing 'non-removables'

Katharine T Weatherhead

EU law and policy on non-removable irregular immigrants – such as unsuccessful asylum seekers who cannot be returned to their country of origin – have political and humanitarian consequences.

In the European Union (EU), regular immigrants receive a residence permit and irregular immigrants receive a return order, an order to leave the country. Irregular immigrants “whose presence in the territory is known to the immigration authorities, but who, for a variety of reasons ... are not removed”¹ are termed non-removables, non-returnables or non-deportables. The barriers to their removal may be related to legal or humanitarian considerations, practical obstacles or policy choices.

Legal barriers include the humanitarian situation in the state of origin, humanitarian considerations in cases of serious illness, obligations to protect family and private life, and obligations to protect the best interests of the child.

Practical barriers include the lack of identification of the immigrant, the lack of travel documents, or refusal by the state of origin to readmit the individual.

Policy-based barriers include safeguarding national interests, such as public

security, or safeguarding values enshrined in national constitutions and policies.

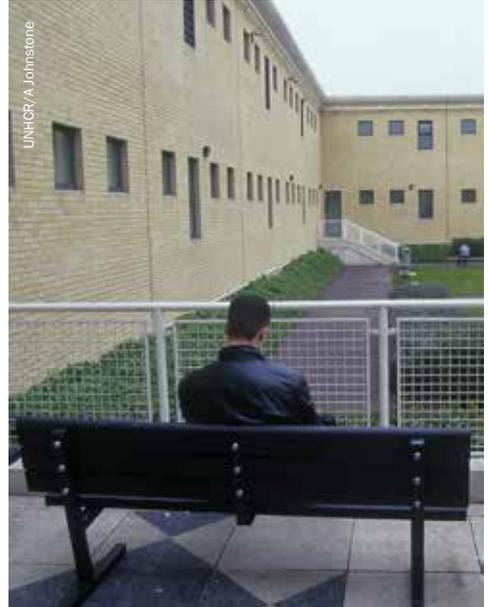
Under the EU's 2008 Return Directive, non-removable persons face the possibility of official postponement of removal.² However, the term 'postponed removal' understates just how long individuals may have their removal postponed for. For example, in October 2009, 58,800 irregular immigrants within Germany had been in possession of a 'tolerated stay' status for over six years following postponement of removal.

More importantly, official postponement does not grant these individuals temporary legal residency. Rather, their status remains irregular. This means that Member States still have an obligation to remove them from EU territory, even though EU law recognises them as non-removable.

This problematic legal framework leaves non-removable migrants in a vulnerable situation. In particular, they are susceptible to human rights violations, as the full range of human rights held by irregular migrants is not contained in the Return Directive's provisions for them. The precariousness of their situation is worsened in that several Member States have no specific provision at all governing their presence. This vulnerability is little dealt with by academics and is neglected by policymakers.

When combined with the political emphasis on deportation in managing irregular immigrants, it seems that the EU institutions depict deportation as both possible and necessary, despite the clear barriers to removal. At the same time, the option of regularising immigrants as provided for in the Return Directive begins to appear more apparent than real, especially given the high number of references being made within the EU to potential security threats posed by asylum seekers and irregular immigrants.

There are intermediate policy options, however, between deportation and regularisation. A nominal and/or temporary regular status could provide a basic level of legal security for non-removable immigrants which reduces the risk of human rights violations. The resulting increase in documentation of these individuals



Asylum seeker awaiting deportation from Tinsley House immigration detention centre in the UK.

could also provide more information on their number and situation, upon which a workable policy on non-removability could be developed. Alternatively, encouraging Member States to increase their use of the non-obligatory postponement provisions in the Return Directive could at least further harmonise Member State practice, creating a common basis for future discussion and cooperation on this issue.

Katharine T Weatherhead

katharine.weatherhead@sant.ox.ac.uk

Masters student 2015-16, Refugee Studies

Centre, University of Oxford www.rsc.ox.ac.uk

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'Imagined Mobility' in the European Union: The Partial Securitisation of Non-Removable Irregular Immigrants' (2014).

1. EU Agency for Fundamental Rights (2011) *Fundamental rights of migrants in an irregular situation in the European Union Comparative Report* <http://tinyurl.com/EU-FRA-migrants-irregular-2011>

2. <http://tinyurl.com/EU-Return-Directive-2008>