



Those who cannot stay Implementing return policy in Sweden

Between 1999 and 2018, Swedish authorities made more than 300 000 decisions on return. Those who are not allowed to stay are expected to return voluntarily to their country of origin. However, according to statistical data and practitioners in the field a large proportion do not return, even though return issues have been prioritized at a political level for some time now. What are the reasons for such a large discrepancy between goal and outcome in this field? The Delmi report *Those who cannot stay: Implementing return policy in Sweden* (Delmi 2020:1) by Henrik Malm Lindberg examines the return process from a migration governance and implementation perspective.

Background

The question of how states should deal with irregular migrants and returnees, is high on the political agenda in Sweden as well as in the EU. It is also topical in the context of the emergence of so-called parallel societies with large and growing groups of irregular migrants who often experience miserable living conditions and live in great vulnerability. It is also a policy area where there exists an inherent conflict between the objectives of those governing and those who have an obligation to return, since the goal of the vast majority of asylum seekers is to be allowed to stay in the country and be granted a residence permit. Authorities' work on return starts when there is a decision on rejection of the residence permit application, i.e. the person concerned has no right to stay in the coun-

try and is expected to leave. Implementing return should be done as fast and (cost)efficiently as possible, but also in a humane and legally certain manner. The most desirable outcome is a voluntary return, which entails lower costs at the community level, but also a less traumatic experience for the individuals being deported or expelled. In exchange, various types of financial assistance are offered in the form of return grants, in-kind or cash support. In cases where the migrant does not wish to return voluntarily, detention and assistance from the Police and Prison and Probation Service's Transport Service can be used to enforce the decision.

Purpose, materials and method

The main question that the report seeks to answer is *why* there is such a large discrepancy between objective and

outcome in the field of return. The report also addresses a number of questions about how policy instruments are used in this field. Empirically, the study is primarily based on some 40 interviews and conversations with officials and front-line bureaucrats within the Migration Agency, the Police and the Ministry of Justice, but also with representatives of other agencies, municipalities and civil society. The study also makes use of regulatory letters, internal reports and supporting documents from relevant authorities, as well as public investigations.

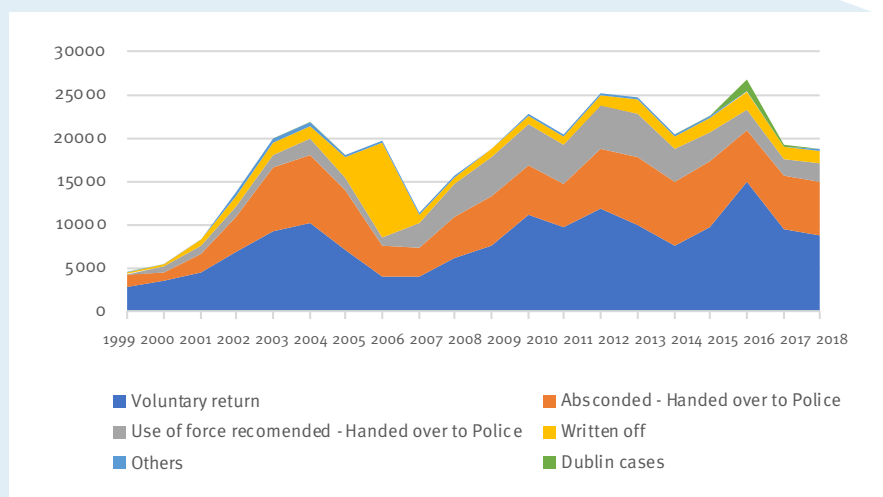
The analysis of this material is based on an implementation model focusing on three questions: How can one *understand, be able, and want* to implement return policy? The report starts from the assumption that the agencies tasked with meeting the targets and implementing the decisions set by politicians can be characterized as “street-level bureaucracies”, which means that bureaucrats who meet with returnees, so called front-line bureaucrats, have room for manoeuvre to make their own interpretations of how the task is to be solved. This is also what the results of the report point to, as it is clear that the front-line bureaucrats create their own routines and ways of working to manage their tasks while at the same time being governed by laws and regulations. An important part of the analysis illustrates how policy-makers and front-line bureaucrats handle conflicting requests and goals; how they prioritize between different tasks within the or-

ganization, and; how they respond to changing external conditions.

How many return from Sweden?

The total number of return cases per year has varied considerably over the past two decades, between around 4 000 and 26 000. (Figure 1). The number of cases written off reached a peak in 2006 in connection with a regularisation, when a large group was given the chance to have their case re-examined. Until 2006, relatively few individuals were handed over to the Police for forced exit, in the early 2010s that number increased significantly and then declined again after 2013. The number of people who have absconded also varies considerably. In the early 2000s, the number increased for a brief period of time before decreasing again, only to increase again a decade later in connection with the large influx of refugees in 2014-2015.

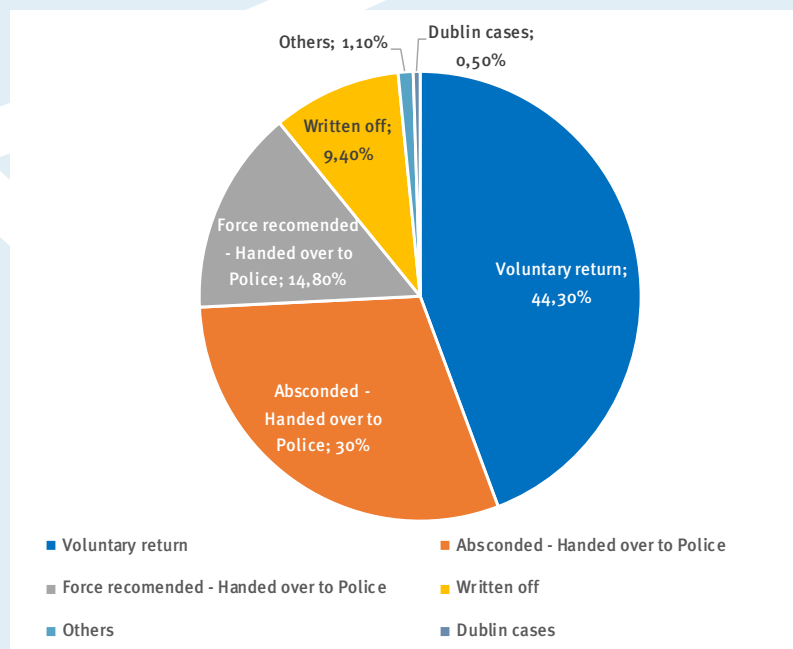
Figure 1. Number of return cases 1999-2018



Source: Swedish Migration Agency, own processing.

The most common regions of origin for individuals receiving return decisions were eastern Europe and the Balkans in the early 2000s, not least Serbia, while in the last ten years the Middle East, notably Iraq and Afghanistan, have dominated. Looking at the period examined, 1999-2018 (Figure 2), less than half, about 44 percent, of all return cases resulted in voluntary return. Nearly a third have absconded and about 15 percent have been handed over to the Police for forced departure. An important observation from the report is that the Migration Agency's and the Police's statistics are not fully compatible, which makes both implementation and estimation of target fulfilment difficult.

Figure 2. Proportion of return cases decided in 1999-2018



Source: Swedish Migration Agency, own processing.

The Police execute their own cases, which they receive from the Swedish Migration Agency and from the courts. It is notable that the Police's own cases increased remarkably in 2016-2018, without a corresponding increase in the cases of the Swedish Migration Agency and the courts. Even in the Police's own statistics, the proportion of cases actually carried out is significantly lower than the number of cases received. Since the turn of the millennium, about half of all police cases on average are executed.

Results and analysis

The report confirms previous research and studies in this area which have highlighted major difficulties and challenges in the implementation of return. Traditional tools and policy instruments work poorly, and although management is working hard to improve

and renew ways and means to ensure that return can take place in humane, legally certain and effective forms, the basic conditions are poor. One should therefore expect results to be proportional to the underlying conditions.

Prioritizing return

Despite promises from politicians and in regulatory letters that return should be a priority, the reality is different. Within both the Police and the Swedish Migration Agency – the two agencies that are supposed to carry out enforcements – the return issues are considered an “odd business”, not really in line with the core mission or in line with what the staff would most like to do. The status of return operations therefore does not appear to be pro-

portionate to the importance attached to various types of regulatory documents. Due to the low status, along with the fact that the activities are being prioritized, both agencies also have difficulty meeting the need for skills in the field of return.

Consistency in decisions

The authorities' efforts to facilitate return and increase the proportion of enforcements, since 2010 and after 2015, have focused on removing obstacles of various kinds and simplifying the work of the agencies by giving them greater authority to act. However, only a small part of the legislation relating to return is heading in this direction.

Political decision-making is largely about dealing with conflicting objectives. This means that the objective of effective return in terms of many and quickly enforced decisions (preferably on a voluntary basis) must be balanced against other aspects, primarily legal certainty and humanity, but also objectives in other policy areas – such as integration and rapid entry in the labour market. From time to time, the balance shifts in the pursuit of different goals, but it is clear that the objective of implementing return decisions has often taken a backseat to other objectives.

A no that is not always a no

The asylum process contains many different tracks and possibilities for appeal, which creates a message (to officials and front-line bureaucrats and to the migrants themselves) that “a no is not always a no”. The ‘track-change’ possibility is linked to the policy’s objective of entry into the labour market. The signal from society is that by entering the labour market one is given a second chance, which creates an expectation to be able to stay. The possibility of raising obstacles to implementing the expulsion order (so called impediments to enforcement) and appealing is

on the other hand a means of meeting the need for legal certainty in the asylum process. Regularization, getting a new chance for assessment, is an opportunity that primarily arises as a response to the fact that the group of irregular migrants is growing in scale and living in hiding. Regularization decisions are usually made out of humanitarian concerns for a neglected group living under difficult conditions.

All these opportunities offer another chance to obtain a residence permit. Why should bureaucrats at the Migration Agency and the Police invest time and effort in a return case if the decision can still be re-examined? Why should the asylum seeker be satisfied and prepare for a return when there is the possibility of a new re-examination or a new appeal?

Lack of cooperation between different actors

The report investigates which actors have a role in implementing return policies and how they interact with each other. The most important roles are held by the Swedish Migration Agency and the Police respectively. This relation must be properly managed: communication being of particular importance, between, but also within, the agencies. The data presented in the report suggest that there is sometimes a lack of communication regarding important information, which in many cases stays within an agency, at a certain level or a department instead of being shared with other affected parties.

Although the Swedish Migration Agency and the Police have the main responsibility for return, they need to cooperate with other actors such as the Prison and Probation Service, the Tax Agency, the Social Insurance Agency, the County Administrative Boards and municipal administrations. Many of these actors should be able to, and are often willing to, take on a more important role in the return

work and could thus offer support with both skills and resources. An important issue in this context concerns the role of the voluntary organizations. At times, optimism about the potential for collaboration has been great, but the difficulties in integrating them into the process seem to be at least as great. The benefits are obvious because many of the organizations may find it easier to reach people who have received a deportation order, as well as have access to valuable information. The main obstacle is that the voluntary organizations have fundamentally different missions with that of the authorities, which cannot easily be reconciled.

Policy recommendations

The results of the study show that Swedish return policy has several challenges to deal with. This is particularly true of the conflicting objectives in this field, the fact that these operations are not always given priority by the authorities with the main responsibility and that return policies are not always consistent. In addition, the policy tools used are met with effective counter-strategies – legal as well as illegal – by the migrants.

A first recommendation is to identify and manage conflicting goals and objectives within the return field. The report points to a wide range of conflicting objectives where new considerations need to be considered. The requirements for legal certainty in the process mean that Sweden offers more opportunities for re-assessment and appeals in the asylum process, including by being able to cite impediments to enforcement and the possibility to also appeal against track changes. Are all the existing opportunities to change track needed? Is it possible to streamline the appeal process in any other way? This would shorten the time and reduce uncertainty for all involved parties and provide more straightforward decisions.

The second recommendation is to have return in focus early in the asylum process for applicants who have little chance of obtaining asylum. This is of utmost importance both for the returnee and for the implementing agencies. Applicants need to understand at the beginning of the process the consequences of a refusal, but also get information about the existing return support. As in previous research and investigations in the field, this report has illustrated the tension – conflict of objectives – that exists between return and integration. The reception system in Sweden assumes that asylum seekers will be allowed to stay and therefore offers a number of support measures for integration, which reduces the incentives to return and sometimes make the rejection a shock to the migrant. A clear focus on return early in the asylum process is therefore recommended.

A third recommendation is to view return as an integral part of migration policy. This is especially true since Sweden has moved from a generous reception to a more restrictive migration policy. Both those who implement the policy and those affected by the consequences must be able to adapt to the new situation. Better communication regarding the objectives of migration policy would give clear signals to those who are coming to Sweden. When vulnerable groups such as unaccompanied minors are deported and expelled, a clear explanation of the process is needed from a legal certainty and humanity perspective from officials and front-line bureaucrats in the agencies, but also by the decision-makers of migration policy.

A fourth recommendation is to take advantage of existing, and stimulate new, research in the field, from different perspectives and with different methods, on return and implementation of policies since there are large knowledge gaps regarding Swedish conditions. In order to do so, research funding is required, but also the abili-

ty to use and merge register data from different systems from the beginning of the asylum process and onwards. In addition, a working interface between research and practice needs to be built in order to be able to cooperate and create synergies. Such arenas and collaborations have been developed in the field of integration, which can serve as a model.

A fifth recommendation is to better attend to the extensive knowledge and training needs of different activities and agencies. One example is the need to further develop border Police competence, but also knowledge among actors who have direct contact with the group, such as social services and other municipal administrations. The knowledge boost can indirectly help to prioritize the work of the personnel actively involved in the return and enforcement work of the relevant authorities.

The last, and most important, recommendation relates to all of these themes and involves consistency in policy design. On repeated occasions, policy makers have stressed that return issues are important and should be prioritized, as has been emphasised in the proposals and the regulatory documents. At the same time, decisions are made on, for example, regularization and track change possibilities, which hampers the work on return, and sends signals through the system that a no is not always a no. Lawmakers should make up their minds. If increasing the number of enforcements is a priority, this should be reflected in the decisions made. It is extremely important that the policy is clear to those who are going to implement the decisions as well as for those who come to Sweden with the hope of staying.



Henrik Malm Lindberg
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