

The Supervisory Board for Forced Returns and the Immigration Detention Centre's Annual Report 2023 (Forced Returns Group)



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Chairman's report



Chairperson Anders Jordet

The year 2023 brought with it a milestone in the field for the Norwegian immigration administration: A national body with a mandate to monitor forced returns was finally established. According to the Return Directive, which entered into force in Norway in 2011, this was one of the obligations. It is therefore long overdue that we now have such a monitoring body. The monitoring of forced returns is an important tool for ensuring that the dignity of every human being deported from Norway is safeguarded and that no fundamental rights are violated in the process.

During the same period, the police in Norway have increasingly focused on the forced return of foreigners without legal residence, and Norway has had a relatively high number of deportations in a European context. At the same time, there has been a professional development in the police, and the work of the National Police Immigration Service (NPIS) in developing and strengthening child-related expertise, which has also attracted international attention, is particularly noteworthy.

There are many aspects of forced returns that are challenging. Nevertheless, forced returns must always be carried out in a humane and respectful manner, and in line with human rights. It is therefore important that there is now a monitoring body in place that will help to ensure this. Two areas we will be paying particular attention to in the coming year are, firstly, about the

approval to use coercive measures using Velcro in Norway, as is in line with the Frontex standard. Secondly, whether a complaints procedure is introduced for foreigners who are deported.

Although we knew that the establishment of a national monitoring body for forced returns would require a lot of work, we also entered 2023 with the expectation that we would be well underway with the actual supervisory activities during the year. As we are about to put our first year of activity behind us, we can only conclude that this work has been more demanding than we had anticipated. These experiences have shown that it was necessary to establish a secretariat function for the body. In the face of challenging framework conditions for the task, the secretariat in the Norwegian Civil Law Administration has devoted considerable effort to the past year. There are now strong indications that work on monitoring can begin in 2024.

As follows from the description under section VIII in the annual report, monitoring forced returns is a new task in a Norwegian context. There was therefore no national guidance on how this work should be carried out, beyond the guidelines given in regulations and preparatory works. Throughout 2023, we have worked to build competence through training and knowledge acquisition, with supervision methodology, with the formal and practical aspects of the implementation of supervision of returns, and criteria for trips to be supervised. This has been helpful and important. With the appointment of three new members towards the end of 2023 and hopefully a strengthening of the secretariat in 2024, much is in place for us to carry out the social mission we are set to do.

Anders Jordet

Group leader

Introduction

According to Article 8(6) of Directive 2008/115/EC of the European Parliament and of the Council (Return Directive), Member States shall have an effective system for the control of the forced returns of third-country nationals with illegal residence in the Kingdom.

Until 2023, Norway did not have an unambiguous allocation of responsibility for overseeing forced returns. Norway's starting point was that the Norwegian overall system of supervision satisfied the directive's requirements. The overall monitoring responsibility lay with the head of the National Police Immigration Service (NPIS), and the Supervisory Board for the Police Immigration Detention Centre at Trandum, the Parliamentary Ombud, the Special Unit for Police Matters and the courts each had a responsibility in their own way.

However, through the Schengen evaluations of Norway in [2012](#) and [2017](#) it emerged that Norway did not comply with the directive with this system. By the Act of 11. In June 2021, the Storting therefore adopted a new provision in section 107-a of the Immigration Act stating that the Trandum Supervisory Board shall also supervise forced returns.

On January 1, 2023, the provision went into effect, and the name of the board was changed to the Foreclosure Board for Forced Returns and the Immigration Detention Centre. The Supervisory Board chose to divide into two groups: the "detention centre group" and the "forced returns group", and lawyer Anders Jordet was appointed as group leader for the "forced returns group."

At the same time, the Supervisory Board received from 1. January 2023 a permanent secretariat of the State Civil Law Administration (SRF). The secretariat's main task is to assist and create continuity in the groups' work.

The Supervisory Board publishes two annual reports. One for the immigration detention centre and one for monitoring the forced return work. This annual report only deals with forced return monitoring.

Mandate

The forced returns group shall supervise forced returns, cf. section 107-a of the Immigration Act. Forced returns mean the deportation of persons who do not have legal residence in Norway and who do not travel of their own free will.

Persons covered by the Dublin Regulation fall outside the mandate of the forced returns group as this is regarded as transfer between states, and not forced return. Convicted persons are also exempt, cf. Article 2(2) of the Return Directive, no. 2, subsection (b).

The group shall assess whether the treatment of those who are deported complies with relevant regulations, cf. immediately below.

The Supervisory Board, including the forced returns group, is independent in its work. Section 5 of the Supervision Regulations reads as follows:

"The Supervisory Board shall be independent in its work and may not be instructed on its task, interpretation of the law or exercise of discretion. The Ministry may nevertheless issue written instructions on the scope of the supervisory work and the prioritisation of specific issues of a general nature."

The legal framework – nationally and internationally

The forced returns group shall supervise whether forced returns are conducted in accordance with national and international laws and guidelines applicable to deportation, including the use of force and coercive measures. This means that all relevant legislation affecting the area must form the basis for the group's assessments.

National regulations and guidelines for deportations include section 90 of the Immigration Act, section 17-15 of the Immigration Regulations, Chapter 11 of the Police Instructions and the National Police Immigration Service's instructions for carrying out deportations (the Deportation Instructions).

International laws and regulations include the European Convention on Human Rights, the Convention on the Rights of the Child and Article 8 (4) of the Return Directive. In addition, the Chicago Convention regulates international civil aviation, and the Tokyo Convention regulates offenses committed on board aircraft.

The Return Directive states that coercive measures in connection with forced return shall be implemented in accordance with national law, in accordance with fundamental rights and with due respect for the dignity and physical integrity of third-country nationals.

What is the use of coercive measures, and what is the police framework?

The conditions for when a deportation may take place and whether it shall be accompanied follow from section 90 seventh paragraph of the Immigration Act and section 17-15 of the Immigration Regulations. If an escort is deemed necessary, the foreign national will be accompanied by the police out of the kingdom and to the third country. Responsibility for deportations has been assigned to the NPIS.

The police are generally authorised to use coercive means against a person in the performance of their duties; section 6, fourth paragraph, of the Police Act and section 3-2, first paragraph, of the Police Instructions. Furthermore, the police may use physical force in connection with deportation; section 3-2, third paragraph, first sentence of the Police Instructions. The use of force is defined as "equipment for physical control of persons. Approved equipment is handcuffs, strips, foot irons, transport irons, attendant equipment and spit protectors", cf. RPOD-2017-10 section 1.3.

Attendant equipment includes the "bodycuff" approved by the Police Directorate, cf. section 3-2, fifth paragraph, of the Police Instructions and Instructions for the use of special aids at the National Police Immigration Service. Section 6.5.2 of the Transport Instructions regulates the use of safety equipment and safety rules on accompanying transports, including the use of force.

It follows from section 6 of the Police Act and sections 3-1 and 3-2 of the Police Instructions that the police shall use as little force as possible and shall use the least invasive means of force. This means that force and coercion must be used with caution and in such a manner that it causes the foreign national the least possible pain/injury. The means of force employed must be necessary and proportionate to the seriousness of the situation, the nature and purpose of the act of service, and the circumstances in general. The police must continuously assess whether the use of force should be maintained. The group will assess the proportionality of the use of coercive measures.

The forced return is completed when the foreign national has been handed over to the authorities in his or her home country. It is only when representatives from local authorities have accepted the readmission that the deportation ceases.

Norway's monitoring group

The Supervisory Board's forced returns group, and thus Norway's monitors, currently consists of:

- Lawyer Anders Jordet, group leader (Oslo)
- Nurse Tony Heyerdahl, member (Follebu)
- Lawyer Annicken Iversen, member (Oslo)
- Deputy Director General and Lawyer Marianne Granlund, member (Sørumsund)
- National Insurance Court Judge Espen Slettmyr, member (Sandvika)

The latter three were appointed by the Ministry of Justice and Public Security on 3 September 2023. The monitors are appointed for two-year terms, and are appointed for the years 2023 and 2024.



From left to right: board member Annicken Iversen, board member Tony Heyerdahl, group leader Anders Jordet, board member Espen Slettmyr, secretariat leader Katrine Kleiven Mentzoni and secretariat adviser Linnea Røsjø Johanssen.

Permanent secretariat at the Norwegian Civil Law Administration

In 2023, funds were allocated for a separate permanent secretariat for the Supervisory Board. The Ministry of Justice and Public Security decided to add the secretariat to the SRF. Besides the head of the secretariat, the secretariat also consists of a legal adviser, a law student and necessary ICT, office and support functions.

SRF is located both in Oslo and Hamar. Most of the meetings in the forced returns group have been held in Hamar. In addition, one employee in the secretariat has a permanent office in Hamar and one member of the group lives in Follebu. Furthermore, the secretariat will be strengthened with another employee in 2023 who will have their office location in Hamar.

The forced returns group and the SRF have agreed that one person from the secretariat should, as a general rule, participate in the forced returns together with one monitor. This means that on each forced return, two people will be sent. The secretariat will assist the monitor in writing notes from the inspection and prepare a draft report afterwards. This way,

the secretariat will build expertise, create continuity in the group's activities and ensure that the supervision scheme is safeguarded and developed over time.

Establishment of new task

When the Supervisory Board was assigned the task of monitoring forced returns from 1 January 2023, we started with a "clean slate." This is a completely new task in a Norwegian context, and there was no national guidance on how this work should be carried out, beyond what is stated in the regulations, the preparatory work and instructions from the Ministry issued pursuant to the second sentence, section 5 of the Supervisory Board Regulations.

The following is stated:

- The board shall supervise whether forced returns are carried out in accordance with the national and international laws and guidelines that apply to deportation, including the use of force and force, cf. section 11 of the regulations.
- The members of the Supervisory Board responsible for supervising forced returns shall have completed training in accordance with approved European standards, cf. Section 4 of the Regulations. The returns include forced returns carried out by scheduled flights, nationally chartered aircraft and charter flights under the auspices of Frontex, cf. section 2 of the Regulations.
- The returns apply from the time the foreign national was picked up until the handover has been completed, cf. Section 2 of the Regulations.
- The returns may include all or parts of the returns, cf. section 11 of the Regulations.
- There is a requirement for continuous reporting from supervision, cf. Section 9 of the Regulations.
- The Ministry wishes to supervise 20 forced returns annually, cf. instructions in letter of 20 June 2022, ref. 21/6287.

Training and knowledge acquisition

The first step along the way was to put in place training; sections 4 and 11 of the Regulations.

The wording of section 4 of the Regulations indicates that the members who are to supervise forced returns must have completed training in accordance with approved European standards. In a European context, the European Border and Coast Guard Agency (Frontex) organises so-called monitor training. These courses last for five days, but are arranged relatively infrequently and places are limited. In a national context, a separate course for monitors does not exist.

In July 2023, the forced returns group was offered one place on Frontex's course. The council members and the secretariat expressed a wish that everyone in the group and the secretariat should attend Frontex's course. Unfortunately, there were no more available course spots, and so only the leader of the group, Anders Jordet, who participated.

The National Police Immigration Service (NPIS), which is responsible for deportations in Norway¹, possesses a lot of important information and knowledge about forced returns. In order to have a common knowledge platform, it has been important for the forced returns group and the secretariat to gain insight into how NPIS works with forced returns, and how they interpret and enforce the regulations.

To meet this need, NPIS set aside three working days at the beginning of August to present its work on deportations. During these days, a review was given of the proceedings in connection with a deportation, the legal framework, children's competence and practical training in methods and materials. The forced returns group and the secretariat were satisfied with NPIS's course, and experienced the importance of knowing the details of the police's work.

In addition, in autumn 2023, we have held a meeting with the Danish Parliamentary Ombud and the Swedish Migration Agency (Migrationsverket). For several years, both of these agencies have had a similar monitoring model to the one Norway have recently chosen to establish. Dialogue and the exchange of experience with these agencies has been very valuable.

Our goal is for more people to attend Frontex's courses, but at the same time we believe that the group and the secretariat have now been given adequate training in accordance with the regulatory requirement in section 4.

Monitoring methodology

As mentioned above, the forced returns group shall supervise whether forced returns are carried out in accordance with the national and international laws and guidelines that apply to deportation, cf. the regulations, section 11. In addition to the annual report, the group shall also report continuously from the supervision of forced returns. The reports must be sent to the National Police Immigration Service within 14 days, cf. Section 9, second paragraph, of the Regulations.

In the EU, Frontex monitors and monitors forced returns. We have therefore sought support from Frontex's routines and guidelines in the preparation of the group's supervision methodology. Since the majority of Frontex's trips are made using chartered tours, while the visits in Norway are done using scheduled flights, it has been crucial to create a supervision model and methodology adapted to Norwegian conditions.

¹ cf. the Police Directorate's Circular 2012/005 and instructions for the NPIS on the NPIS's mandate.

Organisation of the returns

Section 6 of the Regulations stipulates that the forced returns group may require the information and access to the places necessary for it to carry out its monitoring tasks. On-site staff shall assist so that the group can carry out its monitoring duties.

In order to carry out supervision of forced returns, the forced returns group and the secretariat are dependent on close cooperation with NPIS with regard to booking of travel, safety assessments, planning and organisation of transport, etc.

The forced returns group and the secretariat have experienced that NPIS has taken on the task of facilitating the group's work in an appropriate manner. They have been accommodating and keen to find good solutions. Several meetings have been held throughout the year between the NPIS and the secretariat to assign responsibilities and prepare a sound agreement.

At the same time, the establishment of a monitoring scheme for forced returns takes time, and many actors need to be involved before a final agreement can be signed and monitoring initiated. The forced returns group and the secretariat have been concerned with creating a good and thorough foundation for the monitoring work, and we hope that this will pay off in the long term.

Selection criteria for supervised tours

The supervision scheme covers forced returns carried out by scheduled flights and nationally chartered aircraft, cf. Section 2, second paragraph, of the Regulations.

The National Police Immigration Service (NPIS) has the national responsibility for the implementation, coordination and quality assurance of all deportations of foreign nationals with illegal residence in Norway, cf. the Police Directorate's (POD) Circular 2012/005, Instructions for the National Police Immigration Service of 1.12.2004 and the Instructions for withdrawal of personnel for deportation of 21.07.2011.

The forced returns group makes its own selection of which returns are to be followed within any limits stipulated pursuant to Section 5 of the Regulations and the scope limitation in section 1, subsection (c) of the Regulations. The group also assesses whether the supervision should cover all or parts of the transport, cf. Section 11, second paragraph, of the Regulations.

As mentioned, the Ministry of Justice and Public Security has, pursuant to the exemption provision in the second sentence of Section 5 of the Supervision Regulations, instructed that it considers that the supervision of approximately 20 forced returns annually, spread over different flights, will constitute a representative sample that is sufficient.

Return monitoring under Frontex

Anders Jordet was nominated to participate as a monitor in a return operation under Frontex in November. Alongside a monitor from Germany, they oversaw a national operation in which Germany was the responsible member state. The operation took place on 8 November, from Hamburg, Germany to Yerevan, Armenia, in which 30 people were transported on a chartered plane, accompanied by German police, medical personnel and interpreters. According to Frontex's procedures, Jordet's report on the operation was subsequently sent there and will form the basis for the analysis of this matter, which is to be published in the biannual reports of the Fundamental Rights Office at Frontex.

Concluding remarks

The task of establishing a forced returns monitoring body is, and will continue to be, a major undertaking in 2024. However, we have high hopes that we will be fully operational by the first quarter of 2024.