



The EU Return Directive

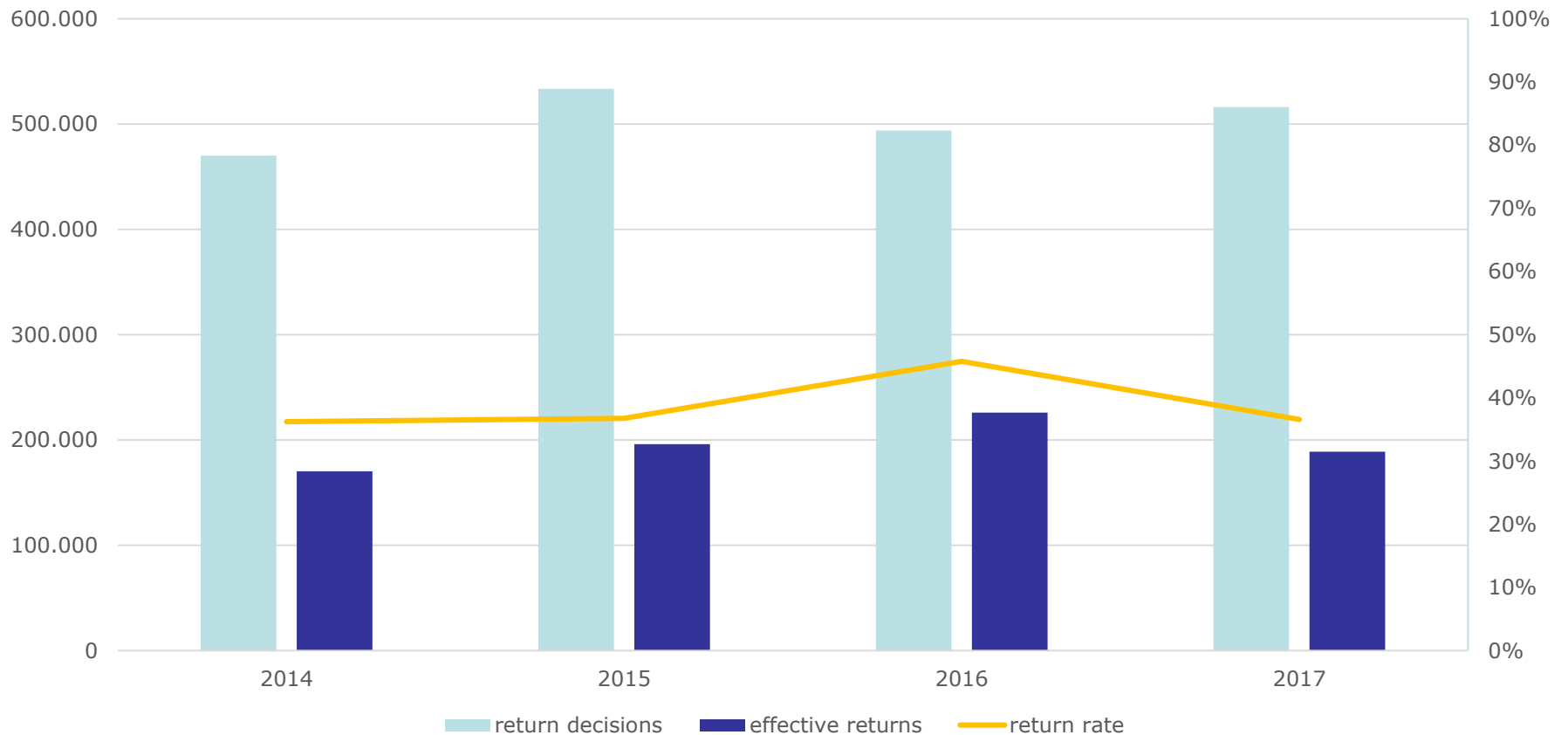
Recent jurisprudence, current issues, key challenges

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EU Return Directive 2008/115/EC

- *Third-country nationals who have no right to stay*
- *Common standards and procedures*
- *Procedural rules on issuing and enforcing of decisions*
- *Rules on detention, entry bans, appeals*
- *Standards on respect of fundamental rights*
- *From "Directive of shame" to "Directive of protection"*

The situation at a glance



Increasing importance

Policy documents

- *European Agenda on Migration – May 2015*
- *EU Action Plan on Return – September 2015*
- *Partnership Framework – June 2016*
- *Renewed Action Plan on Return – March 2017*
- *Protection of children in migration – April 2017*

Legislation (hard and soft law)

- *Return Handbook – September 2015*
- *Recommendation on making returns more effective – March 2017*
- *Revised Return Handbook – November 2017*
- *Proposal to amend the Return Directive – September 2018*
- *European travel document for return, SIS return, European Border and Coast Guard, Eurodac, asylum proposals...*

Main issues

- *Increase effectiveness while maintaining high standards*
- *Provide increased technical and operational assistance via EU Agency*
- *New tools for info sharing and handling of cases*
- *Prevent abuses of procedures*
- *Avoid absconding and secondary movements- effective alternatives to detention and use of detention*
- *Status of migrants in protracted illegal stay*
- *Data protection*
- *Filling gaps between asylum and return procedures*
- *...and, of course, lack of cooperation of third countries*

Links asylum - return

- *Most returnees are rejected asylum seekers*
- *Timing of issuing return decisions*
- *Loopholes between termination of right to stay / obligation to return*
- *Unfounded (subsequent) applications lodged at last stages of return procedures*
- *Lodging of subsequent applications for preventing return*
- *Repetitive assessment of risk of non-refoulement*
- *Automatic suspensive effect of appeals*

Detention and effective alternatives

- *What are the effective alternatives*
- *When there is a risk that a person absconds*
- *Duration of detention and due diligence*
- *Detention for public order / security reasons*
- *Specialised facilities*
- *Detention of minors and families*

Recent ECJ jurisprudence on return

- *C-181/16, Gnandi – link asylum / return*
- *C-290/14, Celaj – criminalisation*
- *C-47/15, Affum - criminalisation*

C-181/16 - Gnandi

- *Do the principle of non-refoulement and the right to an effective remedy preclude the adoption of a return decision immediately after the rejection of an asylum application, before the legal remedies available are exhausted?*
- *Ruling:*
 - **the Directive does not preclude the adoption of a return decision in such cases; however**
 - **The legal effects of the return decision are suspended pending the outcome of the appeal,**
 - **the applicant is entitled to benefit from the rights of RCD**
 - **the applicant is entitled to rely on any change in circumstances occurred after the adoption of the decision which may have a significant bearing on the assessment of the individual situation**

Other cases

- *Order of the Court C-269/18*
- *C-601/15, J.N.*
- *Joint cases 175 and 180/17*

C-290/14 – Celaj

- *Does the Return Directive precludes legislation providing for the imprisonment of an illegally staying third-country national who, following return, re-entered the territory of the State in breach of an entry ban and without being subject to return procedures?*
- *Ruling:*
 - **the Directive does not preclude imposing a prison sentence in such cases**

C-47/15 - Affum

- *Is a third country national illegally staying also when he is only transiting to reach another Member State?*
- *Can a third-country national who entered illegally and to whom return procedures have not been applied be liable to a sentence of imprisonment? Can this be done when the person can be taken back by another Member State on the basis of a bilateral agreement?*
- *Ruling:*
 - **A third-country national who illegally crossed an internal border and does not fulfil the conditions for entry and stay falls within the scope of the Directive**
 - **The Directive precludes national legislation allowing the imprisonment of third-country nationals who illegally crossed the internal border and were illegally staying and were not subject to return procedures. This is also the case if the irregular migrant can be taken back by another EU State.**

Revision of the Return Directive

- *Border procedure*
- *Stronger link between asylum and return procedures:*
 - issuing return decisions following termination of legal stay
 - appeals against decisions following negative asylum decision
- *Obligation to cooperate with competent national authorities*
- *Definition of risk of absconding*
- *Streamlined rules on periods for voluntary departure*
- *Assisted Voluntary Return programmes*
- *National IT systems for the management of return files*
- *Duration of detention, detention for public order / security*
- *Appeals against return decisions (deadlines, suspensive effect)*



Thanks for your attention

Questions?