

The return directive as implemented in France

The paradox between minimal protection and deportation mania
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French deportation system

- 37.000 aliens deported from France
- An « assembly line »
 - ✧ I.D. controls
 - ✧ Police custody
 - ✧ Order of deportation
 - ✧ Placement in administration detention
 - ✧ Deportation
- Irregular entry or residence: one year in prison and a fine

The return directive and ECJ decisions

- **El Dridi, 28 April 2011:** the return directive « must be interpreted as precluding a Member State's legislation [...] which provides for a sentence of imprisonment to be imposed on an illegally staying third-country national on the sole ground that he remains, without valid grounds, on the territory of that State, contrary to an order to leave territory within a given period ».
- **Achughbabian, 6 December 2011:** EU law prohibits national legislation from permitting imprisonment of an undocumented third-country national « who has not yet been subject to the coercive measures provided for in the directive and has not, in the event of his having been placed in detention with a view to application of the removal procedure, reached the expiry of the maximum duration of that detention ».

The consequences in France

- Constitutional Council: the criminalization of illegal stay complies with the Constitution
- Court of Cassation: an undocumented migrant cannot be sentenced to imprisonment unless he has already been subject to prior coercive measures and been placed in detention for the maximum period of 45 days.
- Parliament:
 - ✧ decriminalization of illegal stay
 - ✧ a new custody « for purposes of verifying the administrative situation »

Compliance with ECHR?

- Art. 5 § 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
- Art. 5 § 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.