

Own-initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JRO)

Correspondence - 20/10/2014

Case OI/9/2014/MHZ - **Opened on** 20/10/2014 - **Decision on** 04/05/2015 - **Institution concerned** European Border and Coast Guard Agency (No maladministration found) |

Mr Gil ARIAS-FERNÁNDEZ Executive Director a.i. European Agency for the Management of Operational Cooperation at the External Borders (Frontex) Rondo ONZ 1 00 124 WARSZAWA POLOGNE

Strasbourg, 20/10/2014

Own-initiative inquiry [1] OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JRO)

Dear Mr Arias,

According to the Commission's 2014 Communication on the EU Return Policy [2] , Frontex coordinated 209 joint return operations (JROs) returning 10 855 people between 2006 and 2013. The Commission highlights the fact that no violations of fundamental rights were reported during the JROs. At the same time, the Commission expresses concern that only half of the JROs were independently monitored.

By their very nature, forced return operations have the potential to involve serious violations of fundamental rights. This inevitably provides grounds for some concern. It is important for the public to know how Frontex is equipped to deal with any violations that may take place and what steps it takes to minimise the risk of such violations occurring. It is against this background that I have decided to examine and evaluate, through an own-initiative inquiry, how Frontex ensures that JROs respect the fundamental rights of the persons who are subject to forced returns.

The inquiry includes Frontex's cooperation with the national monitoring bodies (Article 9(1b) of Frontex Regulation [3] in conjunction with Article 8(6) of the Return Directive. [4]) As you know, all the national ombudsmen in the EU Member States, as well as the European Ombudsman, belong to the European Network of Ombudsmen. Furthermore, some of the national ombudsmen in the Network are involved in monitoring return operations [5] . For this reason, I



have written to the national ombudsmen to inform them of this inquiry. Specifically, I have asked them to provide any relevant information to me including possible inquiries of their own to promote effective and transparent independent monitoring of return operations.

To assist the inquiry, I would be grateful if Frontex could reply to the following questions and requests for information:

As regards the treatment of returnees

1. During a JRO, can Frontex staff question national "fit-to-travel" documentation in the case of returnees who are, for example, obviously sick or in advanced pregnancy?
2. Who has responsibility for the welfare of returnees while they are on board the aircraft?
3. In July 2013, Frontex adopted a Code of Conduct on JROs ("the Code"). Could Frontex consider, on the basis of its experience with the Code, publishing standards for escorts' behaviour as an annex to the Code (Article 6.4 of the Code provides: "*The organising Member State and Frontex decide on the list of authorised restraints in advance of the JRO. This list must be distributed to the relevant participating Member State prior to the JRO: (...)*")?
4. Article 5(2) of the Code refers to complaints by returnees alleging ill treatment during the JRO. Who is supposed to deal with such complaints, to whom should they be submitted and at which stage of the JRO? Having applied the Code for one year, does Frontex have any information on the application of this provision?
5. Could Frontex explain how it ensures the effective implementation of Article 18 of the Code of Conduct on JROs which provides that "*Frontex financial support to Member States for the JRO is conditional upon full respect of the EU Charter of Fundamental Rights*" [6] ?

As regards reporting

6. In December 2012, Frontex appointed its Fundamental Rights Officer, who is in charge of monitoring, assessing and making recommendations on the protection of human rights in all Frontex activities and operations, including those related to JROs. The written input of the Fundamental Rights Officer as regards fundamental rights compliance during JROs could make a valuable contribution to the inquiry. Please could Frontex invite such input and attach it to its opinion?
7. Have there been any reports in respect of alleged fundamental rights violations from participants in the JROs via the Frontex Serious Incident Reporting system (Article 16 of the Code of Conduct on JROs). If so, how were they dealt with? Please note that the Ombudsman would also like to inspect the Frontex reports on JROs.
8. Has Frontex considered publishing the Final Return Operations Reports on its website, if necessary with redactions of confidential information?



As regards monitoring of JROs

9. According to the Commission's 2014 Communication, there is no independent monitor present in half of the JROs. What measures does Frontex propose to improve this situation? In this respect, the Ombudsman notes that, in its Communication, the Commission recommends that, in its Code of Conduct on JROs, Frontex should spell out clearly that each JRO will be subject to independent monitoring. Has Frontex done so?

10. How does Frontex ensure the application of Article 14 of its Code of Conduct on JROs, particularly in relation to monitors' access to information and returnees, and the inclusion of monitors' observations in Frontex final reports on JROs?

11. The Commission's 2014 Communication mentions that the International Centre for Migration Policy Development currently runs an EU-financed project aimed at harmonising the different approaches to monitoring taken by Member States. Is Frontex involved in this project? What measures is Frontex taking to encourage the exchange of best practice among the national monitoring bodies established under Article 8.6 of the Return Directive?

12. Article 14 (5) of the Frontex Code of Conduct on JROs provides that monitors may also monitor on behalf of other Member States taking part in the JRO. Is Frontex taking any action to encourage such "representative monitoring"?

13. The Fundamental Rights Agency takes the position that, in order to be effective, forced return monitoring systems should cover all removal activities, including reception in the country of destination. [7] In this regard, the European Ombudsman understands that, in 2013, the Serbian Ombudsman office (in its role as National Preventive Mechanism established under the Optional Protocol to the Convention against Torture) cooperated with a German church-led monitoring forum in relation to the post-return phase.

Would Frontex consider taking inspiration from this experience in order to promote the regular monitoring of the post-return phase?

I would be grateful if you could submit an opinion responding to the above questions and requests for information by 31 January 2015.

I would also like to inform you that, during my inquiry, I may consider publishing Frontex's opinion on my website and giving interested third parties the opportunity to make observations.

Should your services require any further information or clarifications concerning this inquiry, including how to arrange for the inspection of documents mentioned in point 7 above, please do not hesitate to contact Mrs Marta Hirsch-Ziembinska (+33 388 17 27 46), Head of Complaints and Inquiries Unit, who is responsible for the inquiry.

Yours sincerely,



Emily O'Reilly

[1] The Ombudsman undertakes inquiries on her own initiative where she finds grounds to do so. As well as inquiring into any possible maladministration, these inquiries are intended to be helpful to the particular institution and to promote good administrative practice.

[2] COM(2014)199 final

[3] Regulation 1168/2011 of 25 October 2011 amending Council Regulation (EC)2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ 2011 L 304).

[4] Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third country nationals (OJ 2008 L 348).

[5] This is the case in Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Greece, Spain, Finland, Hungary, Latvia, Poland, Sweden, and Slovakia.

[6] See also Article 9(1) of the Frontex Regulation.

[7] FRA Annual Report 2013, page 45.