

Stakeholders meeting concerning the European Ombudsman's special report on FRONTEX

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30 June 2015, European Parliament Brussels

Introduction

By way of introduction, I made this Special Report following an own initiative inquiry because Frontex did not accept my recommendation to create a complaints mechanism through which it could deal with INDIVIDUAL incidents of breaches of fundamental rights alleged to have occurred in the course of its operations.

In the meantime migration has become an issue of even greater concern for the EU for reasons which this audience is fully aware of.

I do not pretend that this recommendation could possibly solve the multiple, complex, migration issues but it would make it possible that some individual violations of the human rights of migrants would be detected, reported and remedied by the competent organisations both at EU and member state level.

Frontex's tasks are not easy and I fully appreciate the multiple pressures under which it operates on daily basis. It must seek to achieve a difficult balance – in a constantly changing political and economic environment - between the legitimate interest in controlling immigration and compliance with its human rights and humanitarian obligations. Rights of course are nothing without remedies and if the fundamental rights in the Charter are to mean anything other than words on a page, there must be an effective mechanism for people to complain in order to secure those rights.

Arguments I



Frontex and the Commission have stated in the past that Frontex has no legal obligation to establish a complaints mechanism.

However the 2011 EU Regulation provides for a general obligation that Frontex should put in place an effective mechanism to monitor the respect for fundamental rights in its activities and I submit that a complaints mechanism is a necessary and obvious part of such monitoring.

Frontex has drawn up Codes of Conduct for Frontex operations, appointed a Fundamental Rights Officer and is assisted by the Consultative Forum on Fundamental Rights. These are all welcome steps forward in addressing its obligations under the Charter and the Regulation. However, the absence of an internal complaints mechanism is seen as a significant gap in its human rights architecture.

Arguments

II

Frontex also said that individual incidents, which become the subject of complaint, are ultimately the responsibility of the particular Member State on whose territory the incident occurred or whose officials are involved.

I do not accept that Frontex can simply deny any responsibility- for the actions of persons operating under the Frontex banner. That responsibility may of course be shared with the individual Member State, but it is not realistic to claim that Frontex has no responsibility whatsoever.

Frontex has a critical role in European migration policy and one that is reportedly going to be significantly increased not only in the general area of border monitoring but also in relation to its role in return flights of migrant denied asylum or residency.

As Ombudsman, I accept the Frontex position that only a few of its own staff members actually participate in operational activities in the field. The fact remains however that there are numerous officers made available by the Member States at the borders who wear armbands inscribed with the word "Frontex" and which carry the flag of the European Union.

When presenting the special report back in 2013, I pointed out the important principle that any person working in an official capacity who wears an EU flag on their uniform or an armband in this case, must be, at least jointly with the Member States, accountable to the European institutions, including the European Parliament.

Those affected by a Frontex operation naturally believe that an officer wearing such an armband is acting under the direction of Frontex. These people are typically under stress and



vulnerable -consider the images of near unimaginable distress that we have witnessed recently - and it cannot possibly be expected that desperate, terrified individuals could possibly determine what is a confused and complex allocation of responsibility. It would seem only logical for these people to see Frontex as the first resort for complaints about violations of their fundamental rights.

Arguments

III

Finally, Frontex argued that it has a system of serious incident reporting which could work as an equivalent of the complaints mechanism.

However, these are two very different things. Serious incidents reporting is part of the professional obligations of Frontex officials while complaints are submitted by individuals or NGOs acting on their behalf.

Arguments

IV

Frontex might have legitimate fears about how the mechanism should work in practice.

The following suggestions may be helpful:

- Accessibility to complaints mechanism should be ensured (complaint forms with explanation on the procedure in the most common languages of migrants, possibility of submitting complaints orally, or by NGOs).
- Each participant in the Frontex labelled operations wearing Frontex armband could receive complaints and should forward them to the Frontex Fundamental Rights Officer (FRO). Aggrieved individuals should have a choice of remedies and be able to complain to Frontex or to the Member State concerned.
- In joint return operations, complaints could be submitted also after the return. Returnees should be informed about agencies or services able to assist them in the return country with making a complaint.
- Given the prestige and independence of the FRO her position would be crucial in the procedure. She should serve as recipient of complaints at Frontex, decide on admissibility and channel appropriately. She needs additional resources (human and technical) to do so and her



independence in this new task should be ensured.

- Inadmissible complaints /against national authorities would be transferred to the national/regional ombudsman or similar body. The European Network of Ombudsmen would make the relevant arrangements with FRO to facilitate this task.
- Admissible complaints/concerning Frontex staff would be dealt with by FRO/or Frontex Administration.

Conclusion

Frontex and the FRO would not be working on their own. The ombudsmen core business is dealing with complaints. As European Ombudsman, both I and my colleagues from the European Network of Ombudsmen are ready to help to design and implement an effective and proportionate procedure.