

## WEISKORN Michael

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**From:** Apostolis Fotiadis [REDACTED]  
**Sent:** 17 August 2012 17:07  
**To:** Euro-Ombudsman  
**Subject:** [EOWEB] Comments in relation to your public inquiry into the implementation by Frontex of its fundamental rights obligation

**Attachments:** frontex inquiry ombudsman.doc

## Αποστολέας

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Αποστολέας Apostolis Fotiadis <[REDACTED]>  
Ημερομηνία Friday, August 17, 2012 5:07:23 PM CEST

## Τα στοιχεία σας

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### Μέρος 1<sup>ο</sup>- Στοιχεία επικοινωνίας

Όνομα Apostolis  
Επίθετο Fotiadis  
Το φύλο σας Άντρας  
Διεύθυνση ηλεκτρονικού ταχυδρομείου [REDACTED]  
Γλώσσα στην οποία θα επιθυμούσατε να λάβετε απάντηση en - English

### Μέρος 2<sup>ο</sup>- Στοιχεία

**Θέμα** Comments in relation to your public inquiry into the implementation by Frontex of its fundamental rights obligation  
Dear European Ombudsman

Please accept this comment in relation to your public inquiry into the implementation by Frontex of its fundamental rights obligation.

I have read thoroughly your inquiry addressed to Frontex as well as the lengthy response of the agency. In various points made in the response of Frontex I have noticed that while the agency takes all precaution in monitoring and registering human rights violation it is specifically aiming to disconnect itself in any way from directly being connected to any responsibility that occurs from such violations.

For example in your question on the "inclusion of a complaints mechanism for persons affected by Frontex' activities within the development of an effective mechanism for monitoring fundamental rights" you receive the answer that

"Since Frontex' task is only to coordinate the cooperation of the EU Member States and Schengen Associated Countries, activities that can affect on a person's rights can only be performed by the competent authorities from the Member States hosting or participating in the operation. Frontex' staff members do not have executive powers in the fields of border control; all such power are only in the hands of the Member States authorities"

In your question regarding "Eventual competence of FRO (Fundamental Rights Officer) to receive complaints from individuals concerning respect for fundamental rights by Member States and/or Frontex" the agency responds that

"The question of the competence of FRO to receive complaints from individuals concerning respect for fundamental rights by Member states and/or Frontex has already been raised but the outcome is expected only after the fundamental rights monitoring mechanism fully defined. The FRO will be involved in defining the monitoring mechanism once appointed. In any case, every individual is entitled to appeal to the national authority of the Member State where the reported incident occurred"

And again on your question about the "Responsibility for possible failures of EBGT (European Border Guard Teams) to fully respect fundamental rights" Frontex has responded that

"EBGT' members may only perform tasks and exercise powers under the instruction from and, as a general rule, in the presence of border guards of the Member State. If an EBGT member (or Host Member State officer) personally fails to respect fundamental rights, the matter will become subject for examination by the respective authorities of the Host Member State (e.g. investigation), and/or Frontex via its coordination structure as well as sending authorities of the Home Member State".

## **Περιεχόμενο**

Finally in Annex 3 regarding Frontex Fundamental Rights Action Plan on point 19 says

"Alleged violations of human rights reported either by national of Frontex officers or third parties, when substantiated, will be followed up by Frontex by communicating and clarifying the situation in cooperation with the competent national authorities without prejudice to any resulting administrative or penal procedures..."

The off-shoring of responsibility for actions occurring by the implementation of policy and executive power on the field to either Member State or individuals seems of fundamental importance for Frontex. This in fact provides it with capacities to operate as a security structure institution (organize and implement policy and exercise executive power in the field) without running the risk of being penalized at any circumstance in relation with violations produced by its actions. The agency achieves this 'legitimacy vacuum' by always deploying officers accompanied by a member of the host country border guard which plays the role of legitimizing actions due to the presence of person bringing authority of the country that hosts operation, or by 'advising' on issues which are in consequence being implemented by national authorities.

The latter is a characteristic procedure taking place during 'screenings', the first interviews of asylum seekers with Frontex specialists able to identify the country and place of origin. While this screening is of utmost importance for the fate of the asylum claim of each individual Frontex evades any responsibility for a wrong consideration since it only 'suggests' a decision regarding the country of origin that is afterwards formally registered

by national border guards.

I have researched the consolidation of this agency since three years ago and it is my understanding that this is one of the basic principles on which the mandate of the agency has been constructed. Frontex aims to achieve, and to a great extent has managed, a position of co-ordinator among member states border guards. This is done in a way that institutionally exempts the agency from directly being held responsible for violation that might occur during its 'Joint Operations' and 'Return Operations'.

This has been a key point made in a detailed investigation I published on Oct 28<sup>th</sup> 2010 on how Frontex evolves into a key player of European migration policy. The publication was hosted by Greek electronic news site TVXS

<http://tvxs.gr/news/%CE%B5%CE%BB%CE%BB%CE%AC%CE%B4%CE%B1/frontex-%CE%AD%CE%BD%CE%B1%CF%82-%CE%B8%CE%B5%CF%83%CE%BC%CF%8C%CF%82-%CE%BD%CE%AC%CE%BD%CE%BF%CF%82-%CE%BC%CE%B5-%CE%B4%CF%85%CE%BD%CE%AC%CE%BC%CE%B5%CE%B9%CF%82-%CE%B3%CE%AF%CE%B3%CE%B1%CE%BD%CF%84%CE%B1>

You can read an English translation of the four parts of this report in this blog.

<http://shortstorymadelong.wordpress.com/2010/11/18/frontex-1-looking-for-a-permanent-crisis-to-settle-in/>

I would like to invite the European Ombudsman to look into the legal and technical aspects of the unique condition of off-shoring responsibility while exercising effective executive power on the field and what the implications of this condition might be for the status and powers of a security structure like Frontex. Especially to investigate the claim made by Frontex that "Frontex' staff members do not have executive powers in the fields of border control", regarding whether Border Guards joining Frontex operations are to be considered 'staff members' of the agency or not, and generally whether the agency acceptance of any invitation by national authorities does not exempt it from responsibility for its actions in the field?

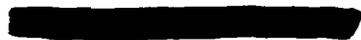
Additionally in its response letter to European Ombudsman Frontex does not mention the 'screening' procedures at any point despite those are some of the most sensitive actions the agency undertakes on the field. Mistakes and misconduct, during screenings, that led to violations of fundamental rights have been reported by various organizations, domestic and international, in Greece. Furthermore Frontex Code of Conduct's principles as they are described in Annex 4 of Frontex response to European Ombudsman are violated constantly during operation Poseidon Land in Evros region of Greece where the Border Guards operating under the mandate of Frontex observe almost daily violations of their Code of Conduct for more than two years. The agency has failed to take any effective action in response to these issues while it continues its joint operation.

For further information on human rights violation occurring during screenings and the failure of the agency to observe its Code of Conduct you might want to refer to competent

authorities like 'The Greek Council of Refugees', the "UNHCR" or the non governmental organization of 'Lawers Group for the Rights of Migrants and Refugees".

Sincerely

Apostolis Fotiadis



Short professional bio

"Apostolis Fotiadis is a freelance journalist based in Belgrade and Athens. He has completed a history degree in Aberdeen University in Scotland and a Master on Nationalism Studies at the Central European University in Hungary. Since 2004 he has cooperated with the major national Greek daily 'Kathimerini'. On September 2007 he was appointed as a Greek Correspondent of the news agency Inter Press Service ([www.ipsnews.net](http://www.ipsnews.net)). His work has been published in various regional publications around South Eastern Europe as well as in Switzerland and Spain. He focuses on issues related to ethnic conflict, human rights and migration in the region. In the past he has contributed as a stringer for the political weekly 'Kapital' in Bulgaria. He has worked as an output producer on the field for 'ZDF', 'National Public Radio', the Dutch 'NRC Handelsblad', the Belgian public TV channel 'VRT', the Serbian 'B92', the 'Die Welt', the New York Times, Wall Street Journal, CCTV International, 'Russia Today', BBC World and the Associated Press Television Network. Since 2012 he has contributed for McClatchy network as a special correspondent from Athens."

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