



Médiateur européen

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Date d'arrivée

Mrs Emily O'Reilly

European Ombudsman

1, avenue du Président Robert Schuman

F-67001 Strasbourg Cedex, France

Subject: Response to the own-initiative inquiry OI/9/2014/MHZ of the European Ombudsman concerning the means through which Frontex ensures respect for fundamental rights in joint return operations.

Dear Madam,

Thank you for the own-initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations.

Frontex carefully considered each question and has provided a comprehensive response to your queries.

Annex I, attached to this response letter contains the responses to all the questions except question number 6, to which the response is provided separately by the Fundamental Rights Officer in Annex II.

I remain at your disposal should you require further information.

Yours sincerely,



Fabrice Leggeri

Executive Director

Annex I - Response to the own-initiative inquiry OI/9/2014/MHZ of the European Ombudsman concerning the means through which Frontex ensures respect for fundamental rights in joint return operations.
Annex II - Fundamental Rights Officer contribution.

Response to the European Ombudsman's own-initiative inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations

The Frontex Regulation¹ and the return policy of EU specifically tasks Frontex to provide the necessary assistance and ensure the practical coordination or the organisation of joint return operations proposed by EU Member States, without entering into the merit of return decisions.

The cooperation on joint return operations of EU Member States has increased the operational cooperation among Member States in carrying out the practical return of irregular migrants with no legal right to remain. It has also increased the cooperation with some countries of return and has shown an EU approach to the practical return of irregular migrants.

Joint return operations of EU Member States supported by Frontex are based on needs identified by the EU Member States and the willingness of an EU Member State to be the practical organiser of the operation.

Frontex Regulation underlines that the Agency shall ensure that any financial support to joint return is conditional upon the full respect for the Charter of Fundamental Rights. Fundamental rights issues have therefore always been a keystone in the assistance provided by Frontex and form an important part of the training provided to the EU Member States. What is more, JROs are done in a transparent way and are well-scrutinized.

The Code of Conduct for Joint Return Operations coordinated by Frontex² has been in force since October 2013 and applies to all joint return operations coordinated by Frontex.

The Code establishes standards and rules to be respected during a joint return operation supported by Frontex, in particular regarding the respect for fundamental rights of returnees, the use of coercive measures, fitness to travel and medical examination of returnees, obligations of escorts³, presence of medical staff, interpreters and other external participants. The Code also aims at developing the criteria for an effective forced-return monitoring system underlying that monitoring is an obligation of the Member States as set out in the Return Directive⁴. In this respect, Frontex continuously encourages Member States to deploy a monitor on-board during the whole joint return operation, supporting such monitoring by financing entirely the costs borne by a monitor.

The technical and detailed instructions for the practical implementation of joint return operations are included in a separate document called "Best Practices for Joint Return Operations by Air Coordinated by Frontex". The Best Practices are currently being revised and developed with the EU Member States in consultation with the Frontex Consultative Forum.

Nearly all Member States have now participated in one or more of 267 (as of 27.01.2015) Frontex coordinated joint return operations; 28 destination countries have been covered, mainly the

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004, in OJ L 349, 25.11.2004, as last amended

² ED Decision No 2013/67 of 8.10.2013

³ The term "escort(s)" refers to the security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the Member State

⁴ Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348/98, 24.12.2008, p. 98

regions of West Africa, Western Balkans, South America and Asia. The top 5 destination countries are Nigeria, Kosovo, Georgia, Serbia and Colombia. As of 27.01.2015, 13,633 returnees have been returned by joint return operation coordinated by Frontex.

In the letter from 20th October 2014 informing Frontex on the own-initiative inquiry, the EU-Ombudsman has requested information on the following questions:

- 1) **Question:** *“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?”*

Frontex answer: The “fit-to-travel” medical examination is carried out by the respective MS in reasonable time prior to the joint return operation when there is a known medical condition or where medical treatment is required.

The “fit-to-travel” term refers to a returnee’s medical condition - both physical and mental - which allows the person to travel safely. The returnees can only be removed as long as they are “fit-to-travel” at the time of the joint return operation.

Only the medical doctor assigned to the operation by the OMS has the power to review the “fit-to-travel” decisions, he/she can veto an earlier medical decision and deem the returnee unfit to fly. In the Frontex Code of Conduct for joint return operations it is underlined that the organising Member State⁵ (OMS) must refuse the participation in a joint return operation of a returnee who is not “fit-to-travel” based on the assessment of the medical doctor assigned to the operation.

- 2) **Question:** *“Who has responsibility for the welfare of returnees while they are on board the aircraft?”*

Frontex answer: Each participating Member State⁶ (PMS) is responsible for their own contingent and partly also for the welfare of all the returnees on board. The OMS has an increased responsibility in terms of coordination and supports each Member State by providing a medical doctor for the joint charter flight, sufficient food and drinks both on the ground and if necessary at the collecting point, on board the flight and access to toilet facilities at the collecting point.

The OMS ensures in the contract with the air company the catering during the flight, which is co-financed by Frontex. Finger food, but of a high quality and sufficient quantity, is preferred during the flight to the destination country for security reasons. Additionally, cultural and religious considerations should be taken into account as well as the presence of babies or young minors. The same food is always served to both the returnees as well as the escorts. In case of transit and waiting time on the ground, the OMS provides catering for all, which is also financed by Frontex.

- 3) **Question:** *“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: (. . .)”)?”*

⁵ A Member State which is responsible for the organisation of a JRO

⁶ A Member State which participates in a JRO organised by an organising MS

Frontex answer: The OMS fills in a standardized form developed by Frontex called “Offer of a Return Flight” when offering the participation in a return flight to other Member States. One part of this form is dedicated to the authorised/prohibited restraints and equipment allowed by the OMS during the operation. The participating Member States have to agree on this proposed list of type of restraints/equipment in accordance with the provisions of Council Decision 2004/573/EC, Common Guidelines 3.2 and the provisions of the Frontex Code of Conduct for JROs in advance of the return operation. No participating Member State is permitted to use restraints not allowed under its national legislation even if those measures are accepted by the organising Member State and Frontex for the particular joint return operation. Such a list is part of the Implementation Plan of each JRO signed by Frontex. The Frontex Code for JROs does not serve as a definitive list of authorised/prohibited restraints, as the lists can vary amongst JROs. As a general rule, standards of behaviour in the use of force are regulated by national law and the Code states that the use of coercive measures must be done under principles of proportionality, when strictly necessary and with due respect to the returnees rights, dignity and physical integrity.

- 4) **Question:** *“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?”*

Frontex answer: There has been no complaint launched in relation to a JRO coordinated by Frontex so far. Therefore there is no information available on the application of Article 5(2).

Article 5(2) of the Code highlights the responsibility for each participating Member State to give sufficient and clear information to the returnees about the procedure for lodging a complaint concerning alleged ill-treatment during the operation. In Article 8(1) of the Code it is highlighted that the authorities of the Member States have overall responsibility in accordance with the general principles of State responsibility and for investigating and sanctioning actions of escorts acting under their law and instructions irrespective of whether the escorts are State employees or employed by a private contractor.

Furthermore, any participant in a joint return operation (Article 16 of the Code) who has reasons to believe that a violation of this Code or of fundamental rights has occurred is required to report it to Frontex via the appropriate channels, for example via Frontex Serious Incident Reporting system. The reporting can also be made to the Frontex representative on board the flight or to a monitor present.

- 5) **Question:** *“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?”*

Frontex answer: Frontex ensures the effective implementation of the quoted provision with the presence of its representative on board and with the established reporting mechanism.

With regards to the reporting system, any participant in the JRO who has reasons to believe that a violation of the Frontex Code on JROs or fundamental rights has occurred is required to report it to Frontex via the appropriate channels, for example via Frontex Serious Incident Reporting system.

A possible decision to review or reduce the co-financing could be taken in case of violation of fundamental rights provisions, based on evidence.

- 6) **Question:** *“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?”*

Frontex answer: Separate/independent reply from Frontex Fundamental Rights Officer is attached to the present letter as Annex II.

- 7) **Question:** *“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.”*

Frontex answer: No allegations of violation of fundamental rights have been received regarding return operations via the Frontex Serious Incident Reporting System. During the return operations coordinated by Frontex only three critical situations mentioned below regarding non-compliance by returnees were reviewed by Frontex and all relevant Member States authorities.

In 2011 an incident was reported to Frontex during a JRO. The incident occurred in a toilet in the gathering area before the embarkation. A returnee was escorted to a toilet by four escorts from a PMS. When they came out from the toilet, the returnee was bleeding from injuries in the facial area. The escorts stated that they had to use force against the returnee because of his aggressive behaviour (spitting at the escorts and trying to close the door etc.)

The incident was reported by the OMS to the public prosecutor. After a detailed evaluation, the public prosecutor decided to dismiss the charge and to drop the case. Nevertheless, the case led to a common understanding in the Member States of the power of escorts from PMS when in transit in another MS.

An incident during a JRO to West Africa in 2012 is also to be mentioned. An escort from a PMS was badly injured, when in the air, by a returnee who pulled a razorblade whilst using the lavatory and severely injured the escort officer’s right earlobe and made a deep laceration on his left shoulder. The escort injuries were attended to by the OMS doctor and a paramedic.

The incident led to a stronger awareness of the need to thoroughly search the aircraft before embarkation as it was likely that the razorblade was found by the returnee in the lavatory.

In 2014, at the airport, before the embarkation to the main charter, non-compliance took place, in which no one was injured.

The organising Member State, the participating Member States, and the Frontex representative evaluated the situation at the time and concluded that insufficient escorting staff from the participating Member State was the main contributing factor.

This conclusion was in line with feedback received from an independent monitor who was present observing the operation. Furthermore, this critical situation was discussed at the next joint return operation evaluation meeting with Member States, with a strong recommendation which they fully supported, that it is essential to ensure sufficient escort staff is tasked to avoid a reoccurrence.

- 8) **Question:** *“Has Frontex considered publishing the Final Return Operations Reports on its website, if necessary with redactions of confidential information?”*

Frontex answer: Frontex publishes on the website basic information related to the concluded joint return operations (<http://frontex.europa.eu/operations/archive-of-operations/>), but not the Final Return Operation Reports, which are sent by OMS to Frontex after the JRO accomplishment.

- 9) **Question:** *“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?”*

Frontex answer: Monitoring is an obligation for the Member States that in accordance with Article 8(6) of the Return Directive shall provide for an effective forced-return monitoring system.

In accordance with Article 9(1a + 1b) of Frontex Regulation the Agency developed a Code of Conduct for joint return operations that applies during all joint return operations coordinated by the Agency. In particular, the Code highlights the obligation of Member States to provide for an effective forced-return monitoring system. Furthermore, pursuant to the above mentioned provisions, the monitoring of joint return operations should be carried out on the basis of objective and transparent criteria and cover the whole joint return operation from the pre-departure phase until the hand-over of the returnees in the country of return.

With reference to existing practice, the monitoring systems established in the Member States have a different scope and include different independent entities. The nature of the monitoring is also carried out differently. In some Member States all operations are physically monitored while in other Member States the monitoring is carried out ex post or ad hoc.

In this regard, it must be clarified that the European Commission’s Communication 2014 refers to the absence of “physical presence” of monitor on the half of the JRO. This does not mean that half the JRO were not monitored, in accordance with the national legislation of the OMS or the PMS. The practical implementation of monitoring of a joint return operation is therefore dependent on the system established in the Member States.

In 2013, in 51 % of the joint return operations a monitor was physically present on-board the aircraft, which in 2013 was increased to 60 %.

Frontex uses appropriate channels - like the regular meetings of the Direct Contact Points in Return Matters (DCP) - to encourage MSs active application of their responsibility.

Additionally, when establishing the Specific Financial Decisions for joint return operations, Frontex includes the financing costs for monitors which aims to encourage the Member States providing for a monitor to be physically present during the operation in accordance with their national monitoring system.

Frontex does not have any mandate to evaluate the Member States' monitoring systems (this is within the mandate of the European Commission), or to force a Member State to physically monitor a joint return operation coordinated by Frontex if its national monitoring system does not require it to do so.

Frontex obligation is to ensure that the assistance and the coordination of JRO is subject to the return policy of European Union and in particular the Return Directive - whereas the Member States have to provide for the forced-return monitoring system. In cases where based on a COM evaluation some Member States would fail to meet this condition, this situation could ultimately lead to postponement or cancellation of the participation of the respective MS in the JRO.

- 10) **Question:** *“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?”*

Frontex answer:

The implementation of Article 14 and in particular the compliance with the privileges of the monitors is ensured during the briefing where, in the presence of all participants, including the escorts, the content of the provision, in particular, the right of monitors access to returnees and the unimpeded access to all areas used for the JRO is pointed out and underlined.

The inclusion of monitors' observations in the Frontex Final Evaluation Reports on JROs is ensured by the monitors' participation in the debriefing after the hand-over of returnees (Article 14(3) of the Code) and his/her comments in OMS Final Return Operation Report. Of course statements of monitors (verbal or written) are included, in case there are such particular statements made.

- 11) **Question:** *“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?”*

Frontex answer: ICMPD runs the project called “Forced Return Monitoring” (FReM) with the objectives to create a European pool of independent forced return monitors and their availability to other Member States' and to set out guidelines to be used by the monitors and to carry out training.

Frontex takes part with observer status in the project and at the same time provides a significant contribution to the project development, the guidelines and the training of monitors that will form the pool of European monitors within the ICMPD project.

Frontex supports the participation of a monitor from each participating Member State in all joint return operations. Frontex also supports the presence of several monitors from

various Member States in one JRO and thus supports the exchange of information and best practice amongst them.

In the past Frontex also invited monitoring bodies from several Member States to the meetings for Direct Contact Points in Return Matters (DCP). During DCP meetings, among other topics is the evaluation and planning of JRO, Frontex repeatedly encourages Member States to provide monitors for the whole JRO.

As mentioned above, the different MSs regulations on the use of force and means of restraint make it challenging for monitors of a MS to monitor escort behaviour of another MS. In any event, the Code of Conduct establishes clearly that JROs should be monitored and MS agree and understand these requirements.

- 12) **Question:** *“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?”*”

Frontex answer: Frontex expects that every monitor present should report on all monitored situations regardless of which Member State the monitor is representing.

In the past few years, Frontex explored the possibility for making arrangements with an independent body that would monitor certain JROs coordinated by Frontex on behalf of the Member States. For that purpose Frontex proactively approached FRA, UNHCR and CPT and initiated meetings with them in order to discuss the mentioned topic. This work is still ongoing.

Furthermore, in connection with Article 14(5) of the Frontex Code for JROs Frontex raised the issue of one monitor performing monitoring on behalf of other Member States. Frontex encourages the Member States to use this option, which can contribute to building trust among the MSs.

- 13) **Question:** *“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. 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?”*

Frontex answer: It is the obligation of the Member States to monitor enforced returns and therefore also the possible monitoring of the reception in the country of return. Article 9 (1b) of Frontex Regulation stipulates only monitoring of JROs (from the pre-departure phase until the hand-over of the returnees in the country of return), not the reception of returnees in the country of destination.



EO Own Initiative Inquiry IO /9/2014/MHZ

Annex: Fundamental Rights Officer contribution

Question 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?

The Frontex Fundamental Rights Officer (FRO) welcomes the request to contribute to the European Ombudsman inquiry concerning Frontex Joint Return Operations (JROs). Since her appointment, the FRO has been actively engaged with the Frontex Return Operations Sector and other return related activities on a regular basis, and has participated in several JROs. The following annex provides an overview of the activities and support provided by the FRO to Frontex JROs.

1. Mandate and tasks of the Frontex Fundamental Rights Officer

The overall objective of the work of the FRO is to ensure the respect and promotion of fundamental rights in all Frontex activities, with focus on operations. The FRO mandate is both a pro-active and reactive one as it comprises both the prevention of fundamental rights breaches and adequate reaction when allegations of such violations occur. In general terms, the tasks of the FRO include, inter alia, making observations on joint operations and pilot projects coordinated by Frontex; contributing to an effective mechanism for monitoring respect for fundamental rights by regular reporting and monitoring activities of Frontex, including field visits; identifying possible preventive and corrective measures; addressing possible fundamental rights incidents that may occur in joint operations and pilot projects; setting up and maintaining a record of possible fundamental rights incidents in the course of Frontex operations and pilot projects; monitoring and analysing the implementation of the Frontex Fundamental Rights Strategy¹; and contributing to other fundamental rights issues in Frontex. Thus, the FRO is both a support for Frontex to establish an effective monitoring system for fundamental rights in its activities² and a tool within the system.

The FRO is independent in the performance of the duties and reports regularly to the Management Board, the Consultative Forum and also supports the Frontex Executive Director on fundamental rights matters.

Related to the specific field of work of the EO own inquiry, the monitoring of forced return operations is a specific tool that strengthens the mechanism for reporting and following up on fundamental rights matters. It aims at supplementing the internal reporting during JROs coordinated by Frontex and incidents through direct presence of FRO in joint return operations coordinated by Frontex and the revision of JRO evaluation reports, including the so called "collecting JROs"³.

¹ Available at http://frontex.europa.eu/assets/Publications/General/Frontex_Fundamental_Rights_Strategy.pdf

² As mandated by Article 26 a) of the Frontex Regulation as amended in 2011

³ Flights were the destination countries arrive with their escorts to the EU and brings returnees to the country of origin, see relevant additional information included in the Frontex response.

The Code of Conduct for JROs (CoC JRO)⁴ clearly states that the monitoring of joint return operations aims at gathering information and ensuring they are conducted in a humane manner and in compliance with fundamental rights. Both the Frontex Regulation⁵ and the CoC JROs state that monitoring must be carried out on the basis of objective and transparent criteria and cover the whole operation from the pre-departure phase until the hand-over of the returnees in the country of return or back to the country of departure.

2. FRO participation in JROs

a. Monitoring JROs

Preparation of JROs

The FRO has free and full access to the calendar of JROs and decides to be present and monitor any JRO coordinated by Frontex when necessary or adequate, thus contributing to ensure fundamental rights compliance. In practice and when feasible, the FRO tries to prioritise those JROs where there is no monitor present during flight, and during 2014, the “collecting JROs” during pilot stages.

During JROs

In order to guarantee monitoring activities with effectiveness, the CoC JROs, which is annexed to the Implementation Plan of all JROs, allows for all monitors to have access to all relevant information concerning the JRO as well as to the returnees and other participants and to all areas used for the operation. Therefore, the FRO observes the briefings prior to the JRO and participates in the debriefings to provide a brief account of the main findings if any. As it is the principle for all monitors participating in JROs, the FRO may inform the Frontex representative, the head of operation and/or the escort leader(s) of any perceived irregularities but may not interfere with the planned execution of the operation.

The FRO monitoring activities focus on the support Frontex provides to MSs in the organization of JRO and it does not replace or substitute the national obligation of all EU MS to provide for an effective monitoring system during their return operations. FRO does not have the staff and resources by herself to monitor an average of 40-45 return flights per year.

Evaluation of JROs

The FRO receives all Evaluation Reports from all Joint Operations. When the FRO has participated in the JRO, she writes her mission report and submits it to the JOU/Return Operations Sector (ROS) for information and discusses observations and recommendations with the officers involved and, if/when needed, also with the Frontex management.

When the FRO has not taken part in a JRO, the FRO receives the Evaluation Report of the JRO and performs a desk review *a posteriori*. Sometimes, reports include a quote with the recommendations from the -national- monitors present during the flight. However, the FRO does not directly receive the reports from the national monitors, although this has been requested by the FRO.

Other activities regarding JROs

Frontex has devoted considerable efforts in developing training material in fundamental rights for border guards at all levels with the support of external experts from international organizations, EU agencies, NGOs and academia, as well as from MSs. Further efforts to mainstream fundamental rights in all other trainings and briefings provided by Frontex are foreseen.

⁴ Available at http://frontex.europa.eu/assets/Publications/General/Code_of_Conduct_for_Joint_Return_Operations.pdf

⁵ Available at <http://frontex.europa.eu/about-frontex/legal-basis>

With a view to increasing knowledge and understanding of the role of Frontex in JROs, the FRO participated in the Escort Leaders Training organised by Frontex. This experience served to consolidate concepts, to cross checking them with practical experience when monitoring JROs and to assess the need to expand certain aspects of the best practices in JROs which were observed in practice. In this sense, the FRO also met with various doctors participating in JROs to discuss the challenges and needs in this crucial field to ensure fundamental rights during JROs and to support the exchange of medical information among doctors prior to embarkation to ensure their preparedness.

The FRO has sporadically briefed and trained escort officers and escort leaders from third countries that will take part in the “collecting” JROs (Albania and Georgia). The FRO has also been very active in the ICMPD Forced Return Monitoring Project (FRoM) project, advising on fundamental rights matters at stake during JROs from a European and international law perspective, together with the Return Operations Sector.

The FRO participated in the drafting process and in the consultations with the Frontex Consultative Forum on Fundamental Rights (CF) and MS on the CoC for JROs. Furthermore, the FRO has been actively participating in various events with the aim to disseminate the fundamental rights aspects included of the CoC JRO, mainly at EU level.

The FRO also has regular contact with the Fundamental Rights Agency and other international organisations (CoE, UN, etc) on this matter. The FRO has also established contact with the European network of national human rights institutions (ENHRI), and some national preventive mechanisms of torture in several MSs with a mandate to monitor return operations for exchange of experiences and ideas as the matter is increasingly under development. The FRO suggested to Frontex to actively include monitoring mechanisms from third countries (i.e. Ombudsman) in the training of escorts participating in collecting JROs to ensure monitoring of flights under national law as well as the EU MSs monitoring mechanism in these specific operations.

3. Main findings and conclusions

The FRO has never received a complaint or a Serious Incident Report alleging violations of fundamental rights during a JRO coordinated by Frontex since her appointment. Therefore, participation in JROs has so far served the purpose of learning how JROs are organised and carried out, as well as identifying potential critical issues and best practices during the operations from the perspective of the Frontex mandate.

In this sense, for instance, the participation of children in JROs is of crucial interest and concern. The upcoming revision of the Best Practices for JROs represents an excellent opportunity to provide more fundamental rights guidance in this respect. For instance, the FRO has observed a variety of embarkation and boarding methods among MSs of families with children and has discussed ways to minimise the risk of impact of the operations and avoid any potential exposure to use of force during JROs. Frontex has so far not allowed participation of unaccompanied minors in JROs, even before FRO’s appointment, and the FRO supports this approach in light of the best interests of the child principle.

Another matter of attention for enhancement in the revision of the Best practices is the possibilities of harmonisation of medical support and exchange of medical information prior to JRO. The doctors on all flights observed and reported that they would benefit from more coordination among them prior to the JRO in order to know the general health status of the returnees on the flight, irrespective of the MS ordering their removal.

Following the recommendation of the Fundamental Rights Agency and other institutions and organizations, the FRO intends to continue using every opportunity to encourage national human rights institutions and other monitoring mechanisms to start or to continue monitoring JROs in order to enhance the transparency and accountability of law enforcement authorities participating in Frontex coordinated JROs. The receipt of monitoring reports from those monitors participating in JRO in Frontex would also benefit the process of enhancing fundamental rights compliance during JRO, as recommendations and best practices observed by national monitors could be regularly discussed at experts meetings and fora. In spite of the challenges of references to national laws and practices, the FRO considers that the submission of monitoring reports of JROs by the monitoring systems -either to Frontex or to the FRO or both- would result in the enhancement of existing standards for all JROs. The lack of monitoring system in some MSs clearly affects the work load and monitoring capacity of the FRO and the obligation of Frontex to ensure compliance with fundamental rights in all its activities.

In conclusion, the FRO has not experienced any obstacle in accessing files, meetings or information related to Frontex coordinated JROs to date. Furthermore, she has participated in operations and has received numerous requests to attend meetings and provide contributions on internal documents and external projects on this matter. The FRO is confident that increased monitoring systems and exchange of best practices among all stakeholders will yield more humane return operations in full compliance with fundamental rights.

Warsaw, 15 January 2015



Inmaculada Arnaez
Frontex Fundamental Rights Officer