



Defensora del Pueblo



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Soledad Becerril

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Defensor del Pueblo
REGISTRO

Ms. Emily O'Reilly
European Ombudsman
1 Avenue du President Robert Schuman B.P. 403
67001 Strasbourg

Fecha: 06/11/2014
Salida: 14111111
Expte.: 14021522

Dear Ms O'Reilly,

I congratulate you on your own- initiative inquiry about the role of FRONTEX in joint repatriation flights. Let me tell you in case it might be of interest, that we have already conducted several enquiries on this issue in our capacity as National Mechanism for the Prevention of Torture. The Ombudsman has been closely monitoring the procedure for repatriations since 2007.

On that year, an enquiry was opened to meet the circumstances of the death of a foreign national during a repatriation flight. Also other enquiries were conducted about legal proceedings investigating possible ill-treatment during the repatriation of other foreign nationals. The investigation concluded in 2010 into the alleged mistreatment of a foreign national who resisted repatriation, with photographs being posted on the internet. In view of these cases, note has been made of the need to reinforce aspects of the protocol for the police procedure involving the repatriation of foreign nationals by sea and air as regards the techniques of physical restraint used. After seeing the pictures and receiving official information, the Ombudsman did not approve of the behaviour of one police officer who placed a foot on the back of the person being repatriated, at a time when this person was already bound by the feet and hands. Mention should also be made of the recommendation made on 17 July 2008, which was accepted by the Spanish police, whereby a request was made for the amendment of the Resolution of 1 October 2007, of



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the aforesaid body, on the repatriations and transfers of foreign nationals by sea and air.

Following a comparison between this resolution and the common guidelines on security measures in group expulsions by air, contained in the Council Decision, of 29 April 2004, as well as a review of the conclusions reached by the CPT on the deportation of foreign nationals by air [GR 13 (2002-2003), sections 27 to 45, and especially 36], a request was made for the amendment of section 4.3.9 whereby it would specifically mention that any coercive measures should not hinder or endanger the ability of the person being repatriated to breathe normally, with total prohibition of the use of any measure that might block the respiratory pathway. In addition, a request was made to prohibit any measure for depriving the persons being repatriated of the ability to see or hear.

In 2010, we monitor the first repatriation flight from Madrid to Morocco. Since 2011, we published in NMP Annual reports all incidents reported by the police on these flights and we compare them with those which have been reported to our Institution as National Ombudsman.

In 2012, we participated in the workshops organized by the Council of Europe under the European NPM Project and we carried out the monitoring of two flights. The first one, operated by FRONTEX and organized by Netherlands to Nigeria. The second flight, organized and exclusively operated by the Spanish authorities to Ecuador and Colombia. The joint FRONTEX flight was the first of its kind, with operations of the Pre removal phase was carried out at the Madrid-Barajas airport being supervised by experts of the Ombudsman Institution in its capacity as NPM.

In 2013, we monitored for the first time the three phases in a FRONTEX flight: Pre removal, in flight and arrival. The flight was organised by Spain destination to Colombia with a scale in Equator. A forensic doctor was member of the Spanish monitoring team in order to pay specific attention to monitoring the medical aspects of the removal including the need for the pre-removal medical assessment, the adequate competence and independence of



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the doctors involved and ensuring that communication channels are established between the doctors and detainees pre-and during removal.

The complete conclusions of the monitoring are available at our website...

Finally I would like to highlight those issues which in the opinion of this institution need to be addressed in greater depth, following the findings of the aforementioned European NMP Project of the Council of Europe:

- 1. Fit to fly? The role of the monitoring doctor during the removal process: Medical assessments pre (and post/failed) removal, Medical and general healthcare considerations during the removals process: General medical and healthcare considerations from the perspective of the clinician accompanying the removal.**
- 2. Use of force during the removal process: Measures of control and restraint, Staffing issues concerning the removals process, Use of Chemical Restraints**
- 4. The mandate to monitor removals: the NPM mandate and the EU Returns Directive**

Best regards,