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European Ombudsman
Ms Emily O'Reilly
1 avenue de President Robert Schuman
CS 30403
F-67001 Strasbourg Cedex
eo@ombudsman.europa.eu

Dear Ms O'Reilly,

I refer to your letter ref. no. OI/9/2014/MHZ in connection with the operation of Frontex and its respect for fundamental human rights in the case of group returns of aliens.

In this context I would like to note that in 2011, the Human Rights Ombudsman of the Republic of Slovenia (referred to below as "the Ombudsman") drew attention to the need of Slovenia to ensure an effective system of monitoring forced return in accordance with Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (the Returns Directive). This need was again pointed out in our 2012 and 2013 Annual Reports.

According to Article 159 of the Slovenian Constitution, the responsibility of the country's Human Rights Ombudsman is to protect human rights and fundamental freedoms in relation to Slovenian state bodies, local self-government bodies and holders of public authority. The Ombudsman may, within the competences and powers of office, examine possible irregularities after attention has been drawn to them (after the Ombudsman has been petitioned to begin a procedure) or where they have actually been detected by the Ombudsman (initiating procedure on the Ombudsman's own motion) and for this reason the Ombudsman, within his/her competences and powers, cannot ensure an effective system for monitoring forced return as laid down in the above-mentioned Directive.

Within the scope of his/her powers, in particular in the role of a national preventive mechanism, the Ombudsman has already (also) been monitoring police procedures (which may include procedures related to deportation of aliens). This means that in locations of deprivation of liberty, the Ombudsman, on a regular basis, checks the treatment of persons who have been deprived of liberty in order to enhance their protection against torture and other forms of cruel, inhuman or degrading treatment or punishment. In this respect, this is the exercise of powers delegated to the Ombudsman under the Act of Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Uradni list RS (Official Gazette of the Republic of Slovenia), no. 114/06 – International Treaties, no. 20/06, MOPPM) and not under the aforementioned Directive (which is, by date of formation, a later legal act). In our opinion, the mere fact that the Ombudsman, within the implementation of his competences and powers of a national preventive mechanism may also monitor the possible forced return of aliens, in itself does not mean that by doing so the Ombudsman is also fulfilling tasks under the aforementioned Directive, which clearly obliges Member States to ensure an effective system of monitoring the forced return of aliens.

Moreover, the system of monitoring the forced return of aliens should not merely present an opportunity to monitor the legality and regularity of any particular procedure but should include many other tasks that should be carried out regularly, which all requires an adequate legal basis. Periodical monitoring, currently carried out by the Ombudsman, does not meet these requirements; for this reason, we will monitor possible forced returns in compliance with our competences and the powers of a national preventive mechanism or Ombudsman. At this moment, we are preparing to carry out these tasks.

Considering that Slovenia has not yet fulfilled its obligations under Article 8(6) of the Directive, we invited the Ministry of the Interior, which is competent for legislation in connection with aliens, to adopt all the measures required to meet this obligation. We saw a possible solution for transposition of the aforementioned Directive into our legislation in non-governmental organisations which have already been involved in legal protection of aliens, as is clearly the practice in some other EU Member States.

The legislator followed up on our proposal. The Act Amending the Aliens Act (Uradni list RS (Official Gazette of the Republic of Slovenia), no. 26/14, ZTuj-2A), supplemented Article 69 of the Aliens Act with new paragraphs 5, 6 and 7. The Act now provides that the police, on the basis of a public call for applications, shall conclude a written agreement on monitoring the deportation of aliens with the selected non-governmental organisation or other independent institution or body. In Slovenia, monitoring the deportation of aliens will be carried out by a selected non-governmental organisation or other independent institution or body, together with all the police activities intended for deporting an alien from the state, including the period before departure, during the flight or other means of travel, transit stays, arrival and reception of the alien in the country of return. The Act also provides that the findings of the chosen organisation, institution or body referred to in the preceding paragraph, indicating violations of human rights and fundamental freedoms, will be dealt with by the police in the complaints procedure provided in the Police Tasks and Powers Act.

According to the information in our possession, the public call for applications from organisations for monitoring the deportation of aliens is about to be published. Once an organisation is selected, the Ombudsman will discuss the possibilities of cooperation with the selected organisation and, in particular, monitor its work.

In general, we believe that in monitoring the deportation of aliens the coordinated operation of all control mechanisms is required to prevent duplication of effort, through exchange of information and agreements on effective monitoring of these procedures.

Yours sincerely,

Vlasta Nussdorfer
Ombudsman

