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Date d'arrivée

FOLKETINGETS
OMBUDSMAND



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Re: Your letter of 20 October 2014

11-12-2014

Dear Ms. O'Reilly,

Doc. No. 14/04870-3/KKH
Please quote with enquiries

Thank you for your letter of 20 October 2014 informing me of the own-initiative inquiry concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JROs).

Personal enquiries: 10:00-14:00

With reference to your letter and to a conversation that one of my employees had with Mrs Marta Hirsch-Ziembinska on 27 November 2014, I will hereby provide you with information about the Danish monitoring system and our experience so far. I will also describe the two cases where employees of the Ombudsman accompanied "Danish" returnees in a Frontex JRO. Finally, I will inform you of my views in relation to the potential for further cooperation among monitoring bodies.

Enquiries by phone:
Monday-Thursday 9:00-16:00
Friday 9:00-15:00

General description of the Danish monitoring system and our experience so far

The Danish Parliamentary Ombudsman was, with effect from 1 April 2011, charged with the responsibility of monitoring removals of citizens of third-countries (non-EU countries) staying illegally in Denmark¹. This was a consequence of the fact that the Danish Parliament in 2011 adopted an amendment of the Danish Aliens Act implementing the EU Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (The Return Directive).

In Denmark, it is the police that are responsible for foreigners' departure from the country when their departure is not voluntary. Before the adoption of the

¹ In the EU Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (The Return Directive), the concept "removals" and "forced returns" are used. In this letter, I will be using the concept "deportations" as a synonym for these concepts.

amendment of the Danish Aliens Act, there was no separate monitoring of police activities in connection with deportations.

The monitoring

According to the Danish Aliens Act, the monitoring must be of a general nature. Thus, actual complaints about the behaviour of individual police officers are not to be processed as part of the Ombudsman's monitoring activities. Such complaints must be considered by the relevant complaint bodies.

In accordance with the general rules of the Danish Ombudsman Act, the Ombudsman may however take up matters on his own initiative and initiate a hearing on issues relating to a return operation.

The monitoring activities of the Ombudsman are two-folded. Firstly, each year the Ombudsman monitors a number of removals by being present during the forced returns. The selection of these removals is based on lists of planned removals which the Ombudsman receives from the police on a daily basis. The lists contain removals that are to be completed within a 14-day period. In addition, a practice has been established whereby the police inform the Ombudsman of certain types of removals, e.g. removals involving special chartered flights like the joint return operations organised by Frontex. The Ombudsman monitors the process from the time when the police decide to initiate a forced return up until the forced return has been carried out (i.e. the time when the deportee is entering the country of destination).

Secondly, once a year the Ombudsman reviews all the concluded removal cases of the previous year with the purpose of selecting a number of cases for further investigation. All cases where the police have been using coercive measures are selected, while other cases are being selected randomly. The selected cases are carefully examined in relation to issues like, for example, the use of force, persons belong to vulnerable groups, unity of the family, the prior contact between foreign nationals and the police. The examination is especially focusing on documentation of these issues.

As a consequence of the general nature of the monitoring, the Ombudsman does not notify the persons whose removals are considered. Also, the Ombudsman is not allowed to intervene in the selected removals.

The removals to be monitored

The monitoring system in Denmark covers removals resulting from return decisions within the meaning of Article 6 of the Directive, i.e. deportations of rejected asylum seekers and deportations of persons without a valid residence permit. The monitoring system does not cover deportations resulting from sentences in criminal cases. Nor does it cover return decisions

within the context of the Dublin Convention. However, while the Directive only covers deportations of third-country citizens, the monitoring system in Denmark also includes removals of EU citizens in order to ensure that they are not in a worse position than third-country citizens.

In Denmark, the deportation of foreign nationals who do not depart voluntarily can either be carried out through a *monitored departure*, where the departure is monitored by the police, for instance when the foreign national boards a plane, or through an *escorted departure*, where the police escort the foreign national out of the country to his or her home country or a third-country where the foreign national is entitled to take up residence. The monitoring system includes both monitored and escorted departures.

The assessment

Pursuant to the Danish Aliens Act, and in accordance with the Return Directive, the Ombudsman is to ensure that police activities in connection with deportations are carried out with respect for the fundamental rights of the persons who are subject to forced returns. In doing so, the monitoring is especially concerned with issues relating to the dignity of the individual and the use of coercive measures.

The monitoring is carried out on the basis of the Danish Ombudsman Act. The Ombudsman must therefore assess whether the police act in contravention of applicable Danish law, including Denmark's obligations pursuant to EU law and international human rights conventions. Insofar as the Ombudsman carries out inspections pursuant to section 18 of the Danish Ombudsman Act as part of the monitoring role, he can also assess conditions from human and humanitarian perspectives. In carrying out the monitoring, the Ombudsman is also using the Twenty Guidelines of the Committee of Ministers of the Council of Europe on Forced Return from September 2005. Furthermore, the Ombudsman is also paying attention to the national guidelines on practical planning and implementation of escorted returns by air developed by the Danish National Police.

On this background, the cases are reviewed in relation to:

- use of force – e.g. is the use of force necessary and proportional?
- deportation of people belonging to vulnerable groups (such as children, single women, elderly people, people with disabilities, and people in poor health) – e.g. are the special needs of the deportees considered by the police in the planning of the deportation?
- unity of families – e.g. are all family members to be returned together?
- prior contact between the police and the deportees – e.g. what information is given to the deportees about the planned forced deportation?

- police security assessments of the return operation
- aborted deportations
- police deportation reports – e.g. is the forced return fully documented, in particular with respect to any significant incidents that occur or any means of restraint used in the course of the operation?

With regard to the use of detention in connection with forced returns, the general conditions of detention facilities are not monitored by the employees monitoring the forced returns. However, the Ombudsman monitors these detention facilities when acting as the Danish National Preventive Mechanism (NPM) according to the UN Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Also, it should be mentioned that, if a removal process includes the deprivation of liberty of the persons involved, then one of my employees should, as far as possible, be present when these persons are being deprived of their liberty.

How can the Ombudsman react?

The Ombudsman may use the response options laid down in Chapter 7 of the Ombudsman Act. He may thus criticise, recommend or otherwise state his opinion in a case. In addition to that, the Ombudsman may propose changes in the procedures or case processing in connection with deportations that fall within the jurisdiction of the monitoring system.

The reporting

Every year, the Ombudsman submits a report on his monitoring activities to the Parliament. The report is incorporated in the Annual Report of the Ombudsman, and the report is published. The latest annual report can be accessed by using the following link:

<http://beretning2013.ombudsmanden.dk/english/ar2013/>

The practical experience

By monitoring the removals, the Ombudsman has gained valuable experience which has had implications on the way the monitoring is organised. Firstly, it is the experience of the Ombudsman that the use of coercive measures is almost only occurring in removals involving an escorted departure. The police very rarely use force in connection with removals where the police monitor the departure. Secondly, it is the experience that the police mostly use coercive measures in the initial phases of a removal, i.e. when the foreign nationals are being picked up and taken to the airport and when they are boarding the plane.

Because of his experience in the matter, the Ombudsman in 2013 decided to focus on the removals where the police escort the foreign nationals, and in some of these removals to limit the scope of the monitoring to the time from when the police pick up the foreign nationals until boarding at the airport.

In the period from April 2011 to December 2014, the Ombudsman monitored 49 removals. 32 of these were escorted departures, and 17 were monitored departures.

In 23 of the 32 escorted departures, employees of the Ombudsman were present up until the time when the foreign nationals entered the country of destination. In the remaining 9 escorted departures, employees of the Ombudsman monitored the time from when the police picked up the foreign nationals until boarding at the airport.

The destination countries of the monitored departures have been Serbia, Lebanon, the Ivory Coast, India, Italy, Nigeria, Gambia, Russia, Uganda and Latvia. The escorted departures have been to the Democratic Republic of Congo, Nigeria, Afghanistan, Lebanon, Tunisia, Iran, Cameroun, Serbia, Russia, and Egypt. Two of the escorted departures were joint return operations to Nigeria organised by Frontex.

So far, the Ombudsman has not had grounds for expressing criticism of the way in which the police have carried out the removals. The deportations have been carried out with respect for the individual and without unnecessary use of force.

However, the Ombudsman has been criticising the Danish National Police for their insufficient documentation of the work in connection with forced returns. In a number of cases, the Ombudsman has found that the documentation did not comply with the recommendations of the international and national guidelines on forced returns. Moreover, in several respects the police did not comply with the Danish non-statutory principle on the obligation to take notes. Consequently, the Danish National Police have initiated a number of measures in 2013 in order to improve the documentation of the various administrative procedures in connection with deportation cases. Also in 2013, following a recommendation of the Ombudsman, the police have begun to make statistics on their use of coercive measures in connection with forced returns.

The cases where employees of the Ombudsman accompanied “Danish” returnees in a Frontex JRO

As mentioned, employees of the Ombudsman have monitored the Danish participation in two Frontex JROs to Nigeria.

The first one took place on 6 and 7 September 2011 from Vienna to Lagos and involved the removal of four Nigerian nationals who were escorted by 10 Danish police officers. In connection with the removal, the police officers used coercive measures in relation to three of the four persons. The use of force was deemed necessary and proportionate by the employee of the Ombudsman. One of the incidents took place on board the plane and involved the Austrian security back-up team on board. The incident was mentioned in the Austrian evaluation report of 20 September 2011.

The second removal was on 28 and 29 January 2014 from Madrid to Lagos. On this flight, three Danish police officers escorted one Nigerian national. The police did not use any means of coercion during this removal.

None of the two Frontex JROs gave the Ombudsman grounds for expressing criticism of the way in which the Danish police had carried out the removals.

My views in relation to the potential for further cooperation among monitoring bodies

In your letter of 20 October 2014, you mention that one of the objectives of the own-initiative inquiry is to promote effective cooperation (i) between national monitoring bodies and Frontex and (ii) among the national monitoring bodies. I welcome and support this objective. I believe that the exchange of standards and experience among monitoring bodies in this field has the potential of strengthening the quality of the monitoring and thereby ensuring respect for fundamental rights in relation to return operations.

The Danish Ombudsman has had informal contacts with monitoring bodies of Great Britain and Finland, and the Ombudsman has on several occasions responded to questionnaires from The European Union Agency for Fundamental Rights (FRA) and from the International Centre for Migration Policy Development (ICMPD) project on Forced Return Monitoring (FRoM).

I will be following your own-initiative inquiry concerning the means through which Frontex ensures respect for fundamental rights in joint return operations (JROs) with great interest.

Should you require any further information or clarification concerning this letter, please do not hesitate to contact Mr Klavs Kinnerup Hede (+45 20 44 75 84), Head of Section, Legal Adviser.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Steen Sørensen', written in a cursive style.

Jørgen Steen Sørensen