



Chancellor of Justice

Ms Emily O'Reilly
Euroopa ombudsman
eo@ombudsman.europa.eu

Your ref. 20.10.2014 No

Our ref. 08.01.2015 No 5-2/1504462

Re: Own-initiative inquiry concerning the means through which Frontex ensures respect for fundamental rights in joint return operations

Dear Ms O'Reilly,

Thank you very much for your letter concerning your own-initiative inquiry, how the Frontex (European Agency for the Management of Operational Cooperation at the External Borders of the EU) ensures that joint return operations respect the fundamental rights of the persons who are subject to forced returns.

In your letter you mentioned that one of the objectives of the own-initiative inquiry is to promote effective cooperation between monitoring bodies and Frontex and among the monitoring bodies themselves. You pointed out that you would be interested to find out the views of monitoring bodies whether greater cooperation among them would be feasible and desirable and could better results be achieved by avoiding duplication of monitoring bodies on flights. Secondly, you pointed out that given the important monitoring role played by the number of national ombudsmen offices, you were interested of the input from ombudsmen in the European Network of Ombudsmen as to their possible inquiries in relation to the monitoring of the return operations. Therefore you were interested in receiving my views in relation to the potential for further cooperation among monitoring bodies and whether I consider it feasible to launch an inquiry in this area in my own country, and any relevant information in this regard.

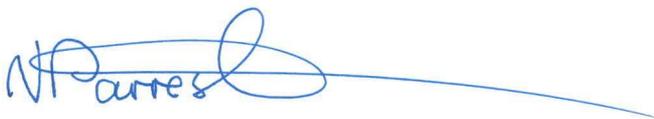
I would like to inform you that in Estonia the Ministry of the Interior has concluded an agreement with the Estonian Red Cross to carry out the task of monitoring the expulsion of the foreigners under the Directive 2008/115/EC of 16 December 2008, on common standards and procedures in Member States for returning illegally staying third country national. Therefore, the Chancellor of Justice has not been actively involved in monitoring how the expulsion is carried out in concrete cases. However, the Chancellor of Justice has the power as an ombudsman to supervise the activities of the Police and Border Guard Board and this power concerns also monitoring the expulsion. I would like to inform you that I have carried out proceedings concerning the expulsion proceedings (e.g. implementation of the principles of the Directive 2008/115/EC, right to be heard, access to medical aid and supervision of the health condition of the returnee, use of the means of restraint). I am also considering to initiate an inquiry to find out information about the work of the Estonian Red Cross as a monitoring body, their

recommendations to the Police and Border Guard Board and to the Ministry of the Interior and how these recommendations have been implemented in practice.

I am also considering to analyse whether the legislative framework to grant the tasks of the monitoring body as set forth in the Directive 2008/115/EC to a private entity are in compliance with the Constitution and the directive. I would like to point out that according to Article 6⁴(1) of the Obligation to Leave and Prohibition of Entry Act¹ the purpose of monitoring the expulsion of an alien is to observe the compliance of the exercise of expulsion of an alien with the procedural requirements and provide opinions and recommendations on the exercise of the expulsion to the Ministry of the Interior. For this purpose the Ministry of the Interior, the Police and Border Guard Board or the Security Police shall conclude an agreement with an agency or a legal person governed by private law. According to Article 6⁴(3) an agency or a legal person governed by private law that is exercising the monitoring of expulsion of an alien has to be reliable and have the knowledge and skills required for assessment of the legality of the removal arrangements of an alien. Thus, I would be interested to find out if these provisions are sufficient to meet the requirements of Article 8(6) of the Directive 2008/115/EC according to which the Member States have to provide for an effective forced-return monitoring system. Therefore, I would appreciate it very much if you could point out any information about whether it has been defined in any documents of the European Union in more detail which requirements have to be met to consider the monitoring system effective and independent.

I would be very pleased if you could inform me about your work and any opinions concerning the issue of monitoring the forced return operations and I would also be interested in participating in future cooperation among the monitoring bodies.

Yours sincerely,



Nele Parrest
Deputy Chancellor of Justice
on behalf of the Chancellor of Justice

¹ The text of the Obligation to Leave and Prohibition on Entry Act is available in English at: <https://www.riigiteataja.ee/en/eli/519092014004/consolide>.