

Dear Emily

I am attaching my reply in respect of your Own-Initiative Inquiry OI/9/2014/MHZ concerning the means through which Frontex ensures respect for fundamental rights in joint return operations.

My Office is always at your disposal should you require further clarifications or assistance.

Your sincerely

J Said Pullicino
Parliamentary Ombudsman



Reference is made to your correspondence dated 28th October 2014 whereby you notified us of your Own-initiative Inquiry regarding how FRONTEX ensures that the Joint Return Operations (JROs) respect the fundamental rights of those individuals subject to forced returns.

This Office is aware that over the past years considerable progress was made towards putting in place a consistent legal framework for return measures in Member States across the Union, particularly with the adoption of the Return Directive which was transposed into Maltese law by means of Legal Notice 81 of 2011, the Return Regulations, entitled “Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations”. It is also aware that the FRONTEX Agency played an important role as a vehicle for promoting joint return operations coordinating 209 Joint Return Operations between 2006 and 2013 and providing standardised training for return officers focusing on safeguarding returnees’ fundamental rights and dignity during forced returns.

Unlike some Ombudsman Offices in other European countries, the Office of the Maltese Parliamentary Ombudsman is not the body responsible for monitoring detained persons who are subject to a Removal Order. In fact, in terms of Legal Notice 251 of 2012 ¹ the Board of Visitors for Detained Persons is empowered to “*monitor the proceedings relating to the involuntary return of illegally staying third country nationals in accordance with the provisions of the Immigration Act and of the Common Standards and Procedures for Returning Illegally Staying Third-Country Nationals Regulations.*” This Board is a government appointed board, appointed annually by the Minister responsible for immigration and is currently composed of four persons who have no legal background or legal qualifications. It is chaired by Ms Mary Anne Agius.

My Office is not at all satisfied with the obtaining institutional set up by which monitoring of actions of the public administration is entrusted to a government appointed body, without any guarantees regarding its independence and autonomy. While I have no reason to doubt the competence and integrity of the members of the Board of Visitors for Detained Persons that does sterling work in its field, I believe monitoring government actions, including JROs, should be entrusted in the hands of an independent authority. In this respect, I have recently formally proposed to government to appoint a Commissioner for Disciplined Forces and Persons deprived of their Civil Liberty within my Office on a par with the other Commissioners who

¹ Board of Visitors for Detained Persons (Amendment Regulations)

audit Health, Education and Environment and Planning. These Commissioners form an integral part of my Office and like the Parliamentary Ombudsman, are Officers of Parliament. If the proposal is accepted this Commissioner will be entrusted with the monitoring of JROs, in collaboration with the Board of Visitors for Detained Persons.

This having been said, even if the Office of the Parliamentary Ombudsman is not the local Monitoring body it has the remit to investigate any complaints lodged by migrants where it is alleged that their fundamental human rights have been or are likely to be breached and can also investigate actions of or decisions taken by the Board of Visitors for Detained Persons since the jurisdiction of the Ombudsman extends to the investigation of complaints about any decision, action or lack of action, by public authorities such as government departments, statutory bodies, corporations, agencies and foundations, local councils, as well as partnerships and other bodies where the Government has an effective controlling interest in the exercise of their administrative functions on behalf of Government.

In view of the above, and so as to reply to this enquiry, this Office met with the Chairman of the Board and one of the Board members so as to discuss the operation of the monitoring procedure in Malta. This Office was informed that no member of the Board has ever monitored a flight with returnees. The local Board however monitors the conditions of the premises in which the prospective returnees are kept and the well-being of the said returnees before they actually depart Malta. The Board also visits the local detention centres. The Chairman explained that two members of the Board have received training last year through the project run by the International Centre for Migrations Policy Development (ICMPD) in Brussels for them to be able to fulfil their role as the inbuilt control mechanism for day-to-day return practices.

This Office considers that a common EU approach to the return of irregular migrants is crucial and central to a common immigration and asylum policy. In my opinion, cooperation among monitoring bodies is not only desirable but vital for JROs to fully respect the fundamental human rights of returnees. While the Directive has contributed to promote respect for fundamental rights, created fair and efficient procedures and resulted in a reduction of cases in which migrants are left without a clear legal status, the Commission itself has noted that there are still a number of shortcomings, particularly those relating to detention conditions and the set-up of independent forced return monitoring systems.

Moreover, in some Member States, amongst which Malta, there is the need for a more systemic use of alternatives of detention and the promotion of voluntary departure. I consider that cooperation between monitoring bodies is achievable and will certainly avoid situations where some return operations are monitored by a number of monitors, while other flights do not have sufficient or any monitors on board. However,

observing common standards when monitoring, is the only effective manner to ensure the protection and full respect of the fundamental rights of the returnees.

It is my opinion, this cooperation is being favourably enhanced by the EU-financed project run by the International Centre for Migration Policy Development which seeks to harmonise the different approaches to monitoring taken by Member States. This is particularly important since this project is developing transparent criteria and common rules to be followed by monitors and will provide a pool of independent monitors to Member States which may be used in JROs. As stated earlier members of our Monitoring Board have already benefitted from the training offered by the ICMPD and will thus be adept at carrying out such delicate duties and be present on JRO flights leaving Malta.

Effective cooperation between monitoring bodies of various EU States also renders these operations much more cost effective. A case in point would be the possibility of reducing the number of monitors on the same flight or staggering a flight between departure points, having different monitors covering parts of the same flight. However, this would only be acceptable and possible if common standards are set on the required minimum levels of human rights protection. Centralised training for monitors need to be carried out to ensure intra-national effective monitoring procedures. I believe that steps are being taken at EU level in this direction to promote such initiatives.