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Date d'arrivée

Response to questions related to own-initiative inquiry OI/9/2014/MHZ

Dear Ms O'Reilly,

Thank you for your query of 20 October 2014 related to your own-initiative inquiry into respect for fundamental rights in joint return operations (OI/9/2014/MHZ). Please accept my apologies for this late response.

Before responding to your questions, I need to clarify the role of the Swedish Parliamentary Ombudsmen in forced return monitoring. We, as the Parliamentary Ombudsmen, have the power to monitor forced returns organized by Swedish authorities. However, we do not consider ourselves as fulfilling the role of "an effective forced-return monitoring system" as envisaged in Article 8 (6) of the returns directive 2008/115/EC. To date, we have neither participated as an observer in any joint return operations (JROs) or any other forced returns organized by Swedish authorities, nor have we been invited to participate or informed of the dates of JROs in advance by Swedish authorities. Consequently, we have not entered into any discussions or other forms of cooperation with Frontex regarding monitoring of joint return operations. As a matter of fact, as far as my office is aware, no observers from other Swedish public monitoring bodies or civil society organizations have ever observed a JRO or any other kind of forced return operation organized by, or with participation from, Sweden.

The Parliamentary Ombudsman's position on its role in return monitoring in accordance with the returns directive was made clear to the Government of Sweden before the implementation of the directive through comments submitted by my former Ombudsman colleague, Mr. Hans-Gunnar Axberger, to the government. He stressed, *inter alia*, that the extraordinary oversight offered by the Parliamentary Ombudsmen did not come close to fulfilling the requirement of an effective monitoring system set out in Article 8 (6).¹ These views of the Parliamentary

¹ Reg. no. 4081-2009.

Ombudsmen were partially taken on board by the Government of Sweden and Parliament. In the bill on implementation of the returns directive, the Government of Sweden argued that there was no need for legislative change or other measures in order to live up to Article 8 (6). According to the Government, an effective forced-return monitoring system was already in place through the existence of various bodies with a role in monitoring, including the Parliamentary Ombudsmen, the Chancellor of Justice, the National Police Board, civil society etc.²

I would like to clarify that we are not ruling out that the Parliamentary Ombudsmen's offices in the future might undertake monitoring of forced returns through inspections of e.g. return flights. However, in that case, it would most likely be undertaken in our role as a national preventive mechanism (NPM) under the Optional Protocol to the Convention against Torture, OPCAT.

I will now get the questions you posed to us in your letter.

Potential for further cooperation among monitoring bodies

Yes, there is a potential for further cooperation. Exchange of experiences and information would be valuable, but I believe that such cooperation should be accompanied by a discussion of prospective monitors aimed at clarifying the roles and responsibilities for monitors from various countries during JROs.

For example, any future inspection of a JRO that the Parliamentary Ombudsmen's Office might undertake in our NPM role would necessarily have a focus on decisions and actions of Swedish public servants in upholding Swedish law during the operation, i.e. all actions and decisions of agents of other governments could most likely not be monitored or reported on. Consequently, it is hard to imagine that "representative monitoring" as envisaged in the Frontex Code of Conduct Article 14 (5) would be feasible for an actor with a mandate similar to ours. If a "one-monitor-per-flight" principle were to be agreed upon, the assigned monitor's mandate and authority therefore ought to be as comprehensive as possible.

The possibilities to launch an inquiry

We believe that the inquiry initiated by you will be a very useful tool for us and other oversight bodies and monitors in Europe, and look forward to read the responses that are to be submitted to you by monitors and by Frontex.

² Govt. Bill 2011/12:60 p. 41-42. NB: The National Police Board, the former main governing body of the Swedish police force, had oversight powers but was disestablished on 1 January 2015 in connection with a comprehensive reorganization of the entire Swedish police force.

For your information, our office has been following issues surrounding migration and forced returns issues quite carefully in the past. Ombudsman Axberger ran a project involving inspections of all detention centres for foreign nationals between 2009 and 2011.³ Some forced return complaints have involved issues such as forced return to the wrong country.⁴ A 2009 decision, that stressed the need to execute a decision of deportation as soon as possible when a person has been deprived of his or her liberty,⁵ has, according to a report by the National Police Board in 2013, been seen by some police as a possible obstacle to Swedish participation in JROs.⁶ We have also received some complaints and other reports concerning allegations of ill-treatment during forced returns. One such report, concerning possible ill-treatment that occurred during a Swedish chartered deportation flight to Iraq in 2009, led Ombudsman Axberger to start an own-initiative inquiry.⁷

For your information, the Swedish Prison and Probation Service (whose transport division is involved in return operations) has, following revelations by an investigative Swedish public radio programme in October 2014 of forced injections in connection with deportations from Sweden, recently submitted a complaint concerning these to the Swedish Health and Social Care Inspectorate. According to media reports, at least some of these alleged forced injections have also been reported to the police by the Prison and Probation Service. As far as I am aware, investigations into these reports are on-going.

You are welcome to forward this reply and publish it as you may see fit.

Yours sincerely,



Elisabet Fura

³ Reg. no. 6090-2009.

⁴ Reg. no. 6051-2010 involved the police escorting a man whose protection claim had been tried against Iran to Iraq without him expressing his consent to this.

⁵ Reg. No. 2411-2008.

⁶ National Police Board (Rikspolisstyrelsen), *Handläggningen av Polisens verkställighetsärenden i samband med avvísings- och utvisningsbeslut: Tillsynsrapport 2013:10*, p.37.

⁷ Reg. no. 3139-2009. Documents and reports from the authorities involved were requested but the Ombudsman did not see any reason to make a statement.