

## MORAIS BISMARQUE GASPAR Ana Gloria

---

**From:** Stefan Kessler <stefan.kessler@jrs.net>  
**Sent:** 01 April 2015 17:05  
**To:** Euro-Ombudsman  
**Subject:** RE: European Ombudsman invites your input to her inquiry on Frontex Joint Return Operations (OI/9/2014/MHZ)  
**Attachments:** 20150401\_JRS\_E\_Reply\_to\_EU\_Ombudsman\_JROs.pdf

Dear Madam,

Please find attached a letter with JRS Europe's answers to your questions.

Sincerely yours,  
Stefan Kessler

\*\*\*\*\*

Stefan Kessler  
Senior Policy & Advocacy Officer  
Jesuit Refugee Service Europe  
Rue du Progrès 333 / 2  
1030 Brussels  
Belgium  
Phone: +32 (0)2 250 32 21  
Fax: +32 (0)2 250 32 29  
Email: [europe.senioradvocacy@jrs.net](mailto:europe.senioradvocacy@jrs.net)  
WWW: [www.jrseurope.org](http://www.jrseurope.org)  
Skype: europe.senioradvocacy

Follow us on Twitter: <http://twitter.com/JRSEurope>  
[Our current campaign: Rescued - What next?](#)



---

From: Euro-Ombudsman [mailto:EO@ombudsman.europa.eu]  
Sent: 05 March 2015 09:14  
Subject: European Ombudsman invites your input to her inquiry on Frontex Joint Return Operations (OI/9/2014/MHZ)

Dear Sir/Madam,

I am contacting you to invite your feedback in the context of the European Ombudsman's own-initiative inquiry in relation to how Frontex ensures respect of fundamental rights in its Joint Return Operations (JROs).

### Background

In October 2014, the European Ombudsman [wrote to Frontex](#) with a series of questions about how it ensures respect of fundamental rights in its Joint Return Operations (JROs). The Ombudsman also wrote to

national ombudsmen within the European Network of Ombudsmen to ask about their experience as regards monitoring forced return flights, including JROs. Their replies can be consulted on our website.

On 31 January 2015, Frontex and its Fundamental Rights Officer replied to the Ombudsman's questions in an [opinion](#) on the own-initiative inquiry.

### **Targeted consultation**

The European Ombudsman considers it useful to gather feedback on Frontex's opinion from representative bodies and organisations which have shown significant interest in this inquiry and/or which are active in the protection of the human rights of migrants. If you are interested in providing input, please do so by replying to the **Questions** below or to those of the questions that are most relevant to you.

When replying, please bear in mind that the purpose of the European Ombudsman's inquiry is to assess Frontex's actions. **The European Ombudsman is not in a position to judge the conduct of national authorities or private bodies.**

We would appreciate if your replies could be as succinct and concrete as possible.

### **Questions**

1. Are you aware of concrete violations of returnees' fundamental rights or cases of ill-treatment during JROs (pre-departure; in flight; hand-over of the returnees in the country of destination), or in the post-return phase (the reception of returnees in the country of destination)?
2. According to Frontex, no complaint has yet been made in relation to a JRO coordinated by Frontex. Which actions should Frontex take, in your view, to promote awareness among persons subject to a JRO of the possibility to lodge a complaint with Frontex and to ensure that problems are indeed brought to Frontex's attention?
3. Frontex co-ordinates relatively few JROs, with Member States carrying out the vast majority of forced return operations. Given its co-ordinating role, however, what more do you think Frontex could do to promote among the Member States minimum standards and good practices that ensure respect for human rights and the dignity of returnees? Do you consider that the Frontex *Code for joint return operations* and its *Best Practices for JROs* are sufficient in this respect, specifically as regards standards on fitness to travel and medical examination, the use of coercive measures and the return of vulnerable people, in particular families with children?
4. Do you consider that the *Code* and *Best Practices* provide for sufficient safeguards in terms of respect for human rights, dignity and the welfare of returnees on board when applied to so-called "Collecting JROs"<sup>[1]</sup>?
5. Should JROs be monitored by one monitor designated by the country hosting the operation (the country returning the biggest group), or it is better that each country participating in the operation designates one monitor to be present during the JROs?
6. What more could be done to improve the exchange of good monitoring practices between national monitors? What more could Frontex do in this regard? [In its opinion, Frontex mentions that it invites national monitoring bodies to the meetings of Direct Contact Points in Return Matters and supports the project run by the International Centre for Migration Policy Development to create a European pool of independent forced return monitors.]
7. In its opinion, Frontex states that: (i) standards of behaviour in the use of force are regulated by national law; (ii) the only restraints/equipment that may be used during JROs are those that are on the list drawn up by the organising Member State and backed by Frontex's signature on the

Implementation Plan, and (iii) no participating Member State is permitted to use restraints not allowed under its national legislation even if those measures are accepted by the organising Member State and Frontex. Moreover, monitors normally observe/report on the decisions and actions in upholding their national law by national public servants/escorts present on board.

Do you have any suggestions as to how to facilitate the reporting of monitors present on board where they are entrusted with reporting on behalf of several participating Member States pursuant to Article 14.5 of the *Code* ("*When feasible and subject to prior agreement between the MSs concerned, monitors may also monitor on behalf of other MSs taking part in the JRO*" - the one-monitor-per-flight principle).

8. Do you consider that the information provided by Frontex on its website as regards JROs is sufficient to ensure their transparency? Do you consider that reports of monitors observing JROs should be submitted to national authorities or to Frontex or both? Should reports be published or not? If so, should they be published on Member States' or Frontex's website?
9. Do you have other comments on Frontex opinion? Please be as concise and concrete as possible.

**Please note that, as part of the inquiry procedure, the Ombudsman normally forwards to the Institution, in this case Frontex, the contributions received. The Ombudsman may also publish them. Contributors who consider that their name should not be published and/or that their comments should not be made publicly available, should state so and explain the reasons why. In the latter case, contributors should submit a non-confidential summary. We would also ask you to avoid including unnecessary personal data in your replies, notably personal data of third parties.**

#### Next steps

Replies received by **6 April 2015** will be taken into account. Please note that the Ombudsman intends to take the next step in this inquiry in April 2015.

We look forward to hearing from you. If you have any questions in relation to this consultation, please contact Ms Marta Hirsch-Ziembinska, Head of Complaints and Inquiries Unit 1, who is responsible for this own-initiative inquiry (Tel.:+33 (0)3 88 17 27 46).

Kind regards,



**European Ombudsman**

**Rosita Agnew**

Co-ordinator for own-initiative inquiries

T. + 32 (0)2 284 25 42

[rosita.agnew@ombudsman.europa.eu](mailto:rosita.agnew@ombudsman.europa.eu)

Rue Wiertz

Montoyer 30 Building

B-1047 Brussels

F. + 32 (0)2 284 49 14

[www.ombudsman.europa.eu](http://www.ombudsman.europa.eu)

**PLEASE REPLY TO THIS E-MAIL IF YOU WISH TO SUBMIT A CONTRIBUTION – PLEASE DO NOT AMEND THE SUBJECT HEADING OF THE E-MAIL**

---

No virus found in this message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 2015.0.5751 / Virus Database: 4299/9226 - Release Date: 03/04/15

---

<sup>[1]</sup> In these JROs, the third country to which migrants are returned provides the plane, escorts and medical staff for the operation. The handing over of migrants by national authorities/escorts takes place in an airport in the EU. Frontex provides training to third country escorts.



***Jesuit Refugee Service–Europe aisbl***

[www.jrseurope.org](http://www.jrseurope.org)

[europe@jrs.net](mailto:europe@jrs.net)

*Rue du Progrès, 333/2 • 1030 Bruxelles, Belgium*

*T. : +32/2 250.32.20 • Fax : +32/2 250.32.29*

Stefan Keßler, Senior Policy and Advocacy Officer • [europe.senioradvocacy@jrs.net](mailto:europe.senioradvocacy@jrs.net) • Direct t.: +32/2 250.32.21

---

European Ombudsman

BY EMAIL ONLY

Brussels, 01 April 2015

Dear Madam,

Thank you very much for inviting the Jesuit Refugee Service (JRS) Europe to give feedback on Frontex' opinion regarding the respect of fundamental rights in its Joint Return Operations.

Please note that the following replies to your questions have not been discussed with other members of the Frontex Consultative Forum on Fundamental Rights and are, therefore, based on JRS Europe's own assessment only.

1. Question:

Are you aware of concrete violations of returnees' fundamental rights or cases of ill-treatment during JROs (pre-departure; in flight; hand-over of the returnees in the country of destination), or in the post-return phase (the reception of returnees in the country of destination)?

Answer:

No.

2. Question:

According to Frontex, no complaint has yet been made in relation to a JRO coordinated by Frontex. Which actions should Frontex take, in your view, to promote awareness among persons subject to a JRO of the possibility to lodge a complaint with Frontex and to ensure that problems are indeed brought to Frontex's attention?

Answer:

In the context of Frontex-coordinated Joint Return Operations there is no uniform complaints mechanism in place. As Frontex has pointed out in their response, Article 5(2) of the Code of Conduct for Joint Return Operations (“the Code”) obliges participating member states to inform returnees about procedures for lodging complaints but a concrete mechanism, if any, is only established in the respective national laws. The Frontex representative on board of a certain flight can only receive reports by participants but is not mandated to receive individual complaints as well. Hence, the establishment of a complaints mechanism that is clearly related with Frontex would be the first step for ensuring that problems are brought to the agency’s attention.

3. Question:

Frontex co-ordinates relatively few JROs, with Member States carrying out the vast majority of forced return operations. Given its co-ordinating role, however, what more do you think Frontex could do to promote among the Member States minimum standards and good practices that ensure respect for human rights and the dignity of returnees? Do you consider that the Frontex *Code for joint return operations* and its *Best Practices for JROs* are sufficient in this respect, specifically as regards standards on fitness to travel and medical examination, the use of coercive measures and the return of vulnerable people, in particular families with children?

Answer:

In our view, the Code was a considerable step forward to establishing effective safeguards for the full respect of returnees’ fundamental rights. When drafting the Code, the Agency, for the first time, applied a process in which civil society was consulted early on and was brought together with national experts. This not only allowed civil society actors providing recommendations to the draft but to exchange views at experts’ level.

Other achievements are:

- Article 4 of the Code addresses a list of concrete and relevant human rights (right to life, dignity, non-refoulement, non-discrimination, right to asylum, prohibition of torture) instead of just referring to human rights in general.
- Monitoring is set as a pre-condition for a member state to participate in a Joint Return Operation. This should at least motivate member states to establish independent return monitoring mechanisms.
- Following the spirit of the 2011 amendments of the Frontex Regulation, Article 4(3)(b) of the Code clearly states that in cases of human rights violations a JRO “must be interrupted or terminated”.
- Article 6 limits the use of force so that necessity and proportionality principles are met.
- Article 11 provides for the presence of medical and interpretation staff during a return operation.

There are, however, still some concerns:

- As indicated in our answer to question 2 above, the process on how returnees can lodge complaints is not clear from the Code. There is no uniform mechanism in place, and it is not specified to whom returnees can report and how and by whom complaints will be followed up. It is also unclear how the compensation clause is going to be applied.
- The relation of Article 7 which provides for medical examination of returnees to the ‘fit to travel’ definition in Article 3(k) could be clearer: In a footnote to Article 3(k) it is stipulated that ‘medical condition’ comprises both the physical and the mental health of the returnee. It would have been advisable to make that clear in Article 7 as well so that it is ensured that the mental condition of the returnee is always considered as part of the fit to travel assessment.
- The reporting to Frontex seems to be left to the discretion of the member states although this reporting is crucial for the Agency in order to assess the correct application of the Code and its principles. Incidents on coercive measures should be reported but it is not clear to whom. Monitors may provide feedback in debriefings. But how will Frontex evaluate these activities in order to take corrective measures for future operations if there is no or little reporting?

- Article 6(1) of the Code allows the use of coercive measures in response to, inter alia, ‘causing damage to property’. It is not clear what this means.

4. Question:

Do you consider that the *Code* and *Best Practices* provide for sufficient safeguards in terms of respect for human rights, dignity and the welfare of returnees on board when applied to so-called "Collecting JROs"<sup>[1]</sup>?

Answer:

No, because the concrete provisions of the Code do only address member states (be they organising or participating) within the meaning of Article 3(a) of the Code and not authorities of third countries.

5. Question:

Should JROs be monitored by one monitor designated by the country hosting the operation (the country returning the biggest group), or it is better that each country participating in the operation designates one monitor to be present during the JROs?

Answer:

With the term ‘country hosting the operation’ you probably mean the ‘Organising Member State’ as defined in Article 3(b) of the Code. This is not necessarily the one with the biggest group of returnees.

One monitoring person per return flight might be not sufficient to effectively monitor an operation, especially when a larger group of persons is about to be returned. Whether a group of monitors should be designated by the Organising Member State or comprised of persons being designated by each Participating Member State would, in our view, not be that important if it is ensured that all monitors are properly trained, equipped and have the necessary powers.

---

<sup>[1]</sup> In these JROs, the third country to which migrants are returned provides the plane, escorts and medical staff for the operation. The handing over of migrants by national authorities/escorts takes place in an airport in the EU. Frontex provides training to third country escorts.

6. Question:

What more could be done to improve the exchange of good monitoring practices between national monitors? What more could Frontex do in this regard? [In its opinion, Frontex mentions that it invites national monitoring bodies to the meetings of Direct Contact Points in Return Matters and supports the project run by the International Centre for Migration Policy Development to create a European pool of independent forced return monitors.]

Answer:

Regular meetings of independent monitors for exchanging information among themselves and discuss issues with Frontex (including the Fundamental Rights Officer and the Consultative Forum) would be helpful. It might also be advisable to develop a Handbook for Independent Monitors that is based on experiences and good practices.

7. Question:

In its opinion, Frontex states that: (i) standards of behaviour in the use of force are regulated by national law; (ii) the only restraints/equipment that may be used during JROs are those that are on the list drawn up by the organising Member State and backed by Frontex's signature on the Implementation Plan, and (iii) no participating Member State is permitted to use restraints not allowed under its national legislation even if those measures are accepted by the organising Member State and Frontex. Moreover, monitors normally observe/report on the decisions and actions in upholding their national law by national public servants/escorts present on board.

Do you have any suggestions as to how to facilitate the reporting of monitors present on board where they are entrusted with reporting on behalf of several participating Member States pursuant to Article 14.5 of the *Code* ("*When feasible and subject to prior agreement between the MSs concerned, monitors may also monitor on behalf of other MSs taking part in the JRO*" - the one-monitor-per-flight principle).

Answer:

The 'one-monitor-per-flight' principle should only be used when the applicable standards are the same. Otherwise it would be impossible for a monitor to clearly assess what is allowed in which national laws, and what is not allowed.

8. Question:

Do you consider that the information provided by Frontex on its website as regards JROs is sufficient to ensure their transparency? Do you consider that reports of monitors observing JROs should be submitted to national authorities or to Frontex or both? Should reports be published or not? If so, should they be published on Member States' or Frontex's website?

Answer:

Frontex may consider publishing detailed statistics on Joint Return Operations (how many persons have been returned in a certain operation, which was the country of destination, which member state did organise the operation and which other member states participated, etc.).

Reports of monitors should be submitted to national authorities as well as to Frontex. They should be made public at least on Frontex' website provided that sensitive personal data is not included.

We hope that these answers are helpful for you, and we are at your disposal if you need any further information or comment.

Sincerely yours,

A handwritten signature in black ink that reads "Stefan Kessler". The signature is written in a cursive, flowing style.

Stefan Kessler  
Senior Policy & Advocacy Officer  
Jesuit Refugee Service Europe