

From: Philippa Candler <candler@unhcr.org>
Sent: 01 April 2015 19:06
To: Euro-Ombudsman
Cc: Marta Ballesterro
Subject: RE: European Ombudsman invites your input to her inquiry on Frontex Joint Return Operations (OI/9/2014/MHZ)

Please find attached UNHCR's responses to your questionnaire (in blue below).

Regards,
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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)?

No

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?

To our understanding, a complaints mechanism has not yet been established. First would then be to set up one, and then develop a thorough roll-out strategy, involving all relevant actors who could play a role in providing information to potential returnees (e.g. Monitors, NGOs providing assistance at airports or airline companies etc). Frontex could also play a role in ensuring that returnees and their legal representatives are duly informed in a manner that they can understand of the Joint Nature of the operation, the possibility and procedure to lodge a complaint. It is not clear how the individual complaints' mechanisms operated by the Ombudsman office could play a role in this either.

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?

Frontex has developed useful tools but their effectiveness relies on the implementation phase at the national level. The update of these with the involvement of the CF is also a good practice. Frontex could take further steps to encourage endorsement and use by the MS of these good practice standards through practical cooperation activities, development of joint implementation plans etc. Further attention could be given to the above listed areas in the update of the Best Practices for JRO.

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"^[1]?

No comment

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?

JROs often involve over 10 countries and it would neither be realistic nor efficient to provide such a number of monitors. It might be more relevant for Frontex to work on the establishment of a pool of monitors regardless of their nationality or designation. This would also be of assistance to ensuring independent monitoring.

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.]

Joint training and regular exchanges among national monitors as well as the development of good practice standards.

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.

Frontex could develop a set of agreed good practice standards on the use of force that would be in line with MS legislation and encourage MS to adopt these. These standards could also be referred to in Frontex training to facilitate their implementation at national level. It could also develop easy tools for monitors that provide an overview of MS legal standards on this or other relevant aspects. These could be distributed to escorts (so they are aware of the relevant legislation applicable to all those involved in a particular operation), monitors and other interested parties. With this tool and the adoption of good practice standards, monitors should be able to observe and report on the decisions and actions taken by all those involved in a given operation.

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).

Suggested above (e.g. joint monitoring standards, information on national standards made easily accessible etc).

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?

Could be improved. Reference should be made to monitoring systems, standards of practice could be shared and information on complaints mechanism should be made available. The information on JRO undertaken should be timely updated and could be provide through a link on the main returns page. Reports should be submitted to both Frontex and national authorities. Some MS make their

reports public which could be considered as a good practice, otherwise there could be a system to request reports which should at least be made available to returnees and their legal representatives upon request.

9. Do you have other comments on Frontex opinion? Please be as concise and concrete as possible.

To summarise:

- Monitoring pool approach including organisations or experts with an independent mandate to monitor. Further use of art.14.5 (i.e. monitoring undertaken from a EU as opposed to national perspective would further contribute to ensuring independency)
- Development of good practice standards for monitoring and use of force as well as tools to facilitate understanding of national standards for monitors. Further practical cooperation activities and exchanges among monitors.
- Establishment and roll-out of a complaints mechanism.
- Efforts to increase awareness and understanding of JROs, monitoring system and complaints mechanism. Timely and easily accessible information could be made available on the web on JROs.



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^[1] 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.