



European Ombudsman: fundamental rights and forced returns of migrants

Dealing with immigration, and in particular with the challenges presented by illegal entry, poses major legal and humanitarian challenges for the EU. There are, almost necessarily, tensions between the legitimate interest in controlling immigration and the humanitarian obligation to offer people a safe haven while their asylum claims are being processed. Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States, working at the front line with national authorities, plays a key role in this context. For some time, concerns have been expressed about the human rights implications of Frontex's activities. These concerns have become more acute since the EU's Charter of Fundamental Rights became legally binding in 2009.

In 2011, Regulation 1168/2011/EU, requiring Frontex to put in place certain administrative mechanisms and instruments to promote and monitor compliance with its obligations concerning the respect of fundamental rights, entered into force. At the same time, civil society continued to raise concerns about the human rights implications of Frontex's activities. These circumstances prompted the European Ombudsman to launch in 2012 an own-initiative inquiry to review Frontex's implementation of the fundamental rights obligations established by the Regulation.

Her investigation led to recommendations that Frontex set up a mechanism to deal directly with complaints from people claiming to have had their fundamental rights breached by the Agency. Frontex, however, did not accept this recommendation arguing that the responsibility lies in the hands of the relevant Member States. The Ombudsman countered that Frontex should assume responsibility for the actions of staff operating under the Frontex banner. The Ombudsman presented a Special Report to the European Parliament (EP) asking it to support her analysis. In December 2015, the EP backed her recommendation that Frontex should set up a complaints mechanism on fundamental rights infringements occurring in the course of its operations. The European Commission took the Ombudsman's recommendation into account in its recent proposal for the review of the Frontex Regulation.

The Ombudsman in 2014 launched another own-initiative inquiry involving Frontex. This one concerned the coordination and financing of joint return operations (JROs) by air of irregular migrants, in cooperation with Member States. Between 2006 and 2015, it coordinated 267 joint return flights, returning more than 13 000 people. The Ombudsman made proposals on ways to better ensure respect of the fundamental rights of migrants who are subject to forced returns from the EU to their countries of origin.

One of the priorities of the European Ombudsman is increased strategic cooperation between the members of the European Network of Ombudsmen. Since JRO monitoring falls within the jurisdiction of Member States, she invited feedback from her colleagues.



Many national ombudsmen looked at the JRO practices in their own Member States and submitted valuable contributions to the European Ombudsman's investigation.

In her investigation, the European Ombudsman found that, in general, Frontex was making reasonable progress in addressing its obligations under the Charter and the Regulation. However, there was room for improvement. She called on the agency to ensure that families with children and pregnant women are seated separately from other returnees. Frontex should also promote common rules on the use of restraint, publish more information on JROs, including monitors' reports, and require Member States to improve complaints procedures. The Ombudsman suggested several amendments to Frontex's JRO Code of Conduct, including provisions on the use of coercive measures, timely medical examinations of returnees, and human rights training for escorts, with a focus on people with disabilities, women and children.

A meeting of ENO investigators who had participated in the parallel inquiry was held in October in Madrid. Discussions at this meeting gave rise to the "Madrid declaration on forced return flights".

This was the first such investigation realised with the European Network of Ombudsmen on matters involving EU and national administrations.

As a result of this excellent collaboration Frontex has accepted the European Ombudsman's recommendations concerning Joint Return Operations.
