

XII FRONTEX FUNDAMENTAL RIGHTS OFFICER REPORT

To: Frontex Management Board and Frontex Consultative Forum on Fundamental Rights

17 August - 30 October 2015

Overview

- Three SIRs reported in Bulgaria and Greece.
- Internal work with Frontex Units to collect the progress on implementation of the Fundamental Rights Strategy and Action Plan.
- JO VEGA Children Phase II completed, with the support of 14 CF participants.
- Data protection and return matters in the focus of FRO work.

1. JOINT OPERATIONS**a) Incidents reported**

1. On 29 August 2015 a suspicious motor yacht was detected by LV CPB (Latvian Coastal Patrol Boat) at Marathounta Bay - Symi island, Greece. The LV CPB attempted to intercept the yacht by the repeated usage of light and sound signals but the skipper of the yacht not only refused to comply but also tried to escape by performing dangerous manoeuvres and allegedly attempted to intentionally ram the LV CPB. The Hellenic Coast Guard Officer (HCG) Officer onboard the LV CPB fired warning shots in the air with his service weapon. Eventually, with the assistance of another speedboat (private boat) with HCG staff onboard, the yacht was immobilized and HCG crew together with a crew member of the LV CPB managed to board it. The LV officer was ordered back to the CPB shortly afterwards. According to initial information there was a fight between one of the facilitator and the HCG officer resisting his arrest. During the conflict gun shots were fired.

Approximately 100 migrants were found onboard as well as one dead 17 years old Iraqi minor by gunshot. The dead body was transferred to Rhodes hospital for postmortem examination by the local public coroner. By order of the Minister of Shipping and the Commandant of HCG, the South Aegean HCG District Commander was sent to Symi Island to investigate the exact circumstances of the incident. Local Public prosecutor was informed accordingly.

According to the information provided by the HCG to FRO, three types of investigations have been launched:

- a) Disciplinary investigation, by the South Aegean HCG Regional Commander, to establish any disciplinary punishable demeanor of the involved HCG staff in the incident.
- b) Penal investigation by Rhodes Public Prosecutor against the smugglers.
- c) Penal investigation by the Piraeus Naval Marshall Court to establish potential criminally punishable demeanor of the involved HCG staff in the shooting

All investigations are ongoing. FRO has agreed to receive an update of the developments of the case with the HCG.

2. On 4 September 2015 on the flight connecting Istanbul to Athens, two passengers from Nigeria and DRC were intercepted in the first line and directed to the second line for further interview. The Frontex Supporting Officer (FSO) was not authorized to sit in the interview, which was being carried out by 3 Greek police officers in a closed room. Outside, the FSO heard shouting and some loud noises he identified as slapping, and therefore that a possible violation of fundamental rights was taking place inside. The FSO had a meeting that same evening with the Hellenic Police (HP) Chief of the Athens Airport together with the duty officer and they explained the internal inquiry performed by the HP. The FSO expressed his apologies in overreacting the situation and agreed with the further explanations he received that the interviewing officers had to ask about the identity of a passenger with a louder voice, because he refused to cooperate, as the FSO was in the hallway and not in the interview room.

3. On 13 September 2015, during an interview with a debriefer, a Syrian national claimed that the Bulgarian police officers had taken their money and phones and after that transported them back to Turkey. The person did not wish to launch formal investigation. Nevertheless, an investigation team from Busmantsi detention centre, informed that the person provided enough detailed information to trigger the initiation of an official investigation. Further information on the results of the investigation is expected.

3. Other Operational projects

As in previous occasions, FRO and the Consultative Forum participated in the pre deployment briefing and post operation debriefing of the Joint Operation VEGA Children Phase II, briefing on 25th August and debriefing on 7th October. The established cooperation of the CF in the operation resulted in the deployment of 14 child protection experts paired to guest officers at the airports of Arlanda, Brussels, Bucharest, Geneva, Lisbon, Porto, Ljubljana, Riga and Warsaw. The common objective of the operation, combining aspects of child identification and referral with efficient border management is clearly highlighted by all the participants.

On 12 October, FRO provided a pre deployment briefing on FR to third country observers participating in the Air Border JO Alexis II. The short presentation included the FR Strategy, and several aspects on fundamental rights considerations at air borders, notably related to children (VEGA Children) and access to asylum procedure. FRO invited the observers to also pay attention to protection and referral aspects in their EU airports of deployment and share experiences and ideas with the GOs deployed.

FRO has intensively worked on this period in data protection aspects related to the PEDRA project that RAU/OPD has commenced. The pilot project is part of the future sharing of personal data foreseen in the Frontex Regulation with EUROPOL on criminal networks. FRO provided FR related concerns to the pilot project documents and implementing rules in preparation of the launching of the Phase II of the project that started on 20 October. She included, among others, the need to ensure guidelines and

treatment of date on discriminatory ethnic profiling and no criminalization of persons assisting refugees on humanitarian grounds.

On 28 October FRO participated in an internal coordination meeting on return matters together with several networks from MSs and the European Commission. FRO is supporting Frontex ED and OPD in ensuring sufficient consideration to fundamental rights risks related in the ongoing discussions on the enhanced Frontex mandate in this field.

4. Support Frontex Monitoring System on Fundamental Rights

FRO team has been undertaking a thorough revision of SIRs received where allegations of violation of FR are at stake, which is still ongoing. The aim of the exercise is to further analyze the follow up and the effectiveness of the monitoring system with a view to recommend further procedural guidelines and clarification of roles during 2016.

Once completed, the upcoming period until the end of 2015 and early 2016 will be devoted to internal analysis of the Frontex Evaluation Reports (FER) after Joint Operations are completed. Aside of implementing the required FRO observations to the Evaluation Reports, this will enable reaching conclusions on further operational needs on guidance and other relevant initiatives.

5. Operational Plans and Evaluation Reports received during reporting period

FRO has received the following JRO evaluation reports in this period:

FER JROs

JRO Russia by Switzerland on 23-June-2015
JRO Kosovo by Austria on 26-Aug-15
JRO Kosovo by Germany on 08-Sep-15
JRO Nigeria by Italy on 17-Sep-15
JRO Kosovo by Austria on 22-Sep-15
JRO Pakistan by Bulgaria on 23-Sep-15
JRO Nigeria by Norway 28-Sep-15
JRO Albania by Sweden on 29-Sep-15
JRO Nigeria by the Netherlands on 14-Oct-15
JRO Nigeria by Italy on 15-Oct-15
JRO D.R. of Congo by Belgium on 21-Oct-15
JRO to Albania and Georgia by Spain on 23- Oct- 2015

OPLANS

JO Flexible Operational Activities 2016 Land

FERs

JO VEGA Children 2015 Phase I
JO Indalo 2015

6. CAPACITY BUILDING

On 3-4 September the FRO team has assisted TRU/ CBD in developing FR aspects of the development of the training material for EUROSUR National Coordination Center Operators. The tasks included support to the development of modules and also real cases for training of the officers that will be inserting information on the EUROSUR system. Revision of new material is still ongoing.

On 22-23 September, FRO participated in the FR for Border Guards training in Minsk, Belarus, that Relax TC team is coordinating in the framework of the IPA II Eastern Partnership Project. Border guards from Moldova, Ukraine, Belarus, Georgia, Armenia and Azerbaijan took active part in the training. FRO took the opportunity to encourage the replication of the training in the respective training academies, and also assessed the positive evolution of the Frontex training product since her first participation in the FR for BG Trainers in late 2013. The training represents a good collection of best practices of fundamental rights compliant practices and procedures delivered in a very practical manner.

7. FUNDAMENTAL RIGHTS STRATEGY

As previously reported, FRO team with the support of a researcher has performed a 2nd round of meetings with the Frontex unit (all) to clarify doubts, and reach preliminary conclusions on the feedback provided about the progress of implementation of the FR Strategy and Action Plan. FRO team has held a very high number of internal meetings and discussions to reflect on the progress reported by the units, reaching some basic preliminary findings. The upcoming period will include the analysis of recommendations from FR international, European and national bodies and several organisations to Frontex in the last years and preparation of initial outputs.

8. RELATIONS WITH EU INSTITUTIONS, OTHER FUNDAMENTAL RIGHTS ORGANIZATIONS AND BODIES

On 28 August FRO took part in the meeting hosted at the HQ during the fact finding visit to Frontex by [REDACTED] in preparation of the report "The Mediterranean Sea: a front door to irregular migration" to be presented to the Parliamentary Assembly of the Council of Europe". FRO included a bilateral meeting with [REDACTED] where her questions and concerns related to the implementation of fundamental rights safeguards in Frontex activities were discussed.

On 25 September FRO participated in a workshop organized by FRA in Vienna in the framework of the project "Biometric data in large EU IT systems in the areas of borders, visa and asylum - fundamental rights implications". The objective was to provide comments to the questionnaire to be used in the field research that will undertaken in the upcoming months. FRO also presented the valuable comments from the Research and Development Unit within Capacity Building Division in Frontex to include practitioners view in the research.

On 28 September FRO took part at the EASO Quality Matrix meeting hosted at the Frontex Headquarters in Warsaw. The meeting aimed to revise preliminary material to complete the toolkit on Access to Procedures that has also involved FRA, UNHCR and several MSs experts. FRO provided her views on the material prepared, with the aim that it could be of use to GOs and operational managers in charge of organizing pre deployment briefings in the operational areas (key messages on access, check list, etc.).

On 13 October FRO traveled to Brussels to participate in the Final Conference of the ICMPD project on Forced Return Monitoring (FReMP), financed by the European Commission. The conference provided an overview of the achievements of the Project, which includes a framework for the establishment of a pool of monitors as well as a training scheme and material for monitors of forced return operations. A panel discussion on "Main policy challenges in the area of forced return and the contribution of the Pool to improve return policies" was included in the agenda, where FRO and Return Sector highlighted the benefits of monitoring for the Frontex coordinated operations. The

future of the pool of EU monitors was also discussed and it is currently under consideration by the relevant stakeholders.

Following the FReMP meeting, FRO together with the Frontex LO Assistant in Brussels met with some members of Human Rights Unit of the External Action Service of the EU (EEAS). The invitation for a briefing of the Frontex FR Strategy and Action Plan was also attended by some desk officers from Western Balkans, Sub-Saharan Africa and Eastern Partners. The discussion and exchange provided an opportunity to further explore possibilities of cooperation in relation to human rights and third countries from a very practical perspective. Furthermore, EEAS personnel was very keen on receiving Frontex analytical reports on regular basis.

During the reporting period, two researchers have requested interviews FRO with questions around the FRS and Fundamental rights matters within Frontex and also on the use of the EU Charter on FR within the Agencies.

9. MISCELLANEUS

FRO participated at the MB meeting on 9-10 September and reported on the previous report and most recent incidents in operational areas. The report was also shared with the CF members via FOSS.

FRO is glad to report about a limited expansion of her team. The FRO assistant was replaced by a more senior support, [REDACTED] who has been acting as FRO Advisor and CF Secretariat since 16 July. [REDACTED] has temporarily joined the team as additional administrative support on a temporary contract from 10 August. Furthermore, and as part of his PHD on Schengen and fundamental rights, the researcher [REDACTED] joined the FRO team on 17 August to support the revision of the FRS until December.

As part of the Induction Training for New comers, FRO provided a briefing on 29 October, with a focus on the Strategy, Action Plan and the role of FRO and CF.

10. PLANNED ACTIVITIES AND UPCOMING EVENTS

4-5 November: CF meeting, Warsaw

5 November: Annual Bilateral Talks with TC

11-12 November: TAIEX meeting in Tirana, Albania

25-26 November: MB meeting, Warsaw

11. FRO RECOMMENDATIONS

FRO recommends the members of the Management Board to take into consideration the aspects of monitoring of JROs in relation to the strengthening of the Frontex mandate in return matters proposed by the Council Conclusions of June 2015, and encourage consideration to the available mechanisms in the MSs and also by ICMP roster of monitors, to ensure that all JRO are effectively monitor.

