

June 2011

THE FRONTEX AGENCY: WHICH GUARANTEES FOR HUMAN RIGHTS?

Karolína Babická

Abstract:

At the request of four Members of the European Parliament, representing the Greens/European Free Alliance faction, the Migreurop organization (www.migreurop.org) conducted a study on the human rights guarantees within the proposed revisions to the mandate of the Frontex agency. The results of the study were presented at a Forum organized by the Heinrich Böll Foundation in Brussels on 25 May 2011 and shall serve as a reference point for the Greens in their attempt to influence discussions about the proposed regulation.

The study is available here:

<http://migreurop.org/IMG/pdf/Frontex-PE-Mig-ENG.pdf>

At the request of four Members of the European Parliament, representing the Greens/European Free Alliance faction (Hélène Flautre, Ska Keller, Ulrike Lunacek and Barbara Lochbihler), the network of Migreurop organizations (www.migreurop.org)¹ conducted a study on the human rights guarantees contained within the proposed revisions to the Frontex agency's mandate. The results of the study were presented at a Forum organized by the Heinrich Böll Foundation in Brussels on 25 May 2011 and shall serve as a reference for the Greens in their attempt to influence discussions about the proposed regulation. The Forum was attended by 25 academics and representatives from a number of international organizations, NGOs and agencies.

¹ **Migreurop** is a network of 42 organizations and individuals from 13 countries in Europe and Africa based in France. It campaigns for a Europe without migrant camps; gathers information about the conditions in the camps and on the external borders; and informs the public about the situation. Migreurop monitors the situation in Europe, the Maghreb and some other African countries; conducts field visits; organizes campaigns for migrant rights protection; publishes articles and reports on the conditions in the camps, and maintains an outline of the camps in Europe that can be found on their website.

FRONTEX, an EU agency based in Warsaw, was setup in 2004 as a specialized and independent body tasked with coordinating operational cooperation between Member States in the field of border security. The main goal of the FRONTEX agency is to control border areas in order to “strengthen external border security” in the words of FRONTEX, or to “prevent the arrival of third-country nationals into the EU territory” in the words of the Migreurop study. The Agency also coordinates the return of irregular migrants from EU Member States and other joint operations on behalf of the Member States. FRONTEX was initially allocated a significant budget, which has since its establishment increased considerably. It possesses helicopters, aircraft and vessels in order to help to combat illegal migration to the EU.

In February 2010, the European Commission proposed an amendment to the FRONTEX Regulation² in order to review its mandate. This would provide FRONTEX with greater financial support and enable them to carry out more operations. Since a concern for human rights is not obvious in the operations of the FRONTEX agency, the Green/EFA Party MEPs asked for a study to be conducted that would look at whether there are human rights violations during the operations conducted by FRONTEX. This study is intended to serve as a basis for further discussions about the revision of the Agency’s responsibilities and operations.

The study outlines several clear examples of human rights violations within FRONTEX’s operations. It has identified the fact that the Agency violates several human rights by: denying people the right to seek asylum in connection with the breach of the non-refoulement principle and the principle of non-discrimination; by violating the right to leave any country; by violating the prohibition of inhuman or degrading treatment, and also by contravening the EU’s provisions for personal data protection. Ska Keller, a German MEP and member of the LIBE Committee (Civil Liberties, Justice and Home Affairs) warned that under the new mandate the Agency could share the personal data it gathered with other agencies, such as EUROPOL.

Marie Charles, a legal adviser from the Human Rights League who conducted the study with other members from Migreurop, points out that it is very difficult to find out what actually happens during FRONTEX operations. The only witnesses to the human rights violations are usually the victims of the violations, and, in some cases, the staff of various NGOs, the media or international organizations. Yet this lack of transparency is only one of many major problems with the way FRONTEX currently functions.

Another serious issue is a lack of accountability for the actions carried out by FRONTEX, or at least the lack of clarity concerning who is responsible. FRONTEX claims that it is not responsible for decisions that may impinge on a person’s human rights but rather that these are the responsibilities of individual Member States. However, the Agency has a legal personality and may exercise a large amount of discretion; it can, for example, make

² Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

agreements with the authorities of third countries on its own behalf. Moreover, the content of these agreements is secret and has never been made public.

According to the study and in line with the views of the MEPs concerned, if the EU wants to keep FRONTEX as an independent agency, it should also be held responsible for its actions. As mentioned by the Austrian MEP Ulrike Lunacek, an independent monitoring system should be set up for every operation. She identified the lack of understanding of human rights dimensions by the employees of the Agency, many of whom have a military or policing background, as one of the reasons why it is difficult to include such an independent system within the agency as it currently operates.

The first recommendation that the study makes is that there should be a clear division of responsibilities between Member States and the FRONTEX agency, and that FRONTEX should be legally responsible for its actions. According to the MEPs, the Agency's new mandate should include an efficient and independent evaluation process as well as a monitoring system that will guarantee the protection and promotion of fundamental human rights in future missions. They also recommend that all of the agency's operations should be independently monitored and that it should no longer be able to negotiate agreements with the authorities of third countries. The French MEP H  l  ne Flautre argued that the Green MEPs need to be very innovative and imaginative in pushing for accountability for FRONTEX as there is a clear lack of political will in this regard. The MEPs hope that the emergence of the Fundamental Rights Agency may help to push for human rights guarantees. Ulrike Lunacek said that the EU has to maintain its own standards for human rights in order not to lose credibility internationally.

At the moment, a rather difficult dialogue (informal negotiations between the European Parliament, the Commission and the Council) on the FRONTEX regulation amendment is going on and it is as yet unclear when it will come to an end and what the results will be.

About the author

Karol  na Babick   is a PhD researcher at the Charles University, Faculty of Law focusing on international and European migration law. She is currently a visiting PhD researcher at the Institute for European Studies, Vrije Universiteit Brussel.