

Fundamental Rights in return operations

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What are fundamental rights?

- ❖ Minimum standards to ensure that a person is treated with dignity.
- ❖ Universal legal guarantees belonging to all human beings.

Human Rights vs. Fundamental Rights

- ❖ The two terms refer to the same content and substance. Interchangeably.
- ❖ The term ‘**fundamental rights**’ is used in a constitutional context whereas the term ‘**human rights**’ is used in international law.

Fundamental Rights: an *integral* part of *integrated* border management

“The European Border and Coast Guard *shall guarantee the protection of fundamental rights* in the performance of its tasks under this Regulation in accordance with relevant Union law, in particular the Charter, relevant international law - including the 1951 Convention Relating to the Status of Refugees, the 1967 Protocol thereto and obligations related to access to international protection, *in particular the principle of non-refoulement.*”

- Regulation 2016/1624, Art. 34.1

European Border and Coast Guard Regulation enhances fundamental rights safeguards in operations by:

- Establishing complaints mechanism
- Cast mandatory training on FR protection and access to asylum procedure before deployment
- Revision of operational plans and evaluations compliance with fundamental rights
- Child protection and vulnerable groups expertise among members of the teams, specially in operations
- Protection of vulnerable groups - information and addressing to referral mechanism
- Supporting vulnerability assessment of external borders to include capacity to deal with massive flows
- The Agency and Member States shall comply with fundamental rights and the principle of non-refoulement in their cooperation with Third Country partners

Fundamental Rights in Return Operations

Human Dignity

Right to life

Right to an
effective
remedy

Torture and
inhuman or
degrading
treatment

Non-
Discrimination

Non-refoulement

Protection of
vulnerable
persons



Code of Conduct for JRO coordinated by Frontex

Fundamental Rights Art 4

- a) JROs are conducted in a humane manner and in compliance with FR.
- b) JRO can be interrupted or terminated in case of unsafety or serious violations of fundamental rights.

Coercive Measures Art 6

- a) Use only when strictly necessary (individual risk)
- b) Use proportional and with reasonable force
- c) No measures that can provoke asphyxia or use of sedatives.

Obligation to report all violations of the Code of Conduct

Fundamental Rights obligations in return operations

National law

European Union (EU) law

- Charter of Fundamental Rights of the European Union (EU Charter)
- Return Directive 2008/115/EC
- European Border and Coast Guard Regulation 2016/1624

International law

- **European Convention on Human Rights (ECHR)**
(formally the Convention for the Protection of Human Rights and Fundamental Freedoms)
- **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**
- **ALL FORESEE TO HAVE MONITORING MECHANISMS**
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations Convention against Torture)**
- **International Covenant on Civil and Political Rights (ICCPR)**

Registration and Identification of persons

With regard to return, and in accordance with the respect for fundamental rights, the Agency shall:

- ❖ coordinate the use of relevant IT systems and
- ❖ provide support to the Member States on consular cooperation for the identification of third-country nationals and the acquisition of travel documents

SPECIFIC CHILD PROTECTION EXPERTISE: Best interest of the child, Unaccompanied minors, families with children & other links, access to child protection systems, etc.

Referral to international protection procedures

Participants in Frontex activities shall promote, ***in full compliance with the principle of non-refoulement***, that persons seeking international protection:

- ❖ Are recognized
- ❖ Receive adequate assistance
- ❖ Are ***informed***, in an appropriate way, about their rights and relevant procedures
- ❖ Are ***referred*** to national authorities responsible for receiving their asylum requests

Access to Asylum Procedure: EASO- Frontex tool

In the operational plan for joint operations at the external borders shall be included:

- Procedures whereby persons in need of international protection [...] are directed to the competent national authorities for appropriate assistance”

Regulation 2016/1624, Article 16 (3)

1. ALL OPERATIONAL PLANS include the authority and procedures.
2. All PRE DEPLOYMENT BRIEFINGS in hotspots include a presentation about the tool on access to the Asylum procedure (Poster, FAQ, Practical Guide, and pocket book, a video in preparation)
3. Difference in statistical compilation (centralized vs regional) make difficult a comparison of needs and assessment
4. Next step: registration of asylum referrals?

The importance of Monitoring System

- Ensure return in a humane manner and with full respect for fundamental rights.
- Strict observation of EU and CPT standards.
- Transparency and Accountability.
- Safety and protection of returnees and also of staff (escorts and other participants).
- Include individual complaints

Main conclusions on return operations FRO Observations to MB

- ✓ During return operations with involvement of more participating member states and especially for long-distance operations, the stopover time should be as short as possible in order not to unnecessarily prolong the time of the operation.
- ✓ In order to reduce the risk of refusal of entry in a Third Country, especially when the returnees possess no other document than European Laissez Passer, further development of the co-operation between OMS/PMS and the Third Countries of return concerning recognition of travel documents issued by the MSs is advised.
- ✓ OMS shall be informed in advance by PMS about presence of vulnerable persons in the return operation.
- ✓ The size and conditions of the pre-departure facilities should be tailored to the number of returnees and special needs of vulnerable persons to be returned.
- ✓ Separated waiting area for families with children should be provided in order to avoid situations where the children are distressed by the presence of unknown adults.

CPT's recommendations on returns Standards and monitoring visits

- All the necessary steps should be taken to ensure that the removal files of all persons who are to be returned are updated and contain all the relevant information, including on pending legal procedures. [CPT/Inf (2016) 33]
- In order to reduce the risk of a violation of the principle of *non-refoulement*, the authorities need to ensure that a foreign national is not removed when a court has suspended such removal, a request for suspension of removal is pending before a court, or if such a request for suspension is legally possible. [CPT/Inf (2016) 33]
- Each person to be returned should be offered the opportunity to make at least one telephone call, free of charge if necessary, in the period immediately following the notification of the removal. [CPT/Inf (2016) 35]
- The detainees subject to a removal operation should undergo a medical examination several days before the decision to remove them is implemented. [CPT/Inf (2016) 33]

Frontex Complaints Mechanism

- **Purpose:** “[...] to monitor and ensure the respect for fundamental rights in all activities of the Agency.”
- **Who can make a complaint:** “Any person who is directly affected by the actions of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, **return operation** or return intervention and who considers him or herself to have been a subject of a breach of his or her fundamental rights due to those actions [...].”
- **Role of the FRO:** handling complaints, admissibility review, registration of admissible complaints, forwarding registered complaints to the Executive Director and/or Member States, registration and ensuring the follow up.

Regulation 2016/1624, Art.72

Monitoring system Serious Incident Report: Overview of Phases





Thank you for your attention!

Any questions?