

[REDACTED]

From: Jonas Grimheden
Sent: 03 March 2023 09:57
To: Hans Leijtns
Subject: Bulgaria and fundamental rights concerns - possible letter to send
Attachments: Letter Bulgarian Authorities 3 March 2023 for ED.docx

Dear Hans,

Following up on our conversation yesterday and the exchange on Bulgaria that you also had with Aija:

- Aija as ED a.i. has had an exchange of letters with the Bulgarian member of Frontex' Management Board, which ended up in a recent response that was positive about training.
- In addition to training, we would have a number of other mitigating measures that we would like to see.
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Below and attached a draft letter for you to consider to send, in whole or in part.
- A bilateral, as you suggested, on the side-lines of the Management Board meeting, would also be a good step.

Best,

Jonas

Ms Rositsa Dimitrova
Director of Chief Directorate Border Police
Ministry of the Interior
Member of Frontex Management Board

Warsaw, 3 March 2023

Dear Ms. Dimitrova,

I would like to express my sincere gratitude to you and your colleagues for the continuous engagement and excellent level of cooperation with Frontex, including the Fundamental Rights Office and its Fundamental Rights Monitors in the framework of the activities carried out in Bulgaria under Joint Operation Terra.

Since 2021 the Fundamental Rights Monitors have conducted four monitoring missions in Bulgaria during which concerns regarding allegations of fundamental rights violations, both at the border with Turkey - on entry - and the border with Serbia - on exit, have been reported.

Concerns have been raised on continuous and persisting allegations of irregular returns (so-called "pushbacks"), accompanied by serious allegations of mistreatment and excessive use of force by national border police against migrants attempting to cross the borders. These allegations are reinforced by [REDACTED] [REDACTED] as well as by leading and credible international and non - governmental organizations that the Fundamental Rights Office is regularly in contact with.

In the context of [REDACTED]

[REDACTED] However, recurrent replies received, and the general language used to deny the allegations raises concerns regarding the effectiveness and impartiality of the investigation carried out. Often, there is no concrete response to the questions posed.

During monitoring activities, the Fundamental Rights Monitors also observed issues related to the registration of third country nationals, both on entry (Turkey-Bulgaria) and on exit (Bulgaria-Serbia). Likewise, they have observed challenges related to the identification of vulnerabilities, as regards in particular cases of trafficking in human beings, and unaccompanied minors. A major issue in this respect is to establish a well-functioning mechanism of referral of such cases to the competent authorities.

With reference to the registration of third country nationals, inconsistencies between the number of apprehensions of migrants provided by the Frontex officers and Local Coordination Centers have also been observed. This may suggest that incidents of apprehensions of migrants are not always consistently reported in the [REDACTED]. I would like to highlight as an example the Serious Incident Report concerning a missing unaccompanied child which was launched to clarify the discrepancy identified in the reporting system.

Furthermore, according to the information received by Frontex' Fundamental Rights Office, the number of vulnerable persons including victims of trafficking in human beings and torture/inhuman treatment among migrants in Bulgaria is relatively low. It therefore seems that the Bulgarian authorities could make a greater effort to identify these groups, taking into account that migrants apprehended on the territory of Bulgaria often come from war-torn countries where they may have experienced trauma and should therefore receive appropriate protective measures.

We acknowledge the complexity of the situation and the challenges related to the management of borders highly affected by a migration flow such as the one at the borders between Bulgaria-Turkey, and Bulgaria-Serbia. Nevertheless, the above-mentioned allegations and concerns are of a serious nature and correspond to fundamental rights challenges that need to be addressed. According to EU and international law, any person crossing the border to a Member State have the right to be treated in a humane way, to be properly registered, screened and have their case individually assessed to ensure access to international protection. Moreover, EU and international law requires that the authorities have in place measures to protect vulnerable people, including victims of trafficking.

To address these challenges and to avoid similar allegations and concerns in the future preventing measures could include:

1. Ensuring a more effective use of Frontex deployed officers and assets

Frontex officers and assets - including [REDACTED] should be more effectively used during all the activities, including [REDACTED] particularly in areas which are more affected by migratory pressure and where allegations of fundamental rights are reported.

It is also important to ensure that Frontex staff is present to provide support in [REDACTED], and to ensure that the Fundamental Rights Monitors have access to all the information acquired during border and surveillance activities to conduct effective monitoring and investigations of Serious Incidents Reports related to fundamental rights.

Organising English language courses for Bulgarian border police, in cooperation with Frontex, would be beneficial and would help improving exchange with Frontex staff. This would further enhance integrated border management, while promoting common fundamental rights EU obligations and values.

2. Enhancing cooperation with Frontex' Fundamental Right Office

The Fundamental Rights Monitors must have full access to all operational areas and to all Frontex activities including screening, debriefing and land patrolling according to the European Border and Coast Guard Regulation. To ensure that monitoring activities are comprehensive, direct interaction of Fundamental Rights Monitors with national border police officers participating in Frontex activities could be facilitated.

Regular follow-up of Frontex SIRs should be carried out in close cooperation with the Fundamental Rights Office, in order to provide all the information requested to assist its task to assess the facts on the basis of the evidence gathered in the course of an effective investigation carried out by the national authorities.

3. Ensuring that allegations of fundamental rights violations are investigated by independent body

There is a need to ensure that all allegations received by Frontex' Fundamental Rights Office as well as those by national/international organizations regarding irregular returns and use of violence against migrants are also investigated - in accordance with international standards - by an independent body operating outside the institutional structure of the Bulgarian Ministry of the Interior;

4. Improving apprehensions reporting system

All apprehensions in the area of the joint operation should be duly reported in [REDACTED]. This includes apprehensions both upon entry to Bulgaria at the Turkish-Bulgarian border as well on exit at the Bulgaria-Serbia border.

5. Appointment of a fundamental rights focal point within the General Directorate Border Police

Appointing a fundamental rights focal point could ensure regular exchanges with Frontex' Fundamental Rights Office contributing to more efficient follow up on the recommendations provided while enhancing communication and common understanding.

The implementation of these actions would strongly contribute to ensure fundamental rights compliance with EU and International law at the border. Allegations against the Bulgarian authorities also have an impact on Frontex' reputation and responsibility - as well as the European Border and Coast Guard in its entirety. Delivering on our common obligations under the European Border and Coast Guard Regulation is essential and these actions would contribute to this.

I appreciate the initiatives taken by the Bulgarian authorities to raise fundamental rights awareness among Bulgarian Border Police officers and your willingness to engage on training. I would also like to take this opportunity to encourage you to invite Frontex' Fundamental Rights Monitors to provide awareness-raising sessions for Bulgarian Border Police officers. Such sessions could cover fundamental rights obligations at the border, focusing on the prohibition of collective expulsion, access to asylum and identification of persons belonging to vulnerable groups.

Yours sincerely,

