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## SYNTHESIS OF THE IPCAN SEMINAR ON 14 DECEMBER 2018:

### « POLICE CONDUCT OF LAW ENFORCEMENT SERVICES IN THEIR RELATIONSHIPS WITH MIGRANTS IN EUROPE »

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#### Opening of the seminar by M. TOUBON, Defender of Rights (IPCAN member, France)

M. TOUBON opened the seminar by mentioning the new report of the institution entitled “Exiles and fundamental rights, three years after the Calais report”, which refers to his 2015 report in which he denounced the undignified life conditions and the breaches to fundamental rights on the franco-british border.

The Defender declares that the protection of fundamental rights retreats before the alleged necessities to prevent terrorism, ensure security and control migratory flows. The Defender notes that the implementation of this migratory policy is more and more given to law enforcement forces. In Calais, for example, the strategy is to prevent the fixation of camps, such as the jungle in Calais, dismantled in the summer of 2016. Thus, law enforcement services are instructed to drive settling migrants away.

M. TOUBON also referred to the current particular situation in France (“gilets jaunes” and Strasbourg attack), that leads us to question ourselves on matters directly dealing with the police conduct of law enforcement in the face of this type of popular movements (relations between the police and the population) and terrorism. These questions are continuous, hence the importance of institutions like ours, outlines the Defender.

The Defender reminds that the last European council, on that matter, did not reach an agreement, except on giving priority to the effective control of the European Union’s (EU) external borders.

#### Session 1

#### Police conduct of law enforcement services regarding migrants present on the national territory

#### Moderation: M. Christian AHLUND, member of the European Commission against Racism and Intolerance (ECRI), Council of Europe

M. AHLUND started by explaining that the ECRI is a monitoring instance in the field of human rights, specialized in questions of fight against racism, discrimination and intolerance. Within this framework, the ECRI analyses the situation of each EU member-state and makes recommendations in the objective of treating issues like racism and intolerance that the Commission identified.

M. AHLUND emphasizes that terror attacks have contributed to Muslim migrants being seen as threats and being much more controlled, and arrested, by law enforcement services.

The balance is hard to maintain between the objective of monitoring and security, and the objective of respect of human rights, M. AHLUND thinks.

## **MS. Cecilia RENFORS, Parliamentary Ombudsman (IPCAN member, Sweden)**

MS. RENFORS begins her intervention by presenting the role of the Swedish Parliamentary Ombudsmen. The institution, which is attached to the Parliament, has four Ombudsmen working independently from each other. Their mandate is, in short, to ensure that public authorities respect the law. An Ombudsman leads investigations following individual complaints or *proprio motu* actions. The institution treats appr. 9,000 complaints per year. Within the framework of its investigations, an Ombudsman has a power of instruction, and professional secrecy cannot be invoked before them.

The decisions of the Ombudsman can influence laws and regulations.

MS. RENFORS takes the example of a decision relating to a woman with children, to whom a permission to stay in Sweden was refused, and who did not want to leave the country voluntarily. The family was retained a few hours before their return flight. The investigation showed that the use of coercive measures lacked legal basis and that this was the case in general in similar situations. The Ombudsman decision was submitted to the Ministry of Justice, and today, Swedish law provides for this type of measures.

MS. RENFORS also puts forward the question of the use of force towards persons in custody before deportation in order to bring them to an embassy to collect travel documents. She expressed doubts concerning the legal basis allowing coercive measures in these situations. She takes the example of a person who was driven to the embassy and carried from the car into the embassy building by the law enforcement services, which was contrary to human dignity, according to MS. RENFORS.

Recent allegations deal with actions by police officers towards beggars, often migrants from other parts of Europe. The police justifies its action with public order.

One example is a decision concerning a woman who was displaced by police officers nine kilometers away from the place where she was begging. The investigation showed that she was not disturbing public order and there was no reason for the decision of displacement.

MS. RENFORS warns on the fact that migrants do not know the law, and therefore very rarely file complaints. The language barrier is also an obstacle to lodging complaints. She has reminded in her decisions that it is up to the police to ensure that people can understand them. The partaking of interpreters during operations of police forces is therefore very important.

## **MRS. Maja KEVIĆ, Deputy Ombudswoman, Office of the Ombudsman (IPCAN Member, Croatia)**

*“Access to international protection”*

MRS. KEVIĆ shares her experience in Croatia with her counterparts. The Ombudswoman Office has been engaged in the protection of human rights of persons seeking international protection and of migrants in irregular situations since the Balkan route was opened in 2015, but, from 2016 onward, Croatia experiences great difficulties in the field of migration.

In the Ombud's 2017 report, it is notified that today, border control in European states is much stricter. This affects Croatia that has a particular status since it is not yet a member of the Schengen area.

The Ombud has received numerous complaints on the difficulties experienced by migrants in accessing international protection and in lodging complaints related to police brutality. Several cases of inhuman and degrading treatments have also been observed (police officers forcing migrants to stay in the snow, on their knees, violence, theft of personal effects).

Reclamations are introduced by migrants themselves or by actors of the civil society. They are also based on the finding of international organisations and media announcements as well as conducting unannounced visits to police stations within the National Preventive Mechanism (NPM).

The Croatian Ombud thinks these complaints, dealing with very serious situations constituting possible breaches of Article 3 of the European Convention on Human Rights (ECHR), should be subject to in-depth and impartial investigations. Yet, the Ministry of Home Affairs simply declared these complaints untrue. Authorities tend not to take seriously complaints from persons in irregular situations because they think these persons would do anything to discredit the police in order to stay on the EU territory.

A case that was subject to a great media exposure was about the use of firearms when stopping a van, which as it turned out carried 30 migrants, including children who were injured in the incident.

The Croatian Ombuds asked the Ministry to provide clear information on the actions that were led, but once again, the investigation was conducted in a biased way, declares MRS. KEVIĆ. The investigators only heard the police officers, not the migrants, even though they were present in the country.

Another issue revolves around the returns of migrants. There is a significant number of cases of questionable treatment related to measures to secure the return of migrants, which indicates that they might be prevented from seeking international protection. Indeed, MRS. KEVIĆ explains that migrants in an irregular situation found on the Croatian territory are transported to the police station of the zone of which they supposedly crossed the border in order to show the exact location. But in the proceedings seen by the Ombuds, no explanation was given to migrants, they had no interpreter or medical assistance. Almost none of administrative procedure cases examined within the NPM contained a record on the time when irregular migrants were taken to the police station and released from it, on whether they sought international protection while there and whether they required medical care. Each time, an order to leave is handed down. Migrants have seven days to leave voluntarily, whereas the deadline could be up to thirty days. But there is no record of them leaving the country. The Ombud therefore suspects that migrants who are caught are placed in trucks and driven outside of borders, notably in Bosnia Herzegovina.

MRS. KEVIĆ concludes that in 2018, for the first time it was made impossible for the Ombudswoman to do her work as she was denied immediate access to items and data on the treatment of irregular migrants in the MOI Information System which is at the same time the only source of such data. This happened during visits and inquiries pursuant to the Act on the National Preventive Mechanism and

the Ombudsman Act making it difficult for her to work according to her powers deriving from the Constitution and the above mentioned laws.

MRS. KEVIĆ believes that these behaviors should be notified to international organizations such as the Sub-Committee for the prevention of torture and other cruel, inhuman or degrading treatments or punishments (CPT) and the United Nations Committee Against Torture (CAT).

## **M. Jacques TOUBON, Defender of rights (IPCAN member, France)**

M. TOUBON assesses the evolution of the situation in Calais since his October 2015 report. Today, there are not many camps left in Calais, but many migrants, including minors, are homeless and sometimes left without any recourse. In this year's report, it is shown how, today, their fundamental rights are largely disregarded.

M. TOUBON notices that the activities framing the reception of migrants are more and more penalized in the current context. Associations are not only under pressure but also submitted to penal justice, notably through the "*offence of solidarity*", which is an offense constituted by bringing help to people wishing to enter our territory in an irregular manner. The text regulating this infraction was recently modified in order to limit its scope of application, but the offense has still not disappeared.

In France, one of the priorities of public authorities is to deter migrants from any settlement on the territory. This work, ensured by law enforcement services, is made through the strengthening of police presence, but also by the embezzlement of identity checks. These checks are used in order to deter migrants from accessing assisting premises or to evacuate living spaces.

The Defender of Rights recommends that these identity checks are not used within the framework of this deterring policy and are instead better supervised.

The 2018 report also observes persistent impediments to entry into the asylum procedure: permanently saturated counters, lack of information... For example, the branch of Calais' sub-prefecture dedicated to welcoming asylum seekers has been closed. As a consequence, migrants have to go to Arras to file their request, which makes the procedures nearly impossible.

Security forces are in charge of the the implementation of this policy. This raises the questions of the relationships between the law enforcement services, the migrants deprived of their rights and the population as a whole. This can affect positively or negatively the way people see security forces. It certainly raises a debate.

## **M. Adriano SILVESTRI, Head of Sector Asylum, Migration and Borders, European Union Agency for Fundamental Rights (FRA, UE)**

M. SILVESTRI stresses that the problem of the relations between police and migrants can be found everywhere within the borders of the Schengen area, and not only at its external borders.

M. SILVESTRI thinks that a greater visibility should be given to the reports that are being published, such as the Calais report. In this way, we could create an environment conducive to a change in the behaviors of authorities.

A few weeks ago, the FRA published the report “Being Black in the EU”. The latter raised questions about discrimination, violence motivated by racial hatred, racism. He put forward many problematics, such as African people with a Sub-Saharan background that are victims of violence in Austria.

Another report highlights the treatments undergone by migrants.

The Agency has also produced useful tools, such as a guide on the profiling of migrants by the police during identity check.

## Question:

**M. AHLUND:** “What do you think will be the consequences for migrants of the possible end of the Touquet Agreements?”

**M. TOUBON:** “If the Touquet Agreements come to an end, this littoral would lose its role as a bulwark against migration. Each will have to do his own work on his own border. Today, England has invested between seventy and a hundred million of euros to build walls to implement the Touquet Agreements. What we say, is that we cannot stay stucked on solutions, which constituted at the time breakthroughs, but which leads today to the opposite of the result that was sought. We need common arrangements. There is no reason for us to treat each situation that presents itself in the UE with exceptional means.”

## Session 2

### Police conduct of law enforcement services and administrative detention

#### Moderation: MRS. Carmen COMAS-MATA, Elected Member, Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT, United Nations)

To start, MRS. COMAS-MATA indicates that the *Defensor del Pueblo* regularly notes the presence of asylum seekers in detention centers, including women and children.

In 1985, the *Defensor del Pueblo* seized the Spanish Court of Cassation, considering that a person should only be subjected to a measure involving deprivation of liberty if he / she has committed an offence.

The *Defensor del Pueblo* also criticizes the conditions in which asylum seekers are placed in administrative detention centers and regrets that a great number of asylum seekers are turned back at the Moroccan border.

Besides, MRS. COMAS-MATA emphasizes that it is important not to reduce the frequency of inspection in administrative detention centers, notably by independent institutions such as those represented by the Ombudsmans.

## **MRS. Olena PETSUN, Adviser to the Commissioner for Human Rights (Council of Europe)**

### ***« Law enforcement authorities and administrative detention: European standards »***

After presenting the mandate and the tasks of the Commissioner for Human Rights, MRS. PETSUN has reminded his will of ending the detention of migrants. Indeed, on 31 January 2017, M. Nils Muižnieks has declared: « it is high time for States to invest in alternatives to migrant detention ». To end the detention measures towards migrants, he advocates for an action plan, divided into five parts:

1. Plan in a clear and effective manner the obligation for member-States to implement alternatives to detention in domestic law and national policies;
2. Develop a well-stocked toolbox of alternatives in order to offer a range of viable and accessible alternatives in regard to various needs and situations;
3. Forbid child detention, State-members having to present a roadmap and firm deadline before the entry into force of this prohibition;
4. Systematically step up exchange of good practices in this matter;
5. Improve data gathering on national detention practices.

Then, MRS. PETSUN reminded that the European Committee for the Prevention of Torture and Inhuman or Degrading Punishments Treatment or Punishment (CPT) has prescribed a certain number of standards<sup>1</sup> regarding the detention of migrants, notably on:

1. The conditions in which the detention measure is implemented:
  - Detention areas located on borders (airports lounges and police stations) are often unsuitable for welcoming persons, all the more on extended periods;
  - Prison is not an appropriate place for a person who has not been condemned or is suspected of having committed a criminal offense;
  - Assuming that the detention measure is deemed necessary, the person targeted by this measure must be retained in a specially designed location, by avoiding any similarity with a prison setting and offering satisfying material conditions as well as a regime adapted to his / her legal status;
  - Conditions of the detention measure must be adapted to the nature of the measure of deprivation of liberty (limited number of restrictions, range of various activities, contact with the outside world, etc.).
2. The exercise of fundamental rights from the beginning of the measure of deprivation of liberty: it relates to the right to access to a lawyer / a legal assistance, to a doctor and to the possibility of informing a close one or a third party of the detention measure. To do so, it is necessary to respect a certain number of guarantees (individual detention measure, effective judicial

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<sup>1</sup> V. CPT 1996 7th General Report on "Foreign nationals detained under aliens legislation" ; 2003 CPT 13th General Report on "Deportation of foreign nationals by air" ; 2009 CPT 19th General Report on "Safeguards for irregular migrants deprived of their liberty" ; Relevant CPT country reports.

action, impossibility to extend the detention measure without time limit and without a prospect of release, to avoid the separation of family members, clear rules of procedure, independent control mechanism of detention places);

3. Guarantees to respect throughout the detention measure;
4. Specific guarantees linked to the health condition and additional guarantees for minors;
5. Specific guarantees to be respected during the implementation of the expulsion measure;
6. Risks of ill-treatment after the expulsion from the territory.

In addition to the standards prescribed by the CPT, MRS. PETSUN has reminded the contributions of the European Court for Human Rights (ECtHR) on detention measures toward accompanied<sup>2</sup> or unaccompanied<sup>3</sup> minors, as well as toward adults<sup>4</sup>. She also mentioned several tools (resolutions, recommendations, guidelines, action plan) adopted by the Committee of Ministers, other intergovernmental committee of experts<sup>5</sup>, as well as the Parliamentary Assembly of the Council of Europe<sup>6</sup> on this matter.

Lastly, MRS. PETSUN indicates that the Commissioner has made several visits to detention centers in Europe, after which he published country reports.<sup>7</sup> In this context, she insisted on the importance for visiting and controlling bodies to communicate and share information among them. Besides, MRS. PETSUN has invited participants to express the difficulties they experience when visiting detention centers to the Commissioner, who will make every effort to correct the situation.

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<sup>2</sup> ECHR, Factsheet – Accompanied migrant minors in detention :  
[https://www.echr.coe.int/Documents/FS\\_Accompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Accompanied_migrant_minors_detention_ENG.pdf)

<sup>3</sup> ECHR, Factsheet – Unaccompanied migrant minors in detention :  
[https://www.echr.coe.int/Documents/FS\\_Unaccompanied\\_migrant\\_minors\\_detention\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Unaccompanied_migrant_minors_detention_ENG.pdf)

<sup>4</sup> ECHR, Factsheet – Migrants in detention :  
[https://www.echr.coe.int/Documents/FS\\_Migrants\\_detention\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Migrants_detention_ENG.pdf)

<sup>5</sup> V. Recommendation Rec(2003)5 on measures of detention of asylum seekers (2003) ; Twenty Guidelines on Forced Return (2005) ; Guidelines on human rights protection in the context of accelerated asylum procedures (2009) ; Action Plan on Protecting Refugee and Migrant Children in Europe (2017) ; CDDH's analysis of the legal and practical aspects of alternatives to immigration detention (December 2017)

<sup>6</sup> V. Resolution 2020 (2014) on the alternatives to immigration detention of children ; Recommendation 1985 (2011) on Undocumented migrant children in an irregular situation: a real cause for concern ; Resolution 1707 (2010) on Detention of asylum seekers and irregular migrants in Europe ; Recommendation 1547 (2002) on Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity ; The Parliamentary Campaign to End Immigration Detention of Children ; A study of immigration detention practices and the use of alternatives to immigration detention of children.

<sup>7</sup> V. Belgium: letters dated 2016 and 2018; 2015 report; Bulgaria: 2015 report; Croatia: 2016 report; Cyprus: 2016 report; Denmark: 2016 report; France: 2013 visit to detention centre of Geispolsheim, 2015 report and 2017 letter; Germany: 2015 report; Hungary: 2014 report, 2016 third party intervention to the ECtHR; 2017 statement; Luxembourg: 2017 statement and subsequent visit; Netherlands: 2014 country report; UK: 2016 memorandum on asylum and immigration.

**M. André FERRAGNE, General Secretary, Contrôleur général des lieux de privation de liberté (NMP, France)**

« *La double fonction du policier en CRA : services à la personne et sécurité* » (“*The dual function of the police officer in administrative detention centers: services to the individual and security*”)

First, M. FERRAGNE presented the role and the mandates given to the *Contrôleur général des lieux de privation de liberté* (CGLPL). His main mandate is to control places of deprivation of liberty, either by making field visits or by exchanging correspondence, in the aim of preventing acts or torture and cruel, inhuman and degrading treatments.

Since 2008, the CGLPL has achieved about sixty visits in administrative detention centers throughout France, knowing there are about thirty of them on the territory. Each center has been subjected to two or three visits by the CGLPL. The aim of these visits is to control the respect of fundamental rights of retained persons and to ensure the effectiveness of their rights.

M. FERRAGNE insists on the fact that administrative detention centers are not usual police facilities because retained people are not confined because of their behavior but because of their status: they are not a priori dangerous. Another distinction lies within the fact that there is a multiplication of actors within administrative detention centers (lawyers, OFPRA (French Office for the Protection of Refugees and Statelessness), OFFI (French Office for Immigration and Integration), associations, medical unit linked to the closest hospital, etc.).

Besides, M. FERRAGNE indicates that several deontological matters can arise in administrative detention centers. First, he explains that police officers working in administrative detention centers rarely choose this function which is atypical. Indeed, the functions of a police officer in administrative detention centers are static, resembling more a service delivery (informing on rights, listening, respect of norms related to facilities, etc.) than a security function, and are not about facing delinquents. There can be confusion between the hosted public and the inversion of the values of security on the one side and protection on the other side.

Furthermore, M. FERRAGNE declares that this function is undervalued and poorly prepared: it touches less than five per cent of police forces; therefore, no related module is included in the initial training of police officers. M. FERRAGNE explains that it is a function that can be traumatizing because police officers are brought to monitor children, to free people in whatever conditions, to undergo painful / difficult-to-live-through removal procedures. They can sometimes feel like prisoners in a confined environment. A certain number of police officers working in administrative detention centers therefore wonders about the very sense of their mandate.

Moreover, M. FERRAGNE indicates that police officers in administrative detention centers can face difficulties: the lack of understanding between confined persons and police servants because of the language barrier, the failure to inform confined persons on their rights, the absence of conformity of the police equipment, the lack of staffing in regard to the number of persons they are in charge of.

However, as for other police servants and militaries, police officers working in administrative detention centers are subject to the respect of the provisions of the Code of Internal Security, which imposes deontological obligations such as the exemplarity of their behavior (*vouvoiement*), neutrality, respect

of the dignity of the persons, non-discrimination, proportionality and necessity of constraints (search, handcuffs, solitary confinement), preservation of people's health condition, protection against inhuman or degrading treatments, attention to the physical and psychological state of the apprehended persons, assistance to a person in danger, etc.

In the face of these findings, M. FERRAGNE formulates several recommendations. Firstly, he indicates that it is necessary to increase material and human means. Then, about the training of police officers working in administrative detention centers, M. FERRAGNE reminds the efforts that have already been made by organizing the training on taking up duty and continuous educating courses. However, efforts are still needed concerning training on rights, on management of violence, on real-life situation settings and on identification of mental disorders. Lastly, M. FERRAGNE underlines the necessity to implement external control mechanisms, by favoring alternatives to prosecution when possible.

Finally, M. FERRAGNE addressed MRS. PETSUN and warned not to copy prison regulations to apply them to detention centers, emphasizing that they are really not the same sort of places of deprivation of liberty.

## **M. Mathieu BEYS, Legal and policy officer at Myria, Federal Migration Center (Belgium)**

### **« *Trafic d'êtres humains et arrestations administratives de migrants: le cas belge* »**

*("Human trafficking and administrative arrests of migrants: the Belgium case")*

M. BEYS started his intervention by thanking the Defender of rights for his contributions, notably for his reports on Calais and his observations before jurisdictions in litigations related to discriminatory identity checks, from which he draws inspiration. M. BEYS then presented the institution for which he works: Myria. It is a public independent institution that has three legal missions:

1. Enlighten public authorities on the nature and wideness of migratory flows;
2. Guard foreigners' fundamental rights;
3. Promote the fight against human trafficking.

Myria also plays a role of a platform aiming at favoring dialogue between actors of civil society and the government.

Concerning arrests of migrants by police forces, Myria has formulated several recommendations:

- The right to be heard before any potentially prejudicial decision (such as an OQT, "*Obligation de Quitter le Territoire*" – obligation to leave the territory). Myria finds progress on this matter. Indeed, from now on, police forces have to ask the person being subjected to an OQT if he / she raises objections to being deported.
- The use of EU general principles of rights (article 41 of the EU Charter) and provisions from the ECHR to assert elements (non-refoulement, article 3; family life, article 8). M. BEYS indicates on that matter that Belgium does not follow the CoE's recommendations in an orthodox way and thanks the latter for the exchanges it has been having with Belgian authorities. He specifies that in Belgium, a migrant can be retained during twenty-four hours in a police facility. Another

example is that persons in an irregular situation who do not wish to apply for asylum in Belgium but who invoke risks of persecution in their country of origin can however be subjected to the Dublin III regulation and transferred to the member-state on which they depend;

- The taking into account of situations of vulnerability;
- The right to be informed within a short period and in a comprehensive language of the reasons of the deprivation of liberty (article 5 §2 CEDH);
- The right to a lawyer during the administrative phase.

Myria recommends bringing particular attention to victims of human trafficking or of aggravated traffic in an irregular situation, who have a forty-five days-reflection period as soon as their situation is known from the police forces, to recover and find themselves in a peaceful state.<sup>8</sup> They are then being cared of and welcomed in a specialized center. At the end of that period, victims have to take a decision: make declarations, lodge a complaint or prepare their return to their country of origin. Indeed, while there is no “*offence of solidarity*” (French “*delit de solidarité*”) in Belgium, Belgian law does provide for a criminal offence for authors of human trafficking.<sup>9</sup> If victims cooperate to the investigation, they have the possibility to get a residence permit. The role of police forces is then crucial to detect the state of vulnerability and to inform the victim of their rights.

According to the Office of Foreigners, amongst the 19 persons victims of human smuggling (and not trafficking) who entered into the residency procedure, twelve were Iraqi. A majority of victims was men and four were minors.

M. BEYS notes that Directive 2012/29/CE constitutes a great progress in the matter, notably because it forbids to discriminate victims of violations, including in regard to their residency status, which means that victims residing illegally (e. g. human beings trafficking) should have the same rights as any other victim.

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<sup>8</sup> Article 62/1 1st § of the Belgian law from 15 December 1980: « When police or inspection services have indices of a foreigner being victim of (human trafficking) (...) they immediately notify the ministry or his deputy and notify the foreigner of his possibility to obtain a permission to stay by cooperating with competent authorities in charge of the investigation or of the prosecutions concerning these offences and they put him in contact with a center acknowledged by competent authorities, specialized in the welcoming of victims of these offenses ».

<sup>9</sup> Article 77 bis of the Belgian law from 15 December 1980: “constitutes the offense of human trafficking, the fact to contribute, in whatever manner, would it be directly or through an intermediary, to allowing the entry, the transit or the stay of a non-citizen of a State-member of the European Union on or through the territory of a given State or a State party to an international convention related to the crossing of external borders and committing Belgium, in breach of the legislation of this State, in the objective of obtaining, directly or indirectly, a patrimonial advantage”;

Article 77 quater of the Belgian law from 15 December 1980: victims of aggravated traffic able to solicit a stay:

« 1° when the offense was committed toward a minor (unaccompanied);

2° when it was committed by abusing a situation of vulnerability in which a person finds itself because of his/her illegal or precarious administrative situation, his/her precarious social situation, his/her age, her state of pregnancy, of illness, of infirmity or of mental or physical deficiency, in such a manner that the person does not have any other true and acceptable choice but to submit herself/himself to this abuse;

3° when it was committed by using, in a direct or indirect manner, fraudulent manoeuvres, violence, threats or any form of constraint, or by resorting to kidnapping, abuse of authority or deceit;

3bis° when it was committed through the offer or acceptation of payments or any sort of advantages for obtaining the consent of a person having authority over the victim;

4° when the life of the victim is being endangered deliberately or by gross negligence;

5° when the offense caused an appearing incurable, a personal work incapacity of more than four months, the complete loss or use of an organ, or serious mutilation”.

M. BEYS recommends to break the smugglers “business model” instead of fighting migrants in an irregular situation. Indeed, he believes that the violation of fundamental rights of these persons is counterproductive in efficiently fighting smugglers. On the contrary, a human-based approach to the smugglers victims can benefit the investigation because the the victims’ declarations and the information that can be found on their smartphone can constitute elements of proof. It is then necessary to create a bond of trust between the law enforcement forces and the victims to establish this cooperation. However, in practice, Myria has found that the effectiveness of this cooperation meets obstacles: victims of human trafficking sometimes find themselves in the same cells as their smugglers, or there is a lack of human means (interprets, social workers) leading to a barrier language that does not allow the detection of victims. Besides, the lack of awareness or the attitude of actors can also defeat this cooperation if police forces refuse to take the victim’s complaint.

**Commentary from M. SILVESTRI:** the matter needs to be addressed in terms of effectiveness. The return rate went from forty-five per cent to thirty-six per cent last year. Often, authorities indicate that it is necessary to place migrants in administrative detention centers, otherwise they might run away; but the effectiveness of a placement in an administrative detention center is still to be demonstrated.

**M. FERRAGNE:** the deporting rate is about forty per cent in France. This claim of effectiveness has been used to extend retention from forty-five to ninety days because the extension of this deadline was necessary to obtain passes.

**MRS. DUQUELLENEC:** beware of the European passes and of the longevity of the procedure which can eventually make a placement in retention necessarily longer.

**M. SILVESTRI:** if someone is expert on this question, the FRA is interested.

## Session 3

### Police conduct of law enforcement services and returning procedures

**Moderation: MRS. Claudine ANGELI TROCCAZ, Deputy, Deputy-chair of the Commission in charge of Police Conduct, Defender of Rights (IPCAN member, France)**

**MRS. Elena ARCE JIMENEZ, Head of the Migration and Equal Treatment Department, Defensor Del Pueblo (IPCAN member, Spain)**

MRS. ARCE declares that, in the context of the Spanish Ombud’s escorting migrants to their countries of origin, it is difficult to be identified as the Ombud and not as a Frontex member.

She adds that the *Defensor del Pueblo* has insisted on the establishment of a complaints' mechanism that could be activated by the deported person throughout his / her expulsion. It is necessary that this complaints' mechanism be presented in the plane.

She adds that the *Defensor del Pueblo* also warned on the fact that families, sometimes including children, have been deported back to their country while Frontex is not entitled to deport children. This is a total violation of the Convention on the Rights of the Child, declares MRS. ARCE. Besides, it is one of the points that the *Defensor del Pueblo* controls throughout his missions with Frontex.

## **M. Yiannis BOUTSELIS, Senior investigator, Ombud (IPCAN member, Greece)**

### ***« Human rights monitoring in forced return operations: challenges for the Ombudsman »***

The European Directive 2008/115/EC gives instructions to state-members by enouncing that « member-states must provide for an effective forced return monitoring system ». For M. BOUTSELIS, the continuous challenge for the Greek Ombud is to define the term "effective". According to him, "effective" means "independent". Indeed, there cannot be effectiveness without guarantees of independence and transparency.

In addition to this Directive, guidelines, procedures, recommendations or a Code of Conduct have also been established. According to M. BOUTSELIS, these tools are very useful. However, member-states still depend on domestic law.

Concerning specific legal tools, such as the recent Frontex regulation, which is currently subjected to an amendment procedure, M. BOUTSELIS believes, therefore agreeing with his colleague MRS. ARCE, that there is an issue: the Article 29. The latter, according to him, does not start properly because it begins with "The Agency", which makes the continuation of the sentence completely subjected to the control of this "agency", Frontex.

M. BOUTSELIS recognizes having an excellent collaborations with Frontex and he admits that the Agency has shown a great professionalism in the conduct of its operations.

Consequently, he declares that it is important for Frontex to have an appropriate external control mechanism in order to certify the quality of its work.

For M. BOUTSELIS, the most important is to note that today, Frontex's control mechanism is not external and, consequently, does not do justice not only to European citizens but also to agents and European law enforcement services, who combine their skills to achieve operations of forced returns. Actually, declares M. BOUTSELIS, this system does not do justice to anyone.

M. BOUTSELIS goes on by saying that the Greek Ombud was made an independent institution by the Constitution. Contrary to the majority of the rest of the EU states but like France or Spain, the Greek Ombud's mandate is very vast: it is the national mechanism for the prevention of torture, it enjoys a control mechanism as well as a human rights body, it can launch disciplinary proceedings against security forces...etc.

However, the institution does not have the necessary means in order to accomplish these tasks. Thus, many files are pending at the Greek Ombud.

The Greek Ombud is also competent for exercising an external control mechanism toward forced return operations. The team taking care of forced returns' cases is made of fifteen people. Its task is to undertake an external control, independent from forced returns' operations in order to ensure their "conformity with fundamental rights".

In that respect, the first challenge for the Greek Ombud is to understand the meaning of the expression "in conformity with fundamental rights". According to M. BOUTSELIS, this expression was originally misunderstood, not only in Greece but also throughout Europe. There was indeed a confusion about the fact that the controller's role was to notice potential violations of the escort's rights. For M. BOUTSELIS, this was not clearly enunciated in their mandate and it did not really make sense.

The other major challenge is that it was the first time that civilians, like the Greek Ombud, were part of an operation conducted by uniformed services. According to M. BOUTSELIS, this has a double meaning: on the one side, the police must be trained in order to understand that the Ombud is there to fulfill a legitimate and useful objective, and, on the other side, the Ombud must understand that its tasks are not achieved in the same way as usual throughout this operation. Indeed, the major distinctive element is that they cannot intervene. M. BOUTSELIS acknowledged that he and his colleagues have a tendency to point out or to ask that something be done in order to rectify the situation. However, this is not part of the Ombud's work within the framework of forced returns' operations.

The Greek Ombud, in the context of its competencies towards forced returns' operations, takes part in every phase of the operation. Besides, since he also is the national mechanism for the prevention of torture and because of its other competencies, the Ombud can even be present during the phase preceding the pre-return phase. For example, when there is a readmission operation from Lesbos Island to Turkey, the police has the obligation to inform the Ombud beforehand and the latter has to inform, in return, the police that he will be watching the operation. The Ombud arrives on the spot one day before the operation and meets with the police, in order to ask to be shown that the necessary documents have been drafted in respect to the law and in the presence of an interpret, so fundamental rights of the person are guaranteed. If one element is missing, the Ombud notifies it and considers the file as incomplete. Thus, either the file is completed, either the operation is reported. In this way, the Ombud has total control over the operation.

The Ombud also has access to the entirety of the medical file. It is something that the Greek Ombud has to explain to foreign security forces participating to Greek operations, because they are not familiar with this system.

However, it is not because this competency was given that the Ombud will abandon all its other mandates. It cannot ignore the breadth of its mandate simply in the name of an operation, declares M. BOUTSELIS.

This leads us, according to him, to the heart of the problem (besides logistic problems): the current situation is obscure and leads them to be in a difficult and embarrassing position, which sometimes bring them to improvisation. Yet, it is necessary to have clear rules on this matter. That is why the Greek Ombud, together with Ombuds from other member-states, has taken the initiative, with the support of the Council of Europe, to remedy this situation.

For M. BOUTSELIS, it is not a Greek problem, it is a EU problem. Therefore, he hopes for the prompt drafting of a common document offering conclusions and suggestions in order to change the situation and to provide for appropriate external control mechanisms in the context of EU joined return operations, a document that could also affect the conduct of national return operations.

## **MME. Magdalena SILSKA, Adviser to the Fundamental Rights Office, Frontex, EU Agency**

### **« Fundamental rights in Frontex return activities »**

MRS. SILSKA gives an overview of Frontex operations from a human rights-based approach.

First, she reminds that Frontex is implicated in several sorts of operations on EU borders, including in return operations as well as maritime and land operations. She focuses on return operations during her intervention.

MRS. SILSKA defines fundamental rights as distinct from human rights. According to her, both notions share the same content and substance; however, they distinguish themselves by the fact that the notion of fundamental rights is used in a constitutional context (in EU documents) while the notion of human rights is rather used in international law.

MRS. SILSKA goes on by presenting fundamental rights in the context of operations conducted on borders, such as human dignity, right to life, right to asylum or the non-refoulement principle. According to her, the protection and promotion of human rights are at the heart of Frontex's activities.

Then, MRS. SILSKA introduces the role of her Office: the Frontex Office of Fundamental Rights. It is competent for controlling Frontex' activities based on a protection and promotion of fundamental rights. It is independent; even though it is part of Frontex.

The main activities of the Office are conducted:

- during the pre-operational phase, through the checking of the content of documents by proceeding to a risk analysis and a vulnerability assessment, but also by a presentation of guidelines and by the consultation of fundamental rights officers;
- during the implementation phase, through the monitoring of the respect of fundamental rights (through serious incident reporting and the complaint mechanism) and field visits (here, the role of the Office is to control all Frontex's activities, which means in practice that it can be present in all operational activities; indeed, the access must be given to the Office);
- during the evaluation phase, through observations (every six months, the Office publishes a declaration highlighting all important aspects brought out in the context of the control).

Thereafter, MRS. SILSKA reminds the legal basis of her Office's activities, and declares that fundamental rights are integral part of Frontex's borders management. Besides, she notes that, a few years ago, references to fundamental rights was made about four times in the texts of Frontex; today, there are almost a hundred references to fundamental rights in these same texts. Thus, she recognizes that a lot is left to be done but that the situation did progress.

She also refers to Article 34.1 of the Regulation 2016/1624. The latter designates « the European Border and Coast Guard », which are made of the member-states and Frontex. Both have to guarantee the protection of fundamental rights, in particular the non-refoulement principle.

In this way, concludes MRS SILSKA, Frontex has to safeguard fundamental rights in the conduct of its operations. It is notably made through the establishment of a complaint mechanism (since 2007), team-training, revision of operational plans and evaluation compliance, emphasizing on protection of children and vulnerable groups (recently, a children protection expert team has been established, it works on the necessity of including a protection of children rights in official documents) ...ect.

The legal basis of Frontex return operations can be found in domestic law, European law and international law.

MRS. SILSKA then discusses the heart of her presentation: fundamental rights in the conduct of Frontex return operations. These fundamental rights are: human dignity, right to an effective remedy, right to life, prohibition of torture, non-discrimination principle, the non-refoulement principle and protection of vulnerable persons.

According to the non-refoulement principle, Frontex agents have to ensure that people asking for international protection: are protected, receive adequate assistance, are informed of their rights and of the procedures to be followed and are referred to national authorities responsible of receiving asylum requests.

In the context of the examination of operational plan of operations, Frontex always inserts this element of reference to national authorities. Besides, operational plans - based on new amendments to Frontex regulations - and their annexes have become binding and therefore create legal obligations for states. Even though domestic law prevails, attention must be given to regulations.

In this regard, Frontex has created two codes: one concerning Frontex joined forced return operations that must always be incorporated to operational plans and the other (of which MRS. SILSKA has participated to the drafting) concerning Frontex general operations. These two codes complete each other, and it is important to read them together. The main message of these codes is that the rules are binding. MRS. SILSKA does acknowledge that the fact that the availability of these codes is subjected to the authorization of States can be an issue (as asserted by MRS. ARCE).

MRS. SILSKA also stresses the importance of access to asylum procedure. In 2014, Frontex created a tool in collaboration with EASO (European Asylum Support Office), in order to better know the asylum procedure. This tool will be distributed in all hotspots.

MRS. SILSKA then turns to the importance of the control mechanism, of which the main idea is to ensure that the return operation is done in a human way, in total conformity with fundamental rights and standards established by the CPT and the EU, and in a transparent and responsible manner. The protection of returned persons and of the teams has to be ensured, and the operation has to include an individual complaint mechanism.

The latter was established in 2006 and the Office is ready to lead its first evaluation. This system was created mainly for returned persons and migrants in contact with Frontex, notably through operations organized by the Agency, and who consider having been victims of a violation of their fundamental rights. These persons have the possibility to lodge a complaint in several ways, which are explained on Frontex's website. These complaints are addressed and managed by the Office of Fundamental Rights, which first decides if the complaint is admissible or not; if it is, it is registered then transmitted to the Executive Director or to the member-state, depending on the situation. Lastly, the Office ensures the follow-up of this complaint.

There are many discussions on the effectiveness of this system. In this way, MRS. SILSKA thanks for the critics and the recommendations expressed toward the system because it allows Frontex to identify the weaknesses of the procedure and to think about solutions. One of the challenges is to ensure that the complaint will come to Frontex. A solution is that controllers are tasked with the sending of this complaint; that being said, some are reluctant to this idea of such a responsibility.

MRS. SILSKA is also responsible for the serious incident reporting's control mechanism. She notes that there sometimes is a misunderstanding concerning the distinction between this system and the complaints' mechanism. The reporting mechanism has been created some time ago, in order to ensure that all types of incidents can be reported. In the event of an alleged violation of a fundamental right, every Frontex employee has to report it. This violation will be automatically reported to the Office, which decides, or not, to conduct an investigation. Often, the Office enters in contact with national authorities of the involved state. It will also do a follow-up of the management of the issue.

## **M. Fernand GONTIER, Central Director, French Border Police (France)**

M. GONTIER starts by presenting the organization of the Border Police and the procedures applied to deportation operations. He reminds that the Border Police is competent on the entire spectrum of the treatment of foreigners, therefore not only on border control but also on the fight against irregular immigration on the French territory, on the fight against migrant trafficking, on all detention centers (excepted Paris Police Prefecture) and on the implementation of physical deportation measures toward countries of return.

The structure numbers about 11,500 persons. 3,000 police officers are working on borders, 2,000 are in detention centers and more than 300 are committed to deportation operations.

In 2017, France has proceeded to 22,000 deportations, including 14,000 forced. M. GONTIER explains that forced deportations do not automatically include the presence of a police officer or of an escort because two-thirds of these departures are done voluntarily (that is to say without the use of an escort). Nonetheless, one-third of deportations do ask for the intervention of an escort, the person having shown that he / she does not wish to submit him/herself to the deportation measure. For example, some can be violent in detention centers, stresses M. GONTIER.

On 14,000 forced deportations, there are about 2,000 refusals of boarding. In general, these refusals occur when there is no escort, but ten per cent do happen in the presence of an escort. These refusals disrupt, if not stop, deportation operations, which constitutes an infraction; therefore, the person will be held in police custody and presented to the judiciary authority, and, where appropriate, condemned to a retention sentence or deported to a center of detention for the purpose of a new deportation attempt.

Most of the time, the Border Police uses commercial flights. It decides, according to the profile of the person, whether a police escorts is needed or not.

The Border Police can also use special flights, notably through Frontex or Air France. In 2017, 1,536 persons have been deported in the context of these "grouped flights" (165 flights).

Since 2003, the Border police has created a specific unity of police officers trained to carry out these escorts. Therefore, not any police officer can achieve these escorts. This unity is linked to the major-State of the Border Police direction. The very selective recruiting is done by a jury, composed of a psychologist, former police officers and trainers. Once recruited, the police officer will be subjected to a specific training, composed of a phase of the study of English but also of a psychological phase. Use of force is presented as the last bastion and the use of psychology, discourse, conversation is described as an important element allowing convincing the foreigner to go back in the best conditions, without resisting.

This training is also updated every three months. Thus, every three months, police officers follow another training, in order to verify that they still are up to date to continue their activity. Besides, this activity is limited in time because it cannot last more than nine years (three years renewable three times).

On the question of the legal basis, in the context of air deportations, the Border Police uses an instruction from the General-Director of the National Police from 17 June 2003. M. GONTIER describes it as a “very technical, very concrete, very precise document, on the use of police and escort techniques that are allowed or not allowed”. This document lists authorized equipment and techniques, such as metallic handcuffs, scratch canvas straps or individual dispositions’ mechanisms. He adds that this document is currently under revision, in the objective of adding elements to the list of authorized equipment, such as soft casks allowing to “protect the persons against themselves”. Indeed, some persons who are informed of their deportation the day before conduct self-mutilation with the objective of being hospitalized. This equipment is not systematically used, according to M. GONTIER.

M. GONTIER also mentions Article 803 of the Code of Penal Procedure on handcuffing and on the use of obstacles. This equipment is generally used during the boarding. If the person is calm, handcuffs will be removed. M. GONTIER expresses his agreement with the statement expressed during the seminar regarding the use of means proportionated and adapted to the person’s behavior.

Since the end of 2017, France has known a series of acts of violence. M. GONTIER gives the example of the murdering of two women in Marseille by a Tunisian national in an irregular situation. According to him, this murder has provoked a reaction from administrative and judiciary authorities because, since then, the Border Police has prioritized the deportation of released prisoners and persons known for acts of delinquency as well as radicalized people or persons with a terrorist profile.

According to M. GONTIER, released prisoners are a very special population, very experienced. He declares that it “bothers” the Border police to have this population mixed with migrants with a “classic” profile in centers of detention. Therefore, it is a population that the Border Police tries to keep away without a placement in detention, but it is not always possible. To M. GONTIER, this population has degraded the climate in centers of detention and that is why the Border Police uses much more restraint techniques toward them. These persons represent about 4,000 individuals per year and M. GONTIER believes it is “normal” to use reinforced means toward them.

Among the other difficulties experienced by the Border Police, M. GONTIER also mentions pilots in command who sometimes take the sovereign decision not to take over the escorts. He emphasizes that it is however a rare phenomenon (between fifty to sixty per year). The Border Police sensitizes pilots in command to these operations, through common working sessions (for example with Air France), which allowed to create a relationship of trust, which is “essential” in the eyes of M. GONTIER.

Another difficulty is other passengers taking side of the foreigner. In this case, the passengers are disembarked and are subjected to a procedure for hindrance to air traffic.

In the event of a particular medical situation, the Border Police solicits medical certificates and, where appropriate, boards with a doctor.

Regarding the monitoring achieved by the CGLPL (Contrôleur général des lieux de privation de liberté, NMP, France) since 2014, M. GONTIER says he is “used to it”. However, he declares that, contrary to what he heard during the seminar, the Border Police is never informed of the CGLPL’s mission and that it “discovers on the spot” the arrival of the CGLPL, who is, according to M. GONTIER, systematically informed beforehand of the organization of the flights. The Border Police is sometimes brought to disembark passengers “to make way for the CGLPL”. M. GONTIER declares that this is not an issue and that this is part of their way of working.

He also reminds that the Border Police is subjected to quotas, imposed by air companies themselves. The ratio is of two escorts for one foreigner, sometimes more for a more resistant profile.

When particular cases are notified to the Border Police, the latter uses “pedestrian-cameras” in order to film difficult boarding procedures. These images will potentially allow police officers to defend themselves.

M. GONTIER adds that there is today a very strong increase in violence toward police officers: more than forty per cent increase in this field in 2018. Therefore, he believes that this element has to be taken into account in the training of the teams.

MRS. ANGELI-TROCCAZ indicates that the Defender of Rights and the CGLPL are coordinated in the external monitoring, which occurs, according to her, very smoothly, and which is organized around the monitoring of deportations conditions on the one side (for the CGLPL) and monitoring of the behavior of police forces on the other side (for the Defender of Rights).

## **M. Eurico SILVA, Inspector, Inspectorate body of the Ministry of Internal Administration (IGAI) (Portugal)**

### ***« Forced return monitoring in Portugal: the role of the IGAI as a legitimate monitoring body »***

M. SILVA describes the seminar as very enriching and revealing. He also expresses how much he can identify himself to some of the things described by M. BOUTSELIS.

M. SILVA explains that the IGAI was created in 1996, under the then Prime Minister, António Guterres, who is today General-Secretary of the United Nations. At the time, Mr Guterres’ Government declared that the objective of the IGAI was to bridge the lack of transparency and to ensure the respect of fundamental rights. Thus, the improvement of policing and of police institutions is part of IGAI’s mission and assignments.

IGAI’s guiding principles are notably the rule of law, equality and proportionality, justice or impartiality. Besides, the IGAI works independently and autonomously, since it stands as an external and independent body, in a context of technical and operational autonomy, regarding the security forces and services comprised within the Home Office (Ministry of the Interior).

According to a 2012 decree-law, IGAI’s general mission is to ensure functions of high level auditing, inspection, oversight and monitoring of all entities, services and bodies responding to, or whose activity is administratively supervised or regulated by the member of the government responsible for the Home Office.

In this way, the IGAI investigates on all complaints related to a violation of fundamental rights.

The mandate of the IGAI therefore relates to: inspections, oversight, audits, complaints' analysis, as well as management of disciplinary proceedings and of proceedings related to regulatory offences, in addition to technical and advisory support.

Since 2014 IGAI is the Portuguese monitoring body of forced-returns.

M. SILVA reminds that in 2017, the European Commission has published a recommendation (2017/2338), which came to frame the monitoring of forced-returns. This recommendation notably mentions the Directive Return, according to which a great discretion is left to States in the context of the monitoring of forced-returns. However, the Directive can angle the State, notably in the definition of forced-return; it also declares that monitoring systems should include involvement of organisations/bodies different and independent from the authorities enforcing return and that public bodies, such as a national Ombudsman or an independent general inspection body, may act as monitor. Thus, it seems problematic that the body that is organizing forced-returns would also conduct this monitoring.

M. SILVA then presents the internal legal basis of the IGAI's action concerning forced-returns.

According to the Immigration Act of Parliament, it is up to the member of the government responsible for the Home Office to designate the body responsible for the monitoring of forced-returns.

Hence, the Parliament has chosen not to indicate directly this body, but rather to confer that power to the member of the government responsible for the Home Office. Back in 2012, the communist party and the Portuguese parliamentary Left Bloc party have both vividly criticized the Immigration Act of Parliament in force and wanted to amend it. It did not happen because the right wing parties in coalition won the parliamentary elections, and the Immigration Act was later complemented with the regulation that instated IGAI as the Portuguese forced-return monitoring body.

The Immigration Act was amended four times. In 2017, two articles were modified with a new wording that now allows migrants to legalize their situation more easily. For example, a job contract promise is sufficient to lodge a request of legalization of their situation.

The IGAI's mandate in regard to forced-returns deals with the oversight of all actions and proceedings of the national authority – the Portuguese Border and Immigration Service (SEF) to which the competence to execute forced-returns has been conferred – and pursues the objective of preventing and reporting actions that would breach fundamental rights of persons subjected to forced-return.

Since 2008, the number of forced-return operations led by the SEF has been in constant decrease (785 in 2008, 354 in 2017). Men are more subjected to such operations (267 in 2017 for 55 women). Generally, forced-return is done until boarding in commercial flights and the SEF officer does not accompany the individual to the country of destination.

The IGAI has also noted that it does not receive all communications of forced-returns that are being performed.

Related with IGAI's role in forced-return monitoring, Mr Silva concluded by saying:

- A previous and careful vetting of a removal decision (either administrative or judicial) is always undertaken, in addition to specifically verifying whether the returnee was duly notified of that decision;
- The monitoring begins at the place where the returnee is confined (whether a Prison, or a Centre for Temporary Confinement or Similar Facility);
- During the monitoring, an interview with the returnee always takes place in order to identify restrictions/limitations of rights;
- In 2015, 2016 and 2017, all carried out FRO communicated to IGAI used scheduled commercial flights, with the exception of just one case, when the SEF (in 12-12-2017) took part in a CRO organized by Germany;
- In 2018, following the monitoring of two different FRO and due to what was assessed as a violation of fundamental rights, two (2) disciplinary inquiry proceedings were opened by IGAI (cases still pending);
- Also in 2018, subsequently to another monitoring of a FRO, IGAI recommended to the Head of SEF to open a disciplinary inquiry proceeding to a SEF officer for breach of professional duties, mainly, breach of due diligence;
- Two inspectors of IGAI are members of the FRONTEX Pool of monitors.

## Discussion

**M. BEYS** notes that the possibility to film the police is a key question of the treatment of migrants and that it is an important question in Belgium. Indeed, twenty years ago, a migrant died, and her death was filmed by police officers themselves. Since then, it was decided not to film anymore, asserting that it could raise an issue about private life of police officers and migrants. M. BEYS's second point deals with the possibility of filming police officers intervening in situations of potentially problematic use of force. He mentions a jurisprudence from the ECtHR, according to which conducting police operations with the use of force without the police being recognizable by a distinctive sign is a violation of Article 3 of the Convention. In reality, in Belgium, it is not always the case. However, in Germany, each police officer has an identification number clearly recognizable. He asks how it works in the member-states who are present at the seminar.

**MRS. ANGELI-TROCCAZ** answers that France is also subjected to this obligation but that it is not always respected.

**M. GONTIER** declares that a permanent identification is provided for police officers, uniformed or in plainclothes. Those who would not wear it would commit an administrative misconduct likely to generate a sanction. Besides, concerning the use of cameras, he considers that it is a "good thing" and reminds that there is plan of inquisition of "pedestrian-cameras" and that police officers are equipped with one.

According to him, at first, we could think there would be a diligence from police officers on the use of camera, but it actually relieves the situation because it is a way for the police to have objective elements in the context of a judiciary procedure. This is not systematic but, according to M. GONTIER, the use of cameras tends to be generalized, notably during particularly sensitive deportation operations.

**MRS. ANGELI-TROCCAZ** adds that the Defender of Rights has declared being in favor of video recordings and that a policy of pedestrian-cameras is indeed being established today. However, it raises the question of the objectivity of the triggering of the recording; because, as for now, it is up to the police forces wearing the camera to trigger the recording or not. Therefore, this can give rise to a debate.

**M. SILVESTRI** intervenes to declare that, in the Italian context, the FRA has supported the principle of recording in the context of delicate situations.

**MRS. ANGELI-TROCCAZ** declares that indeed, the recording is an element that can allow the objectivization of the situation and understanding what happened.

## [Concluding remarks by MRS. Sarah GREEN, Regional Director for the South East of England, Independent Office for Police Conduct \(IOPC, IPCAN member, United Kingdom\)](#)

MRS. GREEN mentions the Brexit negotiations, which, according to her, do not appear very promising. She thanks the organizers of the seminar.

To her, the main question is how to balance between liberty and security. She wonders about the political will to ensure fundamental rights for foreigners in connexion with public opinion on them, and how security forces can intervene in this context. She notes that security forces are being asked to act outside of their regular work setting, which led to all sorts of difficulties, in terms of not only equality but also regarding the public trust.

MRS. GREEN quotes, to conclude on a positive note, the novelist Mohsin Hamid who wrote:

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*“What happens if we look with a degree of optimism towards the future?’ That’s very important. I have come to the belief that pessimism is a deeply conservative and reactionary position. It tends to lead towards deference, towards the strong and powerful, towards powerlessness and a kind of surrender.”*

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MRS. GREEN concludes by declaring that we shall never surrender, that we shall always stay optimistic. New meetings will occur, including the coming 2019 IPCAN seminar, where she hopes to see all the people currently present in the room.

*Our thanks to Camille Miglierina; Maëlle Vi Van and Laure Fournier trainees at the Defender of Rights for the synthetizing the content of the seminar as well as Laure Fournier for the work on the English version.*