

CoE-FRA-ENNHRI-Equinet Platform on Asylum and Migration

A meeting between FRA, the Council of Europe, Equality Bodies,
National Human Rights Institutions and Ombudsperson Institutions

Vienna, 24 September 2014

MEETING REPORT

Compiled by FRA, CoE, Equinet and ENNHRI¹

BACKGROUND AND OBJECTIVES OF THE MEETING

This meeting was one of the follow-up activities of a joint conference of the European Union Agency for Fundamental Rights (FRA), the Council of Europe (CoE), the European Network of National Human Rights Institutions (ENNHRI) and the European Network of Equality Bodies (Equinet), which took place in October 2013 in Vienna. That meeting set the scene for closer cooperation among national bodies, and between national and international bodies. It was agreed to focus on establishing platforms for collaboration on pressing topics such as asylum and migration, Roma integration, combating hate crime, and advancing social and economic rights and socio-economic equality.

This meeting on asylum and migration was the first thematic platform meeting. The topics selected for different working groups were:

- a) monitoring forced return;
- b) conditions of detention and alternatives to detention;
- c) unaccompanied and separated migrant children; and,
- d) discrimination of migrants.

In particular, the meeting focused on:

- Identifying critical areas to focus on, and cooperation within the platform on migration and asylum;
- Discussing future working methods of the platform and channels of exchange;
- Creating networking opportunities for participating organisations.

¹ DISCLAIMER: Please note that this report is a compilation of the outcomes of the meeting including views and opinions of the participants. Thus, the views or opinions expressed therein are not the official opinions of the FRA, the CoE, Equinet or ENNHRI.

European and international organisations were represented by participants from the Council of Europe (the Directorate General for Human Rights and Rule of Law, the office of the Commissioner for Human Rights and ECRI), the secretariat of Equinet, as well as the secretariat of ENNHRI and FRA. Representatives from 30 National Human Rights Institutions, Equality Bodies and Ombudsmen from 23 countries attended the meeting.

The role of NHRIs is to protect and promote human rights at the national level through activities that include: monitoring and investigating human rights violations; legislative review; advising government, parliament and other public bodies; reporting to international supervisory bodies; publishing recommendations and opinions; education and training; research; and complaints handling. Equality bodies are independent organisations assisting victims of discrimination, monitoring and reporting on discrimination issues, and promoting equality. They are legally required to promote equality and combat discrimination in relation to one, some, or all of the grounds of discrimination covered by EU law – gender, race and ethnicity, age, sexual orientation, religion or belief and disability.

Both Equinet and ENNHRI have a number of thematic working groups from their member organisations. Many of the participants of this meeting were also members of the ENNHRI working group on asylum and migration. For the Equality Bodies in particular, discrimination of migrants was a link to their mandates.

WELCOME BY PARTNERS

Friso Roscam Abbing, Head of Communication, FRA:

It is crucial that all organisations responsible for safeguarding human rights work together. At the national level, these are prominently the National Human Rights Institutions, Equality Bodies and Ombudsperson Institutions but also national data protection authorities. Beyond that, there is also a need to create interlinks between the EU Member States and the supranational level so as to ensure that our mechanisms and frameworks of rights are mutually reinforcing.

Lilja Gretarsdottir, Senior Advisor on Migration, Council of Europe:

Perhaps the best way to think of this platform is as a venue of mutual support and reinforcement. The Council of Europe is here to support you in every way we can in joint areas of concern. If one member of the platform is more effective through this cooperation, we are all more effective. One relatively simple step forward, but a significant one, is to become better at sharing targeted information and be in touch more on precise matters. This will help us identify specific actions where we can join forces to make a difference for people who desperately need it.

Patricia Ötvös, Adviser, Office of the Commissioner for Human Rights, Council of Europe:

Migration is one of the priorities of the Council of Europe Commissioner for Human Rights. National human rights structures are the Commissioner's main partners at the national level and we wish to strengthen this alliance. We should explore how we can better inform each other, how your offices can inform the Commissioner and how the Commissioner can support you in your work. It is important to keep the communication channels between us open so that we can together support and enhance our work. This platform can provide further opportunities for combining our efforts.

Debbie Kohner, Director of the Permanent Secretariat of the European Network of National Human Rights Institutions (ENNHRI):

Across Europe it is crucial to show solidarity, support and a consistent message on the human rights of migrants and asylum seekers. This Platform could have a two-track approach. First, through more effective coordination and communication of work already planned, we could ensure that our actions are complimentary, reinforcing and more impactful. Secondly, by identifying a few joint objectives to work towards within the term of the Platform, we could ensure that the added value of this cooperation is more than the sum of its parts. As such, this endeavour has great potential to make a real difference.

Cosmin Popa, Communications Officer, the European Network of Equality Bodies (Equinet)

This platform provides the perfect venue in ensuring that we avoid overlaps in our work and synchronize efforts in addressing particular issues that have been put on the agenda. Our task is to foster more coherent and effective communication and collaboration between our respective institutions. Migrants are among the most vulnerable groups in our continent and, worryingly, multiple discrimination is on the rise. We see this platform as an excellent forum to discuss the underlying issues and join hands in trying to find solutions.

Pia Tirronen, National Human Rights Bodies Focal Point, FRA

We hope this platform will help all of us do our work better. We can start with simple tools and exchange information in a more structured way. We need to know each other better and know each other's work better in order to build two-way communication. We at FRA would like to better inform you what happens at EU level, and we need to know what goes on at the national level. This two-way channel of information can be very useful.

FIRST PLENARY SESSION: Discussion on the working methods of the platform

This session focused on possible working methods and the platform's tools, as well as roles and responsibilities of platform members. The questions included:

- How to organise the exchange of information?
- How to ensure regular and timely information flow from national level developments to European partners?
- How to ensure regular information flow from the European institutions and structures to the national level concerning policy and legislative developments?



Key messages

- Asylum and migration issues pose some of the most pressing and serious human rights challenges in Europe today. It is therefore extremely important to devise ways in which national bodies and European institutions can work together more closely to attain concrete results for migrants in need;
- The platform can serve both as a two way exchange of information, where national bodies and European institutions are better informed of each other's work. Significantly it can also help identify certain critical issues that can be collectively worked on;
- Patience, perseverance and resourcefulness are needed in this experiment as no extra budget or resources exist. This calls for modest ambition and expectations while simultaneously recognising that closer contact and exchange inevitably leads to better outcomes;
- In a world which suffers from information overload and overflowing inboxes, clever ways to share targeted and useful information within the platform need to be identified. This entails every member voicing what at any given time may be of most practical use in their daily work as regards migrants' rights. Building trust and confidence among members can already greatly help in this regard;
- The platform has two to three years to prove its value. Identifying one issue within each working group whereby different actors can unite in a committed result-oriented action would already be a valuable outcome and make the experiment worthwhile.

WORKING GROUP ONE: Monitoring of Forced Return

This working group looked at cooperation within the Platform concerning the requirements set by the EU directive 2008/115/EC for common standards and procedures for returning third-country nationals in an irregular situation in Member States. In particular, the discussions focussed on the article which requires Member States to provide for an effective forced-return monitoring system.



Key messages

- It is necessary to look closely into each separate phase of the return procedure of migrants and identify the protection needs in the various phases;
- For the pre-return phase, the following aspects need to be stressed in particular:
 - The proper training of monitoring bodies;
 - The proper training of escorts;
 - Access to free legal aid;
 - Access to effective remedies and necessary safeguards.
- For the return phase, the following aspects need to be stressed in particular:
 - The strengthening of the capacities and powers of monitoring bodies;
 - The implementation of standards for assessment when monitoring the return.
- For the post-return phase, the following aspects need to be stressed in particular:
 - Even if reintegration is outside the scope of directive 2008/115/EC there is a need for a broader human rights approach when the return is finalized and greater understanding of the developments in the post-return phase;
 - Human rights awareness activities must be upheld after migrants returns to their country of origin as this can be a critical phase of the individual journey.

Possible follow-up activities – working methods and tools

Exchange of information

- Gather and share information on the standards of monitoring returns at EU and CoE levels;
- Collect checklists, guidelines and/or other instruments on monitoring returns at national levels;
- Map the different characteristics of national monitoring bodies as regards their power, mandate, employees, financing and resources;

Awareness raising

- Promote a wider accessibility and applicability of monitoring reports at national level;
- Promote the collection of more detailed statistics on the number of forced return flights, the percentage of flights monitored and the standards used;

Other

- Other follow-up activities may include: looking into better use of reporting mechanisms at UN level; pursuing a possible pilot project which would entail a study of the situation of migrants after handover.

WORKING GROUP TWO: Conditions of Detention and Alternatives to Detention

This working group focussed on questions such as how viable alternatives to detention could be promoted, and how the separation between criminal detention and administrative detention could be done in practice. The aim was also to discuss how to address the detention of vulnerable groups, such as children and pregnant women. In general, European minimum standards and how to promote these standards were looked at.



Key messages

- Collections of good practices and success stories on alternatives to detention must be more widely shared and advice on the practicalities of successful implementation disseminated;
- The plight of children in detention needs to be especially highlighted and alternatives to detention for children and their families strongly prioritized, guided by the principle of the best interest of the child. Gathering a more detailed overview and statistics on migrant children in detention across Europe would be valuable;
- Migrants in detention are on the whole in a precarious situation and the conditions of their detention are often profoundly problematic and at times deplorable. As long as alternatives have not yet become standard practice, as they should be, improving the conditions of all migrants in administrative detention is essential;
- Promoting viable, dignified and cost-effective alternatives to detention is a critical priority for all stakeholders, but a deeper understanding of the practical application of this is needed;
- Greater attention and mechanisms of protection in general need to be in place when it comes to particularly vulnerable individuals among migrants;
- The Council of Europe's current work on the codification of European rules on conditions of administrative detention needs to be supported and followed up.

- Representatives of ENNHRI introduced a public statement where the Council of Europe is called upon to codify a set of immigration detention rules, taking into account the fundamental distinction between criminal and administrative detention and building upon the precedent of the European Prison Rules.

Possible follow-up activities – working methods and tools

Exchange of information and collecting data

- Collect and disseminate handbooks, good practices, guidelines, advice and other practical material on alternatives to detention;
- Link up with other networks already working on alternatives to detention;
- Set up a system for ad-hoc expert tele-conferencing on specific topics requested by members. Identify other meetings already in place for possible follow-up, for example by a shared calendar, tele-conferencing, email alerts and/or newsletters etc.

Training and capacity building

- Explore avenues for joint training on alternatives to detention and conditions of detention, and staying alert to such requests/needs at national level;

Promotion of standards

- Ensure an effective system of exchange and information on progress made on the proposed CoE minimum standards of administrative detention;
- Start immediately with joint efforts to break the connection between irregular migration and criminality by promoting at every instance the wording “irregular/undocumented” migrant rather than “illegal”.

WORKING GROUP THREE: Unaccompanied and Separated Migrant Children

The aim of this working group was to discuss how participant organisations can effectively contribute to the systematic consideration of the best interest of the child in the day-to-day reality of unaccompanied migrant minors – and migrant children at large. It also looked at how a better system of guardianship and guidance for unaccompanied migrant minors could be promoted in practice



Key messages

- The needs of all migrant children – not only those who are unaccompanied or separated – need to be addressed. Migrant children who are accompanied by parents or other guardians are often also in a situation of extreme vulnerability;
- The *best interest of the child* principle needs to be better integrated across all procedures. Children should at every stage be treated as children regardless of migration status;
- Early identification of children at risk and in need of special protection must be better ensured;
- An effective system of registration of migrant children, not only at national level but at European level, is called for; this system should be accompanied by adequate guarantees ensuring that registration does not negatively affect migrant children;
- Human rights perspectives and approaches need to be more at the forefront in age assessment procedures. In addition, the national bodies' potential for making recommendations in this regard need to be realized;
- Common standards on humane and dignified age assessment procedures are to be recommended.

Possible follow-up activities – working methods and tools

Exchange of information and collecting data

- Better collection and exchange of information in the field is needed, and the sharing of evidence-based recommendations is called for;
- Exchange of information, the dissemination of good practices and advice on practical issues where migrant children are concerned would be valuable for all stakeholders;

Training and capacity building

- Systematic training of relevant authorities when addressing the needs of children, especially local authorities, would be useful;
- Further work is called for to identify areas of deeper cooperation among states, such as in the registration of children, and to coordinate various national organisations in this area;
- Examples of dignified age assessment procedures guided by a sound human rights approach should be more widely distributed;
- Practical advice on how to make better use of the additional protocol of the UNCRC for individual complaints would be welcome.

WORKING GROUP FOUR: Discrimination of Migrants

This working group focussed in particular on racial and ethnic origin, religion or belief as potential causes of discrimination, including multiple discrimination. The other main strand in this group was to discuss links between migration and discrimination with nationality or citizenship as a discrimination ground. The discussions included also EU Directive 2014/54/EU on the free movement of EU workers and the role of the different actors in implementing it.



Key messages

- Across Europe there are disconcerting trends of increased discrimination. Discrimination based on racial and/or ethnic origin, religion and belief, continues to be an enormous challenge, but also discrimination on the basis of nationality and/or citizenship. Migrants are among those most at risk and multiple discrimination is one of the worrying trends, i.e. against migrant women, children, LGBTI, migrants with disabilities, etc.;
- Different levels of protection based on nationality under EU law cause varied human rights challenges as EC directives apply to different people on different grounds. The concept of nationality and statelessness needs therefore to be jointly addressed as this acutely affects the vulnerabilities of people across Europe;
- The new EU directive on the freedom of movement reflects a reality on the ground which is characterized by increased intolerance and multiple discrimination of migrants;
- Migration flows continue to increase and humanitarian crises grow more urgent while the public debate on migrants shows a worrying lack of confidence in integration policies – a reinvigorated effort on successful integration is urgent;
- A high level of underreporting of discrimination reinforces continued human rights violations, especially as regards irregular migrants who are in an extremely precarious situation;
- Addressing structures and causes in third countries is needed in order to properly frame the issue of irregular migration.

Possible follow-up activities – working methods and tools

Exchange of information and collecting data

- Exchange of information needs to be strengthened and good practices more actively disseminated and promoted, especially on combating under-reporting of discrimination;
- Technical ways for disseminating targeted information need to be explored within the platform, such as possible sub-sections on websites, active email-lists, email alerts, etc.

Training and awareness raising

- More training is needed on the new EU directive on the mobility of workers and more practical insight needs to be shared on how to implement it;
- A deeper awareness raising on the integration of migrants at local and communal level is called for and better understanding of good practices in this regard;
- Systematic training to help combat discrimination and promoting inter-faith, intercultural exchange which actively involves duty bearers and employers, including in the private sector, is called for.

Other

- Multiple mandates and the diversity of national institutions across Europe pose a challenge for identifying a specific focus to work on collectively. This needs to be further thought out within the platform. However, the dissemination of good practices within critical areas is an important first step.

SECOND PLENARY SESSION: Reporting from the working groups and next steps



Key messages

- All working groups put great emphasis on information sharing and constructing more direct channels of communication to ensure closer contact on critical issues;
- The exact avenues to share information regularly need to be determined but different possibilities can be explored depending on the nature of the issues at hand (i.e. email groups, email alerts, tele-conferences, ad-hoc expert meetings, shared calendars, sections on websites, newsletters, etc);
- All working groups highlight the need to disseminate already existing material and knowledge more widely, and stress the practical application of these;
- Focused activities and joint efforts on specific topics need to be organically identified with time through better information sharing and contact;
- All working groups emphasised the need for sharing good practices on specific topics and practical, concrete guidance on implementing these;
- The key to the success of the platform is not to create an extra burden to already under-resourced bodies, but to facilitate mutual exchange and practical reinforcement for all stakeholders in their respective work;
- All working groups identify the need for trainings on specific issues;
- The platform has neither budget nor staff so its success depends entirely on the engagement of its members in their daily work. Creating avenues for constructive, two-way communication of practical value between stakeholders is therefore the most significant step forward at this stage.

It was agreed that a work plan for the platform will be drafted jointly by FRA, CoE, Equinet and ENNHRI on the basis of the outcome of this meeting.