

## The Development of Human Rights and Good Administration

Maladministration, fundamental rights and the *'life beyond legality'*

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## Frontex

- Agency responsible for coordination of management of external borders of the EU.
- Established under Council Regulation 2007/2004 of 26 October 2004.
- Amended after Lisbon via Regulation 1168/2011/EU to further enhance the role of Frontex and specify its legal obligations as regards fundamental rights.
- The Ombudsman conducted two separate investigations into Frontex.



## OI/5/2012/BEH-MHZ

- This investigation sought to understand how Frontex viewed its role in relation to the protection of fundamental rights after the reforms to its legal basis.
- The Ombudsman issued 13 draft recommendations, 12 of which Frontex answered satisfactorily.
  - The Ombudsman recommended that Frontex expand the role of the Fundamental Rights Officer so that he/she would be able to deal with complaints about possible fundamental rights violations committed during its operations.
  - Frontex stated that as it was only responsible for the coordination between Member States it was the Member States who were liable for fundamental rights violations.
- The Ombudsman made a Special Report to Parliament regarding this last point as by rejecting this recommendation, Frontex was refusing to put in place any complaints mechanism that individuals could use to report violations of their fundamental rights.



## OI/92014/MHZ

- The second investigation into Frontex sought to inquire how Frontex observed fundamental rights during Joint Return Operations (JRO).
- JROs by their very nature run the risk of causing such violations as individuals are removed from the EU territories.
- Amongst other things, there was focus on whether Frontex had an appropriate complaints mechanism to allow individuals to report possible violations of their fundamental rights.



## Maladministration and fundamental rights

- Both these cases reflect the need to assess administrative procedures.
- The lack of an effective complaints mechanism meant that individuals were left with a burdensome task in order to make a complaint.
- This shows how the EO is able to have an impact on fundamental rights through the concept of maladministration.



## The EU Cohesion Policy: The use of the European Structural and Investments Funds (ESIF)

- The ESIF was part of the EU's social and cohesion policy.
- The Fund existed to support the less developed regions in the EU and was managed jointly by the Commission and the Member States.
- The Ombudsman asked a detailed set of questions in order to understand how the Commission ensured that its partners in the Member States ensured compliance with fundamental rights when using the funds.
- Again, the link between administrative practices and the impact on fundamental rights is observed.



## The Free Trade Agreement Between the EU and Vietnam

- Article 21 TEU:

*"The Union's action on the international scene shall be guided by the principles which inspired its own creation, development and enlargement, and which it seeks to advance in the world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law."*



European Ombudsman

## 1409/2014/MHZ

- The Commission did not carry out a new impact assessment on human rights when negotiating a new trade agreement with Vietnam.
- Instead it relied upon a previous assessment from 2009 which was used during the abandoned negotiations of the EU/ASEAN free trade agreement.
- This document had covered the situation in Vietnam however, the complainant stated that the Commission should have carried out a new assessment.
- The Ombudsman agreed with the complainant and issued draft recommendations stating that the assessment should be carried out.
- This case highlights that not everything that is maladministration will be illegal as there was no rule binding on the Commission to do this.
- However, the Ombudsman felt it would not be in line with the spirit of Article 21 TEU to not carry out a new assessment.
- Thus the concept of maladministration allows for the protection of fundamental rights in the life beyond legality.



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## Conclusions

- The Ombudsman assesses maladministration.
- Addressing maladministration in these cases indirectly ensured the protection of fundamental rights.
- The final case shows how assessing maladministration is necessary as it allows the EO to hold the EU accountable to a standard beyond legality, which can have implications for fundamental rights.



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