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Frontex and human rights : responsibility in 'multi-actor situations' under the ECHR and EU public liability law

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Propositions (Stellingen) relating to the Dissertation

Frontex and Human Rights

Responsibility in 'Multi-Actor Situations' under the ECHR and EU Public Liability Law

by Melanie Fink

1. There is no effective remedy for victims of human rights violations that occur in the context of Frontex-coordinated joint operations.
2. The secrecy and intransparency surrounding the command and control regime applicable to operational resources deployed to Frontex-coordinated joint operations make it extremely difficult to identify each actor's precise level of control, knowledge, and involvement, and thus to determine their responsibility.
3. Host states typically incur *primary responsibility* for human rights violations that occur in the context of Frontex-coordinated joint operations. However, when human rights violations are committed by personnel on large assets contributed by participating states, the latter incur *primary responsibility* instead of (ECHR) or in addition to (EU law) the host state.
4. Host states and states contributing large assets typically also incur *associated responsibility* alongside the primarily responsible state for human rights violations that occur in the context of Frontex-coordinated joint operations.
5. All other participating states are typically not responsible for their contribution to or involvement in human rights violations that occur in the context of Frontex-coordinated joint operations.
6. However, Frontex cannot escape responsibility for human rights violations that occur in the context of joint operations it coordinates because it typically incurs *associated responsibility* alongside the member states under EU public liability law.
7. Responsibility mechanisms, both at the level of public international and EU law, have to sufficiently reflect the fact that harm done by several public actors may go beyond the sum of the contributions of each of them.
8. The ECtHR should fully hold states responsible in accordance with the rules on aid or assistance provided under general international law.
9. Under EU law, general rules should be developed to address questions of allocation of liability in multi-actor situations.

10. In its current form, EU public liability law, in many situations the only remedy available to individuals against fundamental rights violations by EU bodies, does not live up to what is required under Article 47 CFR, which guarantees the right to an effective remedy. Thus, the EU should set up a fundamental rights complaints procedure.
11. As the case of Frontex-coordinated joint operations shows, the lack of responsibility of the EU under the ECHR may lead to an 'accountability gap'. In this light, the EU should, as prescribed by Article 6 TEU, accede to the ECHR as soon as possible.
12. Upon accession of the EU to the ECHR, the EU may be required under Article 13 ECHR, the right to effective remedy, to improve its regime of individual remedies.
13. Nothing has changed since 1906, when Bierce defined responsibility as 'A detachable burden easily shifted to the shoulders of God, Fate, Fortune, Luck or one's neighbor. In the days of astrology it was customary to unload it upon a star.' (Ambrose Bierce, *The Devil's Dictionary*, first published 1906).