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**Veřejný ochránce práv**  
OMBUDSMAN

File No.	36/2016/VOP/VS	Mr genmjr. Mgr. Bc. Tomáš Tuhý Police President Police of the Czech Republic – Police Presidium of the Czech Republic
Ref. No.	KVOP-24240/2017	Strojnická 27
Date	13 September 2017	170 89 Prague 7 – Holešovice

Dear Sir,

I hereby use my powers to impose penalties<sup>1</sup> in relation to the Directorate of the Foreigners Police and inform you that I am not satisfied with the performance of the measure I proposed regarding handcuffing of escorted persons. Furthermore, I ask you to provide a statement concerning this topic.

Authorised employees of the Office of the Public Defender of Rights (hereinafter the “Office”) have been monitoring the execution of administrative expulsion, surrender or transit of detained foreigners, and the penalty of expulsion of foreigners since 2011.<sup>2</sup> So far, they have monitored the execution of 45 expulsions, surrenders or transits within the meaning of the Public Defender of Rights Act and the Return Directive.<sup>3</sup> During the monitoring, they have noticed the practice of automatic and routine handcuffing of escorted persons without properly individualised reasoning. Already in the past, both my predecessor JUDr. Pavel Varvařovský and I have repeatedly pointed out this fact.<sup>4</sup>

### **General findings on handcuffing of escorted persons**

Handcuffs are one of the coercive means permitted by law under Section 52 (p) of the Police Act<sup>5</sup>. The use of handcuffs during escorting is, however, limited to situations where there is reasonable concern “that the security of persons and property or protection of public order may be at risk, or that the detained person may attempt to escape.”<sup>6</sup> **This authorisation**

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1 In accordance with Section 21a (5), in conjunction with Section 20 (2)(a) of Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

2 According to Section 1 (6) of the Public Defender of Rights Act.

3 Article 8 (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

4 E.g. Public Defender of Rights’ Report on Inquiry of 18 August 2015, File No. 5/2015/NZ/OV; available

at <http://eso.ochrance.cz/Nalezene/Edit/4384>; 2011 Annual Report on the Activities of the Public Defender of Rights of 22 March 2012, File No. 1/2012/PDCJ; available

at [https://www.ochrance.cz/fileadmin/user\\_upload/zpravy\\_pro\\_poslaneckou\\_snemovnu/Souhrnna\\_zprava\\_VOP\\_2\\_011.pdf](https://www.ochrance.cz/fileadmin/user_upload/zpravy_pro_poslaneckou_snemovnu/Souhrnna_zprava_VOP_2_011.pdf).

5 Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

6 According to Section 53 (1) and Section 54 of the Police Act in conjunction with Art. 2 (6) of Binding Instruction of the Police President No. 159/2009, on escorts, guarding of persons and on police cells, as amended.

**under no circumstances permits the use of handcuffs as a preventive measure<sup>7</sup> and every use of handcuffs must pursue a legitimate purpose and the principle of proportionality.<sup>8</sup>**

The police officer escorting the foreigner can put the handcuffs on the foreigner only for the necessary period of time. The case law of the European Court of Human Rights allows the general conclusion that enforcement measures may not be used just because the legislation generally permits the use of such measures. According to the Constitutional Court, an automatic and routine handcuffing of escorted foreigners is unacceptable and unjustified.<sup>9</sup>

Indiscriminate handcuffing of foreigners also infringes on their right to human dignity embodied in Art. 7 (2) of the Charter of Fundamental Rights and Freedoms and Art. 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>10</sup> In the case of *Kummer v. the Czech Republic*, the European Court of Human Rights stated that “in order to fall within the scope of Article 3, the handcuffing, like any other treatment, must attain a minimum level of severity.” Ill-treatment can occur especially with regard to indiscriminate, ungrounded handcuffing of certain vulnerable persons (minors, the elderly, women or people with disabilities). The recommendation of the Council of Europe also says that handcuffing must constitute **an appropriate response to an actual or reasonably expected resistance of a person.**<sup>11</sup>

My predecessor, JUDr. Pavel Varvařovský, too, dealt with the issue of indiscriminate handcuffing and the lack of justification for handcuffing in escort decisions. He stressed that handcuffs are a coercive means that can only be used in exceptional cases. Handcuffing of foreigners should be a last resort, not a regular or common measure taken by police officers during escorting. Furthermore, there must exist a possibility of a retrospective check in cases where handcuffs were used. To only indicate in the escort decision whether the handcuffs were used or not does not, *per se*, suffice and cannot show whether the use of the handcuffs was justified. I am aware that an escort decision is not an administrative decision within the meaning of Part Two of the Code of Administrative Procedure. Nevertheless, for the purposes of retrospective review of the use of coercive means, it is necessary to include specific facts of the case that motivated the decision of the head of the escort to put the handcuffs on the person being expelled.

In the years 2011, 2014, 2016 and also 2017, employees of the Office analysed escort decisions or personally witnessed escorts of foreigners with the goal of determining the manner in which handcuffs were used. In the period from February to April 2011, out of the total 92 escorts executed,<sup>12</sup> handcuffs were used in 45 cases; in the rest of the cases, the

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7 This fact is also emphasised in Explanatory Report on Act No. 273/2008 Coll., on the Police of the Czech Republic. In: Beck – online.

8 Judgments of the European Court of Human Rights of 23 November 2003, *Hénaf v. France*, No. 65436/01, paragraph 56; of 16 December 1997, *Raninen v. Finland*, No. 20972/92, paragraph 56; and of 25 July 2013, *Kummer v. the Czech Republic*, No. 31233/11, paragraphs 63 to 64.

9 Judgment of the Constitutional Court of 27 October 2015, File No. I. ÚS 860/15. Paragraphs 78 to 79; available at [http://nalus.usoud.cz/Search/GetText.aspx?sz=1-860-15\\_1](http://nalus.usoud.cz/Search/GetText.aspx?sz=1-860-15_1) (the ruling published only in the NALUS).

10 Note: Art. 7 (2) of the Charter of Fundamental Rights and Freedoms: “No one may be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.”; Art. 3 of the European Convention for the Protection of Human Rights: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

11 Council of Europe. Twenty Guidelines on Forced Return Strasbourg © Council of Europe 2005; available at [http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20\\_Guidelines\\_Forced\\_Return\\_en.pdf](http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf).

12 Analysis of escort decisions from the Běla-Jezová Facility for Detention of Foreigners.

handcuffs were either not used (22), or the use of handcuffs was not properly indicated (25). In the year 2014, employees of the Office analysed 180 escort decisions in total,<sup>13</sup> out of which the handcuffs were used in 158 cases. In June 2016, 65 decisions on the escort of a foreigner were examined,<sup>14</sup> where 41 foreigners were handcuffed. From November 2016 to the end of July 2017, employees of the Office monitored a total of 18 executions of administrative and court-ordered expulsion. In total, 24 persons were returned, out of which 16 were handcuffed, two of them women. **None of these 16 escort decisions included justification of the decision of the head of the escort to use handcuffs.**

Employees of the Office noticed that handcuffing of foreigners was on average more common in the cases where the forced return was executed by police officers from regional police directorates or from facilities for detention of foreigners. On the other hand, as regards the forced returns executed by police officers from the Air Marshal Department of the Directorate of the Foreigners Police, handcuffing is rather an exception, which I appreciate. Among other things, I ascribe this to the thorough training of these police officers on the national and, primarily, on the international level. The police officers from the Air Marshal Department stated that for them, handcuffs constituted a last resort for cases when it was not possible to use less coercive alternative measures.

#### **Handcuffing of the expelled person during the execution of an administrative expulsion**

On 19 and 20 December 2016, authorised employees of the Office monitored the administrative expulsion of Mr A., where the foreigner was expelled from the Balková Facility for Detention of Foreigners to the border crossing of Tbilisi International Airport in Georgia. I enclose the report on monitoring of expulsion as an annex.

In the report on monitoring of the expulsion of Mr A., I pointed out the existing deficiencies in the course of forced return, *inter alia* the automatic handcuffing of the foreigner being expelled during his escort by the police officers from the facility for detention of foreigners, and I recommended the Directorate of the Foreigners Police to adopt remedial measures with the goal of limiting the automatic handcuffing of expelled foreigners and using handcuffs as a preventive measure. In the proposed measure, I demanded that the escorting police officers evaluate the necessity to use the handcuffs while taking into account the principle of proportionality and that every decision on using the handcuffs be duly justified.

In his statement, the Director of the Foreign Police Service, plk. Mgr. Milan Majer, stated certain facts concerning the past of the person being expelled that, in his opinion, had established legitimate reasons for handcuffing. He mentioned the fact that a decision on the administrative expulsion of the foreigner had been taken repeatedly and that the foreigner had been convicted of the criminal offence of obstructing the implementation of an official decision. The body of this criminal offence was the failure to leave the territory of the Czech Republic within the set deadline. In his statement, the Head of the Foreign Police Service further states that **“the decision to use handcuffs is based solely on the current situation”** [emphasis added]. This implies, however, that the facts concerning the foreigner’s past should not affect in any way the decision on handcuffing. As regards the course of the escort as such, the foreigner co-operated with the police officers who were escorting him, not hindering the execution of the expulsion in any way (verbal or physical), and his stay at the

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13 Analysis of escort decisions from the Běla-Jezová Facility for Detention of Foreigners.

14 Analysis of escort decisions from the Běla-Jezová, Drahonice and Vyšší Lhoty Facilities for Detention of Foreigners.

Balková Facility for Detention of Foreigners was without problems. Moreover, upon the handover of the foreigner to police officers from the Air Marshal Department at Václav Havel Airport Prague, the handcuffs were removed. Thus, the question is why the police officers from the facility for detention of foreigners decided to handcuff the foreigner during the escort.

I do not contest the authority of the escort commander to decide on handcuffing the person escorted if the statutory conditions are met. As a commander, the person is also responsible for the whole course of the escort and security of all persons involved. I am well aware of the concerns about the possible sanctions that could be imposed on the escort commander in the case of frustration of the escort. Nevertheless, these concerns must not lead to **routine handcuffing without stating relevant reasons. It is necessary to always evaluate the current situation, while taking into account the information about the foreigner that can be acquired by the police from the Refugee Facilities Administration.**

The current state of affairs where police officers in the escort decision only indicate whether the handcuffs were used, but not what the individual reasons for such measure were, is unacceptable. A reasonable safety concern must always be grounded. Otherwise, the concern is not reasonable. In some cases, employees of the Office encountered escort decisions that also included escort instructions. However, these instructions only reproduce the provisions of the Police Act, so there are no facts of the case that could justify the use of handcuffs in the respective case. Rather, it is a general rule applied to every escort. **In the escort decision, it is therefore necessary to always state the specific facts of the case that legitimise an interference with personal freedom and human dignity of the foreigner.** This can be the case, for example, if the foreigner currently behaves aggressively, attempts to escape or displays conflict behaviour during detention. A concern that the person might escape or the fact that in the past, the person failed to leave the country upon a removal order do not constitute sufficient reasons for handcuffing.

The escort decision also includes the “record on the course of the escort” box that is usually filled with the words “no problems” or “NP”, regardless of whether the person was handcuffed. However, handcuffing the person automatically implies that there was some problem, because a coercive means had to be used. **Thus, in the “record on the course of the escort” box or some other individual box, the escort commander should always state specific facts of the case that led to the handcuffing in cases when the escorted person was handcuffed.** Such a decision will make it possible to conduct a retrospective check of the legality of the use of handcuffs, and also to strengthen the protection of police officers in the case of complaints concerning the course of the escort.

**Therefore, I suggest that the police officers conducting the escorts of persons:**

- (1) handcuff the escorted person only in justified cases;**
- (2) state the specific facts of the case justifying the handcuffing of the person in the escort decision.**

Dear Sir, I would appreciate it if you could respond to the above-stated proposals and provide me with information on specific measures that you will adopt in order to implement these proposals within **30 days** of receipt of this letter.

Yours sincerely,

Mgr. Anna Šabatová, Ph.D., signed  
Public Defender of Rights  
(this letter bears electronic signature)

**Annex**

Report on Monitoring of the Expulsion of Mr A. of 4 April 2017