



FINANCOVÁNO
EVROPSKOU UNIÍ
AZYLOVÝ, MIGRAČNÍ
A INTEGRAČNÍ FOND



Veřejný ochránce práv
OMBUDSMAN

REPORT ON EXPULSION MONITORING

FROM: Prague-Ruzyně Remand Prison

To: border crossing at the Hanoi airport, Vietnam

Type of monitoring: expulsion sentence

Person being expelled Mr A, date of birth: xxx, national of Vietnam (returnee):

Carried out on: 22 July 2017 and 23 July 2017

Issue date of the report: 7 August 2017

Monitoring carried out by: Mgr. Veronika Sedláková

File No. 31/2017/NZ/VS

Mgr. Anna Šabatová, Ph.D.
Public Defender of Rights



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Introduction

A. Legal framework of expulsion monitoring

On the basis of Section 1 (6) of the Public Defender of Rights Act,¹ the Public Defender of Rights carries out monitoring of *detention of foreigners and execution of administrative expulsion, transfer or transit of detained foreigners and of the sentence of expulsion imposed on foreigners placed in expulsion custody or serving prison sentences* (hereinafter “expulsion monitoring”). The Defender’s mandate for expulsion monitoring follows from implementation of Art. 8 (6) of the Returns Directive.² The Defender’s competence in this area also follows from the Optional Protocol to the Convention against Torture,³ aimed to prevent torture and other cruel, inhuman or degrading treatment or punishment, and thus also from the exercise of her mandate as a “national preventive mechanism”. The combination of the two supervision mechanisms ensures effective preventive protection of foreigners’ rights and supervision over their treatment within the forced return process.

The objective of expulsion monitoring is to ensure respect for the rights of foreigners who have been detained and are being expelled, transferred and transited (hereinafter “foreigners being expelled”, “persons being expelled” or “returnees”), to increase the standard of treating foreigners, as well as to ensure compliance with the international commitments of the Czech Republic in this area. A further goal is to strengthen the protection of especially vulnerable persons, such as unaccompanied minors, persons with disabilities, etc.

The Defender is informed in advance of each execution of administrative or criminal expulsion, transfer or transit.⁴ The Police of the Czech Republic provides authorised employees of the Office of the Public Defender of Rights (hereinafter the “Office”) with the necessary collaboration in expulsion monitoring based on the Foreigners’ Residence Act.⁵

Authorised employees of the Defender’s Office⁶ may enter the detention facility where the person being expelled is located; the manager of the facility must be informed in advance

1 Act No. 349/1999 Coll., on the Public Defender of Rights, as amended.

2 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 (hereinafter the “Returns Directive”).

3 Memorandum of the Ministry of Foreign Affairs No. 78/2006 Coll. Int. Tr. on the adoption of the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

4 In conformity with Section 21a (2) of the Public Defender of Rights Act and Section 178d (1) of Act No. 326/1999 Coll., on the residence of foreigners and amendment to certain laws, as amended.

5 In conformity with Section 178d (2) of the Foreigners’ Residence Act.

6 Under Section 25 (6) of the Public Defender of Rights Act.



about this. The employees of the Office may then put questions to persons participating in the expulsion, including especially the police escort officers and employees of the Refugee Facilities Administration of the Ministry of the Interior. They may also speak with the foreigner without presence of third parties and inspect all the documents related to the forced return, including medical records.⁷

The fundamental human rights and freedoms of the persons being expelled are guaranteed by the Charter of Fundamental Rights and Freedoms as well as a number of international conventions binding on the Czech Republic (e.g. the Convention for the Protection of Human Rights and Fundamental Freedoms⁸) and by the European Union law (e.g. the Charter of Fundamental Rights of the European Union,⁹ the Returns Directive, etc.).

The specific rules governing the rights and duties of persons being expelled are comprised especially in legal regulations establishing the competences of bodies involved in the execution of expulsion, transfer and transit of foreign nationals. These bodies include primarily the Police of the Czech Republic, who have a legal mandate to carry out expulsion of foreign nationals.¹⁰ The procedure of the Police in escorting returnees is regulated by the binding instruction of the Police President on escorts.¹¹

In assessing the actual treatment of persons being expelled, the Defender also bases her conclusions on case law of the European Court of Human Rights,¹² and on the standards formulated by the Council of Europe¹³ and by the European Committee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT).¹⁴

7 In conformity with Section 65 (2)(m) of Act No. 372/2011 Coll., on healthcare services and the conditions of their provision (the Healthcare Services Act), as amended.

8 Memorandum of the Federal Ministry of Foreign Affairs No. 209/1992 Coll., on the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by subsequent protocols.

9 Charter of Fundamental Rights of the European Union signed on 12 December 2007 in Strasbourg, Official Journal 2012/C 326/391.

10 Pursuant to Section 152 and Section 163 (1)(h) of Act No. 326/1999 Coll., on the residence of foreigners, and Section 87 (7) of Act No. 325/1999 Coll., on asylum, as amended.

11 Binding instruction of the Police President No. 159 of 2 December 2009, on escorts, guarding of persons, and on police cells, as amended.

12 European Court of Human Rights. Fact sheet – Collective expulsions of aliens [online]. Strasbourg ©European Court of Human Rights 2016 [retrieved on 2017-07-26]. Available at: http://www.echr.coe.int/Documents/FS_Collective_expulsions_ENG.pdf.

13 Council of Europe. Twenty Guidelines on Forced Return [online]. Strasbourg © Council of Europe 2005 [retrieved on 2017-07-26]. Available at:

http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf.

14 European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. CPT Standards [online]. Strasbourg © Council of Europe 2015 [retrieved on 2017-07-26]. Available at: <http://cpt.coe.int/en/documents/eng-standards.pdf>.



B. Report on expulsion monitoring

In her report, the Defender presents her findings, evaluation and proposals for remedial measures, and calls on the responsible bodies and facilities to provide a substantiated statement, which may concern both the findings made and the measures or deadlines for remedy. She sets a deadline for providing the statement.

If the Defender finds the statement of the bodies she addressed sufficient, she notifies them accordingly. She may also request additional statements. Explaining the errors found, documenting how the proposed remedial measures are implemented or a credible pledge of their implementation are all of crucial importance. If the Defender finds the statements provided by the relevant facilities and other authorities she addressed insufficient, she will advise the superior authority (or, in its absence, the Government) or present the case to the public.¹⁵

C. Proposed remedial measures

As a rule, the proposed remedial measures differ by urgency, difficulty and time required for implementation. In formulating remedial measures, the Defender also proposes a deadline for their adoption, expecting that the entity to which the measure is addressed will either observe the deadline or propose a substantiated alternative:

- **Measures with a set deadline** for adoption have to be taken by the set deadline as they usually require more time. The Defender expects that the affected entities will advise the Defender in their statement on her report whether and how exactly they will carry out the measures and whether they will do so by the set deadline or by some other specific date, or that they will suggest an alternative measure with a specific deadline for performance.
- **Ongoing measures** are formulated by the Defender where a specific working procedure or style of work should be introduced or, to the contrary, abandoned. The Defender expects these measures to be implemented without delay and continued in future. She anticipates that the affected entities will indicate in their statement on her report that the measures in question have been implemented and how; or when and how the measures will be implemented; or what alternative measures they propose.

D. Information on persons being expelled (returnees)

The person being expelled was Mr A, date of birth: xxx, a national of Vietnam. On 21 March 2008, the foreigner to be later expelled was sentenced to imprisonment for a period of 10 years and to expulsion for an indefinite term.¹⁶ On 18 July 2017, he was

¹⁵ These are referred to as “penalties” and the procedure taken is analogous to the procedure set out in Section 20 (2) of the Public Defender of Rights Act.

¹⁶ Judgment of the Regional Court in Prague of 23 March 2008, File No. 5 T 3/2008.



transferred to the Prague-Ruzyně Remand Prison, and then expelled from the country on 22 July 2017.

E. Course of expulsion monitoring

The Police informed the employees of the Defender's Office in writing of the execution of the expulsion sentence by means of a notice of expulsion of 23 June 2017.¹⁷ The sentence of the foreigner's expulsion was carried out by the police officers of the Directorate of the Immigration Police, the Air Marshal Department (hereinafter the "Air Marshal Department").

The expulsion monitoring was carried out by an authorised employee of the Defender's Office, Mgr. Veronika Sedláková, on 22 and 23 July 2017. Since the director of the Prague-Ruzyně Remand Prison was not present at the time of the visit, the authorised employee of the Office presented her authorisation to the guard service inspector, who then informed the director by telephone. After the police escort arrived, the authorised employee also submitted her authorisation to the escort commander. The employees of the Prague-Ruzyně Remand Prison and also the police escort from the Air Marshal Department provided the necessary collaboration, which I appreciate.

The authorised employee of the Defender's Office monitored the processes related to the release of the returnee from the Prague-Ruzyně Remand Prison, the foreigner's escort across the border crossing at Václav Havel Airport in Prague, via the transit zone of the Sheremetyevo international airport in Russia, to the foreigner's escort to the border crossing at the Hanoi Noi Bai international airport in Vietnam. Since she was not allowed to travel in the escort vehicle, the part of the escort from the Remand Prison to the airport was not monitored.

The foreigner was informed of the planned execution of the expulsion sentence in advance. On 19 July 2017, the social worker at the Prague-Ruzyně Remand Prison advised the foreigner of the exact date and time of execution of the expulsion sentence, together with the place and time of arrival at the Hanoi airport. The foreigner was enabled by the Prague-Ruzyně Remand Prison to call his family and inform them of the planned expulsion. The foreigner, however, did not use this opportunity and rather talked to his family at his own expense. He called his sister, who lives in Vietnam. She would meet him in Hanoi on the date of his arrival.

The foreigner's medical check-up took place on 21 July 2017 with the result: "*fit for expulsion and air transport*". During his interview with the employee of the Defender's Office, the foreigner stated that he felt healthy and had no problems with being transported by air.

¹⁷ Information on execution of the court sentence of expulsion by air with an escort, sent on 23 June 2017 by the Directorate of the Immigration Police, Service Support Department, the foreigners' residence regimes unit.



When leaving the Prague-Ruzyně Remand Prison, the returnee collected all his personal belongings. The members of the police escort from the Air Marshal Department advised him of the planned course of the escort in the Czech language, which he demonstrably understood. The body search was carried out in a separate room behind half-closed door, by persons of the same sex.

The returnee was not handcuffed during his escort.¹⁸ He was escorted by police officers from the Air Marshal Department to the departure hall at Terminal 1 and through the security check, where he was taken over by another police escort from the Air Marshal Department, which accompanied the foreigner to the border crossing at the Hanoi Noi Bai Airport in Vietnam. The escort was completed upon handover of the returnee to the Vietnam authorities for passport control.

¹⁸ The authorised employee of the Defender's Office was present during the foreigner's escort from the Prague-Ruzyně Remand Prison to the escort vehicle and then, at Václav Havel Airport in Prague, from the escort vehicle to the aircraft. While waiting for departure of the aircraft, the foreigner stated that he had not been handcuffed even during the escort from the prison to the airport.



Summary

In the framework of expulsion monitoring, I examined primarily whether the foreigner was prepared for execution of the expulsion sentence and whether he was sufficiently familiarised with the individual steps in the expulsion process. I also dealt with the course of the actual expulsion and the way the police escort treated the foreigner being expelled.

I appreciate the professional and forthcoming approach of the police escort to the foreigner being expelled and the collaboration provided during the course of expulsion. I also highly appreciate the collaboration provided by the employees of the Prague-Ruzyně Remand Prison.

In view of the above, I propose no remedial measure in the given case.



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