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EVROPSKOU UNIÍ
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Veřejný ochránce práv
OMBUDSMAN

REPORT ON EXPULSION MONITORING

FROM: Facility for Detention of Foreigners at Balková
To: Tbilisi international airport, Georgia
Type of monitoring: Administrative expulsion
Person being expelled (returnee): Mr A, date of birth: xxx, a national of Georgia
Carried out on: 19 and 20 December 2016
Issue date of the report: 4 April 2017
Monitored by: Mgr. Veronika Sedláková, Mgr. Anna Láníčková
File No. 36/2016/NZ/VS

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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 standards 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 about this. The employees of the Office may then put questions to persons participating in

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



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 2016-12-15]. 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 2016-12-15]. 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 2016-12-15]. 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 that they will carry out the measures 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 Georgia. Mr A was placed in the Facility for Detention of Foreigners at Drahonice on 21 September 2016. On 14 November 2016, he was transferred to the Facility for Detention of Foreigners at Balková, where he stayed until the date of his administrative expulsion.

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.



The Police of the Czech Republic ordered administrative expulsion of the foreigner with a ban on entry to the European Union Member States for a period of 5 years, on the grounds of frustrating the enforcement of administrative decisions.¹⁶

Mr A failed to leave the country by the set deadline and continued to stay in the territory of the Czech Republic. On 21 September 2016, he was arrested based on an order of the Police of the Czech Republic with a view to his administrative expulsion.¹⁷

E. Course of expulsion monitoring

The Police informed the employees of the Defender's Office in writing of the execution of the administrative expulsion order by means of a notice of expulsion of 13 December 2016, Ref. No. CPR-23901-19/ČJ-2016-930310-C220.

The forced return was carried out by officers of the Police of the Czech Republic, Directorate of the Immigration Police in Prague, and officers of the Police of the Czech Republic, Directorate of the Immigration Police, Air Marshal Department (hereinafter the "Air Marshal Department").

The expulsion monitoring was performed by authorised employees of the Defender's Office, Mgr. Veronika Sedláková and Mgr. Anna Láničková, on 19 and 20 December 2016. The authorised employees of the Defender's Office submitted their authorisation to perform expulsion monitoring to the director of the Facility for Detention of Foreigners at Balková, Ing. Peter Galáž, who was present at the time.

The forced return was carried out by prap. Pavel Květoň, nstržm. Martin Procházka, pprap. Vít Heřman from the Directorate of the Immigration Police in Prague, and nprap. Jiří Moravčík, as the escort commander, together with two further police officers from the Air Marshal Department. The employees of the Facility for Detention of Foreigners at Balková and the members of the police escort provided all the necessary collaboration, which I appreciate.

The authorised employee of the Defender's Office monitored all the processes related to the release of the returnee from the Facility for Detention of Foreigners at Balková, the foreigner's escort across the border crossing at Václav Havel Airport in Prague, via the transit zone of the Atatürk international airport in Turkey, to the foreigner's escort to the border crossing at the Tbilisi international airport in Georgia.

16 decision on administrative expulsion issued by the Police of the Czech Republic, Regional Directorate for the Liberec Region, Immigration Police Department, residence control, search and escorts unit, pursuant to Section 119 (1)(b)(9) of Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and amending certain laws, as amended, on 7 September 2015, Ref. No. KRPL-124773-46/ČJ-2014-180022-SV

17 decision on detention (arrest) issued by the Police of the Czech Republic, Regional Directorate for the Capital City of Prague, Immigration Police Department, residence control, search and escorts unit, pursuant to Section 124 (1)(c) of Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and amending certain laws, as amended, on 21 September 2016, Ref. No. KRPA-387167-16/ČJ-2016-000022

Summary

In the framework of expulsion monitoring, I examined primarily whether the foreigner was prepared for execution of the administrative expulsion and whether he was sufficiently familiarised with the individual steps in the expulsion process. I also dealt with the course of the actual administrative 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 entire course of administrative expulsion. I also highly appreciate the collaboration provided by the employees of the Facility for Detention of Foreigners at Balková. However, the report on administrative expulsion monitoring also comprises findings indicating certain shortcomings that occurred during the forced return of the returnee.

Preparation of a foreigner for his/her return to the country of origin and the provision of proper information regarding support and assistance from governmental authorities or non-governmental non-profit organisations constitute some of the basic prerequisites for a more straightforward return of the foreigner and his/her subsequent re-integration in society.

As a rule, administrative expulsion should take place without the use of coercive means. Handcuffing of a foreigner cannot serve as a preventive measure and the decision on application of handcuffs should always be preceded by thorough evaluation of the situation and should be properly reasoned.

The police officers escorting the person being expelled to the country of origin should make sure, after arriving in the given country, that all the documents and luggage are handed over to the returnee.

I therefore call on the Police of the Czech Republic and the Refugee Facilities Administration of the Ministry of the Interior to comply, as soon as possible, with the measures I proposed, and thus proceed in forced returns in conformity with the international standards and Czech regulations.



Preparation for forced return

1. Preparation of the foreigner for administrative expulsion

Preparing the returnee for his/her expulsion is the key aspect of any forced return. It enables the foreigner to inform his/her family and friends about his return, both in the country from which the foreigner is being expelled and in the country of destination. It is precisely a comprehensive and gradual preparation what will facilitate the foreigner's return to the country of origin and his/her subsequent re-integration in the destination country.

1.1 Preparation of foreigners for departure from the facility for detention of foreigners and return to the country of origin

Pursuant to Section 134 (5) of the Foreigners' Residence Act, the operator of a facility for detention of foreigners shall provide for preparation of a detained foreigner, with his/her consent, for leaving the country. The explanatory memorandum on the Act states that preparation of a foreigner for return encompasses several aspects, including contact with the family and/or domestic and foreign non-governmental non-profit organisations.¹⁸ Thorough preparation of the person to be expelled thus consists in communication with people in the country from which the foreigner is being expelled, and also establishing contacts with entities in the country of destination to which the foreigner will be expelled.¹⁹ According to the Foreigners' Residence Act, such entities include non-governmental non-profit organisations based in the destination country.

Within the preparation for forced return, the foreigner should be provided with at least basic information on the options for support and assistance available in the country of destination because a person placed in a facility for detention of foreigners cannot obtain this information using his/her own means of electronic communication.²⁰ Contact information should be provided to a foreigner especially in those cases where the foreigner lacks sufficient funds for basic expenditures after his/her forced return or has no family or friends in the country of destination.²¹

18 paragraph 105 of the explanatory memorandum on Act No. 314/2015 Coll., amending Act No. 325/1999 Coll., on asylum, as amended, Act No. 326/1999 Coll., on the residence of foreigners in the territory of the Czech Republic and on amendment to certain laws, as amended, Act No. 221/2003 Coll., on temporary protection of foreigners, as amended, and other related laws

19 Council of Europe. Twenty Guidelines on Forced Return. [online]. Paragraph 15.2. Strasbourg © Council of Europe 2005 [retrieved on 2017-03-07]. Available at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf

20 According to Section 136 (3)(c) of the Foreigners' Residence Act, a foreigner detained in a facility for detention of foreigners is not allowed to bring into the facility or keep in the facility during his/her placement therein any means of electronic communication.

21 Her Majesty's Inspectorate of Prisons for England and Wales. Expectations – Criteria for assessing the conditions for and treatment of immigration detainees [online]. London © Her Majesty's Inspectorate of Prisons for England



The responsible entity providing information and ensuring preparation, including aspects of reintegration, is the Refugee Facilities Administration. I have already stated in a previous report on a visit to a facility that foreigners should be provided with information regarding their return to the country of origin, including possible assistance and support in the destination country.²²

The need for reasonable assistance provided to a foreigner after his/her return to the country of origin was also confirmed *de facto* by the Ministry of the Interior, which implemented, in co-operation with the International Organisation for Migration, various projects aimed to reintegrate persons returned to Georgia. These projects resulted in establishing labour, consultancy and mediation centres in Tbilisi and Batumi.²³

Based on a personal interview performed by the authorised employees of the Defender's Office, I determined that Mr A was informed about the date of his administrative expulsion on 13 December 2016. He maintained intensive contacts with his partner and children before leaving the country. They regularly called each other and the family repeatedly visited him. However, Mr A later did not contact any person in Georgia because all family members had already left or died. During the interview, the foreigner confirmed that he no longer knew anyone in Georgia. He further stated that he had been provided with no information or contact details of organisations offering assistance to citizens being returned or organisations focusing on reintegration of expelled persons. The foreigner himself knew of no such entities and had therefore no-one to turn to with possible questions regarding his return.

Within the preparation for his return at the Facility for Detention of Foreigners at Balková, the foreigner received no contact details of entities based in Georgia that could help him during the first days after his arrival, especially with accommodation, finding a job and reintegrating into society. As a result of the neglected preparation of the foreigner for his

and Wales 2012. Section 4: preparation for removal and release, paragraph 5: Detainees are helped to prepare for their release. Section 6: Safety, paragraph 14: Detainees are helped to prepare for the arrival and early days in the destination country and their arrival is managed as smoothly and constructively as possible. [retrieved on 2017-03-07]. Available at: <http://www.justiceinspectrates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/immigration-expectations.pdf>

22 PUBLIC DEFENDER OF RIGHTS: *Report on Visit to Facility on 13 and 14 October 2014: Facility for Detention of Foreigners at Bělá-Jezová*. [online]. Brno, 18 February 2015. [retrieved on 2017-03-07]. Available at: http://www.ochrance.cz/fileadmin/user_upload/ochrana_osob/ZARIZENI/Zarizeni_pro_cizince/ZZ-Zarizeni_Bela-Jezova_2014.pdf

23 Association of Citizens Dealing with Emigrants: *Assisted Voluntary Returns to Third Countries. Comparison of Return Systems of Selected EU Countries and the Czech Republic*. [online] SOZE, Ministry of the Interior of the Czech Republic, 2010. pp. 61-62. [retrieved on 2017-03-07]. Available at: http://www.google.cz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKewjgmfjA0sTSAhXLIiwKHTOAC14QFggcMAA&url=http%3A%2F%2Fwww.mvcr.cz%2Fsoubor%2Fasistovane-dobrovolne-navraty-do-tretich-zemi-pdf.aspx&usq=AFQjCNGZURyErdAKVUFC85I_zJoiOkww&bvm=bv.148747831,d.bGg



administrative expulsion, the returnee found himself alone at the Tbilisi international airport, without any assistance. He did not know whom he could call, how to get from the airport or where to go, which increased the stress associated with the return and absolute uncertainty regarding his future.

The foreigner's preparation for the administrative expulsion thus did not meet the requirements laid down by the Foreigners' Residence Act or the intentionally recognised standards of treating returnees.

Remedial measures addressed to the Facility for Detention of Foreigners at Balková:

- 1) Prepare each foreigner for departure from the facility for detention of foreigners and return to the country of origin (ongoing measure).**



Course of the forced return

A forced return begins with handover of the foreigner being expelled to the police escort at the facility for detention of foreigners, and continues with his escort to the border crossing, where it ends upon his/her handover to the authorities or a mere transport and handover of the returnee for passport control at the destination country's international airport.

The course of a forced return operation depends on various aspects pertaining to the foreigner, the members of the escort team, the means of transport and other, unpredictable circumstances. The commencement of the actual expulsion process is critical for the foreigner, as this is the point when he/she becomes fully aware that he will indeed be returned to his/her home country. It often involves increased tension and confrontation of the returnee with the police escort team.

Problems can be avoided, among other things, by thorough assessment of all the risks that could arise during the return operation ("risk assessment"). Within the evaluation, it is important to take into consideration the personality and individual needs of the person being expelled, with regard to the time, manner of the expulsion and the police escort.

2. Authority to handcuff a person being expelled

According to the Police Act, a police officer may use against a detained person "*handcuffs and means of preventing spatial orientation ... if there is reasonable concern that the safety of persons and property or protection of public policy may be at risk, or that the detained person might attempt to escape*".²⁴

The authority to use handcuffs is limited to justified cases where this means of restraint is used in response to an imminent risk associated with the person being expelled, and only for the necessary period of time.²⁵ This authority does not have the nature of a preventive measure and the decision whether or not handcuffs will be used should always pass the proportionality test.

The returnee seemed to be a quiet person during his entire contact with the authorised employees of the Defender's Office. Many staff members of the Facility for Detention of Foreigners at Balková stated that he was friendly and caused no trouble. When processing the documents necessary for the administrative expulsion, they even came to bid farewell to him. During this time, the foreigner was not handcuffed. Handcuffs were applied only

²⁴ pursuant to Section 53 (1) and Section 54 of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended, 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

²⁵ Council of Europe. Twenty Guidelines on Forced Return [online]. Strasbourg © Council of Europe 2005 [retrieved on 2017-03-10]. Available at: http://www.coe.int/t/dg3/migration/archives/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf



before his departure from the Facility for Detention of Foreigners at Balková by the police officers from the Directorate of the Immigration Police in Prague. After arrival at Václav Havel Airport in Prague, the foreigner was placed in a cell and a police officer removed his handcuffs. They were later not replaced for the escort to the Tbilisi international airport.

Based on the findings obtained from the expulsion monitoring, I consider that it was not necessary to handcuff this returnee during his escort from the Facility for Detention of Foreigners at Balková to Václav Havel Airport in Prague. I consider the use of handcuffs in the given case a mere preventive measure.

I have already pointed out the issue of repeated application of handcuffs as a preventive means of restraint in my previous findings from expulsion monitoring.²⁶ I deal with this issue in the long term and consider that every decision on applying handcuffs to a returnee has comprise proper reasoning.

Remedial measures addressed to the Police of the Czech Republic, Directorate of the Immigration Police, Facility for Detention of Foreigners at Balková:

- 2) A decision to apply handcuffs may not be used as a preventive measure. Every decision on applying handcuffs to a returnee has to comprise proper reasoning (ongoing measure).**

²⁶ Public Defender of Rights: Activities in 2015. Our recommendations for expelling foreigners. 2016 [retrieved on 2017-03-08]. Available at: <http://www.ochrance.cz/sledovani-vyhosteni-cizincu/prehled-aktivit/>



3. Transport of the returnee to the destination country and completion of the escort

3.1 Handover of the luggage to the returnee at the border crossing

The escort of a returnee begins with handover of the given person to the police escort at a facility for detention of foreigners and ends upon his/her arrival in the destination country. Then, there are two possible options. Either the returnee is handed over to the authorities of the destination country, which marks an end of the police escort arranged by the Air Marshal Department, or the foreigner is brought to passport control, the police officers submit the returnee's identification documents to the immigration officer, and the escort ends at this point. The foreigner is then responsible for picking up his/her luggage and finding a transport to the place of residence.

If the foreigner is not handed over to the authorities of the destination country, it is desirable, in the opinion of the International Centre for Migration Policy Development, that the police escort also provide for handover of all luggage to the foreigner in intact condition.²⁷

After arrival at the Tbilisi international airport, the police escort submitted the returnee's passport and other documents to an immigration officer. The foreigner's escort thus ended. The police officers then themselves went through passport control and entered the airport's arrival hall. The foreigner was confused as he had no information as to what would happen next or how he should proceed. He began shouting at the police officers, asking them for help. The police officers did not respond and left the airport.

Given the lacking preparation for return to the country of origin, failure to arrange information regarding possible help in the destination country, and failure to provide money required for the basic expenditures connected with the return, the expelled foreigner basically found himself in a hopeless situation. His feeling of uncertainty was magnified by the fact that he did not know where his luggage was and whether he would get it all back intact.

The stress associated with his return to the country of origin would be more bearable if the police escort accompanied the foreigner to his luggage, made sure that he got everything and at least helped him find his way around the airport.²⁸ This would at least partially alleviate the foreigner's stress and make the return easier for him. I consider such a procedure desirable and aimed at increasing the standards of forced return.

27 International Centre for Migration Policy Development: Guidelines and Monitoring Tools for Forced Return Monitoring. Vienna, Austria, September 2015. 55 p. ISBN: 978-902880-51-2.

28 NB: the foreigner was expelled at the border crossing at the N. international airport in Georgia. A public transit or private transport is required to get from this airport. Since the returnee had no money on him and was unable to contact anyone, he was basically left alone at the airport.



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File No.: 36/2016/NZ/VS
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sentence

Remedial measures addressed to the Police of the Czech Republic, Directorate of the Immigration Police, Air Marshal Department:

- 3) The police escort shall make sure that all the luggage has been handed over to the returnee (ongoing measure).**



Summary of remedial measures

- Ongoing measures
- Prepare each foreigner for departure from the facility for detention of foreigners and return to the country of origin.
 - A decision to apply handcuffs may not be used as a preventive measure. Every decision on applying handcuffs to a returnee has to comprise proper reasoning.
 - The police escort shall make sure that all the luggage has been handed over to the returnee.
-