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REPORT ON EXPULSION MONITORING

FROM: Prague-Ruzyně Remand Prison

To: Lagos, Federal Republic of Nigeria

Type of monitoring: Expulsion sentence carried out in co-operation with FRONTEX

Persons being expelled (returnees): Mr A, date of birth: xxx, national of Nigeria
Mr B, date of birth: yyy, national of Nigeria

Carried out on: 15 February and 16 February 2017

Issue date of the report: 13 November 2017

Monitored by: Mgr. Anna Láníčková, Mgr. Veronika Sedláková

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Introduction

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” or “forced return 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 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>.



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

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.

Information on persons being expelled (returnees)

Mr A was validly convicted in the Czech Republic, by the Municipal Court in Prague,¹⁶ of an attempted criminal offence of illegal manufacture and possession of addictive and psychotropic substances and poisons. He was sentenced to imprisonment and expulsion from the Czech Republic for an indefinite term. The forced return of Mr A was already

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 Municipal Court in Prague of 15 January 2009, File No. 46 T 25/2008.



planned for 3 January 2017, but it was ultimately not carried out on that date. While the foreigner did board the aircraft, he was later shown off the plane by the captain because of his unruly behaviour.¹⁷

Mr B was also validly convicted by the Municipal Court in Prague¹⁸ – just like Mr A – of an attempted criminal offence of illegal manufacture and possession of addictive and psychotropic substances and poisons. Mr B, too, was sentenced to imprisonment and expulsion for an indefinite term. The sentence of expulsion was to be carried out on 15 February 2017 – this was the first attempt to carry out the forced return.

Course of expulsion monitoring

The sentence of expulsion of both foreigners was carried out based on an instruction given by plk. Mgr. Soňa Szelesová, head of the foreigners' residence regimes unit at the Service Support Department of the Directorate of the Immigration Police. The forced return took place within a joint return operation organised by Austria with participation of other Member States of the European Union, including the Czech Republic. The return operation was co-ordinated by the European Border and Coast Guard Agency ("Frontex") in conformity with Article 28 of the Regulation of the European Parliament and the Council on the European Border and Coast Guard.¹⁹

The Directorate of the Immigration Police informed the employees of the Defender's Office informally of the execution of the expulsion sentence sufficiently in advance in writing.²⁰ All the administrative aspects required for planning the whole operation and securing the presence of authorised employees of the Office in the aircraft were then agreed with the police officer in charge. The monitoring of this return operation was therefore notified in advance.

On the day when the sentence of expulsion was to be carried out, two authorised employees of the Defender's Office presented their authorisation to monitor the expulsion on the premises of the Prague-Ruzyně Remand Prison to the prison director, plk. Ivan Horák, and later also to the commander of the police escort from the Air Marshal Department, the Directorate of the Immigration Police (hereinafter the "AMD"). They spoke to the two foreigners to be expelled, to the head nurse of the Remand Prison, to a

17 According to the official record made by the Directorate of the Immigration Police on 3 January 2017, the foreigner was brought on board handcuffed and then seated. Before departure, he asked for permission to go to the toilet. After he left the toilet, he remained standing in the aisle and refused to sit down. He began shouting that he did not want to go back to Nigeria. He was asked to calm down, but continued shouting in spite of the police escort's instructions. Police officers from the Air Marshal Department used certain control and restraint techniques to overcome his resistance and placed him back in his seat. After the foreigner calmed down, an airline representative notified the police escort that the captain had decided to exclude the entire escort from the flight.

18 Judgment of the Municipal Court in Prague of 15 January 2009, File No. 46 T 25/2008.

19 Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC.

20 Letter of 17 January 2017.



social worker and to the head of the Remand Department. The final medical check-up was carried out in the morning of the same day, in the presence of an interpreter.²¹

The employees of the Defender's Office monitored the processes related to the release of the two foreigners from the Prague-Ruzyně Remand Prison (hereinafter the "remand prison") and their transport from the prison by the police escort from the AMD all the way to the Mikulov-Drasenhofen border crossing. Upon arrival of the police escort at the remand prison, both foreigners were handcuffed by the police officers. Each returnee had his own escort and they were transported in separate police vehicles. In spite of their request, the authorised employees of the Defender's Office were not allowed to join the foreigners in the escort vehicles and, therefore, the overland leg of the return operation was not fully monitored.

In the Police Liaison Centre building at the Mikulov border crossing, the foreigners were handed over to another escort from the AMD, which then transported them to the Vienna-Schwechat international airport with assistance of the Austrian police. All the processes related to the foreigners' departure taking place in the non-public part of the airport were monitored, and so was the entire flight until the foreigners were handed over to the authorities at the Lagos international airport in Nigeria.

The premises where the foreigners were located during the return operation were clean, bright, sufficiently heated and spacious. The rooms in which security checks took place (whether at the Prague-Ruzyně Remand Prison or at the Vienna airport) ensured adequate privacy. The security checks (body searches) were carried out by persons of the same sex. The foreigners' luggage was properly marked with identification details. Their personal belongings were checked in the foreigners' presence and eventually handed over to them on board of the aircraft, just before arrival at the place of destination. Mobile phones were already returned to them on their release from the prison; however, they were not functional – probably because they had not been used for a long time – and the returnees thus could not use them to inform their families about their arrival.

Both foreigners had sufficient access to refreshments during the entire course of the return operation. The remand prison provided them with a package containing food and beverages for the trip; a sufficient variety of foods was available in the non-public area of the Vienna-Schwechat airport, and of course also during the flight.

The two foreigners spent the time waiting for departure by talking to other returnees; the AMD staff allowed them to move around while diligently supervising them from a distance. They had access to washrooms during the trip²² and also when waiting at the Mikulov-Drasenhofen border crossing and at the airport. The police escort arranged for a currency exchange for one of the foreigners and generally treated the foreigners in a forthcoming and civil manner.

21 A member of the prison staff speaking English.

22 A medical break at a petrol station during the overland leg of the return operation, specifically the trip from the Prague-Ruzyně Remand Prison to the Mikulov-Drasenhofen border crossing.



Summary

In the framework of expulsion monitoring, I examined primarily whether the two foreigners were prepared for execution of the expulsion sentence and whether they were 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 foreigners being expelled. The report on expulsion monitoring comprises findings indicating certain shortcomings that occurred during the forced return of the two foreigners.

I highly appreciate the collaboration provided by the employees of the Prague-Ruzyně Remand Prison. My report points out certain shortcomings in the process of forced return of the foreigners, consisting specifically in insufficient information provided to one of the returnees and his inability to contact his family regarding the imminent return, as well as the use of coercive means against one of the foreigners.

The police may use handcuffs and other means of preventing spatial orientation only if there is reasonable concern that the safety of persons could be at risk, or that the detained person might attempt to escape. However, not for preventive reasons.

I therefore call on the Police of the Czech Republic and the Prison Service of the Czech Republic 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 and course of expulsion

1. Preparation of the foreigner for departure and informing the family of imminent return

Preparing the returnee for his/her expulsion is the key aspect of any forced return. It enables the foreigner, among other things, 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 that country.

Both foreigners were very well aware of the situation they found themselves in and also of the fact that they would soon leave the country. Mr A had previously frustrated the execution of his sentence of expulsion. During his interview with employees of the Defender's Office, he stated that he had learnt about the contemplated second expulsion only on the day for which the expulsion was scheduled. In the morning, he was told to pack his things because he would be leaving on the same day. It follows from his personal file that shortly before his forced return, he had called his family several times. However, he was unaware when exactly he would be returned and thus had no real opportunity to inform his family about the exact date and time when they could expect him.

In contrast, Mr B was familiar with the exact date of his expulsion. He stated that he had already learnt about it two weeks before the planned departure. He knew he would be released in the morning. He called his family several times to advise them about his return, and arranged that they would pick him up at the airport.²³ However, he did not know the exact time and thus could not pass it on. He therefore told them only the date. His mobile phone was returned to him after he was released from the remand prison, but the phone was not functioning and he thus could not use it. While waiting at the Mikulov-Drasenhofen border crossing at the Police Liaison Centre, he asked the police officers from the AMD several times whether they would lend him their own phone so that he could call his family and tell them the exact time of arrival. He made the same request when waiting in the non-public area of the Vienna airport. His requests were denied. Mr B was visibly agitated. This showed when the aircraft was landing in Nigeria, when the emotional stress escalated into a quarrel with one of the members of the police escort. Mr B again complained about being unable to contact his family. The police officer managed to calm him down without using any coercive means.

Given the previous unsuccessful attempt, I can understand the decision not to inform Mr A of the exact date and time of his expulsion to the country of origin. However, I am

²³ Request for a phone call – reason given in the request: “To let them know about my deportation, so they can pick me up in the airport.” (the telephone call took place on 3 February 2017); similarly, the reason stated in another request for a phone call: “To wait for me at the airport.” (the call took place on 13 February 2017).



convinced that, even in that case, the prison service and the police should have enabled the foreigner to contact his family immediately after he became aware of the time of return to his home country, and thus arrange for one of his relatives to wait for him at the airport. As a matter of fact, while monitoring criminal expulsion and other forms of forced return of foreigners, I have encountered several cases where a foreigner who had not been previously informed of his expulsion was allowed to make a phone call from a prison or police phone.

Mr B demonstrably knew that he would be leaving the country on that day, and informed his close ones in Nigeria accordingly. However, he had no idea that he would be returned within a joint return operation co-ordinated by Frontex. He believed that he would be flying to Nigeria with Turkish Airlines and was confused when he found out that this would not be so. He suddenly became nervous because he could not tell his family and did not know when they should be expecting him. Convicts do not have access to their mobile phones when serving their prison sentence and it is likely that their phones will no longer be functional after years of not being used. Consequently, although they do get their mobile phones back after having been released from prison, they are still unable to call their families. This is basically what happened in this case. After many years out of service, Mr B's mobile phone was not functional and he had no way to inform his family – which he otherwise had been in contact with – about new information which he learnt only on the date of his expulsion.

Remedial measures addressed to the Prague-Ruzyně Remand Prison:

- 1) Provide complete information on expulsion to the foreigner involved sufficiently in advance so that he/she can inform his/her family about his/her return (ongoing measure).**
- 2) Shortly before the exercise of the expulsion sentence, enable the foreigner being expelled to make a phone call at the prison's expense (ongoing measure).**

This report is made after some time has elapsed from the expulsion in question – in the meantime, the Director General of the Prison Service has issued Order No. 48/2017,²⁴ concerning a new set of measures and rules for treating convicted foreigners, including preparation for expulsion and informing the foreigners being expelled of the date, time and destination, precisely so that they are able to pass this information on in time to their families or other close persons. This part is now regulated in detail in the mentioned internal regulation, and I therefore consider the measure set out in paragraph 1) implemented for the time being.

²⁴ Full title: Order of the Director General of the Prison Service setting the principles and rules of treating convicts who are not nationals of the Czech Republic during the service of imprisonment. Issued with effect from 1 October 2017.



2. Use of means of restraint

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*”.²⁵

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.²⁶ This authority does not have the nature of a preventive measure and the decision whether or not handcuffs will be used must always pass the proportionality test. It is necessary to assess the necessity and proportionality of using this coercive means, always in view of the specific behaviour of the given person.

The Constitutional Court has noted that any coercive means have to be used only to a degree required to attain the legitimate purpose followed in the given intervention. It also referred to international standards when it stated that coercive means should only be used to a necessary degree and that their lawfulness, proportionality and suitability should be examined.²⁷ The Court also referred to case law of the European Court of Human Rights according to which the European Court always attaches great importance to the specific circumstances of each case and examines whether the use of means of restraint was necessary.²⁸ Any indiscriminate and routine use of means of restraint is considered unacceptable by the Constitutional Court.²⁹

The foreigners were handcuffed at all times during the escort, starting with their release from the remand prison and ending in the non-public area of the Vienna-Schwechat airport, i.e. over a period of 6 hours. From Mr B, the handcuffs were removed for approximately 60 minutes in the building of the Police Liaison Centre, when he was waiting for handover to the second escort team from the AMD. They were again applied before he left the building. He in no way hindered this act and showed no signs of resistance. Mr A, who had already once refused to co-operate and had been shown off a means of transport, was handcuffed during the entire second escort. The handcuffs were ultimately finally removed from both foreigners when they arrived in the non-public area of the Vienna airport, where parties from other Member State gradually gathered. No coercive

25 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.

26 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.

27 Paragraph 69 of the judgement of the Constitutional Court of 27 October 2015, File No. I. ÚS 860/2015. Published only in the NALUS system. Available at: <http://nalus.usoud.cz/Search/ResultDetail.aspx?id=90263&pos=1&cnt=1&typ=result>.

28 Ibid, paragraph 78.

29 Ibid, paragraph 79.



means were then used from this time on until the handover of the foreigners to the responsible authorities at the airport in Nigeria.

During the initial interviews with the employees of the Defender's Office, both foreigners expressed a strong displeasure at the idea of being handcuffed. The both stated that they would cause trouble if handcuffed. After the police escort arrived, they were subjected to a body search, and the escort commanders explained to the foreigners the steps that would be taken and the plan of their return. They complied with all the instructions voluntarily. Everything took place in peace and neither of the returnees showed any resistance (whether active or passive), tried to bargain or incited any quarrel. They both refused to sign the advice on their rights and duties during the escort. The members of the police escort asked them to sign this document on several occasions throughout operation, but they refused. They were thus advised orally. The communication took place in English, which the foreigners understood without any greater difficulty.

The decision on escort of the two foreigners of 14 February 2017 provides no substantiation for exercising the authority to apply handcuffs. It is recorded in the decision that the authority under Section 54 of the Police Act had been used and handcuffs had been applied.³⁰ It is also stated that the escort regime follows an internal instruction of the police.³¹ The escort decision mentions no individual *ad hoc* assessment of the behaviour of the two foreigners during the previous service of imprisonment. In response to additional questions from the monitoring parties regarding the reasons for applying coercive means, the members of the police escort stated that Mr A had been handcuffed because he had previously refused to co-operate, refused to leave the country and had been ultimately excluded from a flight due to his unruly behaviour. Regarding Mr B, the police had been advised that he could cause trouble and it would allegedly be better for a smooth journey if both returnees were handcuffed, rather than applying handcuffs to one of them and not to the other.

In the case of Mr A, I consider that it could indeed be justifiably assumed that he might try to frustrate the escort, precisely with reference to his previous behaviour. I can therefore understand the decision of the escort commander to apply handcuffs. However, Mr B was subjected to the same coercive means as Mr A although there was nothing to indicate that he, too, might try to hinder the course of the expulsion or that he would pose a risk for the safety of persons, property or protection of public policy. The two foreigners travelled separately, each in a different vehicle and with his own escort. The size of the escort team corresponded to the number of foreigners being expelled.³² In case of an emergency, there was sufficient staff to intervene if necessary. The justification of using handcuffs for one foreigner cannot result in indiscriminate handcuffing of all other persons being expelled.

30 Section 54 of Act No. 273/2008 Coll., on the Police of the Czech Republic.

31 Binding instruction of the Police President No. 159/2009 of 2 December 2009, on escorts, guarding of persons and on police cells, as amended by binding instruction of the Police President No. 171/2010.

32 A total of 7 police officers and 2 foreigners being expelled.



An interview with the social worker at the Prague-Ruzyně Remand Prison indicated that Mr B had not tried to avoid the planned departure, wanted to go home and had communicated several times with his family in Nigeria in this regard. The interview with the prison director, plk. Ivan Horák, revealed that there had been no problems with the foreigner's behaviour and that he had never been subject to any disciplinary action. Mr B himself stated in his interview with the employees of the Defender's Office that he wanted to leave the country, that his family was already waiting for him and that they were even prepared to pick him up at the airport.

Based on the expulsion monitoring we performed, I consider that it was not necessary to handcuff Mr B to ensure smooth course of the escort. The period of almost 6 hours when he was handcuffed appears rather unreasonable, all the more so that Mr B was under close supervision of three highly experienced members of the police escort at all times. In the given case, I consider the application of handcuffs a mere preventive measure, which is not in line with the requirement for necessity and proportionality.

I do not question the authority of the escort commander to decide on handcuffing the person being escorted if the statutory conditions are met. I deal with this issue in the long term and consider that every decision on applying handcuffs to a returnee has to comprise proper reasoning. 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.³³

It follows from the escort decision itself that coercive means are still being used indiscriminately, without sufficient regard for the specificities of each individual case. They thus have the nature of a preventive measure and their application is not subjected to the tests of necessity and proportionality. They are thus used at variance with Section 11 of the Police Act and the international standards. According to the mentioned provision, a police officer is obliged to proceed so that any potential interference with the rights and freedoms of the persons against whom the given measure is aimed does not exceed the degree necessary to attain the purpose of the measure. It is then reflected in evaluation of this measure whether the use of handcuffs is really necessary to ensure smooth course of the escort and, at the same time, whether there might be a less restrictive measure to achieve the same objective. During the entire term of administrative acts connected with the release of Mr B, there was nothing to indicate that the safety of persons and property or protection of public policy might be at risk, or that the detained person might attempt to escape. The foreigner had no history of disciplinary misconduct, he was in contact with his family and wanted to leave the country. It was apparent in the given case that the foreigner had come to terms with his planned expulsion and there were no reasons to believe that the safety of police officers or other persons, property or public policy might be at risk, or that Mr B would attempt to escape.

33 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/>.



Consequently, there were generally no indications that smooth course of the escort would be endangered. If the purpose is not jeopardised, there is also no reason to interfere with the foreigner's personal freedom. The handcuffs were applied at variance with the principle of proportionality and without sufficient *ad hoc* assessment.

Remedial measures addressed to the Directorate of the Immigration Police:

- 3) Handcuff persons being escorted only in justified cases, always subject to the conditions of necessity and proportionality (ongoing measure).**
- 4) State proper and individual reasons for applying handcuffs in each decision on escort (ongoing measure).**



Summary of remedial measures

Ongoing measures

Remedial measures addressed to the Prague-Ruzyně Remand Prison:

- Provide complete information on expulsion to the foreigner involved sufficiently in advance so that he/she can inform his/her family about his/her return (measure No. 1).
- Shortly before the exercise of the expulsion sentence, enable the foreigner being expelled to make a phone call at the prison's expense (measure No. 2).

Remedial measures addressed to the Directorate of the Immigration Police:

- Handcuff persons being escorted only in justified cases, always subject to the conditions of necessity and proportionality (measure No. 3).
- State proper and individual reasons for applying handcuffs in each decision on escort (measure No. 4).