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**AVOCATUL
POPORULUI
OMBUDSMAN**

MONITORING REPORT

of Forced Return Operation

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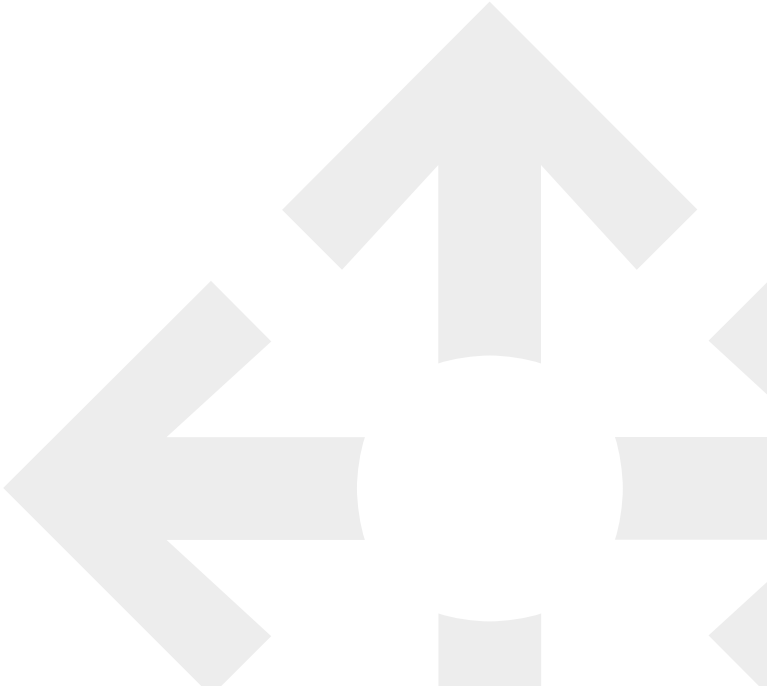
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List of abbreviations:

BMA – Bureau for Migration and Asylum

BP – Border Police

BPS – Border Police Sector

CTPF – Centre for Temporary Placement of Foreigners

CIA – Chisinau International Airport

IGBP – Inspectorate-General of Border Police

MIA – Ministry of Internal Affairs of the Republic of Moldova

OP CAT – Optional Protocol to the UN Convention against Torture

PA – The People’s Advocate (Ombudsman)

PAO – The People’s Advocate Office

SBCP CIA – State Border Check Point „Chisinau International Airport”

UNCHR – United Nations High Commissioner for Refugees in Moldova

Definitions¹:

Term	Definition
Return	The process of returning an alien through voluntary enforcement of the return decision or its forced execution: in the country of origin, in a country of transit in accordance with readmission agreements or in a third country where the alien voluntarily decides to return and to which he will be accepted.
Return decision	Administrative act of the competent authority for foreigners, by which the stay of a foreigner is established as illegal and which obliges the foreigner to leave the territory of the Republic of Moldova within a set term.
Forced-return	Compulsory return of a person to the country of origin, transit or third country (i.e. the country of return) on the basis of an administrative or judicial act.
Returnee	A foreign national who is residing irregularly in a country and who is the subject of return decisions issued in the respective country.
Return operation	Operation which is coordinated by the return authority and under which the persons subject to the return measure are returned either voluntarily or forcibly.
Escort Officer	Security-assurance person, including persons employed by a private contractor, whose responsibility is to accompany returnees in particular while transporting them out of the country.
Escort Leader	The person that leads the team and is responsible for the proper implementation of the return operation. The leader of the escort team is the person who has the greatest authority or decision-making capacity, after the captain of the aircraft.
Return under escort	The administrative measure of the competent authority for foreigners, which involves accompanying, to the state border crossing point open for international traffic or to the country of origin, transit or destination, the alien who has crossed the State border illegally, did not leave the territory of the country within the time limit stipulated in the return decision, has been declared undesirable, the measure of expulsion was ordered against him or his state of health presents a danger to public health.
Vulnerable persons	This category includes minors, unaccompanied minors, people with special needs, elderly people, pregnant women, victims of human trafficking, single parents with young children, people with medical conditions, persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence.
Return Authority	The BMA is the state authority responsible for the organization of return operations and their technical implementation, both in the case of national return operations from Moldova to other third countries, as well as in the case of collecting return operations from the EU Member States to Moldova.

¹ Return Handbook:

[https://ec.europa.eu/transparency/documents-register/api/files/C\(2015\)6250_1/de0000000386027?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2015)6250_1/de0000000386027?rendition=false) and Directive 2008/115/EC of 16.12.2008 on common standards and procedures in Member States for returning nationals of countries residing illegally in other countries:

<https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:32008L0115&from=FR>

Introduction:

- 1) The People's Advocate (Ombudsman) ensures the promotion and protection of human rights and fundamental freedoms, conducting its activity on the basis of art. 59¹ **Constitution of the Republic of Moldova**, Law Nr. 52 of April 3rd, 2014 on the People's Advocate (Ombudsman), and on the principles on the status of national human rights institutions (Paris Principles).
- 2) In this regard, the **People's Advocate Office** (national institution for the protection of human rights), through its specific mechanisms, examines requests from persons who consider that their fundamental rights and freedoms have been violated, periodically carries out preventive and monitoring visits to places where persons deprived of liberty are placed in custody/detention, issues reports and recommendations to the authorities concerned. The reports of the Ombudsman have become sources of truthful information for the **ECHR, UN CAT/ SpT/ CPT** the situation regarding the observance by the Republic of Moldova of the commitments assumed in order to protect and ensure the right to life, physical and mental integrity, as well as the right to health, freedom and safety, access to effective remedies at law in national courts.
- 3) From October 21st to 22nd, 2022, the representative of the People's Advocate Office participated in a mission to monitor the operation of forced-return under escort of a citizen from the Republic of Uzbekistan to the transit country.
- 4) The return operation was organised and carried out by the BMA according to national return procedures. The PAO participated in this mission for the first time.²
- 5) The purpose of the visit consisted in the actual monitoring of the forced-return process, as well as in making recommendations for improving the situation in the matter, as the case may be, from the perspective of respecting and protecting human rights.
- 6) The monitoring mission was carried out with the support of the International **Centre for Migration Policy Development (ICMPD)** within the project „Capacity for a rights-based return system for Moldova (CareFor)”³.

² <http://ombudsman.md/news/premiera-prima-misiune-de-observare-a-returnarii-fortate-realizata-cu-succes-de-catre-oficiul-avocatului-poporului/>

³ https://www.icmpd.org/news/the-first-ever-forced-return-monitoring-mission-carried-out-in-moldova?fbclid=IwAR1L6So6un1valGf-RMBnlhc_OEx96iXkBhRTkNCeDTsEiSt6R-8XUF6ufU

Monitoring Standards:

- The rules of the European Committee for the Prevention of Torture;
- **ESC Resolution No. 663 (XXIV)** of July 31, 1957 on the set of minimum rules for the treatment of detainees;
- **Directive 2008/115/EC of 16.12.2008** on common standards and procedures applicable in Member States for returning third countries nationals residing illegally in other countries;
- **Law No. 215/2011** on the state border of the Republic of Moldova;
- **Law No. 283/2011** on border police;
- **Law No. 200/2010** on the regime of foreigners in the Republic of Moldova;
- **Law No. 270/2008** on asylum in the Republic of Moldova;
- **Government Decision No.493 of July 7th**, 2011 on the approval of the Regulation of the Center for Temporary Placement of Foreigners;
- **Government Decision No. 492 of July 7th**, 2011 on the approval of the Regulation on the procedures for return, expulsion and readmission of foreigners from/to the territory of the Republic of Moldova;
- **Order of the Ministry of Internal Affairs No. 30** of August 12th, 2022 on the approval of the Standard Internal Operating Procedure applied by the CPTS Identification and Escort Service and by the BMA in the field of escorting foreign nationals;
- **ICMPD** guidelines for forced-return monitors in Moldova, January 2022.

The status of the foreigner subjected to forced-return:

- 7) The returned person comes from the Republic of Uzbekistan, and was born in 1988.
- 8) In Moldova, the foreigner violated the rules of residence⁴ and refused to voluntarily leave the territory of the country, for which he was placed in public custody (CTPF).
- 9) For the illegality committed, the court applied the „**ban on entering the country**” for a period of 5 years. The court’s decision was not challenged by the foreigner stranger or his lawyer. According to the operative part of the court decision, the court verified the criteria and restrictions imposed by **art.439 of the Contravention Code** „expulsion” in respect of the foreigner person.
- 10) The foreigner had been kept in custody, in a CTPF, for three months before being returned.

⁴ Art.84¹. al.2 Law 200/2010 on the legal regime of foreigners “Foreigners on the territory of the Republic of Moldova are obliged to respect the purpose for which they were granted the right of entry and, as the case may be, the right to stay on the territory of the country, also to leave the territory of the Republic of Moldova at the expiry of the granted term of stay”.

Monitoring of forced return operation

Pre-departure phase monitoring⁵:

11) The return process started with the briefing at the CTPF headquarters, at 17.30, on October 20th, 2022. Mr. Nicanor Trocin, the head of CTPF presented the escort team, the monitor, the role of each team member, the purpose and objectives of the return mission, the situation of the returned person, the risks within the mission and the rules in the process of return and behaviour towards the returnee and other passengers. The members of the escort team had the possibility to ask questions.

12) Mr. Trocin added that the returnee was informed about the return process, and went through a medical check conducted by a doctor; he received food, water and the opportunity to inform relatives about the flight. The foreigner is not agitated, has no medical conditions, is not part of the vulnerable group and has not committed threats to the staff. However, the returnee was placed under a yellow hazard code rating during return.

13) The risks of being subjected to ill-treatment in the country of origin have not been identified. The foreigner will be picked up from the Airport by his relatives.

14) The return of the person is made by air, to the transit area of **Istanbul International Airport, Turkey**. Subsequently, the foreigner will climb independently on board the aircraft to the country of destination. The BMA bought him a return ticket.

15) After the briefing and the physical security control of the returnee, he was conducted in a special room. The monitor had access to procedures and documents.

16) The physical security control was carried out properly, calmly, professionally and decently. No coercive measures were applied. No prohibited objects or substances were identified. The foreigner signed the minutes and the record regarding the lack of observations/claims against the **BMA**.

17) The escort officers accompanied the returnee to the transport. The returnee was not handcuffed. The luggage was placed in the car. The documents for the return operation were taken over by escort leader. The foreigner did not oppose the boarding in the transport.

⁵ The pre-departure phase includes the period starting from the moment of departure from CPTS and lasts until the moment of embarkation in the means of transport. In this phase, the physical security control (body search) of the returned person is carried out, the briefing with the escort team is performed, and the returned person can wait in the place of detention / waiting located in the location from where the boarding is to take place in the used means of transport.

Monitoring of the transportation phase⁶:

- 18) The means of transport is a minibus designed for transporting passengers.
- 19) The foreigner was placed on the middle seat, being flanked by escort officers on both sides. The monitor had the possibility to monitor the situation of the foreigner and the actions of the escort officers during the trip to the destination.
- 20) The returnee was not handcuffed during the transport. The escort officers had a calm and professional behavior during the transport. No incidents occurred during the travel phase.
- 21) The escort officers communicated with the returnee person in Russian, language that both the person deported and the officers are familiar with.

Monitoring of the in-flight phase⁷:

- 22) In the airport area, both the escort officers and the returnee entered through the access area for all passengers and passed the same control procedures applied to all the passengers. This process is to be appreciated, because it did not lead to any feeling or impression of danger, awkwardness or frustration, neither for the returnee, not for the other passengers.
- 23) The BP provided the necessary support to the BMA in the process of going through the **AIC SBCP**.
- 24) While waiting for the flight, the escort officers behaved with dignity and in a professional manner.
- 25) The returnee did not manifest any resistance. The foreigner had access to water and toilet. No incidents were recorded.
- 26) In order to get on board of the plane (flight KIV-IST), the returnee and the escort officers followed a separate route from the rest of the passengers. Thus, the escort and the returned person were the first passengers who boarded the plane, taking seats situated in the rear part of the plane.
- 27) The returnee was placed on the middle seat, the escort officers on both of his sides, and the monitor set in front of them. No incidents occurred during the flight. The airline provided food and water during the flight. The foreigner was not handcuffed.
- 28) The plane landed at Istanbul International Airport at 23.30, according to the timetable.

Monitoring of the arrival phase⁸:

- 29) The escort officers were the last ones to get off the plane, accompanying the returnee.
- 30) The escort officers accompanied the returnee to the border and customs control crossing area to the point of destination.
- 31) Before going through the border control, the escort leader handed him his passport, the ticket to Tashkent, Uzbekistan and the appertaining documents. The returnee thanked the escort for their support and care and left. No incidents were recorded.
- 32) The monitoring and return mission were completed with the debriefing session.
- 33) Waiting to board the plane for their return flight to Chisinau, the escort officers remained in the transit lounge of the Istanbul International Airport (12 hours).

⁶ The transportation phase starts with closing the doors of the vehicle used for removal and ends upon arrival at destination.

⁷ The in-flight phase includes the time spent completing the procedures of going through the AIC BCP, the pre-take-off waiting time, the time for boarding the plane and the flight.

⁸ The arrival phase includes the interval of time counting from the moment when the returnee and the escort get off the plane and go through border check point on the stopover airport, as well as through the check made before boarding the plane for the airport of destination.

Conclusions:

As a result of the monitoring process, we come up with the following conclusions:

- The return mission by air was successfully completed, as planned;
- The BMA escort officers demonstrated diligence, professionalism and dedication in relation to the returned person;
- During the monitoring period, no incidents occurred. The returned person was not subjected to any form of abuse or unworthy conduct;
- Both the returnee and the passengers of the flight felt safe and did not even realize that a forced-return mission was taking place, including thanks to the professionalism of the escort.
- The PAO monitor had free access to all processes, procedures and documents of the returned person and was not influenced during the monitoring process.

Recommendations:

Following the findings of the Monitoring Report, the People's Advocate (Ombudsman), acting in accordance with the provisions of art. 24, paragraph 2 of Law No. 52 of April 3rd, 2014 on the People's Advocate (Ombudsman) institution:

MAKES THE FOLLOWING RECOMMENDATIONS:

- 1) The **BMA** should increase the budget/budget line for organizing and carrying out forced-return operations;
- 2) The **BMA** should design (adjust) the SOP on forced return by land, air, providing for a set of solutions regarding the interaction of escort officers in cases of emergencies or crisis, etc., the conduct to be adopted in relationship with various categories of vulnerable foreign nationals in difficult situations, as well as lists of rights for returnees;
- 3) The **BMA** should purchase specialized non-offensive safety and newest protection equipment, to ensure the safety and security of people / passengers during the flight;
- 4) The **BMA** should provide trainings for its staff on tools and techniques for the application of physical force and special means, including in closed-in or plane on-board spaces;
- 5) The **BMA** should provide trainings of employees on techniques of non-assertive communication with returned persons;
- 6) The **BMA** should provide international languages trainings to its employees;
- 7) The **BMA** should consider the opportunity of additional reward for escort officers involved in forced return missions;
- 8) The **BMA** should also provide copies of the respective CPTS report to its subdivisions for information and reaction, as appropriate.

The respective report is available on the PAO website for information and dissemination.

