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Inspection visit to Tallinn Airport

On 28 March 2019, the Chancellor's advisers inspected the areas at Tallinn Airport where detained foreigners waiting for a departure flight may be present:

- 1) the non-Schengen area (hereinafter 'the transit area' or 'transit zone'),
- 2) two single-occupancy Police and Border Guard Board (PBGB) holding cells,
- 3) three paid airport rooms.

I would like to thank everyone for assistance to the Chancellor's advisers in organising the inspection visit.

Foreigners who have been denied entry to the country may also be present in the airport transit zone and other areas. These may include, for example, third-country nationals who do not fulfil the necessary requirements for crossing the external Schengen border and who have therefore been issued a refusal of entry laid down by Article 14 of the [Schengen Borders Code](#). Foreigners subject to forced removal and foreigners whose visa has been invalidated may also be present at the airport. The waiting time at the airport may vary depending on circumstances, ranging usually from a couple of hours to five days. For example, detained foreigners may wait for a departure flight for several days on sofas and chairs in the transit area. This solution does not comply with international requirements and may also disturb other passengers in the transit zone.

It is commendable that the airport and the PBGB in cooperation try to ensure the everyday welfare of foreigners detained on airport territory and forced to leave the country. In view of the specific environment of the border crossing point, detention of people on airport territory is complicated and requires a flexible approach. Based on inspection of the airport transit area, paid rooms and the PBGB holding cells, and relying on international recommendations, I submit the following observations. I hope that these would be useful in resolving issues related to detained foreigners waiting for a departure flight.

Õiguskantsleri Kantselei

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1. Detention on airport territory

Under § 9¹(1) of the [State Borders Act](#), persons who have not been permitted to cross the border as well as persons who have illegally crossed the external border shall be detained.

The European Court of Human Rights (ECtHR) has also considered forced stay of foreigners on airport territory to be detention within the meaning of Article 5(1) of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#). In particular, the ECtHR emphasised in the case of [Amuur v. France](#) as long ago as 1996 that even if a foreigner in the transit zone may voluntarily leave (for another country) by plane, this cannot exclude a restriction on liberty. Deprivation of liberty, i.e. detention, within the meaning of Article 5(1) of the ECHR may occur even where a foreigner who has been denied entry to the country must stay overnight at the airport under surveillance of border officials (see e.g. the ECtHR judgment of 2009 in [Nolan and K. v. Russia](#)).¹ In the 2011 judgment in the case of [Abou Amer v. Romania](#), the Court found that a situation where a foreigner stays in the transit zone because their entry to the country is impeded also amounts to detention. According to the [Court's assessment](#), foreigners forced to stay at the airport under the surveillance of officials during return proceedings also amounts to detention.

In the case of [Z.A. and Others v. Russia](#) (21 November 2019), the Grand Chamber of the ECtHR affirmed that people in the airport transit zone are also within the jurisdiction of a particular country (para. 132). The Court also set out the main considerations based on which it can be distinguished whether a foreigner's stay on airport premises may be interpreted as deprivation of liberty within the meaning of Article 5(1) of the ECHR or Article 2 of [Protocol No 4](#) to the ECHR. More specifically, the Court explained in paras 140–156 of the judgment that aspects to be assessed include the following:

- 1) a person's individual situation and choices;
- 2) the applicable legal regime, including the purpose and duration of confinement (whether domestic law lays down the maximum duration of confinement) and procedural safeguards;
- 3) the nature and degree of the actual restrictions (a person's freedom to move about within the airport area and make preparations for a departure flight).

The Court has repeatedly noted that every country enjoys the right to control foreigners' entry into the country (see e.g. the case of [Saadi v. the United Kingdom](#), para. 64). Nevertheless, inter alia, detention must be compatible with the Constitution, the ECHR and international law documents and expert opinions. People within the state's jurisdiction must be ensured decent conditions of detention in line with requirements.

2. Provision of information

Under Article 8(5) of the [Schengen Borders Code](#), when entering a country, third-country nationals subject to a thorough second line check must be given written information on the purpose of, and the procedure for, such a check. Information must be provided in a language which they understand or may reasonably be presumed to understand, or in another effective way.

At Tallinn Airport border control, information about a second line check is provided in writing in Estonian, English, Russian, and French. If necessary, this must also be done in other languages.

¹ Cf. the ECtHR decision in [Gahramanov v. Azerbaijan](#) where the applicant wanted to travel from Baku to Dubai but due to additional checks had to stay a couple of hours in the border officers' room and was denied boarding. In this case, the Court found that the situation did not amount to deprivation of liberty within the meaning of Article 5(1) of the ECHR.

3. Registration

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) emphasised in its 2017 recommendation to [Greece](#) that all foreign nationals detained at an airport must be registered.

The inspection revealed that, at the Tallinn Airport border crossing point, the duration and place of stay at the airport is registered only in respect of foreigners detained in the PBGB holding cells. No information is recorded on stays within the airport transit area and airport hotel rooms. I ask to be ensured that the PBGB has an adequate, relevant and easily accessible overview of who has been detained and on what grounds (e.g. a foreigner refused entry or subject to removal), how long and in which part of the airport (a paid room, transit zone, holding cells).

4. Primary safeguards

According to para. 81 of the [CPT Standards](#),² among other things, every detained foreigner should be ensured immediate access to a lawyer and medical care. They must also be able to inform a relative or a third party of their choice about the detention. Paragraph 83 of the Standards emphasises a foreigner's right to also contact the consular representation of their country of nationality if they wish. A detainee must be informed of these rights in a language they understand.

According to the PBGB, third-country nationals refused entry at the border may, if they wish, contact a legal aid provider, a medical professional, consular representation or next of kin. They can do so by using a personal means of communication or the intercom system in the transit area (connected to the assistant terminal manager). For sure, a foreign detainee must be notified of this right. If a foreigner has no personal means of communication, the possibility to call from the airport must be ensured by the airport and/or the PBGB.

A third-country national refused entry at the border is given an information leaflet (in English, Georgian and Russian) on purchasing return tickets, the cost of airport hotel rooms, the phone numbers of the relevant embassies and other essential phone numbers. Additionally, a foreigner detained at the border must be given information about legal aid available in Estonia and the procedure for applying for it. This information must also be understandable to foreigners who are not proficient in English or Russian – if necessary, the information must be translated.

The PBGB must also ensure that a foreigner obtains necessary information about the possibilities laid down by [§ 14\(3¹\)](#) of the Act on Granting International Protection to Aliens.³

5. Conditions of detention

Under paragraph 26⁴ of the CPT Standards, a detained foreigner must be provided with suitable means for sleeping, access to their luggage and food, and a possibility to use sanitary and washing facilities. A detainee must also be allowed to exercise in the open air once a day. If necessary, medical care must be ensured.

At Tallinn Airport, detained foreigners may be waiting for a departure flight (including at night) in three places: within the territory of flights departing the Schengen area, i.e. in the transit area; in two

² See as of page 59.

³ See also R. Vetik and A. Lauren. [Legal and Procedural Information For Asylum Seekers in Europe: Estonia Report](#), Tallinn University and European Migration Network, page 10; A study by the United Nations High Commissioner for Refugees [“Access to legal aid for asylum-seekers in Estonia”](#), page 22.

⁴ See as of page 54.

single-occupancy holding cells of the PBGB; or in three paid airport rooms (two double-occupancy and one triple-occupancy room). These rooms are not suitable for holding people for a longer period (over 24 hours) as they lack the necessary conditions. It is also not possible to hold a larger number of foreigners at Tallinn Airport since the number of places for holding is insufficient.

Conditions for overnight stay

The conditions at the airport transit area are more or less adequate for waiting during the daytime or for a couple of hours at night. However, sofas and chairs in public areas cannot be considered suitable for sleeping if a person is held throughout the night. The ECtHR in the judgment in [Riad and Idiab v. Belgium](#) criticised the situation where foreigners to be removed from the country had to wait for their departure flight for several days in the airport transit zone. The CPT in para. 26 of its Standards and the 2011 [recommendation](#) to Ukraine (para. 64) has also found it problematic if foreigners detained at the airport are forced to stay overnight in airport waiting areas and/or sleep on chairs (see also the CPT 2008 [recommendation](#) to Croatia, para. 30).

Although the two PBGB holding cells have been renovated and are clean, no natural light reaches these rooms (see the Chancellor's 2018 [recommendation](#) to Paide police detention centre). The rooms also have constant video surveillance which might not always be appropriate in terms of people's privacy (see the Chancellor's 2019 [recommendation](#) to the detention centre for foreigners). The cell has no remote call system, so that a person in the cell might not be able to effectively notify someone in case of need. According to the CPT's [opinion](#), people may be held in such a cell (including with washing facilities, which Tallinn Airport lacks) for a maximum of 24 hours.

Three paid airport rooms have proper sleeping conditions but the price of the rooms (70–100 euros for 24 hours) may prove unaffordable for many detained foreigners. Where exceptionally a family with children has to stay overnight in these rooms, children must also be ensured sleeping arrangements appropriate for their age, including a safe bed.

First aid equipment

The PBGB assured that foreigners held at the airport can take personal items from their checked-in luggage. They may keep their carry-on luggage with them. This practice is correct and compatible with para. 26 of CPT Standards. It would be good if, similarly to shops in the airport Schengen area, hygiene articles were also on sale in shops in the transit area where they could be bought if necessary. If a detained foreigner has no money to buy the necessary items, basic hygiene articles (including those taking into account the needs of women) must be ensured by the PBGB.

Food

A detained foreigner might wish to buy their food from vending machines or the café in the transit area. If no food can be purchased in the transit area, it would be good if hot meals can be ordered from a catering establishment in the Schengen area.

In any case, the PBGB must be prepared to ensure food to a detained foreigner. For instance, in [Riad and Idiab v. Belgium](#) the ECtHR did not relieve the state of the duty to ensure meals for detained foreigners (three times a day) – despite the fact that the applicants themselves had some money to buy food. Dietary requirements for custodial institutions have been established by a [regulation of the Minister of Social Affairs](#). In the 2018 [recommendation](#) to Italy (para. 71) the CPT also drew attention to the fact that information concerning provision of meals to a foreigner must be recorded.

Washing facilities

A foreigner held in the airport transit area or a police detention cell cannot wash their whole body. A person held overnight must have a possibility to wash if they so wish.

Outdoor exercise

In the 2018 recommendation to [Italy](#) and [Cyprus](#), the CPT emphasised that in airports without natural light and an exercise yard for being in the open air, people may be held only for a very short period.

Within the territory of Tallinn Airport, foreigners cannot be outdoors, except if held in the police detention cells and officials there can escort the foreigner to the staff smoking area. Although such a concession may be suitable for smokers, it might not ensure the right of all detained foreigners to one hour of outdoor exercise a day.

6. Contact with the outside world and activities for spending time

The CPT has also criticised the situation (see the 2018 recommendations to [Italy](#) and [Cyprus](#)) where, for example, detained foreigners have no reading material or television. The ECtHR emphasised the importance of contact with the outside world in the case of [Riad and Idiab v. Belgium](#) (paras 88, 104). The ECtHR has [recognised](#) arrangements where detainees can have unimpeded contact with, for example, humanitarian organisations. Certainly, if they so wish, a foreigner must be able to contact consular staff, legal aid providers and medical professionals, and must be able to maintain contact with their next of kin (see para. 87 of CPT Standards).

Foreigners refused entry at the border often have a mobile phone or other electronic means of communication, so that they can keep abreast of events in the world and communicate with the necessary people. However, not all foreigners held in the transit zone might have personal means of communication or money to buy, for instance, newspapers. I ask to be ensured that those foreigners too can maintain contact with people or institutions important for them and be informed of events in the outside world.

I expect your opinion concerning the recommendations by 28 February 2020 at the latest.

Ülle Madise