I. ÚS 860/15 of 27 October 2015

On the course of the administrative expulsion of a foreigner and ill-treatment

CZECH REPUBLIC
CONSTITUTIONAL COURT
JUDGMENT

IN THE NAME OF THE REPUBLIC

HEADNOTES

A foreigner who is detained in order to be expelled administratively does not become a thing which needs to be transported at the time set by the police from point A (detention facility for foreigners) to point B (aircraft). A foreigner, even under these circumstances, remains a human being who is entitled to human and dignified treatment. Not only the deprivation of personal freedom itself but also the overall circumstances of the expulsion have to be human and show sufficient respect to the human being. Under the given circumstances, this mainly includes sufficient communication with the detained person, which must also apply to the information about the exact time and manner of the expulsion. This information must be notified to the detained person in sufficient time allowing the person to prepare for the departure mentally as well as to arrange his/her affairs - e.g. saying goodbye to the close persons in the Czech Republic or notifying the close persons in the country where he/she is to be expelled to. According to the Constitutional Court, providing this information in advance of 24 hours is a bare minimum which must be observed, with the exception of very exceptional cases. However, the information about the exact time and manner of expulsion should be communicated to the detained person as soon as possible, i.e. without undue delay after the police learns of the date of departure.

Any coercive means should only be used to the extent strictly necessary to achieve the legitimate aim pursued (see the conditions for the use of coercive means in Section 53 of Act No. 273/2008 Coll., on the Police of the Czech Republic). The coercive means must in no way serve as a retribution or punishment for disobeying police orders. When the detained person does not represent a threat to others and simply refuses to obey any command, the use of tear gas spray is impermissible, and instead the police officers should use other techniques to control the detained person.

The requirements for the defensibility of claims for the persons who are still in detention and not released must be lower than for the persons who have already been freed and as for whom it is usually necessary to insist on the submission of a medical certificate. The released persons are not prevented by anything from seeking a physician after their release who can document their injuries. However, those who have not been released have no possibility to visit an independent physician. As for them, it is possible to establish the defensibility of claims solely on their testimony which generally meets the above-mentioned conditions of a defensible claim.

The requirement for the speed of inquiry therefore cannot narrowly imply that the inquiry must be completed within a reasonable period of time. The main purpose of the requirement for speed is to ensure the effectiveness of the inquiry. Individual acts within the inquiry must therefore be done without delay so that they have no negative impact on the overall effectiveness of the investigation.

Inhuman and degrading treatment is a very serious interference with individuals' fundamental rights and law enforcement authorities (here especially the GISF) may not take lightly a defensible claim that someone was exposed to such treatment. On the contrary, they are obliged to screen the circumstances of the case particularly thoroughly and speedily so that they can

make a compelling conclusion as to whether such treatment actually occurred and, if so, so that the inquiry is able to lay the groundwork for the subsequent punishment of the offenders.
In the case of a person deprived of freedom who is not able to procure the means of evidence about his/her health (medical opinions, photographs), the law enforcement authorities must ensure that evidence themselves on their own initiative. For this purpose, in particular, they must act expeditiously since any injuries may subside over time.

VERDICT
The Constitutional Court has decided through the panel composed of presiding judge Ludvík David, judge-rapporteur Kateřina Šimáčková, and judge David Uhlíř on the constitutional complaint by Augustin Sitcha, represented by JUDr. Maroš Matiašek, LL.M., lawyer, based at Rumunská 22, Prague 2, against the actions of the Police of the Czech Republic in the expulsion of the complainant on 6 June 2014, against the action of the General Inspection of Security Forces and of the Regional Public Prosecutor's Office in Prague consisting in the failure to carry out the effective investigation in the matter conducted by the General Inspection of Security Forces under file No. GI-TC-376/2014, against the resolution of the General Inspection of Security Forces, ref. No. GI-TC-376-32/2014, of 20 November 2014, and against the resolution of the Regional Public Prosecutor's Office in Prague, file No. KZN 1064/2014, of 17 December 2014, as follows:

I. The action of the Police of the Czech Republic in the administrative expulsion of the complainant on 6 June 2014 infringed upon one of the fundamental rights of the complainant, namely the right not to be subjected to degrading treatment under Article 7 (2) of the Charter of Fundamental Rights and Freedoms and Article 3 of the European Convention on Human Rights.

II. The resolution of the General Inspection of Security Forces, ref. No. GI-TC-376-32/2014, of 20 November 2014, the resolution of the Regional Public Prosecutor's Office in Prague, file No. KZN 1064/2014, of 17 December 2014, and the notification of the High Public Prosecutor's Office in Prague, ref. No. 1 VZN 1611/2015-7, of 25 March 2015, have infringed upon the fundamental right of the complainant to the effective investigation, as arising from Article 7 (2) of the Charter of Fundamental Rights and Freedoms and Article 3 of the European Convention on Human Rights.

III. The mentioned decisions are therefore annulled.

IV. The remainder of the constitutional complaint is rejected.

REASONING

I. Definition of the case and previous course of the proceedings
1. In his constitutional complaint, the complainant argues that the action of the Police of the Czech Republic in the expulsion of the complainant on 6 June 2014 infringed upon his right not to be subjected to inhuman and degrading treatment contrary to Article 7 of the Charter of Fundamental Rights and Freedoms (hereinafter referred to as the "Charter") and Article 3 of the European Convention on Human Rights (hereinafter referred to as the "Convention"). The complainant further argues that a violation of the same provisions of the Charter and the Convention occurred also due to the fact that the competent law enforcement authorities failed to investigate effectively into that inhuman and degrading treatment.

2. The complainant is a national of Cameroon. He lived in the Czech Republic continuously from February 2010 until his expulsion on 2 July 2014. However, he stayed in the Czech Republic before that period as well.

3. On 11 January 2014, the Police of the Czech Republic imposed upon the complainant the administrative expulsion for one year and set a deadline of thirty days to leave the country. The police considered it proven that the complainant had stayed in the Czech Republic in the period from 4 May 2013 without a valid visa or residence permit. At the same time, the police found that the complainant had, except for his girlfriend, no ties in the Czech Republic, and his family lived in Cameroon. The police therefore found no reason why he could not return to Cameroon. The appeal of the complainant was dismissed on 24 March 2014. The Municipal Court in Prague rejected the administrative action of the complainant against the decision as delayed on 12 June 2014. This resolution, however, was annulled on procedural grounds by the judgment of the Supreme Administrative Court on 24 June 2014. On 10 April 2015, the Municipal Court in Prague again ruled that the action had been brought late.

4. On 13 May 2014, the complainant in person came to the police station in order to resolve somehow his stay in the Czech Republic. The following day, the Police of the Czech Republic has decided to detain the complainant for a period of 30 days for the purposes of administrative expulsion. According to the police, the decision on administrative expulsion came into legal force on 7 April 2014 and, therefore, starting from 8 May 2014, the complainant stayed in the Czech Republic contrary to the decision on administrative expulsion. The police found that the complainant had filed an administrative action against the decision of the administrative authorities but he failed to do so in a timely manner in the opinion of the Police and, therefore, his action did not have suspensive effect. The police justified the detention by the fear of obstructing the administrative expulsion. For the purpose of detention, the complainant was placed in the Facility for Detention of Foreigners Bělá-Jezová (hereinafter referred to as the "Detention Facility").

5. On 3 June 2014, the police booked for the complainant a seat on the Turkish Airlines flight to Cameroon, scheduled for 6 June 2014. This date of expulsion with the exact time of scheduled departure from Prague was notified by the police to the Detention Facility on 4 June 2014, which in turn notified the complainant on 5 June 2014. According to the complainant, however, it happened only by coincidence. When he wanted to take a personal thing that was kept outside his room, he was informed by a social worker that his personal belongings were already packed and ready for leave. That social worker only wrote for him on a small piece of paper that his departure from the Detention Facility is scheduled for the following morning at 8 am and the departure from the Prague airport at noon.

6. The parties to the proceedings do not agree on the circumstances of the attempted expulsion of the complainant on 6 June 2014 either. The following recapitulation of the events is based on the conclusion of the inquiry made by the police and law enforcement authorities. Deviations from such described facts of the case as stated by the complainant will be mentioned in the next part of the judgment which contains the arguments of the parties to the proceedings.

7. On 6 June 2014, before eight o'clock in the morning, four police officers entered the room of the complainant. Two police officers were in charge of escorting the complainant and the other two were to protect them and, during the operation, stood in the corridor outside the room. However, the complainant refused to leave the room voluntarily; he was naked and refused to get dressed. Despite using hugs and grips, the two police officers were not able to overcome using hugs and grips the resistance of the complainant who allegedly held the pieces of furniture and got away from the grip of police officers. Therefore they went out of the room and contacted their superior by telephone who told them that the escort must take place.

8. The two police officers then returned to the room but they again failed to overcome using hugs and grips the resistance of the complainant and that is why, after cautioning the complainant, they used tear gas. As a result of the use of tear gas, the complainant became disoriented and the police officers managed to put handcuffs on him and take out of the building. Because the complainant was naked, they covered him with a sheet, which he was allegedly trying to take off while being moved to another building in the Detention Facility. After the exit medical examination and getting him dressed, the

police officers took him into the car and drove to the airport. Throughout the escort, the complainant was handcuffed and secured by a restraint belt.

9. At the airport, the complainant still refused to cooperate and walk on his own. The police officers could not get a wheelchair for disabled persons and, that is why, moved him around at the airport with the use of a baggage cart, transporting him this way to the police cell at the airport. However, the captain of the Turkish Airlines aircraft which was to transport the complainant refused to allow the complainant on board because, according to the captain, the complainant posed a risk for the flight. The complainant travelled involuntarily and while in flight he was not to be accompanied by any other person any longer.

10. The complainant was transported from the police cell to the car again, this time using a wheelchair for disabled persons, and was transported back to the Detention Facility. Upon arrival, he was treated by a doctor working in the Detention Facility.

11. The complainant filed a complaint of the conduct of police officers in the course of his expulsion on 16 June 2014 with the police and, at the same time, filed a criminal complaint with the General Inspection of Security Forces (hereinafter referred to as the "GISF"). In the criminal complaint, the complainant claimed that he was subjected to inhuman and degrading treatment (hereinafter also referred to as the "ill-treatment") consisting especially in the failure to notify him of the scheduled departure in a timely manner, the use of inadequate coercive means (punches and kicks directed at the whole body and tear gas), the painful handcuffing while being transported, and the treatment at the airport.

12. On 7 August 2014, the complainant was notified by the director of the Alien Police Service that his complaint was deemed unfounded. Regarding the use of coercive means, the police concluded that these were necessary to overcome the resistance of the complainant who refused to submit to the administrative expulsion. According to the police findings and comments by the Detention Facility doctor, the complainant was treated after the application of tear gas. The medical examination was also performed upon the complainant's return from the escort and the complainant complained of no injury sustained. The complainant was handcuffed and secured by a restraint belt throughout the escort, but this was necessary and the handcuffs were not tightened excessively. Transporting the complainant at the airport using a baggage cart was also necessary according to the police because the complainant refused to leave the car and go to the police cell. It was a tactical and expeditious handling of the situation.

13. According to the police findings, the complainant was notified of the date of administrative expulsion on 5 June 2014 by social workers of the Detention Facility, which he himself admitted ultimately. Moreover, according to the police, there is no legal obligation to inform detained foreigners in advance about the circumstances of their administrative expulsion. In addition, the fact that the expulsion will be carried out during the period of detention is implied by the very nature of detention for the purposes of expulsion.

14. Through the contested resolution of 20 November 2014, the GISF decided pursuant to Section 159a (1) of the Criminal Procedure Code not to proceed with the criminal complaint filed by the complainant since the GISF found no suspicion of a criminal offence and no need to deal with the case in a different manner. According to the GISF, the use of coercive means against the complainant was adequate. The complainant consistently obstructed his expulsion, to which the police officers had to respond and overcome his resistance. At the same time, the testimony given by the Detention Facility doctor showed that the complainant was treated immediately after the application of tear gas and showed no further signs of injury. He received the treatment by the application of eye ointment and in the evening on 7 June 2014 he was already without any health difficulties. The GISF made this conclusion on the basis of an inquiry that involved the following steps.

15. On 18 June 2014, the GISF received a criminal complaint of the complainant who was actually expelled from the country on 2 July 2014. In the meantime, between the filing of a criminal complaint and the expulsion of the complainant, he was neither examined by an independent doctor nor interrogated. Only on 25 June 2014, the GISF asked for the records from the CCTV of the Václav Havel Airport. However, such records could not be provided as they are kept by the airport administration for 14 days only.

16. On 30 June 2014, the GISF carried out an inquiry at the Václav Havel Airport, finding among other things that a camera in the detention cell had not been in operation for several months. The police officers serving at the airport on 6 June 2014 did not notice anything abnormal. They stated, however, that the complainant was secured by the escorting police officers themselves.

17. Further, the GISF asked the police for the results of an internal inquiry conducted by the police and documents relating to the complainant's expulsion.

18. On 14 September 2014, the GISF commenced the criminal proceedings pursuant to Section 158 (3) of the Criminal Procedure Code.

19. On 20 August 2014, the GISF interrogated the complainant's girlfriend.

20. On 25 August 2014 and 28 August 2014, the GISF interrogated all the five police officers who were involved in the escort of the complainant. They described the events virtually identically as described above.

21. On 28 August 2014 and 7 November 2014, the GISF interrogated the doctor who was on duty at the Detention Facility on 6 June 2014. The doctor testified that she made an exit examination of the complainant prior to his departure to the airport. At that time, he was allegedly absolutely fine and showed no signs of being attacked and the doctor had only carried eyewash because of the application of tear gas. After returning from the airport, the complainant suffered from conjunctivitis and received the treatment by the application of eye ointment. As early as the following evening, however, he was totally fine according to the doctor. He showed no other signs of injury.

22. On 29 August 2014, the GISF interrogated a representative of Turkish Airlines who stated that the complainant was not allowed to board because his presence would pose a risk to the flight as he resisted the departure and was not accompanied. However, he did not see the complainant personally.

23. On 23 August 2014, the GISF interrogated a security officer of the Detention Facility who was present at the complainant's escort. The officer testified similarly as the police officers carrying out the operation. When asked who informed the complainant in advance of his departure, he did not know the answer.

24. As it is apparent from the official record of 29 August 2014, the GISF also carried out its own inquiry at the Detention Facility but failed to identify the person who had allegedly notified the complainant of the date of his departure and could not even identify other witnesses to the events of 6 June 2014.

25. Through the contested resolution of 17 December 2014, the Regional Public Prosecutor's Office dismissed the complainant's complaint against the decision not to proceed with the matter. According to the resolution, the police officers who were supposed to ensure the expulsion learned of the departure of the complainant only on 4 June 2014 (while another police officer knew the exact departure time already on 3 June 2014) and the submission of information to the complainant on 5 June 2014 cannot be deemed to be late or a procedure directed against the complainant and motivated by the attempt to cause any harm to the complainant. The GISF did not interrogate the complainant because he was expelled on 2 July 2014. However, his objections to the procedure of police officers were sufficiently described in both the criminal complaint and the testimony given by his girlfriend.

26. According to the Public Prosecutor's Office, the police officers acted with the intent to ensure the proper and timely escort. Their conduct was adequate bearing in mind the behaviour of the complainant. Using the tear gas spray contributed to the operation and with regard to its impact and the subsequent immediate treatment of the complainant it was not inadequate either.

27. On 25 March 2015, the High Public Prosecutor's Office in Prague found the complainant's motion to supervise the Regional Public Prosecutor's Office as unjustified and endorsed the conclusions of the Regional Public Prosecutor's Office.

II. Arguments of the parties to the proceedings and the comment by the Public Defender of Rights

28. The complainant argues that during the attempt to expel him on 6 June 2014 the police violated the prohibition of inhuman and degrading treatment under Article 7 (2) of the Charter and Article 3 of the Convention. According to the complainant, Article 3 of the Convention can be violated not only in consequence of a particular event or practice but also as a result of the accumulation of circumstances during depriving a person of his/her freedom. The complainant especially argues that he was not notified in sufficient time of the departure time, so that he could say goodbye to his girlfriend, have his belongings which he had not at the Detention Facility brought to him, and inform his family in Cameroon about the time of arrival. He further argues that the police officers used inadequate coercive means against him, especially tear gas in a confined space, handcuffed him as a precaution, and treated him in an undignified manner at the airport, and especially moved him around at the airport with the use of a baggage cart. The complainant draws attention to the inhumane and undignified course of the attempt to expel him, which is contrary to the international commitments of the Czech Republic and the standards defined for the expulsion of foreigners.

29. The complainant also disputes the circumstances of the case as they were presented in the contested resolutions. According to the complainant, when they entered his room, he was told by the police officers that they would use coercive means against him should he refuse to go with them voluntarily. The complainant did not comply with the police request and kept sitting on the bed. The police officers started beating and kicking him and sprayed tear gas in the eyes and handcuffed him. The complainant was naked during the operation. After using coercive means, the police officers brought the complainant naked through the corridor of the accommodation part of the building B to the building E where the police have their offices. They got the complainant dressed there and then moved him into the car.

30. The complainant argues that as a result of punches and kicks he suffered numerous bruises and contusions all over his body. In addition, the police officers sprayed tear gas in the face of the complainant which caused him intense burning of eyes, breathing problems, headaches, and nausea, and later also conjunctivitis. The complainant was severely disoriented. After the coercive means were used, he did not receive any medical treatment and his face was not even washed in order to remove tear gas. The complainant was unable throughout his expulsion to open his eyes and during the entire operation he was handcuffed so tightly that his wrists were bruised. In that condition, the complainant was transported from the Detention Facility by car, escorted by three police officers to the Václav Havel Airport. Throughout the journey lasting two hours, the handcuffs very securely fastened dug into his skin, he could not see anything due to the use of tear gas, and his face and especially eyes were burning.

31. Throughout the stay at the airport, the complainant was allegedly not informed about what was happening. Upon arrival to the Detention Facility, the complainant was not told by anybody why the departure failed to materialise and why he was taken back to the Detention Facility. The complainant was notified of the reason why the departure failed to materialise only after a few days, after consulting with a lawyer of the Organization for Aid to Refugees, who inspected the file after being authorised to do so by the complainant.

32. The complainant further argues that an effective investigation into this matter has not been carried out, whereby the state authorities have infringed upon his rights under the procedural part of Article 3 of the Convention. The investigation especially failed to meet the demands of thoroughness, objectivity, and speed. The state authorities only ensured the evidence confirming the opinion of the police officers carrying out the operation and the staff of the Detention Facility including the doctor and completely failed to ensure the evidence that would provide an objective view of the situation. The complainant has in mind in particular the lack of interrogating him and other detained foreigners, as well as ensuring the additional evidence, in particular the CCTV recordings from the airport, an expert's report on the consequences of the use of tear gas, etc.

33. According to the complainant, the investigation failed to establish firmly what happened on that day. Especially it was not credibly confirmed whether the complainant was treated by a doctor immediately after the tear gas was applied and if the lack of treatment or insufficient treatment resulted in conjunctivitis and other health complications of the complainant, particularly headaches in the days following the escort. Another inconsistency not cleared by the investigation was the inadequate tightening of handcuffs, which allegedly caused the complainant bruises on his wrists.

34. The investigation was not expeditious either, because the inquiry was officially launched as late as 14 July 2014, i.e. almost a month after the filing of the criminal complaint, although the GISF made some steps even before this date. As a result of this procedure, not only that the complainant was prevented from participating in person in the investigation (hearing, medical examination) but also the relevant evidence were not available, such as CCTV recordings from the airport, which would significantly contribute to the objectivity of the inquiry and proper establishment of the facts of the case, at least as regards the treatment of the complainant at the airport. The complainant's girlfriend was interrogated as late as 20 August 2014, more than ten weeks after the failed attempt to expel him, and after a certain time passed witnesses obviously do not remember all the important details.

35. The Alien Police Service Directorate stated in its statement that the constitutional complaint is unfounded. The directorate argues that the obligation to notify could not be neglected as it is not even established by the Foreigners Stay Act or any other regulation. In addition, starting from the beginning of this detention, or the depriving of freedom, i.e. 13 May 2014, the complainant knew of the reasons for his detention and placement in the Detention Facility. Until 6 June 2014, he had thus a sufficiently long period to prepare for the process of expulsion and arrange for his personal matters that might require a longer period of time. The use of coercive means was justified because the complainant did not cooperate consciously and deliberately, did not want to get dressed, and did not want to be escorted to his place of origin, while it was clearly apparent from his behaviour that he did not intend to cooperate with the police either and intended to do everything possible to avoid his deportation.

36. The police deemed it was justified and necessary to use the tear gas spray. Given that the complainant failed to comply with the escort order and the use of hugs and grips appeared to be ineffective, the police officers decided to use a more forceful coercive means, namely tear gas, that was applied to the chest area according to the testimony of the police officer involved in the operation. The tear gas spray was not in any case used against the detainee over whom control was acquired. The inquiry made shows that the use of tear gas did not result in any injury to the complainant and no health difficulties of the complainant have been established.

37. The police justifies the use of handcuffs by that it was clear from the complainant's behaviour that he would not cooperate with the police officers and that he would do everything possible to prevent his administrative expulsion. The police officer had reason to believe that the complainant would do everything possible to frustrate the service operation, possibly either by escape or self-inflicted injury. The complainant suffered no injury due to the use of handcuffs. The transport on a baggage cart at the airport resulted from the attitude of the complainant who refused to go alone. Such procedure was evaluated by the police officers as tactical, expeditious, and not contrary to law.

38. Further, according to the police, the complainant also failed to exhaust all of the procedural remedies available to him as he failed to apply for the conclusions of the police inquiry to be examined by a superior authority, as provided under Section 175 (7) of the Administrative Code.

39. In its statement, the GISF proposed that the constitutional complaint be dismissed. The GISF deems that all possible acts have been carried out within its inquiry as necessary to establish the facts of the case about which there is no reasonable doubt, precisely to the extent that is necessary for making a decision. The individual acts have been carried out as early as from 25 June 2014.

40. The complainant was not interrogated because he was expelled from the Czech Republic as early as 2 July 2014. The GISF also notes that the complainant filed a criminal complaint as late as ten days after the failed attempt to expel him, which significantly impeded the screening of the whole matter. Additionally, the criminal complaint of the complainant did not contain the so-called defensible claim. The investigation was also expeditious enough as it was completed within five months of the filing of the criminal complaint.

41. In its statement, the Regional Public Prosecutor's Office referred to the reasoning of its resolution. The evidence produced implies that the main reason for the operations which the complainant complains of (the use of tear gas, carrying the naked aggrieved person to the treatment room, transporting him on a baggage cart, and the use of handcuffs) and which are not disputed by the police officers either was his behaviour from which his unwillingness to submit to the expulsion was apparent.

42. His passive resistance in conjunction with the need to carry out the escort within a certain period of time so as not to miss the plane did not give the police officers any space for negotiation and persuasion. The complainant knew from the previous day that he was to be expelled and still resisted and refused to submit to the expulsion. The public prosecutor does not consider the use of tear gas to be inadequate under the given circumstances. Based on the complainant's conduct, the police officers could be justifiably concerned that their safety as well as safety of others could be jeopardised during the escort, and in addition they did not use the spray with the intention to cause the complainant any damage, but with the intention to make the escort to the airport properly and within the limited period of time available to them. The police officers preferred that use of the mentioned coercive means to hugs and grips, punches or kicks which could cause the complainant, if he resisted, even more serious injury than that caused by the spray. Using the spray eliminated for the necessary time the resistance of the aggrieved person and apparently facilitated the escort, previously thwarted by the complainant. According to the testimony of police officers and the attending doctor, the complainant was subsequently given the necessary medical care, and the consequences of using the spray were not serious for him.

43. The constitutional complaint was also commented on by the Public Defender of Rights who provided her findings on the detention of foreigners at the Detention Facility and on their escorts for the purpose of expulsion. These findings have been gained through her systematic and repeated visits to the places where persons are deprived of freedom (detention facilities) and through its activities of monitoring the administrative expulsion of foreigners.

44. According to the findings of the Public Defender of Rights, the detention facilities do not normally provide foreigners with assistance and advice in connection with their first moments of their stay at liberty or their reintegration in the country of origin and, in practice, they are not informed about the date of their expulsion. On the initiative of the Public Defender of Rights, the Asylum and Migration Policy Department of the Ministry of the Interior announced on 9 April 2015 that it accepts its recommendations and the foreigners will henceforth be clearly informed within the asylum proceedings of the date and time of their departure from the facility, at least 24 hours in advance. However, in relation to the facilities for the detention of foreigners, including the Detention Facility, no such internal regulation has been issued yet.

45. The Public Defender of Rights also found the excessive use of handcuffs to escort foreigners. According to her, handcuffs are used generally and it is not possible to evaluate objectively whether the use of handcuffs in a particular case fulfilled the requirement of adequacy. Handcuffs should only be used where there is individually established reasonable concern about the safety of police officers, other persons, property or public order or that the person escorted might try to escape.

III. Assessment by the Constitutional Court

46. The complainant argues that the prohibition of inhuman and degrading treatment has been violated, both in its substantive aspect and in its procedural aspect. The Constitutional Court is going to address those two issues in steps. But first it must deal with the issue of whether the complainant has exhausted all procedural means of protection before filing a constitutional complaint.

47. As a way of introduction, the Constitutional Court notes that in compliance with the case-law of the ECtHR and the doctrine (Kmec, J., Kosař, D., Kratochvíl, J., Bobek, M.: European Convention on Human Rights. Commentary. Prague: C. H. Beck, 2012, page 408 et seq.; or Langášek, T. in Wagnerová, E. et al. Charter of Fundamental Rights and Freedoms. Commentary. Prague: Wolters Kluwer ČR, 2012, page 203) it will continue to identify the conduct that is degrading or inhuman treatment within Article 3 of the Convention and Article 7 (2) of the Charter also as ill-treatment.

A. Exhaustion of procedural remedies

48. Pursuant to Section 75 (1) of Act No. 182/1993 Coll., on the Constitutional Court, a constitutional complaint is inadmissible if the complainant has failed to exhaust all procedures afforded to him/her by law for the protection of his/her rights. This issue is relevant in the case under consideration in relation to the alleged violation of both substantive and procedural aspect of the prohibition of inhuman and degrading treatment.

49. Regarding the alleged ill-treatment by the police while trying to expel the complainant on 6 June 2014 there is the question of whether the complainant should have defended against it also using the internal controls of the police or by filing an administrative action against the illegal interference by an administrative authority within the meaning of Act No. 150/2002 Coll., the Administrative Procedure Code. As to this, it may be primarily noted that according to the case-law of the European Court of Human Rights, in terms of the condition of exhaustion of all available procedural remedies for complaints of any violation of the prohibition of ill-treatment, the only relevant inquiry is that carried out by an independent authority within the criminal proceedings, in the case under consideration namely the GISF and the public prosecutor's office. If an individual submits any defensible claim that he/she was subjected to ill-treatment, the state authorities are obliged to carry out an effective investigation, which is capable of establishing the facts of the case and possibly could lead to the identification and punishment of the persons responsible. Therefore, it is sufficient if the victim files a criminal complaint and exhausts effective procedural remedies within the inquiry conducted on the basis of the complaint (see e.g. the judgment of the ECtHR in the case of Bureš versus the Czech Republic of 18 October 2012, No. 37679/08, Sections 81 to 82; all the decisions of the ECtHR cited in this judgment are available at http://hudoc.echr.coe.int/). Therefore, according to the ECtHR, the victim of ill-treatment does not have to file a complaint of the police procedure with the internal police control bodies, and even if such person does so, then he/she is not required to use the described remedies within that internal control.

50. The Constitutional Court thus finds that the fact that the complainant has failed to request the examination of the findings of the police inquiry to be carried out by a superior authority under the Administrative Procedure Code may not result in the inadmissibility of his constitutional complaint pursuant to Section 75 (1) of the Act on the Constitutional Court. More complicated, however, in his case, is the issue of exhaustion of an action within administrative court proceedings, by means of which he could have reached a finding of illegality of the police operation complained of. The Constitutional Court, however, does not consider it necessary to answer that question definitively in the case under consideration, because even if it was necessary in the event of alleged ill-treatment (even where there is a defensible claim concerning it) to defend using an administrative action before

filing a constitutional complaint, the conditions under Section 75 (2) (a) of the Act on the Constitutional Court are fulfilled as for the constitutional complaint of the complainant. Pursuant to this provision, the Constitutional Court shall not reject a constitutional complaint, even though it does not satisfy the condition provided for under Section 75 (1) if the significance of the complaint extends substantially beyond the personal interests of the complainant, so long as it was submitted within one year of the day when the events which are the subject of the constitutional complaint took place. The constitutional complaint was filed on 22 March 2015, that means before the expiry of one year after the concerned police operation on 6 June 2014. Substantial extending beyond the personal interests of the complainant is then given by that the conduct of the police during the expulsion complained of, especially the failure to notify the complainant in a timely manner of the exact time of departure and the automatic use of handcuffs during the escort, is not a unique phenomenon accompanying only his case, as follows from the comments by the Public Defender of Rights, summarising the findings from her activities [cf. the similar judgment of the Constitutional Court, file No. I. ÚS 89/94 of 29 November 1994 (N 58/2 of the Collection of Judgments of the Constitutional Court 151); all the decisions of the Constitutional Court cited in this judgment are available at http://nalus.usoud.cz]. On the contrary, these are phenomena almost "standard" in the administrative expulsion of foreigners which are repeatedly criticised by the Public Defender of Rights who in this respect acts as a special national independent authority for the prevention of ill-treatment at places where people are deprived of their freedom. The decision of the Constitutional Court, therefore, is likely to have an impact also on other cases of expelled foreigners, whereby the substantial extending beyond the personal interests of the complainant is given as for the constitutional complaint filed under Section 75 (2) of the Act on the Constitutional Court and, therefore, this complaint cannot be rejected as inadmissible in terms of the alleged substantive violation of the prohibition of ill-treatment.

51. As regards the issue of the exhaustion of all available remedies in connection with the alleged violation of the procedural aspect of the prohibition of ill-treatment, i.e. the lack of an effective investigation into the events occurred on 6 June 2014, the Constitutional Court has already stated in its case-law that the generally effective remedies for the persons complaining of objectionable procedure within the inquiry to uncover facts indicating that the person was a victim of a criminal offence committed also include a request for the exercise of supervision by the next superior public prosecutor's office under Section 12d (1) of Act No. 283/1993 Coll., on the public prosecutor's office (the judgment, file No. I. ÚS 1565/14, of 2 March 2015). Under the cited judgment, the law enforcement authorities did not even commence criminal proceedings in accordance with Section 158 (3) of the Criminal Procedure Code and the case was closed after an inquiry in accordance with Section 158 (1) of the Criminal Procedure Code. However, the reasoning of the Constitutional Court in the cited judgment was made in general and such findings need to be applied also to the present case in which the GISF commenced criminal proceedings and decided not to proceed with the matter through a resolution in accordance with Section 159a (1) of the Criminal Procedure Code. A complaint against this resolution may be filed with the supervising public prosecutor. However, even the decision of that public prosecutor concerning the aggrieved person's complaint may be reviewed within the supervision in accordance with Section 12d (1) of the Public Prosecutor's Office Act. If the case was closed during the stage prior to the commencement of criminal prosecution, the law enforcement authorities are not prevented by anything from reopening the inquiry upon the instruction by the supervising public prosecutor. The resolution not to proceed with the matter in accordance with Section 159a (1) of the Criminal Procedure Code does not constitute an obstacle of a matter already judged (claim preclusion, *res iudicata*).

52. In the case under consideration, however, the complainant filed a motion for supervision by the next higher public prosecutor's office under Section 12d (1) of the Public Prosecutor's Office Act and the High Public Prosecutor's Office decided not to proceed with the matter due to its unfounded nature on 25 March 2015. The complainant therefore fulfilled the condition of the exhaustion of effective remedies.

B. The alleged substantive violation of the prohibition of inhuman and degrading treatment

53. Article 7 (2) of the Charter and Article 3 of the Convention prohibit subjecting anyone to any inhuman or degrading treatment. Inhuman treatment is that which either causes "directly an injury to health" or any "intense physical and mental suffering" (the judgment of the Plenum of the ECtHR in the case of Ireland versus United Kingdom of 18 January 1978 No. 5310/71, Section 167; or the judgment of the Grand Chamber of the ECtHR in the case of Gäfgen versus Germany of 1 June 2010, No. 22978/05, Section 89). The treatment is considered "degrading" if it disgraces or humiliates an individual, does not show sufficient respect for or disparages his/her human dignity or raises the feelings of fear, anxiety and inferiority which are capable of breaking the moral and physical resistance of the person (the judgment of the Grand Chamber of the ECtHR in the case of M. S. S. versus Belgium and Greece of 21 January 2011, No. 30696/09, Section 220). The degrading treatment is closely linked to the demanded respect for human dignity, which does not permit public authorities treat any human being as a thing (the judgment of the Grand Chamber of the ECtHR in the case of Bouyid versus Belgium of 28 September 2015, No. 23380/09, Section 90). Moreover, the ECtHR consistently rules that persons in detention, or the persons against whom members of the security forces take action, are in a vulnerable position, and therefore "any use of physical force which has not been strictly enforced by the behaviour of these people disparages the human dignity and constitutes in principle a violation of the right enshrined in Article 3 of the Convention" (e.g. the judgment of the ECtHR in the case of Ribitsch versus Austria of 4 December 1995, No. 18896/91, Section [a1] 38 and the judgment of the Grand Chamber of the ECtHR in the case of Bouyid versus Belgium, cited above, Sections 83 and 88).

54. Should the specific ill-treatment fall within the scope of Article 3 of the Convention or Article 7 (2) of the Charter, it must exceed a certain minimum level of seriousness. Assessing the level of seriousness of ill-treatment is relative by definition; it depends on all the circumstances of the case, such as the duration of treatment, its physical and psychological effects on the victim, and also, in some cases, the sex, age, and state of health of the victim (the judgment of the Plenum of the ECtHR in the case of Ireland versus the United Kingdom, cited above, Section 162). The question of whether the purpose of the treatment was to humiliate or degrade the victim is another factor that must be taken into account. However, the absence of such purpose cannot definitively rule out a violation of the prohibition of ill-treatment. In other words, the intention to subject another to inhuman or degrading treatment is not a prerequisite for the actual inhuman or degrading treatment (see e.g. the judgment of the ECtHR in the case of Farbtuhs versus Latvia of 2 December 2004, No. 4672/02, Section 50; or the judgment of the Grand Chamber of the ECtHR in the case of V. versus the United Kingdom of 16 December 1999, file No. 24888/94, Section 71).

55. The complainant argues that the following four factors individually or cumulatively caused that he was subjected to prohibited ill-treatment: failure to be informed in advance about the time of the administrative expulsion; the use of coercive means, especially tear gas; the preventive use of handcuffs during the escort; and treating the complainant in an undignified manner at the airport, especially moving him around at the airport with the use of a baggage cart. The Constitutional Court will address these individual circumstances gradually. However, it must be taken into account that the degrading treatment does not have to be caused necessarily by one of the circumstances cited separately but it could also result from their combination. When considering the treatment of people deprived of freedom, the ECtHR usually rules that it is necessary to take into account the cumulative effect of the conditions of detention as well as the specific claims of the complainant (see e.g. the judgment in the case of Jirsák versus the Czech Republic of 5 April 2012, No. 8968/08, Section 62; and other decisions cited therein).

56. According to the Constitutional Court, a similar approach should also be applied to the case under consideration. As follows from the above-mentioned case-law of the ECtHR, one of the criteria for determining whether the treatment has reached the level of seriousness indicative of prohibited ill-treatment is the duration of treatment and the aggregate of all the circumstances. Individual incidents, therefore, may not constitute ill-treatment, but it may do so in aggregate. Some previous treatment of the victim may increase the intensity of the suffering caused by the following treatment.

1. The lack of preparation of the complainant for his administrative expulsion

57. According to the Public Defender of Rights, the issue of leaving a Detention Facility is generally not discussed at all with those placed in such facility and, in practice, the foreigners kept there are not usually informed about the date of expulsion. Under these circumstances, the assertion of the complainant that he learned of the scheduled departure only by coincidence in the course of the previous day seems to be plausible and the Constitutional Court will rely on it. Finally, the assertion is also in line with the findings of law enforcement authorities, according to which the complainant was informed about the departure during the previous day, but it has not been determined by whom and how he was informed. The police in its statement pointed to the fact that they do not feel obliged to give the detained persons an advance notice of expulsion as there is no obligation arising from any legal regulation.

58. The issue of dignified treatment of expelled persons is addressed in detail in its standards on the basis of its experience by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the "CPT"): According to them, "the operations including the deportation of detained foreigners must always be preceded by measures designed to help people organise their return, particularly with regard to their family, work and psychological support. It is very important to ensure that foreigners are informed in sufficient time of their future deportation so that they are able to cope with it mentally, to inform the people who should know about it, to prepare their personal belongings. The CPT has observed that a constant threat of forced deportation hanging over the detained persons who had not received prior information about the date of their deportation can cause anxiety, which may culminate during the deportation and result in aggression and a state of distress" [Standards of CPT, CPT/Inf/E (2002) 1 - Rev. 2015, page 81].

59. When assessing the violation of the prohibition of ill-treatment, the Constitutional Court must take these opinions of the CPT into account. The CPT is an expert body that based on its rich experience from visits to places where persons are deprived of freedom provides interpretation for various contexts of the terms of torture and inhuman and degrading treatment. Although it is not a binding interpretation, it is a reliable interpretation provided by the authority established by states in order to strengthen the protection of persons deprived of freedom against torture and inhuman or degrading treatment or punishment (Article 1 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or punishment, No. 9/1996 Coll.). The high relevance of the interpretations made by the CPT is also demonstrated by the fact that they are often applied also by ECtHR (see e.g. the judgment of the ECtHR in the case of Kummer versus the Czech Republic of 25 July 2013, No. 32133/11, Section 67). Even the Constitutional Court, as mentioned above, as well as other institutions of the Czech Republic, must take into account that legally non-binding but reliable interpretation of the legally binding prohibition of ill-treatment. Although it is possible to deviate from the interpretation given by the CPT, unlike from any binding interpretation, such deviation must be very thoroughly and convincingly substantiated. Otherwise, if any public authority ignores the relevant interpretation given by the CPT or does not deal with it inadequately, it endangers a fundamental constitutional value, namely that under Article 1 (2) of the Constitution of the Czech Republic according to which the Czech Republic shall observe its obligations resulting from international law.

60. Any expulsion has generally also a strong negative impact on the private and family life of expelled foreigners and must be done carefully so that these negative consequences are not even increased. The practice in the detention facilities where detained persons are not in an official way and in sufficient time notified of the specific date and manner of expulsion may ultimately make even more intense the interference in their private and family lives. Such practice may also cause the feelings of anxiety and inferiority among the detained persons, which is a relevant action from the perspective of the prohibition of ill-treatment. At the same, the failure to notify creates a conflict situation that can lead to the unnecessary use of force, as it happened in the case now under consideration.

61. A foreigner who is detained in order to be expelled administratively does not become a thing which needs to be transported at the time set by the police from point A (detention facility for

foreigners) to point B (aircraft). A foreigner, even under these circumstances, remains a human being who is entitled to human and dignified treatment. Not only the deprivation of personal freedom itself but also the overall circumstances of the expulsion have to be human and show sufficient respect to the human being. Under the given circumstances, this mainly includes sufficient communication with the detained person, which must also apply to the information about the exact time and manner of the expulsion. This information must be notified to the detained person in sufficient time allowing the person to prepare for the departure mentally as well as to arrange his/her affairs - e.g. saying goodbye to the close persons in the Czech Republic or notifying the close persons in the country where he/she is to be expelled to. According to the Constitutional Court, providing this information in advance of 24 hours is a bare minimum which must be observed, with the exception of very exceptional cases. However, the information about the exact time and manner of expulsion should be communicated to the detained person as soon as possible, i.e. without undue delay after the police learns of the date of departure.

62. The manner of informing people about the exact time of departure should also have the proper form and that person must not be notified of the respective information only by coincidence. This act should be documented by the police or the responsible person in Detention Facilities to avoid any later doubts about whether the proper notice has really been given. According to the Constitutional Court, it is generally not detrimental if the information is given to the complainant by other person than a police officer - for example, by any member of the detention facility staff. However, if the police delegates this duty to any other authority or person, it cannot relieve itself of responsibility for any eventual misconduct of such other person. The administrative expulsion shall be carried out properly by the police that is also responsible for respecting the rights of expelled persons. Sufficient and timely information about the exact time and manner of deportation is an integral part of the overall process of expulsion, which cannot be separated.

63. The Constitutional Court does not deny that in exceptional cases it may be necessary for safety reasons not to comply with the obligation to provide prior information. However, such foreigner should adequately be warned that he/she will not be informed in advance of the exact time and manner of his/her expulsion. However, in the case under consideration, no extraordinary circumstances have been found or asserted as for the complainant, which would justify such procedure.

64. In the case under consideration, the police knew of the exact time of the planned departure of the complainant as early as 3 June 2014. This information could therefore be, and should have been, notified to the complainant as early as 3 June 2014, not two days later. Any internal administrative procedures of the police and the Detention Facility cannot serve as justification for the fact that the complainant learned about the time of departure less than 24 hours in advance. It is up to the police and other state authorities to arrange for their operations in a manner that respects the rights of human beings coming into contact with them.

65. The complainant had lived in the Czech Republic for at least four years at the time of expulsion. He had a partner with whom he lived in a flat in Prague, where he also kept his personal belongings. The complainant's argument that he needed to say goodbye to his partner, to ask her for bringing his belongings to him, and to contact his family in Cameroon seems in this respect quite understandable. It is natural and human that the complainant wanted to say goodbye to his partner before the departure. The failure to notify the complainant of the departure in sufficient time causing that he had no chance to arrange for the above-mentioned maters show a lack of respect for the human dignity and feelings of the complainant and was able to induce the feelings of anxiety and inferiority.

66. The Constitutional Court cannot accept the argument of parties to the proceedings arguing that in terms of informing the complainant about the time of departure it is sufficient that he knew from the beginning about the reasons for his detention, including that he would be expelled within 30 days. Such procedure is capable of increasing substantially the feeling of anxiety of the detained person who knows that he/she can be deported at any time during his/her detention, i.e. at any time throughout a month. At the same time such procedure does not respond in any way to the legitimate need of the

detained person to say goodbye to the close people in the Czech Republic and inform the closed persons in the state where the person is expelled to about the exact time of arrival.

67. The obligation of the police to notify any detained person properly and in sufficient time about the exact time of his/her deportation results not only from the constitutional order, as it has been explained above, but it can also be inferred from the sub-constitutional legislation. Pursuant to Section 9 of Act No. 273/2008 Coll., on the Police of the Czech Republic, the police shall always in its actions respect the dignity of persons and their honour and follow the rules of politeness. The fact that part of this obligation is notifying a foreigner in sufficient time of the date and circumstances of the expulsion has been communicated to the relevant authorities also by the Public Defender of Rights.

68. The Constitutional Court thus concludes that the failure to notify the complainant properly of the exact time of his departure in sufficient time is unacceptable. Nevertheless, in the opinion of the Constitutional Court, the conduct itself in relation to the complainant did not exceed the minimum threshold of seriousness for a finding of degrading treatment sought by the complainant. However, it cannot be ignored that this initial misconduct by the police also contributed to the subsequent formation of a conflict situation which led to the problematic treatment of the complainant on 6 June 2014 and thus contributed to the increase in the intensity of suffering caused to the complainant in aggregate.

2. Use of force and tear gas

69. As it has been pointed out above, the case-law of the ECtHR implies that in the case of persons deprived of freedom any use of physical force that is not strictly necessary as a result of the conduct of that person, disparages the human dignity and constitutes in principle an infringement upon the right as set out in Article 3 of the Convention (see the judgment of the ECtHR in the case of Ribitsch versus Austria of 4 December 1995, No. 18896/91, Section 38; or the judgment in the case of Kummer versus the Czech Republic of 25 July 2013, No. 32133/11, Section 56). The ECtHR has recently ruled that a "mere" smack against a detained person is degrading treatment even if the police officer is provoked by the disrespectful behaviour of the detained person who was however not physically aggressive and did not pose a danger to others. While rendering its judgment, it stated that "in a democratic society any ill-treatment is never an appropriate response to the problems faced by the public authorities" (the judgment of the Grand Chamber of the ECtHR in the case of Bouyid versus Belgium of 28 September 2015, No. 23380/09, Section 108). Any coercive means should only be used to the extent strictly necessary to achieve the legitimate aim pursued (see the conditions for the use of coercive means in Section 53 of Act No. 273/2008 Coll., on the Police of the Czech Republic). The coercive means must in no way serve as a retribution or punishment for disobeying police orders. Similarly, the CPT acknowledges that members of the escort of deported persons are sometimes forced to use force and coercive means to perform the deportation effectively. The force and coercive means, however, should only be applied to the extent necessary and the legality, adequacy, and appropriateness of their use should be examined [CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2015, page 78].

70. Firstly, the Constitutional Court will address the issue whether it was really necessary to use the tear gas spray in the given situation.

71. The Constitutional Court has not commented on the use of tear gas spray as a coercive means in its case-law yet. The ECtHR has already done so several times in the context of the right of assembly. In the case of Tali versus Estonia, the ECtHR dealt with the permissibility of the use of tear gas spray to the persons deprived of freedom (the judgment of 13 February 2014, No. 66393/10). In the case under consideration, the tear gas spray was used against the uncooperative prisoner who refused to submit to an order to surrender the mattress from his cell. The ECtHR reiterated the view of the CPT that the tear gas spray is a potentially dangerous substance and should not be used in confined spaces and further stated that the tear gas spray should never be used against a prisoner who has already been under control. According to the ECtHR, it must also be noted that although a tear gas spray is not considered a chemical weapon and its use as a coercive means is permitted, it can have negative effects, such as respiratory problems, nausea, vomiting, respiratory irritation, irritation of tear ducts

and eyes, spasms, chest pain, dermatitis, and allergies. When applied in strong doses, it can cause tissue necrosis in the respiratory or digestive tract, pulmonary oedema or internal bleeding. Given these potentially serious impacts of the use of tear gas spray in a confined space on the one hand and the existence of alternative coercive means available to the guards, such as bulletproof vests, helmets and shields, on the other hand, the ECtHR did not find that the circumstances of the case justify using the tear gas spray (Section 78 of the cited judgment).

72. The CPT has very serious reservations also about the use of incapacitating or irritant gases for the purpose of gaining control of the detained foreigners who resist so that they could be moved from their cells to the aircraft. The use of these gases in very confined spaces, such as cells, poses an evident danger to the health of detained persons and the facility staff as well. The staff should be trained in the use of other techniques for controlling the detained person who resists (e.g. manual techniques or the use of shields) [CPT Standards, CPT/Inf/E (2002) 1 - Rev. 2015, page 80]. These conclusions were repeated by the CPT several times also directly in relation to the Czech Republic. In the report on its last visit to the Detention Facility Bělá-Jezová in 2014, the CPT noted after finding that the staff of private security agencies in the Detention Facility routinely wear tear gas sprays: "a tear gas spray is a potentially dangerous substance and should not be used in confined spaces. If it needs to be used in open spaces exceptionally, the clearly defined guarantees must be adhered to. For example, the persons affected by pepper spray should immediately be allowed to visit a doctor and they should be immediately provided with the means for suppressing effects effectively and expeditiously. Pepper spray should not be part of the standard equipment of security officers." [Report for the Government of the Czech Republic on the visit to the Czech Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on 1 to 10 April 2014, of 31 March 2015, CPT/Inf (2015) 18, Section 38].

73. To decide the case under consideration, it is not necessary that the Constitutional Court should establish a clear rule whether the use of tear gas spray inside a detention facility is completely ruled out. It cannot be anticipated on the basis of the facts of the case under consideration whether the use of such gas will not be justified in certain circumstances, particularly in the case of self-defence of police officers or in the protection of others against violence. In the case under consideration, however, the tear gas spray was not used as a means of defence against an aggressive person, but as a coercive means against the complainant who refused to undergo the escort to the airport for his expulsion, although he did not hurt anyone and was not dangerous to others. The parties to the proceedings deem it beyond doubt that the complainant resisted the escort which had been ordered in order to perform the administrative expulsion. However, if the complainant's conduct justified the use of force, it is necessary to examine whether the force used was "absolutely necessary" and, therefore, appropriate.

74. Two police officers tried to perform the escort of the complainant. They were unable, however, due to his resistance, when he was holding on to the pieces of furniture and getting out from their grip, to carry the complainant away from the room. They applied a tear gas spray against him under those circumstances. The above-mentioned principles of the CPT and the case-law of the ECtHR imply that in such situation when the detained person does not represent a threat to others and simply refuses to obey any command, the use of tear gas spray is impermissible, and instead the police officers should use other techniques to control the detained person. Four police officers were on the spot during the operation performed against the complainant. If for operational reasons it was not possible for all four police officers to perform the operation (two police officers checked the corridor and entrance to the room), they had a series of other options to deal with the complainant, for example they could ask for reinforcements or better equipment or armaments. They could use vests, helmets, and shields that would protect, if necessary, the police officers during the operation against the complainant and would also more demonstrate the superiority of police officers. It cannot be ruled out that if the complainant was confronted with a clear superiority, he could submit to the operation voluntarily. The Constitutional Court is not then convinced that the use of tear gas spray was necessary to overcome the resistance of the complainant and that it was not conceivable to use less coercive means. Nevertheless, given the circumstances of the use of tear gas spray against the complainant, the

Constitutional Court deems that this in itself does not constitute ill-treatment that is contrary to Article 7 (2) of the Charter and Article 3 of the Convention.

75. Regarding the complainant's claim that after the use of spray he was neither given any medical treatment nor his eyes were rinsed out, this statement is a solitary one compared to the assertions by the police officers carrying out the operation and by the doctor. Under these circumstances, the Constitutional Court cannot conclude that the complainant was neither immediately treated nor his eyes were rinsed out after the use of spray, which would be totally impermissible and in itself would constitute ill-treatment pursuant to Article 7 (2) of the Charter and Article 3 of the Convention.

76. Similarly, the Constitutional Court cannot conclude based on the materials available that the police officers unreasonably kicked the complainant and dealt him hard blows that would go beyond the hugs and grips permissible and necessary in the given situation. In this context, however, the Constitutional Court notes that similar operations, which are conflict situations by definition, would be appropriate to be shot using a camera. Such record would then essentially help to assess whether the police operation was adequate or not, and it would also protect the police officers against unreasonable complaints of their conduct primarily.

77. The Constitutional Court, however, points out that the lack of evidence of injuries alleged by the complainant, occurred due to the relative lateness or possible sluggishness in the procedure of the GISF, will then be taken into account when assessing the procedural aspect of protection against ill-treatment, therefore, in the part dealing with the effective investigation.

3. Use of handcuffs, transporting the complainant to the airport and the treatment of the complainant at the airport

78. According to settled case-law of the ECtHR, handcuffing is not usually problematic in terms of Article 3 of the Convention if that measure has been used in connection with the lawful arrest or detention and is not accompanied by the use of physical force or exposing the person to the public in a manner that is not to be regarded as necessary and adequate in the given circumstances. In this regard, it is important, for example, whether there is any reason to believe that the person will resist arrest or wants to escape, cause injury or damage or destroy evidence. The ECtHR always attaches great importance to the particular circumstances of each case and examine whether the use of restrictive means was necessary (see e.g. the judgment of the ECtHR in the case of Kummer versus the Czech Republic of 25 July 2013, No. 32133/11, Section 63, and the references cited therein).

79. In the case under consideration, it was evident from the conduct of the complainant that he did not intend to undergo the escort voluntarily. Consequently, he was handcuffed and secured by a restraint belt by the escorting police officers. The Constitutional Court is of the opinion that given the behaviour of the complainant the police officer could reasonably fear that he might attempt to escape and even attack the escorting police officers while doing so. Using these means was not thus automatic and routine, which would be inadmissible, and cannot be assessed as unjustified in the complainant's case.

80. Nevertheless, the complainant's claim that the handcuffs were tightened too hard, causing him pain and abrasions as a result, is serious. Based on the materials available to it, however, the Constitutional Court cannot make such conclusion. The injury of the complainant is not supported by any evidence other than his own claims. Any injury of the complainant was not confirmed by any person in the course of inquiry conducted by law enforcement authorities or the police and was not supported by any medical report.

81. The Constitutional Court also dealt with the fact that the complainant was carried over naked to another Detention Facility building after the operation. This allegedly was caused by that he had previously refused to get dressed. In addition, the police officers tried to cover him up with a sheet which the complainant was trying to take off. Primarily, however, carrying over was not performed before the public. The complainant also argued that he was treated in a degrading manner when he was

moved around at the airport with the use of a baggage cart. The complainant, however, refused to go on his own and the wheelchair for disabled persons was not reportedly available at the airport at the moment. Later, when the police officers managed to provide it, the wheelchair for disabled persons was used to transport the complainant. In both situations cited by the complainant, the police officers faced the problem of how to transport the complainant somewhere - to another building in the Detention Facility or from the car to the appropriate place at the airport. Their chosen measures - carrying him over naked within the Detention Facility or transporting him using a baggage cart - were more considerate towards the complainant than other variants. If, for example, the police officers had to carry the complainant at the airport, this could lead to unnecessary fight between the police officers and the complainant as they were in very close physical contact. Neither of the solutions adopted in both situations are unreservedly acceptable with respect to the complainant but neither in the context of the situation considered exceed the aforementioned threshold for stating interference with the complainant's rights protected by Article 7 (2) of the Charter and Article 3 of the Convention. On the other hand, it begs the question whether this situation as described above should not cause serious concerns of the police officers carrying out the operation relating to whether the complainant in such a state of excitement could be allowed to air transport, and thus whether all actions causing harm to the complainant are actually unnecessary. If this simple consideration had been made in a timely manner by the police officers carrying out the operation, they would have found that it was unlikely to attain the objective of the operation, and therefore any resulting violence and action against the complainant are meaningless.

4. Conclusion on the substantive violation of the prohibition of ill-treatment

82. The overall treatment of the complainant during his expulsion on 6 June 2014 points to a lack of seeing the complainant as a human being who is endowed with natural human dignity and rights. On the contrary, the police treated the complainant not as a human beings but only as a source of problems which needs to be got rid of by transporting him to the aircraft at any cost.

83. We cannot disregard the fact that all the described operations against the complainant were ultimately unnecessary because the airline refused to transport the complainant. The outcome of the events on 6 June 2014 could be predicted according to the Constitutional Court at the very beginning, because one cannot assume that any airline takes on board a person who resists the departure with all his/her powers. There could also be considered whether the violence used had a legitimate purpose if it could not lead to the desired objective.

84. The Constitutional Court emphasises that it does not dispute that foreigners who have been imposed the administrative expulsion order which is enforceable, are obliged to submit to that order. If, in such situation, no obstacles of departure are found, the police is authorised to enforce such order against the will of a foreigner. However, the enforcement has to fully respect the rights and dignity of foreigners expelled. The Czech Republic is a state based on democratic values and respect for the rights and freedoms of human beings (Article 1 (1) of the Constitution). The quality, maturity, and humanity of any society can be recognised by the way it treats the most vulnerable, those who for any reason find themselves on the margins; and whether it respects that all people are free and equal to others in dignity and rights, as laid down in Article 1 of the Charter. Only because someone was born and raised in a country other than ours, he/she cannot be excluded from the protection of his/her freedom and equality in dignity and rights. Every human being, whether it is or is not "one of us", must be protected against inhuman and degrading treatment without exception.

85. During the final comprehensive assessment of the actions of the police against the complainant in the exercise of his administrative expulsion, the Constitutional Court has in particular in mind what has been outlined above: a foreigner who is detained in order to be expelled does not become a thing which needs to be transported at the time set by the police from point A (detention facility for foreigners) to point B (aircraft). A foreigner, even under these circumstances, remains a human being who is entitled to human and dignified treatment. Therefore, not only the deprivation of personal freedom itself but also the overall circumstances of the expulsion must be human and show sufficient respect to the human being. Furthermore, the police, as well as other state security forces, must

perform their actions not only with respect for the dignity and rights of persons against whom the operation is performed, but also in order to calm down any conflict situation rather than to escalate or even provoke any conflicts. This, however, did not occur in the case under consideration.

86. As previously justified in detail, the police committed misconduct particularly when it failed to inform the complainant sufficiently about the departure and did not allow him to prepare for it adequately. This misconduct also very probably contributed to conflicting events on 6 June 2014, including the use of tear gas against the complainant in a confined room. The Constitutional Court therefore concluded that the conduct of the police towards the complainant in an attempt to expel him on 6 June 2014 - namely the failure to notify the complainant in an appropriate manner and in sufficient time of the exact time of departure and the use of tear gas spray against the complainant in a confined room, additionally supported by the subsequent use of handcuffs and transport on a baggage cart - had to cause the complainant the feelings of anxiety and inferiority so intense as to reach the level of seriousness amounting to prohibited degrading treatment contrary to Article 7 (2) of the Charter and Article 3 of the Convention. The Constitutional Court reached this conclusion only based on undisputed claims of the complainant and of the other parties to the proceedings, because it did not find enough evidence for a different version of events presented by the complainant. The failure to secure evidence and clarify other complainant's claims has however been taken into account by the Constitutional Court in the assessment of a procedural violation of the prohibition of ill-treatment, as shown below.

C. The alleged procedural violation of the prohibition of inhuman and degrading treatment (effective investigation)

1. General principles

87. In the event that the aggrieved person makes a defensible claim that he was subjected to ill-treatment, the state is obliged to carry out an effective investigation (see e.g. the judgment of the Grand Chamber of the ECtHR in the case of Bouyid versus Belgium of 28 September 2015, No. 23380/09, Section 116, or the judgment file No. I. ÚS 1565/14 of 2 March 2015, Items 50 to 51, and the references cited therein). A claim is deemed defensible if it is not completely untrustworthy and unlikely, it is possible even in terms of time, and it is sufficiently specific and invariant in time (ibid, Item 55).

88. Any effective investigation carried out by law enforcement authorities, including the stage prior to the commencement of criminal prosecution, must cumulatively comply with the following separate requirements arising from the case-law of the ECtHR: it must be (a) independent and impartial, (b) thorough and sufficient, (c) expeditious, and (d) subjected to public scrutiny. The requirement for thoroughness and sufficiency means that the authorities must take adequate steps available to them in order to secure evidence about the incident, including, inter alia, eyewitness testimonies and the use of forensic methods. The findings of the inquiry must be based on thorough, objective, and impartial analysis of all relevant facts. Any shortcomings in the investigation which undermines its ability to determine the circumstances of the case or the person responsible will lead to conflict with the required level of effectiveness of investigation (see the judgment, file No. I. ÚS 1565/14, of 2 March 2015, Item 56).

89. The case-law of the ECtHR emphasises that it is extremely difficult for the person deprived of freedom, who is isolated from the outside world without access to doctors, lawyers, family or friends who would provide support to that person and ensure the necessary evidence, to prove any ill-treatment. The competent state authorities must then on their own initiative obtain all the evidence about the incident. To that end, they must provide a detailed account of the circumstances by the alleged victim, eyewitness testimonies, forensic evidence, and expert medical opinions providing the complete and accurate records of possible injuries and objective analysis on medical findings, particularly regarding the causes of injuries (see e.g. the judgment of the ECtHR in the case of Bati and others versus Turkey of 3 September 2004, No. 33097/96, Section 134; the judgment in the case of Karabet and others versus the Ukraine of 17 January 2013, No. 38906/07, Section 303; or the

judgment in the case of Eldar Imanov and Azhdar Imanov versus Russia of 16 December 2010, No. 6887/02, Section 113).

2. Application of general principles to the case under consideration
90. The primary question in assessing a procedural violation of the prohibition of ill-treatment is whether the complainant raised a defensible claim that he has been ill-treated and whether the law enforcement authorities have therefore become obliged to carry out an effective investigation.

91. On 16 June 2014, the complainant filed a complaint against the police procedure and, at the same time, a criminal complaint with the GISF. In the criminal complaint, the complainant claimed that he was subjected to ill-treatment consisting especially in the failure to notify him of the scheduled departure in a timely manner, the use of inadequate coercive means (punches and kicks directed at the whole body and tear gas), the painful handcuffing while being transported, and the treatment at the airport.

92. The facts stated in the criminal complaint filed by the complainant were sufficiently specific and possible as regards time and facts. The complainant described the circumstances of the events that had occurred objectively, i.e. an attempt to expel him against his will on the given day, which ultimately failed. The criminal complaint does not seem at the first glance completely untrustworthy and it contains claims which, if proven, would justify a conclusion that the complainant was subjected to ill-treatment, including the excessive use of force that was not absolutely necessary due to his behaviour. It is nevertheless true that the complainant did not support his criminal complaint by any medical proof of the injuries allegedly incurred by him.

93. The Constitutional Court, however, considers that the requirements for the defensibility of claims for the persons who are still in detention and not released must be lower than for the persons who have already been freed and as for whom it is usually necessary to insist on the submission of a medical certificate. The released persons are not prevented by anything from seeking a physician after their release who can document their injuries. However, those who have not been released have no possibility to visit an independent physician. As for them, it is possible to establish the defensibility of claims solely on their testimony which generally meets the above-mentioned conditions of a defensible claim. The fact that the defensibility of claims of the persons deprived of freedom can be based only on their testimony is also respected by the case-law of the ECtHR (see e.g. the judgment in the case of Labit versus Italy of 6 April 2000, No. 26772/95, Section 130). Finally, the GISF concluded that the criminal complaint filed by the complainant is defensible as it commenced, based on that complaint, the criminal proceedings pursuant to Section 158 (3) of the Criminal Procedure Code. The Constitutional Court therefore considers that the complainant's criminal complaint meets the requirements for a defensible claim that the complainant has been subjected to ill-treatment. The ill-treatment in respect of which the defensible claim was raised is not constituted only by the conduct which the Constitutional Court has found to be proved as given above, but also the conduct that due to lack of evidence has not been established, such as the alleged punches and kicks against the complainant, the lack of medical treatment after the use of tear gas, and the excessive tightening of handcuffs. As the Constitutional Court stated above, each conduct mentioned above could alone be sufficiently serious to constitute ill-treatment of the complainant. Therefore, it was the obligation of law enforcement authorities to investigate effectively whether the complainant had actually been subjected to such conduct, because only after an investigation that meets all the requirements of an effective investigation a convincing conclusion that such conduct occurred may be made.

94. The complainant argues that the investigation was neither thorough nor objective nor expeditious. The Constitutional Court will address the speed of the inquiry at first.

95. The requirement for the speed of investigation covers not only the general requirement of the absence of delays in proceedings relating to the fundamental rights of individuals, but it is also an integral part of the overall effectiveness of the investigation. In its case-law regarding the speed of investigations, the ECtHR in particular considers whether the inquiry was initiated promptly, if there

were no delays in identifying and interrogating witnesses, and even the overall duration of the investigation and the criminal proceedings (see the judgment of the ECtHR in the case of Y. versus Slovenia of 28 May 2015, No. 41107/10, Section 96). The requirement for the speed of inquiry therefore cannot narrowly imply that the inquiry must be completed within a reasonable period of time. The main purpose of the requirement for speed is to ensure the effectiveness of the inquiry. Individual acts within the inquiry must therefore be done without delay so that they have no negative impact on the overall effectiveness of the investigation. Witnesses lose memory in the course of time, bodily injuries caused to the aggrieved person disappear, CCTV records are deleted and factual evidence in general is lost, the risk of collusion of witnesses increases, etc. Inhuman and degrading treatment is a very serious interference with individuals' fundamental rights and law enforcement authorities (here especially the GISF) may not take lightly a defensible claim that someone was exposed to such treatment. On the contrary, they are obliged to screen the circumstances of the case particularly thoroughly and speedily so that they can make a compelling conclusion as to whether such treatment actually occurred and, if so, so that the inquiry is able to lay the groundwork for the subsequent punishment of the offenders.

96. As noted above, the complainant submitted a defensible claim that the police officers when carrying out the expulsion treated him in a degrading way, including the excessive use of force and coercive means. The obligation of the GISF was therefore to respond to the criminal complaint without undue delay and to investigate with all due care whether the complainant's claims are true or not.

97. The ECtHR has found in several cases that it does not meet the requirement for an effective investigation if the police officers suspected of serious infringement upon fundamental rights are interrogated with a significant delay. For example, in the case of Kummer versus the Czech Republic, the ECtHR considered unacceptable when police officers suspected of degrading treatment of a detained person had been interrogated as late as nearly three months after the filing of the criminal complaint (the judgment of the ECtHR of 25 July 2013, No. 32133/11, Section 84; a similarly problematic three-month delay occurred in an investigation according to the judgment of the ECtHR in the case of Süleyman Demir and Hasan Demir versus Turkey of 24 March 2015, No. 19222/09, Section 51; or in the judgment in the case of Kulik versus the Ukraine of 19 March 2015, No. 10397/10, Section 51). It should also be noted that the degrading treatment is the mildest form of ill-treatment and in more serious cases law enforcement authorities must respond much faster.

98. In the case under consideration, the GISF interrogated the police officers carrying out the escort of the complainant and the Detention Facility doctor as late as 25 August 2014 and 28 August 2014, i.e. after more than two and a half months after the concerned events and more than two months after the criminal complaint was filed. The situation is therefore comparable to the case of Kummer versus the Czech Republic. The Constitutional Court therefore finds that the procedure of the GISF in the inquiry into the circumstances of the complainant's expulsion on 6 June 2014 was not expeditious enough.

99. In response to the argument of the complainant, however, the Constitutional Court adds that the fact that the acts of criminal proceedings pursuant to Section 158 (3) of the Criminal Procedure Code were commenced as late as 14 July 2014 is not in itself problematic. From the perspective of the right to effective investigation, it does not matter if law enforcement authorities carry out the necessary steps as early as in the stage prior to the commencement of criminal proceedings. It is not therefore essential that all the requirements for effective investigations are satisfied as early as in the course of inquiry under Section 158 (1) of the Criminal Procedure Code or of screening under Section 158 (3) of the Criminal Procedure Code or of investigation under Section 160 of the Criminal Procedure Code (see the judgment, file No. ÚS 1565/14, of 2 March 2015, Item 55).

100. As far as the requirement for the thoroughness of the investigation is concerned, the Constitutional Court notes that the investigation must primarily be able to determine the facts of the case as much as possible. In the event of ill-treatment, because of the alleged use of physical force and

coercive means in general, a key means of evidence is the information about the health of the alleged victim.

101. In the case of a person deprived of freedom who is not able to procure the means of evidence about his/her health (medical opinions, photographs), the law enforcement authorities must ensure that evidence themselves on their own initiative. For this purpose, in particular, they must act expeditiously since any injuries may subside over time.

102. In the view of the Constitutional Court, however, the GISF focused within its inquiry on determining the state of health of the complainant in the case under consideration insufficiently. The complainant complained especially of the inadequate use of force against him (punches and kicks) and the excessive tightening of handcuffs. In such situation, the immediate examination of the complainant by an independent doctor who would record any injury to the complainant even ten days after the operation should have been performed. However, any medical examination of the complainant was not initiated by the GISF, which had a significant negative impact on the effectiveness of investigation (for similar misconduct, cf. the judgment of the ECtHR in the case of Eldar Imanov and Azhdar Imanov versus Russia of 16 December 2010, No. 6887/02, Section 113: in that case, the complainant was medically examined as late as three months after the announcement that he was ill-treated by the police officers). This does not mean that after the criminal complaint filed containing a defensible claim of ill-treatment the state of health of the alleged victim must always be immediately examined independently. Sometimes, after a certain period of time, it will not be effective or the state of health has already been documented sufficiently. However, these circumstances must be carefully assessed and established by the investigating authority.

103. The Constitutional Court found that the criminal file does not contain any medical report on the condition of the complainant on 6 June 2014 or in later days. Thus, it cannot even be determined how thorough the health examinations of the complainant in the Detention Facility before leaving for the airport and after returning from it were. The GISF also did not interrogate, except for the police officers carrying out the operation and the doctor (which was not until some time after), any person who could testify about the physical condition of the complainant after the cancelled deportation on 6 June 2014. Although the complainant was in the Czech Republic for two weeks after he filed a criminal complaint, he was not examined by an independent doctor. The official record of the GISF on the local inquiry at the Detention Facility on 29 August 2014 shows that the GISF tried to identify any witnesses to the events occurred on 6 June 2014, however it failed. This effort, however, cannot be considered sufficient, only because of the considerable time delay since any informative value of such testimonies would have been greatly reduced. Further, a number of foreigners who were in the Detention Facility on 6 June 2014 probably were not there in August 2014. However, the GISF did not interrogate any other persons that might report on the state of the complainant, such as a lawyer of the Organization for Aid to Refugees who visited the complainant at the Detention Facility on 9 June 2014. The inquiry made by law enforcement authorities concerning the complainant's state of health therefore cannot be considered as thorough and sufficient.

104. The Constitutional Court, however, in contrast to the failure to determine immediately the state of health of the complainant, sees fundamental misconduct in that the GISF did not interrogate the complainant who left the Czech Republic for Cameroon on 2 July 2014. There is no need to interrogate the aggrieved person who already described substantial circumstances in the criminal complaint so expeditiously as other relevant witnesses and suspects. Ultimately, it may be effective to interrogate the aggrieved person after interrogating other persons and confront him with such testimonies.

105. The case under consideration illustrates why the performance of effective investigation is so important in terms of effective protection against ill-treatment. The Constitutional Court has not found above that any hugs, grips, punches, and kicks were used against the complainant inadequately or that handcuffs were tightened on him excessively because it did not have sufficient evidence for such conclusions. The complainant himself, as a person deprived of freedom, could procure no evidence of

such claims. Therefore, it is an extraordinary obligation of the competent authorities (the GISF in this case) to procure such evidence which allows making convincing conclusions, with all due care and thoroughly and expeditiously. If the competent authority fails to do so, the person deprived of freedom will never be virtually able to prove such ill-treatment and that serious misconduct becomes virtually non-punishable.

106. The above-mentioned implies that the investigation carried out was not an effective investigation because it was not sufficiently expeditious and thorough. The law enforcement authorities therefore infringed upon the complainant's right to effective investigation, which is part of the right not to be subjected to ill-treatment under Article 7 (2) of the Charter and Article 3 of the Convention.

3. Conclusion and form of the statement on the effective investigation

107. The complainant requires in his constitutional complaint both the annulment of the contested decisions and the statement that the procedure of the law enforcement authorities who have failed to carry out an effective investigation have infringed upon his rights. According to the settled case-law of the Constitutional Court, if there is a final and effective decision, the complainant must contest through a constitutional complaint the decision, since the constitutional complaint of another conduct by a public authority may be taken into account only if such conduct is not itself an expression (result) of the proper decision-making power of that authority and, as such, goes beyond the usual review or other proceedings [the judgment, file No. III. ÚS 62/95, of 30 November 1995 (N 78/4 of the Collection of Judgments of the Constitutional Court 243)].

108. In the present case, however, the misconduct found in the investigation relating to deficiencies in speed and thoroughness was shown directly in the decision of the GISF that is thus based on insufficient facts of the case found and is inadequately reasoned. The complainant could file an appeal against it with the regional public prosecutor's office. Obviously it is a decision which could be and was subjected to the normal review proceedings. The contested decisions themselves infringe upon the complainant's fundamental right to effective investigation and are decisions within the meaning of Section 72 (1) (a) of Act on the Constitutional Court. Therefore, the Constitutional Court has decided to annul those decisions.

109. On the contrary, the above-mentioned misconduct shown in the contested decisions and leading to their annulment by the Constitutional Court as such may not lead to a finding that the complainant's fundamental right was infringed upon also by the procedure of law enforcement authorities that preceded the contested decisions and during which the misconduct occurred. The Constitutional Court must reject this petition as inadmissible pursuant to Section 43 (1) (e) of the Act on the Constitutional Court because defects in the procedure of law enforcement authorities were shown in the contested decisions (see, mutatis mutandis, the judgment, file No. I. ÚS 1549/11, of 23 April 2015, Item 59).

110. After the annulment of the contested decisions, it is up to the law enforcement authorities to decide how to proceed further and what acts they will carry out, of course while respecting this judgment, including its supporting reasons. The Constitutional Court notes, however, that it has found that the complainant was subjected to ill-treatment due to the combination of several factors for the sum of which a specific person or persons cannot be held liable. In this respect, it can be difficult to conclude the criminal liability of specific natural persons. As regards the alleged excessive use of physical force and handcuffs against the complainant that had allegedly caused him an injury, the Constitutional Court found misconduct mainly in the speed of inquiry, which by definition cannot be corrected now. The same applies to a thorough medical examination of the complainant since he does not claim that the operation has resulted in any permanent consequences for him. All negative consequences for his state of health must have subsided already. While the Constitutional Court does not anticipate a decision of law enforcement authorities, it is possible and acceptable from the perspective of the Constitutional Court that any effective acts could no longer be carried out within the criminal proceedings concerning the case and the right of the complainant to effective investigation in this particular case infringed upon will not be possible to be corrected otherwise than through compensation for harm to his fundamental rights.

D. Conclusion

111. For the reasons mentioned above, the Constitutional Court partially complied with the constitutional complaint pursuant to Section 82 (2) (a) of the Act on the Constitutional Court as the operation of the police in the administrative expulsion of the complainant on 6 June 2014 infringed upon one of the fundamental rights of the complainant not to be subjected to degrading treatment pursuant to Article 7 (2) of the Charter and Article 3 of the Convention, and at the same time the contested decisions of law enforcement authorities infringed upon the same rights of the complainant due to the failure to carry out the effective investigation. Therefore, the Constitutional Court, pursuant to Section 82 (3) (a) of the Act on the Constitutional Court, annulled the contested decisions.

112. Pursuant to Article 89 (2) of the Constitution, the judgments of the Constitutional Court shall be binding on all authorities and persons. In this case, it is primarily the Police of the Czech Republic - Alien Police Service Directorate which is bound by the supporting reasons of this judgment [as to the binding nature of the judgments Constitutional Court see e.g. the judgment, file No. ÚS 301/05, of 13 November 2007 (N 190/47 the Collection of Judgments of the Constitutional Court 465), Item 60]. It is therefore an obligation of the police to respond to the supporting reasons of this judgment systematically. The police should primarily inform the foreigners detained for deportation properly and in sufficient time about the exact time of their expulsion. It should also approach foreigners with full respect for their human dignity and refrain from anything which can cause the feelings of fear, anxiety or inferiority, without it being necessary to achieve a legitimate purpose.

113. The Constitutional Court, however, has not established a need to pronounce a violation of Article 13 of the Convention, namely the right to an effective remedy, because the case-law of the ECtHR implies that in the case of finding a procedural violation of Article 3 of the Convention it is not possible due to the failure to carry out an effective investigation to pronounce a violation of Article 13 of the Convention (see e.g. the judgment of the ECtHR in the case of Adnaralov versus the Ukraine of 27 November 2014, No. 10493/12, Section 36). A separate violation of Article 13 of the Convention could only be taken into account for some other reasons, such as if the victim of ill-treatment could not obtain compensation for harm even in civil proceedings (see the judgment of the ECtHR in the case Lenev versus Bulgaria of 4 December 2012, No. 41452/07, Sections 128 to 132). However, this did not happen in the case under consideration as the civil courts are not bound by the resolution not to proceed with the matter in accordance with Section 159a (1) of the Criminal Procedure Code and the complainant does not even assert that he could seek compensation for harm in civil proceedings.

Appeal: No appeal is permissible against the judgment of the Constitutional Court.

In Brno on 27 October 2015