



Office of the Chancellor of Justice

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The role of private military and security companies in immigration and border management

Dear Mr Chris Kwaja

Since January 1, 2019 the Chancellor of Justice of Estonia performs the functions of protection and promotion of human rights on the basis of the UN General Assembly Resolution No 48/134 of 20 December 1993 “National institutions for the promotion and protection of human rights”.

On behalf of the Chancellor of Justice of Estonia, we would like to give the following comments concerning the role of private bodies in immigration and border management.

Management of the detention centre for foreigners

The Police and Border Guard Board (PBGB) currently administers the detention centre for migrants in Estonia.

However, according to the law it is possible to delegate the performance of the functions of the detention centre to a private body on the basis of an administrative contract (Article 26²⁰ of the [Obligation to Leave and Prohibition on Entry Act](#) (OLPEA)). The functions of the head of the detention centre may not be transferred; these duties have to be fulfilled by an official. The employees of the private body have to follow the lawful commands given by the head of the detention centre (Article 26²⁰ (1) and (6) of the OLPEA).

The law sets forth a few requirements for the personnel used by the private body: the person has to be an adult Estonian citizen with active legal capacity, have a command of Estonian language (at least level B2), cannot be serving a sentence for a criminal offence nor have any effective penalties in the criminal records database (Article 26²⁰(3) of the OLPEA). There are no educational requirements for the personnel of the private body in this Act.

If the functions would be delegated to the private body, they would assume the same rights, obligations and liability provided for in the OLPEA (Article 26²⁰(4)). This means that a person who has assumed the obligations and the employees thereof shall be held liable by way of civil, criminal or administrative procedure on the same basis as an official of the PBGB (Article 26²⁰(5)).

The services of a private security company were used in the detention centre for foreigners until September 2010 (at that time the centre was named the expulsion centre). Since 01.10.2010 the PBGB is fully responsible for managing the detention centre for foreigners. Nevertheless, the respective provision that enables the delegation of the duties to a private body has not been invalidated.

Monitoring of forced returns

In Estonia, the monitoring of forced returns is carried out by a NGO. [Estonian Red Cross](#) has been responsible for this task, but currently a new contract for the new project period is under conclusion.

According to the law the purpose of monitoring the expulsion of an alien is to observe the compliance of the exercise of expulsion of an alien with the procedural requirements and provide opinions and recommendations on the exercise of the expulsion to the Ministry of the Interior (Article 6⁴(1) of the OLPEA). The Ministry of the Interior, the PBGB or the Estonian Internal Security Service shall conclude an agreement with an agency or a legal person governed by private law (Article 6⁴(2) of the OLPEA). In practice, the Ministry of the Interior concludes this contract.

An agency or a legal person governed by private law that is exercising the monitoring of expulsion of an alien has to be reliable and have the knowledge and skills required for assessment of the legality of the removal arrangements of an alien (Article 6⁴(3) of the OLPEA).

Voluntary returns

If the migrant can leave the country voluntarily, they can ask for assistance from [IOM Estonia](#). The legal ground for their involvement is Article 6⁵ of the OLPEA.

Please find the text of the respective provisions in the annex. We hope you find this information useful. You can publish our response on the website of the working group if you consider it necessary.

Sincerely Yours,

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On behalf of the Chancellor of Justice

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Obligation to Leave and Prohibition on Entry Act:

Article 6⁴. Monitoring the expulsion of an alien

- (1) The purpose of monitoring the expulsion of an alien is to observe the compliance of the exercise of expulsion of an alien with the procedural requirements and provide opinions and recommendations on the exercise of the expulsion to the Ministry of the Interior.
- (2) For the purposes set out in subsection 1 of this section the Ministry of the Interior, the Police and Border Guard Board or the Estonian Internal Security Service shall conclude an agreement with an agency or a legal person governed by private law.
- (3) An agency or a legal person governed by private law that is exercising the monitoring of expulsion of an alien shall be reliable and have the knowledge and skills required for assessment of the legality of the removal arrangements of an alien.
- (4) The agreement specified in subsection 2 of this section shall grant an agency or a person performing monitoring of expulsion operations the right to process the personal data and other relevant data of an alien for the purpose of assessment and to the extent required.

Article 6⁵. Involvement of legal persons governed by private law

- (1) The Ministry of the Interior, the Police and Border Guard Board or the Estonian Internal Security Service may involve a legal person governed by private law to assist in the compliance with the obligation to leave from Estonia of an alien.
- (2) In order to involve a legal person governed by private law the Ministry of the Interior or the Police and Border Guard Board shall enter into a civil law contract with the legal person governed by private law, specifying the functions, rights, obligations and responsibility of the legal person.
- (3) The contract referred to in subsection 2 of this section shall grant the legal person governed by private law the right to process the personal information and other relevant information concerning an alien for the purpose and to the extent specified in the contract.

Article 26²⁰. Performance of the functions of the detention centre

- (1) The Police and Border Guard Board may transfer the performance of functions of the detention centre and of officials of the detention centre on the basis of an administrative contract. The functions of the head of the detention centre or an official appointed by him or her may not be transferred.
- (2) A person who has assumed the obligation to perform the functions of the detention centre on the basis of an administrative contract is required to ensure detention of the persons to be expelled, compliance with the internal rules and security in the detention centre in compliance with the requirements.
- (3) Adult Estonian citizens with active legal capacity whose level of Estonian language proficiency is at least at level B2 (intermediate) or an equal level may be used upon performance of functions specified in subsection (2) of this section, which are transferred on the basis of an administrative contract. Persons who are serving a sentence for a criminal offence or data concerning those whose penalty has not been expunged from the criminal records database shall not be used.
- (4) Functions transferred on the basis of an administrative contract shall bring about the rights, obligations and liability provided for in this Act.
- (5) Upon performance of functions transferred on the basis of an administrative contract, a person who has assumed the obligations and the employees thereof shall be held liable by way of civil, criminal or administrative procedure on the same basis as an official of the Police and Border guard Board.

(6) The employees of a person who has assumed the obligation to perform the functions transferred on the basis of an administrative contract are required to follow the lawful commands given by the head of the detention centre.

(7) The Director General of the Police and Border Guard Board or a person authorised by him shall exercise supervision over performance of the functions transferred on the basis of an administrative contract.