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Report

**to the German Government
on the visit to Germany
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 13 to 15 August 2018

The German Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2019) 15.

Strasbourg, 9 May 2019

CONTENTS

EXECUTIVE SUMMARY	3
I. INTRODUCTION	4
A. The visit, the report and follow-up	4
B. Consultations held by the delegation and cooperation encountered	4
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	5
A. The removal operation: preparation, execution and handover	5
1. Preliminary remarks	5
2. Safeguards in the context of preparation for removal	7
a. protection against <i>refoulement</i>	8
b. timely notification of the removal	9
c. access to a lawyer	11
d. medical “fit-to-travel” examination.....	12
e. the right to inform a third person of the removal.....	14
3. Transport to Munich Airport.....	15
4. Execution of the removal and handover.....	16
5. Use of force and means of restraint.....	19
6. Complaints and monitoring procedures	22
B. Eichstätt Prison (Centre for detention pending deportation)	25
1. Preliminary remarks	25
2. Conditions of detention	27
3. Returnees held in security cells.....	28
4. Health-care services	29
5. Contact with the outside world and information on rights.....	30

EXECUTIVE SUMMARY

This report examines the treatment of foreign nationals before and during a national return flight from Munich to Kabul (Afghanistan) on 14 August 2018, coordinated by Frontex. This was the fifth removal operation by air monitored by the Committee. The CPT received excellent cooperation during the visit from the German authorities and its delegation was able to observe all stages of the operation, including the preparation at Eichstätt Prison (Centre for detention pending deportation) and at the airport, the in-flight phase, and the physical handover of the 46 returnees to the Afghan authorities.

During the removal operation, the CPT received no allegations of deliberate ill-treatment of returnees by escorting police officers; on the contrary, the operation was well prepared and carried out professionally. However, the CPT is critical about the apparent ill-treatment of one returnee that occurred on board the aircraft. It recommends that techniques which impede a person's capacity to breathe and/or inflict severe pain to gain compliance (i.e. squeezing a person's genitals) must not be applied by Federal Police escorts. Further, all police escorts should wear a visible identification tag during such operations and, in principle, undergo a debriefing session following the operation. The overall number of specifically trained escorts should also be increased.

The CPT emphasises that, in order to reduce the risk of a violation of the principle of non-*refoulement*, no person should be removed from Germany while legal proceedings that have suspensive effect are still pending before a court. To this end, it recommends that a "last call procedure" before handover of returnees to the authorities of the destination country be effectively implemented in practice. Relevant safeguards, including returnees' access to a lawyer from the outset of deprivation of liberty must be applied in practice. In this regard, the CPT has certain misgivings about the policy of the German authorities late or even last-minute notification of an imminent removal. The CPT also recommends that persons at risk of self-harm and/or suicide or with mental health problems undergo a comprehensive medical assessment before a conclusion is drawn on whether or not they are "fit to travel". Further, interpretation services should be made available throughout the removal operation, if required.

The existing complaints mechanism should be made accessible and effective in practice, including by providing adequate information to returnees on how to make a complaint, both orally and in writing, in a language they understand.

The report also looks into several issues related to the situation of returnees held in immigration detention in Eichstätt Prison (Centre for detention pending deportation). In particular, the Bavarian authorities should adapt (former) prison establishments to the specific needs of immigration detainees, both in terms of the material conditions and the regime, including an open-door regime and access to activities throughout the day. The CPT also reiterates that detention pending deportation should be governed by specific rules reflecting the particular status of immigration detainees.

As regards immigration detainees placed in a security cell, the CPT once again calls on the competent authorities to abolish the prohibition of outdoor exercise as a special security measure and recommends that these detainees be offered at least one hour of outdoor exercise per day. They should also be allowed to make phone calls and receive visits. Further, the privacy of detainees under video surveillance in these security cells should be guaranteed, e.g. by pixelating the image of the toilet area on the CCTV monitoring screens. In addition, more effective self-harm and suicide prevention measures for vulnerable detainees should be put in place, by increasing the availability of psycho-social support and enhancing contact with the outside world. Recommendations are also made *inter alia* on medical confidentiality and the independence of health-care staff, as well as on medical screening on admission.

I. INTRODUCTION

A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Germany from 13 to 15 August 2018.

The main purpose of the visit was to examine the treatment of foreign nationals during a removal operation by air. To this end, the CPT’s delegation monitored a charter flight from Munich to Kabul (Afghanistan) scheduled for departure in the late hours of 14 August 2018. This national return operation was implemented by the German Federal Police and coordinated and co-financed by the European Border and Coast Guard Agency (Frontex). The delegation also observed preparations for the return flight, notably at Eichstätt Prison (Centre for detention pending deportation),¹ including the transfer of returnees to the airport by the Bavarian State Police and the hand-over to the Federal Police authorities in charge of the boarding procedures.

The visit was also an occasion to look into several issues related to the situation of returnees held in immigration detention in Eichstätt Prison (Centre for detention pending deportation).

2. The visit was carried out by the following members of the CPT: Jari Pirjola (Head of the delegation), Djordje Alempijević, and Ivona Todorovska. They were supported by Sebastian Rietz of the CPT’s Secretariat, and assisted by Angela Drösser, Silvia Schreiber, and Javed Stanekzai (interpreters).

3. The report on the visit was adopted by the CPT at its 97th meeting, held from 5 to 9 November 2018, and transmitted to the German authorities on 3 December 2018. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the German authorities to provide within three months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

B. Consultations held by the delegation and cooperation encountered

4. On the eve of the flight, the delegation met representatives of the Federal Police and officials from the authorities in Bavaria, including representatives of the Bavarian State Ministry of the Interior and for Integration and the Bavarian State Police. It also held consultations with the National Agency for the Prevention of Torture (National Preventive Mechanism).

The cooperation received from the German authorities and, in particular, from the Federal Police and the Bavarian State Police was excellent. The delegation had access to all places of deprivation of liberty it wished to visit, including Eichstätt Prison (Centre for detention pending deportation), transport vehicles and the aircraft hired for the removal operation. Full access was given to all information necessary for the delegation to carry out its task, including confidential operational and medical information, and the delegation was able to interview returnees in private.

¹ *Justizvollzugsanstalt Eichstätt (Zentrum für Abschiebehaft).*

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. The removal operation: preparation, execution and handover

1. Preliminary remarks

5. Since 2012, the CPT has monitored several removal operations by air. In particular, the Committee examined, in October 2012, a national return flight from the United Kingdom (London) to Sri Lanka (Colombo) and it observed three joint return operations, coordinated and co-financed by Frontex, namely in October 2013 from the Netherlands (Rotterdam) to Nigeria (Lagos), in December 2015 from Italy (Rome) to Nigeria (Lagos), and in February 2016 from Spain (Madrid) to Colombia (Bogota) and the Dominican Republic (Santo Domingo).² The national return operation from Germany to Afghanistan on 14 August 2018 was the fifth removal operation by air that the CPT has monitored.

In its 7th General Report on the CPT's activities, the CPT set out some essential standards concerning the use of force and means of restraint in the context of removal operations.³ In 2003, in its 13th General Report, the Committee put forward more detailed guidelines concerning removal operations by air.⁴ Most of these guidelines were subsequently reflected in the "Twenty Guidelines on Forced Return" adopted by the Committee of Ministers of the Council of Europe in May 2005.

6. The removal of foreign nationals is a frequent and widespread practice throughout Europe. According to data provided by the German authorities by letter of 11 October 2018, a total of 14,465 persons were forcibly returned by them during the first eight months of 2018 – the vast majority by regular commercial flights.⁵ These numbers are comparable with those for 2017, when a total of 21,904 returnees were sent back to their countries. Further, between January and August 2018, the country carried out a total of 138 return operations (including 84 national return operations, 39 joint return operations, and 15 collecting return operations).⁶

According to data from the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge* – BAMF), between January 2016 and July 2018, the German authorities rejected more than 86,500 applications for international protection from Afghan nationals.⁷ By contrast, only 338 persons were returned to Afghanistan during the same period. In order to address this discrepancy, the German government in July 2018 announced a list of measures to increase the number of forced returns of foreign nationals who are required to leave the federal territory.⁸

² See [CPT/Inf \(2013\) 14](#), [CPT/Inf \(2015\) 14](#), [CPT/Inf \(2016\) 33](#), and [CPT/Inf \(2016\) 35](#).

³ See [CPT/Inf \(97\) 10](#), paragraphs 24 to 36.

⁴ See [CPT/Inf \(2003\) 35](#), paragraphs 27 to 45.

⁵ It is noteworthy, that – during the same period – an additional 2,172 removal attempts failed after the person concerned had been transferred to the Federal Police.

⁶ In 2017, Germany carried out a total of 189 return operations (including 90 national return operations, 84 national return operations, and 15 collecting return operations).

⁷ While the overall protection rate for Afghan nationals decreased from 55.8% in 2016 to 35.6% in the first seven months of 2018, the rejection rate increased to 49.1% in 2017.

⁸ These measures also aim at increasing the use of detention pending deportation. See Federal Ministry of the Interior, Building and Community, [Masterplan Migration](#), 4 July 2018, pp. 20-23.

7. This removal operation was the 15th return flight from Germany to Afghanistan since December 2016, when the German authorities resumed returning Afghan nationals to Afghanistan based on the bilateral readmission agreement of 2 October 2016.⁹ Between December 2016 and July 2018, Germany forcibly returned 303 Afghan nationals to Afghanistan, on the basis of this agreement.

In a more general perspective, **it would be desirable that, when negotiating readmission agreements and/or implementation protocols, an explicit reference be made to the possibility for independent monitoring bodies to observe the handover procedure to the authorities in the country of destination. Moreover, specific monitoring arrangements should be made, as appropriate, as regards readmission agreements already in force.**

8. The legal framework concerning the removal of irregular migrants from Germany is regulated by the relevant provisions of the federal Aliens Act.¹⁰ Germany is also bound by the 2008 European Union Return Directive.¹¹ The immigration authorities (*Ausländerbehörden*) are responsible for issuing a removal order if a foreign national is required to leave the federal territory and if this requirement can be enforced (*vollziehbar ausreisepflichtig*).¹² The police services of the *Länder* are – together with the immigration authorities – responsible for enforcing the obligation to leave the federal territory and for implementing the removal order.¹³ The Federal Police is responsible for carrying out the removal of foreign nationals by way of return flights.¹⁴

Moreover, all Federal Police officers participating in removal operations by air are subject to an internal instruction concerning the provisions on the return of foreign nationals by air.¹⁵ According to this instruction, the Common Guidelines on security provisions for joint removals by air annexed to the Council Decision on joint removal flights¹⁶ equally apply to national return operations by air. Police escorts assigned for duty during a removal operation coordinated by Frontex are also subject to the Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex, and to the Code of Conduct applicable for all persons participating in Frontex activities. Further, as set out in the Frontex Implementation Plan, the common standardised procedures compiled in the Frontex Guide for joint return operations by air coordinated by Frontex should be considered during the present return flight to Afghanistan.¹⁷

⁹ Joint declaration of intent on cooperation in the field of migration between the Government of the Federal Republic of Germany and the Government of the Islamic Republic of Afghanistan.

¹⁰ See Sections 57 *et seq.* of the Act on the Residence, Gainful Activities and Integration of Foreigners in the Federal Territory – *Aufenthaltsgesetz* (hereafter: Aliens Act), last amended in October 2017.

¹¹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹² See Sections 50, 58 (2), and 71 (1) of the Aliens Act. Usually, a period for voluntary departure is granted.

¹³ See Section 71 (5) of the Aliens Act.

¹⁴ See Section 1 (2) of the Federal Police Act taken together with Section 71 (3) 1d of the Aliens Act.

¹⁵ *Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg (Best Rück Luft)*, as of 17 October 2016, as well as the Explanatory Note of the Federal Ministry of the Interior, B 2 – 21005/22 of 8 November 2013.

¹⁶ Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removal from the territory of two or more member states of third-country nationals who are subjects of individual removal orders.

¹⁷ These three documents are available on [Frontex's website](#).

9. The CPT's delegation monitored the following parts of the removal operation: the preparation, pick-up and transport of six detainees from Eichstätt Prison (Centre for detention pending deportation) to Munich Airport; the arrival of returnees at the airport; the flight preparations at Munich Airport; the boarding of the aircraft to Kabul; the six-hour flight to Kabul; and the physical handover to the Afghan authorities at Kabul Airport.

10. A few days prior to the flight, a total of 104 male adult Afghan nationals had been earmarked for removal to Afghanistan. This number significantly reduced in the following days.

On the day of the flight, 47 persons were transferred to Munich Airport, of whom 46 were effectively removed to Afghanistan. The remaining person was declared "unfit-for-travel" by the two doctors who had carried out the medical examination at the airport. Out of the 46 returnees, 21 persons who all had a criminal record in Germany had been deprived of their liberty either in centres for detention pending deportation or in prison establishments in different *Länder*. Six were held at the facility in Eichstätt (see paragraphs 61-78). A valid removal order had been issued in respect to all 46 single men, between 18 and 40 years of age. Further, a total of 101 police escorts, a medical doctor and an interpreter were also present during the return flight.

11. In the CPT's experience, the forcible removal of foreign nationals entails a risk of inhuman and degrading treatment (during preparations for the removal, during the actual flight or when removal is aborted).

From the outset, the CPT wishes to make it clear that, during the removal operation, its delegation did not receive any allegations of deliberate ill-treatment of returnees, either by escorting police officers from the *Länder* police services or from the Federal Police. On the contrary, the operation was well prepared and carried out professionally. In particular, the delegation appreciated the efforts made by most Federal Police escorts to engage with the returnees throughout the operation.

However, the CPT has reservations about the way force was used during one incident which occurred during the flight and that which be commented upon later in the report (see paragraphs 54-55).

2. Safeguards in the context of preparation for removal

12. Proper preparation of foreign nationals for their impending removal is crucial and contributes to reducing the risk of ill-treatment and possible violations of the principle of *non-refoulement*. The CPT has therefore placed particular emphasis on the respect in practice of the following safeguards:

- timely notification of the removal;
- immediate access to a lawyer;
- access to a medical doctor, particularly in the context of a "fit-to-travel" examination; and,
- the right to inform a third person of the upcoming removal.

The Committee has also consistently held that these rights should be enjoyed by all categories of foreign nationals to be removed, from the very outset of their notification, i.e. at least 24 hours prior to the flight. It is equally fundamental that these persons be informed without delay of their rights, including those mentioned above, in a language they understand.

a. protection against *refoulement*

13. During the 14th return operation to Afghanistan of 3 July 2018, 69 Afghan nationals were returned by the German authorities to their home country, which presented a significant increase compared to previous return flights to Afghanistan.¹⁸ This was due to the fact that the restrictions that had previously been applied to male adult returnees¹⁹ had been lifted in June 2018 as a consequence of a new assessment by the federal authorities of the security situation in Afghanistan. The assessment was based on a revised report on the situation in Afghanistan as regards asylum- and removal-related matters, issued by the Federal Ministry of Foreign Affairs on 31 May 2018,²⁰ and applied at the time of the 15th return operation monitored by the CPT's delegation.

However, on 30 August 2018, the United High Commissioner for Refugees (UNHCR) published eligibility guidelines for assessing the international protection needs of asylum seekers from Afghanistan.²¹ In particular, UNHCR considers that, given the current security, human rights and humanitarian situation, the possibility for persecuted groups of persons to move to another safe region within Afghanistan (i.e. an internal flight alternative) is generally not available in Kabul.²²

By letter of 11 October 2018, the German authorities indicated that, while the above-mentioned UNHCR eligibility guidelines are being taken into account by the Federal Office for Migration and Refugees in the context of the asylum procedure, there was no need to change the current assessment.

14. It is of particular concern for the CPT that, according to information provided by the Federal Ministry of the Interior, Building and Community, between 2017 and 2018, seven persons had been unlawfully returned to their country of origin by the competent *Länder* authorities despite the fact that their removal orders should not have been enforced.²³

¹⁸ 51 out of the 69 returnees came from Bavaria.

¹⁹ In June 2017, the interior ministers of the *Länder* decided to resume return operations of male adults to Afghanistan, which had been halted in May 2017 following a deadly suicide attack in front of the German Embassy in Kabul. Returns were however restricted to the following three groups: criminal offenders, persons posing a threat to public order or national security (so-called „*Gefährder*“), and persons persistently refusing to participate in the identification process. That said, it remains the case that families, women and children, as well as other vulnerable groups of persons are not deported to Afghanistan.

²⁰ *Bericht über die asyl- und abschiebungsrelevante Lage in der Islamischen Republik Afghanistan*. According to the classified report, the overall situation in Afghanistan remains characterised by a “volatile security situation”. While the report confirmed the existence of the possibility for persecuted groups of persons to move to another safe region within Afghanistan (i.e. an internal flight alternative), it also pointed out that this option would significantly depend on the situation in the region and on the quality of their social bonds, their ethnicity and their financial situation.

²¹ According to UNHCR, people fleeing Afghanistan may be at risk of persecution or other forms of serious harm for reasons that are related to the on-going armed conflict, on the basis of serious human rights violations not directly related to the conflict, or both, at the hand of state actors or non-state actors.

²² As a consequence, the Finnish authorities decided to suspend all return flights to Afghanistan.

²³ This concerned two persons in 2017 and five persons in 2018. These returns were carried out to Afghanistan, China, Kosovo (all reference to Kosovo, whether to the territory, institutions or population, in this text shall be

One of these seven persons had been returned to Afghanistan during the previous removal operation of 3 July 2018, although an appeal in his asylum case had still been pending before a court. For this reason, the Bavarian authorities indicated that, in the context of the present return operation, they had again examined the cases of all returnees from Bavaria prior to their removal to reduce the risk of a violation of the principle of non-refoulement.

It goes without saying that, in order to avoid the execution of a removal potentially having an irreversible effect in breach of Article 3 of the European Convention on Human Rights, an asylum seeker should under no circumstances be removed when legal proceedings with suspensive effect are still pending before a court at the time of departure. By letter of 11 October 2018, the German authorities confirmed that none of the 46 returnees removed to Afghanistan during the removal operation on 14 August 2018 had legal proceedings with suspensive effect under scrutiny of a court at the time of departure, which might have presented a legal obstacle to their removal.

The CPT trusts that all *Länder* authorities ensure that no person is removed from Germany while legal proceedings that have suspensive effect are still pending before a court.

15. In the CPT's view, immediately before the handover, a last contact between the escort leader of the Federal Police on board the plane and the headquarters in Germany is essential in order to verify whether an interim order has been issued by a court during the flight ("last call procedure"). However, during the debriefing that took place after the handover of the 46 returnees to the Afghan authorities, it was confirmed to the delegation that no such contact had been established with the headquarters in Germany as regards the state of their legal proceedings. By letter of 11 October 2018, the German authorities informed the CPT that such a procedure was in place, which allowed all relevant actors, including the escort leader, to be at all times fully informed of the state of legal proceedings of returnees.

The CPT recommends that the competent federal and *Länder* authorities ensure that a "last call procedure" be effectively implemented in practice during all future removal operations by air to guarantee that all relevant actors, notably the escort leader, is at all times fully informed of the state of legal proceedings of the persons to be removed, up to the moment of handover.

b. timely notification of the removal

16. In the CPT's experience, preparing the person concerned well in advance of the scheduled removal (and, in particular, the time of departure) can decrease the risk of the person violently resisting the removal (see paragraphs 52-55). Such an approach will reduce the need to have recourse to force and/or means of restraint and reduce the risk of ill-treatment. A timely notification of the removal gives the foreign nationals concerned time to prepare for departure and organise their return, and particularly to inform the persons they need to let know and to retrieve their personal belongings.

understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo), Morocco, Nigeria, Tunisia and Zimbabwe. Three of the seven persons have been subsequently brought back to Germany. See: *Bundestag*, Response by State Secretary Dr Helmut Teichmann of 14 August 2018 to a parliamentary question by MP Margarete Bause (BÜNDNIS 90/DIE GRÜNEN), [Drucksache 19/3847](#), 17 August 2018, p. 6.

17. The relevant legislation provides that a written notice of the intention to remove a foreign national shall be served, specifying a reasonable period of between seven and 30 days for voluntary departure (“deportation warning”) and including information on the right to appeal that decision.²⁴ When this period has expired, the person shall not be informed of the date of the removal.²⁵ This means, in practice, that the person concerned is only notified of the requirement to leave the federal territory upon the issuing of the expulsion order; when the deadline for departure has expired, the expulsion order can be enforced without any further notification of the date of the removal, which may – in extreme cases – be carried out only after several months or even years have elapsed. On the other hand, an impending removal shall be announced at least one week beforehand if the foreign national is held in detention pending deportation.²⁶

All 46 returnees had received a deportation warning at the time their expulsion order was issued.

18. Most returnees (25 of the 46) were not deprived of their liberty until the time of their apprehension. They only learned that they would be removed on the day of the removal itself when they were individually apprehended by the competent *Länder* police authorities at their places of residence. Usually, the pick-up occurred in the early morning and was carried out by one or more police patrols consisting of two police officers.²⁷ That said, some returnees told the delegation that they were not given sufficient time to prepare for their removal while others were picked up during the night. For instance, several persons complained that they could not collect all their personal belongings and documents; another person could not inform his employer about his situation.

The six returnees detained at the facility in Eichstätt were – contrary to the above-mentioned legal requirements – only informed about their imminent removal when they were picked up in their cells prior to their transfer to the airport. According to the psychologist, whose role it was to advise the management on when or even whether the returnee should be notified, the time of notification varied. The person concerned was normally notified on the same day but, in some cases, not at all as the security risk was deemed too high.

One of the two persons held in the security cells (see paragraphs 69-70) complained that he had not been able to collect his personal belongings when he had been apprehended by the police at his residence. The management of the facility explained that normally they would get in touch with the social service of the person’s previous place of residence to arrange for his personal belongings to be transferred to the establishment but, in this case, no action had been taken by the management and the detainee had not been given the opportunity to make his complaint at an early stage (see paragraph 35). Similarly, some returnees who had been held in immigration detention in other *Länder* complained that they had not been able to access their bank account to collect their savings and had not been informed on how they could subsequently access these funds.

The CPT recommends that the competent *Länder* authorities take steps to ensure that, as much as possible, all foreign nationals to be removed are given the possibility and sufficient time to collect their personal belongings, including documents and money, upon apprehension by the police and to make the necessary arrangements to prepare for their return prior to their removal.

²⁴ That said, the set period for departure may be reduced or waived altogether if the person concerned is likely to evade removal or poses a serious risk for public safety or order.

²⁵ See Section 59 (1) of the Aliens Act. See also Section 58a (1) of the Aliens Act.

²⁶ See Section 59 (5) of the Aliens Act.

²⁷ When the police authorities expected that the returnee would resist or react violently, up to six police officers were involved in the pick-up.

19. Consequently, all returnees interviewed by the delegation had only been officially informed by the competent authorities of their imminent removal on the day of their scheduled removal, at the moment of their pick-up by the police. The German approach of not preparing persons prior to their impending removal appears to be mainly grounded on practical and security-related concerns (i.e. to avoid the returnee evading removal); there is however no reason to apply such an approach for returnees who are already deprived of their liberty in an immigration detention centre.

In the CPT's view, it is essential that immigration detainees be informed sufficiently far in advance of their prospective removal, so that they can also begin to come to terms with the situation psychologically. This might be achieved by providing psycho-social support services to returnees.

The CPT recommends that the competent *Länder* authorities take the necessary measures to ensure that all returnees who are held in detention pending deportation are in practice officially informed in writing, in a language they understand, at least one week in advance of their scheduled removal, as required by law. All returnees should systematically be prepared for their removal, including through the provision of psycho-social support.

c. access to a lawyer

20. As indicated above, in Germany, it may take a considerable amount of time before an expulsion order is executed. Indeed, one of the 46 returnees interviewed had been issued with an expulsion order some five years earlier; the order could have been enforced as of September 2013. With such a lengthy time span, the situation of the person may have undergone significant changes since the date when the expulsion order was issued, and might give rise to a potentially successful request for judicial review or retrial.²⁸ Further, it should be noted that a request for interim measures²⁹ is a complex legal procedure that requires the services of a lawyer.

21. The four returnees held among the general population at the facility in Eichstätt had been in a position to contact a lawyer, including after they had been notified of their removal on the day of the return flight, although none of them made use of this right in practice.³⁰ On the other hand, one of the two detainees who had been placed in a security cell complained that he was not granted this possibility during his entire period of detention until his pick-up, due to the fact that he was prohibited from making phone calls. **Reference is made to the CPT's recommendation contained in paragraph 77.**

22. Clearly, the practice of late or even last-minute notification of an imminent removal risks rendering access to a lawyer challenging. Therefore, it is essential that this access be granted without delay. In the CPT's opinion, access to a lawyer should not only be granted by law but also actively facilitated in practice.

The CPT recommends that the authorities of Bavaria, as well as of all other *Länder*, take the necessary measures to ensure that all foreign nationals to be removed have in practice access to a lawyer from the outset of their deprivation of liberty.

²⁸ See Part III of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung* – VWGO).

²⁹ See Section 123 of the VWGO.

³⁰ It is also noteworthy that civil society organisations visited the establishment once a week to provide basic legal advice.

d. medical “fit-to-travel” examination

23. In the light of certain incidents that have occurred during removal operations by air,³¹ the CPT has advocated, since 2003, the importance of ensuring that returnees undergo a medical examination before a removal operation by air; and that a “fit-to-travel” certificate be issued. This requirement was reiterated in the “Twenty Guidelines on Forced Return”.

According to the applicable legislation, the competent authorities assume that – as a general rule – the removal of foreign nationals is not precluded on health grounds. However, the person can rebut this assumption and substantiate an illness which might impede the removal by submitting a qualified medical certificate. Further, if there is factual evidence for the existence of a “life-threatening or serious illness” which would be significantly worsened by the removal operation, the authorities shall temporarily suspend the removal.³²

According to the relevant internal instruction of the Federal Police, the competent *Länder* authorities are expected to carry out a medical examination prior to removal and indicate whether there are indications of health problems or risks that might have an impact on the removal operation; this might include, for example, acute injuries, contagious diseases or suicide risks. Further, it is required that returnees with a mental disorder or who have attempted to commit suicide be accompanied by a medical doctor.

24. The delegation noted that a “fit-to-travel” certificate (*Bescheinigung über Flugreisetauglichkeit*) had been established for all returnees who had been deprived of their liberty prior to pick-up by the police, which was included in the documentation that accompanied each returnee. They had all been examined by a medical doctor, usually several days prior to the removal operation, in the respective establishments in which they had been detained. Relevant medical information had been communicated in advance to the accompanying doctor. For example, the six detainees held at the facility in Eichstätt had been examined by the doctor and they were all deemed “fit to travel”.

25. Given that, in Germany, a large number of returnees are not deprived of their liberty prior to their removal in the context of return operations by charter flight, the Federal Police authorities ensure the presence of at least one medical doctor who carries out a “fit-to-travel” examination at the airport of departure prior to removal. This practice is to be welcomed and allows the authorities to establish whether or not a returnee is indeed “fit to travel” at the time of departure. The standardised Frontex “fit-to-travel” certificates are generally used in this context.³³

26. At Munich Airport, the “fit-to-travel” examination was carried out by two doctors – with the assistance of an interpreter – in two areas within the departure hall, which were visually separated from the view of other persons by temporary partition panels. Both doctors were recognisable by their pink safety vests and had previous experience in providing medical services in the context of removal operations by air. They were contracted by the Federal Office for Migration and Refugees. One of the two doctors was also present on board the flight (see paragraph 47).

³¹ Between 1991 and 2018, eighteen returnees have died in the course of return operations from various European countries.

³² See Section 60a (2), (2c) and (2d) of the Aliens Act, as well as the relevant internal instruction of the Federal Police.

³³ See Annex 1 to the Frontex Guide for Joint Return Operations by Air coordinated by Frontex.

However, the two areas being used for medical examinations were inadequately equipped: they contained no examination bed or wash basin and only had a chair and a high desk. These conditions were not conducive to establishing a proper patient-doctor relationship. **The CPT recommends that the German authorities ensure that areas designated for carrying out medical examinations of returnees in airports prior to their removal be suitably equipped, including with at least one examination bed and a wash basin.**

27. The CPT would like to emphasise that, for the purpose of prevention of ill-treatment, all medical examinations should be conducted out of the hearing and out of the sight of police staff – unless the doctor concerned expressly requests otherwise in a given case. The delegation noted that all returnees were systematically accompanied by their respective police escorts for the flight (up to three) who were present throughout the medical examination, although the large majority of them did not present any risk. **The CPT recommends that the German authorities find alternative solutions to reconcile legitimate security requirements with the principle of medical confidentiality.**

28. In the course of this removal operation, one person who was to be removed was not admitted to the return flight by the Federal Police, as he was not deemed “fit to travel” by the two doctors who had carried out the medical examination. According to one of the doctors, he was in great distress and at acute risk of suicide. This person was subsequently taken back by the competent *Länder* police authorities to the psychiatric hospital from which he had been picked up.

By contrast, three other returnees were admitted to the return flight, although all three had attempted or threatened to commit suicide in the days prior to or on the day of the removal operation. Two of them had been detained at Eichstätt Prison (Centre for detention pending deportation); both were considered to be at risk of self-harm and/or suicide by the psychologist and had been placed in security cells at the facility and constantly monitored (see paragraphs 69-70).³⁴ A third returnee, according to his medical file, had attempted to self-harm and commit suicide on the day of the return operation, by cutting the underside of the left forearm and by swallowing medication. He was treated at a local hospital. During the transfer to the airport, he reportedly attempted to self-harm again, including by re-opening his wounds. When interviewed by the medical doctor of the delegation, it became apparent that this returnee also had a mental health problem.

Both the doctors at the respective detention places and those present at the airport considered that these three returnees were “fit to travel” as long as a medical doctor was present on board, in line with the relevant internal instruction of the Federal Police. However, the initial “fit-to-travel” certificate of the third returnee, on which the two doctors present at the airport mainly based their assessment, had been established prior to the self-harm and suicide attempt on the day of the return operation. The CPT must express its doubts about whether the medical “fit-to-travel” assessment of this person adequately took into account these incidents.

³⁴ The first detainee attempted to commit suicide by swallowing medication and repeatedly banging his head against the wall. The second detainee had threatened that he would commit suicide at a court hearing.

In addition, the observations of the delegation point to an apparent dual loyalty of the accompanying doctor who established the “fit-to-travel” certificate for this person whereby his primary interest appeared to lie with the Federal Police authorities.³⁵ This in itself raises a question of medical ethics with an evident impact on the quality of the medical assessment. Moreover, given the almost total absence of adequate psycho-social support for preparing returnees for their removal and in the light of the suicide committed by one returnee shortly after his removal to Afghanistan in the context of the previous return operation of 3 July 2018, the current approach towards removing vulnerable persons should be reviewed.

The CPT recommends that the German authorities ensure that persons at risk of self-harm and/or suicide or with mental health problems undergo a comprehensive medical assessment, including by an independent mental health professional, if appropriate, before a conclusion is drawn on whether these persons be deemed as “fit to travel”.

29. Another returnee, who had been brought in from the Centre for detention pending deportation in Büren, had sustained a compressed fracture of a lumbar vertebra as a result of a fall from a significant height, when he attempted to jump out of the window to escape police at the time of his apprehension, some ten days prior to the removal operation. He subsequently underwent spinal surgery during which the fractured vertebra was internally fixated and was discharged from hospital three days prior to the removal operation; his medical record mentioned that he would need a further medical consultation in order to remove the stitches and, later on, the internal fixation.³⁶

This person was equally deemed “fit to travel”, under the condition that a medical doctor was present on board the flight. During the flight, the escorts agreed to his request to lie down to alleviate his pain.

- e. the right to inform a third person of the removal

30. Informing relatives in advance of an upcoming removal is an additional safeguard against ill-treatment, and it enables family members and/or friends remaining in the country to say their goodbyes. Possible contact with family members or other persons in the country of destination may also reduce anxiety about the return, thus facilitating the removal, and possibly the reintegration, of the person concerned, in particular in a country marked by conflict such as Afghanistan.

The applicable legal provisions allow detained persons to inform a third person of the removal.³⁷

31. In respect of the six detainees held in detention pending deportation at the facility in Eichstätt, reference is made to the CPT’s remarks and recommendations made in paragraphs 76-77 as regards their possibilities to have contact with the outside world.

³⁵ It is noteworthy that he expressed the view that, in his experience, many returnees would commit acts of self-harm or even attempt to commit suicide solely in an attempt to frustrate removal.

³⁶ It was determined that the vertebra fracture did not involve a spinal cord and/or nerve lesion.

³⁷ See Section 62a (2) of the Aliens Act.

As concerns those returnees apprehended by the police in their places of residence, most had been provided with an opportunity to make a phone call to their relatives or friends upon pick-up or during their temporary stay in police custody. Further, returnees could benefit of the assistance of the social support service to make a phone call at the airport. The delegation was also informed by the Federal Police authorities that the procedure had been changed for return operations by charter flight to Afghanistan to allow returnees to access – upon request – their mobile phones to make and/or receive phone calls until the moment of boarding – a measure that reportedly had a calming effect. This is a welcome practice. **The CPT encourages the German authorities to extend this practice to all removal operations by air.**

32. That said, some returnees interviewed by the delegation at the airport complained that they had not been granted access to their mobile phones from the moment they had been picked up by the competent *Länder* police authorities, despite their request to do so. Further, some returnees were not aware that they could make a phone call using a phone provided by the social support service and/or access their mobile phones. **The CPT encourages the German authorities and the authorities of all *Länder* to actively facilitate the right of returnees to inform a third person of their removal.**

3. Transport to Munich Airport

33. Out of the 46 returnees, 25 persons came from various locations within Bavaria, while the other 21 persons were transferred to Munich Airport from ten other *Länder*.³⁸ Returnees who had not been deprived of their liberty prior to pick-up by the police were usually transferred to a police station, where some had to wait for several hours before their onward transport to the airport. Those foreign nationals who had been held in detention pending deportation or in prison were directly transferred from their respective detention places to the airport. Returnees were usually brought by police escorts from the competent *Länder* to Munich Airport in detainee transport vehicles, either individually or in small groups.

34. The pick-up procedure at the facility in Eichstätt, observed by the delegation, started at around 1 p.m. and lasted for about two hours. The four detainees held in the general population were individually picked up by three uniformed police officers of the Bavarian State Police, in the presence of the director. Each time, two officers entered the cell and informed the detainee that he would be returned to his home country on the same day. They were polite, constantly engaged in conversation, and also gave him time to collect his personal belongings and to say goodbye to fellow detainees. The two detainees who had been placed in the security cells were each picked up by five police officers, in the presence of the director and the psychologist. Both detainees were allowed to take a shower in the presence of two police officers. Means of restraint were not applied during the whole procedure. When the police officers entered the first cell to escort the detainee concerned, they were, in addition to handcuffs, equipped with a truncheon and pepper spray; however, this equipment was no longer being carried when the other five detainees were brought out of their cells. This dynamic security approach is to be welcomed.

³⁸ Baden-Württemberg (3 returnees), Berlin (1 returnee), Brandenburg (3 returnees), Hamburg (1 returnee), Hessen (2 returnees), North Rhine-Westphalia (5 returnees), Rhineland-Palatinate (2 returnees), Saarland (1 returnee), Saxony (2 returnees) and Schleswig-Holstein (1 returnee).

35. One of the two returnees held in a security cell requested to speak both to the psychologist and to the director. However, he was only able to address his complaints to the director when the delegation offered the services of its interpreter, as no interpretation service had been made available to him. **The CPT recommends that the Bavarian authorities, as well as the authorities of all other *Länder*, ensure that interpretation services are made available, if needed, both throughout the period of detention and when carrying out preparations for removal operations.**

36. Each of the six returnees was taken to the reception desk, where they were provided with the possibility to make a phone call. After being subjected to a full-body search, their personal clothes were handed back and their personal belongings (including money and mobile phones) were taken from storage, shown to the returnee and placed in a transparent plastic bag, for which they were invited to sign a receipt. Subsequently, they were taken to a waiting room, where they were provided with food and could use the toilet.

The six returnees were brought out, one by one, from the waiting room to the court yard, where they were seated in two transport vehicles, each accompanied by two plainclothes escort officers of the Bavarian State Police who were responsible for their transfer to the airport. The transport to Munich Airport, which took about an hour and a half, went smoothly and does not call for any further comments.³⁹

37. Upon their arrival at Munich Airport, all returnees were initially taken to a secured parking area, where they had to wait for up to several hours inside the transport vehicles. The security arrangements differed among the returnees; some were allowed to leave the vehicles for short periods and smoke a cigarette, while others had to remain in the vehicles and were even restrained (see paragraph 50 on the use of means of restraint). During the waiting time, returnees were granted access to the toilet, accompanied by their escorts. However, most detainees were not provided with food or water.⁴⁰ Having in mind that several returnees had been apprehended in the early morning but had not received any food and water since, **the CPT recommends that detained persons be provided with food and water.**

4. Execution of the removal and handover

38. At Munich Airport, the return operation carried out under the authority of the Federal Police started at around 4 p.m. with a briefing from the escort leader and the police officer responsible for coordinating the operation. They briefed the escorts about various operational and organisational matters, including the pre-embarkation phase, security, and means of restraint.

39. As of 4.30 p.m., the first returnees were transferred in their transport vehicles to the entrance at the arrival hall in Terminal F, a security gate for high-risk flights with restricted public access. In total, some 30 to 40 police officers from the Federal Police were deployed at strategic locations all over the terminal to provide security.

³⁹ One of the six detainees transferred from Eichstätt Prison (Centre for detention pending deportation) was not handed over to the Federal Police, as his removal had been halted.

⁴⁰ Only few returnees had been provided with a snack and water, at the initiative of either the previous detention places or the *Länder* police escorts.

Returnees were individually brought by escorting police officers from the *Länder* to a front desk where they were registered and admitted by the Federal Police. Luggage, personal belongings and documents were also handed over, and those who would not have any means upon their return were provided with pocket-money.⁴¹

At that point in time, with one exception (see paragraph 53), means of restraint were removed, if these had been applied during the transport to the airport, and Federal Police escorts were attributed to the returnees according to an individual risk assessment.

40. The risk assessment was carried out in two steps. Prior to the day of the return operation, Federal Police authorities gathered relevant information provided by the competent immigration and *Länder* police authorities on the security risk posed by the returnees.⁴² The level of risk either indicated “no security risk” or specified the risk (e.g. “(serious) criminal activity”). In a second step, the security risk was re-assessed during the hand-over and admission process at the airport, by way of a short interview with the assistance of an interpreter, also taking into account the returnee’s behaviour during pick-up and transportation by the *Länder* police authorities. Usually, for each returnee, two escorts were assigned; those who presented a high security risk or resisted their removal had an escort of three police officers, and a back-up team was also available.

41. All Federal Police escorts („*Personenbegleiter Luft*” – PBL) were required to attend an initial training course of three weeks, during which they were acquainted with the required knowledge and skills for performing removal operations by air. The training included modules ranging from the legal framework, medical aspects and intercultural competence to operational training and application of means of restraint. Once a year, escorts have to attend an eight-hour training course on means of restraints and, every second year, a three-day training unit on removal operations by air. Further, first aid and language skills are required.⁴³

That said, only 67 escorts (PBL) had volunteered for the present return flight. They were supplemented by 33 Federal Police officers from the units responsible for detention and securing evidence (“*Beweissicherungs- und Festnahmeeinheiten*” – BFE) and another Federal Police officer (“*Polizeivollzugsbeamter*” – PVB). It appears that none of the latter officers who participated in the removal operation have participated in the initial training required for Federal Police escorts. In the CPT’s view, all officers of the Federal Police who are called upon to carry out escort duties ought to be provided with appropriate training for removal operations.

The CPT recommends that the German authorities take action to increase the overall number of Federal Police escorts who have received prior training on carrying out removal operations by air.

⁴¹ While luggage was checked in separately, personal belongings (such as documents, money and mobile phones) were handed over to the escort officers assigned to the person. According to the Federal Police, an amount of 50 USD each was distributed to 19 returnees.

⁴² This included information such as criminal offences, prior acts of violence, unruly behaviour or resistance committed by the returnee, evidence about any threat or danger posed by him, past aborted return operations.

⁴³ Escort leader training and training courses provided by Frontex are required to become an escort leader.

42. All Federal Police plain-clothes escorts wore yellow safety vests labelled with the tag “police” both in front and on the back. They were equipped with gloves and Velcro straps. The delegation noted positively that all escort officers engaged professionally and respectfully with the returnees they had been assigned to during the entire removal operation; they engaged in continuous conversations with returnees and tried to reassure them during the waiting time. Whenever necessary, they intervened swiftly, initially attempting to de-escalate the situation. The CPT welcomes this emphasis placed on dynamic security.

43. Once admitted, returnees were then brought by their escorts to the medical “fit-to-travel” examination, which took place in the departure hall of Terminal F (see paragraphs 25-27). Following medical clearance, returnees were subjected to a search procedure based on an individual assessment. Those returnees who presented no security risk only had to go through the standard security check at the airport. On the other hand, those who presented a high security risk were subjected to a full-body search. That said, a full-body search was also carried out based on the request of the assigned escorts when this appeared necessary for the returnee’s and their own security. Roughly one third of the returnees were subjected to this procedure.

The full-body search was carried out by three specially trained Federal Police officers in a designated security area within the departure hall, which was visually separated from view by temporary partition panels. While the departure hall was fitted with a large number of CCTV cameras, it is positive that all cameras located at or near this area, as well as the area for medical examinations, had been covered. The security area was equipped with a synthetic mattress, a movable desk and several chairs. It was also used to apply body-cuffs, if required, out of the view of other returnees and escorts (see also paragraph 53).

44. The CPT considers it a welcome practice that a social support service⁴⁴ was regularly present at the departure hall during return operations by air, although the possibilities for interaction with the returnees were limited in practice. Returnees were able to make a phone call and were provided with light food (i.e. cheese rolls, apples and biscuits) and water or juice. The social support service also liaised with the Federal Police officers responsible for coordinating the operation, in order to bring relevant legal or other information to their attention (e.g. pending lawsuits or interim measure requests). Further, they could distribute additional pocket money to particularly vulnerable returnees and were also providing documentation on possible post-arrival and re-integration assistance, available in the relevant languages. This is particularly important, as there is no post-return monitoring or follow-up, once returnees have been handed over to the authorities of the destination country.

Returnees were then escorted to the waiting area in the departure hall. During the waiting time, which lasted for up to four hours for those returnees who had been processed first, they were able to access the toilet and could smoke.⁴⁵

⁴⁴ I.e. two representatives of the social welfare service of the church.

⁴⁵ As indicated above, access to mobile phones was also granted upon request.

45. Boarding started at 9.35 p.m. following a crew briefing and lasted for about one hour. All returnees, with one exception, were brought by bus to the aircraft. Returnees boarded the aircraft, one by one, accompanied by their escorts. In most cases, they were guided by the arms by police escorts on both sides (see also paragraph 53). Those who presented no security risk were seated in window seats with one escort officer next to them. Those considered as presenting a security risk were seated in the three-seat middle row with one police escort seated on either side.

46. The aircraft left Munich Airport at 11.47 p.m. after a delay of more than two hours with the result that returnees became increasingly anxious and stressed prior to take-off. During the flight, blankets, sandwiches and cold drinks were provided and requests to visit the toilet were complied with; the toilet door was either closed or left ajar with the escort standing outside, in line with an individual risk assessment.

47. The flight was accompanied by one medical doctor – a general practitioner and surgeon currently working in a prison medical service (see also paragraph 28) – and one interpreter. Both were seated in the front rows. Their services were only called upon on two occasions each. The contents of the medical bag taken on board by the medical doctor were appropriate and contained adequate equipment.

48. After six hours of flight, the aircraft landed at Kabul Airport. The handover to the Afghan authorities took place on the tarmac of the airport, in the presence of representatives from the German Embassy in Kabul, after one Afghan official accompanied by an interpreter went on board the aircraft to individually welcome all returnees. Before leaving the aircraft, the escorts handed over personal belongings, medication and documents to the returnees. Thereafter, the returnees descended, one by one, and boarded a bus. The handover took place in a calm atmosphere and – with one exception (see paragraph 53) – there were no signs of tension among the returnees.

49. A short debriefing session was organised during the return flight to Munich, shortly after take-off, to discuss the operation, in which the escort leader, the Frontex monitor and the CPT's delegation participated. Further, the delegation was informed that an informal debriefing would be organised for most of the police escorts (i.e. those who would be disembarking at Tbilisi for an overnight stay before returning to Munich). **The CPT considers that, as a matter of principle, it is important for all police escorts to undergo a debriefing session.**

5. Use of force and means of restraint

50. The use of force and means of restraint in the context of pick-up and transport of irregular migrants by the different *Länder* police authorities is regulated in the respective *Länder* police legislation.⁴⁶ In the context of the transfer to the airport, most of the returnees were not subjected to any means of restraint. However, a number of returnees were restrained (handcuffed, hand- and foot-cuffed, or even body-cuffed) during their transfer and upon arrival at Terminal F. The use of means of restraint was based on an individual risk assessment.

⁴⁶ See, for instance, Sections 77 *et seq.* of the Law on the tasks and powers conferred on the Bavarian State Police (*Polizeiaufgabengesetz – PAG*).

51. During the different stages in the preparation of the removal operation by air from a German airport as well as on board a stationary aircraft on German territory, the use of force and means of restraint falls under the jurisdiction of the Federal Police. In-flight, the aircraft commander⁴⁷ is – with the assistance of the Federal Police⁴⁸ – entitled to apply the necessary preventive and coercive measures to ensure flight security. In particular, means of restraint can be applied if there is a risk that the returnee might attack law enforcement officers or a third party, or if he/she resists.⁴⁹

The internal instruction of the Federal Police contains detailed provisions on the use of force and means of restraint. In particular, coercive measures are only applied based both on an individual risk assessment and on the returnee's conduct. Further, the principle of proportionality must be observed. During removal operations, the following means of restraint may be applied: steel, plastic or Velcro hand- and foot-cuffs as well as body-cuffs and head- (i.e. a helmet) and bite-protective devices; the last three means of restraint may only be applied by specially trained police officers and precise instructions have to be followed. Every application of use of force or means of restraint is documented. Further, according to another internal instruction and the operational instructions for this return operation, other weapons (i.e. firearms, tear gas, batons) are prohibited.

This approach is in line with the means of restraint agreed upon with the European Border and Coast Guard Agency (Frontex), as specified in the implementation plan and its Annex I (operational overview). The implementation plan also underlines that the “use of force is always a last resort and must be the minimum level required to achieve the legitimate objective”.

Moreover, the internal instruction explicitly mentions by way of clear guidelines the risks related to the use of force and/or means of restraint capable of causing positional asphyxia, including a detailed list of possible related symptoms, and prohibits the use of means likely to obstruct the airways as well as “techniques directed against the person's neck or mouth”. Further, the forced administration of medication (i.e. sedatives or tranquilisers) as a means of chemical restraint to facilitate removal is strictly forbidden. Such an approach fully reflects the Committee's position on this issue.

52. According to information provided by letter of 18 October 2018, the German authorities, in the context of return operations, applied means of restraint 1,098 times for a total of 21,904 foreign nationals returned in 2017, and 673 times for a total of 14,465 persons returned in the period between January and August 2018.

53. In the course of the return flight on 14 August 2018, coercive measures were applied by the Federal Police to two returnees who attempted to forcefully resist their return.

⁴⁷ According to Article 6 of the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), the responsibility “to protect the safety of the aircraft, or persons or property therein” and “to maintain good order and discipline on board” is assigned to the aircraft commander. For these purposes, as specified by the Tokyo Convention, passengers may be restrained and the aircraft commander may request or authorise the assistance of other passengers.

⁴⁸ See Sections 1 (2), 4 and 58 of the Federal Police Act taken together with Section 5 of the Reorganisation of Aviation Security Tasks (*Luftsicherheitsgesetz*), as well as Sections 1 (2), 2, 12 and 13 of the Federal Police Act taken together with Sections 161 and 163 of the Code of Criminal Procedure (*Strafprozeßordnung*).

⁴⁹ See Sections 1 (2), 2, 4a, 12, 13 and 39 of the Federal Police Act as well as Sections 4 and 8 (1) of the Act on Direct Coercion in the Exercise of Official Authority by Federal Law Enforcement Officers (*Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes – UZwG*).

One returnee, who had previously attempted to commit suicide and to resist his transfer by the *Länder* police authorities (see paragraph 28), became agitated during the full-body search in the airport terminal, when Federal Police officers attempted to remove his body-cuff in order to replace it with a more appropriate model (i.e. with Velcro straps rather than metal handcuffs). Further, the wounds on his left forearm had re-opened, requiring the medical doctor to dress them. The returnee was temporarily segregated from other returnees and embarked separately, during which resort to physical force was required to take him inside the aircraft.

Once seated in the rear of the aircraft (surrounded by five escort officers seated on either side of him, in front and behind), he continued resisting, including by banging his head against the seat, and two of the escorts had to stand up to contain him manually during take-off. Apart from two further minor episodes of agitation, he calmed down as the flight progressed. However, at the moment of handover, he resisted being removed from the aircraft. Consequently, he was immobilised and carried out of the aircraft by a team of up to seven escort officers. Once on the tarmac, he was placed in a separate police vehicle, his body-cuff was removed, and he was handed over to three Afghan police officers, one of whom filmed his handover.

54. The second returnee complied with the embarkation procedure until the moment when he was seated in the aircraft, at which point he became agitated, started shouting and hitting out in all directions, and attempted to stand up. The two escorts seated on either side of him attempted to keep him seated by holding his arms; they were supported by a back-up team of four escorts, three of whom took up positions behind his seat. One of these escort officers put his arm around the returnee's neck from behind and used his other hand to pull the returnee's nose upwards thus enabling his colleague to insert a bite protection into the returnee's mouth.

The reaction of the returnee was to increase his resistance, and a second escort officer from the back-up team intervened pulling the returnee's head down onto an adjacent seat and placing his knee on the returnee's head in order to exert pressure and gain compliance while the returnee's hands were tied behind his back with a Velcro strap. Another escort officer applied pressure with his thumb to the returnee's temple. A second Velcro strap was applied below the returnee's knees to tie his legs. A helmet was placed on the returnee's head, additional Velcro straps were applied to his arms and legs, and force was used in order to contain him manually. At this stage, three escorts were holding the returnee from behind his seat and an escort officer was seated either side of him. A sixth escort officer knelt on the returnee's knees and upper legs, using his weight to keep the returnee seated. After some 15 minutes, this sixth escort officer gripped the returnee's genitals with his left hand and repeatedly squeezed them for prolonged periods to gain the returnee's compliance to calm down. When the aircraft took off some ten minutes later, two escorts were still standing upright behind the returnee's seat to ensure that he remained seated. Shortly thereafter, the returnee calmed down when told that, if he remained compliant, most means of restraint would be removed. He remained cuffed, with his hands tied behind his back, for about one hour. As he remained calm, he was untied.

55. In the course of this intervention, the delegation observed that, when the first escort officer from the back-up team put his arm around the returnee's neck, the returnee started struggling to breath and became even more agitated, given that the pressure applied around his throat obstructed his respiratory tract momentarily. The CPT considers that any use of force must avoid inducing a sensation of asphyxia on the person concerned. As is reflected in the relevant internal instructions of the Federal Police, no control technique which impedes a person's capacity to breath is authorised for use by escort officers.

Moreover, the delegation observed that, each time the sixth escort officer applied pressure to squeeze the returnee's genitals, he physically reacted by becoming more agitated. The CPT acknowledges that it will often be a difficult task to enforce a removal order in respect of a foreign national who is determined to stay on a State's territory. Escorts may on occasion have to use force and apply means of restraint in order to effectively carry out the removal; however, the force used should be no more than is absolutely necessary. To ill-treat a person by squeezing the genitals, a technique which is clearly aimed at inflicting severe pain to gain compliance, is both excessive and inappropriate; this is all the more so given that the person was being restrained by six escorts.

The CPT recommends that the German authorities take immediate action to end the application of these two techniques by Federal Police escort officers.

56. The wearing of identification tags by staff involved in removal operations is also an important safeguard against possible abuse. The delegation noted that escort police officers from the Bavarian State Police and from the Federal Police did not wear any identification tag. **The CPT recommends that all police escorts from the Federal Police as well as from all *Länder* police authorities wear a visible identification tag to make them easily identifiable (either by their name or an identification number).**

6. Complaints and monitoring procedures

57. Return flights coordinated by the European Border and Coast Guard Agency (Frontex) are now subject to a complaints mechanism, which also applied during the present return operation.

This individual complaints mechanism, which was established in October 2016,⁵⁰ lays down the procedures to be followed whenever a person makes a complaint that he/she has been directly affected by the action of officials involved in a Frontex activity, including by that of national police officers during a return operation, in breach of his/her fundamental rights. Such a complaint shall be submitted in writing and in any language to the Agency's Fundamental Rights Officer who is responsible for handling it. To this end, a standardised complaints form is made available.⁵¹

The implementation plan of the present return operation explicitly mentioned that the official complaint forms should be made available in hard copy during the operation.

58. During the present removal operation by air, returnees were expected to address either their respective escorts or the escort leader if they felt that their rights and entitlements had been violated. They could also have addressed complaints to the representatives of the social support service present at Munich Airport. That said, the procedure appeared not to be clearly established in practice; for instance, it was initially not clear who could provide returnees with a copy of the official complaint form. The Federal Police informed the delegation that the form was provided only upon request and that it was only available in the English language.

⁵⁰ See Article 72 of the European Border and Coast Guard Regulation (EU) 2016/1624.

⁵¹ The [complaints form](#) is available in ten different languages, including in English, Pashtu and Urdu.

In its 27th General Report, the CPT stressed the importance of effective complaints mechanisms as a fundamental safeguard against ill-treatment.⁵² In particular, they should be available, accessible, confidential/safe, effective and traceable. As part of these guarantees, persons deprived of their liberty should promptly receive information, both orally and in writing, about all avenues of complaint, in a language they can understand. However, during the present return operation, none of the returnees was informed about this right, nor were they told how to make a complaint, and there were no complaints forms provided during the flight, rendering the right to complain ineffective in practice.

The CPT recommends that the German authorities provide adequate information to returnees on how to make a complaint, both orally and in writing, in a language they can understand, prior to the departure of the flight. The complaints mechanism should be made accessible and effective in practice.

59. Previously, the Committee has already expressed its doubts on whether the new complaints mechanism established by Frontex can be considered as being rigorous and effective.⁵³ The CPT welcomes the fact that the 2016 European Border and Coast Guard Regulation includes additional safeguards. For instance, appropriate follow-up measures by European Union member states are now defined as including “disciplinary measures as necessary or other measures in accordance with national law”. The member state is also bound by a duty to report within six months on the findings of the investigation and follow-up made in response to the complaint, which is also communicated to the national mechanism for the protection of rights, and the Agency may request the member state to remove the official concerned, if a violation is established. It nevertheless remains upon member states to carry out such an investigation.

In the light of the above, **the CPT would like to receive further information from the German authorities on the follow-up given to complaints forwarded by the European Border and Coast Guard’s (Frontex) Fundamental Rights Officer, in particular as regards the requirements of accessibility, effectiveness and independence.**

60. Moreover, in its 13th General Report,⁵⁴ the CPT underlined the importance of the role to be played by monitoring systems in areas as sensitive as removal operations by air. From the consultations held with the National Agency for the Prevention of Torture, it became apparent that the German NPM is now regularly monitoring return operations by air. In 2017, eight return operations were monitored by the NPM and three more in 2018 (until early October); this included three Frontex-coordinated operations as well as one Dublin return, and members of the NPM have accompanied the flight-phase on six occasions.⁵⁵ The National Agency has also developed standards on removals.⁵⁶ The CPT welcomes the regular and independent monitoring of removal operations by air by the National Agency for the Prevention of Torture.

⁵² See [CPT/Inf \(2018\) 4](#), paragraph 68.

⁵³ See, for instance, [CPT/Inf \(2016\) 35](#), paragraphs 46-47.

⁵⁴ See [CPT/Inf \(2003\) 35](#), paragraph 45.

⁵⁵ This also included three return operations from Germany to Afghanistan. See National Agency for the Prevention of Torture, [Visits of the National Commission](#).

⁵⁶ See National Agency for the Prevention of Torture, [Standards on removals](#).

The return operation to Afghanistan of 14 August 2018 was also monitored by a forced-return monitor from the “pool of forced-return monitors”, as required under the 2016 European Border and Coast Guard Regulation and the 2008 Return Directive.⁵⁷ The pool also includes both persons made available by the member States and Frontex staff. The present return flight was monitored by a Frontex staff member. It is positive that return operations coordinated by Frontex are now monitored by an internal forced return monitor. However, the current arrangements cannot be considered as an independent external monitoring mechanism. To fulfil this criterion, the monitoring mechanism must meet the requirements of institutional independence.

⁵⁷ Pursuant to Articles 28 (6) and 29 of the European Border and Coast Guard Regulation (EU) 2016/1624, return operations coordinated by Frontex have to be monitored by a forced-return monitor in accordance with Article 8 (6) of the EU’s Return Directive, which requires member States to provide for an “effective” forced return monitoring system.

B. Eichstätt Prison (Centre for detention pending deportation)

1. Preliminary remarks

61. The former prison at Eichstätt had been closed in 2016; it was transformed into a dedicated immigration detention facility – while keeping its prison-like character – and reopened in June 2017 with a total capacity of 96 places (86 for men and ten for women). At the time of the visit, 73 men and three women were held at the establishment. According to the director, the average length of stay was 31 days.⁵⁸

Six detainees had been listed for removal to Afghanistan by means of the return operation on 14 August 2018. They had been placed in detention pending deportation between one and seven days prior to the return flight. Four out of the six returnees were being accommodated among the general population (see paragraphs 69-70 as regards the two returnees held in security cells).

62. The legislative framework governing detention pending deportation (*Abschiebungshaft*) remains largely unchanged since the CPT's 2010 periodic visit.⁵⁹ In particular, detention pending deportation shall only be applied as a measure of last resort and for the shortest possible time, and the principle of proportionality shall be upheld. A foreign national may be detained for up to six weeks as a preparatory measure (*Vorbereitungshaft*) pending the decision on whether to expel the person, and/or for up to six months as a preventive measure (*Sicherungshaft*) to ensure the enforcement of an expulsion order. In the latter case, which is the most commonly used form of immigration detention in Germany, the detention period may be extended to a total of 18 months if the removal is being delayed or obstructed by the foreign national concerned.⁶⁰

A second form of short term immigration detention as a preventive measure (*Ausreisegewahrsam*) was introduced but is not often applied in practice. According to this provision, a foreign national may be placed for up to 10 days in detention to ensure the enforcement of departure.⁶¹ The *Länder* authorities are responsible for the enforcement of immigration detention.

63. In its 2010 visit report, the CPT was critical of the fact that immigration detainees continued to be held in prisons due to the lack of specific detention centres for foreign nationals outside the prison system.⁶² In 2014, the Court of Justice of the European Union decided in a preliminary ruling that a Union member State could not rely on the fact that there were no specialised facilities in a part of its territory to justify detaining third-country nationals in prisons pending their removal.⁶³ Shortly after this judgment, the German Federal Court of Justice held in a decision that enforcing detention pending deportation of foreign nationals in prison establishments was generally not permitted, even if detainees were being held separately from prisoners serving criminal sentences.⁶⁴

⁵⁸ Between 12 June 2017 and 13 August 2018, a total of 1,094 detainees were held at the establishment, of which 847 were deported.

⁵⁹ See [CPT/Inf \(2012\) 6](#), paragraph 32.

⁶⁰ See Section 62 of the Aliens Act. The maximum period spent in immigration detention as a preventive measure includes periods spent in preparatory detention.

⁶¹ See Section 62b of the Aliens Act.

⁶² See [CPT/Inf \(2012\) 6](#), paragraph 33.

⁶³ See Court of Justice of the European Union, [Judgments in Joint Cases C-473/13 and C-514/13 – Bero and Bouzalmate](#), 17 July 2014.

⁶⁴ See Federal Court of Justice (*Bundesgerichtshof*), [Decision V ZB 137/14](#), 25 July 2014.

As a consequence, the general principle that detention pending deportation shall be enforced in special detention facilities is now commonly accepted by all *Länder* authorities.⁶⁵ The CPT welcomes this development.

64. In Bavaria, detention pending deportation takes place in prison establishments designated as centres pending deportation by way of mutual administrative assistance (*Amtshilfe*), with prison staff who did not receive any specific training.⁶⁶ The CPT had previously called upon the German authorities to take immediate steps to ensure that, in all *Länder*, detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees, so as not to subject them to the same rules and restrictions as sentenced or even remand prisoners.⁶⁷ This recommendation has however only been partially implemented. Federal legislation still requires that the relevant provisions of the federal Act on the Execution of Prison Sentences (*Strafvollzugsgesetz*) apply *mutatis mutandis* for detention pending deportation when implemented in prison establishments by way of mutual administrative assistance, as is the case in Bavaria, but with fewer restrictions applied (*Hafterleichterungen*).⁶⁸ Although the specific provisions concerning the enforcement of detention pending deportation of the Aliens Act equally apply, they only regulate very few aspects of immigration detention.⁶⁹

65. In the CPT's view, the use of (former) prison establishments to implement immigration detention by way of mutual administrative assistance without making any structural changes should be avoided.⁷⁰ Irregular migrants awaiting removal should be held in centres that are appropriate for their status. The Committee considers that all aspects regarding immigration detention should be tailored to their specific status and needs, and governed by specific legislation reflecting the nature of their deprivation of liberty. In this respect, the prison-like conditions of detention observed at the facility in Eichstätt were not adapted to the situation of immigration detainees (see paragraphs 67-68). It is also not appropriate to apply prison rules to this category of detainees.

In the light of the above, the CPT recommends that the Bavarian authorities take the necessary steps to adapt (former) prison establishments to the specific needs of immigration detainees, by ensuring material conditions and a regime that are appropriate for this category of detainees. Training courses should also be provided to custodial staff.

⁶⁵ This principle is also regulated in Section 62a (1) of the Aliens Act.

⁶⁶ See Bavarian State Ministry of Justice, [Response to the visit report of the National Agency for the Prevention of Torture to Eichstätt Prison \(Centre for detention pending deportation\) on 12 September 2017](#), 6 March 2018.

⁶⁷ See [CPT/Inf \(2012\) 6](#), paragraph 33; see also National Agency for the Prevention of Torture, Joint *Länder* Commission, [Visit report to Eichstätt Prison \(Centre for detention pending deportation\)](#), visit of 12 September 2017, 20 December 2017, pp. 3-4.

⁶⁸ Section 422 (4) of the Act on the Procedures in Family Affairs and Non-Contentious Matters (*Gesetz über das Verfahren in Familiensachen und in Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG*) taken together with Sections 171, 173-175 and 178 (3) of the federal Act on the Execution of Prison Sentences (*Strafvollzugsgesetz – StVollzG*). According to these provisions, foreign nationals are allowed to use their own clothing and bedding, shall be permitted to buy food and sanitary products, and shall not be obliged to perform any work, occupation or auxiliary work.

⁶⁹ The provisions contained in Section 62a of the Aliens Act concern the requirement of privacy for family members, contact with the outside world, immigration detention of children, visits by specialised organisations, and information on rights.

⁷⁰ The example of Erding Prison (Centre for detention pending deportation) shows that the former prison had only – within a week's time – changed its name, when the facility was transformed into an immigration detention centre in February 2018, without any structural changes being made.

The Committee reiterates its recommendation that the German authorities take the necessary steps, without further delay, including by way of legislative amendments, to ensure that, in all *Länder*, detention pending deportation is governed by specific rules reflecting the particular status of immigration detainees.

66. In the course of its visit to Eichstätt Prison (Centre for detention pending deportation), the delegation received no allegations – and found no other indications – of ill-treatment of detainees by staff.

2. Conditions of detention

67. While material conditions at the facility in Eichstätt were generally very good in terms of state of repair, living space, access to natural light, ventilation and equipment,⁷¹ the environment did not take into account the specific situation of immigration detainees, with a number of restrictions that appeared unnecessary. For example, female detainees were allowed to wear and wash their own clothes, whereas male detainees had to wear clothes provided by the establishment.

At the time of the visit, the call-bell system was dysfunctional, which could have severe consequences. For example, during the CPT's visit, a detainee had set off the alarm because his cell-mate had attempted to commit suicide by hanging. Custodial officers were unable to immediately locate the cell in which the incident had occurred and were forced to check cell by cell before being able to find and assist the detainee concerned.

The CPT recommends that the Bavarian authorities take steps to further reduce the restrictions that are currently applied at Eichstätt Prison (Centre for detention pending deportation). In particular, all male detainees should be offered the possibility to wear their own clothes during their stay and to have these clothes washed. The Committee also wishes to receive confirmation that the call-bell system at the facility is now functioning properly.

68. Moreover, due to the applicable legislation on the execution of prison sentences, the regime for immigration detainees held at the establishment was – to all intents and purposes – comparable to that of sentenced prisoners.⁷² The only significant differences concerned the fact that the detainees were not obliged to work and that they could usually have more contact with the outside world and spend more time outside their cells. However, male detainees – in contrast to female detainees – did not benefit from an open-door regime (indoors); cell doors were unlocked between 9 a.m. and 12 noon and between 12.30 p.m. and 7 p.m.

A spacious multi-purpose hall, where detainees could, for instance, watch television, use sports equipment or play table football or darts, was only accessible for up to two and a half hours a day.⁷³ The CPT considers that access to the hall should be significantly extended throughout the day, given that almost no purposeful activities were on offer. Further, the outdoor exercise yard, which could only be accessed in the afternoon, was not equipped with a shelter against inclement weather and its high walls and concrete floor made it a drab and unwelcoming place.

⁷¹ The facility consisted of 33 single-occupancy cells and 16 multiple-occupancy cells for up to four detainees.

⁷² In Bavaria, the 2007 Law on the Execution of Sentences of Bavaria (BayStVollzG) applies.

⁷³ Female detainees also had another common room with cooking facilities at their disposal.

The CPT recommends that an open-door regime at Eichstätt Prison (Centre for detention pending deportation) be applied to all male detainees and that access to the multi-purpose hall be granted to all detainees throughout the day. The outdoor exercise yard should also be equipped with a shelter against inclement weather and be rendered less austere.

3. Returnees held in security cells

69. Two of the returnees who were to be removed were being detained in the two security cells (*besonders gesicherter Haftraum* – BGH) of the facility. They had been placed there and were under constant CCTV monitoring for having either attempted or threatened to commit suicide; reportedly, one of them had also behaved violently (see paragraph 28).⁷⁴ According to the director, security cells were only used to segregate detainees for security reasons (i.e. risk of self-harm or harm to others), in accordance with the applicable legislation;⁷⁵ it is noteworthy that immigration detainees were not subjected to any disciplinary sanctions. The records indicated that the two security cells were regularly in use; in the first seven and a half months of 2018, 53 detainees had been placed in these cells.

Both security cells were only equipped with a mattress on the floor and a floor-level toilet. While they were in a good state of repair with sufficient access to natural light, ventilation was insufficient. They were each fitted with a call bell and a CCTV camera; the cameras in both cells also covered the toilet areas, which were fully displayed on the CCTV monitor screens. **The CPT recommends that when it is deemed necessary to place a detainee under video surveillance, steps be taken to ensure that the privacy of the person is guaranteed whenever he/she is using a toilet, for example by pixelating the image of the toilet area. Further, the two security cells should be sufficiently ventilated.**

70. Although important safeguards for the placement of detainees in security cells for protective or prevention purposes were in place,⁷⁶ it is a matter of serious concern that the applicable legislation still allows the management to impose a prohibition on outdoor exercise on detainees as a special security measure (*besondere Sicherheitsmaßnahme*). Indeed, neither of the detainees held in the security cells had been granted access to outdoor exercise during their entire stay at the establishment.

Locking up a vulnerable person for 24 hours a day in a small austere cell in conditions akin to solitary confinement is likely to harm their mental health and increase their feelings of hopelessness or depression. By contrast, if such detainees are offered more activities, including access to an outside yard (which should ideally contain at least some green space or vegetation), and provided with appropriate human contact, this would have a beneficial effect on their mental health.

⁷⁴ One detainee had been held for a total of four days in the security cell and the second detainee had been admitted to the facility in Eichstätt and placed in the security cell the day prior to the return operation.

⁷⁵ See Section 422 (4) of the FamFG taken together with Sections 171, 88 (2) Nr. 5 of the StVollzG.

⁷⁶ In particular, every placement of a detainee in a security cell is individually decided upon by the director or the competent head of department, the doctor must be heard prior to the placement if the mental state of the detainee (i.e. risk of suicide or self-harm) is the reason for the security measure, the prison doctor and the psychologist regularly visit the person concerned, the measure is documented in a dedicated register and the relevant supervisory authority is informed if the detainee is placed there for more than three days.

The CPT recommends that the Bavarian authorities take the necessary steps to ensure that immigration detainees placed in a security cell are offered at least one hour of outdoor exercise per day in a suitably equipped yard. For vulnerable detainees, additional measures should be taken to engage with them, including through the provision of appropriate human contact. Reference is also made to the CPT's recommendation contained in paragraph 74.

The Committee once again calls on the German and the Bavarian authorities and, as appropriate, the other *Länder* authorities, that prohibition of outdoor exercise is abolished from the relevant legislation as a special security measure (in respect of all categories of persons deprived of liberty).

4. Health-care services

71. The six returnees held at the facility in Eichstätt were all seen by the medical doctor – a general practitioner – for medical screening upon their arrival. The doctor was contracted to work twice a week (Tuesday and Thursday) and usually remained during that day as long as required.⁷⁷ He was supported by a fully qualified nurse and three paramedics who were present at the establishment during weekdays. However, the nurse and the three paramedics were at the same time working as custodial officers; this represents a direct conflict of interest in their duty of care and undermines medical confidentiality and independence. Further, detainees who wished to be seen by the doctor had first to report to custodial officers and provide them with a reason for a medical consultation. Custodial officers should not be in a position to filter these requests.

In the light of these remarks, **the CPT recommends that health-care staff (i.e. the nurse and the three paramedics) working at Eichstätt Prison (Centre for detention pending deportation) no longer perform custodial functions and that they no longer be considered as part of the custodial staff. A system should also be put in place (e.g. written requests to be collected by health-care staff) to enable detainees to directly request consultations with the medical doctor.**

72. As medical screening only took place during the two weekdays when the doctor was present, detainees were initially seen by a nurse. However, in some cases, they were only seen about four days after having been admitted to the facility. Further, detainees transferred from either a prison establishment or another immigration detention centre were not routinely screened upon admission. It also appears that screening for injuries was not carried out thoroughly, as newly admitted detainees were not required to undress during the medical examination. For instance, the evident scars and incisions on the left arm⁷⁸ of one of the returnees interviewed by the delegation, which were consistent with injuries caused by self-harming, had not been recorded in his personal medical file, although the self-harm had taken place prior to his admission.

There was also no dedicated trauma register in the establishment. Moreover, no routine medical screening is carried out if a returnee is brought back to the establishment following an aborted return operation. Such screening is essential to verify the state of a person's health and to document any possible injuries; it can also protect escort staff against unfounded allegations.

⁷⁷ During the rest of the time, he remained on call. Further, the local ambulance service and the "Prison Doctor Association" provided emergency medical assistance.

⁷⁸ The person concerned displayed a number of visible scars on the left lower arm and two parallel fresh superficial incisions, about 10 cm long, on the left upper arm.

The CPT recommends that the necessary steps be taken to remedy these shortcomings as regards medical screening of detainees.

73. Psycho-social support at the facility was provided by one full-time psychologist as well as four social workers. The psychologist usually met all detainees after their admission for an initial assessment (see also paragraph 75); all six returnees had been assessed by the psychologist. That said, at the time of the visit, the second psychologist's position was vacant. As a result, the psychologist who was present was mostly occupied with assessing detainees rather than with providing clinical work and support. **The CPT would like to be informed whether a second psychologist has now been recruited at Eichstätt Prison (Centre for detention pending deportation).**

74. The CPT considers that psycho-social assistance is particularly important in the context of detention pending deportation, as there is a great need for such assistance given the profile of the population. However, it appears that the assistance provided at the facility was insufficient for the detainees' needs. Indeed, since the beginning of 2018, seven persons had attempted to commit suicide and ten persons had self-harmed at the establishment.⁷⁹ Moreover, the presence of psychologists and social workers cannot replace specialist psychiatric care for detainees suffering from mental disorders.⁸⁰

The CPT recommends that the Bavarian authorities, and the authorities of all other *Länder*, if appropriate, put in place more effective self-harm and suicide prevention measures for foreign nationals held in detention pending deportation. This would require increasing the availability of psycho-social support for detainees, as well as some mental health input and a greater engagement by custodial staff.

75. As regards interpretation services, both the prison doctor and the psychologists usually met foreign national detainees without any interpretation service. While an interpreter might be provided upon request, co-detainees occasionally served as interpreters. In the CPT's opinion, the use of fellow detainees as interpreters should, in principle, be avoided. The delegation was informed that the Bavarian authorities were planning to introduce a video-based translation service within all prison establishments in Bavaria, which would also be made available for medical and psychological consultations at the facility in Eichstätt.⁸¹

The CPT recommends that the Bavarian authorities take steps to ensure that foreign nationals detained at Eichstätt Prison (Centre for detention pending deportation) receive, when necessary, the assistance of qualified interpreters, particularly during consultations with the medical doctor and the psychologist. The Committee would also like to be informed when the translation service planned to be introduced in all Bavarian Prison establishments will become operational.

⁷⁹ The previous attempt only dated back some 10 days, and the delegation was present at the establishment when another person attempted to commit suicide (see paragraph 67). Moreover, in 2018, 17 detainees had started a hunger strike.

⁸⁰ They are usually referred to the nearest psychiatric hospital in Ingolstadt for assessment and treatment.

⁸¹ It is also noteworthy that the doctor was using a [picture booklet](#) in five different languages to facilitate the communication during medical consultations. Further, the establishment provided for the possibility to use an Internet-based translation service to assist foreign national detainees and staff members in day-to-day communication. The delegation also noted positively that information about the daily routine of the facility was posted in the corridors in several languages and included pictograms and visuals to enable a better understanding by detainees.

5. Contact with the outside world and information on rights

76. The four returnees held among the general population at the establishment in Eichstätt had access to a phone and were provided with phone cards free-of-charge, which allowed them to call five persons for up to 30 minutes a day. It was also possible to call abroad (for instance to Afghanistan). Further, they could receive visits for up to four hours during weekdays. That said, they did not have access to the internet. **The Bavarian authorities should consider providing immigration detainees held at Eichstätt Prison (Centre for detention pending deportation) with access to computers along with Voice-over-Internet Protocol facilities and basic internet access.**

77. The applicable legislation provides for that visits may be prohibited if security or order in the institution would be jeopardised,⁸² this should – in the CPT’s view – not lead to a situation in which vulnerable detainees do not have any contact with the outside world. Indeed, the two detainees held in the security cells were prohibited from making phone calls and from receiving visits during their entire stay in these cells. Such a state of affairs is not acceptable. If anything, vulnerable detainees should be offered increased opportunities for contacts with the outside world.

The CPT recommends that the Bavarian authorities take the necessary steps to ensure that all immigration detainees who are placed in the security cells at Eichstätt Prison (Centre for detention pending deportation) be allowed to make phone calls and receive visits. Contact with the outside world should be enhanced when it concerns vulnerable detainees at risk of self-harming or committing suicide.

78. According to the relevant legislation, immigration detainees shall be informed of their rights and obligations and the rules applied in the facility.⁸³ However, detainees at the facility in Eichstätt were only provided with some general oral information upon admission. They were not given any written information on their rights and the procedures applicable to them. Moreover, the director informed the delegation that there were no house rules for the establishment.

In the CPT’s view, all immigration detainees should be fully informed, without delay and in a language they understand, of their situation, their rights (including the right to lodge complaints) and the procedure applicable to them. To this end, they should be systematically provided with a document setting out this information; the document should be available in the languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. The persons concerned should confirm in writing that they have been informed of their rights, in a language they can understand. Specific attention should be paid to the situation of those detainees who are illiterate or who cannot understand the language in the written form. Further, the establishment’s house rules should also be translated in a variety of languages and posted around the detention areas.

The CPT recommends that the Bavarian authorities take the necessary steps to ensure that all immigration detainees are systematically informed, including in writing, of their rights and the procedure applicable, in a language they understand. Further, house rules should be issued without delay at Eichstätt Prison (Centre for detention pending deportation), and the CPT would like to receive a copy of them.

⁸² See Section 422 (4) of the FamFG taken together with Sections 171 and 25 Nr. 1 of the StVollzG.

⁸³ See Section 62a (5) of the Aliens Act.