

CPT/Inf (2023) 18

Report

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

from 7 to 9 November 2022

The Government of Cyprus has requested the publication of this report and of its response. The Government's response to the report is set out in document CPT/Inf (2023) 19.

Strasbourg, 13 July 2023

Contents

I.	INTRODUCTION	3
A.	The visit, the report and follow-up.....	3
B.	Consultations held by the delegation and co-operation encountered.....	4
II.	FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	5
1.	Preliminary remarks.....	5
2.	Ill-treatment.....	6
3.	Safeguards in the context of preparation for removal	9
i.	timely notification of the removal.....	9
ii.	access to a lawyer	10
iii.	medical examination by a doctor and “fit-to-fly” certificate.....	10
iv.	the right to inform a third person of the upcoming removal.....	12
v.	protection against <i>refoulement</i>	12
4.	Transfer to Larnaca International Airport.....	13
5.	Other issues related to the CPT’s mandate.....	16
i.	means of restraint.....	16
ii.	interpretation.....	16

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 Cyprus from 7 to 9 November 2022.

The visit was considered by the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention) and its objective was to examine the treatment of foreign nationals deprived of their liberty under immigration legislation prior to a removal operation by air, including the safeguards applied to them in the context of their removal.

The removal operation by air concerned a joint return operation (JRO) by air from Belgium to the Democratic Republic of the Congo (DRC), via Cyprus,¹ that took place on 8 November 2022. The return flight was organised by Belgium (organising member state), with the participation of Cyprus, Germany and Sweden (participating member states), and was supported by the European Border and Coast Guard Agency (Frontex).

2. Since 2012, the CPT has monitored two national return flights (from the United Kingdom to Sri Lanka in October 2012 and from Germany to Afghanistan in August 2018) and three joint return operations, coordinated and co-financed by Frontex (from the Netherlands to Nigeria in October 2013, from Italy to Nigeria in December 2015, and from Spain to Colombia and the Dominican Republic in February 2016). The return operation between Belgium and DRC was the Committee’s fourth monitored JRO of six monitored removal operations by air in total.

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.² In 2003, in its 13th General Report, the Committee put forward more detailed guidelines concerning removal operations by air. 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.

3. The visit was carried out by the following members of the CPT:

- Vincent Delbos (Head of delegation)
- Marie Kmecová.

They were supported by Marco Leidekker (Head of Division) of the CPT’s Secretariat and assisted by an expert, Djordje Alempijević, Medical Doctor, Head of Department at the University of Belgrade Institute of Forensic Medicine (Serbia), and two interpreters, Maria Houvarda Louca and Rhea Frangofinou.

4. The report on the visit was adopted by the CPT at its 110th meeting, held from 6 to 10 March 2023, and transmitted to the authorities of Cyprus on 20 March 2023. 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 authorities of Cyprus 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.

The CPT would like to encourage the Cypriot authorities to bring this report to the attention of Frontex and the other participating member states.

1. Simultaneously, another CPT delegation carried out an ad hoc visit to Belgium from 7 to 10 November 2022 to observe the treatment of those foreign nationals who were removed from Belgium on this JRO. The findings of this visit are contained in a separate report transmitted to the Government of Belgium.

2. See CPT/Inf (97) 10, paragraphs 24 to 36.

B. Consultations held by the delegation and co-operation encountered

5. In the course of the visit, the delegation held consultations with representatives of the Aliens and Migration Unit of the Cyprus Police (Stavvas Stephanides (Deputy Commander for Support), Petros Zeniou (Deputy Commander for Operations) and Dimitris Hadjipavlou (Head of Returns Coordination Office) as well as with the Commissioner for Administration and the Protection of Human Rights, Maria Stylianou-Lottides, whose responsibilities include the Cypriot National Preventative Mechanism (NPM). It also met with a representative of civil society in Cyprus.

6. The CPT delegation received excellent cooperation during the visit by the Cypriot authorities at all levels. The delegation had rapid access to all places of detention it wished to visit, and was able to meet in private with those persons with whom it wanted to speak and was provided with access to the information required to carry out its task.

The Committee wishes to express its appreciation for the assistance provided to its delegation during the visit by the management and staff in the Menoyia Detention Centre, the staff of the Aliens and Migration Unit of the Cyprus Police, as well as to the support offered by its liaison officer from the Ministry of Justice and Public Order, Constantina Fillipou.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

1. Preliminary remarks

7. In recent years, Cyprus has experienced a considerable increase in irregular migration, prompting close cooperation with the European Border and Coast Guard Agency (Frontex). Frontex has established a presence on the island and assists the Cypriot government with migration management, including by proposing migrants a voluntary return to their country of origin in exchange for financial compensation, such as through its programme for Assisted Voluntary Return (AVR).³

8. According to data provided by the Cypriot authorities, between January and October 2022, approximately 5 000 migrants were repatriated. By far the majority of these persons (approximately 90%) left Cyprus voluntarily, either on their own or assisted, in exchange for financial compensation. For those refusing to depart voluntarily, Cyprus organises bilateral repatriations or participates in joint return operations organised with the support of Frontex.⁴

9. On 8 November 2022, the Belgium authorities, jointly with Cyprus, Germany and Sweden and in cooperation with Frontex, organised the forced return of DRC nationals to Kinshasa. Initially, Cyprus had aimed at removing 15 DRC nationals. However, in the weeks before the flight, a number of them agreed to return voluntarily, whilst others had absconded, leaving five persons to be returned forcibly. For Cyprus, this was the seventh removal operation by air for 2022.

10. In addition to the return flight to DRC (Kinshasa), and the physical handover of the DRC nationals to the DRC authorities at Kinshasa International Airport, the CPT monitored the following parts of the removal operation:

- In Belgium: the preparations, collection and transfer of the detained foreign nationals from the Repatriation Centre 127bis to Brussels Military Airport; the arrival of these persons and of additional persons to be removed from Germany and Sweden at Brussels Military Airport; the boarding of the military aircraft chartered for the JRO;
- In Cyprus: the preparations, collection and transfer of the foreign nationals from the Menoyia Detention Centre to Larnaca International Airport⁵; the arrival and the flight preparations of these persons at the airport; and the boarding of the aircraft.

This report concerns the flight preparations in Cyprus, including at the Menoyia Detention Centre, where the foreign nationals were held prior to removal. The report has a special emphasis of the prevention of ill-treatment during the removal procedure.

3. The Assisted Voluntary Return (AVR) Programme offers financial assistance to migrants in an irregular situation who wish to return voluntarily to their home countries. The level of financial assistance depends on the country concerned: for countries situated in Asia and Northern Africa the compensation is €1 000 and €1 500 for sub-Saharan countries. Further, in certain cases, a returned migrant could be eligible for Post-Return Assistance, in the form of additional financial support, for instance to start a business, to receive schooling or to pay for housing.

4. An overview of Frontex' involvement in returns can be found on its website, Returns and Reintegration. See also Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (Frontex Regulation).

5. Including accompanying the foreign nationals in the escort vans.

11. The legal framework concerning the removal of migrants in an irregular situation from Cyprus is regulated by the relevant provisions of the 1959 Aliens and Immigration Law (Cap. 105). For instance, under the terms of Article 18O foreign nationals may be handed a Return Order, which gives them the opportunity to leave the country voluntarily. If the person concerned refuses to leave voluntarily, under Article 14 the Cypriot authorities could decide to issue a Deportation Order. Further, Article 18B sets certain conditions in case the Deportation Order is executed with the assistance of escorts: these shall wear civilian clothes and not be armed. The Cypriot Police (Aliens and Migration Unit) are responsible for enforcing the Deportation Order by implementing forced removal operations, including by means of charter flights.

As to applicable EU law, Cyprus is bound by the EU Return Directive.⁶ Further, as specified in the Frontex Implementation Plan for the removal operation to DRC of 8 November 2022, the JRO is implemented in accordance with the respective applicable national legislation as well as the applicable EU and international law; relevant standards and guidelines shall also be considered.⁷ In addition to their legal obligations under Cypriot law, all police officers assigned as escorts during a JRO supported by Frontex are also subject to the revised Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex. Reference is also made to the Common Guidelines on security provisions for joint removals by air annexed to Council Decision 2004/573/EC,⁸ the Frontex Guide for joint return operations by air coordinated by Frontex, and the 'Return Handbook' annexed to Commission Recommendation (EU) 2017/2338.⁹

2. Ill-treatment

12. In the CPT's experience, the forced removal of foreign nationals entails a risk of inhuman and degrading treatment (during preparations for the removal, during the actual flight or if removal is aborted). In fact, during its visit to Cyprus in 2017, the CPT received several allegations of ill-treatment during the transfer of detained foreign nationals to the airport by police.¹⁰ During the 2022 ad hoc visit, no such allegations were received from the five DRC nationals. On the contrary, the CPT observed that the treatment afforded to them by the Cypriot Police during the removal procedure, including the preparations in the Menoyia Detention Centre, during the boarding and the flight, was dignified and respectful.

However, the CPT became aware of allegations of ill-treatment after aborted removal attempts in the months before the CPT's visit. For example:

- i. On 26 July 2022, a foreign national was returned to the Menoyia Detention Centre after a failed forced removal attempt. At the Centre, he complained that the police escorts had kicked him in the genital area and that they had twisted the thumb of his right hand. Subsequently, he was examined by the Centre's doctor. The incident report by the director of the Centre, drawn up on 27 July 2022, states that the doctor found a possible fracture on the base of the right thumb and swelling of the testicles. The incident report further states that the doctor referred the foreign national to Larnaca Hospital for further examination, where he was examined at the Emergency Department. According to the incident report, the duty doctor wrote in his report that there were hand injuries and that the man had pain in the peri-genital

6. 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.

7. An overview of applicable international and EU law, including relevant standards and guidelines, can be found in the annex of the Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex. This list notably includes the relevant CPT standards on this matter as well as the above-mentioned "Twenty Guidelines on Forced Return".

8. Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders.

9. Commission Recommendation (EU) 2017/2338 of 16 November 2017 establishing a common 'Return Handbook' to be used by Member States' competent authorities when carrying out return-related tasks.

10. CPT/Inf (2018) 16, paragraphs 12-14 and 57.

region, without visible bruises or other traumatic lesions. The report also makes reference to the beating the person claimed to have received. Upon his return to the Menoyia Detention Centre later that day, the man repeated his allegations of ill-treatment to the Centre's staff.

The following day, he returned to Larnaca Hospital to be examined by two forensic doctors. Photographs were taken. According to the incident report, the two forensic doctors mentioned having observed "linear injuries on the wrists of both hands" which they assessed as being "probably the result of handcuffs". Apparently, the foreign national refused to be examined in the peri-genital region. The report of the forensic examination was not ready at the time of the drafting of the incident report and was not available in the Menoyia Detention Centre when the CPT visited the Centre.

At the time of the CPT's visit, the investigation into the allegation of ill-treatment by the Independent Authority for the Investigation of Allegations and Complaints Against the Police (IAIACAP) had not been concluded.

- ii. The Commissioner for Administration and the Protection of Human Rights informed the CPT of an allegation received after monitoring a return operation by the NPM on 28 September 2022. While boarding the designated airplane, the foreign national resisted firmly and loudly. Subsequently, the pilot refused to accept the man on board of the airplane.

The man was taken back to the Menoyia Detention Centre and examined. It was found that he had no injuries, which was confirmed by doctors at Larnaca Hospital, where he was sent afterwards due to pain in the shoulder. One day later, on 29 September 2022, his lawyer lodged a complaint with both the Commissioner and the IAIACAP, claiming that the man had been ill-treated by a police escort during the failed removal operation.

At the time of the CPT's visit, the allegation was under investigation by the IAIACAP, whilst the Commissioner had decided to suspend an investigation by her Office awaiting the outcome of the investigation by the Independent Authority.

The CPT would like to receive up to date information as to the state of affairs of the investigations into the allegation of ill-treatment under i and ii above and of any subsequent steps taken. Further, as to case i, the Committee would like to receive a copy of the examination report of the forensic doctors related to the examination performed on 27 July 2022 at Larnaca Hospital, as well as the photographs taken during this forensic medical examination.

13. The persistence of allegations of ill-treatment after a failed removal should be a stimulus for the Cypriot authorities to take a proactive approach to the detection and prevention of ill-treatment, rather than instigating an investigation following a complaint only. In this respect, the CPT finds it concerning that the records at the Menoyia Detention Centre were not always well maintained and kept updated. For example, in the case described under i, on the date concerned, no reference to an aborted removal attempt or to an examination by the doctor or a referral to Larnaca Hospital could be found in the Station Diary, the Centre's electronic service register.

The CPT has similar concerns in respect of the keeping of the medical files. For instance, on 8 November 2022, the CPT witnessed an incident with one of the DRC nationals which prompted the intervention of the medical staff based at the Menoyia Detention Centre as well as a subsequent visit to the hospital (see paragraphs 45-47). When the delegation revisited the Centre the following day, it found no reference to the incident in the medical file of the person concerned. In other medical files seen by the delegation, it was found that the description of injuries omitted relevant details (such as, its location and dimension), lacked an account of the origin of the injury by the foreign detainee or the doctor's opinion about the consistency between the injury and the allegation.

14. In the CPT's view, proper record keeping greatly facilitates the effectiveness of the work of investigative bodies such as the IAIACAP or oversight bodies such as the Commissioner for Administration and the Protection of Human Rights, including the NPM. This is even more the case when the allegation stems from a foreign national, who may no longer be in the country when the investigation is launched.¹¹ To assist the investigations carried out by these bodies, the Cypriot authorities should seriously consider introducing at the Menoyia Detention Centre a special trauma register in which all types of injury observed are to be recorded, as well as a proper incident register, to note, inter alia, failed removals.¹²

15. Further, Article 6 (4) of Law 83 (I) 2011 "on the creation, regulation and operation of detention areas for prohibited persons" provides for a mandatory medical examination upon admission to the Menoyia Detention Centre. This examination appears to be carried out diligently but is limited in scope.¹³ The CPT was told that when a newly arrived foreign national does not complain about injuries and has no injuries on the visible part of the body (for instance the face and arms), there will not be an examination of the entire body surface. Such an approach corresponds with the "Procedure for the reception of detainees" described in the Operating Manual for Menoyia Detention Centre.¹⁴

16. Also, in 2017 the CPT recommended that the Cypriot authorities, and the management of the Menoyia Detention Centre in particular, ensure that a medical examination is systematically undertaken upon return to Menoyia after an aborted removal.¹⁵ In the CPT's view, such medical examination contributes to evidence for later complaints and acts as a deterrent against ill-treatment. It is self-evident that such examination should concern the entire body surface and be added to the medical file of the detained person.

The Cypriot authorities decided not to provide a follow up to this recommendation. Apparently, primarily for formal bureaucratic reasons. The Centre's director explained that a foreign national due to be deported only leaves the Menoyia Detention Centre formally once on board the airplane. Therefore, when a forced return is aborted before boarding, the foreign national is considered not to have left the responsibility of the Centre. As the rules foresee a medical examination upon arrival in the Centre only, this is not carried out. The CPT is unconvinced by this reasoning.

17. In addition, medical confidentiality is compromised both by the circumstance that the assistant to the Centre's doctor is a police officer, who has full access to the medical files of persons detained in the Menoyia Centre, and that the doctor for his medical screening relies in part on responses to a health care questionnaire (with questions related to addiction and certain communicable diseases, such as tuberculosis) filled in by police officers during the admission procedure.

18. The CPT considers that besides an appropriate measure in light of the findings of CPT delegations, it is clearly in the interest of the Cypriot police to introduce a medical examination after an aborted removal, both to dispel fictitious accusations and from the perspective of improving the quality and efficiency of the removal process. Such medical examination should be carried out in a manner and in conditions fully respecting the principles of medical confidentiality. Custodial staff should neither have access to medical data of a detained foreign national nor be responsible for collecting it. Health-care staff may inform non-medical staff on a need-to-know basis about the state of health of a detained foreign national; however, the information provided should be limited to that necessary to prevent a serious risk for the prisoner or other persons, unless the prisoner consents to additional information being given.

11. In its report on the 2017 periodic visit to Cyprus, the CPT found that it may take up to 16 days before an allegation of ill-treatment is investigated by the IAIACAP, and up to 21 months before the investigation is completed.

12. See also CPT/Inf (2018) 16, paragraph 66, on the introduction of a register for incidents of self-harm.

13. Law 83(I)/2011 states that "a preventative medical examination of each detainee shall be carried out to prevent communicable diseases". In reality, the medical examination upon admission at the Menoyia Detention Centre was broader in scope and included taking blood pressure and auscultation of lungs and heart.

14. Cypriot Police, Menoyia Detention Centre Operating Manual, page 21.

15. CPT/Inf (2018) 16, paragraph 57.

19. **The CPT recommends that the Cypriot authorities take a proactive approach as to the detection and prevention of ill-treatment, including by:**
- **reminding staff at the Menoyia Detention Centre to maintain registers meticulously, including the Station Diary and the medical files, as well as the introduction of both a trauma register and an incident register;**
 - **introducing a complete examination of the body surface upon admission to the Menoyia Detention Centre;**
 - **the record drawn up after the medical screening containing:**
 - i. **an account of statements made by the foreign national which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment);**
 - ii. **a full account of objective medical findings based on a thorough examination, and;**
 - iii. **the health care professional's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**
 - **introducing systematic medical examinations on departure from, and on return to Menoyia premises for foreign nationals to be deported.**

Further, **the CPT recommends that the Cypriot authorities respect the principles of medical confidentiality when collecting, processing and accessing health care related information from foreign nationals detained at the Menoyia Detention Centre.**

3. Safeguards in the context of preparation for removal

20. 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;
- access to a lawyer;
- access to a medical doctor, particularly in the context of a "fit-to-fly" 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 due to be removed, from the very outset of their notification, that is, 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.

- i. timely notification of the removal

21. 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. 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. It will also allow them to come to terms with the situation psychologically and ensure that they are able to inform the persons they need to and to retrieve their personal belongings.

22. As mentioned in paragraph 11 above, under Article 14 the 1959 Aliens and Immigration Law, before a migrant in an irregular situation may be removed from the territory of Cyprus, a Deportation Order must be issued by the “Chief Immigration Officer”.¹⁶ Such had indeed been the case for the five DRC nationals, whose Deportation Orders had all been issued between August and October 2022.

23. According to the Cypriot authorities, the five DRC nationals had been notified about their upcoming removal on Friday, 4 November 2022, four days before the flight. However, it appears to the CPT that the notification process may have been defective to some extent. When interviewed by the delegation on Monday, 7 November 2022, four of them said that they had neither been made aware of the exact date of their removal nor of its modalities. Upon request from the delegation, the Cypriot authorities reconfirmed that the escort leader had given oral information about the removal, including the date, to the five persons concerned, but that as no interpreter was present, there may have been a misunderstanding due to language.

Further, the single person who confirmed having known about the upcoming removal appeared not to have been aware of the maximum number of suitcases to be taken on board, forcing her to quickly repack her belongings from three into two suitcases shortly before boarding the van to the airport.

24. In the CPT’s view, these misunderstandings could have been avoided if the information provided by the escort leader had been provided both orally and in writing, in French or another language understood by the DRC nationals or with the assistance of an interpreter.

The CPT recommends that the Cypriot authorities take the necessary measures to ensure that all foreign nationals who are held in detention pending removal are officially informed at least several days before the flight both verbally and in writing, in a language they understand, of their scheduled removal, including its modalities, if necessary, with the assistance of an interpreter.

- ii. access to a lawyer

25. Under the 1959 Aliens and Immigration Law¹⁷, foreign nationals detained due to their irregular situation have the right to be assisted by a lawyer. Foreign nationals detained in the Menoyia Detention Centre may contact their lawyers at any time, as they remain in possession of their mobile phones and have unrestricted access to the internet through the computers made available to them by the Centre. Lawyers could meet their clients without limitations during visiting hours, in a room made available for this purpose.

The CPT welcomes this state of affairs.

26. Officially foreign nationals deprived of their liberty may benefit from free of charge legal assistance under the legal aid scheme. However, the CPT was informed that in practice access to this legal aid scheme is marred with difficulties, including due to the information being provided in Greek only.¹⁸

The CPT would like to receive more details about the accessibility of the legal aid scheme for migrants in an irregular situation, including its eligibility criteria. Further, the CPT would like to receive data about the number of migrants that have benefited from the legal aid scheme in 2022, in the context of proceedings related to an asylum application, detention and/ or removal as well as the average time between request and the granting of legal aid.

- iii. medical examination by a doctor and “fit-to-fly” certificate

16. According to the Aliens and Immigration Law, the Chief Migration Officer is the Minister of the Interior.

17. Article 18ΠΖ (2) of the Aliens and Immigration Law.

18. Another example brought to the attention of the CPT concerned migrants seeking refugee status. Apparently, in order to be granted legal aid, they need to convince the authorities in charge that their case has changes to succeed.

27. In the light of certain incidents that have occurred during removal operations by air, 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-fly” certificate be issued. This requirement was reiterated in the “Twenty Guidelines on Forced Return” and the 2016 Frontex Guide for Joint Return Operations by Air coordinated by Frontex.

Further, the Frontex Implementation Plan for this removal flight indicates that member states taking part in the JRO shall ensure that each person to be removed is “fit-to-fly”. Reference is also made to the Code of Conduct for return operations and return interventions coordinated and organised by Frontex, which requires that returnees are to be removed only if they are “fit to travel” at the time of the return operation and that a medical examination is provided for this purpose.

28. In Cyprus, a “fit-to-fly” assessment entails an evaluation of the personal medical file of the foreign national. A personal pre-departure medical exam is performed only when the medical file reveals a serious medical condition possibly affecting a person’s fitness to travel.

29. None of the five DRC nationals was medically examined in person before the removal. Thanks to their recent transfer to the Menoyia Detention Centre, the medical files of four of the five persons contained recent medical information, obtained through the medical examination performed on the day of their admission.¹⁹ As to the fifth foreign detainee, such updated medical information was absent from the file, as she had been detained in the Centre since 23 March 2022.

30. Moreover, the substance of the medical examination carried out on admission to the Menoyia Detention Centre did not cover the whole range of pathologies enumerated in the International Air Transport Association (IATA) flight inadmissibility criteria, or the need to specifically assess the risks associated with possible prolonged use of means of restraint, in particular in confined spaces such as an aircraft. Therefore, completing a basic medical examination upon admission does not automatically mean that the person concerned will be fit-to-fly if they are removed.

Further, the reliance on medical files rather than on a pre-departure medical examination presumes that the medical files adequately reflect the medical condition of the foreign national. As indicated in paragraph 13 above, the CPT has concerns about the completeness of the medical files held at the Menoyia Detention Centre, which could compromise their reliability. Also, from the small sample of files assessed by the delegation’s medical doctor it transpired that the medical examination at admission, besides not revealing injuries on covered parts of the body²⁰ was also insufficiently thorough; in one case, a pre-existing psychiatric illness had not been detected. In addition, the delegation observed that the medical notes were cursory, at times consisting of no more than one single word.

An extra complication is that it appears that a detained person may have two distinct medical files. The CPT came across a foreign national who had been detained in the Menoyia Detention Centre twice, in the space of a few months. Upon her second admission, she had been given a new detainee number and a second medical file had been opened. None of the medical information from the first medical file found its way into the second file, and no cross reference was made in either file.

31. The CPT recommends that foreign nationals subject to a removal operation should undergo a medical examination shortly before the decision to remove them is implemented, both for Joint Return Operations coordinated by Frontex and for removal operations organised by the Cypriot authorities. The medical forms to be completed following such examinations should record the doctors’ conclusions notably regarding relevant IATA inadmissibility criteria. Further, appropriate medical information, including fit-to-fly certificates, should be communicated to on-board healthcare staff in advance of the return flight.

19. The CPT understands that medical files kept in an establishment under the Ministry of Justice are not forwarded to the Menoyia Detention Centre. Therefore, the exams at admission to the Menoyia Centre do not take into account health care information collected in prison.

20. See paragraph 15 above.

iv. the right to inform a third person of the upcoming removal

32. Informing relatives in advance of an upcoming removal is an additional safeguard against ill-treatment, and persons being removed should be allowed to contact and speak to family and friends remaining in the country and in the country of return, before the start of the removal operation. Such calls contribute to reducing anxiety and allow the persons concerned to prepare their return, and possibly their reintegration. It also reduces the risk of resistance during the removal. In the CPT's view, access to a phone should, in principle, be possible until the moment of boarding.

33. The 1959 Aliens and Immigration Law, in Article 18 ΠΖ (2), provides that foreign nationals detained under the provisions of that legislation may freely communicate with family members. Despite family visits continue to be suspended due to the COVID-19 pandemic, in practise third persons could be contacted at any time as detained persons in the Menoyia Detention Centre are allowed to keep their mobile phones and have free access to Internet.

The CPT welcomes the policy applied at the Menoyia Detention Centre that detained foreign nationals remain in the possession of their mobile phones and have free access to Internet, which facilitates their capacity to contact third persons. Further, it invites the Cypriot authorities to reconsider the suspension of family visits in the light of the strongly reduced societal impact of the COVID-19 pandemic.

v. protection against *refoulement*

34. The CPT has consistently advocated for the need to reinforce the procedural safeguards against refoulement for persons deprived of their liberty to prevent violations of Article 3 of the European Convention on Human Rights.

35. In the light of its findings during this 2022 ad hoc visit, the CPT recalls the 2016 judgment of the Grand Chamber of the European Court of Human Rights (the Court) in the case of *Paposhvili v. Belgium*²¹. The Court found that the removal of a seriously ill person to his country of origin may raise an issue under Article 3, if the concerned person adduces substantial evidence that they would face a real risk of being exposed to a serious, rapid and irreversible decline in their state of health resulting in intense suffering or a significant reduction in life expectancy, due to the absence of appropriate treatment in the receiving country or the lack of access to such treatment.

According to the Court, once this 'high threshold' for the application of Article 3 has been met (also known as the "Paposhvili test")²², it is incumbent on the sending state to demonstrate, inter alia that its national procedure as to the assessment of the alleged risk of ill-treatment in the receiving country is sufficiently robust. This procedure must evaluate both the standard of care in the receiving country and the individual's personal circumstances.

36. It appears that the requirements of the Court's Paposhvili judgment have been incorporated in Cypriot law through Article 18 OZ of the Aliens and Immigration Law. There it has been made explicit that the state of health of a foreign national may prevent this person to be deported.

37. For the five DRC nationals to be deported on 8 November 2022, as far as the CPT could ascertain, there were no claims, from their lawyers or from themselves, that their state of health would prohibit removal. However, in view of the delegation's findings reported in paragraphs 29 and 30 above, on the comprehensiveness of the medical files held at the Menoyia Detention Centre, the Cypriot authorities may wish to reflect on the existence of a risk of any future violation of the principles of non-refoulement. **The CPT would like to receive the comments of the Cypriot authorities on this matter.**

21. See *Paposhvili v. Belgium*, application no. 41738/10, Grand Chamber judgment of 13 December 2016, paragraphs 183-187 and 202-206.

22. See *Savran v. Denmark*, application no. 57467/15, Grand Chamber judgment of 7 December 2021, paragraphs 134-136.

38. As regards the DRC national who remained in Cyprus after displaying signs of being unwell and who was medically examined at Larnaca Hospital, **the CPT would like to receive information about the outcome of the medical examination.** Further, **it would like to be informed whether he has been deported after the court hearing on 18 November 2022 and, if so, about his state of health at the moment of removal.**

39. Another safeguard against refoulement is a last contact, immediately before the handover to the receiving authorities, between the escort leader on board the plane and the headquarters in Nicosia to verify whether any interim order with suspensive effect has been issued by a court during the flight (“last call procedure”).²³ However, it appeared to the delegation that no such contact had been established with the headquarters in Cyprus as regards the state of their legal proceedings.

The CPT recommends that the Cypriot 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, are at all times fully informed of the state of legal proceedings with suspensive effect of the persons to be removed, up to the moment of handover.

4. Transfer to Larnaca International Airport

40. Transport of detained foreign nationals to the airport for removal purposes is governed by Police Regulation 5/4 of 4 February 2021 “on the transport of convicts”. Amongst other things, the Regulation stipulates that, as a rule, handcuffs must be used, that escorting police officers shall not be armed and that they shall be of the same sex as the person they are accompanying. Further, the Regulation prescribes the use of strip searches at various moments during a transport and sets rules as to how these should be carried out.

To the CPT it appears that in particular the obligatory nature of the use of handcuffs as prescribed by Police Regulation 5/4 may very well be in contradiction with the Aliens and Immigration Law, where in Article 18 B coercive measures are reserved for foreign nationals who resist removal. The practise as observed by the delegation during the transport to Larnaca International Airport was more lenient than prescribed by the Regulation. This is to be welcomed as it concerns foreign nationals administratively detained under Immigration legislation rather than persons who are serving a criminal sentence or suspected to have committed a crime.

The CPT recommends that a specific rule be drafted on the transportation of foreign nationals due to be deported.

41. With the airplane to Kinshasa departing from Brussels on Tuesday 8 November at 11:00 and expected to make its stop over at Larnaca International Airport between 16:10 and 17:40 the same day,²⁴ the five DRC nationals were individually collected from their rooms around 14:00 in order to be escorted to the transport van waiting at the main entrance of the Menoyia Detention Centre.

42. Before the individual collection, the escorts met for a briefing. The escorting police officers were presented with the timetable of the return flight and reminded of their obligations and responsibilities. It was the second meeting of the escort team: an earlier briefing had taken place on Friday. The Cypriot authorities informed the delegation that it was during the Friday 4 November meeting that operational matters were discussed, including the individual risk assessment, and that it was decided that, in line with the Frontex Implementation Plan, Velcro type handcuffs were to be used on the five foreign nationals. None of these matters was addressed at the Tuesday 8 November meeting.

23. For instance, the Cyprus Supreme Constitutional Court under Rule 13 Rules of Court may grant a provisional order to suspend a removal, and the European Court of Human Rights may issue Interim Measures under Rule 39 of its Rules of Court. Further, under the terms of the Aliens and Immigration Law also the Chief Immigration Officer may decide to suspend a removal “due to the physical or mental condition” of the foreign national.

24. In reality, the aircraft landed at 16:25 and departed at 17:45, all local time.

43. Immediately after the briefing, five teams of two escorts each proceeded to the accommodation Blocks to collect the five returnees: teams consisting of male police officers for the four male returnees and a team consisting of female officers for the female returnee.

44. Three of the five persons were escorted to the transport van without incident: they were allowed to say goodbye to their roommates, collected their luggage which they had packed the night before and were brought to the admission office on the ground floor. There, their stored valuables were returned. Subsequently, they were subjected to a pat-down search.

The collection process for these three DRC nationals was smooth and expedient but for a minor disruption. As mentioned in paragraph 23 above, shortly before boarding, one of the persons had to repack her belongings from three into two suitcases. This misunderstanding had no noticeable impact; the woman remained calm and cooperative.

45. The collection of the two other DRC nationals was more problematic. In the case of one returnee, initial resistance was overcome after approximately 30 minutes when the Cypriot authorities accepted that he would return on voluntarily terms, with a financial compensation.

The second returnee continued to resist his removal firmly as he was under the assumption that he was entitled to attend an appeal hearing about his rejected asylum request, scheduled for 18 November 2022. During approximately 45 minutes, the Head of Operation attempted to convince the man to cooperate. However, neither a phone call with his lawyer, who explained that an appeal procedure does not have a suspensive effect, nor a promise by the Cypriot authorities that he would be returned to Cyprus if his appeal would be successful, made him change his mind. He also refused a certain monetary amount he was offered if he would give up resistance.

His mood swung between agitation and passive resignation. At some point, the man started to display signs of becoming physically unwell: twice he slipped on the ground, first from a chair and then from the wheelchair in which he had been placed, each time shaking and vomiting slime, and at times crying.

He was cuffed behind the back with metal handcuffs twice. On both occasions the handcuffs were removed soon afterwards, and negotiations resumed. Eventually, due to the time pressure and apparent reluctance to apply force, the Cypriot authorities decided that he could remain in Cyprus, awaiting the hearing.

46. Later that day, at 15:50, he was brought to Larnaca Hospital to be examined at the Emergency Department. The hospital report states that a psychological test was performed and that psychiatric examination was recommended. The report neither mentions the presence of somatic health issues nor specifies the outcome of the psychological test. At 20:30, he returned to the Menoyia Centre.

47. The CPT found that the behaviour by the representatives of the Cypriot police towards the DRC national was calm and respectful throughout the event. In this respect, the CPT has more concerns with the intervention undertaken by the Centre's nurse.

Early in the negotiations, the Centre's nurse came into the room and offered the person a sedative, which he refused. Later, the nurse re-entered the room with two syringes: one filled with a fully transparent, colourless liquid, the other with a yellowish transparent fluid. By exposing the buttock of the DCR national, he appeared to prepare for the injection of one or both of the substances. At that point, upon the nurse's request, the CPT delegation, with the exception of the delegation's doctor, retired from the room. The nurse took offence at the doctor remaining and asked him to leave, which he refused, explaining the role of the CPT. The nurse insisted and raised his voice against the delegation's doctor.

In order not to escalate the matter further and knowing that the room was under video surveillance, the delegation's doctor decided to step back, prompting an intervention by the Head of Operation. He led the delegation's doctor back into the room and explained the role of the CPT to the nurse. By now very upset, the nurse left the room, taking the two unused syringes with him.

One day later, on 9 November 2022, the delegation asked the Centre's doctor, who during the event had been present in the building but had remained in the nursery, about the purpose of the intervention. According to the doctor, both syringes had been filled with water, intended to create a placebo effect. As one of the syringes contained a yellowish transparent liquid, the delegation believed that the doctor might have been mistaken. An enquiry in the Centre itself led the delegation to believe that the yellowish transparent liquid in one of the syringes was most likely Diazepam, a sedative.

48. The intervention by the nurse raises various questions:

- First, what was the aim of the intervention, particularly given the fact that chemical restraints are not allowed in the context of a removal?
- Secondly, if instead there was a necessity to intervene medically, how was this medical necessity established, as neither the doctor nor the nurse had examined the person concerned?
- Thirdly, if the forcible administration of medication was indeed considered a medical necessity, for what reason was it not ultimately given?

The CPT invites the Cypriot authorities to provide an explanation as to the intervention by the nurse, taking into account the questions above. Further, the CPT would like to receive an explanation as to the role of the Centre's doctor in overseeing the above medical intervention.

49. The transport van with four DRC nationals left the Menoyia Centre around 15:30, arriving at the airport at approximately 15:55. In the van, the foreign nationals were divided over two compartments: the woman was seated in the front compartment and separated by a grill, the three men were placed in the rear compartment. All passengers were secured with safety belts and none of them was handcuffed. The escorting police officers followed in another car, as did the luggage and an interpreter recruited by Frontex.

50. At the airport, a large party of police officers, including 10 forced return escort and support officers (FRESOs) from the Frontex standing corps from Bulgaria and France, awaited the four returnees, who descended from the van one by one, accompanied by two police escorts each. Then, with an escort on each side, holding an arm, each returnee together with their luggage was brought into the building. There, they were searched once again (pat-down search).

51. After a security check, performed by airport staff, the four DRC nationals were led onto a bus, unrestrained, which brought them to the old airport building, then into a large waiting room with chairs, where they received a snack and had their phones returned. If needed, they could use the toilet.

When at 16:25 the plane from Brussels landed at Larnaca International airport, the four returnees boarded a bus, which brought them to the airplane. Then, one by one, with one police escort on either side holding an arm, they boarded the plane through a group of police officers that returned them to the Democratic Republic of Congo.

52. The delegation noted that certain escort officers made efforts to repeatedly engage in conversation with the persons for whom they had responsibility in order to decrease tensions or to reassure them. Unfortunately, this was not the case for all escorting officers. **The CPT recommends that the Cypriot authorities promote the adoption of a dynamic security approach by all police escorts.**

5. Other issues related to the CPT's mandate

i. means of restraint

53. As regards the use of means of restraint during transport, Regulation 5/4 of 4 February 2021 refers to Regulation 5/39 of 23 November 2020 on the use of handcuffs. The latter Regulation distinguishes between three types of handcuffs: metal, disposable plastic handcuffs (straps) and "Velcro type" handcuffs. As to the Velcro type handcuffs, these are to be employed exclusively for removal operations of foreign nationals. Conversely, in the event that the foreign national is uncooperative or when there is a risk of absconding or violence, metal handcuffs are to be used. Further, the Regulation prescribes that in principle the hands must be cuffed at the back.

54. After an individual risk assessment, the five DRC nationals were considered to be of low risk (level 1 out of 3). Consequently, in line with the Frontex Implementation Plan for the JRO and in accordance with Cypriot legislation a decision was made to use Velcro handcuffs. This decision as to the security level applied could be found in their personal files but omitted the underlying grounds.

The CPT would like to receive more information as to the individual risk assessment, including the criteria used, and in what way it is carried out, including how a certain security level is determined. Further, it would like to be informed in what manner the outcome of the individual risk assessment was communicated within the team in charge of carrying out the removal of the five DRC nationals.

55. Means of restraint were used for the first time before the security check at Larnaca International Airport, when two of the male DRC nationals were handcuffed with Velcro bracelets. The woman and the man who last minute negotiated a return under voluntary conditions, remained unrestrained, causing some consternation with the two other returnees. Their protests led to a decision by their escorts to remove their handcuffs. Later the delegation was provided with the explanation that, as a rule, women are not handcuffed and that the man considered himself a voluntary returnee and threatened to become violent if he were to be restrained.

Although the delegation was surprised that the decision was made at the level of the escorting police officers rather than by the escort leader, the CPT nevertheless welcomes the flexibility displayed by the escorts, which led to the de-escalation of what could have become a tense situation.

56. Despite Regulation 5/39 authorising the use of leg cuffs in very exceptional cases and with the prior approval of the Police Commander, the CPT was repeatedly told that no means of restraints other than handcuffs, be they chemical or mechanical, are authorised for use in the context of a removal operation.

The CPT would like to receive confirmation of the above.

ii. interpretation

57. It is to be welcomed that Frontex made an interpreter fluent in English, French and Lingala available throughout the removal procedure.

The CPT understands that the interpreter had been recruited shortly before the removal operation, which may explain why at times the Cypriot police appeared to be uncertain how best to use his services. For instance, during the event described in paragraph 45 above, the police officers involved could have sought more consistently his assistance to calm the foreign national rather than continue to speak in English, which the man had difficulties in understanding.

58. A more strategic use of the services of an interpreter combined with the presence of an interpreter during the entire operation, including during the notification of removal, would have been an asset for the operation, for police officers and foreign nationals alike.

The CPT would like to receive the comments of the Cypriot authorities on the above.