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Report

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

from 7 to 10 November 2022

The Government of Belgium 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) 21 (available in French only).

Strasbourg, 13 July 2023

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EXECUTIVE SUMMARY

The report on the November 2022 visit to Belgium examines the treatment of foreign nationals deprived of their liberty under immigration legislation and the safeguards afforded to them in the context of their removal. The CPT's delegation monitored a joint removal operation (JRO) by air from Belgium to the Democratic Republic of Congo (DRC), via Cyprus, on 8 November 2022, supported by the European Border and Coast Guard Agency (Frontex). The delegation observed all stages of the operation, including the preparations at the Repatriation Centre 127bis and at the airport, the in-flight phase, the stop-over in Cyprus, and the handover of the 18 returnees to the authorities of the DRC. The delegation received excellent cooperation during the visit from the Belgian authorities.

The CPT did not receive any allegations of ill-treatment from persons removed from Belgium to the DRC by escort officers of the Belgian Federal Police. On the contrary, the removal operation was carried out professionally throughout and returnees were treated with respect and dignity.

Nevertheless, the CPT considers that there is a need to further strengthen the procedural safeguards against *refoulement*, including the legal remedies against the removal order, to ensure that no-one is sent back to a country where they run a real risk of ill-treatment when removed. It is important that the risk of ill-treatment is adequately assessed at the time of removal. The Committee also encourages the authorities to put in place additional safeguards against *refoulement*, such as a "last call procedure" before handover and post-return monitoring. Moreover, all returnees should be notified of their scheduled removal at least several days in advance and be more systematically informed on possible assistance and support upon their return.

The Belgian authorities should also actively facilitate the possibility for returnees to inform a third person of their choice of their imminent removal and ensure that all returnees can contact their lawyer up to the moment of boarding. In addition, the safeguards in the context of issuing a "fit-to-fly" certificate should be strengthened and medical examinations prior to removal should be conducted in a dedicated examination room and without the presence of police officers.

The CPT takes note of the detailed guidelines and operational instructions on the use of force and means of restraint, which reflects the Committee's position on this matter. It welcomes the proportionate and gradual resort to force and means of restraint, based upon an individual risk assessment and a dynamic security approach adopted by all federal police escorts. Police escorts should however wear a visible identification tag. Further, returnees should not be required to remove all their clothes at the same time when strip searches are carried out prior to boarding the aircraft. In addition, several recommendations are made to improve medical confidentiality and the coordination of transmission of medical information.

Moreover, the CPT highlights the importance of ensuring that returnees are appropriately informed of the Frontex complaint mechanisms. It also considers that the General Inspectorate of the Federal Police and Local Police (AIG) should be provided with the necessary resources to effectively carry out its mandate as the national forced return monitoring system.

The treatment and conditions of detention of the returnees at the Repatriation Centre 127bis were also examined. The CPT welcomes the Belgian authorities' decision to no longer detain children in removal centres. It also notes the plans to create additional immigration detention places. As regards the 127bis Centre, the material conditions in the segregation section should be improved and all decisions concerning the placement of foreign nationals in segregation should be notified in writing. The Committee also makes recommendations concerning the healthcare services provided within, including on the independence of healthcare staff and the need for systematic and comprehensive medical examination of returnees after an unsuccessful removal attempt.

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 Belgium from 7 to 10 November 2022. The visit was considered by the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

The purpose of the visit was to examine the treatment and conditions of detention of foreign nationals deprived of their liberty under immigration legislation as well as the procedures applied and safeguards afforded to them in the context of their removal. More specifically, the delegation observed the preparations and conduct of 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. The joint return operation (JRO) from Belgium to the DRC was the sixth removal operation by air monitored by the Committee since 2012. The previous monitoring visits included two national return operations (NROs) and three JROs, four of which had been supported by Frontex.²

In 1997, in its 7th General Report, the CPT set out its 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 developed its standards on deportation of foreign nationals by air,⁴ which were subsequently reflected in the Council of Europe’s 2005 “Twenty Guidelines on Forced Return”.⁵

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

- Jari Pirjola (Head of delegation)
- Kristina Pardalos

They were supported by Sebastian Rietz and Kelly Sipp of the CPT’s Secretariat and assisted by an expert, Cyrille Orizet, psychiatrist at the European Hospital Georges Pompidou, Paris (France), and two interpreters, Hildo Bos and Léa Ouédraogo.

1. Simultaneously, another CPT delegation carried out an ad hoc visit to Cyprus from 7 to 9 November 2022 to observe the treatment of the foreign nationals who were removed from Cyprus on this JRO. The findings of this visit are contained in a separate report transmitted to the Government of Cyprus.

2. The Committee observed an NRO from the United Kingdom (London) to Sri Lanka (Colombo) in October 2012 (see CPT/Inf (2013) 14), a JRO from the Netherlands (Rotterdam) to Nigeria (Lagos) in October 2013 (see CPT/Inf (2015) 14), a JRO from Italy (Rome) to Nigeria (Lagos) in December 2015 (see CPT/Inf (2016) 33), a JRO from Spain (Madrid) to Colombia (Bogota) and the Dominican Republic (Santo Domingo) in February 2016 (see CPT/Inf (2016) 35), and an NRO from Germany (Munich) to Afghanistan (Kabul) in August 2018 (see CPT/Inf (2019) 14). Prior to 2012, the CPT had examined a number of removal operations by air in the framework of the treatment of persons deprived of their liberty under immigration legislation.

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

4. See CPT/Inf (2003) 35, paragraphs 27 to 45.

5. See Committee of Ministers of the Council of Europe, Twenty Guidelines on Forced Return, adopted on 4 May 2005.

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 Belgium on 23 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 Belgium 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 also like to encourage the Belgian authorities to bring this report to the attention of Frontex and the other participating member states.

B. Consultations held by the delegation and cooperation encountered

5. In the course of the visit, the delegation held consultations with representatives of the Belgian Federal Police (namely the aviation police operating at Brussels National Airport, LPA/BruNat, responsible for border control and removals) and the Immigration Office, both operating under the authority of the Federal Public Service (FPS) Home Affairs. Further, it held discussions with representatives of the General Inspectorate of the Federal Police and Local Police (AIG). The delegation also met with representatives of civil society in Belgium and of the International Organisation for Migration (IOM) mission in Kinshasa (DRC).

6. The level of cooperation received from the Belgian authorities, and especially from the Federal Police, was excellent.⁶ The delegation had rapid access to all places of deprivation of liberty it wished to visit (namely the segregation section at the Repatriation Centre 127bis and the vehicles and aircraft used for the removal operation), was provided with full access to all information required to carry out its task and was able to interview detained persons in private.

The CPT wishes to express its appreciation for the assistance provided to its delegation during the visit by the management and staff in the 127bis Centre and the contact persons appointed by the Federal Police and the Immigration Office, and especially by the escort leader of the JRO, Frederik Dedeyne and its liaison officer from the FSP Justice, Philippe Wéry.

6. The Committee wishes to place on record that its delegation benefited from excellent cooperation from the three other national escort teams and from Frontex staff.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. The removal operation: preparations and conduct

1. Preliminary remarks

7. According to the data provided by the Immigration Office, published by the General Inspectorate of the Federal Police and Local Police (AIG)⁷ in its 2021 Annual Report on forced return monitoring, a total of 1 984 persons were subjected to a forced removal from Belgium, including 1 549 by air, during 2021. These numbers are comparable with those in 2020 (2 097 persons, including 1 549 by air), but much lower than those in 2019 (3 743 persons, including 3 312 by air), which can be explained by the impact of the COVID-19 pandemic on forced returns.⁸

Moreover, Frontex has enhanced its technical and operational support in migration enforcement and return. In 2021, 18 300 persons were removed with Frontex support from European Union (EU) member states.⁹ The EU has announced to further increase the number of removals, in line with its strategy for more effective returns.¹⁰

8. Belgium has outlined its political intention to implement a step-by-step plan for a humane, safe, effective and efficient removal policy, which gives priority to voluntary return.¹¹ The country has signed a Memorandum of Understanding with the authorities of the DRC in April 2017, which does not, however, cover the readmission of DRC nationals or nationals of other third countries.

Despite the absence of a bilateral readmission agreement between Belgium and the DRC and formalised cooperation on readmission practices between the EU and the DRC, the European Return Liaison Officer (EUR-LO)¹² deployed in the country supports operational cooperation in returns. According to Federal Police data, only six DRC nationals were removed by force from Belgium in 2021 and 20 in 2022 (including the eight persons removed by the return flight monitored by the CPT).

9. The legal framework concerning the removal of migrants in an irregular situation from Belgium is regulated by the relevant provisions of the Law of 15 December 1980 on access to the territory, residence, settlement and removal of foreign nationals (Immigration Act), and the Royal Decree of 8 October 1981 on access to territory, residence, settlement and removal of foreign nationals. When foreign nationals are apprehended and found to be in an irregular situation, a removal order is issued by the administrative (namely the Immigration Office) or judicial authorities.¹³ A period of 30 days for voluntary departure is usually granted to the person concerned. If the person

7. AIG has been designated as the national body responsible for monitoring forced returns under Article 8 (6) of Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive) (see paragraphs 75-76).

8. Measures taken by certain countries of destination in response to the pandemic included, for instance, the imposition of travel restrictions and/or the requirement for persons to be returned and escort staff to be subjected to a negative COVID-19 test and/or quarantine, which resulted in a significant reduction in the number of forced return flights in 2020 and 2021.

9. An overview of Frontex's 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).

10. See European Commission, Towards an operational strategy for more effective returns, policy document, COM(2023) 45 final, 24 January 2023.

11. See Ministerial guidelines on the organisation of removals of foreign nationals by air, dated 16 March 2022.

12. A European Return Liaison Officer (EUR-LO) is a specialised liaison officer deployed to third countries in view of representing EU interests by strengthening their capacity in the field of return, supporting the organisation of joint return operations under coordination of Frontex and facilitating the implementation of reintegration and post-arrival assistance. See European Commission, Proposal for a Regulation on the creation of a European network of immigration liaison officers (Recast), COM(2018) 303 final. In the context of the JRO, an official from the Belgian FSP Foreign Affairs, Foreign Trade and Development Cooperation deployed in Kinshasa acted as EUR-LO.

13. A removal order can also be accompanied by an entry ban. As regards detention of foreign nationals, see part B below.

does not comply with the order, the foreign national can be placed at the disposal of the Government or deprived of their liberty in a detention centre with a view to their forced removal.¹⁴ After a refusal to return on a voluntary basis, the Federal Police, in cooperation with the Immigration Office, is responsible for enforcing the removal order and implementing forced removal operations by air, including by means of charter flights. When carrying out forced removals, Federal Police officers assigned as escorts must comply with the Police Act of 5 August 1992 (*Loi sur la fonction de police – LFP*).

As to applicable EU regulations, Belgium is also bound by the EU Return Directive.¹⁵ Further, as specified in the Ministerial Guidelines on the organisation of removals of foreign nationals by air of 16 March 2022 and the Frontex Implementation Plan for this JRO, the removal operation is implemented in accordance with the respective national legislation as well as the applicable EU and international law; relevant standards and guidelines shall also be considered.¹⁶ In addition to their legal obligations under Belgian law, all Federal Police officers participating in 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,¹⁷ the Frontex Guide for joint return operations by air coordinated by Frontex, and the ‘Return Handbook’ annexed to Commission Recommendation (EU) 2017/2338.¹⁸

During the in-flight phase of the removal operation, the Tokyo Convention¹⁹ governs the rules regarding all actions related to security and safety on board the aircraft.

10. In addition to the return flight to the DRC (Kinshasa), and the handover of 18 Congolese 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 foreign nationals from the Repatriation Centre 127bis to Brussels Military Airport; the arrival of these persons and of additional persons to be returned from Germany and Sweden at Brussels Military Airport; and the boarding of the military aircraft chartered for the JRO; and
- In Cyprus: the preparations, collection and transfer of foreign nationals from the Menoyia Detention Centre to Larnaca International Airport; the arrival and flight preparations of these persons at the airport; and the boarding of the aircraft.²⁰

This report concerns the preparations for removal and pre-flight phase in Belgium, including the treatment and conditions of detention at the 127bis Centre, as well as the conduct of the entire return flight to the DRC.

11. The Frontex Implementation Plan communicated to the CPT in the week prior to the scheduled return flight, mentioned that the four countries involved in the JRO had indicated a concrete interest to remove 23 persons to the DRC (that is 10 from Belgium, five from Cyprus, six from Germany and two from Sweden), down from an initial 33 persons.

14. Article 74/8 (1) and 74/14 of the Immigration Act.

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

16. 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”.

17. 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.

18. 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.

19. Convention on Offences and Certain Other Acts Committed on board Aircraft (Tokyo Convention), signed on 14 September 1963.

20. The findings of the CPT’s ad hoc visit to Cyprus from 7 to 9 November 2022 are contained in a separate report transmitted to the Government of Cyprus.

In the end, 18 Congolese nationals were returned to the DRC: eight persons were removed from Belgium (including two women), four from Cyprus (including one woman), three from Germany (including one woman), and three from Sweden (including one woman). Among the eight persons removed from Belgium, six were brought to the segregation section of the 127bis Centre in preparation of their imminent removal (see part B) one day prior to the flight, while two had already been detained at the centre before. All had a valid and enforceable removal order.²¹

12. Further, a total of 63 police escorts from the four countries participating in the JRO (including the four escort leaders, the Belgian deputy escort leader and the 10 Forced Return Escort and Support Officers (FRESOs) from the Frontex standing corps), a representative of the Immigration Office, a medical doctor, and two social workers boarded the aircraft.

In addition to the delegation, there were also two Frontex representatives as well as one Fundamental Rights Monitor from the Office of the Fundamental Rights Officer (FRO) onboard the aircraft. Moreover, two representatives of the General Inspectorate of the Federal Police and Local Police (AIG) monitored the pre-departure phase of the return operation in Belgium.

13. In the Committee's experience, the forced removal of foreign nationals entails a certain risk of ill-treatment (for example, at the time of collection, during the actual flight or when removal is aborted). However, over the last decade, the CPT has observed a positive trend of professionalisation of removal operations by air in Europe, which is notably due to clearer rules and regulations, increased training of escort officers and enhanced monitoring of return flights.

The CPT welcomes this development. It is important that this positive trend be sustained, given the current context of continued arrivals of mixed-migratory flows to Council of Europe member states and ongoing measures taken towards increasing the number of forced removals.

14. From the outset, the CPT wishes to emphasise that its delegation did not receive any allegations of ill-treatment from persons removed from Belgium to the DRC by escort officers of the Belgian Federal Police. On the contrary, the return operation of 8 November, organised by Belgium was well prepared and carried out professionally throughout. Overall, the Committee gained a positive impression of the conduct of the JRO, and persons removed to the DRC were treated with respect and dignity.

2. Safeguards in the context of removals

15. In its 7th General Report,²² the CPT has set out the safeguards that should be afforded to foreign nationals deprived of their liberty. This includes specific safeguards against *refoulement* and effective procedures to notify the person concerned in a timely manner of, and prepare them for, their impending removal with the aim of reducing the risk of ill-treatment during and after removal.

The CPT also recalls that foreign nationals deprived of their liberty in view of their removal should be able to enjoy, from the very outset of their notification, the fundamental safeguards against ill-treatment, notably the rights to inform a close relative or third party of the imminent removal, to have access to a lawyer and to a medical doctor (particularly in the context of a "fit-to-fly" examination), and to be informed of their rights in a language and a manner that they understand.

a. protection against *refoulement*

16. 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. More specifically, the decision-making process concerning the removal of migrants should offer suitable guarantees, including as regards the level of competence of those making the decision and the possibility to appeal such decisions to an

21. Six other DRC nationals deprived of their liberty and originally placed on the flight list, were removed from the list later in the days prior to departure. One person had submitted an urgent appeal against his removal order and requested interim measures with suspensive effect, a second had lodged an asylum application with suspensive effect, and two other persons were required to first serve their respective prison sentences in Belgium. Moreover, a fifth person had a separate Dublin transfer to Cyprus scheduled during the same week, and the travel documents for a sixth person could not be organised in time.

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

independent body. This includes access to a confidential, independent and objective asylum process based on an individual risk assessment. Further, foreign nationals who are required to leave the country should receive individual removal orders and be placed in a position to effectively make use of the legal remedies available against their forced removal, based on an individual assessment of the *prima facie* risk of ill-treatment in the case of removal.

17. Based on the findings of the visit, the persons removed to the DRC had the possibility to access a confidential, independent and objective asylum process based on an individual risk assessment. Seven of the eight persons removed had previously applied for asylum in Belgium but had been rejected. Three of them had their asylum claim considered in 2022.²³

However, the asylum applications of the four other returnees had been rejected over 10 years ago, which did not allow for an assessment of the risks these persons might face at the time of removal. In view of the absolute nature of the protection offered by Article 3, the CPT is of the view that the asylum procedure carried out many years prior to the actual removal may not in itself provide for a sufficient safeguard against *refoulement*. It therefore does not exempt the Belgian authorities from their procedural obligations to examine the *prima facie* risk of serious and irreparable harm prior to the person's removal.²⁴

18. To ensure that a person is not sent back to a country where there are substantial grounds for believing that they would run a real risk of being subjected to ill-treatment, the delegation was informed that every returnee had a right to be heard and provide information about their individual situation, including when interviewed by the social workers or representatives of the Immigration Office in detention.

According to the relevant provisions of the Immigration Act,²⁵ a foreign national who is required to leave the country can lodge an appeal for annulment before the Immigration Appeals Board (*Conseil du Contentieux des étrangers, CCE*) to set aside the removal order, combined with a request for a stay of execution under the "ordinary procedure". One of the persons returned to the DRC had lodged such an appeal against his detention and removal order that was pending at the time of removal.

19. However, appeals under the "ordinary procedure" do not reassess the merits of the removal decision and do not have automatic suspensive effect of the removal. For a person detained for the purpose of imminent removal, only appeals combined with a request for a stay of execution of the removal order under the "extremely urgent procedure" will have the effect to automatically suspend the removal.²⁶

In view of the importance of the right protected by Article 3 and the irreversible nature of the removal, this procedure has previously been found by the European Court of Human Rights (the Court) as "in practice difficult to implement and too complex" and therefore to be contrary to Article 13 taken in conjunction with Article 3.²⁷ Further, the information brochure and specific information on removal provided upon arrival in a detention centre do not contain any information on the possibility to appeal the removal order.

20. In light of these remarks, **the CPT recommends that the Belgian authorities take the necessary steps, including of a legislative nature, to review and strengthen the legal remedies**

23. Another DRC national lodged a first-time asylum application with suspensive effect and was removed from the initial flight list (see Article 49/3/1 of the Immigration Act). However, any follow-up application for international protection can be dealt with under the accelerated procedure and the appeal only has suspensive effect in exceptional circumstances.

24. See European Court of Human Rights, *M.A. v. Belgium*, application no. 19656/18, judgment of 27 October 2020, paragraph 86.

25. Article 39/2 (2).

26. Article 39/82 (4) of the Immigration Act. The time limit to lodge this appeal and request interim measures in case of extreme urgency is reduced from 10 to five days in case of a second removal attempt.

27. See *S.J. v. Belgium*, application no. 70055/10, judgment of 27 February 2014, paragraphs 102-107. After the Chamber judgment, this case was referred to the Grand Chamber and struck out of the list of cases following a friendly settlement reached between the applicant and the Belgian authorities.

against the removal order, to ensure no-one is sent back to a country where they run a real risk of ill-treatment when removed. Further, the specific information on removal provided upon arrival in a detention centre should include information on legal remedies against the removal order, to ensure that they are made more accessible in practice.

21. The Grand Chamber of the Court, in its 2016 judgment in the case of *Paposhvili v. Belgium*, found that the removal of a seriously ill person to his country of origin may raise an issue under Article 3, if the person concerned 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.²⁸

According to the Court, once this high threshold for the application of Article 3 has been met (also known as the “*Paposhvili test*”),²⁹ it is incumbent on the 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.

22. As a consequence of this judgment, the Belgian authorities have revised the questionnaire to be completed by the persons concerned prior to their detention pending removal by adding general questions about possible risks in case of removal. Moreover, a specialised legal unit of the Immigration Office composed of three officials was established, tasked with carrying out the assessment of the risk of ill-treatment. From the individual files of the returnees consulted by the delegation, it became apparent that close attention was paid to the medical conditions of the persons concerned. In addition, the representatives of the Immigration Office indicated that the risk of ill-treatment in countries where there was a situation of generalised violence or conflict was also assessed. If the assessment would conclude that there was a high risk of treatment contrary to Article 3, the authorities would not have proceeded with the removal of the person concerned. This is a positive development.

28. See *Paposhvili v. Belgium*, application no. 41738/10, Grand Chamber judgment of 13 December 2016, paragraphs 183-187 and 202-206. See also the relevant case law of the Immigration Appeals Board (CCE) and the Council of State. In its judgment of 26 September 2017 (Joint chambers, no. 192.584), the CCE found that a foreign national who fears that he will be subjected to treatment contrary to Article 3, if removed to a country – on account of both the general situation in that country and the individual circumstances – can, in good time, assert them in substance. It follows that the Immigration Office must, before adopting a removal order, carry out as rigorous an examination as possible of the elements concerning the alleged ill-treatment of which it is or must be aware. The Council of State, in its judgment of 29 May 2018 (nos. 241.623 and 241.625), confirmed that the Immigration Office must ensure that the enforcement of the removal order complies with Article 3 at the moment the removal order is issued.

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

23. Although the eight returnees were brought to the capital Kinshasa, having regard to the ongoing conflict and violence in the eastern parts of the DRC,³⁰ **the CPT would like to receive a confirmation that an assessment of the risk of ill-treatment had been carried out with respect to all eight persons removed to the DRC, based on their individual circumstances at the time of removal.** Further, it would like to receive additional information concerning the functioning of the specialised legal unit and the role played by the EUR-LO in the assessment of the risk of ill-treatment.

24. In the CPT's view, a last contact between the escort leader of the Federal Police or the representative of the Immigration Office on board the plane and the headquarters in Belgium should be carried out immediately before the handover to verify whether an interim order with suspensive effect has been issued by a court during the return flight ("last call procedure") following an appeal by a legal representative of one of the persons returned.

However, during consultations with representatives of the Immigration Office, they confirmed that such a last call procedure was – in their view – not necessary as the removal of the person concerned would be halted if a suspensive appeal had been lodged prior to the departure of the flight. Nevertheless, this does not exclude such appeals from being submitted at a later point in time during the flight, especially in case of late notification of the removal. The delegation was informed that no contact was established with colleagues in Belgium upon arrival in Kinshasa to verify whether any further legal proceedings with suspensive effect had been initiated in the meantime.

25. **The CPT recommends that the Belgian authorities ensure that a "last call procedure" is put in place and effectively implemented in practice during all future removal operations by air to guarantee that the escort leader and/or representative of the Immigration Office onboard are always fully informed of the state of pending legal proceedings with suspensive effect, up to the moment of handover.**

26. Moreover, the CPT is of the opinion that post-return monitoring³¹ of the situation of persons removed in the country of return would present an additional safeguard against *refoulement*.

At present, the Belgian authorities do not monitor what actually happens to foreign nationals after they have been removed. If data and information on the post-return phase of forced returns was collected more systematically by the Belgian authorities, the Immigration Office would be better equipped to take informed removal decisions in compliance with Article 3.

The CPT would like to encourage the Belgian authorities to consider developing a system of post-return monitoring and collecting relevant data and information on whether foreign nationals removed by force to their countries of origin were exposed to treatment contrary to Article 3 of the European Convention on Human Rights upon their return. It also encourages the Belgian authorities to bring this matter to the attention of Frontex³² and the other EU member states organising or participating in return operations supported by Frontex.

30. See United Nations High Commissioner for Refugees (UNHCR), UNHCR position on returns to North Kivu, South Kivu, Ituri and adjacent areas in the Democratic Republic of Congo affected by ongoing conflict and violence – Update III, November 2022.

31. "Post-return monitoring" aims to collect relevant data and information about the different problems that returnees have faced upon their return, including possible exposure to persecution or ill-treatment.

32. According to Article 80 of the Frontex Regulation, the Agency shall ensure that no person, in contravention of the principle of *non-refoulement*, be sent to a country where there is a serious risk that they would be subjected to the death penalty, torture, persecution, or other inhuman or degrading treatment or punishment.

b. timely notification of removal

27. According to the relevant provisions under Belgian law, returnees subjected to a first removal attempt and their lawyers shall be notified of the date of removal 48 hours before departure.³³ This delay seemed to be respected by the Immigration Office. From the eight detained persons returned to the DCR, four returnees were notified four days prior to departure (Friday 4 November), due to the weekend.

However, there are no rules concerning notification for subsequent removal attempts. Consequently, the other four returnees, who were subjected to a subsequent removal attempt, were only notified of their imminent removal 24 hours before departure (Monday 7 November), shortly before their transfer to the 127bis Centre.³⁴ Some persons complained that they had not had sufficient time to collect all their personal belongings, including documents and money, or inform relatives or friends, let alone say goodbye to them. Further, returnees were only notified about their impending removal orally. Several returnees who were subjected to a second attempt of removal had allegedly been told by the social worker when being notified that they could not refuse the flight or lodge an appeal against the decision.

28. The CPT recalls that it is essential for foreign nationals detained in view of removal – many of whom have lived in the country for several years – to be informed sufficiently far in advance of their prospective removal, so that they can begin to prepare for departure and organise their return. A timely notification of removal will allow them to come to terms with the situation psychologically and ensure that they are able to inform the persons they need to and retrieve their personal belongings. Further, in the Committee's experience, preparing the person concerned well in advance of the scheduled removal can decrease the risk of the person violently resisting the removal (see paragraphs 69 and 70). Such an approach will reduce the need to use force and/or means of restraint during forced removal operations.

The CPT recommends that the Belgian authorities take the necessary measures, including of a legislative nature, to ensure that all persons held in detention with a view to their removal (irrespective of the number of previous removal attempts) are notified of their scheduled removal at least several days in advance, to allow them to collect their personal belongings, including documents and money, and be able to make the necessary arrangements to prepare for their return.

c. preparations for return

29. It is crucial that foreign nationals deprived of their liberty can prepare adequately for their removal. According to the Ministerial guidelines on the organisation of removals of foreign nationals by air, the returnee must be prepared in the best way possible. This means that all reasonable steps must be taken to eliminate factors that may make a departure difficult or impossible.

30. Upon arrival at an immigration detention centre, all foreign nationals are seen by a social worker. During the induction meeting, an information brochure and specific information sheets on immigration detention, the possibility of benefitting from assisted voluntary return and the various stages of the forced removal procedure are provided to the person concerned. The brochure and the information sheets are available in 38 languages. The social worker – so-called “return coach” – explains the various steps in return³⁵ and offers psycho-social and administrative support to prepare them for their return.

33. Article 62 of the Royal Decree of 2 August 2002 on the regime and operating rules in closed centres.

34. This concerned two persons who had previously indicated that they would resist any attempt to remove them and two persons who had been placed on the reserve list and had only been included in the flight list, the day before the removal operation.

35. See <https://dofi.ibz.be/en/themes/illegal-stay/return/steps-return>.

31. From the interviews with the eight returnees, it appeared that all had an induction meeting with a social worker at their arrival in the respective detention centres. Further, at the time of notification of the return flight to Kinshasa, they could watch an information video which explains the different stages of the removal procedure, including forced removal by air with the assistance of police escorts. Those who had previously refused their first removal attempt were informed that they would be removed by force.

However, when interviewed by the delegation, some returnees complained that preparation was limited to being offered to watch the video on the return process. Several returnees were of the view that they had not been appropriately prepared for their return. Particularly, they had not received any information pertinent to their personal situation, including whom to contact for possible assistance and support upon their return to the DRC. This appeared especially problematic for those who had left the DRC more than a decade prior to their return and who had no strong personal ties to the country. Although some information was provided on assisted voluntary return and possible support by the International Organisation for Migration (IOM), all eight returnees had refused to comply with the removal order on a voluntary basis and therefore, were not provided with any information or contacts about possible support in the country of return.

The CPT encourages the Belgian authorities to provide information more systematically to all persons subjected to forced removal on possible assistance and support upon their return.

32. The delegation was informed that, for persons with vulnerabilities, the Belgian authorities would take the necessary steps in advance and contact the relevant services in the country of return, including the national migration authorities, international or civil society organisations (such as IOM or Caritas), as well as medical services or hospitals, to prepare the return of these person concerned. For the DRC, the EUR-LO – who is the liaison officer from the Belgian FPS Foreign Affairs, Foreign Trade and Development Cooperation in Kinshasa – would also be able to follow-up in specific cases. This is positive.

However, the delegation took note of the situation of a woman removed from Sweden who was vulnerable due to her age, medical condition and reduced mobility due to her physical disability (see also paragraph 59). At the debriefing of the JRO, the Belgian escort leader explicitly mentioned the fact that the Belgian authorities as the organising member state were not informed in advance of her vulnerability and could therefore not take the above-mentioned steps to prepare for her return to Kinshasa.

33. The CPT would like to receive the comments of the Belgian authorities. It would also like to encourage the Belgian authorities to bring the issue of timely provision of information about persons with vulnerabilities and/or disabilities being removed to the attention of Frontex and the other EU member states organising or participating in return operations supported by Frontex.

d. the right to inform a third person

34. The relevant legislation allows foreign nationals deprived of their liberty to use the telephone to inform their relatives, or a third party of their choice, of the removal.³⁶

Following the notification of the impending removal, most of the eight persons removed to the DRC had been provided with an opportunity to contact a third person of their choice about their removal. Once all had been regrouped and placed in the segregation section at the 127bis Centre in view of their imminent removal, their mobile phones were taken away and they were no longer allowed to call their families and friends. Nevertheless, in practice, detention centre staff allowed returnees to use the phone of the detention centre for a duration of five to 10 minutes to speak with one person of their choice on the eve of the return flight.

However, those returnees who had only been notified of the impending removal on the day before the flight, and particularly those who had resisted a previous removal attempt, had very limited or no

36. Article 24 of the Royal Decree of 2 August 2002 on the regime and operating rules in closed centres.

opportunity to contact relatives or friends about their return to the DRC. One person was not able to contact their relatives as he had been denied access to his mobile phone and could not retrieve their phone numbers. Further, once collected by their assigned escorts of the Federal Police on the day of the flight, the eight returnees were no longer given the possibility to make phone calls.³⁷

35. 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.

The CPT recommends that the Belgian authorities actively facilitate the right of returnees to inform a relative, or third person of their choice, of their removal, including by granting access to their mobile phones, if required.

e. access to a lawyer

36. As described above (see paragraph 19), the legal procedure to lodge an appeal against the removal order is complex and foreign nationals detained in view of their removal are not informed of it. It is therefore essential that they can benefit from the right to access to a lawyer. Under Belgian law, foreign nationals deprived of their liberty have the right to be assisted by a lawyer, including free of charge under the legal aid scheme. Further, contacts with the lawyer are unrestricted.³⁸ If required, foreign nationals can benefit from the services of an interpreter.

Seven of the eight persons removed to the DRC had a lawyer and were able to call them at the time of notification. This was also possible once they had been regrouped and placed in the segregation section at the 127bis Centre in view of their imminent removal. For example, the lawyer of another person had submitted an urgent appeal against the removal order and requested interim measures with suspensive effect.

37. However, the practice of late notification of an imminent removal entails a risk of rendering access to a lawyer more challenging. As indicated above, the persons concerned could no longer contact their lawyers, once collected by the Federal Police. It is important that such access be granted until the moment of boarding, as the execution of a removal order can only be legally suspended by a request for interim measures at the very last moment.

The CPT recommends that the Belgian authorities ensure that all returnees can contact a lawyer up to the moment of boarding.

f. medical examination by a doctor and "fit-to-fly" certificate

38. The CPT has long advocated for 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 Council of Europe's 2005 "Twenty Guidelines on Forced Return".

According to the Ministerial Guidelines on the organisation of removals of foreign nationals by air of 4 April 2022, all returnees must undergo a medical examination to determine their fitness to fly if the removal operation takes place by charter flight. Further, a "fit-to-fly" certificate shall be drawn up.

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.

37. This contrasts with the three persons returned from Germany, who were able to make a phone call prior to boarding.

38. Article 64 of the Royal Decree of 2 August 2002.

39. The “fit-to-fly” certificate used by the Belgian authorities consists of a “fit-to-fly” cover sheet in Dutch, French and English which is intended for transmission to relevant administrative and police authorities, and the common standardised form for medical records or “fit-to-fly” declarations entitled “Medical report and information for return operations”³⁹, which is intended for transmission to the accompanying healthcare staff.

On the cover sheet, the medical doctor of the detention centre in which the returnee is held, must declare that they have examined the returnee and that they deem the person concerned “fit to travel by air”. However, the cover sheet does not specify the day or time when the doctor shall examine the person. Although the “fit-to-fly” certificate must be completed a maximum of 72 hours prior to departure of the flight, nothing obliges the doctor to physically examine the returnee on the day when the certificate is issued. In practice, some of the eight returnees had only been physically examined several weeks before the doctor completed the certificate or upon their arrival at the immigration detention centre in which they were held before their transfer to the 127bis Centre, and the “fit-to-fly” assessment of these returnees was based on an evaluation of the medical file.

Three “fit-to-fly” certificates had been dated and signed twice: initially, four days prior to the flight (Friday 4 November) by the doctor of the centre concerned and, again, two days prior to the flight (Sunday 6 November) by a nurse. Further, four “fit-to-fly” certificates did not include the common standardised form. Moreover, the “fit-to-fly” cover sheet and the common standardised form contained specific medical information. Namely, the cover sheet mentioned the list of medication that the returnees could or must take. However, both documents in respect of all eight returnees from Belgium were kept by the Belgian deputy escort leader who is a Federal Police officer, which compromised medical confidentiality.

40. In light of the previous paragraph, **the CPT recommends that the Belgian authorities take the necessary measures to ensure that:**

- **All returnees are physically examined by the doctor of the detention centre on the day when the “fit-to-fly” certificate is issued (that is a maximum of 72 hours prior to the departure of the removal flight);**
- **The cover sheet intended for transmission to the relevant administrative and police authorities be revised accordingly and also no longer contains any information that is covered by medical confidentiality;**
- **The common standardised form “Medical report and information for return operations”, which contains information that is covered by medical confidentiality, is only transmitted to the healthcare staff accompanying the removal flight;**
- **Both parts of the “fit-to-fly” certificate (namely the cover sheet and the common standardised form) are systematically issued and thoroughly completed by the doctors of the detention centres in which the returnees are detained.**

As regards the “fit-to-fly” certificates of the returnees from the other member states participating in the JRO, reference is made to the lack or insufficiency of medical information on the returnees transmitted to the medical doctor accompanying the flight (see paragraph 59).

39. The form is contained in Annex 1 to the Guide for joint return operations by air coordinated by Frontex.

41. It is positive that, when the returnees were collected by the Federal Police, the “fit-to-fly” certificates were verified and confirmed orally by means of a medical examination (consisting of a short anamnesis, auscultation, measurement of the blood pressure and a cursory abdominal palpation) that was performed on each returnee by the medical doctor accompanying the return flight.⁴⁰

However, the medical check was carried out in the narrow space used for body searches, which was only separated from the purpose-built room by a curtain. This space did not contain an examination bed, a wash basin or even a chair, and the medical examination could be heard by the police officers and custodial staff present in the room. These conditions were not conducive to ensuring medical confidentiality or establishing a proper patient-doctor relationship and did not allow a proper medical examination to be performed.

42. The CPT recommends that the Belgian authorities take the necessary steps to ensure that medical examinations prior to removal are conducted in a dedicated examination room or space, and out of the hearing and – unless the healthcare professional concerned expressly requests otherwise in a particular case – out of the sight of police officers and custodial staff.

3. Conduct of the removal operation

43. All eight returnees were placed in the segregation section at the 127bis Centre in preparation for their removal. This section contained both seclusion rooms and isolation cells (see part B). Two of the returnees were already being held in other parts of the centre while the six other DRC nationals were brought in the day before from three other immigration detention centres in Belgium.

44. The JRO of 8 November 2022, coordinated by the Belgian Federal Police, started at 06:30 with a briefing by the Belgian escort leader for all Belgian escort officers, at the facilities of the aviation police at Brussels National Airport. The briefing included an update on various operational and organisational matters, such as the number of persons to be removed, the timeline and chain of command but also security measures and means of restraint that could be used. It was recalled that the Police Act, the Frontex complaints mechanism and the Frontex Code of Conduct for return operations and return interventions coordinated or organised by Frontex are applicable. Returnees were then assigned to escort officers for the entire duration of the removal operation.⁴¹

45. The 25 Belgian escort officers, including the escort leader, his deputy and six officers of the back-up team, were all Federal Police officers working for the aviation police.⁴² All were specially trained and selected⁴³ and had previous experience in escorting returnees in the context of forced removal operations by air. In addition to a permanent team of escort officers, a pool of additional escort officers was available. The CPT notes positively that, when travel restrictions linked to the COVID-19 pandemic were lifted, all escort officers had received a refresher training course. Moreover, the escort leader and his deputy had received additional Frontex training for escort leaders.

40. As both a general and an emergency physician, he also regularly worked as a visiting doctor in an immigration detention centre. Consequently, he was able to access the medical files of most returnees from Belgium (including information about their medication, medical history, or the notes of certain consultations) about two weeks prior to the removal operation.

41. Simultaneously, a separate briefing was held in English for the Frontex representatives.

42. In addition, seven escort officers from Cyprus, 12 from Germany, nine from Sweden, and 10 FRESOs from the Frontex standing corps participated in the JRO.

43. The special training programme for escort officers consisted of five modules (equivalent of one month of theory), 30 days in the offices of the aviation police and participation in four return flights. The training also included modules ranging from the legal framework applicable, medical aspects and intercultural competence to operational training and application of means of restraint. Successful candidates were then selected by a jury and received a certification as escort officers.

46. All escort officers deployed by Belgium (as well as all other escort officers who participated in the JRO) engaged professionally and respectfully during the entire removal operation with the persons removed to the DRC to whom they had been assigned. The delegation noted that most escort officers made efforts to repeatedly engage in conversation with the returnees and tried to decrease tensions or reassure them. Whenever necessary, they intervened swiftly, gradually and proportionately, attempting to de-escalate the situation (see paragraphs 69 and 70). The CPT welcomes the dynamic security approach adopted by all Federal Police escorts.

47. The CPT has repeatedly stressed that the wearing of identification tags by escort staff involved in removal operations is also an important safeguard against possible abuse. Escort officers wore yellow safety vests and members of the back-up team orange safety vests, indicating their respective roles and allowing to clearly distinguish them. However, unlike some of the other escort officers participating in the JRO, the Federal Police escort staff deployed by Belgium did not wear a visible identification tag.

The CPT recommends that all escort officers of the Federal Police wear a visible identification tag on their safety vests to ensure that they can be individually identified (either by their name or an identification number).

48. The delegation observed the collection procedure at the 127 bis Centre, which began at around 07:45 and took about two hours. Seven of the eight returnees were, one by one, informed that they would be collected for removal and then brought from their cells by custodial staff of the centre to a purpose-built room at the entrance. The returnees' personal belongings (including valuables and mobile phones) had previously been placed in sealed plastic bags. Its contents were verified, and the persons' signature was collected. The plastic bags remained with the escort officers until arrival in the DRC.

49. Following the medical clearance described above (see paragraphs 38-41), each of the eight returnees was subjected to a strip-search. According to the applicable procedure,⁴⁴ searches are carried out based on an individual risk assessment, taking into account the level of risk posed by the returnee concerned and the principle of proportionality. The strip-search was carried out by two escort officers of the same gender as the person concerned in the same curtained off narrow space used for the medical examination. This space and an adjacent area were covered with soft mattresses to allow for means of restraint to be safely applied in the event a returnee would resist.

However, according to the information provided by the Federal Police, all returnees were asked to remove their clothes.

50. The CPT is of the view that every strip-search is a very invasive and potentially degrading measure. To minimise embarrassment, detained persons who are being searched should normally not be required to remove all their clothes at the same time. For example, a person should be allowed to remove clothing above the waist and put it back on before removing further clothing.

The CPT recommends that these precepts are effectively implemented in practice when strip-searches are performed by the Federal Police in the context of removal operations.

51. One returnee had previously announced that he would actively resist the attempt to remove him and had been placed in a special security cell the day before. After an initial notification that he would be collected, which was met with aggressive behaviour, it was decided that he would be escorted by the Federal Police directly from his cell to a separate van, which involved a demonstration of force and the use of means of restraint as a preventive measure (see paragraph 70).

44. In February 2023, the Federal Police introduced an internal note which clarifies the legal basis for strip-searches and provides for a strict reporting requirement.

52. As mentioned above, a dynamic security approach was applied throughout the removal operation which was based on an individual risk assessment carried out prior to removal. The assessment took into account the profile, possible criminal record and previous behaviour of each returnee, including during possible earlier attempts at removal. Further, the information communicated by staff working in the respective detention centres and the direct observations made by the social workers when the removal operation was notified to the person concerned and during another meeting at the eve of removal were being considered when assessing the individual risk posed by the returnees. Particular attention was paid to the returnees' reaction and behaviour, and whether they intended to cooperate or actively resist during the operation. As a rule, two escort officers were assigned per returnee (the two women were escorted by at least one female escort).

53. The transfer of the eight returnees to Brussels Military Airport lasted for about 20 minutes. Upon arrival at the airport, the returnees remained, together with their escorts, seated in the coach/van for about one hour until boarding. They were allowed to access the toilet on the airport premises, upon request.

54. At Brussels Military Airport, the returnees and delegations of the participating member states (Germany and Sweden) landed. Following short operational briefings between the respective escort leaders, the three returnees from Germany were, together with their escorts, disembarked and brought to a waiting room, whereas the Swedish delegation remained on board their transfer aircraft.

55. The military aircraft chartered for the JRO was an Airbus A330 MRTT⁴⁵ and the crew consisted of Belgian Air Force personnel. Prior to boarding, soft mattresses were placed at the bottom of the stairs and the luggage was loaded. Further, the Belgian escort leader inspected the aircraft and briefed the flight captain and the crew. Boarding started at 10:40 and lasted for half an hour. One by one, accompanied by their respective escorts, the three returnees from Sweden, followed by the three returnees from Germany, boarded the aircraft and were seated in the second compartment. The eight returnees from Belgium were guided by the arms by their respective police escorts on both sides and seated in the third compartment. Overall, the boarding process was calm and carried out in a professional manner.

56. The aircraft left Brussels Military Airport at 11:50, with a 50-minute delay. During the in-flight-phases, all returnees were provided with catering services (food and cold drinks) and requests to use the toilet were complied with (the door being left ajar with the escorts standing outside). Most of the escorts continued to regularly engage with the returnees throughout the flight. In sum, the flight was carried out professionally and, with one exception (see paragraph 70), does not call for any further comments.

57. During the stop-over in Cyprus, which lasted for some 90 minutes, the aircraft was refuelled before the Belgian escort leader and the Cypriot escort leader met at the tarmac for a briefing. Due to insufficient communication prior to the flight, the exact number of returnees from Cyprus was only known by the Belgian authorities upon their arrival in Cyprus; an issue which was also raised at the debriefing.

Shortly thereafter, the four returnees from Cyprus swiftly boarded the aircraft together with their respective escorts, including the FRESOs from the Frontex standing corps, and were also seated in the second compartment.

45. The Multinational Multi-Role Tanker Transport (MRTT) Fleet comprises six countries, including Belgium.

58. Two social workers from the Immigration Office were present throughout the removal operation, including onboard the flight. Their task was, if required, to ensure psycho-social assistance and to engage with the returnees to decrease tensions. In addition, the JRO to Kinshasa was also accompanied by the medical doctor⁴⁶ who had previously carried out the medical examination during collection at the 127bis Centre. He was fluent in both French and Lingala, which was helpful to establish good communication with the returnees.⁴⁷

The doctor's medical bag contained a well-equipped emergency kit and appropriate medication. During the flight, he could offer basic pain relieve medication to the returnees who requested it. Further, the aircraft was equipped with a defibrillator and oxygen.

59. As regards the transmission of medical information on the returnees to the medical doctor accompanying the flight, the information on the returnees from Belgium provided prior to the return operation were – in his view and given that he himself worked in an immigration detention centre – satisfactory. However, this was far from being the case for the medical information transmitted on the respective returnees by the delegations from the participating member states. For the returnees from Germany and Cyprus, the doctor had received no information on their state of health or medication and had not even been able to consult the “fit-to-fly” certificates.⁴⁸ For the three returnees from Sweden, a short oral briefing was provided on the tarmac by the medical doctor who had accompanied the transfer flight from Sweden and who himself had met, for the first time, the returnees, the same morning.

This was problematic as two of the three returnees from Sweden required specific medical attention and medication, including one woman who was vulnerable due to her age and her medical condition.⁴⁹ In addition, the information provided was incomplete. The lack or insufficiency of medical information transmitted to the accompanying doctor on the specific healthcare situation of these returnees did not allow him to adequately prepare for possible medical complications that could have arisen during the flight.⁵⁰

60. The CPT recommends that the Belgian authorities take the necessary steps to improve coordination with other member states participating in removal operations by air to ensure that medical information on the returnees is complete and transmitted in a confidential manner to the accompanying medical doctor in advance (see also the recommendation made in paragraph 61). It would also like to encourage the Belgian authorities to bring this matter to the attention of Frontex and the other EU member states organising or participating in return operations supported by Frontex.

Further, the CPT would like to receive the comments of the Belgian authorities on the above, and particularly on how they ensure the proper transmission of medical information to the accompanying doctor.

46. According to the Ministerial Guidelines on the organisation of removals of foreign nationals by air, the presence of a medical doctor is mandatory if Belgium organises a JRO.

47. The Belgian escorts and social workers all spoke French. In addition, one Swedish escort also spoke Lingala with one returnee from Sweden who only spoke Lingala. For this reason, it had been decided not to hire an additional interpreter for the JRO.

48. The transfer flight from Germany to Brussels Military Airport had been accompanied by another medical doctor who had already left the airport, which did not allow for a transfer of medical information. No medical information was made available by the Cypriot delegation. To quote the doctor: “I know nothing about them, not even their names!”

49. They were presented by the doctor accompanying the transfer flight as being hypertensive and epileptic or diabetic (non-insulin dependent).

50. Reference is made to Article 8 (3) of the Code of Conduct for return operations and return interventions coordinated or organised by Frontex, which requires that participating member states inform the organising member state in advance about any medical condition of a returnee which would need special care and attention.

61. Moreover, medical confidentiality was not strictly respected during the flight. The accompanying medical doctor was asked by one of the escort officers of a participating member state to attend and assist a returnee as he had concerns due to a health-related problem of that person. While non-medical personnel were in possession of medically sensitive information, the doctor had not been informed of it (see paragraph 59).

The CPT recommends that the Belgian authorities take the necessary steps to ensure that medical confidentiality is always strictly respected during return operations organised and carried out by Belgium. It would also like to encourage the Belgian authorities to bring this matter to the attention of Frontex and the other EU member states organising or participating in return operations supported by Frontex.

62. The aircraft landed at 02:30 in Kinshasa. Escorts handed over personal belongings and valuables, phones, identification documents, and – if required – medication prepared in advance to the returnees. The handover of the returnees to the DRC authorities took place inside the aircraft. Three officials, including a representative of the General Directorate of Migration (DGM), together with the EUR-LO, entered the aircraft. They were briefed by the Belgian escort leader and approached all returnees. As opposed to the initial plans, it was decided to first disembark the most agitated returnee (see paragraphs 51 and 70) and then immediately all other returnees, which caused some disorganisation and crowding at the exit of the aircraft. The handover nevertheless went smoothly and took place in a calm atmosphere.

63. A debriefing to discuss the return operation took place during the return-leg of the flight back to Cyprus and Belgium, shortly after take-off. In addition to the delegation, the Belgian escort leader, his deputy and the back-up team leader, the escort leaders of the participating member states, the Frontex representatives, the Fundamental Rights Monitor (FRO), the representative of the Immigration Office and the accompanying doctor attended the briefing. The CPT also notes positively that a separate debriefing took place between the Belgian escort leader and the escort officers assigned to the above-mentioned agitated returnee.

4. The use of force and means of restraint

64. During the different stages in the preparation of the removal operation and onboard a stationary aircraft, the use of force and means of restraint is regulated by national law. In addition, the territorial principle⁵¹ must be respected by all participating member states. In the context of this JRO, this meant that, for the part of the operation that took place on Belgian territory, Belgian law was applicable for all escorts whereas Cypriot legislation applied during the stop-over in Cyprus.

The CPT notes once again the diverging approaches in terms of legislation, police culture and training on the use of force and means of restraint in the EU member states participating in JROs coordinated and supported by Frontex. In the context of this JRO, this relates notably to the use of metal handcuffs or leg restraints, which can be applied in the respective participating member states during the initial stages of the operation. For example, from the moment of arrival at Brussels Military Airport, the German delegation had to comply with Belgian law, which did not allow the use of spit masks or of metal handcuffs or leg restraints without a quick release system.

65. The Frontex Implementation Plan prepared for this JRO responds to this challenge by listing, in its Annex I, the means of restraint authorised at the hub airport in Belgium and during the flight, which corresponds to the means authorised by Belgium. It also specifies that force shall only be used as a last resort and shall respect the principles of necessity, proportionality and precaution. It must not be systematic but based on an individual dynamic risk assessment. Further, the dignity of returnees, the right to physical integrity and the prohibition of inhuman or degrading treatment or torture shall be guaranteed. The use of sedatives to facilitate removal is forbidden.

51. In accordance with Point 2.1. (f) of the Common guidelines on security provisions for joint removals by air annexed to the Council Decision 2004/573/EC of 29 April 2004 and with Article 7 of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air.

FRESOs from the Frontex standing corps – who were assigned to this JRO – shall perform their tasks, including those requiring the use of force, under the instructions and with the authorisation of staff from the host/requesting member states (in this instance Cyprus) and must comply with relevant national legislation. Further, FRESOs are required to report every incident where force is used.⁵²

66. More specifically, according to Belgian law, coercive measures (namely the use of force and means of restraint) may be used in the context of forced removal operations in accordance with the relevant provisions of the Police Act.⁵³ During removal operations, escort officers of the Federal Police must also follow the Ministerial Guidelines on the organisation of removals of foreign nationals by air of 16 March 2022. According to these guidelines, the use of force is governed by the principles of legality and proportionality. They explicitly mention the use of force techniques and means of restraint which are not authorised.⁵⁴ It is also specified that handcuffing should not be systematic during forced removal operations by charter flight. During these flights, the Federal Police may only apply a “French belt” (a waist belt made of soft material with Velcro quick-release fasteners to cuff the hands), Velcro ankle bracelets and quick-release metal handcuffs.⁵⁵ The use of these means of restraint must be authorised by the escort leader. Further, all possible precautions shall be taken to protect the physical integrity and dignity of the person to be removed.

The operational order drawn up by the escort leader prior to the removal operation recalls the principles for the use of coercion, including the gradual use and removal of means of restraint, based on an individual risk assessment and upon decision of the escort leader.

The CPT takes note of these detailed guidelines and operational instructions which reflect the Committee’s position on this matter.

67. According to the Frontex Implementation Plan, the escort leader of the organising member state (in this case Belgium) has the overall responsibility of the JRO, including the command and control of the activities. In the event of an incident during the flight, in close liaison with or under instructions from the pilot in command, he is charged with the operational command to restore order. Escort officers may, like any other passenger, “take all reasonable precautionary measures, if they have reason to believe that such measures are immediately necessary to ensure the safety of the aircraft or of persons or property on board”, pending a decision by the captain, including the application of means of restraint.⁵⁶

68. In practice, during the JRO monitored by the CPT,⁵⁷ the Belgian escort officers demonstrated or used force and/or applied means of restraint in respect of three returnees from Belgium. This included the following gradual approach: (a) demonstration of force as a preventive measure without the use of means of restraint, (b) preventive use of means of restraints without demonstration or use of force, (c) demonstration of force and the use of means of restraint as a preventive measure, and (d) use of force and means of restraint.

52. See Frontex, Decision of the Executive Director No. R-ED-2021-38 of 6 March 2021 on Standard Operation Procedure (SOP) – Use of force and Incidents Involving the use of force reporting (UFR/ IFR).

53. Article 74/15 (2) of the Immigration Act and Articles 1, 37 and 37bis of the Police Act.

54. These include the use of firearms, techniques by which the airways are – even partially – obstructed or capable of causing positional asphyxia and the administration of sedatives or other drugs for coercive reasons and against the will of the person concerned.

55. See Ministerial Decree of 11 April 2000 regulating conditions of transport of passengers presenting particular security risks onboard civil aircrafts, as amended by the Ministerial Decree of 20 June 2019, and FPS Mobility and Transport, Decree of the Director General concerning the approval of models of means of restraint devices authorised onboard civil aircraft for inadmissible passengers and persons to be removed, 9 February 2022.

56. 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.

57. The CPT notes that, during the parts of the JRO monitored by its delegation, namely the boarding process and the flight, the 10 returnees of the other participating member states were not restrained. According to the German and Swedish escort leaders, one returnee from Germany and one from Sweden had to be restrained during the initial stages of the removal operation, prior to their transfer to Belgium (see paragraph 64).

69. Based on an individual risk assessment established prior to the removal operation and due to their resistant behaviour (lack of cooperation or verbal aggression) during the collection and search procedure, the escort leader decided to apply French belts to two returnees following their search (b). Inside the coach, one of the two restrained persons remained agitated, but escorts made good use of de-escalation techniques. Shortly after the arrival of the coach at Brussels Military Airport, while waiting for boarding, he became verbally and physically aggressive. He was reportedly able to remove his hands from the French belt and threatened and attempted to bite an escort officer. With the assistance of two members of the back-up team, the person was brought under control, by immobilising his head against the seat to prevent him from biting without blocking the respiratory tract and by applying quick-release metal handcuffs (d).⁵⁸ The incident was resolved professionally and in the presence of the escort leader and with the support of the accompanying medical doctor. Half an hour later, once the person had calmed down and before boarding, the metal handcuffs were removed, and his hands were restrained with the French belt. Given that these two persons complied with the instructions of escorts and remained calm, the escort leader authorised that the French belts be removed immediately after take-off. Both persons remained calm for the rest of the flight.

70. As indicated above, the returnee who had previously announced that he would actively resist the removal attempt was collected by the Federal Police in his isolation cell (see paragraph 51). As a demonstration of force, 10 escorts (in the presence of the escort leader, the director of the 127bis Centre and the medical doctor) were involved in this process. The three escort officers assigned to him entered the cell and – despite constant dialogue and the use of de-escalation techniques – he continued to demonstrate aggressive behaviour and resistance. This led to the intervention of the back-up team that entered the cell and, once brought under control, he accepted that a French belt be applied (c). After having been searched and subjected to a medical check, he was escorted by all 10 escort officers to a police van and transferred to the airport separately from the other returnees. During the whole collection process, the escorts addressed and treated him with respect.

After boarding, he remained uncooperative and agitated, continuously shouting that he did not want to be removed and expressing his anger. As he attempted to stand up, he had to be held in place and kept being restrained after take-off. After a while, he calmed down and, some 40 minutes later, when catering was served, the escort leader agreed to free his hands from the French belt, which however remained in place around his waist. Some two hours later, as he remained calm, it was decided to completely remove the French belt. Later during the flight, he again became agitated and verbally and/or physically aggressive on several occasions, standing up at random, and hitting the seat, the ceiling and, on one occasion, one of the escort officers on the shoulder with the flat of his hand. During these outbursts, escort officers remained calm and professional and did not respond when being challenged by him, occasionally engaging in a conversation to calm him down. The escort leader decided not to restrain the person again and allowed him to regularly stand up to avoid escalation, based on a dynamic and on-going risk assessment. However, when he threatened to fight anyone trying to disembark him, all members of the back-up team immediately reacted with a coordinated demonstration of force as a preventive measure, by visibly putting on their protective clothing and gloves and placing themselves around him without resorting to means of restraint (a). At the same time, another escort officer engaged in a conversation with him to reduce tensions. This had the effect that he remained calm until arrival.

71. In sum, the resort to force and means of restraint was done proportionately and with great professionalism by applying a gradual approach and de-escalation techniques, based on a dynamic and ongoing individual risk assessment. Another positive example for this approach was that, after approximately one hour after departure, the two women removed from Belgium were allowed to sit together. Returnees were treated with respect. The CPT welcomes this approach.

5. Complaints and monitoring

72. In its 27th General Report,⁵⁹ the CPT has highlighted the importance of an effective complaints mechanism as a fundamental safeguard against ill-treatment.

58. During the flight, the person concerned complained about a light dermabrasion on his right wrist due to the handcuffs and the doctor applied an adhesive plaster.

59. See CPT/Inf (2018) 4, paragraphs 68-91.

Return flights supported by Frontex are subject to the complaints mechanism established by the Agency.⁶⁰ Under this mechanism, the handling of which is the responsibility of the Frontex FRO, any person who is directly affected by alleged fundamental rights violations during operational activities by staff involved in Frontex activities⁶¹ may submit a complaint in writing to the Agency. To this end, a standardised complaint form and leaflets are available in 14 languages, including French.⁶²

The Frontex Implementation Plan for this JRO explicitly mentions that hard copies of the complaint form and information material must be made available and accessible to all participants during the operation.

73. During the return operation monitored by the CPT, returnees from Belgium who wished to submit a complaint could have done so by addressing themselves to their assigned escorts, to the escort leader or to the two accompanying social workers. Indeed, the escort leader specifically referred to the Frontex complaints mechanism during the initial briefing with escorts prior to the removal operation and confirmed that hard copies of the complaint form were available.

However, the delegation noted that no information about the possibility to complain or how to make a complaint was provided to the persons returned from Belgium, and the complaints form was only handed out upon request, thus rendering the right to complain less effective in practice. This was also acknowledged by the Frontex representative during the debriefing. It is therefore no surprise that during previous reporting periods, the FRO did not receive a single complaint relating to Frontex-supported return operations.⁶³

74. The CPT recommends that the Belgian authorities ensure that all persons removed in the context of removal operations supported by Frontex are provided with information on the Frontex complaint mechanisms, both orally and in writing, in a language they can understand. To this end, information leaflets and/or a poster should be made available to all returnees prior to or during the removal operation to ensure that the complaints mechanism is rendered accessible and effective in practice. The Committee would also like to encourage the Belgian authorities to bring this matter to the attention of Frontex and the other EU member states organising or participating in return operations supported by Frontex.

75. Moreover, in its 13th General Report,⁶⁴ the Committee underlined the important role of monitoring systems in such areas as sensitive as removal operations by air. Under Article 8 (6) of the EU Return Directive, member states shall provide for an effective forced-return monitoring system.

Two representatives of the General Inspectorate of the Federal Police and Local Police (AIG), which is the designated national forced return monitoring system in Belgium,⁶⁵ participated in the preparatory phases of the forced removal operation monitored by the CPT. The delegation also held consultations with the AIG. The AIG, which operates under the joint authority of the FPS Home Affairs and FPS Justice, is considered an independent system to monitor forced returns by the EU Agency for Fundamental Rights (FRA).⁶⁶ Indeed, it is independent from the police authorities it supervises and has its own budget. In the context of its monitoring, the AIG pays specific attention to the use of force and means of restraint. Further, it can intervene immediately if it observes non-compliance with standards or instructions, risks to the physical integrity of returnees or a non-respect of their rights, including by inviting the police authorities to interrupt a removal operation.

60. Article 111 of the Frontex Regulation.

61. This includes a member of the teams from a host member state or from another participating member state. In these cases, the relevant member state shall ensure appropriate follow-up, including disciplinary measures or referral for the initiation of civil or criminal justice proceedings.

62. See <https://microsite.frontex.europa.eu/en/Complaints>.

63. See Frontex, Fundamental Rights Officer's Observations to Return Operations (RO) conducted in the first half of 2022 and in the second half of 2021.

64. See CPT/Inf (2003) 35, paragraph 45.

65. Article 74/15 (3) of the Immigration Act and Article 9/1 of the Royal Decree of 20 July 2001 on the functioning and personnel of the General Inspectorate of the Federal Police and Local Police.

66. See <https://fra.europa.eu/en/publication/2022/forced-return-monitoring-systems-2022-update>.

76. However, the delegation was informed that the AIG currently fulfils its monitoring mandate with insufficient human and financial resources available, given that – since 2012 – the additional task of national forced return monitoring system has not translated into an increase of its resources. Consequently, the AIG is currently not able to effectively monitor all high-risk removal operations and is only in a position to monitor the pre-flight phases (preparation and boarding).⁶⁷

The CPT recommends that the Belgian authorities ensure that the AIG is provided with the necessary resources to effectively carry out its mandate as the national forced return monitoring system. In the long term, the Belgian authorities should set up a national forced return monitoring system that is truly independent (namely that is not operating under the authority of the FPS Home Affairs).

77. In addition, a Fundamental Rights Monitor from the FRO took part in the JRO. Given that every return operation organised or coordinated by Frontex shall be monitored, the Frontex Regulation provides for a subsidiary monitoring mechanism, the so-called “Pool of forced return monitors” (the Pool). The Frontex Implementation Plan for this JRO recalls that this operation shall be monitored by the forced return monitor based on objective and transparent criteria, from the pre-departure phase until the handover of the returnees in the third country of return.⁶⁸

In 2022, a total of 62 forced return monitors were nominated to the Pool by EU member states. Further, five Fundamental Rights Monitors from the FRO are acting as forced-return monitors in the Pool and are engaged in return monitoring activities (an additional three Fundamental Rights Monitors underwent training for forced return monitors). During the first semester of 2022, Fundamental Rights Monitors participated in 19 return operations and at least one forced return monitor was present onboard 76% of all return operations supported by Frontex.⁶⁹ This is a positive development.

67. In 2021, the AIG has monitored a total of 132 removal operations by air, including 125 removals by commercial flight and seven charter flights, including four charter flights where it observed the entire removal operation until handover in the country of return. See AIG, 2021 annual report on forced return monitoring.

68. Articles 50 (5) and 51 of the Frontex Regulation.

69. See Frontex, Fundamental Rights Officer’s Observations to Return Operations (RO) conducted in the first half of 2022.

B. Repatriation Centre 127bis

1. Preliminary remarks

78. Due to the COVID-19 pandemic, the number of persons held in immigration detention in Belgium has decreased in recent years. In 2021, almost 3 000 foreign nationals were administratively deprived of their liberty under immigration legislation (down from an average of 6 000 to 8 000 persons during previous years). This is due to the decision to reduce the capacity of immigration detention centres by half during the pandemic. The numbers are expected to rise again.

Currently, Belgium has six immigration detention centres – commonly referred to as “closed centres” – with an overall capacity of 635 places. In March 2022, the current government coalition reached a political agreement to build three new immigration detention centres and an additional centre for short periods of stay prior to removal (to replace one of the six existing detention centres) creating more than 500 additional places by 2030. This would bring the total capacity of the immigration detention estate in Belgium to 1 145 places, in view of the political objective to step up the number of forced removals. **The CPT would like to receive more detailed information on these plans.**

79. The legislative framework governing immigration detention in Belgium is regulated by the relevant provisions of the Immigration Act and the Royal Decree of 2 August 2002 on the regime and operating rules in closed centres.⁷⁰

As mentioned above, foreign nationals who do not comply with the removal order, can be arrested and administratively detained by the Immigration Office in a detention centre with a view to their forced removal (see paragraph 9).⁷¹ The legislation provides that immigration detention shall only be applied as a measure of last resort and for the time strictly necessary for the enforcement of the removal order. Foreign nationals may be detained for up to two months, which can be extended to a maximum of five months.⁷² If the foreign national avoids or impedes the preparation of the return or the removal procedure, the person can, once again, be detained based on a new detention order is issued by the Immigration Office.⁷³

The CPT wishes to receive data on the number of detention orders that have been renewed beyond five months in 2021 and 2022. Further, it would like to be informed of the safeguards in place to avoid situations of prolonged detention due to frequently renewed detention orders in practice.

80. The relevant provisions of the Royal Decree of 2 August 2002 allow for some exceptions to the ordinary group regime. These exceptions notably include the possibility to place foreign nationals in isolation for medical reasons and as a public order or security measure and to segregate them prior to removal or transfer, including by placing them in isolation cells.⁷⁴

70. Royal Decree of 2 August 2022 establishing the regime and operating rules applicable to places located on Belgian territory, managed by the Immigration Office, where a foreign national is detained, placed at the disposal of the Government or held, in application of the provisions cited in Article 74/8 (1) of the Immigration Act.

71. Article 74/8 (1) and 74/14 of the Immigration Act.

72. Article 7 of the Immigration Act. The detention period can be extended up to eight months, if necessary to protect public order or national security.

73. Articles 27 (3) and 29 of the Immigration Act. For example, during the COVID-19 pandemic, the refusal of the foreign national to comply with a mandatory PCR test led, in individual cases, to prolonged periods of detention. In this regard, see also the conclusions of the European Court of Human Rights on the lack of prompt review of the detention amounting to a violation of Article 5 (4) of the European Convention on Human Rights, *Makdoudi v. Belgium*, application no. 12848/15, judgment of 18 February 2020; and *Muhammad Saqawat v. Belgium*, application no. 54962/18, judgment of 30 June 2020.

74. Article 84 of Royal Decree of 2 August 2002. Disciplinary solitary confinement, as regulated under Article 98 (1) can be imposed for a maximum of three consecutive days according to Article 101.

81. The law also provides, under certain conditions, for the detention of asylum seekers upon arrival at the border or if the application for asylum is lodged by a person who is already detained.⁷⁵ Whereas unaccompanied minors cannot be deprived of their liberty, Belgian legislation allows for the detention of families with minor children in the context of their removal if they refuse to cooperate. They can be detained for up to two weeks, renewable once.⁷⁶ In August 2018, five closed family units were created for this purpose in the 127bis Centre, under the previous government.⁷⁷ Following relevant decisions of the Council of State, the current government has, as a matter of principle, decided to no longer detain children in these closed family units located inside immigration detention centres. Presented as an alternative to detention, the above-mentioned government agreement intends to increase from 28 to 54 the number of so-called “return houses” for families with minor children.

The CPT considers that, in principle, children should not be deprived of their liberty in an immigration context. **It welcomes the decision of the Belgian authorities to no longer detain children in immigration detention centres and would like to receive further information on the operation of the return houses.**

82. The *Repatriation Centre 127bis*, located in Steenokkerzeel, near Brussels National Airport, opened in 1994 as a dedicated immigration detention facility mostly for adult men. Operated by the Immigration Office, the centre has a capacity of 120 places. In addition, the segregation section of the centre also serves as a transit hub for short-term stays in segregation prior to removal. At the time of the visit, a total of 90 foreign nationals, including three women,⁷⁸ were being held at the 127bis Centre; most in view of their removal or pending their transfer to another EU member state under the EU Dublin rules. The average length of stay at the centre was 36 days; the person staying the longest had been held there for five and a half months. Those held in segregation prior to removal were usually held for one day in the segregation section.

83. During its visit to the 127bis Centre, the delegation focussed its observations on the treatment and conditions of detention of the eight Congolese nationals (six men and two women) who were held in segregation prior to their removal to the DRC in the context of this JRO. Among them, six were brought from three other immigration detention centres to the 127bis Centre one day prior to the flight,⁷⁹ while the other two were already detained there.

84. The delegation received no allegations of ill-treatment and all returnees interviewed indicated that they were treated correctly by staff.

2. Conditions of detention in the segregation section

85. The 127bis Centre’s structure remained largely unchanged since the CPT’s previous visit in 1997,⁸⁰ with its modular design and its rather carceral appearance. Only three of the four sections in the main building were operational.⁸¹ The segregation section – located in a building adjacent to the infirmary – included a unit with eight seclusion rooms, on the first floor, and a security unit with four isolation cells on the ground floor.

75. Articles 74/5 and 74/6 of the Immigration Act.

76. Articles 74/9 (2) and 74/19 of the Immigration Act, and Articles 83/4 and 83/11 of Royal Decree of 2 August 2002.

77. Between August 2018 and April 2019, nine families were detained.

78. One woman was exceptionally held at the centre together with two members of her family.

79. A seventh person who had also been brought to the 127bis Centre was removed from the flight list, because his lawyer had submitted an urgent appeal against the removal order and requested interim measures with suspensive effect.

80. See CPT/Inf (98) 11, paragraphs 49 and 58-59.

81. The delegation did not visit these sections.

86. Following an individual risk-assessment, four returnees were placed on their own and two returnees (for whom it was their first attempt at removal) were held together in the seclusion rooms on the first floor of the segregation section.⁸² The other two returnees, who presented an increased security risk and had indicated that they would actively resist their removal, were placed in two isolation cells on the ground floor.

87. The eight seclusion rooms on the first floor, each meant to hold two persons, were of sufficient size (18 m²) with a fully partitioned sanitary annexe. They were generally clean (apart from some writing on the walls) and lighting and ventilation was adequate. The equipment in the rooms was rather spartan and only contained two beds and a television. Although acceptable for short stays of a few days, the rooms were not equipped with a chair, a table, or a call bell. Personal belongings could only be accessed upon request and under staff supervision. Further, returnees placed in segregation prior to removal were not provided with basic sanitary items, such as soap.

The CPT recommends that the seclusion rooms on the first floor of the segregation section at the Repatriation Centre 127bis be fitted with a call bell, a table and chairs. Further, all persons placed in the segregation section should be provided with basic sanitary kits upon their arrival.

88. The four isolation cells on the ground floor, which were used for isolation as a public order or security measure, or a disciplinary sanction, were all small (4 m²) and contained a platform with a mattress, a stainless-steel toilet with a sink, and a call bell. Lighting and ventilation were sufficient. One of the four cells was equipped with padded walls and a CCTV camera, which was not in use at the time of the visit.

89. Contrary to all other foreign nationals placed in the ordinary group regime and who could benefit from at least two hours of outdoor exercise per day, a different regime could be applied for persons held in segregation prior to removal. As a minimum, one hour of outdoor exercise had to be granted to all returnees, including those held in an isolation cell.

All eight returnees were provided with at least one hour of outdoor exercise in one of the yards adjacent to the segregation section on the day prior to their removal. It was also positive that they were occasionally brought outside, upon their request, to smoke a cigarette. However, the placement in segregation prior to removal implied that returnees were taken out in the yard at different times and – except for the two persons placed in the same seclusion room – were not allowed to meet or interact with each other.

90. The outdoor exercise yards of the segregation section were equipped with wooden benches and tables and contained some green space. However, they did not have shelter to protect detained foreign nationals from the elements.

The CPT recommends that the outdoor exercise yards of the segregation section at the Repatriation Centre 127bis be equipped with shelters against inclement weather.

82. A ninth DRC national who was included on the flight list was also placed in segregation prior to removal. About one or two hours after his lawyer had submitted a request for interim measures with suspensive appeal, he was transferred to another section in the main building under the ordinary regime. In addition to the returnees held in segregation prior to removal, another foreign national considered to be vulnerable was being held in segregation in one of the seclusion rooms on the first floor, at the time of the visit.

91. The delegation found that the placement in segregation was not accompanied by effective safeguards. Especially, the decision of placement in segregation prior to removal, and notably the placement of the two returnees in the two isolation cells on the ground floor, had not been notified by means of a written decision.

The CPT recommends that the Belgian authorities take the necessary steps to ensure that, at the Repatriation Centre 127bis and, if applicable, in all other immigration detention centres in Belgium, all foreign nationals subjected to segregation be provided with a copy of the relevant decision and information on the possibilities to appeal the measure to an outside authority.

3. Healthcare services

92. At the 127bis Centre, healthcare services – including for the eight returnees held in segregation prior to removal – were provided at the infirmary, which was well-equipped, including with a good range of medication, and consisted of various consultation rooms and offices.

93. For an establishment with a capacity of 120 places, which accommodated 90 persons on the day of the visit, the healthcare team was composed of two medical doctors, six nurses for a full-time equivalent (FTE) of 4.5, and three psychologists for an FTE of 2.8. While the doctors had a daily medical presence of approximately three hours from Monday to Friday (they were on call for the rest of the time), there was at least one nurse present every day from Monday to Friday from 7:30 to 18:00 and for two to four hours in the morning during weekends.

However, the delegation was informed that the position of one nurse was vacant at the time of the visit. **The CPT would like to be informed whether the vacant nursing position at the Repatriation Centre 127bis has been filled.**

94. All healthcare staff in Belgian immigration detention centres were working under the authority of the Immigration Office, which itself operated under the authority of the FPS Home Affairs. For obvious reasons, and particularly to ensure that foreign nationals detained and removed by decision of the Immigration Office can benefit from healthcare services and independent medical assessments without the risk of undue pressure being exercised on healthcare staff, the CPT considers that there is a need to increase the professional independence of healthcare staff from the Immigration Office.

The CPT recommends that healthcare staff in immigration detention centres work under the authority of the FPS Health, Food Chain Safety and Environment.

95. For the two returnees who had previously been held at the 127bis Centre, medical screening upon admission was carried out by a nurse on the day of their arrival at the centre, followed by a medical examination by a doctor shortly thereafter, and within the next three days at the latest. If necessary, additional blood tests or X-rays could be carried out. For example, there was a protocol for the detection of tuberculosis, and in case of doubt, the patient was referred to the relevant hospital in Brussels. The provision of somatic care was overall satisfactory.

96. Moreover, the delegation was informed that foreign nationals who were brought back to the establishment following an aborted attempt of removal were immediately seen by healthcare staff. However, from the information gathered by the delegation, it became apparent that medical screening upon arrival was not carried out systematically in all such cases.

97. In the CPT's view, such a medical screening after an aborted removal attempt – which should include a comprehensive physical examination for possible signs of ill-treatment – 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.

The CPT recommends that the Belgian authorities ensure that foreign nationals subjected to forced removal operations are systematically examined by healthcare staff on return to an immigration detention centre after an unsuccessful removal attempt. These medical examinations should include a comprehensive physical examination for possible signs of ill-treatment.

98. The medication of all foreign nationals detained at the 127bis Centre was individually prepared every day by an external pharmacy and brought to the establishment. They were usually distributed by nursing staff. However, in the absence of nursing staff, for example in the afternoon during weekends, medication – including psychotropic drugs other than methadone⁸³ – was distributed by custodial staff.

The CPT recommends that all medication be distributed solely by healthcare staff.

99. Moreover, based on the findings of the delegation's medical doctor, the provision of psychiatric and addictive care appeared to be a problem at the 127bis Centre. According to one of the doctors of the centre, at least one in five foreign nationals detained at the establishment with a view of their removal had a psychiatric and/or substance use problem. However, it appears that the number of patients with substance use disorders was apparently much higher. Indeed, one third of the detained persons had at least one psychotropic prescription for their psychiatric disorder or substance use disorder, or both. Among them, no less than eight foreign nationals detained at the Centre were prescribed pregabalin,⁸⁴ in the context of an attempt at progressive withdrawal.

Despite this situation, there was no presence of a psychiatrist or a specialist in substance use at the Centre. Although it was possible to refer a person with serious psychiatric disorder to a psychiatric hospital, most foreign nationals who had a psychiatric and/or substance use problem did not benefit from appropriate treatment. For example, a forced withdrawal from pregabalin or Methadone was often attempted in practice, without much success, and returnees were only provided with medication for up to three days after their removal, along with a doctor's certificate.

The CPT recommends that foreign nationals detained at the Repatriation Centre 127bis and suffering from a psychiatric and/or substance use problem can benefit from the regular presence of a (visiting) psychiatrist and/or a specialist in substance use.

4. Contact with the outside world and information on rights

100. The rules on contact with the outside world for foreign nationals held in immigration detention are stipulated in the Royal Decree of 2 August 2002.⁸⁵ Foreign nationals detained in one of the ordinary sections of the 127bis Centre could generally receive open visits by members of their families and other registered friends or visitors every day during the hours specified in the house rules. However, the eight returnees held in segregation prior to removal were no longer entitled to see their family and friends. Further, although visits by lawyers were unrestricted, none of them met their lawyer in person.

83. Methadone was only distributed by healthcare staff. For drugs likely to be trafficked – such as pregabalin – a red sticker was placed on the pill container to draw the custodial staff's attention to the distribution of these treatments.

84. Pregabalin is an anti-epileptic drug that is used for the treatment of certain forms of epilepsy, neuropathic pain and certain forms of anxiety.

85. Article 18 *et seq.*

101. As regards access to the telephone, foreign nationals held at the 127bis Centre under the ordinary group regime were able to make phone calls at their own expense every day between 8:00 and 22:00, except during mealtime. They were also allowed to use a mobile phone without a camera to make phone calls. To this end, they could purchase mobile phones without a camera at the Centre and insert their own SIM card to call their families and friends or to contact a lawyer. In addition, foreign nationals could use the computers with internet connection between 9:00 and 23:00.

However, as indicated above, mobile phones were systematically taken away from the returnees upon placement in the segregation section prior to their removal and placed together with other valuables in a plastic bag for the purpose of the removal operation. Further, they had no access to the internet. Nevertheless, the eight returnees – including those detained in the isolation cells – were allowed to use the phone of the Centre for a duration of five to 10 minutes to call one person of their choice and they could also contact their lawyers. **Reference is made to the CPT's comments and recommendations made in paragraphs 34-37.**

102. As regards information on their rights, an information brochure and specific information sheets on immigration detention, voluntary and forced returns, complaints and appeals, along with contact details for local civil society organisations, were available in 38 languages. A copy of the house rules was available in four languages.

In practice, all eight returnees had been informed of their rights and the legal procedures they were subjected to upon arrival at their respective immigration detention centres. Most of them were aware of their rights and seven were assisted by a lawyer. It was also positive that an info-sheet was placed at the door of each returnee's room or cell, which notably indicated whether custodial staff had informed them of their rights and verified the legal safeguards.

As regards the lack of information on the possibility to appeal against the removal order, **reference is made to the CPT's recommendation in paragraph 20.**

APPENDIX I – LIST OF AUTHORITIES AND ORGANISATIONS MET BY THE DELEGATION

A. Authorities

Federal Public Service (FPS) Home Affairs

Federal Police (Aviation Police)

Mr Simon Deblock	Chief Police Commissioner (<i>Commissaire divisionnaire de police</i>), Director of the Aviation Police (LPA)
Mr Camile Demol	Advisor, LPA
Mr Tom Smets	Chief Police Commissioner, Head of Department of the Aviation Police at the Brussels National Airport (BruNat)
Mr Frederik Dedeayne	Police Commissioner (<i>Commissaire de police</i>), Head of the “Removal” Unit, Escort leader in this instance
Mr Kristof Lenvain	Police Commissioner, Deputy Head of the “Removal” Unit
Mr Eric Baudoux	Police Commissioner, Head of Department of the Aviation Police at Gosselies Airport, Deputy escort leader in this instance

Directorate General of the Immigration Office

Mr Bart Verstraete	Director, International Cooperation
Ms Bauke Blondé	Head, International Removals
Ms Lise Naert	International Removals
Ms Brenda Melis	Director, “127 bis” Repatriation Centre

Federal Public Service (FPS) Justice

Mr Philippe Wéry	Head of the Human Rights Department, Liaison Officer of the CPT
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B. Other authorities

General Inspectorate of the Federal Police and Local Police (AIG)

Ms Els Truyens	Chief Commissioner, Directorate of Audit and Inspection (IGIN)
Mr Eric Bracaval	Commissioner, IGIN
Mr Masaki Cogneau	Commissioner, IGIN
Mr Peter Pieters	Commissioner, IGIN

C. Non-governmental organisations

Move coalition
Jesuit Refugee Service