

## **Report**

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

**from 4 to 7 September 2023**

The Government of Germany has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2024) 15.

Strasbourg, 4 April 2024

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## EXECUTIVE SUMMARY

The CPT report on the September 2023 ad hoc visit to Germany examines the treatment of foreign nationals deprived of their liberty under immigration legislation, including the safeguards afforded to them in the context of their forced removal. The CPT delegation monitored a joint return operation (JRO) by air from Germany to Pakistan, via Cyprus, on 5 September 2023, supported by the European Border and Coast Guard Agency (Frontex). It observed all phases of the removal operation, including the preparations and the flight phase to Pakistan. 51 returnees (including 38 from Germany) were handed over to the Pakistani authorities in Islamabad during this JRO.

The CPT did not receive any allegations of ill-treatment from persons removed from Germany to Pakistan by either police or immigration officials from the different federal states or escort officers of the German Federal Police. On the contrary, the removal operation was well prepared and carried out professionally throughout and returnees were treated respectfully.

Nevertheless, the CPT considers that the procedural safeguards against *refoulement* should be further strengthened to prevent sending persons to a country where they run a real risk of ill-treatment. This requires developing procedures to ensure documents with potentially compromising information about the returnee do not accompany the person back to the country. It would also be useful to support a system of independent post-return monitoring. Foreign nationals held in custody awaiting deportation should be notified at least one week in advance of their impending deportation, as required by law, but which, in practice, was not always happening. Returnees who are apprehended on the day of their removal should be given the opportunity and sufficient time to inform the persons they need to, collect their personal belongings and make the necessary arrangements to prepare for their departure and organise their return.

Moreover, additional measures are required to guarantee that all returnees can effectively benefit from the protection of fundamental safeguards against ill-treatment from the outset of their deprivation of liberty and that they are systematically and fully informed of their rights. This includes the need to review the policy concerning access to telephone for persons held under short-term detention from the moment of their apprehension, including by granting access to their mobile phones, to allow all returnees to inform a third person of their choice of their detention and removal and to effectively exercise their right to contact a lawyer. The CPT also calls for all returnees to systematically benefit from a somatic clinical examination by a medical doctor prior to the removal operation and for a “fit-to-fly” certificate to be established for all returnees, which requires further harmonisation of the different practices at the federal state-level. In addition, procedures regarding the independence of contracted medical doctors, respect of medical confidentiality and the continuity of care of returnees should be further improved.

Germany’s guidelines and internal instructions on the use of force and means of restraint fully reflect the CPT’s position on this matter. The Committee also welcomes the professional conduct of all escort officers, based upon an individual risk assessment and de-escalation approach towards returnees. However, the CPT has once again noted the diverging approaches in terms of use of force and means of restraint among the different police authorities of the federal states in Germany and among the different EU member states participating in JROs supported by Frontex. A more harmonised approach would be desirable. To this end, Germany is encouraged to generalise the use of safe means of restraint with soft material such as textile or Velcro quick-release fasteners in the context of forced removal operations by air, where this is deemed necessary. German police escorts should also wear a visible identification tag to ensure that they can be individually identified which was not the case during this JRO. Further, returnees should not be required to remove all their clothes at the same time when strip searches are carried out prior to the return flight.

Finally, the CPT considers that the Frontex complaints mechanism should be made more accessible and effective in practice, by providing all returnees with information on it and making information leaflets and complaints forms available to them. The German authorities should also swiftly transpose Article 8 (6) of the Return Directive into national law by designating a national forced return monitoring system that is both independent and effective.

## I. INTRODUCTION

### A. The visit, the report and follow-up

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Germany from 4 to 7 September 2023. The visit was considered by the Committee “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).<sup>1</sup>

2. The purpose of the visit was to examine the treatment of foreign nationals deprived of their liberty under immigration legislation, as well as the procedures applied, and the safeguards afforded in the context of their forced removal. More specifically, the delegation observed the preparation and conduct of a joint return operation (JRO) by air from Germany to Pakistan, via Cyprus, which took place on 5 September 2023. The return flight was organised by Germany (the organising member state), with the participation of Austria, Cyprus and Italy (participating member states), and was supported by the European Border and Coast Guard Agency (hereafter referred to as “Frontex”).

3. The JRO from Germany to Pakistan was the second return flight from Germany and the seventh removal operation by air monitored by the CPT since 2012. The Committee has previously carried out six visits to monitor two national return operations (NROs) and four JROs, five of which were supported by Frontex.<sup>2</sup>

In 1997, in its 7th General Report, the CPT outlined its standards concerning the use of force and means of restraint in the context of removal operations.<sup>3</sup> In 2003, in its 13th General Report, the Committee set out its standards on deportation of foreign nationals by air,<sup>4</sup> which have subsequently been incorporated into international law and other non-binding instruments, such as the 2005 Council of Europe “Twenty Guidelines on Forced Return”.<sup>5</sup>

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

- Nico Hirsch (Head of delegation)
- Kristina Pardalos

They were supported by Sebastian Rietz of the Committee’s Secretariat and assisted by an expert, Cyrille Orizet, psychiatrist at the European Hospital Georges-Pompidou, Paris (France), and two interpreters, Veronika Gruber and Javed Stanekzai.

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1. According to Recital 82 of the Regulation (EU) 2019/1896 of 13 November 2019 on the European Border and Coast Guard repealing Regulations (EU) 1052/2013 and (EU) 2016/1624 (hereafter referred to as “the EBCG Regulation”), the European Border and Coast Guard Agency (hereafter referred to as “Frontex”) should allow, subject to the agreement of the European Union (EU) member state concerned, the CPT to conduct visits to monitor return operations.

2. The Committee observed an NRO from the United Kingdom (London) to Sri Lanka (Colombo) in October 2012 ([CPT/Inf \(2013\) 14](#)), a JRO from the Netherlands (Rotterdam) to Nigeria (Lagos) in October 2013 ([CPT/Inf \(2015\) 14](#)), a JRO from Italy (Rome) to Nigeria (Lagos) in December 2015 ([CPT/Inf \(2016\) 33](#)), a JRO from Spain (Madrid) to Colombia (Bogota) and the Dominican Republic (Santo Domingo) in February 2016 ([CPT/Inf \(2016\) 35](#)), an NRO from Germany (Munich) to Afghanistan (Kabul) in August 2018 ([CPT/Inf \(2019\) 14](#)) and a JRO from Belgium (Brussels), via Cyprus (Larnaca), to the Democratic Republic of Congo (Kinshasa) in November 2022 ([CPT/Inf \(2023\) 20](#) and [CPT/Inf \(2023\) 18](#)). Prior to 2012, the CPT had examined several removal operations by air in the framework of the treatment of persons deprived of their liberty under immigration legislation.

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

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

5. Committee of Ministers of the Council of Europe, [Twenty Guidelines on Forced Return](#), adopted on 4 May 2005.

5. The report on the visit was adopted by the CPT at its 112th meeting, held from 6 to 10 November 2023, and transmitted to the German authorities on 14 November 2023. The various recommendations, comments and requests for information made by the Committee are set out in bold type in the present report. The CPT requests that the German authorities provide within three months a response containing a full account of action taken by them to implement the Committee's recommendations, along with replies to the comments and requests for information formulated in this report.

**The CPT would also like to encourage the German 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**

6. On the eve of the visit, the delegation met with representatives of the Federal Ministry of the Interior and Community, the Federal Police, the Senate Department for the Interior and Sport of Berlin, the Berlin Police and the Central Immigration Office of Brandenburg. Prior to the visit, it also held consultations with representatives of the National Agency for the Prevention of Torture (National Preventive Mechanism), the "Forum forced return monitoring at Berlin/Brandenburg Airport" and the Frontex pool of forced return monitors.

7. The level of cooperation received from the German authorities, and especially from the Federal Police, was excellent.<sup>6</sup> The delegation had rapid access to all places of deprivation of liberty it wished to visit (namely the collecting centre of Brandenburg, the airport facilities 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.<sup>7</sup>

The CPT also wishes to express its appreciation for the assistance provided to its delegation during the visit by the Federal Police, namely Unit 25 of the Federal Police Headquarters and the Federal Police Inspectorate at Berlin/Brandenburg Airport, as well as the liaison officer from the Federal Ministry of Justice, Sigrid Jacoby, and her team.

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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.

7. The sole exception was when one police officer of the federal state of Bremen refused to grant the members of the delegation access to a returnee held in a transport vehicle at the central gathering point at Berlin/Brandenburg Airport as he was not aware of the CPT's mandate. The delegation had the possibility to interview the person later in the waiting area of the terminal.

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. The removal operation: preparations and conduct

#### 1. Preliminary remarks

8. A main destination for refugees, asylum seekers and migrants, Germany has over the past decade received the highest number of asylum seekers in the European Union (EU).<sup>8</sup> Since 2015, the country has pursued several initiatives and restrictive measures to reduce the number of foreign nationals arriving and staying in the Federal Republic without the appropriate documentation and to increase the number of removals. Today, Germany is among the countries which carry out the highest number of forced removals of foreign nationals in Europe.

According to data provided by the German authorities by letter of 10 October 2023, 137 charter flights were carried out by Germany in 2022 and the country forcibly removed from its territory a total of 10 917 foreign nationals (including 5 047 by charter flight).<sup>9</sup> During the first eight months of 2023, 129 charter flights<sup>10</sup> were organised and 8 704 persons (including 3 790 by charter flight) were subject to forced removals from Germany.

9. Moreover, in recent years, Frontex has enhanced its assistance to support EU member states in removing foreign nationals to their countries of origin, both by means of forced return operations and support for voluntary return. According to the Agency, over 15 000 persons were forcibly removed with Frontex support in 2022 (including some 9 200 by charter flight).<sup>11</sup> More specifically, Frontex supported 287 return operations by charter flight, including 38 JROs, 178 NROs, and 71 Collecting Return Operations (CROs).<sup>12</sup>

10. Removals from Germany to Pakistan are carried out in accordance with the multilateral readmission agreement concluded between the EU and Pakistan, which entered into force on 1 December 2010.<sup>13</sup> Between 2020 and 2022, the German authorities removed 1 094 Pakistani nationals to their country; 117 were removed to Pakistan between January and August 2023.

11. The overall legal framework for the removal from Germany of foreign nationals has not changed since the CPT's visit in 2018, and is regulated by the relevant provisions of the federal Residence Act.<sup>14</sup> It is recalled that the immigration authorities (*Ausländerbehörden*) of the different federal states are responsible for issuing a so-called "deportation warning" – a written notice of intention to deport a foreign national – if the person concerned must leave the federal territory, as well as for carrying out the person's deportation if the requirement to leave the federal territory can be enforced (*vollziehbar ausreisepflichtig*).<sup>15</sup>

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8. See Eurostat, [Asylum and first time applicants – annual aggregated data](#).

9. These figures are similar to the numbers in 2020, when 147 charter flights were organised by Germany and 9 076 foreign nationals (including 4 903 by charter flight) were deported, as well as 2021, when 187 charter flights took place and 10 461 persons (including 6 035 by charter flight) were removed by force.

10. Including 63 JROs, 50 NROs (41 of which were carried out without Frontex support) and 16 CROs. In addition, 28 charter flights were organised under the Dublin Regulation, see Regulation (EU) No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

11. In addition, Frontex supported the voluntary return of almost 9 800 persons in 2022.

12. Frontex, European Centre for Returns Division, Frontex evaluation reports – Returns in the 1st half of 2022 ([Ref. Ares\(2022\)8221978](#)) and Returns in the 2nd half of 2022 ([Ref. Ares\(2023\)3564110](#)) as well as Frontex, Observations to Return Operations conducted in the 1st half of 2022 by the Fundamental Rights Officer ([Ref. Ares\(2022\)6140560](#)) and Observations to Return Operations conducted in the 2nd half of 2022 by the Fundamental Rights Officer ([Reg. FRO/JOGR/2023](#)). See also the Agency's [website](#) for an overview of Frontex's involvement in returns, as well as the EBCG Regulation.

13. Official Journal of the European Union, OJ L 287, 4 November 2010, pp. 52-67.

14. Section 57 *et seq.* of the Act on the Residence, Gainful Activities and Integration of Foreigners in the Federal Territory (*Aufenthaltsgesetz*) (hereafter referred to as "the Residence Act").

15. Sections 50 and 58 (2) of the Residence Act. A period for voluntary departure is generally granted.

Depending on the arrangements in the federal states, the respective police and/or immigration authorities are responsible for enforcing the requirement to leave the federal territory, in cooperation with the Federal Police, which is responsible for carrying out most deportations of foreign nationals by way of return flights.<sup>16</sup>

12. However, in recent years, some federal states have decided to increasingly conduct forced removal operations by air on their own. In this context, it is noteworthy that in Baden-Württemberg and Bavaria, escort duties during the flight phase have been delegated to private security staff of the company “Air Bulgaria”, which was awarded this task following a competitive bidding process.<sup>17</sup>

**The CPT would like to be informed how the German authorities carry out oversight of personnel of private security companies during forced removal operations by air conducted by federal state authorities alone, and how effective monitoring of these flights is ensured. The Committee would also like to receive detailed information about the training that is provided to private security staff members carrying out return flights.**

13. The September 2023 visit did not provide an opportunity to further examine the issue of immigration detention,<sup>18</sup> and specifically custody awaiting deportation (*Abschiebungshaft*) as well as custody to secure departure (*Ausreisegewahrsam*).<sup>19</sup> Depending on the policies applied by the respective federal state authorities, custody awaiting deportation or to secure departure can be applied in Germany. The CPT takes note that several federal states have decided not to resort to detention in the context of removal proceedings which is positive.

The rules on immigration detention have been subject to some changes since the CPT’s 2018 visit.<sup>20</sup> Most importantly, the short-term detention (*kurzzeitiges Festhalten*) of persons to be removed by the competent state authorities enforcing the requirement to leave the federal territory is now expressly regulated in the Residence Act. The new provision therefore creates a legal basis for the practice of holding persons in short-term detention without a specific court order in the context of their deportation, as opposed to custody awaiting deportation or to secure departure which require an individual detention order by a court.<sup>21</sup>

14. As to applicable EU regulations, Germany is bound by the EU Return Directive.<sup>22</sup> Further, as specified in the internal instructions (*Dienstanweisung*) concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*),<sup>23</sup> and the Frontex Implementation Plan for this JRO, the removal operation is implemented in accordance with the respective national legislation and the applicable EU and international law; relevant standards and guidelines shall also be considered.<sup>24</sup>

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16. Section 71 (1), (3) and (5) of the Residence Act.

17. See National Agency for the Prevention of Torture, Annual report 2022 ([Jahresbericht 2022](#)), p. 85. This possibility is also foreseen according to the internal instructions concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*), see footnote 22.

18. In Germany, there are currently 11 dedicated long-term immigration detention centres, one police holding facility and six medium-term airport holding facilities with a total capacity of 782 places in operation. None of the returnees from Berlin and Brandenburg were deprived of their liberty prior to their removal.

19. Section 62 of the Residence Act allows for two forms of custody awaiting deportation: custody to prepare deportation (*Vorbereitungshaft*), custody to secure deportation (*Sicherungshaft*), whereas Section 62b of the Residence Act provides for the possibility to apply custody to secure departure.

20. Reference is made to the legislative framework concerning immigration detention, as set out in the CPT’s 2018 visit report, [CPT/Inf \(2019\) 14](#), paragraph 62. The Orderly Return Law (“*Geordnetes Rückkehr Gesetz*”) of 2019, which was aimed at increasing the number of returns, introduced several amendments to Germany’s migration and asylum legislation, and specifically a new form of immigration detention, namely custody to enforce cooperation (*Mitwirkungshaft*) according to Section 62 (6) of the Residence Act and detention pending exit from the federal territory (*Zurückweisungshaft*) according to Section 15 (5) of the Residence Act.

21. In accordance with Section 58 (4) of the Residence Act, such temporary detention is authorised to bring the foreign national to the airport or to a border crossing point and must be limited to the extent necessary to carry out the deportation.

22. Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereafter referred to as “the Return Directive”).

23. *Bestimmungen über die Rückführung ausländischer Staatsangehöriger auf dem Luftweg (Best Rück Luft)*, as of 17 October 2016. The internal instructions are currently being revised.

24. 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 the matter, as well as the above-mentioned “Twenty Guidelines on Forced Return”.

In addition to their legal obligations under German 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.<sup>25</sup> Reference is also made to the Common Guidelines on security provisions for joint removals by air annexed to Council Decision 2004/573/EC,<sup>26</sup> Council Directive 2003/110/EC,<sup>27</sup> the Frontex Guide for joint return operations by air coordinated by Frontex, and the “Return Handbook” annexed to Commission Recommendation (EU) 2017/2338.<sup>28</sup>

Moreover, during the in-flight phase of the removal operation, the Tokyo Convention<sup>29</sup> governs all actions related to security and safety on board the aircraft.

15. The CPT delegation monitored the following phases of the removal operation: the gathering of Pakistani nationals to be returned at the collecting centre of Brandenburg (organising federal state) and at the central gathering point at Berlin/Brandenburg Airport; the handover process of returnees to the Federal Police authorities; the pre-departure phase at the airport facilities; the boarding of returnees from Germany as well as from Austria and Italy; the flight phase to Pakistan, including the stopover in Cyprus, where additional returnees and escort officers boarded; and the physical handover of all returnees to the Pakistani authorities in Islamabad.

16. Based on information communicated to the CPT by Frontex in July 2023, the EU member states participating in the JRO had indicated a concrete interest in removing 73 Pakistani nationals (including 50 from Germany, 10 from Austria, 10 from Cyprus and three from Italy). On the day of the JRO, 51 persons were effectively removed to Pakistan (including 38 from Germany, two from Austria, 10 from Cyprus and one from Italy). All returnees deported from Germany were single men, and all had a requirement to leave the territory that could be enforced.

The list of persons to be removed from Germany initially contained 100 persons. Most of these persons were not deprived of their liberty and it was planned that the competent police and/or immigration authorities apprehend and collect them on the morning of 5 September 2023. In the end, only 38 persons were removed from Germany, 25 of whom had been deprived of their liberty prior to the operation.<sup>30</sup>

17. These 51 persons were escorted by a total of 131 police escorts from the four countries participating in the JRO, including 93 escort officers from Germany and three Forced Return Escort and Support Officers (FRESOs) from the Frontex Standing Corps (one participating on behalf of Austria and two on behalf of Cyprus). Three representatives of the German Federal Police Headquarters, a representative of the Austrian Federal Agency for Reception and Support Services, a Frontex representative, a medical doctor, a paramedic and an interpreter also boarded the aircraft.

In addition to the CPT delegation, other monitors on board the flight included two forced return monitors from the Frontex pool of forced return monitors (requested by Germany to monitor the removal operation on behalf of Germany) and a human rights monitor (*Menschenrechtsbeobachterin*) from Austria. Further, one forced return monitor of the “Forum forced return monitoring at Berlin/Brandenburg Airport” observed the pre-departure phase of the JRO in Germany.

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25. In addition, the complementary instructions of the Federal Ministry of the Interior (B 2 – 21005/22 of 8 November 2013) must also be observed.

26. 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.

27. Article 7 (1) of Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purpose of removal by air.

28. 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.

29. Article 6 of the Convention on Offences and Certain Other Acts Committed on board Aircraft (Tokyo Convention), signed on 14 September 1963.

30. One person from Baden-Württemberg, two from Bavaria and three from Saxony were held in custody awaiting deportation; two persons from Bavaria, two from Hesse, one from Lower-Saxony, one from Rhineland-Palatinate and two from Saxony were held in custody to secure departure. In addition, six persons were held in custody awaiting deportation under the responsibility of the Federal Police and five foreign nationals from Baden-Württemberg, Bavaria, North Rhine-Westphalia and Saxony were detained in prison.

18. From the outset, the CPT wishes to emphasise that its delegation did not receive any allegations of ill-treatment from persons removed from Germany to Pakistan by either police or immigration officials from the different federal states or escort officers of the Federal Police. On the contrary, the JRO of 5 September 2023, organised by Brandenburg with the assistance of the German Federal Police, was well prepared and carried out professionally and in a calm manner. Overall, the Committee gained a positive impression of the conduct of the removal operation, and persons removed from Germany to Pakistan were treated with respect and dignity.

## 2. Safeguards in the context of removals

19. In its 7th General Report,<sup>31</sup> the Committee set out the safeguards which should be afforded to all foreign nationals deprived of their liberty under immigration legislation. This includes specific safeguards against refoulement and effective procedures for the timely notification of the person concerned and their preparation 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 apprehended by the police in view of their removal should, from the very outset of their deprivation of liberty, enjoy the protection of the fundamental safeguards against ill-treatment during detention, notably the rights to notify a close relative or third party of their detention and imminent removal, to have access to a lawyer and to a doctor (particularly in the context of a “fit-to-fly” examination), and to be systematically and fully informed of their rights and the procedure applicable to them, with the assistance of a qualified interpreter if necessary.

### a. protection against *refoulement*

20. 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. According to the established case law of the European Court of Human Rights, the removal of a foreign national by a state may give rise to an issue under Article 3, and hence engage the responsibility of that state under the Convention, where there are substantial grounds for believing that the person would face a real risk of being subjected to ill-treatment in the destination country; in these circumstances, Article 3 implies an obligation not to remove the person concerned to that country.<sup>32</sup>

More specifically, the Committee has stressed that the decision-making process concerning the removal of foreign nationals 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 independent body. Emphasis was placed on 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.

21. Based on the findings of the visit, those who wished to apply for international protection in Germany had the possibility of doing so by means of a confidential, independent and objective asylum process before the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*). The agency first assesses whether the person qualifies for refugee protection, an entitlement to asylum, or subsidiary protection status. If none of the three forms of protection is granted to the persons concerned, the Federal Office then determines whether the criteria for granting a deportation ban are met.<sup>33</sup> According to the relevant provisions of the Residence Act, a person who is seeking protection may not be deported if the removal to the destination country constitutes a breach of the European Convention on Human Rights, or if a substantial concrete threat to life, limb or liberty exists in that country.<sup>34</sup>

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

32. For a summary of the general principles established in the Court's case law, see *Khasanov and Rakhmanov v. Russia* [Grand Chamber], nos. 28492/15 and 49975/15, 29 April 2022, paragraphs 93-116.

33. Section 60 (5) and (7) of the Residence Act.

34. A substantial concrete threat for health reasons does exist if a life-threatening or serious disease would become much worse in case of return.

Rejected asylum seekers have two weeks to file an appeal against the negative asylum decision, which has suspensive effect.<sup>35</sup> However, most returnees had their asylum application rejected several years before deportation.

22. All 38 Pakistani nationals were issued with an individual deportation warning informing them that they must leave the federal territory.<sup>36</sup> Once the time set for voluntary departure has expired, the competent immigration and/or police authorities can legally enforce the requirement to leave the federal territory and deport the persons concerned (see paragraph 29).

23. The delegation was informed that, 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, every foreign national has a right to be heard and provide information about their personal situation. According to the relevant provisions of the Residence Act and the Code of Administrative Procedure, a foreign national who is required to leave the federal territory can lodge an appeal against the deportation warning (or, in specific cases, against the expulsion or deportation order) on points of fact and law within one month of the administrative court decision being issued.<sup>37</sup> In addition, the person concerned can lodge an application for temporary relief with the competent administrative court to reinstate the suspensive effect by means of an interim measure.<sup>38</sup>

24. Two of the 38 persons removed to Pakistan in the context of the JRO indicated when interviewed by the delegation that they were afraid to be sent back to Pakistan, where they might be at risk of ill-treatment or reprisals upon return. For example, from the casefile of one of the two returnees, it appeared however that, following the rejection of both his asylum claim and follow-up asylum application, as well as his application for temporary relief, all legal remedies against his deportation had been exhausted. In this context, it is positive that the escort leader explicitly requested a confirmation from the competent immigration authorities of the federal state concerned, which confirmed that the person could effectively be removed (see also paragraph 45).

However, this person was still in possession of his casefile and of other relevant documents, which contained detailed information about his asylum claim, flight history (*Fluchtgeschichte*) and political activities in Germany. Following the intervention of two monitors, the Federal Police escort officers assigned to that individual agreed to proceed – upon the person’s request – with the destruction of his casefile and all documents containing specific personal information that might have placed the person at risk of ill-treatment or reprisals upon his return to Pakistan.<sup>39</sup> In addition, he was also granted access to his mobile phone to delete all potentially compromising data.

25. The internal instructions concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*) mention that no information about, for instance, the returnee’s criminal record or a possible asylum claim shall be provided to the competent immigration authorities of the country of return. However, no provision appears to exist concerning documents that might contain such compromising information.

**The CPT recommends that the German authorities ensure that procedures are in place to prevent documents with potentially compromising information about the returned person’s asylum claim, criminal record or political activities from accompanying the person in their luggage, unless they request otherwise.**

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35. Sections 74 and 75 of the Asylum Act (*Asylgesetz*) combined with Section 67 of the Code of Administrative Procedure (*Verwaltungsgerichtsordnung*). However, if the asylum application is manifestly unfounded or inadmissible, the appeal must be made within one week and does not have suspensive effect.

36. Section 59 of the Residence Act.

37. Section 124 of the Code of Administrative Procedure. This appeal, however, does not have suspensive effect, see Section 80 (2) of the Code of Administrative Procedure. Further, within one month, requests for a review of the appellate court decision by the Federal Administrative Court can be made on the grounds provided in Section 132 of the Code of Administrative Procedure.

38. Section 123 of the Code of Administrative Procedure. In any case, all returnees who consider that they might face an imminent risk of irreparable damage such as fear of ill-treatment in the country of removal have the possibility to lodge a request for interim measures with the European Court of Human Rights, under Rule 39 of the Rules of the Court.

39. After a second intervention by one of the Frontex forced return monitors, the assigned escorts agreed to also return and open his already checked-in luggage to proceed with the destruction of additional documents that contained compromising information.

26. In the CPT's view, a final contact between the escort leader of the Federal Police on board the plane and the headquarters in Germany should be carried out immediately prior to handover to verify whether any application for temporary relief with suspensive effect has been granted by a court during the return flight ("last call procedure") following an appeal by a legal representative of one of the persons returned. This would allow the authorities to ensure that all relevant actors, including the escort leader, are always fully informed of the state of legal proceedings of the persons to be removed, until the very moment of handover to the authorities of the destination country.

In their response to the CPT's 2018 visit report, the German authorities confirmed that such a procedure was in place as a standard procedure during all removal operations by air carried out from Germany. It is incumbent on the competent state authorities to ensure that the required contact data of all competent persons are available to all parties involved (administrative courts, immigration authorities and escort officers). They must also inform the Federal Police without undue delay of any requests filed as a matter of urgency with a court, including after the airplane has taken off. Consequently, the deportation procedure can still be halted during the flight and the person concerned might, if necessary, be brought back to Germany. The communication channels in aviation do allow for such a decision to be forwarded to the escort leader at any time. This is positive.

27. Moreover, the CPT is of the opinion that post-return monitoring<sup>40</sup> of the situation of persons removed in the country of return would present an additional safeguard against *refoulement*.

At present, the Federal Foreign Office and the Federal Office for Migration and Refugees monitor the general conditions in all countries of return by means of local liaison officers and diplomatic representations.<sup>41</sup> However, the German authorities currently do not monitor what happens to foreign nationals after they have been removed.

**The CPT would like to encourage the German authorities to develop a system of independent 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 (see also paragraph 100). It also encourages the German 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.**

- b. timely notification of removal and preparations for return

28. In the CPT's experience, preparing foreign nationals well in advance of the scheduled removal contributes to a reduction in the need to use force and/or means of restraint and considerably decreases the risk of ill-treatment. A timely notification of the removal also gives the persons concerned time to prepare for departure and to organise their return, and particularly to inform the persons who need to know and to retrieve their personal belongings, such as luggage, money (especially from their bank accounts), valuables, medication or important documents.

29. The delegation observed that the same procedures in force at the time of the CPT's 2018 visit were applied during the JRO of 5 September 2023. It is recalled that the relevant legislation provides that a deportation warning (*Abschiebungsandrohung*) shall be served to a person who is required to leave the federal territory, specifying a reasonable period of between seven and 30 days for voluntary departure.<sup>42</sup> The person has the right to appeal that decision. When this period has expired, the person shall not be informed of the date of the removal.<sup>43</sup>

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40. "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.

41. For instance, if medical treatment and follow-up are made available in the country concerned. In some instances (such as in countries in the Balkans), a representative of the German diplomatic representation would even be present upon arrival of the airplane and monitor the handover procedure.

42. However, the set period for departure may be reduced or waived altogether if the person concerned is likely to evade removal or poses a serious risk to public safety and order. The competent immigration authorities can also issue an expulsion order on the grounds of public interest in expelling the foreign national (*Ausweisungsinteresse*) pursuant to Section 54 (1) of the Residence Act or a deportation order to avert a special threat to the security of Germany or a terrorist threat pursuant to Section 58a of the Residence Act. The deportation order and, in some cases, the expulsion order can be enforced immediately.

43. Sections 59 (1) and 58a (1) of the Residence Act.

This means, in practice, that the person concerned is only notified of the requirement to leave the federal territory when the deportation warning is issued; if the time set for voluntary departure has lapsed, the person may be removed without any further notification of the exact date of the removal.

30. Most of the 38 Pakistani nationals on the flight had been issued the deportation warning several months or even years earlier. The fact that the notice to leave the federal territory is not enforced – sometimes for several years during which the persons concerned have often made efforts to integrate and settle to the host country – places them in a situation of vulnerability. They told the delegation that it had been a surprise when the police and/or immigration authorities came to collect them. However, the law foresees that foreign nationals held in custody awaiting deportation shall be notified at least one week before their planned deportation.<sup>44</sup>

Among the 25 persons who had been detained prior to their removal, some had been informed of their deportation only one or two days in advance, despite having been deprived of their liberty for longer than this, and only one person had been informed upon his apprehension six days prior to his deportation. The German practice to apprehend and collect many returnees on the day of their removal has the merit of not placing them in custody awaiting deportation or to secure departure. However, this practice also has several adverse consequences.<sup>45</sup>

31. Several returnees, especially those apprehended and transferred on the day of the JRO, complained that they had not been given sufficient time to prepare for their removal or take leave of their close friends. The delegation received many complaints from returnees that they themselves were not allowed to collect their personal belongings, including money or important documents when apprehended by the competent police and/or immigration authorities. Some persons alleged that they had been intimidated by the police officers concerned; several returnees complained that they were not allowed to withdraw money from their bank accounts or to collect all their personal belongings. For instance, one returnee who had spent one day in custody awaiting deportation was removed to Pakistan with only a small backpack. He was not given the opportunity to collect his other personal belongings and they had not been collected for him.

32. In this context, the CPT takes note of two additional procedures that appear to be regularly applied by the competent immigration authorities in some federal states. First, it appears that returnees are apprehended by the competent police and/or immigration authorities during a scheduled appointment at the immigration office (so-called “*Tischfestnahme*”). At least three returnees had been apprehended in this way. This carries the risk that the person is removed without having been granted the possibility to collect their personal belongings, as was the case in the above-mentioned example. Second, the relevant provisions of the Residence Act allow the competent immigration authorities to retain a certain amount of the returnee’s money as a deposit – given that foreign nationals must, in principle, bear the costs for their deportation themselves – and to enforce this measure without any prior notice.<sup>46</sup> For example, some tensions arose when one returnee from Saxony was informed during his handover to the Federal Police that an amount of over €1 000 had been withheld as a deposit, without this measure having been explained to him at any moment by the competent immigration authorities who took the decision. **The CPT would like to receive the German authorities’ comments on whether these two practices observed are applied by all federal states throughout Germany.**

33. Moreover, several returnees interviewed expressed their view that they had not been adequately prepared for their return to Pakistan. Particularly, they were not able to organise their return or contact family or friends in Pakistan; they had also not received any information pertinent to their personal situation, including whom to contact for possible assistance and support upon their return. This appeared especially problematic for those who had left Pakistan over a decade ago and who no longer had any family, friends or personal ties to their country.

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44. Section 59 (5) of the Residence Act.

45. In addition, many persons who were initially on the list of persons to be removed from Germany could not be found by the competent police and/or immigration authorities at their places of residence on 5 September 2023. Only 38 out of 100 persons could effectively be removed from Germany, including 25 who were previously deprived of their liberty. It is to be noted that the information about the return flight, which is in principle confidential, had been leaked by civil society activists via social networks prior to the JRO and a demonstration had even been organised in front of the Federal Ministry of the Interior and Community.

46. Section 66 (1) and (5) of the Residence Act.

34. The German authorities, in their response to the 2018 visit report, indicated that all returnees held in custody awaiting deportation or to secure departure are generally notified of their impending deportation at least one week prior to their removal, with one notable exception.<sup>47</sup> Further, most federal states would ensure that returnees apprehended on the day of the return flight are given the possibility and sufficient time to collect their personal belongings, including documents and money, upon apprehension by the police and to make the necessary arrangements to prepare for their return prior to their removal. However, the findings of the 2023 visit indicate that these affirmations do not seem to be supported by the practice applied by the competent authorities in several federal states.

35. The Committee recalls that it is essential for foreign nationals deprived of their liberty in view of their deportation – many of whom have lived in Germany for several years – to be informed sufficiently far in advance of their planned removal, so that they can begin, psychologically and practically, to prepare for their 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 necessary persons and retrieve their personal belongings, including money, medication or important documents. 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 removal. Such an approach will hence reduce the need to use force and/or means of restraint during forced removal operations.

The CPT also considers that those foreign nationals who are only apprehended and collected on the day of their removal should be given the possibility and sufficient time to inform the persons they need to, and to retrieve their personal belongings. Further, due to their specific vulnerability, they should, from the outset of their deprivation of liberty, enjoy the protection of the fundamental safeguards against ill-treatment, notably the rights to inform a third person of their detention and imminent removal, to have access to a lawyer and to a doctor, and to be systematically and fully informed of their rights and the procedure applicable to them (see paragraphs 37 to 60).

The CPT is also of the view that these matters should be regulated at federal level to ensure a coherent approach and common practice by the different federal state authorities involved in the deportation process.

**36. The CPT reiterates its recommendation that foreign nationals held in custody awaiting deportation should be notified at least one week in advance of their impending deportation, as required by law. If they are detained less than one week prior to deportation, they should be informed of the impending deportation on the day of their deprivation of liberty.**

**The CPT also recommends that the German authorities take the necessary steps to ensure that returnees who are apprehended on the day of their removal be given the opportunity and sufficient time to inform the persons they need to, to collect their personal belongings, including money (especially from their bank accounts), medication and documents, and to make the necessary arrangements to prepare for their departure and organise their return. To this end, additional measures should be taken to guarantee that they can effectively benefit from the protection of the fundamental safeguards against ill-treatment from the outset of their deprivation of liberty.**

**The Committee also encourages the German authorities to provide information more systematically on possible assistance and support upon their return to all persons subject to forced removal.**

c. the right to inform a third person

37. The relevant legislation allows foreign nationals held in custody awaiting deportation to use the telephone to inform their relatives, or a third party of their choice, of the removal.<sup>48</sup> However, the right to inform a third person of their situation and deprivation of liberty is not formally granted to persons held in short-term detention without a court order, in the context of their deportation.

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47. The authorities of Bavaria take the view that these legal standards do not apply to custody awaiting deportation; consequently, returnees are not informed of the specific date of their removal. See [CPT/Inf \(2019\) 15](#), pp. 8-9.

48. Section 62a (2) of the Residence Act.

On the contrary, the checklist containing instructions for carrying out removal operations by air, annexed to the service-internal preparatory letter of 17 August 2023 sent by the Federal Police Headquarters to the competent immigration authorities of the federal states, requires that mobile phones are to be immediately confiscated upon apprehending and collecting the returnee concerned, according to the relevant federal state law. At the same time, this document also indicates that the persons concerned should be given the opportunity to retrieve important contact details and telephone numbers and make telephone calls during the waiting time before handover to the Federal Police. This instruction was also repeated orally by the escort leader during the briefing of escorts, with the information that two telephone boxes were available where returnees could make telephone calls. Further, it appears that some federal states explicitly grant returnees the possibility of keeping their mobile phones during the collection and transfer process, which the CPT considers good practice.

38. It is positive that returnees were usually granted access to the telephone after their handover to the Federal Police and the ensuing security search in the waiting area of the terminal at Berlin/Brandenburg. Most returnees were allowed to make at least one phone call to inform their relatives or a third person of their choice about their imminent removal to Pakistan.<sup>49</sup> This greatly contributed to the reduced anxiety and stress of persons to be returned.

39. However, for most returnees, the right to inform a third person about their detention and their removal was not granted from the outset of deprivation of liberty but only at a very late stage in the removal proceedings (prior to boarding). While persons held in custody awaiting deportation were able to make telephone calls during their detention, all returnees interviewed by the delegation – with one notable exception – had their mobile phones confiscated or placed in their luggage when being apprehended and collected by the competent police and/or immigration authorities of the federal states.

None of them was provided with an opportunity to make a telephone call to inform family members or a third person during the entire collection and transfer process, including during the waiting time at the parking area at Berlin/Brandenburg Airport, despite requests to do so. Moreover, most were not allowed to retrieve the telephone numbers of their contacts from their mobile phones until their arrival at the airport. Some returnees, who had not been granted access to the telephone when being apprehended and transferred, had no time to inform a third person of their deprivation of liberty and their removal, as they arrived late at the airport due to traffic and the boarding process was already underway. Many persons described the lack of access to a telephone throughout the day as the greatest source of stress during the removal process.

40. The exception concerned one Pakistani national who had been granted access to his mobile phone during his transfer to Berlin/Brandenburg Airport. In contrast to all other returnees, he was able to contact his two brothers, who live abroad in another European country, and could therefore organise his return; his father had confirmed that he would await him upon his arrival at Islamabad Airport.

41. 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, foreign nationals should have access to their mobile phones when being apprehended and collected by the competent police and/or immigration authorities of the federal states concerned and should be allowed to make at least one telephone call and retrieve important numbers. Mobile phones should only be confiscated if deemed necessary, based on an individual risk assessment.

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49. It is also noteworthy that the German Federal Police facilitated the possibility for the returnee from Italy to make a telephone call upon a request by the Italian escort leader, as he had not previously been granted this possibility in Italy.

42. **The CPT recommends that the German authorities review their policy concerning access to a telephone to ensure that all returnees have the right to contact relatives, or a third person of their choice, from the outset of their deprivation of liberty by the competent police and/or immigration authorities of the federal states. These agents should actively facilitate the right of returnees to inform a person of their choice of their detention and impending removal, including by granting access to their mobile phones. The right of notification from the outset of deprivation of liberty should be formally granted to persons held in short-term detention, and the relevant instructions reviewed accordingly.**

d. access to a lawyer

43. Under German law, foreign nationals held in custody awaiting deportation are permitted to contact a lawyer.<sup>50</sup> If required, foreign nationals can benefit from the services of an interpreter. However, this right is not explicitly granted to persons held in short-term detention without a court order in the context of their deportation.

44. For most Pakistani returnees, the deportation warning was enforced only several months or years after it had been issued. With such a lengthy period in between, the situation of the person may have undergone significant changes and might give rise to a potentially successful judicial review. Moreover, as described above (see paragraph 23), the legal procedure to lodge an appeal against a deportation warning, or a deportation or expulsion order is complex, especially an application for temporary relief to reinstate the suspensive effect by means of an interim measure pursuant to the Code of Administrative Procedure. It is therefore essential that returnees, including those who are not detained prior to their removal, can benefit from the right to access to a lawyer from the very outset of their apprehension and collection by the competent police and/or immigration authorities.

45. The delegation observed one situation, where the Federal Police actively facilitated the possibility for one returnee who had expressed fear that he might be subjected to ill-treatment or reprisals upon his return to Pakistan (see paragraph 24) to contact his lawyer.

46. However, the CPT is concerned that the lack of advance notification of returnees of their scheduled deportation, combined with the lack of access to a phone from the outset of deprivation of liberty (that is, the moment when they are apprehended and collected by the competent police and/or immigration authorities of the federal states on the day of their deportation) renders the right to access to a lawyer almost ineffective in practice. For example, one person who was initially on the list of persons to be removed, despite scheduled appointments for the renewal of the residence permit and for a court hearing, complained that no access had been granted to contact the lawyer. The deportation was only stopped by the competent state immigration authorities when handover to the Federal Police at Berlin/Brandenburg Airport was about to start.

As previously described, most returnees only had the possibility to make a telephone call once they were in the waiting area of the terminal at Berlin/Brandenburg Airport in the late afternoon. However, most law firms close their offices at 17:00 and many returnees did not manage to contact their lawyers. Even those returnees who did reach their lawyers could only do so at a very late stage.

47. **The CPT recommends that the German authorities ensure that all returnees can effectively exercise their right to contact a lawyer from the outset of their deprivation of liberty by the competent police and/or immigration authorities of the federal states. This right should be formally granted to persons held in short-term detention and be facilitated in practice.**

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

48. The CPT has long advocated for the importance of ensuring that returnees undergo a medical examination before a forced removal operation by air and for the systematic issuing of a “fit-to-fly” certificate. This requirement was reiterated in the Council of Europe’s 2005 “Twenty Guidelines on Forced Return”.<sup>51</sup>

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50. Section 62a (2) of the Residence Act.

51. Committee of Ministers of the Council of Europe, [Twenty Guidelines on Forced Return](#), adopted on 4 May 2005, Guideline 16.

49. The applicable legislation has not changed compared to the situation described in the CPT's 2018 visit report. It is recalled that the competent immigration authority assumes that – in principle – the removal of foreign nationals is not precluded on health grounds. The person can rebut this assumption and substantiate an illness or medical condition which might impede their removal, by submitting a qualified medical certificate. In that case, the person is required to undergo a medical examination by a doctor from the competent immigration authority; if the foreign national does not comply with this order, the authority can disregard the reported illness or medical condition. If there is factual evidence for the existence of a “life-threatening or serious illness” which would be significantly worsened by deportation, the authorities shall temporarily suspend the removal.<sup>52</sup>

The internal instructions concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*) have been slightly amended to clarify the applicable rules concerning fitness to fly and medical care. According to these rules, the responsibility for establishing fitness to travel is now with the competent immigration authorities of the federal states, who are expected to inform the Federal Police if no medical certificate has been established and that there are no indications of the existence of a life-threatening or serious illness. The immigration authorities shall also notify any illness or medical condition raised by the foreign national, as well as any real indications of a health risk, such as serious injury, suicide risk, substance use or contagious disease. Further, it is required that returnees who have a mental disorder, have attempted to commit suicide, or require medication be accompanied by a medical doctor during the flight.

Moreover, the Frontex Implementation Plan provides that all returnees shall be fit to travel; the Frontex Guide for JROs by air also requires that returnees are to be removed only as long as they are fit to travel at the time of the JRO and that the recommended fit-to-travel form as annexed to the Guide should be used.

50. However, the applicable legislation and rules in place still do not require a mandatory and systematic medical examination of every returnee. The delegation was informed that, since 2019, fit-to-fly certificates no longer need to be systematically established for every foreign national removed by Germany, as had been the practice during the CPT's 2018 visit. It appears that a fit-to-fly certificate is now only mandatory for returnees who have a specific medical problem or illness or if there are doubts regarding their fitness to travel.

Given that the competence for carrying out a medical examination and drawing up a fit-to-fly certificate is attributed to the federal states, they can now decide on their own policy and rules in the matter. It is positive that some federal states require a mandatory medical examination and fit-to-fly certificate<sup>53</sup> for all returnees. However, based on the findings of the delegation, it appears that other federal states require fit-to-fly examinations and the corresponding certificates only for those returnees with a pre-existing illness, medical condition and/or treatment.

51. On the day of the visit, a healthcare team consisting of two medical doctors and two paramedics<sup>54</sup> were present at Berlin/Brandenburg Airport. The few returnees who had either an illness, a medical condition and/or required treatment or medical assistance, all benefitted from a medical consultation by a doctor in one of the two dedicated rooms, without all being examined clinically.<sup>55</sup> Their medical files all contained a fit-to-fly certificate. In addition, at the handover to the Federal Police, the medical files and medication of these returnees were transmitted in person to the medical doctor boarding the flight.<sup>56</sup>

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52. Section 60a (2), (2c) and (2d) of the Residence Act.

53. For example, the fit-to-fly certificate used in Brandenburg consisted of a “medical opinion” (*ärztliche Stellungnahme*) established by a medical doctor of the competent central immigration authority indicating the persons “fitness for custody” and “fitness to fly/travel” (kept by the immigration authority) and a second document containing relevant medical information, such as the person's diagnosis, health requirements and medication (transmitted to the healthcare team at the airport).

54. The two medical doctors were both anaesthetists. The doctor accompanying the flight also had previous experience in resuscitation and emergency care and was regularly requested to take part in forced removal operations by air.

55. The consultation rooms were adequately equipped and contained an examination bed.

56. In the case of two returnees, a proper transmission took place between the medical doctors accompanying these returnees during their transfer to the airport and the medical doctor boarding the return flight.

Further, most returnees who had previously been deprived of their liberty had been examined by a medical doctor in the different places of detention. Those returnees who had been apprehended and collected at their home on the day of the JRO, and those who had no pre-existing or acute medical condition or problem, were all seen by the two paramedics who briefly evaluated their state of health. They were required to report back to the medical doctors if one of the returnees had a health-related problem. This medical screening allowed the Federal Police to ensure that all returnees were, *de facto*, fit to fly and, indeed, no health-related incident took place during the forced removal flight.

52. However, the CPT notes that – despite these measures – many of the 38 returnees removed from Germany were not clinically examined by a medical doctor prior to the JRO and no fit-to-fly certificate had been drawn up for most of them. In this regard, it is recalled that all returnees were previously transferred by the different police authorities of the federal states before their handover to the Federal Police, and many had been previously living in the community. From a prevention of ill-treatment perspective, the Committee considers that all returnees should systematically be examined by a medical doctor prior to the removal operation. They should also receive a fit-to-fly certificate.

**The CPT recommends that the German authorities take the necessary measures to ensure that, in the context of forced removal operations by air organised by Germany, all returnees systematically benefit from a somatic clinical examination by an independent medical doctor prior to the removal operation. This examination might be carried out at the airport of departure. Further, clear procedures of reporting and action to be taken in case of credible allegations of ill-treatment should be developed.**

**Moreover, a fit-to-fly certificate should be systematically established for all returnees. To this end, the Committee encourages the authorities to further harmonise the different practices at the federal state-level.**

53. In its 2018 visit report, the CPT had raised concerns as regards the apparent dual loyalty of the medical doctor who accompanied that return flight.<sup>57</sup> For the JRO of 5 September 2023, two doctors and the two paramedics were contracted by the Federal Police. Further, one doctor who was contracted by the Central Immigration Office of Brandenburg was present at the collecting point of this federal state. All three doctors interviewed by the delegation's medical doctor considered themselves independent from the police or immigration authorities for which they were working.<sup>58</sup>

However, the CPT considers that the independence of the medical doctors contracted in the context of forced removal operations by air organised by Germany could be further strengthened by improving the system of their appointment. Indeed, the three doctors appeared to be regularly contracted by the competent police or immigration authorities based on a list of accredited doctors. For one of the three doctors met, these missions had apparently become an essential part of his professional activity.<sup>59</sup> This presents a clear risk of conflict of interest in terms of potential financial dependence of the doctors concerned who wished to continue being called upon for future missions and might therefore be inclined to see their primary interest to lie with the competent authorities.

**The CPT recommends that the German authorities ensure that the number of missions for which medical doctors are contracted in the context of forced removal operations is limited to the extent that they do not present an essential part of their professional activities in order avoid a situation of dependency.**

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57. See [CPT/Inf \(2019\) 14](#), paragraph 28: “the observations of the delegation point to an apparent dual loyalty of the accompanying doctor who established the “fit-to-travel” certificate for this person whereby his primary interest appeared to lie with the Federal Police authorities.”

58. They also shared with the delegation their vision of the task with which they had been mandated, which was limited to accompanying the forced removal operation by air and ensuring that all returnees are removed safely from a medical perspective. This also meant that the question of whether the returnees would be able to access medical treatment upon their return to Pakistan, or their continuity of care in that country did not seem to be among their central preoccupations.

59. Within the past three years, he had contributed as a medical doctor to some 240 removal operations for different police and/or immigration authorities in Germany.

54. To further strengthen the independence of medical doctors contracted in the context of forced removal operations by air, the competent police and immigration authorities might wish to consider additional measures, for instance, by allowing the competent German Federal or State Medical Associations (*Bundesärztekammer* or *Landesärztekammer*), or an ad hoc committee, to designate the medical doctors contracted in the context of a return operation. **The CPT would like to receive the comments of the German authorities in this regard.**

55. The Committee is also concerned that, during the monitored return flight, medical confidentiality was not respected on various occasions and at different levels, and it appeared that there was no clear policy concerning medical secrecy in the context of forced removal operations. The examples observed by the delegation are numerous. Firstly, the list of returnees ("*FAR-Liste*") that was accessible to the competent police authorities contained relevant medical information, such as "psychiatric disease", "substance user", or specific details of the person's medical illness or pre-condition. Secondly, the doctor contracted by the Central Immigration Office of Brandenburg indicated that all medical consultations would be carried out in the presence of a police or immigration officer. Thirdly, the fit-to-fly certificates that were accessible to the competent police and immigration authorities, and the documentation on the returnee's conduct drawn up by the escort officers, also contained relevant medical information, such as the person's Covid status, substance use or the list of medication prescribed and/or administered. Fourthly, the medical files of some returnees were not kept by the medical doctor accompanying the flight, but by escort officers. Finally, upon handover to the Pakistani authorities, the medical documentation of one returnee requiring continuity of care and medical treatment for his disease was transmitted to these authorities in the absence of a medical doctor.

**56. The CPT recommends that the German authorities take the necessary steps to address the above-mentioned shortcomings and draw up a clear policy concerning the respect of medical confidentiality during forced removal operations by air. This policy should be fully respected in practice. In particular, the documentation made available to police officers, including escort staff, should not contain information covered by medical confidentiality.**

**Further, all medical examinations of persons deprived of their liberty should be conducted out of the hearing and – unless the healthcare professional concerned requests otherwise in a particular case – out of the sight of police officers.**

57. Moreover, from the findings of the delegation, it appears that the medical preparations for the return of foreign nationals to ensure continuity of care in Pakistan were insufficient regarding two persons deported from Germany. It notably emerged that one returnee, who had for several months been receiving opioid agonist therapy by means of a daily treatment with methadone, was not adequately prepared for his return to Pakistan and was left without any arrangements for the continuity of care.<sup>60</sup> According to the explanations provided by the different medical doctors met, this appeared to be the usual procedure in case of removal of patients undergoing opioid agonist therapy.

Further, a second returnee, who was diagnosed with tuberculosis, had been receiving antibiotic treatment for several months. He was required to continue his daily treatment for another three and a half months upon his return to Pakistan, for which he had been provided with sufficient antibiotic treatment, which is positive.<sup>61</sup> However, for both returnees, the risk of relapse is very high in the absence of continuity of care in Pakistan.

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60. As methadone is a long-acting drug, the first signs of withdrawal appear around 24 hours after the last dose (in this case, a few hours after the returnee's scheduled arrival in Islamabad). These signs of withdrawal, which can be very intense, include shivering, trembling, diarrhoea, widespread muscular pain, a feeling of unease, sleep disturbance, irritability, craving or an intense need to obtain and take an opiate at any price. They usually last for up to two weeks, with a peak around the 10th day, whereas the craving persists for several months.

61. 150 pills of Rifampicin (600 mg) and 150 pills of Isoniazid (300 mg). In the absence of compliance with the daily treatment, there is a risk that the patient develops resistance to conventional antibiotic treatment and, if not treated adequately, that the disease can be transmitted further. See also, World Health Organization, Direct Observed Treatment Short-course (DOTS) strategy for TB control.

58. **The CPT would like to be informed of the measures taken by the competent immigration authorities prior to deportation to guarantee the continuity of care of both persons upon their return to Pakistan. More generally, the CPT encourages the German authorities to put in place effective arrangements to organise the continuity of care of returnees in the countries of removal prior to their deportation.**

f. information on rights

59. The delegation also found that returnees were not systematically informed of their rights to notify a third person of their deprivation of liberty and their imminent removal and to have access to a lawyer and to a doctor when apprehended by the competent police and/or immigration authorities of the federal states.

Indeed, several returnees complained that they had not been informed, despite their requests, if and when they could inform a third person of their apprehension and their impending deportation, and contact their lawyer. Further, some persons interviewed were not even informed by the competent police authorities of the federal states, or did not understand, that they would be deported to Pakistan on the same day.

60. **The CPT recommends that the German authorities take the necessary measures to ensure that all returnees are systematically and fully informed of their rights, the procedure applicable to them and the legal remedies available against their deportation from the very outset of their deprivation of liberty (that is, from the moment when they are obliged to remain with the competent police and/or immigration authorities from the federal states). This should be ensured by the provision of clear verbal information at the moment of apprehension, to be supplemented at the earliest opportunity by the provision of the relevant information sheet, in a language that they can understand. If needed, the assistance of a qualified interpreter should be provided.**

### 3. Conduct of the removal operation

61. The 38 Pakistani nationals were transferred to Berlin/Brandenburg Airport from nine different federal states on 5 September 2023.<sup>62</sup> They were brought to a central gathering point, in the vicinity of Terminal 5, some arriving as of 12:00 midday with the handover to the Federal Police starting around 14:00. The returnees could make use of a portable toilet, and some were allowed to smoke a cigarette under close surveillance by the competent police and/or immigration officials of the federal states in charge of their apprehension and transfer.<sup>63</sup> Several returnees were directly transferred to Terminal 5 upon arrival; for instance, a bus with 11 returnees from Saxony and a vehicle with five returnees from Bavaria arrived late, due to dense traffic. Therefore, the decision was taken to extend the time for handover to the Federal Police of these returnees.

62. Brandenburg – the federal state responsible for organising this return operation in cooperation with the Federal Police – has rented a building located near Terminal 5 which serves both as an accommodation centre for asylum seekers and as a pre-removal detention centre.<sup>64</sup> Further, it is regularly used as a collecting point of the Central Immigration Office of Brandenburg in the context of removal operations by air carried out from Berlin/Brandenburg Airport. The delegation

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62. Baden-Württemberg (two returnees), Bavaria (12 returnees, including six returnees who were held under the authority of the Federal Police), Brandenburg (two returnees), Bremen (one returnee), Hessen (two returnees), Lower-Saxony (two returnees), North Rhine-Westphalia (three returnees), Rhineland-Palatinate (two returnees), and Saxony (12 returnees). One person was brought to the airport from Berlin but had to be released before handover to the Federal Police, as the person could not be removed due to pending judicial proceedings.

63. After the handover to the Federal Police, the competent police and immigration authorities of the federal states were required to remain at the central gathering point until departure of the aircraft to ensure that persons whose deportation was halted could be taken into charge.

64. The Centre was used for the following three purposes: (1) as a pre-removal detention centre to hold foreign nationals in custody to secure departure pursuant to Section 62b of the Residence Act; (2) as a place of accommodation to hold foreign nationals who have reached the federal territory by air but were refused entry, and from where they are able to leave the federal territory under Section 15 (6) of the Residence Act; and (3) as a place of accommodation for asylum seekers who entered via Berlin/Brandenburg Airport and who either come from a safe country of origin or who are unable to prove their identity (so-called “airport asylum procedure”) according to Section 18a of the Asylum Act.

briefly visited the centre, which had a total capacity of 34 places, but which was empty at the time of the visit. It consisted of two parts, which could be separated by an airlock – one for accommodating asylum seekers (14 places) and a second for holding foreign nationals in custody to secure departure for up to 48 hours. The facility was administrated by the German Red Cross, with staff from a private company providing security.

The conditions of detention at the centre were excellent, with foreign nationals who could be accommodated in three- to six-person bedrooms which were clean, spacious and in a good state of repair, and which do not call for additional comments. Returnees held in short-term detention without a court order in the context of their deportation would only spend a few hours at the facility. At around 12:00 midday, one returnee was brought to the facility, where it was initially planned to bring together some 14 returnees from Brandenburg. He was presented to a contracted medical doctor who was also present at the centre for a fit-to-fly examination, before being transferred to the Terminal for handover to the Federal Police some two hours later.

63. The JRO of 5 September 2023 started at around 13:30 with a briefing by the escort leader for all German escort officers at Terminal 5 of Berlin/Brandenburg Airport.<sup>65</sup> The briefing included an update on operational and organisational matters, such as the number of persons expected to be removed, the seating plan and the scheduled timeline of the operation. It also addressed the applicable rules for security searches, use of force and means of restraint – with an emphasis on the importance of de-escalation and the requirement to immediately inform the escort leader of their use – and access to telephones by returnees. The Frontex complaints mechanism, Implementation Plan and Code of Conduct for return operations and return interventions coordinated or organised by Frontex were also recalled. Each of the returnees whose removal had been confirmed were then assigned to two escort officers. The back-up team leader then distributed the equipment and assigned the tasks to his team during the ground handling, boarding and in-flight phases.

64. 93 escort officers from Germany (*Personenbegleiter Luft – PBL*) took part in the return flight, including the escort leader, his deputy and the back-up team.<sup>66</sup> All were specially selected and trained<sup>67</sup> and had previous experience in escorting returnees in the context of forced removal operations by air. The delegation had been informed by the Federal Police that there was no longer a shortage of escort officers, with over 2 000 police officers having been trained for return flights since 2018, most of whom were from the Federal Police.

65. The CPT has repeatedly stressed that the wearing of identification tags by escort staff involved in removal operations is an important safeguard against possible abuse. Escort officers from Germany wore plain clothes as well as yellow high-visibility vests with the label “escort”, and members of the back-up team wore orange safety vests with the label “back-up”, which allowed them to be clearly distinguished.<sup>68</sup> However, the delegation noted once again that, unlike escort officers from all other participating member states, the Federal Police escort staff deployed by Germany did not wear a visible individual identification tag.

**The CPT reiterates its recommendation that all escort officers of the Federal Police should wear a visible identification tag on their high-visibility vests to ensure that they can be individually identified (either by their name or an identification number).**

66. The returnees were, one by one, presented at the entrance of the building of Terminal 5 where the handover to the Federal Police took place. The officials from the police or immigration authorities of the federal states handed over the relevant documentation, including the returnee’s passport or emergency travel document, the enforceable decision concerning the

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65. Besides the delegation, the briefing was attended by the forced return monitors of both the “Forum forced return monitoring at Berlin/Brandenburg Airport” and the Frontex pool of forced return monitors, the two medical doctors and two paramedics, the two interpreters and the Frontex representative.

66. 82 police officers were from the Federal Police and 11 from the police forces of different federal states. 18 of the 93 police officers were women. In addition, 42 police officers of the Federal Police were deployed for the ground handling at Berlin/Brandenburg Airport.

67. The selection and training requirements of escort officers and escort leaders were described in the CPT’s 2018 visit report and had remained the same, see [CPT/Inf \(2019\) 14](#), paragraph 41.

68. Officials, medical staff, interpreters and monitors were provided with different high visibility vests that allowed them to be distinguished.

non-renewal of residence or removal, such as a deportation warning, as well as any detention order or relevant judicial decisions. They had a brief exchange with the assigned escorts, before handing over the returnee's personal belongings, including money, valuables or cigarettes, in a sealed plastic bag which remained with the escort officers until arrival in Pakistan.<sup>69</sup> The two escort officers then presented themselves to the returnee and explained their role and the procedure, in the presence of officers from the back-up team. Any medication and/or medical files were handed over separately to the medical doctor who accompanied the flight.

67. The person was then brought to the security control where their luggage and personal belongings were checked in the presence of the escort officers and controlled by airport security personnel. Security searches were based on an individual risk assessment. Those who presented a low security risk were subject to the standard security check at the airport, whereas those who presented a high security risk were subjected to a strip search.

68. Only one of the 38 returnees from Germany had to undergo a strip search, which took place in one of two designated security areas that were separated from view by partition panels. The decision to carry out a strip search was taken by the officers of the back-up team. Each area was equipped with a soft mattress on the floor to allow for means of restraint, including body cuffs, to be safely applied in the event that a returnee might resist. The strip search was carried out by three police officers of the back-up team of the same gender as the person concerned, in the mandatory presence of a medical doctor, but also with the assistance of an interpreter. Further, the measure was adequately documented. However, according to the information provided by the Federal Police, the returnee subjected to a strip search had to undress fully.

69. 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 subjected to such a search 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. Further, strip searches should only be carried out by custodial staff of the same sex.

**The CPT recommends that the German authorities ensure that these precepts are effectively implemented in practice when strip searches are performed in the context of removal operations.**

70. In addition, the strip searches were supplemented by a visual inspection of the body cavities as a security measure that was performed exclusively by the medical doctor. The members of the back-up team who had carried out the strip search stepped back behind the partition panels.<sup>70</sup> No illicit items were found during the search.

71. The Committee also considers that intrusive inspections of the body cavities carry a high risk of abuse and intimidation. Best practice requires that they are only conducted exceptionally, when absolutely necessary on the basis of an individual risk assessment, and that they are supported by appropriate safeguards. This includes that they be conducted by a medical doctor only and in a way that respects, to the greatest possible extent, the safety and dignity of the returnee. This appeared to be the case in practice during the JRO of 5 September 2023.

72. The security measures and possible means of restraint applied during a removal operation are always based on an individual risk assessment. The risk assessment was carried out in two steps. Prior to the start of the removal operation, the Federal Police authorities collected information about the profile, possible criminal record and previous behaviour of each returnee, including during possible earlier attempts at removal. The person's risk level ranged from "no security risk" to specifying the risk posed by the returnee, such as "escapee", "(serious) criminal activity" or "known violent behaviour". In a second step, the security risk was assessed by the back-up team during the handover to the Federal Police at the airport, considering the returnees' behaviour and cooperation during their apprehension and transfer by the police or immigration authorities of the federal states, as well as their state of agitation or possible resistance. The dynamic risk assessment had a direct

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69. Indigent persons were usually provided with some money by the federal state authorities and the Federal Police verified that all returnees had indeed a lump sum of at least €50 to be able to travel on from Islamabad.

70. Should they, for security reasons, be required to remain in the security area, they would turn around to reduce embarrassment when the doctor performed the visual inspection of the body cavities.

impact on the number of escort officers assigned, the type of search conducted and the need to apply means of restraint. During the JRO of 5 September, two escort officers were assigned to all 38 returnees from Germany and no means of restraint had to be applied.

73. After the search, the returnees were brought to the waiting area in the departure hall. On the way they could request to be seen by the medical doctor if they had a medical problem, took medication or required medical assistance (see paragraphs 51-52). They were also provided with a snack (sandwich, apple and chocolate) and water. During the waiting time, which could last for up to four and a half hours for those returnees who had been processed first, they could access the toilet and were able to smoke. They were also provided the opportunity to use one of the two cabins to make a telephone call to a third person of their choice. This possibility was appreciated by the returnees and had a calming effect on them, most of whom had only now been given the first opportunity to inform their relatives or their lawyers about their imminent removal. All returnees were calm and were allowed to speak with each other.

74. The delegation from Italy (one returnee and five escort officers) arrived at Berlin/Brandenburg Airport by means of a commercial flight, whereas the delegation from Austria (two returnees, nine escort officers (including one FRESO from the Frontex Standing Corps) one medical doctor and two paramedics, as well as one official and one human rights monitor) came by means of a small connecting charter flight. Following short operational briefings between the German escort leader and the respective escort leaders of the participating member states, the three returnees, together with their escorts, joined the other returnees in the waiting area at the terminal. No incident or medical problems were signalled, and all the returnees were calm.

75. The aircraft used for the JRO was a 284-seat Airbus A330-200 chartered by the company Maleth Aero. Prior to boarding, the back-up team inspected the aircraft, and the escort leader briefed the flight captain and the crew. 12 police officers charged with the ground-handling, as well as from the back-up team, were standing in two lines at the bottom of the staircase creating a passageway. However, there were no soft mattresses placed in front of the staircase to guarantee security and allow for means of restraint to be applied safely if needed, as is usual practice in JROs – a point that was raised by one of the two forced return monitors at the debriefing.

Boarding started at 18:55 with the returnees and escorts from Italy and Austria who were seated in the second compartment of the aircraft. Thereafter, all 38 returnees from Germany boarded the aircraft. One by one, they were closely accompanied by their two respective escorts who held the returnee's arms when climbing the staircase and were then guided by members of the back-up team to their allocated seats in the first compartment, alternating between the left and right sides of the aisle. The boarding process lasted for about a half an hour and was carried out in a calm and professional manner. It took about another hour until the doors of the aircraft were closed.

76. The aircraft left Berlin/Brandenburg Airport with a two-hour delay at 21:13, and three and a half hours later a stopover was made in Cyprus, which lasted for some 90 minutes. The German and Cypriot escort leaders met on the tarmac for a short briefing, during which no incidents or medical problems were signalled. Shortly thereafter, the bus with the 10 returnees and 24 escort officers (including two FRESOs from the Frontex Standing Corps) from Cyprus, arrived and all returnees had their Velcro restraints removed. One after another, the returnees swiftly boarded the aircraft, together with their respective escort officers, and were seated in the front of the first compartment.

77. During the two inflight phases, all returnees were provided with catering services (sandwiches and cold drinks), and requests to use the toilet were overseen by members of the back-up team who remained vigilant throughout the flight (the door being left ajar with escorts standing outside).

78. All escort officers deployed by Germany (as well as all other escort officers from the participating member states who took part in the JRO) engaged professionally and respectfully with the returnees to whom they had been assigned during the entire removal operation. The delegation observed that many escort officers made regular efforts to engage in conversation with returnees and to calm or reassure them during waiting times. The escort leader together with an interpreter intervened on at least two occasions and successfully managed to reduce the anxiety and emotional agitation of one returnee. Moreover, as all returnees remained calm throughout the entire removal

operation, the back-up team in charge of dealing with all movements of returnees during the boarding and inflight phases decided to ease the previously announced security protocol on several occasions, which contributed to further decreasing tensions. The emphasis was placed on de-escalation and dynamic security; an approach that is to be welcomed.

79. The JRO to Pakistan was accompanied by one medical doctor and one paramedic. It was also positive that one interpreter boarded the return flight, which ensured an appropriate level of communication between the escorts, the healthcare team and the returnees, as well as with the Pakistani authorities.

The doctor's medical bag contained a well-equipped emergency kit and appropriate medication, in addition to the emergency kits contained in the aircraft. During the flight, basic pain relief medication could be offered to returnees upon requested. Further, the aircraft was also equipped with a defibrillator and oxygen.

80. After an additional five-hour-flight, the aircraft landed at 10:10 (local time) in Islamabad, Pakistan. Escorts handed over the plastic bag containing the personal belongings and valuables, as well as medication prepared in advance, if required, to the returnees. The handover of the returnees to the Pakistani authorities took place at the front door of the aircraft. The Pakistani officials were briefed by the German escort leader with the assistance of an interpreter. The 51 returnees (first those from Cyprus, followed by those from Germany, Italy and Austria) were then called – one by one – to present themselves, accompanied by at least one escort officer. The documents for each returnee were handed over to the authorities (including the medical records for one returnee from Germany) and all were asked questions by the Pakistani officials, before being aligned inside the gangway. The handover went smoothly and took place in a calm atmosphere. The delegation positively noted that several German escort officers politely said goodbye to their returnees and wished them well.

81. A debriefing to discuss the return operation took place shortly after take-off during the return leg of the flight back to Tbilisi, Georgia, where an overnight stay was planned to allow escort officers to rest. In addition to the delegation, the German escort leader, his deputy and the back-up team leader, the representatives of the Federal Police Headquarters, the escort leaders of the participating member states, the Frontex representative, the two forced return monitors, and the accompanying doctor and paramedic attended the briefing. Participants in the debriefing praised the excellent organisation and cooperation among the different national delegations and the professionalism with which the operation was carried out. The CPT also notes positively that a separate debriefing took place shortly thereafter, via the loudspeaker of the aircraft, in which the German escort leader gave feedback to all German escort officers on the operation.

#### **4. Use of force and means of restraint**

82. The use of force and means of restraint in the context of apprehension and transfer of foreign nationals to be deported by the competent police authorities of the different federal states is regulated in the respective police laws of the federal states concerned. Whereas most returnees were not subjected to any means of restraint during the transfer to the airport, and its use was generally based on an individual risk assessment, the CPT notes once again the diverging approaches among the different federal states in terms of practice when it comes to the use of restraint measures for returnees during transfer. A total of eight returnees who were transferred by certain state police authorities wore metal handcuffs and/or metal ankle cuffs until they were handed over to the Federal Police. Based on the observations made by the delegation, it appeared that a few state police authorities systematically applied a means of restraint as a pre-emptive security measure for those who had previously been held in immigration detention or had been detained in prison.

**The CPT recommends that the German authorities take the necessary steps to ensure that means of restraint are not systematically applied as a means of precaution by the competent police authorities of the federal states. Further, the Committee is of the view that a more harmonised approach concerning the resort to means of restraint by the state police authorities throughout Germany, in the context of forced removal operations, would be desirable.**

83. 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 principle<sup>71</sup> must be respected by all participating member states. In the context of this JRO, this meant that, for the part of the operation which took place on German territory, German law was applicable for all escorts, whereas Cypriot legislation applied during the stopover in Cyprus.

84. 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. This is because the use of force and means of restraint remain within the national competence of member states. Consequently, a variety of means of restraint are used by escort officers from different countries, in line with respective national legislation and regulations. For the JRO of 5 September 2023, a wide range of means of restraint were allowed in accordance with German legislation and instructions. In Germany, body cuffs with steel handcuffs are still in use, although the general trend in Europe is towards the use of body cuffs made of soft material with Velcro handcuffs.<sup>72</sup> Further, recourse to spit masks and plastic cable ties<sup>73</sup> as a means of protection was also permitted – means that are not being applied in most other EU countries.<sup>74</sup>

**The CPT considers that a more harmonised approach concerning the use of means of restraint by the different EU member states participating in JROs supported by Frontex would be desirable, which might require further amendments to the existing national legislative and EU regulatory framework. The Committee also encourages the German authorities to bring the issue of diverging approaches in terms of use of force and means of restraint to the attention of Frontex and the other EU member states organising or participating in return operations supported by Frontex.**

85. More specifically, according to German law, force may be used and means of restraint applied in the context of forced removal operations carried out under the authority of the Federal Police in accordance with the relevant provisions of the Federal Police Act and the Act on Direct Coercion in the Exercise of Official Authority by Federal Law Enforcement Officers.<sup>75</sup>

86. The internal instructions concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*) contain detailed guidelines on the use of force and means of restraint which have not been modified since the CPT's 2018 visit,<sup>76</sup> and which must be followed by escort officers taking part in return flights. It is recalled that coercive measures shall only be applied based on an individual risk assessment and the returnee's conduct. Further, the principle of proportionality must be observed, and a removal measure halted, if the circumstances require so in line with the principle "no removal at all cost". Moreover, the internal instructions explicitly mention, by way of clear guidelines, the use of force techniques and means of restraint which are not authorised.<sup>77</sup> These detailed guidelines fully reflect the Committee's position on this matter.

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71. 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.

72. According to the information provided by the German Federal Police, body cuffs with Velcro handcuffs were being tested in a pilot phase during return operations carried out from Frankfurt/Main Airport, and their use was planned to be generalised, in the future.

73. According to the Federal Police, these were only used exceptionally to loosely tie the ankles by attaching two plastic cable ties together to ensure the returnee would not be able to run away.

74. The CPT also observed that all returnees from Cyprus were systematically being tied with Velcro bracelets until the moment of boarding – a measure that appeared to be used in a pre-emptive manner.

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

76. See [CPT/Inf \(2019\) 14](#), paragraph 51.

77. The internal instructions explicitly prohibit the use of means likely to obstruct the airways as well as techniques directed against the person's neck or mouth. They also describe the risks related to the use of force and/or means of restraint capable of causing positional asphyxia, including a detailed list of possible related symptoms. Moreover, the forced administration of sedatives or tranquilisers for coercive reasons and against the will of the person concerned to facilitate removal is strictly forbidden. Further, according to another internal instruction and the operational instructions for this return operation, other weapons, such as firearms, tear gas or batons are prohibited.

87. There have also been no changes concerning the list of means of restraint that are authorised during removal operations by air and which still include steel, plastic and Velcro hand- and ankle cuffs as well as body cuffs (including those equipped with metal handcuffs). Further, helmets, spit masks and bite protections may also be used as means of protection.

The CPT notes that additional safeguards are in place, such as the requirement for specialised training and the obligation for those police officers using coercive measures to follow precise instructions, as well as the need to document every use of force or means of restraint. In addition, the escort leader explicitly requested to be informed about any resort to force or means of restraint. However, the trend in Europe is towards the use of safe means of restraint with soft material such as textile or Velcro quick-release fasteners. The CPT is of the view that metal handcuffs, plastic hand- and/or ankle cuffs or spit masks should not be used as standard equipment during removal operations by air, as the Committee has observed in other European countries.

**The CPT encourages the German authorities to generalise the use of safe means of restraint with soft material such as textile or Velcro quick-release fasteners in the context of forced removal operations by air, where it is deemed necessary to apply such means of restraint as a last resort and based on an individual risk assessment.**

88. According to the information provided by letter of 10 October 2023, the German Federal Police applied means of restraint in the context of removal operations more than 1 250 times for a total of about 10 900 foreign nationals forcibly returned in 2022, and over 1 100 times for a total of around 8 700 persons returned by force between January and August 2023.<sup>78</sup>

89. The Frontex Implementation Plan prepared for this JRO only partly allows to further harmonise the different approaches by simply listing, in its Annex I, the agreed means of restraint authorised for use on German territory and during the inflight phase, and which corresponds to the wide range of means authorised in Germany. 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.

The Implementation Plan also mentions that 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 Austria and Cyprus) and must comply with relevant national legislation. Further, FRESOs are required to report every incident where force is used.<sup>79</sup> The CPT also takes note that a supervisory mechanism to monitor the application of the use of force by the statutory staff of the Standing Corps has been developed.<sup>80</sup>

90. According to the Implementation Plan, the escort leader of the organising member state (in this instance Germany) 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 flight captain, the escort leader 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 flight captain, including by applying means of restraint.<sup>81</sup> The back-up team members have a primary role to play in this regard.

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78. During these eight months, this concerned mostly the use of plastic handcuffs (448 times), ankle cuffs (416 times), and body cuffs (138 times).

79. 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).

80. See Frontex, Management Board Decision 7/2021 of 20 January 2021 establishing a supervisory mechanism to monitor the application of the provisions on the use of force by statutory staff of the European Border and Coast Guard Standing Corps.

81. 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.

91. In practice, during the JRO of 5 September 2023 monitored by the CPT, no force had to be used and no means of restraint needed to be applied. The professional conduct of all escort officers, the de-escalating approach by the escort leader, based on dynamic and ongoing risk assessment, and the proactive role of the back-up team contributed to a very calm and relaxed atmosphere throughout the removal operation. The CPT gained the impression that all returnees were treated with respect – an approach that is to be welcomed.

## 5. Complaints and monitoring

92. In its 27th General Report,<sup>82</sup> the CPT has highlighted the importance of an effective complaints mechanism as a fundamental safeguard against ill-treatment.

93. Return flights supported by Frontex are subject to the complaints mechanism established by the Agency.<sup>83</sup> Under this mechanism, the handling of which is the responsibility of Frontex's Fundamental Rights Officer, all persons who are directly affected by the actions or failure to act of staff involved in a Frontex activity, and consider themselves to have been the subject of a breach of their fundamental rights, may submit a complaint in writing. To this end, a standardised complaint form and information material are available in 24 languages.<sup>84</sup>

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

94. During the return operation monitored by the CPT, returnees from Germany who wished to submit a complaint could have done so by addressing themselves to their assigned escorts or to the German escort leader. Indeed, the escort leader specifically referred to the Frontex complaints mechanism during the initial briefing with escort officers prior to the removal operation, and confirmed that hard copies of the complaint form were available in English, Urdu and Pashto.

It is also positive that two different posters with information about the complaints mechanism were displayed in the waiting area at the airport, including one in Pashto, English and Urdu, with brief information highlighting that returnees have the right to complain free of charge and a second, in English, with more detailed information on how to lodge a complaint.

95. However, the delegation noted once again that returnees from Germany were not actively and systematically informed about the possibility of submitting a complaint, and the complaints form was only handed out upon request. With the current arrangements, it is therefore no surprise that during previous reporting periods, Frontex's Fundamental Rights Officer only received one single complaint relating to Frontex-supported return operations.<sup>85</sup>

96. The CPT considers that returnees should be more actively informed, both verbally and in writing, about the possibility of submitting a complaint. Further, forms and leaflets on the complaints mechanism should be made available in waiting areas at the airport to make this mechanism more accessible in practice. To this end, Frontex might wish to consider also entrusting to monitors, including forced return monitors, the role of informing returnees about the possibility of lodging a complaint. Reference is also made to the European Ombudsman's decision of 15 June 2021 which concerns, *inter alia*, the functioning of the Frontex complaints mechanism.<sup>86</sup>

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82. See [CPT/Inf \(2018\) 4](#), paragraphs 68-91.

83. Article 111 of the EBCG Regulation.

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

85. See Frontex, Observations to Return Operations (RO) conducted in the 1st half of 2022 ([Ref. Ares\(2022\)6140560](#)) and in the 2nd half of 2022 ([Reg. FRO/JOGR/2023](#)) by the Fundamental Rights Officer. The complaint had a positive outcome for the complainant. It is noteworthy that the Frontex Serious Incident Reporting procedure also applies to JROs supported by Frontex. Frontex's Fundamental Rights Officer handled one Serious Incident Report related to a return operation, which was launched in July 2022 and closed in October of the same year, with respective recommendations issued to the member state concerned, and which is subject to further monitoring and follow-up.

86. See European Ombudsman, [Decision in OI/5/2020/MHZ](#) on the functioning of the European Border and Coast Guard Agency's (Frontex) complaints mechanism for alleged breaches of fundamental rights and the role of the Fundamental Rights Officer, 15 June 2021. The Ombudsman makes a series of suggestions for

**The CPT encourages the German authorities, in the context of removal operations supported by Frontex, to provide all returnees more actively and systematically with information on the Frontex complaints mechanism, both orally and in writing, in a language and form they can understand (see also paragraph 60). To this end, information leaflets and complaints forms should be made available to all returnees prior to or during the removal operation, to ensure that they can submit any complaint they might have also after their removal and that the complaints mechanism is rendered accessible and effective in practice.**

**The Committee would also like to encourage the German 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.**

97. Moreover, in its 13th General Report,<sup>87</sup> the Committee underlined the important role of independent monitoring systems in such areas as sensitive as forced removal operations by air.

98. In accordance with Article 8 (6) of the Return Directive, EU member states are under an obligation to provide for an effective forced return monitoring system; as a matter of principle, every return operation organised or coordinated by the Agency shall be monitored.<sup>88</sup> The monitoring of forced return operations to ensure compliance with fundamental and human rights shall be carried out by forced return monitors, including those made available by the Agency, and shall cover the whole return operation.<sup>89</sup> Despite the high number of forced removal operations carried out by Germany, the authorities have not yet set up an independent and effective national forced return monitoring system.

99. Due to the absence of an effective national forced return monitoring system, Germany systematically requests the presence of a forced return monitor from the subsidiary monitoring mechanism foreseen by the EBCG Regulation and established by Frontex, the so-called “pool of forced return monitors” (hereafter referred to as “the pool”) for all Frontex-supported JROs which it organises.<sup>90</sup> This was also the case for the JRO of 5 September 2023: in line with the requirements mentioned in the Frontex Implementation Plan, two forced return monitors from the Frontex pool took part in and monitored the removal operation from the pre-departure phase until the handover of the returnees to the Pakistani authorities.

However, this possibility does not release the country from its obligation to set up an effective national forced return monitoring system within the meaning of Article 8 (6) of the Return Directive. Indeed, Frontex’s Fundamental Rights Officer noted that 47 out of 151 return operations supported by Frontex were not monitored and recommended increasing the number of national monitors and ensuring effective monitoring systems.<sup>91</sup>

100. In addition to the above-mentioned arrangements, a patchwork of various actors carrying out monitoring functions exist, which might be part of a possible solution. This includes the National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*), which is the National Preventive Mechanism under the Optional Protocol to the United Nation’s Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). It continues to occasionally monitor forced removal operations by air, including the inflight phase,

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improvement to Frontex, with a view to improving the accessibility of the complaints mechanism for potential victims of fundamental rights violations and how complaints are handled and followed up on.

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

88. Article 8 (6) of the Return Directive has not yet been transposed into national law in Germany. Consequently, in the event of late or insufficient implementation, national law must be applied in conformity with the Directive.

89. Article 50 (4) and (5) of the EBCG Regulation.

90. Article 51 of the EBCG Regulation. This pool, which also includes Frontex’s own fundamental rights monitors, who work under the authority of the Fundamental Rights Officer, is designed to reinforce national monitoring mechanisms. At the end of December 2022, the pool consisted of 60 forced return monitors nominated by EU member states. In addition, six Fundamental Rights Monitors (with some additional monitors being trained) acted as forced return monitors in the pool. Fundamental Rights Monitors can also monitor forced return operations organised or supported by Frontex that fall outside the scope of the pool monitors.

91. See Frontex, Observations to Return Operations (RO) conducted in the 2nd half of 2022 ([Reg. FRO/JOGR/2023](#)) by the Fundamental Rights Officer.

but currently only has the capacity to observe some four to five return flights per year.<sup>92</sup> It is also recalled that the National Agency issues a report after each monitoring visit and has developed standards on deportations.<sup>93</sup> **The CPT encourages the National Agency for the Prevention of Torture to cooperate actively with other National Preventive Mechanisms in the countries of return which have such a mechanism regarding the monitoring of removal operations by air (see also paragraph 27).**

101. Further, several “fora” exist at different airports in Germany (Berlin/Brandenburg, Düsseldorf, Frankfurt/Main, Hamburg, Cologne/Bonn and Leipzig/Halle) that monitor return operations carried out at these airports. These fora bring together a variety of different actors, including both the competent state, immigration and police authorities as well as international organisations, non-governmental organisations and the church. The “Forum forced return monitoring at Berlin/Brandenburg Airport” (*Forum Abschiebungsbeobachtung Berlin/Brandenburg*) currently has one forced return monitor from Caritas who regularly monitors the pre-departure phase of removal operations until the moment of boarding. The Forum only releases now annual activity reports and neither has the mandate to access all relevant documentation nor the resources to monitor the inflight phase.<sup>94</sup> Further, due to the participation of relevant state, immigration and police authorities, it cannot be considered independent.

102. During the meeting that took place on the eve of the JRO of 5 September 2023, the delegation was informed by representatives of the Federal Ministry of the Interior and Community that consultations were ongoing to enhance forced return monitoring in Germany. One option considered was the possibility of officially designating the Federal Office for Migration and Refugees – the agency operating under the authority of the Federal Ministry of the Interior and Community which belongs to the branch of government responsible for return – as the future national forced return monitoring system, in accordance with Article 8 (6) of the Return Directive.

103. The EU Agency for Fundamental Rights, in its 2022 update for forced return monitoring systems, rightly considered that the Federal Office for Migration and Refugees<sup>95</sup> was not sufficiently independent to qualify as “effective” under Article 8 (6) of the Return Directive. By designating an agency belonging to the branch of government responsible for returns and asking this agency to monitor the forced return of foreign nationals for which it is partly responsible (for example, Dublin transfers), structural independence is not guaranteed. The CPT concurs with the EU Agency for Fundamental Rights’ assessment that the envisaged arrangement to designate the Federal Office for Migration and Refugees as the national forced return monitoring system is inadequate.

**The CPT recommends that the German authorities take the necessary measures to swiftly transpose Article 8 (6) of the Return Directive into national law by designating a national forced return monitoring system that is both independent and effective. The Committee wishes to be informed about the steps taken in this regard as well as the timeline and resources envisaged to render this monitoring system effective in practice.**

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92. See National Agency for the Prevention of Torture, Annual report 2022 ([Jahresbericht 2022](#)), p. 85, and [Visits of the Federal Agency 2023](#). This includes charter flights under the authority of the Federal Police, individual forced return measures by scheduled flight, Dublin transfers, and return operations under the responsibility of the federal states.

93. See *ibid.*, pp. 25-26.

94. See Caritas Brandenburg, [Abschiebungsbeobachtung](#).

95. See EU Agency for Fundamental Rights, [Forced return monitoring systems – 2022 update](#).