

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.