

Response

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

from 4 to 7 September 2023

The Government of Germany has requested the publication of this response. The CPT's report on the 2023 visit to Germany is set out in document CPT/Inf (2024) 14.

Strasbourg, 4 April 2024



Bundesministerium
der Justiz

Observations by the Federal Government on the recommendations, comments, and requests for information of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the occasion of the Committee's visit from 4 to 7 September 2023

Berlin, 28 February 2024

Preliminary remarks

From 4 to 7 September 2023, a delegation of the CPT visited the Federal Republic of Germany. The main objective of this ad hoc visit was to examine the treatment of foreign nationals deprived of their liberty under immigration legislation, as well as the safeguards afforded 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). The return flight was organised by Germany, with the participation of Austria, Cyprus and Italy (participating member states). The CPT delegation observed all phases of the removal operation, including the preparations and the flight phase to Pakistan.

By letter of 14 November 2023, the CPT forwarded a report drawn up following its visit (CPT (2023) 64) which contains a number of recommendations, comments and requests for information. The CPT has requested that, within three months, the German authorities transmit a reply, in particular in light of the Committee's recommendations, comprehensively addressing the measures taken to implement said recommendations. The Committee furthermore proceeded from the assumption that it would be possible for the German authorities to address the comments and requests for information.

The Federal Government hereby submits its observations on this report. It is noted that the observations follow the sequence of the comments set out in the CPT report. In each case, the recommendations, comments, and requests for information precede the observations.

The Federal Government has approved publication of the report and of its observations.

Paragraph 5

“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.”

The report has been made available to the bodies responsible for coordination with Frontex and other member states, which will address it accordingly.

Paragraph 12

“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.”

Bavaria has contracted private security companies in the past, **Baden-Württemberg** is doing so currently.

It should be noted that **Baden-Württemberg** only conducts its own collective returns by charter flight to the Western Balkans or, in a small number of cases, to Georgia. As part of the award procedure, all bidders must confirm that the staff to be deployed on board the charter plane are professionally qualified. Up-to-date documentation of this must be provided; the same applies to the security escorts and the security leader of the company commissioned. Both the charter company commissioned and the airline company have many years of experience in conducting collective returns by charter flight from Germany to the Western Balkans. The airline also has employees with language skills allowing them to communicate with returnees in their own language.

In **Bavaria**, the authority responsible for planning and carrying out return operations, the Office for Asylum and Returns (*Landesamt für Asyl und Rückführungen*), had asked the authorities responsible at the federal level and in the other *Länder* for references before commissioning a specific airline. Having received positive replies and subsequently having thoroughly examined the qualifications of the security service’s escort leader, the Office for Asylum and Returns monitored the security service’s working methods during several return operations. Subsequently, the Office for Asylum and Returns continuously reviewed the current conditions and assessed them in accordance with European law requirements and federal requirements (internal instructions concerning the provisions on the return of foreign nationals by air (*Best Rück Luft*)). The “*Guide for Joint Return Operations by Air coordinated by Frontex*” and the “*Code of Conduct – For All Persons Participating in Frontex Activities*” were also taken into account.

Paragraph 25

“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.”

The Federal Police makes sure that returnees carry with them all documents necessary for their handover. Usually, these are the returnees’ travel documents. As a general rule, they carry no further identity documents. Whether or not they carry further personal documents is the sole responsibility of the returnees.

Luggage is not separately checked for personal documents.

Paragraph 27

“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.”

According to the relevant provisions of the Residence Act, a person who is seeking protection may, in particular, not be deported if the removal to the destination country constitutes a breach of the European Convention on Human Rights (cf. section 60 (5) of the Residence Act (*Aufenthaltsgesetz*, AufenthG), or if a substantial concrete threat to life, limb or liberty exists in that country (cf. section 60 (7) sentence 1 of the Residence Act). Any additional systematic monitoring of returnees’ well-being in their country of origin is not practicable in Germany’s view. If any facts indicating treatment in violation of the European Convention on Human Rights become known, these are considered as part of the assessment of the situation in the country of origin that is conducted before any deportation.

Paragraph 32

“The CPT would like to receive the German authorities’ comments on whether these two practices observed are applied by all federal states throughout Germany.”

1. Apprehension during a scheduled appointment

In principle, the following applies: A foreign national who is subject to an enforceable requirement to leave the federal territory and does not voluntarily fulfil this requirement can, as a rule, be apprehended at any time and at any place for the purpose of enforcing the requirement to leave the federal territory if none of the grounds for a temporary suspension of deportation apply. There is no legal provision stipulating that it must be possible for returnees

to carry personal belongings. Due to the existence of an enforceable requirement to leave the federal territory, there is also no legitimate expectation on the part of the returnee which would merit protection; the persons concerned must be aware that they could be deported at any time.

Apprehension of returnees by the competent police and/or immigration authorities during a scheduled appointment at the immigration office (so-called “*Tischfestnahme*”) sometimes occurs in the *Länder*. This practice is mostly applied in individual cases only, in particular where less severe measures are not an option. However, persons required to leave the country are usually allowed to bring personal belongings with them.

2. Deposit

Under section 66 (1) of the Residence Act, returnees must bear the costs arising in connection with their deportation. Pursuant to section 66 (5) of the Residence Act, the party liable for costs may be required to furnish security (deposit) (cf. no. 66.5 et seqq. of the General Administrative Regulation to Implement the Residence Act (*Allgemeine Verwaltungsvorschrift zum Aufenthaltsgesetz, VwV-AufenthG*)).

Bavaria and **Bremen** do not apply this practice in a standardised manner.

In the other *Länder* a deposit may be withheld pursuant to section 66 (5) of the Residence Act. Some *Länder* have established quality standards explicitly for this case (e.g. Berlin). In addition, returnees are allowed to keep a certain sum to pay for their onward travel to their place of origin, for example.

As a general rule, the persons concerned are informed about this practice:

- **Baden-Württemberg:** Persons held in custody awaiting deportation or in prison prior to their deportation must furnish security whilst still in the facility as soon as the respective order has been issued to them. In all other cases, security is usually furnished to the *Land* police. In these cases, the person concerned is informed of the practice, a verbal administrative act is issued and the person concerned is given a receipt in the amount of the deposit withheld.
- **North Rhine-Westphalia:** The competent authority informs the persons concerned of the possibility of withholding a deposit when notifying them of the order requiring them to leave the federal territory.
- **Saarland:** Based on a thorough assessment on a case-by-case basis, an order to furnish security can be issued. This order details the reasons underlying the authority’s decision.
- **Saxony:** The provision of security is documented and the person concerned is given a receipt. In the case discussed in the CPT report, it was explained to the person concerned why the money was withheld to ensure (partial) payment of his or her deportation costs.

- **Thuringia:** The persons concerned are explained that they are liable to pay the costs for the compulsory measure. The provision of security is documented using a standardised form specific to Thuringia in accordance with the corresponding instructions.

In **Hamburg**, persons who are to be transferred under the Dublin III Regulation are not required to provide security. In **Hesse** and **Saxony-Anhalt**, deposits are only withheld where the returnees in question carry with them amounts of money that exceed the allowance provided for by the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*, AsylbLG).

Paragraph 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.”

1. Announcement of impending deportation

The persons concerned are detained in order to safeguard their deportation; this is done exclusively on the basis of a court order handed down by a judge. The Act to Improve Returns provides for the deletion of the requirement to announce an impending deportation at least one week beforehand where the person in question is to be deported directly from custody; section 59 (5) sentence 2 of the Residence Act will be repealed accordingly. This amendment serves the purpose of relieving the burden on immigration authorities. It is also in line with European law, as the Return Directive only requires that a period for voluntary departure be granted (this being unnecessary in the present cases, however, where the persons concerned

were to be returned directly from custody). It does not, however, provide for a separate requirement to announce an impending deportation in the sense of granting a period allowing for preparation for the deportation. As a deportation warning pursuant to section 59 (1) of the Residence Act had already been issued in the cases at hand (where deportation was to be carried out directly from custody), the announcement does not reflect a decision on deportation, but rather aims to alert the person concerned of the fact that the deportation will be carried out after completion of the period set. As such an announcement does not constitute an independent administrative act, it is unnecessary and merely adds to the burden on immigration authorities. The Act entered into force on 27 February 2024.

2. Opportunity to attend to private affairs before deportations on the day of apprehension

Where deportations are carried out on the day on which the persons concerned are apprehended, the *Land* police authorities make sure, as a general rule, that all returnees are given enough time to pack personal belongings to take with them to the extent possible; this includes necessary medication. Medication is provided if it is not subject to specific import restrictions in the country of destination. In **North Rhine-Westphalia**, for example, this is ensured by the requirement on police authorities to adhere to the check-list for the preparation, enforcement and documentation of return operations. It is also generally possible for returnees to contact persons of their choice by phone (friends, acquaintances, relatives – including in the country of origin –, legal counsel). There is usually not enough time to withdraw money from a bank account – in part because the period of detention “is to be limited to the extent necessary to carry out the deportation” (section 58 (4) sentence 2 of the Residence Act).

After being handed over to the Federal Police by the *Land* authorities for the purpose of a forced return, returnees still have the opportunity to call persons of their choice.

3. Information on assistance and support upon return

The competent *Land* authorities support and advise returnees in need of such assistance to the extent possible. They take various measures to inform returnees about possible assistance and support upon their return. These include:

- **Bavaria:** Returnees are provided with leaflets containing information on support organisations and other institutions in the country of destination. Discussions are currently ongoing on the idea of handing out flyers (Country Fact Sheets of the International Organization for Migration (ZIRF-Counselling)) with information on the respective country of origin to returnees upon their arrival. Reference is also made to support services that will be available in the future in the framework of the Frontex JRS programme.
- **Brandenburg:** Persons held at the so-called collecting centre at the airport in the municipality of Schönefeld on the basis of a court order handed down by a judge are offered legal and social counselling as well as advice regarding their return. This is based on the Custody Regulations (*Gewahrsamsordnung*; last updated on

5 January 2024). At the request of the person held in custody, this counselling can subsequently be intensified and a focus can be placed on measures to facilitate reintegration after the return to their country of origin. Persons who are subject to an enforceable requirement to leave the federal territory can also benefit from the decentralised counselling service concerning returns offered by the Central Migration Authority (*Zentrale Ausländerbehörde*) and schedule individual counselling sessions. Contact can be established directly via the Central Migration Authority or via any local migration authority.

- **Rhineland-Palatinate:** Where the respective requirements are satisfied, females held in custody are provided with advice regarding their return by the association SOLWODI (SOLidarity with WOMen in DIstress). Pastoral care providers at the facilities can also often provide the address or contact details of support services in the countries of origin.
- **Saarland and Schleswig-Holstein:** All persons required to leave the federal territory are offered advice regarding voluntary departure. During this advice session, the persons concerned are provided with comprehensive information on available support (including in the country of origin).
- **Saxony:** Persons held in custody awaiting deportation receive legal and social assistance.

Paragraph 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.”

The *Land* authorities provide returnees with the opportunity to contact relatives, friends or legal counsel (cf., for example, in the case of **Brandenburg** the explicit provision in no. 4.5.7 of decree no. 9/2020). To this end, they can either use their own mobile phones or mobile phones provided by the authorities. Persons subject to long-term deprivation of liberty have a constitutional right to notify a relative. In most *Länder*, persons placed in custody are allowed to use their mobile phones until they are handed over to the officers in charge of the transfer for the purpose of their deportation. The manner in which contact can be established by phone is explicitly regulated by law in some *Länder*.

In **Rhineland-Palatinate**, for example, the procedural instructions (*Geschäftsweisung*) for the pre-removal detention centre for persons required to leave the federal territory expressly state that all detainees are entitled to use a phone free of charge to notify relatives, friends or

legal counsel on the day of their admission to the facility and on the day prior to their deportation. Upon admission and in the course of their stay at the facility, they have the opportunity to retrieve contact details and telephone numbers from their mobile phones. All detention rooms are equipped with a landline phone at which phone calls can be received.

In **Saxony**, the Guidelines for Returns (*Leitfaden zur Rückführungspraxis*) provide the binding rule that returnees must have the right and the opportunity to make phone calls and to retrieve telephone numbers at the beginning of the operation. The mobile phone is then withheld and kept with the returnee's remaining personal belongings. In the context of collective returns by charter flight, all returnees are allowed to make phone calls during waiting times (to relatives, legal counsel...).

During transfer, mobile phones usually have to be switched off and handed over to the officers in charge of the transfer (**Baden-Württemberg, Bavaria**).

After handover to the Federal Police, access to mobile phones is generally not granted for reasons of personal security. Mobile phones are temporarily confiscated in line with the applicable provisions of the Act on the Federal Police (*Bundespolizeigesetz*) in order to prevent self-harm.

However, returnees are allowed to retrieve relevant phone numbers from their mobile phones and to use phones provided by the Federal Police to make calls. The opportunities for contact called for by the CPT are therefore available.

It is also generally taken into account that returnees should be allowed to make calls without being interrupted or disturbed.

Please also refer to the information provided under paragraph 36.

Paragraph 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.”

The right of persons deprived of their liberty prior to deportation to contact legal counsel, for example, is governed by law in section 62a (2) of the Residence Act. The *Länder* implement this provision in the following ways, for example:

- In **Berlin**, persons deprived of their liberty are informed orally right away and in writing shortly after their apprehension, and given the opportunity to contact a lawyer.
- In **Rhineland-Palatinate**, the social services provider contacts the lawyer of persons held in custody at their request. This is part of the concept for social support at the pre-removal detention centre for persons required to leave the federal territory. At the request of detainees, social services also enable contact with a lawyer to apply for legal aid and assistance, and assist them in obtaining an advance payment for legal advice for those without means. Where persons are placed in short-term detention for less than six calendar days, arranging for legal counsel is very difficult in practice, but efforts are made nonetheless.
- According to **Saxony’s** Act on the Execution of Custody Awaiting Deportation (*Sächsisches Abschiebungshaftvollzugsgesetz, SächsAHaftVollzG*), detainees have the right to free legal advice on matters of immigration law, to be facilitated by the detention centre. Depending on the detainees’ wishes, this advice can be provided by a lawyer or by a specialised support organisation. Where only a short period of detention was ordered, this is taken into account in the scheduling process. Contact with a specialised support organisation is possible irrespective of the legal right to legal advice mentioned above. Contact can either be established by the detainees themselves or it can be facilitated by the detention centre. Moreover, detainees have the option of contacting their own lawyer by phone, email or letter. Personal consultations with lawyers are, of course, possible, too.
- The Act to Improve Returns also provides for compulsory appointment of legal counsel for the proceedings governing custody awaiting deportation, the proceedings governing custody to secure departure and for custody for the purpose of transfers under the Dublin Regulation. The Act entered into force on 27 February 2024.

Please also refer to the information provided under paragraphs 36 and 42.

Paragraph 52

“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.”

Pursuant to section 60a (2c) sentence 1 of the Residence Act, it is assumed that deportation is not precluded on health grounds. Foreigners must provide credible evidence of an illness which might interfere with deportation by submitting a qualified medical certificate (section 60a (2c) sentence 2 of the Residence Act). A medical examination is therefore only necessary where credible evidence of a medical condition has been provided. If there is a concrete suspicion of current unfitness to travel, medical examinations will be arranged or the return will not be carried out.

In some *Länder*, fitness-to-travel examinations are always carried out by a doctor at the detention centre before deportations directly from custody (**Baden-Württemberg, Saarland**). In **Brandenburg**, returnees are generally subjected to a fitness-to-travel examination on the day of the deportation. Moreover, returnees are invited to undergo a medical fitness-to-travel examination beforehand if there are any doubts as to their fitness for travel, based either on information provided by third parties or on information provided by the returnees themselves. Usually, this examination takes place in close chronological proximity to the return operation. Fit-to-travel certificates are issued.

In the case of collective returns by charter flight, doctors and other medical staff are usually commissioned by the organising *Land* to accompany the flight. This means that qualified medical assistance can always be provided and that deportations can be halted if a returnee's health is at risk. In some *Länder*, fitness-to-fly examinations are routinely carried out before such collective returns by charter flight, for example in **Bavaria**.

An automatic medical examination of each returnee in the absence of any indication of a medical condition is, however, not possible in all *Länder*, especially where commercial flights are used, in view of insufficient staffing and funding. What is more, the consent of the persons concerned would always be required for medical examinations without a specific reason.

Medical doctors licensed in Germany are required to remain independent and neutral as set out in the Professional Code for Physicians (*Berufsordnung*) in Germany. This applies irrespective of whether they are employed or self-employed.

If there are any suspicions regarding ill-treatment by police officers involved in the transfer, investigations are initiated under the applicable provisions of the Code of Criminal Procedure (*Strafprozessordnung*, StPO).

The Committee's recommendation to further harmonise the different practices at *Land* level was forwarded to the bodies concerned and has already been welcomed by some.

Paragraph 53

“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.”

Responsibility for contracting medical doctors lies with the *Länder*. There are no indications that the medical doctors contracted do not adhere to the Professional Code for Physicians. In particular, the number of deportations a medical doctor has accompanied cannot be a sufficient indicator for the assumption of a situation of financial dependency which might give rise to infringements of this professional code or even to criminal conduct.

Most *Länder* alternate in contracting medical doctors, choosing from a larger pool. In some cases, the number of missions for which medical doctors can be contracted is deliberately limited in order to avoid such missions constituting an essential part of their professional activity. In many cases, the medical doctors contracted are not permanently employed by the respective authorities. They are independent and not bound by the instructions of a particular authority.

The **Berlin** police, for example, has a pool of currently 34 medical doctors who work on a freelance basis and who are commissioned in individual cases to perform fitness-to-fly or fitness-to-travel examinations and/or to accompany return operations and provide medical treatment during such operations where necessary. The work of those freelancers is coordinated by the medical service of the Berlin police. The large number of medical doctors available and the practice of commissioning them in rotation ensure that these assignments do not constitute an essential part of their professional activity.

In **Thuringia**, however, the commissioning of medical doctors for whom return operations do indeed constitute an essential part of their professional activity cannot be ruled out. This is due to the subject matter itself and the fact that not many doctors are willing to accompany return operations. However, the Free State of Thuringia mainly contracts medical doctors who have proven reliable in the past.

Paragraph 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.”

The practice applied by the *Länder* to contract medical doctors already sufficiently ensures their independence. Germany sees no need to have medical associations provide or designate medical doctors to accompany return operations. Please refer to the information provided under paragraph 53.

Moreover, involving medical associations in the contracting process would likely cause some difficulties. This type of activity would probably not fall within the original remit of medical associations and would cause a considerable administrative burden (for example with regard to availability on weekends and public holidays, which would be required in such a case). The general legal prohibition on announcing the scheduled date of a deportation should also be borne in mind.

Some of the competent authorities have already signalled in reaction to the CPT report that they would assess how and to what extent other measures might serve to meet the CPT's recommendation.

The Federal Ministry of Health welcomes the proposal that, in addition to the current practice of contracting different medical doctors in rotation, the Federal Medical Association and *Land* Medical Associations keep lists and can commission doctors for return operations so as to increase doctors' independence.

Paragraph 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.”

The knowledge gained from fitness-to-travel examinations or medical examinations in detention centres or elsewhere, as well as the knowledge provided in the framework of proceedings under the law on foreigners, for example with regard to contagious diseases or necessary medication, is of essential importance to ensure the safe enforcement of returns, the safety of escort officers and adequate medical care for returnees (e.g. provision of a cane or walker, substitution drugs, medication that needs to be taken regularly, oxygen, etc.).

The information detailed in the list of returnees (*FAR-Liste*) comprises “person-related warnings/pieces of information” from the joint Federal and *Land* Police Information System (INPOL) such as “mental and behavioural disorder”, “substance user” or “risk of infection”. This information is selected from a catalogue of pre-determined values and assigned according to the respective criteria in line with the guidelines applicable throughout Germany. It serves to protect the safety of the escort officers, the flight crew, fellow travellers and the returnees themselves. Collection of personal data is subject to the federal or *Land* law applicable to the respective body participating in the INPOL system.

Where possible and not otherwise requested by the healthcare professional conducting the examination, care is generally taken to ensure that examinations take place out of the hearing and out of the sight of police officers. It is generally for the responsible medical doctor to decide whether police officers are needed to ensure safety. Where returnees are violent or where it is sufficiently likely that they might become violent, police security measures are always necessary.

Any exemption from medical confidentiality for the purpose of securing a deportation requires the written consent by the person concerned or their guardian. Such consent can also be given implicitly as part of cooperation provided pursuant to section 82 (1) and (4) of the Residence Act.

Implicit consent by a returnee to an exemption from medical confidentiality can be assumed, for example, where the returnee overtly discloses their medical history despite the circumstances, and must therefore anticipate that some information will be passed on to the security staff by the doctor unless the returnee requests otherwise.

Irrespective of this, the exceptions to medical confidentiality regulated in the professional code, which are also found in the ordinary laws, apply. For instance, medical doctors are authorised to disclose information where necessary to avert serious threats to the life and limb of the foreign national or of others (section 88 (2) no. 1 of the Residence Act). In such cases, the disclosure is limited to such information as is absolutely necessary for the escort officers to have.

The bodies involved are aware of the confidentiality of medical examinations and always assess the practicality of outside suggestions for optimisation, such as the recommendation made here to draw up a clear policy concerning respect for medical confidentiality.

Paragraph 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.”

1. Specific cases

Methadone case: The competent immigration authority stated that it had arranged for the person concerned to be accompanied from his place of residence to the country of destination by a health professional contracted through the medical service it usually relies on. The medical doctor contracted was informed in advance of the fact and the extent of the substitution treatment and at the same time instructed to organise the returnee’s reception and further medical treatment in the country of origin. These instructions were complied with.

On the day of the operation, the returnee was given his substitution drug based on the procedure agreed between the doctor and the substitution clinic. The doctor then issued a fit-to-fly certificate.

At the destination airport, immediate medical treatment was available and readily apparent (a doctor holding a sign with the returnee’s name was waiting in the arrival hall, and the returnee had been sufficiently informed of this). It had also been arranged that, in the event of medical indications to this effect, any necessary treatment would be provided by the awaiting doctor under the circumstances on site.

Upon enquiry, the contracted doctor reported that the returnee did not seek medical treatment at the destination airport. The possibility of further treatment had been organised and made available. The returnee had also been sufficiently informed and had decided of his own volition not to undergo the necessary further treatment.

Tuberculosis case: The competent immigration authority responsible for enforcing the requirement to leave the federal territory confirmed that the returnee concerned had received medical treatment for a longer period of time for closed tuberculosis. His first round of treatment with medication had already been concluded in August 2023. Another round of treatment with medication was to take place until 16 December 2023. All persons involved had been informed about the disease well in advance, in particular the doctor accompanying the flight. The medical documentation had been sent to the enforcing authority in Brandenburg to be forwarded to the Federal Police which had, to our knowledge, arranged both the medical accompaniment of the charter flight and the handover to medical personnel in the country of origin. The person concerned was not contagious.

As stated in the CPT report, the Pakistani national had been provided with a sufficient quantity of medication to last until the conclusion of his treatment on 16 December 2023. Having

undergone the same type of treatment for several months, the person concerned was very familiar with the medication and the treatment process. Upon termination of this therapy, doctors consider the treatment to be completed and the disease to be cured. However, as it is a bacterial disease, reinfection can never be completely ruled out. Against this background, neither an increased risk of relapse nor inadequate medical preparation for the return or inadequate organisation of further treatment in the country of origin can be identified.

2. General organisation of further treatment in the countries of removal

To the extent possible, the *Länder* take all measures necessary in individual cases to ensure continuity of care by authorities/institutions in the countries of removal, including further treatment of existing health problems. This can include the provision of medical care during the return operation, the provision of medication (cf. the statements under paragraph 36), clarification (e.g. via the embassy of the respective country) of whether the medical treatment in question can be continued there and whether the necessary medication is available, and – where necessary – the organisation of medical doctors to receive the returnee concerned in the country of destination.

For this to be successful, it is usually necessary for the person concerned to cooperate. There is no legal basis for German authorities to autonomously contact authorities or private organisations in the country of destination to ensure further treatment (prohibition on disclosure of health data, medical confidentiality etc.).

Subsequent organisation of further treatment in the country of origin does not fall within the remit of German authorities, but is the responsibility of the authorities in the country of destination.

Pursuant to section 60 (7) sentences 1 and 3 of the Residence Act, deportations do not take place if the returnee concerned suffers from a life-threatening or serious illness that would significantly worsen in case of deportation due to insufficient medical care in the country of destination. It is the task of the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF) to assess whether any obstacles to deportation related to the country of destination exist (deportation ban). According to section 42 sentence 1 of the Asylum Act (*Asylgesetz*, AsylG), the (central) immigration authorities are bound by the decision of the Federal Office for Migration and Refugees concerning a deportation ban under section 60 (5) or (7) of the Residence Act. Based on new provisions in the Act to Improve Returns, which also serve to implement CJEU case law and entered into force on 27 February 2024, the Federal Office for Migration and Refugees is now also required to check for domestic obstacles to deportation pursuant to Article 5 (a) to (c) of the Return Directive (best interests of the child, family life, state of health) before issuing a requirement to leave the federal territory and a deportation warning under section 34 of the Asylum Act. If such obstacles to deportation exist, no deportation warning may be issued, as is the case for obstacles to deportation related to the country of destination pursuant to section 60 (5) or (7) of the Residence Act.

Paragraph 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.”

In **Baden-Württemberg** and **Bremen**, for example, returnees are provided with information sheets containing information on their rights at an early stage. Information regarding legal remedies available against the deportation warning is already provided in the corresponding notification. In **Rhineland-Palatinate**, multilingual information is also provided at this stage on the possibility of (supported) voluntary return.

In cases of deprivation of liberty subject to a judicial decision, steps are taken during the court hearing to ensure that the persons concerned are sufficiently informed. Where necessary, the courts also facilitate the assistance of a qualified interpreter. In **Brandenburg**, detainees are informed of their essential rights and duties as part of the legal advice given at the time of their admission to custody to secure departure. During custody awaiting deportation, interpreting services are provided, where necessary, by members of staff able to speak the language in question or by external interpreters.

When returnees are being collected, police officers generally describe the specific measure to them in detail and explain the further process (**Baden-Württemberg**).

Persons deprived of their liberty who are apprehended on the day of their deportation are informed in most *Länder* at least orally and sometimes by means of information sheets about their rights, their duties and the possibility of contacting third parties, as well as the police measures to take place that day (e.g. **Berlin, Bremen, Saarland**). The information sheets are available in several languages, with further languages being added as appropriate.

Automatic involvement of an interpreter in those cases is not practicable in all *Länder* from an organisational standpoint. However, interpreters are commissioned in most *Länder* where it is known that their assistance will be needed or when a returnee so requests, provided that this does not preclude or delay the deportation and no disproportionate effort is required. If interpretation is needed in **Berlin**, for example, qualified interpreters or officers with the requisite language skills can usually be involved by the officers on site at short notice, at least by phone. When returnees are taken into custody in **Hamburg**, the Office for Migration ensures the availability of an interpreter. Collective returns by charter flight organised by the *Land* of

Hesse are accompanied by at least one interpreter. In **Thuringia**, translation apps installed on the mobile phones issued to police officers are used.

Please also refer to the information provided under paragraph 47.

Paragraph 65

“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).”

Currently, no such obligation to wear a visible identification tag exists in Germany. However, it is generally possible to identify the escort officers of the Federal Police without such identification tags, even after the mission, because each deployment must be documented in writing. On 20 December 2023 the Federal Government decided to reform the Act on the Federal Police. Section 93 of the draft act provides for an identification requirement. The draft act is currently in the parliamentary process.

Paragraph 69

“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.”

Under German law, searches may only be performed by persons of the same gender or by medical doctors (cf., for example, section 43 (4) of the Act on the Federal Police). Where searches are conducted by Federal Police staff, they are carried out by persons of the same gender.

Removal of all clothes for the purpose of a complete search is allowed provided that the principle of proportionality is safeguarded. This process is handled in a manner consistent with human dignity.

The approach described by the CPT where different parts of clothing are successively removed is already regularly applied by the Federal Police as well as the *Land* police authorities in **Berlin, Brandenburg, Hesse, North Rhine-Westphalia, Lower Saxony and Saarland**

Berlin plans to include this rule in the quality standards for searches, seizures and freezing of assets.

In **Hesse**, the standards of the National Agency for the Prevention of Torture (*Nationale Stelle zur Verhütung von Folter*) with regard to strip searches are also regularly conveyed in the training of police officers who are to be deployed in relevant areas.

Paragraph 82

“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.”

In 2022 and 2023, nationwide workshops were held to formulate guidelines for transfers for the purpose of deportations. The recommendation regarding a harmonised approach to the deployment of means of restraint throughout Germany is therefore currently being addressed.

In general, the police officers on site decide, based on the circumstances of the individual case and taking the principle of proportionality into account, whether and, in particular, to what extent means of restraint are to be used. This means that restraints are not applied systematically (e.g. standardised cuffing during transport). The applicable *Land* acts governing the use of direct force in the exercise of public authority or the equivalent federal act (Act on the Use of Direct Force by Federal Enforcement Officers engaged in the Exercise of Public Authority (*Gesetz über den unmittelbaren Zwang bei Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Bundes*, UZwG)) form the legal basis for this.

Paragraph 84

“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.”

The report has been made available to the bodies responsible for the coordination with Frontex and the other member states who will address it accordingly.

Paragraph 87

“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.”

Every use of means of restraint – including the choice of cuffs – is subject to a risk assessment in the individual case. The principle of proportionality must be adhered to whenever means of restraint are applied, meaning that less restrictive means would not be sufficient.

The means of restraint allowed by the Federal Police include textile cuffs (Velcro). Metal-free body cuffs (textile) are currently being tested with the aim of introducing and procuring them. Assessments as to which means of restraint should be applied are performed in each individual case.

Paragraph 96

“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.”

Returnees are informed by the Federal Police of the possibility of complaining under the Frontex complaints mechanism. To this end, multilingual posters explaining the complaints

mechanism in an understandable form are displayed in the rooms used for return operations. Moreover, the respective forms are explained or provided upon request. The competent authorities have been notified of the CPT's recommendation.

Paragraph 100

“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).”

In line with the encouragement of the CPT, the National Agency strives to increase its monitoring efforts (in particular regarding the collection phase) and to intensify its cooperation with other National Preventive Mechanisms. The National Agency shares the view that independent monitoring from arrival in the country of destination is an important aspect in assessing whether there is a risk of a violation of Article 3 of the ECHR – for example due to ill-treatment, insufficient medical care or to unaccompanied minors not being met in the country of destination. In addition to necessary exchange of information, the National Agency considers it essential that so-called Collecting Return Operations (operations where the flight is accompanied by security staff of the country of destination) are jointly monitored with the National Preventive Mechanism of the country of destination in question so as to ensure continuous independent monitoring of the operation.

Paragraph 103

“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.”

Germany already has an effective forced return monitoring system in place which takes account of the country's federal system and the fact that responsibility for enforcing returns lies with the *Länder*.

The National Agency for the Prevention of Torture, established on the basis of the Optional Protocol of 18 December 2002 on the Convention of 10 December 1984 against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and already mentioned in this report, is an independent body for the prevention of torture and ill-treatment in Germany. Accordingly, the National Agency's remit includes monitoring return operations. Based on its observations, the National Agency regularly publishes its assessments and recommendations in its annual reports.

Moreover, a “National Agency for the coordination of the pool of forced-return monitors” (*Nationale Stelle zur Koordinierung des Pools von Rückführungsflugbeobachtern (Monitore)*)

was established at the Federal Office for Migration and Refugees in February 2017 based on the Regulation (EU) 2016/1624 (so-called Frontex Regulation). The persons deployed to the pool by Germany accompany return flights organised by Frontex according to the Frontex Regulation.

In addition, based on agreements reached between the *Länder*, the Federal Police and church agencies/non-governmental organisations, the above-mentioned agencies monitor the deportation process at specific airports that are particularly relevant in connection with return operations.

Moreover, return operations are also always subject to administrative and operative supervision by the immigration and police authorities of the *Länder* (which are responsible for the enforcement of deportations in Germany) as well as the Federal Police. They are also subject to judicial control by independent courts.