

Report

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

from 17 to 19 February 2016

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2016) 36.

Strasbourg, 15 December 2016

CONTENTS

Copy of the letter transmitting the CPT’s report 3

Executive summary 4

I. INTRODUCTION 5

A. Dates of the visit and composition of the delegation..... 5

B. Cooperation between the CPT and the Spanish authorities..... 5

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED..... 6

A. Preliminary remarks 6

B. The joint flight: preparation, execution and handover 8

1. Safeguards in the context of the preparation for removal 8

 a. timely notification of the removal 9

 b. access to a lawyer 10

 c. access to a medical doctor 10

 d. the right to inform third person(s) of the removal 12

2. Transport to Barajas Airport 12

3. Execution of the removal and handover..... 13

C. Other issues related to the CPT’s mandate..... 15

1. Use of force 15

2. Staff-related issues 16

3. Complaints and monitoring procedures 16

4. Risk assessment..... 17

Copy of the letter transmitting the CPT's report

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Strasbourg, 21 July 2016

Dear Director General,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Spanish Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 17 to 19 February 2016. The report was adopted by the CPT at its 90th meeting, held from 4 to 8 July 2016.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold type in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Spanish authorities to provide **within three months** a response giving a full account of action taken to implement them. The CPT trusts that it will also be possible for the Spanish authorities to provide, in their response, reactions to the comments and requests for information formulated in this report.

I should like to inform the Spanish authorities that the CPT intends to raise with Frontex some issues regarding the rules and practices followed during joint removal operations in general. In this context, it would be very useful if Frontex could be informed of the contents of the enclosed report, either through transmission by the Spanish authorities or by authorising the CPT to transmit the report to Frontex. These two options would preserve the confidentiality of the report. Alternatively, the Spanish authorities might request its publication in the near future. I should be grateful if you could inform me about the course of action the Spanish authorities wish to follow in this regard.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Mykola Gnatovskyy
President of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

This report examines the treatment of foreign nationals during a joint removal operation (JRO) by air coordinated by Frontex, with Spain as Organising Member State and Germany as Participating Member State. The JRO was from Madrid to Bogota (Colombia) and thereafter to Santo Domingo (Dominican Republic). The CPT was able to observe all stages of the JRO from its preparation at the Aluche Centre for Identification and Removal and the Aluche Central Office for the Detention of Foreigners up until and including the physical handover of the returnees to the Colombian and Dominican immigration authorities.

The returnees were officially notified of their removal at best 12 hours in advance. The CPT considers this advance notification inadequate and recommends that returnees should be informed in writing, in a language they understand, at least several days prior to a JRO. Further, measures should be taken to ensure that all returnees have, in practice, access to a lawyer and are granted the possibility to make at least one telephone call, free of charge if necessary, to their relatives before the flight.

The Committee's delegation did not observe any ill-treatment of returnees by the staff; escort officers carried out the JRO professionally. The report stresses the importance of every returnee undergoing a medical "fit-to-fly" examination prior to a removal operation. The lack of such an examination was brought into relief by a medical incident that occurred during the JRO. The CPT recommends that such a medical examination be carried out systematically on every returnee prior to their removal.

As regards the staff taking part in a removal operation by air, the CPT notes that overseas escort duties are stressful and recommends that due attention be paid to the psychological aspects of this work during selection and training of staff. Regarding the use of means of restraint, the Committee recommends that the Spanish authorities review their current practice in this area bearing in mind the Council of Europe's *Twenty guidelines on forced return*.

The Committee also considers that an effective complaints procedure should remain accessible to returnees up until their arrival in the country of destination.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

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 an ad hoc visit to Spain from 17 to 19 February 2016. The purpose of the visit was to examine the treatment of foreign nationals during a removal operation by air and the conditions under which the removal operation took place. The monitoring concerned a chartered “joint flight” between Madrid (Spain) and Bogota (Colombia) and Santo Domingo (Dominican Republic), scheduled for departure in the early hours of 18 February 2016.

2. The monitored joint flight was part of the Joint Return Operations (JRO) coordinated and co-financed by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) in 2016. In addition to Spain, the “Organising Member State” (OMS), Germany also participated in the JRO as a “Participating Member State” (PMS).

3. The visit was carried out by three members of the CPT, Mark KELLY (Head of delegation), Therese Maria RYTTER and Hans WOLFF, who were supported by Julien ATTUIL-KAYSER and Marco LEIDEKKER from the CPT’s Secretariat.

B. Cooperation between the CPT and the Spanish authorities

4. The level of cooperation received from the Spanish authorities and from the National Police in particular was very good.¹ The delegation had access to all places of deprivation of liberty it wished to visit, in particular the Aluche Centre in Madrid, which accommodates both the Centre for Identification and Removal (CIE) and the Central Office for the Detention of Foreigners (Oficina Central de Detenidos Extranjeros, OCDE). Full access was given to all the information necessary for the delegation to carry out its task, including medical information, and the delegation was able to interview returnees in private.

5. It has been the CPT’s consistent policy, when monitoring a return operation by air, to observe the physical handover of the returnees to the local immigration/border police officials. Such handovers may take place inside the aircraft, on the tarmac or in a dedicated space in the arrival hall at the airport. As regards this particular JRO, the physical handover of the returnees to the Colombian authorities took place on the tarmac in Bogota and to the Dominican authorities inside the aircraft in Santo Domingo. The delegation observed both handovers.

This being said, in a more global perspective, **the Committee would like to stress that, when negotiating future readmission agreements and/or implementation protocols, an explicit reference should be made to the possibility for national or international monitoring bodies, such as the CPT, to observe removal operations in the country of destination, including the handover procedure to the local immigration authorities.**

Specific arrangements should be made, on an ad hoc basis, as regards readmission agreements already in force.

¹ It should also be noted that the delegation benefited from very good cooperation from the German national escort team and the Frontex staff (on board as well as at the headquarters).

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Preliminary remarks

6. Prior to this JRO between Spain and Colombia and the Dominican Republic, the CPT had monitored two other removal operations by air, coordinated and co-financed by Frontex.² In addition to JROs, a CPT delegation had monitored in October 2012 a removal operation by air between London and Colombo (Sri Lanka), organised by the authorities of the United Kingdom.³

Prior to 2012, the CPT had examined removal operations by air in the framework of the treatment of persons deprived of their liberty under aliens legislation, which was dealt with in a section of the 7th General Report on the CPT's activities.⁴ The CPT also set out in that report some essential rules concerning the use of force and means of restraint in the context of removal operations. In 2003, in its 13th General Report,⁵ the Committee put forward more detailed guidelines concerning removal operations by air. Most of these guidelines were subsequently reflected in the "Twenty Guidelines on Forced Return" adopted by the Committee of Ministers of the Council of Europe in May 2005.

7. In the 25 years since the CPT initiated its activities, there have been positive developments regarding the standards and practices surrounding forced removal by air. For example, in its 7th General Report the CPT observed that certain restraint techniques could lead to "positional asphyxia". The use of these techniques has since been largely banned in Europe, and is prohibited during Frontex joint return operations.⁶ The CPT welcomes this development. It is important that this positive trend be sustained, particularly in the current context of large-scale arrivals of migrants into Europe.

8. As regards the applicable legal framework:

- the substantive and procedural matters related to the removal of an irregular migrant are regulated by the relevant national legislation of the OMS and PMS, as well as by relevant EU directives, in particular the 2008 Return Directive;⁷
- matters related to the cooperation of EU member states (and associated states) in the framework of a Joint Return Operation, as well as the organisation of a joint flight and certain operational aspects, are based on Council Decision 2004/573/EC of 29 April 2004, including the Common Guidelines annexed thereto;⁸

² In October 2013, the CPT monitored a joint flight from Rotterdam to Lagos, Nigeria (CPT/Inf (2013) 14) and in December 2015, from Rome to Lagos, Nigeria.

³ See CPT/Inf (2013) 14.

⁴ See CPT/Inf (97) 10, paragraphs 24 to 36.

⁵ See CPT/Inf (2003) 35, paragraphs 27 to 45.

⁶ Article 3, Code of Conduct for joint return operations coordinated by Frontex.

⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

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

- the “Code of Conduct for joint return operations coordinated by Frontex” applies to the on-board treatment of returnees, as well as to practical matters related to the organisation of the removal;
- in-flight, the role of the aircraft commander as regards safety and discipline, including the application of the means of restraint and the establishment of jurisdiction in the case of a criminal incident, is regulated by the 1963 Tokyo Convention;
- specifically for Spain, the 2007 “Normas de actuación en las repatriaciones y en el traslado de detenidos por vía aérea y/o maritime” apply.

At the time of the visit, Frontex was in the process of drafting a “Guide for Joint Return Operations by Air coordinated by Frontex”.⁹ While the Guide had not yet been adopted, the delegation noted that the representatives of the OMS, the PMS and Frontex followed diligently the procedures and practices set out in the draft Guide.

⁹ The adopted version of the Guide was published on 12 May 2016.

B. The joint flight: preparation, execution and handover

9. The practice of removal of foreign nationals is a frequent and widespread practice throughout Europe. For Spain, removal operations to Latin America in particular are commonplace. In the CPT's experience, removal of foreign nationals entails a manifest risk of inhuman and degrading treatment (during preparations for the removal, during the actual flight or when the removal is aborted).

10. In the case of the Joint Return Operation of 18 February 2016, the returnees removed by Spain were transported from various places of deprivation of liberty, including police stations in the Madrid area, several prisons in different parts of the country and the CIEs in Aluche and Valencia. All returnees listed for removal appeared to have been issued with a valid removal order.

11. The following parts of the operation were monitored: the collection and transport of 40 returnees from Aluche detention facilities (both the CIE and the OCDE) to Madrid Barajas Airport; the flight preparations at Madrid Airport; the boarding of the aircraft to Bogota/Santo Domingo, the 15-hour flight to Bogota and Santo Domingo, including a two-hour stopover in Bogota; and the physical handover to the Colombian and the Dominican authorities.

12. A few days prior to the JRO, 80 persons had been listed to be removed by the Spanish authorities and two others from Germany. In the end, 70 returnees from Spain (including two women), and one man from Germany boarded the aircraft – 47 returnees were removed to Colombia and 24 to the Dominican Republic.

The ten returnees from Spain listed for removal who did not board remained behind for various reasons, including a pending asylum procedure and an intervention by a judge.

13. From the outset, the CPT wishes to make it clear that its delegation did not observe or receive any allegations of ill-treatment during the operation, including by escorting police officers. On the contrary, from the CPT's perspective the removal operation by air was carried out smoothly and professionally. In particular, the delegation noted with appreciation the efforts made by the escorts to engage with the returnees throughout the operation. These efforts were acknowledged by some of the returnees who shook hands with their escort before leaving the aircraft (see also paragraph 31).

1. Safeguards in the context of the preparation for removal

14. A proper preparation for removal is crucial in order to reduce both the risk of violating the principle of *non-refoulement* and the inherent health risk related to the return flight. A number of safeguards should therefore be guaranteed.

The Committee has placed particular emphasis on timely notification of the removal to both the returnee and his/her lawyer. Following this notification, the returnee should be granted:

- immediate access to a lawyer;
- access to a medical doctor, particularly in the context of a “fit to fly” examination; and,
- the right to inform a third person(s) in the sending country and, when possible, the destination country of the upcoming removal.

These rights should be enjoyed by all categories of foreign nationals to be removed, from the very outset of their notification, i.e. at least 24 hours prior to the flight (see paragraph 17). It is equally fundamental that these persons be informed without delay of their rights, including those mentioned above, in a language they understand.

a. timely notification of the removal

15. A timely notification of the removal gives the foreign national time to prepare for his or her departure, which is likely to reduce stress and resistance.

16. Although situated in a single location, there was a striking difference between the CIE and the OCDE in Aluche as concerns the moment returnees were informed of their upcoming removal.

For the Aluche CIE, a judicial authority had ordered that returnees should receive, at least 12 hours before removal, information about the aircraft’s time of departure; the city of its destination; and the flight number.

This order was complied with. With one exception,¹⁰ all returnees interviewed were informed in writing exactly 12 hours before departure of their removal and they were requested to sign an act of notification of the expulsion (which indicated the date and time of the notification). Due to the very short time available, not all returnees managed to prepare themselves properly for the removal. Several indicated that there was insufficient time for their personal belongings to be transferred to the detention centre as they had been living some distance from Madrid. One returnee was returned in the company uniform he had been wearing at the moment of his arrest. Several complaints were received alleging that returnees did not know how they would be able to access the money in their Spanish bank account and one returnee stated that he was not informed that he was allowed to take his belongings.

In contrast, none of the returnees interviewed at the Aluche OCDE was provided with written information about their removal; they were only informed orally by police officers a few hours before the removal operation began. The delegation observed that this situation generated anxiety and distress among these returnees.

¹⁰ One returnee interviewed was notified more than a day in advance as he was transferred from another CIE to Aluche.

17. Leaving the person being removed unaware of the scheduled removal (and, in particular, of the time of departure) can do more harm than good. Experience shows that instead of facilitating the process, it increases the risk of the person violently resisting the removal. Preparing the person concerned well in advance for his/her removal has proved in the long term to be the most humane and efficient approach. **The CPT recommends that the Spanish authorities adopt the necessary measures, including of a legislative nature, to ensure that all persons being removed, and their lawyer, if applicable, are officially informed in writing, in a language they understand, at least several days in advance of the flight (see also paragraph 22).**

b. access to a lawyer

18. In Spain, it may take a considerable amount of time before an expulsion order is executed. For instance, the expulsion order of one of the returnees interviewed dated back to 2010. Within such a lengthy time span, the situation of the person may have undergone significant changes since the date the expulsion order was issued, prompting a potentially successful request for review.¹¹ Access to a lawyer is essential for filing such a request or even a request for asylum.

Clearly, as described above, the practice of late or even last-minute notification of an imminent removal risks rendering access to a lawyer illusory. Therefore, it is essential that this access be made possible immediately. Several returnees interviewed at the CIE indicated that they had difficulties in accessing their lawyers as they were not immediately available. At the OCDE, several persons interviewed did not have the possibility of talking to their lawyer.

In the CPT's opinion, access to a lawyer should not only be granted by law but also actively facilitated in practice. **The authorities are strongly encouraged to take the necessary measures in this regard.**

c. access to a medical doctor

19. In the light of certain incidents that have occurred during organised removal operations, the CPT has advocated, since 2003, the importance of ensuring that returnees undergo a medical examination before a removal operation by air; and that a "fit-to-fly" certificate be issued. This requirement was reiterated in the 2005 Committee of Ministers of the Council of Europe "Twenty Guidelines on Forced Return".¹²

¹¹ See Articles 129 et seq. of the Law on Judicial Review of Administrative Action (Ley 29/1998).

¹² Adopted by the Committee of Ministers on 4 May 2005 at the 925th meeting of the Ministers' Deputies.

20. At the time of the visit, Spanish legislation did not require a returnee to undergo a medical examination prior to a removal in order to establish his or her fitness to be removed. Nevertheless, under the terms of the relevant EU decision,¹³ the use of both “standardised forms for medical records” and fit-to-fly certificates is encouraged. Moreover, the OMS has the right to refuse access to a joint flight to any returnee with a medical condition rendering their return incompatible with the principles of safety and dignity.

21. In Spain, persons are medically examined on admission to a CIE. The substance of the medical examination carried out on admission to a detention centre did not cover the whole range of pathologies enumerated in the International Air Transport Association (IATA) flight inadmissibility criteria, or the need to specifically assess the risks associated with the possible prolonged use of means of restraint, in particular in confined spaces such as an aircraft. Completing a basic medical examination upon admission does not automatically mean that the person concerned will be fit to travel if they are removed. Persons coming from OCDE and other police establishments had not undergone any medical examination and those arriving from prisons may have been examined upon admission to the penitentiary establishment but not in connection with their removal.

An incident of a medical nature that took place during the JRO illustrates the deficiencies of the above approach. After approximately three hours of flight, the on-board medical doctor was asked to provide assistance to a 54-year-old Colombian man, who had lost consciousness in his seat. The condition of the man initially improved after the doctor administered oxygen. However, moments later, the man fainted a second time and oxygen was given once again. The delegation observed that the on-board doctor did not re-examine the person later during the flight and did not transmit any information regarding this incident to the patient or the Colombian authorities.

As no medical examination had been carried out prior to the removal operation, no fit-to-fly certificate had been issued and no other medical information transmitted, the state of health of the man was unknown to the on-board doctor. The cause of the loss of consciousness remained unclear.

22. In the CPT’s opinion, the on-board incident clearly illustrates the importance of adhering to the obligation to ensure that every person being removed by air undergoes a medical examination prior to (i.e. a few days before) his/her departure and of producing a fit-to-fly certificate for every person being removed. The Spanish Ombudsman, in its capacity as an NPM, has expressed a similar view.¹⁴ In the exceptional event that a returnee arrives at the airport without a fit-to-fly certificate, the medical doctor of the flight should examine him/her and assess his/her medical capacity to fly prior to departure.

The CPT is pleased to note that the “Guide for Joint Return Operations by Air coordinated by Frontex” explicitly mentions that “returnees are to be removed only as long as they are fit to travel at the time of the JRO”. To that end, a medical form is to be filled in. The CPT assumes that this implies that a medical examination should be carried out a few days prior to the removal operation. Further, the Guide stresses that “(t)he Organising Member State must refuse participation on a Joint Return Operation coordinated by Frontex to any returnee from a PMS it considers not fit to travel after an evaluation by the medical personnel available”.

¹³ Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removal from the territory of two or more member states of third-country nationals who are subject to individual removal orders.

¹⁴ See notably the 2014 annual report of the Spanish NPM, paragraphs 351-352.

The Committee recommends that returnees subject to a removal operation should undergo a medical examination several days before the decision to remove them is implemented both for Joint Return Operations coordinated by Frontex and for removal operations organised by the Spanish authorities. The medical forms to be completed following such examinations should record the doctors' conclusions notably regarding relevant IATA inadmissibility criteria. Further, appropriate medical information, including fit-to-fly certificates, should be communicated to on-board health-care staff.

- d. the right to inform third person(s) of the removal

23. Informing relatives in advance of an upcoming removal is an additional safeguard against ill-treatment, and it also enables family members remaining in the country to say their goodbyes. Furthermore, contact with family members in the country of destination may reduce anxiety about the return, thus facilitating the removal, and possibly the reintegration, of the person concerned.

At the CIE, returnees interviewed by the delegation stated that they had the possibility to contact their relatives. The situation was more confused at the OCDE, notably because returnees were not properly informed of their removal. At least one person was only able to contact his relatives following a comment by the delegation, but only a few minutes before the departure of the convoy for the airport.

The CPT recommends that the authorities offer each person to be removed the possibility to make at least one telephone call, free of charge if necessary, in the period immediately following the notification of the removal.

2. Transport to Barajas Airport

24. At the Aluche CIE and OCDE, the returnees were brought out in pairs to an interior yard, with their wrists tied together with fabric straps ("lazos") and accompanied by armed police officers, some of whom were equipped with helmets, shields and handcuffs and visible pistols and batons. Most of the returnees walked to the specially-adapted minibuses by themselves, although a few were held by their arms and shoulders and guided to the transport.

The transport between the Aluche detention facility and Barajas, in a convoy of three minibuses facilitated by four motorcycle outriders, took less than 30 minutes. The minibuses had two secure compartments: one at the rear for up to seven returnees and one in the centre for one police officer with a driver and another police officer in the front.

25. The delegation observed that in two of the vehicles, a large number of returnees' suitcases and belongings were piled up inside the secure compartment in the middle of the vehicle, effectively blocking the only door through which the returnees could exit. In the event of an accident, the luggage could impede both the occupants exiting the vehicle and the emergency services from accessing it. Consideration should be given to transporting luggage and returnees separately. Further, the vehicles were not equipped with seatbelts for each person being transported. **The CPT recommends that the Spanish authorities ensure that all passengers have a seatbelt while being transported and that the means for transporting the luggage be reviewed.**

26. The operation was conducted calmly and the returnees were compliant. The delegation observed only one instance of a returnee who became agitated because he was unsure if his luggage had been loaded with him in the vehicle. When reassured that it had been, he immediately calmed down.

3. Execution of the removal and handover

27. Upon arrival at the airport, the escort leader briefed the escort members about various operational matters for the pre-embarkation phase, including the permissible use of force and the procedure for accessing the toilet in the confined space of the aircraft.

At the airport, the straps (“lazos”) were removed from the returnees before they disembarked from the minibuses and were taken to a secure wing of Barajas Airport, where they underwent a “pat-down” search and were requested to open their mouths. The atmosphere remained calm even when a potentially harmful object was found in the mouth of one of the returnees. After the search, the returnees were seated together in a large room with rows of chairs, where they waited until boarding and were allowed to go to the toilet. The wrist straps were re-applied. The escorts were also in the room, standing around the returnees.

The Consul General of Colombia in Spain was present during this phase of the operation.¹⁵

28. The returnee from Germany was placed in a separate room under the supervision of four German police officers after undergoing a “pat-down” search. The Spanish and the German escort leaders held a short coordination meeting, observed by the delegation, but did not address the use of means of restraint.

29. After approximately two hours of waiting, during which time the escort leader performed a final identity check, buses took the returnees to the aircraft. The buses parked a few metres away from the open aircraft steps and the returnees boarded the aircraft one by one, accompanied by their escorts. A few returnees became agitated during the boarding procedure and started shouting, but the escorts responded with composed professionalism; they spoke to the men concerned who calmed down quickly.

30. Boarding was completed rapidly and the plane took off at 01h50. Returnees who were assessed as low or medium risk were seated in window seats with one officer next to them (in a two-seat row). Those considered as high risk were seated in the three-seat middle row with a police officer seated on either side (see also paragraph 49). Female returnees were escorted by female police officers.

Approximately 20 minutes after take-off, all means of restraint were removed and were not re-applied during the remainder of the flight (see paragraph 41).

¹⁵ The delegation was informed that the Consul General of the Dominican Republic in Spain had declined the invitation to attend.

31. The CPT welcomes the emphasis placed on dynamic security. Once the boarding was complete, numerous police officers engaged respectfully with the returnee seated next to them. These conversations had a positive impact in reducing the level of stress and anxiety.

32. During the flight, the returnees were provided with pillows and blankets as well as a hot meal and cold drinks. Requests to visit the toilet were complied with; the toilet door was left ajar (5-10 cm) with the escort standing outside.

33. The doctor and nurse on board were both contracted by the national police. They had participated in a large number of removal operations. Nevertheless, the CPT believes that in order to reduce the potential for any conflict of interest and to best assure the clinical independence of health-care staff, it would be preferable for health-care staff participating in a removal operation to be employed by an authority distinct from the agency responsible for the operation itself, in this case the national police. Further, when called upon, the on-board doctor should operate as the returnee's doctor, with only the returnee's medical interest in mind (see paragraph 21). **The Committee encourages the authorities to consider the possibility of reinforcing the independence of the health-care staff on board return flights.**

34. Any medical intervention should result in a detailed report being drawn up and a copy handed over to the returnee upon arrival in the destination country, in order to enable continuity of medical care. In the case mentioned above (see paragraph 21), the medical doctor did not produce a written report on the incident. **The CPT recommends that every significant medical intervention be recorded in writing by the on-board medical team and a copy of this record be communicated to the authorities of the country of destination and to the returnee concerned.**

35. The medical member of the delegation checked the contents of the medical bag taken on board by the health-care team. It contained a wide variety of equipment and medication, including painkillers, sedatives, antibiotics, and equipment to measure blood sugar level and blood pressure. There was also a defibrillator on board and the staff had received the appropriate training in how to use it. Both health-care professionals confirmed that the use of sedatives during removal operations was only administered voluntarily and if medically necessary; they were not used as a means of chemical restraint. This approach should be welcomed; it reflects the CPT's position on this issue.

36. The physical handover of the returnees to the Colombian authorities took place on the tarmac of the airport. In Santo Domingo, it took place inside the aircraft: officers of the Dominican Republic migration service came on board the aircraft and called out the returnees one by one. Thereafter, the returnees descended to the tarmac and boarded a bus. Both handovers took place in a calm atmosphere and there were no signs of tension among returnees or between them and the local migration officers.

37. During the return flight to Madrid from Santo Domingo the following day, shortly after take-off, a short debriefing session was organised to discuss the operation, in which escort leaders and monitors participated. Regrettably, the medical doctor did not participate in this debriefing and the issue of the medical incident and the lessons to be learnt from it were not raised orally, although the event was noted in the final police report on the operation.

C. Other issues related to the CPT's mandate

1. Use of force

38. On board a stationary aircraft, as well as during the different stages in the preparation of the removal operation by air, the use of means of restraint falls under the jurisdiction of the state where (that stage of) the removal operation takes place.

As well as legislation, police culture and training also vary from one State Party to another, therefore it comes as no surprise that escorts from Frontex State Parties display different approaches as concerns restraints and their use during a JRO.

39. As soon as the aircraft is “in flight”, the provisions of the 1963 Tokyo Convention apply, which in Article 6 assign the responsibility “to protect the safety of the aircraft, of persons or property therein” and to “maintain good order and discipline on board” to the aircraft commander. For these purposes, as specified by the 1963 Tokyo Convention, passengers may be restrained and the aircraft commander may request or authorise the assistance of other passengers.

40. The complex legal framework makes it challenging to develop a consistent policy on the use of restraints during a JRO. At the same time, the uncoordinated use of means of restraint is a potential source of unrest on board.¹⁶ Efforts to coordinate the use of means of restraint on board were made by OMS, PMS and Frontex. For instance, the authorised means of restraint were listed in the JRO Implementation Plan, sent out by Frontex on 15 February 2016.

41. The different national approaches with regard to restraint were visible. The escort team from Germany used the so-called American belts and leg straps, while the Spanish team relied on “lazos”, with metal handcuffs and French belts available in the case of need (see also paragraph 50).

In the CPT's opinion, more in-depth discussions among Frontex State Parties on the subject of promoting more precise common rules on the use of means of restraint (through a regular exchange of experience, and/or the organisation of joint training sessions) is important. These common rules should be included in the “Guide for Joint Return Operations by Air coordinated by Frontex” (see paragraph 8). **The CPT would like to receive the comments of the Spanish authorities on the above and would encourage the Spanish authorities to bring this matter to the attention of Frontex and its State Parties.**

42. Further, it is regrettable that the use of restraints (i.e. the “lazos”) was not recorded in a specific register. **The CPT invites the Spanish authorities to set up a designated register and systematically record any use of means of restraint in it.**

¹⁶ CPT/Inf (2013) 14, paragraph 32.

2. Staff-related issues

43. The proper conduct of removal operations by air depends to a large extent on the quality of the staff assigned to escort duties. Escort and back-up staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum.

44. For this particular JRO, the escorts were drafted from two police units: the *Unidad Central de Expulsiones y Repatriaciones* (UCER), which is the agency responsible for organising and leading removal operations, and *Unidades de Intervención Policial* (UIP), police units responsible for public security that are summoned to participate in removal operations on an ad hoc basis. All the police escorts wore a police vest over their civilian clothes, which clearly displayed a personal number tag with six digits. The CPT was pleased to note that members of these units acted professionally and humanely throughout the JRO. The involvement of the UIP was extraordinary, due to the large numbers of returnees being removed in this JRO. They had not received any training to carry out such operations. On the other hand, the staff of the UCER interviewed by the delegation indicated that they had received dedicated training.

It is undisputable that overseas escort duties are stressful, intensive and tiring. The CPT considers that the recruitment procedure of escorts should include some form of psychological assessment. Furthermore, once recruited, it is essential that measures be taken in order to avoid professional exhaustion syndrome and the risks related to routine, and to ensure that staff maintain a certain emotional distance from the operational activities in which they are involved. In this context, the CPT is pleased to note that care is taken to rotate escorts regularly between escort and regular police duties, limiting the escort duties to two or three removal operations a month. If it is necessary to call upon UIP staff, they ought to be provided with appropriate training for removal operations.

The CPT recommends that all escort staff involved in a removal operation receive prior training. The Committee would like to receive information as to the training currently provided to escorts. Further, due attention should be given to the psychological aspects of escort duty, including during selection, training and after return from an escort assignment.

3. Complaints and monitoring procedures

45. At present, Joint Return Operations do not have a proper complaints mechanism. Returnees are expected to address the escort leader if they feel that their rights and entitlements have been violated, but receive no information to that end.

46. The CPT is aware that a draft EU regulation,¹⁷ currently under discussion, includes a framework for a complaints mechanism, *inter alia*, applicable to removal operations. The new mechanism should involve the designated Warsaw-based Frontex Fundamental Rights Officer who will receive complaints in writing, by means of a standardised complaints form, and process them.

¹⁷ Proposal for a Regulation of the European Parliament and of the Council on the European Border and Coast Guard (COM (2015) 671 final); Article 72.

In order to be admissible, a complaint shall not be “anonymous, frivolous, vexatious, hypothetical or inaccurate”. Moreover, the complaint must be submitted by a person who is directly affected by the actions of staff involved in the removal operation.

Depending on whether the persons against whom the complaint is directed are Frontex staff or member-state officials, the Fundamental Rights Officer will forward it either to the Frontex executive director or to the authorities of the member state involved. The recipient will assure an “appropriate follow-up”, a concept which is not defined in the draft regulation.

47. The CPT has consistently advocated the setting up of effective complaints procedures, both internal and external, for any complaints from returnees about their treatment by law enforcement officers. Such a procedure should be accessible in practice (which in the case of a JRO means that detainees should be able to file a complaint either immediately upon arrival or on board the plane prior to arrival) and offer guarantees that complaints will be dealt with effectively, expeditiously and thoroughly. In addition, the external procedure should meet the requirements of independence. The Committee is not convinced that the proposed draft regulation establishes such a rigorous complaints mechanism.

The CPT would like to receive the comments of the Spanish authorities on the above remarks and would encourage this matter to be brought to the attention of Frontex and its State Parties.

48. In its 13th General Report,¹⁸ the CPT stressed the importance of the role to be played by monitoring systems in areas as sensitive as removal operations by air. In this context, it should be noted that a representative of the Spanish Ombudsman, in its capacity of national preventive mechanism, was involved in the monitoring of the flight. This representative was wearing a high visibility vest that made her clearly identifiable to both staff and persons to be removed during the flight.

4. Risk assessment

49. A “risk assessment” had been completed for each returnee prior to the operation and each one had been “classified” as low, medium or high risk. On the lists provided at the preparatory meeting, nine were classified as low risk, 33 as medium risk and 38 as high risk. It later emerged that, of the 38 persons classified as high risk, four were considered to constitute a “very high” risk. In relation to these returnees, close police supervision was maintained throughout the flight.

The delegation was informed that the risk assessment was governed by a 2007 Circular no. 12/07 issued by the Ministry of the Interior, and is based on an assessment of the likelihood of the returnee displaying violent behaviour. Other criteria, which determine how returnees are categorised, include: their criminal record, their behaviour in detention, any previous resistance to repatriation and their medical history. Account is also taken of the relevant IATA standards of risk assessment. However, none of the returnees interviewed was aware of the assessment or of its outcome. **The CPT would like to receive more details regarding the risk assessment and how it is carried out, in particular if it takes places on an individualised basis.**

¹⁸ See CPT/Inf (2003) 35, paragraph 45.

50. Given the significant numbers of persons classified as high risk, the flight as a whole was considered to be a “high risk flight”. Therefore, every returnee was accompanied by two escorts. Further, as a standard procedure, all returnees were restrained during certain phases of the operation: transfer from the Aluche facility to the airport; the waiting period at Barajas Airport; during embarkation; and during the first 20 minutes of the flight.

In this context, it should be recalled that guideline 19 of the 2005 Council of Europe Twenty guidelines on forced return provides that “the only forms of restraint which are acceptable are those constituting responses that are strictly proportionate responses to the actual or reasonably anticipated resistance of the returnee with a view to controlling him/her”. Further, the Guide for JROs by air coordinated by Frontex indicates that “the use of coercive measures must not be systematic and must be justified in each case by an individual dynamic risk assessment”.

The CPT recommends that the Spanish authorities review their current practice regarding the use of means of restraint bearing in mind the above-mentioned guidance.