

## **Report**

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

**from 16 to 18 December 2015**

The Italian Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2016) 34.

Strasbourg, 15 December 2016

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**Copy of the letter transmitting the CPT's report**

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President of the Interministerial Committee  
for Human Rights  
Ministry of Foreign Affairs  
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00135 Rome  
Italy

Strasbourg, 31 March 2016

Dear Ambassador,

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 Italian Government drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Italy from 16 to 18 December 2015. The report was adopted by the CPT at its 89<sup>th</sup> meeting, held from 7 to 11 March 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 Italian 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 Italian authorities to provide, in their response, reactions to the comments and requests for information formulated in this report.

I should like to inform the Italian 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 Italian authorities or by authorising the CPT to transmit the report to Frontex. These two options would preserve the confidentiality of the report. Alternatively, the Italian authorities might request its publication in the near future. I should be grateful if you could inform me about the course of action the Italian 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

The CPT's ad hoc visit provided an opportunity to examine the treatment of foreign nationals during a joint removal operation (JRO) by air from Rome to Lagos (Nigeria). The JRO was organised and coordinated by Frontex with Italy as Organising Member State and Belgium and Switzerland as Participating Member States. The CPT received excellent cooperation during the visit from the Italian authorities and its delegation was able to observe all stages of the JRO from its preparation at the Identification and Expulsion Centre (CIE) Ponte Galeria in Rome up to the handover of the detainees to the Nigerian immigration authorities in Lagos.

The information gathered by the delegation indicated that some detainees were subject to removal from Italy while court appeals in relation to their asylum requests were still pending. In order to reduce the risk of violation of the principle of non-refoulement, the CPT makes several recommendations as to when a foreign national should not be removed and proposes that two practical safeguards be put in place regarding information flows and the introduction of a "last call" procedure for persons being returned.

In relation to the conduct of the JRO, the Committee did not observe any instance of ill-treatment of detainees by the staff and that the escort staff carried out the JRO professionally. However, the CPT is not fully convinced of the policy of the Italian authorities of informing detainees about their imminent removal only on the day of their departure and solicits the comments of the authorities on this issue. Further, the Committee recommends that every detainee should undergo a medical examination prior to a removal operation.

As regards escort 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. Escort members should also wear a visible identification tag during removal operations. The question of use of force is also addressed and the Committee considers that more precise common rules on the use of means of restraint should be put in place by Frontex and its State Parties.

The Committee also considers that an effective complaints procedure accessible to detainees up until their arrival in the country of destination be established and enquires about the mandate, powers and means national monitoring mechanisms in respect of such operations.

## **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 Italy from 16 to 18 December 2015. 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” organised by the State Police between Rome and Lagos (Nigeria), scheduled for departure on 17 December 2015.

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 2015. It involved, in addition to Italy (“Organising Member State” (OMS)), both Belgium and Switzerland (“Participating Member State” (PMS)).

3. The visit was carried out by two members of the CPT, Wolfgang HEINZ, 2<sup>nd</sup> Vice-President, and Inga HARUTUNYAN, who were supported by Marco LEIDEKKER and Christian LODA from the CPT’s Secretariat, and assisted by Alan MITCHELL, former Head of the Scottish Prison Health-Care Service (expert).

### **B. Cooperation between the CPT and the Italian authorities**

4. The level of cooperation received from the Italian authorities and from the State Police in particular was excellent.<sup>1</sup> The delegation had access to all places of deprivation of liberty it wished to visit, in particular the Identification and Expulsion Centre (Centro di Identificazione ed Espulsione - CIE) Ponte Galeria in Rome, as well as to coaches, vans and aircrafts hired for the removal operation.

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 detainees in private.

5. It has been the CPT’s consistent policy, when monitoring a removal operation by air, to observe the physical handover of the detainees to the local immigration/border police officials. In this particular case, the physical handover of the detainees to the local authorities took place inside the aircraft. However, this is by far not always the case; handovers may also take place in a dedicated space in the arrival hall at the airport, or on the tarmac.

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<sup>1</sup> It should also be noted that the delegation benefited from exemplary cooperation from the two other national escort teams and the Frontex staff, both those present on board and those in Warsaw.

With this in mind, in a more global perspective, the CPT would encourage 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 to 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.**

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

### A. Preliminary remarks

6. The Joint Return Operation (JRO) between Italy and Nigeria was the second removal operation by air coordinated and co-financed by Frontex, monitored by the CPT. In 2013, a delegation of the Committee was on board a joint flight to Lagos from Rotterdam, with the Netherlands as Organising Member State.<sup>2</sup> In addition to JROs, in October 2012, a CPT delegation monitored a removal operation by air between London and Colombo (Sri Lanka), organised by the authorities of the United Kingdom.

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 7<sup>th</sup> General Report on the CPT's activities (CPT/Inf (97) 10, paragraphs 24 to 36). The CPT also set out in that report some basic rules concerning the use of force and means of restraint in the context of removal operations. In 2003, in its 13<sup>th</sup> General Report (CPT/Inf (2003) 35, paragraphs 27 to 45), the Committee set out 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 commenced its activities, there have been positive developments regarding the standards surrounding forced removal (by air).

For example, in its 7<sup>th</sup> General Report the CPT observed that certain restraint techniques could lead to "positional asphyxia". By 2015, the use of these techniques has been largely banned in Europe, including during Frontex joint return operations.<sup>3</sup> **The CPT welcomes this development. It is important that this positive trend be sustained, also 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;<sup>4</sup>
- 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;<sup>5</sup>

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<sup>2</sup> CPT/Inf (2013) 14.

<sup>3</sup> Article 3, Code of Conduct for joint return operations coordinated by Frontex.

<sup>4</sup> 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.

<sup>5</sup> 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 detainees, 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.<sup>6</sup>

Further, Frontex is in the process of drafting the “Guide for Joint Return Operations by Air coordinated by Frontex”. While the Guide has not yet been adopted, the CPT’s delegation noted that the representatives of the OMS, the PMS and Frontex followed the procedures and practices set out in the draft Guide diligently.<sup>7</sup>

9. In the case of the Joint Return Operation monitored by the CPT’s delegation, the male detainees were flown on the morning of departure from Belgium, Switzerland and, on a domestic flight, from Sicily to Rome airport. The female detainees were taken to Rome Fiumicino Airport by bus as they had been accommodated in its vicinity, at CIE Ponte Galeria.

10. The CPT’s delegation monitored the following parts of the operation: the collection and transport of the female detainees from CIE Ponte Galeria to Rome Airport; the flight of 20 male detainees from Palermo to Rome; the boarding of the Lagos-bound aircraft (including boarding preparations at Rome Airport); the six-hour flight to Lagos; and the subsequent handover to the Nigerian authorities.

11. Initially, the intention had been to remove 46 Nigerian detainees, from Italy (20 men and 13 women), Belgium (two men), Norway (six men), Sweden (two men) and Switzerland (three men).

In the end, 28 detainees (five women and 23 men, including two men from Belgium and two men from Switzerland) were removed to Lagos. During the flight, they were accompanied by 104 staff members: escorts; a medical team (a doctor and a nurse); a team of the Italian Scientific Police<sup>8</sup> filming the operation; and a back-up escort team. In addition, besides the CPT’s delegation, a human rights monitor from Switzerland<sup>9</sup> and the Frontex coordinator were on board.

12. For two main reasons, the number of detainees removed to Nigeria was considerably lower than initially planned: there were technical problems with the connecting flight from Norway and Sweden, which led to the withdrawal of these PMS, and the Italian authorities had decided overnight to suspend the forced removal of seven of the 13 women.

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<sup>6</sup> Convention on Offences and Certain Other Acts Committed On Board Aircraft, signed at Tokyo on 14 September 1963: <http://www.un.org/en/sc/ctc/docs/conventions/Conv1.pdf>.

<sup>7</sup> The draft version was dated 28 October 2015.

<sup>8</sup> According to the Italian Escort Leader, the Scientific Police was on board to film the operation in order to be able to protect escort staff from unfounded allegations of ill-treatment.

<sup>9</sup> The flights from Belgium and Switzerland had monitors on board. The Swiss monitor was working for the National Preventive Mechanism. The Belgian monitors were police officers working for the Ministry of the Interior’s police inspectorate. The Belgian monitors did not board the joint flight.



13. As to the latter reason, the decision of the Italian authorities not to remove seven of the women was taken after the CPT's delegation had visited CIE Ponte Galeria on 16 December 2015, where it held interviews with the 13 Nigerian women listed to be removed.

From the interviews, it transpired that all of these 13 women had had their application for asylum rejected by the first instance Territorial Commission for the Recognition of International Protection<sup>10</sup> and had subsequently appealed this decision to the Rome City Court. No information as to the pending legal procedures could be found in the women's removal files. Apparently, such a state of affairs is not unusual.

**The CPT recommends that steps be taken to ensure that the removal files of all persons detained in CIE Ponte Galeria are updated and contain all the relevant information, including on pending legal procedures.**

14. After the CPT's delegation visit to the CIE Ponte Galeria the Italian escort leader had received an email late at night from the lawyer responsible for the cases of several of the Nigerian women, confirming that he had launched appeals in a number of cases (in four cases already on 3 December 2015).<sup>11</sup> Consequently, the Italian authorities decided to halt the removal operation for seven women.<sup>12</sup> The delegation was informed that they are awaiting the decision on their appeal in liberty, after having been released by the Rome City Court.<sup>13</sup>

15. The CPT was told that the removal of the 13 Nigerian detainees would have been in accordance with Italian law, given that an appeal against a negative decision on a request for asylum by the first instance Territorial Commission does not have automatic suspensive effect.<sup>14</sup>

16. Having said this, the CPT noted that the cases of several Nigerian asylum seekers in 2014 and 2015 displayed a marked difference of view between the first instance Territorial Commission for Rome and its appeal body, the Rome City Court: while the Territorial Commission considers Nigeria sufficiently safe to receive irregular migrants, with the exception of the areas affected by the activities of Boko Haram, the Rome City Court considered in several cases that persons originating from the southern part of the country are also eligible for international protection in light of a "generalised climate of conflict whose boundaries cannot be defined with certainty".<sup>15</sup>

Further, although the case law of the European Court of Human Rights provides that in asylum cases an appeal against a negative first-instance decision does not have to lead to an automatic suspension of the removal, it does make an exception for cases where there is a violation

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<sup>10</sup> A four-member body designated to decide on asylum applications. It is composed by two officials from the Ministry of the Interior, one representative from the UNHCR and one local government representative.

<sup>11</sup> The delegation received this information from the Italian escort leader.

<sup>12</sup> Seven of the 13 women to be removed remained in CIE Ponte Galeria and an eighth woman was returned to the CIE from the airport.

<sup>13</sup> The release took place following the mandatory review of the detention. The CPT's delegation was informed that the Rome City court had found that there was no ground for the detention of the Nigerian women in a CIE due to the fact that they had never been issued an expulsion order but simply a refusal of entry at the border at the time of their interception at sea in September 2015. Their release was in accordance with Section 6, paragraph 3 of the Legislative Decree 142/2015 of 18 August 2015.

<sup>14</sup> See Section 35, paragraph 7 of the Legislative Decree 25/2008 of 28 January 2008, according to which the court must decide within five days on the suspensive effect of the appeal.

<sup>15</sup> See for instance decisions 12955/2015 and 19049/2015, issued by the First Civil Section of the Rome City Court.

of the principles enshrined in Article 3 of the European Convention on Human Rights, or a risk thereof.<sup>16</sup> Also, the European Court itself has granted interim measures under Rule 39 of the Rules of the Court in cases concerning a removal to Nigeria.<sup>17</sup>

17. By consequence, in cases of rejected Nigerian asylum seekers, the possibility that the (Rome) City Court will not allow the Italian authorities to carry out a removal operation to Nigeria or that the removal operation will become the subject of an interim measure under Rule 39 of the Rules of the Court is not negligible. In this context it is relevant that, according to information received by the CPT, in the case of one of the women removed to Nigeria on 17 December 2015, the competent court had decided to grant suspension of removal and that this decision was communicated to the State Police after the joint flight had departed from Rome Airport. **The CPT would like to receive the comments of the Italian authorities on this matter and to be informed of any subsequent action taken.**

18. To avoid the implementation of a removal having a potentially irreversible effect in breach of Article 3 of the European Convention on Human Rights, a removal of an asylum seeker should not be carried out when a request for its suspension is under scrutiny of a (higher) court, either in a separate procedure or as part of an appeal against a negative decision on an asylum request. Neither should a removal of an asylum seeker take place if a request for such a suspension remains legally possible.<sup>18</sup> If necessary, the relevant legislation should be amended to this end. Further, the Italian authorities should inform detainees subject to a removal operation and their lawyers. Also, immediately before the handover a last contact between the representatives of the State Police on board the plane and their headquarters in Italy is essential in order to verify whether a last judicial injunction has been issued by a national Court (or the European Court of Human Rights) during the flight (a “last call procedure”).

**In order to reduce the risk of a violation of the principle of non-refoulement, the CPT recommends that the Italian authorities ensure that a foreign national is not removed when:**

- a court has suspended such removal;
- a request for suspension of removal is pending before a court;
- such a request for suspension is legally possible.

**To this end, the Italian authorities should ensure that all relevant actors, notably the escort leader, should at all times be fully informed of the state of legal proceedings of the detainees to be removed, up to the moment of handover. Two important practical safeguards should be put in place:**

- the detainees subject to a removal operation and their lawyers should be informed of the removal operation;
- a “last call procedure” as regards removal operations (by air), in line with the remarks above.

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<sup>16</sup> The European Court of Human Rights has, through its case-law on Article 3 of the ECHR, extended the principle of non-refoulement to all persons who would be exposed to a real risk of torture, inhuman or degrading treatment or punishment should they be returned to a particular country.

<sup>17</sup> See for example the European Court of Human Rights decisions in the cases *L.O. v. France* (Application no. 4455/14), *OBI v. the United Kingdom* (Application no. 8206/14) and *B.A. v. France* (Application no. 74694/14).

<sup>18</sup> As concerns Italy, after notification of the negative decision by the Territorial Commission, the asylum seeker has 15 days to appeal. After reception of the appeal, a judge has to decide within five days whether or not the appeal has suspensive effect as to the removal of the asylum seeker.

**B. The joint flight: preparation, execution and handover to the Nigerian authorities**

19. The practice of removal of foreign nationals is a frequent and widespread practice throughout Europe, including in Italy. According to the Italian authorities, in 2015, 14,113 persons were the subject of removal operations from Italy while the country has participated in 11 JROs coordinated by Frontex.<sup>19</sup>

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).

20. From the outset, the CPT wishes to make it clear that its delegation did not observe any 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 Italian escorts to engage with the detainees throughout the operation.

**1. Preparation for removal**

21. As mentioned in paragraph 10 above, the CPT's delegation monitored the preparation for removal in respect of the 13 female detainees accommodated in CIE Ponte Galeria.<sup>20</sup>

22. The women were only informed of their imminent removal on the morning of the flight. Despite such last minute notification, the detainees were calm and cooperative: they underwent a pat down search and boarded the bus to the airport without resistance. They were also given a lunch bag, containing sandwiches and water.

Each detainee was accompanied by two female escorts at all times, and means of restraint were not applied. After boarding the bus, it took approximately one hour before the bus left for Rome Airport, due to the delayed (and later cancelled) arrival of the connecting flight from Norway and Sweden. During this wait, the Nigerian women remained on the bus and became increasingly anxious. For their part, the escorts continued to engage with the detainees, which had a calming effect.

While their personal belongings had been put in a plastic bag, which was sealed and taken on board, their personal files were handed over to them in person. As these personal files contained health-care records, it was unfortunate that medical confidentiality was not respected: the copies were handed over to the women by an interpreter and not in a closed envelope.

**The CPT invites the Italian authorities to ensure that personal files are handed over in a closed envelope.**

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<sup>19</sup> Communication from the Commission to the European Parliament and the Council Progress Report on the Implementation of the hotspots in Italy (COM (2015) 679 final).

<sup>20</sup> The domestic flight between Palermo and Rome did not call for specific comments.

23. The CPT's delegation enquired as to the objective of the policy of informing detainees about their imminent removal only on the day of their departure and was given two reasons for this approach:

- late notification prevents detainees from self-harming in order to frustrate their removal;
- a forced removal is not certain until the day of departure.

These reasons are not fully convincing. The CPT would like to stress that leaving a person who is to be removed unaware of his/her scheduled removal (and, in particular, his/her 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 would like to receive the comments of the Italian authorities on the above.**

24. On a positive note, all detainees removed from Italy had been subjected to a personalised risk assessment, as provided for by an internal circular of the State Police.<sup>21</sup> The risk assessment is based on the detainee's behaviour in the CIE and leads to their classification as 'low', 'medium' or 'high risk'. In the case of the monitored joint flight, all detainees were considered to be of 'medium risk'. **The CPT would like to receive more details as to the risk assessment and how it is carried out.**

25. The outcome of the risk assessment was reflected in the individualised approach as regards, for instance, escort monitoring during a visit to the toilet. The delegation had been told that it was Frontex policy that the toilet door should remain slightly open during such visits. However, it observed that in several cases the detainee was allowed to close the door, with the escort waiting outside. **The CPT welcomes this approach.**

## **2. Execution of the removal**

26. With the exception of the group of men coming from Sicily, who upon arrival in Rome were taken directly to the aircraft, all the other detainees were, together with their escorts, assembled in separate rooms in a stand-alone building at Fiumicino Airport ("INAD centre"). They were allowed to go to the toilet.

27. The time in the INAD centre was used to verify the documentation that accompanied the detainees. Further, for the escort leaders of the OMS and the PMS, the assembly at the INAD centre provided the opportunity to coordinate their approaches, most notably as regards the application of means of restraint. It was agreed that if the situation was judged favourable, all restraints would be removed after take-off.

For her part, the medical doctor assigned to the joint flight reviewed the medical record of each detainee. In the case of detainees removed by the Italian authorities, the records had been drawn up by the doctors working at the two CIEs involved at the moment when the migrants had been admitted to the CIEs. The medical doctor did not examine any of the detainees in person and none of the detainees were refused access to the joint flight on medical grounds.

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<sup>21</sup> Internal Circular of the Italian Ministry of the Interior on the "Organisation of Return Operations" of 5 May 2010.

28. Under the terms of the relevant EU decision,<sup>22</sup> the use of both “standardised forms for medical records” and fit-to-fly declarations is encouraged. Moreover, the OMS has the right to refuse access to a joint flight to any detainee with a medical condition rendering their return not compatible with the principles of safety and dignity.

However, at present, there exists no legal obligation to carry out a medical examination on a detainee on the eve of a removal in order to establish his or her fitness to be removed.

29. In its 13th General Report,<sup>23</sup> following certain incidents that had taken place in the past, the CPT stressed the importance that should be attached to allowing detainees to undergo a medical examination before the implementation of a removal operation by air: the fit-to-fly certificate.<sup>24</sup> The Committee of Ministers of the Council of Europe did likewise when adopting its “Twenty Guidelines on Forced Return” in 2005.<sup>25</sup>

The fact that persons are medically examined on admission to a CIE does not automatically mean that they will be fit to travel when their removal takes place. Furthermore, the substance of the medical examination carried out on admission to a detention centre might well not cover the large amount 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 aircraft.

In the CPT’s opinion, the above-mentioned arguments fully justify the principle that every person being removed (by air) should undergo a medical examination prior to his/her departure (i.e. a few days before). Furthermore, a medical examination of the person to be removed should be systematically carried out.

The CPT was pleased to note that the draft “Guide for Joint Return Operations by Air coordinated by Frontex”<sup>26</sup> 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 should be filled in and the CPT assumes that this implies a medical examination should be carried out on the eve of the removal. Further, the draft 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”.

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<sup>22</sup> 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.

<sup>23</sup> See CPT/Inf (2003) 35, paragraph 39.

<sup>24</sup> “Certain incidents that have occurred during deportation operations have highlighted the importance of allowing immigration detainees to undergo a medical examination before the decision to deport them is implemented. This precaution is particularly necessary when the use of force and/or special measures is envisaged. Similarly, all persons who have been the subject of an abortive deportation operation must undergo a medical examination as soon as they are returned to detention (whether in a police station, a prison or a holding facility specially designed for foreigners). In this way it will be possible to verify the state of health of the person concerned and, if necessary, establish a certificate attesting to any injuries. Such a measure could also protect escort staff against unfounded allegations.”

<sup>25</sup> CM (2005)40, 4 May 2005, Principle 16.

<sup>26</sup> Version 28 October 2015, paragraph 6.1.17.

**The CPT recommends that detainees subject to a removal operation should undergo a medical examination before the decision to remove them is implemented both for Joint Return Operations coordinated by Frontex and for removal operations organised by the Italian authorities. Further, all persons returning to detention after a failed removal operation should undergo a medical examination upon admission to the detention centre.**

30. After approximately two hours of waiting in the INAD centre, buses took the detainees to the aircraft. The buses parked a few steps away from the stairs and the detainees boarded the aircraft one by one, each accompanied by two escorts: one climbing the stairs behind the detainee and the other one in front of him/her.

In order to cross the few metres between the bus and the stairways, the detainees had to pass through a group of uniformed and armed police officers.

At the platform at the top of the stairway, a member of the back-up team had positioned himself in order to prevent detainees from jumping off. However, the staircase to the aircraft was not enclosed and there were no mattresses placed underneath the stairs.

31. The boarding was completed rapidly and the plane took off at 14.25. Approximately 30 minutes after take-off, all means of restraint were removed and were not reapplied during the remainder of the flight (see paragraph 38).

During the flight, the detainees were provided with a hot meal and a cold drink, and requests to visit the toilet were complied with.

32. The doctor and nurse on board were both formally employed by the State Police and had participated in a number of previous removal operations. While the services of neither were called upon during this flight, the delegation's doctor gained a positive impression in respect of their experience and professionalism.

Notwithstanding the above, the Committee believes that in order to reduce the potential for any conflict of dual obligations and to best assure the clinical independence of healthcare staff, it would be preferable if the medical staff participating in a removal operation were to be engaged by an authority distinct from the agency responsible for the operation itself, (in this case the State Police).

33. The medical member of the delegation checked the contents of the medical bag taken on board by the health-care team. The bag contained a wide variety of equipment and medication, including painkillers, sedatives, antibiotics and equipment to measure blood sugar level and blood pressure. There was no defibrillator, as such equipment could interfere with the aircraft's navigation instruments and was therefore not allowed by the aircraft commander. The CPT's delegation was somewhat puzzled by the aircraft commander's position since a defibrillator is now considered standard equipment on many commercial flights.

Both health-care professionals confirmed that the use of sedatives during removal operations was for the comfort of the detainees only and were only administered at their request: they were not used as chemical restraint. **The CPT welcomes this approach, which reflects the Committee's position on this issue.**

34. The handover procedure took place on board the plane and was similar to the one described in the 2013 CPT report on the Joint Return Operation between Rotterdam and Lagos,<sup>27</sup> and was effectuated without incident.

35. During the return flight to Rome, shortly after take-off, an efficient debriefing was organised in which escort leaders, the medical team and monitors participated.

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<sup>27</sup> CPT/Inf (2015)14, paragraph 38.

## C. Other issues related to the CPT's mandate

### 1. Use of force

36. 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.

Not only legislation, but also police culture and training vary from one Frontex State Party to another, therefore it comes as no surprise that escorts from Frontex State Parties have displayed different approaches as concerns the use of means of restraint during a JRO.

37. As soon as the aircraft is “in flight”, the provisions of the 1963 Tokyo Convention apply, whereby Article 6 assigns 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.

38. 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.<sup>28</sup> 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 December 2015, and escort leaders agreed on their approach to the application of means of restraint during a coordination meeting at the INAD centre (see paragraph 27).

Nevertheless, the different national approaches remained visible. For instance, while the escort teams from Switzerland and Belgium used the so-called French belts, the Italian teams relied on velcro wrist bands. Further, while the Belgian escorts removed the means of restraint before boarding the joint flight to Lagos, despite one of the detainees having a history of resistance, the Swiss escorts only removed the restraints once the joint flight had departed. For their part, the Italian escorts applied the velcro wrist restraints to the male detainees during the boarding procedure in Sicily and Rome and for disembarkation in Rome, and removed them during both flights (from Sicily to Rome and the joint flight from Rome to Lagos).

39. 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.<sup>29</sup> 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 Italian authorities on the above and it would be useful that this matter be brought to the attention of Frontex and its State Parties.**

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<sup>28</sup> CPT/Inf (2013) 14, paragraph 32.

<sup>29</sup> CPT/Inf (2013) 14, paragraph 32.



40. The wearing of identification tags by staff involved in removal operations is also an important safeguard against possible abuse. Although all escort and senior staff were wearing vests indicating their respective role, the delegation noted that the State Police escort staff did not wear an identification tag on their civilian clothes. **The CPT recommends that all State Police escort staff wear a visible identification tag to make them easily identifiable (either by their name or an identification number).**

## **2. Staff-related issues**

41. 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.

The 800 State Police staff assigned to escort duties are all voluntary and carry out two or three removal operations per month. The CPT was informed that the selection was primarily based on language skills. Further, escorts must be under 45 years of age and physically fit (for which they have to pass a medical exam).

Before becoming operational, aspirant escorts receive additional English language training and are taught about the procedures, practices, rules and regulations to be respected during removal operations. In addition, escorts receive training organised by Frontex as well as updates organised by the Italian authorities.

42. 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 was pleased to note that care was taken to rotate escorts regularly between escort and regular police duties, limiting the escort duties to two or three removal operations a month.

**The CPT recommends that due attention is being given to the psychological aspects of escort duty, including during selection, training and after return from an escort assignment. Further, the CPT would like to receive additional information as to the training curriculum for escorts.**

## **3. Complaints and monitoring**

43. At present, Joint Return Operations do not have a proper complaints mechanism: detainees 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.

44. The CPT is aware of a proposal for an European Union regulation on a European Border and Coast Guard,<sup>30</sup> currently under discussion. In the proposal, the European Commission lays the framework for a complaints mechanism, inter alia, applicable to removal operations. The new mechanism revolves around a dedicated Fundamental Rights Officer of the proposed Agency, who receives complaints in writing, by means of a standardised complaints form.

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 to whom the complaint is directed are Agency staff or member state officials, the Fundamental Rights Officer forwards the complaint to the Agency’s executive director or to the authorities of the member state involved. The recipient shall assure an “appropriate follow-up”. The draft regulation does not specify or apply conditions on such “appropriate follow-up”.

45. The CPT has consistently advocated the setting up of effective complaints procedures, both internal and external, for any complaints from detainees about their treatment by law enforcement officers. Such 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, expediently and thoroughly. In addition, the external procedure should meet the requirements of independence. **The CPT would like to receive the comments of the Italian authorities on the above and would encourage that this matter be brought to the attention of Frontex and its State Parties.**

46. In its 13<sup>th</sup> General Report (see CPT/Inf (2003) 35, paragraph 45), the CPT stressed the importance of the role to be played by monitoring systems in areas as sensitive as removal operations by air. The Committee understands that the monitoring of removal operations by air will be carried out by members of the office of the *Garante Nazionale dei Detenuti* (acting as National Preventive Mechanism and created through the Decree 11 March 2015, no. 36) whose Head was appointed on 6 February 2016 by the President of the Republic. **The CPT would like to receive detailed information on the mandate, powers and means assigned to the Garante Nazionale dei Detenuti to fulfil this new monitoring mission.**

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<sup>30</sup> 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.