



Deportation of foreign nationals by air

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27. As from the beginning of its activities, the CPT has examined the conditions of detention of persons deprived of their liberty under aliens legislation, and this issue was dealt with in a section of the CPT's 7th General Report (CPT/Inf (97) 10, paragraphs 24 to 36). The CPT set out in that report some basic rules concerning the use of force and means of restraint in the context of procedures for the deportation of immigration detainees.

28. The CPT's visits since that report have enabled it to flesh out its knowledge of practices concerning the deportation of foreign nationals by air. During its visits, the CPT has concentrated on procedures involving forcible departure with an escort¹, and on a number of cases brought to its attention, in particular because of the death of the deported person, the extent of the means of restraint used and/or allegations of ill-treatment. The CPT did not confine its examination to the procedure followed when the person concerned boarded the plane and during the flight; it also monitored many other aspects, such as detention prior to deportation, steps taken to prepare for the immigration detainee's return to the country of destination, measures to ensure suitable selection and training of escort staff, internal and external systems for monitoring the conduct of staff responsible for deportation escorts, measures taken following an abortive deportation attempt, etc.

29. In order to be able to make a detailed study of the procedures and means used during deportation operations, the CPT obtained copies of the relevant instructions and directives. It also obtained copies of many other documents (statistics on deportation operations, escort assignment orders, escort assignment reports, incident reports, reports in the context of legal proceedings, medical certificates, etc.) and examined the restraint equipment used during deportation operations. It also had detailed interviews in various countries with those in charge of units responsible for deportation operations and with prospective deportees met on the spot, some of whom had been brought back to holding facilities after an abortive deportation attempt.

30. After its visits, the CPT drew up a number of guidelines, which it recommended the countries concerned to follow. In order to promote widespread application of these guidelines in all the States Parties to the Convention, the Committee has decided to group together the most important principles and comment on them below.

¹ Deportation procedures tend to be classified according to a number of factors, such as the extent to which force is used, the type of means of restraint employed, and the number of persons escorting the deportee. For example, one of the countries visited recently distinguished between departures in which no resistance was offered, forcible departures without an escort and forcible departures with an escort. In general, the most problematic procedures were those involving the combined use of force, several means of restraint and a large number of escort staff until the deportee's arrival in the country of final destination.

Of course, what follows must be read in the light of a State's fundamental obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment.

31. The CPT recognizes that it will often be a difficult and stressful task to enforce a deportation order in respect of a foreign national who is determined to stay on a State's territory. It is also clear, in the light of all the CPT's observations in various countries – and particularly from an examination of a number of deportation files containing allegations of ill-treatment – that deportation operations by air entail a manifest risk of inhuman and degrading treatment. This risk exists both during preparations for deportation and during the actual flight; it is inherent in the use of a number of individual means/methods of restraint, and is even greater when such means/methods are used in combination.

32. At the outset it should be recalled that **it is entirely unacceptable for persons subject to a deportation order to be physically assaulted as a form of persuasion to board a means of transport or as a punishment for not having done so.** The CPT welcomes the fact that this rule is reflected in many of the relevant instructions in the countries visited. For instance, some instructions which the CPT examined prohibit the use of means of restraint designed to punish the foreigner for resisting or which cause unnecessary pain.

33. Clearly, one of the key issues arising when a deportation operation is carried out is the use of force and means of restraint by escort staff. The CPT acknowledges that such staff are, on occasion, obliged to use force and means of restraint in order to effectively carry out the deportation; however, **the force and the means of restraint used should be no more than is reasonably necessary.** The CPT welcomes the fact that in some countries the use of force and means of restraint during deportation procedures is reviewed in detail, in the light of the principles of lawfulness, proportionality and appropriateness.

34. The question of the use of force and means of restraint arises from the moment the detainee concerned is taken out of the cell in which he/she is being held pending deportation (whether that cell is located on airport premises, in a holding facility, in a prison or a police station). The techniques used by escort personnel to immobilise the person to whom means of physical restraint – such as steel handcuffs or plastic strips – are to be applied deserve special attention. In most cases, the detainee will be in full possession of his/her physical faculties and able to resist handcuffing violently. In cases where resistance is encountered, escort staff usually immobilise the detainee completely on the ground, face down, in order to put on the handcuffs. Keeping a detainee in such a position, in particular with escort staff putting their weight on various parts of the body (pressure on the ribcage, knees on the back, immobilisation of the neck) when the person concerned puts up a struggle, entails a risk of positional asphyxia².

There is a similar risk when a deportee, having been placed on a seat in the aircraft, struggles and the escort staff, by applying force, oblige him/her to bend forward, head between the knees, thus strongly compressing the ribcage. In some countries, the use of force to make the person concerned bend double in this way in the passenger seat is, as a rule, prohibited, this method of immobilisation being permitted only if it is absolutely indispensable in order to carry out a specific, brief, authorised operation, such as putting on, checking or taking off handcuffs, and only for the duration strictly necessary for this purpose.

² See, in particular, "Positional Asphyxia – Sudden Death", US Department of Justice, June 1995, and the proceedings of the "Safer Restraint" Conference held in London in April 2002 under the aegis of the UK Police Complaints Authority (cf. www.pca.gov.uk).

The CPT has made it clear that **the use of force and/or means of restraint capable of causing positional asphyxia should be avoided whenever possible and that any such use in exceptional circumstances must be the subject of guidelines designed to reduce to a minimum the risks to the health of the person concerned.**

35. The CPT has noted with interest the directives in force in certain countries, according to which means of restraint must be removed during the flight (as soon as take-off has been completed). If, exceptionally, the means of restraint had to be left in place, because the deportee continued to act aggressively, the escort staff were instructed to cover the foreigner's limbs with a blanket (such as that normally issued to passengers), so as to conceal the means of restraint from other passengers.

On the other hand, instructions such as those followed until recently in one of the countries visited in connection with the most problematic deportation operations, whereby the persons concerned were made to wear nappies and prevented from using the toilet throughout the flight on account of their presumed dangerousness, can only lead to a degrading situation.

36. In addition to the avoidance of the risks of positional asphyxia referred to above, the CPT has systematically recommended **an absolute ban on the use of means likely to obstruct the airways (nose and/or mouth) partially or wholly.** Serious incidents that have occurred in various countries over the last ten years in the course of deportations have highlighted the considerable risk to the lives of the persons concerned of using these methods (gagging the mouth and/or nose with adhesive tape, putting a cushion or padded glove on the face, pushing the face against the back of the seat in front, etc.). The CPT drew the attention of States Parties to the Convention to the dangers of methods of this kind as far back as 1997, in its 7th General Report. It notes that this practice is now expressly prohibited in many States Parties and **invites States which have not already done so to introduce binding provisions in this respect without further delay.**

37. It is essential that, in the event of a flight emergency while the plane is airborne, the rescue of the person being deported is not impeded. Consequently, **it must be possible to remove immediately any means restricting the freedom of movement of the deportee, upon an order from the crew.**

Account should also be taken of the health risks connected with the so-called "economy-class syndrome" in the case of persons who are confined to their seats for long periods³.

38. Two particular points were of concern to the CPT after visits to certain countries: the wearing of masks by deportation escorts and the use, by the latter, of incapacitating or irritant gases to remove immigration detainees from their cells in order to transfer them to the aircraft.

In the CPT's opinion, **security considerations can never serve to justify escort staff wearing masks during deportation operations.** This practice is highly undesirable, since it could make it very difficult to ascertain who is responsible in the event of allegations of ill-treatment.

The CPT also has very serious reservations about the use of incapacitating or irritant gases to bring recalcitrant detainees under control in order to remove them from their cells and transfer them to the aircraft. The use of such gases in very confined spaces, such as cells, entails manifest risks to the health of both the detainee and the staff concerned. Staff should be trained in other control techniques (for instance, manual control techniques or the use of shields) to immobilise a recalcitrant detainee.

³ See, in particular, "Frequency and prevention of symptomless deep-vein thrombosis in long-haul flights: a randomised trial", John Scurr et al, *The Lancet*, Vol. 357, 12 May 2001.

39. 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.

40. During many visits, the CPT has heard allegations that immigration detainees had been injected with medication having a tranquillising or sedative effect, in order to ensure that their deportation proceeded without difficulty. On the other hand, it also noted in certain countries that instructions prohibited the administration, against the will of the person concerned, of tranquillisers or other medication designed to bring him or her under control. **The CPT considers that the administration of medication to persons subject to a deportation order must always be carried out on the basis of a medical decision taken in respect of each particular case. Save for clearly and strictly defined exceptional circumstances, medication should only be administered with the informed consent of the person concerned.**

41. **Operations involving the deportation of immigration detainees must be preceded by measures to help the persons concerned organise their return, particularly on the family, work and psychological fronts.** It is essential that immigration detainees be informed sufficiently far in advance of their prospective deportation, so that they can begin to come to terms with the situation psychologically and are able to inform the people they need to let know and to retrieve their personal belongings. The CPT has observed that a constant threat of forcible deportation hanging over detainees who have received no prior information about the date of their deportation can bring about a condition of anxiety that comes to a head during deportation and may often turn into a violent agitated state. In this connection, the CPT has noted that, in some of the countries visited, there was a psycho-social service attached to the units responsible for deportation operations, staffed by psychologists and social workers who were responsible, in particular, for preparing immigration detainees for their deportation (through ongoing dialogue, contacts with the family in the country of destination, etc.). Needless to say, **the CPT welcomes these initiatives and invites those States which have not already done so to set up such services.**

42. The proper conduct of deportation operations depends to a large extent on the quality of the staff assigned to escort duties. Clearly, **escort staff must be selected with the utmost care and receive appropriate, specific training designed to reduce the risk of ill-treatment to a minimum.** This was often far from being the case in the States Parties visited. In some countries, however, special training had been organised (methods and means of restraint, stress and conflict management, etc.). Moreover, certain management strategies had had a beneficial effect: the assignment of escort duties to staff who volunteered, combined with compulsory rotation (in order to avoid professional exhaustion syndrome and the risks related to routine, and ensure that the staff concerned maintained a certain emotional distance from the operational activities in which they were involved) as well as provision, on request, of specialised psychological support for staff.

43. **The importance of establishing internal and external monitoring systems in an area as sensitive as deportation operations by air cannot be overemphasised.** The CPT observed that in many countries, specific monitoring systems had, unfortunately, been introduced only after particularly serious incidents, such as the death of deportees.

44. **Deportation operations must be carefully documented.** The establishment of a comprehensive file and a deportation record, to be kept for all operations carried out by the units concerned, is a basic requirement. Information on abortive deportation attempts should receive special attention and, in particular, the reasons for abandoning a deportation operation (a decision taken by the escort team on managerial orders, a refusal on the part of the captain of the aircraft, violent resistance on the part of the deportee, a request for asylum, etc.) should be systematically recorded. The information recorded should cover every incident and every use of means of restraint (handcuffs; ankle cuffs; knee cuffs; use of self-defence techniques; carrying the deportee on board; etc.).

Other means, for instance audiovisual, may also be envisaged, and are used in some of the countries visited, in particular for deportations expected to be problematic. In addition, surveillance cameras could be installed in various areas (corridors providing access to cells, route taken by the escort and the deportee to the vehicle used for transfer to the aircraft, etc.).

45. **It is also beneficial if each deportation operation where difficulties are foreseeable is monitored by a manager from the competent unit, able to interrupt the operation at any time.** In some of the countries visited, the CPT found that there were spot checks, both during preparations for deportation and during boarding, by members of internal police supervisory bodies. What is more, in an admittedly limited number of cases, members of the supervisory bodies boarded aircraft incognito and thus monitored the deportee and the escort until arrival at the destination. The CPT can only welcome these initiatives, which are all too rare at present in Europe.

Further, **the CPT wishes to stress the role to be played by external supervisory (including judicial) authorities, whether national or international, in the prevention of ill-treatment during deportation operations.** These authorities should keep a close watch on all developments in this respect, with particular regard to the use of force and means of restraint and the protection of the fundamental rights of persons deported by air.