



PUSHBACKS OF FOREIGN NATIONALS

CPT

**EUROPEAN COMMITTEE
FOR THE PREVENTION OF
TORTURE AND INHUMAN OR
DEGRADING TREATMENT OR
PUNISHMENT**

IMMIGRATION STANDARD

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THE PREVENTION OF ILL-TREATMENT OF FOREIGN NATIONALS DEPRIVED OF THEIR LIBERTY IN THE CONTEXT OF FORCED REMOVALS AT BORDERS

PRELIMINARY REMARKS

The prevention of ill-treatment of refugees, asylum seekers and migrants deprived of their liberty¹ within the Council of Europe area remains a priority for the CPT. In its 7th and 19th General Reports², the Committee set out its thinking on the rights of foreign nationals in immigration detention. Since 2009, the CPT has continued to receive numerous allegations of ill-treatment of foreign nationals by state officials and to visit immigration detention centres with appalling conditions.



**Many persons have been violently removed from Europe
without consideration of their individual situation**

In addition, the CPT it has met increasing numbers of persons who claimed that they had been violently removed by force from the territory of a Council of Europe country, at land or sea borders, without consideration of their individual circumstances, vulnerabilities, protection needs or risk of ill-treatment when returned (so-called “pushbacks”).

The increasing resort to pushbacks in recent years with minimal accountability by state actors has led the CPT to set out its views in the paragraphs below on the need to put in place appropriate oversight structures to end this phenomenon. All persons deprived of their liberty should be treated with dignity and in accordance with human rights principles as recognised by international law.

The numerous reported instances of summary and forced removals of foreign nationals at several Council of Europe member states’ land and sea borders – characterised, *inter alia* by acts of physical ill-treatment, disregard for basic legal safeguards and access to asylum, and poor material conditions of detention – have been documented by various international and civil society organisations, including through the use of geolocation technology.

The widespread phenomenon of pushbacks – both in their scale and geographical scope – has been denounced by the Parliamentary Assembly of the Council of Europe, the Council of Europe Commissioner for Human Rights and the European Parliament, among others.

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1. The generic term “foreign nationals deprived of their liberty” is used to describe persons on the move and includes refugees, asylum seekers and migrants, regardless of their legal status.
 2. See [CPT/Inf \(97\) 10](#), paragraphs 24 to 36, and [CPT/Inf \(2009\) 27](#), paragraphs 75 to 100.

In conducting its fact-finding visits, the CPT is well aware of the context in which pushbacks of different categories of foreign nationals at borders take place. This is characterised by the rapidly changing circumstances of mixed-migratory flows and complexities relating to large-scale arrivals of persons on the move to European countries, and more specifically those within the European Union (EU).

Migration routes shift unpredictably due to conflict, poverty, politics, and human smuggling networks

The Committee's experience shows that migration routes can change unpredictably as they are linked to external factors, such as conflict, poverty, volatile political situations in the countries of origin or transit, and the sophistication of human smuggling networks.

In addition, states multiply their policy, legislative and practical measures aiming to obtain full control over their borders. Reinforcement of border controls, construction of fences along borders, resorting to deterrence policies to reduce pull-factors, use of surveillance technologies, increasing provision of technical and operational support by the European Border and Coast Guard Agency (Frontex), the progressive "externalisation" of migration controls and the "instrumentalisation" of migration have all become part of the changing landscape in which the CPT and other monitoring bodies carry out their assessments.

In its 2012 landmark judgment in the case of *Hirsi Jamaa and Others v. Italy*³ – relying, *inter alia* on the findings of the CPT – the European Court of Human Rights ("the Court") found that the forced return to Libya of 23 applicants who had *prima facie* claims for international protection was in violation of Article 3 of the European Convention on Human Rights ("the Convention", ETS No. 5) and Article 4 of Protocol No. 4 to the Convention (ETS No. 46). Since this judgment, the jurisprudence of the Court has developed consistently in ascertaining violations of Article 3 of the Convention, and notably its procedural limb (or in conjunction with Article 13).

The practice of summary and forced removal of asylum seekers may violate Article 3 ECHR

In particular, the practice of summary and forced removal of applicants intercepted at land or sea borders (or shortly after their entry into the territory of a Council of Europe member state) without an individual assessment by the authorities of the removing state of the merits of their asylum claims, has been found to violate a state's Article 3 obligations.

3. *Hirsi Jamaa and Others v. Italy*, application no. 27765/09, Grand Chamber judgment of 23 February 2012.

Further, the Court established that whenever a state has jurisdiction, for example by exercising control and authority over an individual, it is under an obligation to guarantee to that individual their Convention rights and freedoms. This principle applies regardless of where foreign nationals are intercepted or apprehended by state agents, whether operating inside or outside state territory. In addition, the Court has repeatedly drawn on the Committee's findings to conclude that the conditions in which detained foreign nationals had been held were in breach of Article 3 of the Convention which also had implications for transfers to some EU member states under the Dublin Regulation (Regulation (EU) 604/2013).

THE CPT'S MANDATE IN THE CONTEXT OF FORCED REMOVALS AT BORDERS

In examining the treatment of detained foreign nationals in the context of pushback operations at frontiers, the CPT has always respected the inviolable right of states to control their sovereign borders and acknowledged the disproportionate challenges faced by certain countries confronted with large-scale mixed-migratory arrivals, especially by virtue of their geographical situation. Consequently, the Committee has repeatedly stated in its reports that responding to these challenges requires a concerted European approach in addressing mixed-migration flows. At the same time, the CPT has been adamant in reaffirming that these challenges cannot absolve Council of Europe member states from meeting their human rights obligations.



International law forbids sending people to places where they risk torture

There can be no derogations from fundamental norms of international law such as the prohibition of torture and inhuman or degrading treatment of persons deprived of their liberty, and their right not to be sent back to a country where there are substantial grounds for believing that they would run a real risk of being subjected to such treatment.

During its monitoring activities at borders, the CPT's main task consists of preventing acts of torture, physical ill-treatment, and other forms of inhuman and degrading treatment by law enforcement officials⁴ against foreign nationals who are intercepted, apprehended or otherwise, *de jure* or *de facto*, deprived of their liberty. Attention is also paid by the Committee to the need to reinforce fundamental safeguards against ill-treatment and the procedural guarantees protecting them from being sent back to a country where they would be at risk of ill-treatment.

In sum, the CPT has a clear mandate to monitor the treatment of persons deprived of their liberty in the context of border control activities at land and sea borders of Council of Europe member states – regardless of whether such deprivation of liberty has taken place at official

4. The term "law enforcement officials" includes police and border guard officers and other state agents.



border crossings, the green border (territory between official land border crossing points), or international waters. The goal is to prevent possible violations of the substantive and procedural limbs of Article 3 of the Convention.

To this end, the Committee has begun to develop a cross-border fact-finding methodology which takes into account the clear and objective determination of *de facto* deprivation of liberty of foreign nationals, a rigorous interpretation of the various legal instruments governing such operations (irrespective of the different terminology and legal categorisations adopted by states), a forensic medical assessment of any injuries observed on the persons concerned and their ability to access an independent, individualised and objective asylum procedure in which the risk of *refoulement* can be rigorously examined.

THE CPT'S EXPERIENCE AND METHODOLOGY IN EXAMINING PUSHBACK OPERATIONS

The CPT has examined pushback practices along all the main migratory routes towards Europe (namely the so-called Western Balkan route, Western Mediterranean, Central Mediterranean and Eastern Mediterranean routes as well as, more recently, the Eastern Borders route). In doing so, it has visited police, border guard and coast guard stations, green border zones, pre-removal and reception facilities, transit zones and other places of *de facto* deprivation of liberty. In each place, it has spoken with foreign nationals about their treatment by law enforcement officials. Further, it has reviewed custody records, obtained copies of various logbooks (shift handover reports, shift charts, patrol reports, daily logbooks of sea vessels, lists of personnel involved in pushback operations, etc.) and examined CCTV footage of stationary and mobile thermo-visual cameras covering border areas, in the attempt to reconstruct the main elements of pushback operations and assess the levels of accountability and transparency.

The CPT identifies victims of pushbacks, gathers testimonies, and assesses medical evidence

The methodology applied by the CPT in the scrutiny of violent pushback operations consists of identifying the alleged victim, collecting a detailed account of the allegations, documenting any medical evidence and psychological impact on the victim and assessing their compatibility with the allegation. This includes a forensic examination of any injuries by the Committee's medical doctors (in compliance with the standards of the "Istanbul Protocol"⁵). Further, to corroborate the findings, a triangulation of the information is pursued through separate and individual interviews – with the help of interpreters as required – with members of the same migrant group and the examination of available medical documentation and injury reports.

In the course of its monitoring and fact-finding activities, the Committee has also been confronted with challenges inherent to the summary nature of pushback operations and their volatile context.

Key questions include whether migrants have been deprived of their liberty and identifying the source of their injuries

First and foremost, the Committee needed to establish whether persons on the move have been *de jure* or *de facto* deprived of their liberty by law enforcement officials, in the sense of Article 5 of the Convention (for instance, in terms of resort to handcuffing, transportation in a police van or escort to a gate in the border fence for a non-negligible period of time, and the coercive nature of the operation, including the threat and/or use of force).⁶

Further, the CPT needed to assess the compatibility of the injuries observed on foreign nationals with the alleged ill-treatment in terms of their origin being linked with the purported actions of law enforcement officials rather than stemming from alternative causes (for example, so-called "forest injuries", which the person might have sustained in the woods).

On some occasions, national authorities have challenged the CPT's findings and attempted to hinder the work of its delegations.

As concerns compliance with the principle of *non-refoulement*, the Committee examines in detail the system of safeguards afforded to intercepted and apprehended persons in each

5. Office of the United Nations High Commissioner for Human Rights (OHCHR), Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition), published on 29 June 2022.

6. See, for example, *Foka v. Turkey*, application no. 28940/95, judgment of 24 June 2008; *De Tommaso v. Italy*, application no. 43395/09, Grand Chamber judgment of 23 February 2017; and *Ilias and Ahmed v. Hungary*, application no. 47287/15, Grand Chamber judgment of 21 November 2019.

contextual situation. This raises issues such as the existence and enforcement of bilateral protocols for technical and police cooperation and readmission agreements with countries of destination (which do not always provide for sufficient procedural guarantees), as well as whether the existing asylum procedures provide for an effective protection against *refoulement* and/or chain *refoulement*.

||| Pushbacks to a European state risk “chain refoulement”

More specifically, in the case of a pushback to another Council of Europe member state, the CPT’s assessment is also guided by the objective risk of chain *refoulement* that the person concerned might face if removed onwards to a third country. Such an assessment might also be based on the Committee’s own observations and experience in the relevant country (in terms of access to an effective asylum procedure).

In the case of a forced removal to a non-Council of Europe member state, the CPT has often relied on country-of-origin information, the objective assessments of the risks in case of returns from the United Nations High Commissioner for Refugees (UNHCR) and whether the relevant country is a state party to the 1951 Convention relating to the Status of Refugees.

THE CPT’S SUBSTANTIVE FINDINGS IN THE CONTEXT OF FORCED REMOVALS AT BORDERS

||| The CPT has identified clear patterns of ill-treatment and abuse foreign nationals

The CPT has identified and established clear patterns of physical ill-treatment deployed against foreign nationals in the context of pushback operations across Council of Europe member states’ borders.

These consist primarily of foreign nationals being beaten upon their apprehension or at the time of their pushback – punches, slaps, blows with truncheons, other hard objects or non-standard items (such as barrels of automatic weapons, wooden sticks or the branches of trees) – by police or border guards, members of the coast guard, or other law enforcement officials.

It is not uncommon for these officials to remove their identification tags and police insignia and to wear balaclavas in order to hide their identity.

Other forms of inhuman and degrading treatment were also deployed, such as firing bullets close to the persons’ bodies while they lay on the ground, pushing them into rivers (sometimes with their hands still tied), removal of their clothes and shoes and forcing them to walk barefoot and/or in their underwear and, in some cases, even fully naked across the



border. The use of unmuzzled dogs to threaten or even chase foreign nationals, seizure and destruction of property, and deprivation of food and water for prolonged periods were frequently reported. These and other actions were generally perceived by the persons concerned as being a threat to their physical integrity and/or demeaning and intended to humiliate them.

The CPT has directly documented recognisable medical evidence, such as the classic “tram-line” hematomas on various parts of foreign nationals’ bodies (which are consistent with truncheon blows) and typical dog-bite wounds on their limbs.

Further, it also found corroborative evidence of the conduct of pushback operations at the timing and location indicated by the persons concerned in informal logbooks held, for instance, at the relevant police stations. In some cases, the examination of audio-visual recordings, such as CCTV footage and photographs, of green border areas also provided elements of proof of excessive use of force by law enforcement officials against foreign nationals and their summary removal across border fences.

The prolonged and sometimes informal detention of intercepted and apprehended foreign nationals in inadequate conditions prior to their removal is another focus for the CPT. Many of its reports, from which the Court has drawn evidence in support of breaches of Article 3 of the Convention, have consistently described the extremely poor material conditions of detention in police and border guard stations or places of informal detention.

Vulnerable persons, including children, are often held in appalling conditions

In numerous instances, families with children, unaccompanied and separated children, and other persons with vulnerabilities were also held in conditions which might easily amount to inhuman and degrading treatment. In some instances, the Committee has also been

critical of the unsafe and appalling conditions in which detained foreign nationals have been transported during their removal, crammed into the back of police vans and denied food and water or access to the toilet for prolonged periods of time.

THE DIVERSE SCENARIOS OF PUSHBACKS EXAMINED BY THE CPT

In terms of *modus operandi* of pushback operations carried out by law enforcement officials, a first scenario identified by the CPT relates to interception at sea and subsequent pushbacks of foreign nationals by force to the countries from which they departed or transited. A number of consistent and credible allegations were received concerning acts by coast guard officials preventing boats carrying foreign nationals from reaching territorial waters, including excessive use of force and removing the fuel or engine of the boat.

State agents compelled foreign nationals onto dinghies, and left them adrift at sea

Moreover, the Committee received credible allegations from foreign nationals that, after they had landed by boat, they were re-embarked on inflatable dinghies by state agents, deliberately towed back out to sea and cast adrift.





A second scenario concerns the use of transit zones at border crossings. In a few instances, these constituted the only entry points to register new arrivals – including families with children, unaccompanied and separated children, and other persons with vulnerabilities – and to lodge asylum applications. Access to these transit zones – and consequently to asylum – was severely restricted and persons were detained there in carceral and cramped conditions for weeks and sometimes months on end, without an assessment of their vulnerabilities or the provision of adequate safeguards. In this context, the CPT could establish that foreign nationals, many of whom alleged physical ill-treatment and other forms of inhuman and degrading treatment by police officers, had previously been subjected to automatic and summary forced removal through a gate to a narrow strip of state territory on the external side of the border fence, without being properly identified and registered and in the absence of any effective assessment of the risks of *refoulement*, including chain *refoulement*.

A third scenario relates to the use of police and border guard stations processing large numbers of foreign nationals intercepted at or apprehended near borders in appalling conditions of detention. They were subsequently summarily removed using force during pushback operations, in the absence of an individual assessment of the risk of ill-treatment in case of removal. This included official detention facilities but also informal places of detention, such as disused police stations, abandoned buildings, garages, containers or tents. Persons interviewed alleged that they had been confined in these places for periods ranging from a few hours to several days. These claims were regularly accompanied by allegations of deliberate physical ill-treatment by law enforcement officials.

A fourth scenario concerns interception at or apprehension near land borders, *de facto* detention, immediate transport to the border and subsequent pushback operations by means of collective expulsions at specific locations at the green border. Persons interviewed by members of the Committee consistently alleged that they had not been identified and registered, that their requests for asylum had been ignored and that they had not been provided with fundamental safeguards, emergency medical assistance or effective remedies



(with automatic suspensive effect) against their immediate and forced removal. These claims were frequently accompanied by credible, detailed and concordant allegations of physical and other forms of severe ill-treatment.

Collective expulsion is prohibited

Under the Convention, collective expulsions – which concern the forced removal of individuals as a group, regardless of their legal situation and without an objective examination of each individual case – are prohibited. Although the Court's 2020 judgment in the case of *N.D. and N.T. v. Spain* might suggest the requirement of the existence of genuine and effective means of legal entry and whether foreign nationals had cogent reasons for not making use of them,⁷ it did not reduce the scope of Article 3, which is absolute. Indeed, in its recent case law,⁸ the Court has established that a violation of the prohibition of collective expulsion under Article 4 of Protocol No 4 to the Convention can go hand in hand with the violation of the prohibition of torture and other forms of ill-treatment under Article 3. By refusing the applicants' entry into the country or unlawfully pushing them back to Belarus, while denying them the possibility of lodging applications for international protection or providing a genuine and effective possibility of submitting arguments against their expulsion, the responding country failed to protect them from exposure to a real risk of being subjected to ill-treatment.

7. *N.D. and N.T. v. Spain*, application nos. 8675/15 and 8697/15, Grand Chamber judgment of 13 February 2020.

8. *M.K. and Others v. Poland*, application nos. 40503/17, 42902/17 and 43643/17, judgment of 23 July 2020; see also *D.A. and Others v. Poland*, application no. 51246/17, judgment of 8 July 2021; *A.B. and Others v. Poland*, application no. 42907/17, judgment of 30 June 2022, *A.I. and Others v. Poland*, application no. 39028/17, judgment of 30 June 2022; and *T.Z. and Others v. Poland*, application no. 41764/17, judgment of 13 October 2022.



THE NEED FOR REINFORCING SAFEGUARDS AGAINST REFOULEMENT AND AGAINST ILL-TREATMENT

The CPT has consistently advocated for the need to reinforce the procedural safeguards against *refoulement* to prevent violations of Article 3 of the Convention. In its 7th General Report⁹ the Committee, for the first time, set out the safeguards that should be afforded to all foreign nationals deprived of their liberty under immigration legislation, stating that it sees as its role to ensure that the decision-making process concerning the removal of foreign nationals as a whole offers suitable guarantees, including as regards the level of competence of those making the decision and the possibility to appeal such decisions to an independent body. Emphasis was placed on access to a confidential, independent and objective asylum process based on an individual risk assessment.

**Foreign nationals should be health-screened,
assessed for vulnerability and offered asylum
opportunities upon arrival**

In the CPT's view, there must be effective procedures in place to ensure that foreign nationals intercepted or apprehended at the border and/or entering the country are individually identified and registered, undergo health screening and a vulnerability assessment, and are offered the opportunity to apply for asylum.

They should also receive individualised removal orders and be placed in a position to effectively make use of the legal remedies available against their forced removal, based on an individual assessment of the *prima facie* risk of ill-treatment in the case of removal.

9. See [CPT/Inf \(97\) 10](#), paragraphs 24 to 36.


By effectively granting these procedural safeguards to foreign nationals deprived of their liberty under immigration legislation, states can ensure that the risk of ill-treatment and *refoulement* contrary to Article 3 is significantly reduced.

The CPT also recalls that foreign nationals apprehended by the police should, from the very outset of their deprivation of liberty, enjoy the protection of the fundamental safeguards against ill-treatment during detention, notably the rights to notify a third party of their detention, to have access to a lawyer and to a doctor and to be systematically and fully informed of their rights, their legal situation (including the grounds for their detention) and the procedure applicable to them, with the assistance of a qualified interpreter if necessary.

The Committee has stated that, in the case of complex rescue operations at sea or interception of foreign nationals in remote border areas, a certain delay in the enjoyment of such safeguards could be justifiable. However, this should not imply a complete derogation from these rights for the purpose of conducting an expedited and summary removal of the persons concerned.

On numerous occasions during its visits, the CPT found no evidence that the above-mentioned rights were afforded in practice to intercepted or apprehended foreign nationals, who moreover alleged that they had been subjected to ill-treatment in the context of pushback operations. Further, it was common for foreign nationals' belongings, including mobile phones, to be either seized or destroyed.

The CPT has also stressed the importance of additional safeguards against ill-treatment. The use of individualised detention orders and custody records for all foreign nationals deprived of their liberty in the context of border control activities would significantly reinforce the practical application of the other fundamental safeguards against ill-treatment.



Detention must be accurately recorded to prevent arbitrariness

Every instance of detention of a person must be fully and accurately recorded so that there can be no arbitrary detention.

The CPT also considers that all law enforcement officials should display clearly visible identification numbers or tags on their uniforms and that border control activities should be video recorded – both as a safeguard against ill-treatment as well as a protective measure against false accusations.



Border control officers should not routinely wear balaclavas

Further, there can be no justification for balaclavas to be systematically worn by law enforcement officials undertaking border control activities.

CHALLENGES AHEAD IN THE CPT'S VIEW

First, the CPT wishes to recall that immigration detention should only be used as a measure of last resort for foreign nationals crossing borders, after careful and individual examination of each case.



Children must not be detained.

Vulnerable individuals need suitable housing and support

Further, children should not be deprived of their liberty. Families with children, unaccompanied and separated children, and other persons with vulnerabilities should be offered suitable accommodation and support.

A significant challenge relates to the attempt by certain Council of Europe member states to introduce measures that aim to legalise pushback practices. These include:

- Adopting national legislation legalising pushbacks, often in the context of applying national emergency measures to prevent large numbers of foreign nationals from crossing their borders. This notably includes measures to allow for the temporary suspension of asylum applications (or the increased use of the “safe third country” concept) and automatic forced removal of all intercepted or apprehended foreign nationals, without an assessment of their individual situation. It also comprises the introduction of new criminal offences for unlawful border crossings, allowing for the imprisonment and/or mandatory expulsion of foreign nationals. These measures expose persons to possible treatment contrary to Article 3 of the Convention, as they do not allow them to present their individual claims.
- Concluding a series of bilateral or multilateral protocols for technical and police cooperation, readmission agreements, or treaties with non-European countries, aimed at intercepting and diverting large numbers of foreign nationals at the borders, as well as returning them to the countries from which they departed or transited. In some instances, such agreements did not include a *non-refoulement* clause and allowed for the summary removal of foreign nationals without an individual assessment of the risk of exposing the persons concerned to ill-treatment in the receiving country in case of removal.
- Applying a customised interpretation of Article 13 of the Schengen Borders Code (Regulation (EU) 2016/399) and making extensive use of the exclusion clause of the EU Return Directive (Directive 2008/115/EC) in a manner that would allow for this Directive, as well as the relevant fundamental safeguards contained therein, not to be applied to foreign nationals who are apprehended and intercepted deep inside the territory of an EU member state in the context of irregular crossings of the external borders into the Schengen area.

Further, states also encourage the introduction of expedited procedures for forced removals at borders under the common EU rules, which can be interpreted in a manner that would justify pushback practices. In December 2021, the European Commission presented two legislative proposals, including one for a Regulation



addressing situations of “instrumentalisation” in the field of migration and asylum and a second mainly for amending the Schengen Borders Code. Both proposals, if adopted, would leave a large margin of interpretation to states, with a concrete risk of derogating from existing standards and directly returning persons at borders without applying the necessary procedural safeguards.

What is common in these measures is that they greatly increase the potential for informal pushback practices with a concrete risk that this might lead to violations of the principle of *non-refoulement* and, ultimately, of the prohibition of torture and other forms of ill-treatment.

Border control measures must comply with the absolute obligations under Article 3 ECHR

Whatever measures Council of Europe member states introduce to prevent foreign nationals from crossing their borders or to justify removals, states are bound by their non-derogable, peremptory obligations under Article 3 of the Convention.

THE NEED FOR EFFECTIVE INVESTIGATIONS, ACCOUNTABILITY, MONITORING AND COMPLAINTS MECHANISMS

Investigations must be independent, thorough, transparent, prompt, and involve the victim

The CPT considers, in line with the Court's case law, that all allegations or other relevant information indicative of ill-treatment in the context of pushback practices, should be investigated effectively and that, where offences are found to have occurred, the responsible officials should be held to account. In its 14th General Report,¹⁰ the CPT set out the criteria that should be met if any investigations into alleged ill-treatment are to be seen as effective and capable of leading to the identification and punishment of those responsible for ill-treatment; it is notably essential that all investigations strictly comply with the criteria of independence and thoroughness as well as those of transparency, promptness and victim participation.

Further, once ill-treatment has been established and proven, adequate disciplinary and criminal sanctions should be imposed commensurate to the gravity of the case. Combating impunity also requires positive action, through training and by example, to promote a culture where resort to ill-treatment is regarded as unprofessional.

Moreover, the Committee has consistently pointed out the need to put in place robust mechanisms capable of holding to account any state official found to misbehave or act outside the law. This includes clear rules on the detailed recording of every law enforcement operation during which foreign nationals who attempt to cross or have previously crossed the border into the country are intercepted, apprehended or prevented from entering the country.

Records for every border intervention should document the time, place, officers involved, force used, and outcome

These records should, at a minimum, contain the time, precise location and a brief description of each intervention, the officers involved, the identification of foreign nationals, whether any means of restraint or use of force were applied, and the outcome of the intervention.

Regrettably, the findings gathered by the CPT during its visits indicate that few investigations have been carried out by states into allegations of physical ill-treatment and other forms of inhuman and degrading treatment in the context of pushback operations, and that – when carried out – they often do not comply with the criteria of effectiveness.¹¹ Consequently,

10. See [CPT/Inf \(2004\) 28](#), paragraphs 25 to 42.

11. In this regard, see for example the recent Court judgment in the case of *Alhowais v. Hungary*, application no. 59435/17, judgment of 2 February 2023, which concerned the ineffective investigation into the death of a Syrian national who drowned during a border control operation at a river on the Hungarian-Serbian border.

law enforcement officials involved in these practices are not identified or held to account and the cycle of ill-treatment remains unchallenged.

In addition, there is to date no effective and independent system for systematically monitoring border control activities. Professional independent oversight and monitoring is essential when border control activities take place in remote or out-of-sight locations such as the high seas or the green border. Such mechanisms can gather the information and evidence required to assess allegations or other relevant information indicative of ill-treatment in the context of alleged pushbacks, allow for accountability and the prevention of further human rights violations, and enable effective investigations to be carried out.

In its 30th General Report,¹² the CPT commented on the proposal of the European Commission that each EU member state shall establish an “independent monitoring mechanism” (COM (2020) 612 final), given the potential for such monitoring mechanisms to contribute to the prevention of ill-treatment of persons deprived of their liberty.



Effective and independent monitoring can prevent abuse at borders

Provided that the criteria outlined by the CPT in terms of effectiveness and independence are met, such mechanisms might fill the current gap created by the absence of systematic, independent monitoring at borders where alleged ill-treatment and pushbacks reportedly continue to take place.

More specifically, any such monitoring mechanism should be provided with a mandate and powers to conduct regular and unannounced inspections. It should have unimpeded access to visit law enforcement establishments, directly observe all border control operations, and inspect all relevant documentation and records (such as custody records, shift handover notes or shift patrol reports and CCTV footage). In addition, it should be granted full institutional and operational independence from the relevant authorities responsible for policing the borders, be provided with adequate human and financial resources (including staff with adequate expertise), be empowered to publicly produce reports with clear recommendations, and be entitled to communicate directly with the competent prosecutorial authorities if malpractice is observed. Reference is made to the EU Agency for Fundamental Rights' (FRA) practical guidance on establishing national independent mechanisms to monitor fundamental rights compliance at EU external borders.¹³

In this context, the CPT also stresses the need for states to set up effective complaints mechanisms to which foreign nationals alleging ill-treatment in the context of pushback operations can appeal and obtain redress. Foreign nationals detained under immigration legislation interviewed by the CPT generally did not have the possibility to lodge complaints. In its 27th General Report,¹⁴ the Committee set out the basic principles required for such a complaints mechanism to be effective.

12. See CPT/Inf (2021) 5, paragraphs 20 to 21.

13. <https://fra.europa.eu/en/publication/2022/border-rights-monitoring>.

14. See CPT/Inf (2018) 4, paragraphs 68 to 91.



CONCLUSIONS

In the CPT's view, there is a high risk that states' responsibility under Article 3 of the Convention is engaged in the context of pushback operations. During its different monitoring visits, the CPT was able to examine for itself the numerous consistent and credible allegations of ill-treatment of foreign nationals deprived of their liberty under immigration legislation who claimed that they had been subjected to violent pushback operations at the borders of several Council of Europe member states.

||| As pushbacks persist, more robust safeguards should be promoted

It is evident that such illegal pushback practices continue to occur at several borders in Europe.

It is therefore imperative that a human rights-based approach prevails in all activities related to border control and in dealing with mixed-migratory arrivals. Regardless of where they take place – at land or sea borders – pushback operations of foreign nationals, often accompanied by physical ill-treatment and other forms of inhuman or degrading treatment, must end. The absolute nature of the prohibition of torture and other forms of ill-treatment under Article 3 of the Convention requires that individuals may not be sent back to a country where there are substantial grounds for believing that they would run a real risk of being subjected to ill-treatment, without first assessing their claim as to whether this is safe.

Consequently, based on its preventive mandate, the CPT calls upon all member states of the Council of Europe to act, individually and collectively, to protect foreign nationals deprived of their liberty under immigration legislation from any form of ill-treatment and from pushbacks at borders, and particularly at the external borders of the EU.

Further, there is a need to reinforce the safeguards against *refoulement* and ill-treatment and promote the operation of independent monitoring mechanisms at these borders.

The CPT will continue to closely monitor the treatment of foreign nationals deprived of their liberty at borders and remains ready to assist member states with its expertise.

“NO ONE SHALL BE SUBJECTED TO TORTURE OR TO INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT”

Article 3 of the European Convention on Human Rights

Established in 1989 by the Council of Europe Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the CPT's aim is to strengthen the protection of persons deprived of their liberty through the organisation of regular visits to places of detention.

■ The Committee is an independent, non-judicial preventive mechanism, complementing the work of the European Court of Human Rights. It monitors the treatment of persons deprived of their liberty by visiting places such as prisons, juvenile detention centres, police stations, immigration detention facilities, psychiatric hospitals and social care homes. CPT delegations have unrestricted access to places of detention, and the right to interview, in private, persons deprived of their liberty. They may access all the information necessary to carry out their work, including any administrative and medical documents.

■ The CPT plays an essential role in promoting decency in detention, through the development of minimum standards and good practice for states parties, as well as through coordination with other international bodies. The implementation of its recommendations has a significant impact on the development of human rights in Council of Europe member states and influences the policies, legislation and practices of national authorities regarding detention.



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The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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