Refugee Legal Support

Border Violence - Complaints and Litigation:

Image © Sarah Booker.

A Practitioner's Guide

A comparative guide on relevant EU-based, and international legal complaints processes **for people who experience border violence, including pushbacks, and/or collective expulsions.**

Acknowledgements

Elèna Santioli and Isaac Shaffer (Refugee Legal Support) are the authors of this guide. A special thanks is also extended to Lily Parrot and Heather Burke, for their contribution to its development.

Disclaimer

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1. Introduction

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1.1 Purpose of the Guide: Border Violence and the Accountability Gap

People on the move not only face increasingly precarious and perilous journeys, but are frequently subjected to severe human rights violations.

There can be little doubt that at the external borders of the European Union, as well as along global transit routes, border violence against those seeking to move is a systemic and deeply concerning phenomenon involving the violation of fundamental rights. The Office of the United Nations High Commissioner for Human Rights (OHCHR) explicitly emphasised that international borders are not zones of exclusion or exception for human rights obligations; rather, States are bound by international law to govern migration in conformity with their human rights commitments.[1]

And yet, despite such an unequivocal legal standard, reports from international bodies, non-governmental organisations, civil society and migrants themselves consistently and increasingly document widespread abuses that include unlawful profiling, torture and ill-treatment, gender-based violence, dangerous interception practices, and prolonged and/or arbitrary detention.

Whilst of particular alarm is the practice of pushbacks and collective expulsions involving often the violent cross-border expulsion of individuals without due process or an individualised assessment of protection needs. These acts constitute direct violations of fundamental rights including the principle of non-refoulement— the cornerstone of international refugee protection enshrined in the 1951 Refugee Convention.

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Despite the gravity and frequency of such violations, a profound "accountability gap" persists. Domestic legal remedies often prove inaccessible, ineffective, or unreasonably prolonged for people on the move, who face systemic barriers such as a lack of legal representation, language constraints, and the precarious nature of their circumstances.

The European Union Agency for Fundamental Rights (FRA)[2] and the European Network of National Human Rights Institutions (ENNHRI) [3] have repeatedly highlighted the lack of progress in investigating rights violations at EU borders and the urgent need for effective, independent monitoring mechanisms

In this context, legal practitioners can and do play a critical role as human rights defenders, utilising a broad range of litigation and international complaints mechanisms to improve visibility; challenge impunity; obtain disclosure and transparency; demand accountability, and secure justice for survivors of border violence.

1.2 Contents, Structure, and How to Use this Guide

The Border Violence - Complaints and Litigation: A Practitioner's Guide (the 'Guide') is designed to serve primarily as a resource for legal professionals to advocate individually and collectively for those who have experienced border violence. Through the *Guide* we hope to equip practitioners with the necessary legal and procedural tools to identify and navigate often complex international and regional complaints mechanisms. In doing so we hope to make a small contribution to bridging the accountability gap and facilitating access to justice.

Furthermore, by outlining the broad range of possible routes for complaint we hope to foster strategic approaches, new ideas and provide inspiration for alternative or concurrent avenues of approach.

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1 Human rights in transit and at International Borders, OHCHR and migration.

2 European Union Agency for Fundamental Rights (FRA), Little progress in investigating rights violations at EU borders.

3 European Network of National Human Rights Institutions (ENNHRI). "Gaps in Human Rights Accountability at Borders." December 2021.

To achieve these objectives, the guide is systematically structured to provide both high-level overviews and detailed analytical insights across different jurisdictional levels. The core contents are divided in half: with **Section 2** aimed at addressing the **International** mechanisms of complaint available; and **Section 3** dedicated to those specific to **Europe** and European legal/political institutions.

Within both sections there are three sub-parts.

The first part entitled ***Overview*** provides **Summary Cards** presenting an overview of the main complaint mechanisms. The cards provide the busy practitioner the key information needed to swiftly determine scope, relevant procedural issues and applicability.

The second part ***Analysis*** provides a more detailed breakdown of all mechanisms. That includes identifying key applicable rules/laws, admissibility criteria and procedural requirements.

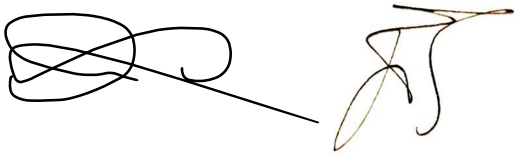
Lastly, the third part provides detailed ***Resources*** that address the key concepts and definitions relevant to drafting complaints. Relevant commentary, jurisprudence and resources are also drawn together.

To further support practical application, the guide concludes with a **Glossary** of legal definitions and sources.

Crucially, *Appendix 1* provides a comprehensive, three-part **Screening Tool** designed for intake interviews with potential survivors of border violence. This staged tool aims to guide practitioners through from an initial **Preliminary Intake**; a subsequent **Initial Screening** for direct survivors, and then a **Detailed Triage** to evaluate the factual and legal merits of potential complaints systematically.

The *Tool* is designed to ensure that the main relevant information is obtained to identify the viability of a complaint as well as what suitable mechanisms for redress and accountability are applicable. It should also assist with the process of gathering the relevant information to compile and prepare a potential complaint.

All in all, we firmly hope this Guide proves to be a contribution that gives practical support and inspiration to front-line legal practitioners seeking to challenge border violence, and so increases the visibility of this issue, along with bringing accountability and redress to those directly impacted, For those undertaking this work we express our profoundest respect and gratitude. Finally, all feedback on this Guide including how and where to expand or improve it are hugely welcomed, along with any other opportunities for collaboration. We hope and look forward to working together to uphold the fundamental rights of all people at international borders.



Isaac Shaffer and Elèna Santioli
Refugee Legal Support

2. Jurisdiction: International

2.1. Legal Complaints Processes

2.1.1. Overview: Summary Cards

United Nations
Human Rights Council

Under its complaints process, the Human Rights Council will consider, and if necessary, issue a confidential report making certain recommendations, on consistent patterns of **gross and reliably attested violations** of human rights committed by a Member State.

Consider using for

- Border violence
- Collective expulsions
- Crimes against humanity
- Degrading detention conditions
- Discrimination
- Enforced disappearances
- Forced migration
- Human smuggling
- Interception measures
- Inhuman or degrading treatments
- Persecution
- Pushbacks
- Sexual and gender-based violence
- Torture

Mechanism	Rights Engaged	Deadline to Apply
UN	International law	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties	One or more UN Member states

Jurisdiction	
Standard	*Exception(s)*
N/A	N/A

Admissibility

- Must concern consistent patterns of gross and reliably attested violations.
- The complainant must have exhausted all remedies available to them in the State the subject of the

Procedural Requirements

Request made via form (available at the HRC's website) or the dedicated portal.

Requests must be:

complaint or the available remedies are ineffective or unreasonably prolonged.	■ In writing in one of the six official UN languages (ie, Arabic, Chinese, English, French, Russian and Spanish); and ■ Contain a detailed description of the relevant facts, including the names of the alleged victims, relevant dates, location and other supporting evidence (although not exceeding 15 pages).

Procedural Time Frame	Evidentiary Standards
24 months from issuing of the complaint.	No evidentiary standard.

Outcomes/Remedies
A confidential report which makes conclusions regarding the human rights situation in the relevant State, and if necessary, making recommendations for addressing any human rights violations.

What is the mechanism?

The Human Rights Council is an intergovernmental body of the United Nations (UN). Its purpose is to address consistent patterns of **gross and reliably attested violations** being committed by any of the **UN Member States**.[4]

The complaints procedure of the Human Rights Council is **confidential**, unless it chooses to make certain decisions public. This means it is difficult to assess how many times this procedure has been used, by whom and in respect of which human rights violations.

"Gross violation"

There is no universally accepted definition of what "gross violations" entail, however it's generally used to refer to the most serious violations by States of civil and political and economic, and social and cultural rights.

What is the outcome of a complaint?

After the Human Rights Council has considered the complaint, it will **issue a report** which will:

- summarise the proceedings and the review process the complaint has undergone;
- summarise its conclusions in respect of the complaint, including:
  - an assessment of the human rights situation in the relevant State;
  - sharing of best practices;

[4] Human Rights Council Resolution 5/1 titled "Institution-Building of the United Nations Human Rights Council" dated 18 June 2007.

    - an emphasis on enhancing cooperation for the promotion and protection of human rights;
    - provision of technical assistance and capacity-building in consultation with, and with the consent of, the State the subject of the complaint;
- if necessary, make recommendations on how to address human rights violations; and
- if applicable, identify the voluntary commitments of the State that is the subject of the complaint.

Alternatively, the Human Rights Council may choose to:

- discontinue considering the complaint;
- request further information from the State or complainant;
- appoint an independent expert to monitor the situation and report back; or
- recommend the OHCHR assist the State that is the subject of the complaint.

The process will **not** provide a direct remedy to the complainant for the harm they have suffered (ie, by way of implementation of fines against the relevant State or an order for compensation in favour of the complainant).

A complainant does not have a **right of appeal** in respect of the final report issued by the Human Rights Council.

What are the admissibility criteria?

Any individual, group of individuals or non-governmental organisation can submit a complaint to the Human Rights Council.
A complainant may submit a complaint to the Human Rights Council only if:

- it has exhausted all remedies available to them in the State that is the subject of the complaint; or
- the available remedies in that State appear ineffective or unreasonably prolonged.

The complaint must not already be under examination by another complaint procedure (for example, another special procedure, a treaty body or another UN human rights complaints procedure.

The complaint can be directed against any of the UN's 193 Member States (whether or not the State has ratified any particular treaty or made reservations under a particular instrument).

The procedure itself is confidential and will not be made public. The complainant's identity can also be kept confidential from the State that is the subject of the complaint. Information contained in the complaint can be kept confidential from the relevant State (upon request by the complainant).

What must be proven?

There is no **evidentiary standard**. However, it is recommended that a complainant submits as much evidence as they can in support of their complaint (ie, photos, emails, letters, videos etc).

What is the procedure?

Complaints can be submitted via the online submission portal, which allows for the fastest processing of complaints.[5] Alternatively, a complainant can complete the complaint procedure form (available on the Council's website) and mail it to the following address:

Complaint Procedure Unit – Human Rights Council Branch
OHCHR – Palais Wilson
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Complaints will not be considered if they are sent via email.

A complaint must:

- be in writing in one of the six official UN languages (ie, Arabic, Chinese, English, French, Russian and Spanish); and
- contain a detailed description of the relevant facts, including the names of the alleged victims, relevant dates, location and other supporting evidence (although not exceeding 15 pages).

A complaint must **not**:

- be anonymous;
- be manifestly politically motivated;
- be based exclusively on reports disseminated by the media; or
- contain abusive or insulting language.

After the complaint is submitted, both the complainant and the State(s) the subject of the complaint will be kept informed of the process.

Given the high volume of complaints that the Human Rights Council receives, complaints may take a long period of time to be addressed. In any event, the period in time between when the complaint is transmitted to the State(s) the subject of the complaint and consideration by the Human Rights Council will **not exceed 24 months**.

5 HRC complaint homepage.

Summary

PROS

- ✓ A complaint can be issued against any of the UN's Member States.
- ✓ No evidentiary threshold.
- ✓ The procedure is confidential.
- ✓ Complainants have the option of their identity not being disclosed to the State the subject of the complaint.

CONS

- × This procedure is not appropriate for individual cases (as it is purely concerned with patterns of gross violations).
- × All remedies available to a complainant in the State which is the subject of the complaint must have been exhausted.
- × Complaints can take up to 24 months to be addressed.
- × The process does not provide the complainant with a direct remedy for the harm they have suffered.
- × You can't use this as well as other INT/UN complaints mechanisms.

Useful resources

- ➢ Human Rights Council FAQs
- ➢ Human Rights Council home page
- ➢ Online submission form

See more

Analysis of Legal Complaints Processes: Human Rights Council

United Nations

Human Rights Council – Special Procedures

The Special Procedures of the Human Rights Council are **independent human rights experts** who investigate human rights violations and then publish its report for each session of the Human Rights Council.

Consider using for

- Border violence
- Collective expulsions
- Crimes against humanity
- Degrading detention conditions
- Discrimination
- Enforced disappearances
- Forced migration
- Human smuggling
- Interception measures
- Inhuman or degrading treatments
- Persecution
- Pushbacks
- Sexual and gender-based violence
- Torture

Mechanism	UN HRC	Rights Engaged	Civil, political, economic, social and cultural rights	Deadline to Apply	Not stated

Potential Parties		Jurisdiction	
Claimant(s)	*Defendant(s)*	*Standard*	*Exception(s)*
■ Victim ■ Concerned parties	One or more UN Member states.	N/A	N/A

Admissibility	Procedural Requirements
A submission must: ■ Not be manifestly unfounded or politically motivated; ■ Contain a factual description of the alleged violations of human rights; ■ Not include abusive language; ■ Be submitted on the basis of credible and detailed information; ■ Not be exclusively based on reports disseminated by mass media.	Complaints can be submitted via the online submission portal available or submitted by mail.

Procedural Time Frame	Evidentiary Standards
Not stated.	No evidentiary standard.

Outcomes/Remedies
All communications sent and replies received by the expert are all made publicly available once the confidentiality period is over in a report prepared for each session of the Human Rights Council.

What is the mechanism?

The Special Procedures of the Human Rights Council, established pursuant to Resolution 16/21, are independent human rights experts who:

- monitor the situation in countries through visits;
- act on complaints of alleged human rights violations by sending communications;
- conduct thematic studies and organise expert consultations;
- contribute to the development of international human rights standards;
- engage in advocacy and raise public awareness; and
- provide advice for technical cooperation to Governments.

What is the outcome of the complaint?

A Report is prepared by the expert for each session of the Human Rights Council. All communications sent and replies received by the expert are all made publicly available in that report once the

confidentiality period is over. The Special Procedures **do not have power or authority to enforce their views or recommendations**.

What are the admissibility criteria?

Any individual, group, civil-society organisation, inter-governmental entity or national human rights bodies can issue a complaint.

The experts report on allegations of human rights violations regarding the following:

- past human rights violations;
- ongoing or potential human rights violations; and/or
- concerns relating to bills, legislation, policies or practices that do not comply with international human rights law and standards.

Each expert will decide whether they will take action on a given submission, on the basis of the information received and the scope of their mandate.

Generally, a submission must:

- not be manifestly unfounded or politically motivated;
- contain a factual description of the alleged violations of human rights;
- not include abusive language;
- be submitted on the basis of credible and detailed information; and
- not be exclusively based on reports disseminated by mass media.

Complainants **do not need to have exhausted all domestic remedies** in order to send a communication. It is not required that a State have ratified an international or regional human rights treaty in order for an expert to investigate a complaint.

What must be proven?

There is **no specific evidentiary standard requirement**. However, it is recommended that a complainant submits as much evidence as it can in support of their complaint.

What is the procedure?

Complaints can be submitted via the online submission portal available here. Alternatively, a complainant can complete the complaint procedure form and mail it to the following address:

OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneva 10

Switzerland

Attention is given to the most serious and urgent cases. The process may take longer in instances where sufficient information is not available in the submission.

It is possible to complain about violations which have not happened, but have a high risk of occurring, including in relation to draft legislation, policy or practise considered not to be fully compatible with international human rights norms and standards.

Communications sent by the experts to a government or an intergovernmental organisation etc in relation to a complaint will include the name of the alleged victim. However, if the victim or their representatives make it clear in the submission that concerns relating to the security of the alleged victim exist, then the experts may decide to keep this information confidential. However, this is not a guaranteed right to confidentiality.

Summary

PROS

- ✓ A complaint can be issued against any of the UN's Member States.
- ✓ No evidentiary threshold.
- ✓ The procedure is confidential.
- ✓ It is possible to complain about violations. which have not happened yet but have a high risk of occurring.
- ✓ Do not need to have exhausted all domestic remedies in order to send a communication.

CONS

- × The process does not provide the complainant with a direct remedy for the harm they have suffered.
- × No power or authority to enforce their views or recommendations.

Useful resources

- ➢ Special Procedures website
- ➢ Communications submissions

See more

Analysis of Legal Complaints Processes: Special Procedures of the Human Rights Council

United Nations

UN Special Rapporteur on the Human Rights of Migrants

The Special Rapporteur investigates cases involving both individual and group **alleged violations of the human rights of migrants** in a specific country.

Consider using for

- Pushbacks
- Collective expulsions
- Border violence
- Torture
- Discrimination
- Enforced disappearances
- Human smuggling
- Inhuman or degrading treatment
- Crime against humanity
- Persecution
- Degrading detention conditions
- Interception measures
- Forced migration
- Sexual and gender-based violence

Mechanism	Rights Engaged	Deadline to Apply
UN	International law	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties	States or individuals connected to the State

Jurisdiction	
Standard	*Exception(s)*
N/A	N/A

Admissibility
■ Must involve violations of the human rights of migrants.

Procedural Requirements
■ Communications must be sent by email, mail, or fax.

Procedural Time Frame	Evidentiary Standards
Not stated.	No evidentiary standard.

Outcomes/Remedies
The Special Rapporteur will provide a summary of the communications and replies received from the concerned State which is included in the Special Rapporteur's annual Communications report to the Human Rights Council.

Who is the Special Rapporteur?

The Special Rapporteur on the Human Rights of Migrants is an appointed expert in the field of human rights. According to their mandate, they undertake the following main functions[6]:

- to request and receive information from various sources, including migrants, their families and NGOs;
- to make recommendations to prevent and remedy violations of the human rights of migrants;
- to promote the effective application of relevant international norms and standards;
- to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of migrants' human rights;
- to take into account gender, age and disability perspectives when requesting and analysing information and give special attention to the occurrence of multiple and intersecting forms of discrimination and violence against migrant women and girls, children, older migrant persons, migrants with disabilities and Indigenous migrants; and
- to report regularly to the Human Rights Council, and to the General Assembly.

Special Rapporteur's thematic reports:

- A/HRC/47/30 dated 12 May 2021 on means to address the human rights impact of pushbacks of migrants on land and at sea.
- A/HRC/50/31 dated 22 April 2022, which is a follow-up report on human rights violations at international borders.

What is the outcome of a complaint?

In discharging its functions, the Special Rapporteur will:

- act on information regarding alleged violations of the human rights of migrants;
- conduct country visits upon the invitation of the State in order to examine the state of protection of the human rights of migrants; and

6 Pursuant to UN Resolution 1999/44.

- report annually to the Human Rights Council about the global state of protection of migrants' human rights.

The Special Rapporteur will then provide a summary of the communications and replies received from the concerned State which is included in the Special Rapporteur's annual Communications report to the Human Rights Council.

What are the admissibility criteria?

The Special Rapporteur receives information:

- regarding individual cases of alleged violations of the human rights of migrants; and
- regarding general situations concerning the human rights of migrants in a specific country.

There are **no specific admissibility requirements**.

When issuing communications to the Special Rapporteur, complainants should include the following information:

- the date, time and location (as precise as possible) of where the incident occurred;
- name, number and full details on the location of the individual(s), people or community that has had or is at risk of having their human rights violated;
- circumstances of the alleged violation; and
- the identity of the individual(s) or group that allegedly committed the violation, and whether they have any relation with national authorities;
- any action taken by national authorities;
- any action taken before international bodies; and
- the name and full address of the organisation or individual(s) submitting the information. (This information is kept confidential.)

The Special Rapporteur does not require the exhaustion of domestic remedies to act.

What must be proven?

There is **no specific evidentiary standard requirement**.

What is the procedure?

Communications can be sent to the Special Rapporteur by mail to the following address:

Special Rapporteur on the Human Rights of Migrants
Office of the High Commissioner for Human Rights
United Nations
8-14 Avenue de la Paix
1211 Geneva 10, Switzerland

Communications can also be sent by fax ((+41 22) 917 90 06) or by email to urgent-action@ohchr.org or migrant@ohchr.org (please include in the subject box: Special Rapporteur HR of Migrants).

The Special Rapporteur will then issue communications with the relevant State either:

- requesting further information and cooperation; or
- requesting urgent action.

There is no specific procedural timeframe, however the Special Procedures will act as quickly as possible, with attention given to the most serious and urgent cases. Cases may be taken up **within 24 hours of their submission**. However, it may take longer, particularly when sufficient information is not available in the submission.

Urgent appeals and letters of allegation remain confidential until published.

Summary

PROS

- ✓ Complainant's identity can stay anonymous.
- ✓ Does not require the exhaustion of domestic remedies to act.
- ✓ Apparent urgent attention may be given.
- ✓ No evidentiary threshold.
- ✓ The procedure is confidential.

CONS

- × The process does not provide the complainant with a direct remedy for the harm they have suffered.
- × No clear timeframes.

Useful resources

- Special Rapporteur website
- Special Rapporteur communications
- A/HRC/47/30 report on means to address the human rights impact of pushbacks of migrants on land and at sea - Report of the Special Rapporteur on the human rights of migrants
- A/HRC/50/31 report on human rights violations at international borders: trends, prevention and accountability

See more

Analysis of Legal Complaints Processes: UN Special Rapporteur on the human rights of migrants

United Nations

UN Treaty Bodies

The UN treaty bodies are committees made up of **independent experts** who monitor the implementation of the core international human rights treaties and make recommendations where rights have been violated.

Consider using for

- Pushbacks
- Collective expulsions
- Border violence
- Torture
- Discrimination
- Enforced disappearances
- Human smuggling
- Inhuman or degrading treatment
- Crime against humanity
- Persecution
- Degrading detention conditions
- Interception measures
- Forced migration
- Sexual and gender-based violence

Mechanism	Treaty Body
Rights Engaged	International law
Deadline to Apply	As soon as possible after domestic remedies exhausted.

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties	One or more UN Member states.

Jurisdiction	
Standard	*Exception(s)*
N/A	N/A

Admissibility
■ The complainant must have exhausted all remedies available to them in the State the subject of the

Procedural Requirements
Request made via form (available at the HRC's website) or the dedicated portal.

complaint or show that the available remedies are ineffective or unreasonably prolonged.	Requests must be: ■ In writing in one of the six official UN languages (i.e., Arabic, Chinese, English, French, Russian and Spanish); and ■ Contain a detailed description of the relevant facts, including the names of the alleged victims, relevant dates, location(s) and other supporting evidence/documents.

Procedural Time Frame	Evidentiary Standards
Approx. 1-2 years	No evidentiary standard.

Outcomes/Remedies
A confidential decision which makes recommendations for addressing any violation and, if necessary, making any interim and protective measures.

What is the mechanism?

The UN treaty bodies are committees made up of independent experts who monitor the implementation of the **core international human rights treaties**. This includes:

- International Covenant on Civil and Political Rights;
- UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment;
- Convention for the Elimination of all Forms of Discrimination Against Women; and
- Convention on the Rights of Persons with Disabilities.

UN Treaty bodies:

There are ten treaty bodies in total, of which the following four are discussed in this factsheet:

- UN Human Rights Committee;
- UN Committee Against Torture;
- UN Committee on the Elimination of Discrimination against Women; and
- UN Committee on the Rights of Persons with Disabilities.

The treaty bodies are established under the various optional protocols, which are treaties that are open to signature and ratification by States. This means that not every State is subject to the treaty bodies.

What is the outcome of a complaint?

A complaint results in the issuing of final "views" of the committee. The final decision is available to the public, although the committee may, at its own discretion, decide not to disclose certain matters in the course of consideration of the complaint.

The final decision could result in either of the following:

- **Designation of a Rapporteur:** The committee may designate a rapporteur to follow up on its decision for the purpose of ascertaining measures taken by the State. The rapporteur may then make further recommendations for further action as necessary to give effect to the decision.
- **Interim and Protective Measures:** In urgent cases, the committee may request the State to adopt measures to prevent irreparable harm. This can include suspension of a complainant's deportation to a country where they face a risk of torture or ill treatment. The committee may also request protection measures to protect individuals involved in the communication from reprisals, including lawyers, witnesses and family members where the risk relates to the filing of the communication.

The decisions are not legally binding, although States have a moral obligation to implement the decisions.

There is **no appeal process, and decisions are final**.

What are the admissibility criteria?

A complainant may submit a complaint to a Treaty Body if:

1. it relates to events that occurred after entry into force of the relevant treaty, except where there has been continuous violation of the treaty;
2. the case has not been submitted to any other procedure of international investigation or settlement – either under examination or as the subject of a decision;
3. they have exhausted all remedies available to them in the State that is the subject of the complaint; or the available remedies in that State are ineffective or unreasonably prolonged;
4. where the complainant acts on behalf of another person, consent has been obtained;
5. the victim is personally and directly affected by the law, policy, practice, act or omission of the State party;
6. the complaint is compatible with the provisions of the relevant treaty; and
7. the complaint is not an abuse of process – ie, frivolous, vexatious or otherwise inappropriate.

Although there is no fixed period for submitting a communication, the complaint should be submitted as soon as possible after the exhaustion of domestic remedies as the committee may declare the complaint inadmissible if the time elapsed is so unreasonably prolonged as to render consideration of the complaint by the committee or the State unduly difficult.

What must be proven?

It is essential to set out, in chronological order, all the facts on which the complaint is based. The complaint must be as complete as possible and contain all information relevant to the case. The complainant should also state why they consider that the facts described constitute a violation of the treaty in question.

Complainants should identify the rights set out in the treaty that have allegedly been violated and the kind of remedy they are seeking from the State.

Complainants should also aim to provide as much information as possible: a complaint that is not sufficiently substantiated may be rejected as inadmissible.

Where the complainant is also seeking interim and protective measures, the complainant must demonstrate that:

- the risk is real and that the damage would be irreparable; and
- the risk is personal (and not merely based on the general context).

What is the procedure?

Submission

The complainant must use the model complaint form,[7] which is available in English, French, Russian and Spanish. The complaint should be signed and emailed to petitions@ohchr.org, and addressed to the OHCHR Petitions and Urgent Actions Section. An unsigned word version should also be submitted.

No paper communications will be processed unless it is justified that it would be impossible to submit the communication electronically.

The complaint should be in legible writing (preferably typed), signed, and use one of the UN languages (Arabic, Chinese, English, French, Russian, Spanish).

The complaint should include the following:

- basic personal information – alleged victim's name, nationality, date of birth, mailing address and email address;
- the State against which the complaint is directed;
- if the complaint is brought on behalf of another person, proof of their consent;
- details of the steps taken to exhaust the remedies available in the State against which the complaint is directed; and

[7] The model complaint form is available to download here.

- copies of all documents of relevance to the complaint, including any previous administrative or judicial decisions on their claims issued by national authorities, with translations where documents are not in an official language of the UN. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents.

The complaint must not be anonymous. However, the complainant's identity can be kept confidential in the final decision where there are particularly sensitive matters. Information contained in the complaint can be kept confidential from the relevant State (upon request by the complainant).

The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to five pages highlighting its main elements.

If the complaint lacks essential information or the description of facts is unclear, the committee may request additional details or resubmission be provided within a certain period of time.

Documents

The Committee can obtain any documentation from organisations within the UN or other bodies that may be of assistance in the consideration of the complaint. The committee may also request submissions from other independent sources, including regional human rights mechanisms, NGOs, national human rights institutions, other relevant specialised institutions, State agencies and offices, and academics that may assist in the examination of the complaint.

Written Submissions

The complaint is shared with the responding State, which then has six months to provide comment.

The State may apply, within two months, to request that the complaint be rejected as inadmissible. The Committee or rapporteur may or may not agree to treat admissibility separately.

Once the State replies to the complaint, the complainant is offered an opportunity to comment.

The committee may request additional written submissions from either party as to merits or admissibility, within a fixed period with a view to avoiding delay.

Decision

The Committee will decide on the admissibility and merits of the case on the basis of the written information supplied without oral submissions or audio-visual evidence. The Committee may invite parties to present at specified closed meetings to provide further clarification or to answer specific

questions on the merits of the case, although this is exceptional and the case will not be prejudiced if the complainant fails to attend in person.

If the committee declares that a communication is inadmissible, that decision may be reviewed at a later date upon written request to the effect that the reasons for inadmissibility no longer apply.

It typically takes about one to two years for a case to be decided after registration.

Summary

PROS

- ✓ A complaint can be issued against any of the UN's Member States.
- ✓ No evidentiary threshold.
- ✓ The procedure is confidential.
- ✓ The process can provide the complainant with a direct remedy for the harm they have suffered.

CONS

- × All remedies available to a complainant in the State which is the subject of the complaint must have been exhausted.
- × Complaints can take up to 24 months to be addressed.
- × Admissible only if the case has not been submitted to any other procedure of international investigation or settlement – either under examination or subject of a decision.

Useful resources

- ➢ Treaty Body information page
- ➢ Model complaint form and guidance note

See more

Analysis of Legal Complaints Processes: UN Human Rights Committee / UN Committee Against Torture / UN Committee on the Elimination of Discrimination against Women / UN Committee on the Rights of Persons with Disabilities

United Nations

UN Working Group on Arbitrary Detention

A party may complain to the UN Working Group on Arbitrary Detention (**WGAD**) if they have experienced **detention which is arbitrary**, or which is **otherwise contrary to international law**. WGAD is empowered to issue opinions in relation to any detention which is identified as being arbitrary.

Consider using for

- **Pushbacks**
- **Border violence**
- **Deprivation of liberty**
- **Degrading detention conditions**
- **Deportations**

Mechanism	UN	Rights Engaged	International law	Time Frame	As soon as possible

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties	One or more UN Member states.

Jurisdiction	
Standard	*Exception(s)*
N/A	N/A

Admissibility
■ Wide admissibility requirements. ■ Complaints may be made in respect of alleged deprivations of liberty by any state. ■ No requirement for local remedies to be exhausted prior to a complaint being made.

Procedural Requirements
■ A complaint can be made by sending a Model Questionnaire[8] and Consent Form[9] to WGAD. ■ WGAD will communicate the complaint to the respondent state and then invite submissions from each party.

8 WGAD Model Questionnaire.
9 WGAD Consent Form.

■ The complainant must have exhausted all remedies available to them in the State the subject of the complaint or the available remedies are ineffective or unreasonably prolonged.	

Procedural Time Frame	Evidentiary Standards
3 to 6 months from complaint being lodged (unless urgent appeal process used).	'Convincing evidence'.

Outcomes/Remedies
A successful submission will result in WGAD issuing an opinion to the respondent government and the subject of the complaint which, whilst non-legally binding, is nevertheless highly persuasive.

What is the mechanism?

As part of its mandate, the WGAD is empowered to consider individual complaints. Individuals **anywhere in the world** can complain to WGAD that they have suffered **detention which is arbitrary**, or which is **otherwise contrary to international law**.

WGAD is composed of five independent experts, and it holds three sessions per year (usually in April, August and November).

WGAD may undertake country visits, investigate specific cases, determine specific complaints, and prepare reports for the Human Rights Council in fulfilment of its mandate.

- WGAD was established by Resolution 1991/42 of the former Commission on Human Rights.
- Since then, WGAD's mandate has been extended twice: by the Commission's Resolution 1997/50, and by Resolution 24/7 of September 2013.
- WGAD's objectives are to investigate arbitrary deprivations of liberty, or deprivations which are otherwise inconsistent with international law.
- WGAD also acts as an intermediary between states and alleged victims, sending urgent appeals and communications to respondent governments to bring cases to their attention.

What is the outcome of a complaint?

WGAD is empowered to issue legal opinions. These opinions are **not legally binding**, but they are **highly persuasive** in practice, because of WGAD's expertise and mandate.

After evaluating all available evidence, WGAD will convene in a private session and adopt one of the following measures:

- **Where the subject has already been released:** If the subject of the complaint has already been released, WGAD may:
    - close the case; or
    - render an opinion on whether or not the deprivation of liberty was arbitrary.
- **Where the subject has not been released:** if the subject of the complaint has not been released, WGAD may:
    - issue an opinion that the case does not involve an arbitrary deprivation of liberty;
    - conclude that further information is required, and keep the case pending until such information is received (either from the subject or the respondent government);
    - conclude that further information is required but that such information is unobtainable and close the complaint; or
    - agree that an arbitrary deprivation of liberty has taken place, issue an opinion to that effect, and make recommendations to the respondent government.

In any event, an opinion issued by WGAD (and any recommendations) will be sent to the respondent government; 48 hours later, it will also be sent to the subject of the complaint. These opinions are also published online.[10]

What are the admissibility criteria?

WGAD has wide discretion in reviewing cases of alleged arbitrary deprivation of liberty. As a result:

- **complaints may be made by a wide range of individuals:** complaints may be made by the individual claiming to have suffered arbitrary detention or by their families, representatives, non-governmental or intergovernmental organisations, or by governments.
- **Complaints may be made about any state.**
- **There is no requirement for local remedies to be exhausted:** this allows complaints to be made in circumstances where the local remedies offered by the respondent government are slow or ineffective, or where that government is otherwise stalling for time.

What must be proven?

WGAD will receive evidence from both the subject of the complaint, and the respondent state. In evaluating this evidence, WGAD will be persuaded by '**convincing evidence**'. This is a lesser standard of proof than 'beyond reasonable doubt', which is the standard applied by many domestic legal bodies in criminal cases.

10 Opinions adopted by the Working Group on Arbitrary Detention.

WGAD does not specifically set out what amounts to 'convincing evidence', and WGAD's assessment is therefore largely discretionary. However, WGAD has noted that detention will be arbitrary if it falls into one of the following categories:

- **Category I:** Imposed without any legal basis.
- **Category II:** Imposed because of the subject's exercise of their human rights (e.g., to free expression).
- **Category III:** Imposed in violation of the right to a fair trial.
- **Category IV:** Prolonged administrative custody imposed on asylum seekers, immigrants or refugees.
- **Category V:** Imposed based on illegal discriminatory grounds.

These definitions would capture, for instance, continued detention after an individual has completed their sentence; prolonged detention of asylum seekers with no opportunity for determination of their asylum claim; and detention based on ethnicity, religion or sexual orientation.

What is the procedure?

Complaints can be lodged by completing a Model Questionnaire and Consent Form and then lodging these with WGAD. WGAD asks that this preferably be done by email (hrc-wg-ad@un.org), but will also accept submission by post:

Working Group on Arbitrary Detention
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8 – 14 Avenue de la Paix, 1211
Geneve 10, Switzerland

Complaints should be submitted **as soon as possible**.

WGAD will communicate complaints to the respondent government once received and will invite the respondent government to reply **within 60 days** with its comments and observations on the allegations made. Respondent governments may request an **extension of up to one month**.

Any reply received from the respondent government is sent to the subject of the complaint for any final comments or observations.

The typical interval between a complaint being lodged and an opinion being rendered by WGAD is **3 to 6 months**. However, an urgent appeals procedure exists for cases where:

- there are **sufficiently reliable allegations** that a person may be arbitrarily detained; and
- the situation is **time-sensitive** (in terms of there being a **risk to life** or of **imminent or ongoing damage of a grave nature**).

In these circumstances, WGAD will send an urgent appeal to the respondent government asking it to respect the detained person's rights. The fact that an appeal has been made on an urgent basis does not affect WGAD's ultimate assessment of whether the detention subject to that appeal was arbitrary or not.

Summary

PROS

- ✓ Fast and flexible alternative to legal action, with no need to exhaust domestic remedies.
- ✓ Evidentiary standards and procedural requirements are lower and less formal than if seeking legal redress.
- ✓ Complainants need not be directly affected by the deprivation complained of.

CONS

- × WGAD's opinions are non-binding.
- × Complainants cannot receive individual or monetary relief.
- × Relief is declaratory and may be given after the individual has already been released.

Useful resources

- ➢ UN WGAD landing page
- ➢ Model Questionnaire
- ➢ Consent Form

See more

Analysis of Legal Complaints Processes: UN Working Group on Arbitrary Detention

United Nations
Commission on the Status of Women

The UN Commission on the Status of Women is the leading global intergovernmental body dedicated to promoting the protection of gender equality and the rights of women. The Commission undertakes investigations into **alleged violations** of human rights that **affect the status of women** in any country in the world.

Consider using for

- Border violence
- Collective expulsions
- Crimes against humanity
- Degrading detention conditions
- Discrimination
- Enforced disappearances
- Forced migration
- Human smuggling
- Interception measures
- Inhuman or degrading treatments
- Persecution
- Pushbacks
- Sexual and gender-based violence
- Torture

Mechanism	Rights Engaged	Deadline to Apply
UN	International law	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties	N/A

Jurisdiction	
Standard	*Exception(s)*
N/A	N/A

Admissibility
■ Communications containing allegations of human rights violations affecting the status of women must be submitted by a prescribed deadline in August.

Procedural Requirements
■ All communications must be signed and submitted in writing by email (to cp-csw@unwomen.org) and directed to the CSW Communications Procedure.

Procedural Time Frame	Evidentiary Standards
Approx. 7-18 months.	No evidentiary standards.

Outcomes/Remedies
The Commission may make recommendations to the Economic and Social Council on what action should be taken on emerging trends and patterns of discrimination against women revealed by the communications.

What is the mechanism?

The communications procedure of the Commission on the Status of Women (**Commission**) was initially established by Economic and Social Council Resolution 76(V) of 5 August 1947, as amended by the Council in resolution 304 I (XI) of 14 and 17 July 1950.

An individual, non-governmental organisation or group can submit communications to the Commission containing information relating to **alleged violations of human rights that affect the status of women** in any country in the world.

What is the outcome of a complaint?

The Commission **does not take decisions on the merit of communications** that are submitted to it and, therefore, the communications procedure does not provide an avenue for the redress of individual grievances.

Instead, the Commission reviews communications and uses the information to feed into its reporting on emerging trends and patterns of discrimination against women. This then feeds into its recommendations for changes to the Economic and Social Council.

The Commission usually takes note of the report of the Working Group and includes it in its annual report to the Economic and Social Council.

What are the admissibility criteria?

There are **no express admissibility criteria**. Communications containing allegations of human rights violations affecting the status of women must be submitted by a prescribed deadline in August, details of which are available here.

What must be proven?

There is no particular evidentiary standard, although the communication should include as much detailed information as possible. It is advisable that communications should:

- identify as far as possible the victim or victims (note: the names of victims will be shared with the concerned State);
- indicate clearly where the alleged violation(s) or pattern of violations have occurred or are occurring, with separate communications submitted for each country in which alleged violations have taken place;
- provide, when available, dates and circumstances of the alleged violations;
- explain the context by providing relevant background information; and
- provide, when available, copies of relevant documentation.

What is the procedure?

All communications must be signed and submitted in writing by email (to cp-csw@unwomen.org) and directed to the CSW Communications Procedure. The author's identity is not made known to the relevant State unless the complainant agrees to such a disclosure.

The procedure is broadly as follows:

1. The Commission receives communications containing allegations of human rights violations affecting the status of women.
2. Communications are sent to the Secretary-General to the State concerned and the State is invited to submit replies within a 12-week deadline.
3. The Commission compiles a confidential report containing summaries of communications and any replies received from the Governments concerned.
4. A Working Group on Communications on the Status of Women, composed of a member from each of the five regional groups, meets in closed meetings.
5. The Working Group's report and the confidential list of communications and replies are then distributed to members of the Commission three days prior to the start of the annual session (which usually takes place in late February).
6. The Commission then takes up the item "Communication concerning the status of women" in closed meeting(s) during the second week of its session (usually in the second week of March).
7. That report is discussed by the Commission on the Status of Women in the second week of March, before recommendations are made to the Economic and Social Council, if deemed necessary.

The annual process typically takes **between 7 – 18 months**.

Summary

PROS

- ✓ No evidentiary threshold.
- ✓ Conclusions included in the annual report to the Economic and Social Council.
- ✓ Particular focus, interest and expertise in sex, gender, and gender identity-related discrimination.

CONS

- × Does not provide an avenue for the redress of individual grievances.
- × Annual process (submissions must be made by a certain date in August).

Useful resources

- ➢ UN Women Communications procedure

See more

Analysis of Legal Complaints Processes: UN Commission on the Status of Women

United Nations

International Criminal Court

The International Criminal Court (**ICC**) is the permanent international court responsible for investigating and prosecuting individuals for some of the most serious crimes under the Rome Statute of the ICC, including **crimes against humanity**.

Mechanism	ICC	**Rights Engaged**	International law	**Deadline to Apply**	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties ■ State(s)	A national of a State Party

Jurisdiction	
Standard	*Exception(s)*
Universal	N/A

Admissibility
The crimes must have taken place after 1 July 2002, in the territory of a State Party or were committed by a national of a State Party, and amount to atrocity crimes, and there are no genuine investigations or prosecutions for the same crimes at the national level. Crimes within the jurisdiction of the ICC include 1) crimes of genocide, 2) crimes against humanity, c) war crimes and d) crimes of aggression (Article 5 of the Rome Statute)

Procedural Requirements
Communications to be made electronically or by sending physical correspondence.

Procedural Time Frame
N/A

Evidentiary Standards
Beyond reasonable doubt

Outcomes/Remedies
A successful outcome will result in a prison sentence of up to 30 years (or in some cases, a life sentence) and/or an order for reparations to be made to the victims

Useful resources

- Rome Statute of ICC
- OTP factsheet
- ICC factsheet
- Electronic communications submission portal: https://www.icc-cpi.int/about/otp/otp-contact

See more

Analysis of Legal Complaints Processes: Prosecutor of the International Criminal Court

2. Jurisdiction: International

2.1. Legal Complaints Processes[11]

2.1.2. Analysis

[11] Complaints processes that could apply to survivors and relatives of victims of border violence, including border deaths, pushbacks and/or collective expulsions.
For a definition of border deaths see P Cuttitta and T Last (ed), *Border Deaths* (Amsterdam University Press, 2019) open access. There is no fixed definition but in broad terms it describes 'the premature deaths of persons whose movement or presence has been unauthorized and irregularised as they navigate or interact with state-made boundaries'; pushbacks include the forced return of migrants, including applicants for international protection, to the country from where they attempted to cross or have crossed an international border without allowing them to apply for asylum or submit an appeal which may lead to a violation of the principle of *non-refoulement.* See here, European Commission, Migration and Home Affairs 'Glossary'.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
UN Human Rights Council	**Human Rights Council resolution 5/1 of 18 June 2007.**	To submit the complaint, there are various **eligibility criteria**: ■ Domestic remedies must have already been exhausted, unless such remedies appear ineffective or unreasonably prolonged; ■ It must be in writing in one of the six UN official languages (Arabic, Chinese, English, French, Russian and Spanish); ■ It must contain a description of the relevant facts (including names of alleged victims, dates, location and other evidence), with as much detail as possible; ■ It must not be manifestly politically motivated, or based exclusively on reports disseminated by mass media; ■ It must not contain abusive or insulting language; and ■ The principle of non-duplication applies. This means the complaint must not already be under examination by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights.	There is **not a particular evidentiary standard.** The complaint must be as specific as possible containing the description of the relevant facts (including names of alleged victims, dates, location and other evidence), with as much detail as possible. It must not be manifestly politically motivated, or based exclusively on reports disseminated by mass media.	The complaint can be submitted against any of the 193 Member States, whether or not the country has ratified any particular treaty or made reservations under a particular instrument and, as mentioned above, the complaint can have as subject matter any consistent pattern of gross and reliably attested violations of human rights. The procedure is confidential. The complainant may make a request for confidentiality of some information, but the complaint must not be anonymous. Should complainants request that their identity be kept confidential, it will not be transmitted to the State concerned.	Given the high volume of complaints, it may take weeks or months before the complaint is addressed. The complainant and concerned States are kept informed of the process as it evolves. However, to ensure that the complaint procedure is victims-oriented, efficient and conducted in a timely manner, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not, in principle, exceed 24 months.	The format of the outcome of the review is a report consisting of a summary of the proceedings of the review process; conclusions and/or recommendations, and the voluntary commitments of the State concerned. The outcome may include, *inter alia*: ■ An assessment undertaken in an objective and transparent manner of the human rights situation in the country under review, including positive developments and the challenges faced by the country; ■ Sharing of best practices; ■ An emphasis on enhancing cooperation for the promotion and protection of human rights; ■ The provision of technical assistance and capacity-building in consultation with, and with the consent of, the country concerned; ■ Voluntary commitments and pledges made by the country under review.
Special Procedures of the Human Rights Council	**Human Rights Council resolution 16/21.** The Special Procedures of the Human Rights Council are independent human rights experts who: ■ Monitor the situation in countries through visits; ■ Act on complaints of alleged human rights violations by sending communication; ■ Conduct thematic studies and organise expert consultations; ■ Contribute to the development of international human rights standards; ■ Engage in advocacy and raise public awareness; and ■ Provide advice for technical cooperation to Governments.	Each expert will decide whether they will take action on a given submission, on the basis of the information received and the scope of their mandate. This decision depends also on criteria laid down in the Code of Conduct for the experts ("**Code of conduct of the Special Procedures mandate-holders of the Human Rights Council**", **Human Rights Council resolution 5/2**): ■ The communication should not be manifestly unfounded or politically motivated; ■ The communication should contain a factual description of the alleged violations of human rights; ■ The language in the communication should not be abusive; ■ The communication should be submitted on the basis of credible and detailed information; ■ The communication should not be exclusively based on reports disseminated by mass media.	There is not a specific evidentiary standard requirement. The experts will monitor: ■ Allegations of violation of the human rights of one or more individuals ■ Allegations of violation of the human rights of a group or a community; ■ Allegations that a bill, a law, a decree, a policy and/or a practice is not in compliance with international human rights law and standards.	There are **no particular procedural requirements.** The procedure is very agile: ■ You do not need to have exhausted domestic remedies; ■ The State you complain about does not have to have ratified a specific human rights treaty; and the procedure can be used in parallel with other international and regional complaint procedures. It is possible to complain about violations which have not happened yet but have a high risk of occurring as well as to complain about draft legislation, policy or practice considered not to be fully compatible with international human rights norms and standards. To make a complaint under the Special Procedures it is possible to use the online submission tool (recommended) or by postal mail to:	The Special Procedures strive to act as quickly as possible. Attention is given to the most serious and urgent cases. Cases may be taken up within 24 hours of their submission. However, it may take longer, particularly when sufficient information is not available in the submission.	The outcome is **transparent**: the letters sent and replies received are all made publicly available once the confidentiality period is over.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
		Experts will not require that the concerned State has ratified an international or regional human rights treaty, or that the alleged victim has exhausted domestic remedies to send a communication.		*OHCHR-UNOG* *8-14 Avenue de la Paix* *1211 Geneva 10* *Switzerland*		
UN Special Rapporteur on the human rights of migrants	**UN Resolution 1999/44.** **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.** **UN Resolution (43/6) adopted by the Human Rights Council on 19 June 2020.**	*See* under **Special Procedures of the Human Rights Council**. The Special Rapporteur **does not require the exhaustion of domestic remedies** to act. There are **no particular admissibility requirements**. Indeed, the Special Rapporteur can request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families. The communications can be divided into two main categories: ■ information regarding individual cases of alleged violations of the human rights of migrants ■ information regarding general situations concerning the human rights of migrants in a specific country.	*See* under **Special Procedures of the Human Rights Council.**	*See* under **Special Procedures of the Human Rights Council.** In particular: ■ The Special Rapporteur acts on information submitted to them regarding alleged violations of the human rights of migrants by sending urgent appeals and communications to concerned Governments to clarify and/or bring to their attention these cases. ■ The Special Rapporteur conducts country visits (also called fact-finding missions) upon the invitation of the Government, in order to examine the state of protection of the human rights of migrants in the given country. The Special Rapporteur submits a report of the visit to the Human Rights Council, presenting their findings, conclusions and recommendations. *See* **Country Visits**. ■ The Special Rapporteur participates in conferences, seminars and panels on issues relating to the human rights of migrants as well as issues press releases. ■ Annually, the Special Rapporteur, reports to the Human Rights Council about the global state of protection of migrants' human rights, their main concerns and the good practices they have observed. In their report, the Special Rapporteur informs the Council of all the communications they have sent, and the replies received from Governments. Furthermore, the Special Rapporteur formulates specific recommendations with a view to enhancing the protection of the human rights of migrants. The Special Rapporteur also reports to the General Assembly.	*See* under **Special Procedures of the Human Rights Council.**	*See* under **Special Procedures of the Human Rights Council.**

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
UNTB individual complaints mechanisms with wide adoption:						
Treaty Body – **UN Human Rights Committee** Communication from individual claiming to be a victim of violations of the International Covenant on Civil and Political Rights ("**ICCPR**") under the first Optional Protocol to the ICCPR (the "**ICCPR Optional Protocol**")	**ICCPR:**[12] **Article 2(3)** - effective remedy. (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted. **Article 6(1)** - Right to Life. **Article 7** - Prohibition against torture, cruel, inhumane or degrading treatment or punishment. **Article 9(1)** - Right to liberty and security of person, no one shall be subjected to arbitrary arrest or detention, no one shall be	**Applicability of Treaty and individual complaints process**[14] – ICCPR and ICCPR Optional Protocol.[15] **Check if applicable reservations.**[16] **Admissibility rationae temporis** – complaint should relate to events that occurred after entry into force of the relevant treaty, save for instances of continuous violation of the treaty and where a complaint relates to facts that occurred before date of entry of ICCPR where there has been a court decision or other State act validating those facts.[17] **No other international complaint**[18] – the "same matter" has not been submitted to any other procedure of international investigation or settlement. However, the Human Rights Committee may consider such a case if it is no longer pending consideration before the other instance of international settlement. The Human Rights Committee will also not declare inadmissible a complaint that has also been submitted to one of the mechanisms of the Human Rights Council.[19] "Same matter" is considered to be the same author, same facts and same substantive rights (and facts that have been submitted to another international mechanism can be brought	**Communication** It is essential to set out, in chronological order, all the facts on which the complaint is based. The account must be as complete as possible and contain all information relevant to the case. The complainant should also state why he/she considers that the facts described constitute a violation of the treaty in question. It is highly recommended to identify the rights set out in the treaty alleged to have been violated. It is also advisable to indicate the kind of remedies that the complainant would like to obtain from the State party in case the Committee concludes on the facts before it discloses a violation of his/her rights. A complaint that is not sufficiently substantiated may be rejected as inadmissible. **Interim and Protective Measures** Must be able to demonstrate that the risk is real and that, should it materialise, the damage would be irreparable. Must also demonstrate that the risk is personal (and not merely based in general context).[26]	Should only be sent to one Treaty Body.[27] Use model complaint form ideally.[28] Claim should be in writing, written legibly, preferably typed and signed. In one of the UN languages (Arabic, Chinese, English, French, Russian, Spanish). The complaint should provide **basic personal information** - alleged victim's name, nationality, date of birth, mailing address and email - and specify the State party against which the complaint is directed. If the complaint is brought on behalf of another person, proof of his/her consent should be provided (no specific form required), or the author of the complaint should state clearly why such proof cannot be provided. Communication must not be anonymous. However, if there are particularly sensitive matters of a private or personal nature that emerge in the complaint, the author of the complaint may request the Committee not to disclose his/her name or the alleged victim's name and/or identifying elements in its final decision so that the identity of the alleged victim or that of the author does not become public. The complainant should also detail the steps taken to exhaust the remedies available in the State	**Timing to Issue Communication** It is important to submit the complaint as soon as possible after the exhaustion of domestic remedies. A delay in submission will not automatically constitute an abuse of the right of submission. "However, a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after 3 years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication".[30] **Registration of the complaint** The Committee's Special Rapporteur will decide whether the case should be registered, that is to say formally listed as a case for consideration by the relevant Committee. You will receive advice on registration. This decision will be taken "as soon as possible" after the communication has been received.[31] **Written submissions**	**Final "Views" of the Committee** Members of a working group established under Human Rights Committee Rules of Procedure (Rev 12) Rule 107 will examine the communications before the Committee plenary. It will make recommendations to the Committee in relation to admissibility[44] and may make recommendations as to merits.[45] Decisions will be taken by a simple majority of Committee members present and voting, in respect of both admissibility and merits.[46] Any member of the Committee that has participated in a decision may write a separate opinion that should be appended to the Committee's Views.[47] Typically it takes about 1 to 2 years for a case to be considered after registration, but the Human Rights Committee has a significant backlog of complaints and the procedure usually takes longer.[48] Final decisions are made public. The Committee may, at its own discretion, decide not to disclose certain matters in the course of consideration of the complaint. There is no appeal process and decisions are final. However, if the Committee declares that a communication is inadmissible under **Article 5(2) of the ICCPR**

12 ***FAA v. Greece*** (Articles 2, 6, 7, 9, 10, 12, 13, 14, 16, 17 and 26 (in conjunction with Article 2)); The story of Parvin A ,https://www.humanrights360.org/bringing-greek-push-backs-to-justice/; ***Case of A.S. et al***, (3042/2017) (violation of Article 6(1), Article 6(1) in conjunction with Article 2(3), and Article 7 in conjunction with Article 2(3)); ***SM v. Croatia*** (Application No. 60561/14) (Articles 2(3), 7 and 16).

14 ICCPR Optional Protocol, Article 1.

15 Ratification Status.

16 Status of ICCPR and Status of Optional Protocol to the ICCPR.

17 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 14.

18 ICCPR Optional Protocol, Article 5(2)(a).

19 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 14.

26 See Guidance, paragraph 12.

27 See Guidance, paragraph 1.

28 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), Annex I.

30 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 99(c).

31 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 92.2.

44 If all Working Group members agree, it may declare a communication inadmissible, but the decision will be transmitted to the Committee plenary.

45 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 98.

46 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 97.4.

47 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 103.

48 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. **Article 9(4)** - Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. **Article 10(1)** - All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. **Article 12(1)** – Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. **Article 12(2)** – Everyone shall be free to leave any country, including his own. **Article 12(4)** – No one shall be arbitrarily deprived of the right to enter his own country.	before this Committee if the ICCPR provides for broader protection).[20] **Exclusion of domestic remedies**[21] - Domestic remedies are exhausted, to the extent that they are effective and available.[22,23] It is not sufficient merely to have doubts as to the effectiveness of a remedy but can be circumvented e.g. were proceedings at national level unreasonably prolonged or remedies unavailable or ineffective. **Individual subject to the State's jurisdiction**[24] **Consent** obtained if the complainant acts on behalf of another person. **Victim** - Is the complainant (or person on whose behalf the complaint is brought) a victim of the alleged violation? Alleged victim is "personally and directly affected by the law, policy, practice, act or omission of the State party"? **Admissibility rationae materiae** – is the complaint compatible with the provisions of the treaty invoked? **Committee is not required to review the facts and evidence in a case already decided by the national courts** - Committees cannot in principle examine the determination of administrative, civil		party against which the complaint is directed, that is steps taken before the State party's local courts and authorities. The requirement to exhaust domestic remedies means that the claims must have been brought to the attention of the relevant national authorities, up to the highest available instance in the State concerned. If some of these remedies are pending or have not yet been exhausted it should also be indicated, as well as the reasons for it. The complainant should state whether he/she has submitted his/her case to another means of international investigation or settlement. Complainants should supply copies of all documents (no originals, only copies) of relevance to their claims and arguments, especially administrative or judicial decisions on their claims issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation of the documents must be submitted. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents. The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to	The case is normally[32] transmitted to the State party concerned to give it an opportunity to comment (usually on merits and admissibility, but the Committee or special rapporteur may decide that in view of the circumstances of the case a written reply is requested solely in relation to admissibility).[33] The State is requested to submit its observations (either on admissibility and merits, or just merits if admissibility has already been determined) within 6 months. The State may request, within 2 months, for the question of admissibility to be determined separately.[34] Once the State replies to the complaint, the complainant is offered an opportunity to comment by way of a reply. The State party may submit a rejoinder[35] Upon the request of one of the parties, additional written submissions may be authorised by the special rapporteur on an exceptional basis[36] The Committee will establish a definitive date for the completion of further steps in the proceedings. To seek an extension of the time limit, a party must make the request as soon as it has become aware of the circumstances justifying the extension and in any event before the expiry of the time limit, stating the reason for the extension. The decision to extend is at the discretion of the Special Rapporteur.[37] No observations or other documents submitted outside the time limit shall be	**Optional Protocol**, that decision may be reviewed at a later date upon written request to the effect that the reasons for inadmissibility referred to in Article 5(2) no longer apply.[49] The Committees' decisions represent an authoritative interpretation of the treaty concerned. They contain recommendations to the State party. Ultimately, however, the decisions are not legally binding (although States have a moral obligation to implement the decisions).[50] **Follow Up Procedures** When the Committee decides on the facts before it discloses a violation by the State party of the complainant's rights under the treaty, it invites the State party to supply information within 180 days on the steps it has taken to give effect to its findings and recommendations. The State party's response is transmitted to the complainant for comments. The Committee shall designate a Special Rapporteur for follow-up in order to ascertain the measures taken by States to implement the Committee's Views. The Special Rapporteur shall make such contacts and take such action as appropriate for performance of the follow up mandate and shall make such recommendations for further action by the Committee as may be necessary. It shall regularly report to the Committee on follow-up activities

20 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 14.
21 ICCPR Optional Protocol Articles 2 and 5(2)(b).
22 UNHRC Annual Report 1984, paragraph 584 (quoted in Moller and de Zayas, United Nations Human Rights Committee Case Law 1977–2008 (Kehl am Rhein: N.P. Engel Verlag, 2009) 112: "exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available").
23 ***MK v. France*** (222/87), paragraph 8.3. The seriousness of the violation can affect the effectiveness of the remedy: ***Vicente et al v. Columbia*** (612/95), para. 5.2.
24 ICCPR Optional Protocol Article 1. This has been interpreted in case law to mean State territory or "all persons subject to [the State's] power or effective control outside of its territory" or "all persons over whose enjoyment of the right to life [the State] exercises power or effective control" in respect of those with a "Special relationship of dependency" with the State. See ***Case of A.S. et al*** (3042/2017), referring to paragraph 63 of UNHCR's general comment No 36 (2018) on the right to life. In A.S. et al, this was satisfied by (i) the vessel initially contacting the Italian rescue centre; (ii) the Italian navy vessel being in close proximity; (iii) the Italian rescue centre remained involved in the rescue even after Malta accepted responsibility and (iv) Italy was bound by international obligations to rescue the individuals, all of which meant that the individuals were "directly affected by the decisions taken by Italy in a manner that was directly foreseeable in the light of the relevant legal obligations of Italy".
32 The Special Rapporteur may decide that in order to reach a determination on the admissibility of a registered communication its transmission to the State party is not required. The decision shall be transmitted to the Committee plenary for discussion. Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 92.3.
33 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 92.5.
34 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 93.1.
35 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 92.6.
36 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 92.7.
37 Rules of Procedure of the Human Rights Committee (Rev. 12), 92.9.
49 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 100.2.
50 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	Article 13 – An alien lawfully in the territory of a State Party to the present Convention may be expelled therefrom only in pursuance of a decision reached in accordance with law. **Article 14** – All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. **Article 16** - Everyone shall have the right to recognition everywhere as a person before the law. **Article 17** – No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour or reputation. **Article 26** – All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national	or criminal liability of individuals, nor can they review the question of innocence or guilt. **Not an Abuse of Process** - Complaint is not an abuse of process – e.g. frivolous, vexatious or otherwise inappropriate use of the complaint procedure (such as if the same individual brings repeated claims to the Committee on the same issue when previous identical ones have been dismissed). **Not anonymous.**[25]		five pages highlighting its main elements. Send by email to petitions@ohchr.org -no paper communications will be processed unless it is justified that it would be impossible to submit the communication electronically.[29]	included on the case file, unless the special rapporteur decides otherwise.[38] **Committee decision making** When comments are received from both parties (or if the State party fails to respond to the complaint even after receiving several reminders from the secretariat) the Committee will take its decision typically on admissibility and merits simultaneously.[39] This is done in closed session[40] on the basis of the written information supplied, without oral submissions or audio-visual evidence. The Committee may though decide in exceptional circumstances to invite the parties to comment on each other's submissions orally[41] Two or more communications may be dealt with jointly if deemed appropriate by the Committee.[42] **Requests for Further Information** If the complaint lacks essential information to be processed under these procedures or the description of facts is unclear, the complainant will be contacted by the secretariat of the United Nations (Office of the High Commissioner for Human Rights, OHCHR) with a request for additional details or resubmission. Complainants should be diligent in conducting correspondence with the secretariat and the information requested should be sent as soon as possible and no later than one year. If the information is not received within a year from the date of the request, the file will be closed.	and the Committee shall include information on follow-up activities in its Annual Report.[51] **Interim and Protective Measures** May be adopted in urgent cases to request the State party to adopt measures to prevent irreparable harm (that cannot be susceptible to reparation). Typical interim measures include suspension of death penalty or deportation to a country where the complainant faces a risk of torture or ill treatment. Can also request protection measures to protect individuals involved in the communication from reprisals, including lawyers, witnesses and family members where the risk relates to the filing of the communication. May be submitted in the context of follow-up procedures.[52] When the Committee requests interim measures, it will indicate that the request does not imply a determination on the admissibility or the merits but that failure to implement such measures is incompatible with the obligation to respect in good faith the procedure of individual communications in the ICCPR Optional Protocol.[53] **Rapporteurs for Repetitive Communications**[54] The Committee may appoint one or two members as rapporteurs for repetitive communications. The rapporteurs for new communications and interim measures may refer cases which raise facts and legal questions of substantially the

25 ICCPR Optional Protocol Article 3.
29 See Guidance, paragraphs 15-17.
38 Rules of Procedure of the Human Rights Committee (Rev. 12), Rules 92.10 and 92.11.
39 Note that it is possible for a decision on admissibility to come first, before the State party is asked for its submissions on the merits.
40 Oral deliberations and summary records of the Committee shall remain confidential. All working documents issued by the Secretariat for the Committee, the Working Group or the Special Rapporteur shall remain confidential unless the Committee decides otherwise. This does not however affect the ability of the complainant (or the State) to make public their submissions or information bearing on the proceedings – although the Committee, Working Group or Special Rapporteur may request them to keep submissions or information confidential in whole or in part. Rules of Procedure of the Human Rights Committee (Rev. 12), Rules 111.1, 111.3, 111.4 and 111.5.
41 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 101.4.
42 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 97.3.
51 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 106.
52 See Guidance, paragraph 12.
53 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 94.2.
54 Rules of Procedure of the Human Rights Committee (Rev. 12), Rule 105.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	or social origin, property, birth or other status. [Recognition by UN Human Rights Committee that this also amounts to **Enforced disappearance under International Convention for the Protection of All Persons from Enforced Disappearance**[13]].				**Interim and Protection Measures** Can be requested at any time before the adoption of a final decision.[43]	same nature as those already decided by the Committee in previous cases to rapporteurs for repetitive communications. The rapporteur(s) for repetitive communications shall propose a draft recommendation to the Working Group. Unless one or more members of the Working Group objects, the recommendation shall be submitted to the Committee for adoption. Unless one or more of the members of the Committee objects, it shall be considered to be adopted as Views of the Committee.
Treaty Body – **UN Committee Against Torture** Communication from individual claiming to be a victim of violations of the UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment ("**CAT**") **under Article 22 CAT**[55]	**CAT**: **Definition of Torture Article 1** – "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." **Article 2** – each State shall take effective measures to prevent acts	**Check ratification/applicability of Treaty complaints process** [57] – CAT **Check applicable reservations.**[58] **Admissibility rationae temporis** – complaint should relate to events that occurred after entry into force of the relevant treaty, save for instances of continuous violation of the treaty. **Individual subject to the State's jurisdiction.**[59] **No other international complaint**[60] – case not submitted to any other procedure of international investigation or settlement – either under examination or subject of a decision.	**Communication** It is essential to set out, in chronological order, all the facts on which the complaint is based. The account must be as complete as possible and contain all information relevant to the case. The complainant should also state why he/she considers that the facts described constitute a violation of the treaty in question. It is highly recommended to identify the rights set out in the treaty alleged to have been violated. It is also advisable to indicate the kind of remedies that the complainant would like to obtain from the State party in case the Committee concludes on the facts before it discloses a violation of his/her rights. A complaint that is not sufficiently substantiated may be rejected as inadmissible. **Interim and Protective Measures** Must be able to demonstrate that the risk is real and that, should it	Should only be sent to one Treaty Body.[63] Use **model complaint form** ideally. Claim should be in writing, written legibly, preferably typed and signed. In one of the UN languages (Arabic, Chinese, English, French, Russian, Spanish). The complaint should **provide basic personal information** - alleged victim's name, nationality, date of birth, mailing address and email - and specify the State party against which the complaint is directed. If the complaint is brought on behalf of another person, proof of his/her consent should be provided (no specific form required), or the author of the complaint should state clearly why such proof cannot be provided. Communication must not be anonymous. However, if there are particularly sensitive matters of a private or personal nature that	**Timing to Issue Complaint** It is important to submit the complaint as soon as possible after the exhaustion of domestic remedies. Delay in submitting the case may make it difficult for the State party to respond properly and for the treaty body to evaluate the factual background thoroughly. There is no fixed period for submitting a communication after the exhaustion of remedies in this Committee.[67] However, the Committee may declare inadmissible if the time elapsed since exhaustion of domestic remedies is so unreasonably prolonged as to render consideration of the complaint by the Committee or State party unduly difficult.[68] **Registration of the complaint** The Committee will decide whether the case should be registered, that is to say formally listed as a case for consideration	**Final Decision of the Committee** Typically it takes about 1 to 2 years for a case to be considered after registration.[75] The Committee shall decide by simple majority as soon as practicable whether or not a complaint is admissible. The working group established under Rule 112 (1) may also declare a complaint admissible by majority vote or inadmissible by unanimity.[76] The working group or rapporteur may also provide its recommendations on merits.[77] If the Committee or working group declares that a communication is inadmissible under **Article 22(5) of the CA**T, that decision may be reviewed at a later date upon written request to the effect that the reasons for inadmissibility referred to in **Article 22(5) no longer apply**.[78] Final decisions are made public.

13 Considered by the UNHRC in ***Boucherf v. Algeria*** (1196/2003), [9.2]; ***Sharma v. Nepal*** (1469/06), [7.4]; ***Sarma v. Sri Lanka*** (950/00), [9.3]. See also General Comment No 36, Right to life, [8].
43 See Guidance, paragraph 12.
55 Source of information is https://www.ohchr.org/en/treaty-bodies/individual-communications#overviewprocedure unless otherwise stated.
57 CAT, Article 22: "A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration".
58 Ratification Status for Greece.
59 CAT, Article 22, paragraph 1.
60 CAT, Article 22 paragraph 4(a).
63 See Guidance, paragraph 1.
67 See Guidance, paragraph 13.
68 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 15.
75 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.
76 CAT Rules of Procedure (Rev 7), Rules 111(1) and 111(2).
77 CAT Rules of Procedure (Rev 7), Rule 112.
78 CAT Rules of Procedure (Rev 7), Rule 116(2).

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	of torture in any territory under its jurisdiction. **Article 3** – no State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds[56] for believing that he would be in danger of being subjected to torture. **Arts 4, 5 , 6** and **7**– Each State shall ensure that all acts of torture are offences under is criminal law, taking jurisdiction over offences committed in any territory under its jurisdiction or on board a ship or aircraft registered to the State, when the alleged offender is a national of that State, (if it considers it appropriate) the victim is a national of that State or the offender is in its jurisdiction. The State shall either extradite the individual or submit the case to its competent authorities for prosecution. **Article 11** – each State shall keep under systematic review interrogation rules and arrangements for the custody and treatment of persons subject to arrest, detention or imprisonment in any territory with a view to preventing cases of torture. **Article 12** – each State shall ensure that its competent authorities proceed to a prompt and impartial investigation wherever reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.	**Exclusion of domestic remedies** - Domestic remedies are exhausted, unless the application of remedies is unreasonably prolonged or unlikely to bring effective relief.[61] It is not sufficient merely to have doubts as to the effectiveness of a remedy but can be circumvented e.g. were proceedings at national level unreasonably prolonged or remedies unavailable or ineffective. **Consent** obtained if the complainant acts on behalf of another person. **Victim** - Is the complainant (or person on whose behalf the complaint is brought) a victim of the alleged violation? Alleged victim is "personally and directly affected by the law, policy, practice, act or omission of the State party"? **Admissibility rationae materiae** – is the complaint compatible with the provisions of the treaty invoked? **Committee is not required to review the facts and evidence in a case already decided by the national courts** - Committees cannot in principle examine the determination of administrative, civil or criminal liability of individuals, nor can they review the question of innocence or guilt. **Not an Abuse of Process** Complaint is not an abuse of process – e.g. frivolous, vexatious or otherwise inappropriate use of the complaint procedure (such as if the same individual brings repeated claims to the Committee on the same issue when previous identical ones have been dismissed) **Not anonymous.**[62]	materialise, the damage would be irreparable. Must also demonstrate that the risk is personal (and not merely based in general context).	emerge in the complaint, the author of the complaint may request the Committee not to disclose his/her name or the alleged victim's name and/or identifying elements in its final decision so that the identity of the alleged victim or that of the author does not become public. The complainant should also detail the steps taken to exhaust the remedies available in the State party against which the complaint is directed, that is steps taken before the State party's local courts and authorities. The requirement to exhaust domestic remedies means that the claims must have been brought to the attention of the relevant national authorities, up to the highest available instance in the State concerned. If some of these remedies are pending or have not yet been exhausted it should also be indicated, as well as the reasons for it. The complainant should state whether he/she has submitted his/her case to another means of international investigation or settlement. Complainants should supply copies of all documents (no originals, only copies) of relevance to their claims and arguments, especially administrative or judicial decisions on their claims issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation of the documents must be submitted. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents. The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to	by the relevant Committee. You will receive advice on registration. **Written Submissions** The case is transmitted to the State party concerned to give it an opportunity to comment. The State is requested to submit its observations (on admissibility, merits and any remedy, or alternatively on admissibility only if so decided by the Committee, working group or rapporteur) within 6 months.[69] The State may apply within 2 months to request that the complaint be rejected as inadmissible. The Committee or rapporteur may or may not agree to treat admissibility separately. Once the State replies to the complaint, the complainant is offered an opportunity to comment. The Committee may request additional written submissions from either party as to merits or admissibility, within a fixed period with a view to avoiding delay.[70] **Committee Decision Making** When comments are received from both parties (or if the State party fails to respond to the complaint even after receiving several reminders from the secretariat) the Committee will take its decision typically on admissibility and merits simultaneously. This is done in closed session on the basis of the written information supplied, without oral submissions or audio-visual evidence. However, it is possible for the Committee to invite parties to present at specified closed meetings to provide further clarification or to answer questions on the merits of the case – although this is exceptional and the case will not be prejudiced if the complainant fails to attend in person.[71] Note that it is possible for a decision on admissibility to come first, before the	The Committee may, at its own discretion, decide not to disclose certain matters in the course of consideration of the complaint. Ultimately, however, the decisions are not legally binding (although States have a moral obligation to implement the decisions).[79] There is no appeal process and decisions are final. **Follow Up Procedures** When the Committee decides on the facts before it discloses a violation by the State party of the complainant's rights under the treaty, it invites the State party to supply information within 180 days on the steps it has taken to give effect to its findings and recommendations. The State party's response is transmitted to the complainant for comments. The Committee may designate rapporteur(s) to follow up on decisions for the purpose of ascertaining measures taken by the State, making such contacts and taking such action as appropriate (including visiting the State). They may make further recommendations for further action as necessary to give effect to the decision.[80] **Interim and Protective Measures** May be adopted in urgent cases to request the State party to adopt measures to prevent irreparable harm (that cannot be susceptible to reparation). Typical interim measures include suspension of death penalty or deportation to a country where the complainant faces a risk of torture or ill treatment. Can also request protection measures to protect individuals involved in the

56 Taking into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights: CAT, Article 3(2).
61 CAT, Article 22 paragraph 4(b).
62 CAT, Article 22(2).
69 CAT Rules of Procedure (Rev 7), Rule 115(2).
70 CAT Rules of Procedure (Rev 7), Rules 115(5) and (6).
71 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 15; CAT Rules of Procedure (Rev 7), Rule 117(4).
79 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.
80 CAT Rules of Procedure (Rev 7), Rule 120.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	Article 13 – States shall ensure that individuals have the right to complain to, and their case promptly and impartially examined by, its competent authorities. **Article 14** – States shall ensure in their legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation. **Article 16** – States undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.			five pages highlighting its main elements. Send by email to petitions@ohchr.org -no paper communications will be processed unless it is justified that it would be impossible to submit the communication electronically.[64] **Documents** The Committee can obtain any documentation from organisations within the UN or other bodies that may be of assistance in the consideration of the complaint.[65] **Third Party Submissions** At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may request, as it deems appropriate, submissions from other United Nations organisations, bodies, specialized agencies and procedures and other independent sources, including regional human rights mechanisms, non-governmental organisations, national human rights institutions, other relevant specialized institutions, State agencies and offices, and academics, that may assist in the examination of the communication.[66]	State party is asked for its submissions on the merits. The State will then be asked for its written explanations or statements clarifying the case. The complainant may then submit their further comments on the merits.[72] **Requests for Further Information** If the complaint lacks essential information to be processed under these procedures or the description of facts is unclear, the complainant will be contacted by the Secretary General or the rapporteur for new complaints and interim measures with a request for additional details or resubmission. The Secretary general or rapporteur will fix a time limit for responding, with a view to minimizing undue delay in the proceedings (which may be extended in appropriate circumstances).[73] **Interim and Protection Measures** Can be requested at any time before the adoption of a final decision.[74]	communication from reprisals, including lawyers, witnesses and family members where the risk relates to the filing of the communication. May be submitted in the context of follow-up procedures.[81] Where the Committee, the working group or Rapporteur(s) request(s) interim measures under the present rule, the request shall not imply a determination of the admissibility or on the merits of the complaint. The State party shall be so informed upon transmittal.[82]
Treaty Body – **UN Committee on the Elimination of**	**CEDAW** **Article 1 – Definition of Discrimination against Women** – any distinction, exclusion or restriction made on the basis of	**Check applicability of Treaty[84] and of individual complaints process.[85]**	**Communication** It is essential to set out, in chronological order, all the facts on which the complaint is based. The account must be as complete as possible and contain	Should only be sent to one Treaty Body.[95] Use model complaint form ideally.[96]	**Timing to Issue Complaint** It is important to submit the complaint as soon as possible after the exhaustion of domestic remedies. Delay in submitting the case may make it difficult for the	**Final "Views"[107] of the Committee** Typically it takes about 1 to 2 years for a case to be considered after registration.[108]

64 See Guidance, paragraphs 15-17.
65 CAT Rules of Procedure (Rev 7), Rule 118(2).
66 CAT Rules of Procedure (Rev 7), Rule 118 bis.
72 CAT Rules of Procedure (Rev 7), Rule 117(2) and (3).
73 CAT Rules of Procedure (Rev 7), Rule 106(2).
74 See Guidance, paragraph 12.
81 See Guidance, paragraph 12.
82 CAT Rules of Procedure (Rev 7), Rule 114(2).
84 CEDAW Optional Protocol, Article 1.
85 Ratification Status .
95 See Guidance, paragraph 1.
96 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), Annex II.
107 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 17.
108 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
Discrimination against Women Communication from individual claiming to be a victim of violations of the Convention for the Elimination of all Forms of Discrimination Against Women ("**CEDAW**") under the first Optional Protocol to the CEDAW (the "**CEDAW Optional Protocol**")[83]	sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. **Article 2** – States condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: … (d) to refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; … (f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. **Article 3** – States shall take in all fields, in particular in the political, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of	**Check applicable reservations.**[86] **Admissibility rationae temporis**[87] – complaints should relate to events that occurred after entry into force of the relevant treaty, save for instances of continuous violation of the treaty. **Under the jurisdiction of the State.**[88] **No other international complaint**[89] – case not submitted to any other procedure of international investigation or settlement, either under examination or subject of a decision.[90] **Exclusion of domestic remedies**[91] - Domestic remedies are exhausted, to the extent that they are effective and available.[92,93] It is not sufficient merely to have doubts as to the effectiveness of a remedy but can be circumvented e.g. were proceedings at national level unreasonably prolonged or remedies unavailable or ineffective. **Consent** obtained if the complainant acts on behalf of another person. **Victim** - Is the complainant (or person on whose behalf the complaint is brought) a victim of the alleged violation? Alleged victim is "personally and directly affected	all information relevant to the case. The complainant should also state why he/she considers that the facts described constitute a violation of the treaty in question. It is highly recommended to identify the rights set out in the treaty alleged to have been violated. It is also advisable to indicate the kind of remedies that the complainant would like to obtain from the State party in case the Committee concludes on the facts before it discloses a violation of his/her rights. A complaint that is not sufficiently substantiated may be rejected as inadmissible. **Interim and Protective Measures** Must be able to demonstrate that the risk is real and that, should it materialise, the damage would be irreparable. Must also demonstrate that the risk is personal (and not merely based in general context).[94]	Claim should be in writing, written legibly, preferably typed and signed. In one of the UN languages (Arabic, Chinese, English, French, Russian, Spanish). The complaint should provide basic personal information - alleged victim's name, nationality, date of birth, mailing address and email - and specify the State party against which the complaint is directed. If the complaint is brought on behalf of another person, proof of his/her consent should be provided (no specific form required), or the author of the complaint should state clearly why such proof cannot be provided. Communication must not be anonymous. However, if there are particularly sensitive matters of a private or personal nature that emerge in the complaint, the author of the complaint may request the Committee not to disclose his/her name or the alleged victim's name and/or identifying elements in its final decision so that the identity of the alleged victim or that of the author does not become public. The complainant should also detail the steps taken to exhaust the remedies available in the State party against which the complaint is directed, that is steps taken before the State party's local courts and authorities. The requirement to exhaust domestic remedies means	State party to respond properly and for the treaty body to evaluate the factual background thoroughly. There is no fixed period for submitting a communication after the exhaustion of remedies in this Committee.[99] **Registration of the complaint** The Committee will decide whether the case should be registered, that is to say formally listed as a case for consideration by the relevant Committee. You will receive advice on registration. **Written Submissions** The case is transmitted to the State party concerned to give it an opportunity to comment. The State is requested to submit its observations on admissibility, merits and any remedies (or admissibility only, if so requested by the Committee) within 6 months.[100] The State may request within 2 months that the communication be rejected as inadmissible.[101] This does not affect the 6-month period for responding on the merits, unless the Committee decides to extend that period.[102] Once the State replies to the complaint, the complainant is offered an opportunity to comment. The Committee may request additional written submissions from either party as	The Committee shall decide by simple majority whether or not a complaint is admissible. The working group may also declare a complaint admissible by unanimity.[109] If the Committee declares that a communication is inadmissible that decision may be reviewed at a later date upon written request to the effect that the reasons for inadmissibility no longer apply.[110] The working group may also provide its recommendations on merits, if so requested by the Committee.[111] Views of the Committee on the merits are to be determined by simple majority.[112] Final decisions are made public. The Committee may, at its own discretion, decide not to disclose certain matters in the course of consideration of the complaint. There is no appeal process and decisions are final. The Committees' decisions represent an authoritative interpretation of the treaty concerned. They contain recommendations to the State party. Ultimately, however, the decisions are not legally binding (although States have a moral obligation to implement the decisions).[113]

83 Source of information is https://www.ohchr.org/en/treaty-bodies/individual-communications#overviewprocedure unless otherwise stated.
86 Status of the Convention on the Elimination of All Forms of Discrimination against Women and Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
87 CEDAW Optional Protocol, Article 4(2)(d).
88 CEDAW Optional Protocol, Article 2.
89 CEDAW Optional Protocol, Article 4(2)(a).
90 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 17.
91 CEDAW Optional Protocol Article 4(1)
92 UNHRC Annual Report 1984, paragraph 584 (quoted in Moller and de Zayas, United Nations Human Rights Committee Case Law 1977–2008 (Kehl am Rhein: N.P. Engel Verlag, 2009) 112: "exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available").
93 ***MK v. France*** (222/87), [8.3]. The seriousness of the violation can affect the effectiveness of the remedy: ***Vicente et al v. Columbia*** (612/95), [5.2].
94 See Guidance, paragraph 12.
99 See Guidance, paragraph 13.
100 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, 69(3) and 69(4).
101 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, 69(5).
102 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 69(7).
109 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 64.
110 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 70(2).
111 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 72(3).
112 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 72(5).
113 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men. **Article 9 –** States shall grant women equal rights with men to acquire, change or retain their nationality. **Article 12(2)** – States shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation. **Article 15(4)** – States shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.	by the law, policy, practice, act or omission of the State party"? **Admissibility rationae materiae** – is the complaint compatible with the provisions of the treaty invoked? **Committee is not required to review the facts and evidence in a case already decided by the national courts** - Committees cannot in principle examine the determination of administrative, civil or criminal liability of individuals, nor can they review the question of innocence or guilt. **Not an Abuse of Process** - Complaint is not an abuse of process – e.g. frivolous, vexatious or otherwise inappropriate use of the complaint procedure (such as if the same individual brings repeated claims to the Committee on the same issue when previous identical ones have been dismissed).		that the claims must have been brought to the attention of the relevant national authorities, up to the highest available instance in the State concerned. If some of these remedies are pending or have not yet been exhausted it should also be indicated, as well as the reasons for it. The complainant should state whether he/she has submitted his/her case to another means of international investigation or settlement. Complainants should supply copies of all documents (no originals, only copies) of relevance to their claims and arguments, especially administrative or judicial decisions on their claims issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation of the documents must be submitted. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents. The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to five pages highlighting its main elements. Send by email to petitions@ohchr.org -no paper communications will be processed unless it is justified that it would be impossible to submit the communication electronically.[97] **Documents** The Committee can obtain, through the Secretary General of the UN, any documentation from	to merits or admissibility, within a fixed period.[103] **Committee Decision Making** When comments are received from both parties (or if the State party fails to respond to the complaint even after receiving several reminders from the secretariat) the Committee will take its decision typically on admissibility and merits simultaneously. This is done in closed[104] session on the basis of the written information supplied, without oral submissions or audio-visual evidence. Note that it is possible for a decision on admissibility to come first, before the State party is asked for its submissions on the merits. **Requests for Further Information** If the complaint lacks essential information to be processed under these procedures or the description of facts is unclear, the complainant will be contacted by the secretariat of the United Nations (Office of the High Commissioner for Human Rights, OHCHR) with a request for additional details or resubmission. Complainants should be diligent in conducting correspondence with the secretariat and the information requested should be sent as soon as possible and no later than one year. If the information is not received within a year from the date of the request, the file will be closed. The Secretary general or rapporteur will fix a time limit for responding.[105] **Interim and Protection Measures**	**Follow Up Process** When the Committee decides on the facts before it discloses a violation by the State party of the complainant's rights under the treaty, it invites the State party to supply information within 180 days on the steps it has taken to give effect to its findings and recommendations. The State party's response is transmitted to the complainant for comments. Recommendations given by the Committee on remedies to be adopted by the State party can be of a general nature (addressing policy issues) or specific, adapted to the case in question.[114] After the 6-month period, the Committee may invite the State to submit further information about any steps taken. It may also request that the State include information on these steps in subsequent reports under Article 18 of the CEDAW.[115] A rapporteur or working group shall ascertain the measures taken by States, making such contacts and taking such action as is appropriate.[116] This follow up process is not confidential.[117] The Committee may invite the State to submit further information about any measures the State Party has taken in response to its views or recommendations in the State's subsequent reports under Article 18 CEDAW.[118] If the Committee receives reliable information indicating grave or systematic violations by the State of rights set forth in the CEDAW, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit

97 See Guidance, paragraphs 15-17.

103 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 69(8).

104 All working documents issued by the Secretariat for the Committee, the Working Group or the Special Rapporteur shall remain confidential unless the Committee decides otherwise. This does not however affect the ability of the complainant (or the State) to make public their submissions or information bearing on the proceedings – although the Committee, Working Group or Special Rapporteur may request them to keep submissions or information confidential in whole or in part. Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rules 74(1), (6) and (7).

105 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 58(2).

114 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 17.

115 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rules 73(1) to (5).

116 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rules 73(4) and (3).

117 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 74(11).

118 CEDAW Optional Protocol, Article 7(5).

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
				organisations within the UN or other bodies that may be of assistance in the consideration of the complaint. Each party will be afforded an opportunity to comment on such documentation or information within fixed time limits.[98]	Can be requested at any time before the adoption of a final decision.[106]	observations with regard to the information concerned.[119] **Interim and Protective Measures** May be adopted in urgent cases to request the State party to adopt measures to prevent irreparable harm (that cannot be susceptible to reparation). Typical interim measures include suspension of death penalty or deportation to a country where the complainant faces a risk of torture or ill treatment. Can also request protection measures to protect individuals involved in the communication from reprisals, including lawyers, witnesses and family members where the risk relates to the filing of the communication. May be submitted in the context of follow-up procedures.[120] Where the Committee exercises its discretion to request that the State take interim measures, this does not imply a determination on admissibility or merits.[121]
Treaty Body – **UN Committee on the Rights of Persons with Disabilities** Communication from individual claiming to be a victim of violations of the Convention on the Rights of Persons with	**CRPD** **Article 1** – The purpose and the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. **Article 2** – "Discrimination on the basis of disability" means "any	**Applicability of Treaty and individual complaints process** [123] – CRPD and CRPD Optional Protocol.[124] **Check applicable reservations.**[125] **Admissibility rationae temporis**[126] – complaint should relate to events that occurred after entry into force of the	**Communications** It is essential to set out, in chronological order, all the facts on which the complaint is based. The account must be as complete as possible and contain all information relevant to the case. The complainant should also state why he/she considers that the facts described constitute a violation of the treaty in question. It is highly recommended to identify the rights set out in the treaty alleged to have been violated. It is also advisable to indicate	Should only be sent to one Treaty Body.[133] Use **model complaint form** ideally.[134] Claim should be in writing, written legibly, preferably typed and signed. In one of the UN languages (Arabic, Chinese, English, French, Russian, Spanish). The complaint should provide basic personal information - alleged victim's name, nationality, date of	**Timing to Issue Complaint** It is important to submit the complaint as soon as possible after the exhaustion of domestic remedies. Delay in submitting the case may make it difficult for the State party to respond properly and for the treaty body to evaluate the factual background thoroughly. There is no fixed period for submitting a communication after the exhaustion of remedies in this Committee.[138]	**Final Decision of the Committee** Typically it takes about 1 to 2 years for a case to be considered after registration.[145] Final decisions on admissibility are reached by simple majority of the Committee or by unanimity of the working group.[146] If the Committee declares that a communication is inadmissible that decision may be reviewed at a later date upon written request to the effect

98 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, Rule 72(2).
106 See Guidance, paragraph 12.
119 CEDAW Optional Protocol, Article 8(1).
120 See Guidance, paragraph 12.
121 CEDAW Optional Protocol, Article 5(2).
123 CRPD Optional Protocol, Article 1.
124 Ratification Status for Greece.
125 Status of the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities.
126 CRPD Optional Protocol, Article 2(e).
133 See Guidance, paragraph 1.
134 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), Annex III.
138 See Guidance, paragraph 13.
145 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.
146 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 65. If the working group decides that the communication is inadmissible by majority, the decision will be transmitted to the Committee plenary, who may confirm it without a formal discussion.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
Disabilities (“**CRPD**”) under the Optional Protocol to the CRPD (the “**CRPD Optional Protocol**”)[122]	distinction, exclusion or restriction on the basis of disability which has the purpose of effect of nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation”. **Article 4** – States undertake to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. **Article 5** – States recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law. **Article 10** – States reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others. **Article 11** – States shall take, in accordance with their obligations under international law, including	relevant treaty, save for instances of continuous violation of the treaty. **Individual subject to the State's jurisdiction.**[127] **No other international complaint**[128] – case not submitted to any other procedure of international investigation or settlement, either under consideration or already examined.[129] **Exclusion of domestic remedies** – Domestic remedies are exhausted, to the extent that they are not unreasonably prolonged or unlikely to bring effective relief.[130] It is not sufficient merely to have doubts as to the effectiveness of a remedy but can be circumvented e.g. were proceedings at national level unreasonably prolonged or remedies unavailable or ineffective. **Consent** obtained if the complainant acts on behalf of another person. **Victim** – Is the complainant (or person on whose behalf the complaint is brought) a victim of the alleged violation? Alleged victim is “personally and directly affected by the law, policy, practice, act or omission of the State party”? **Admissibility rationae materiae** – is the complaint compatible with the provisions of the treaty invoked?	the kind of remedies that the complainant would like to obtain from the State party in case the Committee concludes on the facts before it discloses a violation of his/her rights. A complaint that is not sufficiently substantiated may be rejected as inadmissible. **Interim and Protective Measures** Must be able to demonstrate that the risk is real and that, should it materialise, the damage would be irreparable. Must also demonstrate that the risk is personal (and not merely based in general context).[132]	birth, mailing address and email - and specify the State party against which the complaint is directed. If the complaint is brought on behalf of another person, proof of his/her consent should be provided (no specific form required), or the author of the complaint should state clearly why such proof cannot be provided. Communication must not be anonymous. However, if there are particularly sensitive matters of a private or personal nature that emerge in the complaint, the author of the complaint may request the Committee not to disclose his/her name or the alleged victim's name and/or identifying elements in its final decision so that the identity of the alleged victim or that of the author does not become public. The complainant should also detail the steps taken to exhaust the remedies available in the State party against which the complaint is directed, that is steps taken before the State party's local courts and authorities. The requirement to exhaust domestic remedies means that the claims must have been brought to the attention of the relevant national authorities, up to the highest available instance in the State concerned. If some of these remedies are pending or have not yet been exhausted it should also be indicated, as well as the reasons for it. The complainant should state whether he/she has submitted his/her case to another means of international investigation or settlement.	**Registration of the complaint** The Committee will decide whether the case should be registered, that is to say formally listed as a case for consideration by the relevant Committee. You will receive advice on registration. **Written Submissions** The case is transmitted to the State party concerned to give it an opportunity to comment. The State is requested to submit its observations (on admissibility and merits, or if the Committee so decides admissibility only[139]) within 6 months. A State may make a written request for the communication to be rejected on the basis of inadmissibility within 2 months.[140] This does not affect the 6-month period for responding on the merits, unless the Committee decides to extend that period.[141] Once the State replies to the complaint, the complainant is offered an opportunity to comment. **Committee Decision Making** When comments are received from both parties (or if the State party fails to respond to the complaint even after receiving several reminders from the secretariat) the Committee will take its decision typically on admissibility and merits simultaneously. This is done in closed session[142] on the basis of the written information supplied, without oral submissions or audio-visual evidence.	that the reasons for inadmissibility no longer apply.[147] The Committee may refer any communication to a working group to make recommendations on the merits.[148] The Committees' decisions represent an authoritative interpretation of the treaty concerned. They contain recommendations to the State party. Ultimately, however, the decisions are not legally binding (although States have a moral obligation to implement the decisions).[149] Final decisions are made public. The Committee may at its own discretion, decide not to disclose certain matters in the course of consideration of the complaint. There is no appeal process and decisions are final. **Follow-up procedures** When the Committee decides on the facts before it discloses a violation by the State party of the complainant's rights under the treaty, it invites the State party to supply information within 180 days on the steps it has taken to give effect to its findings and recommendations. The State party's response is transmitted to the complainant for comments. The Committee may invite the State to submit further information about any measures the State Party has taken in response to its views or recommendations in the State's

122 Source of information is https://www.ohchr.org/en/treaty-bodies/individual-communications#overviewprocedure unless otherwise stated.
127 CRPD Optional Protocol, Article 1.
128 CRPD Optional Protocol, Article 2(c).
129 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 18.
130 CRPD Optional Protocol, Article 2(d).
132 See Guidance, paragraph 12.
139 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rules 70(3) and (4).
140 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 70(5).
141 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 70(9).
142 All working documents issued by the Secretariat for the Committee, the Working Group or the Special Rapporteur shall remain confidential unless the Committee decides otherwise. This does not however affect the ability of the complainant (or the State) to make public their submissions or information bearing on the proceedings – although the Committee, Working Group or Special Rapporteur may request them to keep submissions or information confidential in whole or in part. Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rules 76(2)-(4).
147 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 71(2).
148 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 73(3).
149 OHCHR, 23 Frequently asked Questions about Treaty Body Complaints Procedures.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters. **Article 14** – States shall ensure that persons with disabilities, on an equal basis with others enjoy the right to liberty and security of person and are not deprived of their liberty unlawfully or arbitrarily and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty. States shall ensure that if persons with disabilities are deprived of their liberty through any process, they are on an equal basis with others entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of the CPRD including by provision of reasonable accommodation. **Article 15** – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. States shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.	**Committee is not required to review the facts and evidence in a case already decided by the national courts** - Committees cannot in principle examine the determination of administrative, civil or criminal liability of individuals, nor can they review the question of innocence or guilt. **Not an Abuse of Process** - Complaint is not an abuse of process – e.g. frivolous, vexatious or otherwise inappropriate use of the complaint procedure (such as if the same individual brings repeated claims to the Committee on the same issue when previous identical ones have been dismissed). **Not anonymous**[131]		Complainants should supply copies of all documents (no originals, only copies) of relevance to their claims and arguments, especially administrative or judicial decisions on their claims issued by national authorities. If these documents are not in an official language of the United Nations, a full or summary translation of the documents must be submitted. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents. The complaint should not exceed 50 pages (excluding annexes). When it exceeds 20 pages, it should also include a short summary of up to five pages highlighting its main elements. Send by email to petitions@ohchr.org – no paper communications will be processed unless it is justified that it would be impossible to submit the communication electronically.[135] **Documents** The Committee can obtain, through the Secretary General of the UN, any documentation from organisations within the UN or other bodies that may be of assistance in the consideration of the complaint. Each party will be afforded an opportunity to comment on such documentation or information.[136] **Interventions from Third Parties** The Committee may accept interventions from the third party at any time, as long as the intervention is accompanied by written authority from one of the parties.[137]	Note that it is possible for a decision on admissibility to come first, before the State party is asked for its submissions on the merits. Two or more communications may be dealt with jointly if deemed appropriate by the Committee.[143] **Requests for Further Information** If the complaint lacks essential information to be processed under these procedures or the description of facts is unclear, the complainant will be contacted by the secretariat of the United Nations (Office of the High Commissioner for Human Rights, OHCHR) with a request for additional details or resubmission. Complainants should be diligent in conducting correspondence with the secretariat and the information requested should be sent as soon as possible and no later than one year. If the information is not received within a year from the date of the request, the file will be closed. **Interim and Protection Measures** Can be requested at any time before the adoption of a final decision.[144]	subsequent reports under Article 35 CRPD.[150] The Committee shall designate a Special Rapporteur or working group for follow-up in order to ascertain the measures taken by States to implement the Committee's Views. The Special Rapporteur or working group shall make such contacts and take such action as appropriate for performance of the follow up mandate and shall make such recommendations for further action by the Committee as may be necessary (including a State visit). It shall regularly report to the Committee on follow-up activities and the Committee shall include information on follow-up activities in its report under Article 39 of the Convention.[151] If the Committee receives reliable information indicating grave or systematic violations by the State of rights set forth in the CRPD, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.[152] **Interim and Protective Measures** May be adopted in urgent cases to request the State party to adopt measures to prevent irreparable harm (that cannot be susceptible to reparation). Typical interim measures include suspension of death penalty or deportation to a country where the complainant faces a risk of torture or ill treatment. Can also request protection measures to protect individuals involved in the communication from reprisals, including lawyers, witnesses and family members where the risk relates to the filing of the

131 CRPD Optional Protocol, Article 2(a).
135 See Guidance, paragraphs 15-17.
136 Fact Sheet No. 07: Individual Complaints Procedures under the United Nations Human Rights Treaties (Rev 2), page 18.
137 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 72(3).
143 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rule 67.
144 See Guidance, paragraph 12.
150 CRPD Optional Protocol, Article 7(1).
151 Rules of Procedure of the Committee on the Rights of Persons with Disabilities, Rules 75(4) to (8).
152 CRPD Optional Protocol, Article 6(1).

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	Article 16 – States shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities both within and outside the home from all forms of exploitation, violence and abuse. **Article 17** – Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others. **Article 18** – States shall recognise the rights of persons with disabilities as to liberty of movement, freedom to choose their residence and as to a nationality on an equal basis with others by ensuring that people with a disability: have the right to acquire and change nationality and are not deprived of their nationality arbitrarily or on the basis of disability; they are not deprived on the basis of disability to obtain, possess and utilise documentation of their nationality or other documentation of identification or to utilise relevant processes such as immigration proceedings, that may be needed to facilitate exercise of the right of liberty of movement; they are free to leave any country including their own; and they are not deprived arbitrarily or on the basis of disability, of the right to enter their own country. **Article 22** – No person with disabilities shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.					communication. May be submitted in the context of follow-up procedures.[153] Where the Committee exercises its discretion to request that the State take interim measures, this does not imply a determination on admissibility or merits.[154]
Additional Treat Bodies with more limited application/ratification.						
Treaty Body – **UN Committee**	**CRC**	**Applicability of Treaty and individual complaints process** [156] – CRC entered				

153 See Guidance, paragraph 12.
154 CRPD Optional Protocol, Article 4(2).
156 CRC Optional Protocol, Article 1.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
on the Rights of the Child Communication from individual claiming to be a victim of violations of the Convention on the Rights of the Child ("**CRC**") under the Optional Protocol to the CRC (the "**CRC Optional Protocol**")	**Arts 3, 8, 20(1), 37.**[155]	into force and ratification of Optional Protocol.[157]				
Treaty Body – **UN Committee on Enforced Disappearances** Communication from individuals claiming to be a victim of violations of the International Convention for the Protection of All Persons from Enforced Disappearance ("**CED**") under Article 31 CED.	**CED**[158] **Article 2** – the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.	**Applicability of Treaty and individual complaints process**[159]. Acceprance of individual complaints procedures for CED, **Article 31**.[160]				
Treaty Body – **UN Committee on the Elimination of Racial Discrimination** Communication from individual claiming to be a victim of violations of the International Convention on the Elimination of All Forms of	**CERD** **Articles 5(a)** and **6** – right to equal treatment before tribunals and all other organs administering justice – without distinction as to race, colour or national or ethnic origin, and effective protection and remedies against any acts of racial discrimination.	**Applicability of Treaty and individual complaints process** and acceptance of individual complaints procedures or CERD, **Article 14**.[161]				

155 *UF v. Croatia and Slovenia* (95/2022 and 196/2022), UNCRC.

157 Ratification Status.

159 CED, Article 31 – "A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration."

160 Ratification Status for Greece.

161 Ratification Status for Greece.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
Racial Discrimination ("**CERD**") under **Article 14 CERD**						
Treaty Body – **UN Committee on Economic, Social and Cultural Rights** Communication from individual claiming to be a victim of violations of the International Convention on Economic, Social and Cultural Rights ("**CESCR**") under the Optional Protocol to the CESCR		**Applicability of Treaty and individual complaints process -** CESCR entered into force widely, but limited ratification of the CESCR Optional Protocol. [162]				
Treaty Body – **Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.** Communication from individuals claiming to be a victim of violations of the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** ("**CMW**").	*Note* that the CMW does not apply for refugees or stateless persons, 'unless such application is provided for in the relevant national legislation of, or international instruments in force for, the State Party concerned' (**Article 3(d)).**	**Applicability of Treaty and individual complaints process –** CMW has not been widely ratified or acceded , including the complaints procedure under **Article 77**.[163]				
UN Working Group on Arbitrary Detention ("**WGAD**")	**Resolution 1991/42 of the former Commission on Human Rights**. The legal status of the prevention of arbitrary detention is based on	A remarkable feature of the WGAD complaints procedure is that it does not require exhaustion of local remedies.	Upon evaluating contradicting evidence, such as between an individual claiming arbitrary deprivation of liberty and a government, the WGAD uses a standard of ***'convincing***	Communications should be filled in and submitted (preferably by email): Model Questionnaire: English Consent Form: English Email**: hrc-wg-ad@un.org**	It is important to submit the complaint **as soon as possible**. Typical time period between submitting a communication and receiving an opinion – is **3 – 6 months.**	In the light of the information collected, the WGAD adopts one of the following measures in private session: ■ If the person has been released, for whatever reason, following the reference of the case to the WGAD

162 Ratification Status for Greece.
163 Ratification Status for Greece.

FURTHER INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	the following international human rights provisions: ■ **Universal Declaration of Human Rights - Article 9** states: 'No one shall be subjected to arbitrary arrest, detention, or exile'. ■ **International Covenant on Civil and Political Rights (ICCPR) - Article 9(1)** states; "Everyone has the right to liberty and security of person." ■ Body of principles for the protection of all persons under any form of detention or imprisonment. ■ Standard Minimum Rules for the Treatment of Prisoners. ■ United Nations Rules for the Protection of Juveniles Deprived of their Liberty. ■ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("**The Beijing Rules**"). ■ Convention relating to the Status of Refugees of 1951. ■ Protocol relating to the Status of Refugees of 1967. ■ International Convention on the Elimination of All Forms of Racial Discrimination. ■ Convention on the Rights of the Child. ■ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment. ■ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. ■ Convention on the Rights of Persons with Disabilities. ■ United Nations Basic Principles and Guidelines on remedies and procedures on the right of anyone deprived of their liberty to bring	The WGAD has wide discretion in reviewing cases of alleged arbitrary deprivation of liberty. The WGAD accepts complaints concerning deprivations of liberty by any State. The WGAD also allows broad standing with regard to who may act as a source (i.e. complainant or applicant), including, inter alia, family members of the individual detained, NGOs, governments, inter-governmental organisations, and advocates acting on behalf of the individual concerned.	***evidence',*** as opposed to evidence beyond a reasonable doubt.[164] The WGAD has identified detention or imprisonment as arbitrary if it falls into one of the following categories: ■ **Category I:** Imposed without any legal basis. ■ **Category II:** Imposed because of the exercise of human rights. ■ **Category III:** Imposed in violation of the principle of fair trial. ■ **Category IV:** Prolonged administrative custody imposed on asylum seekers, immigrants or refugees. ■ **Category V:** Based on illegal discriminatory grounds. Examples of this can include continued detention after the completion of a sentence, denial of the exercise of fundamental rights such as freedom of expression, violations of the right to a fair trial, asylum and immigration claims, or detention based on ethnicity; religion; sexual orientation, etc.		When the Working Group receives an individual complaint, it transmits the allegation(s) to the Government concerned through diplomatic channels with an invitation to reply within 60 days. Governments may request an extension of up to one month. **Urgent Appeals** The urgent appeals procedure is reserved for cases in which there are sufficiently reliable allegations that a person may be arbitrarily detained and that the situation is time-sensitive in terms of loss of life, life-threatening situations, or imminent or ongoing damage of a grave nature. This procedure involves the WGAD sending an urgent appeal to the government through diplomatic means, asking the government to take appropriate measures to ensure that the detained person's rights are respected. The WGAD is careful to communicate to the government that its decision to send an urgent appeal will not affect the Group's assessment of whether or not an arbitrary detention actually took place, until the Group already determined that the detention was arbitrary.	the case may be filed; the Group, however, reserves the right to render an opinion, on a case-by-case basis, about whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned; ■ If the Group considers that the case is not one of the arbitrary deprivation of liberty, it shall render an opinion to this effect; ■ If the Group considers that further information is required from the Government or the source, it may keep the case pending until that information is received; ■ If the Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively; or ■ If the Group decides that the arbitrary nature of the deprivation of liberty is established, it shall render an opinion to that effect and make recommendations to the Government. The opinion is sent to the Government, together with the recommendations. 48 hours after this notification, the opinion is also conveyed to the source for information. **Opinions are also published online.**

164 "Clear and convincing evidence" is the standard of proof that requires the party with the burden of proof to demonstrate that an allegation or argument is far more likely to be true than false. This standard of proof is greater than the preponderance of the evidence standard commonly used to prove civil liability, but less than the beyond a reasonable doubt standard commonly used to prove criminal liability.

FURTHER INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	proceedings before a court (A/HRC/30/37).					
International Organization for Migration (IOM)	**Resolution adopted on 5 December 1951 by the Migration Conference in Brussels**. **Constitution and Basic Texts, available here**.	Migrants who have experienced or are vulnerable to violence, exploitation and abuse before, during or after migrating.	N/A.[165]	It is possible to report a misconduct online to the Office of the Inspector General through the following link: https://weareallin.iom.int/ It is also possible to attach voice messages, videos, emails, photos, etc. as evidence. Once a migrant has been identified as vulnerable, an assessment should be made to determine whether or not s/he requires or could benefit from support from a case manager. This can be done by establishing criteria for entry into a case management system. The criteria will vary depending on the organisation or agency providing case management services, any existing system-wide protocols or procedures, the funding source, the programme parameters, and the availability of case managers to allocate to the vulnerable migrant.	N/A.[166]	Case managers should conduct regular assessments to identify any risks to the security, safety and well-being of vulnerable migrants and the risks inherent to accessing and/or not accessing services. This should be done with the full participation and knowledge of the vulnerable migrant; where risks are identified, mitigating strategies should be put in place. Identified risks and mitigation strategies should be included in the development and implementation of assistance plans. Assistance plans are likely to include multiple service providers, as a single service provider can rarely meet all needs. Coordination is therefore essential to ensure continuity of service and a holistic approach to addressing needs. Effective coordination reduces service duplication and fragmentation and can identify gaps in service delivery. The role of the case manager is to foster, maintain and strengthen collaborative partnerships between multiple parts of the service delivery system. Case management may be terminated because the support has ended, the migrants no longer meet the criteria for case management support, they choose to stop receiving support, or they leave the area. Before closing a case, the assistance plan should be reviewed to determine if needs were met and to identify any unmet or emerging needs. This should be done, wherever possible, with the participation of the vulnerable migrant.
UN Commission on the Status of Women	The current communications procedure of the Commission on the Status of Women has its roots in **Economic and Social Council resolution 76 (V) of 5 August 1947**, **as amended by the Council in resolution 304 I (XI) of 14 and 17 July 1950.** The mandate of the Commission on the Status of Women to consider communications has been reaffirmed and the	There are no express admissibility criteria. The types of communications which are sought are accurate and detailed information relating to the promotion of women's rights in political, economic, civil, social and educational fields in any country anywhere in the world.	There is **not a particular evidentiary standard**. It is advisable that communications should: 1. Identify as far as possible the woman victim, or women victims (note: the names of victims will be shared with the Government concerned for its reply); 2. Indicate clearly where (the particular country) the alleged	The communication containing allegations of human rights violations affecting the status of women should be submitted to UN Women (Human Rights Section). All claims must be signed and submitted in writing by e-mail (to cp-csw@unwomen.org), and directed to the CSW Communications Procedure. The author's identity is not made known to the	Communications containing allegations of human rights violations affecting the status of women must be submitted by a prescribed deadline in August. The next deadline is 1 August 2025. The concerned Governments are given 12 weeks to submit replies to the communications, upon receipt from the Secretary-General. In mid-February the Working Group meet in closed sessions, in order to consider	The Commission on the Status of Women does not take decisions on the merit of communications that are submitted to it and, therefore, the communications procedure does not provide an avenue for the redress of individual grievances. The Commission on the Status of Women may make recommendations to the Economic and Social Council on what action should be taken on emerging trends and patterns of

165 No indication available.
166 No indication available.

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	modalities of the procedure have been further modified by the Council (**see Council resolutions 1983/27 of 26 May 1983, 1992/19 of 30 July 1992, 1993/11 of 27 July 1993, 2009/16 of 28 July 2009 and decision 2002/235 of 24 July 2002**).[167]		violation(s) or pattern of violations have occurred or are occurring. Separate communications should be submitted per country in which alleged violations have taken place; 3. Provide, when available, dates and circumstances of the alleged violations; 4. Explain the context by providing relevant background information; and provide, when available, copies of documentation.	Government(s) concerned unless she/he agrees to the disclosure. Communications are sent through the Secretary-General to the Governments concerned and these Governments are invited to submit replies within a 12 week deadline. UN Women then compiles a confidential report containing summaries of communications and any replies received from the Governments concerned. A Working Group on Communications on the Status of Women, composed of a member from each of the five regional groups, meets in closed meetings. This typically takes place a few weeks prior to the annual session of the Commission on the Status of Women (usually mid-February). During these meetings, the Working Group considers the communications and replies. The Working Group's report to the Commission identifies trends and patterns of reliably-attested injustice and discriminatory practices against women. The report also indicates the categories in which communications are most frequently submitted to the Commission. The Working Group's report and the confidential list of communications and replies are ready for distribution to members of the Commission on the Status of Women three days prior to the start of the annual session (which usually takes place in late February). The Commission on the Status of Women takes up the item "Communication concerning the status of women" in closed meeting(s) during the second week of its session (usually in the second week of March).	the communications and replies, and to prepare a report which is submitted to the members of the Commission on the Status of Women in late February. That report is discussed by the Commission on the Status of Women in the second week of March, before recommendations are made to the Economic and Social Council, if deemed necessary. As such, the annual process typically takes between **7 – 18 months**.	discrimination against women revealed by the communications. The Commission usually takes note of the report of the Working Group and includes it in its annual report to the Economic and Social Council.
Prosecutor of the International	**Rome Statute of the ICC**.[168] **Article 7**[169] – **Crimes against Humanity**	In evaluating the *reasonable basis* for initiating an investigation, the Office of the Prosecutor ("OTP") is required to	The OTP conducts a preliminary examination to decide whether there is a *reasonable basis*.[171] to initiate an investigation.	Any individual, group or State can send information to the Office of the Prosecutor ("OTP").	There are no timelines provided in the Rome Statute for bringing a preliminary examination to a close. Depending on the facts and circumstances of each	Decision by the ICC. In the event of a conviction, the Trial Chamber shall consider the appropriate sentence to be imposed and shall take

167 UN Commission on the Status of Women Communications Procedure.
168 Rome Statute.
169 Note the definition of Enforced Disappearance at Article 7, paragraph 2(i).
171 The requisite standard of proof of "reasonable basis" has been interpreted by the Chambers of the Court to require "a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court 'has been or is being

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
Criminal Court ("ICC")	1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; (b) Extermination; (c) Enslavement; (d) Deportation or forcible transfer of population; (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture; (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (i) Enforced disappearance of persons; (j) The crime of apartheid; (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health. 2. For the purpose of paragraph 1: (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or	assess and verify a number of legal criteria: ■ That the crimes took place after 1 July 2002, the date of the entry into force of the Rome Statute, the Court's founding treaty; ■ If the crimes took place in the territory of a State Party or were committed by a national of a State Party (unless the situation was referred by the UN Security Council); ■ If they amount to war crimes, crimes against humanity or genocide; ■ The gravity of the crimes; ■ If there are no genuine investigations or prosecutions for the same crimes at the national level; ■ If opening an investigation would not serve the interests of justice and of the victims. National authorities bear the primary responsibility, in the first instance, to investigate and prosecute those most responsible for the commission of mass crimes. The Court will initiate investigations, in accordance with the legal criteria set by the Rome Statute, only when the national authorities have failed to uphold this primary responsibility and in the absence of genuine national proceedings. **Article 17 of the Rome Statute:** **Issues of admissibility** 1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution; (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness	According to **Article 15** of the **Rome Statute**, the Prosecutor has to analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organisations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court. If the Prosecutor concludes that there is a reasonable basis to proceed with an investigation, he or she shall submit to the Pre-Trial Chamber a request for authorization of an investigation, together with any supporting material collected. Victims may make representations to the Pre-Trial Chamber, in accordance with the Rules of Procedure and Evidence. If the Pre-Trial Chamber, upon examination of the request and the supporting material, considers that there is a reasonable basis to proceed with an investigation, and that the case appears to fall within the jurisdiction of the Court, it shall authorize the commencement of the investigation, without prejudice to subsequent determinations by the Court with regard to the jurisdiction and admissibility of a case. The refusal of the Pre-Trial Chamber to authorize the investigation shall not preclude the presentation of a subsequent request by the Prosecutor based on new facts or evidence regarding the same situation. If, after the preliminary examination referred to in paragraphs 1 and 2, the Prosecutor concludes that the information provided does not constitute a reasonable basis for an investigation, he or she shall inform those who provided the information. This shall not preclude the Prosecutor from considering further information submitted to him or her regarding the same situation in the light of new facts or evidence. Article 13 of the Rome Statute, while referring to situations brought forward	The United Nations Security Council (UNSC) may also refer a situation to the OTP. The Prosecutor may also open an investigation on her own initiative after the authorisation of the judges. The Prosecutor cannot, on her own motion, initiate investigations with respect to States not Party to the Rome Statute unless the matter involves nationals of the States Parties allegedly involved in committing Rome Statute crimes on the territory of the non-State Party in question. Exceptionally, States may accept the jurisdiction on an *ad hoc* basis, by submitting a declaration pursuant to **Article 12(3) of the Rome Statute**.	situation, the Prosecutor may decide either to: (i) decline to initiate an investigation; (ii) continue to collect information on crimes and relevant national proceedings in order to make a determination; or (iii) initiate the investigation, subject to judicial authorisation as appropriate. There is also not a specific timeframe within which the trial has to be concluded.	into account the evidence presented and submissions made during the trial that are relevant to the sentence. **Article 75 of the Statute – Reparation of the victims** 1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect of, victims and will state the principles on which it is acting. 2. The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79. 3. Before making an order under this article, the Court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested States. 4. In exercising its power under this article, the Court may, after a person is convicted of a crime within the jurisdiction of the Court, determine whether, in order to give effect to an order which it may make under this article, it is necessary to seek measures under article 93, paragraph 1. 5. A State Party shall give effect to a decision under this article as if the provisions of article 109 were applicable to this article. 6. Nothing in this article shall be interpreted as prejudicing the rights of victims under national or international law.

committed'": Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19-Corr, 31 March 2010, paragraph 35. Jurisdiction, admissibility, complementarity, gravity, interest of Justice, are factors applied to all situations, irrespective of whether the preliminary examination was initiated on the basis of information received on crimes, by a referral, or by a declaration lodged pursuant to article 12(3) (for further detail on each factor, see Policy Paper on Preliminary Investigations, pp. 8-17. As rule 48 of the RPE provides: "[i]n determining whether there is a reasonable basis to proceed with an investigation under article 15, paragraph 3, the Prosecutor shall consider the factors set out in Article 53, paragraph 1(a) to (c)."

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	organisational policy to commit such attack; (b) “Extermination” includes the intentional infliction of conditions of life, inter alia the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population; (c) “Enslavement” means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children; (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (e) “Torture” means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions; (f) “Forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy; (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity; (h) “The crime of apartheid” means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the	or inability of the State genuinely to prosecute; (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3; (d) The case is not of sufficient gravity to justify further action by the Court. 2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable: (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5; (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice; (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice. 3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.	by a State Party, mentions the fact that “a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring to the situation*”.* Once the OTP considers that it has sufficient evidence to prove before the judges that an individual is responsible for a crime in the Court's jurisdiction, the Office will request the judges to issue a warrant of arrest or a summons to appear. To conduct its investigations, generally, the OTP sends missions – usually composed of investigators, cooperation advisers, and if necessary, prosecutors – to concerned countries, collects and examines different forms of evidence, and questions a range of persons, from those being investigated to victims and witnesses. To undertake these activities, the OTP relies on the assistance and cooperation of States Parties, international and regional organisations, as well as civil society. In the process of gathering evidence, the OTP identifies the gravest incidents and those most responsible for these crimes. The OTP has an obligation to gather both incriminating and exonerating evidence, in order to establish the truth about a given situation. The exonerating information will be disclosed to the Defence teams as part of the proceedings. Pursuant to **Article 86 of the Rome Statute** there is a general obligation to cooperate: States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. ***Note***: The OTP's Response to the ICC Australia Communication (regarding Australia's immigration detention policy; its treatment of refugees and asylum seekers on Nauru and Manus Island, Papua New Guinea) and its **reliance** on Elements of Crimes, specifically under Article 7 (3) and footnote 6 (“attack directed against a civilian population”), seeking an 'encouragement' of the attack by States (excerpted here). The ICC Elements of Crime are an official aid to the Court's interpretation of its Statute. Analogously, in ICC			

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
	intention of maintaining that regime; (i) "Enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time. 3. For the purpose of this Statute, it is understood that the term "gender" refers to the two sexes, male and female, within the context of society. The term "gender" does not indicate any meaning different from the above.[170]		Communications related to migration, this should be taken into account (in the case the direct perpetrators are third parties).			

Other (non-enforceable) rights considered:

- **1951 Refugee Convention** - There is no specialist international refugee court or tribunal that is responsible for monitoring whether or not countries comply with the Refugee Convention. However, the United Nations High Commissioner for Refugees (UNHCR) supervises how countries apply the provisions of the Refugee Convention. This includes monitoring the situation of refugees and engaging with governments in relation to issues of concern.
- **Universal Declaration of Human Rights** – not binding and no direct individual complaints mechanism.
- **UN Convention on the Law of the Sea (Article 98)** – obligation to render assistance at sea but no direct individual complaints mechanism. Inter-state disputes available with the International Tribunal for the Law of the Sea. A Guide to proceedings is available here.
- **International Convention for the Safety of Life at Sea (SOLAS) 1974** (as amended by MSC.153(78)) – obligation to render assistance at sea (including treating persons in distress with humanity) but no direct individual complaints mechanism. Only enforceable through diplomatic means.
- **International Convention on Maritime Search and Rescue (SAR) 1979** (with annexes) – obligation to render assistance at sea (including providing for initial medical needs of assisted persons) but no direct individual complaints mechanism. Only enforceable through diplomatic means.[172]
- **International Convention on Salvage 1989** – obligation to render assistance at sea (including obligation for States Parties to enforce such duty) but no direct individual complaints mechanism. Only enforceable through diplomatic means. Replaced previous Brussels Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea 1910.[173]
- **Global Compact for Migration 2018** – details a common approach to international migration but is not legally binding.[174]
- **Global Compact on Refugees 2018** – provides a framework for more predictable and equitable responsibility-sharing, recognizing the need for international cooperation to provide a sustainable solution to refugee situations but is not legally binding.[175]

170 On May 5, 2022, the ICC Prosecutor has confirmed that crimes committed against migrants in Libya may amount to International Crimes and fall within the ICC Jurisdiction (see https://www.uprights.org/2022/05/05/the-icc-prosecutor-confirms-that-crimes-committed-against-migrants-in-libya-may-amount-to-international-crimes-and-fall-within-the-icc-jurisdiction/). Within the Article 15 Communication it can be read: "§ 406. Rather than one overall attack, the crimes committed in each of the individual detention centres may be viewed as forming part of separate systematic (or large scale) attacks against a civilian population (namely, the migrants detained therein). The conduct at each centre therefore constitutes its own attack. § 407. First, in each centre analysed, the abuses committed against migrants correspond to the underlying acts under Article 7 of the Statute". In particular, the crimes were those of murder, imprisonment, torture, other inhumane acts, enslavement, rape and other forms of sexual violence.
It should also be noted that according to the information made available in that context, in each of the detention centres, the crimes collectively formed part of an attack, namely a course of conduct involving the multiple commission of acts under Article 7(1) of the Statute. In particular see ICC, ***The Prosecutor v. Ongwen***, ICC-02/04-01/15, Trial Judgement, 4 February 2021 ("Ongwen Trial Judgement"), paragraph 2674 ("An 'attack' in this context means a 'course of conduct involving the multiple commission of acts referred to in [Article 7(1)]'. The requirement that the acts form part of a 'course of conduct' indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. The 'multiple commission of acts' sets a quantitative threshold involving a certain number of acts falling within the course of conduct.") (references omitted).

172 The International Maritime Organization is the competent international Organization of UNCLOS and which lays down implementation instruments and complementary rules for the fulfilment of rights and duties of States that must be exercised in different maritime zones. UNCLOS becomes operational through the support of the international harmonized framework for maritime search and rescue laid down by the IMO instruments (Salvage, SOLAS and SAR Conventions).

173 International Convention on Salvage 1989.

174 Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195).

175 Global Compact for Safe, Orderly and Regular Migration (A/RES/73/195).

INTERNATIONAL COMPLAINT PROCESSES						
Process	**Relevant rule / law / obligation**	**Admissibility criteria (including standing)**	**Evidentiary standards**	**Procedural requirements**	**Procedural time frame**	**Outcomes/remedies**
■ **1954 Convention relating to the Status of Stateless Persons** – defines "stateless persons" and prohibits expulsion of stateless persons that are lawfully on the territory of a State Party (Article 31). The Convention also prohibits discrimination of stateless persons (Article 3) and requires that States facilitate assimilation and naturalisation of stateless persons (Article 32). Contains no direct individual complaints mechanism.[176] ■ **1967 Declaration on Territorial Asylum** – prohibits refoulement of refugees to States where they "may be subjected to persecution" (Article 3.3), but no direct individual complaints mechanism.[177]						

176 Convention accessed from the UN High Commissioner for Refugees.
177 Declaration on Territorial Asylum.

2. Jurisdiction: International

2.2. Resources: Key Concepts

Asylum / Asylum Seeker

The Practical Guide to Humanitarian Law, Françoise Bouchet-Saulnier, Médecins Sans Frontières, 1998 (regularly updated)

Article 14 of the UDHR establishes that “everyone has the right to seek and to enjoy in other countries asylum from persecution”.

The Refugee Convention and the UNHCR Statute attempt to guarantee and to protect the right to seek asylum for all individuals who fear persecution in their country on the ground of race, religion, nationality, membership of a particular social group or political opinion and who are unable to benefit from the protection of their country (Arts. 8(a), 8(d) of UNHCR Statute; arts. 1(A)(2), 31-33 of the Refugee Convention; art. 1(2) of Protocol Relating to the Status of Refugees).

UNHCR Protecting refugees and asylum seekers under the International Covenant on Civil and Political Rights, Santhosh Persaud, November 2006- Research Paper No.132 as a part of Policy Development and Evaluation Service's New Issues in Refugee Research Series.

Asylum seekers subject must be afforded access to a fair and efficient procedure in line with international standards. At a minimum, this encompasses the right to an interview; safeguards related to the asylum procedure and includes access to an interpreter. The jurisprudence of human rights treaty bodies suggests that this is a binding requirement under ICCPR (HRC, Concluding Observations on Estonia, UN doc CCPR/CO/77/EST (31 March 2003) paragraph 13), ACHPR (***Kenneth Good v Botswana***, Communication No. 313/05, ACommHPR, 26 May 2010, [169]) and ACHR (***Pacheco Tineo Family v Bolivia***, IACtHR Series C No 272, 25 November 2013, [159(e)–(f)]), and ECHR (***Vilvarajah & Ors v UK***, Application Nos. 13163/87 et al, ECtHR, 30 October 1991, [126]).

These standards are detailed in established international refugee policy, deriving from the legal principle of effectiveness in implementing the Refugee Convention and the prohibition on direct or indirect refoulement: UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status, UN doc HCR/IP/4/Eng/REV.1 (1979, reissued 2019) paragraph 189; UNHCR Executive Committee Conclusion No. 21 (1981) paragraph d, referring to “effective implementation”.

Border Violence / Governance

Greece: Violence Against Asylum Seekers at Border Detained, Assaulted, Stripped, Summarily Deported, 17 March 2020

“The European Union is hiding behind a shield of Greek security force abuse instead of helping Greece protect asylum seekers and relocate them safely throughout the EU” ... “The EU should protect people in need rather than support forces who beat, rob, strip, and dump asylum seekers and migrants back across the river.”

OHCHR Press Release Greece: UN experts call for safe, impartial border policies and practices, 23 August 2023

“The past 12 months have been among the deadliest for asylum seekers, refugees and migrants of African descent and others on their journeys, particularly along sea and land routes in the Middle East and North Africa region, and in perilous Sahara and Mediterranean crossings,” they said.

States have obligations under international human rights and refugee law to address the dangers and risks faced by migrants, refugees and asylum seekers in host and transit countries. The lack of regular migration pathways, coupled with restrictive migration policies, xenophobic rhetoric and many other push factors for the migration and displacement of persons on the move, including climate change and conflict, which have deep historical roots within colonial practices, often operate to aggravate these dangers and risks rather than mitigate them.

The experts found the alleged unlawful, arbitrary, and collective expulsion of the asylum-seekers to be of particular concern, as it was in direct contravention of due process and the protections provided by the 1951 Refugee Convention and the European Convention on Human Rights. They call on Greece to comply with the Recommended Principles and Guidelines on Human Rights at International Borders and the Global Compact for Safe, Orderly and Regular Migration.

These forced removals are also contrary to the recommendation of the Committee on the Elimination of Racial Discrimination, calling on States to “ensure that non-citizens are not subjected to collective expulsions”.

See also Report for the Special Rapporteur on pushback practices and their impact on the human rights of migrants at European land borders

Legal Action Database - Border Violence Monitoring Network

The Legal Action Database on Pushbacks is an open and live resource that compiles pending cases and judgments from national courts, the European Court of Human Rights, the Court of Justice of the EU and from UN Committees. The cases gathered relate to non-refoulement, pushbacks, summary expulsions, collective expulsions and to border violence.

Bringing Greek push-backs to justice - Complaint before the UN Human Rights Committee

With the support of the European Center for Constitutional and Human Rights (ECCHR), HumanRights360 and Forensic Architecture (“FA“), a woman refugee submitted a complaint against Greece to the UN Human Rights Committee for multiple violations of the International Covenant on Civil and Political Rights.

Border Violence Monitoring Network, Submission to the UN Special Rapporteur on Torture, regarding Greece

“Due to the levels of violence, humiliation and intimidation used during pushbacks, the cumulative approach to torture requires that all whom experience pushbacks should be considered a victim of torture and ill-treatment. In 2020, BVMN found that 90% of all pushback testimonies in Greece contained at least one act of physical torture of ill-treatment, including: forced undressing, beatings, use of electric discharge weapons, use of firearms, mock executions and the use of inhuman and extralegal detention, with up to 52% of all pushback groups containing minors. While many of the violent techniques highlighted above alone are inhuman treatment, the cumulative acts of humiliation, intimidation, physical and psychological violence intentionally carried out on people amount to treatment contrary to Article 1 CAT due to the psychological impact these acts have. For those

seeking asylum, an additional dimension of trauma is evident where people are denied the right to seek safety. This cumulative approach to defining torture is in line with the Istanbul Protocol which defines torture through a holistic process that can involve both physical and psychological methods and effects. It is imperative to consider the entire process of a pushback and the impact of these acts one after another, with every pushback constituting treatment contrary to Article 1 CAT."

Child / Minor / Unaccompanied and Separated Minors

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3/CRC/C/ GC/22 (2017) (paragraphs 29-31)

"States parties shall ensure that the best interests of the child are taken fully into consideration in immigration law, planning, implementation and assessment of migration policies and decision-making on individual cases, including in granting or refusing applications on entry to or residence in a country, decisions regarding migration enforcement and restrictions on access to social rights by children and/or their parents or legal guardians, and decisions regarding family unity and child custody, where the best interests of the child shall be a primary consideration and thus have high priority.

In particular, the best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the entry, residence or return of a child, placement or care of a child, or the detention or expulsion of a parent associated with his or her own migration status.

In order to implement the best interests principle in migration-related procedures or decisions that could affect children, the Committees stress the need to conduct systematically best-interests assessments and determination procedures as part of, or to inform, migration-related and other decisions that affect migrant children. As the Committee on the Rights of the Child explains in its general comment No. 14, the child's best interests should be assessed and determined when a decision is to be made. A "best-interests assessment" involves evaluating and balancing all the elements necessary to make a decision in the specific situation for a specific individual child or group of children. A "best-interests determination" is a formal process with strict procedural safeguards designed to determine the child's best interests on the basis of the best-interests assessment. In addition, assessing the child's best interests is a unique activity that should be undertaken in each individual case and in the light of the specific circumstances of each child or group of children, including age, sex, level of maturity, whether the child or children belong to a minority group and the social and cultural context in which the child or children find themselves."

EU Commission, Communication from the Commission to the European Parliament and the Council, "Action Plan on Unaccompanied Minors (2010-2014)", COM (2010), page 9

"Wherever unaccompanied minors are detected, they should be separated from adults, to protect them and sever relations with traffickers or smugglers and prevent (re)victimisation. From the first encounter, attention to protection is paramount, as is early profiling of the type of minor, as it can help to identify the most vulnerable unaccompanied minors. Applying the different measures provided for by the legislation and building the trust are indispensable to gain useful information for identification and family tracing, ensuring that unaccompanied minors do not disappear from care, identifying and prosecuting traffickers or smugglers.

Unaccompanied minors should always be placed in appropriate accommodation and treated in a manner that is fully compatible with their best interests. Where detention is exceptionally justified, it is to be used only as a measure of last resort, for the shortest appropriate period of time and taking into account the best interests of the child as a primary consideration."

Committee on the Rights of the Child, Treatment of unaccompanied and separated children outside their country of origin, General Comment No. 6 (2005), paragraph 26

"In affording proper treatment of unaccompanied or separated children, States must fully respect non-refoulement obligations deriving from international human rights, humanitarian and refugee law and, in particular, must respect obligations codified in article 33 of the 1951 Refugee Convention and in article 3 of the CAT."

Report to the Human Rights Council, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez (A/HRC/28/68), concludes that when considering torture and ill-treatment of children compared to adults, the threshold at which treatment or punishment may be classified as torture or ill-treatment is therefore lower in the case of children, and in particular in the case of children deprived of their liberty". In addition to international treaties and customary international law governing the rights of the child, there are often country-specific legal frameworks and rules regarding child protection and safeguarding that must be considered when conducting clinical evaluations.

F.I.J. v. Sweden, UN Committee on the Rights of Persons with Disabilities, Communication No. 104/2023, 29 August 2024

F.I.J, a Nigerian national, submitted the communication on behalf of her children who all had psychosocial and intellectual disabilities whose applications for asylum were rejected. As a result of migration court proceedings, the family was subsequently subject to a deportation order from Sweden to Nigeria. F.I.J. alleged that the deportation would adversely affect the children's health and well-being due to the lack of adequate care and support for children with disabilities in Nigeria and in making the deportation order, that the Swedish authorities did not adequately consider the children's best interests or the proportionality of the removal.

Article 7(3) of the Convention on the Rights of Persons with Disabilities obliges States parties to ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability- and age-appropriate assistance to realise that right

Conclusions:

- The Committee found that Sweden had failed to fulfil its obligations under Article 7(3) of the Convention by granting E.O.J. the right to be heard in any judicial or administrative proceedings affecting the child, either directly or through a representative, nor had the State party provided any specific information on measures taken to fulfil E.O.J.'s right to express his views.

A.M. v. Switzerland, UN Committee on the Rights of the Child, Communication No. 80/2019, 21 May 2024

A.M., an Afghanistan national and an unaccompanied minor applied for asylum in Switzerland, and then alleged that Swiss authorities arbitrarily declared him an adult by ignoring a Swedish age assessment, and as a result, dismissed his asylum application on the basis that he was not owed national protection as a child and was not to be treated as a child under the Dublin III Regulation. He alleged these amounted to a violation of his rights under Article 3 (best interests of the child) and 12 (right to be heard) of the Convention.

Conclusions:

- The Committee stated that the determination of the age of a young person who claims to be a minor is of fundamental importance. On the merits, the Committee emphasised that age assessments must be comprehensive, child-friendly, and that the burden of proof should not rest solely with the child. It noted that Swiss authorities did not conduct a comprehensive assessment, placed the burden of proof entirely on A.M., and did not provide a qualified legal representative or trusted person during his hearing when there was still a possibility that he was a minor.
- The Committee found that the facts demonstrated that the best interests of A.M. was not a primary consideration and therefore disclosed violations of Articles 3 and 12 of the Convention. It recommended that Switzerland provide A.M. with an effective remedy for the violations suffered, including granting him with benefits he would have enjoyed as an unaccompanied child, and take measures to ensure future age assessments are consistent with the Convention, such that alleged minors are treated as children and are provided with prompt and free legal assistance.

***S.E.M.A. v. France*, UN Committee on the Rights of the Child, Communication No. 130/2020, 25 January 2023**

A 17-year-old Pakistani unaccompanied child claimed that, by failing to recognize them as a child despite having identity documents attesting their age, France violated their rights under the Convention and failed to protect them despite their situation of abandonment and extreme vulnerability.

The determination of the age of a young person who claims to be a minor is of fundamental importance, as the enjoyment of the rights set out in the Convention flow from that determination. The best interests of the child should be a primary consideration throughout the age determination process.

Conclusions:

- The Committee considered that the age determination procedure undergone by the author, who claimed to be a child and provided evidence (identity documents) to support that claim, was not accompanied by the safeguards needed to protect their rights under the Convention. The Committee particularly took into consideration: (a) the initial summary assessment used to determine the author's age; (b) the failure to appoint a representative and to provide the author with interpretation into their native language during the administrative procedure; and (c) the fact that the State party deemed the documentation they presented to have no probative value without undertaking a proper examination of the information contained therein and, in the event of uncertainty, requesting confirmation of its validity by the consular authorities of Pakistan in France (which was not done until the Court of Appeal handed down its decision one and a half years after the author's arrival in France, at which point they had already reached the age of majority).
- The Committee also recalled that States parties are obliged to ensure the protection of every migrant child deprived of his or her family environment by guaranteeing, inter alia, access to social services, education and adequate housing, and that during the age determination procedure young migrants who claim to be children should be given the benefit of the doubt and treated as such.
- The Committee concluded that the best interests of the child had not been a primary consideration in the age determination procedure undergone by the author, in violation of Articles 3 and 12 of the Convention. The Committee also concluded that the State party violated the child rights under Article 8 of the Convention as it did not recognise their date of birth.
- The Committee noted that the child was in a street situation from the time of their arrival in France on 25 August 2019 until 31 December 2021, the day of their eighteenth birthday, and that they were not given temporary emergency accommodation, as required by law, or any measures of protection or support. The Committee, therefore, concluded that the State party had failed to protect the author as a child in violation of Articles 20 (1) and 37 (a) of the Convention.

***D.D. v. Spain*, UN Committee on the Rights of the Child, Communication No. 4/2016, 1 February 2019**

After fleeing the war in Mali, the applicant crossed the border fence between Morocco and the Spanish enclave of Melilla. He was apprehended by the Spanish authorities at the fence and immediately sent back to Morocco. He was not identified as a minor, nor had the chance to express his willingness to apply for asylum and to seek legal assistance. After the applicant entered Spain for a second time, he gained access to legal assistance and the case was brought before the UN CRC.

Conclusions:

- The Committee emphasised that, under the Convention on the Rights of the Child, States must conduct an initial assessment prior to any removal, which has to include, inter alia, age and vulnerability assessment. In the case in question, the authorities failed to conduct proper identification procedures, and they did not give the applicant an opportunity to object to his deportation in violation of his rights under Articles 3 and 20 of the Convention.

- The Committee further held that considering the situation of violence against migrants in the border area with Morocco and the ill-treatment to which the complainant was subjected, the failure to carry out an assessment of the possible risks involved and to take into account the complainant's best interests violated Articles 3 and 37 of the Convention in the light of the principle of non-refoulement. In this vein, the overall circumstances of the child's deportation, including him being detained and handcuffed without any legal and interpretative assistance, constituted treatment prohibited by Article 37.

***U. F. v. Croatia and Slovenia*, UN Committee on the Rights of the Child, Application Nos. 195/2022 and 196/2022**

A Rohingya child refugee faced repeated beatings by Croatian border officers, had his belongings burnt and his shoes confiscated before numerous forced expulsions, including a “chain” pushback from Slovenia. U.F. submitted complaints against Croatia and Slovenia at the UN Child Rights Committee for multiple violations of the CRC.

U.F. was 8 years old when he fled a military attack on his village and became separated from his family. After many years searching for protection, he spent over a year in Bosnia and Herzegovina (BiH) from 2020 to 2021 having to survive without state support or medical care, sleeping rough in forests and squatting in abandoned buildings. During this time, he was pushed back five times from Croatia to BiH and subjected to consistent, choreographed violence. In Slovenia he was subjected to a “chain” pushback, by which he was forcibly returned first to Croatia by Slovenian authorities and then onwards by Croatian authorities to BiH in a coordinated operation.

National, EU, and international law oblige Croatia and Slovenia to act in a child’s best interests and prioritize the identification of their age during their handling by border officers. The applicant’s complaints argue violations of the CRC, in relation to his expulsions and ill-treatment, and states’ failure to assess his age or apply any of the relevant safeguards under Articles 3, 8, 20(1), and 37 CRC. U.F. corroborated his accounts with a range of digital evidence. The complaints were filed against Croatia and Slovenia with the support of ECCHR and Blindspots. The litigation forms part of the Advancing Child Rights Strategic Litigation project (ACRiSL). ACRiSL comes under the auspices of the Global Campus of Human Rights – Right Livelihood cooperation.

Conclusions:

- The final decision on the merits of this case is still pending.

Crime Against Humanity

See, also Legal Centre Lesvos' reports:

- Collective Expulsions Documented in the Aegean Sea: March - June 2020 (13 July 2020)
- Crimes Against Humanity in the Aegean (1 February 2021)

Following the Legal Centre Lesvos' first report, the second report is based on evidence shared by over fifty survivors of collective expulsions, and underscores the widespread, systematic and violent nature of this attack against migrants. Beyond being egregious violations of international, European and national human rights law, this report argues that the constituent elements of the modus operandi of collective expulsions in the Aegean amount to crimes against humanity within the definition of Article 7 of the Rome Statute of the ICC.

The Situation in Nauru and Manus Island: Liability for crimes against humanity in the detention of refugees and asylum seekers | Itamar Mann and Ioannis Kalpouzos

From 2014, at least seven communications to the Prosecutor of the ICC requested that the Prosecutor open a preliminary examination into Australia's treatment of asylum seekers in its offshore detention centres on Manus Island and Nauru. The communications argued that the people in Australia's offshore detention centres had been the victims of the crimes against humanity of deportation, imprisonment, torture, other inhumane acts and persecution.

The Prosecutor also received several communications concerning the treatment of migrants attempting to travel by boat from Libya to Europe. These communications addressed a range of harms experienced by migrants, perpetrated by state and non-state actors in Libya, as well as by officials and agents of the European Union.

"§ 406. Rather than one overall attack, the crimes committed in each of the individual detention centres may be viewed as forming part of separate systematic (or large scale) attacks against a civilian population (namely, the migrants detained therein). The conduct at each centre therefore constitutes its own attack.

§ 407. First, in each centre analysed, the abuses committed against migrants correspond to the underlying acts under Article 7 of the Statute".

- On 28 April 2022, the ICC Prosecutor confirmed that crimes committed against migrants in Libya may amount to International Crimes and fall within the ICC Jurisdiction. In particular, the crimes of murder, imprisonment, torture, other inhumane acts, enslavement, rape and other forms of sexual violence.
- See ***The Prosecutor v. Ongwen***, Trial Judgement of the ICC, ICC-02/04-01/15, 4 February 2021 ("Ongwen Trial Judgement"), paragraph 2674: "An 'attack' in this context means a 'course of conduct involving the multiple commission of acts referred to in [Article 7(1)]'. The requirement that the acts form part of a 'course of conduct' indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. The 'multiple commission of acts' sets a quantitative threshold involving a certain number of acts falling within the course of conduct."

Degrading Treatment or Punishment

UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) (1992)

"3. The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority."

UN Human Rights Committee (HRC), CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty) (1992)

"3. Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty...Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7… but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment."

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition)

This revised edition from the original 2004 version strengthens the widely recognised and highly valued Istanbul Protocol on the effective investigation into and documentation of torture and ill-treatment. Relying on multi-sectoral engagement, specialized global expertise and practical experiences of law, health and human rights professionals in the field, including members of United Nations anti-torture mechanisms, the updated edition seeks to fortify the implementation of international norms and preventive tools to assist survivors of torture worldwide

See also European Committee for the Prevention of Torture, General Reports

***M.I. et al v. Australia,* Communication No. 2749/2016, UN Human Rights Committee, 31 October 2024**

22 nationals of Iraq, Iran, Afghanistan, Pakistan and Sri Lanka (including M.I.) and two stateless persons coming from Myanmar, each of whom (at the time of submission of the communication) were unaccompanied minors submitted that they fled persecution in their home countries. While en-route to Australia by sea, Australian authorities intercepted, brought them to Christmas Island and mandatorily detained them until their forcible transfer to the Nauru Offshore Regional Processing Centre (RPC). In Nauru, they alleged that, in breach of Article 7 of the Covenant, they were forcibly detained at the offshore RPC in unacceptable living conditions: there were inadequate provisions for clothing and footwear (amongst other inadequacies). The individuals alleged that they started to suffer from health problems in the form of deterioration of physical and mental well-being, including seal-harm/threats of self-harm, depression, kidney problems and insomnia.

Amongst other claims, they alleged violations of Article 7 of the Covenant as the effects of unacceptable detention conditions at the detention facility, its indefinite nature, and the uncertainty surrounding their fate amount to cruel, inhuman or degrading treatment.

Conclusions:

- The Committee concluded that the authors did not establish that they were personally at risk of irreparable harm as a necessary and foreseeable consequence of their transfer to Nauru in 2014. Therefore, the Committee found that the available information did not disclose that the authors' transfer to Nauru amounted to a violation of Article 7 of the Covenant.

***N.L. v. Sweden,* UN Committee on the Rights of Persons with Disabilities, Communication No. 60/2019, 28 August 2020**

The case concerned N.L., a national from Iraq, who applied for asylum in Sweden and was diagnosed with "depression with psychotic features." Her asylum application was rejected, and that decision was ultimately confirmed by the Migration Court of Appeal. She pursued new proceedings to prevent her deportation, based on the deterioration of her mental health and on the allegation that she would not be able to access adequate mental health care services in Iraq.

Conclusions:

- The Committee found that the State failed to discharge obligations under Article 15 of the CRPD (Freedom from torture or cruel, inhuman or degrading treatment or punishment), as it failed to assess whether the author would in fact be able to access adequate medical care if removed to Iraq.

C. v. Australia, Communication No. 900/1999, UN Human Rights Committee, 13 November 2002, paragraph 8.4

"8.4 […] [T]he Committee notes that the psychiatric evidence […] was essentially unanimous that the author's psychiatric illness developed as a result of the protracted period of immigration detention. The Committee notes that the State party was aware, at least from August 1992 when he was prescribed tranquillisers, of psychiatric difficulties the author faced. Indeed, by August 1993, it was evident that there was a conflict between the author's continued detention and his sanity. Despite increasingly serious assessments of the author's conditions in February and June 1994 (and a suicide attempt), it was only in August 1994 that the Minister exercised his exceptional power to release him from immigration detention on medical grounds (while legally he remained in detention). As subsequent events showed, by that point the author's illness had reached such a level of severity that irreversible consequences were to follow. In the Committee's view, the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under Article 7 of the Covenant."

***Delalić Judgment* (IT-95-14/2), ICTY, [552]**

The International Criminal Tribunal for the former Yugoslavia has used a wider definition determining that inhuman treatment is that which "causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity". The element of "a serious attack on human dignity" was not included in the definition of inhuman treatment under the Elements of Crimes for the International Criminal Court because the war crime of "outrages upon personal dignity" covers such attacks.

Other cases

In their case-law, human rights bodies apply a definition which is like the one used in the Elements of Crimes for the ICC, stressing the severity of the physical or mental pain or suffering. They have found violations to the prohibition of inhuman treatment in cases of active maltreatment but also in cases of very poor conditions of detention, as well as in cases of solitary confinement. Lack of adequate food, water or medical treatment for detained persons has also been found to amount to inhuman treatment.

- UN Human Rights Committee; ***Essono Mika Miha v. Equatorial Guinea***, Communication No. 414/1990
- UN Human Rights Committee; ***Williams v. Jamaica***, Communication No. 609/1995
- ECtHR; ***Keenan v. United Kingdom***, Judgment, 3 April 2001
- ***African Commission on Human and Peoples' Rights, Civil Liberties Organisation v. Nigeria***, Communication No. 151/96, 15 November 1999

Deportation / Removal / Forced Return / Expulsion

The Practical Guide to Humanitarian Law sets out an overview of expulsion and the principle of non-refoulement.

OHCHR Discussion Paper, Expulsions of aliens in international human rights law, September 2006 sets out the substantive protection available to individuals facing expulsion to a country where they may be exposed to grave human rights violations.

UNHCR Note on the Principle of Non-Refoulement, November 1997

The principle of non-refoulement is the cornerstone of asylum and of international refugee law. Following from the right to seek and to enjoy in other countries asylum from persecution, as set forth in Article 14 of the UNDR, this principle reflects the commitment of the international community to ensure to all persons the enjoyment of human rights, including the rights to life, to freedom from torture or cruel, inhuman or degrading treatment or punishment, and to liberty and security of person. These and other rights are threatened when a refugee is returned to persecution or danger.

At the universal level the most important provision in this respect is Article 33 (1) of the 1951 Convention… Also at the universal level, mention should be made of Article 3 (1) of the UN Declaration on Territorial Asylum unanimously adopted by the General Assembly in 1967 [res. 2312 (XXII)].

Safa Turhan v. Sweden, UN Committee against Torture, Communication No. 1109/2021, 8 November 2024

Mr Turhan, a national of Türkiye, claimed that his deportation to Kosovo would violate Article 3 of the Convention against Torture because of a high likelihood of illegal rendition or expulsion from Kosovo to Türkiye, where he would face torture.

Conclusions:

- The Committee found that there was a foreseeable real risk of Mr Turhan being forcibly returned from Kosovo to Türkiye. The Committee acknowledged that Kosovo was not a party to the Convention against Torture or other key human rights conventions, and in the past, it had failed to respond to inquiries about unlawful transfers.
- The Committee therefore concluded that the removal of the complainant by the State party to Kosovo, where he would face a real risk of being forcibly transferred to and subjected to torture in Türkiye, would constitute a violation of Article 3 of the Convention.

John Falzon v. Australia, Communication No. 3646/2019, UN Human Rights Committee, 14 March 2024

Mr Falzon emigrated from Malta to Australia when he was three years old. The author grew up, studied and started a family in Australia. However, he never applied for Australian nationality, even though he was entitled to it.

He was convicted of drug trafficking and served eight years in prison. He was subsequently notified that he was subject to deportation following the cancellation of his visa on the basis that he had failed the statutory character test owing to a substantial criminal record.

Mr Falzon was deported to Malta. Mr Falzon argued that by deporting him to Malta, the State party had violated his rights, inter alia, under Article 12(4) (that the State party arbitrarily deprived the author of the right to enter his own country).

Conclusions:

- The Committee found that despite Mr Falzon not being an Australian citizen, the author had no meaningful connections with Malta at the time of his removal. Taking into consideration that his whole life was based in Australia (Mr Falzon had completed all his schooling there,

he married there and had children and grandchildren there, all of his immediate family members were nationals of Australia, and he always paid taxes and made social contributions there), the Committee found that Australia was the author's own country within the meaning of Article 12(4) of the Covenant. The Committee found breaches of Article 12(4).

***R v. Secretary of State for the Home Department, Ex parte Adan, Ex parte Aitseguer*, (2001) 2 WLR 143, 19 December 2000 (UK House of Lords)**

In assessing whether a state is a safe third country with regard to its interpretation of the 1951 Refugee Convention, it was not sufficient to assess whether the foreign state's interpretation of the Convention was reasonable. The Secretary of State for the Home Department had to be satisfied that the foreign state applied the true interpretation of the Convention, as decided upon by the UK Courts.

***Stakić Case* (IT-97-24) (22 March 2006)**

In this case, the ICTY Appeals Chamber held "that the actus reus (material element) of deportation is the forced displacement of persons by expulsion or other forms of coercion from the area in which they are lawfully present, across a de jure state border or, in certain circumstances, a de facto border, without grounds permitted under international law" and that the mens rea (moral element) of that crime does not require an intention to displace the persons across the border on a permanent basis. This was confirmed by the ICTY Trial Chamber in the ***Krajišnik Case*** (27 September 2006, [723]). In the latter case, the Trial Chamber further found that international humanitarian law recognizes only limited circumstances under which the displacement of civilians during armed conflict is allowed, namely, if it is carried out for the security of the persons involved or for imperative military reasons (para. 725). Furthermore, the Chamber held that deportation does not require "that a minimum number of individuals must have been forcibly transferred for the perpetrator to incur criminal responsibility" (paragraph 309).

Conclusions:

- In the ***Stakić Case***, the ICTY Appeals Chamber held that "acts of forcible transfer may be sufficiently serious as to amount to 'other inhumane acts'" that is to say, a crime against humanity. In the ***Krajišnik Case*** (17 March 2009, [330]-[331]), the ICTY Appeals Chamber held that in order to prove that a forcible transfer amounts to "other inhumane acts" under Article 5.i of the Statute, it must be shown that the forcible transfer in question is of a similar seriousness to other enumerated crimes against humanity.

Collective Expulsion

The Practical Guide to Humanitarian Law, Françoise Bouchet-Saulnier, Médecins Sans Frontières, 1998 (regularly updated)

Collective expulsions are explicitly prohibited in a number of international and regional instruments (ECHR Protocol No. 4 prohibiting Collective Expulsion (art. 4), American Convention on Human Rights (ACHR) (art. 22(9)), International Convention on the Protection of All Migrant Workers and Members of Their Families (art. 22(1)); the ACHPR (art. 12(5)), the Arab Charter on Human Rights (art. 26(2))), and can also be inferred from other treaty provisions that require individualized decisions on each migrant's claim to remain in the country, see the ICCPR (art. 13) and the CFREU (art. 19(1)).

The European Court of Human Rights (ECtHR) defines "collective expulsion" as "any measure of the competent authority compelling aliens, as a group, to leave the country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual aliens of the group". Moreover, expulsions of aliens must not be discriminatory nor arbitrary and no single measure can be taken to expel all persons having the nationality of a particular State or based on the fact that they belong to a certain group.

The ECtHR also considers that the right to an effective remedy under Article 13 of the ECHR requires that States make available to the individual concerned the effective possibility of challenging the deportation decision (see the case ***Soering v. The UK***, Application no. 14038/88, Judgment, 7 July 1989). This prohibition does not mean that all expulsions constitute collective expulsions. What is prohibited is that mass expulsions be carried out without an individual determination justifying the expulsion and without giving individuals the possibility to obtain a judicial review of an order.

OHCHR Discussion Paper, Expulsions of aliens in international human rights law, September 2006 sets out the substantive protection available to individuals facing expulsion to a country where they may be exposed to grave human rights violations.

ECHR Guide on Article 4 of Protocol No. 4 to the European Convention on Human Rights sets out an overview of collective expulsion and relevant case law and commentary.

ECHR Collective expulsions of aliens factsheet, March 2023 sets out an overview of the relevant case law.

For an expulsion to be "collective" in nature, there are no requirements such as a minimum number of persons affected or membership of a particular group. The decisive criterion in order for an expulsion to be characterised as "collective" is the absence of "a reasonable and objective examination of the particular case of each individual alien of the group" (***N.D. and N.T. v Spain*** (Application Nos. 8675/15 and 9697/15), [193]-[199]). Complaints under Article 4 of Protocol No. 4 can be brought by an individual alone who alleges to have been part of a group that was collectively expelled (see ECtHR; ***Shahzad v Hungary*** (Application No. 12625/17).

Hirsi Jamaa and Others v. Italy (Application No. 27765/09), ECtHR, 23 February 2012 – see "***Interception Measure(s)***" below

Somali and Eritrean migrants travelling from Libya were intercepted at sea by the Italian authorities. Returning them to Libya without examining their case exposed them to a risk of ill-treatment and amounted to a collective expulsion.

M.K. and Others v. Poland (Application Nos. 40503/17, 42902/17, 43643/17), ECtHR, 23 July 2020

The ECtHR ruled that the consistent practice of returning applicants to Belarus amounted to collective expulsions in breach of Article 4, Protocol 4 of the European Convention on Human Rights (ECHR). The court noted that the Polish authorities refused to accept asylum applications at the border from Chechen applicants, did not undertake an adequate review of applications and had consistently ignored the interim measures issued by the ECtHR, continuing to remove applicants to Belarus despite the risk of chain-refoulement and treatment contrary to the European Convention.

Khlaifia and Others v. Italy (Application No. 16483/12), ECtHR, 15 December 2016

The applicants' detention under Article 5(1) (ECHR) was arbitrary and did not ensure the principle of legal certainty and the lack of information was contrary to Article 5(2) and impaired their ability to challenge the detention decisions in violation of Article 5(4). The conditions at the reception centre and the boats did not amount to a violation of Article 3, as the applicants' stay was very short and there were not sufficient indications.

There was no violation of Article 4 Protocol 4, as the applicants have had a genuine and effective possibility to raise concerns regarding obstacles to their return to Tunisia.

Detention

Report to the 22nd Session of the Human Rights Council, Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, A/HRC/22/44 (2012)

"38. The Working Group regards cases of deprivation of liberty as arbitrary under customary international law in cases where: [...] (d) Asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review of remedy; […]

62. […] The legal basis justifying the detention must be accessible, understandable, non-retroactive and applied in a consistent and predictable way to everyone equally. Moreover, according to the Human Rights Committee, an essential safeguard against arbitrary arrest and detention is the "reasonableness" of the suspicion on which an arrest must be based.

63. The notion of 'arbitrary detention' lato sensu can arise from the law itself or from the particular conduct of Government officials. A detention, even if it is authorized by law, may still be considered arbitrary if it is premised upon an arbitrary piece of legislation or is inherently unjust, relying for instance on discriminatory grounds. An overly broad statute authorizing automatic and indefinite detention without any standards or review is by implication arbitrary. […]

82. The Working Group recommends that States: [...] (b) Ensure that the guarantees available against arbitrary arrest and detention are extended to all forms of deprivation of liberty, including house arrest; re-education through labour; prolonged periods of curfew; detention of migrants and asylum seekers; protective custody; detention for rehabilitation or treatment; detention in transit areas; border control checkpoints, etc.

83. All measures of detention should be justified; adequate; necessary and proportional to the aim sought."

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

Principle 10 Anyone arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

Principle 11 (1). A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

Principle 13 Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights.

Principle 14 A person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1, and principle 13 and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

Principle 16 1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

Principle 17 1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

Notion of "arbitrary detention"

Opinion No. 63/2024, concerning Al-Hussein al-Bashir Ibrahim (Morocco and Spain), Human Rights Council, Working Group on Arbitrary Detention, 101st session, 11-15 November 2024

Mr Al-Bashir Ibrahim was a political activist who defended the Saharan people's right to self-determination. He resided in Western Sahara. After a violent demonstration between Saharan and Moroccan students, Mr Al-Bashir Ibrahim fearing arrest or death for his activism, fled to Spain by boat where he was arrested by Spanish police and put into detention. After it was announced that he would be deported, Mr. Al-Bashir Ibrahim reportedly went on a thirst strike for two days, during which time he was placed in solitary confinement without being given any attention whatsoever by the guards or any medical care. He was subsequently handed over to Moroccan authorities. In Morocco, Mr. Al-Bashir Ibrahim alleged that he was subjected to ill-treatment and torture.

Conclusions:

- The Working Group on Arbitrary Detention found several violations of Mr al-Bashir Ibrahim's rights including being deprived without legal basis (Category I violations) and denial of a fair trial (Category III violations).
- Regarding the conditions of his detention, the Working Group expressed concern over the conditions of Mr. Al-Bashir Ibrahim's detention, which were not adequately refuted by the Moroccan Government. It emphasized that all persons deprived of their liberty must be treated with humanity and respect for their inherent dignity, as per Article 10 (1) of the ICCPR and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Opinion No. 58/2024 concerning Mohammad Arfat (India), Human Rights Council, Working Group on Arbitrary Detention, 101st session, 11-15 November 2024

Mr Arfat was a Rohingya Muslim refugee originally from Myanmar, who was detained (along with other Rohingya Muslims) in India after fleeing from Bangladesh and entering India. He alleged that he had been subjected to degrading treatment during his detention, including being physically assaulted during interrogation by police and not being provided with food or medical care while in custody. He was moved to another detention centre where his living conditions continued to be substandard. As a result of the poor conditions of his detention and the fact his detention is indefinite, this led to a deterioration in his mental and physical health.

Mr Arfat's family petitioned the Guwahati High Court in Assam for his release, however the Government of Assam argued that his detention was necessary until his nationality could be verified by Myanmar authorities and his deportation from India could be effected.

Amongst other things, Mr Arfat argued that his detention is arbitrary on the basis of its indefinite nature, and that there was no proper legal basis for the deprivation of his liberty,

The Indian Government argued that the necessary action for deportation or detention or for verification of the nationality of any foreign national was being taken as per the procedure established by law, which was also applicable in the present case.

Conclusions:

- The Working Group expressed grave concern for Mr Arfat and urged the Indian Government to end his arbitrary detention immediately and unconditionally releasing him and to liaise with UNHCR to grant him protection and a remedy, befitting his status as an asylum-seeker, which could include resettlement in a third country.
- The Working Group found that the deprivation of liberty of Mr Arfat was in contravention of Articles 2, 7, 8, 9, 10 and 14 of the Universal Declaration of Human Rights and Articles 2, 9, 14 and 26 of the International Covenant on Civil and Political Rights, and was arbitrary under Categories I, II, III, IV and V.

Madani v. Algeria, UN Human Rights Committee, Communication No. 1172/2003, 28 March 2007, [8.4]

"8.4 [...] The Committee recalls its jurisprudence that, in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for which the State party can provide appropriate justification."

A v. Australia, UN Human Rights Committee, Communication No. 560/1993, 30 April 1997

The Committee found that it was not per se arbitrary to detain individuals requesting asylum. Nor was there a rule of customary international law which would render all such detention arbitrary. "[E]very decision to keep a person in detention should, however, be open to review periodically so that the grounds justifying the detention can be assessed. In any event, detention should not continue beyond the period for which the State can provide appropriate justification. For example, the fact of illegal entry may indicate a need for investigation and there may be other factors particular to the individual, such as the likelihood of absconding and lack of cooperation, which may justify detention for a period. Without such factors detention may be considered arbitrary, even if entry was illegal."

Length of detention

F.J. et al. v. Australia, UN Human Rights Committee, Communication No. 2233/2013, 2 May 2016, [10.3]

"Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims, and determine their identity if it is in doubt. To detain them further while their claims are being resolved would be arbitrary absent particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security. The decision must consider relevant factors case by case, and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review. The decision must also take into account the mental health condition of those detained. Individuals must not be detained indefinitely on immigration control grounds if the State party is unable to carry out their expulsion. The inability of a State party to carry out the expulsion of an individual does not justify indefinite detention."

Right to be informed on arrival, to legal assistance and contact family members

F.K.A.G. et al. v. Australia, UN Human Rights Committee, Communication No. 2094/2011, 26 July 2013, [9.5]

"[…] The Committee considers that one major purpose of requiring that all arrested persons be informed of the reasons for the arrest is to enable them to seek release if they believe that the reasons given are invalid or unfounded; and that the reasons must include not only the general basis of the arrest, but enough factual specifics to indicate the substance of the complaint."

Torture/Cruel, inhuman and degrading treatment

C. v. Australia, UN Human Rights Committee, Communication No. 900/1999, 13 November 2002, [8.4]

"[…] [T]he Committee notes that the psychiatric evidence […] was essentially unanimous that the author's psychiatric illness developed as a result of the protracted period of immigration detention…. In the Committee's view, the continued detention of the author when the State party was aware of the author's mental condition and failed to take the steps necessary to ameliorate the author's mental deterioration constituted a violation of his rights under Article 7 of the Covenant."

Other cases

Wackenheim v. France, UN Human Rights Committee, Communication No. 854/1999, 15 July 2002

Liberty of person concerns freedom from confinement of the body, not a general freedom of action. Security of person concerns freedom from injury to the body and the mind, or bodily and mental integrity.

Deprivation of liberty involves more severe restriction of motion within a narrower space than mere interference with liberty of movement under Article 12. Examples of deprivation of liberty include police custody, arraigo penal, remand detention, imprisonment after conviction, house arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as being involuntarily transported. They also include certain further restrictions on a person who is already detained, for example, solitary confinement or the use of physical restraining devices.

See, for example:

- Mexico (CCPR/C/MEX/CO/5, 2010), [15]
- ***Gorji-Dinka v. Cameroon*** (1134/2002), [5.4]
- United Kingdom (CCPR/C/GBR/CO/6, 2008), [17] (control orders including curfews of up to 16 hours).
- ***A v. New Zealand*** (CCPR/C/66/D/754/1997), [7.2] (mental health).
- Republic of Moldova (CCPR/C/MDA/CO/2,2009), [13] (contagious disease).
- Belgium (CCPR/CO/81/BEL, 2004), [17] (detention of migrants pending expulsion).
- ***Saldías de López v. Uruguay***, (CCPR/C/13/D/52/1979), [13]
- Czech Republic (CCPR/C/CZE/CO/2, 2007), [13]
- Republic of Korea (CCPR/C/KOR/CO/3, 2006), [13]

Discrimination

A widely accepted principle of international customary law, the principle of non-discrimination is established in the Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945, Arts 13(1)(b), 55(c) and 76(c)). The Charter prohibits discrimination based on race, sex, language, or religion. The principle is also enshrined in most human rights treaties as the reverse side of the principle of equality. Article 1 of the Universal Declaration of Human Rights (adopted 10 December 1948, UNGA Res 217(A)) stipulates that "[a]ll human beings are born free and equal in dignity and rights," while Article 2 recognizes that "Everyone is entitled to all the rights and freedoms set forth in this Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...". The grounds of discrimination vary from one convention to another. The human rights conventions most recently adopted (including the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003, 2220 UNTS 3, Art. 7) also list, among these grounds, "nationality", which is more specific and relevant to migration than the broader term "national origin" used in other human rights treaties (see, for example, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art. 2(1)).

Human Rights In The Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors And Lawyer, United Nations, New York And Geneva, 2003. See in particular here

Discrimination may have many different causes and may affect people of different racial, ethnic, national or social origin such as communities of Asian or African origin, Roma, indigenous peoples, Aborigines and people belonging to different castes. It can also be aimed at people of different cultural, linguistic or religious origin, persons with disabilities or the elderly and, for instance, persons living with the HIV virus or with AIDS. Further, persons may be discriminated against because of their sexual orientation.

The manual provides a brief description of the most important legal provisions on the right to equality and non-discrimination in general international human rights law, and then focuses on some of the most relevant aspects of the judgments, views and comments of the international monitoring bodies.

The Practical Guide to Humanitarian Law, Françoise Bouchet-Saulnier, Médecins Sans Frontières, 1998 (regularly updated)

Discrimination violates one of the most basic principles guiding society: that all individuals are equal before the law. The practice of discrimination can fall under different categories, and several conventions and declarations forbid it:

- International Convention on the Elimination of All Forms of Racial Discrimination (GA Resolution 2106 [XX] of 21 December 1965);
- International Convention on the Suppression and Punishment of the Crime of Apartheid (GA Resolution 3068 [XXVIII] of 30 November 1973);
- Convention on the Elimination of All Forms of Discrimination against Women (GA Resolution 34/180 of 18 December 1979);
- Convention against Discrimination in Education, adopted under the aegis of UNESCO at its Eleventh Session on 14 December 1960;
- Convention (No. 100) Concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, adopted under the aegis of the International Labor Organization (ILO) at its Thirty-fourth Session on 29 June 1951; and
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981.

K.K. v. Spain, UN Committee on the Rights of the Child, Communication No. 165/2021, 26 January 2024

The complainant is a national of Morocco who presented the communication, on behalf of her daughter, S.J. a national of Morocco who was born in Spain. The author claimed that S.J. was denied access to primary and secondary education despite being of compulsory school age and born in Spain, due to the discriminatory application of administrative requirements related to proof of residence. She alleged violations of, Articles 2 (non-discrimination), 3 (best interests of the child), 28 (right to education), and 29 (aims of education) of the Convention on the Rights of the Child.

Conclusions:

- The Committee found that there had been a violation of Article 2 (read in conjunction with Article 28) and found that the documents provided were sufficient to trigger an obligation for the State to proactively verify residence, and that the administrative requirements were applied in a discriminatory manner, leading to S.J.'s de facto exclusion. It recommended that Spain provide S.J. with effective reparation, including compensation and support to catch up on her education, and ensure that local authorities proactively verified residence for migrant children.

Racial discrimination

UNHCR Guidance on Racism and Xenophobia, February 2023 aims to:

- provide a comprehensive framework for UNHCR's interventions regarding racism, racial discrimination, xenophobia and related intolerance;
- expand the ways UNHCR describes and presents issues related to racism, racial discrimination, xenophobia and related intolerance in order to include intersectional dimensions as well as structural, institutional and historical perspectives;
- highlight avenues to leverage the national, regional and UN human rights mechanisms and other platforms.

UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation No. 30 on Discrimination Against Non Citizens, 01 October 2002

The Committee on the Elimination of Racial Discrimination provides guidance to States in relation of the applicability of the prohibition of racial discrimination with regard to refugees and displaced persons as well as non-citizens, including on issues related to hate speech and racial violence, access to citizenship, administration of justice, and expulsion and deportation. The prohibition of racial discrimination is absolute. According to Art. 4 of the International Covenant on Civil and Political Rights, measures that States may adopt to respond to public emergencies threatening the life of the nation cannot discriminate on the ground of race, colour, sex, language, religion or social origin. The prohibition of racial discrimination applies in all matters pertaining to both private and public life.

Koptova v. Slovakia, UN Committee on the Elimination of Racial Discrimination, Communication No. 13/1998, 1 November 2000

On 8 June 1997, the Municipal Council of Rokytovce enacted a resolution which expressly forbade Romany families from settling in the village and threatened them with expulsion should they try to settle there. On 16 July 1997, the Municipality of Nagov adopted resolution No. 22, which also forbade Roma citizens to enter the village or to settle in shelters in the village district. The Kosice Legal Defence Foundation sent a letter to the General Prosecutor's Office in Bratislava requesting an investigation into the legality of Resolutions No. 21 and No. 22.

It was alleged that these resolutions unlawfully restricted the freedom of movement and residence of a group of people solely because they were Roma.

Conclusions:

- The Committee recommended that the State ensure that practices restricting the freedom of movement and residence of Roma under its jurisdiction are fully and promptly eliminated.

P.S.N. v. Denmark, UN Committee on the Elimination of Racial Discrimination, Communication No. 36/2006, 8 August 2007

The Documentary and Advisory Centre on Racial Discrimination filed complaints against violations of section 266b of the Danish Criminal Code which prohibits racial statements. These were rejected. The petitioner claimed that the decision of the police not to initiate an investigation violates, inter alia, Article 4 ICERD).

Conclusions:

- The Committee found the application to be inadmissible as there was no singling out of a group of persons contrary to Article 1 of the ICERD. In particular, the Committee noted that "a general reference to foreigners does not at present single out a group of persons, contrary to Article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent or national or ethnic origin". Applied to this case, the Committee considered that the general references to Muslims does not single out a particular group of persons, contrary to Article 1 of the Convention. It, therefore, concluded that the petition falls outside the scope of the Convention.

On February 4, 2021 the International Court of Justice (ICJ rendered its decision on the Application of the International Convention on the Elimination of All Forms of Racial Discrimination (***Qatar v. United Arab Emirates***)

The Court ruled the definition of 'racial discrimination' under Article 1(1) of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) does not include discrimination on the basis of current nationality neither explicitly nor implicitly under the term 'national origin'.

See also selected decisions of the committee on the elimination of racial discrimination

Displacement (forced displacement / migration / relocation / transfer)

Criminal Justice and Forced Displacement: International and National Perspectives (June 2013) by Federico Andreu-Guzmán: examination of the legal framework relating to forced displacement and how it could be prosecuted as a crime.

UNHCR Global Trends –Forced Displacement in 2014. UNHCR. 18 June 2015.

Prosecutor v. Milorad Krnojelac (Appeal Judgement), IT-97-25-A, ICTY, 17 September 2003, [218]-[222]

"The Appeals Chamber holds that acts of forcible displacement underlying the crime of persecution punishable under Article 5(h) of the Statute are not limited to displacements across a national border. The prohibition against forcible displacements aims at safeguarding the right and aspiration of individuals to live in their communities and homes without outside interference. The forced character of displacement and the forced uprooting of the inhabitants of a territory entail the criminal responsibility of the perpetrator, not the destination to which these inhabitants are sent […] The Appeals Chamber concludes that displacements within a state or across a national border, for reasons not permitted under international law, are crimes punishable under customary international law, and these acts, if committed with the requisite discriminatory intent, constitute the crime of persecution under Article 5(h) of the Statute. The Appeals Chamber finds that the facts accepted by the Trial Chamber fall within the category of displacements which can constitute persecution."

Prosecutor v. Momcilo Krajisnik (Appeal Judgment), IT-00-39-A, ICTY, 17 March 2009

When finding that a forcible transfer amounts to "other inhumane acts" under Article 5(i) of the Statute, the Trial Chamber had to be convinced that the forcible transfer in question is of a similar seriousness to other enumerated crimes against humanity.

The Appeals Chamber held that "acts of forcible transfer may be sufficiently serious as to amount to other inhumane acts" (at [330]). Accordingly, a Trial Chamber should examine if the specific instances of forcible transfer in the case before it are sufficiently serious to amount to "other inhumane acts" under Article 5(i) of the Statute.

Effective Investigation(s)

FRA: Fundamental rights of refugees, asylum applicants and migrants at the European borders

Whenever Articles 2 and 3 of the ECHR are violated, States must carry out an effective official investigation.

European Court of Human Rights, "Guide on Article 2 of the European Convention on Human Rights: Right to life"

Protection afforded by the ECHR includes the right not to be deprived of life (Article 2), the right not to be subjected to torture or other forms of ill-treatment (Article 3), the right not to be subjected to slavery or human trafficking (Article 4) and the right not to be unlawfully or arbitrarily detained (Article 5).

The absolute and non-derogable nature of the prohibitions is clear from the text of the ECHR. Despite the lack of express wording, the articles place a legal obligation upon States to take positive action in order to prevent breaches of these rights. Without a positive obligation to investigate allegations or other indications of breaches of these rights, the prohibition would be rendered theoretical and illusory, allowing state authorities and their agents to act with impunity.

Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation is seen as a distinct obligation. It can give rise to a finding of a separate and independent "interference". This conclusion derives from the fact that the Court has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation on that account) and the fact that on several occasions, a breach of a procedural obligation has been alleged in the absence of any complaint as to its substantive aspect.

ECtHR jurisprudence

Armani da Silva v. the United Kingdom (Application No 5878/08)

The Applicant brought proceedings in respect of the investigation into the death of her cousin who was shot by police officers at Stockwell Underground Station, as they mistakenly believed that the deceased was a terrorist.

Conclusions:

- The court held that the investigation was effective and there was no violation of Article 2 of the ECHR, as the decision not to prosecute any individual officer came after a thorough investigation and finding that there was insufficient evidence against any individual officer.

Ramsahai and others v The Netherlands (Application No. 52391/99), ECtHR, 15 May 2007

The case concerned the death of Moravia Ramsahai, the applicants' son and grandson, who was shot dead by a police officer in Amsterdam. A criminal investigation was opened, which was partly conducted by the police force to which the responsible police officer (and his colleague, who was also involved in the incident) belonged. The public prosecutor ultimately concluded that the shooting had been an act of self-defence and decided not to bring a prosecution against the responsible police officer. The applicants brought a complaint about the failure to bring a prosecution, which also argued that the investigation had not been "effective" and "independent".

Conclusions:

- The ECtHR noted that in order to be "effective" (in the context of Article 2 of the ECHR) an investigation into a death must be adequate. This means that it must be capable of leading to the identification and punishment of those responsible. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident.

- In this case, the ECtHR found that the investigation was inadequate as (amongst other things) the failure to test the hands of the officers for gunshot residue, stage a reconstruction of the incident and interview or separate the two responsible police officers was unexplained.
- The ECtHR also held that for an investigation to be "effective", it may generally be regarded as necessary for the persons responsible for it and carrying it out to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection, but also a practical independence. The ECtHR noted that there were 15.5 hours from Moravia Ramsahai's death until the National Police Internal Investigations Department became involved in the investigation and that supervision by another authority, however independent, is not a sufficient safeguard for the independence of an investigation.
- The ECtHR held that the subsequent involvement of the National Police Internal Investigations Department was insufficient to remove the taint of the police force's lack of independence.

Bati and others v Turkey (Application Nos. 33097/96 and 57834/00), 3 June 2004

The case concerned applicants arrested by Istanbul police and held for questioning as part of a police operation against an illegal Marxist organisation, the Communist Labour Party of Turkey/Leninist. The applicants lodged a complaint of ill-treatment against the police officers who had been on duty while they were in custody. The applicants subsequently alleged that the relevant authorities had not carried out an effective investigation into their complaints of ill-treatment.

Conclusions:

- The ECtHR noted that an investigation must be "effective" in practice as well as in law and not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. It should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman or degrading treatment or punishment would be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.
- The ECtHR did however note that this is a qualified, not an absolute, obligation and that allegations of torture in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without those who could help provide support or assemble the necessary evidence. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries.
- The ECtHR also noted that the requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.

Effective Remedy / Redress

UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13

The Article 2, paragraph 1, obligations are binding on States [Parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law. However, the positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.

There may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities. States are reminded of the interrelationship between the positive obligations imposed under Article 2 and the need to provide effective remedies in the event of breach under Article 2, paragraph 3.

The Covenant itself envisages in some articles certain areas where there are positive obligations on States Parties to address the activities of private persons or entities. For example, the privacy-related guarantees of Article 17 must be protected by law. It is also implicit in Article 7 that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of Article 26.

ECHR Guide on Art 13 of the European Convention on Human Rights, Right to Effective Remedy (31 Aug 2022) sets out a detailed guide, including case law/commentary, on the right to an effective remedy.

E.P. and 44 other children v. Bosnia and Herzegovina, UN Committee on the Rights of the Child, Communication No. 124/2020, 17 January 2024

The complainants were 45 nationals from Iran or Iraq between the ages of 5 and 17 who were all temporarily residing in a refugee reception centre, located in Bosnia and Herzegovina. They alleged that their lack of access to primary and secondary education constituted various violations of their rights. The decision raised issues in respect of whether the complainants had exhausted all domestic remedies.

In accordance with Article 7(e) of the Optional Protocol to the Convention on the Rights of the Child, the Committee was required to consider a communication inadmissible when the available domestic remedies had not all been exhausted, unless the application of the remedies is unreasonably prolonged or unlikely to bring effective relief. The complainants contended that domestic remedies had been exhausted by the presentation of a complaint to the Institution of the Human Rights Ombudsman.

Conclusions:

- The Committee found that the complainants had not exhausted all domestic remedies. In respect of the complaint made to the Ombudsman, the Committee noted that the recommendations issued by that institution were not binding and therefore could not be considered an effective remedy for the purposes of Article 7(e) of the Optional Protocol. The complainants did not provide any justification as to why no attempt had been made to present their case before any administrative or judicial body other than the Ombudsman. The communication was therefore deemed inadmissible under Article 7 (e) of the Optional Protocol.

A.S., D.I., O.I. and G.D. v. Italy, UN Human Rights Committee, Communication No. 3042/2017, 4 November 2020

Effective control of Italy over a shipwrecked vessel leads to an obligation to rescue passengers in line with ICCPR Article 6.

The individuals, who were migrants seeking asylum, submitted this complaint on behalf of their relatives who died after the vessel that they were on board capsized. The authors claimed that there were no effective remedies available that would enable them to submit their claims to domestic authorities.

Conclusions:

- The Committee recalled that the right to life "includes an obligation on the State party to adopt any appropriate laws or take measures in order to protect life in a reasonable manner", including "reasonable and positive measures", with no disproportionate burden on a State party to fulfil this obligation.
- In addition to that, the Committee noted that no official, independent, and effective investigation was carried out and this failure constituted a violation of Article 6 alone and in conjunction with Article 2(3) of the Covenant.

Article 13 of the European Convention on Human Rights, Right to Effective Remedy

Contracting States are afforded discretion (or a margin of appreciation) as to the manner in which they provide the requisite remedy and conform to their Convention obligations under Article 13 (***Kaya v. Turkey,*** 1998, § 106).

Neither Article 13 nor the Convention in general lays out any given manner for ensuring the effective implementation of any of the provisions of the Convention (***Silver and Others v. the United Kingdom***, 1983, § 113;). However, the nature of the right at stake has implications for the type of remedy the State is required to provide under Article 13 (***Budayeva and Others v. Russia***, 2008, § 191).

The remedy must encompass the merits of the complaint as submitted by the applicant. If the authority or court concerned reformulates the complaint or fails to take into consideration an essential element of the alleged violation of the Convention, the remedy will be insufficient (***Glas Nadezhda EOOD and Elenkov v. Bulgaria*, 2007, § 69**).

The requirements of Article 6 may be relevant for the assessment of the effectiveness of a remedy for the purposes of Article 13 of the Convention. As a general rule, the fundamental criterion of fairness, which encompasses the equality of arms, is a constitutive element of an effective remedy. A remedy cannot be considered effective unless the minimum conditions enabling an applicant to challenge a decision that restricts his or her rights under the Convention are provided (***Csüllög v. Hungary***, 2011, § 46).

Excessively restrictive requirements may render the remedy ineffective (***Camenzind v. Switzerland,*** 1997 (§ 54).

The remedy required by Article 13 must be "effective" in practice as well as in law *(**Mentes and Others v. Turkey***, 1997, § 89*;* ***İlhan v. Turkey*** *[GC]*, 2000, § 97).

The scope or extent of the field of action of the obligation under Article 13 will vary depending on the nature of the complaint under the Convention (***Chahal v. the United Kingdom***, 1996, §§ 150-151**;** ***Aksoy v. Turkey***, 1996, § 95**;** ***Aydın v. Turkey***, 1997, § 103; ***Z and Others v. the United Kingdom*** [GC], 2001, § 108; ***Paul and Audrey Edwards v. the United Kingdom***, 2002, § 96) or the nature of the right relied upon under the Convention (***Hasan and Chaush v. Bulgaria*** [GC], 2000, § 98).

Enforced Disappearance

- Protection of migrants from enforced disappearance: A human rights perspective, International Review of the Red Cross (2017), 99 (2), 569–587. This Review examines the issue of enforced disappearances of migrants during their migratory journey or once they have reached their destination, and how the legal and analytical framework provided by international human rights law and migration law applies to enforced disappearances of migrants.
- The Enforced Disappearance of Migrants, Boston University International Law Journal Vol 40:133-204 This journal examines acts of border violence at the U.S.-Mexico Border and at the EU's Southern and Eastern borders, including the Mediterranean Sea, and the potentials and limitations of labelling such practices as enforced disappearances in legal advocacy.
- EDLD EHRAC - Cases Archive - Enforced Disappearance Legal Database. The Jurisprudence Database sets out leading judgments and commentary by international and domestic legal mechanisms in the field of enforced disappearances. It summarises factual and legal findings and identifies common themes and search terms allowing for a comparative cross-jurisdictional analysis of this area of law.
- UN Working Group on Enforced or Involuntary Disappearances: Fact Sheet No. 6 (Rev. 4): Enforced Disappearances. Multiple human rights bodies and tribunals, including the UN Human Rights Committee (HRC) (e.g. ***Mojica v. Dominican Republic***), the African Commission on Human and Peoples' Rights (AComHPR) (e.g. ***Mussie Ephrem v. Eritrea***) and the Inter-American Court of Human Rights (IACtHR) (e.g. ***Goiburú v. Paraguay***) recognise that enforced disappearance can constitute torture.

E.L.A. v. France, UN Committee on Enforced Disappearances, Communication No. 3/2019, 25 September 2020

Mr. E.L.A., a citizen of Sri Lanka, alleged that he was arrested and detained on several accounts in 1997, 1998, 1999 and 2000 in his home country. He also reported instances of torture and ill-treatment from the police. The applicant repeatedly claimed that if expelled, he would be at risk of persecution and enforced disappearance by the Sri Lankan Army. His asylum application had been examined and re-examined on a total of five occasions by the French asylum courts.

Conclusions:

- The Committee found that France violated his right to non-refoulement.
- The Committee clarified that the risk of enforced disappearance at the country of origin/return should be linked to the personal circumstances of the applicant, as well as the general context of enforced disappearance in the respective country. The risk of enforced disappearance following return must be examined by the domestic courts in a comprehensive manner. A mere acknowledgment of the applicant's arguments and a simple confirmation of the lower court's findings does not satisfy this requirement.

Mangisto and al-Sayed v. State of Palestine, UN Committee on the Rights of Persons with Disabilities, Communications Nos. 67/2019 & 68/2019, 28 March 2023

The Mangisto and al-Sayed v the State of Palestine decision pertains to the disappearance of two Israeli nationals in Gaza. Palestine was found responsible for multiple violations of the Convention on the Rights of Persons with Disabilities (CRPD), despite lacking effective control over the territory where the violations occurred.

The communication was submitted by family members of two persons with psychosocial disabilities who had crossed into the Gaza Strip in 2014 and 2015. The authors claimed that the alleged victims were subjected to enforced disappearance.

Conclusions:

- On the admissibility of the communication, the Committee considered, among other things, the issue of jurisdiction. The Committee found that according to the jurisprudence of the

Treaty Bodies and the regional human rights courts, even in the absence of effective control by a State over parts of its territory, a State still has a positive obligation to take diplomatic, economic, judicial or other measures that are in its power to take and are in accordance with international law to secure to the residents in such a territory the rights guaranteed to them. The Committee therefore considered that despite limitations in the State party's ability to exercise its authority in the Gaza Strip, the alleged victims were within its jurisdiction within the meaning of Article 1 of the Optional Protocol.

- The Committee considered whether the State party had discharged its positive obligations to take appropriate and sufficient measures that were within its power to secure the alleged victims' rights as guaranteed by the Convention. The Committee noted that the State party had not provided any specific information on any such measure it had taken, or attempted to take, including to inquire into the fate and whereabouts of the alleged victims or the conditions of detention, including by attempting to engage the de facto authorities in the Gaza Strip; to facilitate and secure their release and safe return to their families; to guarantee their placement under the protection of the law; to ensure that they have access to adequate health care, taking into account their psychosocial disabilities and particularly vulnerable situation; and to enable them to be in contact with their families, relatives and representatives. The Committee concluded that the failure by the State party to take, or attempt to take, any such measure amounted to a violation of the victims' rights under Articles 10, 14, 15 and 25, read alone and in conjunction with Article 11 of the Convention.

Boucherf v Algeria UN Human Rights Committee, Communication No. 1196/2003, 30 March 2006, [9.2]

The Committee recalls the definition of enforced disappearance in Article 7, paragraph 2 (i), of the Rome Statute of the International Criminal Court: "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

Any act of such disappearance constitutes a violation of many of the rights enshrined in the Covenant, including:

- The right to liberty and security of the person (art. 9).
- The right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7).
- The right of all persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (art. 10).
- It also violates or constitutes a grave threat to the right to life (art. 6).

Human Smuggling / Trafficking

OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking (OHCHR Trafficking Guidelines) (2010). These principles have been developed in order to provide practical, rights-based policy guidance on the prevention of trafficking and the protection of victims of trafficking.

OHCHR International Instruments Concerning Trafficking in Persons, 2014

The most important international instrument to combat trafficking is the Palermo Protocol, a supplement to the UN Convention against Transnational Organized Crime (2000). Article 5 of the Protocol requires States to criminalize trafficking, attempted trafficking, and any other intentional participation or organization in a trafficking scheme.

Two International Labour Organization (ILO) conventions focus on forced labour or services: The ILO Forced Labour Convention (Convention No. 29 of 1930) (alongside its newly adopted Protocol, which defines forced or compulsory labour) and the ILO Abolition of Forced Labour Convention (Convention No. 105 of 1957).

The Slavery Convention (1926) defines slavery, and its Supplementary Convention describes "practices similar to slavery," including debt bondage, and institutions and practices that discriminate against women in the context of marriage.

The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) requires States to punish any person who exploits the prostitution of another.

ICCPR prohibits a number of practices directly related to trafficking, including slavery, the slave trade, servitude and forced labour.

United Nations Office on Drug and Crime - Smuggling of Migrants - A Global Review and Annotated Bibliography of Recent Publications sets out an overview of human smuggling issues across the globe.

United Nations Human Rights – Office of the High Commissioner – Human Rights and Human Trafficking sets out states' obligations with respect to human trafficking.

The United Nations Office on Drugs and Crime (UNODC) Human Trafficking Case Law Database has made human trafficking cases from over one hundred jurisdictions publicly available.

The SHERLOC portal is a wider UNODC initiative, which includes information on Articles of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as 14 crime types. See also: Case Digest on Evidential Issues in Trafficking in Persons cases (2017)

The following cases relate to membership of a "particular social group":

Moldova v. Secretary of State for the Home Department CG [2008] UKAIT 00002, 26 November 2007 (UK Asylum and Immigration Tribunal)

"Former victims of trafficking" and "former victims of trafficking for sexual exploitation" could be members of a particular social group because of their shared common background or past experience of having been trafficked.

VXAJ v. Minister for Immigration and Another [2006] FMCA 234, 20 April 2006 (Australia Federal Magistrates Court)

"Having failed to identify the relevant social group [i.e. trafficked women who have given evidence against traffickers] the Tribunal deprived itself of the opportunity to properly assess the applicant's fear of persecution and serious harm. […] The Tribunal has assumed that the applicant's debt and betrayal of the traffickers were factors exclusive of any motivation arising from the fact that the applicant was a sex worker. However, the fact that the harm feared by the applicant arose from her debt and betrayal of the traffickers did not preclude a finding that the applicant also feared harm because she was a sex worker." [22] & [26]

Imminent Risk of Irreparable Damage / Harm

ECtHR Interim measures Factsheet, June 2023. This factsheet provides a helpful overview of the recent case law relevant to an expulsion or an extradition.

UNHCR's Toolkit on How to Request Interim Measures under Rule 39 of the Rules of the European Court of Human Rights for Persons in Need of International Protection, February 2012. This toolkit provides helpful guidance for legal practitioners on how to submit a Rule 39 request for interim measures to the ECtHR, noting that:

- The Court's case law on Article 3 ECHR shows that the mere expression of a fear of persecution upon return does not in itself amount to a "real risk". When considering whether an alleged risk of irreparable harm is real, the Court takes into account a combination of facts and circumstances including the credibility of the facts presented by the applicant, the general situation in the country and, where relevant, UNHCR's position.
- Rule 39 requests for interim measures are not expected to meet the standard of proof applied to an individual application under Article 34 ECHR. Due to the short timeframes involved, it would be difficult for Rule 39 requests to do so. However, when requesting Rule 39 interim measures, one should demonstrate, to the extent possible, that there are substantial grounds for believing that there is a real risk of irreparable harm for the applicant if he/she is forcibly returned.

***Paladi v. Moldova*, Application No. 39806/05, ECtHR, 10 March 2009**

The applicant, a Moldovan national, complained that the Republic of Moldova violated his rights under Articles 3, 5, and 34 of the ECHR by detaining him without a lawful basis and failing to provide proper medical care.

Conclusions:

- The ECtHR has held that the medical treatment of a prisoner was inadequate and that failure to treat him as an inpatient at a hospital where he could receive the necessary neurological and hyperbaric oxygen treatment amounted to a violation of the prohibition on torture and other cruel, inhuman or degrading treatment.
- The Court has stated that "it follows from the very nature of interim measures that a decision on whether they should be indicated in a given case will often have to be made within a very short lapse of time (…). Consequently, the full facts of the case will often remain undetermined until the Court's judgment on the merits (…). It is precisely for the purpose of preserving the Court's ability to render such a judgment (…) that such measures are indicated. Until that time, it may be unavoidable for the Court to indicate interim measures on the basis of facts which, despite making a prima facie case in favour of such measures, are subsequently added to or challenged to the point of calling into question the measures' justification."

***Abdollahi v. Turkey*, Application No. 23980/08, ECtHR, 3 November 2009**

The applicant alleged that he was a member of the People's Mujahedin of Iran and that he would therefore face death or be subjected to ill-treatment if deported back to Iran. The Court granted an interim measure to prevent the applicant's deportation pending further information. The application of Rule 39 of the Rules of Court was lifted after the Registry lost contact with the applicant.

***F.H. v. Sweden*, Application No. 32621/06, ECtHR, 20 January 2009**

The applicant alleged that, if deported to Iraq, he would face a real risk of being killed or subjected to torture or inhuman treatment on account of his Christian faith and background as a member of the Republican Guard and the Ba'ath Party.

Conclusions:

- The Court decided to apply Rule 39 of the Rules of Court, requesting the Swedish Government to refrain from deporting the applicant until further notice. The application of Rule 39 was lifted when the Court's judgment finding that the implementation of the deportation order against the applicant would not give rise to a violation of Articles 2 or 3 of the Convention became final.

Y.P. and L.P. v. France, Application No. 32476/06, ECtHR, 1 September 2010

The first applicant, an opponent of the regime and a member of the Belarusian People's Front, was detained and assaulted on a number of occasions by the Belarusian police.

He fled with his family, passing through various European countries, and applied for asylum in France, but it was denied. The applicants alleged that if they were returned to Belarus they would risk imprisonment and ill-treatment.

Conclusions:

- The Court decided to apply Rule 39 of the Rules of Court, requesting the French Government to refrain from deporting the applicants pending the outcome of the proceedings before it. The application of Rule 39 was lifted when the Court's judgment finding that the implementation of the deportation order against the applicants would give rise to a violation of Article 3 of the Convention became final.

M.A. v. Switzerland, Application No. 52589/13, ECtHR, 18 November 2014

The applicant, an Iranian national, claimed that, if forced to return to Iran, he would face a real and serious risk of being arrested and tortured because of his active participation in demonstrations against the Iranian regime.

Conclusions:

- The applicant's expulsion was suspended on the basis of an interim measure granted by the Court in September 2013 under Rule 39 of its Rules of Court, which indicated to the Swiss Government that he should not be expelled for the duration of the proceedings before it. The application of Rule 39 was lifted when the Court's judgment finding that the implementation of the expulsion order against the applicant would give rise to a violation of Article 3 of the Convention became final.

M.I. et al v. Australia, Communication No. 2749/2016, UN Human Rights Committee, 31 October 2024

The facts of this case is set out above (see under 'Degrading Treatment or Punishment').

Conclusions:

- The Committee concluded that the authors had not substantiated their claims under Article 7 relating to a real risk of irreparable harm after their transfer, pursuant to Article 2 of the Optional Protocol did not face an imminent risk of irreparable harm.
- While no risk of irreparable harm was found, the Committee stated that there was an obligation for State parties not to extradite, deport, expel or otherwise remove a person from their territory where there were substantial grounds for believing that there was a real risk of irreparable harm, such as that contemplated by Articles 6 and 7 of the Covenant. The Committee indicated that the risk must be personal and that there is a high threshold for providing substantial grounds to establish that a real risk of irreparable harm exists.

Interception Measure(s)

The academic literature acknowledges that states may use interception to combat criminal and organised smuggling and trafficking. However, the application of interception measures must not obstruct the ability of asylum-seekers and refugees to benefit from international protection.

ECtHR KEY THEME - Article 4 of Protocol No. 4 and Immigration - Summary returns of migrants and/or asylum-seekers ("push-backs") and related case scenarios

UNHCR Note on Interception of Asylum-Seekers and Refugees sets out an overview of the international legal framework in respect of the interception of asylum-seekers and refugees. The Note sets out the following considerations at paragraph 34:

- "(a) Interception and other enforcement measures should take into account the fundamental difference, under international law, between refugees and asylum-seekers who are entitled to international protection, and other migrants who can resort to the protection of their country of origin;
- (b) Intercepted persons who present a claim for refugee status should enjoy the required protection, in particular from refoulement, until their status has been determined.
- (c) Alternative channels for entering asylum countries in a legal and orderly manner should be kept open, in particular for the purpose of family reunion, in order to reduce the risk that asylum seekers and refugees will resort to using criminal smugglers.
- (d) States should, furthermore, examine the outcome of interception measures on asylum-seekers and refugees, and consider practical safeguards to ensure that these measures do not interfere with obligations under international law, for instance, through establishing an appropriate mechanism in transit countries to identify those in need of protection, and by training immigration officers and airline officials in international refugee law;
- (g) In cases where refugees and asylum-seekers have moved in an irregular manner from a country in which they had already found protection, enhanced efforts should be undertaken for their readmission including, where appropriate, through the assistance of concerned international agencies. In this context, States and UNHCR should jointly analyze possible ways of strengthening the delivery of protection in countries of first asylum. There could also be more concerted efforts to raise awareness among refugees of the dangers linked to smuggling and irregular movements;
- (h) In order to discourage the irregular arrival of persons with abusive claims, rejected cases which are clearly not deserving of international protection under applicable instruments should be returned as soon as possible to countries of origin, which should facilitate and accept the return of their own nationals. States should further explore proposals to enhance the use and effectiveness of voluntary return programmes, for instance with the assistance of IOM."

Hirsi Jamaa and Others v. Italy, Application No. 27765/09, ECtHR, 23 February 2012

The case concerned 24 migrants from Somalia and Eritrea who were intercepted at sea by Italian authorities when travelling from Libya to Italy. The Italian authorities sent them back to Libya. The Grand Chamber found that by returning the migrants to Libya without examining their case, the state of Italy exposed the migrants to a risk of Art .3 breach and amounted to a collective expulsion; (Article 4 of Protocol No. 4).

Conclusions:

- The Court has found that the interception at high seas were within the jurisdiction of Italy for the purposes of Article 1 of the Convention as an exercise of extraterritorial jurisdiction. Vessel sailing on the high seas was subject to the exclusive jurisdiction of the State of the flag it was flying (at [76]-[82]).
- The Court noted the disturbing conclusions of numerous organisations regarding the treatment of clandestine immigrants in Libya. No distinction was made between irregular

migrants and asylum-seekers, who were systematically arrested and detained in conditions which observers had described as inhuman, reporting cases of torture. Clandestine migrants were at risk of being returned to their countries of origin at any time.

- The existence of domestic laws and the ratification of international treaties were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment where reliable sources had reported practices contrary to the principles of the Convention.
- Italy could not evade its own responsibility under the Convention by relying on its subsequent obligations arising out of bilateral agreements with Libya.
- The situation in Libya was well-known and easy to verify. The Italian authorities had or should have known, when removing the Applicants, that they would be exposed to treatment in breach of the Convention and/or that there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their respective countries of origin.
- The fact that the Applicants had failed to expressly request asylum did not exempt Italy from fulfilling its obligations.
- The Court for the first time examined the application of Article 4 of Protocol No. 4 to the transfer of aliens to a third State carried out outside national territory and whether this constituted a "collective expulsion of aliens" within the meaning of that provision.
- The Court observed that neither Article 4 of Protocol No. 4 nor the travaux préparatoires of the Convention precluded extraterritorial application of that article. The notion of "expulsion" was principally territorial, as was the notion of "jurisdiction". Where a Contracting State had, exceptionally, exercised its jurisdiction outside its national territory, the exercise of extraterritorial jurisdiction by that State can take the form of collective expulsion.
- The special nature of the maritime environment could not justify an area outside the law where individuals were covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention.
- The Applicants had not been subjected to any identification procedure by the Italian authorities. The removal of the Applicants had been of a collective nature, in breach of Article 4 of Protocol No. 4.
- The Court reiterated the importance of guaranteeing anyone subject to a removal measure (the consequences of which were potentially irreversible) the right to obtain sufficient information to enable them to gain effective access to the relevant procedures and to substantiate their complaints.
- Even if such a remedy were accessible in practice, they must satisfy the criterion of suspensive effect enshrined in Article 13.
- The Applicants had been deprived of any remedy which would have enabled them to lodge their complaints under Article 3 of the Convention and Article 4 of Protocol No. 4 with a competent authority and to obtain a thorough and rigorous assessment of their requests before the removal measure was enforced.

Safi and Others v Greece, Application No. 5418/15, ECtHR, 7 July 2022

A fishing boat with 27 Afghan, Syrian and Palestinian nationals on board sunk in the Aegean Sea while under tow by the Greek coastguard. The sinking caused the deaths of 11 people. The proceedings concerning the potential criminal liability of the coastguard members involved in the incident were discontinued, as were those against the military personnel alleged to have subjected the applicants to ill-treatment after their arrival. The 16 survivors complained to the Court, inter alia, that their lives had been endangered during the sinking by reason of the acts or omissions of the coastguard, that the investigation into who should bear responsibility for the fatal accident had been inadequate and that they had been ill-treated after the coastguard had transferred them to the nearby island.

Conclusions:

- There had been a violation of Article 2 under its procedural head: national authorities had not carried out a thorough and effective investigation;

- The ECtHR concluded on the basis of established facts that the Greek authorities had violated Article 2 by failing to take preventive operational measures to protect the individuals whose lives were at risk;
- A number of omissions and delays in the rescue operation meant that the authorities had not done all that could reasonably be expected to provide the level of protection required, in violation of Article 2; and
- There had been a violation of Article 3 concerning 12 of the applicants who had been subjected to degrading treatment on account of the body searches they had undergone upon arrival.

Persecution (racial, gender-based, other) / Well-founded fear of persecution

The Refugee Convention does not define “persecution”. However, according to the UNHCR, it encompasses “serious human rights violations, including a threat to life or freedom, as well as other kinds of serious harm. In addition, lesser forms of harm may cumulatively amount to persecution. Discrimination will also amount to persecution where the effect leads to a situation that is intolerable or substantially prejudicial to the person concerned”.

To provide guidance on what constitutes persecution, the Council of the European Union included a non-exhaustive list in the Qualification Directive of acts that could be considered persecution such as:

- Acts of physical or mental violence, including acts of sexual violence; legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; prosecution or punishment, which is disproportionate or discriminatory; denial of judicial redress resulting in a disproportionate or discriminatory punishment; prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2); acts of a gender-specific or child-specific nature.
- Qualification Directive, art. 9(2). The persecution at issue also does not need to have been committed by a State actor; persecutory acts committed by non-state actors may qualify under the 1951 Convention where the State is unwilling or unable to protect the individual claiming refugee status. See, e.g., id. at art. 6.

The UNHCR stated that “an evaluation of the subjective element is inseparable from an assessment of the personality of the applicant, since psychological reactions of different individuals may not be the same in identical conditions.”

J v. Sweden, UN Human Rights Committee, Communication No. 2936/2017, 1 May 2024

The complainant was an Afghan national, submitting the communication in his own name and on behalf of his father, mother and aunt. The author submitted that by deporting them to Afghanistan, Sweden violated their rights under Article 6, 7, 9, 17, 18 and 19 of the Covenant. The author's father worked for a company that was known to support the US and NATO forces in Afghanistan and, as a result, the Taliban had publicly stated that the family were traitors and ordered their followers to kill the author and his relatives. In addition, the author became an atheist after arriving in Sweden and alleged that he would be persecuted by the Taliban for having renounced Islam.

Conclusions:

- The Committee found that the communication was inadmissible as the claims had been insufficiently substantiated. The Committee also noted that the author had failed to raise certain allegations (such as in relation to his atheism) at an earlier stage of the proceedings. The author had further not provided elements to indicate that he engaged in behaviour or activities in connection with his atheism that would expose him to a real and personal risk of treatment contrary to Articles 6 or 7 if he were to be deported to Afghanistan.

C v. Sweden, UN Human Rights Committee, Communication No. 3307/2019, 26 August 2024

The complainant was an Albanian national, submitting the communication in his own name and on behalf of his wife and two daughters. The author submitted that by deporting the family to Albania, Sweden violated their rights under Articles 2(1) and (3), 7 and 14(1) of the Covenant. The author alleged that, in his role as a security officer at the premises of a government office in Albania he was asked to commit unlawful acts and was threatened after he discovered explosives in a vehicle. The

author further alleged that he was later publicly named in connection with the discovery and his family in Albania was subsequently targeted.

Conclusions:

- The Committee found that the communication was inadmissible as the author raised new claims (which were a material aspect) which differed from his initial account. The Committee also found that the author had failed to explain why, when facing deportation, he proactively sought to publicise through a journalist his name and the allegations of the risk he faced. Such conduct could not be reconciled with his fear of treatment contrary to Article 7 of the Covenant upon return to Albania. The author was also found to have failed to provide details of the persecution alleged faced by his family in Albania.

R.M. and Q.M. v. Sweden, UN Human Rights Committee, Communication Nos. 4062/2021 and 419/2022, 23 July 2024

The complainants of the communications were nationals of Pakistan and Ahmadi Muslims, a religious minority in Pakistan. The authors alleged that their grandfather was the head Chairperson of a region Ahmadi assembly and who, after being shot in the face, was granted asylum in Sweden. The authors submitted that by deporting them to Pakistan, Sweden would violate their rights under Article 7 of the Covenant as they would face a real, personal and foreseeable risk of being subject to torture or ill-treatment in Pakistan as a result of their religious beliefs. The authors later invoked Article 18 of the Covenant.

Conclusions:

- The Committee found that the authors had provided insufficient details regarding the timing and specific nature of the incidents in which they were allegedly targeted before they left Pakistan, which undermined their claim that they would face a personal and real risk of being tortured or subjected to cruel, inhuman or degrading treatment if they returned to Pakistan. While the Committee expressed concern regarding credible reports relating to human rights violations against Ahmadi Muslims in Pakistan, the authors had not substantiated their claim. The Committee further found that the authors had not invoked Article 18 of the Covenant in their initial submission, as required, without explanation.

V.K v. Australia, UN Human Rights Committee Communication No. 3129/2018, 1 May 2024

The complainant was a citizen of Sri Lanka and a former member of the Liberation Tigers of Tamil Eelam (LTTE). The author alleged that he faced irreparable harm due to a potential violation of Articles 6 and 7 of the Convention if he were to be removed to Sri Lanka and feared that he would be subjected to arbitrary arrest and detention upon return to Sri Lanka in violation of Articles 9 and 17 of the Covenant.

Conclusions:

- The Committee found that the author had failed to substantiate for the purposes of admissibility that he would face a personal and real risk of treatment contrary to Articles 6 or 7 of the Covenant if returned to Sri Lanka.

Person(s) in a Vulnerable Situation

Inter-American Commission on Human Rights (IACHR), Resolution 03/08, Human Rights of Migrants, International Standards and the Return Directive of the EU, (2008)

"States are required to provide special protections or guarantees to migrants in especially vulnerable conditions. For example, in decisions concerning children and adolescents, primary regard must be given to their best interest. Further, international standards may also require that special measures be taken in the case of persons who have been trafficked or other vulnerable groups."

Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations, Report of the United Nations High Commissioner for Human Rights

The UNHCHR underlines that: "the vulnerable situations that migrants face can arise from a range of factors that may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances change"

The UNHCHR further explains that: "[f]actors that generate vulnerability may cause a migrant to leave their country of origin in the first place, may occur during transit or at destination, regardless of whether the original movement was freely chosen, or may be related to a migrant's identity or circumstances. Vulnerability in this context should therefore be understood as both situational and personal".

Finally, the report also recalls that: "migrants are not inherently vulnerable, nor do they lack resilience and agency. Rather, vulnerability to human rights violations is the result of multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights".

ECtHR case law touches on vulnerability, by way of example:

- ***Tarakhel v. Switzerland***, Application No. 29217/12, ECtHR, 4 November 2014, [187] noted that where an asylum seeker was a child it was particularly important that the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not "create ... for them a situation of stress and anxiety, with particularly traumatic consequences".
- ***Yoh-Ekale Mwanje v. Belgium,*** Application No. 10486/10, ECtHR, 10 December 2011, [124] held that the detention of a woman affected by AIDS who did not present particular risks of flight was arbitrary because the authorities had not contemplated less intrusive alternatives to detention, such as a temporary residence permit.

Vulnerability is also relevant to an assessment of whether ill-treatment may amount to Torture or Cruel, Inhuman or Degrading Treatment or Punishment ("IDTP"):

The severity of harm sufficient to amount to Torture/CIDTP is relative, and will depend on all the circumstances of the case, such as duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (***Muršić v. Croatia*** [GC], 2016, § 97). Those who are vulnerable (such as children) are entitled to protection from serious harm; (***X and Others v. Bulgaria*** [GC], 2021, § 177 and ***R.B. v. Estonia***, 2021, § 78).

It is also relevant to consider whether a person is in a 'vulnerable situation' which "... is normally the case for persons deprived of their liberty" and so states must ensure detention conditions are "compatible with respect for…human dignity"; (***Khlaifia and Others v. Italy*** [GC], 2016, § 160). There is a duty to protect the physical well-being of persons who find themselves in a vulnerable position by virtue of being within the control of the authorities, such as, detainees or conscripted servicemen (***Premininy v. Russia***, 2011, § 73).

Preventive Operational Measures

The scope of the positive obligation is unclear, as is the question of whether the procedural obligation is a freestanding duty or simply part of the wider substantive positive obligation.

- In relation to the substantive obligation, the ECtHR will consider what the state might reasonably have done to avoid the risk. This will be a fact specific analysis without firm principles and may involve some benefit of hindsight suggested by the applicant themselves.
- In relation to the procedural obligation, the ECtHR will only consider whether the national authorities' risk assessment met the qualitative standards of being autonomous, proactive and comprehensive (rather than re-performing the exercise). An indication that an individual might be exposed to a lethal risk will meet this threshold.

Both obligations are triggered by an immediate threat to life (***Osman v. United Kingdom*** (Application Nos. 87/1997/871/1083)). Immediacy is more likely to be found if the threat can be circumscribed to a specific location, time, and/or as being of a specific kind/severity/category (i.e., the more concrete it is). This applies not just to singular instances of harm being imminent, but also cases in which harm has already materialised and is likely to happen again, for example a domestic violence scenario (Stoyanova, Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete, Human Rights Law Review, Volume 23, Issue 3, September 2023).

The ECtHR has clarified that the positive obligation to take preventive operational measures must be interpreted in a way that does not place an impossible or disproportionate burden on the authorities. The ECtHR has also noted that not every risk to life can entail a requirement to take preventive operational measures to prevent that risk from materialising (***Osman v. United Kingdom*** (Application Nos. 87/1997/871/1083)). The ECtHR will therefore take into account (amongst other things) the difficulties inherent in carrying out police duties, the operational choices made by domestic authorities, and the unpredictability of human behaviour (Council of Europe – Human rights handbooks, No.7: A guide to the implementation of the European Convention on Human Rights).

***Kurt v. Austria*,** Application No. 62903/15, ECtHR, 15 June 2021

The case concerned a woman who complained that the Austrian authorities had failed to protect her and her children from her violent husband which resulted in his murdering their son.

Conclusions:

- The case clarified that (1) in addition to the substantive positive obligation to take preventive operational measures, there is a procedural positive obligation for states to assess the nature and level of risk to an individual's life; and (2) the test set out in ***Osman v. United Kingdom*** (Application Nos. 87/1997/871/1083) would be met not just where harm was imminent, but where harm had already materialised and was likely to happen again;
- Although the authorities had identified a level of non-lethal risk to the children in the context of domestic violence perpetrated by the father (the primary victim of which was the applicant), no real and discernible risk of an attack on the children's lives had been discernible. An indication of a lethal risk was therefore necessary and the ECtHR therefore found no reason to question the Austrian courts' risk assessment.

***Safi and Others v. Greece*,** Application No. 5418/15, ECtHR, 7 July 2022 – *see "**Interception Measure(s)**" above*

Pushbacks

UDHR

Any pushback is a violation of human rights according to Art. 14 of the UDHR, the right to seek asylum. Due to their brutal nature, pushbacks also violate many other articles of the UDHR, including Art. 3, the right to life, liberty and security of person, Art. 5 which states that no one should be "subjected to torture or to cruel, inhuman or degrading treatment or punishment", and Art. 9 which addresses arbitrary arrest and detention.

Refugee Convention

Pushbacks violate the principle of non-refoulement (art. 32, 33) of the 1951 Convention which constitutes the cornerstone of international refugee protection. The principle clearly forbids states from returning anyone to a state where their life or freedom would be in danger. This would include, for example, Turkey or Libya on the EU's external borders. Within the EU, this includes subjecting refugees to chain pushbacks to unsafe third countries or returning them to a country where they risk facing deportation to their country of origin.

International Maritime Law

The 1982 UN Convention on the Law of the Sea and the 1979 International Convention on Maritime Search and Rescue outline that every captain is obliged to provide help to people in distress, no matter who or for what reason. The Conventions do not detail obligations once someone is rescued. However, international law requires that those who are rescued should only be disembarked in a safe port and the principle of non- refoulement applies here as well.

See also:

- Joint letter by GCR & HLHR on irregular forced returns (pushbacks), criminalisation and the Rule of Law in Greece, March 2023
- Border Violence Monitoring Network, "New report on border violence, pushbacks and containment in Ceuta and Melilla," 6 August 2021
- Jan-Phillip Graf & Kai Budelmann, (2020), A pushback against international law?: Legal analysis of allegations against the Frontex mission in the Mediterranean, Völkerrechtsblog
- Marco Stefan; Roberto Cortinovis (2021). "Setting The Right Priorities: Is the New Pact on Migration and Asylum Addressing The Issue of Pushbacks at EU External Borders?"

Legal Action Database - Border Violence Monitoring Network ("BVMN")- The Legal Action Database compiles pending cases and judgments from national courts, the European Court of Human Rights, the Court of Justice of the EU, and from UN Committees. The cases gathered relate to non-refoulement, pushbacks, summary expulsions, collective expulsions and, in general, to border violence.

Pushbacks in Greece

Amnesty International has documented pushbacks by Greece since 2013. In 2021, the Council of Europe Commissioner for Human Rights Dunja Mijatović urged Greece to put an end to pushbacks of migrants.

Many of the pushbacks in Greece and Croatia are accomplished by masked men who have been observed operating Hellenic Coast Guard vessels or in heavily surveilled areas of the Croatian/Bosnian border. According to the BVMN, almost 90% of migrants traveling on the Balkan route who reported pushbacks in 2020 also reported "torture, inhuman or degrading treatment". BVMN has reported "assaults lasting up to six hours, attacks by unmuzzled police dogs, and food being rubbed into the open wounds of pushback victims". Between April and June 2021, the Protecting Rights at Borders coalition recorded 5565 people reporting pushbacks.

Pushbacks: Migrants Accuse Greece of Sending Them Back out to Sea' BBC News (12 December 2020)

Upon their arrival in Greece, refugees were met by a team of Hellenic Coast Guard (HCG) officers. They were put on a bus. Refugees were informed by the guards that they would be taken to a camp. Instead, the bus drove to the north of the island for a couple of hours and stopped. People were taken off the bus and their phones were collected. They were beaten heavily and forced to board "a big coast guard boat with something like a cannon in the front side" that took them out to sea. They were eventually pushed back to Turkey.

Greece: Refugees Attacked and Pushed Back in the Aegean' DW Made for Minds (29 June 2020)

A 16-year-old refugee from Afghanistan described his experience of a pushback in the Aegean. He told reporters that an inflatable boat carrying five masked men approaching from the Greek side to stop their dinghy. He explained what those five men did to them: "One was steering, two hit us with sticks, one destroyed our boat and our engine with a knife. The fifth just watched."

Human Rights Watch, 'Greece: Violence Against Asylum Seekers at Border Detained, Assaulted, Stripped, Summarily Deported' (17 March 2020)

Greece has employed forcible and brutal pushbacks as an informal or de facto state policy against people who have entered Greece through its border at Turkey's Evros river. Often even if refugees have arrived on Greek soil and have been put in detention centres (where they faced inhuman and degrading conditions), they are sent back towards Turkish borders. Survivors' testimonies have made clear that there have been incidents, documented with reports, showing "physical violence, including beatings, use of weapons, batons, choking, and throwing people from the deck of the HCG boat onto life rafts."

Refoulement

The principle of non-refoulement is a fundamental principle of international law. It has its origins in international refugee law as found in Article 33 of the Convention relating to the Status of Refugees ((adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137), which stipulates: "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". The principle was then developed further in Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ((adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85), which prohibits States Parties to: "expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture". The same article also specifies that: "For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

The principle is also enshrined in Article 16 of the International Convention for the Protection of All Persons against Enforced Disappearances ((adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3). Other human rights bodies have then interpreted the prohibition of torture and inhuman and degrading treatment as entailing an obligation for State parties to the relevant conventions (notably, at the universal level, the International Covenant on Civil and Political Rights ((adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171) not to send persons back to a country where there is a real risk that they are submitted to the proscribed ill-treatments. The reference to "irreparable harm" in the definition has been added to take into consideration the jurisprudence of the Human Rights Committee (Human Rights Committee, General Comment No. 31: The Nature of General Legal Obligation Imposed on States Parties to the Covenant (26 May 2004) UN Doc. CCPR/C/21/Rev.1/Add. 13, paragraph 12).

Human rights bodies have also clarified that States should avoid any risk of "indirect refoulement" in cases where the real risk of ill-treatment would not subsist in the State to which the person is returned in the first place, but in any other country to which the person would risk being subsequently returned by this State.

- OHCHR Technical note: The principle of non-refoulement under international human rights law (2018) - Under international human rights law, the principle of non-refoulement guarantees that no one should be returned to a country where they would face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm. This principle applies to all migrants at all times, irrespective of migration status.
- E. Lauterpacht and D. Bethlehem, "The Scope and Content of the Principle of Non-Refoulement" in E. Feller, V. Turk, and F. Nicholson, eds., Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003) This chapter is taken from Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (edited by Erika Feller, Volker Türk and Frances Nicholson, Cambridge University Press, 2003). It was originally presented as an expert paper at a round table in the context of the Global Consultations on International Protection, which were organized by UNHCR in 2000-2002.
- Hard protection through soft courts? Non-refoulement before the United Nations Treaty Bodies – Refugee Studies Centre. This article comparatively analyses how the prohibition of refoulement is interpreted by United Nations Treaty Bodies (UNTBs) in their individual decision-making, where it is suggested they act as "soft courts." It asks whether UNTBs break ranks with or follow the interpretations of non-refoulement of the European Court of Human Rights. The article undertakes a multi-dimensional analysis of non-refoulement across an original dataset of over 500 UNTB non-refoulement cases decided between 1990–2020, as well as pertinent UNTB General Comments. From this analysis, the article finds that whilst UNTBs at times do adopt a more progressive position than their "harder" regional

counterpart, there are also instances where they closely follow the interpretations of the European Court of Human Rights and, on occasion, adopt a more restrictive position. This analysis complicates the view that 'soft courts' are likely to be more progressive interpreters than 'hard courts'. It also shows that variations in the interpretation of non-refoulement in a crowded field of international interpreters present risks for evasion of accountability, whereby domestic authorities in Europe may favour the more convenient interpretation, particularly in environments hostile to non-refoulement.

- María-Teresa Gil-Bazo, 'Refugee Protection under International Human Rights Law: From Non-Refoulement to Residence and Citizenship' (2015) 34(1) Refugee Survey Quarterly 11-42. The prohibition to remove someone to a place where they risk prohibited treatment has been unequivocally reaffirmed both at the universal and regional levels. The prohibition is absolute, thus allowing for no derogation or exception under any circumstances, where forced removal exposes an individual to a risk of torture or other inhuman or degrading treatment or punishment. The principle of non-refoulement is accepted today by State Parties to the Refugee Convention and its Protocol as customary international law (Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees, 13 Dec. 2001, UN Doc. HCR/MMSP/2001/09, 16 Jan. 2002, Preamble, paragraph 4)

Njamba and Balikosa v. Sweden, UN Committee against Torture, Communication No. 322/2007, 3 June 2010

In this case, the complainants were nationals of the Democratic Republic of the Congo (DRC). They were the subject of an order for deportation from Sweden to the DRC.

Conclusions:

- The Committee held that in assessing whether there are substantial grounds for believing that the complainants would be in danger of being subjected to torture upon return, the Committee must take account all relevant considerations, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights in the DRC. The aim of such an analysis is to determine whether the complainants run a personal risk of being subjected to torture in the country to which they would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country, additional grounds must be adduced to show that the individual concerned would be personally at risk.
- The risk need not be highly probable, but it must be foreseeable, real and personal, and present.

D.D. v. Spain, UN Committee on the Rights of the Child, Communication No. 4/2016, 1 February 2019

After fleeing the war in Mali, the applicant crossed the border fence between Morocco and the Spanish enclave of Melilla. He was apprehended by the Spanish authorities at the fence and immediately sent back to Morocco. He was not identified as a minor and did not have the chance to express his willingness to apply for asylum and to seek legal assistance. After the applicant entered Spain for a second time, he gained access to legal assistance and the case was brought before the UN CRC.

Conclusions:

- The Committee emphasised that, under the Convention on the Rights of the Child, States must conduct an initial assessment prior to any removal, which must include, inter alia, an age and vulnerability assessment.
- In the case in question, the authorities failed to conduct proper identification procedures, and they did not give the applicant an opportunity to object to his deportation in violation of his rights under Articles 3 and 20 of the Convention.

- It was held that considering the situation of violence against migrants in the border area with Morocco, and the ill-treatment to which the complainant was subjected, the failure to carry out an assessment of the possible risks involved and to take into account the complainant's best interests violated Articles 3 and 37 of the Convention in the light of the principle of non-refoulement. In this vein, the overall circumstances of the child's deportation, including him being detained and handcuffed without any legal and interpretative assistance constituted treatment prohibited by Article 37.

A.G. et al. v. Angola, UN Human Rights Committee, Communication Nos. 3106/2018-3122/2018, 21 July 2020

Turkish followers of the Gülen Movement were at risk of refoulement. The Committee noted a violation and condemned Angola for lack of implementation of protective laws.

Conclusions:

- The Committee noted that according to General Comment No.31, States have the obligation to not extradite, deport, expel or otherwise remove a person from their territory when there are substantial grounds for believing that there is a real risk of irreparable harm such as contemplated in Articles 6 and 7 of the covenant (ICCPR). The organs of state should examine the facts and evidence on a case-by-case basis to determine if such a risk exists.
- The Committee noted the State Party had not demonstrated that the administrative or judicial authorities had conducted such an individualised assessment into the real and substantial risks associated with such an expulsion. Therefore, the State party had failed to comply with their obligations under Article 7 of the covenant in light of non-refoulement.
- On the basis of Article 13 of the Covenant, the Committee noted that the authors were not able to challenge the decision on their deportation. The authors were not told the reasons for the expulsion, were not given time to explore effective remedies or to have their case reviewed by a competent authority.

A.J. v. Switzerland, UN Committee against Torture, Communication No. 1041/2020, 26 April 2024

The complainant was a national of the Russian Federation, submitting the communication on his own behalf and on behalf of his three children. The author alleged that by removing him to Poland (being the location that he first fled to and applied for asylum), Switzerland violated his rights under Articles 3, 14 and 16 of the Convention. The author argued that, while in Poland, they believed that they were being sought by the Russian secret services. The author also alleged that when he temporarily returned to Russia, he was interrogated, tortured and only released after a ransom was paid.

Conclusions:

- The Committee found that the author had not shown that the facts raised separate issues under Articles 14 and 16 of the Convention and therefore only considered the merits of the allegations submitted under Article 3. The Committee found that the author had not demonstrated the existence of a generalised practice of detaining asylum-seekers transferred to Poland. The author had also failed to demonstrate that Switzerland would violate his rights under the Convention by subjecting him to a risk of summary removal to a country where he could face a real, present, personal and foreseeable risk of being tortured.

F v. Switzerland, UN Committee against Torture, Communication No. 1085/2021, 3 November 2023

The complainant was a national of Syria of Kurdish ethnicity who claimed that by removing him to Romania, Switzerland would violate his rights under Articles 3, 12, 14 and 16 of the Convention. The author alleged that he arrived in Turkiye with the assistance of a smuggler and was taken to Romania, where he was taken to prison and beaten.

Conclusions:

- The Committee found that, in cases involving refoulement, complainants were required to present an arguable case by submitting substantiated arguments to demonstrate the danger of being subjected to torture upon removal is foreseeable, present, personal and real. The Committee found that the author had not provided adequate details for the purposes of admissibility to establish that he was subjected to torture or ill-treatment in Romania or that he was entitled to redress from Switzerland for those acts under Article 14 of the Convention;

or that Switzerland would violate his rights under Articles 3 or 16 of the Convention by exposing him to a real, personal, foreseeable and present danger of being tortured during a pushback operation in Romania. The Committee also rejected the author's claim that Switzerland would violate his rights by removing him to Romania because the Romanian authorities might not properly examine his claim before summarily removing him to Syria on the grounds that his asylum application had been rejected in an administrative phase after his departure from Romania and arrival in Switzerland. There was no evidence that the author would not benefit from a fair asylum procedure in Romania.

N.A. v. Switzerland, UN Committee against Torture, Communication No. 1096/2021, 9 May 2024

The complainant was a national of Afghanistan who claimed that by removing him to Romania, Switzerland would violate his rights under Articles 3, 12, 14 and 16 of the Convention. The author alleged that following his objection to his sister's marriage to a Taliban fighter, he was tortured by the Taliban before leaving the country and arriving in Romania via Iran, Turkiye, Greece and other countries. He claimed that upon arrival in Romania he was forced to stay in a metal container and severely beaten. After leaving Romania he travelled to Switzerland where he filed an asylum application. The author alleged that Romania treats asylum-seekers in a degrading and inhuman way and is unable to provide appropriate health care for asylum seekers. There was also a risk that he would be exposed to a serious and real risk of further torture and inhuman and degrading treatment, and a risk of removal to Afghanistan.

Conclusions:

- The Committee found that the author had not shown that the facts raised separate issues under Articles 14 and 16 of the Convention and therefore this aspect of the communication was insufficiently substantiated. The Committee found that the author had failed to provide evidence in support of his allegations of torture and ill-treatment by Romanian police and that there was no support for the author's claim that Switzerland would violate his rights under the Convention by subjecting him to a risk of summary removal to a country where he could face a real, present, personal and foreseeable risk of being tortured. There were also no indications that the author would not benefit from a fair asylum procedure in Romania.

Refugee

United Nations High Commissioner for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, 2019

Under international refugee law, recognition as a refugee is declaratory and not constitutive. “A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee”. The second part of the definition also covers stateless persons who are outside their country of habitual residence.

Sexual and Gender-based Violence

Oosterveld, V., "Gender, Persecution, and the International Criminal Court: Refugee Law's Relevance to the Crimes Against Humanity of Gender Based Persecution," Duke Journal of Comparative & International Law, Vol. 17 (2006), 49, pp. 50-51.

Both international human rights law and refugee law have recognised gender / gender-related persecution over the last thirty years.

Gender-based violence (GBV) may be physical, psychological, sexual or socio-economic in nature. It can manifest as rape, sexual assault, physical assault, forced marriage, denial of resources, opportunities, or services as well as psychological or emotional abuse. Common forms of GBV include intimate partner violence, so-called 'honour-related crimes', child sexual abuse, child marriage, female genital mutilation, and trafficking in persons for the purpose of sexual exploitation, including sexual slavery, domestic servitude, and servile forms of marriage. Sexual exploitation and abuse (SEA) by humanitarian workers are forms of GBV. Men and boys can be subjected to sexual violence.

They may be exposed to sexual violence committed for the "explicit purpose of reinforcing inequitable gender norms of masculinity and femininity".

In addition, they may also be targeted because of reduced power and status in view of diversity characteristics or other intersecting inequalities.

There are "forms of discrimination that lead to increased risk of sexual violence for men and boys", including but not limited to "socioeconomic status, birth country and legal status, including asylum status". In addition, risks may be heightened for men and boys in detention, unaccompanied children or for children with disabilities.

Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979

Violence against women is a human rights violation and a form of discrimination against women. "Violence against women" refers to all acts of violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats, coercion or arbitrary deprivation of liberty, whether occurring in public or private spaces.

Domestic violence refers to all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.

Gender is defined as the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men.

Gender-based violence against women refers to all violence directed against a woman because she is a woman or that affects women disproportionately.

Victim is defined as any person subjected to behaviour which constitutes "violence against women" or "domestic violence".

The Convention states that the term "women" also includes girls under the age of 18.

Nuremberg Trial Proceedings *Vol. 4, 8 January 1946 at p. 506*; *Vol. 6, 29 January 1946 at p. 309*; and, *Vol. 12, 25 April 1946 at p. 199*.

Persecution as a crime against humanity crystallised as an international crime in the London and Tokyo Charters and in the judgements of the post-Second World War International Military Tribunals, with evidence of gender-based crimes appearing in the written records.

International criminal law recognises that people of all genders and sexual orientations can be targeted with sexual and gender-based violence. However, gender discrimination has not been historically identified as a driving factor of violence under international criminal law. For example, there has been a tendency to view sexual violence as a gender-neutral crime, which ignores the gender aspect (IIIM Gender Strategy and Implementation Plan, page 4).

***Prosecution v. Ntaganda*, Trial Chamber VI Judgement, ICC-01/04-02/06, [1010] ("Ntaganda Trial Judgement"); *Prosecutor v. Rutaganda*, Trial Chamber I Judgement, ICTR-96-3-T, para. 56; *Prosecutor v. Jelisić*, Trial Chamber Judgement, IT-95-10-T, [70].**

A perpetrator's discriminatory intent may overlap with or exacerbate existing social constructs or criteria used to define gender or may represent an effort to impose new ones. A perpetrator's discriminatory intent may intersect with other grounds for persecution prohibited under the Statute and may also reflect existing social constructs or criteria used to define targeted groups based on, for example, race, ethnicity or culture, or impose new ones.

***Prosecution v. Al Hassan*, Confirmation of Charges, ICC-01/12-01/18**

The Al Hassan case is the first where gender persecution charges have been filed. Charges of persecution on the grounds of gender (along with ethnic, political and/or religious grounds) have also since been brought in the Central African Republic and Darfur (***Prosecutor v. Al Rahman***, Confirmation Decision, ICC-02/0501/20; ***Prosecutor v. Said***, Confirmation Decision, ICC-01/1401/21). Prior to the Al Hassan case, the Prosecutor attempted to bring charges of gender persecution in the Mbarushimana case, but these were not ultimately included in the document containing the charges (***Prosecutor v. Mbarushimana***, Pre-Trial Chamber I, ICC-01/04-01/10).

See comments made in: ***Njamba and Balikosa v. Sweden***, UN Committee against Torture, Communication No. 322/2007, 3 June 2010, [9.5]; Convention on the Elimination of All Forms of Discrimination against Women, General Recommendation No. 32. In an asylum context, this will typically be a ground for non-refoulement and treating an individual as a refugee.

State / Country of Origin

The Use of Country of Origin Information, in Refugee Status Determination: Critical Perspectives May 2009

It is generally accepted that country of origin ("COI") information is central to refugee status determination to inform decision makers about conditions in the countries of origin of asylum applicants and to assist them in establishing an objective criterion as to whether an asylum claim is well founded. The importance of COI has been endorsed by statements, reports and policy documents of the UNHCR, the international body of Immigration Judges (IARLJ), the European Union and the Home Office Asylum Policy Unit.

See also the Asylum Information Database (AIDA), Country Report: The safe country concepts, Greece

***Maarouf v. Canada* (Minister of Employment and Immigration) [1994] 1 F.C. 723, 13 December 1993 (Canada Federal Court)**

The definition of "country of former habitual residence" should not be unduly restrictive so as to pre-empt the provision of "surrogate" shelter to a stateless person who has demonstrated a well-founded fear of persecution on any of the enumerated grounds. A country of former habitual residence should not be limited to the country where the claimant initially feared persecution. The argument that habitual residence necessitates the claimant be legally able to return to that state is contrary to the shelter rationale underlying international refugee protection. Once a stateless person has abandoned the country of his former habitual residence for the reasons indicated in the definition, he is usually unable to return. The concept of "former habitual residence" seeks to establish a relationship to a state which is broadly comparable to that between a citizen and his country of nationality. Thus the term implies a situation where a stateless person was admitted to a country with a view to a continuing residence of some duration, without necessitating a minimum period of residence. The claimant must have established a significant period of de facto residence in the country in question.

***Al-Anezi v. Minister for Immigration & Multicultural Affairs* [1999] FCA 355, 1 April 1999 (Federal Court of Australia)**

A stateless person may have more than one country of former habitual residence and he may have a fear of persecution in relation to more than one of them. The definition does not require that he satisfies the criteria in relation to all of them.

***Jong Kim Koe v. Minister for Immigration; Multicultural Affairs* [1997] FCA 306, 2 May 1997 (Federal Court of Australia)**

"Given the objects of the [1951] Convention, it can hardly have been intended that a person who seeks international protection to which, but for a second nationality he or she would clearly be entitled, would, as a consequence of a formal but relevantly ineffective nationality, be denied international protection and, not being a "refugee", could be sent back to the country in which he or she feared, and had a real chance of being persecuted. […] [Thus] findings that a person has dual nationalities but lacks a well-founded fear of persecution in one of the countries of nationality will not necessarily preclude a finding that the person is a refugee." [p. 9]

Torture

Some of the relevant sources include:

- The UN guide Preventing Torture: An Operational Guide for National Human Rights Institutions
- Reports and other documents drafted by the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment - contains widely accepted standards for identifying victims of torture and documenting and reporting the abuse.
  - Chapter 14 of Rhona K. M. Smith's Textbook on International Human Rights
  - The Committee against Torture's General Comment No. 2
  - The Human Rights Committee's General Comment No. 29
  - The International Rehabilitation Council for Torture Victims (IRCT) states that "some of the most common methods of physical torture include beating, electric shocks, stretching, submersion, suffocation, burns, rape and sexual assault. Psychological forms of torture and ill-treatment, which very often have the most long-lasting consequences for victims, commonly include: isolation, threats, humiliation, mock executions, mock amputations, and witnessing the torture of others".
  - ECtHR, Guide on Article 3 of the Convention – Prohibition of torture

Prosecutor v. Kunarac et al, Appeals Judgement of the ICTY (IT-96-23 & 23/1), 12 June 2002

- [142] With reference to the Torture Convention and the case-law of the Tribunal and the ICTR, the Trial Chamber adopted a definition based on the following constitutive elements:

  (i) The infliction, by act or omission, of severe pain or suffering, whether physical or mental.

  (ii) The act or omission must be intentional.

  (iii) The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.
- [150] The Appeals Chamber holds that the assumption of the Appellants that suffering must be visible, even long after the commission of the crimes in question, is erroneous. Generally speaking, some acts establish per se the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or mental, and in this way justifies its characterisation as an act of torture.
- [151] Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.[2] […]

Naletilić & Martinović, Appeals Judgement of the ICTY (IT-98-34), 3 May 2006

- [589]-[591]: applying the approach in the Kordić and Čerkez Appeal Judgement to cumulative convictions, the Appeals Chamber found that cumulative convictions on the basis of the same acts are permissible in relation to persecutions under Article 5(h) and torture under Article 5(f) of the Statute.
- The Appeals Chamber finds that the definition of persecutions contains materially distinct elements not present in the definition of torture under Article 5 of the Statute: the requirements of proof that an act or omission discriminates in fact and proof that the act or omission was committed with specific intent to discriminate. Torture, by contrast, requires

proof that the accused caused the severe pain or suffering of an individual, regardless of whether the act or omission causing the harm discriminates in fact or was specifically intended as discriminatory.

The Center for Justice and International Law (CEJIL), Torture in International Law, A guide to jurisprudence, 2008 provides a list of cases of torture under International Law, see for example:

- See ***Njamba and Balikosa v. Sweden***, UN Committee against Torture, Communication No. 322/2007, 3 June 2010, para 9.5; CEDAW, General Recommendation No. 32 –see "***Refoulment***" above
- See ***Y.H.A. v. Australia***, UN Committee against Torture, Communication No. 162/2000, 27 March 2002 and ***M.M.K. v. Sweden***, UN Committee Against Torture, Communication No. 221/2002, 18 May 2005. In both cases the CAT held there was torture but held that there was no evidence the torture would continue if the complainants returned.

See also: ***Safa Turhan v Sweden***, UN Committee against Torture, Communication No. 1109/2021, 12 December 2024 (see above under 'Deportation / Removal / Forced Return / Expulsion').

Territorial Jurisdiction

Extraterritoriality

The International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts- these Articles were developed over the course of some thirty years of research, drafting, and debate by the world's leading international jurists and adopted with consensus on "virtually all points" in 2001. They do not attempt to propose new law but rather to codify existing norms. As such, they represent the highest authority for attributing responsibility to states.

Article 1 provides that: "Every internationally wrongful act of a State entails the international responsibility of that State." Article 2 proceeds to lay out the conditions for such a wrongful act, namely, "when conduct consisting of an act or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State."

With respect to attribution of conduct to a state, three articles are relevant to the interception context:

- Article 4(1): The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever the position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.
- Article 5: The conduct of a person or entity which is not an organ of the State under Article 4 but which is empowered by the law of that State to exercise elements of the governmental authority shall be considered an act of the State under international law, provided the person or entity is acting in that capacity in the particular instance.
- Article 8: The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

E. Lauterpacht and D. Bethlehem, "The Scope and Content of the Principle of Non-Refoulement: Opinion" in E. Feller, V. Turk, and F. Nicholson, eds., Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (Cambridge: Cambridge University Press, 2003) at 110, paragraph 62.

Elihu Lauterpacht and Daniel Bethlehem observe with respect to the extraterritorial application of the 1951 Refugee Convention:

> "The responsibility of the Contracting State for its own conduct and that of those acting under its umbrella is not limited to conduct occurring within its territory. Such responsibility will ultimately hinge on whether the relevant conduct can be attributed to that State and not whether it occurs within the territory of the State or outside it."

Lauterpacht and Bethlehem make a similar point specifically with regard to the principle of non-refoulement:

> "[P]ersons will come within the jurisdiction of a State in circum-stances in which they can be said to be under the effective control of that State or are affected by those acting on behalf of the State more generally, wherever this occurs. It follows that the principle of non-refoulement will apply to the conduct of State officials or those acting on behalf of the State wherever this occurs, whether beyond the national territory of the State in question, at border posts or other points of entry, in international zones, at transit points, etc."

Alex Mills, Rethinking Jurisdiction in International Law, British Yearbook of International Law, Volume 84, Issue 1, 2014, pages 187–239.

The increasing acceptance that international law concerns the regulation of individuals and not only states has raised a further challenge – the question whether individuals should be recognised as active agents or 'subjects' rather than passive 'objects' of regulation. There has been an apparent 'drift' in the conception of the status of individuals under international law.

It has long been recognised that states owe obligations to meet a 'minimum standard of treatment' in respect of their dealings with each other's nationals. The standard of treatment includes a requirement for states to afford 'adequate judicial protection and effective legal remedies for repairing invasions of rights' for foreigners, whether natural or legal persons, typically through access to domestic courts. A breach of this standard is considered to give rise to an international delict of 'denial of justice' – an established idea which has received new prominence.

Alongside the development of obligations which relate to the treatment of foreign nationals, particularly investors, international law has also developed obligations on states which relate to the treatment of all persons – including each state's own nationals – principally in the form of human rights. They have also included rights which relate to a state's exercise of adjudicative jurisdiction, generally under the rubric of rights of 'access to justice', as well as access to an 'effective remedy' for violations of other rights.

Lopez Burgos v. Uruguay, UN Human Rights Committee, Communication No. 52/1979, 29 July 1981

The Lopez Burgos case before the HRC concerned an applicant who was abducted and detained by Uruguayan agents in Argentina, which had not ratified the ICCPR at the time although on the facts of the case, the HRC found that ICCPR applied.

Conclusions:

- The Committee found as follows:

"The Human Rights Committee further observes that although the arrest and initial detention and mistreatment of Lopez Burgos allegedly took place on foreign territory, the Committee is not barred either by virtue of Article 1 of the Optional Protocol ("... individuals subject to its jurisdiction ...") or by virtue of Article 2(1) of the Covenant ("... individuals within its territory and subject to its jurisdiction ...") from considering these allegations, together with the claim of subsequent abduction into Uruguayan territory, inasmuch as these acts were perpetrated by Uruguayan agents acting on foreign soil.

The reference in Article 1 of the Optional Protocol to "individuals subject to its jurisdiction" does not affect the above conclusion because the reference in that article is not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.

Article 2 (1) of the Covenant places an obligation upon a State party to respect and to ensure rights "to all individuals within its territory and subject to its jurisdiction", but it does not imply that the State party concerned cannot be held accountable for violations of rights under the Covenant which its agents commit upon the territory of another State, whether with the acquiescence of the Government of that State or in opposition to it. According to Article 5(1) of the Covenant: "Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant. In line with this, it would be unconscionable to so interpret the responsibility under Article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory."

Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar

The ICC's decisions on the Myanmar/Bangladesh situation reflect two requirements for the conduct element of deportation. First, "the two-state requirement" in Myanmar/Bangladesh Article 19(3) necessitates the expulsion or coercion of victims into another State to complete the crime of deportation. Second, "the international-border-crossing requirement", emphasised in Myanmar/Bangladesh Article 15, requires the expulsion or coercion of victims out of the State across an international border.

***Prosecutor v. Tadić* (Jurisdictional Phase), Appeals Chamber, International Criminal Tribunal for the former Yugoslavia, Decision of 2 October 1995, [97]**

"… the impetuous development and propagation in the international community of human rights doctrines, particularly after the adoption of the Universal Declaration of Human Rights in 1948, has brought about significant changes in international law, notably in the approach to problems besetting the world community. A State-sovereignty-oriented approach has been gradually supplanted by a human-being-oriented approach. Gradually the maxim of Roman law hominum causa omne jus constitutum est (all law is created for the benefit of human beings) has gained a firm foothold in the international community as well."

Mavrommatis Palestine Concessions Case (1924) PCIJ Series A, No. 2, 12. See also **Factory at Chorzow (1928) PCIJ Series A, No.17; Panevezys-Saldutiskis Railway Case (1939) PCIJ Series A/B, No.76.**

"It is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State, from whom they have been unable to obtain satisfaction through the ordinary channels. By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own rights – its rights to ensure, in the person of its subjects, respect for the rules of international law."

3. Jurisdiction: European Union

3.1. Legal Complaints Processes

3.1.1. Overview: Summary Cards

European Court of Justice

Application for Damages

Under Articles 268 and 340 of the Treaty on the Functioning of the European Union, an action for damages may be made against an EU institution or body alleging that their **acts or omissions have caused harm** to the applicant.

Consider using for:

- Pushbacks
- Preventative operational measures
- Collective expulsions
- Border violence
- Torture
- Inhuman or degrading treatment
- Refoulement
- Deportations
- Degrading detention conditions

Mechanism	CJEU

Rights Engaged	EU law

Deadline	5 years from damage

Potential Parties	
Claimant(s)	*Defendant(s)*
A victim (whether natural or legal)	One or more EU institutions

Jurisdiction	
Standard	*Exception(s)*
None – all harms caused by an EU institution	N/A

Admissibility

- Any natural or legal person suffering harm from an act or omission of an EU institution.
- No specific requirements as to standing and the applicant's nationality/residence is irrelevant.
- Can only be brought against an EU institution, and not an EU Member State, national authority, or other international body.
- Must relate to a non-contractual liability.

Procedural Requirements

- A written application of up to 50 pages sent to the Registry of the General Court.
- Application served on the respondent either using the CJEU's e-Curia portal, or by registered post.
- Respondents may file a defence, to which the applicants may file a reply, followed by the respondent filing a rejoinder.
- An oral hearing may take place by request or at the CJEU's own motion.

Procedural Time Frame	Evidentiary Standards
Average duration of proceedings is between 16.2 and 20.4 months.	A sufficiently serious breach of EU law conferring rights on an individual, which caused actual damage to the applicant.

Outcomes/Remedies
Damages (which may be non-material/symbolic).

What is the mechanism?

Under the Treaty on the Functioning of the European Union ("**TFEU**"), an application may be made to the EU's General Court by individuals who have **suffered harm due to the acts or omissions of an EU institution**.[178]

In this way, applicants may seek damages from the relevant EU institution. Such damages may reflect monetary losses, but may also reflect future and/or symbolic losses.

This mechanism may be appropriate in circumstances where an EU institution (e.g. ***Frontex***) has caused harm to an individual (e.g. in a **pushback scenario**).

***WS and Others v Frontex* (C-T-600/21) – CJEU:**

- Several Syrian nationals (including children) arrived in Greece in 2016 and sought international protection;
- Via a joint operation co-organised and implemented by Frontex and Greece, they were returned to Turkey (and then further moved to Iraq);
- The applicants sought material and non-material damages from Frontex, alleging serious breaches of, inter alia, the right to asylum, the principle of non-refoulement and the prohibition of collective expulsion;
- In 2023, the General Court dismissed the application on the basis of causation;
- The General Court found that Frontex cannot assess the merits of return decisions or asylum applications and so did not directly cause the damage allegedly suffered;
- This is the General Court's first ruling in an application against Frontex; and
- This judgment underscores the difficulties of discharging the high evidentiary burden for an application for damages, particularly in the case of Frontex.

What remedies can be sought?

Under Articles 268 and 340, damages are the only available remedy.

Damages are intended to be compensatory; under Article 340, **damages must be sufficient to make good any damage caused** by the respondent institution or its employees in the

178 There are seven EU institutions: the European Parliament, the European Council, the Council of the European Union, the European Commission, the CJEU, the European Central Bank and the European Court of Auditors.

performance of their duties. This means returning the applicant to the position that they would have been in had the damage not occurred.[179]

Damages may also be awarded for (i) **sufficiently foreseeable future losses**;[180] and (ii) **pain and suffering** via the award of non-material or symbolic damages,[181] so long as the applicant is able to prove the existence and extent of the damage that should be compensated.

What are the admissibility criteria?

Any natural or legal person may bring an application in relation to an act or omission of an EU institution that has caused them harm. An action for damages cannot be brought against a Member State, national authority, or other international body.

For Article 340 to apply, the application must allege a non-contractual liability on the part of the respondent.

There are no specific requirements as to standing, and **the applicant's nationality and residence are irrelevant**.

There is a **five-year limitation period** which runs from the moment that the damage which is the subject of the application materialises.[182]

What must be proven?

An applicant must demonstrate:[183]

- **Actual damage has occurred:** for damage to be 'actual', it must be real and certain, it cannot be prospective;
- **The conduct of the institution which is the subject of the application directly caused the damage to the applicant.** Causation is interpreted strictly. The conduct subject to the application must be the determining cause of the damage suffered and cannot simply be one of the causes of such damage;[184] and
- **There has been a sufficiently serious breach of EU law which confers rights on an individual:** see below.

An EU law will confer rights on an individual where those rights are capable of being protected by a

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Mulder and others v Council of the European Communities and Commission of the European Communities (C-104/89 and 37/90).

180 ***Kampffmeyer v. Commission and Council of the European Communities*** (C-56/74).

181 ***Algera and others v. Common Assembly*** (C-7/56 and 3/57 to 7/57).

182 Article 46 of the Statute of the Court of Justice of the European Union.

183 ***Bergaderm and Goupil v. Commission*** (C-352/98), at [40] – [44].

184 ***WS v. Frontex*** (C-T-600/21); ***EU v Gascogne Sack*** (C-138/17 P and 146/17 P).

court. The requirement for a breach of these rights to be "sufficiently serious" creates a high bar in practice, involving a factually specific analysis of each case. It will depend on the clarity of the rule breached and whether the breach was excusable or intentional. An intentional breach of a clear rule is more likely to be serious, but it is not necessary to show that a breach was arbitrary for an application to succeed.[185]

Whether a breach is "sufficiently serious" also depends on whether the EU institution, subject to the application, exercised discretion when committing the breach:

- Where the EU institution exercises no (or considerably reduced) discretion, **a breach may be sufficiently serious simply because EU law has been breached**.[186] However, this is not automatic: the amount of discretion afforded to an institution by the law that has been breached is just one factor to be considered in determining whether a breach is sufficiently serious;[187] and
- Where the EU institution exercises discretion, the **test is whether the relevant institution manifestly and gravely disregarded the limits on that discretion**.[188] Practically, it is difficult to demonstrate that such discretion has been obviously and seriously disregarded where the degree of discretion afforded to an institution is high.[189]

It is necessary for an applicant to show that the breach reflects unlawful conduct by the respondent institution. However, showing this does not necessarily mean that the breach was 'sufficiently serious' for the purposes of Articles 268 and 340.[190]

What is the procedure?

Under Article 268, **CJEU has exclusive jurisdiction in respect of actions for damages**. Under Article 256, this jurisdiction rests with the General Court. Actions for damages must therefore not be brought before either national courts (unless on appeal from CJEU, and only then on a point of law) or the ECJ.

There is no specific procedure for an application for damages, so the General Court's general procedural rules apply.

185 ***Commission v. Stahlwerke Peine-Salzgitter*** (C-220/91), at [51].
186 ***Bergaderm***, at [44].
187 ***Dyson v. Commission*** (C-122/22).
188 ***Bergaderm***, at [43].
189 For example, in ***MyTravel v Commission*** (T-212/03), the CJEU held that not all errors or mistakes (even if of some gravity) will be "sufficiently serious" for the purposes of Articles 268 and 340 TFEU. The CJEU made clear that institutions responsible for rules which are complex, delicate and subject to a considerable degree of discretion will be afforded leeway in determining their application.
190 ***Richez-Parnise v. Commission*** (C-19/69, 20/69, 25/69 and 30/69).

Contents

Under Article 51 of the Rules of Procedure of the General Court (the "**ROP**"), a written application of up to 50 pages must be sent to the Registry of the General Court. This must include the following information:

- The applicant's name and address;
- Details of the status and address of the applicant's representative;[191]
- Identity of the respondent;
- Details of the application's subject matter, including the applicant's legal pleadings and arguments relied upon;
- Details of the form of order sought; and
- Any evidence in support of the application.

Service

Under ROP Article 80, the application must then be served on the respondent either using the CJEU's e-Curia portal, or by certified copy sent by registered post (with a form for acknowledgment of receipt by the respondent). The main points of the application are then published in the Official Journal of the European Union.

Response

The respondent may file a defence of up to 50 pages within two months of service. In response, the applicant may serve a reply of up to 25 pages, and the respondent a rejoinder of up to 25 pages.

Hearing

Under ROP Article 106, an oral hearing of the application may take place either at the General Court's own motion, or at the request of one of the parties. A request by a party must provide written reasons for its position and must be submitted within three weeks of the close of the written part of the procedure. If no such request is made, the General Court may opt to determine the application on the papers.

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191 Under Article 51 ROP, all parties before the CJEU must be represented by a legal representative entitled to appear before a court in one of the Member States of the EU.

Duration of proceedings

According to the CJEU, the average duration of proceedings is between 16.2 months (for cases closed by judgement or order) and 20.4 months (for cases closed by judgement only).

New applications

If an application is unsuccessful, then an application involving the same parties and the same facts (i.e., without material new facts) cannot be resubmitted. However, the parties are still able to initiate new claims based on the same facts provided that the limitation period has not been exceeded.[192]

Summary

PROS

- ✓ Relief is directed against the institution that perpetrated the harm.
- ✓ No specific procedure for an application for damages.
- ✓ The requestor is not required to be a national of a state that is party to the ECHR; only the respondent state must be an EU institution.

CONS

- × Remedies are confined to monetary damages.
- × High evidentiary burden.
- × Long lead times for the determination of cases before the CJEU.

Useful resources

- ➢ Statute of the Court of Justice of the European Union
- ➢ General Court Rules of Procedure

See more

Analysis of Legal Complaints Processes: European Court of Justice

192 ***Sison v. Council*** (C-T-341/07), at [17] – [25].

European Court of Human Rights

Individual Application

For **violations of rights contained in the European Court of Human Rights ("ECtHR ") or its Protocols**, an individual application may be made against a state under Article 34 ECtHR. If the violation is found and the domestic law of the respondent state only allows partial reparation to be made, the ECtHR may award financial compensation.

Consider using for:

- Pushbacks
- Collective expulsions
- Border violence
- Torture
- Human trafficking
- Vulnerable persons
- Displacement
- Inhuman or degrading treatment
- Refoulement
- Deportations
- Degrading detention conditions
- Enforced disappearances

Mechanism	ECtHR

Rights Engaged	ECtHR rights, via rules of ECHR

Deadline	4 months from final domestic decision

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties ■ At the motion of the ECtHR (rare)	One or more states, so long as the ECHR or relevant Protocol has been ratified at time of violation

Jurisdiction	
Standard	*Exception(s)*
Territorial	Exceptions have been made (e.g., at borders or where a state has "effective control")

Admissibility
■ Most concern rights/freedoms protected by the ECHR or one of its protocols. ■ All domestic remedies must be exhausted.

Procedural Requirements
Requests must be made in writing, using the official application form on the ECtHR's website. Must be accompanied by:

■ Applies to any Convention right, where the alleged violation is the responsibility of the respondent state.	■ All relevant documents and exhibits; ■ A statement of the facts in 3 pages; ■ A statement of the alleged violations of rights; and ■ A statement of compliance with Article 35(1).

Procedural Time Frame	Evidentiary Standards
To be determined within three years of being brought (though many take longer).	There are no strict rules for proving a violation, and various forms of evidence can be submitted (e.g., video evidence).

Outcomes/Remedies
The award of "just satisfaction" constituted by awards of sums of money (though these may reflect pecuniary or non-pecuniary losses suffered by the applicant)

What is the mechanism?

Article 34 empowers the ECtHR to examine cases brought against states that are party to the ECHR by individuals alleging violations of their ECHR rights, so long as the alleged violation occurred after the respondent state ratified the ECHR (or relevant Protocol) in which that right is contained. The requestor is not required to be a national of a state that is party to the ECHR.

This mechanism will be appropriate in circumstances where an individual alleges a rights violation which has already happened or is otherwise non-urgent – such as when an individual has been the victim of a collective expulsion.

What remedies can be sought?

Under Article 41, the ECtHR will award "just satisfaction", in the form of damages, intended to cover both pecuniary and non-pecuniary losses suffered by the applicant. [193]

The purpose of these damages is to compensate the applicant for the actual harmful consequences of a violation, and not to punish the respondent state. Damages cannot be awarded for events which do not amount to a violation (or which are otherwise inadmissible).

193 ECtHR Practice Directions - Just satisfaction claims.

The ECtHR has discretion in deciding on the matter of "just satisfaction", and it **will only award such an amount as it considers appropriate in the circumstances**. The ECtHR considers that the public vindication of the wrong suffered by the applicant, in the form of a binding judgment, is itself a powerful form of redress. The ECtHR **may therefore award less than the value of the actual damage sustained, or even nothing at all** (e.g., if it decides that the finding of a violation is itself sufficient to constitute "just satisfaction" or if the violation found was minor).

Damages may not be awarded where there are mechanisms for obtaining compensation at a domestic level: Article 41 makes clear that the ECtHR shall make an award only if the respondent state's domestic law allows only partial reparation to be made, and only then if necessary.

What are the admissibility criteria?

For an individual application:

- **Victim:** under Article 34, an application can be lodged by any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation (or by their representatives). A victim can be a direct victim, a direct victim's next of kin (where the violation relates to the direct victim's death or disappearance), or a potential victim;
- **Convention right:** Article 32 provides that the ECtHR's jurisdiction extends only to matters concerning the interpretation and application of the ECHR and its Protocols. The request must therefore concern a violation of a right found within those documents;
- **Territorial jurisdiction:** the alleged violation must have occurred within the jurisdiction of the respondent state, where they could therefore have been expected to stop it; and
- **Responsibility:** Article 34 applies to violations of the ECHR by contracting states. The alleged violation must therefore be imputable to the respondent state, which will be the case where the alleged violation is committed by (a) public authorities or public officials; or (b) private individuals where the state has a positive obligation to protect against that violation (e.g., Article 3 imposes a procedural obligation on states to investigate and criminalise torture).

Under Article 35(1), a request must be lodged **only after all domestic remedies have been exhausted**. The request must be lodged **within four months** of the decision in which domestic remedies are finally denied.

An application **must not be**:

- Made anonymously;
- Substantially the same as another application previously examined by the ECtHR (or by another relevant international body);

- Manifestly ill-founded;
- Abusive; or
- Made by an application who has not suffered a significant disadvantage.

What must be proven?

An individual application must prove **the violation of a right contained in the ECHR or its Protocols**.

The ECtHR does not follow strict rules of evidence meaning that there are no firm principles setting out how a violation should be proven. For example, there are no specific admissibility requirements in respect of the forms of evidence that can be submitted (and so, for example, video evidence might demonstrate the violation of a right), or the format in which such that evidence must be provided (e.g., domestic judgments can be provided in PDF format).

Jurisdiction

For the purposes of the ECHR, a state will have jurisdiction within its own national territory. Outside of its own national territory, it may also have jurisdiction:

- On a boat where that state exercises control over the individuals concerned (e.g., via the coast guard) (***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09) – ECtHR);
- In regions outside of the national territory within which it exercises decisive control (e.g., via military occupation) (***Ilaşcu and Others v. Moldova and Russia*** (Application No. 48787/99) – ECtHR);
- In regions outside of the national territory where the violation has been committed by close agents of the state who exercise physical power and control over the victims (***Al-Skeini and Others v. The United Kingdom*** (Application No. 55721/07) – ECtHR).

An applicant can evidence that it is within the jurisdiction of a particular state using:

- Testimony in a witness statement (***M.H. and Others v. Croatia*** (Application Nos. 15670/18 and 43115/18) – ECtHR);
- Photographic evidence (e.g., of a border checkpoint) (***M.A. and Others v. Lithuania*** (Application No. 59793/17) – ECtHR);
- Physical evidence (e.g., train tickets) (***M.A. and Others v. Lithuania*** (Application No. 59793/17) – ECtHR);

- First or third-party video evidence (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 8697/15) – ECtHR).

In ***M.A. and Others v Lithuania***, the ECtHR also indicated that thermographic, mobile phone signal and first or third-party GPS evidence will suffice.

What is the procedure?

Rule 47 of the Rules of Court stipulates that **applications must be made in writing, using the official application form** available on the ECtHR's website.[194] Each field of the application form must be completed, and the form must be hand-signed by the applicant(s) and their representative(s). Note that the only power of attorney accepted by the ECtHR is that found in the application form.

The application must be accompanied by copies of all relevant documents and/or exhibits, numbered consecutively. Beyond this, the application form requires:

- A **statement of the facts** in 3 pages or less;
- A **statement of the alleged violations of rights** contained in the ECHR or its Protocols; and
- A **statement of compliance** with the admissibility criteria set out in Article 35(1).

Individual applications are progressing slowly. The ECtHR aims to reach a conclusion to all applications within three years of them being brought, however, many take longer (though some can also be processed more rapidly).[195]

Procedural steps vary depending on the complexity of the case. Cases may be heard by a Single Judge, a Committee (3 Judges), a Chamber (7 Judges) or a Grand Chamber (17 Judges).

Summary

PROS

- ✓ Results in a final determination that is binding on the respondent state.
- ✓ The requestor is not required to be a national of a state that is party to the ECHR; only the respondent state must be a signatory.

CONS

- × All domestic remedies with suspensive effect must first have been exhausted.
- × Higher evidentiary standards than in a request for interim measures.
- × Slow running.

194 ECtHR application portal.
195 The ECHR in 50 Questions.

✓ No specific admissibility requirements in respect of the forms of evidence that can be submitted.

× Redress limited to pecuniary awards (and even then, this is not guaranteed).

Useful resources

- ECHR Rules of Court
- ECHR application guidance/resources
- List of Protocols and ratification dates
- The ECHR in 50 questions

See more

Analysis of Legal Complaints Processes: European Court of Human Rights – Individual Application

European Court of Human Rights

Request for interim measures

A request for interim measures under Rule 39 of the ECtHR's Rules of Court compels states to take or not take a particular action or actions where there is **an imminent risk of irreparable harm to a right** under the European Convention of Human Rights.

Consider using for:

- Pushbacks
- Collective expulsions
- Border violence
- Torture
- Vulnerable persons
- Inhuman or degrading treatment
- Refoulement
- Deportations
- Degrading detention conditions
- Enforced disappearances

Mechanism	ECtHR

Rights Engaged	ECtHR rights, via rules of ECHR

Deadline	4 months from final domestic decision

Potential Parties

Claimant(s)	*Defendant(s)*
■ Victim ■ Concerned parties ■ At the motion of the ECtHR (rare)	One or more states, so long as the ECHR or relevant Protocol has been ratified at time of violation

Jurisdiction

Standard	*Exception(s)*
Territorial	Exceptions have been made (e.g., at borders or where a state has "effective control")

Admissibility

- Must concern rights/freedoms protected by the ECHR or one of its protocols;
- All domestic remedies with a suspensive effect must be exhausted; and
- Applies to any Convention right, but more likely where that right is 'core' (e.g., where there is a risk

Procedural Requirements

Request made by fax, post or via a dedicated portal. There are no formal requirements, but guidance proposes that:

- Detailed grounds for request;
- Information concerning domestic proceedings;
- ECHR Articles referred to;

to life or physical integrity, or a risk of torture or degrading treatment).	■ Authority form and ECtHR number (if relevant); and ■ All other documents considered necessary.

Procedural Time Frame	Evidentiary Standards
To be determined "expeditiously".	Standards are usually lower and less formal than for a full individual application.

Outcomes/Remedies
An order, for a limited time, for interim measures, with the aim of protecting ECHR rights that are at imminent risk of being irremediably compromised.

What is the mechanism?

Article 34 empowers the ECtHR to examine cases brought against states that are party to the ECHR by individuals alleging violations of their ECHR rights – provided that the alleged violation occurred after the respondent state ratified the ECHR (or relevant Protocol) in which that right is contained. The requestor is not required to be a national of a state that is party to the ECHR.

Under Rule 39 of the Rules of Court, the ECtHR can indicate interim measures which compel states to protect rights that are at imminent risk, of being irreparably compromised.[196] The imminent risk might arise because of something that the respondent state is doing, or because of an action that the respondent state is failing to take; the interim measures ordered might therefore require the state to take some action to guard against that risk, or to not do something that creates the risk in the first place.

This mechanism will be appropriate in circumstances where an individual requires **immediate protection** against what might otherwise be an **irreparable violation** of an ECHR right – such as in a **pushback scenario**.

196 ***Mamatkulov and Askarov v. Turkey*** (App. Nos. 46827/99 and 46951/99).

Examples of interim measures:

Measures have been indicated to:

- Prevent the removal of an Iraqi asylum-seeker from the UK to Rwanda, pending a final domestic decision in ongoing proceedings (***N.S.K. v. The United Kingdom*** (Application No. 28774/22) – ECtHR);
- Require Russia to release dissident politician Alexei Navalny to receive urgent medical care in Germany;
- Require Turkey not to execute Kurdistan Workers' Party (PKK) founder Abdullah Öcalan pending the ECtHR's examination of his separate case (***Öcalan v. Turkey*** (Application No. 46221/99) – ECtHR);
- Require Belgium to ensure the reception of a homeless applicant, and provide him with housing and material assistance to meet his basic needs (***Camara v. Belgium*** (Application No. 49255/22) – ECtHR); and
- Require Latvia to provide applicants stranded on the Belarussian border with food, clothing, adequate medical care and (if possible) temporary shelter (***H.M.M. and Others v. Latvia*** (Application No. 42165/21) – ECtHR).

Jurisdiction

For the purposes of the ECHR, a state will have jurisdiction within its own national territory. Outside of its own national territory, it may also have jurisdiction:

- On a boat where that state exercises control over the individuals concerned (e.g., via the coast guard) (***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09) – ECtHR);
- In regions outside of the national territory within which it exercises decisive control (e.g., via military occupation) (***Ilaşcu and Others v. Moldova and Russia*** (Application No. 48787/99) – ECtHR);
- In regions outside of the national territory where the violation has been committed by close agents of the state who exercise physical power and control over the victims (***Al-Skeini and Others v. The United Kingdom*** (Application No. 55721/07) – ECtHR).

An applicant can evidence that it is within the jurisdiction of a particular state using:

- Testimony in a witness statement (***M.H. and Others v. Croatia*** (Application Nos. 15670/18 and 43115/18) – ECtHR);
- Photographic evidence (e.g., of a border checkpoint) (***M.A. and Others v. Lithuania*** (Application No. 59793/17) – ECtHR);

- Physical evidence (e.g., train tickets) (***M.A. and Others v. Lithuania*** (Application No. 59793/17) – ECtHR);
- First or third-party video evidence (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 8697/15) – ECtHR).

In ***M.A. and Others v Lithuania***, the ECtHR also indicated that thermographic, mobile phone signal and first or third-party GPS evidence will suffice.

What remedies can be sought?

An indication of interim measures by the ECtHR **requires a state to do (or not do) something** to protect against the imminent risk of an ECHR right being immediately compromised. Neither the requestor nor the respondent state can appeal the ECtHR's decision. Interim measures **only apply for a limited amount of time**. If the requestor has also made an individual application under Article 34 in relation to the same subject matter, the granting of interim measures does not decide the outcome of this individual application.

Although interim measures stem from the Rules of Court, and not the ECHR itself, parties are under an obligation to comply with them. If the respondent state does not comply with the interim measure within a reasonable time, this constitutes a violation of Article 34 – and can, in turn, lead to compensation being due to the requestor.[197]

What are the admissibility criteria?

Article 32 provides that the ECtHR's jurisdiction extends only to matters concerning the interpretation and application of the ECHR and its Protocols. The request must therefore concern a potential violation of a right found within those documents:

- **Territorial jurisdiction:** the potential violation must be expected to occur within the jurisdiction of the respondent state, where they can therefore be expected to stop it; and
- **Responsibility:** Article 34 applies to violations of the ECHR by contracting states. The potential violation must therefore be imputable to the respondent state, which will be the case where the alleged violation is committed by (a) public authorities or public officials; or (b) private individuals where the state has a positive obligation to protect against that violation (e.g., Article 3 imposes a procedural obligation on states to investigate and criminalise torture).

Under Article 35, a request must be lodged **only after all domestic remedies have been**

197 *Ibid.*

exhausted. Note that, in practice, this means that only domestic remedies with a suspensive effect need be exhausted, as these are the only remedies that might be expected to avoid the irreparable damage.[198]

The request must be lodged **as soon as possible – and within four months –** of the decision in which domestic remedies are finally denied (though the ECtHR may not be able to deal with requests in expulsion or extradition cases received less than a working day before the scheduled time of removal).[199]

Interim measures may be indicated at the request of the party fearing that it will suffer the alleged violation, the request of any other interested party, or of the ECtHR's own motion (though this is very rare).

What must be proven?

A party requesting interim measures must prove that **exceptional circumstances** exist which justify the indication of interim measures.[200] This will be the case where there is an imminent risk of irreparable damage to an ECHR right.

What is an "imminent risk of irreparable damage"?

There is no specific guidance as to the meaning of "imminent" or "irreparable", although case law suggests that the ECtHR interprets these terms in line with their ordinary meaning. Nor is there specific guidance as to how this condition should be demonstrated.

What ECHR rights are in scope?

The ECtHR's updated Rule 39 makes clear that interim measures can be indicated where any ECHR right is at risk. However, the ECtHR has generally held that interim measures will be appropriate when a person's life or physical integrity is at stake (Article 2) and/or where there is a risk of treatment amounting to torture or inhuman and degrading treatment (Article 3).[201] Exceptionally, interim measures have also been granted in situations concerning family or housing rights of vulnerable subjects, for example, minors (Article 8), when there is a risk of denial of justice (Article 6) and to

198 ***N.A. v UK*** (App. No 25904/07) (now codified in the updated Rule 39 Practice Direction).
199 ECtHR Practice Directions.
200 On 23 February 2024, the ECtHR amended Rule 39. As part of this, the ECtHR adopted a new Practice Direction which referred to "exceptional circumstances" for the first time. However, commentators have interpreted this as the codification of a pre-existing requirement, meaning that case law from before March 2024 remains persuasive.
201 For example: ***Öcalan v. Turkey*** (App. No 46221/99) and *Y.P.* and *L.P. v France* (App. No 32476/06) respectively.

protect freedom of expression (Article 10).[202]

Given the urgent nature of requests for interim measures, **evidentiary standards tend to be lower and less formal** than for full individual applications under Article 34.

What is the procedure?

Requests can be lodged via fax, post, or by using a dedicated portal.[203]

There is no set format in which a request must be made, though the ECtHR has produced guidance to the effect that the following information is likely to be pertinent to an application:[204]

- details of the grounds on which the request is made (i.e., the nature of the alleged violation), including reasons why interim measures should be indicated;
- background as to the nature and outcome of domestic proceedings concerning the alleged violation in the respondent state (together with relevant decisions made by domestic courts, tribunals or other bodies);
- details of the ECHR Articles or Protocols being referred to;
- if the request is made by the representative of a party affected by the alleged violation, a completed authority form (noting that that representative must also have a power of attorney, unless the nature of the alleged violation which is the subject of the request is that the individual concerned has been unable to access a lawyer);
- if the requestor has already been provided with one, an ECtHR reference number; and
- all other information and documents considered necessary.

Given the urgent nature of requests for interim measures, **the ECtHR will immediately consider applications received during regular working hours** (8.00 a.m. CEST to 16.00 p.m. CEST, weekdays) on an individual and priority basis.

Requests will be considered by the Grand Chamber, the President of the Grand Chamber, the President of the Court, the Chamber, the President of the Section, or a Duty Judge (though the overwhelming majority of cases are decided by Duty Judges). Requests will be determined expeditiously.

202 For example: ***Amrollahi v. Denmark*** (App. No 56811/00), *Wróbel v Poland* (App. No 6904/22), and ***ANO RID Novaya Gazeta and Others v. Russia*** (App. No 11884/22) respectively.
203 ECtHR Rule 39 site.
204 ECtHR Practice Direction – requests for interim measures.

Summary

PROS

- ✓ Relief is immediate, suspensive and tailored to the threat faced.
- ✓ Evidentiary standards tend to be lower and less formal than for full individual applications.
- ✓ The requestor is not required to be a national of a state that is party to the ECHR; only the respondent state must be a signatory.

CONS

- × All domestic remedies with suspensive effect must first have been exhausted.
- × Interim measures only apply for a limited period of time.
- × The granting of interim measures does not decide the outcome of an individual application relating to the same subject matter.

Useful resources

- ➢ ECHR Rules of Court
- ➢ Application Portal
- ➢ ECHR Factsheet
- ➢ ECHR Practice Direction

See more

Analysis of Legal Complaints Processes: European Court of Human Rights – Interim Measures

European Ombudsman

Complaint

A party may complain to the EU Ombudsman in relation to **maladministration in the activities of most EU institutions, bodies, offices or agencies**. The Ombudsman is empowered to make recommendations in relation to any maladministration identified.

Consider using for:

- Pushbacks
- Preventative operational measures
- Collective expulsions
- Border violence
- Torture
- Inhuman or degrading treatment
- Refoulement
- Deportations
- Degrading detention conditions
- Interception measures

Mechanism	EU

Rights Engaged	EU law via Statute of the EU Ombudsman

Deadline	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Any third parties ■ The Ombudsman of its own initiative	One or more EU institutions, bodies, offices or agencies

Jurisdiction	
Standard	*Exception(s)*
Any EU citizen, or natural/legal person residing in the EU	N/A

Admissibility
■ Complainant must first have sought to resolve matters bilaterally. ■ Cannot relate to facts which are/have been the subject of legal proceedings.

Procedural Requirements
■ A complaint can be made directly, or through a Member of the European Parliament. ■ A complaint can be lodged via post, email, or using a dedicated portal.

- Cannot be against the CJEU, the EU acting in its judicial role, or domestic authorities.

- It may use the specified complaint form, or any equally good alternative (in any EU language).

Procedural Time Frame	Evidentiary Standards
Approx. 6 months from the Ombudsman issuing a recommendation.	There is no evidentiary burden - Ombudsman itself adopts an inquisitorial role.

Outcomes/Remedies
A successful submission will result in the Ombudsman making non-binding recommendations and possibly publishing its findings/sending a report to the European Parliament.

What is the mechanism?

Under Article 228 of the TFEU, the EU Ombudsman is empowered to conduct inquiries into **maladministration in the activities of the EU's institutions, bodies or agencies** (excepting the CJEU, and the EU acting in its judicial role). If the EU Ombudsman identifies any maladministration, it has the power to make recommendations in relation to the same.

A failure to act in accordance with the law, good administration or human rights constitutes maladministration. It can include unfairness, discrimination or abuse of power.

Efficacy:

- The overall compliance rate of EU institutions with the Ombudsman's decisions was 79% in 2021, and 81% in 2020.
- In 2022, the Ombudsman received 2,238 complaints and initiated 344 inquiries.
- The Ombudsman can, and often does, open inquiries at its own initiative.
- In 2020, the Ombudsman opened an inquiry into potential shortcomings in the Frontex complaints mechanism.
- In 2023, the Ombudsman opened an inquiry aimed at clarifying Frontex's role in search and rescue operations in the Mediterranean Sea.

The **Ombudsman's findings are non-legally binding**. The Ombudsman aims to provide a free, fast and flexible alternative to legal action, which enables parties to achieve amicable solutions which satisfy both the complainant and the EU institution affected.

Complainants do not need to have been adversely affected by maladministration in order to make a complaint: it is therefore **open for NGOs (or others) to make complaints on public interest grounds**. The Ombudsman also has the power to open inquiries on its own initiative.

What remedies can be sought?

The Ombudsman's powers and responsibilities are set out in the Statute of the European Ombudsman (the "**Statute**").[205] Article 2(10) of the Statute empowers the Ombudsman to make non-binding recommendations to address complaints, in furtherance of its goal of seeking to eliminate maladministration within EU institutions to the satisfaction of complainants. This may be used to recommend that the respondent institution makes certain changes in response to the complaint.

The EU Ombudsman may also **publish its findings**, or send a **special report to the European Parliament**, in relation to any maladministration identified.

What are the admissibility criteria?

A complaint can be made by **any citizen of the EU or any natural or legal person residing or having its registered office in an EU Member State**. A complainant need not be adversely affected by the maladministration that is the subject of the complaint. A complaint can be made directly, or through a Member of the European Parliament.

The complainant **must first have contacted the relevant institution and sought to resolve matters bilaterally**.[206] A complaint may only be made when that institution has failed to resolve matters within a reasonable time.

The Ombudsman cannot investigate complaints where:

- The underlying facts are or have been the subject of legal proceedings;[207]
- The complaint is against the CJEU, or the EU acting in its judicial role; or
- The complaint is against domestic authorities within EU Member States (whether national, regional, or local, and even where the complaint relates to EU matters).

If a complaint is inadmissible the Ombudsman may advise the complainant to file it with an alternative authority.[208]

What must be proven?

Once a complaint has been made and declared admissible, **there is no evidentiary burden for the complainant to meet**: instead, the Ombudsman itself adopts an inquisitorial role.

205 Regulation (EU, Euratom) 2011/1163.
206 Article 2(3) of the Statute.
207 Article 228(1) of the TFEU.
208 Article 2(4) of the Statute.

Under Article 3(1) of the Statute, the **Ombudsman must conduct all enquiries it considers justified** to clarify whether the complaint of maladministration should be upheld. This may involve requesting information from the complainant (or scheduling a meeting to discuss the same), respondent, and relevant third parties. It may also involve commissioning studies or expert reports.

Subject to the conditions set out in Article 5 of the Statute, EU institutions, bodies, offices, agencies and the competent authorities of Member States must provide the Ombudsman with any information it requests for the purposes of an inquiry in a timely fashion.

The Ombudsman may seek access to the respondent's premises and conduct an inspection of relevant documents. The Ombudsman may also conduct interviews with relevant members of staff.

What is the procedure?

Complaints can be lodged via post, email, or using a dedicated portal.[209] It is **free to make a complaint**.

A complaint may be made using the complaint form provided by the EU Ombudsman but can also be submitted without using that complaint form (provided that the complaint contains sufficient information to allow the Ombudsman to assess it).

A complaint must (i) be made in writing, and (ii) identify the complainant. Complainants can request that the complaint, or parts of it, remain confidential.[210]

A complaint can be made in any official EU language. Under Article 20(2)(d) TFEU, complainants have a right to receive a reply in the same language.

Upon issuing a recommendation:

- The recipient institution has **three months to send its opinion in response** (though this period is extendable by up to two months).
- After considering the institution's response, or if the institution fails to respond at all, the Ombudsman **may close the inquiry**.
- The Ombudsman may choose to **publish definitive findings** or to **send a special report to the European Parliament** (which is more likely to occur if the institution in question has failed to comply with the Ombudsman's recommendations within the three-month timeframe for responding, or to provide a response at all).
- After closing an inquiry, the Ombudsman **must inform the complainant of the outcome** (including the institution's response and any recommendations made).[211]

209 European Ombudsman complaint form.
210 Article 2(2) of the Statute.
211 Article 4 of the Statute.

An appeal can be launched against a determination by the Ombudsman on the grounds that (i) a complaint is outside the Ombudsman's mandate, (ii) there are no grounds for it to conduct an inquiry, or (iii) to close an inquiry, provided that such an appeal is made within two months of the Ombudsman's decision. However, it is **not possible to appeal a finding of maladministration, or any recommendation made following such a finding**.[212]

Frontex

On 10 November 2020, of its own initiative, the Ombudsman opened an inquiry into the functioning of the Frontex complaints mechanism. In a decision issued on 15 June 2021[213], the Ombudsman found that:

- Very few complaints had been made, with none concerning the actions of Frontex staff members; Between 2016 and January 2021, 69 complaints were received and only 22 were admissible; and
- The victims of forced returns conducted by Frontex were not always being provided with complaints forms.

The Ombudsman recommended that:

- Frontex should clearly stipulate, in all operational plans, that staff members should accept complaints of alleged fundamental rights violations;
- Frontex should state its responsibility for receiving all such complaints in its memoranda of understanding with non-EU country bodies;
- Frontex should make clearer the benefits of the complaints mechanism in its public information material;
- Frontex should revise its implementing rules for its complaints mechanism; and
- Frontex should improve its public reporting.

Summary

PROS	***CONS***
✓ Free, fast, and flexible alternative to legal action.	× The Ombudsman's recommendations are non-binding.
✓ Evidentiary standards and procedural	× Complainants cannot receive individual or

212 Article 1 of the Decision of the European Ombudsman concerning requests for review.
213 Decision of the European Ombudsman 1062/2021/ABZ.

requirements are lower and less formal than if seeking legal redress.

✓ Complainants need not be directly affected by the maladministration complained of, making public interest complaints possible.

monetary relief.

× Relief is in the form of process improvements, which follow (and cannot prevent) damage suffered.

Useful resources

- ➢ Statute
- ➢ Ombudsman Summary
- ➢ Application Portal

See more

Analysis of Legal Complaints Processes: European Ombudsman

European Union

Individual complaint to Frontex

Any person **directly affected by an act or omission** of the **European Border and Coast Guard Agency (Frontex)** resulting in the **concrete violation of a fundamental right, or** any person(s) **suspecting breach of the rules** on the use of force by Frontex staff may, make an individual complaint against Frontex.

Mechanism	EU	Rights Engaged	EU law, via Agency Rules	Deadline	One year from (knowledge of) alleged violation

Potential Parties	
Claimant(s)	*Defendant(s)*
■ Victim ■ Representative of a victim ■ Any person(s) suspecting breach of the rules on the use of force by Frontex staff	Frontex

Jurisdiction	
Standard	*Exception(s)*
None – all situations involving Frontex staff	N/A

Admissibility

- Made by a person directly affected by the acts or omissions of Frontex staff, or their representative;
- Related to acts or omissions by Frontex staff during an agency activity;
- Must be substantiated and involve concrete fundamental rights violations;
- Made in writing, by a named complainant; and
- Not repetitive, frivolous or malicious.

Procedural Requirements

- Complaints can be lodged in writing using a standardised complaint form (though other comparable written complaints are permissible).
- May be submitted in any language by post, electronic means, or via a dedicated portal.

Procedural Time Frame	Evidentiary Standards
Admissibility determined within 30 days of registration (or, exceptionally, a further 15).	Reasonable probability that the alleged act or omission occurred and caused a violation.

Outcomes/Remedies
Recommendations in the form of a report, which may include disciplinary measures against the alleged perpetrators and/or a referral of those alleged perpetrators for further civil or criminal penalties.

Useful resources

- Regulation (EU) 2019/1896
- Rules on the Complaints Mechanism
- Application portal
- Frontex's Booklet on Complaints
- List of Potential Fundamental Rights Violations During Operations

See more

Analysis of Legal Complaints Processes: Frontex

European Union

Petition to the European Parliament

A petition to the European Parliament can be used by any EU citizen, or any natural or legal person residing in the EU, to complain of **something which affects them** directly and which relates to the EU's **fields of activity**.

Mechanism	EU	Rights Engaged	EU law	Deadline	N/A

Potential Parties	
Claimant(s)	*Defendant(s)*
Victims	One or more EU institutions, bodies, offices or agencies

Jurisdiction	
Standard	*Exception(s)*
Any EU citizen, or natural/legal person residing in the EU	N/A

Admissibility

- Petitioner must be directly affected by the subject matter of the petition.
- Petition must relate to a matter within the EU's fields of activity (e.g., the actions of an EU body).
- Must not ask the European Parliament to, e.g., overturn a domestic judgment.

Procedural Requirements

- Petitions can be lodged via post, or by using the dedicated portal.
- The European Parliament Committee on Petitions (**PETI**) will make a decision on admissibility and any initial actions to be taken.
- If admissible, details will appear on the Petitions Web Portal.

Procedural Time Frame

Expectation that European Commission will respond to PETI within 3 months.

Evidentiary Standards

No evidentiary burden - petitions should be "comprehensive".

Outcomes/Remedies

This is a non-judicial mechanism, carrying non-judicial remedies (e.g., the European Parliament may ask the European Commission to conduct an investigation, prepare a report, or refer on the petition).

Useful resources

- Rules of Procedure
- Guidelines
- Application portal
- Petitions FAQs

See more

Analysis of Legal Complaints Processes: European Parliament

3. Jurisdiction: European Union

3.1. Legal Complaints Processes[214]

3.1.2. Analysis

214 Complaints processes that could apply to survivors and relatives of victims of border violence, border deaths, pushbacks and/or collective expulsions.
For further information on border deaths see *Border Deaths*, P. Cuttitta and T. Last (ed), (Amsterdam University Press, 2019) on Open Access. There is no fixed definition, but in broad terms it describes "the premature deaths of persons whose movement or presence has been unauthorized and irregularised as they navigate or interact with state-made boundaries". Pushbacks include the forced return of migrants, including applicants for international protection, to the country from where they attempted to cross or have crossed an international border without allowing them to apply for asylum or submit an appeal which may lead to a violation of the principle of non-refoulement. See here for the European Commission, Migration and Home Affairs, 'Glossary'. For the principle of non-refoulement, see the European Commission, Migration and Home Affairs 'Glossary', here.

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
European Court of Human Rights (ECtHR) **Individual Application**	Article 34 of the European Convention on Human Rights	**Jurisdiction** Under **Article 34**, the ECtHR can examine cases brought by individuals against one (or more) states which are party to the ECHR, provided that the alleged violation occurred after the ratification of the ECHR (or relevant Protocol) by the respondent state and within the jurisdiction of the respondent state.[215] Jurisdiction is primarily territorial (**Article 1** ECHR), but has also been found: ■ At the borders of a state (M.A. and Others v. Lithuania, (App. No. 59793/17) – ECtHR); ■ Wherever a state exercises "effective control" over an area or person outside its territory (Catan and Others v. Republic of Moldova and Russia, (App. Nos. 43370/04, 8252/05 and 18454/06); and ■ On board aircraft and ships registered in, or flying the flag of, a respondent state (Hirsi Jamaa and Others v. Italy, (App. No. 27765/09) – ECtHR). **Victim** Under Article 34, an application can be lodged by any person, nongovernmental organisation or group of individuals claiming to be the victim of a violation of a right (or their representatives). The applicant must be a victim of the alleged violation, i.e.: ■ A direct victim; ■ A direct victim's next of kin, when the alleged violation is concerned with the direct victim's death/disappearance; or		**Article 34 of the Convention** **Article 34** applies to violations of rights set forth in the ECHR or its Protocols. An applicant must therefore demonstrate that an ECHR right has been violated. The admission of evidence before the ECtHR does not follow strict rules, meaning that there are no specific admissibility requirements in respect of the forms of evidence that can be submitted (e.g., videos), or their format (e.g., local judgments in PDF format).	**Rule 47 of the Rules of the Court** The application must be made in writing and using the official application form available on the ECtHR's website (here). The application form requires: ■ A statement of the facts, in 3 pages; ■ A statement of the alleged violations of ECHR rights and/or Protocols; and ■ A statement of compliance with the admissibility criteria set out in Article 35 s. 1 of the ECHR. Each field of the application form must be completed, and the form must be hand-signed by the applicant(s) and their representative(s) (as the only power of attorney accepted by the ECtHR is that found in the application form). The application must be accompanied by copies of all relevant documents/exhibits, numbered consecutively. The ECtHR provides guidance on, and resources for making an application here.	**Article 35 of the Convention** An application must be lodged a maximum of 4 months after the final decision after which all domestic remedies have been exhausted. Applications under Article 34 are slow-running; though the ECtHR endeavours to deal with cases within three years after they are brought, some can take longer (though some can also be processed more rapidly).[216] Procedural steps vary depending on the complexity of the case, and cases may be heard by a Single Judge, a Committee (3 judges), a Chamber (7 judges) or a Grand Chamber (17 judges).	**Article 41 of the Convention** If the ECtHR finds a violation of the ECHR or its protocols, and if the internal law of the respondent state concerned allows only partial reparation to be made, the ECtHR will afford "just satisfaction" to the injured party if necessary. Just satisfaction is constituted by awards of sums of money, which might be in respect of pecuniary or non-pecuniary losses.[217] However, where a domestic legal process provides genuine domestic remedies and acknowledgment of violations, Article 34 can be satisfied even without a full judgment on the merits by the ECtHR. In Gündüz v. Türkiye (App. No. 3473/19), the Turkish Constitutional Court had acknowledged a breach of the applicant's right to a reasoned judgment – and this had been corrected by an appeal court. This meant that the applicant had ceased to be a 'victim' for the purposes of Article 34, even though she had not been awarded compensation domestically (which, the ECtHR held, is not automatically entailed by a violation of Article 6(1)). Any form of pressure applied by a state which is intended to discourage applicants from pursuing a complaint (and whether that pressure is direct or indirect) will also constitute a violation of Article 34 (Bogdan Shevchuk v. Ukraine (App. No. 55737/16).

215 A list of protocols, and their dates of ratification by their signatories, can be found here.
216 The ECHR in 50 questions.
217 ECtHR Practice Directions, Just satisfaction claims.

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		■ A potential victim. **State's imputability** Article 34 applies to violations of the ECHR by contracting states. The alleged violation must therefore be imputable to the respondent state, which will be the case when the acts/omissions complained of were committed by: Public authorities/public officials; or Private individuals, where the state had a positive obligation to protect the violated right (e.g., obligation to criminalised acts of torture). **Admissibility** Under Article 34, the alleged violation must concern rights/freedoms protected by the ECHR or one of its protocols (e.g., Article , the 2 right to life, Article 3, the prohibition of torture, and Article 5, the right to liberty and security). Article 35 of the Convention: ■ An application must be lodged: ■ Only after all domestic remedies have been exhausted; and ■ A maximum of 4 months after the final decision after which all domestic remedies have been exhausted. An application must not be: ■ Made anonymously; ■ Substantially the same as another application previously examined by the ECtHR, or another relevant international body; ■ Manifestly ill-founded; ■ Abusive; or ■ Made by an applicant who has not suffered a significant disadvantage.					

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		The Practical Guide on Admissibility Criteria produced by the ECtHR can be found here.					
European Court of Human Rights (ECtHR) **Interim Measures**	**Rule 39 of the Rules of Court**	**Jurisdiction** Under **Rule 39** of the Rules of Court, the ECtHR can indicate interim measures (***Mamatkulov and Askarov v. Turkey*** (App. Nos. 46827/99 and 46951/99) – ECtHR). As this mechanism is designed to provide interim relief, these applications are in principle always connected to an individual application (e.g., under Article 34). Under **Article 34**, the ECtHR can examine cases brought by individuals against one (or more) states which are party to the ECHR, provided that the potential violation may occur after the ratification of the ECHR (or relevant Protocol) by the respondent state and within the jurisdiction of the respondent state.[218] Jurisdiction is **primarily territorial (Article 1 ECHR)**, but has also been found: ■ At the borders of a state (***M.A. and Others v. Lithuania***, (App. No. 59793/17) – ECtHR); ■ Wherever a state exercises "effective control" over an area or person outside its territory (***Catan and Others v. Republic of Moldova and Russia***, (App. Nos. 43370/04, 8252/05 and 18454/06); and ■ On board aircraft and ships registered in, or flying the flag of, a respondent state (***Hirsi Jamaa and Others v. Italy***, (App. No. 27765/09) – ECtHR). **Victim** Under **Rule 39** of the Rules of Court, interim measures may be		**Rule 39 of the Rules of Court** An applicant must demonstrate: ■ An imminent risk; ■ Of irreparable harm; ■ To a right under the ECHR which, on account of its nature, would not be susceptible to reparation, restoration, or adequate compensation. **Practice Direction on requests for interim measures** With respect to the third limb, "*restoration*" should be understood as referring to a return to the situation before any harm was done. Interim measures are therefore indicated where there is a risk that, without them, a situation may occur where a return to that position would not be possible if the ECtHR decided at the end of proceedings that it was warranted. As a matter of principle, the ECtHR indicates interim measures in exceptional cases only (and where the evidence available points to a clearly arguable case of a genuine threat to life and limb, with the ensuing real risk of grave harm in breach of the "*core provisions*" of the ECHR). This is consistent with past case law; the ECtHR has generally held that interim measures will be appropriate when a person's life or physical integrity is at stake (Article 2), and when there is a risk of treatment amounting to torture or inhuman and degrading treatment (Article 3).[219] Exceptionally, interim measures have also been granted in situations concerning family or housing rights of vulnerable	**Practice Directions on requests for interim measures** An application must be lodged in a "timely manner", but ordinarily only after all domestic remedies have been exhausted – though for an application under **Rule 39**, this need only be all domestic remedies with suspensive effect (***N.A. v. The United Kingdom*** (App. No. 25904/07) – ECtHR, [90]). Where the final domestic decision is imminent and there is a risk of immediate enforcement (especially in expulsion or extradition cases), requests may be submitted without waiting for that decision (but must indicate clearly the date on which the decision will be made, and that the request is subject to the final domestic decision being negative). Making a request in a "timely manner" will normally mean sending a request as soon as possible after the final domestic decision has been taken; the ECtHR notes that it may not be able to deal with requests in expulsion or extradition cases received less than one working day before the scheduled time of removal. The Practice Direction notes that applicants must not delay lodging their request to create a greater degree of urgency, as such delays may adversely affect their rights and interests. Requests can be lodged via fax, post or via a dedicated portal. There is no set format in which a request must be made, though the ECtHR provides guidance on what format is most useful (and what information should be included in an application) (here) – i.e.:	**Practice Directions on requests for interim measures** Applications for interim measures are categorised as 'urgent' under The Court's Priority Policy, and are therefore processed and adjudicated as soon as possible. The ECtHR will immediately consider applications received during regular working hours (8.00 a.m. CEST to 16.00 p.m. CEST on weekdays) on an individual and priority basis. An application will be considered by the Chamber, the President of the Section, or a Duty Judge (though cases are overwhelmingly decided by Duty Judges). Applications will be determined expeditiously.	**Practice Directions on requests for interim measures** The ECtHR will make an order for interim measures, with the aim of protecting ECHR rights that are at imminent risk of being irremediably compromised. This requires a state to do something to protect against that risk. Interim measures only apply for a limited amount of time, and do not decide the outcome of the case. Neither the applicant nor the respondent state can appeal the ECtHR's decision. If the respondent state does not comply with the interim measure within a reasonable time, this constitutes a violation of Article 34 ECHR which can lead to compensation (***Mamatkulov and Askarov v. Turkey*** (App. Nos. 46827/99 and 46951/99) – ECtHR). Following changes to the procedure for interim measures announced on 13 November 2023: ■ the ECtHR now discloses the identity of judges making decisions on requests for interim measures; ■ the ECtHR continues to provide reasons for Rule 39 decisions on an ad hoc basis; ■ the ECtHR now issues formal judicial decisions to the parties (instead of informal notifications); and ■ the ECtHR continues to adjourn the examination of requests for interim measures and making requests for information where the situation is not extremely urgent and the information supplied by the applicants was insufficient to enable the

218 A list of protocols, and their dates of ratification by their signatories, can be found here.

219 Rule 39 was amended in 2024, with a new Practice Direction being introduced. However, practitioners have queried the extent to which this represents anything other than a codification of the approach taken by case law: see here, for example.

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		indicated at the request of a party, or any other person concerned, or of the ECtHR's own motion (though this is very rare). **State's imputability** **Article 34** applies to violations of the ECHR by contracting states. The alleged violation must therefore be imputable to the respondent state, which will be the case when the acts/omissions complained of were committed by: ■ Public authorities/public officials; or ■ Private individuals, where the state had a positive obligation to protect the violated right (e.g., obligation to criminalised acts of torture). **Admissibility** Under **Article 32,** the ECtHR's jurisdiction extends only to matters concerning the interpretation and application of the ECHR and its protocols. The alleged future violation must concern rights/freedoms protected by the ECHR or one of its protocols (e.g., Article 2, the right to life, Article 3, the prohibition of torture, and Article 5, the right to liberty and security). Under **Article 35,** an application must be lodged only after all domestic remedies have been exhausted (though, for a Rule 39 request, only domestic remedies with a suspensive effect should be exhausted as these are the only remedies that might avoid the irreparable damage (***N.A. v. The United Kingdom*** (App. No. 25904/07) – ECtHR). The application must be lodged within 4 months of the decision which provides final denial of domestic remedies. The Practical Guide On Admissibility Criteria produced by the ECtHR can be found here (last updated on 28 February 2025).		subjects, e.g. minors (Article 8), when there is a risk of denial of justice (Article 6) and to protect freedom of expression (Article 10). Given the urgent nature of **Rule 39** requests, evidentiary standards tend to be lower and less formal than for full individual applications. However, the exceptional nature of interim measures means that they will only be indicated where the circumstances of the case exceed a high degree of seriousness. Interim measures are indicated only where there is prima facie evidence of an imminent risk of irreparable harm (and not, e.g., where an applicant would merely endure hardship).	■ Detailed grounds for the request for interim measures, including reasons (e.g., the nature of the alleged risks); ■ Information regarding domestic proceedings in the respondent state (together with relevant domestic court, tribunal or other decisions); ■ Convention articles referred to; ■ A duly completed authority form (if the request is made by a representative); ■ A reference number from the ECtHR (if the applicant already has one); and ■ All other information and documents considered necessary by the applicant. A party's representatives must also have a power of attorney (unless the request relates to the impossibility of the party accessing a lawyer). **Rule 39 of the Rules of Court** The judge(s) determining the case may request information from the parties on any matter connected with the implementation of any interim measure indicated. Both parties have a duty to cooperate fully in the conduct of proceedings and, in particular, to take such action within their power as the ECtHR considers necessary for the proper administration of justice. Applications must also be accompanied by all relevant documents and information when made.		ECtHR to examine the request. A detailed factsheet on interim measures produced by the ECtHR can be found here (last updated March 2024); a detailed user guide produced by the European Human Rights Advocacy Centre, including case studies, can be found here (last updated June 2023).).

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
Council of Europe	Rule 9 of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.	**Jurisdiction** Communications must relate to the implementation of an ECtHR judgment under the supervision by the Committee of Ministers (irrespective of its supervisory classification, i.e., standard or enhanced), and can be sent at any time before a case is closed. **NHRIs / NGOs** **Rule 9** of the Committee of Ministers entitles the Committee of Ministers to consider communications from national human rights institutions ("**NHRIs**") and non-governmental organisations ("**NGOs**") regarding the execution of ECtHR judgments (which, upon becoming final, are passed to the Committee of Ministers for supervision). There are no strict definitions of these terms; the Committee of Ministers may heed a Rule 9 submission at its discretion.		**Standard** There is no evidentiary standard to be met; the Committee of Ministers may heed a **Rule 9** submission at its discretion. **Guidance** Developed by the Council of Europe (here) and various NGOs (e.g., the European Implementation Network ("**EIN**") – here). Communications may make proposals in relation to specific cases, and in relation to general measures arising from specific cases. This guidance suggests that a Rule 9 submission may have one (or a combination of) three broad objectives: 1. To convey recommendations for strengthening the supervision process (e.g., commenting on whether the measures proposed in the state's action plan produced following the judgment are sufficient); 2. To convey new factual information (e.g., correcting inaccuracies, misrepresentations or omissions in a state's submissions which present an overly positive picture of progress); or 3. To make procedural proposals (e.g., seeking to influence the supervision procedure by proposing that a case be moved from the standard to the enhanced procedure, or opposing a state's call or a case to be closed).	**Standard** There are no formal requirements. The Committee of Ministers may heed a Rule 9 submission at its discretion. **Recipient** Communications should be sent to the Department for the Execution of Judgments of the ECHR (the "DEJ"). **Guidance** The EIN advises the following typical structure (here): ■ A short description of the case/group of cases; ■ A paragraph briefly describing the NGO making the submission, and its qualifications for making the submission; ■ A paragraph summarising the key recommendation of the submission; ■ Comments on individual measures; ■ Comments on general measures; ■ Conclusions; and ■ Recommendations on what the NGO submitting the application requests the Committee of Ministers to urge the respondent state to do. Submissions should identify that they are Rule 9 submissions. The EIN Handbook provides further detail, and suggests that communications respond to the scope and content of a state's action plan (or action plan updates) by: ■ Addressing the adequateness of the individual measures adopted/envisaged; ■ Recommending additional measures where those	**Timing** Communications must be sent at any point before a case is closed. **Execution process** There are timetabling nuances relating to whether a case is subject to enhanced or standard supervision, but the basic judgment execution process is as follows: ■ On becoming final, cases are transferred by the ECtHR to the Council of Ministers for supervision. Within 2 to 3 months, the DEJ decides whether a case is a leading case or a repetitive case; ■ If a case is leading, a decision on allocation to enhanced or standard supervisory procedure is taken at the next quarterly Committee of Ministers Human Rights meeting. If a case is repetitive, it will automatically come under the procedure of the leading case to which it is attached; ■ As soon as possible (and, in any event, by no later than six months after the relevant judgment becomes final), the respondent state must submit an action plan (or, if it considers none is required, the action report); ■ Following submission, the DEJ makes a preliminary assessment of the measures envisaged and the timetable proposed, and contacts the respondent state for further information and clarification; ■ Further action plans are submitted, as necessary, until finally the state considers itself in a position to submit its action report (inviting the Committee of Ministers to close supervision); and ■ The DEJ makes a final assessment of the action report within 6 months of its	**Under Rule 9 of the Committee of Ministers**, the Committee of Ministers will take the submission into account in determining how a judgment is to be implemented, and urge the respondent state to behave accordingly. In exceptional cases (e.g., when fundamental values like the right to liberty are grossly violated), the Committee of Ministers may apply the infringement procedure mechanism and refer a case back to the ECtHR (as in ***Mammadov v. Azerbaijan***, (App. No. 15172/12) – ECtHR).

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Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
					proposed by the state are insufficient (e.g., because the case reveals issues ignored by the state); ■ Providing evidence to justify the need for these additional measures; ■ Challenging information which misrepresents or exaggerates state progress in implementing measures; ■ Providing more general contextual information (e.g., if a state alleges that an instance is isolated when it is part of a wider point); ■ Providing evidence that existing general measures taken by the state are ineffective; ■ Suggesting the types of evidence the Committee of Ministers might request that the state provide to demonstrate progress; and ■ Referring to relevant data from reports of expert bodies of the Council of Europe (e.g., the Committee for the Prevention of Torture), or by expert bodies of other national and international institutions. This document advises against presenting recommendations or information which goes beyond the scope of what is required for implementation of the judgment, and adopting a tone that is overly "campaigning" or emotive. Submissions are intended to counter-balance the Committee of Ministers' dependence on information provided by the state. **Length** The Council of Europe recommends that submissions should be kept short and to the point – recommending that, if they are longer than 3-4 pages, applicants should consider adding	submission. If it agrees that the measures implemented are appropriate and sufficient, it will propose that the Committee of Ministers adopt a final resolution closing the case. **Rule 9 submission process** In relation to a Rule 9 submission, the following procedure is followed: ■ All communications are immediately sent by the Council of Europe Secretariat to the state concerned; ■ If the state responds within 5 working days, both the communication and response are brought to the attention of the Committee of Ministers and made public; ■ If the state does not respond within 5 working days, the communication is transmitted to the Committee of Ministers but is not made public until 10 working days after it was sent to the state (together with any response received during this time limit); ■ If the state responds after 10 working days, it is circulated and published separately upon receipt; and ■ Once received, the Committee of Ministers will consider all representations. The Council of Europe provides guidance on the timeline for submitting communications, together with a flowchart, here.	

EUROPEAN COMPLAINT PROCESSES							
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		In the EU	**Outside the EU**				
					an executive summary at the beginning. **Language** Rule 9 submissions should be in English or French.		
Commissioner for Human Rights Council of Europe	Individual complaints are not within the mandate of the Commissioner (see Article 1 of **Resolution (99) 50 On the Council of Europe Commissioner of Human Rights**).	The Commissioner **does not receive individual complaints**.					
European Court of Justice (ECJ)	**Treaty on the Functioning of the European Union**, ("**TFEU**"), **Section 5.** Further information on procedure is set out in: ■ **Rules of Procedure of the General Court (10** July 2024) ("**ROP");** ■ **Practice Rules for the Implementation of the Rules of Procedure of the General Court** (10 July 2024	**Jurisdiction** **Article 256 TFEU:** General Court can hear and determine at first instance proceedings in relation to: ■ Legality of legislative acts, acts of the Council, of the Commission and of the ECB; acts of the European Parliament and of the European Council and legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties (Article 263); ■ If the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act. This action is only admissible if the institution, body, office or agency has first been called to act (Article 265); and ■ Compensation for damage provided for in Article 340, which requires the EU to make good any damage caused by institutions or its servants in performance of duties (Article 268).	**Article 263 TFEU (Legality):** The grounds on which the General Court may annul a reviewable act are: ■ Lack of competence. ■ Infringement of an essential procedural requirement. ■ Infringement of the treaties or of any rule of law relating to their application (the most common ground argued in access to documents cases). ■ Misuse of powers by the EU institution. **Article 265 TFEU (Failure to act):** In order to establish a claim, a private individual must establish that: ■ The institution must have had a duty to act under the treaties. ■ The institution failed in that duty to act. ■ The failure to act amounts to a reviewable omission. ■ The reviewable omission is not for a recommendation or opinion.	There are **no formal evidentiary standards to be met.**	All parties (except for member states of EU institutions) must be represented by a lawyer entitled to appear before a court in a member state (**ROP, Article 51**). **Written phase** A written application must be sent to the Registry by a lawyer or agent. The written application has a page limit of 50 pages. The application must include the following information (**ROP, Article 76**): ■ Name and address of application; ■ Particulars of the status and address of the applicant's representative; ■ Name of the main party against whom the action is brought; ■ Subject matter of proceedings, pleas in law and arguments relied on; ■ Form of order sought; and ■ Any evidence produced or offered.	According to the CJEU, the average duration for proceedings is 16.2 months for cases closed by judgment or order; and 20.4 months where only cases closed by judgment are taken into account. **Time limits** **Article 263 TFEU:** An application for annulment must be brought before the General Court within two months: ■ Of the publication of the act; ■ Of its notification to the applicant; or ■ Within two months of the day on which it came to the knowledge of the applicant. **Article 265 TFEU:** The applicant has a further two months within which to initiate proceedings if the institution fails to define its position within the first two months. The deadline is usually extended by a further ten days.	**Remedies** **Article 263 TFEU:** If such an action is well founded, the General Court will declare the EU law or act void (**Article 264 TFEU**). **Article 265 TFEU:** If the General Court agrees with the applicant that the institution has failed to act contrary to the EU treaties, then it will find an infringement by the institution. The institution must then take all necessary measures to comply with the judgment (Art 266). **Articles 268 and 340 TFEU:** The General Court will order the institution to pay damages. **Appeals** ■ A party may appeal a final decision of the General Court to the ECJ (on points of law only).

EUROPEAN COMPLAINT PROCESSES							
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		In the EU	**Outside the EU**				
		Article 276 TFEU: The ECJ does *not* have jurisdiction to review the validity or proportionality of operations carried out by police or law enforcement services of member states or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. **Standing** The applicant's nationality and residence are irrelevant to standing. **Article 263 of TFEU:** Any natural or legal person may institute proceedings against an act addressed to that person or which is to direct and individual concern to them. An act will be of direct concern to the applicant if it has legal effects for them. An applicant will only be individually concerned by an act not addressed to them if the act: "affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed [by the act]". (***Plaumann v. Commission*** (Case 25/62) EU:C:1963:17, page 107) The case law in this respect distinguishes from measures of "general application" or "individual application". Where the act is a measure of **individual application**, the applicant will be individually concerned where the applicant forms part of a closed class affected by it (a group of persons identified or identifiable before the	**Articles 268 and 340 TFEU (Actions for damages):** The modern test has three cumulative conditions (***Bergaderm and Goupil v. Commission*** (Case C-325/98 P) 95/34/EC – CJEU): 1. There has been a sufficiently serious (unlawful) breach of a rule of EU law that is intended to confer rights on an individual. 2. Actual (real and certain) damage has occurred. 3. There is a direct causal link between the conduct of the institution and the damage sustained by the applicant.		■ A notice of that application is then published in the *Official Journal* (**ROP Art 79**). ■ Application shall be served on the defendant via e-Curia, or where there is no such account, a certified copy is to be sent by registered post with a form for acknowledgement of receipt or by delivery or by delivery of the copy against receipt (**ROP Art 80**). ■ The defendant then has two months to file a defence (**ROP Art 81**). The defence has a page limit of 50 pages. ■ There may be a further round of pleadings, where the applicant submits a reply (25 pages) and the defendant a rejoinder (25 pages) (**ROP, Article 83**). **Oral phase** ■ A hearing can be held at the request of a main party, or at the General Court's own motion (**ROP, Article 106**). A request from a main party must state the reasons for which the party wishes to be heard, and must be submitted within three weeks after service on the parties of notification of the close of the written part of procedure. ■ If no request is made, the General Court may decide to rule on the action without an oral part of the procedure. ■ If an oral phase is held, there will be a short public hearing. **Other** The General Court has a specific procedure for dealing with confidential information by either main party (**ROP, Article 103**).	**Articles 268 and 340 TFEU:** There is a five-year limitation period that starts running when the damage materialises. **Other:** **Interim relief** The General Court has the power to order any interim measures (**Article 279 TFEU**) (for example, to suspend the application of a measure being challenged in an **Article 263 TFEU** case), if the following conditions are met: ■ The action in the main proceedings is not without reasonable substance; ■ The applicant shows that the measures are urgent and it would suffer serious and irreparable harm without them; ■ The interim measures balance the parties' interests and the public interest. **Expedition** A request for expedited procedure can be made in a separate document lodged at the same time as the application initiating the proceedings or the defence, and shall contain a statement of reasons specifying the particular urgency of the case and any other circumstances (**ROP, Article 152**).	

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		adoption of the act by applying specific criteria), (***Bactria Industriehygiene-Service v. Commission*** (Case-258/02 P) EU:C:2003:675 – CJEU, [34], [36], [50].) A measure of **general application** affects an open class of persons; it "is applicable to objectively determined situations and involves legal consequences for categories of persons viewed in a general and abstract manner (***Zuckerfabrik v. Council*** (Case 6/68) EU:C:1968:43, page 415). By contrast, there are very limited circumstances in which an applicant will be individually concerned by a measure of general application, and it is difficult to see the applicability in this case.[220] **Article 265 TFEU:** Any natural or legal person may complain that an institution, body, office or agency of the Union has failed to address to that person any act. An action can only be brought by an applicant who has invited the institution to act. As above, the applicant must also have been directly and individually concerned. The EU institution must first be called upon to act within a "reasonable timeframe". This will be factually specific; however, an action will only be admissible if the institution fails to define its position within those two months. **Articles 268 and 340 TFEU:** There are no specific procedural or standing requirements for an action for damages.					

[220] The leading case for an applicant being individually concerned by a measure of general application involved a Council regulation which limited the use of the term "crémant" to sparkling wine produced in France or Luxembourg when the Spanish applicant had been marketing its wine under the trademark, "Gran Crémant de Cordoniu" since 1924, ***Codorniu v. Council*** (Case C-309/89) EU:C:1994:197, [19]-[22].

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
EU Ombudsman	**Article 228 Treaty on the Functioning of the EU ("TFEU").** **Article 20 TFEU.** **Article 24 TFEU.** **Article 43 of the Charter of Fundamental Rights of the EU , European Ombudsman.** The Ombudsman's Statute and duties are set out in **Regulation (EU, Euratom) 2021/1163 of the European Parliament**, 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties **("Statute").**	**Jurisdiction** **Article 228** of the TFEU empowers the Ombudsman to conduct inquiries into maladministration in the activities of the EU's institutions, bodies, offices or agencies, except for the Court of Justice of the European Union acting in its judicial role. The Ombudsman also has the power to make recommendations to put an end to any maladministration uncovered. The Ombudsman ***cannot*** investigate a case where the alleged facts are or have been the subject of legal proceedings (**Article 228(1) TFEU**). The Ombudsman ***cannot*** investigate complaints against national, regional or local administrations in the Member States, even when the complaints are about EU matters. The Ombudsman has the power to open inquiries on their own initiative under EU law, as well as previous cases of the Ombudsman's office. **Admissibility** Any citizen of the Union or any **natural or legal person residing or having its registered office in a Member State** has the right to complain to the Ombudsman, either directly or through a Member of the European Parliament. The complainant must first have contacted and tried to resolve the matter with the institution in question. **Public interest complaints** It is important to note that access to the Ombudsman is governed by different and less restrictive rules than access to the courts. For example, complainants do not have to be adversely affected by maladministration in order to complain to the Ombudsman. In other words, public interest complaints are possible, which is of particular importance for NGOs.	**Jurisdiction** The European Ombudsman's jurisdiction is limited to the oversight of the activities of the EU's institutions, bodies, offices or agencies. **Admissibility** Any citizen of the Union or any **natural or legal person residing or having its registered office in a Member State** has the right to complain to the Ombudsman, either directly or through a Member of the European Parliament. Accordingly, there is **limited scope** for complaints to be made outside the EU.	**Evidence gathering by the Ombudsman** The Ombudsman is required to conduct all enquiries they consider justified to clarify suspected maladministration (**Article 3(1) Statute**). Subject to the conditions laid down in **Article 5 Statute**, the EU institutions, bodies, offices and agencies and the competent authorities of the member states must, at the request of the Ombudsman or on their own initiative, and without undue delay, provide the Ombudsman with any information he or she has requested for the purposes of an inquiry. **Detailed rules are set out in Article 4 of the 2023 Implementing Provisions.** In practice, the Ombudsman will identify the allegations of maladministration and ask the EU institution to respond to them by a deadline (within three months). The Ombudsman may also ask them to provide information or grant access to their premises and files so that she and her team can inspect documents. She can also ask them to attend a meeting to clarify issues, interview officials and staff and require them to answer questions, subject to their duty of professional secrecy. **Evidence from the complainant** The Ombudsman may also request information from the complainant or third parties and commission any studies or expert reports considered necessary to the inquiry. The Ombudsman can also request a meeting with the complainant to clarify issues.	**Prior to lodging** It is free to lodge a complaint to the EU Ombudsman. Before you have submitted a complaint to the Ombudsman, you must first have contacted the institution concerned about the matter to try to resolve it (**Article 2(3) Statute**). If the institution does not resolve it satisfactorily within a reasonable time, then you can complain to the Ombudsman. **How to lodge a complaint?** Complaints must be made In writing and must identify the complainant, although the complainant can request that the complaint, or parts of it, remains confidential (**Article 2(2), Statute**). A complaint can be submitted in several ways. ■ By submitting an online complaint form. To do this you need to register and create a user account. ■ The complaint form can also be downloaded and submitted by email to eo@ombudsman.europa.eu or to: *European Ombudsman* *1 avenue du Président Robert Schuman* *CS 30403* *F-67001 Strasbourg Cedex* *France* A complaint can also be submitted without using the complaint form, as long as sufficient information is provided. A complaint can be made in any official EU language. The Ombudsman shall communicate with the complainant in the language of the complaint, unless the complainant accepts to receive communications in another official EU language (Article 3.1, 2023 Implementing Provisions).	**Limitation periods** A complaint must be brought within two years of the complainant becoming aware of the facts on which the complaint is based (**Article 2(3), Statute**). Making a complaint to the Ombudsman does not affect time limits for appeals in administrative or judicial proceedings (**Article 2(8), Statute**). In other words, making a complaint to the Ombudsman does not stop the time for the limitation period to bring a judicial or administrative appeal from running. In practice, this can impact a decision about whether to complain to the Ombudsman or to bring a case before the General Court. **How long does an inquiry into a complaint take?** According to the latest Annual Report for the Ombudsman, which is for 2024, on average, an inquiry into a complaint to the Ombudsman takes less than 6 months: ■ 36% of inquiries are closed within three months. ■ 50% of inquiries are closed within three to 12 months. ■ 10% of inquiries are closed within 12 to 18 months. ■ 4% of inquiries are closed after more than 18 months.	**Outcomes/ remedies** The Ombudsman's aim is to seek a solution with the EU institution to eliminate any maladministration and satisfy the complainant. In doing so, the Ombudsman may propose a solution to address the complaint (**Article 2(10), Statute**). When conducting inquiries and proposing solutions, the Ombudsman will take into account EU law as well as earlier Ombudsman decisions and recommendations, which is sometimes known as "ombudsprudence". Upon issuing a recommendation (as appropriate) to the institution, the institution has three months to send the Ombudsman its opinion in response (extendable by two months) (**Article 4(1) and (2), Statute**). If the institution fails to send the Ombudsman a response within the deadline, the Ombudsman may close the inquiry (**Article 4(2), Statute**). After considering the institution's opinion, or if the institution fails to respond, the Ombudsman can close the inquiry. Often, the Ombudsman would announce definitive findings. The Ombudsman can choose to send a special report on any inquiry of significant public interest to the European Parliament (**Article 4(3), Statute and Article 7.3, 2016 Implementing Provisions**). This is more likely to happen if the institution has failed to respond to or to comply with the Ombudsman's recommendations within the three-month deadline. On closing an inquiry, regardless of whether maladministration is found, the Ombudsman must also inform any complainant of the outcome, the institution's response if any, and of any recommendations made (Article 4(3), Statute).

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		If a complaint is not admissible If a complaint does not fall within the scope of the Ombudsman's mandate, the file on it will be closed (**Article 2(5), Statute** and **Article 3.3, 2023 Implementing Provisions**). The Ombudsman may advise the complainant to send it to another authority (**Article 2(4), Statute**).					**Appeal Avenues** If a complainant is not happy with the findings of an Ombudsman, it is usually not possible to appeal to an external body. However, a complainant can make a request for a review within two months from the date of the Ombudsman's decision. However, the review is limited to (i) a decision that a complaint is outside the Ombudsman's mandate, (ii) that there are no ground to conduct an inquiry, or (iii) a decision closing an inquiry (**Article 1.1**) and does not extend to a review of a finding of maladministration (**Article 1.2**). **Efficacy** **It is important to note that the Ombudsman's findings and recommendations are <u>not legally binding</u> on EU institutions.** However, the Ombudsman's findings are influential and EU institutions do often follow the Ombudsman's recommendations. The overall compliance rate of the Institutions with decisions of the Ombudsman in 2023 was 82%. The Ombudsman aims to achieve friendly solutions that satisfy both the complainant and the institution involved. In providing a free, (relatively) fast and flexible service, the Ombudsman can often provide a useful alternative remedy to bringing an action before the EU courts. In 2024 (the last year for which there is published data), the Ombudsman received 2,264 complaints (a slight decrease compared to 2,392 in 2023), which resulted in 411 inquiries. **Note** that in 2020, the Ombudsman opened an Inquiry on their own initiative into potential shortcomings of the Frontex complaints mechanism. (See **Frontex complaints mechanism** above for further details.) Further, in 2023 the Ombudsman opened an own-initiative Inquiry aimed at clarifying Frontex's role in search and rescue operations in

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
							the Mediterranean Sea following the drowning of hundreds of people off the coast of Greece on 14 June 2023, as in the Decision on the European Border and Coast Guard Agency (Frontex) (OI/3/2023/MHZ). The Ombudsman's recommendations, *inter alia,* stressed the need for Frontex to explicitly lay down guidance for its staff on the issuance of maritime emergency signals.
Frontex – European Border and Coast Guard Agency **Individual Complaint Mechanism**	Regulation EU 2019/1896 on the European Border and Coast Guard. The Agency's Rules on the Complaints Mechanism.	**Jurisdiction** Recital 104 of the Regulation provides that the Regulation should establish a complaints mechanism for the Agency in cooperation with the fundamental rights officer ("**FRO**") to safeguard the respect for fundamental rights in all the activities of the Agency. This should be an administrative mechanism whereby the FRO should be responsible for handling complaints received by the Agency in accordance with the right to good administration. **Admissibility** The FRO decides on the admissibility of a complaint following an examination of the requirements in Article 111(2) and (3) of the Regulation and in Article 5(3) of the Agency's Rules. Article 111(2) of the Regulation: Any person who is: ■ directly affected by the actions or failure to act on the part of staff involved in a joint operation, pilot project, rapid border intervention, migration management support team deployment, return operation, return intervention or an operational activity of the Agency in a third country; and ■ who considers himself or herself to have been the subject of a breach of his or her fundamental rights due to	**Jurisdiction – Article 9 of the Agency's Rules:** When activities which the Agency performs in the territory of third countries give rise to a complaint concerning alleged fundamental rights violations, the part of the complaint regarding the allegations concerning staff involved in an Agency activity is treated by the FRO in accordance with the procedure set out by the Rules (i.e. as though it was in the EU).	**Article 5(3) of the Agency's Rules:** (b) the complaint must be substantiated, i.e., the information presented in the complaint allows FRO to ascertain, with "reasonable probability", that the alleged actions or failures to act have actually taken place.	**Article 3 of the Agency's Rules:** ■ A complaint shall be submitted in writing using the standardised complaint form or other comparable means. The complaint may be submitted to the Agency by post or by electronic means, including electronic devices or the Agency's website. ■ A complaint may be submitted in any language. ■ A complainant may be represented by any party whether natural or legal person acting on their behalf (the 'representative'), ■ A complaint is free of charge and may be made even when domestic remedies, whether administrative or judicial have not been exhausted. **Article 5 (3) of the Agency's Rules:** (f) A complaint must be submitted within one year from: • The date on which the alleged violation occurred; or • The date the complainant became aware of such violation. (g) A complaint concerns facts which occurred after 6 October 2016. **Article 5 (10) and (11) of the Agency's Rules:**	**Article 5(3) of the Agency's Rules:** (f) the complaint is made within one year from the date on which the alleged violation of the fundamental rights occurred or the complainant was informed or learnt about such violation; (g) the complaint concerns facts which occurred after 6 October 2016. **Article 5(5) of the Agency's Rules:** The FRO decides on the admissibility of a complaint within 30 days from registration of the complaint. In exceptional cases, that period may be extended by 15 days, provided the complainant is notified in advance and that detailed reasons are given. **Article 5(7) of the Agency's Rules:** Once a complaint is declared admissible, the FRO immediately forwards it to the Executive Director.	

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		those actions or that failure to act; ■ or any party representing such a person ■ may submit a complaint in writing to the Agency. Article 111(3) of the Regulation: Only complaints that are substantiated and involve concrete fundamental rights violations shall be admissible. **Article 5(3) of the Agency's Rules:** The FRO decides on the admissibility of a complaint. A complaint shall be declared admissible where: ■ A complainant claims to have been directly affected by Frontex (involved in an agency activity) in a manner that breached their fundamental rights; and ■ The complaint is not manifestly repetitive, frivolous or malicious. These scenarios are not exhaustive and further grounds of admissibility are contained in the Agency's Rules. Note: Under the current implementing rules a complainant has to provide their name and contact details. Anonymous complaints are not admissible. Complainants may be represented by any party, whether a natural or legal person (the "representative").[221]			■ If a complaint is declared inadmissible, the complainant is informed and, if available, provided with further options for addressing their concerns. In particular, the complainant shall be informed about the possibility to submit new evidence within one year of the date on which the initial decision on inadmissibility was communicated. ■ Any decision by the FRO shall be in written form and reasoned. **Article 7 of the Agency's Rules:** ■ If the complaint is admissible, the FRO undertakes an assessment of the complaint in view of recommending appropriate follow-up, in accordance with Article 111(6) of the Regulation. ■ Upon ascertaining the facts, the FRO provides a legal analysis of the concrete fundamental rights violations having regard to the relevant Union law, in particular the Charter, and relevant international law, including the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the Convention on the Rights of the Child and obligations related to access to international protection, in particular the principle of non-refoulement. **Complaints mechanism guidance:** Frontex works to ensure that its complaints mechanism complements national complaint systems, and does not replace or interfere with national procedures. Frontex has therefore entered into Memoranda of Understanding with institutions in Albania, Moldova,		

221 Ombudsman Decision OI/5/2020/MHZ.

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
					Serbia and Montenegro which aim to ensure compatibility and effective cooperation between national and Frontex complaints mechanisms.222 However, Frontex's 'Complaints mechanism' guidance explains that a complainant does not need to go through national procedures before submitting a complaint. Equally, submitting a complaint to Frontex does not prevent a complainant from later accessing other forms of complaint (e.g., national or European Ombudspersons or courts).		
European Parliament ("EP") **Article 14 of the Treaty of the European Union ("TFEU").** **Article 223-234 TFEU.**	**Jurisdiction** According to **Article 14(1)** of TFEU, the EP's key tasks are to: ■ Exercise jointly with the Council of the EU, legislative and budgetary functions. ■ Exercises functions of political control and consultation. The right to petition is set out in TFEU (**Article 227 and Articles 20(2)(d)** and **24**). It is also enshrined in the Charter of Fundamental Rights. **Note EU Petitions website:** Please note that the European Parliament cannot overturn decisions taken by the competent authorities of Member States. The European Parliament is not a judicial body and is not empowered to carry out legal investigations, hand down judgments or overturn judgments of Member State courts of law. **Admissibility** **Article 227** of TFEU provides that "any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European	**Jurisdiction** The petition must relate to an issue within the EU's fields of activity. This is interpreted broadly. **Article 227** of TFEU provides that "any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly." Accordingly, there is limited scope for complaints to be made outside the EU, or in relation to non-EU institutions or bodies.	**Evidentiary requirements** The guidance is unclear on the evidentiary requirements for petitions. The EU Petition website FAQs states that: "Your petition should be comprehensive and include all facts relating to the issue, but should omit unnecessary detail. It should be written in a clear and legible manner, or otherwise it will be declared inadmissible. It should not contain offensive or obscene language."	**Procedure** The European Parliament dedicated Committee on Petitions, (PETI) handles the petition process. In summary, the procedure for petitions to the EP is: ■ A petitioner submits a petition either by the Petitions Portal website. Petitions or by post which must be signed. By post to: *Chair of the Petition Committee European Parliament, B-1047 BRUSSELS, Belgium.* ■ The PETI Secretariat registers it and assigns it a number. ■ The PETI Secretariat prepares a summary of the petition which summarises the key issues and makes recommendations on admissibility and actions to be taken. It sends the summary to the Committee members. ■ The PETI Committee decides on whether the petition is admissible and, if it is, initial actions to be taken. ■ The PETI Committee may at some stage discuss the petition at a meeting, in which case the petitioner and other	**Time frames** In the normal procedure (SIR document), petitions are summarised and a decision on their admissibility is taken based on the order in which they arrived. If a Member considers a petition to be particularly urgent, he/she may seek the Coordinators' approval concerning the question of admissibility on an ad hoc basis, before the petition is included in a SIR document. In that regard, it is also possible to request an answer from the Commission in an accelerated manner. Requests for application of the urgency procedure should be sent to the Chair and the Secretariat by e-mail, with clear and duly substantiated justification as to why the petition should be treated urgently. Such a request should be made at least 10 working days before the next Coordinators' meeting. For each urgency procedure request where a decision on admissibility has not yet been taken, the Secretariat provides a summary and a preliminary recommendation for the Coordinators. If the Coordinators agree to the urgency request, the SIR	**Possible outcomes** *Note* that the remedies available are non-judicial, and include: ■ Asking the Commission to conduct a preliminary investigation or provide information, such as on the application of or compliance with EU laws (**Rule 233(5), EP Rules of Procedure**) ■ Referring the petition to another EP committee for information or further action; for example, so that the other committee can take account of the petition in its legislative activities (**section 8, PETI Guidelines**). ■ Preparing an own initiative report on the petition (**Rule 233(3), EP Rules of Procedure**). However, this is rare. PETI can only prepare an own initiative report with permission from the EP's Conference of Presidents (**Rule 55, EP Rules of Procedure**) ■ Submitting a short motion for a resolution on the petition or its subject matter at an EP plenary session (**Rule 233(2), EP Rules of Procedure; Section 14a, PETI Guidelines**).

222 https://prd.frontex.europa.eu/wp-content/uploads/report-on-cooperation-between-frontex-and-third-countries-in-2023.pdf.

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
		Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly." **Note** that Practical Law commentary[223] states that "petitions are therefore an important mechanism for the representation for individuals and minorities, such as non-EU citizens, migrants and minors, who may lack other options for participating in democratic life in the European Union." The issue complained of in the petition must directly affect the petitioner. This is interpreted very broadly. **Inadmissible petitions** Inadmissible petitions are filed with no further action taken other than to notify the petitioner (**Rule 232(9) and (11), EP Rules of Procedure**). However, PETI will provide a written notification of its decision. If a petition is deemed inadmissible due to the applicant not meeting the eligibility requirements. Depending on the subject of the petition, PETI may advise the petitioner to contact another body, such as the ECHR or a national authority.			relevant stakeholders (such as the European Commission) will also be invited to attend. ■ Once declared admissible, details of the petition will be included in the public version of the Petitions Web Portal, subject to confidentiality and privacy considerations. ■ The petitioner will be kept informed of progress and key decisions. ■ PETI will eventually close the petition once it has been sufficiently researched, discussed and dealt with. **Information required** ■ the applicant's name, nationality and permanent address; ■ If a petition is being submitted collectively by several people, this information must be provided for at least the first signatory; and ■ Petitions must be written in one of the 24 official languages of the EU. **Publicity/anonymity** Once a petition is registered by PETI's Secretariat, it becomes a public document and the name of the petitioner, possible co-petitioners and possible supporters and the contents of the petition may be published by the EP, unless a petitioner, co-petitioner or supporter has requested that their name is kept confidential, in which case it will not be published **(Rules 232(12), (13) and 235(2), EP Rules of Procedure).**	document concerning the petition is sent to all Members for adoption, within a deadline of 6 working days. (Section 5, PETI Guidelines). Once PETI asks the Commission to investigate as per Rule 233(5), **EP Rules of Procedure**), PETI expects the Commission to reply to its request within three months, but cannot compel it.	■ Conducting a fact finding visit to relevant locations to prepare reports with observations and recommendations **(Rule 234, EP Rules of Procedure;** Section 13, PETI Guidelines). ■ Taking any other appropriate actions PETI considers worthwhile to resolve an issue or to respond to a petition. **Closing petitions** The petition may be closed at several stages, including (Section 15, PETI Guidelines): ■ If deemed inadmissible ■ The PETI Committee has finished its consideration of an admissible petition and decides to close the petition (Rule 233(7), **EP Rules of Procedure**). This may be if: ■ After discussion at a meeting, the Committee considers that it has been sufficiently researched and discussed: ○ The Committee considers that no further action can be taken and it is included in the list of petitions to be closed on the Committee's meeting agenda (List B), then at the end of the meeting the petitions on that list are deemed closed; or ○ The petition is withdrawn by the petitioner. **Right of appeal** There is no right of appeal of a decision by PETI to close a petition under the EP Rules of Procedure. However, PETI may decide to reopen a petition if relevant new

[223] See Thomson Reuters Practical Law guidance on "Petitioning the European Parliament Alternatives".

EUROPEAN COMPLAINT PROCESSES							
Process	**Relevant rule / law / obligation**	**Admissibility Criteria (including standing)**		**Evidentiary Standards**	**Procedural Requirements**	**Deadline(s)**	**Outcomes and/or remedies**
		In the EU	**Outside the EU**				
							facts come to light and the petitioner makes a reasoned request for it (Rule 233(9), **EP Rules of Procedure; section 16, PETI Guidelines**). **Judicial review** Decisions by the EP's PETI Committee concerning petitions are not normally subject to judicial review by the CJEU. However, certain limited types of decisions or actions regarding petitions to the EP under **Article 227 TFEU** may be reviewable. By way of example, decisions on actions to take or not regarding an admissible petition. One PETI has decided that a petition is admissible, it has a broad discretion, of a political nature, how that petition should be dealt with (***Schönberger v. European Parliament*** (Case C-261/13P) EU:C:2014:2423 – CJEU, paragraph 24).

3. Jurisdiction: European Union

3.2. Resources: Key Concepts

Asylum / Asylum Seeker

There is no specific right to asylum under the ECHR, but there is a non-refoulement obligation.

***Salah Sheekh v. The Netherlands* (Application No. 1948/04) – ECtHR**

"...in exercising their right to expel such aliens, Contracting States must have regard to Article 3 of the Convention which enshrines one of the fundamental values of democratic societies and prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct, however undesirable or dangerous. The expulsion of an alien may give rise to an issue under this provision, and hence engage the responsibility of the expelling State under the Convention, where substantial grounds have been shown for believing that the person in question, if expelled, would face a real risk of being subjected to treatment contrary to Article 3 in the receiving country. In such circumstances, Article 3 implies an obligation not to expel the individual to that country" (§135).

There is no express provision in the ECHR governing the status of asylum seekers during the processing of their claims for protection. Although:

- Article 2 of Protocol No. 4 provides for the free movement of persons 'lawfully resident' in a state.
- Article 1 of Protocol No. 7 provides for certain procedural safeguards against the expulsion of those 'lawfully resident' in the territory of a state. However, lawful status can be lost (***Omwenyeke v. Germany*** (Application No. 44294/04)).[224]

Detention for the purposes of preventing an "unauthorised entry" into a state is therefore lawful (***Saadi v. The United Kingdom*** (Application No. 13229/03)), though when a state authorises the entry or stay of migrants pending an asylum application (either independently or pursuant to EU law), any ensuing detention purporting to be for that purpose may be unlawful under Article 5(1) (***Suso Musa v. Malta*** (Application No. 4233712)).

For EU Member States:

- Article 18 of the EU Charter guarantees the right to asylum, with those qualifying for asylum having the right to have their status recognised (and not just to seek asylum);
- The right of asylum seekers to documentation is set out in the Reception Conditions Directive (2013/33/EU). Under Article 6 of this Directive, all individuals who lodge an application for asylum must be given, within 3 days, a document certifying their status as asylum seekers or that they are allowed to stay while their asylum application is being examined (though Article 6(2) allows states to refrain from doing so when the applicant is in detention or at the border);[225]

224 "Handbook on European law relating to asylum, borders and immigration", Publications Office of the European Union (2020), pages 82 and 83.

225 Ibid, pages 82 and 83. Page 345 contains a list of EU Member States bound by the Directive.

- An asylum seeker who has applied for (but not yet obtained) a residence permit in one Member State cannot be refused a resident permit in a second simply by virtue of having made that first application (***Krasiliva*** (Case C-753/23));
- Article 15 of Directive 2013/32/EU provides that EU Member States shall allow asylum applicants the opportunity, at their own cost, to consult a legal adviser on matters relating to their asylum applications (with free legal assistance and/or representation granted on request in the event of a negative decision by a determining authority); and
- Article 31(3) of Directive 2013/32/EU provides that Member States shall ensure that asylum applications are determined within six months of being lodged. That six-month period can be extended where (a) complex issues of fact and/or law are involved; (b) a large number of applications for international protection are made simultaneously; and/or (c) where the delay can be clearly attributed to default by the applicant. This period cannot be extended under point (b) where there is a gradual increase in the number of applications over an extended period or where a large backlog of already submitted applications compounds the difficulties of processing an ordinary number of applications: there must be a significant increase in the number of applications within a short period compared with that Member State's normal and foreseeable trends in the Member State concerned (***Zimir*** (Case C-662/23)).

Border Violence[226]

Safi and Others v. Greece (Application No. 5418/15) – ECtHR

A fishing boat with 27 Afghan, Syrian and Palestinian nationals on board sank off an island in the Aegean Sea while under tow by the Greek coastguard. The sinking caused the deaths of 11 people, including members of the applicants' families. The proceedings concerning the potential criminal liability of the coast guard members involved in the incident were discontinued, as were those against the military personnel alleged to have subjected the applicants to ill-treatment after their arrival. The 16 survivors of the sinking complained to the Court, inter alia, that their lives had been endangered during the sinking by reason of the acts or omissions of the coast guard, that some of them had lost family members in the sinking, that the investigation into who should bear responsibility for the fatal accident had been inadequate, and that they had been ill-treated after the coastguard had transferred them to the nearby island.

Conclusions:

- There had been a violation of Article 2 under its procedural head as there had been shortcomings in the proceedings and the national authorities had not carried out a thorough and effective investigation capable of shedding light on the circumstances in which the boat had sunk;
- Whilst the ECtHR could not pronounce itself, in the absence of an effective investigation, on several details of the rescue operation and on whether there had been an attempt (as alleged) to push the applicants back to Turkey, the ECtHR concluded on the basis of established facts that the Greek authorities had violated Article 2 by failing to take preventive operational measures to protect the individuals whose lives were at risk;
- The Article 2 duty is one of means and not of result, and so the coastguard could not be expected to succeed in rescuing everyone whose life was at risk at sea; the captain and crew of a vessel involved in a rescue operation have to make quick, difficult and discretionary decisions. However, it must be shown that these decisions are inspired by the effort to secure the right to life of people in danger;
- In this case, a number of omissions and delays in the manner in which the rescue operation was conducted and organised meant that the authorities had not done all that could reasonably be expected to provide all the applicants and their relatives with the level of protection required, in violation of Article 2; and
- There had been a violation of Article 3, concerning 12 of the applicants who had been on board the boat and who, after it had sunk, had been subjected to degrading treatment on account of the body searches they had undergone upon arrival.

S.S. and Others v. Italy (Application No. 21660/18) — ECtHR

The case was brought by 17 nationals of Nigeria and Ghana. The applicants sent a distress signal to the Italian coastguard to be rescued in the Mediterranean. The Italian authorities notified the so-called Libyan coastguard who engaged in dangerous manoeuvres during the rescue operation leading to the drowning of multiple persons, including the applicants' two children. Sea Watch 3 rescued 15 of the applicants, currently present in Italy. Two applicants, R.J. and E.R.O., who remained on board of the Libyan vessel, were allegedly tied up with ropes, beaten and threatened by the crew; they were taken to a detention camp in Libya, where they were allegedly subjected to ill-treatment and violence. On an unspecified date, they were repatriated to Nigeria under the International Organization for Migration Assisted Voluntary Humanitarian Return programme.

226 The term "border violence" is not used in any of the statute or current case law at the EU level.

The applicants raised complaints under Article 2 (right to life) and Article 3 (prohibition of torture and inhumane or degrading treatment) of the European Convention on Human Rights (ECHR), as well as under Article 4 of Protocol 4 (prohibition of collective expulsions).

Conclusions:

- This case is currently still pending judgement by the ECtHR.

Alkhatib and Others v. Greece (Application No. 3566/16) – ECtHR[227]

The case was brought by the son of a man who was shot by the Greek coastguard during an attempted pushback. In 2014, the Greek coastguard located an unidentified vessel near the island of Pserimos in the early hours of the morning. After ordering it to stop, ramming the vessel and firing warning shots without success, shots were fired at the outboard engine to disable the vessel. Several people were seriously injured and the applicant's father shot in the head. Though the applicant's father survived the event itself, the ECtHR reiterated that Article 2 is applicable even where a victim survives if the force used is potentially lethal and the fact of their survival is fortuitous.

Conclusions:

- There had been a violation of Article 2 under its procedural head as there had been shortcomings in the investigation conducted by the national authorities, leading in particular to the loss of evidence (affecting the adequacy of the investigation). Amongst other things, it had been impossible to determine whether the use of potentially fatal force was justified in the particular circumstances of the case;
- There had been a violation of Article 2 under its substantive head as Greece had not complied with its obligation to introduce an adequate legislative framework governing the use of potentially lethal force in the area of maritime surveillance operations; and
- The coastguards, who could have presumed that the boat being monitored was transporting passengers, had not exercised the necessary vigilance in minimising any risk to life and had therefore used excessive force in the context of unclear regulations on the use of firearms. Greece had failed to demonstrate that the use of force had been “absolutely necessary” for the purposes of Article 2, as the aim of arresting the vessel's captain did not warrant the 13 potentially lethal gunshots fired at the boat's engine (even in circumstances where the captain was himself conducting potentially dangerous manoeuvres to evade the coastguard).

Shahzad v. Hungary (No. 2) (Application No. 37967/18) – ECtHR

The case was brought by an applicant who suffered violence at the border between Hungary and Serbia. In the applicant's previous case (***Shahzad v. Hungary*** (Application No. 12625/17) – discussed further below), the Court found violations of Article 13 and Article 4 of Protocol No. 4 with regard to the applicant's apprehension and removal to Serbia by Hungarian authorities, without him being provided with an effective means of legally entering Hungary or having his situation specifically examined. Here, the applicant complained that – upon arriving at the Hungarian border gate – he was intercepted by police together with a group of other migrants and punched, kicked and beaten with a metal rod (to the point of losing consciousness). The group was then sent back to Serbia, and the police burnt the group's belongings left at the border.

Conclusions:

- The conduct to which the applicant was subjected breached Article 3, and there was a sufficiently strong presumption that the Hungarian police were to blame. A member of the Hungarian police had filmed the group's arrival at the border, and it was apparent that the applicant was unharmed; photographs taken fifty minutes later showed him bleeding, and a medical certificate issued a few hours later showed serious head wounds (together with bruises and bleeding all over his body);

227 See also, Advancing Accountability – Verfassungsblog.

- In tandem with the fact that (a) the police video recording stopped just at the moment certain officers discussed "*taking out*" some members of the group; and (b) international human rights bodies have reported on prior misconduct with the Hungarian police, this was enough to shift the burden of proof onto the Hungarian government to provide an alternative explanation as to how and when the applicant's injuries were sustained. Given their failure to do so, the Court was willing to find a breach of the substantive aspect of Article 3; and
- Although the Hungarian authorities had collected video footage, obtained copies of police and medical reports, obtained for the translation of the applicant's medical reports from Serbia, and interviewed 15 police officers present at various points, the investigation was mainly confined to interviewing police officers involved in the incident and thus relied mostly on the statements of the alleged perpetrators. This was despite the fact that there were concerns regarding the credibility and consistency of those accounts. In circumstances where they also failed to interview the applicant, order a forensic medical assessment of his injuries, and take all necessary investigative measures to resolve the factual contradictions and uncertainties they faced, the Court found that Hungary breached the procedural aspect of Article 3 by failing to conduct an effective investigation.

It should be noted that under EU law there is no separate crime of committing border violence. Further, the term "border violence" is not readily defined in case law, statute or in academic literature. Instead, the term "pushback" or "violent pushbacks" will be employed when discussing violence experienced by people on the move at border crossings:

- In considering pushbacks, the Border Violence Monitoring Network states that pushbacks are:[228]

  > *"*informal cross-border expulsions (without due process) of individuals or groups to another country. This lies in contrast to the term "deportation", which is conducted in a legal framework, and "readmission" which is a formal procedure rooted in bilateral and multilateral agreements between states. The expulsion of a group of people, in the absence of legal procedures and without an individual examination of each case, is prohibited under international law. In the past ten years, pushbacks have become an important, if unofficial, part of the migration regime of EU countries and elsewhere. The term "pushback" itself is a definition that came to initially describe the unfolding events along the EU borders of Hungary and Croatia with Serbia in 2016, after the closure of the Balkan route. The practice is now a hallmark of border externalisation which reaches from the Greek-Turkish border, all the way to the Slovenian-Italian-Austrian borders."
- The Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary, or arbitrary executions given at the UN General Assembly (UN Doc. A/72/355, 15 August 2017, at 33) stated that "Push-back measures … may also amount to excessive use of force wherever officials place refugees or migrants intentionally and knowingly in circumstances where they may be killed or their lives endangered because of the environment";
- In referring to several reports from NGOs and human rights institutions, the European Parliament has stated that:[229]

  > "pushbacks often involve excessive use of force by EU Member States' authorities operating at external borders, and degrading and inhuman treatment of migrants and their arbitrary detention. Furthermore, the European Border and Coast Guard Agency (Frontex), has been accused of failing to safeguard people against human rights violations at the EU's external borders."

228 Border Violence Monitoring Network, "Understanding Pushbacks".

229 K. Luyten, "Addressing pushbacks at the EU's external borders", European Parliamentary Research Service (2022).

In a lot of the guidance and literature prepared by European-based bodies (for example, the Council of Europe and the European Commissioner for Human Rights), pushbacks and border violence are discussed hand-in-hand.[230]

Border Violence is often used as an umbrella term to refer to different forms of violence experienced by people on the move, including torture, ill treatment, illegal use of force, use of electric discharge weapons, forced undressing, threats or violence with a firearm, inhuman treatment, sexual or gender-based violence, hate crimes, and theft of personal belongings.[231]

Some literature refers to the concept of "externalisation" (i.e., the process of shifting functions (either through body of laws, policies and practices) normally undertaken by a State within its own territory so they take place, in part or in whole, outside its territory to discuss the issue of border violence) as being key to border control.[232]

230 See for example: (i) the statement by the Commissioner for Human Rights on 19 June 2020: "Pushbacks and border violence against refugees must end" (here); and (ii) the statement by the Commissioner for Human Rights on 21 October 2020: "Croatian authorities must stop pushbacks and border violence, and end impunity" (here).

231 Border Violence Monitoring Network, "Types of violence".

232 D. Cantor, N. Feith Tan, M. Gkliati & E. Mavropoulou, "Externalisation, Access to Territorial Asylum, and International Law", International Journal of Refugee Law, Volume 34: Issue 1 (2022), pages 120 to 156.

Child / Minor

***Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (Application No. 13178/03) – ECtHR**

The first applicant had obtained refugee status and indefinite leave to remain in Canada and had asked her brother, a Dutch national, to collect her five-year-old daughter (the second applicant) from the country of origin, where the child was living with her grandmother, and to look after the child until she was able to join her. Upon arrival in Belgium, instead of facilitating the reunification of the two applicants, the authorities detained and subsequently deported the second applicant to the country of origin.

Conclusions:

- There was a violation of Article 3 in respect of the second applicant as she had been held in the same condition as adults, which had caused her considerable distress. The measures taken by the Belgian authorities informing the first applicant of the position, giving her a telephone number where she could reach her daughter, appointing a lawyer to assist the second applicant and liaising with the Canadian authorities and the Belgian embassy in Kinshasa – were far from sufficient to fulfil the Belgian State's obligation to provide care for the second applicant. The applicants' young age was also a significant factor;
- There was also a violation of Article 3 in respect of the first applicant as the only action the Belgian authorities took was to inform her that her daughter had been detained and to provide her with a telephone number where she could be reached. As a result, the first applicant suffered deep distress and anxiety as a result of her daughter's detention;
- There was a violation of Article 8; as the second applicant was an unaccompanied foreign minor, the Belgian State was under an obligation to facilitate the family's reunification; and
- There was a violation of Article 5(1) as the second applicant was detained in a closed centre intended for illegal immigrants in the same conditions as adults; these conditions were consequently not adapted to the position of extreme vulnerability in which she found herself as a result of her position as an unaccompanied foreign minor.

In the "European legal and policy framework on immigration detention of children", the European Union Agency for Fundamental Rights states that a child's right to protection and care and the principle of the best interests of the child are the starting points when examining deprivation of liberty of children.

Unaccompanied and Separated Minors

Article 8 of the ECHR states:

> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In its guidance, the European Council for Refugees and Exiles states:[233]

> "The right to family reunification, interpreted both as a self-standing right protected under EU law and as the obligation that can arise when observing a child's right to family and private life, is crucial to ensure that unaccompanied children fleeing persecution can enjoy family life where this is no longer possible in their country of origin or former residence. Without being reunited with their family, refugee and asylum-seeking children have poorer integration prospects and endure significant psychological suffering."

***Abdullahi Elmi and Aweys Abubakar v. Malta* (Application Nos. 25794/13 and 28151/13) – ECtHR**

The applicants, Somali nationals, entered Malta irregularly (and separately) by boat. Upon arrival, both were registered and during the registration process, informed the immigration police that they were underage (the first applicant was 16 and the second applicant was 17). Neither could speak English but were presented with two documents in English, a Return Decision and a Removal Order. Both applicants claimed that the contents of the documents were not explained to them. Both applicants were then held in detention (with other adult men) for over eight months during which time age verification tests were undertaken.

Conclusions:

- There was a violation of Article 3 on the basis that the applicants were minor and had been detained for a period of around eight months in conditions that were not fit for children (i.e., they didn't receive proper counselling and educational assistance, nor were any entertainment facilities provided for persons of their age);
- There was a violation of Article 5(1) as the applicants had been detained for a period of eight months (which could not be justified given their age even if the authorities were undertaking the age verification process); and
- There was no violation of Article 5(2) as the applicants' complaint did not comply with the six-month rule.
- In respect of the detention conditions, the applicants referred to international reports (including by the European CPT and the ICJ) which had previously reported on the conditions of where the applicants were being held.

233 European Council on Refugees and Exiles, "ECRE/ELENA Legal Note 4: on Ageing out and Family Reunification", European Legal Network on Asylum (2018), page 3.

M.H. and S.B. v. Hungary (Application Nos. 10940/17 and 15977/17) – ECtHR

The two applicants, who are Afghan and Pakistani nationals respectively, were born in 2000 and entered Hungary in 2016. In their immigration interviews, they said that they were adults and were detained. Shortly afterwards, they requested to be released from detention on the grounds that they were unaccompanied minors. The Hungarian authorities said that they had no doubts about the applicants' age because they had previously declared themselves to be adults but said that they could prove their age by submitting an original identity document or having an age assessment carried out at their own expense. After three months and two months of detention respectively, each applicant provided evidence to show that they were a child. The second applicant alleged that the police had recorded his date of birth upon arrival but his statement that he was a minor was ignored, and that his detention had inflicted serious trauma and suffering.

Conclusions:

- There was a violation of Article 5(1). Under Hungarian law, unaccompanied minor asylum-seekers could not be detained under any circumstances. The Court recognised the applicants appeared to initially say they were adults – meaning that the authorities were entitled to have concerns as to the basis of their changing account. However, the mere fact that the applicants changed their account could not justify dismissing those claims without taking appropriate measures to verify their age;
- Following ***Mubilanzila***, a child's extreme vulnerability takes precedence over considerations relating to his or her status as an irregular migrant – and there might be understandable reasons prompting a child immigrant not to reveal their age. The Hungarian authorities had extended the applicants' detention without in any way addressing their claims to be a minor, and there was no indication that the delays in establishing their age were necessary; and
- The Hungarian authorities should have given the applicants the benefit of the doubt in claiming to be children and considered their best interests. The Hungarian authorities therefore failed to act expeditiously and with due regarding to the applicants' best interests, and their detention after claiming to be minors was arbitrary and not carried out in good faith.

J.B. and Others v. Malta (Application No. 1766/23) – ECtHR

This application was brought by six Bangladeshi nationals who arrived in Malta after being rescued at sea along with around 40 others, and who alleged they were 16 or 17 years old at the time. The entire group was taken to a detention centre, which they complained was inappropriate and overcrowded. An initial age assessment found the six to be 18 or over; although all six appealed that decision, some subsequently signed documents saying they were adults. However, the appeal process was reinstated because those documents had been signed without a legal representative and interpreter present. 5 of the applicants were found to be children on appeal and moved to an open centre for minors. J.B. was transferred to an adult section of a different detention centre, having had his passport (which showed that he was an adult) authenticated.

Conclusions:

- Despite being presumed minors, 5 of the applicants had been detained with adults for around two months (with their detention conditions only improving after a successful application for interim measures. Though the information provided to the Court lacked enough detail to substantiate the applicants' claims of overcrowding, certain third-party reports indicated that their allegations were correct – and, in combination with (a) the applicants' age; (b) the time they were detained; (c) their vulnerability as unaccompanied minors; and (d) the effects of detention on their mental health, the Court was willing to find a violation of Article 3. Although J.B. had been subject to the same conditions, the threshold of Article 3 was not met because he was not a minor;
- The need to detain children in an immigration context must be carefully considered, and the five months to confirm the applicants' age gave cause to doubt the authorities' good faith. At no stage was any alternative to detention envisioned, and no age assessment was completed. The Court therefore found breaches of Article 5(1) in respect of 5 applicants,

though this did not include J.B. because he was not a child and his conditions of detention did not breach Article 3; and

- For all applicants, the Court also found breaches of Articles 5(4), 13 and 46.

***A and S* (Case C-550/16) – CJEU:**

The main proceedings concern an Eritrean girl who applied for asylum in the Netherlands in February 2014 and who attained the age of majority less than four months later. In October 2014, she was granted refugee status and received a residence permit with effect from the date on which her application was submitted. She applied for family reunification with her parents and her three minor brothers, which was rejected on the ground that she was no longer a minor at the date on which the application for family reunification was submitted. On appeal, the District Court of the Hague considered, on the basis of Article 2(f) of the Family Reunification Directive, that, in principle, the status of an unaccompanied minor must be determined by reference to the moment of entry of the person concerned into the territory of the Member State. Prior to this decision, the Dutch Council of State had held, instead, that attaining the age of majority ("ageing out") after arrival may be considered for assessing if a child can be considered an "unaccompanied child" under the relevant Directive.

The District Court of The Hague referred a question to the Court of Justice for a preliminary ruling, asking whether a child entering and asking for international protection in an EU Member State attaining majority during the proceedings shall be still seen as a child for the purpose of family reunification, once (s)he applies for it.

Conclusions:

- Article 2(f) of Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 10(3)(a) thereof, must be interpreted as meaning that a third-country national or stateless person who is below the age of 18 at the time of his or her entry into the territory of a Member State and of the introduction of his or her asylum application in that State, but who, in the course of the asylum procedure, attains the age of majority and is thereafter granted refugee status, must be regarded as a 'minor' for the purposes of that provision.

***Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (Application No. 13178/03) – ECtHR** See under 'Child / Minor' above.

Crime Against Humanity

Although the ECHR does not provide a clear definition of "crime against humanity", the Court has made clear that it conceives of this phrase within the parameters set out in international law[234] – including the Charter of the Nuremberg Tribunal of 1945 (which, amongst other instruments, Resolution No. 95 of the General Assembly of the United Nations declared would be "made a permanent part of the body of international law as quickly as possible" in 1946[235]). This is a living term which changes through time, and the Court will construe its meaning in accordance with the body of international legal instruments built up at the relevant moment.[236]

There is no separate definition of "crime against humanity" in EU law. All case law and literature refer to the examples as set out in Article 7 of the Rome Statute,[237] or the definitions which exist at individual state-level. Additionally, there has been very little consideration by the Council of Europe, the European Commission or other European bodies regarding the applicability of crimes against humanity in an EU context.

In a 2017 report, Agnes Callamard (the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions) detailed how border externalisation policies, including "assisting, funding, or training agencies in other countries to arrest, detail, process, rescue, or disembark and return refugees or migrants", raised serious concerns where the recipient states are alleged to be responsible for serious crimes.[238]

Callamard's successor, Nils Melzer, detailed in his 2018 report to the UN General Assembly that the widespread crimes against humanity committed against migrants in Libya have a causal connection to certain external policies.[239]

Further, Violeta Moreno-Lax and Mariagiulia Giuffré discuss how the EU-Libya cooperation and the Italy-Libya memorandum of understanding are forms of "contactless control" which present new challenges to determine responsibilities as the strategy launched by the EU has effectively transferred all management to Libya and its agents with the aim of eluding all possibilities of international legal responsibility.[240]

Korbely v. Hungary (Application No. 9174/02) – ECtHR:

In 1993, the Hungarian Parliament passed legislation that provided for the non-applicability of the statute of limitation with respect to war crimes and crimes against humanity in respect of the events of the 1956 Hungarian Revolution. Subsequently, a Hungarian court convicted the applicant of multiple homicide constituting a crime against humanity which took place during the revolution. The applicant brought an application in the ECtHR alleging that he had been convicted for an action which did not constitute any crime at the time when it had been committed.

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234 See, for example, ***Kolk and Kislyiy v. Estonia*** (Application Nos. 23052/04 and 24018/04), in which the Court noted that the deportation of a civilian population was expressly recognised as a crime against humanity in the Charter of the Nuremberg Trial of 1945.

235 UN General Assembly Resolution 95(1).

236 For example: in ***Korbely v. Hungary*** (Application No. 9174/02), the Court was required to examine whether the relevant act was capable of amounting to a crime against humanity as that concept was understood in 1956.

237 Rome Statute.

238 UNGA 2018, "Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions", Established by UNGA Res 71/198 (15 August 2017) 72nd Session (2017) UN Doc A/72/335, pages 10 – 36.

239 UNGA. 2018, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment", Established by HRC Res 34/19 (23 November 2018) 37th Session (2018) UN Doc A/HRC/37/50, page 13.

240 V Moreno-Lax and M. Giuffré, "The Rise Of Consensual Containment: From "Contactless Control" To "Contactless Responsibility"", Research Handbook on International Refugee Law, 31 July 2017, page 3.

Conclusions:

- The ECtHR found that it had not been shown that it was foreseeable that the applicant's acts constituted a crime against humanity under international law, and therefore there had been a violation of Article 7;
- In coming to this conclusion, the ECtHR was required to consider whether the act in respect of which the applicant was convicted was capable of constituting, at the time when it was committed, a crime against humanity under international law; and
- In considering the definition of "crime against humanity" (as it was understood in 1956), a number of principles were stated by the ECtHR
    - murder is one of the offences capable of amounting to a crime against humanity;
    - the presence of an element of discrimination against, and persecution of, an identifiable group of persons;
    - the crime should not be an isolated or sporadic act but should form part of "State action or policy" or of a widespread and systematic attack on the civilian population; and
    - the court noted that the requirement for there to be a link or nexus with an armed conflict was no longer relevant by 1956.

Degrading Treatment or Punishment

Article 3 of the ECHR states that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Article 3 refers to two separate categories: torture and inhumane or degrading treatment or punishment.

“Inhuman treatment” must reach a minimum level of severity, and “cause either actual bodily harm or intense mental suffering”. It need not be deliberate nor inflicted for a purpose. In the typical case of injuries in custody, where a person is in good health before arrest or detention and is proved to be injured after it, the burden of proof is on the authorities to show force was not used, or was not excessive, or was justified by the victim's own conduct. Undue restraint during arrest or of a psychiatric patient can also amount to inhuman treatment.[241]

“Degrading treatment” involves humiliation and debasement as opposed to physical and mental suffering. As with inhuman treatment, it does not have to be deliberate. It is most often the conditions of detention that are degrading, for example, dirty and overcrowded conditions over a prolonged period (***Kalashnikov v. Russia*** (Application No. 47095/99)). The same conditions may also be inhuman if severe enough.[242]

Inhuman treatment must be premeditated and applied for a long time causing actual bodily injury or intense physical and mental suffering.[243]

M.H and others v. Croatia (Application Nos. 15670/18 and 43115/18) – ECtHR

The applicants are an Afghan family of fourteen. A number of the applicants, including M.H, entered Croatia from Serbia while the other applicants remained in Serbia. The Croatian police officers approached the group while they were resting in a field. The group told the police officers that they wished to seek asylum, but the officers took them to the border where they told them to go back to Serbia by following the train tracks. The group started walking and a train passed and hit one of the children, M.H, and died. The group was taken to a police station where they were then returned to Serbia.

Conclusions:

- There was a breach of the procedural limb of Article 2 as there was an ineffective criminal investigation into M.H’s death after alleged denial of opportunity to seek asylum and order made by Croatian police to return to Serbia;
- There was no violation of Article 3 regarding degrading treatment in respect of the adult applicants, but there was a violation in respect of the child applicants;
- The applicants’ detention was not in compliance with Article 5(1) of the Convention; and
- There was a violation of Article 4 of Protocol No. 4 to the Convention as the removal to Serbia of the first applicant and the five child applicants was of a collective nature.

The Court relied on the statements of various witnesses, including family members and the doctor who attended the scene when MH had been struck by the train.

Although not adduced, the Court also stated that obtaining GPS locations from both the applicants' and police officers' phones would be “an obvious item of physical evidence” (at paragraph 158) to prove that the applicants had entered Croatian territory before being pushed back.

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241 Council of Europe, “Prohibition of torture“.

242 Ibid.

243 Border Violence Monitoring Network, “A Violence Reporter's Guide to Identifying & Documenting Cases of Torture“, (2023), page 13 (citing ***Kudla v. Poland*** (Application No. 30210/96)).

H.M and Others v. Hungary (Application No. 38967/17) – ECtHR

The case concerned the confinement of an Iraqi family, including four children, in the Tompa transit zone at the border of Hungary and Serbia between 3 April and 24 August 2017. The first applicant was a torture survivor who had required but had not received any psychiatric or psychological treatment in the transit zone. The second applicant was pregnant upon arrival at the transit zone and experienced complications. During the confinement, the first applicant alleged that he had been handcuffed and attached to a leash when he had accompanied the second applicant to hospital, escorted by police officers.

Conclusions:

- There was a violation of Article 3 with respect to the second applicant as the constraints to which she was subjected throughout her pregnancy must have caused her anxiety and psychological suffering and which, given her vulnerability, attained the threshold of severity required to engage Article 3;
- There was a violation of Article 3 regarding the child applicants taking into account the services provided at the Tompa transit zone and their length of stay (i.e., over four months);
- There was a violation of Article 3 with respect to the first applicant as the handcuffing and the use of leash was not imposed in connection with lawful arrest or detention, and the absence of any discernible security risk or other legitimate reason warranting the measure diminished his human dignity and was in itself degrading; and
- There was a violation of Article 5(4) and (1) as the applicants' stay for almost four months in the transit zone amounted to a de facto deprivation of liberty.

A.E. and Others v. Italy (Application Nos. 18911/17, 18941/17 and 18959/17) – ECtHR

The case concerned nine Sudanese nationals who arrived in Italy by boat in the summer of 2016, and who the Italian authorities attempted to remove. The case also concerned the applicants' complaints about their arrest, transportation and detention in Italy. After being detained, the applicants were taken to a police station and searched, asked to undress, and left naked for around ten minutes. They were then transferred to a detention centre via a 15-hour bus journey where they were under constant police control, in a climate of violence and threats, without sufficient food or water at the height of summer. One applicant alleged that he had been beaten by police, forced onto a plane and tied up in an attempted forced removal. Four applicants were ultimately granted international protection, whilst five claimed to have been expelled soon after arrival.

Conclusions:

- Because they had been granted international protection, the complaint by four applicants that the Italian authorities had not considered the risk of inhuman treatment if they were returned to Sudan was inadmissible. However, 3 applicants had not been served with refusal-of-entry orders until late on (and, without documentation, had been arrested and transferred to an area they could not leave) and this amounted to an arbitrary deprivation of liberty in breach of Article 5;
- There was a breach of Article 3 due to the conditions of the applicants' arrest and the bus transfers to the detention centres taken together, which caused considerable distress and feelings of humiliation that amounted to degrading treatment. In particular, there was not a compelling enough reason to justify the applicants being left naked together with many other migrants, with no privacy and while guarded by the police (though the Italian government argued it was necessary for the applicants to be medically examined); and
- The applicants' long bus transfers had also taken place over a short space of time and at a very hot time of year, without sufficient food or water and without them knowing where they were going or why. Cumulatively, such conditions were a source of distress.

In the case ***Hirsi Jamaa and Others v. Italy*** **(Application No. 27765/09)**, the Grand Chamber of the ECHR unanimously ruled that Italy's pushback operations intending to return migrants and refugees at sea to Libya amounted to a violation of the prohibition of torture and other inhuman or degrading treatment under Article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) because Italy "knew or should have known" that migrants and refugees would be exposed to treatment in breach of the ECHR in Libya (European Court of Human Rights 2012).

Deportation / Removal / Forced Return / Expulsion

Guideline 1 of the Council of Europe's "Twenty Guidelines on forced return" underlines that host states should take measures to promote voluntary returns, which should be preferred to forced returns (given that the latter contains a higher risk of ECHR violations).

The ECtHR has rarely been called on to consider the actual manner of removal. However, practitioners expect case law under Articles 2, 3 and 8 (relating to the authorities' use of force in general, the need to protect individuals from harm and the authorities' procedural obligation to investigate their handling of situations allegedly subjecting an individual to serious harm) can be expected to apply.

In applying these standards, the ECtHR will consider whether an individual's particular vulnerabilities (e.g., age, pregnancy or mental health concern) have been taken into account, and migrants in an irregular situation subject to removal (e.g., if they have credibly threatened to end their lives) need to be attested as "fit to travel".[244] Transferring an individual whose state of health is particularly poor may in itself result in the individual concerned facing a real risk of being subjected to treatment contrary to Article 3 (***Khachaturov v. Armenia*** (Application No. 59687/17)).

A breach of confidentiality might engage Article 8 and, where a breach would lead to risk of ill-treatment upon return, Article 3 (e.g., ***X v. Sweden*** (Application No. 36417/17), where the disclosure of information that the returnee was a terrorist suspect may lead to a risk of ill-treatment).

Deportations, or "returns" as they are referred to in EU law, must be preceded by individualised assessments to ensure the person deported will not be exposed to the risk of direct or indirect refoulement. Under EU law, forced returns are regulated by the Return Directive (2008/115/EU); activities carried out by Frontex in the area of return are regulated by Regulation (EU) 2019/1896; and coordinated joint removals by air are regulated by Council Decision 2004/573/EC.

Under the Return Directive:

- Article 5 requires that the individual's state of health be taken into account in the removal process (which, in the case of return by air, typically requires medical staff to certify that the person is fit to travel). Article 5 also requires that due account be given to the right of family life when implementing removals;
- Article 8 requires that coercive measures only be used as a last resort, and that they be proportionate and not exceed reasonable force;
- Article 9 stipulates that the person's physical and mental health condition may also be the reason for a possible postponement of the removal; and
- Article 10 stipulates that unaccompanied children only be returned to family members, a nominated guardian, or adequate reception facilities.

Mubilanzila Mayeka and Kaniki Mitunga v. Belgium **(Application No. 13178/03) – ECtHR** See above under 'Child / Minor'.

Khachaturov v. Armenia **(Application No. 59687/17) – ECtHR**

The case concerned a Russian national of Armenian origin, who faced extradition to Russia where criminal proceedings for attempted bribe-taking were pending. The applicant contended that, under Articles 2 and 3, his medical condition did not render him fit for being transferred either by air or land.

244 "Handbook on European law relating to asylum, borders and immigration", Publications Office of the European Union (2020), pages 235 and 236.

Conclusions:

- The applicant had provided detailed medical information from several doctors, including the chief neurologist of Armenia, attesting to severe cardiovascular and nervous disorders (with associated risks of stroke if he were to travel). No evidence had been put forward to doubt the credibility of this information, and the authorities had not initiated their own assessment of his state of health;
- The risk to the applicant's health was therefore established, in circumstances where the authorities had failed to properly assess the risks of transfer (relying only on medical assurances provided by Russia); and
- Transferring the applicant, even in the presence of an accompanying doctor, would carry a real risk of him being subjected to treatment contrary to Article 3. There would therefore be a violation of Article 3 if the applicant was extradited without the Armenian authorities having assessed the risk faced in view of his health.

Ali v. Serbia (Application No. 4662/22) – ECtHR

The case concerned a Bahraini national who was extradited by Serbia based on an international arrest warrant issued by Interpol, who argued that he faced a real risk of torture and ill-treatment in Bahrain as a result of his political activism. This extradition occurred in spite of an interim measure issued by the Court. Since being extradited, the applicant reported that he had been subjected to serious maltreatment in Bahrain.

Conclusions:

- Serbia had violated Article 3 by failing to properly assess the risk of ill-treatment before extraditing the applicant; and
- Serbia had also violated Article 34 by disregarding the interim measure issued by the Court.

M.I. v. Switzerland (Application No. 56390/21) – ECtHR

The case concerned an Iranian national who sought asylum in Switzerland, arguing that he faced a real risk of harm in Iran due to his sexual orientation. The Swiss authorities rejected his asylum claim on the basis that he would not be at risk if he lived his private life discreetly upon returning to Iran. The applicant argued that the Swiss authorities had failed to properly assess the risk of removing him to a country where homophobia is widespread.

Conclusions:

- The Swiss authorities should not have assumed that discretion about sexual orientation would protect the applicant from harm. As the general human rights situation in Iran is not in itself such as to preclude the expulsion of an Iranian national, the Court must therefore assess whether the applicant's personal circumstances are such that he would run a real risk of being subjected to treatment contrary to Article 3 if deported to Iran;
- Although the authorities did not dispute the applicant's sexual orientation, they failed to conduct a fresh assessment of his risk of ill-treatment – or of whether state protection against ill-treatment by non-state actors was available. In the absence of this, his removal to Iran would breach Article 3; and
- This case can be counterposed against ***Y and Others v. Switzerland*** (Application No. 9577/21), in which an appeal against the Swiss authorities' rejection of asylum claims by a family of seven Albanian nationals was rejected by the Court because Albania is generally a safe country – and Switzerland had sufficiently assessed any individual risks specific to the applicants.

Detention

The ECtHR provides guidance regarding determining the distinction between a restriction on liberty of movement and deprivation of liberty in the context of confinement of foreigners in transit zones and reception centres for the identification and registration of migrants. The factors taken into consideration by the Court may include:[245]

- the applicants' individual situation and their choices;
- the applicable legal regime of the respective country and its purpose;
- the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events; and
- the nature and degree of the actual restrictions imposed on or experienced by the applicants.

Saadi v. The United Kingdom (Application No. 13229/03) – ECtHR

The applicant fled the Kurdish Autonomous Region of Iraq to the UK where he immediately claimed asylum. The applicant was detained. At the time of being detained, the applicant was handed a standard form, "Reasons for Detention and Bail Rights", indicating that detention was used only where there was no reasonable alternative, and setting out a list of reasons, such as risk of absconding, with boxes to be ticked by the immigration officer where appropriate; however, for 76 hours he was not told that he was being held in a centre for those considered unlikely to abscond and whose applications could be dealt with by a 'fast-track' procedure.

The applicant's asylum claim was initially refused on 8 January. The following day he was released from detention and again granted temporary admission pending the determination of his appeal. He was later granted asylum.

Conclusions:

- Article 5(1)(f) of the ECHR permits detention of asylum seekers to prevent them from effecting 'an unauthorised entry' into the territory of a state; an entry remains 'unauthorised' until formally authorised by the national authorities;
- Article 5(1) was not violated by the applicant's detention, which was lawful and in suitable conditions. The national authorities acted in good faith in detaining the applicant. Additionally, the purpose of the deprivation of liberty was to enable the authorities quickly and efficiently to determine the applicant's claim to asylum, and so his detention was closely connected to the purpose of preventing unauthorised entry. The applicant was detained for seven days, and released the day after his claim to asylum had been refused at first instance. This period of detention could not be said to have exceeded that reasonably required for the purpose pursued; and
- Article 5(2) had been violated by the 76-hour delay in informing the applicant of the nature of his detention.

Khlaifia and Others v. Italy (Application No. 16483/12) – ECtHR

The case concerned three Tunisian nationals, who sought to enter Italy by boat and were intercepted by the Italian coastguard. Having been kept in a reception centre in Lampedusa in squalid conditions, they escaped and joined a protest before being flown to Palermo and placed on ships on which conditions were also squalid.

245 ***Z.A. and Others v. Russia*** (Application Nos. 61411/15, 61420/15, 61427/15 and 3028/16), [138]; ***Ilias and Ahmed v. Hungary*** (Application No. 47287/15), [217] - [218].

Conclusions:

- Article 5's requirement that any deprivation of liberty is in accordance with domestic legislation does not simply refer to the existence of such legislation, but also its quality and compatibility with the rule of law;
- The conditions in Lampedusa and on the boats in Palermo amounted to a violation of Article 5(1), (2) and (4). In circumstances where the applicants had received no formal decision of detention, there was no legal basis for their deprivation of liberty, and the applicants had not been informed of the legal reasons for, or the possibility of challenges to, their detention (with awareness of their migration status insufficient);
- Although the refusal-of-entry orders did not contain any reference to the individual situations of the claimants, and individual interviews with them had not taken place, this did not amount to a violation of Article 4 of Protocol No 4. This provision does not guarantee the right to an individual interview under any circumstance and can be satisfied where the applicant has a genuine and effective ability to raise arguments relating to their expulsion which will be properly examined, as here. The use of simple-form refusal-of-entry orders was also justified in circumstances where they had been used on a large number of Tunisian migrants at that time, whose circumstances were similar. The almost simultaneous removal of the three applicants was also insufficient to establish a collective nature, as it was the result of consecutive individual refusal-of-entry orders; and
- The applicants had been deprived of the right to an effective remedy in relation to Article 3, in violation of Article 13. However, in circumstances where an applicant does not allege a real risk of Article 2 or 3 rights being violated in the country to which they are removed, states are not under an obligation to guarantee an automatically suspensive remedy; they need only provide the possibility of challenging the expulsion decision through a sufficiently thorough examination.

Suso Musa v. Malta (Application No. 4233712) – ECtHR

The case concerned a Sierra Leone national who entered Malta irregularly. Having been arrested and detained, he was presented with a removal order and applied for asylum. Pending the resolution of his asylum proceeding, he challenged the legality of his detention. His application was rejected after more than a year, and the applicant complained that (a) his detention up to the date of the determination of his asylum application violated Article 5(1)(f); and (b) he was not provided with information regarding the specific reasons for his detention, violating Article 5(2).

Conclusions:

- Article 5(1)(f) continues to apply until the individual has been granted formal authorisation to stay, which largely depends on national law. However, detention can be justified only as long as deportation proceedings are in progress (unlike here); if such proceedings are not prosecuted with due diligence and in good faith, the detention ceases to be permissible. Here, the applicant had remained in detention after the time when the authorities knew there was no prospect of deporting him;
- Article 5(1) had also been violated as a result of the inadequate conditions in which he was held (with the ECtHR taking account of reports from CPT and ICJ on the conditions in question, and reiterating that they could amount to treatment contrary to Article 3); and
- The ECtHR rejected the applicant's complaint under Article 5(2) as manifestly ill-founded but found a violation of Article 5(4) on the basis that none of the remedies in Malta could be considered sufficiently speedy.

Akkad v. Turkey (Application No. 1557/19) – ECtHR

The case concerned a Syrian national who had been living in Turkey since 2014 under temporary protection status. In 2018, he unsuccessfully sought to enter Greece and was arrested by the Turkish authorities and summarily deported to Syria two days later. The applicant contended that he had

been forced by the Turkish authorities to sign a voluntary return form at the Syrian border. Upon his return, he was apprehended by armed militants and beaten.

Conclusions:

- (1) Returning the applicant to Syria knowing that the territory to which he was transferred was a war zone created a real risk of treatment contrary to Article 3; (2) Turkish law had been violated by removing an individual granted temporary protection status without exceptional circumstances; and (3) handcuffing the applicant during his detention and transfer with no justification in the context of lawful detention amounted to two violations of Article 3;
- The fact that (1) the applicant's removal had not complied with the expulsion procedures and requirements established by Turkish law; and (2) the applicant was returned without any ability to appeal the decision, or access suspensive remedies, violated Article 13;
- The applicant's arbitrary deprivation of liberty, and the transgression of various legal safeguards (e.g., not informing him of the reasons for his detention or allowing him access to a lawyer) amounted to a violation of Article 5(1), (2), (4) and (5); and
- Summarily returning an individual to their country of origin even long after their entry into the territory of the respondent state might constitute a pushback, engaging the ECHR.

B.A. v. Cyprus **(Application No. 24607/20) – ECtHR**

The case concerned a Syrian national who arrived in Cyprus and was detained for over two years and nine months on national security grounds. This was because – having observed wounds on his body during an interview, taken account of the fact he was 23, and noted that he had moved from Damascus to a part of Syria controlled by ISIS – the authorities determined that he matched the profile of a foreign fighter. The authorities failed to provide a speedy review of the lawfulness of the applicant's detention, and delays included a ten-month period of inaction before the COVID-19 pandemic.

Conclusions:

- There was no clear connection between the applicant's detention and the prevention of unauthorised entry, and his detention was not linked to the outcome of his asylum application (or his right to remain in Cyprus). This meant that his detention fell outside the exception of Article 5(1)(f). Article 5(1) had been breached because there was an insufficiently close connection between the ground of national law relied on to justify detention and the prevention of unauthorised entry;
- Even if there had been such a connection, the Court noted that it would have considered the applicant's detention to be arbitrary on account of its length. The applicant's detention was significantly longer than the ***Saadi v. The United Kingdom*** (Application No. 13229/03) and ***Suso Musa v. Malta*** (Application No. 4233712) cases considered above, and the authorities did not point to any difficulties in determining the applicant's age and identity or to the absence of necessary documents which might have justified the length of that detention; and
- Because the applicant had been left without an effective remedy to challenge his detention, Article 5(4) had also been breached. It remains incumbent on a state to ensure that proceedings are conducted as quickly as possible where the liberty of an individual is at stake, and the delays here meant the appeal proceedings had not been conducted “speedily” (as required by Article 5(4)).

See also:

- ***H.M and Others v. Hungary*** (Application No. 38967/17) – ECtHR (see above under ‘Degrading treatment or Punishment’);
- ***M.H and others v. Croatia*** (Application Nos. 15670/18 and 43115/18) – ECtHR (see above under ‘Degrading treatment or Punishment’);

- ***Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*** (Application No. 13178/03) – ECtHR (see above under ‘Child / Minor’);
- ***Abdullahi Elmi and Aweys Abubakar v. Malta*** (Application Nos. 25794/13 and 28151/13) – ECtHR (see above under ‘Unaccompanied and Separated Minors’);
- ***M.H. and S.B. v. Hungary*** (Application Nos. 10940/17 and 15977/17) – ECtHR (see above under 'Unaccompanied and Separated Minors');
- ***J.B. and Others v. Malta*** (Application No. 1766/23) – ECtHR (see above under 'Unaccompanied and Separated Minors'); and
- ***A.E. and Others v. Italy*** (Application Nos. 18911/17, 18941/17 and 18959/17) – ECtHR (see above under 'Degrading Treatment or Punishment').

Discrimination

Article 14 of the ECHR states that the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 does not give a free-standing right. It can only be used in conjunction with another right given by the Convention (or Protocols, if ratified). It may, however, be breached when read with that other right even if the other right on its own is not breached.[246]

In its guidance on the applicability of Article 14, the ECtHR emphasises the ancillary nature of Article 14 in that it does not prohibit discrimination as such, but only discrimination in the enjoyment of the "rights and freedoms set forth in the Convention". The guarantee provided by Article 14 has no independent existence.

The list of grounds for discrimination under the ECHR are not exhaustive. The words "such as" and "or other status" flag up that the list is only illustrative. The Court has also recognised, for example, conscientious objection, disability, illegitimacy and sexual orientation as prohibited grounds of discrimination, and may add more.[247]

However, the EU non-discrimination directives prohibit differential treatment that is based on a fixed and limited list of "protected grounds" covering: sex (Gender Goods and Services Directive, Gender Equality Directive (Recast)), sexual orientation, disability, age or religion or belief (Employment Equality Directive), racial or ethnic origin (Racial Equality Directive).

Indirect discrimination is where a generally applicable law or policy has a disproportionately adverse effect on members of a particular group, even if there is no discriminatory intent. So, a breach was found where a disproportionately high number of children from an ethnic group were sent to special schools for the less able, even though the policy was of general application. The problem was with how the policy had been applied (***D.H. and Others v. the Czech Republic*** (Application No. 57325/00)).[248]

Article 1 of Protocol No. 12 repeats the prohibition on discrimination in identical language to that in Article 14 and extends the scope of protection against discrimination to "any right set forth by law". Article 1 introduces it as a free-standing right. So far relatively few States are parties and there is very little decided case law, so it is hard to give guidance on its likely effect.[249]

Biao v. Denmark **(Application No. 38590/10) – ECtHR**

The applicants included a naturalised Danish citizen of Togolese origin living in Denmark and his Ghanaian wife who complained that their request for family reunification in Denmark had been rejected for non-compliance with statutory requirements. According to Danish law, the permit would be granted if they could demonstrate that their aggregate ties to Denmark were stronger than their attachment to any other country or if they had held Danish citizenship for at least twenty-eight years.

Conclusions:

- The relevant Danish law created a difference in treatment between Danish citizens of Danish origin and those of non-Danish origin, and therefore had a disproportionately prejudicial effect on persons who acquired Danish nationality later in life and who were of ethnic origins other than Danish; and
- Therefore, there had been a violation of Article 14 of the Convention (which the ECtHR read in conjunction with Article 8).

246 Council of Europe, "Prohibition of discrimination".
247 *Ibid.*
248 *Ibid.*
249 *Ibid.*

***Moustaquim v. Belgium* (Application No. 12313/86) – ECtHR**

A Moroccan national had been convicted of several criminal offences and, as a result, was to be deported. The Moroccan national claimed that this decision to deport him amounted to discriminatory treatment. He alleged discrimination on the grounds of nationality, saying that Belgian nationals did not face deportation following conviction for criminal offences.

Conclusions:

- There was no violation of Article 14 as the applicant was not in a similar situation to Belgian nationals, since a State is not permitted to expel its own nationals under the ECHR. Therefore, his deportation did not amount to discriminatory treatment; and
- The ECtHR accepted that he was in a comparable situation to non-Belgian nationals who were from other EU Member States (who could not be deported because of EU law relating to freedom of movement), however it was found that the difference in treatment was justified.

Displacement

Where a foreign power invades a territory and exercises control, and an individual is displaced from that territory, jurisdiction is unlikely to be a barrier to any claim under the ECHR (***Chiragov and Others v. Armenia*** (Application No. 13216/05)). However, there will continue to be a presumption of jurisdiction in favour of the state with internationally recognised possession of the territory, despite any difficulties in exercising state authority at a practical level in the disputed territory (***Sargsyan v. Azerbaijan*** (Application No. 40167/06), in which the ethnic Armenian applicants fled their village during the First Nagorno-Karabakh War in response to bombing by Azerbaijani forces).

In relation to internally displaced persons:

- Article 1 of Protocol No. 1: the Council of Europe Committee of Ministers Recommendation 2006(6) adopted the Guiding Principles on Internal Displacement, and recommended ECHR signatories apply them in every context of displacement. These provide that no one shall be arbitrarily deprived of property and possessions, and ensure protection against destruction and arbitrary illegal appropriation, occupation or use. Displacement frequently engages this point by involving the loss of homes, properties, ancestral graves, lands and monuments;
- Article 8: inevitably, in the context of conflict, destruction of properties, occupation and forceful displacement of people from their homes, the relevant state will have violated both the right to home as well as to the enjoyment of property; there may also be concomitant effects on family life (and, in the case of missing persons, potential violations of Articles 2, 3, 5 and 13); and
- Protocol No. 4 of Article 2: this guarantees free movement within a state to everyone lawfully resident there (subject to restrictions in accordance with the law and necessary in a democratic society), which may be engaged where a displaced individual cannot return home.

The Guiding Principles on Internal Displacement also provide for states to take all necessary and available steps to provide displaced persons with access to adequate housing, all necessary medical care and attention, food and water, education, employment and social protection, and justice.[250]

Chiragov and Others v. Armenia (Application No. 13216/05) – ECtHR

The case concerned six Azeri applicants who lived in territory seized by Armenia in the First Nagorno-Karabakh War (following which, they fled to Baku). The applicants asserted that they could not access their individual houses in the district of Lachin, that Armenia prevented them from returning to their homes, and that they did not receive compensation for this loss.

Conclusions:

- Armenia exercised extraterritorial jurisdiction over Nagorno-Karabakh and the surrounding territories, including Lachin. In preventing the applicants from accessing their homes, Armenia had violated (and continued to violate) Article 1 of Protocol No. 1, Article 8 and Article 13;
- In relation to Article 1 of Protocol No. 1, the ECtHR will consider evidence of ownership of property or residence provided by displaced persons fleeing international or internal armed conflict with flexibility (noting that such persons are frequently unable to take with them documents and titles of ownership, the ECtHR is willing to recognise rights recognised as de facto for generation); "possessions" will be treated as an autonomous concept not depending on the classification under domestic law; and

250 C. Paraskeva, "Protecting Internally Displaced Persons Under the European Convention of Human Rights and Other Council of Europe Standard: A Handbook, Council of Europe Project "Strengthening the Human Rights Protection of Internally Displaced Persons in Ukraine"" (2017).

- In relation to Article 8, the notion of “home” is an autonomous concept which does not depend on the classification under domestic law. Whether or not a habitation constitutes a “home” depends on the existence of sufficient and continuous links with a specific place.

Effective Investigation(s)

Protection afforded by the ECHR includes the right not to be deprived of life (Article 2), the right not to be subjected to torture or other forms of ill-treatment (Article 3), the right not to be subjected to slavery or human trafficking (Article 4) and the right not to be unlawfully or arbitrarily detained (Article 5).

The absolute and non-derogable nature of the prohibitions is clear from the text of the ECHR. Despite the lack of express wording, the Articles place a legal obligation upon States to take positive action in order to prevent breaches of the rights. Without a positive obligation to investigate allegations or other indications of breaches of these rights, the prohibition would be rendered theoretical and illusory, allowing state authorities and their agents to act with impunity.[251]

Although the failure to comply with such an obligation may have consequences for the right protected under Article 13, the procedural obligation is seen as a distinct obligation. It can give rise to a finding of a separate and independent "interference". This conclusion derives from the fact that the Court has consistently examined the question of procedural obligations separately from the question of compliance with the substantive obligation (and, where appropriate, has found a separate violation on that account) and the fact that on several occasions a breach of a procedural obligation has been alleged in the absence of any complaint as to its substantive aspect.[252]

Ramsahai and others v. The Netherlands (Application No. 52391/99) – ECtHR

The case concerned the death of Moravia Ramsahai, the applicants' son and grandson, who was shot dead by a police officer in Amsterdam. A criminal investigation was opened, which was partly conducted by the police force to which the responsible police officer (and his colleague, who was also involved in the incident) belonged. The public prosecutor ultimately concluded that the shooting had been an act of self-defence and decided not to bring a prosecution against the responsible police officer. The applicants brought a complaint about the failure to bring a prosecution, which also argued that the investigation had not been "effective" and "independent".

Conclusions:

- The ECtHR noted that in order to be "effective" (in the context of Article 2 of the ECHR) an investigation into a death must be adequate. This means that it must be capable of leading to the identification and punishment of those responsible. The ECtHR noted that this is not an obligation of result, but one of means. The authorities must take the reasonable steps available to them to secure the evidence concerning the incident;
- In this case, the ECtHR found that the investigation was inadequate as (amongst other things) the failure to test the hands of the officers for gunshot residue, stage a reconstruction of the incident and interview or separate the two responsible police officers was unexplained;
- The ECtHR also held that for an investigation to be "effective", it may generally be regarded as necessary for the persons responsible for it and carrying it out to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection, but also a practical independence. The ECtHR noted that there were 15.5 hours from Moravia Ramsahai's death until the National Police Internal Investigations Department became involved in the investigation and that supervision by another authority, however independent, is not a sufficient safeguard for the independence of an investigation; and
- The ECtHR held that the subsequent involvement of the National Police Internal Investigations Department was insufficient to remove the taint of the police force's lack of independence.

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251 Council of Europe, "Effective investigation of ill-treatment: Guidelines on European standards".

252 European Court of Human Rights, "Guide on Article 2 of the European Convention on Human Rights: Right to life".

***Bati and others v. Turkey* (Application Nos. 33097/96 and 57834/00) – ECtHR**

The case concerned applicants who were arrested by Istanbul police and held for questioning as part of a police operation against an illegal Marxist organisation, the Communist Labour Party of Turkey/Leninist. The applicants lodged a complaint of ill-treatment against the police officers who had been on duty while they were in custody. The applicants subsequently alleged that the relevant authorities had not carried out an effective investigation into their complaints of ill-treatment.

Conclusions:

- The ECtHR noted that an investigation must be "effective" in practice as well as in law and not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State. It should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman or degrading treatment or punishment would be ineffective in practice, and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity;
- The ECtHR did however note that this is a qualified, not an absolute, obligation and that allegations of torture in police custody are extremely difficult for the victim to substantiate if he or she has been isolated from the outside world, without those who could help provide support or assemble the necessary evidence. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical certificates to provide a full and accurate record of the injuries and an objective analysis of the medical findings, in particular as regards the cause of the injuries; and
- The ECtHR also noted that the requirement of promptness and reasonable expedition is implicit in this context. While there may be obstacles or difficulties which prevent progress in an investigation in a particular situation, it may generally be regarded as essential for the authorities to launch an investigation promptly in order to maintain public confidence in their adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts.

***Mukhtarli v. Azerbaijan and Georgia* (Application No. 39503/17) – ECtHR**

The case concerned an Azeri journalist living in exile in Georgia because of his critical reporting on the Azerbaijani government. In 2017, he disappeared from Tbilisi and reappeared the next day in custody in Baku. The applicant alleged that he was abducted by unidentified individuals, forcibly transferred across the border, and subjected to ill-treatment. The applicant was sentenced to six years in prison in Azerbaijan.

Conclusions:

- Georgia had violated Articles 3 and 5 by failing to conduct an effective investigation into the applicant's plausible allegations of abduction and ill-treatment. The Court held that Georgia did not take sufficient steps to establish whether the applicant had been abducted or left the country voluntarily, and that the investigative shortcomings made it impossible to establish with sufficient certainty what had happened. Although the Georgian authorities launched an investigation into the applicant's disappearance, they failed to preserve key evidence like CCTV footage;
- The Court also noted that the investigation lacked independence and diligence and raised concerns about political influence because senior political officials in Georgia made statements dismissing police involvement before the investigation had even been completed. A member of the Azerbaijani Parliament had also stated that the applicant's arrest had been the result of cooperation between the Georgian and Azerbaijani intelligence services, though the Prosecutor General's Office of Azerbaijan later denied this; and

- Azerbaijan had also violated Article 5(3) due to deficiencies in the justification for the applicant's detention, and Article 8 due to searching the applicant's mobile phone without judicial authorisation. No violation of the substantive aspects of Articles 3 and 5 was found based on insufficient evidence to confirm beyond reasonable doubt that the abduction had happened with the active or passive involvement or acquiescence of the Georgian authorities.

Shahzad v. Hungary (No. 2) (Application No. 37967/18) – ECtHR: See above under 'Border Violence'.

Effective Remedy

Article 13 of the ECHR states:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The objective of article 13 is to provide a means whereby individuals can obtain claims at a national level for violations of their ECHR rights before having to issue a complaint to the ECtHR.

Article 1 of the ECHR provides "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention", and so the primary responsibility for implementing and enforcing the rights and freedoms guaranteed by the Convention is laid on the national authorities.

Article 13 has no independent existence. Rather, it complements the other substantive clauses of the Convention and its Protocols (***Zavoloka v. Latvia*** (Application No. 58447/00)). This means it can only be applied in combination with one or more Articles of the Convention or the Protocols thereto of which a violation has been alleged. To rely on Article 13 the applicant must also have an arguable claim under another Convention provision.

Article 13 is applicable to asylum and expulsion/extradition procedures.

Specifically in the context of asylum expulsion/extradition cases, a number of principles emerge from the case law:

- An individual's complaint that his or her removal to another State would expose him or her to a risk of treatment prohibited by Articles 2 and 3 of the Convention must imperatively be subject to close scrutiny by a "national authority" and must be examined speedily (***Jabari v. Turkey*** (Application No. 40035/98); ***Shamayev and Others v. Georgia and Russia*** (Application No. 36378/02); ***Gebremedhin v. France*** (Application No. 25389/05)).
- An excessively short time-limit for filing an application (for example in fast-track asylum procedures), and/or for appealing against a subsequent removal decision, may render the procedure ineffective in practice, and thus in breach of the requirements of Article 13 of the Convention taken together with Article 3 (***I.M. v. France*** **(Application No. 9152/09)**; ***R.D. v. France*** (Application No. 34648/14)).
- In addition, an effective remedy must provide for an automatic suspensive effect in expulsion cases (***A.M. v. The Netherlands*** (Application No. 29094/09)).
- The individuals concerned must receive sufficient information concerning their situations to be able to make use of the appropriate remedies and to substantiate their complaints, and to have access to interpreters and legal assistance (***Abdolkhani and Karimnia v. Turkey*** (Application No. 30471/08); ***M.S.S. v. Belgium and Greece*** (Application No. 30696/09); ***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09)).

Kaya v. Turkey (Application No. 158/1996/777/978) – ECtHR

This case concerned an application brought by Kaya on his own behalf and on behalf of his deceased brother and the widow and children of the deceased.

At the time of the application, Kaya was in a prison in Turkey. His brother was killed in circumstances which are disputed. Kaya alleged his brother was deliberately killed by security forces while the government argued he was killed in a gun battle between members of the security forces and a group of terrorists.

A domestic investigation was undertaken by the public prosecutor and the Administrative Council however investigators failed to follow up on leads and despite named suspects, no one was ever charged.

Conclusions:

- The ECtHR held that there had been a violation of Article 2, noting that Article 2 "enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction"; and
- The ECtHR found a violation of Article 13 noting the "serious deficiencies of the autopsy and forensic examination conducted at the scene as well as on the failure of the investigating authorities to seriously consider any alternative options which may have explained the death." It concluded that the applicant was denied an effective remedy against the authorities in respect of his brother and thereby access to any other available remedies at their disposal, including a claim for compensation.

T.I. v. The United Kingdom (App. No 43844/98) – ECtHR

The applicant had previously lived in Sri Lanka in an area controlled by the Tamil terrorist organisation, the LTTE. The applicant travelled to Germany where he claimed asylum. He then applied for asylum in the UK. The UK Government requested that Germany accept responsibility for the applicant's asylum request pursuant to the Dublin Convention.

The applicant feared that the German authorities would simply send him back to Sri Lanka, where he claimed there was a real risk of him being subjected to treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the ECHR at the LTTE and government security force. He alleged that he had been subjected to ill treatment by the LTTE in Sri-Lanka and had had to leave his home. He also claimed that he had been held prisoner in Colombo for three months and tortured by the security forces, who suspected him of being a Tamil Tiger.

Conclusion:

- The applicant's complaint in respect of Article 13 was manifestly ill-founded. The applicant was able to challenge in judicial review proceedings the reasonableness of the UK Secretary of State's decision to issue a certificate to remove him to Germany pursuant to the arrangements reached under the Dublin Convention;
- The ECtHR referred to recent case law which indicated that the English courts would take into account the way in which allegedly safe third countries comply with their obligations under the Geneva Convention in assessing whether the Secretary of State is entitled to order removal to such countries; and
- The ECtHR was satisfied that in the present case the substance of the applicant's complaint under the ECHR – whether the Secretary of State could order his removal to Germany – did fall within the scope of examination of the courts, which had the power to afford him the relief which he sought.

M.S.S v. Belgium and Greece (Application No. 30696/09) – ECtHR

The case concerned an Afghan asylum seeker who fled Kabul in 2008, entered the European Union through Greece and travelled on to Belgium where he applied for asylum. According to the Dublin rules, Greece was held to be the responsible Member State for the examination of his asylum application. Therefore the Belgian authorities transferred him there in June 2009 where he faced detention in poor conditions before living on the streets without any material support.

Conclusions:

- The ECtHR found that there had been a violation of Article 13 of the Convention taken in conjunction with Article 3 because of the deficiencies in the Greek authorities' examination of the applicant's asylum request and the risk he faced of being returned directly or indirectly to his country of origin without any serious examination of the merits of his asylum application and without affording him access to an effective remedy, including the following:
    - insufficient information on the asylum procedures to be followed in the absence of a reliable system of communication between authorities and asylum-seekers, and malfunctions in the notification procedure in respect of "persons of no known address";

- the very short three-day time-limit within which to report to the police, considering how difficult it was to gain access to the police premises;
- a shortage of interpreters and lack of training of the staff responsible for conducting the individual interviews;
- a lack of legal aid effectively depriving the asylum-seekers of legal counsel;
- excessively lengthy delays in receiving a decision;
- the fact that an application to the Supreme Administrative Court did not offset the lack of guarantees surrounding the examination of asylum applications on the merits, owing to the lack of expedition in the proceedings; and
- the risks of refoulement faced by the applicant in practice before any decision was taken on the merits of his case,

- The ECtHR found a violation of Article 3 on the basis that the Greek authorities have not had due regard to the applicant's vulnerability as an asylum-seeker and for the situation in which he has found himself for several months, living on the street, with no resources or access to sanitary facilities, and without any means of providing for his essential needs. The Court considered that the applicant has been the victim of humiliating treatment showing a lack of respect for his dignity and that the situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation.

***Barouk* (C-283/24) – CJEU:**

The case concerned a Lebanese applicant who in 2018 made an application for international protection in Cyprus. The applicant claimed that he had been tortured by the intelligence agencies and military services in Lebanon due to, amongst other things, his political activism and involvement in the paramilitary wing of a Lebanese political party. The applicant claimed that he had been subjected to threats and attempted murder and that, if he returned to Lebanon, he would be arrested and imprisoned or subjected to the death penalty. The Cypriot authorities refused to grant him refugee status on the basis that there was no reasonable fear of persecution or risk of serious harm if he were to be returned to Lebanon, relying on its determination that statements made by the applicant in several interviews were inconsistent, contradictory or vague.

Conclusions:

- Article 46(3) of Directive 2013/32, read in light of Article 47 ECHR and Article 4(3) TEU, require national courts to conduct a full and *ex nunc* examination of all the facts and points of law necessary to make an up-to-date assessment of the case at hand;
- Here, the Cypriot court had simply relied on the original administrative decision made regarding the applicant. The court was unable to order a medical examination, even though there was concrete evidence that the health problems of the applicant (and their seeming inconsistency) might result from a traumatic event which occurred either in their country of origin or in general. The CJEU held that Cypriot national law therefore did not provide the applicant with an effective remedy; and
- The procedural autonomy of EU Member States cannot override the requirement for an effective remedy under EU law, which exists to ensure that asylum seekers receive a fair and thorough review of their applications.

Enforced Disappearance

Enforced disappearance is a crime under international law and a violation of multiple human rights, including the right to personal liberty and security, the right to recognition as a person before the law, the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment, the right to a fair trial, and the right to life. Enforced disappearance also violates the economic, social and cultural rights of the disappeared person and his or her family. When committed as part of a widespread or systematic attack against any civilian population, enforced disappearance is a crime against humanity.

Enforced disappearance is a continuous crime, as it extends to the point at which the fate and whereabouts of the victim are established with certainty. Even when it can be inferred that the disappeared person was actually subjected to an arbitrary execution, for instance through the discovery of mortal remains and the recognition of personal belongings, as long as the whereabouts of that person are not determined, or his or her remains are not located and identified, the situation is that of enforced disappearance.

States have a positive obligation to investigate cases of enforced disappearance to establish the fate and whereabouts of the disappeared and to identify and prosecute those responsible. If the body of the victim is discovered or his or her death can be presumed, the obligations to account for the disappearance and death, to identify and prosecute the perpetrators, and to provide adequate redress to victims generally remain.

Relatives of disappeared persons are considered victims of a violation of Article 3 notably because of the attitude of indifference often displayed by authorities vis-à-vis their acute suffering. In certain circumstances, the Court employs the reversal of the burden of proof.

However, a lack of coherence in the criteria applied can be noted, as well as scarce use of interim measures to protect applicants, relatives of the disappeared persons and witnesses from reprisals, and a narrow interpretation of the notion of measures of reparation, usually limited to pecuniary and non-pecuniary compensation. The Court's judgments in this field are often slowly executed or are not implemented by respondent states.[253]

Varnava and others v. Turkey (Application Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90) – ECtHR

This case concerned various individuals who had been considered missing since 1974 in circumstances relating to the Turkish military operations in Northern Cyprus. The respondent State submitted that the established case-law on disappearances showed that after a certain lapse of time there was a presumption of death. The applicants submitted that there was no basis for presuming that the missing men were dead or had died in 1974.

Conclusions:

- The ECtHR noted that the procedural obligation under Article 2 of the ECHR to investigate unlawful or suspicious deaths operates independently from the substantive obligation. Even if there was an evidential basis which might justify finding that the nine missing men died in or closely after the events in 1974, this would not dispose of the applicants' complaints concerning the lack of an effective investigation;
- The ECtHR noted, however, that there is an important distinction to be drawn in the case law between the obligation to investigate a suspicious death and suspicious disappearance. A disappearance is a distinct phenomenon, characterised by an ongoing situation of uncertainty and unaccountability in which there is a lack of information or even a deliberate concealment and obfuscation of what has occurred. This situation is very often drawn out over time, prolonging the torment of the victim's relatives. The additional distinctive element of subsequent failure to account for the whereabouts and fate of the missing person gives

253 Council of Europe, "Missing persons and victims of enforced disappearance in Europe: Issue Paper".

rise to a continuing situation. The procedural obligation will, therefore, potentially persist as long as the fate of the person is unaccounted for and the ongoing failure to provide the requisite investigation will be considered as a continuing violation. A continuing violation does not cease by the passage of time to be a continuing violation; and

- The ECtHR referred to international standards on the time limits for the prosecution of disappearance offences. The ECtHR considered that the serious nature of disappearances is such that the standard of expedition expected of the relatives cannot be rendered too rigorous in the context of Convention protection. The ECtHR noted that the non-application of the six-month rule to breaches of international obligations that have a continuing character serves the important purpose of preventing the perpetrators from enjoying impunity for such acts. The issue is whether there is an event which triggers the start of the six-month period.

A.R.E v. Greece (Application No. 15783/21) – ECtHR

This case concerned a Turkish applicant who, in 2019, was sentenced to a term of imprisonment for membership of FETÖ. Having fled, the applicant crossed into Greece over the Evros river. Around 20 minutes after arriving, she contacted her brother via WhatsApp and activated the 'live location' function to allow him to track her. Throughout the day, she sent her brother photos or videos of her whereabouts in Greece and obtained contact details of a lawyer from him. Later that day, she was arrested by the police, held unofficially for around 5 hours, and then taken to another police station where her personal belongings were confiscated, and she was pushed back to Turkey across the Evros river with a group of others.

Conclusions:

- The ECtHR noted that reports and observations by certain third-party interveners showed that the arrest and detention of irregular migrants constituted a kind of temporary forced disappearance, which formed part of the Greek authorities' modus operandi for pushbacks. The applicant had been arrested by the Greek authorities and had sent her location in Greece to her brother;
- The burden of proof lay with the Greek authorities, who had failed to refute the applicant's allegations or explain whether the border post had collected video evidence. As such, the ECtHR concluded that the applicant had been subjected to detention without any legal basis and solely in order to push her back across the border. This breached Article 5; and
- Articles 3 and 13 had been breached by Greece returning the applicant to Turkey without carrying out a prior examination of the Article 3 risks she would face. However, the applicant had not provided sufficient evidence to substantiate that her life had effectively been at risk during the pushback, and – even if they could be established – the methods used did not reach the threshold of severity required to breach Articles 2 and 3.

Collective Expulsion

The term "expulsion" is interpreted in the generic meaning in current use ("to drive away from a place"). It is not necessary that the measure at issue be classified as an "expulsion" under domestic law (***Khlaifia and Others v. Italy*** (Application No. 16483/12), [243]-[244]). The term "expulsion" is to be interpreted autonomously and refers to any forcible removal of an alien from a State's territory, irrespective of the lawfulness of the person's stay, the length he or she has spent in the territory, the location in which he or she was apprehended, his or her status as a migrant or an asylum-seeker or his or her conduct crossing the border. The term has the same meaning in the context of Article 4 of Protocol No. 4 as it has in the context of Article 3 of the Convention. Both provisions apply to any situation coming within the jurisdiction of a Contracting State, including to situations or points in time where the authorities of the State in question had not yet examined the existence of grounds entitling the persons concerned to claim protection under these provisions (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15), [166]-[188]). Notably, the Court found Article 4 of Protocol No. 4 to apply to the following situations:

- The removal of aliens carried out in the context of interception on the high seas by the authorities of a State in the exercise of their sovereign authority, the effect of which was to prevent migrants from reaching the borders of the State or even to push them back to another State (***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09), [169]-[182]).
- The immediate and forcible return of aliens from a land border, following an attempt by a large number of migrants to cross that border in an unauthorised manner and en masse (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15), [189]-[191]).
- The removal of the applicant to the external side of the respondent State's border fence, that is to say, to a narrow strip of land between the border fence and the actual border, belonging to the respondent State's territory. That strip of land only had a technical purpose linked to the management of the border, had no infrastructure on it, and, in order to enter the respondent State's territory lawfully, deported migrants had to go to one of the transit zones, which normally involved crossing another State's territory, to which the applicant was directed by the respondent State's police officers. In such circumstances, the measure aimed at and resulted in the removal from the respondent state's territory (***Shahzad v. Hungary*** (Application No. 12625/17), [45]-[52]).

For an expulsion to be "collective" in nature, there are no requirements such as a minimum number of persons affected or membership of a particular group. The decisive criterion in order for an expulsion to be characterised as "collective" is the absence of "a reasonable and objective examination of the particular case of each individual alien of the group" (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15), [193]-[199]). Complaints under Article 4 of Protocol No. 4 can be brought by an individual alone who alleges to have been part of a group that was collectively expelled (see, for example, ***Shahzad v. Hungary*** (Application No. 12625/17)).

There will be no violation of Article 4 of Protocol No. 4 if the lack of an expulsion decision made on an individual basis is the consequence of an applicant's own culpable conduct (***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15)).[254] This decision has been criticised for carving out an exception to the otherwise absolute prohibition on collective expulsions set out in Article 4 of Protocol No. 4, and creating a body of "rightless" individuals.[255]

Georgia v. Russia (I) (Application No. 13255/07) – ECtHR

This case concerned the alleged existence of an administrative practice involving the arrest, detention and collective expulsion of Georgian nationals from the Russian Federation in the autumn

254 "Immigration and Article 4 of Protocol No. 4: Summary returns of migrants and/or asylum-seekers ("push-backs") and related case scenarios", ECHR-KS (2023).

255 D. Rodrick, "Rightlessness in Melilla: Pushbacks as violations of the right to recognition before the law", EU Immigration and Asylum Law and Policy blog (2022).

of 2006. According to the Georgian Government's submissions, during that period more than 4,600 expulsion orders were issued by the Russian authorities against Georgian nationals, of whom more than 2,300 were detained and forcibly expelled, whereas the remaining persons concerned left the country by their own means.

Conclusions:

- The ECtHR held that there had been a violation of Article 4 of Protocol No. 4 to the Convention, finding that the expulsions of the Georgian nationals during the period in question had amounted to an administrative practice in breach of that Article;
- The ECtHR considered the question of whether the expulsion measures had been taken following, and on the basis of, a reasonable and objective examination of the particular situation of each of the Georgian nationals. The court took note of the descriptions of the summary procedures conducted before the Russian courts and observed that according to the Parliamentary Assembly of the Council of Europe Monitoring Committee, the expulsions had followed a recurrent pattern all over the country and that in their reports the international organisations had referred to coordination between the administrative and judicial authorities; and
- The ECtHR found that even though, formally speaking a court decision had been made in respect of each Georgian national, the conduct of the expulsion procedures during that period, after the circulars and instructions had been issued, and in view of the high number of Georgian nationals expelled – from October 2006 – had made it impossible to carry out a reasonable and objective examination of the particular case of each individual.

Shafari and Others v. Italy and Greece (Application No. 16643/09) – ECtHR

This case concerned 32 Afghan nationals, two Sudanese nationals and one Eritrean national who alleged, in particular, that they had entered Italy illegally from Greece and been returned to that country immediately, with the fear of subsequent deportation to their respective countries of origin, where they faced the risk of death, torture or inhuman or degrading treatment. They also submitted, with regard to Italy, that they had been subjected to indiscriminate collective expulsion.

Conclusions:

- The ECtHR held that there had been a violation by Italy of Article 4 of Protocol No. 4 to the Convention considering that the measures to which they had been subjected in the port of Ancona had amounted to collective and indiscriminate expulsions;
- The ECtHR also held, concerning the four same applicants, that there had been a violation by Italy of Article 13 (right to an effective remedy) combined with Article 3 (prohibition of inhuman or degrading treatment) of the Convention and Article 4 of Protocol No. 4 on account of the lack of access to the asylum procedure or to any other remedy in the port of Ancona; and
- The ECtHR further held that there had been a violation by Greece of Article 13 combined with Article 3 on account of the lack of access to the asylum procedure for them and the risk of deportation to Afghanistan, where they were likely to be subjected to ill-treatment, and a violation by Italy of Article 3, as the Italian authorities, by returning these applicants to Greece, had exposed them to the risks arising from the shortcomings in that country's asylum procedure.

N.D. and N.T. v. Spain (Application Nos. 8675/15 and 9697/15) – ECtHR

The applicants, nationals of Mali and Côte d'Ivoire, were part of a group of around 600 migrants who attempted to cross the border fence between Morocco and Spain. The applicants, who succeeded, were immediately handed over to Moroccan authorities, and alleged that they were not given the opportunity to explain their individual circumstances before removal (and that no identification procedures were carried out).

Conclusions:

- The ECtHR set out the test for when individuals crossing a land border without authorisation and being summarily expelled amounts to a violation (for which, the burden of proof is on the state):
    - the state must have provided genuine and effective access to legally crossing its border to enable all persons who face persecution to submit an application for protection, based in particular on Article 3, under conditions which ensure that the application is processed in a manner consistent with international norms (including the ECHR); and
    - if it has, but the applicant has not made use of such access, there must not be cogent reasons for the applicant not doing so based on objective facts for which the state was responsible (e.g., lack of translators),
- The applicants' expulsion did not amount to a collective expulsion because Spain had provided genuine and effective access to means of legal entry; the applicants could have applied for visas or international protection at a border crossing point, but instead chose to storm the border; and
- There was no violation of Article 13 in conjunction with Article 4 of Protocol No. 4 because the applicants placed themselves in an unlawful situation by deliberately attempting to enter Spain as part of a large group; the lack of available individual procedures to challenge the removal was therefore a consequence of an unlawful attempt to gain entry.

Sherov and Others v. Poland (Application Nos. 54029/17, 54117/17 and 54255/17) – ECtHR

The application was brought by four Tajik nationals who attempted to enter Poland from Ukraine multiple times between December 2016 and February 2017. The applicants told Polish border guards that they faced political persecution in Tajikistan and wanted to seek asylum, but the guards refused them entry each time. On each occasion, Polish border guards issued them with generic official notes stating that they were trying to emigrate for economic reasons and neither had the required documents to enter Poland nor had asserted any risk of persecution in their home country. The applicants alleged that Poland had a wider policy of rejecting asylum applications at eastern border checkpoints to prevent individuals from seeking asylum, and that they were being pushed back to an unsafe country from which they risked deportation to Tajikistan.

Conclusions:

- Article 3 had been breached because Poland had neither allowed the applicants to remain in Polish territory pending examination of their asylum application nor examined whether Ukraine was safe for the applicants that would provide them with an adequate asylum procedure. Ukraine was also a country from which they faced refoulement;
- Article 13 had been breached in circumstances where an appeal against a refusal of entry would not have automatic suspensive effect, meaning the applicants would be expelled before their cases were reviewed;
- Article 4 of Protocol No. 4 had been breached because the applicants were removed without individual assessments. Instead, they had been removed as part of a wider policy of not receiving asylum applications from people arriving at the Polish-Ukrainian border.

Human Smuggling / Trafficking

Article 4 ECHR prohibits slavery and forced labour, and includes three prohibitions:

- of being held in slavery or servitude;
- of being required to perform forced or compulsory labour; and
- of trafficking in human beings.

The crime of human trafficking consists of three elements: (1) action (which involves recruitment, transportation, transfer, harbouring or receipt of persons); (2) committed by certain means; and (3) for the purposes of exploitation. Exploitation is not defined other than to provide examples of practices that will always be abusive (e.g., forced labour, slavery and servitude); these examples are non-exhaustive, however case law does not provide concrete guidance as to what will and will not amount to exploitation. The approach of the ECtHR has been criticised as being unduly vague and for its "moralistic nuances", in particular its focus on sex work.[256] More recently, however, the EU has sought to tackle the increase in human trafficking for purposes other than sexual or labour exploitation and, in June 2024, the EU explicitly identified the exploitation of surrogacy, forced marriage and illegal adoption as forms of exploitation.[257] Whether or not a particular scenario amounts to human trafficking must therefore be assessed on a case-by-case basis, with regard to the non-exhaustive examples set out in Article 5, the Council of Europe Convention on Action against Trafficking in Human Beings, and case law.

European enforcement authorities draw a distinction between 'human trafficking' (which is involuntary, and in which victims are often duped or forced into entering another country) and 'human smuggling' (in which the individuals who pay a smuggler in order to enter a country do so voluntarily). Human trafficking is viewed as a modern form of slavery, abusing people's fundamental rights and dignity.[258]

This distinction has been recognised in case law (e.g., ***VC.L. and A.N. v. The United Kingdom*** (Application No. 7758/12 and 74603/12)), which discussed the separate frameworks applicable to human trafficking (which engages the ECHR) and human smuggling (which engages national law).[259] The difference between the two arises "both by reference to the nature of the crime and the relationship between the person organising the entry of the migrant and the migrant himself".

In states party to the Council of Europe Convention against Trafficking in Human Beings:[260]

- The authorities must allow the suspected victim a recovery and reflection period during which the victim cannot be removed (Article 14);
- If the authorities have reasonable grounds for believing a person has been a victim of trafficking, that person may not be removed from the country until it has been determined whether they were a victim of a trafficking offence (Article 10(2)); and

256 V Stoyanova, "Dancing on the Borders of Article 4: Human Trafficking and the European Court of Human Rights in the Rantsev Case", Netherlands Quarterly of Human Rights Volume 30: Issue 2 (June 2012), pages 169 to 172.

257 Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

258 Europol, "Trafficking in Human Beings".

259 We note that in December 2024, the European Council agreed its position on an EU law on preventing and countering migrant smuggling (designed to align member states' criminal law). Under the proposal, member states must ensure that intentionally assisting a third-country national to enter, transit across or stay within the territory of any EU member state in exchange for financial or material benefit constitutes a criminal offence under their national law. This proposal has formed the basis of negotiations with the European Parliament.

260 A list of signatories, and the dates on which they ratified the Convention, can be found here.

- The authorities can issue renewable residence permits to victims if they believe the victims' stay is necessary owing to their personal situation or for the purposes of the criminal investigation (Article 14(1)).[261]

Under EU law:

- The Employers Sanctions Directive (2009/52/EC) criminalises some forms of illegal employment of migrants in an irregular situation; under Article 13, children (or workers who are subject to particularly exploitative working conditions) may be issued with a temporary residence permit to facilitate the lodging of complaints against their employers;
- Under Council Directive 2004/81/EC, EU Member States are required to issue a residence permit to victims of trafficking who cooperate with the authorities; the permit must be valid for at least 6 months and be renewable (Article 8). The Directive also creates a reflection period during which victims of trafficking or who have been the subject of an action to facilitate irregular immigration cannot be expelled (Article 6);
- Under Article 11 of the Anti-Trafficking Directive (2011/36/EU), (as amended by Directive 2024/1712), assistance and support measures must be provided in a victim-centred, gender-, disability- and child-sensitive approach before, during and after the conclusion of criminal proceedings against traffickers; and
- Where proceedings against the traffickers are not envisaged, or the victim has not cooperated with any investigation, there is no clear requirement for an EU Member State to grant a residence permit.[262]

Rantsev v. Cyprus and Russia (Application No. 25965/04) – ECtHR

The case concerned a woman who arrived in Cyprus on an "artiste" visa, worked in a cabaret in Cyprus, quit and was taken by her manager to the police asking them to declare her illegal. After the police refused and asked the cabaret manager to collect her and return later that morning for further enquiries, the woman was taken to an apartment by the manager from where she fell from the window and died. After an inquest, the court decided that her death was an accident. The Cypriot authorities confirmed this verdict after the woman's father (the applicant) complained of issues with the investigation.

Conclusions:

- There was a violation of the procedural limb of Article 2, on the basis of the ineffective investigation into the woman's death by the Cypriot authorities;
- Human trafficking is prohibited by Article 4, and Cyprus had thereby violated its positive obligations arising under that Article by (1) failing to put in place an appropriate legal and administrative framework to combat trafficking as a result of the existing regime of artiste visas; and (2) the police failing to take operational measures to protect the woman from trafficking, despite circumstances giving rise to a credible suspicion she may have been a victim of trafficking;
- Russia had violated Article 4 by failing to investigate how and where the woman had been trafficked, to identify who had been involved, or to ascertain the methods of recruitment used; and
- Cyprus had violated Article 5 in relation to her detention following confirmation that she was not illegal, and subsequently in the apartment.

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261 "Handbook on European law relating to asylum, borders and immigration", Publications Office of the European Union (2020), pages 84 and 85.

262 "Handbook on European law relating to asylum, borders and immigration", Publications Office of the European Union (2020), page 84.

V.C.L. and A.N. v. The United Kingdom (Application No. 7758/12 and 74603/12) – ECtHR

The case concerned two separate criminal prosecutions of children in 2009, who were both found working in sophisticated cannabis factories and subsequently charged with drug related offences to which they pled guilty. Both applicants appealed; despite findings by the competent authority that both children had been exploited, the CPS proceeded with its case against them.

Conclusions:

- There is no general prohibition on prosecuting victims, or potential victims, of trafficking, but the prosecution of victims of trafficking may be at odds with the state's duty to take operational measures to protect them when they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion of trafficking;
- As soon as a credible suspicion has arisen that an individual suspected of committing a criminal offence may have been trafficked or exploited, that individual must be promptly assessed by individuals trained and qualified to deal with victims of trafficking; and
- The reasons provided for pursuing the prosecution were insufficient and the authorities had failed to fulfil their Article 4 duty (with an additional violation of Article 6, as the proceedings could not be considered “fair”).

Case of T.V. v. Spain (Application No. 22512/21) - ECtHR

The case concerned a woman who alleged that when she was 14 a family acquaintance contacted her in Nigeria and suggested that she go to Spain to work as a prostitute, where she was subjected to sexual exploitation between 2003 and 2007. She managed to escape her alleged traffickers and brought a criminal complaint in 2011, but the criminal case was eventually dismissed by the Spanish courts because the victim's allegations were considered to be inconsistent. The victim complained that Spain had violated her Article 4 ECHR rights by failing to duly investigate her criminal complaint.

Conclusions:

- There were significant shortcomings in the Spanish authorities' investigation into the applicant's criminal case, which amounted to a breach of Spain's procedural obligations under Article 4. The Spanish authorities failed to take several obvious steps, including resolving the obvious contradictions between witness statements, asking key questions of suspects/witnesses and requesting obviously relevant evidence. Spanish authorities therefore displayed a “blatant disregard” for the obligation to investigate serious allegations of human trafficking;
- There is an implicit requirement of promptness and reasonable expedition in all cases. Notwithstanding the fact that the applicant's complaint related to events which had unfolded at least four years prior to her complaint to the police, the authorities' failure to take any steps to investigate the applicant's case during the first two years of the investigation meant that the authorities could not have acted with the requisite diligence at the initial stage of the investigation; and
- Whether the domestic authorities' procedural obligation arises has to be based on the circumstances at the time when the relevant allegations were made or when the prima facie evidence of violation was brought to the authorities' attention, not on a subsequent conclusion reached upon the completion of the investigation or the relevant proceedings.

Imminent Risk of Irreparable Damage

The UNHCR's toolkit on how to request interim measures under Rule 39 notes that:

- While the Court will rely primarily on the current and future situation of the applicant for determining the existence of a risk, information from the past, including the applicant's past experiences, may also be relevant.
- The Court's case law on Article 3 ECHR shows that the mere expression of a fear of persecution upon return does not in itself amount to a "real risk". When considering whether an alleged risk of irreparable harm is real, the Court takes into account a combination of facts and circumstances including the credibility of the facts presented by the applicant, the general situation in the country and, where relevant, UNHCR's position.
- The Court applies the principle of subsidiarity. This means that the Court considers a risk imminent where, and only where, there are no possibilities to make use of the domestic legal avenues capable of suspending removals, or where such avenues have been used unsuccessfully.
- Rule 39 requests for interim measures are not expected to meet the standard of proof applied to an individual application under Article 34 ECHR. Due to the short timeframes involved, it would be difficult for Rule 39 requests to do so. However, when requesting Rule 39 interim measures, one should demonstrate, to the extent possible, that there are substantial grounds for believing that there is a real risk of irreparable harm for the applicant if he/she is forcibly returned.

Paladi v. Moldova (Application No. 39806/05) – ECtHR

This case concerned a Moldovan national who complained that, despite doctors' recommendations, he was not given appropriate medical care while in detention pending trial. The applicant suffered from a number of serious illnesses (diabetes, angina, heart disease, hypertension, chronic bronchitis, pancreatitis and hepatitis) and, while in detention, was examined by various doctors who all recommended medical supervision. Certain doctors also considered that the applicant should undergo operations, which could only be carried out in specialised units. The ECtHR granted an interim measure preventing the applicant's transfer from the Republican Neurological Centre, but the applicant was transferred to the prison's hospital on the same day.

Conclusions:

- The ECtHR considered that the applicant was in a serious condition which, as appeared from the documents available at the relevant time, put his health at immediate and irremediable risk;
- Although no adverse consequences for the applicant's life or health resulted from the delay in implementing that measure, the ECtHR did not accept that a State's responsibility for failing to comply with its obligations should depend on unpredictable circumstances, such as the (non-)occurrence of a medical emergency during the period of non-compliance. It would be contrary to the object and purpose of the Convention for the Court to require evidence not only of a risk of irremediable damage to one of the core Convention rights but also of actual damage before it was empowered to find a State in breach of its obligation to comply with interim measures; and
- On appeal to the Grand Chamber, the ECtHR noted that given the urgency it may be unavoidable for the ECtHR to indicate interim measures on the basis of facts which are subsequently added to or challenged to the point of calling into question the measures' justification. The fact that, ultimately, the risk did not materialise and that information obtained subsequently suggests that the risk may have been exaggerated does not alter the

fact that the attitude and lack of action on the part of the authorities were incompatible with their obligations under Article 34 of the Convention.

Mamatkulov and Askarov v. Turkey (Application Nos. 46827/99 and 46951/99) – ECtHR

This case concerned two Uzbek nationals and members of an opposition party in Uzbekistan. They were arrested in Turkey on suspicion of murder and an attempted attack and extradited to Uzbekistan. This was in spite of an interim measure indicated by the ECtHR under Rule 39 as the applicants argued they would face ill-treatment and torture if returned.

Conclusions:

- In determining whether substantial grounds have been shown for believing that a real risk of treatment contrary to Article 3 exists, the ECtHR will assess the issue in light of all the material placed before it or, if necessary, material obtained on its own initiative. The existence of the risk must be assessed primarily with reference to those facts which were known or ought to have been known to the State at the time of the extradition;
- It is insufficient to refer to the general situation in Uzbekistan, the applicants must be able to corroborate the specific allegations made in the instant case;
- In practice, the ECtHR applies Rule 39 only if there is an imminent risk of irreparable damage. While there is no specific provision in the ECtHR concerning the domains in which Rule 39 will apply, requests for its application usually concern the right to life (Article 2), the right not to be subjected to torture or inhuman treatment (Article 3) and, exceptionally, the right to respect for private and family life (Article 8) or other rights guaranteed by the Convention. The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings; and
- The ECtHR was prevented by the applicants' extradition to Uzbekistan from conducting a proper examination of their complaints in accordance with its settled practice in similar cases and ultimately from protecting them, if need be, against potential violations of the Convention as alleged.

Inhuman Treatment or Punishment

While the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) provides a definition of torture, there is no universally accepted definition of inhuman and degrading treatment or punishment.

The Court emphasised in the ***Selmouni v. France*** judgement of 28 July 1999 that the hierarchy distinguishing the three categories of ill-treatment is fluid in nature and has to be assessed in harmony with societal progress.

There are at least three elements required for inhuman treatment: the intent to ill-treat, a severe suffering (physical or psychological) and the absence of justification for such suffering. While the Commission has considered the notion of intention or premeditation, the ECtHR's approach to this question remains inconsistent. Its definition has on some occasions included an element of premeditation, but on other occasions the requirement of intention appears to be discarded.[263]

Kudla v. Poland (Application No. 30210/96) – ECtHR

The case concerned an applicant who was detained on remand. This detention order was subsequently quashed on the basis of a psychiatric report, which showed that the applicant had persistent suicidal tendencies. The applicant subsequently failed to attend a hearing in his case and an arrest warrant was issued again. He was arrested and placed in detention on remand a year later. The applicant attempted to commit suicide. However, an application for release was refused by the Court. The applicant claimed that he had not received adequate psychiatric treatment when in detention, which resulted in his repeated attempts to commit suicide in prison and constituted inhumane and degrading treatment within the meaning of Article 3.

Conclusions:

- Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the nature and context of the treatment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim;
- The Court has considered treatment to be “inhuman” because, inter alia, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering. It has deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them;
- Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that the execution of detention on remand in itself raises an issue under Article 3. Nor can Article 3 be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain a particular kind of medical treatment; and
- The ECtHR noted that the nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear. It also noted that he was kept in custody despite a psychiatric opinion that continuing detention could jeopardise his life because of a likelihood of attempted suicide. However, the ECtHR did not establish that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3.

263 Y. Arai-Yokoi, “Grading scale of degradation: identifying the threshold of degrading treatment or punishment under Article 3 ECHR“.

Ireland v. The United Kingdom (Application No. 5310/71) – ECtHR

The case concerned Operation Demetrius, which was a series of "extrajudicial measures of detention and internment of suspected terrorists." One of the interrogation techniques became known as the "five techniques" and consisted of the following:

1. Wall standing (forcing detainees to remain in a stress position for hours at a time);
2. Hooding (keeping a bag over detainees' heads at all times, except during interrogation);
3. Subjection to loud noise continuously;
4. Sleep deprivation; and
5. Deprivation of food and drink.

Ireland sought a revision of the ECtHR's judgment to the effect that the use of the "five techniques" amounted to a practice not merely of inhuman and degrading treatment, but of torture.

Conclusions:

- The five techniques were applied in combination, with premeditation and for hours at a stretch; they caused, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation. They accordingly fell into the category of inhuman treatment within the meaning of Article 3; and
- In order to determine whether the five techniques should also be qualified as torture, the ECtHR must have regard to the distinction between torture and that of inhuman or degrading treatment. The ECtHR considered that it was the intention of the Convention for the term "torture" to attach a special sigma to deliberate inhuman treatment causing very serious and cruel suffering. Although the five techniques undoubtedly amounted to inhuman treatment, although their object was the extraction of confessions, the naming of others and/or information and although they were used systemically, they did not occasion suffering of the particular intensity and cruelty implied by the word torture.

M.A. and Z.R. v. Cyprus (Application No. 39090/20) – ECtHR

The case concerned two Syrian nationals who fled Syria because of the war and went to Lebanon where they allegedly faced poor living conditions and the risk of forced return to Syria. In September 2020, the applicants paid smugglers to take them to Cyprus by boat, but on arrival in Cypriot territorial waters, their boat was intercepted by Cypriot authorities, and they were prevented from disembarking. The Syrian nationals were kept at sea for two days, where they had no food or hygiene amenities and were exposed to the sun and high temperatures.

Conclusions:

- The ECtHR held that the conditions, which prevailed while the applicants were under the control of the authorities, caused the applicants considerable distress and feelings of humiliation of such a degree as to amount to degrading treatment prohibited by Article 3;
- It was not determinative that the applicants had not brought direct evidence substantiating their assertion that they had expressed their wish to seek asylum in Cyprus –the circumstances of being stranded at sea for two days meant they would have had very limited contact with the outside world or access to facilities to collect evidence or to officially make their claims. The applicant's account had also not been successfully rebutted by the Government, who did have the ability to collect evidence;
- Cyprus failed to conduct any assessment of the risk of lack of access to an effective asylum process in Lebanon or assess the risk of refoulement or the living conditions of asylum-seekers in Lebanon prior to the applicants' removal and so failed to discharge its procedural obligations under Article 3; and
- The ECtHR noted that the absence of a relevant legal framework regulating the circumstances under which a person is to be kept at sea pending a determination of their

status could on its own raise a structural issue for the purposes of Article 3 (albeit this was not considered further in this case).

***A.E. and Others v. Italy* (Application Nos. 18911/17, 18941/17 and 18959/17) – ECtHR**: See above under 'Degrading Treatment or Punishment'.

***A v. Generalstaatsanwaltschaft Hamm* (Case C-352/22) – CJEU:**

The case involved a request for a preliminary ruling regarding the extradition of a Turkish national for the purposes of a criminal prosecution who had refugee status in Italy and was residing in Germany. The referring court considered that the Italian authorities' decision granting refugee status would not have binding effect for the purposes of the extradition procedure in Germany and the question in front of the CJEU was whether the final recognition by a Member State of a third-country national as a refugee would be binding for the purposes of the extradition procedure conducted by the competent authority of another Member State (so that it must refuse the extradition sought).

Conclusions:

- The fact that another Member State granted the requested individual refugee status is a particularly substantial piece of evidence which the competent authority of the requested Member State must take into account;
- Given the significance of a decision granting refugee status for the purpose of assessing an extradition request from the country of origin of the person who has refugee status, the competent extradition authority of the requested Member State must, as soon as possible, initiate an exchange of information with the authority of the other Member State which granted the requested individual refugee status;
- The requested Member State must obtain, within a reasonable period, from the other Member State which granted the requested individual refugee status the information in its possession that led to refugee status being granted and its decision as to whether or not it is necessary to revoke/withdraw that individual's refugee status; and
- It is only if the competent authority of the Member State which granted the requested individual refugee status decides to revoke/withdraw the refugee status and the requested Member State reaches the conclusion that the individual is not or is no longer a refugee and that there is no serious risk that the individual would be subject to the death penalty, torture, or other inhuman or degrading treatment or punishment if extradited that EU law would not preclude extradition.

Interception Measure(s)

Interception measures do not themselves violate the ECHR, though the manner in which they are conducted might (e.g., if there is detention involved, or threats to life not ameliorated by preventive operational measures) and/or they may result in violations (e.g., pushbacks or refoulement).

In 2011, Resolution 1821 of the Council of Europe's Parliamentary Assembly noted the following issues relating to maritime arrivals:

- States differ in their interpretation of the content of the relevant law; in particular, some do not agree on the nature and extent of their responsibilities in specific situations (and some states question the application of the principle of non-refoulement at sea);
- The priority following an interception is the swift disembarkation of those rescued to a 'place of safety', but states interpret this phrase differently;
- These types of divergences delay or prevent rescue measures, and are likely to dissuade seafarers from rescuing people in distress at sea; they therefore endanger the lives of people to be rescued;
- There are inadequate guarantees of respect for human rights and obligations in the joint operations led by Frontex; and
- Sea arrivals disproportionately impact states located on the southern borders of the EU.

It is unclear that any of these issues have changed since 2011.

The 2022 annual report of the Frontex Consultative Forum found that half of the sightings of migrants by Frontex prompted Search and Rescue missions or migrant interceptions by Libyan coastguards in international waters. The report found that returns to Libya may amount to violations of the principle of non-refoulement, and that it is reasonably foreseeable that intercepted/rescued survivors will suffer serious fundamental rights violations after arriving in Libya (including murder, enslavement, arbitrary detention, torture and ill-treatment, trafficking, extortion, enforced disappearance and sexual violence).[264] This practice has also been criticised by NGOs and human rights groups.[265]

The UNHCR and IOM have emphasised that saving lives should be the first priority when states consider interception measures and warned that heavy-handed interception measures may result in harmful and fatal incidents.[266]

See also:

- ***Safi and Others v. Greece* (Application No. 5418/15) – ECtHR**: See above under 'Border violence'.
- ***Alkhatib and Others v. Greece* (Application No. 3566/16) – ECtHR**: See above under 'Border violence'.

264 Frontex, "Tenth Consultative Forum Annual Report 2022".
265 For example, see: Human Rights Watch, "EU: Frontex Complicit in Abuse in Libya" (2022).
266 UNHCR, "UNHCR, IOM: Interception at sea is not the solution to channel crossings" (2020).

Persecution (racial, gender-based, other)

There is a potential overlap in defining the acts of persecution and the reasons for persecution. Persecution on the ground of religion always interferes in the last instance with the freedom of religion but the act of persecution itself may be ill-treatment or other severe punishment inflicted in response to the exercise of religious freedom.

Under the ECHR – In most cases, the persecution lies in a violation of a basic human right such as the right to life, the right not to be ill-treated, the right to personal liberty and security, etc. In practical terms a conflict however will usually not arise since the test of sufficient severity of a violation of human rights such as the right of religion or expression will only be met if a prohibition or restriction is enforced by sanctions which constitute a severe violation of basic human rights.

A possible source of interpretation of "basic human rights" is provided by the legislative history of Article 9. The original version of the Article referred to life, freedom and physical integrity as examples of basic human rights. The subsequent version contained the "right to life, the right not to be subjected to torture or the right to liberty and security of a person" as examples. Subsequently, the draft Article 11(1)(a) was changed and in particular referred to "the rights from which derogation cannot be made under Article 15(2) ECHR". The right to life is still contained in this version, whereas "freedom" is only covered by the freedom from slavery and servitude (Article 4(1) ECHR). It follows from the wording of Article 33(1) of the Refugee Convention that a threat to life or freedom at least if sufficiently serious, always constitutes persecution.

Another possible source for identifying the basic character of a human right other than those listed as non-derogable rights in the ECHR may be derived from the proximity of a human right to human dignity. Human dignity, guaranteed in Article 1 of the EU Charter must be considered in itself as a basic human right and at the same time as the underlying basis of fundamental rights, such as the rights laid down in Title I of the EU Charter.

Under EU law – The EU Commission has noted that in many cases where persecution emanates from non-State actors, such as militia, clans, criminal networks, local communities or families, the act of persecution may not have been committed for reasons related to a Refugee Convention ground but, for instance, for criminal motivations or for private revenge. However, it often happens in such cases that the State is unable or unwilling to provide protection to the individual concerned because of a reason that is in fact related to the Refugee Convention.

If for instance a State does not grant police protection for ethnic or racial groups against criminal activities by private groups or individuals, the unwillingness to afford protection may amount to persecution. The absence of state protection against persecution implies that the State is unwilling and/or unable to provide protection which is effective, durable and accessible to the applicant.[267]

***Bundesrepublik Deutschland v. Y and Z* (Joined Cases C-71/11 and C-99/11) – CJEU:**

The case concerned two Pakistani nationals who entered Germany and applied for asylum. The individuals are members of the Muslim Ahmadi community and claimed that they had both experienced past incidents of persecution and that the Pakistani Criminal Code provides that members of the Ahmadi religious community may face imprisonment of up to three years or punished by death or life imprisonment or a fine.

267 The International Association of Refugee Law Judges European Chapter, "Qualification for International Protection (Directive 2011/95/EU) A Judicial Analysis", European Asylum Support Office (2016).

Conclusions:

- The CJEU found that it cannot be that any interference with the right to religious freedom constitutes an act of persecution requiring a grant of refugee status. It must be a severe violation, having a significant effect on the person involved;
- It is the severity of the measures and sanctions adopted or liable to be adopted against the person concerned which will determine whether a violation of the right constitutes persecution. Given the concept of religion also includes participation in formal worship in public, the prohibition of such participation may constitute a sufficiently serious act within the meaning of Article 9(1)(a); and
- In assessing whether an applicant has a well-founded fear of being persecuted, the competent authorities must ascertain, in the light of the personal circumstances of the person concerned, whether that person, as a result of exercising that freedom in his country of origin, runs a genuine risk of, inter alia, being prosecuted or subject to inhuman or degrading treatment or punishment. The fact that a person could avoid the risk of persecution by abstaining from religious practices is, in principle, irrelevant.

***Minister voor Immigratie en Asiel v. X and Y and Z* (Joined Cases C-199/12 to C-201/12) – CJEU:**

The case involved applications for refugee status in the Netherlands by gay men from Sierra Leone, Senegal and Uganda, who feared persecution on the basis of their sexual orientation.

Conclusions:

- Homosexuals form a particular social group for the purposes of the EU Directive;
- Sexual orientation is a characteristic so fundamental to a person's identity that the persons concerned cannot be required to renounce it. Therefore, an applicant for asylum cannot be expected to conceal his or her homosexuality or exercise restraint in the country of origin in order to avoid persecution; and
- The criminalisation of homosexual acts alone does not, in itself, constitute persecution. However, a term of imprisonment which is actually applied in practice in the country of origin does constitute persecution.

***AH and FN* (C-608/22 and C-609/22) – CJEU**

The case concerned two Afghan national women who applied for international protection in Austria. The Austrian Federal Office for Immigration and Asylum found, respectively, that one individual's account was not credible, and that the other individual did not face a real risk of persecution in Afghanistan. However, it granted the individuals subsidiary protection status on the ground that in the absence of any social support in Afghanistan, they would face economic and social difficulties if they returned there. The individuals brought appeals on a point of law arguing that the situation of women under the new Taliban regime alone justified their being granted refugee status.

Conclusions:

- The CJEU found that some of the discriminatory acts by themselves must be classified as "acts of persecution" for example forced marriage (which is comparable to a form of slavery and prohibited under Article 4 ECHR), and the lack of protection against gender-based violence and domestic violence (which constitute forms of inhuman and degrading treatment prohibited by Article 3 ECHR);
- The CJEU also found that even if the discriminatory measures against women that restrict access to healthcare, political life and education and the exercise of a professional or sporting activity, restrict freedom of movement or infringe the freedom to choose one's clothing taken separately do not constitute a sufficiently serious breach of a fundamental right, taken as a whole the measures affect woman to the extent they attain the level of severity required to constitute acts of persecution in that they deny women fundamental rights related to human dignity;

- While the general principle is that any application for international protection must be subject to a case-by-case assessment to determine whether the applicant may reasonably fear, in light of their personal circumstances, that they will in fact be the victim of acts of persecution if denied protection, there is provision for Member States to relax the conditions under which refugee status is granted as long as the standards do not undermine the general scheme or objectives of Directive 2011/95; and
- The CJEU considered that competent national authorities are entitled to consider that (given previous findings from the EUAA and the UNHR) it is currently unnecessary to establish that there is a risk that an Afghan national female will actually and specifically be subject to acts of persecution if she returns to her country of origin – it is sufficient to take into account her nationality and gender alone.

Person(s) in a Vulnerable Situation

The Council of Europe's Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe considers "vulnerable persons in the context of migration and asylum" as persons found to have special needs after individual evaluation of their situation and are entitled to call on a States' obligation to provide special protection and assistance.

The Plan notes that the Court's qualification of asylum seekers as inherently vulnerable is rooted in their disadvantaged legal position compared to other groups or nationals. Their right to remain on the territory of a country is by definition precarious as long as their refugee status is not formally established, while the likely lack of command of the national language of the host state and the lack of any support network further contribute to their predicament. The capacity to participate in the host society is to a large part dependent on state authorisation.

The Plan notes that even if EU law provides non-exhaustive guidance in the enumeration of vulnerable groups, there is a risk that the inconsistency between the classes of persons in need of special procedural and reception guarantees as defined in EU law translates into ambiguity in domestic legal orders. European countries do not seem to have taken a consistent approach to the procedural and reception guarantees required by vulnerable groups when transposing the Directives into national law.[268]

M.S.S. v. Belgium and Greece (Application No. 30696/09) – ECtHR

The case concerned an Afghan asylum seeker who entered the EU through Greece and travelled to Belgium where he applied for asylum. According to the Dublin rules, Greece was held to be the responsible Member State for the examination of his asylum application. Therefore, the Belgian authorities transferred him there where he faced detention in insalubrious conditions before living on the streets without any material support.

Conclusions:

- An asylum seeker is "a member of a particularly underprivileged and vulnerable population group in need of special protection";
- The ECtHR placed particular emphasis on the fact that the applicant was an asylum seeker: "…the Court must take into account that the applicant, being an asylum seeker, was particularly vulnerable because of everything he had been through during his migration and the traumatic experiences he was likely to have endured previously"; and
- The detention conditions experienced by the applicant were held to amount to degrading treatment within the meaning of Article 3. The ECtHR, in reaching this conclusion, took into account the fact that the applicant was an asylum seeker and noted that the applicant's distress was accentuated by the vulnerability inherent in his situation as an asylum seeker.

Rahimi v. Greece (Application No. 8687/08) – ECtHR

The applicant, who was born in 1992, left Afghanistan to flee the armed conflicts there and arrived in Greece, where he was arrested on 19 July 2007. He was placed in a detention centre pending an order for his deportation and was held there until 21 July 2007. A deportation order was issued on 20 July 2007. On his release the applicant was not offered any assistance by the authorities. He was homeless for several days and subsequently, with the aid of local NGOs, found accommodation in a hostel.

268 "Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)", Council of Europe Publishing (2021).

The applicant complained, among other things, of a complete lack of support or accompaniment appropriate to his status as an unaccompanied minor, and of the conditions in the detention centre, in particular the fact that he had been placed together with adults.

Conclusions:

- The applicant, on account of his age and personal circumstances, had been in an extremely vulnerable position and the authorities had given no consideration to his individual circumstances when placing him in detention. Accordingly, even allowing for the fact that the detention had lasted for only two days, the applicant's conditions of detention had in themselves amounted to degrading treatment in breach of Article 3; and
- Owing to his youth, the fact that he was an illegal alien in a country he did not know and the fact that he was unaccompanied and therefore left to fend for himself, the applicant undoubtedly came within the category of highly vulnerable members of society, and it had been incumbent on the Greek State to protect and care for him by taking appropriate measures in the light of its positive obligations under Article 3.

Hasani v. Sweden (Application No. 35950/20) – ECtHR

The applicant and his brother were male Afghan nationals who had applied for asylum in Sweden. After their requests had been refused, the applicant's brother (who had a degenerative visual impairment and mental health problems, culminating in multiple previous attempts to harm himself) committed suicide. The applicant complained that the Swedish authorities had breached their Article 2 positive obligations by failing to take measures to prevent his brother from committing suicide.

Conclusions:

- In certain well-defined circumstances, Article 2 can imply a positive obligation on the authorities to take preventative steps to protect an individual from another individual or themselves. However, given the difficulties in policing modern societies, the unpredictability of human conduct and the operational choices in terms of priorities and resources, this obligation should not impose an impossible or disproportionate burden on the authorities;
- As noted in the cases above, asylum seekers are a particularly underprivileged and vulnerable population group in need of special protection. However, the fact that a person whose expulsion has been ordered has threatened to commit suicide does not require the State to refrain from enforcing the expulsion, provided concrete measures are taken to prevent those threats from being realised;
- Due to the individual's circumstances as a young asylum-seeker unaccompanied by adult family members, and considering his visual impairment and mental health problems, he was particularly vulnerable and to a large extent dependent on the care and accommodation provided by the Swedish authorities;
- However, considering the lack of signs of mental distress or suicidal tendencies in the month preceding the individual's suicide (in particular during the meeting with the Migration Agency and the days thereafter) the ECtHR found that although the Migration Agency knew the negative decision on his asylum application would be distressing, there were no signs to alert the authorities that he was in a disturbed state of mind, rendering a suicide attempt likely, even though he had previously voiced such thoughts. As such, the State did not breach its obligations; and
- Three judges however issued a dissenting opinion finding that the individual ticked almost all boxes to qualify as a vulnerable person and that greater consideration should have been given to his particular and multiple vulnerabilities. In particular, they noted concerns that the Migration Agency had failed to ask questions about the individual's disability or mental health (and that his mental health was not mentioned at all in the Agency's decisions). They considered that given the individual's exceptional vulnerability there should have been an assessment of his mental state or the risk of suicide before reaching a decision on the asylum application and that psychological or psychiatric support should have been offered to the individual when he was informed that his asylum application had been rejected.

Preventive Operation Measures

The scope of the positive obligation is unclear, as is the question of whether the procedural obligation is a freestanding duty or simply part of the wider substantive positive obligation:

- In relation to the substantive obligation, the ECtHR will consider what the state might reasonably have done to avoid the risk. This will be a fact specific analysis without firm principles; it might well involve some benefit of hindsight suggested by the applicant themselves.
- In relation to the procedural obligation, the ECtHR will only consider whether the national authorities' risk assessment met the qualitative standards of being autonomous, proactive and comprehensive (rather than re-performing the exercise). An indication that an individual might be exposed to a lethal risk will meet this threshold.

Both obligations are triggered by an immediate threat to life (***Osman v. The United Kingdom*** (Application Nos. 87/1997/871/1083)). Immediacy is more likely to be found if the threat can be circumscribed to a specific location, time, and/or as being of a specific kind/severity/category (i.e., the more concrete it is). This applies not just to singular instances of harm being imminent, but also cases in which harm has already materialised and is likely to happen again (e.g., a domestic violence scenario – or, possibly, a pushback scenario).[269]

The ECtHR has clarified that the positive obligation to take preventive operational measures must be interpreted in a way that does not place an impossible or disproportionate burden on the authorities, and that not every risk to life can entail a requirement to take preventive operational measures to prevent that risk from materialising (***Osman v. The United Kingdom*** (Application Nos. 87/1997/871/1083)). The ECtHR will therefore take into account (amongst other things) the difficulties inherent in carrying out police duties, the operational choices made by domestic authorities, and the unpredictability of human behaviour.[270]

Safi and Others v. Greece **(Application No. 5418/15) – ECtHR**: See above under 'Border Violence'.

Kurt v. Austria **(Application No. 62903/15) – ECtHR**

The case concerned a woman who complained that the Austrian authorities had failed to protect her and her children from her violent husband, which resulted in his murdering their son.

Conclusions:

- The case clarified certain general principles, and clarified that (1) in addition to the substantive positive obligation to take preventive operational measures, there is a procedural positive obligation for states to assess the nature and level of risk to an individual's life; and (2) the test set out in ***Osman v. The United Kingdom*** (Application Nos. 87/1997/871/1083) would be met not just where harm was imminent, but where harm had already materialised and was likely to happen again;
- Though the authorities had identified a level of non-lethal risk to the children in the context of domestic violence perpetrated by the father (the primary victim of which was the applicant), no real and discernible risk of an attack on the children's lives had been discernible. An indication of a lethal risk was therefore necessary; and
- The ECtHR therefore found no reason to question the Austrian courts' risk assessment.

269 V Stoyanova, "Framing Positive Obligations under the European Convention on Human Rights Law: Mediating between the Abstract and the Concrete", Human Rights Law Review Volume 23: Issue 3 (September 2023), pages 1 to 34.

270 J. Akandji-Kombe, "Positive obligations under the European Convention on Human Rights", Council of Europe Publishing (2007), pages 20 and 21.

Pushbacks

Evidencing pushbacks

Due to the fact that pushbacks typically occur covertly (involving, e.g., unacknowledged detention), most violate the law in themselves and are more likely to result in other human rights violations like ill-treatment or torture. Due to the fact that they are covert, however, bringing evidence sufficient to mount a case is a key problem for potential applicants (due to the fact that direct evidence is in the hands of the state, which denies that the practices take place).

Whereas a similar dynamic exists in respect of enforced disappearances, for these cases the ECtHR shifts the burden of proof from the applicant to the state when the former brings prima facie evidence that there has been a violation. Though the ECtHR explicitly states that the same occurs for covert border enforcement cases (e.g., ***M.H and others v. Croatia*** (Application Nos. 15670/18 and 43115/18), [268]-[273]), the ECtHR historically typically required greater evidence in order to establish prima facie evidence in pushback cases, e.g.:

- Reports confirming that the practice alleged in the application is widespread in the respondent country (***MK and Others***, [208]);
- Evidence based on domestic proceedings (e.g., in ***M.H. and others v. Croatia*** (Application Nos. 15670/18 and 43115/18), evidence that the Croatian authorities had never sought to verify police allegations that no surveillance recordings were available from the border and that police did not review signals from the applicants' phones or the polices' cars to identify location – see [155] and [269]-[275]); and
- Circumstantial evidence relating to the individual's situation, e.g.:
    - Photographs (e.g., in ***M.A. and Others v. Lithuania*** (Application No. 59793//17), the applicants evidenced that they had in fact arrived at the railway border checkpoint in Vilnius to claim asylum by reference to a copy of their asylum application, a photograph of the application at the border checkpoint, and their train tickets – see [18]);
    - Videos (e.g., in ***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15), the ECtHR considered video evidence submitted by journalists and other witnesses as evidence of the events – see [27]); and
    - Witness statements from the individuals themselves (e.g., ***M.H. and others v. Croatia*** (Application Nos. 15760/18 and 43115/18) – see [11]).

There is therefore traditionally less of an evidentiary corrective to the problem of differential access to information to the advantage of the state in the case of pushbacks than in enforced disappearance cases, which has received criticism.[271]

More recently, however, the ECtHR has shown signs that its jurisprudence on this point is developing. For example:

- In ***Shahzad v. Hungary (No. 2)*** (Application No. 37967/18) and ***M.A. and Z.R. v. Cyprus*** (Application No. 39090/20), the ECtHR shifted the burden of proof onto the state in the context of pushbacks. In ***Shahzad***, the ECtHR considered that circumstantial evidence of the applicant's injuries being caused by Hungarian border guards required the Hungarian authorities to provide a compelling counter-explanation regarding how those injuries were sustained – in the absence of which, the ECtHR was willing to uphold the applicant's claim; and

271 G. Baranowska, "Exposing Covert Border Enforcement: Why Failing to Shift the Burden of Proof in Pushback Cases is Wrong", European Convention on Human Rights Law Review, Brill Nijhoff (2023), pages 1 – 22.

- In ***A.R.E v. Greece*** (Application No. 15783/21), the ECtHR interpreted pre-pushback detention as a type of temporary enforced disappearance – with the same implications in terms of reversing the burden of proof.

This is in keeping with the trend of academic literature: the European Center for Constitutional and Human Rights has also argued in favour of comparing the legal framework for addressing pushbacks with that for addressing enforced disappearances, and for understanding pushbacks as violations of the right to recognition as a person before the law.

From the opposite perspective, in ***C.O.C.G. and Others v. Lithuania*** (Application No. 17764.22), the ECtHR is being asked to consider the suggestion made by Lithuania, Latvia, Poland and Finland that threats from Russia and Belarus are so extraordinary (and migrants are being 'instrumentalised' as a tool of warfare against the EU) so as to justify derogation from the ordinary protection afforded to asylum seekers. As at June 2025, judgment from the Grand Chamber on this case is awaited.

Kebe and Others v. Ukraine (Application No. 12552/12) – ECtHR

The case concerned two Eritrean nationals and an Ethiopian national. The applicants left Djibouti in 2012 on a ship with the aim of seeking asylum anywhere other than Djibouti. The applicants complained that border guards had prevented them from entering Ukraine upon arrival in Mykolayiv, stopped them from lodging claims for asylum, and exposed them to the risk of ill-treatment in their countries of origin by ensuring that they remained on the vessel (which was headed to Saudi Arabia).

Conclusions:

- With respect to one applicant (one of the others having died, and the remaining applicant having ended contact with his lawyer), a Rule 39 interim measure had been indicated in March 2012 which had enabled him to leave the ship and make an asylum application in Ukraine. This meant that there was no violation of Article 3, because he was no longer at immediate risk of ill-treatment in his country of origin;
- There was a violation of the third applicant's right to an effective remedy under Article 13 taken in conjunction with Article 3, as – prior to the indication of the interim measure – border guards had prevented the applicant from disembarking in Ukraine (which made him liable to be removed from Ukraine at any time, without having his claim of potential ill-treatment examined); and
- Border guards preventing persons from entering a state's territory by not allowing them to disembark at a port might constitute a pushback, engaging the ECHR (as might preventing applicants from lodging an asylum application).

M.A. and Others v. Lithuania (Application No. 59793/17) – ECtHR

The case concerned a Chechen family with five children, the father of whom had been tortured by the Russian security services after refusing to become an informer. In 2017, the family sought to cross from Belarus to Lithuania on three occasions but their attempts to submit asylum applications were refused. The family returned to Russia after their legal stay in Belarus expired, following which the father was detained and beaten.

Conclusions:

- Failure to allow the applicants to submit asylum applications and their removal to Belarus on three occasions, in the absence of any examination of their claim that they would face a real risk of return to Chechnya and ill-treatment there, amounted to a violation of Article 3 (whether or not they would indeed face a real risk of ill-treatment in Chechnya; the issue was that the Lithuanian authorities failed to adequately assess that claim);
- Though the applicants had not appealed the decisions refusing them entry to Lithuania, an appeal – whether successful or not – would not have had automatic suspensive effect and would not have prevented their return to Belarus. This therefore amounted to a violation of Article 13, as it was not an effective remedy against the decisions refusing entry;

- In determining whether individuals sought to request asylum and/or communicated fear for their safety in the event of removal, the ECtHR will consider not only the border guards' records but also (e.g.) the applicant's account, supporting documents and reports regarding the situation at the border (where these indicate the existence of a systemic practice of misrepresenting statements given by asylum-seekers in official notes); and
- Border guards preventing persons from entering a state's territory at a land border might constitute a pushback, engaging the ECHR (as might refusal to accept asylum applications and to initiate asylum proceedings).

M.K. and Others v. Poland (Application Nos. 40503/17, 42902/17 and 43643/17) – ECtHR

The case concerned various applications submitted by Russian nationals from Chechnya, including children, who attempted to cross the border with Belarus on multiple occasions. They were rejected by Polish border authorities on the basis that they had not stated they would face persecution in Chechnya, and the Polish authorities refused to implement Rule 39 interim measures which required the authorities to refrain from returning the applicants to Belarus.

Conclusions:

- Removing asylum seekers to third intermediary countries (a) where they have an arguable complaint that such removal would expose them to treatment contrary to Articles 2 and 3; (b) where they have been effectively prevented from applying for asylum and accessing a remedy with automatic suspensive effect; and (c) without assessing the merits of their asylum claims will ordinarily violate Articles 3 and 13 (as here), unless the state has reviewed whether the applicants would have access to adequate asylum procedures in the third country to which they are removed (the ECtHR found that this was not the case in Belarus). In this case, it is obliged to allow those asylum seekers to remain within its jurisdiction until their claims have been properly reviewed;
- A state cannot deny access to its territory to persons presenting themselves at a border checkpoint who allege that they may be subjected to ill-treatment if they remain on the territory of the neighbouring state (unless adequate measures are taken to eliminate such risk); doing this (and/or removing them) knowingly exposed the applicants to a serious risk of chain-refoulement and Article 3 prohibited treatment in Belarus;
- Though the applicants had been interviewed, and individual decisions issued, these decisions did not adequately reflect the applicants' fear of persecution and had instead emphasised arguments supporting the identification of the applicants as economic migrants (which the ECtHR identified was common practice at the border). This amounted to a failure to properly regard the applicants' individual situations, and thereby a collective expulsion contrary to Article 4 of Protocol No. 4; and
- By failing to implement the Rule 39 interim measures, Poland had put the applicants at risk of treatment that the measures aimed to prevent and thereby violated Article 34.

D v. Bulgaria (Application No. 29447/17) – ECtHR

The case concerned a Turkish journalist and political dissident, who crossed into Bulgaria in 2016 by stowing away in a truck. The applicant was identified by police shortly after when the truck sought to cross the border with Romania, and – despite stating a wish to apply for asylum on multiple occasions – was returned to the Turkish border and handed over to the Turkish authorities (who proceeded to imprison him for 7 years and six months).

Conclusions:

- Returning the applicant to Turkey without instituting proceedings in relation to his asylum application had removed him without examining the Article 3 risks he faced and had rendered the available remedies ineffective in practice, in breach of Articles 3 and 13 of the Convention;

- It was not decisive that the file did not contain a written document by which the applicant had explicitly applied for asylum, given the linguistic obstacles, the lack of involvement of a lawyer, the applicant's (uncontested) statements to the border police and the conditions prevailing in Turkey at that time (including in respect of journalists). Individuals therefore do not have to explicitly request asylum, nor does the wish to apply for asylum need to be expressed in a particular form; states should train officials to enable them to detect and understand asylum requests; and
- Summarily returning an individual to their country of origin shortly after their entry into the territory of the respondent state might constitute a pushback, engaging the ECHR.

See also:

- ***Khlaifia and Others v. Italy*** **(Application No. 16483/12) – ECtHR**: See above under 'Detention'.
- ***Akkad v. Turkey*** **(Application No. 1557/19) – ECtHR**: See above under 'Detention'.
- ***Alkhatib and Others v. Greece*** **(Application No. 3566/16) – ECtHR**: See above under 'Border Violence'.
- ***Shahzad v. Hungary (No. 2)*** **(Application No. 37967/18) – ECtHR**: See above under 'Border Violence'.
- ***A.R.E v. Greece*** **(Application No. 15783/21) – ECtHR:** See above under 'Enforced Disappearance'.
- ***M.A. and Z.R. v. Cyprus*** **(Application No. 39090/20) – ECtHR:** See above under 'Inhuman Treatment or Punishment'.
- ***Sherov and Others v. Poland*** **(Application Nos. 54029/17, 54117/17 and 54255/17) – ECtHR**: See above under 'Collective expulsion'.

Refoulement

Though the ECHR does not contain any explicit reference to a right of asylum, asylum seekers are extended the protection of Articles 2 or 3 by the ECtHR's interpretation of this Article as including the prohibition of refoulement. This expands the Geneva Refugee Convention and Protocol to also cover inhuman and degrading behaviour, as the Convention does not cover many individuals who are in need of international protection due to being at risk of expulsion to situations where they would face harm such as, e.g., torture (given that such treatment would not be based on the criteria set out in the Convention, e.g. race).[272]

In particular, the principle of non-refoulement protects individuals from being removed to a location where they would suffer treatment contrary to Articles 2 or 3. However, the ECtHR's jurisprudence supports the notion that the list of human rights protected by the principle of non-refoulement is not restrictive and continues to develop; whilst the risk of suffering treatment contrary to Articles 2 or 3 is the most obvious set of rights protected by the principle, this list continues (and will continue) to grow (capturing also the right to a fair trial and even, in some cases, the right to freedom of religion or belief).[273]

Insofar as the principle is defined by reference to Articles 2 and 3, there is no freestanding analysis of whether the principle of non-refoulement has been breached. Instead, the analysis relates to whether the applicant is at risk of expulsion to a place where these Articles would be violated. This standard has been met where:

- There is a breach of the substantive obligation (***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09)), through attempts being made by a state to return individuals to a country known to systematically violate Articles 2 and 3. In this case, such systematic violations were demonstrated by reports produced by various third-parties (e.g., Human Rights Watch, the AIRE Centre and Amnesty International), based on statements of numerous direct witnesses; and
- There is a breach of the procedural obligation entailed in Articles 2 and 3, e.g. by failing to analyse all applicable conditions relating to the applicant and the receiving country, even where those conditions have not been directly relied on by the applicant (***Ilias and Ahmed v. Hungary*** (Application No. 47287/15); ***F.G. v. Sweden*** (Application No. 43611/11)).

However, a mere 'possibility' of ill-treatment on account of the unsettled general situation in a country is insufficient to give rise to a breach of Article 3; in ***Muslim v. Turkey*** (Application No. 53566/99), an Iraqi national who had lodged an application in 1999 fearing that he would be held responsible for an attack against a member of Saddam Hussein's Ba'ath party was deemed to no longer face the same level of risk when the complaint was considered in 2005.

Ilias and Ahmed v. Hungary (Application No. 47287/15) – ECtHR

This case concerned two Bangladeshi nationals who transited through Greece, Macedonia and Serbia, before reaching Hungary and immediately applying for asylum. During a period of 23 days of detention, one applicant was provided interpretation and legal information in Dari (which he did not speak). On the same day, both claims were rejected as Serbia was considered a safe third country. After a second rejection of the applicants' case, the applicants were pushed back to Serbia.

272 J. Ristik, "The Right to Asylum and the Principle of Non-Refoulement Under the European Convention on Human Rights", European Scientific Journal Volume 13: Issue 28 (October 2017), pages 108 to 115.

273 Y. Ktistakis, "Protecting Migrants Under the European Convention On Human Rights and the European Social Charter: A handbook for legal practitioners", (2nd edition), Council of Europe Publishing (2016), page 97.

Conclusions:

- It is the duty of a removing state to assess the real risk an applicant would face in a receiving country; if safety is not guaranteed, Article 3 entails a duty not to remove the individual concerned. When an application is not examined on its merits, it cannot be known if an Article 3 risk exists – unless a thorough and comprehensive legal procedure to assess the existence of such risk exists;
- The creation of a safe third country list is not necessarily prohibited but must be accompanied by an analysis of the conditions of the receiving country and of its asylum system. Hungary could not evidence that it had thoroughly assessed Serbia and had not taken into account available and reliable information regarding the risk of refoulement from Serbia. This constituted a breach of Article 3; and
- A short amount of waiting time for the verification of the right to enter cannot constitute deprivation of liberty unless other factors are present; here the applications had been considered quickly, and the nature and degree of restrictions did amount to a significant degree of restriction of movement but was connected to the assessment of their applications without exceeding that necessity. Article 5 was held to be not applicable.

F.G. v. Sweden (Application No. 43611/11) – ECtHR

The case concerned an Iranian national who claimed asylum in Sweden based on his political activities and conversion from Islam to Christianity shortly after his arrival. Having initially not sought to rely on his conversion as a ground for asylum, the applicant's asylum claim was rejected. The applicant applied to stay the enforcement order of his deportation as he now sought to rely on his conversion; the Swedish authorities did not consider this a new circumstance and rejected his appeal. After appeal to the ECtHR, the ECtHR ordered Rule 39 interim measures preventing his expulsion for the duration of the proceedings. The applicant claimed that removal to Iran risked him suffering violations of Article 2 and 3 due to his conversion.

Conclusions:

- There would be a violation of Articles 2 and 3 if the applicant were deported without the Swedish authorities considering his case afresh with respect to his conversion. The authorities were aware of this, knew he might belong to a group at risk of ill-treatment in Iran, but had erroneously never examined this risk on the basis that it had not been invoked as a ground for asylum;
- An individual cannot forego the absolute protection given by Articles 2 and 3, and therefore the national authorities were obliged to assess all information brought to their attention of their own motion; and
- In cases of expulsion, the ECtHR does not examine the actual asylum application or verify how states honour their obligations under the Refugee Convention. Its main concern is whether effective guarantees exist that protect the applicant against arbitrary refoulement (direct or indirect) to the country from which they have fled.

A.B. and Y.W. v. Malta (Application No. 2559/23) – ECtHR

The case concerned two married Chinese nationals of Uighur ethnicity and Muslim faith who applied for asylum in Malta on the basis of persecution in China due to their ethnic and religious background. Their application was rejected in January 2017 and their appeal dismissed in October 2017. In August 2022, Maltese authorities issued a removal order (despite the substantial lapse of time since their asylum rejection). The couple challenged their removal order, arguing that deportation would violate the principle of non-refoulement.

Conclusions:

- The ECtHR ruled that Malta had breached its procedural obligations under Article 3 by attempting to enforce the deportation order without initiating a fresh risk assessment;

- The risk assessment is intended to focus on the foreseeable consequence of the applicant's removal to the country of destination (in light of the general situation there and of the applicant's personal circumstances) and the existence of the risk must be assessed primarily by reference to the facts which were known or ought to have been known by the State at the time of the expulsion. Given the passage of time since the decision in 2017 and the worsening situation in Xinjiang, the applicants should have had an available effective remedy at the time of their expected removal;
- While past persecution or mistreatment would weigh heavily in favour of a positive assessment of risk of future persecution, its absence is not a decisive factor;
- States can rely on the existence of an internal flight alternative in their assessment of an individual's claim. However, in order to rely on an internal flight alternative, the State must satisfy itself that the person can travel to the area concerned, gain admittance and settle there (otherwise an issue under Article 3 may arise); and
- The Court held that the Immigration Appeals Board failed to conduct a rigorous risk assessment before confirming the removal order. For the Immigration Appeals Board to be an effective remedy, it cannot be a mere rubber stamp of any prior asylum decision, particularly where there had been a substantial lapse of time between the rejection of the asylum application and the date of the removal order and its subsequent challenge.

Kunshugarov v. Türkiye (Application Nos. 60811/15 and 54512/17) – ECtHR

The case concerned a Kazakhstani national who was living in Türkiye but faced extradition to Kazakhstan for charges related to involvement in an armed jihadist organisation. The applicant challenged his extradition on the basis that he faced a real risk of the death penalty or ill-treatment in Kazakhstan.

Conclusions:

- While references to a general problem observing human rights in a particular country are not in themselves enough to refuse to extradite a person, various reports had been issued by international organisations in respect of Kazakhstan which referred to allegations of torture and other forms of ill-treatment in prisons and detention centres, particularly for individuals charged with terrorism and extremism-related offences;
- Given the applicant had been charged with terrorist offences and crimes related to religious extremism, the domestic authorities were aware (or ought to have been aware) that the applicant could be exposed to a real risk of ill-treatment if removed to Kazakhstan and which were also sufficiently brought to their attention by the applicant. The onus was therefore on the domestic authorities to carefully assess the risk of ill-treatment in order to dispel any doubts about it, rather than relying primarily on assurances given by Kazakh authorities;
- The assessment requires a careful examination of the adequacy of the assurances given by the State requesting extradition in the light of the specific allegations made by the applicant and of the information relating to the country of origin provided by reliable and objective sources; and
- In assessing the quality of assurances, the Court should consider: who has given the assurances and whether that person/authority has the power to bind the central government of the receiving State, whether they are couched in general or specific terms, whether they have been given by a Contracting State, whether the requesting State's compliance with those assurances can be objectively checked through diplomatic or other monitoring mechanisms and whether there is an effective system of protection against torture in the receiving State. The ECtHR found that the assurances given by Kazakh authorities did not meet this test and therefore the domestic authorities failed to carry out an adequate examination of the applicant's claims.

Refugee

ECHR

There is no right to asylum, and the ECtHR cannot examine whether the refusal or withdrawal of refugee status under the 1951 Geneva Convention or the refusal of subsidiary protection under the Qualification Directive (2011/95/EU) is contrary to the ECHR (***Ahmed v. Austria*** (Application No. 25964/94) and ***Sufi and Elmi v. The United Kingdom*** (Application Nos. 8319/07 and 11449/07)).

There are no specific provisions for the cessation of international protection when the risk situation in a third country has improved; instead, the ECtHR will only consider the present conditions in a third country when making a determination in a case involving a desired removal (rather than historic conditions) (***Tomic v. The United Kingdom*** (Application No. 17837/03)).

EU law

Under the Qualification Directive (2011/95/EU):

- Article 13 provides a right for those who qualify for asylum to have their status as refugees recognised;
- Article 18 provides a right for those who need international protection but who do not qualify for refugee status to benefit from subsidiary protection;
- Article 24 provides the right to documentation for those recognised under Articles 13 and 18, entitling them to residence permits (3 years for refugees, and 1 year for beneficiaries of subsidiary protection); and
- Article 25 entitles refugees and, in some cases, beneficiaries of subsidiary protection to travel documents.

International protection may take the form of refugee status or subsidiary protection. Refugee status is governed by the Geneva Refugee Convention (1951) and Protocol (1967), however, Member States can also decide to grant subsidiary protection status to individuals not meeting this threshold.

Member States implement the Qualification Directive (2011/95/EU) in different ways, and so the criteria for subsidiary protection and standards of protection differ. For subsidiary protection, a person must usually prove that they would face a risk of serious harm if returned to their country of origin. This need not necessarily be for a specific reason such as race, religion or political opinion. The major difference between the two types of protection is usually that refugee status carries the prospect of family reunification, whereas subsidiary protection does not.[274]

Under Articles 11 and 16, international protection can come to an end when the risk situation in a third country has improved (***Salahadin Abdulla and Others v. Bundesrepublik Deutschland*** (Joined Cases C-175/08, C-176/08 and C-179/08)). However, Articles 11 and 16 provide that the status of refugees and beneficiaries of subsidiary protection who have been subject to very serious harm in the past will not cease in cases of changed circumstances if they can invoke compelling reasons for refusing to avail themselves of the protection of their country of origin.

***Salahadin Abdulla and Others v. Bundesrepublik Deutschland* (Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) – CJEU:**

The applicants, who were Iraqi nationals, applied for asylum in Germany on the basis of feared persecution by Saddam Hussein's Ba'athist regime. They were granted refugee status in 2001 and 2002. After the fall of the Ba'ath party and the capture of Saddam Hussein, the Bundesamt initiated procedures to revoke their recognition as refugees in 2004 and 2005.

274 InfoMigrants, "What is the difference between refugee status and subsidiary protection?".

Conclusions:

- Refugee status ceases to exist in the event of a significant and non-temporary change in the third country concerned of the circumstances which justified the person's fear of persecution for one of the reasons on the basis of which refugee status was granted, and that person has no other reason to fear being persecuted within the meaning of Article 2(c) of Directive 2004/83 (to be assessed on the same standard of probability as applied when refugee status was granted); and
- For the purposes of assessing a change of circumstances, the Member State must verify – with regard to the refugee's individual situation – that the third country has taken reasonable steps to prevent persecution, and they operate (inter alia) an effective legal system for the detection, prosecution and punishment of persecution to which the individual will have access if refugee status ceases (which may include protection offered by international organisations controlling the state or a substantial part of it, including by means of a multinational force in that country).

***K.A.M. v. Republic of Cyprus* (Case C-454/23) – CJEU:**

The request for a preliminary ruling concerned the rejection of a Moroccan national's refugee status on the basis that the applicant constituted a danger to the security of the Republic of Cyprus. The Counter Terrorism Office in Cyprus allegedly sent the Asylum Service a confidential letter setting out the danger posed by the applicant, including that he was a person engaged in operational activity for a terrorist group, he had contradicted himself in relation to his travel prior to entering Cyprus, he had been in trouble with the Belgian, Spanish and French police authorities for various offences and he had threatened to bomb the Belgian embassy in Morocco.

Conclusions:

- Reasonable grounds for regarding the refugee as a danger to the security of a State in which he or she is present can include acts or conduct by the refugee prior to his or her entry into the territory of that State;
- It is irrelevant that those acts and that conduct do not constitute grounds for exclusion from being a refugee expressly provided for in Article 1(F) of the Geneva Convention and Article 12 of that directive; and
- The notion of ‘national security’ also covers cases in which a third-country national belongs to an association which supports international terrorism or supports such an association.

***K.L. v. Migracijos departamentas prie Lietuvos Respublikos vidaus reikalų ministerijos* (Case C-63/24) – CJEU:**

The request for a preliminary ruling concerned the application of a third-country national for refugee status who claimed he had been wrongfully convicted three times by the authorities of his country for origin, because of his activities as part of the political opposition. The Lithuanian Migration Department rejected the applicant's application for international protection, but issued a temporary residence permit to him on the ground that to have him returned to his country of origin where he may be persecuted for his political opinions was prohibited. The applicant appealed the decision on the basis that he had already served his sentences for the convictions and therefore the “serious non-political crime” exception in Lithuanian law did not apply.

Conclusions:

- The fact that an applicant for international protection has served his or her sentence constitutes an element which must necessarily be taken into account by the competent authority of the State concerned in its assessment of all the specific circumstances of the individual case concerned;
- In order to assess the seriousness of the offence in question, the competent authority will have to examine the type of act at issue, the sentence provided for and imposed, the period

which has elapsed since the criminal conduct, the conduct of the person concerned during that period and the remorse, if any, expressed; and

- The fact that the sentences have been served does not, in itself, prevent that applicant from being excluded from refugee status.

***A v. Generalstaatsanwaltschaft Hamm* (Case C-352/22) – CJEU:** See above under 'Inhuman Treatment or Punishment'.

***QY v. Bundesrepublik Deutschland* (Case C-753/22) – CJEU:**

The request for a preliminary ruling concerned a Syrian national who obtained refugee status in Greece, but whose application for recognition of refugee status had been rejected by the Federal Office for Migration and Refugees in Germany. The referring court was seeking guidance on whether (given Greece's previous decision) the Federal Office for Migration and Refugees was precluded from conducting a new independent examination of the application for international protection and whether the decision taken in another State is binding on all other States.

Conclusions:

- EU law on international protection does not impose an express obligation on the States to recognise automatically decisions granting refugee status adopted by another State. However, it is open to States to provide for automatic recognition of such decisions adopted by another State, by way of a more favourable provision;
- Applications for international protection must be examined individually, objectively and impartially in light of precise and up-to-date information. Although an authority is not required to grant refugee status to an applicant on the sole ground that that status was previously granted to him or her by decision of another State, it must nevertheless take full account of that decision and of the elements supporting it; and
- The State making the decision must, as soon as possible, initiate an exchange of information with the authority of the other State which granted the requested individual refugee status.

***WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* (C-621/21) – CJEU:**

The request for a preliminary ruling concerned a Turkish national female, of Kurdish ethnicity, who arrived in Bulgaria before moving to Germany and claiming asylum on the basis that she had been forcibly married at the age of 16 and abused by her husband. The Turkish national was taken back by the Bulgarian authorities for the purpose of examining her application, who rejected her application on the basis that acts of domestic violence or death threats by her husband and by members of her biological family were not relevant for the purpose of granting that status, since they could not be linked to any of the reasons for persecution and she did not claim to be a victim of persecution based on her gender. She then made a subsequent application based on new evidence, claiming a fear of persecution from being part of a “particular social group”, women who are victims of domestic violence and potentially of honour killings.

Conclusions:

- Members of a social group must share at least one of the three following identifying features: an “innate characteristic”, a “common background that cannot be changed” or a “characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it”. The group must also have a distinct identity in the country of origin. The fact that women have escaped from a forced marriage or, for married women, have left their homes, may be regarded as a “common background that cannot be changed”;
- Women, as a whole, may be regarded as belonging to a “particular social group” where it is established that, in their country of origin, they are, on account of their gender, exposed to physical or mental violence, including sexual violence and domestic violence;
- Women who refuse forced marriages, where such a practice may be regarded as a social norm within their society, or who transgress such a norm by ending that marriage, may be

regarded as belonging to a social group with a distinct identity in their country of origin if, on account of that behaviour, they are stigmatised and exposed to the disapproval of their surrounding society resulting in their social exclusion or acts of violence;

- In view of the objective of Article 15(a) of Directive 2011/95 of ensuring protection for persons whose right to life would be threatened if they were to return to their country of origin, the term “execution” in that provision cannot be interpreted as excluding harm to a person’s life solely on the ground that it is caused by non-State actors. Therefore, where a woman runs a real risk of being killed by a member of her family or community because of the alleged transgression of cultural, religious or traditional norms, such serious harm must be classified as “execution” within the meaning of that provision; and
- Where the acts of violence to which a woman risks being exposed because of the alleged transgression of cultural, religious or traditional norms are not likely to result in her death, those acts must be classified as torture or inhuman or degrading treatment or punishment within the meaning of Article 15(b) of Directive 2011/95.

Sexual and Gender-based Violence

The Committee on the Elimination of Discrimination against Women (CEDAW) considers that gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. The CEDAW believes that such violence is a critical obstacle to the achievement of substantive equality between women and men and to the enjoyment by women of their human rights and fundamental freedoms and is thus prohibited under Article 1 of the CEDAW.[275]

The United Nations Commission on Human Rights expressly recognised the nexus between gender-based violence and discrimination by stressing in resolution 2003/45 that "all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State."

The 1951 UN Convention relating to the Status of Refugees does not specifically refer to gender as one of the grounds upon which an individual can be recognised as a refugee and given protection. It is this which has largely been seen as the basis of women's marginalisation when their fears of persecution arise out of forms of protest or ill treatment which are not considered 'political'.

Women are as vulnerable to political violence as their male counterparts, even though their political participation often takes place at a 'low level'. In many societies, the penalties for political participation and resistance are even more severe for women than for men because of cultural and social norms that preclude women's involvement. For example, women who are imprisoned run the risk of 'double punishment', punished not only because they oppose the regime in some way but also because they shun the traditional role of women by being politically active at all.[276]

Opuz v. Turkey (Application No. 33401/02) – ECtHR

This case concerned Nahide Opuz, who had been abused by her husband for years, and her mother, who had also been abused by Opuz's husband. Opuz's mother was ultimately killed by Opuz's husband, despite telling police on several occasions that her son-in-law had threatened to kill her and her family. Opuz's husband was convicted twice before the murder took place, due to the seriousness of his offences.

The applicant alleged that the Turkish authorities failed to protect the right to life of her mother and that they were negligent in the face of the repeated violence, death threats and injury to which she herself was subjected. As part of this, she complained about the lack of protection of women against domestic violence under Turkish law, in violation of Article 14 (prohibition of discrimination).

Conclusions:

- There had been a violation of Article 14 (prohibition of discrimination) read in conjunction with Articles 2 and 3 on account of the violence suffered by the applicant and her mother having been gender-based, which amounted to a form of discrimination against women, especially bearing in mind that, in cases of domestic violence in Turkey, the general passivity of the judicial system, albeit unintentional, and impunity enjoyed by aggressors mainly affected women;
- In particular, the ECtHR found there to be serious problems in the implementation of Law no. 4320, which was relied on by the Government as one of the remedies for women facing domestic violence. Research indicated that when victims reported domestic violence to police stations, police officers did not investigate their complaints but sought to assume the

275 Committee on the Elimination of Discrimination against Women, "General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19".

276 H. Crawley, "Gender, persecution and the concept of politics in the asylum determination process", Forced Migration Review Volume 9 (December 2000), pages 17 – 20.

role of mediator by trying to convince the victims to return home and drop their complaint; and

- The ECtHR also noted that there were unreasonable delays in issuing injunctions by the courts under Law no. 4320 because the courts treat them as a form of divorce action and not as an urgent action. Perpetrators of domestic violence also do not seem to receive dissuasive punishments because the courts mitigate sentences on the grounds of custom, tradition or honour.

***N v. Sweden* (Application No. 23505/09) – ECtHR**

This case concerned an applicant who taught women in her native Afghanistan, who fled to Sweden with her husband to escape persecution, but Sweden refused to grant her asylum on the basis that they did not believe there was a real risk of her being harmed if she returned to Afghanistan. The applicant later separated from her husband and was disowned by her family. She feared reprisals from her ex-husband's family and being shunned for having broken with tradition if she went back to Afghanistan.

Conclusions:

- The ECtHR noted that while there had been reports of serious human rights violations in Afghanistan, the reports were not of such a nature to show, on their own, that there would be a violation of the Convention if the applicant were to return to Afghanistan. The ECtHR therefore had to establish whether the applicant's personal situation was such that her return would contravene Article 3;
- The ECtHR observed that women are at particular risk of ill-treatment in Afghanistan if perceived as not conforming to the gender roles ascribed to them by society, tradition and even the legal system. Afghan women who have adopted a less culturally conservative lifestyle, such as those returning from exile in Iran or Europe, continue to be perceived as transgressing entrenched social and religious norms and may, as a result, be subjected to domestic violence and other forms of punishment ranging from isolation and stigmatisation to honour crimes for those accused of bringing shame to their families, communities or tribes; and
- Having regard to the special circumstances of the present case, the ECtHR found that there were substantial grounds for believing that, if deported to Afghanistan, the applicant faced various cumulative risks of reprisals which fall under Article 3 of the Convention from her husband, his family, her own family and from the Afghan society.

***AH and FN* (C-608/22 and C-609/22) – CJEU:** See above under 'Persecution'.

***WS v. Intervyuirasht organ na Darzhavna agentsia za bezhantsite pri Ministerskia savet* (C-621/21) – CJEU:** See above under 'Refugee'.

***X. v. Cyprus (Application No. 40733/22)* – ECtHR**

The case concerned complaints about the failure of authorities in Cyprus to effectively discharge their obligations under Articles 3 and 8 to investigate and prosecute the applicant's allegations of rape while on holiday in Ayia Napa. The applicant had reported the incident to the police but retracted the allegation after being held without a lawyer and was subsequently convicted of lying about the rape attack.

Conclusions:

- The immediate conviction of the applicant after her retraction of initial statements (which was ultimately overturned on appeal) raised significant concerns about the handling of the case;
- The Supreme Court found that the investigation of the applicant's complaint was littered by failures – the police failed to establish the time of the alleged rape, the forensic medical

examiner failed to explain the existence of evidence, take her medical history or enquire into the force used against her and the first-instance court failed to address evidence in a videorecording and witness statements describing the applicant's psychological state. However, the Supreme Court's findings cannot satisfy the requirement of an effective investigation because those initial flaws had an impact on the effectiveness of the entire investigation. The ECtHR also found that the authorities omitted to follow various lines of inquiry which undermined the investigation's ability to establish the circumstances of the case and verify the accounts of the alleged rape;

- It appeared that the authorities' disclination to pursue the investigation further or initiate criminal proceedings had been based on the applicant's sexual liberty and conduct. The applicant's credibility was assessed through prejudicial gender stereotypes and victim-blaming attitudes. Circumstances concerning the victim's behaviour or personality cannot excuse the authorities from the obligation to carry out an effective investigation;
- The applicant, who at the time was 18 years old and a foreigner, alone in Cyprus, faced long and repeated interviews (including six hours of investigation on the final evening) which led to her retraction. The authorities' approach constitutes evidence of re-victimisation through their failure to adopt a victim-sensitive approach and to conduct their investigation so as to mitigate distress to the applicant; and
- The case revealed certain biases concerning women in Cyprus which impeded the effective protection of the applicant’s rights as a victim of gender-based violence and which, if not reversed, run the risk of creating a background of impunity, discouraging victims’ trust in the criminal justice system.

State / Country of Origin

EU law

Member States implement the Qualification Directive (2011/95/EU) in different ways, and so the criteria for subsidiary protection and standards of protection differ. For subsidiary protection, a person must usually prove that they would face a risk of serious harm if returned to their country of origin. This need not necessarily be for a specific reason such as race, religion or political opinion. The major difference between the two types of protection is usually that refugee status carries the prospect of family reunification, whereas subsidiary protection does not.[277]

Under Articles 11 and 16, international protection can come to an end when the risk situation in a third country has improved (***Salahadin Abdulla and Others v. Bundesrepublik Deutschland*** (Joined Cases C-175/08, C-176/08 and C-179/08)). However, Articles 11 and 16 provide that the status of refugees and beneficiaries of subsidiary protection who have been subject to very serious harm in the past will not cease in cases of changed circumstances, if they can invoke compelling reasons for refusing to avail themselves of the protection of their country of origin.

Salahadin Abdulla and Others v. Bundesrepublik Deutschland **(Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08) – CJEU:** See above under 'State / Country of Origin'.

Hoti v. Croatia **(Application No. 63311/14) – ECtHR**

The case concerned a stateless person born in Kosovo, who had lived and worked in Croatia since 1979. In 2014, Croatia refused to extend his temporary residence permit for failing to provide a valid travel document.

Conclusions:

- Stateless individuals like the applicant are required to fulfil requirements that, owing to their status, they are unable to fulfil (in that they needed to have a valid travel document to apply for permanent residence); this was notwithstanding that the applicant's statelessness was evident from his birth certificates; and
- As a result, Croatia had failed to comply with its positive obligation to provide an effective and accessible procedure enabling the applicant to have his status in Croatia determined with due regard to his private life under Article 8.

277 InfoMigrants, "What is the difference between refugee status and subsidiary protection?".

Torture

ECHR

In Recommendation No. R (1998) 7, the Committee of Ministers recommends screening asylum seekers so as to identify victims of torture and provide them with appropriate treatment and conditions.

Regarding torture:

- Though there is no specific ECHR provision concerning the domains in which Rule 39 interim measures will be appropriate, Rule 39 requests usually concern limited subject matters – including the right not to be subjected to torture or inhuman treatment;
- States have an obligation to protect individuals from treatment contrary to Article 3; during the entry process, this means that individuals should be protected against excessive physical restraint or inappropriate and unnecessary body searches;
- The inappropriateness of places of detention combined with prolonged deprivation of liberty may violate Article 3; and
- Detainees who suffer from mental illnesses or physical disabilities should be provided with appropriate conditions of detention; this is especially so when this has been caused by a traumatic experience, and whether or not an individual has been tortured is relevant to this analysis. Failing to provide adequate mental health care or adequate conditions of detention with regard to the detainee's level of disability may itself amount to a violation of Article 3, on the basis that the assessment of the level of suffering and whether it exceeds the threshold of severity of Article 3 must take into account a person's vulnerability.[278]

Human Rights NGOs have identified systemic risks of torture in non-ECHR states such as Libya;[279] removal to these locations may therefore engage the principle of non-refoulement. However, such risks have also been identified in ECHR states themselves (e.g., Latvia), which may engage Article 3 directly.[280]

EU law

For EU Member States:

- Article 25 of the Reception Conditions Directive (2013/33/EU) contains a duty to ensure that persons subject to torture or other serious acts of violence receive the necessary treatment for the damages caused by such acts, in particular access to appropriate medical and psychological treatment;
- Articles 4(3), 14 and 24 of the Asylum Procedures Directive (2013/32/EU) require persons conducting asylum interviews to be knowledgeable about problems like torture that may adversely affect the applicant's ability to be interviewed (in particular, indications of past torture), to provide applicants with adequate support during the asylum procedures, and to exempt such applicants from accelerated border procedures where adequate support cannot be provided; and
- Articles 24 and 46(7) of the Asylum Procedures Directive (2013/32/EU) provide additional guarantees in cases where appeals against a negative first instance decision do not have automatic suspensive effect (e.g., that an applicant must have at least one week to request

278 Y. Ktistakis, "Protecting Migrants Under the European Convention On Human Rights and the European Social Charter: A handbook for legal practitioners" (2nd edition), Council of Europe Publishing (2016), pages 18 to 43.

279 Amnesty International, "Libya: 'Between life and death': Refugees and Migrants trapped in Libya's cycle of abuse" (2019), page 10.

280 Amnesty International, "Latvia: Return home or never leave the woods: Refugees and migrants arbitrarily detained, beaten and coerced into 'voluntary" returns'" (2022).

a court or tribunal to decide on the right to remain in the territory pending the outcome of the appeal).

Evidencing torture

In evidencing violations of Article 3:

- Clear reasons will be needed to depart from findings of fact made by domestic courts (***Cestaro v. Italy*** (Application No. 6884/11));
- The level of persuasion necessary for reaching a particular conclusion, and the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegation made and the ECHR right at stake (***El-Masri v. The Former Yugoslav Republic of Macedonia*** (Application No. 39630/09));
- The standard of proof for allegations of treatment contrary to Article 3 is "beyond reasonable doubt", but it is not the case in all proceedings that someone alleging something must prove that allegation (***Blokhin v. Russia*** (Application No. 47152/06)); and
- The standard may be met by the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact; where events lie wholly/in large part within the knowledge of the authorities (e.g., persons in custody), strong presumptions of fact will arise in respect of injuries occurring during such detention and the burden of proof is then on the government to rebut the victim's account (***Salman v. Turkey*** (Application No. 21896/93)).

In ***R.C. v. Sweden*** (Application No. 41827/07), the applicant submitted a medical certificate documenting scars he said were received during torture in his asylum application. The Swedish Migration Board rejected the request on the grounds that it was not substantiated. Upon request, the applicant submitted a forensic medical report whose findings strongly indicated that the applicant had been tortured. The ECtHR held that the first medical certificate, though not written by an expert specialising in torture, was a good indication of torture that shifted the onus onto the Migration Board to dispel any doubts that might have persisted as to the cause of the scarring. The second medical certificate was of even greater probative value.

Othman (Abu Qatada) v. The United Kingdom **(Application No. 8139/09) – ECtHR**

The case concerned a Jordanian refugee in the United Kingdom who was to be deported to Jordan in the interests of national security. The Jordanian government also sought to try him based on evidence in part obtained through torture of third persons. The UK government obtained assurances from Jordan that he would not be subjected to ill-treatment and would be tried fairly, though the applicant alleged that he would be at real risk of ill-treatment and an unfair trial if deported.

Conclusions:

- A real risk of an individual facing treatment contrary to Article 3 if extradited may engage the ECHR; if the receiving state provides assurances the individual will not face such treatment, the ECtHR will consider whether these are sufficient to alleviate the risk;
- The preliminary question is whether the general human rights situation in the receiving state precludes accepting any assurances at all, but only in rare cases will the general situation in a country mean that no weight can be given to its assurances; here, the risk of this applicant being tortured could be allayed by assurances given by the Jordanian government;
- However, the applicant succeeded on the basis that the use of torture evidence in Jordan was widespread and there was little practical value to the legal guarantees against it being used under Jordanian law, meaning that there was a real risk of a flagrant denial of justice if he were deported to Jordan; and
- The ECtHR will consider the following factors when determining if an individual can be removed to a country in which (a) they allege a risk of torture / a risk of being tried based on evidence obtained by torture; and (b) that country provides assurances that no treatment contrary to the ECHR will occur:

- Whether the terms of the assurances have been disclosed to the ECtHR;
- Whether the assurances are specific or general / vague;
- Who has given the assurances, and whether they can bind the receiving state;
- If the assurances have been issued by the central government of the receiving state, whether local authorities can be expected to abide by them;
- Whether the assurances concern treatment which is legal or illegal in the receiving state;
- Whether the assurances have been given by a state that is a contracting party to the ECHR;
- The length and strength of bilateral relations between the sending and receiving states, including the receiving state's record in abiding by similar assurances;
- Whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms;
- Whether there is an effective system of protection against torture in the receiving state, including whether it is willing to cooperate with international monitoring mechanisms (including international human rights NGOs), and whether it is willing to investigate allegations of torture and punish those responsible;
- Whether the applicant has previously been ill-treated in the receiving state; and
- Whether the reliability of the assurances has been examined by the domestic courts of the sending state.

***Ukraine v. Russia (re Crimea)* (Application Nos. 20958/14 and 38334/18) – ECtHR**

This case concerned a complaint from the Ukrainian Government that the Russian Federation was responsible for administrative practices (mostly in Crimea) as part of a large, interconnected campaign of political repression which resulted in human-rights violations.

Conclusions:

- IGOs and NGOs had found multiple and grave violations of arbitrary arrests and detention, ill-treatment and torture, which were supported by testimonies of witnesses and victims. The victims had been predominantly Ukrainian soldiers, pro-Ukrainian activists, journalists and Crimean Tatars and the treatment they had been subjected to had caused them undeniable mental and physical suffering. Russia therefore breached its obligations under Articles 3 and 5;
- The ECtHR held that there had been “multiple and grave violations of the right to physical and mental integrity” committed by members of the CSDF, various Cossack groups and later by representatives of the Crimean FSB and the police. In particular, the Ukrainian Government alleged that “Ukrainian political prisoners” had been subject to beatings, the use of electric shocks, mock executions and the administration of unknown drugs aimed at inflicting severe pain or suffering in order to obtain information, extract confessions about crimes or testimony about acts carried out by others or inflict punishment or intimidation. The severity of such treatment taken together with the element of intent warranted its classification as acts of torture. Other types of conduct, such as, for example, threats of ill-treatment or psychological pressure had amounted at least to inhuman or degrading treatment;
- There had been 43 documented cases of disappearances between 2014 and 2018 and the whereabouts and fate of 8 individuals abducted in that period were still unknown. However, the consideration of the practice of enforced disappearance was not confined only to the individuals who had remained unaccounted for. Other relevant factors included the large number of instances of irregular deprivation of liberty and the relatively short period during which the abductions had taken place, the fact that the abductions appeared to have been perpetrated by entities under the State's responsibility (irrespective of whether it exercised detailed control over their policies and actions), the fact that the victims had been

predominately pro-Ukrainian activists, journalists and Crimean Tatars and that the abductions and followed a particular pattern and had been used as a means to intimidate and persecute such individuals as part of a strategy to suppress the existing opposition to the Russian occupation. Russia's prosecuting authorities had not carried out an effective investigation, if any investigation at all, into the incidents and this administrative practice was unanimously held to be a violation.

Territorial Jurisdiction

Extent of jurisdiction

Article 1's reference to parties securing rights within their jurisdiction, rather than territory, indicates that states may be obliged to secure rights and freedoms outside their territory. The spatial basis for the extra-territorial application of the ECHR under previous case law (i.e., the ECHR also applies to areas where a contracting state exercises effective control of an area outside its national territory). The ECHR has therefore been found to have extra-territorial application where:

- A violation occurred in a geographical region in which a party to the ECHR exercised decisive control (***Ilascu v. Moldova*** (Application No. 48787/99), in which Russia was held to be exercising control over Transnistria notwithstanding that Transnistria is formally a part of Moldova); and
- An extra-territorial violation was perpetrated by agents of a state that is party to the ECHR (***Al-Skeini and Others v. The United Kingdom*** (Application No. 55721/07), where six Iraqi civilians were shot dead by British military patrols).

This turns on the exercise of physical power and control over the person in question, and is likely to involve a fact-specific analysis considering (1) the circumstances of the alleged violation (e.g., states are likely to be allowed greater leeway in active conflict scenarios than when conducting interception measures in the Mediterranean); (2) the physical power and control exercised by the alleged perpetrators of the violation (e.g., shooting someone is more likely to meet the threshold than touching them); (3) the proximity of the perpetrators of the alleged violation to the state (e.g., members of the soldiery and the police are likely to be more easily identified as state authorities than, e.g., transport employees); and (4) the powers exercised by the perpetrators of the alleged violation (e.g., executive or judicial functions carried out by state authorities in another state's territory are captured).

Although jurisdiction is still presumed to be territorial, and the extra-territorial application of the ECHR is supposed to occur in only 'exceptional' cases, this territorial principle is now uncertain, and judicial authorities have displayed a willingness to interpret 'exceptional' as imposing a not especially high threshold. In ***Andreou v. Turkey*** (Application No. 45653/99), the ECtHR was willing to find that Turkey was exercising extra-territorial jurisdiction in circumstances where Turkish armed forces on Turkish-Cypriot territory shot a demonstrator situated on Greek-Cypriot territory notwithstanding that Turkey exercised no control over the territory on which the demonstrator stood. The ECtHR has thus proven willing on occasion to adopt what has been recognised as a cause-and-effect analysis, and to find extra-territorial jurisdiction in circumstances where one state's actions were the direct and immediate cause of a violation.[281]

Given this extension of the principle of extra-territoriality, certain academic commentary has suggested that the use of non-physical coercive measures (e.g., warning shots) to repel migrant boats might amount to an instance of effective control sufficient to give rise to the extraterritorial application of the ECHR, even in the absence of physical contact between those boats and state vessels.[282]

Evidencing jurisdiction

The ECtHR has accepted the following forms of evidence that an individual is within the jurisdiction of a particular state:

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281 P. Stojnić, "Gentlemen at home, hoodlums elsewhere: The Extraterritorial Application of the European Convention on Human Rights", The Oxford University Undergraduate Law Journal Volume 10 (May 2021), pages 137 to 170.

282 S. Solomon, "Migrant boats on the high seas and their interception through psychologically coercive measures: Is there a case to extraterritorially apply human rights law?", Netherlands Quarterly of Human Rights Volume 37: Issue 1 (2019), pages 36 to 49.

- In ***M.H. and others v. Croatia*** (Application Nos. 15760/18 and 43115/18), the ECtHR accepted witness statements from the applicants as evidence that they had crossed into Croatia (versus the state's account that they had never left Serbia) - see [11];
- In ***M.A. and Others v. Lithuania*** (Application No. 59793//17), the applicants evidenced that they had in fact arrived at the railway border checkpoint in Vilnius to claim asylum by reference to both photographic (a photograph of the application at the border checkpoint) and physical evidence (their train tickets) – see [18];
- In ***N.D. and N.T. v. Spain*** (Application Nos. 8675/15 and 9697/15), the ECtHR considered video evidence submitted by journalists and other witnesses as evidence of the events – see [27];
- Mobile phones with geolocation capabilities create new means of evidencing presence in a certain area;[283] and
- in ***M.H. and others v. Croatia*** (Application Nos. 15760/18 and 43115/18), the ECtHR discussed physical evidence, evidence from video cameras, thermographic evidence, mobile phone signal evidence, and evidence from police car GPS as examples of types of evidence that might establish jurisdiction – see [269]-[275]. Although not adduced, the Court also stated that obtaining GPS locations from both the applicants' and police officers' phones would be "an obvious item of physical evidence" (at [158]) to prove that the applicants had entered Croatian territory before being pushed back.

Hirsi Jamaa and Others v. Italy (Application No. 27765/09) – ECtHR

The case concerned a group of c. 200 individuals who left Libya and were intercepted by the Italian coastguard within the search and rescue area of Malta (another party to the ECHR). The applicants were summarily returned to Libya and given no opportunity to apply for asylum.

Conclusions:

- The applicants fell within Italy's jurisdiction for the purposes of Article 1 as the Italian authorities (1) exercised control over the applicants via the coastguard; and (2) knew, or should have known, that if returned to Libya as irregular migrants, the applicants would be exposed to treatment contrary to the ECHR and would not be given any kind of protection (and there were insufficient guarantees protecting them from the risk of being arbitrarily returned to their countries of origin);
- The fact that the applicants had not sought asylum, or described the risks they faced as a result of the lack of asylum system in Libya, did not exempt Italy from complying with its Article 3 obligations; states remain subject to international refugee law regardless, including the principle of non-refoulement;
- There had been two violations of Article 3 as the applicants had been (1) exposed to the risk of ill-treatment in Libya; and (2) of repatriation to Somalia or Eritrea. The existence of domestic laws and the ratification of international treaties guaranteeing respect for fundamental rights were not in themselves sufficient to ensure adequate protection against the risk of ill-treatment, in circumstances where Libya was known to systematically arrest and detain migrants in inhuman conditions observed to amount to torture;
- Nothing in Article 4 of Protocol No. 4 precluded the extraterritorial application of that article, and the removal of aliens to a non-ECHR state carried out outside the national territory of an ECHR state was capable (and here did) amount to a collective expulsion. Both "expulsion" and "jurisdiction" are principally territorial notions, but the ECtHR can exceptionally find (as here) that a state had exercised its jurisdiction outside its national territory, and that this amounted to a collective expulsion; and

283 G. Baranowska, "Exposing Covert Border Enforcement: Why Failing to Shift the Burden of Proof in Pushback Cases is Wrong", European Convention on Human Rights Law Review, Brill Nijhoff (2023), page 14.

- Article 13 had been violated because the applicants were given insufficient information to enable them to gain effective access to any remedy that would have enabled them to lodge their complaints under Article 3 and Article 4 of Protocol No. 4 with a competent authority, and have those complaints fully examined.

4. Glossary

Legal Definitions & Sources

	Term	Legal Definition(s)	Legal Provision(s)
1	**Asylum;** **Asylum seeker**	**INTERNATIONAL LAW:** "Asylum" refers to the grant, by a State, of protection on its territory to persons outside their country of nationality or habitual residence, who are fleeing persecution or serious harm or for other reasons. Asylum encompasses a variety of elements, including protection against refoulement, permission to remain on the territory of the asylum country, humane standards of treatment and access to a durable solution. "Asylum seeker" refers to a person who seeks protection from persecution or serious harm in a country other than their own and awaits a decision on the application for refugee status under relevant international and national instruments.	▪ Refugee Convention (1951) and Protocol (1967) ("**Refugee Convention**") ▪ Article 14, Universal Declaration of Human Rights ("**UDHR**") ▪ International Covenant on Civil and Political Rights (1966) ("**ICCPR**") ▪ United Nations Convention against Torture (1987) ("**CAT**") ▪ United Nations High Commissioner for Refugees ("**UNHCR**"), Master Glossary of Terms.
		EUROPEAN LAW: "Asylum" refers to the seeking of international protection including refugee status. "Asylum seeker" refers to an individual who has sought international protection and whose claim (for e.g. for refugee status) has not yet been determined, under both EU and ECHR law.	▪ Handbook on European law relating to asylum, borders and immigration
2.	**Border violence;** **Border governance**	**INTERNATIONAL LAW:** "Border violence" is an informal term which is used to describe violent pushbacks perpetrated generally by border guards and/or officials with the aim of preventing people on the move (including migrants, asylum seekers and refugees) from approaching or crossing the border and therefore, from accessing asylum procedures. "Border governance" refers to legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of a State, comprising detection, rescue, interception, screening, interviewing, identification, reception, referral, detention, removal or return, as well as related activities such as training,	▪ United Nations Office of the High Commissioner for Human Rights ("**OHCHR**"), Recommended Principles and Guidelines on Human Rights at International Borders, 2014 ▪ **CAT** ▪ Other sources (non-legal): Border Violence Monitoring Network, ("**BVMN**")

	Term	Legal Definition(s)	Legal Provision(s)
		technical, financial and other assistance, including that provided to other States.	
		EUROPEAN LAW: Border violence does not have a fixed and generally accepted definition under EU law. The same definition as above is generally used.	▪ Report of the Commissioner for Human Rights of the Council of Europe following her visit to Greece from 25 to 29 June 2018, dated 6 November 2018
4.	**Minor;** **Unaccompanied and separated minor (UAM)**	**INTERNATIONAL LAW:** "Minor" (or child) refers to every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. "Unaccompanied and separated minor" (or child) refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so. ***Note:*** *some States refer to these children as unaccompanied minors in their legislation and policies. UNHCR uses the term "unaccompanied children".*	▪ Article 1, Convention on the Rights of the Child (1989) ("**CRC**") ▪ UN Committee on the Rights of the Child, General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 6, 2005, paragraphs 7-8.
		EUROPEAN LAW: "Minor" is a third-country national or stateless person below the age of 18 years. ***Note****: There is no concrete, consistent definition of "child" under EU law. The term "minor" is better suited for the legal context, whereas child is generally used in circumstances to describe familial relations.* Within the context of "family members", this includes "the minor children of the couple …or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law."	▪ Article 2(d), Directive 2011/95/EU (Recast Qualification Directive) ▪ Article 2(e), Directive 2011/95/EU (Recast Qualification Directive) ▪ Article 2(l), Directive 2013/32/EU (Recast Asylum Procedures Directives) ▪ Article 2(d)(ii), Council Directive 2003/9/EC (Minimum standards for the reception of asylum seekers)

	Term	Legal Definition(s)	Legal Provision(s)
		"Unaccompanied minor" is a minor who arrives on the territory of an EU Member unaccompanied by the adult responsible for them by law or by the practice of the EU Member State concerned, and for as long as they are not effectively taken into the care of such a person or, who is left unaccompanied after they have entered the territory of the EU Member State.	
5.	**Crime against humanity**	**INTERNATIONAL LAW:** "Crime against humanity" refers to any of the following acts when committed as part of a **widespread or systematic attack** directed against any **civilian population**, with **knowledge** of the attack: ▪ Murder; ▪ Extermination; ▪ Enslavement; ▪ Deportation or forcible transfer of population; ▪ Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; ▪ Torture; ▪ Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; ▪ Persecution; ▪ Enforced disappearance of persons; ▪ The crime of apartheid; ▪ Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.	▪ Article 7, 1998 Rome Statute establishing the International Criminal Court ("**ICC**") ("**Rome Statute**")
		EUROPEAN LAW:	▪ Article 7(1), Rome Statute

	Term	Legal Definition(s)	Legal Provision(s)
		There is no separate definition for "crime against humanity" at the EU level. All case law and literature refers back to the definition provided from under article 7(1) of the Rome Statute.	
6.	**Degrading / Inhuman treatment or punishment**	**INTERNATIONAL LAW:** "Inhuman treatment" is defined as the infliction of severe physical or mental pain or suffering. **Note:** The element that distinguishes inhuman treatment from torture is the absence of the requirement that the treatment be inflicted for a specific purpose.	▪ Article 5, UDHR: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." ▪ Article 7, ICCPR: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." ▪ Article 10, ICCPR: "(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." ▪ CAT ▪ Elements of Crimes for the International Criminal Court ▪ Convention on the Rights of Persons with Disabilities ("**CRPD**")
		EUROPEAN LAW: "Degrading treatment or punishment" is defined broadly as treatment that humiliates or debases an individual, showing a lack of respect for, or diminishing, their human dignity, or when it arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance. "Inhuman treatment or punishment" refers to an ill-treatment which is premeditated and applied for hours at a stretch and causing either actual bodily injury or intense physical and mental suffering.	▪ ***Svinarenko and Slyadnev v. Russia*** (Application Nos. 32541/08 and 43441/08), ECtHR ▪ ***M.S.S. v. Belgium and Greece*** (Application No. 30696/09) ▪ ***El-Masri v. The Former Yugoslav Republic of Macedonia*** (Application No. 39630/09) ▪ ***Kudla v. Poland*** (Application No. 30210/96) – ECtHR
7.	**Deportation / Removal / Forced return / Expulsion**	**INTERNATIONAL LAW:** "Deportation" is a coerced physical removal of a person to their country of origin or a third country by the authorities of the host country. Related term removal is sometimes used. "Forced return" is a broader term which includes any action having the effect of returning the individual to a State, including expulsion,	▪ Article 2(a), United Nations, International Law Commission, Draft Articles on the Expulsion of Aliens, with Commentaries (2014) ▪ Article 33, Refugee Convention ▪ CAT ▪ UDHR

	Term	Legal Definition(s)	Legal Provision(s)
		removal, extradition, rejection at the frontier, extra-territorial interception and physical return. "Expulsion" refers to a formal act or conduct attributable to a State by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of an alien to a State.	▪ ICCPR ▪ UNHCR Glossary ▪ Protocol No. 4 to the European Convention on Human Rights ("**ECHR**")
		EUROPEAN LAW: "Deportation" is defined as the enforcement of the obligation to return, namely the physical transportation out of the Member State. **Note**: Deportation is not used as a legal term in all EU Member States (only DE, FI, IE and UK define 'deportation' in their legislation) and is only applicable as a general concept by the public, sometimes with a negative connotation. Because of this variation, 'removal' is the preferred term to use in a legal context.	▪ Article 3(5), Return Directive (2008/115/EU)
8.	**Collective Expulsion**	**INTERNATIONAL LAW:** "Collective Expulsion" refers to any measure compelling non-nationals, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual of the group.	▪ United Nations, International Law Commission, Draft Articles on the Expulsion of Aliens, with Commentaries (2014) ▪ ***Andric v. Sweden*** (Application No. 45917/99), ECtHR, 23 February 1999 ▪ ***Khlaifia and Others v. Italy*** (GC) (Application No. 16483/12) 15 December 2016 ▪ Protocol No. 4 to the ECHR ▪ ICCPR
		EUROPEAN LAW: "Collective expulsion" refers to any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.	▪ European Court of Human Rights FactSheet

	Term	Legal Definition(s)	Legal Provision(s)
9.	**Detention**	**INTERNATIONAL LAW:** "Detention" refers to a deprivation of liberty or confinement in a closed place where not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities.	▪ UDHR ▪ ICCPR ▪ Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012 ▪ Article 5, ECHR International human rights law provides a framework relating to detention, enshrined by the following standards: ▪ Human Rights Committee General Comment 35, Article 9 (Liberty and Security of Person) ▪ Body of principles for the protection of all persons under any form of detention or imprisonment ▪ Standard Minimum Rules for the Treatment of Prisoners ("Nelson Mandela Rules") ▪ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("Bangkok Rules") ▪ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules") ▪ United Nations Rules for the Protection of Juveniles Deprived of their Liberty ▪ UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012
		EUROPEAN LAW: "Detention" is defined as the confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.	▪ European Union Agency for Asylum, "7.8 Detention" in Asylum Report 2020, January 2022

	Term	Legal Definition(s)	Legal Provision(s)
10.	**Discrimination (racial, gender-based, otherwise);** **Principle of non-discrimination**	**INTERNATIONAL LAW:** "Discrimination" refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. "Non-discrimination (principle of)" is the principle obliging States not to discriminate against any persons. Discrimination should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.	▪ United Nations Human Rights Committee, General Comment 18: Non-Discrimination (10 November 1989) paragraph 7 in (1994) UN Doc HRI/GEN/1/Rev.1 ▪ UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination (1965); Adopted in 1965, this treaty specifies measures that States parties agree to undertake to eliminate racial discrimination. Compliance by States parties with their obligations under the Convention is monitored by the Committee on the Elimination of Racial Discrimination. ▪ Article 2 of the UDHR: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without discrimination of any kind, such as race, colour, sex, language, religion, political other opinion, national or social origin, property, birth or other status." ▪ Article 2 of the ICCPR See also: ▪ Convention on the Rights of Persons with Disabilities (Adopted on 12 December 2006 by Sixty-first session of the General Assembly by resolution A/RES/61/106) ▪ Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 New York, 18 December 1979 (Adopted on 18 December 1979 by United Nations General Assembly)
		EUROPEAN LAW: "Discrimination" is treating people in analogous situations differently, or people in different situations alike, without objective and reasonable justification.	▪ Council of Europe: Prohibition of Discrimination **Note:** There are definitions for discrimination within specific contexts contained in EU law, including: ▪ Racial discrimination in Directive 2000/43/EC (Racial Equality Directive);

	Term	Legal Definition(s)	Legal Provision(s)
			▪ Discrimination at work on grounds of religion or belief, disability, age or sexual orientation in Directive 2000/78/EC; ▪ Equal treatment for men and women in matters of employment and occupation in Directive 2006/54/EC; and ▪ Equal treatment for men and women in the access to and supply of goods and services in Directive 2004/113/EC. In addition, Directive Proposal (COM(2008)462) proposes to legislate against discrimination based on age, disability, sexual orientation and religion or belief beyond the workplace. This supplements the existing legal framework under which the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation applies only to employment, occupation and vocational training.
11.	**Racial Discrimination**	**INTERNATIONAL LAW:** "Racial Discrimination" refers to any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.	▪ International Convention on the Elimination of All Forms of Racial Discrimination (1965) ▪ General Recommendation No. 14, 7 of the Committee on the Elimination of Racial Discrimination
12.	**(Forced) Displacement; Forced Migration; Forced Relocation; Forced Transfer**	**INTERNATIONAL LAW:** "(Forced) Displacement" is the movement of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters.	▪ Guiding Principles on Internal Displacement, annexed to United Nations Commission on Human Rights, Report of the Representative of the Secretary-General, Mr Francis M. Deng, Submitted Pursuant to Commission Resolution 1997/39, Addendum (11 February 1998) UN Doc E/CN.4/1998/53/Add.2, 5, paragraph 2 of the introduction ▪ Article 49 of the Fourth Geneva Convention forbids forced displacement: "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive."

	Term	Legal Definition(s)	Legal Provision(s)
			▪ The Rome Statute of the ICC (Article 7) defines forced displacement as a crime within the jurisdiction of the court: "Deportation or forcible transfer of population" means forced displacement of the people concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."
		EUROPEAN LAW: Persons who are "displaced" are defined as persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.	▪ Council of Europe Committee of Ministers Recommendation 2006(6)
13.	**Effective investigation(s)**	**INTERNATIONAL LAW:** "Effective investigation" is an investigation meeting the following criteria: prompt, expeditious and capable of leading to the identification and punishment of those responsible: ▪ Investigation must be thorough and must make a serious attempt to find out what happened; ▪ People responsible for the investigation or carrying it out must be practically independent from those implicated in the events; there must be no hierarchical or institutional connection; ▪ Victims should be able to effectively participate in the investigation and the next of kin of the victim must be involved to the extent necessary to safeguard their legitimate interests. **Note**: This definition is drawn from ECtHR Case Law (specifically Articles 2 & 3).	▪ European Union Agency for Fundamental Rights – European Standards on Legal Remedies, Complaint Mechanisms and Effective Investigations at Borders note ▪ Armani da Silva v. the United Kingdom [GC], No. 5878/08, 30 March 2016, [229]-[239].

	Term	Legal Definition(s)	Legal Provision(s)
		EUROPEAN LAW: There is no set legal definition for an "effective investigation" but ECHR case law has established that for an investigation to be effective, it must have the following characteristics: ▪ the investigation must not depend on a complaint from the victim or next of kin and authorities should act on their own initiative where reasonable allegations of ill-treatment arise; ▪ those responsible for carrying out the investigation must be independent of those implicated in the events; ▪ the investigation must be adequate. It must be capable of establishing the facts, determining whether any use of force was justified, and of identifying and where appropriate, punishing those responsible; ▪ the investigation must satisfy the requirements of promptness and reasonable expedition; ▪ the investigation must be thorough and make serious attempts to uncover what happened. The conclusions of the investigation must be based on an objective and impartial analysis of all relevant elements; ▪ during investigations into violent incidents, state authorities have the additional duty to take all reasonable steps to unmask any racist motives and to establish whether ethnic hatred or prejudice may have played a role in the events; ▪ the investigation should remain accessible to the victim or victim's next of kin; they should be involved in the procedure to the extent necessary to safeguard their legitimate interests; ▪ there must be a sufficient element of public scrutiny of the investigation to secure accountability in practice as well as in theory; and	▪ ***Pine Valley Developments Ltd and Others v. Ireland*** (Application No. 12742/87 ▪ ***Paulino Tomás v. Portugal*** (Application No. 58698/00), ECtHR; ***Çelik and İmret v. Turkey*** (Application No. 44093/98), ECtHR

	Term	Legal Definition(s)	Legal Provision(s)
		▪ Investigating authorities must cooperate with the relevant authorities of other states regarding the investigation of events which occurred outside their territories.	
14.	**Effective Remedy / Redress**	**INTERNATIONAL LAW:** An "effective remedy" must be capable of directly remedying the impugned situation. In particular, it must be sufficient and accessible, fulfilling the obligation of promptness. It must enable the submission of a complaint about the alleged violation of the Convention. **Note:** Whether a remedy is effective depends on the right that is said to have been impugned. There is a plethora of rights-specific case law in this area which cannot feasibly be covered by this table.	▪ Article 8, UHDR underlines the sweeping customary requirement that everyone has the right to an effective remedy at law for acts violating the "…fundamental rights granted him by the law and the Constitution." ▪ Article 2(3)(a), ICCPR provides that States Parties to the Covenant undertake to ensure that any person whose rights or freedoms "…are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity." Thus holding governments accountable not only for rights violations but also when the government has failed to provide protective measures. ▪ Article 13, ECHR ▪ Article 14, UNCAT: "1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law."
15.	**Enforced Disappearance**	**INTERNATIONAL LAW:** "Enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.	▪ Article 2, International Convention for the Protection of All Persons from Enforced Disappearance ("**ICPED**") ▪ Preamble of the Declaration on the Protection of all Persons from Enforced Disappearance ▪ Rome Statute

	Term	Legal Definition(s)	Legal Provision(s)
		"Enforced disappearance of persons" refers to the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.	
		EUROPEAN LAW: Same as above. **Note**: There does not appear to be a separate EU definition of enforced disappearance. The prohibition of enforced disappearance and the corresponding obligation to investigate and punish those responsible have attained the status of *ius cogens,* a norm that enjoys a higher rank in international law hierarchy than treaty law and "ordinary" customary rules.[284]	▪ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance
16.	**Human Smuggling;** **Trafficking in Persons / Human Trafficking**	**INTERNATIONAL LAW:** Human Smuggling and Trafficking in persons are ***not*** to be conflated. "Human Smuggling" is the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into a State Party of which the person is not a national or a permanent resident. "Human Trafficking" is the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.	▪ Human Smuggling: Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime ((adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507) Article 3(a). ▪ Human Trafficking: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 25 December 2003) 2237 UNTS 319, Article 3(a). See also Article 14(1): "1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and

[284] Council of Europe, "*Missing persons and victims of enforced disappearance in Europe: Issue Paper*". Accessed at https://rm.coe.int/missing-persons-and-victims-of-enforced-disappearance-in-europe-issue-/16806daa1c#:~:text=Major%20case%20law%20of%20the%20European%20Court%20of%20Human%20Rights,-Chapter%203%20provides&text=The%20Court%20has%20held%20that,European%20Convention%20on%20Human%20Rights (04/12/2023).

	Term	Legal Definition(s)	Legal Provision(s)
		Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.	international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein."
		EUROPEAN LAW: "Human smuggling" is a term used to refer to individuals who voluntarily pay a smuggler in order to enter a country. This is not expressly defined by ECHR case law, and is instead dealt with by national legal frameworks. "Human trafficking" refers to the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim is irrelevant if one of these means has been used.	▪ Council of Europe Convention on Action against Trafficking in Human Beings ▪ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
17.	**Imminent Risk of Irreparable Damage / Harm**	**INTERNATIONAL LAW:** "Imminent risk of irreparable harm" is applicable to interim measure applications under Rule 39 of the Rules of the European Court of Human Rights (ECtHR). Any person who intends to submit an application before the ECtHR under Article 34 ECHR and who faces an imminent risk of irreparable harm can submit a Rule 39 request.	▪ Rule 39 of the Rules of the European Court of Human Rights

	Term	Legal Definition(s)	Legal Provision(s)
		EUROPEAN LAW: "Imminent risk of irreparable damage" is a definition which is tied to interim measures under Rule 39. There does not appear to be a legal definition for "imminent risk of irreparable damage" but requests for its application usually concern the **right to life** (Article 2), the **right not to be subjected to torture or inhuman treatment** (Article 3) and, exceptionally, the **right to respect for private and family life** (Article 8). The vast majority of cases in which interim measures have been indicated concern deportation and extradition proceedings.	▪ ***Mamatkulov and Askarov v. Turkey*** (Application Nos. 46827/99 and 46951/99), ECtHR
18.	**Interception Measures**	**INTERNATIONAL LAW:** "Interception measure" is any measure applied by a State, either at its land or sea borders, or on the high seas, territorial waters or borders of another State, to: ▪ prevent embarkation of persons on an international journey; ▪ prevent further onward international travel by persons who have commenced their journey; or ▪ assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law. In relation to the above, the person or persons do not have the required documentation or valid permission to enter. **Note:** An internationally accepted definition of interception does not exist. Its meaning has to be derived from an examination of past and current state practice.	▪ Executive Committee of the United Nations High Commissioner for Refugees, Conclusion on Protection Safeguards in Interception Measures (10 October 2003) No 97 (LIV). ▪ Executive Committee of the High Commissioner's programme, 18th Meeting of the Standing Committee (EC/50/SC/CPR.17), 9 June 2000.
		EUROPEAN LAW: "Interception measures", and "interception", does not have a fixed and generally accepted definition.	▪ Interception of Asylum-Seekers and Refugees – The International Framework and Recommendations for a Comprehensive Approach, 18th Meeting of the UNHCR Standing Committee

	Term	Legal Definition(s)	Legal Provision(s)
		ECtHR case law appears to treat "interception measures" and "interception" in line with a provisional definition proposed by the UNHCR, whereby 'interception' encompasses all measures applied by a state, outside its national territory, in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination.	
19.	**Persecution (racial, gender-based, otherwise);** **Well-founded fear of persecution**	**INTERNATIONAL LAW:** "Persecution" is the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity **Note**: The UNHCR Handbook notes at paragraph 51 that there is no universally accepted definition of "persecution". "Well-founded fear of persecution" is a key element of the 1951 Refugee Convention's definition of a refugee. Well-foundedness of fear contains both a subjective element (fear of persecution) and an objective element (the fear must have an objectively justifiable basis). According to the 1951 Convention, persecution must be linked to any one of the five specified grounds: race, religion, nationality, membership of a particular social group and political opinion.	▪ Article 7.2. g of Rome Statute ▪ UNHCR Master Glossary of Terms
		EUROPEAN LAW: "Acts of persecution" are defined within Article 9 of Council Directive 2011/95/EU as acts which are "sufficiently serious" to constitute a "severe violation of basic human rights". This can be either in their "nature or repetition" or through an "accumulation of various measures". For this definition, "basic human rights" are those which are non-derogable (so important that they cannot be compromised under any circumstances) under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Paragraph 2 of Article 9 outlines a number of non-exhaustive examples of what may constitute persecution:	▪ Council Directive 2011/95/EU, Articles 9 and 10

	Term	Legal Definition(s)	Legal Provision(s)
		▪ acts of physical or mental violence, including acts of sexual violence; ▪ legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner; ▪ prosecution or punishment, which is disproportionate or discriminatory; ▪ denial of judicial redress resulting in a disproportionate or discriminatory punishment; ▪ prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2); and ▪ acts of a gender-specific or child-specific nature. There must be a connection between the **reasons for persecution** mentioned in Article 10 and the **acts of persecution** or the absence of protection against such acts. Article 10 (a) notes that "the concept of race shall in particular include considerations of colour, descent, or membership of a particular ethnic group".	
20.	**Persons in a vulnerable situation / Vulnerable persons**	**INTERNATIONAL LAW:** "Vulnerable persons" means "Minors, unaccompanied or not; direct relatives of victims of ship-wrecks; persons with a disability; the elderly; women in pregnancy; single parents with minor children; victims of human trafficking; persons suffering from a serious illness; persons with a mental or psychological disability and persons who have been subjected to torture, rape or any other serious form of mental, physical or sexual violence, like victims of genital mutilation." Migrants in vulnerable situations are persons who are unable to effectively enjoy their human rights, are at increased risk of violations	▪ UNHCR - Principles and Guidelines migrants in vulnerable situations ▪ See also: Migration and International Human Rights Law, A practitioners Guide, Third Edition, 2021, International Commission of Jurists. **Note**: There is no definitive catalogue of groups which are vulnerable.

	Term	Legal Definition(s)	Legal Provision(s)
		and abuse and who, accordingly, are entitled to call on a duty bearer's heightened duty of care.	
		EUROPEAN LAW: A "vulnerable person" refers to minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking in human beings, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation. Directive 2011/36/EU (Anti-trafficking Directive) defines a 'position of vulnerability' as a "situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved".	▪ Article 21 of Directive 2013/33/EU (Recast Reception Conditions Directive)
21.	**Preventative Operational Measures**	**INTERNATIONAL LAW:** The operational obligation, derived from Osman v. UK (2000) 29 EHRR 24 as arising out of Article 2 ECHR. This includes: ▪ a duty to take preventative operational measures to protect an individual from another individual or himself, where the state authority knew or ought to have known of the existence of a "real and immediate" risk to life. ▪ A duty to investigate suspicious deaths. ▪ A duty to protect people against threats to their lives. ▪ A duty to provide arrangements to secure legal accountability for those responsible for a death.	▪ Summarised from ***Osman v. UK*** (2000) 29 EHRR 245 ▪ Article 2 ECHR.
		EUROPEAN LAW: "Preventive operational measures" is a concept arising from case law. The ECtHR has clarified through its judgments that states are under a	▪ ***Osman v. The United Kingdom*** (Application Nos. 87/1997/871/1083), ECtHR

	Term	Legal Definition(s)	Legal Provision(s)
		positive obligation to take preventive operational measures to protect individuals whose life is at risk (contrary to Article 2). Preventive operational measures are "measures within the scope of [the state's] powers which, judged reasonably, might have been expected to avoid the risk".	
22.	**Pushbacks**	**INTERNATIONAL LAW:** "Pushback" means informal expulsion (without due process) of an individual or group to another country. This contrasts with the term "deportation", which is conducted in a legal framework. **Note**: There is no internationally upheld legal definition of a 'pushback' as of yet, but it is generally understood (at a minimum) as a violation of the rule of non-refoulement and thus presents a violation of international law. For a legal definition please see "refoulement".	▪ European Center for Constitutional and Human Rights Glossary ▪ Kogovšek Šalamon, Neža (2020). "EU Conditionality in the Western Balkans: Does It Lead to Criminalisation of Migration?". Causes and Consequences of Migrant Criminalization. Springer International Publishing.
		EUROPEAN LAW: "Pushback" is an informal term generally held to refer to summary refusals of entry and expulsions without any individual assessment of protection needs, which results in an individual being forced back over a border with no possibility of applying for asylum.	▪ Resolution 2299 (2019) of the Parliamentary Assembly of the Council of Europe, adopted on 28 June 2019: Pushback policies and practice in Council of Europe member States ▪ European Center for Constitutional and Human Rights, glossary
23.	**Refoulement;** **Principle of Non-refoulement**	**INTERNATIONAL LAW:** "Non-refoulement" (principle of) is the prohibition for States to extradite, deport, expel or otherwise return a person to a country where his or her life or freedom would be threatened, or where there are substantial grounds for believing that he or she would risk being subjected to torture or other cruel, inhuman and degrading treatment or punishment, or would be in danger of being subjected to enforced disappearance, or of suffering another irreparable harm.	▪ Article 3 of the CAT ▪ Article 33 of the Refugee Convention ▪ Article 7 ICCPR: 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. This is read as a prohibition on the return of persons to their country of origin or to a third country where they may be subject to such treatment. ▪ Article 37 Convention on the Rights Of the Child: 'No child shall be subjected to torture or other cruel, inhuman or degrading treatment

	Term	Legal Definition(s)	Legal Provision(s)
			or punishment'. This provision is similar to Article 7 of the ICCPR but applies specifically to children. ▪ Article 16, International Convention for the Protection of All Persons from Enforced Disappearance ("**ICPPED**")
		EUROPEAN LAW: The principle of "non-refoulement" is a wider principle of refugee law expounded in, for example, Article 33 of the Geneva Refugee Convention and Protocol. In an ECHR specific context, case law has interpreted the principle as holding that no one can be returned (directly or indirectly) to a place where they run a real risk of suffering treatment contrary to Articles 2 or 3 (direct refoulement). This also captures scenarios in which an individual is expelled to a state from which migrants may face further deportation without a proper assessment of their situation (indirect refoulement).	▪ Council of Europe – Asylum guidance note ▪ ***Hirsi Jamaa and Others v. Italy*** (Application No. 27765/09)
24.	**Refugee**	**INTERNATIONAL LAW:** "Refugee" is defined by the 1951 Convention as a person who, owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it. "Refugee" (mandate) is a person who qualifies for the protection of the UNHCR, in accordance with UNHCR's Statute and, notably, subsequent General Assembly's resolutions clarifying the scope of UNHCR's competency, regardless of whether or not he or she is in a country that is a party to the 1951 Convention or the 1967 Protocol – or a relevant regional refugee instrument – or whether or not he or she	▪ United Nations High Commissioner for Refugees, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (2011) HCR/1P/4/enG/Rev. 3, 7, paragraph 16 ▪ Article 1 of the Refugee Convention

	Term	Legal Definition(s)	Legal Provision(s)
		has been recognized by his or her host country as a refugee under either of these instruments.	
		EUROPEAN LAW: A "refugee" is a person who fulfils the criteria of the Geneva Refugee Convention (1951) and Protocol (1967).	▪ Handbook on European law relating to asylum, borders and immigration
25.	**(Sexual and) Gender-based violence**	**INTERNATIONAL LAW:** "Gender-based violence" can include sexual, physical, mental and economic harm inflicted in public or in private. It also includes threats of violence, coercion and manipulation. This can take many forms such as intimate partner violence, sexual violence, child marriage, female genital mutilation and so-called 'honour crimes.' UNHCR has historically used the term sexual and gender-based violence (SGBV), often used interchangeably with gender-based violence, but it now consciously uses the term gender-based violence (GBV).	▪ UNHCR Policy on the Prevention of, Risk Mitigation and Response to Gender-based Violence, 2020 ▪ United Nations General Assembly resolution 34/180 (1979), Convention on the Elimination of All Forms of Discrimination against Women ("**CEDAW**") ▪ UN General Assembly Resolution, A/RES/48/104, Declaration on the Elimination of Violence against Women ("**DEVAW**") which recognises that the violence against women is a manifestation of historically unequal power relations between men and women, and which have led to the domination over and discrimination against women by men and to the prevention of the full advancement of women.
		EUROPEAN LAW: "Violence against women" is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. **"**Gender-based violence against women" shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately.	▪ Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210)

	Term	Legal Definition(s)	Legal Provision(s)
26.	**State of Origin; Country of Origin**	**INTERNATIONAL LAW:** "State of origin" is the state of which the person concerned is a national. "Country of origin" is - in the migration context - a country of nationality or of former habitual residence of a person or group of persons who have migrated abroad, irrespective of whether they migrate regularly or irregularly.	▪ Geneva Convention
		EUROPEAN LAW: "State of origin", or "Country of origin", is defined as the state of which the person concerned is a national.	▪ UNHCR International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ▪ Article 2(n) of Directive 2011/95/EU (Recast Qualification Directive)
27.	**Torture**	**INTERNATIONAL LAW:** "Torture" is defined by the UN Convention Against Torture ("**UNCAT**") as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.	▪ UN CAT ▪ Article 3, ECHR ▪ Rome Statute ▪ See also: ICC Elements of Crime
		EUROPEAN LAW: ECtHR case law adopts the UN CAT definition on "torture".	▪ CAT ▪ ***Ireland v. The United Kingdom*** (Application No. 5310/71), ECtHR ▪ ***Selmouni v. France*** (Application No. 25803/94), ECtHR
28.	**Jurisdiction; Territorial**	**INTERNATIONAL LAW:**	**Note:** The term seems to derive from customary public international law, and has no set definition.

	Term	Legal Definition(s)	Legal Provision(s)
	jurisdiction; Exercise of jurisdiction	"Territorial jurisdiction" is the authority of the State over persons, property and events which are primarily within its territories. The territorial jurisdiction of the State extends over to its with: ▪ Land; ▪ National airspace; ▪ Internal water; ▪ Territorial sea; ▪ National aircraft; and ▪ National vessel. It does not only encompass the crime committed on its territory but also the crimes that have effects within its territory.	▪ Colangelo, Anthony J. (2013) "Jurisdiction, Immunity, Legality, and Jus Cogens," Chicago Journal of International Law: Vol. 14: No. 1, Article 4.
		EUROPEAN LAW: "Jurisdiction" is not defined by the ECHR, notwithstanding that Article 1 requires parties thereto to secure to everyone within their jurisdiction the rights and freedoms defined in the ECHR.	N/A

Appendix 1. Screening Tool

Overview

Introduction

This screening tool applies to all third-country nationals willing to receive legal information about an incident/s involving the violation of their rights where perpetrated by State authorities, European agencies, or any other institutional bodies.

It is not required from the interviewee to be able to show any evidence to start the screening process. However, it is necessary that the aim and specific scope of the process are well understood and agreed by the interviewee before starting the interview. This questionnaire doesn't apply to relatives of those who have experienced border violence or border deaths.

This tool and screening process is in three parts, as follows: -

- **Preliminary Intake (Question 1-5):** a very brief preliminary screening to establish if a relevant complaint can be meaningfully discussed further.
- **Initial Screening (Questions 6-40):** for individuals following preliminary intake screening that appear to be direct survivors of border violence. This is a more detailed evaluation to determine the likely merits for further evaluation.
- **Detailed Triage Screening** (**Questions 41-101**): for positively screened cases only): This is a full evaluation to determine the relevant legal and factual issues to develop relevant complaints as appropriate.

Internal Note:

- *In **bold grey** are the interviewer's instructions.*
- *In **bold green** are the terms to be explained (hence defined) during the interview.*

Preliminary Intake

#	QUESTION
1.	Have you experienced an incident/(s) of **border violence**? ***Border violence: Informal term which is used to describe violent pushbacks perpetrated generally by border guards and/or officials with the aim of preventing people on the move (including migrants, asylum seekers and refugees) from approaching or crossing the border and therefore, from accessing asylum procedures. For the purposes of this questionnaire, this term will be used to refer to any coerced physical removal or transfer of an individual from a country to another one; including cases of removal, forced return, deportation, forcible transfer, individual/collective expulsion.***
2.	Do you feel safe talking with us here about these incidents today?
3.	Did any of your relative(s) survive an incident/s of border violence?
4.	Do you know who perpetrated the incident/(s)? If yes, who was it?
5.	Would you like to receive legal information about your rights in relation to the incident/(s)?

Initial Screening

ATTENTION: If any of the below information is already available to the interviewer prior to the interview, the interviewer should fill in the section in advance.

#	QUESTION
INITIAL-SCREENING	
6.	**Date of birth:** When were you born? ***[For interviewer only: please calculate the age and select the box "Adult/Minor" accordingly]***
7.	***[Applicable if Adult]*** **Marital status:** Are you married? 7.1 ***[If answer to no. 7 is positive]*** Where is your husband/wife? (e.g., alive/dead, in the same/a different country, etc.)
8.	***[Applicable if Adult]*** **Children:** Do you have any children? 8.1 ***[If answer to no. 8 is positive]*** How many? 8.2 ***[If answer to no. 8 is positive]*** Where are they? (E.g. alive/dead, in the same/a different country, etc.) 8.3 ***[If answer to no. 8 is positive]*** Are any of your children minors? 8.4 ***[If answer to no. 8 is positive]*** Do any of your children have any physical / cognitive / mental disabilities or serious illnesses, or any other relevant medical conditions that require constant medical treatment (such as serious limitation or difficulty in movement or dependence on support machines/specific medicine/prescription glasses)?
9.	***[Applicable if Minor]*** **Parents:** Where are your parents? (E.g. alive/dead, in the same/a different country, etc.)
10.	**Place of birth:** Where were you born?
11.	**Citizenship:** Please confirm all countries to which you are a citizen?
12.	**Statelessness:** Have you ever had a genuine passport or any other civil identity document(s)?
13.	**Place of residence:** Where are you living now?
14.	**Ethnicity / Minority:** Do you belong to a specific ethnic group, or to a minority? If so, which one? ****Minority: there is no strict definition for this term, but it means being a member of a social group that is more exposed to risk/s than others, and has less power. That group is usually smaller in number than the general population, but this is not always the case.***
15.	**Religion:** What is your religion?
16.	**Gender:** Are you male, female, or do you identify as other?
17.	**Vulnerability:** Do you have any relevant medical conditions or illnesses?

#	QUESTION
INITIAL-SCREENING	
18.	***[If answer to no. 17 is positive]*** Please select the medical condition(s) or illness(es) you're affected by: ■ physical/cognitive/mental disabilities; ■ serious illnesses; ■ serious limitations or difficulty in movement; ■ dependence on support machines/specific medicine; ■ prescription glasses; or ■ other (please specify).
19.	**Language:** What language(s) do you speak?
OVERVIEW OF INCIDENT(S)	
20.	**Crossing(s):** How many times have you attempted to enter [relevant country/ies]?
21.	**Incident(s):** How many times have you experienced violence and/or forced return? If more than one, can you tell us the dates (as accurate as you are able to remember). 21.1 ***[If answer to no. 21 is 'more than 1']*** Would you like to receive legal information for all of them? If not, which incidents would you like to receive information about (cf. dates)?
22.	**Relative(s):** Were any of your family members also involved in the same incident(s)? If so, what's the family link?

ATTENTION: Repeat the below questions for each and every incidents the interviewee survived and would like to report on as part of this screening and triage process: (Incident A, B, etc.).

#	QUESTION
INTERCEPTION	
23.	**Timing (of interception):** On what date and time were you arrested / intercepted / apprehended? ****Interception: This also includes formal/informal arrest, interception at sea, apprehension.***
24.	**Location (of interception)**: Where were you arrested/intercepted/apprehended? (Nearest location)
25.	**Harm (during interception):** During the interception, were you physically or psychologically harmed, or did you face any other acts of violence or mistreatment? ****Mistreatment: it includes verbal abuse and humiliation.***
26.	**Perpetrator(s):** In your opinion, were the perpetrator(s) belonging to any State authorities (e.g. Police, Military, Coast Guard) or other bodies (e.g. Frontex, i.e. European Border and Coast Guard Agency)? 26.1 ***[If answer to no. 26 is positive]*** What made you think that? (For example, were they wearing a uniform, any symbols, logos?)
27.	**Restriction of movement:** Were you at any point detained or deprived of your freedom of movement?

#	QUESTION

Restriction of movement: This can include physical restriction but restriction as a result of verbal threat.

[If answer to no. 27 is positive, ask the below questions under 'Detention']

DETENTION

28. **Timing (of detention):** On what date and time were you detained? (Day when **detention** started)

    Detention: This includes any restriction of movement.

29. **Location (of detention):** Where did the detention take place?

30. **Harm (during detention):** During the detention, were you physically or psychologically harmed, or did you face any other acts of violence or **mistreatment**?

    Mistreatment: This can also include verbal abuse and humiliation.

31. **Perpetrator(s):** In your opinion, were the perpetrator(s) the same as the interception?
    - 31.1 ***[If answer to no. 31 is negative]*** If not, in your opinion were the perpetrator(s) belonging to any State authorities (e.g. Police, Military, Coast Guard) or other bodies (e.g., Frontex, i.e. European Border and Coast Guard Agency)?
    - 31.2 ***[If answer to no. 31 is positive]*** What made you think that? (For example, were they wearing a uniform, any symbols, logos?)

32. **Forced return:** Were you at any point forced to cross any borders?

[If answer to no. 32 is positive, ask the below questions under 'Forced return']

FORCED RETURN

33. **Timing (of forced return):** On what date and time did the forced return start?

    Forced return: This includes deportation, refoulement, expulsion, pushbacks to third countries.

34. **Location (of forced return):** Where did the forced return start? And where did it end?

35. **Chain pushback (following forced return):** From the country you were returned to, were you taken to a different one?

36. **Countries (following forced return):** Which countries were you forced to pass through (between the initial interception and the last country you were taken to)?

37. **Harm (during forced return):** During the forced return, were you physically or psychologically harmed, or did you face any other acts of violence or **mistreatment**?

    Mistreatment: This can also include verbal abuse and humiliation

38. **Perpetrator(s):** In your opinion, were the perpetrator(s) the same as the interception?
    - 38.1 ***[If answer to no. 38 is negative]*** If not, in your opinion were the perpetrator(s) belonging to any State authorities (Police, Coast Guard, etc.) or European agencies (Frontex, etc.)?
    - 38.2 ***[If answer to no. 38.1 is positive]*** What made you think that? (For example, were they wearing a uniform, any symbols, logos?)

#	QUESTION
39.	**Harm or Restriction of movement (following the forced return):** In any of the countries which you were taken to, were you physically or psychologically harmed? If so, which ones?
40.	**Detention (following the forced return):** In any of the countries which you were taken to, were you at any point detained or deprived of your freedom of movement? If so, which ones?

Detailed Triage

ATTENTION: Please fill the below section with the information already available, in particular the information gathered through the Direct Survivor Screening Questionnaire.

#	QUESTION
IN ADVANCE OF MEETING [FOR INTERVIEWER ONLY]	
41.	Is the respondent a minor?
42.	Is the respondent a parent of a minor child(ren)?
43.	Does the respondent have any vulnerability(ies)?
44.	Does the respondent have any medical condition(s)?
45.	Does the respondent belong to any protected/discriminated group(s)?
46.	How many incident(s) did the respondent identify as being a survivor of?
47.	How many incident(s) did the respondent identify as willing to receive legal information on? (They will be the only ones examined under the assessment of this questionnaire.) ***[The no. of incidents mentioned in the answer to Question 47 will determine the assessment below; if possible, link it with the below section "Specifics of the incident"]*** 47.1 For each of them, please specify when they happened (exact, alternatively approximate, date(s). 47.2 For each of them, please specify the number of countries the respondent was forced to pass through (Incident 1, 2, etc.) 47.3 For each of them, please specify if the respondent's freedom of movement was restricted; if yes at which stage/s (Incident A – Interception, Detention, Forced Return, etc.). 47.4 For each of them, please specify if the respondent faced any forms of abuse; if yes, at which stages (Incident A - Interception, Detention, Forced Return, etc.).
48.	For each incident, were the perpetrators the same during all the stages (i.e. from the initial interception to the forced return)? Who were they?
PART ONE: PERSONAL IDENTITY	
49.	Do you have any evidence (by way of supporting documentation) of your: ■ Full name; ■ Nationality; ■ Date of birth; ■ Family links (if any); ■ Legal status (if any); ■ Legal representative (if any); ■ Any other information that may assist (e.g. medical certificates, pictures, etc.); ■ Any other relevant documents (e.g. Afghan tazkira, birth certificate, family certificate, marriage certificate, work agreement, civil ID registration document, etc.).

#	QUESTION
50.	**Applicable if Minor:** Do you have any evidence (by way of supporting documentation) of your minor age?
51.	**Applicable if Discrimination:** Do you have any evidence (by way of supporting documentation) of your belonging to a **protected group**? ***Applicable to individuals who are members of a group/s with protected characteristics. Protected characteristics include (but are not limited to) age, sex, sexual orientation, gender reassignment, disability, pregnancy, race including colour, nationality, ethnic or national origin, religion or belief.***
52.	**Applicable if (any) Vulnerability:** Do you have any evidence (by way of supporting documentation) of any specific needs or vulnerabilities?
53.	**Applicable if (any) Medical condition:** Do you have any evidence (by way of supporting documentation) of your disability (physical/cognitive/mental), or any medical conditions (serious illness/limitation or difficulty in movement or dependence on support machines/specific medicine/prescription glasses), such as certificates?
PART TWO ***Repeat the below questions for each and every incident/s the interviewee survived and would like to report on as part of this screening and triage process (Incident A, B, etc.).*** ***You should explain that you will now ask further questions on each individual incident as raised during the Screening Interview.***	
Specifics of Incident(s)	
54.	**Incident:** Date of the incident (as accurate as recalled by the interviewer)
55.	**Applicable if Parent/Spouse only:** Did your child(ren)/spouse travel with you (for any part of the journey)?
56.	***[If answer to Q. 55 is positive]*** **Applicable if Parent/Spouse only:** Were you at any point separated by them as a consequence of the incident?
57.	**Applicable if Minor only:** Did any of your parents travel with you (for any part of the journey)?
58.	**Applicable if Minor only:** Was there for any part of the journey another adult taking care of you? 58.1 ***[If answer to Q. 58 is positive]*** Was that adult a member of your family? If not, how did you know them?
59.	**Applicable if Minor only:** Did they take care of you properly?
60.	**Applicable if Protected group / Discrimination only:** Were you at any point during the journey and/or the incident treated less favourably than other people in a similar situation? ***Applicable to individuals who are members of a protected group/s, i.e., groups that have a protected characteristic/s. Protected characteristics include (but are not limited to) age, sex, sexual orientation, gender reassignment, disability, pregnancy, race including colour, nationality, ethnic or national origin, religion or belief.***

#	QUESTION

61. **Applicable if Protected group / Discrimination only:** Was the difference in treatment due to one of the following factors:
    - age;
    - sex;
    - sexual orientation;
    - gender reassignment;
    - disability;
    - pregnancy;
    - race including colour;
    - nationality;
    - ethnic or national origin;
    - religion or belief; or
    - other.

62. **Applicable if Protected group / Discrimination only:** Was the difference in treatment justified in any way (i.e., so as to allow you to enjoy particular opportunities on the same basis as others)?

Interception
[If answer to Q. 47.3 is positive and this stage is selected]

63. **Duration of arrest / interception / being apprehended:** How long did it last?
    Interception: This also includes formal/informal arrest, interception at sea, apprehension.

64. **Severity of harm:** Did you experience any form of abuse?
    64.1 ***[If answer to no. 64 is positive]*** Please select all the forms of abuse you faced:
    - physical violence;
    - torture
      Torture: see Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
    - beating with batons or other weapons;
    - psychological violence (including humiliation);
    - verbal abuse;
    - threats;
    - inhuman or degrading treatment;
    - undressing;
    - any kind of discrimination;
    - sexual violence;
    - sexual harassment (including verbal)

    64.2 ***[If answer to no. 64 is positive]*** Were the acts repeated (and if so, how frequently)?

65. **Physical sequela:** Did these act/s produce any physical sequelae (scars, teeth missing, broken bones, hearing loss, physical pain, etc.)?[285]

66. **Psychological sequelae**: Did the act produce any feeling of: [select all that apply] anxiety, flashback, insomnia, feelings of fear, shame, or guilt, etc.)[286]?
    66.1 Did you at any point fear for your life?
    66.2 Did you at any point fear for another member of the group's life?

[285] According to the Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022 edition).
[286] *Ibid.*

#	QUESTION

67. **Medical assistance:** Did you require medical assistance as a result of the act(s)?
    - 67.1 ***[If answer to Q. 67 is positive]*** Were you provided with medical assistance?

68. **Supporting documentation:** Do you have any evidence to support that the act(s) occurred?

69. **Witness(es):** Did anyone witness the above?
    - 69.1 ***[If answer to Q. 69 is positive]*** If yes, are you in touch with this person or would you be able to find them?

70. **Detention measures:** Were you at any point during this restricted by handcuffing; blindfolding; locking up; physical constraint; isolation? For how long?
    - 70.1 Do you have any evidence to support that these act(s) occurred?
    - 70.2 Did anyone witness the above? If yes, are you in touch with this person or would you be able to find them?
    - 70.3 Were you at any point kept without food and/or water? For how long?
    - 70.4 Were you at any point denied access to the use of toilet facilities? For how long?
    - 70.5 Were you at any point denied access to medical assistance? For how long / How many times?
    - 70.6 Did the act produce any physical sequelae (scars, teeth missing, broken bones, hearing loss, physical pain, etc.)[287]?
    - 70.7 Did the act produce any psychological sequelae (anxiety, flashback, insomnia, feelings of fear, shame, or guilt, etc.)[288]?
    - 70.8 Did you at any point fear for your life?
    - 70.9 Did you at any point fear for another member of the group's life?

Detention
[If answer to Q. 27 is positive, ask the below further questions under 'Detection']

71. **Transit (following interception):** By what means were you initially transferred (i.e. following interception) to the place of **detention**?

    ****Detention: This includes any restriction of movement.***

72. During the transit (between interception and detention), were you physically or psychologically harmed?

73. During the transit (between interception and detention), was your movement restrained (e.g. through handcuffing)?

74. **Location(s) (of detention):** Were you kept in one place, or more than one?
    - 74.1 ***[If answer to Q. 74 is 'more than 1']*** Transfer: By what means were you transferred from one place of detention to another?

75. Would you be able to *define & describe* the place(s) in which you were detained (e.g. van, room, police station, vessel, etc.)? If more than one, please list them in a chronological order.

76. How large was it/were they (e.g. in square metres)?

77. How many people were in the same space?

78. Were there any windows or openings?

287 *Ibid.*
288 *Ibid.*

#	QUESTION
79.	Were there chairs or other basic facilities?
80.	Was the space clean?
81.	***Repeat set of Questions 64-69 (see above, under 'Interception').***
Forced Return ***Forced return: This includes deportation, refoulement, expulsion, pushbacks to third countries.**	
82.	To what country/ies were you returned?
83.	***For each country, repeat set of questions no. 64-70 (see above, under 'Interception').***
Identity of Perpetrator(s)	
84.	Did you have any interactions or conversations with the perpetrator(s)? (Including any guards involved in the subsequent detention)
85.	Would you identify the perpetrators (either individually or collectively) as belonging to any national authorities, organisation or an European agency?
86.	Did the perpetrator(s) introduce themselves)?
87.	Did the perpetrator(s) introduce themselves as operating on behalf of an EU body (e.g. Frontex)?
88.	Were the perpetrator(s) wearing any uniforms, or clothing with visible symbols or logos? If yes, can you please describe them?
89.	Were the perpetrator(s) wearing civilian clothing? If yes, do you think they were belonging to a State authority/European agency? Please explain.
90.	Did the perpetrator(s) carry guns or other arms?
91.	Were the perpetrator(s) wearing any hoods or balaclavas?
92.	Did they say or do anything giving you the impression that the abuse was intended to prevent, intimidate or punish you from crossing or trying to cross a border? If yes, what?
93.	Is there any evidence to support that this act was committed by the relevant perpetrator?
PART THREE	
All stages of incident	
94.	During any of the incident/s, did you at any point express your will to apply for asylum?
95.	Did you express your fear of returning to your home country?
96.	Did you express your fear of being deported to any other third country?

#	QUESTION

97. Were you carrying any of the following documents: asylum Seeker's card; documents of recognised beneficiary of international; protection status from any country; identity card or passport; other identification documents?

    97.1 ***[If answer to Q. 97 is positive]*** Did the perpetrator(s) ask you to show them?
    97.2 ***[If answer to Q. 97 is positive]*** Did the perpetrator(s) confiscate them from you?

98. Were you carrying any personal items (such as wallets, money)?

    98.1 ***[If answer to Q. 98 is positive]*** Did the perpetrator(s) ask you to show them?
    98.2 ***[If answer to Q. 98 is positive]*** Did the perpetrator(s) confiscate them from you?

Supporting Documentation/ Evidence

99. Did you witness other people surviving the same incident?

100. Did anyone witness you surviving the incident?

101. Did you have a mobile phone during any of the incident/s?

    101.1 ***[If answer to Q. 101 is positive]*** Do you still have access to that phone?
        101.1.1 ***[If answer to Q. 101.1*** Do you know the log in details of your cloud storage (i.e., such as iCloud or GoogleDrive)?
    101.2 ***[If answer to Q. 101 is positive]*** Did you make any calls/ send messages during or around the incident?
    101.3 ***[If answer to Q. 101 is positive]*** Did you take any photos or recording during or close to the incident?
    101.4 ***[If answer to Q. 101 is positive]*** What applications were on that phone?