FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

GUIDANCE ON INVESTIGATING ALLEGED ILL-TREATMENT AT BORDERS

REPORT

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Key findings

Human rights actors report serious, recurrent and widespread rights violations against migrants and refugees during border management. Although numerous reports appear credible, many incidents are not investigated. When criminal investigations are initiated, these are often closed at pretrial phase.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment expresses concern that few investigations take place. It also notes that investigations often do not comply with standards developed by the European Court of Human Rights. Investigations not meeting the requirements of independence, thoroughness, transparency, promptness and victim participation pose risks to respect for the rule of law.

An increasing number of cases are going to the European Court of Human Rights. In the last few years, the Strasbourg court has adjudicated five cases in which it found that incidents were not effectively investigated. That is, national authorities in Greece, Croatia and Hungary did not effectively investigate incidents of ill-treatment and loss of life during border management. Examples include insufficient efforts to locate and hear victims and witnesses, hindering lawyers in their work and not having access to key evidence (e.g. footage from border surveillance).

The low number of investigations of such cases, despite the high number of credible allegations, casts a negative light on border management authorities' operation. This in turn undermines the high professional standards guiding their work. Genuine efforts to investigate each incident promptly and effectively would not only provide justice to victims but also protect border management staff from false allegations.

More transparency is needed on the number and type of cases that are investigated, as well as on their results. This would strengthen the perception that the matter is being taken seriously.

There are objective challenges to investigating allegations of fundamental rights violations at borders. This is because evidence for what may have happened at night in remote locations (e.g. borders in forests or at sea) is often scarce.

The responsibility to investigate rights violations lies with the Member States. They must do so while respecting the requirements of Article 47 of the EU Charter of Fundamental Rights (the charter). The European Union Agency for Fundamental Rights (FRA) presents 10 points to support authorities investigating incidents of loss of life and alleged ill-treatment that occur during border management.

The European Commission also has an important role in promoting effective national investigations. It does this particularly through its work on monitoring adherence to Schengen rules and in its annual *State of Schengen Report*. More generally, it supports Member States in implementing European integrated border management policies, including through the use of EU funds.

Alleged ill-treatment at borders: Ten points to promote effective national investigations

The following 10 points are suggestions for concrete steps for authorities in charge of judicial and/or disciplinary investigations. They build on FRA's research findings and promising practices in Member States.

The low number of investigations into incidents of loss of life and alleged ill-treatment during border management casts a negative light on border management authorities' operation. This in turn undermines the high professional standards guiding their work.

Efforts to implement more effective investigations should complement preventive action by border management authorities. Such preventive action could include training on fundamental rights, clear instructions on zero tolerance of abusive behaviour and violations of fundamental rights, and measures to enhance transparency (e.g. wearing name or number tags and the use of body cameras) and action to improve the collection and preservation of evidence for trial.

Statutory human rights protection bodies play an important role in monitoring fundamental rights compliance. Subject to mandate and resource considerations, they could establish mechanisms to record testimonies of alleged rights violations during border management, publishing periodic overviews, including trends, and forwarding substantiated cases to the responsible prosecutors.

The following are 10 points to promote prompt and effective national investigations.

1. To increase the transparency of investigations, bodies responsible for disciplinary and judicial investigations and adjudication should publish regular statistics and non-sensitive information. This should include sufficient details on types of complaints received, cases opened and their outcome.
2. To ensure full impartiality and independence from the body involved in the incident, criminal investigations should be entrusted to specific prosecutorial departments. These should be specialised in investigating cases of criminal offences committed by police and other law enforcement officials.
3. Responsible police authorities and state prosecutor's offices should send a clear message on the need for prompt, effective and independent investigations into all substantiated cases. They should also provide regular guidance and training to investigators and local prosecutors. This should include how to protect and support victims during the procedure and how to collect and preserve evidence.
4. Investigative authorities should make full use of the possibilities under national law to initiate investigations promptly, also in the absence of victims' complaints.
5. Investigative authorities should draw upon victims' lawyers, civil society and relevant international organisations to locate victims and witnesses whose whereabouts are not known to them.

6. Investigative authorities should take all possible steps under national law to facilitate victims' participation in criminal proceedings, their protection as victims and their access to victims' support services, as required by EU law. They should make all possible efforts to allow victims to participate without fear of being apprehended and removed for lack of legal status.
7. To obtain timely testimonies from victims and witnesses that can be used for the trial, investigative authorities should make full use of the possibilities under the European Investigation Order and, where appropriate, submit requests through the European Union Agency for Criminal Justice Cooperation (Eurojust). They should also use international judicial cooperation mechanisms.
8. To help reconstruct the sequence of events and expand the sources of reliable physical evidence, in addition to relevant expert reports, investigative authorities should request:

- border management authorities to provide records of border surveillance and body cameras, global positioning system (GPS) records of patrol cars and officers' phones, and relevant communication and reports;
- the victim, witness or, with their consent, their mobile phone providers to provide positioning data during the time of the incident, where legally permissible and suitable to establish the victim's location, when disputed.

9. To identify and investigate structural issues or to initiate *ex officio* investigations, investigators should make use of findings by human rights actors on fundamental rights patterns and trends at borders.
10. State prosecutor's offices should review randomly selected investigation files to identify patterns, shortcomings (e.g. in hearing victims and witnesses or in requesting additional evidence) and good practices in investigations.

Introduction

This report concerns national investigations of incidents of loss of life and alleged ill-treatment that occur during border management at the EU's external land and sea borders.

Article 47 of the Charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal. The way EU Member States organise and run their justice systems is primarily a matter of national law. EU law relies on functioning national justice systems.

The European Union Agency for Fundamental Rights (FRA) – along with UN and Council of Europe bodies, national human rights institutions and civil-society organisations – regularly reports serious, recurrent and widespread human rights violations affecting migrants and refugees at the EU's external land and sea borders [1].

Many reported incidents entail physical violence, ill-treatment, failure to rescue people in distress, stripping people of their clothing, stealing and/or destroying their property, forced separation of families and summary expulsion of those seeking asylum [2]. Such alleged conduct would often amount to a criminal offence under national law.

Five examples illustrate the variety of incidents reported and the challenges and gaps in the investigations.

1. In 2020, the Croatian police intercepted four Afghans who entered the country circumventing border controls. They kept them for 2 days, allegedly intimidating, humiliating and beating them. Their lawyer reported that one of them was also subjected to sexual violence. The Afghans were summarily returned to a neighbouring country. The incident is under investigation. According to the victims' lawyer, the perpetrators have not been identified [3].
2. In April 2020, a European Border and Coast Guard Agency (Frontex) plane located an unseaworthy boat with people in distress at sea. The Maltese authorities coordinated the rescue operation. They instructed a fishing vessel to rescue the people, which took them back to Libya. In the 6 days at sea, 12 of the people on the boat died or went missing at sea. Following a civil-society report that Malta omitted to rescue 56 asylum seekers who were adrift at sea, the judicial authorities opened an inquiry for wilful homicide and attempted wilful homicide. Six weeks later, the magistrate concluded that there was no prima facie basis for criminal charges to be instituted. The 400-page report refers only briefly to the testimonies of the survivors [4].
3. In September 2021, a visibly pregnant woman from Syria arrived in Cyprus by sea with her husband and her 3- and 1-year-old children. She was allowed to disembark, whereas the rest of the family was sent back to Lebanon, where they came from. A doctor visited the woman. She was then left on the pier where she spent the night on a self-made bed of wooden pallets. The next day her waters broke, and she was transported to hospital where she gave birth. The Independent Authority for the Investigation of Allegations and Complaints against

the Police investigated the case and found that the police duly handled it, noting also that a female police officer accompanied the pregnant woman while waiting for her medical examination. The Attorney General gave instructions to close the case, as there was no criminal or disciplinary responsibility [5] .

4. In June 2022, two people from Palestine recognised by Greece as refugees were stopped by police officers for a document check on the island of Kos. The police allegedly took their documents, money and mobile phones. They then allegedly took them to a place where they were subjected to physical and sexual abuse, before being abandoned on a life raft at sea. From there, the Turkish coastguards rescued them. An official complaint is pending before the public prosecutor [6] .
5. In October 2022, the French police stopped an unaccompanied child hiding in a truck destined for the United Kingdom. Volunteers then found the child unconscious – his skull was fractured and his cheekbone and lip were swollen. They called an ambulance. The volunteers deduced that the injuries were the result of the use of force when stopping the child. They reported the case to the public prosecutor of Boulogne-sur-Mer. When the investigators tried to contact the child a month later, he had left for the United Kingdom and could not be found [7] .

Despite regular and continued reports about serious rights violations at borders, there is little information about investigations into such allegations.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) expresses concern that few investigations take place into allegations of ill-treatment and other forms of inhuman and degrading treatment at borders. It also notes that existing investigations 'often do not comply' with the Council of Europe criteria for effectiveness. If perpetrators are not identified or held accountable, the cycle of ill-treatment remains unchallenged [8] .

Victims of human rights violations at borders find it difficult to seek redress in national courts. For victims, initiating legal proceedings is often not a priority. It is also challenging given their lack of legal knowledge, lack of means to bring a case and concerns about negative repercussions should they initiate a complaint. As most incidents occur in remote areas, often at night, there is usually scarce solid evidence.

To remedy the situation, FRA has been calling for establishing fundamental rights monitoring mechanisms at borders. It has also been calling for prompt and effective investigations of all alleged rights violations [9] .

In its 2023 submission to the European Commission's *Rule of Law Report*, FRA underlined the broader impact of ineffective judicial protection against widespread rights violations at borders. It poses a risk to the respect of the rule of law as enshrined in Article 2 of the Treaty on European Union [10] .

Structure and scope

This report presents data on national disciplinary and criminal investigations into rights violations against migrants and refugees at borders. It focuses specifically on those allegedly perpetrated during controls at the EU's external land and sea borders. The report covers 2020 and 2023. Geographically, it covers the EU's eastern land borders, the western Balkans, the Mediterranean and the English Channel.

Thematically, it covers allegations of failure to rescue people in distress at sea, physical ill-treatment and other forms of inhuman and degrading treatment during apprehensions and/or summary returns at borders. It also covers the abandonment of people in remote areas without basic amenities putting their life and physical integrity at risk. The report does not cover administrative procedures relating to asylum or return.

The report explains the duty to investigate reports of fundamental rights violations during border management, describes under-reporting and provides an overview of investigations. This overview is not comprehensive, as data about national investigations, particularly those closed at pretrial phase, are difficult to collect.

The report then analyses the effectiveness of national investigations, shedding light on existing challenges and gaps. This part of the report is primarily based on findings in European Court of Human Rights (ECtHR) case-law. FRA complemented this with information provided by national human rights institutions and information obtained from organisations providing support or legal aid to refugees and migrants and from lawyers.

National case-law could be considered only to a limited degree, as cases are few and most are not publicly available. FRA did not have the benefit of reviewing investigation files to identify patterns, shortcomings and good practices.

This report is primarily addressed to Member States, as they bear the responsibility for prompt and effective investigations into actions that violate the fundamental rights safeguards set in EU law. They must do so while respecting the requirements of Article 47 of the charter. At the same time, the European Commission can play an important role in promoting effective national investigations.

Methodology

This report is based on desk research and on the following data collection:

- With the support of its national liaison officers, FRA requested from courts and/or public prosecutors overviews of pending and closed judicial cases. Cases concerned allegations of border management authorities committing criminal offences against migrants, asylum applicants and refugees.

- FRA requested from the responsible ministries and/or law enforcement bodies overviews of disciplinary investigations on the same matter.
- In 14 Member States, FRA's multidisciplinary research network Franet consulted national human rights bodies, organisations providing support or legal aid to refugees and migrants, and lawyers.

The Franet field research covered Bulgaria, Croatia, Cyprus, France, Greece, Hungary, Italy, Latvia, Lithuania, Malta, Poland, Romania, Spain and Slovakia. Information from courts, prosecutors and national authorities was also sought from Estonia and Finland.

1. National investigations and EU law

Article 47 of the charter provides that everyone whose rights and freedoms guaranteed by EU law are violated has the right to an effective remedy before a tribunal.

The way Member States organise and run their justice systems is primarily a matter of national law. EU law relies on functioning national justice systems.

When national border guards violate the fundamental rights safeguards in the Schengen Border Code [11] or the European border and coast guard regulation [12], it is the Member State's responsibility to carry out investigations based on the rules and procedures set out in national law.

Member States' duty to carry out effective investigations into allegations of fundamental rights violations stems from Article 19 of the Treaty on European Union. It requires Member States to provide remedies to ensure effective legal protection in the fields covered by EU law [13].

In one area – namely for alleged fundamental rights breaches during screening – EU law goes further. Article 10 of the screening regulation expressly obliges Member States to 'adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening'. Member States must ensure, where appropriate, 'referral for the initiation of civil or criminal justice proceedings in cases of failure to respect or to enforce fundamental rights in accordance with national law'. Independent fundamental rights monitoring mechanisms must be allowed 'to trigger investigations and to monitor the progress of such investigations'. [14]

When the EU finds that Member States are not investigating allegations of fundamental rights during border management, it may consider this a gap in implementing EU Schengen rules. For example, under the Schengen evaluation and monitoring mechanism [15], the Council of the EU recommended that Greece should strengthen the fundamental rights component of its national border management governance structure. It also recommended that Greece carry out thorough and prompt investigations of reported serious allegations of ill-treatment [16].

In some cases, EU actors also investigate incidents. Under Article 111 of the European border and coast guard regulation [17], a person whose fundamental rights are directly affected by the conduct of staff involved in Frontex operational activities may submit a complaint in writing to Frontex (see Section 3.4).

The ECtHR has developed case-law for prompt and effective investigations of violations of rights set out in the European Convention on Human Rights (ECHR), which Member States need to comply with. Pursuant to Article 52(3) of the charter, such ECtHR case-law must inform the meaning of the right to an effective remedy in Article 47 of the charter.

FRA activity: providing guidance on prompt and effective investigations

National investigations must be prompt and effective, respecting the requirements set by the ECtHR. In 2021, FRA produced joint guidance with the Council of Europe setting out human rights standards stemming from the ECHR and EU law that apply to effective remedies for human rights violations at borders. Prompt and effective investigations increase accountability for rights violations.

Source: FRA and Council of Europe, European standards on legal remedies, complaints mechanisms and effective investigations at borders, Vienna, Strasbourg, 2021.

Under EU law, the victims' rights directive entitles victims of violent crimes to protection. Such protection has to be afforded regardless of the victim's legal status. Some victims' rights, such as access to information and to victim support services, do not depend on the victim making a formal complaint. They also apply when criminal procedures have not (yet) started [18].

2. Reporting incidents

Victims of ill-treatment at borders are in a vulnerable situation. Victims rarely report such incidents to law enforcement authorities. In France, for example, a civil-society organisation has said that only 1 in 10 cases reported to them in Calais leads to the filing of a complaint [19].

Reasons for not reporting appear manyfold. The lawyers and civil-society organisations consulted for this report give the following examples of reasons: a fear of reprisals, distrust in the authorities, victims' lack of willingness (as the priority is to regularise their stay in Europe), a fear of potential negative impacts on the asylum procedure, smugglers' advice not to report incidents and disbelief that reporting would bring any tangible benefit.

As an illustration, a Romanian civil-society organisation reported that victims believe that investigative procedures would not lead to any result for various reasons. These include difficulties in presenting solid evidence of the violation or in identifying the location of the incidents and the authority involved.

In France, a civil-society organisation active in Calais that was contacted for this research noted that the French police inspection service discouraged them from reporting incidents. This is because their volunteers are not present during the incident and cannot testify and the migrants are either not available or not willing to testify [20].

In Greece, the Ombudsman stressed victims' and witnesses' fear of coming forward and being involved in official proceedings against law enforcement authorities, as they are in a vulnerable position [21].

In some cases, non-EU nationals may report violations anonymously, but this makes it difficult to investigate them, as victims or witnesses cannot be heard. In Romania, for example, in 2020 and 2021, asylum applicants reported some incidents. This led to an internal investigation by the General Inspectorate of Border Police, which concluded that it was impossible to identify alleged perpetrators. None of the asylum applicants was willing to submit a criminal complaint [22].

Some legal measures discourage reporting further. In Cyprus, according to a legal amendment adopted in May 2024, knowingly making false statements to the Independent Authority for the Investigation of Allegations and Complaints Against the Police in relation to 'imaginary offences' is a criminal offence. This offence is punishable by imprisonment of up to 1 year and/or a fine of up to EUR 2 000 [23].

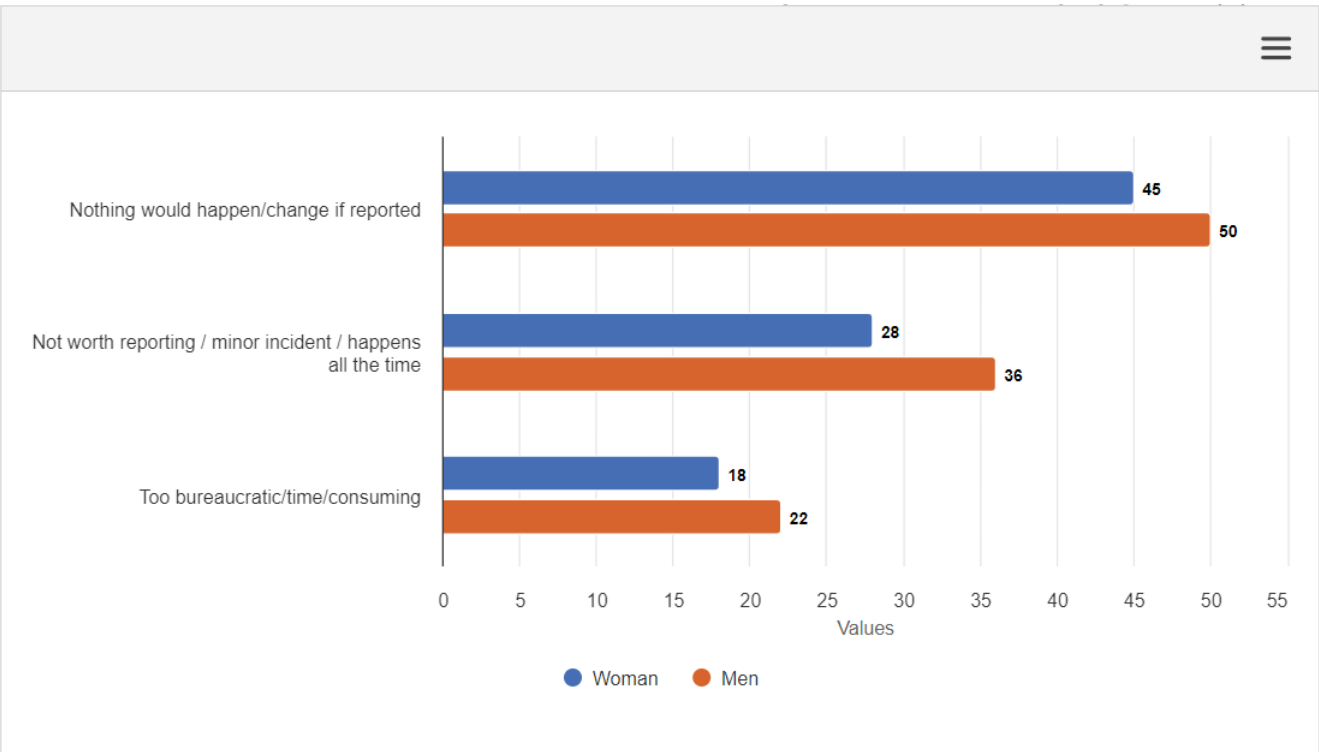
To file complaints, before either the judicial authorities or other bodies, victims need clear information and support from professionals. A common reason not to report is a lack of awareness of how to submit complaints and access justice [24].

Under-reporting is a broader phenomenon not limited to incidents at borders, as FRA's fundamental rights survey shows. With respect to the most recent incident they had experienced in the past 5 years, victims reported to the police only 30 % of incidents involving physical violence

and 11 % of those involving harassment [25] .

The phenomenon of under-reporting also concerns hate crimes and bias-motivated harassment [26] . As an illustration, people of African descent who FRA interviewed in 13 Member States said that they did not report racist incidents to the authorities as nothing would change. Other top reasons relate to their view that such incidents happen all the time and are minor or not worth reporting and that they consider reporting to be time-consuming or bureaucratic (Figure 1).

Figure 1 – Experiences of people of African descent – top three reasons for not reporting the most recent incident of racist harassment to authorities or services in the 5 years before the survey, by gender (%)



Notes: Out of all respondents of African descent who experienced racist harassment in the 5 years before the survey and did not report it anywhere (women, n = 882; men, n = 953); weighted results, sorted by the category 'women'. Question: 'Why did you not report the incident (i.e. racist harassment experienced in the 5 years before the survey (or since you have been in [country])) or make a complaint to the police or any other organisation?'

Alternative text: Bar chart showing that the main reasons why people of African descent do not report incidents of racist harassment are that nothing would change (45 % of men and 50 % of women); it is not worth reporting, as it happens all the time (28 % of men and 36 % of women); and that it is too bureaucratic and time-consuming (18 % of men and 22 % of women).

Source: FRA's EU survey on immigrants and descendants of immigrants, 2022, as reproduced in FRA, Being Black in the EU – Experiences of people of African descent, Publications Office of the European Union, Luxembourg, 2023, Figure 27.

Whistle-blowers can significantly contribute to a well-functioning accountability system, if afforded adequate protection. Some Member States have established in their laws the possibility for whistle-blowers to report breaches of criminal law and other ethical misconduct committed by public officials [27] .

3. Type of legal process

Different actors are responsible for investigating incidents of loss of life and alleged ill-treatment in border management.

At the European level, cases may reach the ECtHR and, in exceptional situations, also the Court of Justice of the European Union (CJEU) [28] . People who are directly affected by the action or failure to act of staff involved in a Frontex activity and whose rights have been breached may submit a complaint to Frontex [29] .

At the national level, this includes ministries and law enforcement authorities, which carry out disciplinary investigations against their personnel. In the case of reported criminal conduct, police and public prosecutors carry out pretrial investigations before the file is passed on to a judge. Ombudspersons and other national human rights institutions may also have a mandate to investigate individual cases.

Promising practice: involving the Greek Ombudsman to review investigations of police arbitrariness

Under Greek law, the Greek Ombudsman has been mandated to review internal investigations of arbitrariness by law enforcement personnel. In its capacity as the National Mechanism for the Investigation of Arbitrary Incidents, the Ombudsman is involved in overseeing the processing of complaints about the actions of uniformed personnel. This refers to the Hellenic Police, the Port Authority (Hellenic Coast Guard), the Fire Brigade and the personnel of penitentiary facilities. It does so by reviewing the investigation file and, where necessary suggesting further action to the competent services. The Ombudsman may also carry out its own investigation in parallel to or in absence of an internal disciplinary investigation.

Source: Greece, Law 3938/2011, Article 1; Law 4443/2016, Article 56; and Law 4662/2020, Article 188.

There are three overall conclusions from FRA's data collection on national investigations.

First, the results of investigations are often not public. Decisions on disciplinary procedures remain internal. This is also true, in most cases, for decisions taken during pretrial investigations to file a case.

Depending on the Member State and the adjudicating court, judicial decisions might also not be publicly available. Lawyers and civil-society organisations that were contacted for this research raised the general lack of transparency about investigations. More information is required on the number and type of cases that are investigated, as well as on their results. This would strengthen the perception that national authorities are taking the matter seriously.

Second, FRA encountered difficulties when attempting to count the number of investigations into incidents of loss or life, ill-treatment and related fundamental rights violations against migrants and asylum seekers during border management. Particularly for criminal procedures, the type of proceedings that are relevant for this report – namely cases concerning alleged criminal conduct against migrants and refugees by law enforcement authorities in the context of border management – cannot, in several Member States, be extracted from existing statistics. Cases need to be counted manually.

Third, a sense of impunity prevails. Very few national court proceedings lead to convictions. This is particularly true when compared with the number of credible reports about serious fundamental rights violations. Although FRA may not have been able to identify all existing cases, it could find only three criminal convictions. There were two in Hungary (a third one is under appeal) and one in Spain [30]. In addition, very few disciplinary proceedings led to sanctions: four in Croatia and four in Hungary, according to the data collected.

This research could not reach a conclusion on whether the sanctions imposed are sufficiently dissuasive. FRA could not access most judgments and decisions.

In the criminal convictions in Hungary, the defendants received a financial penalty in one case and a financial penalty and a suspended imprisonment sentence in the other case.

In the Spanish case, an officer seriously injured a child trying to jump the queue at the border crossing point and attempted to throw a vehicle wheel over the fence in Melilla. In that case, the officer was sentenced to 6 months' imprisonment, a suspension of the right to passive suffrage and a financial penalty.

The disciplinary sanctions imposed included reprimands, delays in promotion, fines and conditional termination of service, subject to a probationary period (see Section 3.1).

3.1. Disciplinary investigations

Standards of conduct guide the work of law enforcement authorities, including those in charge of border control [31]. Infringements of rules of conduct may be subject to disciplinary investigations.

The objectives and scope of disciplinary investigations vary across Member States. However, the primary aim of such investigations is to sanction officers' inappropriate conduct and protect the reputation of law enforcement actors. Their aim is not necessarily to restore justice for the victim. As an illustration, Latvian legislation clarifies that the aim of disciplinary procedures is to 'punish the guilty official and to achieve that he or she and other officials would comply with the service discipline and refrain from committing disciplinary offences' [32].

The scope and procedures of such investigations vary. Typically, specialised units run such an investigation. When there are founded allegations of criminal conduct, national criminal procedure rules require that cases are forwarded to the public prosecutor.

FRA contacted the authorities in charge of disciplinary investigations in 16 Member States and received replies from 11 of them, as shown in Table 1. For Member States that did not reply, FRA included cases reported by lawyers and civil society.

Between January 2020 and September 2023, 118 cases were subject to disciplinary investigations. Of these, 52 were in Greece. Eight of the 61 closed cases led to sanctions – four in Croatia and four in Hungary (see Table 1).

The disciplinary sanctions imposed in Croatia included reprimands, fines and conditional termination of service, subject to a probationary period [33]. The sanctions in Hungary consisted of reprimands and a delay in promotion for 2 years [34].

The Greek Ombudsman noted that, despite the growing number of investigations, there is a certain reluctance by the competent disciplinary bodies of the enforcement agencies are persistently reluctant to investigate allegations of unlawful actions [35].

Concerning the duration of disciplinary procedures, many cases have been pending for more than 6 months.

Table 1: Overview of disciplinary investigations reported to FRA, 2020–2023, 16 Member States

Member State	Reply to FRA request	Total number of reported cases	Number of pending cases
Bulgaria	x	1	1
Croatia	√	16	2
Cyprus	x	n/a	n/a
Estonia	√	0	0
Finland	√	1	0
France	x	11	7
Greece	√	52	35
Hungary	√	17	8
Italy	x	n/a	n/a
Latvia	√	3	2
Lithuania	√	2	0
Malta	x	n/a	n/a
Poland	√	8	0
Romania	√	5	2
Slovakia	√	0	0
Spain	√	2	0
Total	—	118	57

Notes: Data for 2023 include the period from January to September 2023. For Croatia, the list includes all preliminary investigations by the Internal Control Service of the Ministry of Interior, five of which led to the opening of formal disciplinary investigations. √, FRA received information from the competent ministries and/or law enforcement bodies; X, FRA did not receive information from the competent ministries and/or law enforcement bodies; n/a, data not available.

Source: For Bulgaria and France: civil society, lawyers and legal aid organisations. For Estonia and Hungary: police. For Greece: Hellenic Police and Hellenic Coast Guard. For Spain, Croatia and Slovakia: Ministry of Interior. For Finland, Latvia, Lithuania, Poland and Romania: border guards.

The investigations reported also included acts of a criminal nature. As an illustration, in Greece, the Hellenic Police reported a case concerning 'allegations of police brutality against foreigners, illegal removal of their money, mobile phones and other personal items, death of a man due to police indifference and illegal pushbacks from Evros to Turkey' [36].

Decisions on disciplinary investigations are not public. In addition, those organisations that report the incident and are in contact with the alleged victim may also not have information about the progress of investigations. For example, a civil-society organisation in France reported that it had not received information on the progress of complaints it had filed with the police [37].

3.2. Criminal investigations

The police carry out criminal investigations upon a complaint by the victim, upon an order by a

prosecutor or investigative judge or on their own initiative.

Criminal procedures consist of two parts. A pretrial phase and a trial phase. When an incident is reported to the police, the responsible officers undertake a preliminary investigation. This determines whether there is sufficient substance to initiate criminal investigations and forward the case to the public prosecutor. If not, investigations are closed at this stage.

When the geographically and thematically responsible public prosecutor receives a case, he or she reviews it. The prosecutor may ask the police to carry out additional investigations. When the prosecutor is satisfied that the suspicion of criminal conduct is sufficiently substantiated, the case goes to a judge who starts the trial phase. Otherwise, the public prosecutor archives the case.

For this report, FRA approached courts and/or ministries of justice in 16 Member States. They were asked to provide an overview of pending and closed cases concerning criminal offences allegedly committed by border management authorities against migrants.

FRA received information from the judicial and/or prosecutorial authorities of seven Member States. Three of them (Croatia, Lithuania and Romania) replied that such statistics cannot be extracted or are not available (Table 2). When FRA did not receive any data from them, it included information from other sources, including law enforcement authorities, lawyers and civil society. For civil-society sources, FRA included only individual cases that were described in sufficient detail. As an illustration, FRA did not include the over 200 cases that the Greek Helsinki Monitor submitted to prosecutors in Greece in 2020 and 2021 [38] .

The data that FRA collected are not comprehensive. Nevertheless, between January 2020 and September 2023, there were at least 84 criminal investigations in 10 Member States, most in Greece (35) and Hungary (19). At the end of September 2023, 34 cases were pending at trial or pretrial phase, half of them in Greece. Of the 50 cases closed, there were three criminal convictions: two in Hungary (with a third under appeal) and one in Spain [39] .

Table 2: Overview of judicial investigations, 2020–2023, 16 EU Member States

Member State	Prosecutors/courts replied	Input from other actors	Total number of reported cases	Number of cases at pretrial or trial phase	Number of convictions	Illustrations of criminal conduct alleged (selected)
Bulgaria	x	Civil society	4	1	–	Excessive use of force and theft during apprehension and/or summary removal to Türkiye
Croatia	√	Ministry of Interior	11	3	–	Torture, inhuman or degrading treatment, rape, robbery, unlawful deprivation of liberty, abuse of position of authority
Cyprus	x	UNHCR and civil society	0	0	–	–
Estonia	√	–	0	0	–	–
Finland	x	–	0	0	–	–
France	x	Civil society	4	3	–	Manslaughter and non-assistance to people in danger (drowning of 27 people in the Channel), ill-treatment and abandonment of people unable to protect themselves
Greece	x	Hellenic Police, Hellenic Coast Guard, National Commission for Human Rights	35	15	–	Ill-treatment, physical injury, torture, rape and theft during apprehension and/or summary removal to Türkiye; homicide; illegal use of firearms

Member State	Prosecutors/courts replied	Input from other actors	Total number of reported cases	Number of cases at pretrial or trial phase	Number of convictions	Illustrations of criminal conduct alleged (selected)
Hungary	√	—	19	6	2	Assault
Italy	x	—	0	0	—	—
Latvia	√	—	1	0	—	Unlawful confiscation of property
Lithuania	√	Civil society	1	1	—	Severe health impairment, abuse of authority
Malta	x	Civil society	1	n/a	—	Wilful homicide and attempted wilful homicide (delayed rescue and boat's engine cable)
Poland	x	Civil society	1	1	—	Putting migrants' lives and health at risk in the context of summary returns to the Belarus border
Romania	√	Border Police	3	2	—	Abusive behaviour and theft
Slovakia	√	—	0	0	—	—
Spain	x	Civil society	4	2	1	Homicide by gross negligence, denial of assistance, beating causing loss of vision, excessive use of force
Total	—	—	84	34	3	—

Notes: Data for 2023 are only up to September 2023. The table includes only cases that FRA could identify and is therefore not comprehensive. √, FRA received information from prosecutorial or judicial authorities; X, FRA did not receive information from prosecutorial or judicial authorities; n/a, data not available; UNHCR, Office of the United Nations High Commissioner for Refugees. For the Member States for which FRA did not receive a reply from prosecutorial or judicial authorities or that replied that there were no relevant statistics (Croatia, Lithuania and Romania), the table includes cases reported by other actors.

Source: FRA, 2024.

In addition to the cases listed in Table 2, there are cases in which the police concluded that there was no substance to initiate any criminal investigations. In Latvia, for example, the Internal Security Bureau, which conducts criminal investigations following a complaint, reviewed 27 cases. It found that in 25 of those cases, there was no legal basis for initiating a criminal procedure; the other two cases were pending [40].

The limited information available does not allow conclusions as regards the length of criminal procedures for fundamental rights violations during border management. It also does not allow a determination to be made about whether the duration differs from that of criminal procedures in general. According to 2020 data, the calculated time necessary for a pending criminal case (in general, not just those that are the subject of this report) to be resolved, considering the current pace of work, varies significantly between Member States. In Estonia it is 30 days and in Hungary it is 54 days. On the other hand, in Croatia it is 223 days, in Cyprus it is 317 days, in Italy it is 498 days and in Malta it is 792 days [41].

Most investigations are closed at pretrial phase. They are closed either by the police at an early stage of the investigation or by the prosecutor who concludes that there is not sufficient evidence to issue an indictment and pass on the case to a judge (for more information of the lack of evidence, see Section 4.2). Lawyers and civil-society organisations contacted for this research in Croatia, Latvia and Poland noted the difficulty in gathering sufficient evidence to get the responsible authorities to initiate criminal proceedings.

Investigative authorities may also act proactively. For example, in Latvia, the Internal Security Bureau, which determines if there is sufficient substance to initiate criminal investigations, informed FRA that it had conducted two preliminary investigations based on public information identified by one of its employees.

In Croatia, in 2021, a civil-society organisation recalled at least 18 complaints about apprehensions and summary returns of migrants. Several of these complaints involved violence. The complaints were submitted to the prosecutor but none led to an indictment [42].

In Latvia, the criminal procedural law standard for initiating criminal proceedings is the submission of 'information indicating the committing of a possible criminal offence'. This standard is interpreted strictly and lawyers find it difficult to meet [43].

In Poland, legal aid organisations and lawyers mentioned five cases of summary returns conducted in a way that put migrants' lives or health at risk. They brought these to the attention of the authorities alleging misconduct and/or negligence of the border guards. However, the public prosecutor did not initiate criminal proceedings in any of these cases due to the lack of features of a criminal offence [44].

Promising practice: appointing a special team of prosecutors in Poland

In March 2024, the Polish Prosecutor General issued an order to appoint a team of prosecutors to investigate reports of abuse of powers by law enforcement officers when taking actions against migrants and refugees at the Polish–Belarusian border. In April 2024, the Lublin Regional Prosecutor assigned this task to the District Prosecutor in Siedlce. The latter opened an investigation into allegations of rights violations during border management affecting migrants and refugees whose lives and health were at risk or who sought international protection in Poland.

The team will hear victims, where they can be identified, and humanitarian actors assisting migrants and refugees at the Polish–Belarusian border. The team of prosecutors will also analyse already concluded cases, assessing if the decisions issued were legitimate and whether cases should be reopened.

Source: Poland, Ministry of Interior, May 2024.

One factor that may explain the closure of cases at pretrial phase relates to what needs to be proven and to what level of certainty. In criminal proceedings, to convict an individual for a crime, a court must be able to conclude beyond any reasonable doubt that a specific person committed it. Although the type and amount of evidence available may be sufficient to show that the victim suffered harm, it may not be enough to identify the person responsible for it.

Often, the alleged ill-treatment occurs in remote locations, at night and without the presence of witnesses. In such cases, simply reconstructing the facts of an incident – establishing the location and time where it happened, the equipment used, the authority involved – is difficult. Therefore, identifying the individual officers involved, who may not be wearing a name or number tag, and proving their involvement beyond any reasonable doubt is, in the absence of a confession or other conclusive evidence, particularly arduous.

The difficulty in meeting the standard of proof required under criminal law may be one reason why lawyers rely more on the ECtHR than on national criminal courts [45]. When examining potential violations of rights set out in the ECHR, the Strasbourg court needs to be satisfied that the victims suffered a violation and that the state was responsible for it. It does not need to establish the identity of the perpetrator.

For further information on the effectiveness of national investigations, see Chapter 4.

3.3. Human rights bodies

Most national human rights institutions have the power to investigate individual complaints of human rights violations and make recommendations for redress. In 2019, this was the case for 22 of the 27 Member States. The types of complaints that national human rights institutions can

examine depends on their specific mandate. For example, some of them have the power to examine complaints only under their mandate as equality bodies [46].

Some national human rights institutions have been active in investigating individual complaints relating to alleged rights violations linked to border management. For example, the Croatian Ombudswoman investigated cases of apprehensions and summary expulsions, several of which entailed ill-treatment allegations [47]. The Greek Ombudsman reported to the parliament that it was investigating more than 50 cases of rights violations by border management authorities against migrants and refugees with more than 10 000 victims [48]. In Poland, since August 2021, the Ombudsman's Office has made 425 interventions in cases of non-EU nationals summarily returned or at risk of being summarily returned to Belarus [49]. In Spain, the Ombudsman has taken different actions, particularly concerning Ceuta and Melilla [50].

When they identify shortcomings, national human rights institutions may issue recommendations. National authorities hesitate to implement recommendations aimed at strengthening accountability at borders, according to the European Network of National Human Rights Institutions (ENNHRI) [51].

When contacted, the Bulgarian Ombudsman noted the low implementation rate of its recommendations [52]. The French National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'homme, CNCDH) mentioned that the authorities oppose its' recommendations relating to the situation at the border [53]. Similarly, the Ministry of Interior did not accept the Spanish Ombudsman's recommendations issued after the death of at least 23 people trying to cross the border in Melilla [54].

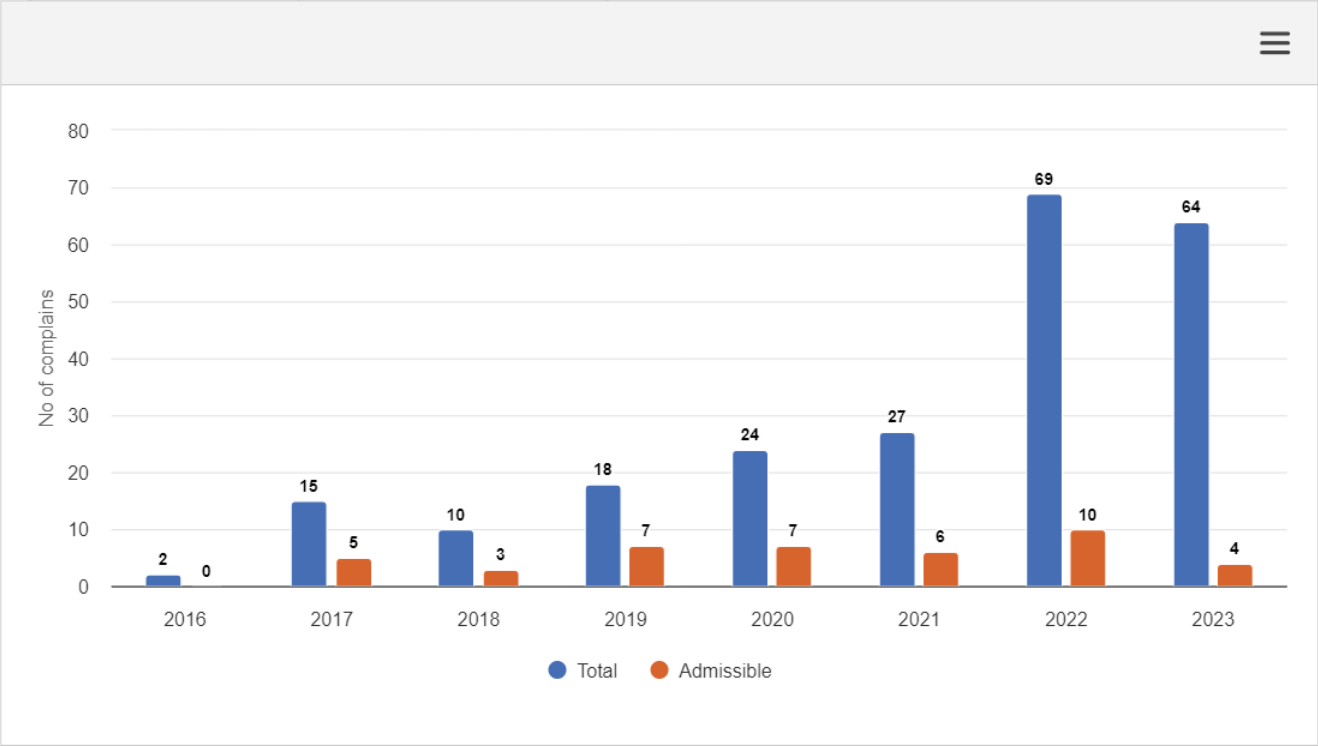
3.4. Frontex investigations

Since its creation in 2004, Frontex operational activities in Member States have gained increasing importance. The agency is deploying more and more officers to the field to support Member States in border management. With its standing corps, Frontex has a uniformed service that will include up to 10 000 people by 2027 [55].

This development required fundamental rights protection mechanisms. Two internal Frontex procedures may lead to investigations of reported fundamental rights incidents.

First, under Article 111 of the European border and coast guard regulation [56], a person whose fundamental rights are directly affected by the conduct of staff involved in Frontex operational activities may submit a complaint in writing to Frontex. The Frontex fundamental rights officer handles such complaints. As shown in Figure 2, between 2016 and 2023, Frontex received 229 complaints, 42 of which were admissible.

Figure 2: Individual complaints of fundamental rights violations submitted to Frontex, 2016–2023



Notes: The number of complaints also includes a few alleged rights violations during returns.

Alternative text: Bar chart showing that between 2016 and 2023 the total number of complaints of fundamental rights violations increased but the number of admissible complaints did not.

Source: Frontex Fundamental Rights Office, May 2024.

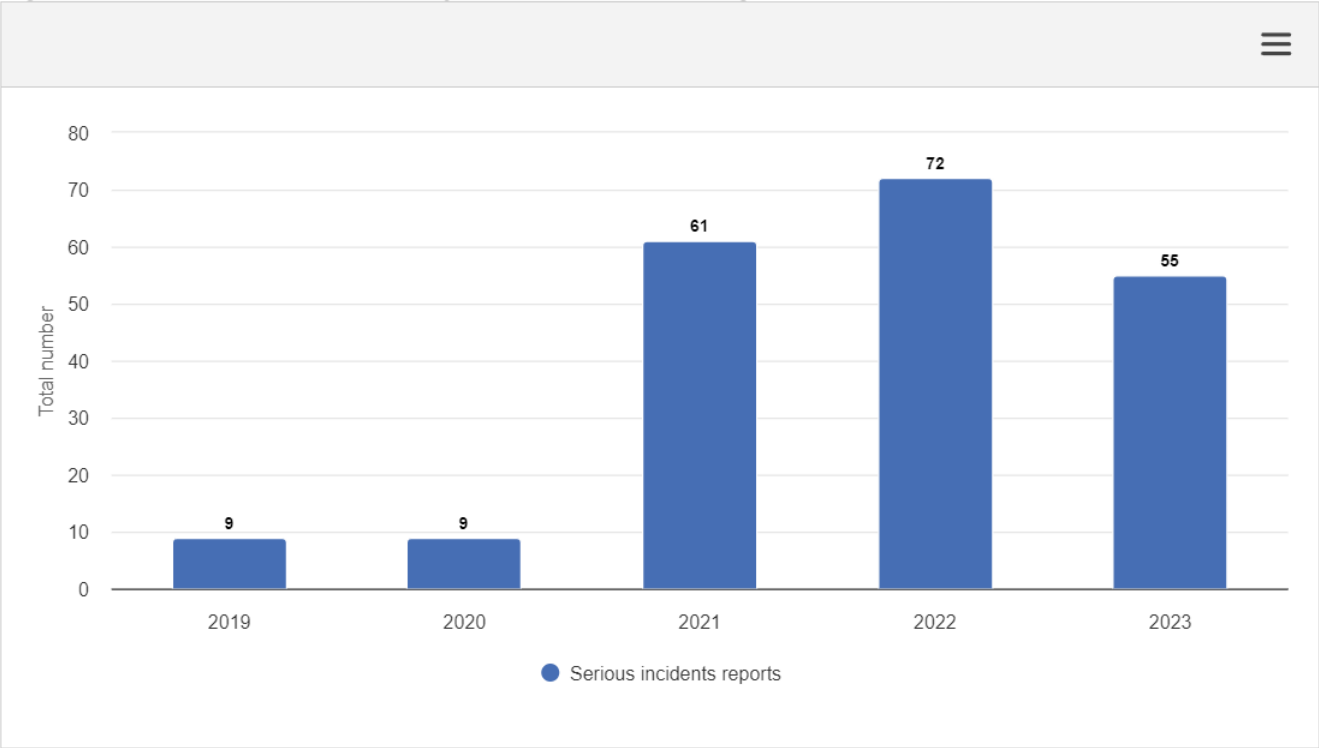
Figure 2 shows that, although the number of complaints has increased over the years, only a few have been found to be admissible. In 2023, there were three admissible complaints: one from Bulgaria, one from Greece and one from Lithuania. They alleged violations of the right to life, the prohibition of torture, inhuman or degrading treatment, protection from *refoulement* and the right to property [57]. Many complaints are inadmissible for Frontex as they relate to Member State authorities' or other actors' actions and not to the conduct of personnel involved in Frontex operational activities.

For victims of rights violations at borders, submitting a complaint to Frontex may not be particularly attractive. There is limited remedy for the victim, as the main purpose of the complaint is to remove or sanction personnel who committed wrongdoings.

Second, every participant in Frontex operational activities needs to immediately report any situation of potential violation of fundamental rights, through a 'serious incident report' [58]. Within Frontex, the fundamental rights officer reviews those serious incident reports that concern potential violations of fundamental rights. From 2019 to 2023, they concluded 206 serious

incident reports (Figure 3).

Figure 3: Frontex serious incident reports on fundamental rights, 2018–2023



Alternative text: Bar chart showing that, in 2019 and 2020, nine serious incidents were reported to Frontex while, in 2021, 61 incidents were reported; in 2022, 72 incidents were reported; and, in 2023, 55 incidents were reported.

Source: Frontex, The Fundamental Rights Officer – Annual report 2023, July 2024, p. 25.

In 2023, most serious incident reports concerned Greece (23 cases), followed by Bulgaria (11 cases) [59] . Several of these cases triggered investigations at the national level. None of them led to a conviction, although some cases are pending.

Sometimes, more than one authority is investigating a case. As an illustration, the Hellenic Police, the responsible Greek court, the Greek Ombudsman and the National Transparency Authority dealt with the case of a summary expulsion from Greece to Türkiye of a Frontex cultural mediator that took place in September 2021. The Greek Ombudsman found sufficient evidence to substantiate the accusations. It concluded that there were serious omissions by the police to investigate the incident as soon as they received a serious incident report from Frontex. The Greek Ombudsman forwarded these findings to the Hellenic Police and to the competent Public Prosecutor [60] . The National Transparency Authority also submitted its findings to the First Instance Prosecutor's Office in December 2022. FRA is not aware of the content of their findings.

The limited information that Frontex receives from responsible national bodies allows only a partial examination of the cases. For example, in two high-visibility shipwreck cases, the fundamental rights officer had to issue his findings without being provided with details that he deemed sufficient to understand how the cases were handled at the national level [61] .

1. On 26 February 2023, a shipwreck near Cutro (Italy) resulted in 98 dead and missing people. The day before, a Frontex surveillance aircraft had spotted the vessel – which was not yet in distress – and communicated the sighting to the responsible Italian authorities. The investigations concluded that Frontex had correctly alerted the Italian authorities, but suggested improvements to Frontex's processing and sharing of information on sightings with national authorities. This would enable a more informed assessment of the risk of an apparently non-dangerous situation escalating into an emergency.
2. The second incident occurred on the night of 13–14 June 2023. Some 600 people died or went missing when an unseaworthy boat that had departed from Libya capsized off the Peloponnese coast (Greece). The Adriana shipwreck was one of the deadliest incidents ever in the Mediterranean Sea. The investigation concluded that Frontex followed applicable procedures, but suggested that, in future, it should review its methodology and assess such cases more thoroughly against the need to issue a Mayday alert.

On the shipwreck case off the Greek coast, FRA issued a report in which it proposed to explore new avenues for investigating maritime shipwreck incidents. FRA referred to the principles concerning maritime safety investigations developed in the context of maritime transport activities as laid out in Directive 2009/18/EC. It proposed applying these principles also to shipwreck incidents occurring in the context of border management [62].

3.5. European Court of Human Rights

The ECtHR continues to play an important role in upholding human rights at borders. When domestic remedies are not effective or have been exhausted without tangible results, lawyers file cases with the ECtHR.

On 1 January 2024, over 30 communicated cases entailing alleged ill-treatment at the EU's external borders were pending adjudication (see Annex). They concern eight Member States: Croatia, Cyprus, Greece, Hungary, Italy, Latvia, Lithuania and Poland.

Applicants in these cases allege violence and ill-treatment during apprehension and subsequent summary return by land to the neighbouring country, ill-treatment during summary expulsion at sea, delayed search and rescue, abandonment of people in forest areas at borders without access to basic amenities and/or exposing applicants to life-threatening situations. One case concerns a search-and-rescue event coordinated by Italy which led to abuses by Libyan coastguards.

Since November 2021, the ECtHR has issued five judgments in which it found that border guards' or coastguards' investigations into migrants' rights violations were ineffective. They concerned allegations of violations of the right to life (Article 2 of the ECHR) and allegations of torture or inhuman or degrading treatment (Article 3 of the ECHR) during apprehension and subsequent summary return [63].

1. In M. H. and Others v Croatia, the ECtHR found that the investigation into the death of a 6-year-old Afghan child had been ineffective. The child was hit by a train after the Croatian

authorities allegedly denied the opportunity to seek asylum and ordered the child to return to Serbia via the tracks. The investigating authorities failed to look into the discrepancies between the police officers' statements, did not inspect mobile telephones and the police car global positioning system (GPS) data, and refused to provide the applicants' lawyer with information on the investigation. In addition, the applicants had been allowed to meet their lawyer only belatedly. The ECtHR found a violation of Article 2 (the right to life) of the ECHR as regards this investigation.

2. In Alhowais v Hungary, the ECtHR found shortcomings in the investigation into the death of a Syrian national who drowned during a border control operation at a river on the Hungarian–Serbian border and allegations of police ill-treatment. The Court noted, inter alia, that not all witnesses were questioned. It also noted that the authorities did not try locating witnesses who had left Hungary and did not explore other options to resolve factual contradictions of the case. The ECtHR found that the deficiencies of the investigation led to a violation of the procedural aspects of Article 2 (the right to life) and of Article 3 (the prohibition of torture) of the ECHR.
3. In Safi and Others v Greece, the ECtHR found serious deficiencies in the conduct of criminal investigations into a shipwreck that led to the death of 11 people. The shortcomings included problems with the interpretation. This resulted in errors in the record of statements and applicants lacking access to evidence (i.e. the coast guard's recordings). The ECtHR found a violation of Article 2 (the right to life) of the ECHR, as the authorities had not carried out a thorough and effective investigation.
4. In Douaa Alkhatib and Others v Greece, the ECtHR found numerous shortcomings in the national authorities' investigation conducted into a shooting incident when intercepting a vessel transporting people illegally to Greece. Such shortcomings led to a loss of evidence and affected the adequacy of the investigation. The ECtHR found a violation of the procedural aspect of Article 2 (the right to life).
5. In Shahzad v Hungary (No. 2), the ECtHR concluded that the Hungarian authorities had not effectively investigated the alleged ill-treatment of a migrant by Hungarian law enforcement officers. The incident took place while officers escorting him back to the external side of the Hungarian border fence with Serbia. The ECtHR found a violation of Article 3 (the prohibition of torture) of the ECHR.

4. Ensuring effective investigations

Under the ECHR, whenever there is a credible assertion of a violation of Article 2 (the right to life) or Article 3 (the prohibition of torture and other forms of ill-treatment), national authorities must carry out an effective official investigation [64].

To be effective, an investigation must be adequate, prompt, expeditious and capable of leading to the identification and punishment of those responsible. This requires that the investigation is thorough and makes serious attempts to find out what happened. It requires the people responsible for the investigation or carrying it out to be independent in practice. It also requires victims to be able to effectively participate in the investigation and for the next of kin of the victim to be involved to the extent necessary to safeguard their legitimate interests [65].

In addition, investigation must not depend on a complaint from the victim or next of kin. National authorities should act on their own initiative where reasonable allegations of ill-treatment arise [66].

Similarly, the CPT stressed that all investigations must strictly comply with the criteria of independence, thoroughness, transparency, promptness and victim participation. Prosecutorial authorities must exercise close and effective supervision of the operational conduct of an investigation into possible ill-treatment by public officials. Investigations must be capable of leading to a determination of whether or not force or other methods used were justified under the circumstances. Once ill-treatment has been established and proven, disciplinary and criminal sanctions should be commensurate to the gravity of the case [67].

In past research, FRA has tried to assess the effectiveness of investigations of incidents of police arbitrariness. In its 2024 report on addressing racism in policing, it found, however, that few data on investigations are available [68].

This chapter reviews the obstacles facing victims in terms of participating in the proceedings, difficulties in producing evidence and due diligence during investigations. The starting point of the analysis is the relevant ECtHR case-law listed in Chapter 3.

4.1. Enabling victims to participate

Under the ECHR, victims must be able to effectively participate in the investigation. In addition, the next of kin of the victim must be involved to the extent necessary to safeguard their legitimate interests [69].

There are practical challenges that make victims' adequate participation in the investigation difficult.

First, even if the authorities have a duty to investigate, irrespective of the victim's complaint [70], lodging a complaint facilitates the start of investigations. To file complaints before the judicial,

disciplinary or human rights bodies, individuals need clear information on the available procedures. This requires support from professionals. The ENNHRI notes that a common reason for migrants not reporting human rights violations is a lack of awareness or understanding of the process to submit complaints and access justice [71].

International or civil-society organisations – which receive accounts of ill-treatment or of other rights violations from people who cross or attempt to cross the border in an irregular manner – play an important role. They refer victims to specialised staff who can provide information on available legal avenues, procedures and other relevant aspects. Recital 63 of the victims' rights directive encourages Member States to put in place mechanisms to enable third parties to report on the victim's behalf. [72] However, the capacity of such third parties may be limited, particularly in border areas.

A second practical barrier is that victims are often not in the territory of the Member State where the alleged violation took place. Victims might have absconded from reception facilities, moved on or been summarily returned to where they came from. This affects their possibility to participate meaningfully in the procedure.

Victims' and witnesses' statements must respect formal requirements to be used as evidence in the trial. In the absence of functioning judicial cooperation mechanisms, obtaining the necessary signatures and testimonies from the victims staying in a third country is complicated. A legal professional in Cyprus underlined, for example, that victims who were summarily returned to Lebanon may not be available because they were *refouled* to Syria or their whereabouts are unknown.

In some Member States, victims can appeal the prosecutor's decision not to initiate pretrial proceedings. However, for this they need to be in the country or give written consent, as a civil-society representative in Bulgaria noted [73].

The victim's absence affects the possibility of being heard during the investigations. Investigative authorities may need to make an additional effort to seek statements from victims who are believed to be staying somewhere in a third country. The difficulties in locating and collecting testimonies from the victims might lead to the discontinuation of the cases. For example, the Hungarian prosecutor did not hear a victim who was ill-treated while being escorted back to Serbia through the border fence in August 2016. This was because the victim had left Hungary and was not available for the proceedings [74].

In other situations, efforts to collect testimonies from the victims may significantly prolong the length of the procedures. A legal aid provider in Bulgaria referred to a case that was pending before the prosecutorial authorities for 14 months [75].

Obtaining larger numbers of and more timely testimonies is crucial. One option to do this could be to use lawyers and international organisations with a protection mandate (e.g. the Office of the United Nations High Commissioner for Refugees (UNHCR)) to contact victims and witnesses whose whereabouts are not known to the investigative authorities [76]. The collaboration of legal professionals or civil-society organisations may also help. For example, a civil-society

organisation in Croatia described how lawyers in Croatia, Serbia and Türkiye worked together to collect the necessary documentation in the case of a Kurdish politician who was removed from Croatia to Serbia.

Third, without the assistance of a lawyer, victims will not be able to participate effectively in the proceedings. In many cases, the victims do not speak the language used in the investigation's proceedings. Investigations into allegations of ill-treatment at borders are complex, and evidence is often difficult to produce. The support of a lawyer is necessary to identify relevant pieces of evidence (e.g. technical expertise, ballistic reports, GPS locations and video footage) that the investigative authority should obtain and analyse. Lawyers may also help victims to get medical reports of injuries or other important documents to submit to the investigative authority.

FRA has repeatedly highlighted the difficulties that civil-society actors and lawyers face who support migrants and refugees at or near the border. These include pressure, harassment and sometimes criminalisation [77].

In a case leading to the death of a young girl in Croatia, initial doubts about the validity of the power of attorney meant that the victim's lawyer could not attend the applicants' hearing. The lawyer also did not receive information about the proceedings and could not meet with her clients for over a week [78].

There may also be formal restrictions to representing victims in proceedings. In Cyprus, for example, only those lawyers who have a legal office or work for a law company can register with the National Bar Association, which is a precondition to appear in court [79].

A fourth issue relates to costs. To give their testimony, victims may be required to travel to border locations where the competent judicial authorities are located. They may need to undergo medical examinations and present, and in some cases translate, medical reports to support the investigations.

4.2. Producing adequate evidence

Many alleged incidents of ill-treatment occur at night in remote locations, such as border forests or at sea. It is challenging to prove who caused the injuries, namely law enforcement officers, other migrants or actors in the neighbouring third country. When it is not disputed that the harm was caused during the migrant's arrest or apprehension, it may be difficult to conclude that the force used was not necessary or proportionate.

Often, available evidence is limited to the victims' statements about the ill-treatment (which may be complemented by testimonies of other migrants) and the statements of the law enforcement officers involved. The presence of other witnesses is rare, as violations take place in locations where the public, civil society and international organisations have limited or no access.

Other pieces of evidence, such as medical reports, ballistic reports (when firearms are used), video footage from surveillance infrastructure and relevant GPS locations, are – for many

incidents – not available.

4.2.1. Testimonies by victims and migrant witnesses

Disciplinary or judicial investigations are often initiated following reports about fundamental rights violations collected from migrants, who either suffered or witnessed ill-treatment.

Promising practice: mechanism to record testimonies about rights violations at borders in Greece

In Greece, the National Commission for Human Rights set up a mechanism to record incidents of summary returns. Between April 2020 and October 2022, it recorded 50 incidents involving at least 2 157 people who wished to seek asylum in Greece but were apprehended or intercepted and then summarily returned to Türkiye. Such incidents were often accompanied by ill-treatment, deprivation or destruction of identity documents and other fundamental rights violations. The Greek National Commission for Human Rights forwarded its report for 2022 to the Ombudsman, the National Transparency Authority, local prosecutors and the prosecutor of the Supreme Court.

Source: Greek National Commission for Human Rights, Recording Mechanism of Incidents of Informal Forced Returns – Annual report 2022, Athens, 2023.

Victims' and migrant witnesses' testimonies may trigger the start of pretrial investigations. However, a review of the relevant ECtHR case-law shows deficiencies in the way they are heard. Examples include:

- not hearing victims or witnesses who were not readily available, without efforts to locate them, or hearing them late, resulting in them not being available to testify any more [80];
- hearing victims using an interpreter who did not speak the language and a failure to address incorrect statements in the file, when the interpretation gaps became known [81];
- using testimonies given in the immigration proceedings or during initial *ex officio* investigation of incidents, without hearing the victims again in the criminal procedure [82];
- a failure to hear victims and/or witnesses again to clarify discrepancies in their statements [83];
- short and very similar records of migrants' statements [84].

National statutory human rights bodies corroborate this finding. For example, in relation to disciplinary investigations conducted by the administration, the Greek Ombudsman noted the failure to take testimonies from alleged victims and important witnesses. This reduces the effectiveness and reliability of the internal investigations [85].

The Croatian Ombudswoman noted that, in an internal investigation, the Ministry of Interior had not questioned the complainant for more than a year. When an interview with her was finally planned, the victim was not available any more [86] .

Legal professionals in Greece and Croatia also highlighted gaps in interpretation. For example, in Greece, 256 criminal trials against people accused of smuggling before the Criminal Courts of Athens between 2020 and 2022 were reviewed. This showed that interpretation was provided in only 33.3 % of trials against foreigners [87] .

4.2.2. Statements of police, border guards and coastguards

The testimonies of police officers, border guards or coastguards who were involved in an incident under investigation form a central part of investigation files. In many cases, such testimonies differ significantly from those of the alleged victims or those of witnesses. This often results, broadly speaking, in two conflicting versions of events: a version as recalled by the migrants and a version presented by law enforcement.

Law enforcement officers would normally be able to provide a detailed account on several aspects of an incident. This includes the exact timing and location of the incident, the number and profile of officers deployed and any equipment and coercive measures used. An internal arrest or similar report may corroborate key aspects of the incident.

Lawyers in France and Latvia highlighted the difficulties in contradicting the facts as presented by law enforcement officers, even when there is video material of the alleged incident [88] . The Latvian General Prosecutor's Office clarified that video footage of the circumstances of the offence does constitute essential evidence. However, its degree of reliability is assessed by evaluating all the evidence obtained during the criminal proceedings taken as a whole.

A review of the relevant ECtHR case-law shows deficiencies in the way law enforcement officers were heard. Examples include:

- not hearing all personnel involved in the operation [89] ;
- not addressing discrepancies in police officers' statements [90] ;
- asking police officers who were not present questions about the incident [91] .

Border management personnel are usually reachable for investigative authorities. This should facilitate the collection of comprehensive evidence from them.

4.2.3. Border surveillance records

Under Article 13 of the Schengen Borders Code [92] , Member States must control their borders to prevent unlawful crossings. Border surveillance involves not only patrolling but also the use of stationary and mobile infrastructure, such as video cameras, to detect unauthorised border

crossings.

The potential evidentiary value of video footage from border surveillance activities during investigations of allegations of ill-treatment at borders remains underutilised. In her inquiry into the actions of Frontex in the Adriana shipwreck, the European Ombudsman concluded that any assessment of the facts of this tragedy was severely compromised by the absence of video or other recording of what took place before and after the boat's capsizing [93].

Promising practice: drawing attention to the evidentiary value of border surveillance footage for investigations in Croatia

An inquiry took place into the death of a young girl hit by a train after Croatian police allegedly intercepted the girl and ordered her to walk back to Serbia via the tracks. In her inquiry, the Croatian Ombudswoman highlighted the evidentiary value of the footage of video cameras installed along the border with Serbia for investigating the incident. She also suggested that the signal from mobile phones and the police car GPS data be inspected to establish if and when the police and the victim had contact (an issues that was disputed).

Neither of the two pieces of evidence became available in the concrete case (a fact that the ECtHR reprimanded). However, since then, the evidentiary value of border surveillance footage for investigations has generally been recognised. In 2023, the CPT went a step further and suggested that all border control activities should be videorecorded. This would be both a safeguard against ill-treatment and a protective measure against false accusations.

Source: Croatia, Ombudswoman, Annual report of the Ombudswoman of Croatia for 2018, 2019, p. 297. See also ECtHR, M. H. v Croatia, Nos 15670/18 and 43115/18, paragraph 12; CPT, The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders, CPT/Inf (2023) 7, extract from the 32nd general report of the CPT (1 January–31 December 2022), Council of Europe, Strasbourg, 2023, paragraph 26.

Border surveillance records, if available, may provide physical evidence of the sequence of events. For example, the Hungarian police videorecord the return of foreign nationals through the border fence to protect themselves against false allegations of ill-treatment [94].

Frontex agreed on an implementation plan with Greece to prevent rights violations during maritime border surveillance. In that plan, the Hellenic Coast Guard committed to purchasing and using portable cameras for vessels deployed in the context of Frontex joint operations. Once used, they may provide visual evidence of a disputed incident [95].

In some cases, the alleged offences are also accompanied by theft or confiscation of mobile phones by border guards. In such cases, victims may not be able to record the incidents or use GPS to identify the exact location. If they did videorecord the incident, the footage may be lost [96].

More generally, when footage is stored from video or infrared cameras installed along the border to detect unauthorised crossings, recordings are soon deleted, including for data protection reasons. If investigations of alleged ill-treatment incidents start only a few weeks after the day of the incident, footage may already be lost.

Frontex issued common minimum standards for border surveillance [97]. They include border surveillance patrols being equipped to secure all evidence from the scene of incidents at the border. This could be an opportunity to explore how to use footage from border surveillance activities more effectively. Such footage can serve as physical evidence of the sequence of events during allegations of rights violations at borders.

4.2.4. Records of GPS location and communications by law enforcement

Accurate GPS locations and border surveillance authorities' internal communications about how to manage an incident may help significantly in reconstructing the sequence of events. For example, GPS data can confirm whether the alleged victims were inside the Member State's territory during the incident. A comparison of the victims' and the officers' GPS locations during the incident may show at what time and for how long alleged victims and alleged perpetrators were together. These may all be important elements to establish the facts, but remain underutilised.

For example, the Greek Ombudsman noted that, in a disciplinary investigation, the people concerned provided photographs to prove that they had physically entered Greece. However, the police did not verify the coordinates in the photographs [98].

In Hungary, an investigation took place into ill-treatment when the victim was being escorted through the border fence with Serbia. The Hungarian authorities investigating the case did not consider it necessary to request GPS data from police vehicles or from the official or private mobile phones of the police officers present at the incident. The authorities also did not contact the Serbian mobile network provider to obtain information about the positioning of the applicant's telephone [99].

At sea, incidents may be complex and involve the coordination of the operation between the patrolling team on the spot and their superiors. In a shipwreck case in the eastern Aegean, a record of the coastguards' internal communication during the incident would have helped clarify the disputed issue on how the authorities managed the incident [100].

When the victim's and the alleged perpetrator's positions are disputed, releasing GPS records of police cars and relevant phones, as well as law enforcement internal communications, would be useful. This would, in many cases, not entail the release of sensitive information for law enforcement operations at borders. Similarly, although potentially protracting the investigations, requesting positioning data from the victim's or witnesses' mobile phone providers could, where legally permissible, result in reliable physical evidence to help reconstruct the sequence of events.

4.2.5. Expert reports

Under the ECHR, investigative authorities must take all reasonable steps available to them to secure evidence. This may include a toxicological report and forensic evidence [101], for example to verify the cause of the victim's injuries or death. In the case of a death or injuries caused by shooting, ballistic expertise may help clarify the trajectories of shots [102]. When the harm suffered is the result of a collision between vehicles or vessels, an expert report on the incident may clarify important details about the crash [103].

Documentation of injuries provided by medical staff plays a central role in assessing claims of ill-treatment [104]. A lawyer in Latvia interviewed for this research explained that proving violent acts without a medical examination of the victims is extremely challenging [105]. In a case of ill-treatment after a person was escorted through the border fence with Serbia, there was no forensic medical assessment of the victim's injuries. This contributed to the ECtHR's finding that the investigations were not effective [106].

Insufficient access to medical care at borders has resulted in difficulties in obtaining and compiling the medical documentation necessary to initiate investigations [107].

4.2.6 General information on patterns at borders

UN and Council of Europe bodies, national human rights institutions and civil-society organisations have been reporting serious fundamental rights violations against migrants and refugees at the EU external land and sea borders for several years [108]. Such reports illustrate patterns of behaviour at borders that help to contextualise an individual incident under investigation. The ECtHR uses relevant credible materials that describe the treatment of migrants at borders to contextualise its analysis [109].

Patterns about fundamental rights violations at borders that emerge from credible reports, particularly those built on testimonies by affected individuals, may provide indications of systemic issues in specific locations or during specific activities. Moreover, credible reports may be useful for oversight or quality control functions, for example when issuing guidance or providing training to investigators.

4.3. Due diligence during investigations

A lack of due diligence during investigations has also emerged as an issue of concern.

First, some national investigations have not been sufficiently thorough . FRA reviewed ECtHR cases concerning investigations of ill-treatment and related rights violations at borders. This review points to national procedures in which the responsible body did not take the measures required to clarify important aspects of an incident. The result is that important evidence is not collected or lost. Examples include:

- relying significantly on national policy that prohibits the unlawful towing of a boat to Turkish waters to close a case and not inquiring more thoroughly about what happened in the specific incident [110] ;
- deviating on a core aspect of the case, without further explanations, from the factual findings of another criminal court, which acquitted the driver of the boat of charges of attempting to cause a shipwreck and endangering human life [111] ;
- closing the file by noting contradictions in the victims' testimonies, although these were recorded with an interpreter who did not speak the victims' language [112] ;
- in a case involving a coastguard using a firearm, not assessing whether the use of force was necessary and proportionate [113] .

Lawyers also expressed concerns about superficial investigations. For example, in Malta, a case of delayed rescue at sea was closed with an acquittal within 6 weeks. In that case, limited evidentiary value was given to the statements of the migrants [114] .

In Greece, the National Transparency Authority published its findings from a first investigation into summary returns from Greece to Türkiye, which involved allegations of ill-treatment. It concluded that the evidence available did not allow it to verify the alleged incidents. However, the investigators reached this conclusion without collecting evidence from victims or direct witnesses of the examined incidents. Evidence also was not collected from key organisations working in Greece on asylum and migration, such as the UNHCR or the International Organization for Migration [115] .

Second, law enforcement authorities' statements appear to be given greater weight than those of migrants. In Greece, the Greek Ombudsman noted that there were evaluative judgments that showed potential bias in the conclusions of disciplinary investigations of incidents of alleged police violence. These included statements about the general reliability of foreigners' complaints [116] .

In one case concerning Hungary, the ECtHR noted that the investigators applied a higher standard when assessing contradictions in the migrants' statements than to those of the police officers. They also relied on statements of alleged perpetrators to close the case [117] .

Other shortcomings in the collection of evidence are that officers of the same institution that is responsible for the alleged rights violations may be the ones carrying out preliminary investigations. To address this challenge, in Greece, the Supreme Court Prosecutor instructed prosecutors to ensure that, in the context of complaints by detainees against police and correctional officers relating to ill-treatment, preliminary investigations are conducted by first instance court prosecutors and not by police officers [118] .

Some actors reported more general concerns about the impartiality of investigation authorities, for example around the investigation of the Adriana shipwreck incident in Greece in June 2023. The Council of Europe Commissioner for Human Rights expressed concern about reports of pressure on shipwreck survivors and about allegations of irregularities in the collection of

evidence and testimonies [119]. Civil-society organisations reported that witnesses to the shipwreck referred to omissions and tampering of their testimonies. This included identical records of different witness statements [120].

Promising practice: establishing special departments for investigation and prosecution in North Macedonia and Slovenia

In North Macedonia, the Office of Ombudsman, the Ministry of Internal Affairs and the Public Prosecutor established a trilateral mechanism to enhance the effectiveness of investigations of crimes committed by law enforcement and prison officers. Such cases are investigated and prosecuted by a specialised department at the Specialised Unit of the Basic Prosecutor for Organised Crime and Anti-Corruption. As part of the mechanism, the Ombudsman is mandated to protect the rights and interests of victims of torture and other forms of ill-treatment.

In Slovenia, a special department investigates cases of criminal offences by military, intelligence and law enforcement officials. It operates as an independent internal organisational unit holding a special position within the State Prosecutor's Office of the Republic of Slovenia.

Source: For Slovenia, see Specialised State Prosecutor's Office, 'Department for the Investigation and Prosecution of Official Persons Having Special Authority'; for North Macedonia, see Ombudsman, Annual Report for 2023 (ГОДИШЕН ИЗВЕШТАЈ), 2024.

One practical suggestion that emerged was to create a separate and specialised team of prosecutors to investigate cases against law enforcement officers suspected of having committed a criminal offence entailing fundamental rights violations [121].

Conclusions

This report shows that there are very few national investigations of incidents resulting in the loss of life and alleged ill-treatment of migrants and refugees at borders. This is particularly so when compared with the vast number of credible reports about serious fundamental rights violations at the EU's external land and sea borders.

Very few national court proceedings lead to convictions. A sense of impunity prevails.

Victims who did not obtain justice in domestic courts are increasingly seeking redress before the ECtHR. Currently, over 30 cases entailing alleged ill-treatment at the EU's external borders are pending adjudication with the ECtHR.

The handful of cases that the ECtHR has adjudicated so far point to systemic gaps in national investigations. Examples include insufficient efforts to locate and hear victims and witnesses; hindering lawyers in their work; not having access to key evidence, such as footage from border surveillance, GPS locations and internal police communication; and, more generally, giving more weight to officers' statements than to those of victims and witnesses.

Ineffective judicial protection against widespread rights violations at borders poses a risk to the respect of the rule of law as enshrined in Article 2 of the Treaty on European Union. When implementing EU law rules on integrated border management and regulating the treatment of people apprehended in connection with their irregular crossing of the EU's external border, the EU and Member States should pay utmost attention to ensuring that all substantiated rights violations are promptly and effectively investigated. The Schengen evaluation and monitoring mechanism constitutes an important oversight tool in this regard.

Prompt and effective investigations would help counter the growing perception that what happens at borders undermines the supremacy of the rule of law. The 10 points published with this report are suggestions for concrete steps to help overcome some of the systemic gaps and practical challenges that render such investigations more difficult.

Finally, border management authorities need to take preventive action. This includes training on fundamental rights, clear instructions on zero tolerance of abusive behaviour, the wearing of name or number tags to identify individual officers on patrol as well as enhanced fundamental rights monitoring of activities at borders.

Annex: European Court of Human Rights cases

As highlighted in section 3.5 European Court of Human Rights, as of 1 January 2024, there were 31 communicated cases pending adjudication that entail alleged ill-treatment at the EU's external borders. The examples are grouped by Member State.

- ECtHR, S. B.v Croatia and 2 other applications, No 18810/19, 25 May 2020 (summary return to Bosnia and Herzegovina in October 2018 and alleged inhumane treatment).
- ECtHR, M. A. and Z. R. v Cyprus, No 39090/20, 16 May 2022 (summary return to Lebanon of two Syrians allegedly seeking asylum following the interception of their boat and alleged ill-treatment by the coastguards while on the boat).
- ECtHR, Almukhlas and Al-Maliki v Greece, Nos 22776/18 and 27/01/2021, 15 February 2021 (Iraqi who died after being hit by a bullet in 2015 when the coastguards tried to stop smugglers who were bringing a boatload of people to Greece).
- ECtHR, S. A. A. and Others v Greece, No 22146/21, 20 December 2021 (summary return and ill-treatment of a group of Syrians from Crete to Türkiye).
- ECtHR, Wasim ABONAHI v Greece, No 22920/16, 18 September 2023 (delayed rescue on Samos island, leading to the death of a woman and two children).
- ECtHR, M. A. v Greece, No 42429/21, 20 December 2021 (ill-treatment during summary expulsion by land).
- ECtHR, K. K. and 17 other cases v Greece, Nos 1712/21, 2871/21, 3104/21, 3111/21, 3118/21, 4159/21, 16807/21, 16811/21, 16813/21, 16815/21, 16817/21, 16818/21, 16820/21, 16822/21, 16824/21, 16825/21, 16828/21 and 16831/21, 20 December 2021 (ill-treatment during summary expulsion at sea).
- ECtHR, G. R. J. v Greece and A. A. J. & H. J. v Greece, Nos 15067/21 and 24982/21, 20 December 2021 (ill-treatment during summary expulsion at sea).
- ECtHR, F. C. and 4 other cases v Greece, Nos 10258/21, 10692/21, 12807/21, 12926/21 and 13134/21, 20 December 2021 (ill-treatment during summary expulsion by land).
- ECtHR, A. D. and A. E. v Greece, Nos 4034/21 and 15783/21, 20 December 2021 (ill-treatment during summary expulsion by land).
- ECtHR, S. G. and S. R. v Greece, Nos 6923/21 and 16802/21, 20 December 2021 (ill-treatment during summary expulsion by land).
- ECtHR, Khurram v Hungary, No 12625/17, 13 November 2017 (summary expulsion in 2016 over the border fence to Hungary and ill-treatment).
- ECtHR, H. Q. v Hungary, No 46084/2, 24 October 2022 (Afghan national who was in Hungary, applied for asylum and was redirected in 2021 to the Hungarian Embassy in Serbia, where he had not been before and who was left without any assistance at the border).
- ECtHR, Z. A. v Hungary, No 40185/22, 27 March 2023 (summary return from a hospital to Serbia of a 16-year-old).

- ECtHR, A. S. A. v Hungary, No 53952/22, 3 July 2023 (removal of a Syrian to Serbia after release from hospital).
- ECtHR, S. S. and others v Italy, No 21660/18, 26 June 2019 (search-and-rescue event coordinated by Italy that led to abuses by Libyan coastguards).
- ECtHR, H. M. M. and Others v Latvia, No 42165/21, 23 May 2022 (Iraqi Kurds stranded in the border forests with Belarus in August 2021 without access to food, water, shelter or medical assistance).
- ECtHR, S. S. v Latvia, No 15408/23, 30 October 2023 (violent and repeated summary returns to Belarus).
- ECtHR, M. A. and Others v Latvia, No 1134/23, 6 November 2023 (violent and repeated summary returns to Belarus).
- ECtHR, C. O. C. G. and Others v Lithuania, No 17764/22, 19 December 2022 (summary return of a group of Cubans to Belarus accompanied by alleged ill-treatment).
- ECtHR, A. S. and Others v Lithuania, No 44205/21, 17 July 2023 (summary return to Belarus that put the applicants in a life-threatening situation, as they were stranded in the border area going back and forth, without food, drinking water or shelter, and had to sleep in a forest in the cold under open sky).
- ECtHR, K. A. and M. A. and Others v Poland, Nos 52405/21 and 53402/21, 20 June 2022 (Syrians stranded at the Belarus border without food, water or medical assistance in 2021).
- ECtHR, F. A. and S. H. v Poland, No 54862/21, 11 July 2022 (Afghans stranded in the border forest area without food, water or shelter and in harsh weather conditions).
- ECtHR, R. A. and others v Poland, No 42120/21, 18 October 2021 (violent summary return of Afghans stranded at the Belarus border).
- ECtHR, H. K. and Others v Poland, No 12752/22, 22 May 2023 (Syrians stranded in the border forests in harsh weather conditions without food, water or shelter and their summary returns to Belarus).
- ECtHR, A. A. and Others v Poland, No 48018/21, 24 April 2023 (summary return to Belarus, leaving the applicants stranded in the border forest area).
- ECtHR, T. Z. and R. Z. v Poland, No 61103/21, 24 April 2023 (applicants stranded in the border forest area and their summary return to Belarus, in two cases involving violence).
- ECtHR, I. A. and Others v Poland, No 53181/21, 24 April 2023 (summary return to Belarus, leaving the applicants, including 10 children, stranded in the border forest area).
- ECtHR, M. A. v Poland, No 51241/22, 24 April 2023 (people stranded in the forest area without basic amenities and their summary expulsion to Belarus, in two cases involving ill-treatment).
- ECtHR, A. S. v Poland, No 15318/22, 24 April 2023 (Syrian summarily returned to Belarus, who remained stranded in the border forest area without basic amenities).
- ECtHR, M. M. and Others v Poland, No 2509/22, 24 April 2023 (summary expulsion to

Belarus, in one case involving violence, leaving the applicants stranded in the border forest area).

Acronyms

- **AIDA** Asylum Information Database
- **CJEU** Court of Justice of the European Union
- **CNCDH** French National Consultative Commission on Human Rights (Commission nationale consultative des droits de l'homme)
- **CPT** European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
- **ECHR** European Convention on Human Rights
- **ECtHR** European Court of Human Rights
- **ENNHRI** European Network of National Human Rights Institutions
- **FRA** European Union Agency for Fundamental Rights
- **Frontex** European Border and Coast Guard Agency
- **GPS** global positioning system
- **OHCHR** Office of the United Nations High Commissioner for Human Rights
- **RSA** Refugee Support Aegean
- **UNHCR** Office of the United Nations High Commissioner for Refugees

Endnotes

[1] These reports are described in FRA, 'Regular overviews of migration-related fundamental rights concerns', which were published from September 2015 to June 2023; FRA, Migration – Fundamental rights issues at land borders, Publications Office of the European Union, Luxembourg, 2020; and FRA, Asylum and Migration – Progress achieved and remaining challenges, Publications Office of the European Union, Luxembourg, 2023, Chapter 1.

[2] For an overview of such reports, see FRA, Asylum and Migration – Progress achieved and remaining challenges,Publications Office of the European Union, Luxembourg, 2023. See also FRA, Migration – Fundamental rights issues at land borders, Publications Office of the European Union, Luxembourg, 2020.

[3] Croatia, Administrative Court of Zagreb, case number Kr-Us-1903/2020, information provided by the lawyer in October 2023.

[4] For an overview of the incident, see OHCHR (Office of the United Nations High Commissioner for Human Rights), Lethal Disregard – Search and rescue and the protection of migrants in the central Mediterranean Sea , Geneva, 2021, p. 20. For the inquiry itself, see Magistrate J. Mifsud, Inquiry into the information filed by the NGO Repubblika in relation to the alleged wilful homicide with the intent to put the life of various individuals in manifest jeopardy in Malta's Search and Rescue Region between the 9th and the 15th of April 2020 – Procès-verbal (Inkjesta dwar denunzja tal-NGO Repubbilka dwar l-allegat omicijdu volontarju wara li bil-hsieb jqieghdu f'periklu car il-hajja ta' diversi persuni fis-Search and Rescue Region ta' Malta bejn id-9 u l-15 ta' April 2020 – Procès-verbal), 26 May 2020.

[5] Information on the incident provided by the Office of the United Nations High Commissioner for Refugees (UNHCR) in October 2023. On this case, see also Cyprus, Parliament, Committee on Human Rights, session of 20 September 2021. Information regarding the investigation provided by the Ministry of Justice and Public Order of Cyprus in May 2024.

[6] Greek Council for Refugees, At Europe's Borders – Between impunity and criminalization, Athens, Thessaloniki, 2023, pp. 39–40.

[7] Information provided by four French civil-society organisations in writing, October 2024.

[8] CPT, The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders, CPT/Inf (2023) 7, extract from the 32nd general report of the CPT (1 January–31 December 2022), Council of Europe, Strasbourg, 2023, paragraphs 30–36.

[9] See, for the most recent publication, FRA, Fundamental Rights Report – 2024, Publications Office of the European Union, Luxembourg, 2024, Sections 3.2.5 and 3.2.6.

[10] FRA, Submission by the European Union Agency for Fundamental Rights to the European Commission in the context of the preparation of the annual Rule of Law Report 2023, Vienna, 2023, p. 42.

[11] Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (OJ L 2024/1717, 20.6.2024).

[12] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

[13] See, for example, Court of Justice of the European Union (CJEU), Associação Sindical dos Juízes Portugueses v Tribunal de Contas, C-64/16, 27 February 2018.

[14] Regulation (EU) 2024/1352 of the European Parliament and of the Council of 14 May 2024 amending Regulations (EU) 2019/816 and (EU) 2019/818 for the purpose of introducing the screening of third-country nationals at the external borders (OJ L 2024/1352, 22.5.2024).

[15] Council Regulation (EU) 2022/922 of 9 June 2022 on the establishment and operation of an evaluation and monitoring mechanism to verify the application of the Schengen acquis, and repealing Regulation (EU) No 1053/2013 (OJ L 160, 15.6.2022, p. 1).

[16] Council of the European Union, Council implementing decision setting out a recommendation on addressing the deficiencies identified in the 2021 evaluation of Greece on the application of the Schengen acquis in the field of management of the external borders, Brussels, 12 April 2022, recommendations 2 and 24.

[17] Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

[18] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57). See also FRA, Victims' Rights as Standards of Criminal Justice – Justice for victims of violent crime – Part I, Publications Office of the European Union, Luxembourg, 2019, p. 32.

[19] Written contribution by a French civil-society organisation, October 2023.

[20] Written contribution by a French civil-society organisation, October 2023.

[21] Greek Ombudsman, 'Third party intervention by the Greek Ombudsman to the European Court of Human Rights in relation to applications Nos 15067/21 (G. R. J. v Greece) and 15783/21 (A. E. v Greece)' ('Δελτίο Τύπου | Παρέμβαση τρίτου του Συνηγόρου του Πολίτη κατόπιν πρόσκλησης του ΕΔΔΑ για το ζήτημα των επαναπροωθήσεων'), 26 March 2024, p. 7.

[22] Information provided by a Romanian civil-society organisation in October 2023. Investigations can be carried out under the mechanism for reporting incidents at the borders established under the memorandum of understanding between General Inspectorate for Border Police and UNHCR. For public information about the memorandum see AIDA (Asylum Information Database), Country Report: Romania – 2022 update, 2023, p. 26.

[23] Cyprus, Official Gazette of the Republic of Cyprus, 'L. 73 (I)/2024 on Police (Independent Authority for the Investigation of Allegations and Complaints Against the Police) (amendment)' ('N. 73(I)/2024 – Ο περί Αστυνομίας (Ανεξάρτητη Αρχή Διερεύνησης Ισχυρισμών και Παραπόνων) (Τροποποιητικός) Νόμος του 2024'), 2024.

[24] See ENNHRI (European Network of National Human Rights Institutions), Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022, p. 13.

[25] FRA, Crime, Safety and Victims' Rights – Fundamental rights survey, Publications Office of the European Union, Luxembourg, 2021, Chapter 4.

[26] FRA, Encouraging Hate Crime Reporting – The role of law enforcement and other authorities, Publications

Office of the European Union, Luxembourg, 2021.

[27] FRA, Addressing Racism in Policing, Publications Office of the European Union, Luxembourg, 2024, p. 7.

[28] See CJEU, Hamoudi v Frontex, T-136/22, 13 December 2023 (under appeal as case C-136/24); and CJEU, WS and Others v Frontex, T-600/21, 6 September 2023 (under appeal as case C-679/23).

[29] Regulation (EU) 2019/1896of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1), Article 111 (European border and coast guard regulation).

[30] For Hungary, see Kbk.II.116/2021, Regional Court of Szeged Military Tribunal; Kb.I.7/2023, Regional Court of Győr Military Tribunal; Kbf.12/2020, Budapest – Capital Regional Court of Appeal Military Tribunal. FRA does not have information on the details of the cases. For Spain, see SAP ML 103/2021, Melilla Provincial Court.

[31] At the EU level, see Frontex, Code of Conduct – Applicable to all persons participating in Frontex operational activities, Publications Office of the European Union, Luxembourg, 2020.

[32] Latvia, Law on disciplinary liability of the officials with special service ranks working in institutions of the system of the Ministry of the Interior and the Latvian Prison Administration (Iekšlietu ministrijas sistēmas iestāžu un Ieslodzījuma vietu pārvaldes amatpersonu ar speciālajām dienesta pakāpēm disciplināratbildības likums), 1 October 2006, Article 13.

[33] Data received from the Croatian Ministry of Interior on 1 December 2023.

[34] Data received from the Hungarian Police (Ready Reserve Police) on 16 January 2024.

[35] Greek Ombudsman, 'Third party intervention by the Greek Ombudsman to the European Court of Human Rights in relation to applications Nos 15067/21 (G. R. J. v Greece) and 15783/21 (A. E. v Greece)' ('Δελτίο Τύπου | Παρέμβαση τρίτου του Συνηγόρου του Πολίτη κατόπιν πρόσκλησης του ΕΔΔΑ για το ζήτημα των επαναπροωθήσεων'), 26 March 2024, pp. 10–11.

[36] Greece, information provided by the Hellenic Police on 30 November 2023.

[37] France, written contribution by a civil-society organisation in October 2023.

[38] Greek Helsinki Monitor, '200+ illegal pushbacks of approximately 10 000 foreigners are being investigated by the Supreme Court Prosecutor's Office and the Ombudsman after appeals by the Greek Helsinki Monitor' ('200+ παράνομες επαναπροωθήσεις περίπου 10 000 αλλοδαπών ερευνούν Εισαγγελία Αρείου Πάγου και Συνήγορος Πολίτη μετά από προσφυγές του ΕΠΣΕ'), 21 July 2021.

[39] Hungary, Supreme Court, case No Bhar.I.1248/2020/28, 25 May 2021 (on appeal from Budapest, Capital Regional Court of Appeal military tribunal, case No 6.Kbf.12/2020/20/I); and Regional Court of Szeged military tribunal, case No Kbk.II.116/2021 (not public). In addition, as regards Regional Court of Győr military tribunal, case No Kb.I.7/2023 (not public), the conviction is not final, as it has been appealed. The Melilla Provincial Court adjudicated the Spanish case; see SAP ML 103/2021.

[40] Information provided by the Latvian authorities in May 2024.

[41] Council of Europe, CEPEJ (European Commission for the Efficiency of Justice), European Judicial Systems

CEPEJ Evaluation Report – 2022 evaluation cycle (2020 data) – Part 1, Strasbourg, p. 126. Data regarding specific Member States were extracted from the interactive table Efficiency EN on 5 May 2024.

[42] Centre for Peace Studies (Centar za mirovne studije), 'Thousands of refugee testimonies but not a single effective investigation', 2 April 2021.

[43] Latvia, phone conversation with two different lawyers and an online meeting with a civil-society organisation, October 2023. For the standard required, see Latvia, Criminal Procedure Law (Kriminālprocesa likums), 1 October 2005, Articles 369 and 373.

[44] Phone consultations with a lawyer and two civil-society organisations, October 2023.

[45] See, as an illustration, Greek Refugee Council, '[https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/42]', 8 June 2023, in AIDA, Greece – Country report.

[46] For more details, see FRA, Strong and Effective National Human Rights Institutions – Challenges, promising practices and opportunities, Publications Office of the European Union, Luxembourg, 2020, Figure 12 and Annex 2. See also ENNHRI, Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022. See also FRA, NHRI Accreditation Status and Mandates – Update 2024, Vienna, 2024.

[47] Croatia, Ombudswoman, Report of the performance of activities of the national preventive mechanism for 2019, 2020, pp. 25–28; Ombudswoman, Report of the performance of activities of the national preventive mechanism for 2020, 2022, pp. 25–27; Ombudswoman, Report of the performance of activities of the national preventive mechanism for 2021, 2023, pp. 16–19.

[48] Greece, Ombudsman, statement before the Hellenic Parliament, May 2022.

[49] Poland, Commissioner for Human Rights, phone consultation, October 2023.

[50] Spain, Defensor del Pueblo, communication, 14 October 2022.

[51] ENNHRI, Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022, pp. 4 and 22.

[52] Consultation with a representative of the Ombudsman conducted by email on 16 October 2023.

[53] CNCDH, phone interview, October 2023; this concerns in particular, CNCDH, 'Opinion on the situation of exiled persons in Calais and Grande-Synthe' ('Avis sur la situation des personnes exilées à Calais et Grande-Synthe'), 11 February 2021; and CNCDH, 'Opinion on the situation of migrants at the Franco-Italian border' ('Avis sur la situation des migrants à la frontière franco-italienne'), 19 June 2018.

[54] Spain, Defensor del Pueblo, 'Recommendations regarding security forces in Melilla' ('Actuaciones y medidas de los Cuerpos y Fuerzas de Seguridad del Estado en Melilla'), 14 October 2022; and Defensor del Pueblo, 2023 Annual Report (Informe anual 2023), Madrid, 2024, p. 172.

[55] See Frontex, 'Standing corps', last accessed: 2 May 2024.

[56] The complaints mechanisms was first established by Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the

European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1), and further developed by Regulation (EU) 2019/1896of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1),Article 111 (European border and coast guard regulation).

[57] Frontex, The Fundamental Rights Officer – Annual report 2023, July 2024, p.29.

[58] For a short overview, see Frontex, 'Fundamental rights at Frontex'. The serious incident reporting is based on the requirement set out in Article 38(3)(h) of Regulation (EU) 2019/1896. Fundamental rights violations are one of four categories of serious incidents that must be reported.

[59] Frontex, The Fundamental Rights Officer – Annual report 2023, July 2024, p. 26.

[60] For the investigation by the Greek Ombudsman, see '2022 special report of the national mechanism for the investigation of arbitrary incidents' ('Δελτίο Τύπου | Έκθεση 2022: Εθνικός Μηχανισμός Διερεύνησης Περιστατικών Αυθαιρεσίας'), pp. 18 and 33; and 'Third party intervention by the Greek Ombudsman to the European Court of Human Rights in relation to applications Nos 15067/21 (G. R. J. v Greece) and 15783/21 (A. E. v Greece)' ('Δελτίο Τύπου | Παρέμβαση τρίτου του Συνηγόρου του Πολίτη κατόπιν πρόσκλησης του ΕΔΔΑ για το ζήτημα των επαναπροωθήσεων'), 26 March 2024. Information regarding the action by the National Transparency Authority was provided to FRA by the Greek authorities on 7 June 2024.

[61] The results of these investigations are available at Frontex, Frontex Incident Reports Cutro, Pylos, Warsaw, 2024.

[62] FRA, Preventing and Responding to Deaths at Sea – What the European Union can do, Vienna, 2023. See also Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ L 131, 28.5.2009, p. 114).

[63] See ECtHR, M. H. and Others v Croatia, Nos 15670/18 and 43115/18, 18 November 2021 (ineffective investigation into a child's death after the Croatian police allegedly denied the opportunity to seek asylum and ordered the child return to Serbia via the train tracks); Safi and Others v Greece, No 5418/15, 7 July 2022 (no effective investigation into a shipwreck in the Eastern Aegean Sea); Alhowais v Hungary, No 59435/17, 2 February 2023 (a Syrian national who drowned during a border control operation at a river on the Hungarian–Serbian border and ineffective investigations into alleged police ill treatment (e.g. use of tear gas and police dogs)); Douaa Alkhatib and Others v Greece, No 3566/16, 16 January 2024 (ineffective investigations into the death of a Syrian who was hit by a bullet in 2015 during an anti-smuggling operation); Shahzad v Hungary (No. 2), No 37967/18, 5 October 2023 (the applicant was beaten while being escorted back to the external side of the Hungarian border fence with Serbia and there were ineffective investigations into the incident). On ineffective investigations see also the following deportation case: ECtHR, Thuo v Cyprus, No 3869/07, 4 April 2017 (ineffective investigations into the alleged ill treatment of the applicant during the deportation process).

[64] ECtHR, S. M. v Croatia, No 60561/14, 25 June 2020, paragraph 324; Mocanu and Others v Romania [GC], Nos 10865/09 and 2 others, 17 September 2014, paragraphs 315–326. See also Department for the Execution of ECtHR Judgments, Thematic Factsheet – Effective investigations into death or ill-treatment caused by security forces, Strasbourg, 2020.

[65] ECtHR, Mocanu and Others v Romania [GC], Nos 10865/09 and 2 others, 17 September 2014 ,paragraph 320; Ramsahai and Others v the Netherlands [GC], No 52391/99, 15 May 2007, paragraph 324; Armani da Silva v the

United Kingdom [GC], No 5878/08, 30 March 2016, paragraphs 229-239; Mustafa Tunç and Fecire Tunç v Turkey [GC], No 24014/05, 14 April 2015, paragraph 175; Halat v Turkey, No 23607/08, 8 November 2011, paragraph 51; Najafli v Azerbaijan, No 2594/07, 2 October 2012, paragraphs 52–54. See also CPT, 14th General Report on the CPT's Activities (2003–2004), Strasbourg, 2004, paragraph 36; CPT, 30th General Report of the CPT – 1 January–31 December 2020, Strasbourg, 2021, para graph21; CPT, 32nd General Report of the CPT – 1 January–31 December 2022, Strasbourg, 2023, paragraphs 98–104.

[66] ECtHR, Al-Skeni and Others v the United Kingdom [GC], No 55721/07, 7 July 2011, paragraph 165.

[67] See CPT, Combating Impunity, CPT/Inf (2004) 28-part, extract from the 14th general report of the CPT, Council of Europe, Strasbourg, 2004, paragraphs 25–42.

[68] FRA, Addressing Racism in Policing, Publications Office of the European Union, Luxembourg, 2024, pp. 33–36.

[69] ECtHR, Ramsahai and Others v the Netherlands [GC], No 52391/99, 15 May 2007, paragraph 347; Najafli v Azerbaijan, No 2594/07, 2 October 2012, paragraph 48; Mustafa Tunç and Fecire Tunç v Turkey [GC], No 24014/05, 14 April 2015, paragraph 179; Armani da Silva v the United Kingdom [GC], No 5878/08, 30 March 2016, paragraph 235.

[70] ECtHR, Lakatoš and Others v Serbia, No 3363/08, 7 January 2014, paragraphs 79–80.

[71] ENNHRI, Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022.

[72] Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ L 315, 14.11.2012, p. 57).

[73] Consultation with a representative of a Bulgarian civil-society organisation conducted by phone in September 2023.

[74] ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 51.

[75] Phone consultation, September 2023.

[76] See in this context also ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 61.

[77] FRA, Protecting Civil Society – Update 2023, Publications Office of the European Union, Luxembourg, 2023, Section 3.2; FRA, Europe's Civil Society – Still under pressure – 2022 update, July 2022, Publications Office of the European Union, Luxembourg, Sections 2.3.1 and 2.4.2; FRA, Submission by the European Union Agency for Fundamental Rights to the European Commission in the context of the preparation of the annual Rule of Law Report 2023, Vienna, 2023, Section 3.2.3.

[78] ECtHR, M. H. and Others v Croatia, Nos 15670/18 and 43115/18, 4 April 2022, paragraphs 160–163.

[79] Cyprus, The law on lawyers, Chapter 2 (Ο περί Δικηγόρων Νόμος ΚΕΦ.2), Article 11.

[80] ECtHR, Alhowais v Hungary, No 59435/17, 2 February 2023, paragraphs 46 and 90; Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 61.

[81] ECtHR, Safi and Others v Greece, No 5418/15, 7 July 2022, paragraph 123; see also M. H. v Croatia,

Nos 15670/18 and 43115/18, paragraph 153.

[82] ECtHR, Alhowais v Hungary, No 59435/17, 2 February 2023, paragraph 90; Safi and Others v Greece, No 5418/15, 7 July 2022, paragraph 124.

[83] ECtHR, M. H. v Croatia, Nos 15670/18 and 43115/18, paragraphs 152–153.

[84] ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024.

[85] Greek Ombudsman, 2021 Special Report – National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA), Athens, 2022.

[86] Croatia, Ombudswoman, Ombudswoman's Report – Analysis of the state of human rights and equality in Croatia – 2022, pp. 215–216.

[87] See RSA (Refugee Support Aegean), Rule of Law Backsliding Continues in Greece – Joint civil-society submission to the European Commission on the 2023 Rule of Law Report – January 2023, Chios, Greece, 2023, paragraph 22.

[88] Information provided by four French lawyers consulted in September 2023 and by an attorney of law in Latvia in October 2023.

[89] ECtHR, Alhowais v Hungary, No 59435/17, 2 February 2023, paragraphs 45, 48 and 91 (two police officers, a dog handler and four or five soldiers were not heard in this case).

[90] ECtHR, M. H. v Croatia, Nos 15670/18 and 43115/18, paragraphs 152–153; Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 62.

[91] ECtHR, Alhowais v Hungary, No 59435/17, 2 February 2023, paragraph 48 (according to the applicant); Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 63.

[92] Regulation (EU) 2024/1717 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders (OJ L 2024/1717, 20.6.2024).

[93] European Ombudsman, Conclusions of the European Ombudsman on EU search and rescue following her inquiry into how the European Border and Coast Guard Agency (Frontex) complies with its fundamental rights obligations in the context of its maritime surveillance activities, in particular the Adriana shipwreck, case OI/3/2023/MHZ, 26 February 2024.

[94] ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraphs 23 and 58 (although the recording stopped while the operation was still ongoing).

[95] Information provided by the Frontex Fundamental Rights Office to FRA in April 2024.

[96] As an illustration, see the example relating to Malta in OHCHR, Lethal disregard – Search and rescue and the protection of migrants in the central Mediterranean Sea, Geneva, 2021, p. 16; see also Greek National Commission for Human Rights, Recording Mechanism of Incidents of Informal Forced Returns – Annual report 2022, Athens, 2023, p. 50.

[97] Frontex, Guidelines for European common minimum standards for border surveillance, Warsaw, 2024, Section 2.3.7 (patrolling), point 8(j).

[98] Greek Ombudsman, 2021 Special Report – National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA), Athens, 2022, p. 80.

[99] ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 29.

[100] See, in this regard, ECtHR, Safi and Others v Greece, No 5418/15, 7 July 2022, paragraph 126.

[101] See ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraphs 54, 60 and 64; El-Masri v the former Yugoslav Republic of Macedonia [GC], No 39630/09, 13 December 2012, paragraph 183; Alhowais v Hungary, No 59435/17, 2 February 2023, paragraph 44.

[102] See ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024, paragraph 90.

[103] See ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024, paragraph 90.

[104] See CPT, Documenting and Reporting Medical Evidence of Ill-treatment, CPT/Inf(2013)29-part, extract from the 23rd general report of the CPT, Council of Europe, Strasbourg, 2013; ENNHRI, Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022, p. 18. See also ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024, paragraphs 80 and 90; Safi and Others v Greece, No 5418/15, 7 July 2022, paragraphs 35 and 50.

[105] Phone interview with a Latvian attorney at law, October 2023.

[106] ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 64.

[107] ENNHRI, Strengthening Human Rights Accountability at Borders, Saint-Gilles, Belgium, 2022, p. 18.

[108] For an overview of credible reports, see FRA, Asylum and Migration – Progress achieved and remaining challenges, Publications Office of the European Union, Luxembourg, 2023, p. 10; FRA, Fundamental Rights Report – 2023, Publications Office of the European Union, Luxembourg, 2023, Section 6.1.2; FRA, Fundamental Rights Report – 2024, Publications Office of the European Union, Luxembourg, 2024.

[109] See, for example, ECtHR, M. H. v Croatia, Nos 15670/18 and 43115/18, paragraphs 103–115 (which also refers to FRA's materials); Thuo v Cyprus, No 3869/07, 4 April 2017, paragraphs 105–109.

[110] ECtHR, Safi and Others v Greece, No 5418/15, 7 July 2022, paragraph 127.

[111] ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024, paragraph 92.

[112] ECtHR, Safi and Others v Greece, No 5418/15, 7 July 2022, paragraph 124.

[113] ECtHR, Alkhatib and Others v Greece, No 3566/16, 16 January 2024, paragraphs 91 and 93.

[114] Malta, Magistrate J. Mifsud, Inquiry into the information filed by the NGO Repubblika in relation to the alleged wilful homicide with the intent to put the life of various individuals in manifest jeopardy in Malta's Search and Rescue Region between the 9th and the 15th of April 2020 – Procès-verbal (Inkjesta dwar denunzja tal-NGO Repubbilka dwar l-allegat omicijdu volontarju wara li bil-hsieb jqieghdu f'periklu car il-hajja ta' diversi persuni fis-

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[116] Greek Ombudsman, 2021 Special Report – National Mechanism for the Investigation of Arbitrary Incidents (EMIDIPA), Athens, 2022, pp. 80–81; Greek Ombudsman, 2022 Special Report – National Mechanism for the Investigation of Arbitrary Incidents, Athens, 2023, p. 34.

[117] ECtHR, Shahzad v Hungary, No 37967/18, 5 October 2023, paragraph 63.

[118] Greece, Supreme Court Prosecutor, Circular 1/2023 (Εγκύκλιος 1/2023), Athens, 3 January 2023. The circular was issued following ECtHR, Torosian v Greece, No 48195/17, 7 July 2022, in which the ECtHR found that investigations into police abuse had been ineffective.

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[120] See RSA, Greece in Institutional Decline – , Joint civil society submission to the European Commission on the 2024 Rule of Law Report, Chios, Greece, 2024, paragraph 34.

[121] Croatia, Ombudswoman, Communication from an NHRI (Ombudswoman of the Republic of Croatia) (18/07/2023) in the case of M. H. and Others v Croatia, No 15670/18, rule 9 submission with regard to the execution of the judgment of the ECtHR, 18 July 2023.

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