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Submission to the Committee on Enforced Disappearances and the Working Group on Enforced or Involuntary Disappearances

on the notion of short-term enforced disappearance

I. Introduction and background

This submission highlights the legal and practical relevance of short-term disappearances that occur during pushbacks of people on the move from European borders. It draws on the experience of the European Center for Constitutional and Human Rights (“ECCHR”) in supporting the litigation of cases challenging such pushbacks before international fora.

The term “pushback” here describes state measures to force people on the move (“PoM”) from its territories and/or effective control while obstructing their access to relevant legal and procedural frameworks, thereby circumventing the application of safeguards relevant to international protection, detention/custody, expulsions, and the use of force. Such pushbacks are widespread and condoned as a means of limiting access to asylum across Europe, including Spain, France, Italy, Austria, Slovenia, Croatia, Hungary, Poland, Lithuania, Greece, Bulgaria, and North Macedonia, although their form and content varies.¹ By preventing PoM from accessing national asylum procedures and individualized examinations of their circumstances, pushbacks are most commonly assessed as incompatible with the principle of *non-refoulement* and the prohibition of collective expulsions.² However, these pushbacks also result in—and in fact rely on—short-term disappearances as a means of effecting PoM’s ultimate expulsion from state territory.

¹ See, i.e., Council of Europe Commissioner for Human Rights, [“Pushed beyond the limits: Four areas for urgent action to end human rights violations at Europe’s borders,”](#) pp.19-24; Parliamentary Assembly of the Council of Europe, [“Pushback policies and practice in Council of Europe Member States,”](#) 08.06.2019; EU Fundamental Rights Agency, [“Fundamental Rights Issues at Land Borders,”](#) 2020, pp.19-20.

² See, i.e., UN Special Rapporteur on the human rights of migrants, [Report on means to address the human rights impact of pushbacks of migrants on land and at sea](#) (A/HRC/47/30), 12.05.2021.

A description of how pushbacks enact short-term disappearances must consider the unique circumstances of PoM, who often travel without their family members or recognized identity documents, forced to move “irregularly” and therefore criminalized for this movement. These conditions heighten their vulnerability to enforced disappearances and increase later obstacles faced by whoever attempts to access information about their fates and whereabouts or pursue justice on their behalf.³ To avoid egregious violations of the rights of PoM at borders, the use of short-term enforced disappearances must be recognized as a state tactic enabling unlawful expulsions and obstructing related accountability—even if, and in fact particularly when, such disappearances are only for short periods of time.

II. The phenomenon of short-term disappearances during pushbacks

To better analyze how short-term disappearances are central to states’ pushback *modus operandi*, this section sketches well-established pushback patterns addressed by ECCHR casework. It illustrates how states’ irregular handling of concerned PoM outside normally applicable legal procedures and related safeguards relies on (1) short-term but secret, incommunicado deprivation of liberty and (2) a lack of related record-keeping, enabling (3) the short-term concealment of PoM’s fate or whereabouts and (4) the later continued refusal to acknowledge that such deprivation of liberty occurred at all.

(1) Short-term but secret and incommunicado deprivation of liberty

To effect the expulsions of apprehended PoM before they can access the asylum procedure, states necessarily deprive them of their liberty during pushbacks. In Greece, this manifests in their temporary detention in police or border guard stations—sometimes in adjacent disused vehicles or containers, rather than equipped holding spaces inside.⁴ In countries such as Bulgaria or Hungary, temporary detention also takes place in so-called “black sites” where the detention of PoM is altogether denied.⁵ From Italy, asylum-seekers have been temporarily held and chained in below-deck cells of ferries returning them to Greece.⁶ And in Croatia, the temporary holding and transport of PoM in windowless police vans is implemented to gather numbers deemed large enough to collectively expel at once.⁷ In all contexts, such detention is kept secret and incommunicado, not only to conceal inhumane and degrading conditions,⁸ but also to prevent PoM from accessing any person or procedure that could assist them to challenge their impending expulsion.⁹ Greek and Croatian officers systematically confiscate or destroy PoM’s mobile phones, thereby preventing

³ These features have been recognized by the Committee in its Draft General Comment No. 1 on Enforced Disappearances in the Context of Migration and the Working Group in its [Report on Enforced Disappearances in the Context of Migration](#) (A/HRC/36/39/Add.2), 28.07.2017.

⁴ European Committee for the Prevention of Torture (CPT), [Report on the visit to Greece carried out from 13-17 March 2020](#), 19.11.2020, §36. On the incommunicado detention of PoM subject to pushbacks in Greece more generally, see ECCHR, “[Analyzing Greek Pushbacks: Over 20 Years of Concealed State Policy Without Accountability](#),” pp.13-15.

⁵ Lighthouse Reports, “[Europe’s Black Sites: Refugees arbitrarily detained, tortured at secret facilities in EU](#),” 08.12.2022.

⁶ Lighthouse Reports, “[Detained Below Deck: Asylum seekers held in secret cells on ferries between Greece and Italy](#),” 18.01.2023.

⁷ CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](#), 03.12.2021, §§38-39. For further references on the pushback pattern in Croatia more generally, see ECCHR, “[Croatia’s Pushback Policy: A System of Unlawful, Covert, and Perpetuated Expulsions](#).”

⁸ See generally CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](#), §38; CPT, [Report on the visit to Greece carried out from 13-17 March 2020](#), 19.11.2020, §§27-38.

⁹ BBC, “[‘Beaten and robbed:’ How Croatia is policing its borders](#),” 29.07.2019, from 01:54.

their communication with the outside world.¹⁰ Such practices obliterate the legal safeguards preventing secret detention laid out in ICPPED article 17(2).

(2) Lack of registration and record-keeping

Because pushbacks are executed outside regular operations for which clear protocols—and therefore associated documentation—exist, they are also marked by a lack of accurate recording of PoM’s treatment. Investigative journalism from Croatia reveals that border officers have been instructed not to record pushback operations, instead communicating with each other and high-ranking officials over channels such as WhatsApp to avoid leaving formal records,¹¹ and the European Committee for the Prevention of Torture (“CPT”) has criticized a lack of full and accessible record-keeping related to pushed back PoM.¹² Similarly, the CPT has for years flagged the lack of recording of PoM detained prior to expulsions from Greece—such that in some cases responsible officers “were not even aware of how many persons were in their care”¹³—as well as tactics of verbal communication between police and relevant ministries carrying out “informal” expulsions.¹⁴ Such strategies intentionally avoid the critical importance of record-keeping as articulated in ICPPED article 17(3).¹⁵

(3) Short-term concealment of fate or whereabouts

Together, irregular handling of PoM outside the protection of the law, its associated procedural safeguards, and any communication with the outside world—including through destruction and/or seizure of mobile phones¹⁶—enables the real-time concealment of PoM’s fates or whereabouts from the moment of their apprehension until their final expulsion. During this short period—and precisely because pushbacks tend to be executed within hours or days—their families or others assisting them are unable to contact them directly and, given the secrecy of such operations, prevented and unequipped to access relevant authorities for information prior to these expulsions. As a result, pushbacks inherently frustrate the efforts of not only families but also lawyers, doctors, activists, and NGOs who could otherwise help PoM access legal protections or frameworks to suspend such expulsions.¹⁷

(4) Continued refusal to acknowledge the deprivation of liberty

Many pushed back PoM do not stay physically disappeared after their expulsions: instead, they may “reappear” in the state to which they have been expelled. Yet litigation of pushback-related

¹⁰ See, i.e., CPT, [Report on the visit to Greece carried out from 13-17 March 2020](#), §§54, 56; CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](#), §§26-27.

¹¹ Lighthouse Reports, “[Inside Croatia’s Secret WhatsApp Group](#),” 06.06.2023; Net.hr, “[The frightening deviation of the 'corridor': 'The police arrange everything on Whatsapp!'](#)” 09.12.2019; Telegram, “[The first interview in which a Croatian policeman claims: our bosses order us to expel migrants illegally](#),” 24.07.2019.

¹² CPT, [Report on the visit to Croatia carried out from 10 to 14 August 2020](#), §§22, 31, 34, 36.

¹³ CPT, [Report on the visit to Greece from 20 to 27 February 2007](#), 08.02.2008, §43. See also [Report on the ad hoc visit to Greece from 26 October to 2 November 1999](#), 13.09.2001, §§45-46; [Report on the visit to Greece from 10 to 19 April 2018](#), 19.02.2019, §§86-89; [Report on the visit to Greece from 13 to 17 March 2020](#), 19 November 2020, §38.

¹⁴ CPT, [Report on the visit to Greece from 26 October to 2 November 1999](#), 13.09.2001, §46.

¹⁵ The importance of record-keeping as a safeguard against ill-treatment is also stressed by the CPT. See [The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders](#) (32nd General Report), 03.2023, §94.

¹⁶ See section (1) above.

¹⁷ For an illustration of such efforts, see Forensic Architecture, “[Pushbacks across the Evros/Meriç River](#),” 08.02.2020.

claims shows that the clandestine nature of their treatment, the isolation of PoM from the outside world and related witnesses, and the absence of accurate record-keeping allows expelling states to deny that concerned individuals were ever in their custody—much less in their territory—at all.¹⁸ Although pushed back individuals may not remain practically disappeared, the state continues to deny their short-term disappearance, thereby hampering efforts at accountability and justice for the wide range of unlawful treatment suffered throughout. Clearly designed to evade accountability and perpetuate impunity in this manner,¹⁹ pushbacks as such conflict with obligations to investigate enforced disappearances as laid out in ICPPED article 3.

III. Additional legal implications of short-term disappearances during pushbacks

The short-term disappearances intrinsic to pushbacks enable severe violence and recklessness in states' handling of PoM, as highlighted by the CPT, which has “established clear patterns of physical ill-treatment” against pushed back PoM across Europe.²⁰ Cases supported by ECCHR reflect these outcomes. Despite not framing pushbacks as enforced disappearances, partially due to lack of legal consensus on those of short-term nature, they are noted below to highlight how such short-term disappearances implicate other relevant human rights frameworks.

(1) International Covenant on Civil and Political Rights (ICCPR)

Two cases pending before the Human Rights Committee (“HRC”) invoke the ICCPR’s protections in addressing the short-term disappearance of pushed back applicants. Syrian asylum-seeker S.M. and Iranian asylum-seeker Parvin A. submit that they were pushed back six times from Croatia and Greece respectively, and consistent with the patterns described above. They assert that their repeated pushbacks violated their ICCPR article 16 right to recognition as a person before the law, as in the HRC’s long-standing jurisprudence finding such for traditional enforced disappearance constellations.²¹ Their experiences demonstrate how the short-term denial of procedural safeguards and oversight enabled their treatment as objects, rather than subjects, of the law, exposing both to severe ill-treatment and humiliation from border officials during their expulsions.²²

(2) Convention on the Rights of the Child (CRC)

The pending case of U.F., a Rohingya refugee from Myanmar who claims several pushbacks from Croatia and one from Slovenia while still a minor, highlights that short-term disappearances during pushbacks also affect children. Never identified as a minor, U.F. describes being beaten, robbed, forced to watch the burning of belongings, and then left to walk barefoot in freezing temperatures back to Bosnia.²³ The CRC’s jurisprudence establishes that children at international borders should be guaranteed the right to “access the territory, regardless of the documentation they have or lack,

¹⁸ See Croatia’s arguments that applicants had “no evidence” of entering Croatian territory in *M.H. and others v. Croatia*, ECtHR 15670/18 and 43115/18, 18.11.2021, §266, and Spain’s assertions that applicants could not prove they had entered Spain during the relevant instance in *N.D. and N.T. v. Spain* [GC], ECtHR 8675/15 and 8697/15, 13.02.2020, §§80-83.

¹⁹ For further analysis, see ECCHR, “[Analyzing Greek Pushbacks: Over 20 Years of Concealed State Policy Without Accountability](#)” and “[Croatia’s Pushback Policy: A System of Unlawful, Covert, and Perpetuated Expulsions.](#)”

²⁰ CPT, [The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders](#) (32nd General Report), §80.

²¹ See *Grioua v. Algeria* (CCPR/C/90/D/1327/2004), 10.07.2007, §3.4; *Tharu v. Nepal* (CCPR/C/114/D/2038/2011), 03.07.2015, §10.9.

²² See Forensic Architecture, “[The Case of Parvin](#),” ECCHR, “[Pushbacks in Croatia: Complaint before the UN Human Rights Committee.](#)”

²³ See ECCHR, “[Rohingya child challenges Croatia and Slovenia over violent pushbacks.](#)”

and be referred to authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards.”²⁴ In line with articles 3 (child’s best interests) and 20 (special protection for unaccompanied minors), states must assess whether an individual is an unaccompanied minor (and in uncertainty provide the benefit of the doubt), verify their identity via interview, and assess their situation and particular vulnerabilities before any return.²⁵

(3) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment (CAT)

Also relevant to short-term disappearances during pushbacks, and the ill-treatment²⁶ and threat to life²⁷ that they facilitate, is states’ *ex officio* obligation via CAT article 12 to effectively investigate allegations of torture or cruel, inhuman and degrading treatment or punishment when there are reasonable grounds to believe such has occurred. Yet pushbacks and the short-term disappearances they entail are in fact designed to obstruct effective investigations, not only by leaving no paper trail or evidence but also by expelling or disappearing related witnesses from state territory before such investigations occur.

IV. Recommendations

To adequately address and prevent short-term disappearances that occur during pushbacks, ECCHR recommends that the CED, WGEID, and other treaty bodies and special procedures:

- (1) Acknowledge the unique ways that states employ short-term enforced disappearances to expel PoM via pushbacks;
- (2) Recognize that these disappearances—egregious violations in themselves—facilitate further grave human rights violations by exposing PoM to arbitrary detention in inhuman conditions, torture or ill-treatment, or even death;
- (3) Remind states of their ICPED and other treaty obligations to:
 - (a) accurately register and document their handling of all PoM, regardless of their status and “emergency situations” including migratory pressure, inside their territories and at their borders;
 - (b) ensure that anyone temporarily deprived of their liberty prior to an expulsion is held in a formally recognized location to which independent actors have access, where their presence is recorded in an up-to-date official register, and where they can communicate with their family, counsel, or other persons of choice; and
 - (c) ensure that anyone subject to an expulsion has an effective opportunity to challenge that expulsion with suspensive effect.
- (4) Define states’ responsibility to clarify the facts of short-term disappearances committed in their territories or under their control in situations where those affected are no longer physically disappeared, confirming that physical “reappearance” or presence outside a state’s territory does not relieve it of obligations to effectively investigate and provide reparation and compensation.

²⁴ *D.D. v. Spain* (CRC/C/80/D/4/2016), §14.4, citing Joint GC No. 4 of the CMW / No. 23 of the CRC (2017), §17.

²⁵ *D.D. v. Spain* (CRC/C/80/D/4/2016), §14.3.

²⁶ See *Diory Barry v. Morocco* (CAT/C/52/D/372/2009), 19.05.2014.

²⁷ See *Sonko v. Spain* (CAT/C/47/D/368/2008), 25.11.2011.