

CASE REPORT _____

Justice for survivors of violent Ceuta push-backs

On 6 February 2014, approximately 400 people attempted to circumvent the border fence separating Morocco from the Spanish enclave of Ceuta. The Guardia Civil, Spain's paramilitary police force, tried to prevent the group from entering Ceuta, and attacked them with tear gas, rubber bullets and batons. At least 15 people were killed and many more were seriously injured. Those who survived and managed to reach the Spanish side of the Tarajal beach were immediately pushed back to Morocco.

The violent expulsion operation conducted by the Spanish security forces in cooperation with Moroccan authorities breached Spanish, European and international human rights law. However, there are numerous impediments to the struggle for legal and political accountability. More than a year passed before an investigating judge at the court in Ceuta (*Audiencia Provincial de Cádiz, Sección Sexta, en Ceuta*) summoned a number of Guardia Civil officers involved in the incident. Since then, proceedings have been closed three times. ECCHR and its Spanish partner lawyer Gonzalo Boye successfully appealed the first two. A decision on the third appeal is pending. The investigation's repeated suspension means that more than four years after the deaths and push-backs in Tarajal, de facto impunity for human rights violations at the Spanish-Moroccan border continues.

Facts: The lethal Guardia Civil operation in Ceuta on 6 February 2014

Testimonies from survivors and witnesses, together with [official videos](#) released by the Guardia Civil, document the fatal events that occurred in the early hours of 6 February 2014. The Spanish authorities had activated the maximum level of alert, which included mobilizing various Guardia Civil units armed with riot gear equipment, in order to prevent a group of around 400 individuals from sub-Saharan Africa from crossing the border.

After a failed attempt by Moroccan border forces to stop the group from reaching Spain, some people managed to enter the water and started advancing to the Spanish side. A number tried to

wade through the water along the jetty. After a few meters, the jetty was submerged in water, and they tried to hold on to its edge. The Guardia Civil beat those who approached the Spanish side. Nathan, one of the survivors, [described](#) how a Guardia Civil officer hit him on the head with a baton and injured his arm. Numerous people used inflatable swimming aids to keep afloat in the water. Several videos document how the officers shot [rubber bullets](#) and [smoke cans](#) to stop them. The survivors described the asphyxiating effects of the gases and the destruction of their floating devices. At least 15 refugees and migrants did not survive the violent attack. Several corpses washed up on the shore that day, others followed in the next days.

Caminando Fronteras, a multidisciplinary collective working with refugees and migrants in Morocco since 2002, [collected](#) witness testimonies, and documented the deaths and injuries. One of the survivors described:

[The Guardia Civil] came and started to shoot at our bodies. The shots punctured our floating aids. Suddenly I saw smoke rising up from the water, it was the tear gas they were firing. It suffocated the people. I lost consciousness. [...] My friend who was always with me, and who came to Morocco with me lost his life. (Caminando Fronteras, pp. 14-15, translation by ECCHR)

The Guardia Civil did not alert the Red Cross or rescue organization Salvamanto Maritimo. Instead, they immediately pushed back those who reached the Spanish side through a gate in the fence constructed for this very purpose (see [video 1](#), [video 2](#) and [video 3](#)). Twenty three individuals were returned to the Moroccan security forces without an examination of their personal circumstances, the opportunity to present an asylum claim, or the possibility to object to their immediate return.

Justifications: The statements and rationale presented by the Spanish authorities/Guardia Civil

Spanish authorities have eschewed all legal and political responsibility for their actions. The first of several [statements](#) relaying the official version of events claimed that Guardia Civil officers did not intervene at all with the people in the water. As additional evidence emerged, the authorities had to gradually adapt their version: on 8 February 2014, the Guardia Civil issued an [official report](#), which conceded the use of anti-riot material. However, the report claims that “the anti-riot material was shot to demarcate the border line in the water, with the usual order that there should be several meters between the place of impact in the water and the migrants” (Guardia Civil, p. 3, translation by ECCHR). The report also emphasizes that the Guardia Civil is permitted to engage in the “legitimate use of force with anti-riot materials” (Guardia Civil, p. 6, translation by ECCHR). Despite video evidence showing how those who barely managed to reach the Spanish shore were immediately forced back to Morocco, the report concludes:

There was no unlawful entry onto national territory [...] Therefore, there was no expulsion [*devolución en caliente*]. [...] The actions of contention and rejection were carried out in said instances by the agents in charge of border surveillance based on the rational use of regulated anti-riot material. [...] No injuries or victims were produced on national territory, as a logical consequence of not having directed the anti-riot actions directly against the migrants. [...] It is deduced that the deceased migrants died in Moroccan waters or territory, the probable cause being drowning due to the human avalanche which carried the migrants towards the sea, without a cause-effect relationship between the use of anti-riot material by the agents of the Guardia Civil and the deaths. (Guardia Civil, p. 9, translation by ECCHR)

Spanish government representatives made similar statements defending the Guardia Civil officers' actions as being a proportionate response. They eventually admitted to the use of rubber bullets and smoke cans, but [Interior Minister Fernandez Diaz](#) insisted that they were shot from a “large distance” and were not aimed at migrants in the water. In [Spanish parliament](#), he claimed that the anti-riot material was shot into the water to “demarcate the border line,” maintaining several meters distance between the place of impact and the migrants in the water. The [Secretary of State for Security Francisco Vazquez](#) added that no one was injured. The [Interior Minister](#) admitted that 23 people were returned to Morocco, but disputed the unlawfulness of these immediate returns.

Procedural developments: Delayed judicial investigation and lack of accountability

In the months following the incident, the judicial investigation was delayed significantly. This contributes to an ongoing climate of Guardia Civil officers' impunity for human rights violations at the Spanish-Moroccan border. Not until March 2015, more than a year after the tragic events in Ceuta, did the Spanish authorities summon 16 Guardia Civil officers as defendants in the criminal proceedings in Ceuta. While some agents decided to remain completely silent, others refused to answer the questions by the civil parties. Those who did answer, admitted that it was the first time anti-riot material was used to deter entry on a maritime route, and that the minimum distance was not respected. The accused Guardia Civil officers maintained that the material was not directly shot at people in the water, the rubber bullets did not puncture the floating devices, and the smoke cans did not affect those who inhaled it. The officials continued to attempt to shift responsibility to the Moroccan side. It remained unclear where the first orders to shoot rubber bullets came from. Moreover, many discrepancies between video evidence and official statements remained unresolved.

Nevertheless, the investigation was closed for the first time in October 2015. Ceuta's investigating judge denied that the defendants had any criminal liability for the deaths. She found that the attacks on the people in the water were lawful and proportionate, and that the

Guardia Civil officers were not obliged to rescue the injured and drowning persons. The decision states:

The Guardia Civil agents acted in accordance with their duty to patrol and protect the border, actions which require the agents to impede the illegal entry of unauthorized persons onto national territory. [...] The Guardia Civil is authorized to use anti-riot material when exercising their function to patrol and protect the border. [According to] the *Orden de Servicio* 15/11 of the *Comandancia* of Ceuta, [...] personnel may use anti-riot materials, including rubber bullets and batons. [...] The use of smoke cans is a last resort. [...] In conclusion, the circumstances on 6 February legitimized the use of anti-riot materials by the agents of the Guardia Civil, who were obliged to use this equipment as part of their duty to protect the Spanish border. [...] The longstanding practice of the *devoluciones en caliente*, its justification by the Interior Ministry, and the express legal cover it enjoys, determine that they are not criminal in nature, which excludes those who practice it in Ceuta, and more concretely, on 6 February 2014, from legal culpability. ([Ceuta Court of 1st instance](#), §§8-9, translation by ECCHR)

A day after the decision to close the proceedings, the Interior Ministry published a [statement](#) conveying the congratulations of the Director General of the Guardia Civil, Arsenio Fernández de Mesa, to the Guardia Civil of Ceuta. He emphasized his absolute confidence in the Guardia Civil's work to defend Spain's borders, in particular, agents' conduct during the operations on 6 February 2014.

The decision to close the investigation was appealed immediately. Over a year later, in January 2017, the *Audiencia Provincial* regional court ordered the investigation into the Guardia Civil officers' brutal actions be reopened. The [decision](#) criticized the superficial and rushed forensic examination, emphasizing that the analysis lacked toxicological and histopathological tests that could have determined the effects of the gases used against the refugees and migrants in Ceuta. Moreover, the judgement stated that far from all investigative means had been exhausted, given that further information could be obtained from survivors or direct witnesses – rather than relying mainly on Spanish officers' testimonies. Lastly, the decision criticized the proceedings for not having completed the identification of several bodies, including those recovered in Spanish waters. Consequently, the decision to close the investigation was judged to have been premature.

However, one year later, in January 2018, the judge closed the case for the second time. She took this decision even though two survivors of the attack now residing in Germany had provided written letters confirming their willingness to testify after the investigation's reopening in 2017. The judge hindered their participation by closing the proceedings without hearing their testimony. ECCHR's partner lawyer Gonzalo Boye successfully appealed the decision. After the case was reopened, one survivor residing in Germany was able to testify via

video before a judge in Berlin in March 2019, while another survivor was unable to do so in a German court in Essen in August 2019 due to technical deficiencies on the side of the Spanish court. In September 2019, the investigative judge issued a decision in which she affirmed to:

Carry on with this investigative proceeding to prepare the hearing of the summary proceeding, regarding the facts and people indicated in the preceding grounds, for the potential offences of gross negligence manslaughter and failure to provide assistance [...]. (Ceuta Court of 1st instance, translation by ECCHR)

However, shortly afterwards in October 2019, the case was closed for a third time, following the Ceuta public prosecutor's appeal against the above instruction to prepare a hearing. The case's provisional dismissal was carried out under the so-called "Botín doctrine." This legal concept, which was established by the Spanish Supreme Court in 2007 and remains highly controversial, allows criminal proceedings to be terminated despite probable cause if the public prosecutor refuses to file charges that are only requested by joint plaintiffs. The doctrine has only been used in a few cases, including in proceedings against the former head of the Santander bank, Emilio Botín. Boye appealed this decision, and the third closing of the case in November 2019.

Politico-legal background: Spain's policy and practice of violent push-backs

The events of 6 February 2014 are part of Spain's violent and systematic practice of push-backs at the maritime and terrestrial borders between Morocco and Spain. The borders between the Spanish enclaves Ceuta and Melilla are the only terrestrial borders between Europe and Africa. In order to prevent unauthorized passage, Spain constructed multiple fences topped with razor wire and surveillance cameras. People who manage to overcome the border complex by climbing over or swimming around it are immediately returned to Morocco through gates in the fence structure. These push-back operations, conducted in cooperation with Moroccan authorities, have repeatedly resulted in injuries and deaths. In Ceuta, Caminando Fronteras documented 311 push-backs and 466 grave injuries, several affecting minors, between September 2015 and December 2016 alone. The total scale of the practice since its introduction in 2005 is difficult to estimate because there are no official records of the expulsions and injuries.

The Spanish government claims that the summary returns immediately after individuals cross the territorial border do not constitute unlawful expulsions, but rather lawful "rejections at the border" (*rechazos en frontera*). According to the authorities, an imaginary "operative border" line must be crossed to enter Spanish territory. This "line" moves depending on the situation and Guardia Civil officers' position. The [Guardia Civil report](#) on the events on 6 February 2014 explains this so-called "Operative Concept of Border Control":

In the case of Tarajal at the border with Ceuta [...], the actions of vigilance, contention and rejection should be carried out along an imaginary line in the sea. [...] The state retracts the line of vigilance and contention to a secure scenario, which is on the firm ground at the beachline. [...] The line is materialized and visibilized by the line of border agents, depending on the case and circumstances, establishing a line until the place on the beach considered necessary. [...] The attempts of unlawful entry counteracted by the operations of contention and rejection, along the above-mentioned line, do not constitute unlawful entry into national territory, which only takes place if the migrant passes the established line of vigilance. [...] This operative concept, which was consolidated in 2005 and maintained unaltered until today, implies that the migrants who are contained and rejected in the above-described lines of vigilance are not the object of immediate push-backs, because this concept supposes that an entry into national territory took place. (Guardia Civil, p. 7, translation by ECCHR)

Applying this rationale of a movable border to the incidents of 6 February 2014, the Guardia Civil concluded that no expulsions took place, since the refugees and migrants never legally entered Spain.

The continuous violence and push-backs at the Spanish-Moroccan border are widely and continuously criticized, but the authorities refrain from making significant policy changes. The Guardia Civil has a [new internal order](#) prohibiting the use of rubber bullets at the borders of Ceuta and Melilla, but other anti-riot materials are still permitted. Moreover, instead of ceasing to violate human rights at the border, the Spanish government legalized the practice of push-backs with the [Organic Law](#) on the Protection of Public Safety (*Protección de la Seguridad Ciudadana*), which entered into force in July 2015. The law established a special regime for Ceuta and Melilla, stipulating that individuals detected while trying to cross the Ceuta or Melilla territorial borders “may be rejected in order to prevent their illegal entry into Spain” (Article 75).

ECCHR’s role: Legal interventions against violent expulsions

ECCHR is assisting the survivors and eyewitnesses who decided to come forward in order to participate in the proceedings. Nathan, who was an unaccompanied minor at the time of the violent expulsion, and Liliane (names have been changed for anonymity) were both subjected to the attack by the Guardia Civil. ECCHR also works together with Gonzalo Boye in Madrid and the NGO Observatori DESC in Barcelona, which is a civil party in the proceedings.

Over the past several years, ECCHR has initiated various legal interventions against the EU’s push-back practices. In particular, ECCHR has focused on push-backs at the Spanish-Moroccan border in Ceuta and Melilla. The case of [N.D. and N.T. v. Spain](#) was brought to the European Court of Human Rights by two individuals from Mali and the Ivory Coast to challenge their

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collective expulsion from Melilla to Morocco in August 2014. Ongoing proceedings in front of the UN Committee on the Rights of the Child in the case of *D.D. v. Spain* address the push-back of an unaccompanied minor from Melilla to Morocco in December 2014. These interventions seek to reclaim the right to have rights with and for those who are denied their fundamental human rights at the borders of the European Union.

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