The Registrar
European Court of Human Rights
Council of Europe
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4 November 2026

Dear Registrar,

Re: Written comments in *Zaidan v Spain* App. No. 24554/25

We refer to your letter dated 14 October 2026 granting us permission to make written comments to the Court pursuant to Rule 44 § 3 of the Rules of Court.

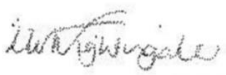
We now enclose REDRESS' written comments. The address for correspondence in relation to this matter is:

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Yours sincerely,



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REDRESS
Ending torture, seeking justice for survivors

ZAIDAN V SPAIN APP. NO. 24554/25

WRITTEN COMMENTS BY REDRESS

1. These written comments seek to assist the European Court of Human Rights (ECtHR) in its assessment of Article 3 of the European Convention on Human Rights (ECHR) by examining (A) the use of force and restraint against persons deprived of liberty; and (B) additional considerations relevant to individual and situational vulnerability, such as circumstances of immigration detention and mental-health vulnerability.

A. THE USE OF FORCE AND RESTRAINT AGAINST PERSONS DEPRIVED OF LIBERTY

2. Enshrining "one of the most fundamental values of democratic societies", which is "closely bound up with respect for human dignity", Article 3 of the ECHR prohibits torture and other ill-treatment in absolute terms, without exceptions or justifications.[1]

3. This Court's usual approach in examining Article 3 cases is to consider whether the treatment attained a minimum level of severity. This assessment depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age, and state of health of the victim.[2] The purpose, intention, and motivation behind the ill-treatment,[3] as well as the context in which it occurred[4] are also relevant factors for such examination. However, "the absence of an intention to humiliate or debase the victim" does not exclude an Article 3 violation.[5] Nor is it necessary for the treatment to result in bodily injury or intense suffering for Article 3 to be engaged: treatment which diminishes human dignity or arouses sufficiently serious feelings of fear, anguish, or inferiority may be characterised as degrading.[6] Humiliation in the victim's own eyes may suffice.[7]

Any unnecessary force against persons deprived of liberty violates Article 3

4. According to international human rights law, State agents may use force against individuals only in narrowly defined circumstances, namely where it is "necessary" and, if it is necessary, the use of force must be "proportionate" to achieve a "legitimate aim".[8] In the context of detention, law

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[1] *Bouyid v Belgium*, Application No. 23380/09 (ECtHR, 28 September 2015), para 81. See also: *Gäfgen v. Germany* [GC], Application No. 22978/05 (ECtHR, 1 June 2010), para 87; *Selmouni v France*, Application No. 25803/94 (ECtHR, 28 July 1999), para 95; *Mocanu and Others v Romania* [GC], Applications Nos. 10865/09, 45886/07, and 32431/08 (ECtHR, 17 September 2014), para 315; UN Human Rights Committee, CCPR General Comment No 20 on Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 3; and UN Committee against Torture, General Comment No 2: Implementation of Article 2 by States Parties, UN Doc CAT/C/GC/2, 24 January 2008, para 5.

[2] *Ireland v United Kingdom*, Application No. 5310/71 (ECtHR, 18 January 1978), para 162; *Gäfgen v. Germany*, para 88; *Jalloh v Germany* [GC], Application No. 54810/00 (ECtHR, 11 July 2006), para 67; *Muršić v. Croatia* [GC], Application No. 7334/13 (ECtHR, 20 October 2016), para 97. See also the European Court of Human Rights Registry, Guide on Article 3 of the European Convention on Human Rights: Prohibition of Torture, updated 31 August 2026, paras 5-6.

[3] *Bouyid v Belgium*, para 86. See also: *El-Masri v The former Yuguslav Republic of Macedonia* [GC], Application No. 39630/09, (ECtHR, 13 December 2012), para 196; *CCPR General Comment No. 20*, para 4.

[4] *Selmouni v France*, para 104.

[5] *Bouyid v Belgium*, para 86.

[6] *Bouyid v Belgium*, para 87; See also: Inter-American Court of Human Rights (IACtHR), *Loayza-Tamayo v. Peru*, 17 September 1997, para 57; IACtHR, *Maritza Urrutia v Guatemala*, 27 November 2003, para 92; and UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: Addendum, UN Doc A/HRC/13/39/Add.5, 5 February 2010, para 188.

[7] *Bouyid v Belgium*, para 87.

[8] UN General Assembly, Code of Conduct for Law Enforcement Officials, Res. 34/169, 17 December 1979 (**UN Code of Conduct**), Art. 3; UN Congress on the Prevention of Crime and the Treatment of Offenders, UN Basic Principles on the Use of Force and

enforcement "shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened".[9]

5. The ECtHR has repeatedly established that, when an individual is confronted with law enforcement, force by State agents that is not made strictly necessary by the person's own conduct violates Article 3 of the ECHR, both in cases involving detention or custody settings and cases on the use of force in protests.[10] Reaffirming the Court's landmark ruling in *Ribitsch v Austria*,[11] the Grand Chamber held, in *Bouyid v Belgium*, that

> "[…] where an individual is deprived of his or her liberty or, more generally, is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention."[12]

6. The Inter-American Court of Human Rights has likewise recognised the connection between unnecessary force and human dignity, finding that force which is not made strictly necessary by the individual's own conduct violates Article 5 of the American Convention on Human Rights.[13] Similarly, the African Commission on Human and Peoples' Rights has recognised that States which deprive an individual of liberty assume heightened level of responsibility to protect that individual's rights, including a positive obligation to protect them from violence,[14] and that any use of force by law enforcement must comply with international standards on necessity and proportionality.[15]

Human dignity and the absence of a separate injury threshold

7. In *Bouyid*, the Grand Chamber expressly rejected the proposition that the force employed could escape Article 3's prohibition because the general severity threshold had not been attained. The

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Firearms by Law Enforcement Officials, 27 August to 7 September 1990 (**UN Basic Principles on the Use of Force**), Principle 15. These provisions are considered to reflect customary international law. See also: Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, submitted by Philip Alston, 5 September 2006, A/61/311 (**Alston 2006 Report**), para 35; Council of Europe, Committee on the Prevention of Torture, 2019, CPT/Inf(2019)9-part, Standards and tools: Preventing police torture and other forms of ill-treatment, para 64.

[9] UN Basic Principles on the Use of Force, Principle 15; Council of Europe, European Prison Rules 1987, Recommendation No. R(87)3, adopted by the Committee of Ministers of the Council of Europe on 12 February 1987, Rule 63 (European Prison Rules 1987). See also Council of Europe, European Prison Rules 2006, Committee of Ministers, Recommendation Rec(2006)2 (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies) (**European Prison Rules 2006**), Rule 64.1.

[10] *Ribitsch v Austria*, Application No. 18896/91 (ECtHR, 4 December 1995), para 38; *Keenan v United Kingdom*, Application No. 27229/95 (ECtHR, 3 April 2001), para 113; *El-Masri v The Former Yugoslav Republic of Macedonia,* para 207; *Eikenaar v. the Netherlands*, Application No. 52053/18 (ECtHR, 30 June 2026), para 49; *Alí Güneş v Turkey*, Application No. 9829/07 (ECtHR, 10 July 2012), para 41 (in relation to the use of tear gas against a person under control).

[11] *Ribitsch v Austria,* para 38.

[12] *Bouyid v Belgium*, para 100.

[13] Article 5(2) of the American Convention on Human Rights provides that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment and that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. Organization of American States, American Convention on Human Rights, adopted 22 November 1969, Art. 5(2). See also *Loayza-Tamayo v Peru,* para 57; IACtHR, *Castillo Petruzzi et al. v Peru*, 30 May 1999, para 197; IACtHR, *Cantoral-Benavides v. Peru*, 18 August 2000, para 96; IACtHR, *Bámaca-Velásquez v Guatemala*, 25 November 2000, para 155; IACtHR, *Miguel Castro-Castro Prison v Peru*, 25 November 2006, para 240; IACtHR, *Montero-Aranguren et al (Detention Center of Catia) v Venezuela*, 5 July 2006, para 67; IACtHR, *Nadege Dorzema et al v Dominican Republic*, 24 October 2012, para 91.

[14] African Commission on Human and Peoples' Rights (ACHPR), General Comment No 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), adopted 12 December 2015, para 36.

[15] ACHPR, General Comment No 3, para 36.

unjustified use of force by State agents against a person under their control is inherently degrading, whatever the impact is on the person - as emphasised in ECtHR's judgements referred above. The assessment must therefore address the necessity of the force, rather than treating the seriousness of its consequences as a preliminary condition for Article 3 protection.[16] Additionally, proportionality is relevant to examine whether the minimum amount of force necessary was used to fulfil the legitimate aim being protected.[17] However, where there is not a legitimate aim or purpose being protected, the need and ability to consider proportionality falls away.

8. The rationale for this rule lies in the relationship between State control and human dignity and the close connection between dignity and the prohibition of degrading treatment.[18] As held by the ECtHR as early as 1978 in *Tyrer v United Kingdom,*

> "[…] although the applicant did not suffer any severe or long-lasting physical effects, his punishment - whereby he was treated as an object in the power of the authorities - constituted an assault on precisely that which it is one of the main purposes of Article 3 (art. 3) to protect, namely a person's dignity and physical integrity."[19]

9. Persons under the control of the police or a similar authority are in a position of vulnerability, and the authorities owe them a duty of protection.[20] The State must ensure that detained persons are held "in conditions which are compatible with respect for [their] human dignity" and that their "health and well-being are adequately secured", including by providing medical assistance.[21] Even in the most difficult circumstances, authorities must refrain from using force amounting to torture and ill-treatment; and this implies an obligation on the State "to train its law-enforcement officials in such a manner as to ensure their high level of competence in their professional conduct so that no one is subjected to torture or treatment that runs counter to that provision".[22]

10. Thus, in the context of detention, unnecessary force abuses the imbalance of power inherent in the relationship between the State – responsible for protecting – and the detained person under its control. Indeed, the Grand Chamber has expressly recognised, in *Bouyid*, that the fact that the victim knows treatment is unlawful could generate feelings of arbitrariness, injustice, and powerlessness.[23] As explained by the UN Special Rapporteur on Torture, Professor Manfred Nowak, "it is the powerlessness of the victim in a situation of detention which makes him or her so vulnerable to any type of physical or mental pressure.[24]

11. The Court's approach similarly recognises that, once physical force against a person under State control is established to have been unnecessary, there is no further requirement to demonstrate serious injury, lasting consequences or suffering of a particular intensity before finding a violation

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[16] *Bouyid v Belgium*, para 101. See also *Y.F.C and Others v the Netherlands*, Application No 21325/19 (ECtHR, 21 July 2026), para 65.

[17] UN Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, submitted by Christof Heyns, A/HRC/17/28, 23 May 2011, para 49, citing Alston 2006 Report, paras 40-45. See also ECtHR, *Gül v. Turkey*, Application No 4870/02 (ECtHR, 8 June 2010), para 37; IACtHR, *Zambrano-Vélez and others v Ecuador*, 4 July 2007; UN Basic Principles on the Use of Force, Principle 13.

[18] UN Human Rights Committee, CCPR General Comment No. 20, para 2. See also International Covenant on Civil and Political Rights (ICCPR), UNGA Res. 2200A (XXI), adopted 16 December 1966, Article 10.

[19] *Tyrer v United Kingdom*, Application No. 5856/72, (ECtHR, 25 April 1978), para 33. See also *Bouyid v Belgium*, para 101.

[20] *Bouyid v Belgium*, para 107.

[21] *Kudla v Poland* [GC], Application No. 30210/96 (ECtHR, 26 October 2000), para 94.

[22] *Bouyid v Belgium*, para 108.

[23] *Bouyid v Belgium*, para 106.

[24] Manfred Nowak & Elizabeth McArthur, '*The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment*', 16 Torture (2006) p. 151.

of Article 3. In *Keenan v United Kingdom*, the ECtHR noted that "there are circumstances where proof of the actual effect on the person may not be a major factor";[25] and, in *Bouyid,* it recognised that a single slap on the face without long-term effects could humiliate and diminish the person's dignity, amounting to degrading treatment.[26] The same standard has been applied by the Inter-American Court of Human Rights.[27]

12. This does not render severity irrelevant to every aspect of the analysis. Although no particular degree of physical or mental suffering needs to be established where the use of force against a person under State control was not strictly necessary, the intensity, duration, and effects of treatment, whether physical or mental, alongside the other circumstances, remain relevant to the assessment and classification of treatment under Article 3.[28] This includes consideration of the treatment as a whole during the person's entire period of detention.

Strict necessity applies to the means and continuation of the force and restraint used

13. Article 3 does not prohibit every use of force in custody; restraints imposed in connection with lawful detention which do not exceed what is "reasonably considered necessary in the circumstances" do not normally give rise to a breach of Article 3.[29] When examining whether a treatment was necessary, the Court may consider the nature, degree, and duration of the technique or force used.[30] Generally, if a person is confronted with law enforcement officers, physical force "must only be used if indispensable and must not be excessive".[31] Relevant considerations include, for instance, a substantiated risk of resistance, escape, injury or damage.

14. International standards provide further guidance on this assessment. The UN Basic Principles on the Use of Force and Firearms require law enforcement officials, as far as possible, to use non-violent means before resorting to force and, where force is unavoidable, to exercise restraint and minimise injury.[32] They also envisage a range of means that allow for a differentiated use of force and training in their use, as well as in non-violent methods.[33] The European Prison Rules similarly provide that force should be used as a last resort, at the minimum level and for the shortest time necessary.[34] These standards reinforce the importance of considering whether effective, less intrusive means were available and whether the force used remained necessary throughout the intervention.

15. The assessment must therefore also account for changes during an intervention. Conduct which initially calls for restraint does not necessarily justify its continuation once the immediate risk has diminished. Once the legitimate aim has been achieved, force is no longer lawful.[35] Similarly, where several techniques are simultaneously applied, their combined effect must be assessed for the purposes of necessity. In *S.T. v Czech Republic*, the ECtHR found a violation of Article 3 emphasising,

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[25] *Keenan v United Kingdom*, para 113.

[26] *Bouyid v Belgium*, paras 106-107 and 111-112.

[27] *Loayza Tamayo v Peru*, para 57.

[28] *Bouyid v Belgium*, paras 86-87; *Ireland v United Kingdom*, paras 162 and 167.

[29] *Svinarenko and Slyadnev v. Russia* [GC], Applications No. 32541/08 and 43441/08 (ECtHR, 17 July 2014), para 117.

[30] *Shlykov and Others v Russia*, Application Nos. 78638/11, 6086/14, 11402/17, and 82420/17 (ECtHR, 19 January 2021), paras 72-74.

[31] *S.T. v. Czech Republic*, Application No. 28273/23 (ECtHR, 16 July 2026), para 207. *See also Eikenaar v The Netherlands*, para 49; *Tsaava and Others v Georgia* [GC], Applications Nos. 13186/20, 16757/20, 20129/21, 20175/21, and 39382/21, (ECtHR, 11 December 2025), para 329.

[32] UN Basic Principles on the Use of Force, Principles 4, 5, and 15.

[33] UN Basic Principles on the Use of Force, Principles 2, 19, and 20.

[34] *European Prison Rules 1987*, Rule 63. See also *European Prison Rules 2006,* Rule 64.2.

[35] Manfred Nowak & Elizabeth McArthur, '*The Distinction Between Torture and Cruel, Inhuman or Degrading Treatment'*, 16 Torture 3 (2006) p. 150-151.

among other factors, that "all those forms of force – handcuffing, prone position, and kneeling on the upper back, shoulder blades, and neck area – had been simultaneously used against S.T. for over four minutes, even after he had demonstrably calmed down".[36] It also recognised that prone position "even without pressure applied on the chest by kneeling on the upper back or neck area", "may be dangerous and life-threatening, especially when used against vulnerable persons in an agitated state".[37] In *V. v Czech Republic*, the Court referred to findings of the European Committee for the Prevention of Torture (CPT) that prone position "may lead to positional asphyxia because of pressure exerted on the neck, and which also makes it impossible to observe whether the person concerned is actually breathing", which contributed to the Court's finding of an Article 2 violation.[38]

16. Similarly, in *Eikenaar*, the ECtHR accepted that the individual's resistance could have required police officers to press him to the ground and use force to handcuff him. However, it found that this did not justify an additional punch to the back of his head to make him more cooperative, noting that "even a single punch to the head would have been able to arouse in him feelings of arbitrary treatment, injustice and powerlessness."[39] Having regard, in particular, to the nature and location of the force used (head and face) and the officer's superior position, the ECtHR concluded that the State had failed to demonstrate that the punch was strictly necessary.[40]

17. These judgments therefore demonstrate the importance of examining the interaction and continuation of restraint techniques, rather than relying solely on the initial justification for intervention, such as agitation or resistance. Further, force cannot be used as a punishment or as a response to conduct perceived as disrespectful; nor can an officer's frustration or exasperation establish that force was strictly necessary.[41]

18. Finally, where the events lie wholly, or in large part, within the exclusive knowledge of the authorities, such as in cases involving persons within their control in custody, the ECtHR recognises that strong presumptions of fact may arise in respect of injuries sustained in detention. In such circumstances, the burden rests on the State to provide a satisfactory and convincing explanation, failing which the Court may draw adverse inferences.[42] Where the use of force by State agents is established, the State must demonstrate that the force used was strictly necessary and proportionate to a legitimate objective, having regard to the circumstances of the individual case.[43]

B. ADDITIONAL CONSIDERATIONS REGARDING VULNERABILITY OF MIGRANTS AND THOSE SUFFERING FROM MENTAL HEALTH CONDITIONS

Immigration detention and the use of force under Article 3 of ECHR

19. In *Y.F.C. and Others v the Netherlands,* the ECtHR affirmed that the *Bouyid* principles regarding the use of force by law enforcement officers apply to immigration detention centres. It reaffirmed that any recourse to physical force against a person deprived of their liberty must be made strictly necessary by that person's own conduct or else it diminishes human dignity and is in principle an

[36] *S.T. v. Czech Republic,* para 210. Request for referral to the Grand Chamber pending.
[37] *S.T. v. Czech Republic*, para 186.
[38] *V. v Czech Republic* (Application No. 26074/18), 7 December 2023, para 97.
[39] *Eikenaar v The Netherlands,* para 55.
[40] *Eikenaar v The Netherlands,* paras 54, 56, and 59-60.
[41] *Bouyid v Belgium*, paras 102 and 108.
[42] *Bouyid v Belgium*, paras 82-84 and 92.
[43] *Eikenaar v The Netherlands*, paras 49 and 60; *Tsaava and Others v Georgia*, para 329.

infringement of Article 3.[44] *Y.F.C.* therefore confirms that the analysis set out in Section A applies without modification to immigration detention. However, the assessment of necessity must still be examined in light of the specific vulnerabilities of immigration detainees.

20. Migrants are particularly vulnerable because of, among other things, their absence from their State of origin, language barriers, differences in custom and culture, and the economic and social obstacles to returning to their State of origin of migrants who are non-documented or in an irregular situation.[45] That vulnerability is acute in detention. The CPT has recognised that immigration detainees may be particularly vulnerable to various forms of ill-treatment, whether at the moment of apprehension, during custody or during deportation.[46] The UN Subcommittee on Prevention of Torture (SPT) has likewise observed that, while everyone in detention is vulnerable, certain groups, including foreign nationals, are particularly vulnerable.[47]

21. According to ECtHR and international standards,[48] a migrant's vulnerability is rarely singular. In assessing Article 3 complaints relating to the treatment of migrants, the ECtHR has taken account of individual factors such as prior trauma,[49] underprivileged position,[50] and their medical condition,[51] alongside their status as migrants. The position of immigration detainees is already one of heightened vulnerability. Any further individual or situational factors deepen that vulnerability cumulatively.

Immigration detention as non-punitive

22. It is widely recognised that immigration detention is administrative, not punitive.[52] It follows that immigration detainees should be afforded both a regime and material conditions appropriate to their legal situation.[53] Yet according to the Parliamentary Assembly of the Council of Europe:

> "Conditions and safeguards afforded to immigration detainees who have committed no crime are often worse than those of criminal detainees. Conditions can be appalling [….] Furthermore, provision for the needs of vulnerable persons is often insufficient and allegations of ill-treatment, violence and abuse by officials persist. This all has a negative

[44] *Y.F.C and Others v the Netherlands*, para 64.

[45] UN General Assembly, Protection of Migrants, UN Doc A/RES/54/166, 24 February 2000, para 5; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMWW), General Comment No 5 (2021) on Migrants' Rights to Liberty, Freedom from Arbitrary Detention and Their Connection with Other Human Rights, UN Doc CMW/C/GC/5, 23 September 2021, para 71.

[46] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 'Safeguards for irregular migrants deprived of their liberty', extract from the 19th General Report of the CPT (**Safeguards for irregular migrants**), CPT/Inf(2009)27-part (2009), para 75.

[47] UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment (SPT), 'The approach of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture', UN Doc CAT/OP/12/6, 30 December 2010, para 5(j).

[48] Official Journal of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, [2008] OJ L348/98, 24 December 2008, article 16(3).

[49] *Abdullah Elmi and Awes Abubakar v Malta*, Application Nos. 25794/13 and 28151/13 (ECtHR, 22 November 2016), para 113.

[50] *M.S.S v Belgium and Greece* [GC], Application No. 30696/09 (ECtHR, 21 January 2011), para 251.

[51] *Khlaifia and Others v. Italy*, Application No. 16483/12 (ECtHR, 15 December 2016), para 194.

[52] UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants (Annex), 2 July 2018, UN Doc A/HRC/39/45, Annex paras 14 and 38; CPT, 'Immigration detention', CPT Factsheet (**CPT Factsheet**), CPT/Inf(2017)3, March 2017, Introduction para 4.

[53] CPT Factsheet, introduction para 4.

impact on the mental and physical well-being of persons detained both during and after detention." [54]

23. Spain's immigration detention centres (Centros de Internamiento de Extranjeros/CIEs) illustrate this risk. The CPT has criticised the prison-like atmosphere in the CIEs of Barcelona and Madrid, made worse by their restrictive regime. It has also recorded allegations of physical ill-treatment of detainees by police officers.[55]

24. International standards specific to immigration detention set a narrower threshold for force than general custodial standards. To illustrate, PACE Resolution 1707, recognises that in cases of immigration detention, detention centre staff shall not use force except in self-defence, in cases of attempted escape, or in response to active physical resistance to a lawful order, and always as a last resort and proportionately.[56] This formulation deliberately omits passive resistance, which the European Prison Rules[57] and the UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)[58] both recognise as a ground for force against prisoners.

25. These limits are supported by positive safeguards. Staff must be carefully recruited and trained, including in interpersonal communication and cultural awareness.[59] The ethos of immigration should not be carceral and staff in immigration detention should not be equipped with batons, handcuffs or pepper spray.[60]

Mental health vulnerability and the treatment of detained persons

26. The ECtHR has long recognised the particular vulnerability of persons with mental-health conditions and held that this vulnerability must be considered when assessing whether treatment or punishment is incompatible with Article 3 of the ECHR.[61] International law protection encompasses dignity, autonomy, and equal respect for physical and mental integrity. Where a person has a psychosocial disability, the Convention on the Rights of Persons with Disabilities requires protection against ill-treatment and reasonable accommodation in deprivation of liberty.[62]

Use of force and restraint where mental health vulnerability is present

27. Where force is used against a person under State control, additional vulnerability caused by mental health may be relevant both to the assessment of whether the authorities' response was strictly necessary, and to the impact of the treatment on the person concerned. The ECtHR acknowledges that a detained person's psychological condition can render them more vulnerable than the average

[54] Parliamentary Assembly of the Council of Europe (PACE), Detention of asylum seekers and irregular migrants in Europe, (**PACE Resolution 1707**), Resolution No. 1707 (2010), 8 January 2010, para 4.

[55] CPT, Report to the Spanish Government on the visit to Spain carried out from 14 to 18 July 2014, CPT/Inf(2015)19, 9 April 2015, pgs. 9, 11.

[56] PACE Resolution 1707, para 9.2.1.

[57] European Prison Rules 2006, Rule 64.1.

[58] UN General Assembly, Standard Minimum Rules for the Treatment of Prisoners (**Mandela Rules**), UN Doc A/RES/70/175, 17 December 2015, Annex, Rule 82(1).

[59] PACE Resolution 1707, para 9.2.13; CPT Factsheet, section 6.

[60] CPT Factsheet, section 6 para 5.

[61] *Keenan v United Kingdom*, para 111; *M.S. v Croatia (No 2)*, Application No. 75450/12 (ECtHR, 19 February 2015), para 96.

[62] UN General Assembly, Convention on the Rights of Persons with Disabilities (**CRPD**), UN Doc A/RES/61/106, adopted 12 December 2006, Articles 3(a), 14(2), 15, and 17. See also UN General Assembly, Principles for the protection of persons with mental illness and the improvement of mental health care (**Protection of persons with mental illness)**, Res. 46/119, 17 December 1991, Principle 1.2 (reaffirming respect for the inherent dignity of the human person).

detainee, exacerbating feelings of distress, anguish and fear, which can be a contributing factor in the finding of an Article 3 violation.[63]

28. Observable distress and agitation in a detained person call for an appropriately adapted response,[64] rather than a presumption that coercion is required. In *Eikenaar*, the ECtHR considered that the person's confused and agitated behaviour should have raised concerns about his mental well-being and possible overdose or mental illness. The Court criticised the inadequate training of officers and their failure to seek assistance from medical professionals or specialised assistance, emphasising that foreseeable resistance should have been taken into account in planning and executing an intervention.[65] In *Kucheruk*, the ECtHR held that the use of truncheons against the person was unjustified, taking into account foreseeable agitation, the officers' numerical superiority and the absence of evidence of an attempted attack or danger during the incident.[66]

29. Comparative jurisprudence reinforces the importance of proportionality when the use of force is necessary. In *Ximenes Lopes v Brazil*, concerning psychiatric care, the Inter-American Court of Human Rights required restraint to be a last resort for protection against a threat to safety, carried out by qualified staff using the least restrictive method after assessing necessity.[67] The CPT's psychiatric standards favour the least restrictive and least dangerous measure, requiring training in techniques that minimise injury and prohibit neck holds and techniques liable to obstruct breathing or inflict pain; it also emphasises that restraint must not be used as punishment nor replace proper care or treatment. [68] The clinical context should be considered when drawing on these safeguards in law enforcement settings.

Obligation to provide adequate and appropriate care and treatment

30. State authorities' responsibility for the health and well-being of persons with mental-health vulnerability who are deprived of their liberty includes providing appropriate and adequate medical assistance, including psychological assistance, where required.[69] In immigration detention, the CPT recommends prompt medical screening, access to psychological and psychiatric care, and training custodial staff to recognise signs of stress and take appropriate action.[70]

31. The UN Code of Conduct requires officials to secure medical attention whenever required.[71] The Mandela Rules support assessment on admission and thereafter as necessary of mental-health needs, self-harm risk and withdrawal symptoms, and reserve clinical decisions to responsible healthcare professionals; non-medical staff must not overrule or ignore them.[72] The CPT further recommends that non-healthcare staff should not filter requests to consult a healthcare professional, that continuity of care upon admission to prison be ensured, and that additionally

[63] *Miranda Magro v Portugal*, Application No. 30138/21 (ECtHR, 9 January 2024), para 81.
[64] In *Eikenaar v The Netherlands*, the ECtHR considered the authorities' response to the individual's agitated behaviour. The relevance of observable mental distress to the authorities' response does not, however, depend on establishing a psychosocial disability. *Eikenaar v The Netherlands,* paras 56-58.
[65] *Eikenaar v The Netherlands*, paras 53-57, and 60.
[66] *Kucheruk v Ukraine*, Application No 2570/04 (ECtHR, 6 September 2007), paras 132-133. See also *M.S. v Croatia (No 2)*, paras 97-110.
[67] IACtHR, *Ximenes Lopes v Brazil*, 4 July 2006, paras 133-135.
[68] CPT, Means of restraint in psychiatric establishments for adults (Revised CPT standards), CPT/Inf(2017)6, 21 March 2017, paras 1.6, 3.1–3.2 and 5.
[69] Keenan v United Kingdom, para 111; Rooman v Belgium [GC] (Application No. 18052/11), 31 January 2019, paras 143, 146-147.
[70] CPT Factsheet, sections 2, 6 and 9; Safeguards for irregular migrants, para 82.
[71] UN Code of Conduct, Article 6.
[72] Mandela Rules, Rules 27 and 30(c)-(d).

required medication be accessible without delay.[73] As noted by the UN Special Rapporteur on torture, Manfred Nowak, the denial of medical treatment in custodial situations may constitute ill-treatment and is prohibited under international human rights law.[74] The Council of Europe's Handbook on Combatting Ill-treatment in Prison also notes that each prisoner should have adequate healthcare arrangements and that failing to provide appropriate medical care may give rise to an Article 3 violation.[75]

32. UN Treaty Bodies and regional human rights courts have long established that States are under an obligation to treat detainees with humanity and respect for their dignity, which includes adequate provision of healthcare and access to medication.[76] In *Rooman v Belgium*, the ECtHR notes that "a lack of appropriate medical care for persons in custody is therefore capable of engaging a State's responsibility under Article 3".[77] In the context of detainees suffering from mental disorders, the fact that a detainee has seen a doctor or been prescribed a certain form of treatment does not automatically mean that medical assistance was adequate.[78] In *Magro v Portugal*, the ECtHR held that the State had failed to demonstrate that the applicant received the therapeutic treatment required by his mental health condition whilst detained in a prison hospital and that "the failure of the authorities to provide the applicant with appropriate assistance and care has unnecessarily exposed him to a risk to his health and must have resulted in stress and anxiety'", leading to the Court finding a violation of Article 3.[79]

33. In *C. v. Australia,* the UN Human Rights Committee found a violation of the prohibition on inhumane treatment, notwithstanding the prescription of tranquilisers and repeated psychiatric assessments, because the authorities had failed to take the necessary steps to ameliorate the immigration detainee's known mental deterioration.[80] The UN Committee against Torture has also repeatedly expressed concerns about the adequacy of mental health care within prisons, further distinguishing between appropriate treatment and mere contact with a doctor.[81]

Self-harm, suicide and solitary confinement

[73] CPT, Prison Standard – Healthcare in Prison, CPT/Inf (2025) 37, paras 25-28 and 36.

[74] UN HRC, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak (**SRT January 2009 Report**) , UN Doc A/HRC/10/44, 14 January 2009, para 71.

[75] Council of Europe, Combatting Ill-Treatment in Prison, A Handbook for Prison Staff with Focus on the Prevention of Ill-Treatment in Prison, April 2016, p. 28.

[76] HRC, *Pinto v. Trinidad and Tobago*, UN Doc CCPR/C/39/D/232/1987 (20 July 1990), para 12.7 (although the Committee did not find a medical-care violation, it did affirm the general duty to provide adequate care); *Sendic Antonaccio v Uruguay*, UN Doc CCPR/C/14/D/63/1979 (28 October 1981), paras 19-20. See also: Committee Against Torture (**CAT**), *X v. Burundi* - Communication No 553/2013, 5 October 2015, UN Doc CAT/C/55/D/553/2013, para 7.4; HRC, *Lantsova v. The Russian Federation*, UN Doc CCPR/C/74/D/763/1997, 15 April 2002, para 9.2 (concerning the right to life).

[77] *Rooman v Belgium*, para 145, 146.

[78] *DT v. Greece*, Application No. 51829/21, 1 September 2026, para 40.

[79] *Miranda Magro v Portugal*, paras 80 and 81.

[80] HRC, *C. v. Australia*, UN Doc CCPR/C/76/D/900/1999 (28 October 2002), para 8.4. See also HRC, *Dafnis v. Greece*, UN Doc CCPR/C/135/D/3740/2020 (19 July 2022), para 8.3 and HRC, *Madafferi v. Australia*, UN Doc CCPR/C/81/D/1011/2001 (26 July 2004), para 9.3 (finding detention in a closed immigration detention facility disproportionate because of the impact on his mental and physical health, even though the detention centre had health services available).

[81] Committee against Torture, Concluding observations on the combined sixth and seventh periodic reports of Norway, CAT/C/NOR/CO/6-7, 13 December 2012, para 13 (concerning appropriate psychiatric care in prisons) and Committee against Torture, Concluding observations on the seventh periodic report of France, CAT/C/FRA/CO/7, 10 June 2016, paras 23-24 (addressing psychiatric care, solitary confinement, and high suicide rates in prisons).

34. Following self-harm, protective measures must be accompanied by appropriate assessment, supervision and care.[82] The CPT recommends "acts of self-harm should be approached from a therapeutic rather than punitive standpoint", with immediate medical assessment and appropriate care. The CPT cautions "separation and isolation of the prisoners who self-harm is likely to exacerbate any distress".[83]

35. The UN Special Rapporteur on Torture has taken the broader position that solitary confinement of persons with psychosocial disabilities, of any duration, constitutes cruel, inhuman, or degrading treatment.[84] Confinement intended to prevent self-harm must not itself create conditions incompatible with a detainee's dignity, vulnerability, and treatment needs, as supported by the UN Human Rights Committee in *Brough v. Australia.*[85] The ECtHR has stated that placement in a punishment isolation cell is "likely to aggravate any existing risk of suicide" and "reiterates that the vulnerability of mentally ill persons calls for special protection".[86]

CONCLUSION

36. In relation to persons deprived of their liberty, any recourse to physical force that has not been made strictly necessary by the person's own conduct diminishes human dignity and is, in principle, an infringement of Article 3[87]. No separate threshold of injury or suffering must be met: the assessment turns on whether the force was strictly necessary, and on whether it remained so, and proportionate, throughout the intervention. Where the use of force is established, it is for the State to demonstrate that it met that standard.

37. These principles apply without modification in immigration detention, which is administrative rather than punitive. The seriousness of any use of force is heightened where further factors of vulnerability are present, such as migration status or mental-health conditions. Such vulnerabilities are cumulative. They must inform the assessment of necessity, and they place obligations on the State to protect the detainee's health, dignity, and physical and mental integrity, including through adequate medical and psychological care, as well as requiring positive protection against violations of Article 3.[88]

[82] *Keenan v United Kingdom*, paras 111-116.

[83] CPT, Prison Standard – Healthcare in Prison, CPT/Inf (2025) 37, paras 81–84.

[84] Mandela Rules, Rules 44–46; UN General Assembly, Special Rapporteur on Torture Report on Solitary Confinement (A/66/268), 5 August 2011, para 78. The Rapporteur's categorical position is stricter than the CPT's framework for exceptional protective isolation.

[85] HRC, Brough v. Australia, CCPR/C/86/D/1184/2003, para 9.4.

[86] *Reynolde v. France*, Application No. 5608/05 (ECtHR, 16 January 2009), paras 107-109. See also *Ketreb v. France*, Application No. 38447/09 (ECtHR, 19 October 2012), paras 114 and 116.

[87] *Bouyid v Belgium*, para 88; *Keenan v. United Kingdom*, para 113.

[88] CRPD, Articles 3(a), 14(2), 15, and 17. See also Principles for the protection of persons with mental illness, Principle 1.2.