Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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Pushback action by member States

Motion for a resolution
tabled by Ms Tineke STRIK and other members of the Assembly

This motion has not been discussed in the Assembly and commits only those who have signed it

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Article 3 of the European Convention on Human Rights and Article 4 of the fourth Protocol thereto prohibit member States of the Council of Europe to return a migrant to another country without an individual assessment if this return is safe for the migrant in question. Despite the firm and clear judgements of the European Court of Human Rights in this regard (Hirsi, Sharifi, Khlaifia, N.D and N.T), there is still a practice of migrants being sent back automatically from the border or even from the main land. In some of these cases, member States claim that they were not responsible as the migrants had not yet reached their territory. The Court however has made clear that member States cannot limit their jurisdiction by creative constructions in order to circumvent their obligation to respect the human rights.

As this persistent practice of pushbacks leads to a clear risk of *refoulement*, it is an important threat to the necessary protection of refugees. It is therefore important that the Parliamentary Assembly reveals those practises and offers member States guidance on how they can protect their borders without violating the right to protection of refugees.

The resolution would map the standards and case law which constitute the legal framework of reference for the prohibition of push backs and collective expulsion. This mapping exercise would be followed by an overview of the practises in the member States, based on reports from independent sources and case-law from the European Court of Human Rights and national courts. This would form the basis for recommendations on the prevention of push backs and collective expulsions of migrants.

Signed (see overleaf)

Signed[1]*:*

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1. EC: European Conservatives Group
   EPP/CD: Group of the European People's Party
   SOC: Socialists, Democrats and Greens Group
   UEL: Group of the Unified European Left
   NR: Representatives not belonging to a Political Group