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Pushbacks on land and sea: illegal measures of migration management

Report[1]
Committee on Migration, Refugees and Displaced Persons
Rapporteur: Mr Pierre-Alain FRIDEZ, Switzerland, Socialists, Democrats and Greens Group

Summary

Pushbacks have taken on worrying proportions, taking place routinely on land, but also in the more deadly environment of the sea. Allegations are no longer limited to just one or two countries, or one or two incidents, but have become widespread and, most worryingly, part of tolerated policy. Pushbacks render the plight of migrants and refugees even harsher, heightening the risk to lose one's life in an extremely perilous journey.

Changes to the law and practice in the Council of Europe member States to stop pushbacks at land and sea and to codify the principle of *non-refoulement* in national legislation are indispensable. Article 3 of the European Convention on Human Rights and Article 4 of its Protocol No. 4 prohibit State Parties from returning migrants and asylum seekers to another country without an individual assessment as to whether this is safe. Member States are called upon to take a series of measures to prevent pushbacks, to protect the victims of pushbacks, to prosecute those responsible for pushbacks and to improve international co-operation and co-ordination between border authorities, police, and other bodies in charge of border protection.

The well-functioning independent border monitoring mechanisms at national and European levels is key, European Union being often the main destination of migrants and refugees arriving to Europe. The EU institutions should serve as guarantors of international human rights protection regarding the right to asylum and the prohibition of *refoulement*. The European Border and Coast Guard Agency (Frontex) should enhance its capacity to deal with allegations of pushbacks and allow for thorough investigation to bring those responsible for pushbacks to justice. Given that civil society organisations play an important role in documenting cases of pushbacks, States should encourage and support their participation in the independent monitoring mechanisms at national and European levels.

Interstate solidarity is essential for making Europe stronger and more resilient to face today's challenges. Migration is a natural societal phenomenon and should be addressed collectively as a continent for Europe to benefit fully from its positive consequences.

1. Reference to committee: Doc. 15180, Reference 4548 of 20 November 2020.

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A. Draft resolution[2]

1. The Parliamentary Assembly recalls its Resolution 2299 (2019) and its Recommendation 2161 (2019) "Pushback policies and practice in Council of Europe member States" and the subsequent reply by the Committee of Ministers (Doc. 15088), in which it welcomed the Assembly's continued attention to migrants and asylum seekers. The term "pushbacks" is "in line with the violent and physical nature of the practices involved", and it "may be applied broadly to cases of non-respect of human rights obligations related to refusal of entry into a country of persons seeking protection, the *refoulement* of those already within a territory, collective expulsion, obligations to carry out screenings, and other hostile action aimed to deny entry into European countries at land and sea borders". Pushback practices are also linked to "pullbacks", which consist in agreements between States aiming to retain migrants on one side in exchange for financial or economic advantage.

2. The Assembly notes that the Committee of Ministers stressed in its reply that the right to seek asylum must be respected, underscoring that asylum seekers have the right to an individual and fair examination of their applications by the competent authorities". The Committee of Ministers reiterated the obligation of the State receiving the asylum application to "ensure that return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, persecution, or serious violation of other fundamental rights which would, under international or national law, justify granting protection". Article 3 of the European Convention on Human Rights (ETS No. 5) and Article 4 of its Protocol No. 4 (ETS No. 46) prohibit member States of the Council of Europe returning migrants and asylum seekers to another country without an individual assessment as to whether this is safe.

3. The Assembly recalls its Resolution 2379 (2021) "Role of parliaments in implementing the United Nations global compacts for migrants and refugees" and Resolution 2408 (2021) "70th anniversary of the 1951 Refugee Convention: the Council of Europe and the international protection of refugees", where it agreed to support world efforts in protecting the right to asylum enshrined in the 1951 United Nations Convention Relating to the Status of Refugees ("the Refugee Convention") and other relevant international instruments.

4. The Assembly deplores the profound disregard of international standards on the matter in some countries, combined with the instrumentalisation of migration flow for political purposes in others, and concludes that the right to asylum continues to be breached. Border pushbacks have now taken on worrying proportions, taking place routinely on land and in the more deadly environment of the sea, becoming a pan-European problem which pertains to at least half of the member States. Allegations are no longer limited to just one or two countries, or one or two incidents, but have become widespread and, most worryingly, part of tolerated policy. Pushbacks from Croatia to Bosnia and Herzegovina, from Greece to Türkiye, from Malta and Italy to Libya, from Hungary to Serbia, and from Poland to Belarus render the plight of migrants and refugees even harsher, heightening the risk to lose one's life in an extremely perilous journey.

5. Furthermore, the Assembly calls upon the Council of Europe observer and member States, as well as States whose parliament enjoys the observer or partner for democracy status to the Assembly, to respect international obligations and to enhance interstate solidarity. They should work together to guarantee the right to asylum, including member States from Central and Northern Europe. Interstate solidarity is key for a stronger Europe from political, economic, social, and cultural perspective. Migration is a natural societal phenomenon and should be addressed collectively as a continent to be more effective and to benefit fully from its positive consequences.

6. The Assembly welcomes the Recommendation of the Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, "Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe's borders", where she addressed the role of members of parliament in preventing human rights violations at the borders, noting that parliamentarians can play an important role in preventing pushbacks, in line with their wider role as guarantors of human rights, both as legislators and as those responsible for carrying out democratic oversight of government action.

7. The Assembly underscores the importance of well-functioning independent border monitoring mechanisms at national and European levels. It forewarns, however, against the risk of paying lip service to the principle of independence by those national authorities that try to undermine the independence of such bodies by making them either dependent on the government for funding, by imposing membership in

2. Draft resolution adopted unanimously by the committee on 21 June 2022.

oversight committees for government-friendly entities, by restricting their access to the border or migrant retention facilities, or by limiting their actions through other means. It recalls the importance of democratic checks and balances and of independent monitoring in its fullest form.

8. The Assembly notes that the European Union is often the main destination of migrants arriving to Europe. The European Union institutions should, therefore, serve as guarantors of international human rights protection regarding the right to asylum and the prohibition of *refoulement*. The European Border and Coast Guard Agency (Frontex) should be called upon to enhance its capacity to deal with allegations of pushbacks and allow for thorough investigation to bring those responsible for pushbacks to justice. The Assembly underscores that effective border control and the protection of fundamental rights are fully compatible. The work of the Fundamental Rights Officer of Frontex should be, therefore, supported and its monitoring capacity enhanced.

9. The Assembly deplores the use of anti-smuggling legislation against human rights defenders and people engaged in search and rescue operations on land and at sea, making access to asylum for people on the move harder to reach. Right to asylum includes the right to be informed about asylum procedures, including by civil society organisations, advocacy groups, human rights defenders and specialised legal aid institutions. States must ensure that the functioning of such bodies is not *de facto* prohibited by criminalising their actions.

10. The Assembly welcomes the decisions taken by regional courts in some countries, ruling in favour of refugees, migrants and asylum seekers who had been pushed back outside the European Union's external borders, underscoring that the practice of pushing back asylum seekers gave rise to a violation of the principle of human dignity.

11. The Assembly calls for changes to the law and practice in the Council of Europe member States to stop pushbacks at land and sea and to codify the principle of *non-refoulement* in national legislation. In specific terms, it asks member States to take measures to prevent pushbacks, to protect the victims of pushbacks, to prosecute those responsible for pushbacks and to improve international co-operation and co-ordination between border authorities, police, and other bodies in charge of border protection, as follows:

11.1. as regards prevention:

11.1.1. to prevent all forms of "pushback" and "pullback" actions regarding migrants, refugees, and asylum seekers. Priority should be given to ensuring that border management is aligned with international law and human rights obligations. The Assembly underscores the need to ensure the individual assessment of protection needs and of the safety of a return in order to prevent violation of Article 3 of the European Convention on Human Rights and of the prohibition of collective expulsions, as enshrined in Article 4 of Protocol No. 4 to the Convention;

11.1.2. to establish secured access to border checkpoints, notably representatives of national prevention mechanisms should have full access to the checkpoints and retention facilities, where such exist, to ensure full respect of international asylum norms;

11.1.3. to make the national legislation and policies human rights-compliant and to amend migration legislation with a view to prevent and prohibit pushbacks and the denial of right to asylum;

11.1.4. to make the relevant legal framework accessible, precise and clear to all migrants, refugees and asylum seekers, available, as much as possible, in languages for them to understand the procedure. Relevant and effective means of redress should be in place in cases of denial of asylum in first instance;

11.1.5. considering that the civil society's role in upholding and advancing democratic values and fundamental rights, including the right to asylum, is crucial, especially as they play an important role in documenting cases of pushbacks, to encourage and support their participation in the independent monitoring mechanisms at national and European levels. Independent border monitoring mechanisms should be able to verify misconduct by State border police and report on it to the competent judicial authorities. Council of Europe member States must respect the role of non-governmental organisations and human rights defenders in conformity with their commitments, as set out in Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;

11.2. as regards protection:

11.2.1. to develop specific programmes to protect the victims of pushbacks, possibly in the framework of the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025) and to ensure that effective complaints mechanisms for the victims are in place. Urgent measures must be taken to ensure the protection of most vulnerable migrants and refugees: children, women, people with disabilities, and elderly people. An absolute prohibition of pushbacks of migrant children should be in place in all Council of Europe member States;

11.2.2. States members of the European Union should take measures to bring the European Union law and practice in compliance with human rights standards, as mentioned in the Assembly Resolution 2416 (2022) "European Union Pact on Migration and Asylum: a human rights perspective". This should include legal guarantees clearly established in the 1951 Refugee Convention and the European Convention on Human Rights. Practices violating the right to apply for asylum should stop;

11.3. as regards prosecution:

11.3.1. to ensure that allegations of pushbacks are fully investigated and those responsible are held to account to dissuade the continuation of such practices. The Assembly reiterates, therefore, the importance of the prohibition of torture or inhuman or degrading treatment and the prohibition of collective expulsions, which apply also during emergency situations;

11.3.2. to comply with judgments of national courts and of the European Court of Human Rights, including their interim measures, in relation to pushbacks and refusing access to asylum and even to an asylum procedure, and to follow up recommendations of national independent bodies such as ombudspersons, as stated in Resolution 2299 (2019), keeping in mind that codifying the principle of *non-refoulement* in national legislation is key;

11.4. as regards international co-operation and co-ordination:

11.4.1. to strengthen international co-operation and co-ordination in the fields of border protection, on the one hand, and migration management, on the other. This is of great relevance as regards search and rescue operations at sea which should be effective, saving lives being the primary objective. International co-operation and co-ordination at sea should, therefore, be further enhanced to prevent human tragedy at Europe's maritime borders;

11.4.2. co-operation between border police authorities should include specialised training on the application of international standards in access to an asylum procedure, to ensure that relevant measures are in place for any individual indicating their need to seek international protection. New technological means can be used to improve access to relevant procedures and provide relevant information to asylum seekers in various languages;

11.4.3. to enhance international co-operation at regional and world levels to take stock of the real progress on the right to asylum. The work of the United Nations Special Rapporteur on the Human Rights of Migrants, the United Nations High Commissioner for Refugees follow-up actions to ensure full compliance with the 1951 Refugee Convention and its 1967 Protocol, the actions of the Council of Europe Commissioner for Human Rights and of the Special Representative of the Council of Europe Secretary General on Migration and Refugees must guide public policies, in addition to the relevant treaty bodies;

11.4.4. to further develop international co-operation between EU and non-EU countries' border police structures, with the participation of Frontex, with the aim of upgrading the competences of border police in the Council of Europe member States as regards the right to asylum, in full compliance with the 1951 Refugee Convention and its 1967 Protocol, the European Convention on Human Rights, and other relevant treaties. Redress measures for failure to respect the law should be clearly stated and applied.

12. The Assembly welcomes the new initiatives aimed at ensuring protection of Europe's borders in full respect of fundamental rights and dignity of those who attempt to cross the borders. It calls for an open and constructive discussion based on the findings of the feasibility study that was launched for setting up a robust and independent human rights monitoring mechanism at the external borders of the European Union on 4 May 2022.

13. Finally, the Assembly calls for stronger commitment to upholding human rights standards at Europe's borders. Time has come for parliamentarians to stand up against pushbacks and to follow the developments closely both at the national and European levels.

B. Explanatory memorandum by Mr Pierre-Alain Fridez, rapporteur

1. Introduction

1. As States tighten their border control measures, denials of entry and expulsion of individuals without any individual assessment of international protection needs have been widely documented as a growing phenomenon at the European Union's external borders. This lack of individual assessment is highly detrimental to the rights of migrants, refugees and asylum seekers, as it violates their right to seek asylum and the principle of *non-refoulement*.

2. These practices, which are systematic in several countries, are referred to as "pushbacks". In a previous report of the Parliamentary Assembly released in June 2019, Ms Tineke Strik (Netherlands, SOC) clarified this notion by stating that the term "is in line with the violent and physical nature of the practices involved", and added that it "may be applied broadly to cases of non-respect of human rights obligations related to refusal of entry into a country of persons seeking protection, the *refoulement* of those already within a territory, collective expulsion, obligations to carry out screenings, and other hostile action aimed to deny entry into European countries at land and sea borders".[3] Pushback practices are also linked to "pullbacks", which consist in agreements between States aiming to retain migrants on one side in exchange for financial or economic advantage.

3. In the continuity of the previous report released in 2019, the committee will emphasise the necessity for member States to comply with the legal framework prohibiting pushback practices and policies, and highlight numerous guidelines to help States avoid practices that are not in line with human rights and refugee rights commitments.

4. The tragic consequences of the Russian aggression against Ukraine that forced millions of people to seek refuge either in Ukraine or abroad have been covered in Resolution 2448 (2022) "Humanitarian consequences and internal and external migration in connection with the aggression of the Russian Federation against Ukraine", adopted on the basis of my report (Doc. 15547).

2. The international and European legal framework on the prohibition of pushbacks

2.1. The United Nations

5. The *non-refoulement* principle, cornerstone of refugee protection guaranteed by the 1951 Geneva Convention in its Article 33.1, prevents refugees from being expelled or returned to the frontiers of territories where their lives or freedom would be threatened in consideration of their race, religion, nationality, membership of a particular social group or political opinion. In this regard, States have the obligation to ensure that measures at their borders provide an individual assessment of each situation.

6. Collective expulsions are also prohibited as a principle of general international law. Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture) extends the scope of the 1951 Refugee Convention to include the prohibition of expulsion, *refoulement* or extradition of any person to another State where they fear to be in danger or subjected to torture.[4] Moreover, the rights enshrined in the International Covenant on Economic, Social and Cultural Rights apply to all individuals, regardless of their legal status and documentation.[5] The UN Convention on the Law of the Sea also states the duty to render assistance to any person in distress at sea.

7. The necessity to comply with the above-mentioned legal framework has been recalled in the UN Global Compact on Refugees[6] as well as in the UN Global Compact for Safe, Orderly and Regular Migration.[7]

2.1.1. United Nations High Commission for Refugees (UNHCR)

8. The UNHCR has been extremely active in addressing violations of refugees and asylum seekers' fundamental rights, especially in the context of pushbacks.

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3. PACE, "Pushback policies and practice in Council of Europe Member States", 8 June 2019, Doc. 14909.
4. United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
5. https://fra.europa.eu/en/law-reference/committee-economic-social-and-cultural-rights-general-comment-no-20-non-discrimination.
6. United Nations Global Compact on Refugees, 2018.
7. A/RES/73/195.

9. Regarding the increasing practices of expulsions and pushbacks of asylum seekers, migrants and refugees at the European Union's external borders, the UNHCR has, in January 2021, called on the European Union and its member States to end these practices urgently and to conduct independent investigations.[8] Indeed, the UNHCR stated that it received numerous reports of some European States carrying out pushbacks "in a violent and apparently systematic way". It recalled that the 1951 Refugee Convention as well as the European legal framework require States to ensure the right to seek asylum by "undertaking an individual assessment of those in need of protection", "even if they enter irregularly". It specified that the Covid-19 pandemic provided no exception to the obligation of ensuring a fair and speedy access to asylum procedures.

10. More recently, the UN Refugee Agency shared its sorrow concerning the deaths of migrants, refugees and asylum seekers occurring near the border between Poland and Belarus. It recalled its growing concern following the reports of pushbacks carried out at the borders of Lithuania, Latvia and Belarus and stated that pushbacks are a threat to the life of migrants, refugees and asylum seekers, and are prohibited under international law. The UNHCR called for the States to work collaboratively on this matter and to prioritise human rights.[9]

11. In its "Recommendations for the French and Czech Presidencies of the Council of the European Union (EU)" in 2022, the UNHCR explained that it "remains gravely concerned about systematic and increasingly violent pushbacks at the EU's external borders. The various human rights violations they encompass are clearly at odds with EU and international law. MS must end these practices and investigations should be conducted into credible reports".[10]

12. In February 2022, triggered by an ever increasing number of incidents of violence and serious human rights violations at various European borders, several of which have resulted in tragic loss of life, UN High Commissioner for Refugees, Filippo Grandi, denounced that "Violence, ill-treatment and pushbacks continue to be regularly reported at multiple entry points at land and sea borders, within and beyond the EU, despite repeated calls..." and expressed fear that "these deplorable practices now risk becoming normalized, and policy based. They reinforce a harmful and unnecessary 'fortress Europe' narrative." He called on States to "uphold their commitments and respect fundamental human rights, including the right to life and right to asylum. How Europe chooses to protect asylum-seekers and refugees matters and is precedent-setting not only in the region but also globally".[11]

2.1.2. International Organization for Migration (IOM)

13. The IOM has repeatedly expressed its concern about persistent reports of pushbacks and collective expulsions, particularly concerning those occurring at the EU border between Greece and Türkiye.[12] It stated that priority should be given to ensuring that border management is aligned with international law and in accordance with human rights obligations.

14. In line with the statements released by the UNHCR, the IOM, in February 2021, also called on EU member States to take urgent action to end pushback practices and the use of violence against migrants, refugees and asylum seekers at the EU's land and sea external borders.[13] Indeed, the IOM conducted direct interactions with migrants which confirmed the documented reports it received demonstrating the level of violence these persons experienced before being pushed back across maritime and land borders.

15. The IOM underlined the prohibition of pushbacks and collective expulsion under international and European law, and welcomed recent investigations initiated by several EU Member States into allegations of pushbacks. The IOM highlighted multiple times the need to improve migration and asylum policy, and offered its continuous support to the EU member States on implementing migration governance respecting the human rights of every individual.

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8. www.unhcr.org/news/press/2021/1/601121344/unhcr-warns-asylum-under-attack-europes-borders-urges-end-pushbacks-violence.html.
9. www.unhcr.org/news/press/2021/10/6172af254/unhcr-urges-states-end-stalemate-belarus-eu-border-avoid-further-loss-life.html.
10. www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=61d71e864&skip=0&query=UNHCR%20Recommendations%20EU%20French%20Presidency.
11. www.unhcr.org/news/press/2022/2/62137a284/news-comment-unhcr-warns-increasing-violence-human-rights-violations-european.html.
12. www.iom.int/news/iom-alarmed-over-reports-pushbacks-greece-eu-border-turkey.
13. www.iom.int/news/iom-calls-end-pushbacks-and-violence-against-migrants-eu-external-borders.

2.1.3. Special Rapporteur on the Human Rights of Migrants

16. Following the resolution adopted by the Human Rights Council in June 2020[14], the UN Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, released a report on means to address the human rights impact of pushbacks of migrants on land and at sea.[15] He conducted an examination on current global practices and concluded that there had been an alarming increase of pushback practices occurring in numerous States on a worldwide scale, often including the use of force. The Special Rapporteur stated that "pushbacks manifest an entrenched prejudice against migrants" which results in the denial of access to human rights-based and individualised assessment of applications for international protection.

17. The Special Rapporteur expressed numerous recommendations to put an end to pushback practices. First, he urged States to implement and fully respect international and regional human rights obligations, to ratify the core international human rights instruments and harmonise their domestic legislation with the prohibition of collective expulsions and *refoulement*. Moreover, the Special Rapporteur called on States to ensure an individual examination and effective remedy before a judicial authority, and to set appropriate administrative and legislative mechanisms to ensure an effective access to rights to all migrants. Finally, it encouraged States to acknowledge the role of civil society organizations in addressing and monitoring pushbacks and urged them not to criminalise private actors who carry out rescue operations to help migrants in distress.

2.2. The Council of Europe

2.2.1. European Court of Human Rights

18. Despite the absence of the right to seek asylum being expressly enshrined in the European Convention on Human Rights, the Court requires member States to provide an individual assessment of protection needs and an effective access to asylum procedures to prevent the breach of Article 3 (torture and inhuman or degrading treatment or punishment) of the Convention and Article 4 of Protocol No. 4 of the Convention, which prohibits collective expulsions of aliens. Article 13 of the Convention, guaranteeing the right to an effective remedy, also applies in the context of prohibition of pushback policies.

19. According to the former European Commission of Human Rights, collective expulsions refer to "any measure of the competent authority compelling aliens as a group to leave the country, except where such a measure is taken after and on the basis of a reasonable and objective examination of the particular case of each individual alien of the group".[16] The need to provide individualised assessments of applications to international protection is thus at the core of the Court's case law.

20. In the key case *Hirsi Jamaa and others v. Italy*,[17] the Court held that automatic returns without individual assessment and the lack of access to a legal redress constitutes an infringement to the above-mentioned legal provisions. The Court found "that the transfer of the applicants to Libya was carried out without any form of examination of each applicant's individual situation. It has not been disputed that the applicants were not subjected to any identification procedure by the Italian authorities, which restricted themselves to embarking all the intercepted migrants onto military ships and disembarking them on Libyan soil. Moreover, the Court notes that the personnel aboard the military ships were not trained to conduct individual interviews and were not assisted by interpreters or legal advisers. That is sufficient for the Court to rule out the existence of sufficient guarantees ensuring that the individual circumstances of each of those concerned were actually the subject of a detailed examination. Having regard to the above, the Court concludes that the removal of the applicants was of a collective nature, in breach of Article 4 of Protocol No. 4 to the Convention. Accordingly, there has been a violation of that Article". While concluding on the breach of Article 4 of Protocol No. 4 by Italy due to its pushback practices in international waters together with Libya, the Court enshrined the need for States to respect the Convention's standards while exercising their jurisdiction outside their national territory, thus prohibiting collective expulsions at sea.

14. A/HRC/RES/43/6.
15. A/HRC/47/30 (www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/Pushback-practices.aspx).
16. European Court of Human Rights, 3 October 1975, *Henning Becker v. Denmark*, Application no. 7011/75.
17. European Court of Human Rights, 26 May 2009, *Hirsi and others v Italy*, no. 27765/09, para. 185-186.

21. In 2019, the Court ruled in the case *Ilias and Ahmed v. Hungary* that the pushback of two Bangladeshi nationals to Serbia did not provide effective safeguards from the risk of being subjected to inhuman or degrading treatment, considering the real risk, at the time, of further expulsion to North Macedonia and to Greece. This shows the particular attention of the Court towards chain pushbacks.[18]

22. In 2020, in the joint cases *N.D. and N.T. v. Spain*, the Court held that migrants who had wilfully failed to comply with official asylum procedures and irregularly entered the Spanish territory as part of a large group placed themselves at risk deliberately.[19] Thus, the Grand Chamber of the Court concluded there had been no violation of Article 4 of Protocol no 4 of the Convention. The international community criticised this judgement for not following the Court's previous case law nor the international standards regulating the prohibition of pushbacks.[20] In her dissenting opinion, Judge Koskelo held that the shift in focus from the well-established requirements under the obligation of *non-refoulement* to the setting on a new criterion based on the "own conduct" of individuals seeking international protection will lead to uncertainties and practical difficulties in the future.

23. When the European Court of Human Rights condemns a State for a violation of a right guaranteed by the Convention, structural indications are given to the State where necessary to adapt its domestic law in accordance with the Convention. Furthermore, several tools aiming to provide member States with guidelines relating to migration policies have been created to assist legal professionals and State authorities in this matter. The Human Rights Education for Legal Professionals (HELP) of the Council of Europe offers online courses dealing with Asylum and Human Rights as well as Refugee and Migrant Children which can be useful for the training of migration authorities.

2.2.2. Council of Europe Commissioner for Human Rights

24. The Commissioner for Human Rights, Dunja Mijatović, has released numerous statements urging States to prevent the denial of access to asylum and the return of migrants and refugees without individual safeguards. She has also called for an end to what has become the normalisation of pushback practices[21] and deplored the regrettable building of walls and fences, the restrictions on asylum applications and pushback policies in the context of the crisis faced by the people of Afghanistan.[22]

25. The Commissioner for Human Rights also corresponds directly with member States of the Council of Europe by addressing letters to public authorities. In this regard, the Commissioner urged Malta to refrain from conducting unlawful returns of migrants, refugees and asylum seekers to Libya in 2020.[23] More recently, she addressed a letter urging the Cypriot authorities to investigate allegations of pushbacks and ill-treatment of migrants due to numerous documented reports indicating that boats carrying migrants had been prevented from disembarking in Cyprus and summarily returned in a systematic manner.[24] The Commissioner also addressed a letter to the Prime Minister of Lithuania to express her concern about the breach of access to fair asylum procedures and allegations of summary returns of migrants without adequate safeguards.[25]

26. The Commissioner regularly publishes third party interventions to the European Court of Human Rights. In a recent case concerning three Syrian applicants pushed back from Croatia to Bosnia and Herzegovina,[26] the Commissioner shared her concern about the existence of an established practice of collective returns of migrants from Croatia, as referred to in her observations of December 2020 (CommDH(2020)33).[27] These are

18. European Court of Human Rights, 21 November 2019, *Ilias and Ahmed v. Hungary*, no 47287/15.
19. European Court of Human Rights, 13 February 2020, *N.D. and N.T. v. Spain*, nos 8675/15 and 8697/15.
20. https://cadmus.eui.eu/handle/1814/66629
21. www.coe.int/en/web/commissioner/-/european-states-must-stand-up-against-pushbacks-and-the-attempt-to-legalise-them.
22. www.coe.int/en/web/commissioner/-/in-their-response-to-afghans-seeking-safety-council-of-europe-member-states-should-not-undermine-human-rights-protections.
23. www.coe.int/en/web/commissioner/-/commissioner-urges-malta-to-meet-its-obligations-to-save-lives-at-sea-ensure-prompt-and-safe-disembarkation-and-investigate-allegations-of-delay-or-no.
24. www.coe.int/en/web/commissioner/-/cypriot-authorities-should-investigate-allegations-of-pushbacks-and-ill-treatment-of-migrants-improve-reception-conditions-and-ensure-an-enabling-envi.
25. www.coe.int/en/web/commissioner/-/lithuania-safeguards-in-asylum-procedures-and-preventing-pushbacks-should-be-central-to-response-to-migration-challenges.
26. European Court of Human Rights, *S.B. v. Croatia, A.A. v. Croatia and A.B. v Croatia*, nos 18810/19, 18865/19 and 23495/19.
27. www.coe.int/en/web/commissioner/-/commissioner-publishes-observations-on-summary-returns-of-migrants-from-croatia-to-bosnia-and-herzegovina

reportedly carried out without any assessment of the migrant's individual situation, leading to systematic breaches of Croatia's international obligations, as she had underscored in the exchanges of views with the Committee on Migration, Refugees and Displaced Persons on 2 December 2020 and on 27 April 2022.

27. Her Recommendation entitled "Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe's borders" identifies four concrete areas where urgent action would be required: member States must implement their legal obligations in good faith; there is a need to strengthen transparency and accountability for actions at borders; tackling pushbacks requires all member States to act together, and parliamentarians have a key role as legislators to guarantee respect of human rights standards. Parliamentarians played an important role also by carrying out democratic oversight of government action. I, therefore, commend Commissioner Mijatović's efforts to enhance respect for human rights standards at Europe's borders and her call for stronger commitment by members of parliaments in that regard.

2.2.3. Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

28. As part of its role as a non-judicial preventive mechanism to protect persons against torture and ill-treatment, the CPT conducts visits in all Council of Europe member States aiming to assess how persons deprived of their liberty are treated.

29. In 2020, the CPT published a report concerning its *ad hoc* visit to Greece in March of the same year. Although it recognised the significant challenges Greece is facing in terms of the number of migrants entering the Greek territory, the committee urged the Greek authorities to comply with their human rights obligations.[28] It recalled the consistent allegations of migrants being pushed back to Türkiye and the need for the Greek authorities to put an end to these practices and to prevent them from happening. Moreover, the CPT underlined the unlawful methods carried out by the Greek Coast Guard consisting in preventing boats carrying migrants from reaching the Greek islands and questioned the role of Frontex in such actions.

2.2.4. Special Representative of the Secretary General on Migration and Refugees

30. Under her mandate, the Special Representative provides advice to member States on legal aspects of migrants and refugees' human rights standards. In 2020, the European Union Agency for Fundamental Rights, along with the Special Representative, published a report on "Border controls and fundamental rights at external land borders", which provides practical guidance aiming to support border-management authorities and member States to implement the fundamental rights safeguards of the EU law instruments.[29]

31. Moreover, the Special Representative published a second joint note with the EU Agency for Fundamental Rights in 2021.[30] Focusing on effective remedies for human rights violations at EU's external borders, the note emphasised the need for member States to conduct independent investigations, which must adequately establish the facts and be thorough and objective. The investigations should also remain accessible to the victim and investigating authorities must co-operate with the relevant authorities of other States involved, particularly in cross-border cases.

32. Recently, the Special Representative has published a report on her fact-finding mission to Bosnia and Herzegovina.[31] This report highlights structural deficiencies concerning access to asylum and emphasised the need for the relevant legal framework to be accessible, precise and clear to all migrants, refugees and asylum seekers. The Special Representative also drew the attention of the authorities to the need to implement legislation in accordance with the refugee and migrants' fundamental rights.

28. www.coe.int/en/web/cpt/-/council-of-europe-s-anti-torture-committee-calls-on-greece-to-reform-its-immigration-detention-system-and-stop-pushbacks.
29. https://fra.europa.eu/en/publication/2020/border-controls-and-fundamental-rights-external-land-borders.
30. https://fra.europa.eu/en/publication/2021/legal-remedies-borders.
31. Report of the fact-finding mission by Ambassador Drahoslav Štefánek, Special Representative of the Secretary General on migration and refugees, to Bosnia and Herzegovina, 24-30 January 2021, SG/Inf(2021)19.

2.3. The European Union

2.3.1. The EU legislation

33. EU primary and secondary legislation also provides protection against pushback policies and practices. Article 78 of the Treaty on the Functioning of the European Union (TFEU) states that the European common policy on asylum, subsidiary protection and temporary protection must ensure compliance with the principle of *non-refoulement*. Such guarantee is also provided by the EU Charter of Fundamental Rights in its Articles 18 and 19, recognising the right to asylum and the absolute prohibition on collective expulsions. The Qualification Directive[32] incorporated the 1951 Refugee Convention standards for the qualification of refugees and persons in need of international protection into EU law, thus prohibiting member States from expelling migrants, refugees and asylum seekers to a State where they face a real risk of persecution.

34. Additionally, the Directive 2008/115 on the return of illegally staying third-country nationals sets out the standard procedures applicable to their return, "in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations". EU member States are also required to conduct an individual registration and examination of all asylum applications under the Asylum Procedures Directive.[33] In the event of a massive influx of arrivals of migrants, asylum seekers and refugees, Article 6 of the Asylum Procedures Directive enables the prolongation of the delay to register and examine asylum applications. However, authorities do not have the right to deny the right to seek asylum.

35. The Schengen Borders Code, which regulates the border control of persons crossing the external borders of EU member States, also underlines the necessity to respect the principle of *non-refoulement* and the fundamental rights of refugees and persons requesting international protection in its Articles 3 and 4.[34] Under Article 14 (3) of the same regulation, a person whose entry was refused at a border crossing point has a right to appeal.

36. In September 2020, the European Commission published a proposal for a New Pact on Migration and Asylum.[35] The New Pact includes new instruments concerning the conduct of migration influx, such as a proposal for a pre-entry screening applicable to third-country nationals arriving at the EU external border, introducing common rules on individual identification, fingerprinting and registration of migrants.[36] Although this proposal aims to provide new legal safeguards to ensure a full assessment of each individual, the proposed Pact raises significant concerns. Indeed, a report prepared by the Assembly on the proposed pact highlights the fact that the accelerated procedure implied by the screening proposal may increase the risk of violation of the principle of *non-refoulement*.[37] The New Pact also raises concerns in terms of access to asylum, detention and expulsion.

37. In the context of the instrumentalisation of unlawful immigration by the Belarusian regime, 12 EU member States have made a request to the European Commission expressing their wish to build fences at the EU's external borders funded by the EU budget.[38] Such an unfortunate proposal, which would lead to severe violations of European and international human rights standards, has been turned down by the Commission.

38. On 24 January 2022, the Assembly adopted Resolution 2416 (2022) "European Union Pact on Migration and Asylum: a human rights perspective". The resolution urged improvements to the proposed new EU Pact on Migration and Asylum. The Assembly welcomed the EU's commitment to integrating European human rights fully into all its policies on migration and asylum but said its proposed new Pact on Migration and Asylum was "very complex" and raised concerns that proposed accelerated asylum procedures may reduce their quality and fairness. The Assembly recommended that EU member States agree to a mandatory relocation system, as a measure of solidarity with EU border countries, prioritising the cases of family reunion

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32. Qualification directive (2011/95/UE).
33. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, pp. 60-95).
34. Regulation (EU) 2016/399 of the European Parliament and the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).
35. COM/2020/609.
36. COM/2020/612 final.
37. Assembly report entitled "European Union Pact on Migration and Asylum: a human rights perspective", rapporteur Mr Oleksii Goncharenko (Ukraine, EC/DA), Doc. 15438.
38. www.euractiv.com/section/justice-home-affairs/news/twelve-member-states-ask-commission-to-finance-physical-barriers-as-border-protection-measures/?_ga=2.249979268.300093433.1637312323-950053773.1637312323.

and unaccompanied migrant children. It also invited the EU to amend the Pact's proposed Screening Regulation to ensure that it includes an effective suspensive remedy against incorrect screening categorisation, and to better address the needs of persons in vulnerable situations, victims of human trafficking and women victims of gender-based violence. European Commissioner for Home Affairs Ylva Johansson, taking part in the debate remotely, underlined that the proposals sought to manage arrivals in an orderly way. Not all people seeking entry to the EU have a right to stay, she pointed out, but all should have a fair assessment, a clear decision within a reasonable time, and be treated with respect and dignity. She welcomed the Assembly's report and pledged to take it into account.

2.3.2. The Court of Justice of the European Union (CJEU)

39. In the judgement *European Commission v. Hungary*, the CJEU ruled that Hungary had failed to comply with its obligation under EU law due to the lack of effective access to procedures granting international protection and the illegal pushbacks of third-country nationals to Serbia.[39] Applications for international protection could only be made from one of the two transit zones at the Serbian-Hungarian border thus drastically limiting the possibility for claiming asylum.[40] In addition, the Court underlined that the systematic nature of the detention regime provided in the Hungarian transit zones violated fundamental rights guaranteed by the EU legislation. Following this judgement, the European agency Frontex suspended all operations in Hungary.

40. However, in February 2021, an alleged number of 4 903 people were pushed back to Serbia since the Court's judgement, according to the Hungarian Helsinki Committee along with other human rights advocacy groups.[41]

2.3.3. The European Border and Coast Guard Agency (Frontex)

41. Created to provide EU Member States and non-EU countries with operational and technical assistance in search and rescue operations at sea, Frontex has the duty to act in accordance with EU law and conduct actions aimed at saving lives.[42] However, the European agency has been strongly criticised for operating in areas where illegal and violent pushbacks were reported by several international and European non-governmental groups, including in Bulgaria, Croatia, Cyprus, Greece and Malta.[43]

42. Frontex introduced an Individual Complaints Mechanism in 2016, allowing any individual whose rights have been violated during a Frontex operation to submit a complaint to the Frontex Fundamental Rights Officer. Considering the alleged breaches of fundamental rights conducted by Frontex, the EU Ombudsman evaluated Frontex accountability mechanisms between 2016 and 2021. In her report released in June 2021, she underlined that the mechanism was subject to "inadequate transparency", even though progress was now being made.[44]

43. The Frontex Scrutiny Working Group of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, constituted at the beginning of 2021, released a report summarising a four-month investigation on alleged violations of fundamental rights in which Frontex was involved or did not report.[45] Following this report, in September 2021, the Committee on Budgetary Control asked for the freeze of a part of Frontex's budget due to unresolved issues in the conduct of its operations on cross-border crime and illegal immigration.[46]

44. On 28 February 2022, the Director-General of the European Anti-Fraud Office, Ville Itälä, presented the agency's report on Frontex at a meeting of the Committees on Budgetary Control and on Civil Liberties, Justice and Home Affairs. It looked into allegations of misconduct within Frontex in connection with human rights violations at the EU's external borders. According to the summary, the report, which allegedly MEPs did not have access to, revealed that Frontex's management was aware of human rights violations and deliberately avoided reporting them. Frontex's management have denied any wrongdoing, pointing instead to

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39. European Court of Justice, Grand Chamber, *European Commission v. Hungary*, 17 December 2020, C-808/18.
40. https://curia.europa.eu/jcms/jcms/p1_3362761/en.
41. www.infomigrants.net/en/post/29944/hungary-4903-pushbacks-after-eu-court-declared-them-illegal.
42. Regulation (UE) 2016/1624; Regulation (EU) 2019/1896.
43. www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders.
44. www.ombudsman.europa.eu/en/decision/en/143108#_ftnref4.
45. LIBE Committee on Civil Liberties, Justice and Home Affairs, Report on the fact-finding investigation on Frontex concerning alleged fundamental rights violations, 14 July 2021.
46. www.europarl.europa.eu/news/en/press-room/20210923IPR13401/ep-committee-asks-for-part-of-frontex-budget-to-be-frozen.

supposed ambiguities in EU regulations. As a member of the Frontex Management Board, the European Commission was asked to decide on the action to be taken against the agency's Executive Director. Further to that, Mr Leggeri, the Head of Frontex, resigned on 29 April 2022.[47]

45. In June 2021, Mr Jonas Grimheden took up the post of Fundamental Rights Officer for Frontex, and his work, along with that of his staff, many of whom still need to be appointed, will be important in the context of ongoing scrutiny of Frontex's border actions. At its meeting of 28-29 April 2022, the Frontex's Management Board clearly stated that effective border control and the protection of fundamental rights are fully compatible.[48] This should now be ensured by the Frontex's Fundamental Rights Officer and his team.

46. On 20 April 2022, I visited Frontex Headquarters in Warsaw, Poland. This visit was triggered because of allegations that Frontex colluded in pushbacks. I met with Mr Jonas Grimheden and Fundamental Rights Monitors from his team: Ms Delphine Buffat, Ms Katarzyna Wencel, Ms Luana Scarcella. I also met with Mr Lars Gerdes, Frontex Deputy Executive Director for Returns and Operations, Ms Ana Cristina Jorge, Director of Operational Response Division, Mr Dirk Vande Ryse, Director of Situational Awareness and Monitoring Division, Ms Anna Polak, Head of the Executive Affairs Unit, and Ms Eleonora Maffezzoli, Senior Policy Officer in the Executive Affairs Unit. I regretted the fact that Frontex representatives considered that there had been allegations but no evidence (inquiries were carried out at the time of my visit).

47. I had a strong impression that Frontex must have known about cases of pushbacks and invited Frontex to conduct serious investigations and take measures to prevent pushbacks in future. The EU institutions should, indeed, serve as guarantors of international human rights protection regarding the right to asylum. Frontex should be called upon to enhance its capacity to deal with allegations of pushbacks and allow for thorough investigation to bring those responsible to justice. The work of the Fundamental Rights Officer of Frontex should be, therefore, supported and its monitoring capacity enhanced.

2.3.4. New initiatives

48. I am aware about the new initiatives aimed at ensuring the protection of Europe's borders in full respect of fundamental rights and dignity of those who attempt to cross them, such as the launch of the feasibility study for the setting up of a robust and independent human rights monitoring mechanism at the external borders of the European Union on 4 May 2022, voiced by a group of authors (Mr Markus Jaeger, Mr Apostolis Fotiadis, Ms Elspeth Guild and Ms Lora Vidović), with the support of the rapporteur for the Assembly's 2019 report entitled "Pushback policies and practice in Council of Europe member States", Ms Tineke Strik (MEP, Greens/EFA, Netherlands). Such new initiatives should be welcomed.

3. The role of civil society

49. Civil society's role in upholding and advancing democratic values and pluralism in society is crucial. To this end, the Conference of International Non-Governmental Organisations of the Council of Europe is the representative body of INGOs within the Council of Europe.

50. Many non-governmental organisations, such as the Border Violence Monitoring Network, Amnesty International, Human Rights Watch and the Danish Refugee Council are engaged in monitoring, documenting and reporting existing border violence. Many are also active in public and private advocacy, and others take part in life-saving search and rescue operations, humanitarian assistance, as well as legal aid.

51. According to the figures published by the Danish Refugee Council, from December 2019 until the end of December 2021 over 23 614 pushbacks were recorded,[49] as well as a rise in the number of pushbacks accompanied by violence, torture, confiscation and destruction of personal belongings. The unlawful actions by border police were recorded also by the Centre for Peace Studies in Croatia, which submitted five criminal complaints to the State Attorney's Office against the unknown perpetrators' police officials, who tortured, humiliated and pushed back refugees from the territory of Croatia to Bosnia and Herzegovina. Criminal complaints referred to a case of pushbacks that concerned 33 persons, that led to physical marking of refugees with orange spray all over their heads in June 2020, the case of torture and humiliation of 16 refugees in July 2020, a case of torture, rape and pushback after the victims were released from the Court in

47. www.lemonde.fr/en/international/article/2022/04/29/frontex-boss-leggeri-resigns-from-eu-border-control-agency_5981965_4.html.
48. https://frontex.europa.eu/media-centre/management-board-updates/management-board-conclusions-from-the-extraordinary-mb-meeting-of-28-29-april-2022-nr08YV.
49. DRC, "Pushbacks Feature".

December 2020, a case of a violent pushback from the railway, with refugees who were forced to undress, got beaten and humiliated, as well as a case of an Afghan family of six with a pregnant women, who were denied their right to seek international protection, put into a van, brought to the border and ordered to leave Croatian territory in August 2021.

52. In an attempt to discourage new migration flows, a disconcerting number of NGOs in Greece, Italy, Malta and Croatia have been criminalised by State authorities, often using anti-smuggling legislation and accusations of facilitating irregular migration. Their independence, neutrality and impartiality have been in many instances questioned.[50] Ignoring the humanitarian imperative, individuals and civil society organisations supporting people on the move have been in many cases (for example Greece, Croatia, Italy, Malta) heavily criminalised. The reasoning behind this approach is that the poorest the services provided, the less people will be seeking international protection and/or residency in EU countries.

53. On 20 February 2022, during my mission to Croatia and Bosnia and Herzegovina, I met the representatives of the Border Violence Monitoring Network: Ms Milena Zajović, Head of Advocacy Border Violence Monitoring Network and President of Are You Syrious, Ms Sara Kekuš, Project Manager, Centre for Peace Studies, and Ms Alexandra Bogos, Advocacy and Legal Coordinator, Border Violence Monitoring Network, whose contributions to my report were very valuable and timely.

4. Encouraging measures at national level and domestic case law

54. Although an alarming pattern of increasing pushback practices can be observed among European States and more globally, on a worldwide scale, several EU Member States have recently ruled in favour of refugees, migrants and asylum seekers who had been pushed back at the EU's external borders. One such decision was recently adopted by an Austrian regional court in July 2021, which ruled that the practice of pushing back asylum seekers to Slovenia gave rise to a violation of the principle of human dignity.[51] A similar verdict was issued by the Administrative Court of Ljubljana in July 2020, which held that the pushback of a Cameroonian asylum seeker to Croatia and the denial of his right to seek asylum violated the EU Charter of Fundamental Rights.[52]

55. The UN Special Rapporteur on the human rights of migrants depicted numerous promising measures aiming to prevent and condemn pushback practices in his latest report. He noted that many States have codified the principle of *non-refoulement* in their domestic legislation. This key principle has also been enshrined in some countries' constitutions, such as in Austria and Finland.[53]

56. More concretely, a secured access to border checkpoints has been established in some States such as Switzerland, where border police authorities must ensure access to the asylum procedure to any individual indicating their need to seek international protection. It is however not just law that is important, it is also practice and the training of police and migration authorities that is essential to prevent the perpetration of pushbacks.

5. Pushbacks involving member States of the Council of Europe

57. The illegal practice of pushbacks has been reported in a concerning number of Council of Europe countries including pushbacks to third countries such as Belarus and Libya. A brief presentation of the most notable case studies, namely those to Belarus and Libya, will be made here in an attempt to highlight the current situation.

58. People on the move are often the victims not only of a humanitarian crisis but also of political games putting their lives and freedom at risk. Migrants, refugees and asylum seekers have been instrumentalised as a means of providing political pressure. This has happened in relation to Türkiye and Greece, together with the European Union. It has also happened more recently with Belarus and its neighbours, Lithuania, Poland and Latvia, and the European Union.

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50. See para. 5 and 108, https://rm.coe.int/expert-council-conf-exp-2020-4-opinion-ngo-registration-greece/16809ee91d.
51. www.euractiv.com/section/politics/short_news/austrian-regional-court-rules-that-push-backs-on-slovenian-border-are-unlawful/.
52. https://balkaninsight.com/2021/08/19/courts-chip-away-at-migrant-pushback-practices-in-eu/.
53. A/HRC/47/30.

59. The majority of the Council of Europe countries engaging in such practices are also EU members neighbouring with non-EU States mandated to act as the guardians of the European Union's external borders (for example Greece, Croatia, Lithuania, Poland, Latvia, Italy, Spain). Within this framework, the EU itself or its member States with the European Union's support, sign agreements with neighbouring countries (such as those with Türkiye and Libya) aiming to contain migratory flows from reaching EU soil in exchange for money, aid or other kinds of political favours. This approach is sometimes referred to in the context of "pullbacks".

5.1. Pushbacks from Croatia to Bosnia and Herzegovina and Serbia

60. There are numerous reports and visual footage[54] of unlawful returns, collective expulsions as well as inhuman and degrading treatment of migrants taking place at the borders between Croatia and Bosnia and Herzegovina,[55] Croatia and Serbia and Croatia and Slovenia. The NGO Danish Refugee Council, which is active in the region, documented nearly 7 000 such cases from Croatia to Bosnia and Herzegovina in 2019 and another 16 000 cases in 2020.[56] Migrants unlawfully returned to Bosnia and Herzegovina have often experienced a series of pushbacks known as chain pushbacks starting from either Italy or Austria, passing through Slovenia and ending in Croatia from where they are being pushed back to non-EU territory being often denied the right to file an international protection request.

61. In their endeavour to enter Croatia, to cross from Croatia to Slovenia or before they are returned to Bosnia and Herzegovina or Serbia, people have reported violence by Croatian police, including physical and sexual violence. The CPT has also investigated some documented cases of ill-treatment and torture during their rapid reaction visit to the country in summer 2020 and a report was prepared.[57] Among other forms of violence experienced by migrants, refugees and asylum seekers at the borders of Croatia, shootings have also been alleged in November 2019.[58] Moreover, starting in 2017 humanitarian and human rights action has been heavily criminalised in the country with NGOs' staff members being accused of facilitating illegal migration and smuggling. The Croatia's Ombudswoman has also reported about the NGOs being denied access to migration-related information in her "National Report on the Human Rights Situation of Migrants at the Borders" published in July 2021.[59]

62. Following the publishing by several European media outlets of footage of illegal pushbacks in Croatia and Greece in early October 2021,[60] the European Commissioner for Home Affairs, Ylva Johansson, called for a thorough investigation in the two countries making clear that even though they did indeed have the obligation to protect EU's external borders, they also had to uphold the rule of law and respect fundamental rights.[61] On 8 October 2021 the Croatian authorities acknowledged that some of its police officers had participated in a pushback incident on the border with Bosnia and Herzegovina.[62] The conduct of an internal investigation is indeed welcome, but the Croatian authorities' statements also raise serious concerns over the actual responsibility around pushbacks and in particular the role of the involved States, as well as that of the Frontex. Moreover, NGOs active in the region are concerned over the actual independence and efficiency of the proposed internal investigation.[63]

63. From 20 to 23 February 2022, I visited Croatia and Bosnia and Herzegovina, together with Ms Stephanie Krisper (Austria, ALDE), rapporteur on "Safe third countries for asylum seekers".[64] This visit allowed for direct exchanges with both, public authorities and civil society representatives in these countries. The issue of pushback was raised in the meetings with the border police officers in both countries, drawing their attention to the importance of preventing pushbacks and respecting international standards on the matter.

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54. Spiegel International, "Europe's Violent Shadow Army Unmasked".
55. Danish Refugee Council, "Bosnia and Herzegovina".
56. Danish Refugee Council, "Border Protection Monitoring".
57. www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-publishes-report-on-its-2020-ad-hoc-visit-to-croatia.
58. *Reuters*, "Croatian police fire on illegal migrants near Slovenian border".
59. https://ennhri.org/news-and-blog/croatian-nhri-presents-the-state-of-human-rights-of-migrants-at-borders-in-its-new-report/.
60. *Spiegel International*, "Europe's Violent Shadow Army Unmasked".
61. *Reuters*, "EU executive demands probe into alleged migrant pushbacks in Greece, Croatia".
62. *Reuters*, "Croatia confirms migrant pushback, Greece promises inquiry".
63. Danish Refugee Council, "Croatia/EU Border Monitoring System: Effective Mechanism Needed - Independent, Broad Mandate, Adequate Resources".
64. See the programme of this visit, AS/Mig/Inf(2022)07.

5.2. Pushbacks to Türkiye

64. After at least 33 Turkish soldiers were killed during an airstrike carried out by Syrian government forces in Syria's Idlib province,[65] Türkiye announced on 27 February 2020 that it would unilaterally open its sea and land borders with Greece to migrants, refugees and asylum seekers who wanted to cross into the rest of Europe. This was despite an EU-Türkiye deal signed back in March 2016. Greece responded by having its police, army, and special forces use tear gas and rubber bullets to prevent migrants and refugees from entering its territory.[66] Following these developments, Greece, in breach of its international obligations,[67] suspended all asylum procedures for a whole month in March 2020.[68]

65. On 3 March 2020, Ursula Gertrud von der Leyen, President of the European Commission, travelled to the border region of Kastanies, Evros, Greece from where she expressed in a joint press conference[69] the European Union's solidarity towards the country. She also committed to provide Greece with financial assistance, human resources, as well as technical expertise, to address the emergency unfolding at its borders. As a result, Frontex launched two rapid border intervention operations, the aim of which was to "co-ordinate a new return programme for the quick return of persons without the right to stay to countries of origin from Greece".[70] In the same press conference, the President of the European Commission thanked Greece for functioning as a shield for the European Union.

66. However, it's important that all countries recall their relevant rights and obligations as these are listed in various international treaties, conventions and agreements and outlined also in the joint report by the European Union Agency for Fundamental Rights and the Council of Europe, published in March 2020, where it is stated that "Council of Europe (CoE) and European Union (EU) Member States have an undeniable sovereign right to control the entry of non-nationals into their territory. While exercising border control, states have a duty to protect the fundamental rights of all people under their jurisdiction, regardless of their nationality and/or legal status. Under EU law, this includes providing access to asylum procedures."[71] As in the case of Croatia, Greece has used anti-smuggling legislation against human rights defenders and people engaged in search and rescue operations,[72] making access to asylum for people on the move harder to reach.

67. Asylum procedures were suspended for a second time in spring of the same year citing Covid-19 as the reason.[73] The extension of an already existing 2012 fence of 10 km length in the Evros region by an extra 26 km was completed in summer 2021 in an endeavour to discourage people from reaching the country and applying for life saving international protection. More border guards, as well as a high-tech border security system have also been employed.[74]

68. Following its *ad hoc* visit to Greece in March 2020 Council of Europe's CPT published a report in November of the same year calling on the Greek authorities to halt pushbacks.[75] The Council of Europe's Commissioner for Human Rights addressed a letter on 3 May 2021 to the Minister for Citizens' Protection, the Minister of Migration and Asylum and the Minister of Shipping and Island Policy of Greece regarding allegations of pushbacks and the living conditions of people on the move in the country. The Greek authorities responded on 11 May 2021 that they adhere to their duties as outlined in national and EU legislation mandating them to protect the national and EU borders. They also claimed to be following "a strict and

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65. *Balkan Insight*, "Turkey Threatens to Release Refugee Wave After Idlib Carnage".
66. Human Rights Watch, "Greece Restarts Suspended Asylum Procedure".
67. European Union Agency for Fundamental Rights and the Council of Europe, "Fundamental rights of refugees, asylum applicants and migrants at the European borders": see page 7, it is clearly mentioned that authorities are not allowed to deny people the right to seek asylum.
68. Human Rights Watch, "Greece Restarts Suspended Asylum Procedure".
69. European Commission, Remarks by President von der Leyen at the joint press conference with Kyriakos Mitsotakis, Prime Minister of Greece, Andrej Plenković, Prime Minister of Croatia, President Sassoli and President Michel.
70. European Commission, Extraordinary Justice and Home Affairs Council: Commission presents Action Plan for immediate measures to support Greece.
71. European Union Agency for Fundamental Rights and the Council of Europe, "Fundamental rights of refugees, asylum applicants and migrants at the European borders".
72. Amnesty International, "Europe: Pushback practices and their impact on the human rights of migrants and refugees. Amnesty International submission to the United Nations Special Rapporteur on the Human Rights of Migrants", February 2021.
73. Human Rights Watch, "Greece Restarts Suspended Asylum Procedure".
74. *Deutsche Welle*, "Greece to introduce high-tech border security system".
75. Council of Europe, "Council of Europe's anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks".

disciplinary legal framework investigating information concerning alleged incidents of ill-treatment at the borders, including allegations for unprocessed returns (pushbacks), applying the foreseen by law penalties and taking all necessary measures so that unwanted incidents are avoided."

69. In October 2021 Greece announced that it was about to entrust the investigation of the pushbacks claims to the National Transparency Authority following the call of the Commissioner for Home Affairs in early October of the same year, after a media investigation published visual evidence of Greek coast guards pushing people away in the Aegean sea.[76] On 29 March 2022, the Greece's National Transparency Authority has announced that an in-depth investigation into claims that Greek coast guard authorities were involved in illegal pushbacks of asylum seekers had found no evidence to support the allegations.[77] Civil society organisations criticised this position of the Greece's National Transparency Authority and called for the report to be made public.[78]

5.3. Pushbacks to Belarus

70. Starting as early as spring 2021, a new migration and asylum crisis has unfolded at the borders of Belarus with Lithuania, Poland and Latvia. Triggered, *inter alia*, by sanctions posed by the EU on Belarus, as well as Lithuania's and other EU countries' criticism of Belarus for the diversion of Ryanair flight FR4978 from Athens to Vilnius on 23 May 2021. As a result, Belarus opened its borders with its EU neighbours in what was seen as a hybrid war against the EU using migrants, asylum seekers and refugees from various countries, in particular Iraq. The Belarusian authorities are even said to have facilitated these movements causing an unprecedented migration crisis in the region since the three EU countries were not ready to receive a high number of migrants, refugees and asylum seekers.

71. This situation has resulted in growing xenophobic attitudes and policies reflected in national legislation, as well as in other measures taken to intercept these movements, raising serious human rights concerns relating to detention, dire living conditions and alleged pushbacks of people who were denied the right to file an international protection request. Lithuania and Latvia have stated that they will only proceed with asylum applications submitted strictly at official border crossings. In Poland, on 17 September 2021, the Sejm voted a law aimed at restricting access to territory and asylum to persons entering Poland outside the official border crossings.

72. All three countries introduced states of emergencies either throughout their whole territory (Lithuania) or in specific areas bordering Belarus (Latvia and Poland) and initiated the construction of physical barriers alongside their borders to contain the flows. The deployment of Frontex rapid forces alongside technical assistance and emergency assistance to be used to reinforce the border surveillance systems of the three countries were also provided by the EU in response to the steps taken by the Belarusian authorities. Even if the weaponisation of migrants, refugees and asylum seekers is indeed a card played by the President of Belarus, Alexander Lukashenko, to destabilise the EU, people on the move should not pay the price of this political game. States have indeed the right to protect their borders, but they also have an obligation to process asylum applications filed at their borders or within their territory.

73. The Assembly has raised its concerns on this issue in an urgent debate which took place on 30 September 2021 and adopted Resolution 2404 (2021) "Instrumentalised migration pressure on the borders of Latvia, Lithuania and Poland with Belarus",[79] based on a report by Ms Anne-Mari Virolainen (Finland, EPP/CD) prepared on behalf of the Committee on Migration, Refugees and Displaced Person.

5.4. Pushbacks to Libya

74. In February 2017, Italy struck a deal with Libya, which was renewed in February 2020 for a period of three years, aiming at blocking migratory flows albeit that Libya is not regarded as a safe country. To this end, the EU has provided financial assistance of about €700 million to Libya over the last few years, a large portion of which is allocated to migration-related activities including the strengthening of border management.[80]

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76. *Spiegel International*, "Europe's Violent Shadow Army Unmasked".
77. www.infomigrants.net/en/post/39535/greek-authority-finds-no-evidence-of-migrant-pushback-claims.
78. https://eu.rescue.org/press-release/greeces-national-transparency-authority-should-publish-its-full-report-regarding.
79. Resolution 2404 (2021) and report by Ms Anne-Mari Virolainen: "Increased migration pressure on the borders of Latvia, Lithuania and Poland with Belarus".
80. European Union External Action Service, "EU-Libya relations"; European Commission, "EU Emergency Trust for Africa, Libya".

75. According to information shared by Amnesty International with the UN's Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, "Italy and EU institutions have provided Libyan maritime authorities with at least 16 speedboats and with the training of at least 477 personnel, mostly through EU naval operation EUNAVFOR MED Sophia[81]. Italy also deployed personnel and ships in Libya to assist in the coordination of maritime operations and has supported the Government of National Accord in the declaration of a Libyan Search and Rescue (SAR) region."[82] Even private vessels are instructed to disembark in Libya instead of a safe harbour. In 2021 the first ever trial over a pushback by a private vessel to Libya took place in Italy. The captain of Asso Ventotto, Giuseppe Sotgiu, was sentenced to one year in prison.[83]

76. According to the same source, more than 60 000 people have allegedly been intercepted in the Mediterranean by the Libyan authorities and disembarked in Libya since 2016.[84] Following Italy's example, Maltese authorities have allegedly engaged in pushback practices within their territorial waters pushing people either to Italy or Libya or letting them float at the high seas.[85] Moreover, they have denied conducting search and rescue missions after having been informed about the existence of boats in distress or delaying it for days.[86] On 10 April 2020, Italy, Malta, Frontex and Libya received information about a boat in distress in the Mediterranean. Three to four days later search and rescue operations were initiated and finally a Libyan-flagged vessel managed to rescue the 51 people aboard within Malta's territorial waters on 15 April 2020. The vessel disembarked in Tripoli, where five people were found to have died, while seven more were reported as missing; the rest were placed in detention in the centre of Trik-al-Sikka.[87] The whole operation was allegedly co-ordinated by the Maltese authorities. Reportedly, Maltese authorities have also used arbitrary detention at sea, while denying the disembarkation of boats carrying migrants at their ports.[88]

77. Both Italy and Malta have been criticised for systematically hindering the work of search and rescue NGOs by criminalising them, denying them the provision of a safe port to disembark and posing administrative procedures resulting in certain ships being seized. The Assembly has warned against such practices in its Resolution 2362 (2021) and Recommendation 2194 (2021) "Restrictions on NGO activities in Council of Europe member States".

6. Conclusions

78. I would like to make reference to our previous discussions in the committee on this issue and would like to highlight the need for States to respect international obligations and to enhance interstate solidarity. The Assembly should denounce the dysfunctional approach in certain member States in terms of pushbacks. Council of Europe member States should work together, including member States from Central and Northern Europe.

79. To prepare this report, the committee held an exchange of views on 24 November 2021 with the participation of Mr Felipe González Morales, the UN Special Rapporteur on the Human Rights of Migrants. Prior to my fact finding visit to Croatia and to Bosnia and Herzegovina, the then President of the Assembly, Rik Daems, had asked me to visit Poland on 18-19 November 2021 to assess the situation of migrants stranded on the border with Belarus in my capacity as Chairperson of the Committee on Migration, Refugees and Displaced Persons.

80. On 27 April 2022, Ms Dunja Mijatović, the Council of Europe Commissioner for Human Rights, presented to the Committee on Migration, refugees and Displaced Persons, her Recommendation entitled "Pushed beyond the limits. Urgent action needed to stop pushbacks at Europe's borders", where she addressed the role of members of parliament in preventing human rights violations at the borders, noting that parliamentarians can play an important role in preventing pushbacks, in line with their wider role as guarantors of human rights, both as legislators and as those responsible for carrying out democratic oversight of government action. She identified, overall, four concrete areas where urgent action would be required:

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81. Amnesty International, "Europe: Pushback practices and their impact on the human rights of migrants and refugees", op. cit.
82. Ibid.
83. The Maritime Executive, "Italian Captain Sentenced to Prison for Bringing Migrants to Libya".
84. Amnesty International, "Europe: Pushback practices and their impact on the human rights of migrants and refugees", op.cit.
85. Ibid.
86. Ibid.
87. Amnesty International, "Malta: Waves of impunity".
88. Amnesty International, "Europe: Pushback practices and their impact on the human rights of migrants and refugees", op. cit.

member States must implement their legal obligations in good faith; there is a need to strengthen transparency and accountability for actions at borders; tackling pushbacks requires all member States to act together, and parliamentarians have a key role as legislators to guarantee respect of human rights standards. In her exchange of views with the committee, she invited parliamentarians to reject the vision of a "fortress Europe" which nobody was able to enter. There was a need to change this approach to allow future generations to be proud rather than ashamed of such a "fortress Europe".

81. A number of other relevant issues were raised in the exchanges of views, namely questions concerning the application of pushbacks with regard to so called "illegal migrants" (some countries established legislative rules by highlighting this discrepancy), and the latest UK legislation that would allow the UK Government to off-shore the review of individual applications for asylum to Rwanda. Commissioner Mijatović was shocked by the draft legislation of the United Kingdom and had immediately called for changes. She highlighted that a "shift" in responsibility to a third country far away had the risk of seriously undermining the global system of international protection. Concerning "illegal immigration", she did not believe that there was such illegal immigration, because people crossing borders should not be punished by criminal law.

82. To conclude, I am strongly convinced that the Assembly should call for serious changes to the law and practice in the Council of Europe member States to stop pushbacks at land and sea. In specific terms, it should ask member States to take measures to prevent pushbacks, to protect the victims of pushbacks, to prosecute those responsible for pushbacks and to improve international co-operation and co-ordination between border authorities, police, and other bodies in charge of border protection, as reflected in the proposed draft resolution.