



Resolution 2462 (2022)¹

Pushbacks on land and sea: illegal measures of migration management

Parliamentary Assembly

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 the Committee of Ministers 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 “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” ([Doc. 14909](#)). Pushback practices are also linked to “pullbacks”, which consist in agreements between States aiming to retain migrants on one side of a border 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, the Convention) and Article 4 of its Protocol No. 4 (ETS No. 46) prohibit member States of the Council of Europe from 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 worldwide efforts in protecting the right to asylum enshrined in the United Nations’ Convention relating to the Status of Refugees of 1951 (“the 1951 Refugee Convention”) and other relevant international instruments.

4. The Assembly deplores the profound disregard for international standards on the matter in some countries, combined with the instrumentalisation of migration flows 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 Council of Europe’s 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 of losing one’s life on an extremely perilous journey.

1. *Assembly debate* on 12 October 2022 (31st sitting) (see [Doc. 15604](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Pierre-Alain Fridez). *Text adopted by the Assembly* on 12 October 2022 (31st sitting).



5. Furthermore, the Assembly calls upon the Council of Europe observer and member States, as well as States whose parliament enjoys 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 perspectives. Migration is a natural societal phenomenon and should be addressed collectively as a continent, in order to manage migration flows in an orderly way that helps to promote the social and occupational inclusion of migrants, while benefiting 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 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. The Assembly 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 oversight committees for government-friendly entities, by restricting their access to 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 for migrants arriving in 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 investigations 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, therefore, be 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. The 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 the application of provisions that criminalise their actions.

10. The Assembly calls on Council of Europe member States to encourage changes at the European level to achieve a sustainable reception process shared with other member States, in accordance with the principle of solidarity referred to in Article 80 of the Treaty on the Functioning of the European Union, based on shared responsibility. The Assembly therefore calls upon the Council of Europe member States to change their legislation and practice in order to promote a multilateral policy of putting in place legal pathways to all European countries on the basis of shared responsibility, to promote solidarity with the countries most affected by the influx of migrants by sea and by land, and thereby contribute to putting an end to pushbacks.

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

12. The Assembly calls for changes to the law and practice in the Council of Europe member States to stop pushbacks on land and at 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:

12.1. as regards prevention:

12.1.1. 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 an individual assessment of protection needs and of the safety of 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;

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

12.1.3. to make national legislation and policies human rights-compliant and to amend migration legislation with a view to preventing and prohibiting pushbacks and the denial of the right to asylum;

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

12.1.5. considering that civil society's role in upholding and advancing democratic values and fundamental rights, including the right to asylum, is crucial, especially as it plays an important role in documenting cases of pushbacks, to encourage and support its 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 the Committee of Ministers' Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe;

12.2. as regards protection:

12.2.1. 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 victims are in place. Urgent measures must be taken to ensure the protection of the 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;

12.2.2. States members of the European Union should take measures to bring European Union law and practice into compliance with human rights standards, as mentioned in the Assembly's [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;

12.3. as regards prosecution:

12.3.1. 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 also apply during emergency situations;

12.3.2. 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;

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

12.4.1. 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 tragedies at Europe's maritime borders;

12.4.2. to include, with respect to co-operation between border police authorities, specialised training on the application of international standards on 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;

12.4.3. to enhance international co-operation at regional and global 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 follow-up actions of the United Nations High Commissioner for Refugees 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;

12.4.4. to further develop international co-operation between European Union and non-European Union countries' border police structures, with the participation of Frontex, with the aim of upgrading the competences of border police in 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.

13. The Assembly welcomes the new initiatives aimed at ensuring protection for Europe's borders in full respect of the 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 to set up a robust and independent human rights monitoring mechanism at the external borders of the European Union on 4 May 2022.

14. Finally, the Assembly calls for stronger commitment to upholding human rights standards at Europe's borders. The time has come for parliamentarians to stand up against pushbacks, to call for the sharing of responsibility in the management of migration between the different Council of Europe member States and to follow the developments closely both at the national and European levels.