

## Resolution 2299 (2019)<sup>1</sup>

# Pushback policies and practice in Council of Europe member States

Parliamentary Assembly

1. To control and manage migration flows, Council of Europe member States concentrate much of their efforts on guarding frontiers. In this context, refusals of entry and expulsions without any individual assessment of protection needs have become a documented phenomenon at Europe's borders, as well as on the territory of member States further inland. As these practices are widespread, and in some countries systematic, these "pushbacks" can be considered as part of national policies rather than incidental actions. The highest risk attached to pushbacks is the risk of *refoulement*, meaning that a person is sent back to a place where they might face persecution in the sense of the 1951 United Nations Convention Relating to the Status of Refugees ("the Refugee Convention"), or inhuman or degrading treatment in the sense of the European Convention on Human Rights (ETS No. 5, "the Convention").
2. This is why the European Court of Human Rights, for instance in its judgment *Hirsi Jamaa and Others v. Italy* (Application No. 27765/09), but also in *N.D. and N.T. v. Spain* (Applications Nos. 8675/15 and 8697/15), requires 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 (ETS No. 46). Pushbacks take place in particular at European Union borders, which is at least in part a consequence of the shortcomings of the current Dublin Regulation and of the failure of attempts to introduce fair responsibility-sharing in Europe.
3. Pushbacks often take place where migrants attempt to enter the territory of a member State in large numbers because the passage is, or appears to be, more "open" than elsewhere, or is geographically close to the countries of origin of asylum seekers. However, recent evidence of pushbacks shows that they also take place where numbers of arrivals are low, but where national policies are hostile towards migration in general. There are also cases of "multiple pushbacks" where migrants are expelled by various countries successively.
4. The Parliamentary Assembly is concerned about the persistent and increasing practice and policies of pushbacks, which are in clear violation of the rights of asylum seekers and refugees, including the right to asylum and the right to protection against *refoulement*, which are at the core of international refugee and human rights law. In view of the gravity of the human rights violations involved, the Assembly urges member States to provide adequate protection to asylum seekers, refugees and migrants arriving at their borders, and thus to refrain from any pushbacks, to allow for independent monitoring and to fully investigate all allegations of pushbacks.
5. The Assembly is extremely worried about persistent reports and evidence of inhuman and degrading treatment of migrants by member States and their agencies in the framework of these pushbacks, through intimidation, confiscating or destroying migrants' belongings, and even through the use of violence and by depriving migrants of food and basic services. In denying having carried out such pushbacks, these types of (sometimes systematic) inhuman and degrading treatment are denied as well, and are therefore not adequately examined or not examined at all.

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1. *Assembly debate* on 28 June 2019 (27th Sitting) (see [Doc. 14909](#), report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Tineke Strik). *Text adopted by the Assembly* on 28 June 2019 (27th Sitting). See also [Recommendation 2161 \(2019\)](#).



6. The Assembly therefore calls on Council of Europe member States to comply with their international obligations in this regard, in particular those set out in the European Convention on Human Rights concerning the prohibition of collective expulsion and inhuman and degrading treatment, as well as the right of access to asylum procedures and the prohibition of *refoulement* as established in the United Nations Refugee Convention.

7. Reported pushbacks concern actions towards migrants who have clearly crossed the border and find themselves inland, but also towards migrants who are present near or at the border, attempting to cross it. A significant number of them have attempted or envisaged submitting an asylum claim. The most important negative consequence of pushbacks is the vulnerable position of the victims. The denial of access to a proper asylum procedure implies that they run the risk of being returned to, or stranded in, another country where they do not have access to proper asylum procedures either, which puts them at risk of being pushed back to yet another country (so-called “chain *refoulement*”). Pushbacks can, however, also lead to direct persecution or inhuman or degrading treatment in the country they are returned to, or from which they cannot escape. The core obligations of asylum and international law are meant to prevent this from happening. The consequence of member States’ refusal to address reported cases of pushbacks is that these practices persist, depriving victims of the right to an effective remedy and to hold authorities accountable for human rights violations.

8. In order to avoid responsibility, member States increasingly make attempts to prevent migrants from crossing their border and to keep them out of their jurisdiction. To this end, frontline States in particular conclude agreements with their neighbouring countries, which are requested to prevent migrants from leaving their territory and paid to do so. These actions of neighbouring countries, often referred to as “pull-backs”, may hamper access to protection for asylum seekers stranded in that country if a sufficient protection system is lacking. In cases of a clear connection between such bilateral co-operation, lack of access to asylum and other human rights violations, the member State requesting pull-backs is also responsible for such violations.

9. To abandon all types of pushbacks, member States should respond actively and adequately to every sign or evidence of their occurrence. Instead, however, there is a tendency in an increasing number of countries to refuse independent examination of serious allegations, to simply deny them or to accuse, stigmatise and even criminalise non-governmental organisations (NGOs), human rights defenders and members of civil society who work to assist migrants in gaining access to asylum procedures and protection. In reporting and attempting to investigate pushbacks and related human rights violations, NGOs are frequently blamed and negatively framed for “interference”, despite their key role in facilitating migrants’ access to their rights and to justice.

10. In this regard, the Assembly calls on Council of Europe member States to respect the role of NGOs 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. The Assembly also recalls its recent adopted texts, including its [Resolution 2073 \(2015\)](#) and [Recommendation 2078 \(2015\)](#) “Countries of transit: meeting new migration and asylum challenges”, and [Resolution 2228 \(2018\)](#) and [Recommendation 2136 \(2018\)](#) “The human rights impact of the ‘external dimension’ of European Union asylum and migration policy: out of sight, out of rights?”, as well as the June 2018 urgent debate on the obligation to save lives at sea, which underlined the crucial work of NGOs in the Mediterranean Sea and the need to allow them to pursue their life-saving operations. The Assembly also refers to statements made by the Council of Europe Commissioner for Human Rights on the increasing administrative obstacles confronting human rights defenders.

12. In the light of the above, the Parliamentary Assembly urges member States:

12.1. with respect to border controls, to

12.1.1. refrain from any measure or policy leading to pushbacks or collective expulsions, as they lead to a violation of the core rights of international asylum law, notably the right to asylum, the right to be protected against *refoulement* and the right to access an asylum procedure;

12.1.2. refrain from any type of violence against migrants and measures depriving them of their basic needs such as food, water, housing and emergency health care;

12.1.3. ensure independent and sustainable monitoring of border control activities, which is essential in putting an end to (violent) pushback action, by granting independent bodies and NGOs access to all border areas, by granting independent bodies access to all border surveillance material, and by effectively addressing reports and complaints by migrants and NGOs, ensuring sufficient independence;

- 12.1.4. combine the investigation of incidents with protective measures for alleged victims pending conclusions. Prevention measures must be introduced against informal forced return procedures, including standardised procedures at borders and clear rules of conduct;
- 12.1.5. encourage and support legal research, investigative journalism and reliable information from recognised, reputable, international and non-governmental organisations as a means of correctly informing the public, rather than relying on unsubstantiated reports, hearsay and misinformation. Satellite and digital data enable registration of cases which require investigation by official and impartial bodies;
- 12.1.6. 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;
- 12.1.7. introduce and/or improve police training programmes, emphasising that border protection and surveillance must be carried out in full compliance with international obligations to respect individual rights to protection, to information, to legal assistance and not to be detained arbitrarily;
- 12.2. with respect to services at borders, to:
  - 12.2.1. increase the means given to border services to allow them to provide adequate services to refugees, asylum seekers and migrants arriving at national borders, whatever their status and pending the implementation of appropriate procedures;
  - 12.2.2. ensure the provision to migrants arriving at borders of information on their legal position, including on their right to apply for international protection (as enshrined in Article 8 of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection – the recast Asylum Procedures Directive) in a language they can understand, including oral interpretation (if necessary using the possibilities of distant interpretation using services available on the internet), taking into account the special difficulties of vulnerable people such as children and traumatised and illiterate people;
  - 12.2.3. ensure the provision of interpretation at borders and throughout reception and medical examinations, registration and asylum processing, and to immediately cease any practices consisting in obliging migrants to sign documents they do not comprehend, which could lead them to believe they are signing asylum applications when the documents concern deportation;
- 12.3. concerning legal assistance, to:
  - 12.3.1. ensure migrants can make a claim for protection at borders, and obtain legal aid and accessible and comprehensible information regarding their legal rights, taking into account the special circumstances of vulnerable people;
  - 12.3.2. allow NGOs to provide assistance at places where human rights violations are reported (in particular in transit zones and along borders);
- 12.4. concerning medical and psychological assistance, to:
  - 12.4.1. provide adequate access to medical services and health care at borders and immediately after transportation to reception centres, ensuring a permanent presence of medical staff, taking into account the special needs of vulnerable people, such as children, traumatised people and pregnant women;
  - 12.4.2. in this framework, enable formal testimonies of physical violence perpetrated by border officials to be verified objectively;
  - 12.4.3. give access to psychological support for asylum seekers, especially children, who often suffer from multiple trauma on arrival in Europe. The psychologists working with NGOs should be involved as partners in providing support, in view of the extensive experience and expertise of international NGO networks working with migrants;
- 12.5. concerning NGOs, to:
  - 12.5.1. consider NGOs as partners and refrain from action that undermines their legitimate activities aimed at saving human lives;

12.5.2. refrain from using stigmatising rhetoric against NGOs assisting migrants, and refrain from taking any measures criminalising, stigmatising or putting at any disadvantage individuals and NGOs providing humanitarian assistance to, and defending the rights of, refugees, asylum seekers and migrants; the authorities are thereby invited to restore an enabling environment conducive to their work;

12.5.3. investigate allegations of infractions by NGOs of national laws or regulations before independent courts for adjudication and sanctions, which should only be applied in proven cases, respecting the principle of proportionality and founded on a clear legal basis.

13. When implementing the assistance, services, policies and procedures set out above in sub-paragraphs 12.1 to 12.4, member States should ensure that these are gender-sensitive and that the special vulnerability of women and girls is duly taken into account. They should also ensure that legally binding standards, namely the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) and the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) are fully known to all those concerned by the arrival of migrants and that they implement them at all stages of the process.

14. With respect to co-operation between countries on border management, the Assembly urges member States not to conclude agreements on the retention of migrants on one side of national borders, as these often create situations in which lives and human rights are put in danger through the obligation to stay in places where living conditions are inhuman and services practically inexistent. Arbitrary detention and denial of the right to (seek) asylum as well as the right to be protected against *refoulement* are also likely to arise in these circumstances.

15. The Parliamentary Assembly once again urges member States, especially members of the European Union and the Schengen area, to improve mechanisms for relocation, which are key in reducing the pressure on Europe's bordering countries and avoiding overcrowding, unnecessary detention and unacceptable reception conditions for asylum seekers. At the same time and for the same reason, more priority should be given to the integration of protected people, including the granting of legal status on other grounds, generalising best practices from countries with proven success in this process.

16. The Assembly urges all European Union member States to refrain from any pushbacks or complicity on pull-backs at their external or internal borders. In line with their obligations under the recast Asylum Procedures Directive and guidance provided by the European Asylum Support Office (EASO) and the European Border and Coast Guard Agency (Frontex), they must proactively inform migrants arriving at their external borders of the possibility to make an application for international protection and ensure access to legal assistance and representation. NGOs providing counselling and legal assistance must be given access to border crossing points and detention facilities at the border and to migrants held there.

17. The Assembly urges Frontex to strengthen its internal reporting mechanism on human rights violations occurring during Frontex-led or co-ordinated operations. In case of violations of human rights or international protection obligations that are serious or likely to persist, the agency's Executive Director should suspend or terminate such operations, in line with Article 25.4 of Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard. Reiterating the Frontex Consultative Forum on Fundamental Rights recommendation, the Parliamentary Assembly urges Frontex to immediately suspend its operations at the Hungarian-Serbian border in light of the systematic violations of human rights in the transit zones as confirmed by the European Court of Human Rights in its judgment *Ilias and Ahmed v. Hungary*.

18. Finally, the Assembly urges the European Commission to:

18.1. ensure that member States immediately halt practices and policies of pushbacks and collective expulsions by responding actively and effectively to violations of Article 3 of the European Convention on Human Rights, Article 4 of Protocol No. 4 to the Convention and Article 33 of the United Nations Refugee Convention, as well as the European Union asylum *acquis*, and by investigating allegations of unlawful acts by member States;

18.2. establish a systematic, independent and transparent mechanism to monitor compliance of border management policies and practice with the relevant provisions in the European Union asylum *acquis*, Articles 18 and 19 of the Charter of Fundamental Rights of the European Union, the Schengen Borders Code and the Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, and launch infringement procedures where necessary;

18.3. define guidelines on how to reconcile border control with safeguarding access to protection, and assist member States in implementing these guidelines;

18.4. link human rights-related requirements to the use of European Union funding related to asylum, migration and border management and monitor the compliant use of this funding by member States.