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Pushback policies and practice in Council of Europe member States

Report¹

Committee on Migration, Refugees and Displaced Persons

Rapporteur: Ms Tineke Strik, Netherlands, SOC

Summary:

Practices and policies of pushbacks are an increasing phenomenon at Europe's borders, in clear violation of the rights of asylum-seekers and refugees, including the right to seek asylum and the protection against *non-refoulement* which are at the core of international refugee and human rights law. In the face of the gravity of the violations involved, the Parliamentary Assembly urges the governments of member States to protect 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 occurring. It also asks member States to promote the work of NGOs and INGOs, refraining from action that undermines their legitimate activities aimed at saving human lives.

There are persistent reports and evidences of inhuman and degrading treatment of member States and their agencies in the framework of those pushbacks, through intimidation, taking or destroying goods of migrants, and even through the use of violence and depriving migrants of food and basic services. The report describes reported cases of pushback and makes recommendations destined to stop them.

¹ Reference to committee: Doc. 14645, Reference 4414 of 21 January 2019.

A. Draft resolution²

1. In their efforts to control borders and manage migration flows, Council of Europe member States concentrate much effort 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, those "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 he might face persecution in the sense of the United Nations 1951 Convention relating to the Status of Refugees or inhuman or degrading treatment in the sense of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2. This is why the European Court on Human Rights, for instance in its judgment *Hirsi Jamaa vs Italy* (no.27765/09) but also *N.D and N.T vs Spain* (nos. 8675/15 and 8697/15) requires an 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 of Protocol No. 4 to the Human Rights Convention. 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 national policies are hostile towards migration in general. There are also cases of "multiple pushbacks" where people are expelled by various countries successively.

4. The Parliamentary Assembly is concerned at the persistent and increasing practices and policy 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 *non-refoulement*, which are at the core of international refugee and human rights law. In the face of the gravity of 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 occurring.

5. The Assembly is extremely worried about persistent reports and evidences of inhuman and degrading treatment of member States and their agencies in the framework of those pushbacks, through intimidation, taking or destroying goods of migrants, and even through the use of violence and depriving migrants of food and basic services. In their denial of carrying out pushbacks, these types of (sometimes systematic) inhuman and degrading treatment are denied as well, and therefore not adequately examined or not examined at all.

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, inhuman and degrading treatment and 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 cases reported had 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 refouled 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 happening. The consequence of member States' refusal to address reported cases of pushbacks is that those practices continue, 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 make increasingly attempts to prevent migrants from entering their border and to keep them out of their jurisdiction. To this end, frontline states in particular conclude agreements with their neighbouring country, who is requested and paid to prevent migrants from leaving their territory. These actions of neighbouring countries, often referred to as "pull-backs", may hamper access to

² Draft resolution adopted by the committee on 29 May 2019.

protection for asylum-seekers stranded in that country if a sufficient protection system is lacking. In cases of a clear connection between such bilateral cooperation and lack of access to asylum and other human rights violations, the member State requesting pull-backs is also responsible for those violations.

9. To abandon all types of pushbacks, member States should respond actively and adequately to every signal or evidence of their occurrence. Instead, however, in an increasing number of countries there is a tendency to refuse independent examination of serious allegations, to simply deny them or even to accuse, stigmatise and even criminalise non-governmental organisations, human rights' defenders and civil society actors 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 role as key actors in facilitating migrants' access to 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, for instance 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 and Recommendation 2078 (2015) on 'countries of transit: meeting new migration and asylum challenges' and Resolution 2228 and Recommendation 2136 (2018) on "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 points to the crucial work of NGOs in the Mediterranean Sea and the need to allow them to pursue their life-saving operations. It 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,

12.1.1. to 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 to an asylum procedure;

12.1.2. to 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. to 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. to combine the investigation of incidents with protective measures for alleged victims pending enquiries. Prevention measures must be introduced against informal forced return procedures, including standardised procedures at borders and clear rules of conduct;

12.1.5. to encourage and support legal research as well as research journalism and reliable information from recognised reputable international and non-governmental organisations as 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. to comply with judgments of national courts and the European Court on Human Rights, including their interim-measures, in relation to pushbacks and refraining from access to asylum and even to an asylum procedure, and to follow-up recommendations of national independent bodies such as the Ombudspersons.

12.1.7. to 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,

12.2.1. to increase the means given to border services in order for them to be in a position 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. to ensure the provision at borders of information for migrants, on their legal position including on their right to apply for international protection (as enshrined in Article 8 Asylum Procedures Directive) in languages they can understand, including oral interpretation (if necessary using the possibilities of distant interpretation using services available on internet), taking into account the special difficulties of vulnerable persons such as children, traumatised and illiterate people;

12.2.3. to 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,

12.3.1. to ensure migrants' access to the possibility of making a claim for protection at borders, to obtain legal aid as well as accessible and comprehensible information regarding their legal rights, taking into account the special circumstances of vulnerable persons;

12.3.2. to allow NGOs to provide assistance at places where human rights violations are reported (in particular at transit zones and along borders);

12.4. Concerning medical and psychological assistance,

12.4.1. to provide adequate access to medical services and healthcare at borders as well as immediately after transportation to reception centres, ensuring permanent presence of medical staff, taking into account the special needs of vulnerable persons, such as children, traumatised persons and pregnant women;

12.4.2. in this framework to enable formal testimonies of physical violence by border officials to be verified objectively;

12.4.3. to give access to psychological support for asylum seekers, especially children, who often suffer from multiple trauma on arrival into 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 non-governmental organisations,

12.5.1 to consider NGOs as partners and refrain from action that undermines their legitimate activities aimed at saving human lives;

12.5.2. to 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, thereby restoring an enabling environment conducive to their work;

12.5.3. to bring investigations into allegations of infractions by NGOs of national laws and 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 special vulnerability of women and girls is duly taken on board. Also, ensure that legally binding standards, namely the Council of Europe Convention on the Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on Action against Trafficking in Human Beings and the Council of Europe

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 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 cooperation between countries on border management, the Assembly urges member States not to conclude agreements on retaining migrants on one side of national borders which put their lives and human rights in danger by obliging them to stay in places where living conditions are inhuman, services practically inexistent or in situations of arbitrary detention, and where they are deprived of the right to (seek) asylum and the right to be protected against *refoulement*.

15. The Parliamentary Assembly once again urges member States, especially members of the EU and the Schengen area, to improve mechanisms for relocation, which are key in reducing the pressure on Europe's bordering countries, 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 persons, 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 also urges Frontex to strengthen its internal reporting mechanism on human rights violations occurring during Frontex-led or coordinated 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's recommendation, the Parliamentary Assembly urges Frontex to immediately suspend its operations at the Hungarian-Serbian borders in light of the systematic violations of human rights in the transit zones as confirmed by the ECHR in its ruling in its judgment *Ilias and Ahmed v Hungary*.

18. Finally, the Assembly urges the European Commission:

18.1. to 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 Convention on Human Rights, Article 4 of Protocol No. 4 to the Convention on Human Rights and article 33 of the UN Refugee Convention as well as the EU asylum acquis, and by investigating allegations of unlawful actions by member States;

18.2. to establish a systematic, independent and transparent monitoring mechanism of compliance of border management policies and practice with the relevant provisions in the EU asylum acquis, Article 18 and 19 of the EU Charter of Fundamental Rights, the Schengen Borders Code and the EU Returns Directive, and launch infringement procedures where necessary;

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

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

B. Draft recommendation³

1. The Parliamentary Assembly is concerned at the persistent and increasing practices and policies of pushbacks, which are in clear violation of the rights of asylum-seekers and refugees, including the right to (seek) asylum and the protection against *non-refoulement*, which are at the core of international refugee and human rights law.

2. In the face of the gravity of human rights violations involved, the Assembly urges the governments of 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 occurring. There are persistent reports and evidences of inhuman and degrading treatment of member States and their agencies in the framework of those pushbacks, through intimidation, taking or destroying goods of migrants, and even through the use of violence and depriving migrants of food and basic services.

3. The Parliamentary Assembly, referring to its Resolution xxxx (2019) on pushback policies and practise in Council of Europe member States, recommends that the Committee of Ministers:

3.1. exhort all member States' governments to reject and prevent any form of pushback policy and action to occur;

3.2. promote the reconsideration of any bilateral agreements between member States on border control between neighbouring countries which jeopardise the human rights of migrants, refugees and asylum-seekers arriving at their borders or trying to arrive there;

3.3. ensure the swift execution of the relevant judgments of the European Court of Human Rights, including the implementation of interim measures;

3.4. promote the work of NGOs and INGOs as partners, refraining from action that undermines their legitimate activities aimed at saving human lives, to refrain from using stigmatising rhetoric against NGOs assisting migrants, and to invite the Council of Europe's INGO Forum to work on recommendations in this area for national NGOs;

3.5. consider drafting guidelines for border policing practises along the lines of the Manual on Intercultural Community Policing of the Council of Europe's Intercultural Cities Programme, and to examine how this programme could be used as a model;

3.6. consider inviting the relevant Council of Europe committee to work on guidelines on ensuring access to rights of migrants arriving at borders or attempting to arrive there, including aspects such as access to complete and comprehensible information, to translation and interpretation services, to legal assistance at all stages of reception and asylum processes, to continued and child- and gender-sensitive medical, social and psychological services and to decent conditions of accommodation, prohibiting inhuman and degrading treatment in violation of Council of Europe and other international conventions.

4. Finally, the Parliamentary Assembly also asks the Committee of Ministers to formally encourage member States of the European Union to accelerate their work on an improved revised Dublin Regulation in a way that furthers equal responsibility sharing in order to relieve the burden for frontline states and in the interest of asylum seekers themselves. Meanwhile, the Committee of Ministers should encourage more efficient relocation programmes, to ease the pressure on Europe's external borders, which can lead to pushbacks.

³ Draft recommendation adopted by the committee on 29 May 2019.

C. Explanatory memorandum, by Ms Tineke Strik, rapporteur

1. Introduction

1. In their efforts to control borders and manage migration flows, Council of Europe member States concentrate much effort on guarding their borders. 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, even take on a systematic character, those "pushbacks" can be considered as part of national policies rather than incidental measures. The highest risk attached to pushbacks is the violation of the right to asylum and the risk of *refoulement*, meaning that a person is sent back to a place where he or she might face persecution in the sense of the United Nations 1951 Convention relating to the Status of Refugees, or inhuman or degrading treatment in the sense of the European Convention on Human Rights. This is why the European Court of Human Rights requires an individual assessment of protection needs and the safety of a return in order to prevent violations of Article 3 of the Convention. 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.

2. The persistent and increasing practice and policies of pushbacks is in clear violation of the fundamental right to asylum and the principle of non-*refoulement*, which form the core of international refugee law. In the face of the gravity of human rights violations and the tendency towards denial, I believe it is important for the Parliamentary Assembly to look more closely into these practices, with a view to proposing guidance to member States on how they can protect their borders while offering adequate protection to refugees. It is also important to recall that pushback action and policies are especially present in European Union frontline states, which is at least in part the result of the failure of the Dublin system and of attempts to introduce fair responsibility-sharing in Europe. Besides these practices, we also see an increasing tendency of pushbacks at the internal borders of the European Union.

3. There are also reports and evidence of inhuman and degrading treatment of member States and their agencies in the framework of these pushbacks, through intimidation, taking or destroying goods of migrants, and even through the use of violence and depriving migrants of food and basic services. In their denial of pushback action, these types of (sometimes systematic) inhuman and degrading treatment are denied as well, and as a consequence not adequately examined.

4. As a result of my research throughout Europe, I have become concerned at the persistent and increasing practices and policy of pushbacks, which are in clear violation of the rights of asylum-seekers and refugees, including the right to protection against non-*refoulement*, which is at the core of international refugee and human rights law. I recall that member States are obliged to provide adequate protection to asylum-seekers, refugees and migrants arriving at their borders, and thus to refrain from any pushback, to allow for independent monitoring and to fully investigate allegations of pushbacks.

5. Reported pushbacks concern actions towards migrants who have clearly crossed the border and find themselves inland, and towards migrants who are present near or at the border while 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 a proper asylum procedure either, which puts them at risk of being sent 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 which they are returned to, or from which they cannot escape. The core obligations of asylum and international law are intended to prevent this from happening. As a consequence of member States' refusal to address reported cases of pushbacks, those practices will continue, victims will be deprived of the right to an effective remedy and to hold authorities accountable for human rights violations.

6. Instead of undertaking action to abandon all types of pushbacks by responding actively and adequately to every signal or actual evidence, an increasing number of countries are tending to refuse an independent examination of serious allegations, to simply deny them or even to accuse, stigmatise and even criminalise non-governmental organisations, human rights' defenders and civil society actors who work to assist migrants to gain 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 role as key actors in facilitating migrants' access to rights and to justice. Such behaviour is in contradiction

with adopted texts such as Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe.

7. Civil society organisations working for the promotion of vulnerable groups and minority rights may be more likely to face threats. While in some Council of Europe member states there may not be an immediate danger to their personal safety, the environment in which they operate can still be hostile. Defenders dealing with the rights of refugees, asylum seekers and migrants, women, LGBTI persons, Roma and other national minority groups are in a particularly vulnerable position given the “unpopularity” of such issues in many countries. It was noted how distorted and harmful rhetoric has led parts of the population to openly manifest hatred towards those groups and towards civil society actors that promote and protect their rights.

8. I was appointed rapporteur in January 2019. During the preparation of the report a hearing was organised on 26 March in Paris with the Council of Europe Secretary General’s Special Representative on Migration and Refugees Mr Tomáš Boček, and an exchange of views with Ms Jelena Sesar, Researcher on the Balkans at the Europe Regional Office of Amnesty International and Mr Kris Pollet, Head of legal and policy research with the Council on Refugees and Exiles (ECRE). Their input was very useful, and I am especially grateful to Ms Sesar who was able to speak at the hearing at short notice to present Amnesty International’s timely and relevant report on pushbacks from Croatia published a few days’ before.⁴

9. After this meeting I travelled to Croatia (Zagreb and Cetingrad) and the border region of Bosnia and Herzegovina (from Velika Kladuša to Bihać) to gain first-hand knowledge of the situation regarding pushback action in this area. I would like to thank to the Croatian authorities for their cooperation and organisation of the meetings and visits, and to all the actors with whom I was able to exchange. Special thanks go to the UNHCR, and IOM partners on the ground, and to Médecins du Monde Belgique as well as the NGOs I was able to meet, including NoNameKitchen, Are You Syrious (in Zagreb) and the Danish Refugee Council, Vasa Prava in Velika Kladuša. My meeting with the Mayor of Bihać was particularly enlightening. More details of the visit are described below.

10. No report has yet dealt exclusively with the problem of pushbacks, but they have been referred to in the framework of various other work, for instance Resolution 2174 (2017) on Human rights implications of the European response to transit migration across the Mediterranean, and Resolution 2073 and Recommendation 2078 (2015) on countries of transit: meeting new migration and asylum challenges and Resolution 2228 and Recommendation 2136 (2018) on Human rights impact of the “external dimension” of European Union asylum and migration policy: out of sight, out of rights?” For all of which, I was rapporteur.

2. Definition of “pushbacks”

11. Article 4 of Protocol No. 4 to the European Convention on Human Rights specifically prohibits the collective expulsion of aliens. Since cases of expulsion are usually accompanied by the use of force, Article 3 of the Convention, prohibiting torture or to inhuman or degrading treatment or punishment, will also apply. Collective expulsion has been defined by the European Court of Human Rights as “any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group” (see, for instance, *Čonka v. Belgium* – 51564/99).

12. The obligation of states not to expel or return (*refouler*) a person to territories where his/her life or freedom would be threatened is a protection principle set out in Article 33 of the United Nations 1951 Convention Relating to the Status of refugees, Article 3 of the Convention on Human Rights and Article 3 of the Convention Against Torture. This article prohibits states from expelling or returning (*refouler*) a refugee in any manner whatsoever to a territory where s/he would be at risk of persecution. The prohibition of *refoulement* applies to all refugees, including those who have not been formally recognised as such, and to asylum seekers whose status has not yet been determined.

13. Although “pushback” action and policies may be less clear in its legal scope than that of *refoulement* or of collective expulsion, I have decided to use the term in this report, for two main reasons. Firstly, it is in line with the violent and physical nature of the practices involved, which I wish to denounce and which the recommendations aim to tackle, and secondly, the notion of “pushback” 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,

⁴ “Pushed to the edge: violence and abuse against refugees and migrants along the Balkans route”, March 2019, see: <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>.

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.

14. Looking at the facts during my research it became clear, moreover, that for some countries pushing migrants back from borders had become a systematic “policy” rather than a repetition of isolated incidents. The title of the report was therefore modified to reflect this worrying fact.

15. Pushback action is closely linked to another phenomenon described as “pullback”. This consists in agreement between countries that migrants will be retained on one side, usually in exchange for financial or other economic incentives given to the retaining country. Pullbacks are implemented by means of joint patrols, agreements to prevent migrants from approaching the border, in some cases funding for reception centres or camps. As observed in my report “Human rights impact of the ‘external Dimension’ of EU Asylum and Migration policy: out of sight, out of rights?” (Resolution 2228, and Recommendation 2136 (2018)), this poses a serious problem of responsibility for violations of the human rights of migrants denied freedom of movement or access to an asylum procedure and potentially victims of the worst forms of inhuman treatment. The present report does not deal with this issue although some reference will be made in the examples given.

3. The work of international organisations to detect, sanction and prevent pushbacks

3.1. Council of Europe

3.1.1. European Court of Human Rights

16. On the basis of Article 3 of the Convention, the Court has reiterated the importance of individualised procedural safeguards which prohibit collective expulsions. In *Conka v. Belgium*, the Court found a violation of Article 4 of Protocol No. 4 as the expulsion procedure had not afforded sufficient guarantees demonstrating that the personal circumstances of each of those concerned had been genuinely and individually taken into account.⁵ In *Sharifi and others v Italy and Greece*,⁶ it found a violation of Protocol 4 Article 4 due to the lack of access to individualised procedural safeguards on the port of Ancona, where the applicants had been detained.

17. The Court held that the Dublin system, the mechanism for deciding which EU state is in charge of handling an asylum claim lodged by a third country national, “must be applied in a manner compatible with the Convention: no form of collective and indiscriminate returns could be justified by reference to that system, and it was for the State carrying out the return to ensure that the destination country offered sufficient guarantees in the application of its asylum policy to prevent the person concerned being removed to his country of origin without an assessment of the risks faced.”⁷

18. In the landmark *Hirsi Jamaa* case, the Court convicted Italy for its pushback operations in the international waters in cooperation with Libya. Automatic returns (pushback operations) without any individual assessment and the possibility of legal redress constitute a violation of Articles 3 and 13 of the European Convention on Human Rights (ECHR) and Article 4 of the Protocol no 4 to the Convention.⁸ The Court held that: “where a State had, exceptionally, exercised its jurisdiction outside its national territory, it could accept that the exercise of extraterritorial jurisdiction by that State had taken the form of collective expulsion.” This case is particularly relevant for incidents involving expulsions at sea (pushbacks from Italy to Libya, for instance). Once again, the failure to take the victims’ individual circumstances into account informed the Court’s finding of a violation of Protocol 4.

19. The Court made clear that member States exercising effective control over migrants exercise jurisdiction and are therefore bound by the obligations of the ECHR, even if this control takes place outside their territory. Since then, member States tend to circumvent their responsibility with creative interpretations of their jurisdiction and territory.

20. *Sufi and Elmi v. the United Kingdom* developed the prohibition of states from extraditing or expelling individuals to another territory where there are substantial grounds for believing that they face a real risk of

⁵ Application no. 51564/99.

⁶ Application no. 16643/09.

⁷ In the framework of the execution of this judgment, in January 2019 UNHCR made a submission to the Italian Government pointing to subsistent problems, in particular at border crossings: access for NGOs, lack of information, “gaps in cultural mediation/interpretation”, identification of persons with special needs and other reception arrangements. Recommendations made included strengthening access to territory and international protection, increasing funding, interpretation and training for border police on international protection and the Dublin regulation.

⁸ *Hirsi Jamaa and others v Italy*, App no 27765/09 (ECtHR, 23 February 2012).

torture. The Court held that the situation of generalised violence in Somalia was intense enough to bar the removal of individuals there. In coming to this decision, it assessed whether fighting was localised or widespread, whether parties used means and methods of warfare that increased the risks to civilians and whether the use of such tactics was widespread amongst the parties to the conflict. This case is relevant for migrants facing *refoulement* to Syria.

21. In the cases of *N.D. and N.T. v. Spain* (nos. 8675/15 and 8697/15, 3 October 2017) a request for referral to Grand Chamber was accepted on 29 January 2018. In that judgment on the automatic return of sub-Saharan migrants by the Spanish Government to Morocco, the ECtHR recalled its jurisdiction as established in the *Hirsi* judgement and made clear that member States cannot escape their responsibility while construing their jurisdiction in a certain way. Member States are hence not allowed to move their borders inwards to prevent asylum seekers from making an asylum claim.⁹

22. In relation to the refusal of access to territory and to asylum application procedures, at the time of reporting the ECtHR had imposed interim measures (emergency measures demanded of a member State when there is a risk of irreparable harm to applicants) on Hungary for the eighth time, ordering a family of Afghan asylum-seekers to be given adequate food supplies while in the Rösztke border transit zone. Recently, the Hungarian authorities forced two asylum-seeking Afghan families to leave the country under duress, which was condemned by UNHCR as deeply shocking and a flagrant violation of international and EU law.¹⁰

3.1.2. Council of Europe Commissioner for Human Rights

23. The Commissioner has reacted on several occasions to issues concerning pushbacks, including for instance concerning the refusal of the Croatian authorities to assist the Ombudswoman in her investigation of pushback cases. In October 2018, the Commissioner stated that she was "worried" by reports from "expert refugee and migrant organisations that provide consistent and substantiated information about a large number of collective expulsions from Croatia to Serbia and to Bosnia and Herzegovina of irregular migrants, including potential asylum seekers".¹¹

24. Similarly, in her report on a visit to Greece¹² published on 6 November 2018 the Commissioner noted that several interlocutors had drawn her attention to consistent allegations of summary returns ("push-backs") to Turkey, often accompanied by the use of violence, preventing migrants from accessing the asylum procedure. The Commissioner noted with concern that such push-back operations were documented in several recent reports by civil society organisations along with numerous testimonies. She also noted that, in June 2017, similar documented allegations led her predecessor to express his concerns¹³ and the Greek Ombudsman to launch an *ex officio* investigation into this alleged practice.

25. The Commissioner for Human Rights has also expressed concern after numerous meetings and exchanges with human rights defenders throughout Europe that the work of these bodies and other civil society actors was increasingly challenged, in particular with respect to the protection of refugees, asylum-seekers and migrants. She has made a number of recommendations regarding the importance of the work of non-governmental organisations and civil society in migration and the need for them to be allowed to carry out their work in an "enabling environment conducive to their work."

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

26. After his visit to the region, the Council of Europe Secretary General's Special Representative on Migration and Refugees published a report identifying problems with access to the territory and asylum procedures in Serbia and Hungary, expressing his concern that reported practices were contrary to Article 4 of Protocol 4 to the Convention.¹⁴ In an exchange of views with the Committee on 26 March in Paris, the

⁹ See C. Gortazár Rotaecche and N. Ferré Trad, 'A cold shower for Spain-hot returns from Melilla to Morocco: *ND and NT v Spain* ECtHR, 3 October 2017' (*EU Migration Law Blog*, 20 October 2017), <http://eumigrationlawblog.eu/a-cold-shower-for-spain-hot-returns-from-melilla-to-morocco-n-d-and-n-t-v-spain-ecthr-3-october-2017>, accessed 16 July 2018;

A. Pijnenburg, "'Is *ND and NT v Spain* the new *Hirsi*?' (*EJIL Talk*, 17 October 2017), <https://www.ejiltalk.org/is-n-d-and-n-t-v-spain-the-new-hirsi/>, accessed 16 July 2018.

¹⁰ <https://www.unhcr.org/news/press/2019/5/5cd3167a4/hungarys-coerced-removal-afghan-families-deeply-shocking.html>.

¹¹ <https://www.aljazeera.com/news/europe/2018/10/council-europe-urges-croatia-probe-police-abuse-allegations-181005104405894.html>.

¹² <https://rm.coe.int/report-on-the-visit-to-greece-from-25-to-29-june-2018-by-dunja-mijatov/16808ea5bd>

¹³ https://twitter.com/CommissionerHR/status/872380520495280129/photo/1?ref_src=twsrc%5Etfw&ref_url=http%3A%2F%2Fwww.coe.int%2Fweb%2Fcommissioner.

¹⁴ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2

Special Representative presented his forthcoming report, which added to and provide points of comparison with the findings from my own mission to the region.

27. Regarding Spain, in September 2018 the Special Representative published a report on his March 2018 fact-finding visit to the country,¹⁵ in which he criticised the substandard living conditions in the Spanish enclaves of Ceuta and Melilla. With regard to prevention of entry into the territory, he warned about the “questions raised with regard to the right to seek asylum and the respect for the principle of non-*refoulement*” in the context of “practices involving information sharing by the border police with the relevant authorities of a neighbouring country regarding suspected unauthorised border crossings and the subsequent action of the authorities in the neighbouring country to intercept migrants and refugees before they cross the border”.¹⁶

3.2. United Nations

28. Whereas Article 3 of the Convention implies an absolute prohibition of *refoulement*, Article 33 of the UN Refugee Convention prohibits the expulsion of a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” Article 33 paragraph 2 leaves some room for exceptions for persons who are a serious risk for the public security.

29. According to the UNHCR, asylum procedures should: “be examined within the framework of specially established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs.” The practical application of this is explained in detail in “A guide to international refugee protection and building state asylum systems.”¹⁷

30. Under article 3 of the UN Convention Against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment: “No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

31. Article 7 of the International Covenant on Civil and Political Rights Prohibits the infliction of torture or to cruel, inhuman or degrading treatment or punishment. According to the UN Human Rights Committee: “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or *refoulement*.”

32. UNHCR, often in partnership with the International Organization for Migration, is present in the field in all countries where pushbacks have been confirmed or alleged. The assistance of the organisation, both with respect to information provided on particular cases and guidance during my fact-finding mission, was essential to the preparation of this report. Although UNHCR is not involved in border management, it deals extensively and on a daily basis with the results of the retention of huge numbers of migrants in transit zones and reception centres, thus is well-placed to bear witness to incidents as they arise.

3.3. European Union

33. Article 18 of the EU Fundamental Rights Charter guarantees the right to asylum for migrants and Article 19 of the EU Charter on Fundamental rights prohibits collective expulsions. This article also states that: “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.” These articles can also apply extra-territorially, for instance if EU Agencies operate outside EU territory.

34. The Qualifications Directive codifies the prohibition of non-*refoulement* as defined in the UN Refugee Convention and Article 3 of the Convention into EU secondary law, prohibiting member states from expelling an individual to a country where they face a real risk of persecution. Article 78 of the TFEU stipulates that the EU must provide a policy for asylum, subsidiary protection and temporary protection, “ensuring compliance with the principle of non-*refoulement*. This policy must be in accordance with [the 1951 Geneva Convention and its Protocol] and other relevant treaties.”

35. The role of the European Border and Coast Guard Agency (Frontex) is to “help EU countries and Schengen associated countries manage their external borders. It also to helps to harmonise border controls across the EU. The agency facilitates cooperation between border authorities in each EU country, providing

¹⁵ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d2c31.

¹⁶ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016808d2c31.

¹⁷ <https://ipu.org/resources/publications/handbooks/2018-03/guide-international-refugee-protection-and-building-state-asylum-systems-handbook-parliamentarians-no-27>.

technical support and expertise.” Frontex has a mandate to cooperation with third countries, which will be further developed in its new mandate.¹⁸ The agency has recently been accused of complicity in the expulsions of migrants from the shores of Italy to Libya¹⁹ and of directly participating in violent pushback operations at the Evros land border between Turkey and Greece, whereby individuals are beaten and robbed of their possessions.²⁰

36. In a 2013 report, the NGO Pro Asyl accused Frontex of complicity in “maritime pushbacks” between Greece and Turkey, as most of the pushbacks occurred within its operational area.²¹ More specifically, the report accuses Frontex of implementing illegal operations designed to detect, dissuade and intercept migrants wishing to claim asylum in Greece.²² That the problem of complicity is currently still relevant, is illustrated by the questions raised about the role of Frontex in pushbacks from Hungary to Serbia.²³

37. In December 2018, agents from Frontex were deployed at the border between Croatia and Bosnia.²⁴ Recently released footage appears to show a Frontex plane observing a van smuggling migrants into Croatia. The smugglers were subsequently arrested and the migrants deported to Turkey, raising questions of Frontex complicity in Croatian pushback operations. During my visit to Croatia and Bosnia and Herzegovina, the Croatian police explained the extent of cooperation with Frontex and with the EU. Frontex involvement in border management helps reduce cases of police violence in general²⁵ and police training funded by the EU is an important factor in border control, nevertheless it appears that more should be done by the agency to ensure the safety and humanitarian treatment of people attempting to cross the borders in this region (see focus on Croatia below).

4. Cases of pushback action

4.1. Pushbacks from European Union member states to countries outside of Europe

4.1.1. The border between Morocco and Spain at Ceuta and Melilla

38. In 2015, Spain made an amendment to the Aliens Act, which now provides that “those foreigners who are detected at Ceuta’s and Melilla’s border lines when trying to pass the border’s contentious elements to irregularly cross the border can be rejected to avoid their illegal entry in Spain.”²⁶ Although accompanied by provisions aimed to guarantee international human rights obligations, the amendment has in practice allowed the Spanish Government to justify collective expulsions.

39. In the same year the United Nations Human Rights Committee expressed concern about the practice of summary return on the borders of Ceuta and Melilla. The committee was also concerned by changes to the Aliens Act, noting that expulsions were carried out without sufficient guarantees of respect for the principle of *non-refoulement* and that non-Syrian asylum seekers, as well as those from other Arab countries, were being denied the right to access asylum offices there. The Committee expressed alarm at reports of ill-treatment, both by Spanish and Moroccan authorities during expulsions from the enclaves.

40. In July 2018, Spain sent back 116 Sub-Saharan African migrants who managed to cross the border fence at Ceuta and Melilla,²⁷ and a total number of 6 000 migrants entered the enclaves. Migrants who enter Ceuta and Melilla irregularly are housed in the Temporary Stay Centre for Immigrants (Centro de Estancia Temporal de Immigrants, CETI), under the authority of the Employment and Social Security Ministry. The centres are open but asylum seekers may not be transferred to the mainland, meaning many remain on the 8.5 or 12 square kilometre enclaves throughout the duration of their asylum process. According to Human Rights Watch: “Migrants faced substandard conditions in arrival facilities and obstacles to applying for asylum.

¹⁸ https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-border-coast-guard-regulation-631_en.pdf; <https://www.consilium.europa.eu/en/press/press-releases/2019/04/01/european-border-and-coast-guard-council-confirms-agreement-on-stronger-mandate/>.

¹⁹ <https://www.politico.eu/article/frontex-involved-in-return-of-migrants/>.

²⁰ <https://www.csmonitor.com/World/Europe/2018/1221/Are-Greek-and-EU-officials-illegally-deporting-migrants-to-Turkey>.

²¹ Ibid.

²² Migreurop, Frontex between Greece and Turkey: at the border of denial, p.34.

²³ http://www.europarl.europa.eu/doceo/document/E-8-2015-014710_EN.html.

²⁴ <http://ba.n1info.com/English/NEWS/a303291/EU-border-agency-Frontex-to-be-deployed-on-Croatia-Bosnia-border.html>.

²⁵ According to Human Rights Watch, for instance, at the hearing of the Committee in Strasbourg on 9 April 2019.

²⁶ http://www.asylumineurope.org/reports/country/spain/access-territory-and-push-backs#footnote6_ycigctw.

²⁷ https://elpais.com/elpais/2018/08/23/inenglish/1535032545_735013.html.

Summary returns from the enclaves continued [in 2018].”²⁸ Human Rights Watch also reported overcrowding and a failure to prevent abuse from other migrants towards asylum seekers of LGBTQ background.²⁹

41. Spain’s approach towards migrants entering irregularly has led to individuals taking drastic measures, with over 700 migrants violently attempting to storm the Ceuta fence in July 2018³⁰. But despite widespread criticism of its policy, the Spanish interior ministry recently stated that there were no immediate plans to halt summary deportations.³¹

4.1.2. Pushbacks from Poland to Belarus

42. The European Court of Human Rights issued interim measures to Poland in several cases concerning pushbacks to Belarus in 2017.³² In the same year, 34 complaints against the Border Guard were registered by the Voivodeship Administrative Court, while the Supreme Administrative Court recently ruled in twelve cases that the official notes issued and signed only by the Border Guard to substantiate refusal of entry decisions, referring solely to economic activity as the reason for foreigners’ entry into the country, were not credible. Applicants before the Court of Human Rights alleged they had been pushed back several times to Belarus (in one case 28 times!), including after the issue of the interim measures under Rule 39 to allow them to apply for asylum in Poland. Despite this, all the applicants were still in Belarus at the time of the communication. At the time of the report none of these cases had been judged.

4.1.3. Pushbacks and pullbacks between Italy and Libya

43. Under a 2008 agreement between Italy and Libya aimed at preventing irregular migration from Libya to Italy, Italy carried out several naval operations whereby it intercepted irregular migrants and returned them to Libya. These were condemned by the European Court of Human Rights in the *Hirsi Jamaa* case. This agreement was suspended in 2011, but in February 2017 a new memorandum of understanding provided for support from Italy to the Libyan Coast Guard to intercept migrant boats trying to cross from Libya to Italy. In this context, an application was filed with the Court arguing that Italy was responsible for a fatal rescue incident in November 2017 in which the Libyan coastguard allegedly interfered in attempts by an NGO vessel to rescue 130 migrants from a sinking dinghy, as a result of which at least twenty migrants died and survivors suffered severe human rights violations in Libya. The application was filed by the Global Legal Action Network (GLAN) and the Association for Juridical Studies on Immigration (ASGI). The case is currently under examination.³³

44. In PACE Resolution 2228 (2018) on the human rights impact of the “external dimension” of European Union asylum and migration policy: out of sight, out of rights? already referred to, paragraph 11.3 asks the Government of Italy to “investigate fully the allegations of experts and international NGOs, such as Amnesty International, of returns to Libya of migrants picked up at sea in the Italian Search and Rescue Zone, and of collusion between the Libyan coastguard and the people smugglers in the Mediterranean.” The situation has, if anything, worsened since the publication of that report, as political tensions in Libya have risen and NGOs are no longer authorised to carry out search and rescue operations in the Mediterranean.

4.2. Pushbacks from EU to Council of Europe member states (Schengen and non-Schengen borders)

4.2.1. Pushbacks between Greece and Turkey

45. In April 2017, some 3 600 asylum seekers attempted to cross the Evros river from Turkey into Greece.³⁴ By the end of July 2017, 9 480 had attempted to make the crossing and UNHCR recorded a total of 18 014 registrations at the land border as at 31 December 2018.³⁵ Since mid-2017 there have been frequent reports

²⁸ <https://www.hrw.org/world-report/2019/country-chapters/spain#>.

²⁹ <https://www.hrw.org/news/2017/04/28/spain-lgbt-asylum-seekers-abused-north-african-enclave>.

³⁰ https://elpais.com/elpais/2018/07/26/inenglish/1532599360_950584.html;

see also: <https://www.euractiv.com/section/justice-home-affairs/news/1000-migrants-storm-border-fence-at-spanish-enclave-of-ceuta/>.

³¹ https://elpais.com/elpais/2018/07/27/inenglish/1532677497_218740.html.

³² See: <http://hudoc.echr.coe.int/eng?i=001-176229>; <http://hudoc.echr.coe.int/eng?i=001-176472>;

<http://hudoc.echr.coe.int/eng?i=001-176484>; <http://hudoc.echr.coe.int/eng?i=001-177298>.

³³ <https://www.glanlaw.org/single-post/2018/05/08/Legal-action-against-Italy-over-its-coordination-of-Libyan-Coast-Guard-pull-backs-resulting-in-migrant-deaths-and-abuse>.

³⁴ <https://www.irinnews.org/special-report/2018/09/27/unprepared-and-overwhelmed-greece-s-resurgent-river-border-turkey>.

³⁵ <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.

Doc. ...

of pushbacks into Turkey at the Evros border.³⁶ Human Rights Watch has accused the Greek authorities of summarily expelling migrants at this border, where migrants were allegedly beaten, robbed of their possessions and subjected to ill-treatment by “forces wearing uniforms and masks without recognizable insignia.”³⁷ These reports have been corroborated by other media outlets.³⁸

46. The Council of Europe Human Rights Commissioner has called on Turkey several times to ensure human rights are upheld, in particular in the context of the implementation of the 2016 EU-Turkey deal.³⁹

47. In February 2018, the Greek Council for Refugees (GCR) reported that “large families, pregnant women, victims of torture but also minors,” were victims of pushbacks at the Evros border. According to the GCR: “A common element in their testimonies is their arbitrary detention in police stations, under extremely poor hygiene conditions, the use of violence and their subsequent transfer, crammed in vans, on one side of the river, wherefrom, on overcrowded boats, they are transferred to the other side, with their lives exposed in danger and in violation of fundamental human rights.”⁴⁰ A follow-up report referring to continued allegations of such practices was released by the GCR in collaboration with the Greek NGOs ARSIS and Human Rights 360 in December 2018.⁴¹

48. In April 2018 the Council of Europe’s Committee on the Prevention of Torture and Inhuman, or Degrading Treatment (CPT) reported the following after a visit to Greece regarding police and border guard stations in the Evros region: “several foreign nationals interviewed in private at three places of detention made credible allegations about the occurrence of push-back operations from Greece to Turkey by boat across the Evros River border, after they had been apprehended by Greek police and border guards. A number of them alleged that they had been physically ill-treated (including baton blows to the head) by police and border guard officers or (para-) military commandos during such push-back operations. [...] the CPT considers that, at least until early March 2018, these persons were not effectively protected against the risk of *refoulement*. The Committee recommends that the Greek authorities act to prevent any form of push-backs taking place, and effectively protect foreign nationals against the risk of *refoulement*”.⁴²

4.2.2. Pushbacks from Hungary

49. Legal amendments that entered into force on 5 July 2016 allowed the Hungarian police to automatically pushback asylum seekers who were apprehended within 8 km of the Serbian-Hungarian or Croatian-Hungarian border, depriving them of the opportunity to lodge an asylum claim.⁴³ As a result, between 5 July and 31 December 2016, 19 057 migrants were denied access (i.e. prevented from entering or escorted back to the border) at the Hungarian-Serbian border. Irregular entry into Hungary through the border fence is punishable by up to ten years imprisonment – and/or the imposition of an expulsion order. Lodging an asylum claim does not suspend the criminal procedure, placing Hungary in breach of Article 31 of the 1951 Geneva Convention.⁴⁴

50. Further legal reforms in March 2017 and in 2018 allowed successively for irregularly staying migrants found anywhere in Hungary to be escorted to the external side of the border fence with Serbia and for the criminalisation of individuals and organisations considered to be assisting irregular crossing.⁴⁵ In 2017, 9 136 migrants were pushed back from the territory of Hungary to the external side of the border fence with Serbia. The only legal means for those travelling along the Balkans to enter Hungary is to lodge an asylum claim at one of the “transit zones,” erected along the borders between Serbia and Croatia. In practice, however, the

³⁶ ECRE, Country report: Greece, 2017 P.23.

³⁷ <https://www.hrw.org/news/2018/12/18/greece-violent-pushbacks-turkey-border>.

³⁸ <https://www.irinnews.org/special-report/2018/10/08/refugee-pushbacks-across-turkey-greece-border-Evros>; <https://www.aljazeera.com/news/2018/01/evros-river-forced-pushback-refugees-edge-eu-180128105408674.html>; <https://translate.google.com/translate?hl=en&sl=tr&u=https://www.bbc.com/turkey/haberler-dunya-46591377&prev=search>.

³⁹ “It is also crucial that Turkey applies legal and procedural safeguards to all migrants – not only Syrians – who return from Greece. This includes the prohibitions of *refoulement* and collective returns.” See:

<https://www.coe.int/en/web/commissioner/-/the-implementation-of-the-eu-turkey-deal-must-uphold-human-rights>.

⁴⁰ <https://www.gcr.gr/en/ekdoseis-media/reports/reports/item/790-reports-of-systematic-pushbacks-in-the-evros-region>.

⁴¹ <https://www.gcr.gr/el/news/press-releases-announcements/item/1028-i-nea-kanonikotita-ston-evro-ameiotes-synexizontai-oi-paranomes-epanaproothiseis-politon-triton-xoron>.

⁴² <https://rm.coe.int/1680930c9a>.

⁴³ *Ibid.*, p.19.

⁴⁴ ECRE, Country Report: Hungary 2017, p.18.

⁴⁵ <https://www.unhcr.org/hu/4486-hungary-unhcr-dismayed-border-restrictions-draft-law-targeting-ngos-working-asylum-seekers-refugees.html>.

number of migrants granted permission to enter Hungary is very small: Hungary applies the policy of non-entry to the territory in the transit zones. By January 2018, only one asylum seeker per day per transit zone, 5 days per week (a total of 10 persons per week) was allowed to enter Hungary via each of the two transit zones.

51. Médecins sans Frontières (Doctors Without Borders) has recorded hundreds of injuries inflicted by Hungarian border guards including dog bites, irritations caused by pepper spray and bruises caused by assaults,⁴⁶ noting further that 76% of children treated by its clinicians cite the state authorities as the main perpetrators of violence against them.⁴⁷ Human Rights Watch notes that “Asylum seekers are detained indefinitely in substandard border camps without a possibility to challenge their detention. They face violence during operations to force them back to the border, and limitations on meaningful access to asylum”⁴⁸ and that “By August, authorities had limited daily entry of asylum seekers to 1-2 asylum seekers per day, leaving thousands stranded in poor conditions in Serbia.”⁴⁹ During a visit to Hungary, the Committee for the Prevention of Torture stated that injuries found on the bodies of interviewees confirmed reports of beatings during pushback operations⁵⁰.

52. A related recent dissuasive measure taken by Hungary has been food deprivation of third-country nationals detained in the transit zones, evidenced as from August 2018. After several interim measures issued by the ECtHR following complaints by the Hungarian Helsinki Committee (HHC), the Hungarian Immigration and Asylum Office (IAO) undertook to provide food to all asylum-seekers in the transit zone. But on 8 February 2019 the parents of an Iraqi family of five detained in the transit zone were refused food by the IAO for five days, until a new interim measure was issued by the Court ordering the practice to be stopped. Between February 2019 and the 23rd of April 2019, the HHC had to request interim measures on a case-by-case basis in a total of 8 cases, pertaining to 13 starved people in the transit zones, bringing the total number of starvation cases since August 2018 to 13, and that of affected individuals to 21.⁵¹

53. As mentioned above, Afghan families have recently been returned to Serbia. According to the Hungarian Helsinki Committee (HCC), 11 Afghan nationals residing in the Hungarian transit zone were faced with a choice of either returning to Kabul or cross the border to Serbia. The UNHCR called the action “a flagrant violation of international and EU law”, urging Frontex to refrain from cooperation in these joint return operations.⁵²

54. The proliferation of unofficial “border hunters” has also been a problem in Hungary, who have subsequently become part of the Hungarian border patrol force. According to Doctors Without Borders, such groups promote: “xenophobic discourse and violence against refugees, asylum seekers and other migrants in the country.”⁵³ There are similar reports of violent militias on the borders of Bulgaria and Slovenia.

4.2.3. Pushbacks from Croatia (Schengen candidate) to Bosnia and Herzegovina

55. In 2017, Human Rights Watch reported that the Croatian police were violently expelling migrants back to the Serbian border without giving them the chance to lodge an asylum claim. Migrants claimed that they were assaulted and robbed of their personal belongings.⁵⁴ It made similar reports that the Croatian authorities were violently expelling migrants to Bosnia,⁵⁵ publishing interviews with several migrants who claimed that: “Croatian police deported them to Bosnia and Herzegovina without due process after detaining them deep inside Croatian territory. Sixteen, including women and children, said police beat them with batons, kicked and punched them, stole their money, and either stole or destroyed their mobile phones.”

56. The Belgrade Center for Human Rights and the International Aid Network published a report “Documenting Abuse and Collective Expulsions of Refugees and Migrants” which includes data on pushbacks and violence against refugees and migrants by Croatian border police. Data from the report were collected in line with the Istanbul Protocol, including forensic medical opinions issued in individual cases.⁵⁶

⁴⁶ <https://www.independent.co.uk/news/world/europe/hungary-refugees-immigration-viktor-orban-racism-border-fence-a8446046.html>.

⁴⁷ MSF, Games of Violence, p.4.

⁴⁸ <https://www.hrw.org/europe/central-asia/hungary>.

⁴⁹ <https://www.hrw.org/world-report/2019/country-chapters/hungary#>.

⁵⁰ <https://www.coe.int/en/web/cpt/-/hungary-anti-torture-committee-observed-decent-conditions-in-transit-zones-but-criticises-treatment-of-irregular-migrants-when-pushed-back-to-serbia>.

⁵¹ https://www.helsinki.hu/en/echr_eighth_interim_measure_denial_of_food/

⁵² <https://www.ecre.org/hungary-gives-afghan-families-an-offer-you-cant-refuse/>.

⁵³ Ibid, p.8.

⁵⁴ <https://www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia>.

⁵⁵ <https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>.

⁵⁶ <http://www.bgcentar.org.rs/bgcentar/eng-lat/wp-content/uploads/2019/01/DOCUMENTING-ABUSE-AND-COLLECTIVE-EXPULSIONS-OF-REFUGEES-AND-MIGRANTS.pdf>.

57. These claims have been corroborated by several other international organisations and civil society groups. According to the Asylum Information Database (AIDA) “people from Afghanistan, but also from Iraq, Pakistan, Syria and other countries, were not given access to the asylum procedure, although some explicitly and repeatedly approached the Croatian police, expressing their wish to apply for international protection.”⁵⁷ The methods used by Croatian police were described in detail in a joint report by the NGO No Name Kitchen and other civil society groups, which reported that migrants were deprived of the right to lodge an asylum claim.

58. In December 2018, the NGO No Name Kitchen documented three cases of individuals being apprehended in Slovenia and subsequently pushed back to Croatia and then to Bosnia,⁵⁸ and cases of pushbacks from Slovenia have also been reported by the UNHCR.⁵⁹ Between January and August 2018, 140 people reported being pushed back from Romania. In Bulgaria, Migrants and asylum seekers have been expelled to Turkey without due process. Again, migrants report being beaten, assaulted with dogs and robbed of their money, mobile phones, food, drinks, and other items. Border crossings into Bulgaria increased in 2018, and between August 2018 and October 2018, a total of 2 416 people was detained by the Bulgarian authorities. In November 2018 Bulgaria and Greece collectively pushed back 11 000 migrants, with many being stripped, beaten and robbed of their food and possessions before being expelled to Turkey.

4.2.4. A closer examination: findings from my mission to Croatia and Bosnia and Herzegovina, March 26-29 2019

59. Croatia has the longest external land border of the European Union, spanning 1300km in all, of which 1100 km separate the country with Bosnia and Herzegovina. The authorities we met with during our visit emphasised that the closing of the humanitarian corridors through the Balkans and the hard borders set up by neighbouring Hungary and Slovenia, as well as the responsibility accompanying Croatia’s candidacy to become part of the Schengen area, had made tight border control a priority nationally as well as for the EU. According to the authorities, Croatia was nearing readiness to enter the area, as the Serbian border was now secure and most problems concerned the Bosnian border, despite these border closures. My attention was also drawn to the fact that the effects of the displacement of 750 000 people during the war in ex-Yugoslavia were still felt.

60. Croatia had supported the 2018 United Nations Global Compact for Regular, Safe and Orderly Migration and the multilateral approach it represented, as well as the compact’s insistence on the fact that countries of transit and of destination needed to be heard. Croatia itself had received 150 Syrians relocated from Turkey in 2018, and a further 100 so far in 2019, under the management of the Interior ministry.

61. According to the Croatian Government, as very few of the asylum-seekers arriving at the border wish to stay in Croatia, a great majority tries to enter irregularly to avoid finger-printing (and consequently the responsibility for Croatia based on the Dublin Regulation). In 2017, 70% of the people who registered as asylum-seekers left Croatia before the end of the asylum procedure. During my visits to the camps in the Republic of Bosnia and Herzegovina, Velika Kladuša and Bihać, I was informed that a great variety of nationalities are present in the camps: among them are North African, Syrian, Afghan, Somalian, Eritrean and Iraqi nationals in the camps. Despite the fact that an individual examination of protection needs is always required, this variety shows even more that part of them would be entitled to protection.

62. There was consensus among the authorities with whom I met during my visit that reforming the Dublin regulation with regard to the principle of first EU country of entry for asylum application, was critical. If Dublin had been applied strictly, there would have been 600 000 applications for asylum in Croatia (in the period during which Dublin was not applied in Greece and Italy), whereas in fact there had been only 150 applications during this period. In its judgments *AS (C-490/16)* and *Jafari (C-646/16)*, the European Court of Human Rights interpreted the irregular entry criteria in the Dublin Regulation in light of the practice of the Slovenian authorities during the time of the mass border crossings in 2016 to facilitate transfers to Austria and other countries. The Court considered such crossing still irregular and therefore no reason not to apply Article 13 Dublin Regulation. Although in 2018 other member States requested for a Dublin transfer to Croatia in 1,263 cases, the number of actual transfers to Croatia in that year was 126.

63. Frustration was high in the Croatian Government on aspects of the Dublin reform negotiations, for instance on the possibility of carrying out border and asylum procedures at control centers in coastal states. Croatia did not have problems in coastal regions and rejected the idea of opening a sea passage for migrants.

⁵⁷ https://www.asylumineurope.org/reports/country/croatia/access-territory-and-push-backs#footnoteref6_990jgym.

⁵⁸ No Name Kitchen, *Illegal Pushbacks and Border Violence Reports*, P.4.

⁵⁹ UNHCR, *Desperate Journeys: January-August 2018*, p.18.

64. The European Union was providing financial support for technical operational needs to the country, including 7 million euros for border policing and a further 6.8 million for training, although this support was considered insufficient in view of the challenges. An operational agreement with Frontex enabled aircraft surveillance to be carried out at the border, and 20 case workers were assigned to asylum procedures. Croatia had improved its border management to a point that it was now able to provide expertise to Serbia and North Macedonia.

65. Another key issue was the conclusion of readmission agreements between Croatia and countries of origin, but talks with Afghanistan, Pakistan and Iran had so far not yielded results through a lack of incentives for these countries. A working agreement on readmission with Bosnia and Herzegovina was under way, although the Bosnian authorities were reluctant to take migrants back without very precise proof of presence. An agreement with Serbia was currently suspended. According to the Croatian government, visa liberalisation policies in other countries caused problems for those further toward the centre of Europe.

Border control and policing

66. I was able to exchange on border control directly with the Croatian Border Police force at the Cetingrad station, where the chief of the station and the regional head explained that 80-90% of equipment and infrastructure was paid for by the European Union. Night vision with thermal detectors allowed surveillance during darkness and the Frontex aircraft based in Zadar controlled the frontier and shared relevant information. In all, 6 500 officers were deployed along the border; on the Bosnian side there were only 2-4 officers between sectors. 620 smugglers had been caught in 2018, and the police denounced huge numbers of what was termed “fake refugees”.

67. The work of the police was complicated by the need for local regular crossing, controlled by biometric passport inspection at certain crossing points, which were periodically the target of attempts to cross by large groups of illegal immigrants. One such incident had led to the closure of the border at Maljevic for one week in 2018 and resulted in migrants being transferred by coach to Velika Kladuša (Bosnia) without crossing the Croatian border.

68. A mixed patrol system with the Bosnian police was organised along the “green border” of 25km around Cetingrad. The Croatian police force received training on reception of persons asking for international protection, in which case an officer for migration came to fill in registration forms and people were taken to the Pörin reception centre. The police’s official remit was to prevent illegal immigration and cross-border trafficking. If registered at the police station, migrants were obliged to give finger-prints, which, according to the Bosnian police, most wished to avoid (once again in the context of the Dublin “first country of entry” rule). It should be noted that those joint patrol operations may have a deterring effect for asylum seekers to approach official border crossing points and ask for protection. According to the Ombudsman, the objective and effect of these joint patrols is that migrants are discouraged to approach the Croatian/Bosnian border. In this light, it is crucial that inland border patrolling clear information on the right to seek asylum is communicated pro-actively.

69. During my meeting with her, the State Secretary for European and International Affairs explained that accusations of police violence were now the subject of inquiry at ministry level instead of within the police’s own ranks, which ensured an objective assessment of the facts and could lead to sanctions (although according to other sources none had yet been pronounced). But she was persistent in her denial of the alleged violence used by the border police and of the pushbacks. According to the State Secretary, asylum seekers try to avoid contact with the Croatian authorities in order to travel further north to western European countries.

Meetings with the Ombudsperson’s office

70. I was struck by the large discrepancies between the statements of the authorities and non-state actors like the Ombudsman and NGOs. The authorities expressed mistrust of NGOs, seen as questioning unnecessarily the country’s border management, accusing the Croatian police of mistreatment where cases were extremely rare, and in some cases encouraging border crossing by illegal migrants. On the other hand, the findings of Ombudsman and NGOs were so consistent and substantiated that I as a rapporteur had to take and investigate them seriously.

71. In this context, the Deputy Ombudswoman of Croatia told me about the high number of complaints (over 200) she had lodged with the Ministry of the Interior about alleged pushbacks and collective expulsions from Croatia to Bosnia and Herzegovina but also from Croatia to Serbia. Only 1% of them had been declared admissible, which caused the Ombudswoman concerns at about the level of independence with which the

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complaints are being dealt with. Although the ministry has informed us about a new, more centralized procedure applied at complaints, it was not yet clear to the Ombudsman how the impartiality will be safeguarded in the future procedure.

72. Many of the complaints dealt with the experiences of undocumented migrants on the Croatian territory who were confronted with the authorities. According to their testimonies, they were apprehended and brought to the police station. They claimed that they were not provided with information about the possibility to request for asylum, but instead were brought back to the border or into Bosnian territory. As official return procedures to Bosnia and Serbia were not always easy, the detention period could take a long time. Those who managed to lodge an asylum claim had to wait for long periods, often in detention. The number of people managing to lodge asylum claims had dropped by 40% in 2018 as compared to 2017. Length of detention in police stations was also a concern, as was the lack of adequate health care in several detention centres. According to the testimonies and the Ombudswoman's own experience, the circumstances of detention were worrying, as no health care was available on a daily basis, but limited to emergency health care, and psychological support and interpretation facilities were lacking.

73. Cases of suspected *refoulement* included, for instance, decisions concerning a large group of people turned away in 1.5 hours with exactly the same wording for each person "Economic migrants, do not wish to stay." Usually in these cases, decisions ordered return with voluntary departure within a 7-day deadline. The apparent absence of legal border crossings seemed to indicate that pushbacks were happening. The EU's request for "expediency" at borders, even accompanied by the need for due process, encouraged Schengen countries to process and return cases without sufficient individual guarantees of access to information and assistance, and the Schengen implementation rules allowed for border authorities to "discourage" potentially illegal entrants, which allowed a margin of interpretation leaning towards *refoulement*.

74. Additional problems outlined by independent bodies, international organisations as well as NGOs concerned the non-registration of cases, the apprehension of migrants anywhere within the territory and transportation to border areas where decisions were taken without allowing sufficient time for appeal, absence of interpretation and misinformation about rights to protection.

75. My meeting with the Deputy Ombudsperson of Croatia corroborated, notably, the conclusions of the Council of Europe Human Rights Commissioner concerning increasing (administrative and other) obstacles facing human rights' defenders and NGOs dealing with migrants in many parts of Europe. For instance, the National Preventive Mechanisms in place since June 2018 required advance written requests from the Ombudspersons' office to consult specific police records rather than holding database information available without restrictions. Lawyers and NGOs were seeing their access to persons in need of assistance reduced and their presence resented, if not hampered, by the authorities. These restrictions illustrate that it has become more difficult to reach out for migrants in need of help or to monitor border practices, and that the democratic space is progressively shrinking.

Reception Centre for Asylum Seekers

76. In Zagreb I visited the Visit to the Reception Centre for Asylum Seekers with the Director of the centre and Ms Juliette Delescluse, Field coordinator for Croatia and General Coordinator for the Balkans with Médecins du Monde Belgium, who was providing on-site medical care. The centre accommodates adults as well as adolescents over 16 (on the advice of guardians), either asylum applicants, who stayed on average up to one year, or people in return or other procedures whose stays were often just a few days. Children living in families in the centre attended local schools. Efforts were made to reduce asylum waiting times to six months. Asylum-seekers were authorised to work from 9 months after their application.

77. Médecins du Monde had been present since 2016, providing health care, first aid and treatment, referring to local specialist doctors where necessary. A general practitioner was present every day as well as two psychologists, an interpreter for Arabic and one for Farsi. A general medical examination and a psychological consultation were carried out on arrival.

78. Médecins du Monde also made a weekly visit to the Putina detention centre as well as others, but the authorities were reluctant to provide or allow for more regular health care for migrants considered to be "only in transit". The absence of daily care meant frequent recourse to emergency services, which was expensive. However, the situation was improving, and the objective was to assist in putting in place a functioning public health system. 20% of patients were under 18, 30% were women, 50% of the patients referred to specialists were women. As regards allegations of police violence, some people bore traces of police violence, and were directed to the Ombudsperson to lodge complaints. Local doctors were reluctant to report injuries as the result of police violence, and there had been so far no response by the authorities to the cases filed.

Non-governmental organisations

79. While in Zagreb I was able to meet with the NGOs Centre for Peace Studies and Are You Syrious, who provided legal assistance and other services to migrants.⁶⁰ Lawyers funded by the UNHCR visited camps for two hours per week. Between April and October 2017 NGOs had escorted 300 people to the Croatian border who had asked for their support, announcing their arrival to the police, but this had been stopped as it gave asylum-seekers false hopes of receiving protection. The will of migrants to travel on from Croatia was stronger than the Dublin rules, so escorting them to official posts amounted to forcing them to register where they did not wish to make their claim. Croatian authorities appeared not to be prepared to contact or receive them. In addition, the authorities resented any action they considered as “interference” by the NGOs. Also these organisations have received many testimonies about pushbacks, a significant part accompanied with violence. They recalled a notorious case of a six-year-old girl who died in such action, as she was forced with her family to walk on train tracks, where she was ran over by a train. When her parents tried to return to Croatia again, they were pushed back again.

80. All non-state actors we interviewed, informed me about many other cases in which detected migrants reported not being sent to a police station, but immediately brought to the border or far inland within Bosnian territory, implying that no access to an asylum procedure was offered and official return procedures were circumvented. In some cases, this happened even with migrants who were found in the north of Croatia, sometimes after a formal readmission procedure applied by the Slovenian authorities. An element that appeared to be structural, especially in those informal procedures, was the brutal way pushbacks were carried out. Goods, in particular mobile phones, were destroyed, people were intimidated, and many people reported that violence was used against them.

81. Respondents also explained how systematic and well-documented these practices were. They referred to several documentaries in which Croatian authorities were shown mistreating groups of migrants, among them women and minors, while directing them to the Bosnian territory. This was also confirmed by the Mayor of the Bosnian city of Bihać, Mr. Suhret Fazlic, who claimed he had been confronted with special units of the Croatian authorities in the forests within Bosnian territory, forcing migrants to walk. During other occasions the Mayor had met groups of migrants who had been stripped of their shoes or even all of their clothing, allegedly by the Croatian authorities.

Situation in Bosnia and Herzegovina

82. I was able to visit two camps in the Una Sana canton of Bosnia, in Velika Kladuša and the Bira camp in Bihać, accompanied by Mr Seid Husagic, Senior Field Coordinator with the UNHCR. I met with the IOM Coordinator in Una-Sana Canton, representatives of the Vaša Prava Legal Aid Network and representatives of the Danish Refugee Council. I also visited the Sedra (converted hotel) family reception centre operated by IOM/UNHCR.

83. Conditions in the Velika Kladuša camp were bad, although I was informed that until November 2018 there had only been an improvised camp of tents, whereas now a disused warehouse and containers provided dry shelter. However, despite the efforts of IOM and UNHCR there was overcrowding, lack of any form of occupation, visible mental and physical health problems. Conditions in the Bira camp in Bihać were horrifying, again accommodation was in warehouses but with interior water leaks, promiscuity of accommodation and lack of sanitary installations. There were currently 1 600 migrants in the camp (with recent spikes I numbers of up to almost 3 000). According to the UNHCR, Health care outside of camps was an even bigger problem than inside them. Migrants were principally from northern Africa, followed principally by Afghanistan, Syria, Eritrea and Somalia.

84. During my visit of the Velika Kladuša camp, I met with a family, consisting of grandparents, parents and young children, who had just been returned by the Croatian authorities after being detected on Croatian territory. They explained that they had tried to ask for asylum but that they did not get the chance. They appeared to be exhausted, as they had had to walk a long distance after being dropped by the Croatian police. Several respondents we spoke to on the Bosnian territory, from where migrants make multiple attempts to cross the Croatian border, emphasised that most migrants aimed to request asylum in Croatia. They explicitly challenged the statement of the Croatian authorities that migrants preferred to be returned to Bosnia in order to make another attempt to cross into Croatia irregularly, rather than applying for asylum in Croatia.

⁶⁰ See Are You Syrious at: <https://twitter.com/areyousyrious?lang=en>.

85. In Bihać I met with Mayor Mr Suhret Fazlić. He stated that the Croatian police were returning migrants across the border in contradiction to extradition procedures and agreements. There was an 8-km zone into Bosnian territory where Croatian police were authorised to “discourage” people from trying to enter Croatia, but this distance was not respected. The attempts to close the European Union’s eastern border had made the situation in Bosnia and Herzegovina untenable, with thousands of migrants “disappearing” into the region on both sides of the border but especially the Bosnian side where police patrols were few. As mentioned before, the Mayor had witnessed in many occasions that Croatian authorities carrying weapons (he presumed they belonged to a special unit within the border police) operated deep into the Bosnian territory while returning migrants. The mayor uttered his criticism on the inhuman character of the actions, but also on the unlawfulness, as they deprived asylum seekers from the right to asylum and they violated the sovereignty of the Republic of Bosnia and Herzegovina.

86. The representative of UNHCR explained that it was almost impossible for migrants to have access to asylum in Bosnia and Herzegovina. There were only a few officials (RSDs) in the whole country tasked with the examination of asylum requests, where according to UNHCR, 25 000 have expressed their intention to seek asylum. As many of the migrants are stuck in the country, it is important to have them registered and to offer them protection and support to build a future. He mentioned several procedural obstacles: an expression of the intention to ask asylum expired after 2 weeks, but it was very difficult to lodge an asylum claim in time, due to the lack of capacity. The only office to lodge a claim was located in Sarajevo, but migrants who travelled to Sarajevo from North-Bosnia were not allowed to return to the camps in the north due to the limitation of numbers of migrants in each “zone” of Bosnia. Thousands of migrants resided outside the camps, lacking any access to health care, information, legal assistance or safety.

4.2.5. Pushbacks from Bulgaria (non-Schengen) to Turkey

87. Pushbacks and other violent action appear to remain widespread along the border of Bulgaria with Turkey. Turkish agencies and organisations report that at least 10 000 individuals are being pushed back collectively from Bulgaria and Greece into Turkey on a monthly basis. Low numbers of new arrivals into Bulgaria in the first half of 2018 and a sharp increase in the second half indicate unofficial cross-border cooperation between the Bulgarian and Turkish governments to prevent access through this external EU border, at least for the duration of the Bulgarian Presidency of the EU Council. According to, the Asylum in Europe organisation (AIDA), alongside pushbacks this cooperation made access to the territory and international protection of those in need of it all the more difficult.⁶¹

4.3. Pushbacks between Council of Europe member states not members of the European Union

4.3.1. Pushbacks from Serbia to Macedonia

88. Access to territory and asylum procedure remains also problematic in Serbia as noted by the Council of Europe’s SRSG on Migration and Refugees in 2017⁶², which includes pushbacks in border areas with Bulgaria and North Macedonia, as well as at the Belgrade International Airport. While practice of having joint military and police forces at the borders was abolished in April 2018, pushback practices continued.⁶³ Recent legislative changes also include provisions which allow for refusal of entry without suspensive effect of the appeal.

89. The Human Rights Committee expressed concerns related to “collective and violent” denial of access to territory.⁶⁴ These concerns have also been shared by the Committee Against Torture (CAT)⁶⁵ and Amnesty International,⁶⁶ while UNHCR reported this problem for the first time in 2012.⁶⁷ In 2015, CAT recommended to Serbia to establish “formalized border monitoring mechanisms, in cooperation with the Office of the United Nations High Commissioner for Refugees and civil society organizations.”⁶⁸

⁶¹ AIDA, Country Report Bulgaria, 2018 Update, January 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_bg_2018update.pdf.

⁶² https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168075e9b2, para. 1.1.

⁶³ Aida Country Report: Serbia.

⁶⁴ Human Rights Committee, *Concluding observations on the third periodic report of Serbia**, 10 April 2017, CCPR/C/SRB/CO/3.

⁶⁵ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

⁶⁶ Amnesty International, *Europe’s Borderlands: Violations against refugees and migrants in Macedonia, Serbia and Hungary*, July 2015, available at: <https://bit.ly/1dLK66T>, 31-34.

⁶⁷ UNHCR, *Serbia as country of asylum*, August 2012, available at: <https://bit.ly/2SevotT>, para 13.

⁶⁸ CAT, *Concluding observations on the second periodic report of Serbia***, 3 June 2015, CAT/C/SRB/CO/2*, para 15.

90. Since 2017 UNHCR has implemented a Border Protection Monitoring (BPM) system in the Western Balkans countries, which captures some of the movements in South Eastern Europe, including pushbacks. In 2018, more than 4 400 cases involving pushbacks for this region were recorded, including (but not exclusively) between Serbia and North Macedonia or Bosnia and Herzegovina and Serbia, as well as from countries neighbouring the region, notably Croatia and Hungary. 140 cases of arbitrary arrests or detention were mentioned during pushback records, and 848 cases of denial of access to asylum application mentioned by groups of people pushed back. The BPM will be used to monitor pushbacks along the Albanian, Montenegrin, Bosnian and Croatian routes and contacts reinforced with the respective Ombudspersons.

4.3.2. Allegations of pushback action between Georgia and Armenia⁶⁹

91. In 2018, according to official statistics on border crossing, of the 11 994 014 individuals entering Georgia 15 908 were denied entry (compared to previous years both entries and denials were gradually increasing: in 2017 these represented respectively 11 369 817 and 7 861. The said individuals were originally from Afghanistan, Syria, Yemen, Eritrea, Iraq and Iran. Denials concerned a majority of Iranian nationals, followed by Syrian, Turkish, Yemenite, Afghan, Iraqi, Eritrean and Somalian nationals.

92. In the course of 2018 UNHCR received a number of unconfirmed reports of potential indirect *refoulement*, very few of which were followed up by enquiry and action. One case of potential *refoulement* was avoided through UNHCR's immediate intervention with the Deputy Head of the Border Police in favour of an Iranian citizen, and another case of confirmed indirect *refoulement* also concerned an Iranian asylum-seeker in Georgia who had been sent back to Armenia. In light of these cases UNHCR had reached an agreement with the Refuge Issues Division, at the Migration Department of the Ministry of Internal Affairs, where cases known to UNHCR would be analysed and follow-up given.

4.4. Pushbacks between EU member states

4.4.1. Pushbacks between France and Italy (and Spain)

93. Regular reports attest the refusal of entry without protection needs being taken into account at the Italian border with France. France plans to maintain controls at its Schengen borders after the end of April 2019. On the basis of instructions reportedly introducing the practice of racial profiling, the Border Police and other police forces deployed in the region have boarded trains arriving from Italy and controlled passengers who appeared to be of African origin. Persons who explicitly expressed the intention to seek asylum have been refused entry by the French authorities on the basis that Italy is responsible for their claim, without being placed under the formal procedure foreseen by the Dublin Regulation.

94. Despite strong condemnation by monitoring bodies, civil society organisations, as well as court rulings condemning Prefectures for failing to register the asylum applications of people entering through Italy, practice remains unchanged. In response to a report by the General Controller of Places of Detention (CGLPL), the Ministry of Interior stated in June 2018 that refusals of entry were not in contravention of the law and implied that asylum applications were made before French officials on Italian soil.⁷⁰ The restrictions on access to the territory of France have been coupled with criminalisation of humanitarian assistance, as convictions continue to be delivered in other cases.

95. The French-Spanish land border became one of the main entry points to France in 2018. Spanish media have reported that migrants are pushed back from France to Spain without appropriate guarantees, in procedures lasting less than 20 minutes. Filmed footage has shown Border Police officials controlling groups of migrants in Hendaye, placing them on board a van and leaving them at the border instead of handing them over to their Spanish counterparts. Civil society organisations and local authorities have denounced what appears to be a practice mirroring the methods of the Border Police on the Italian border.⁷¹

5. Recommendations

96. Pushback action and policies in Council of Europe member states are thus evidenced in many regions, mainly concentrated at EU/Schengen borders but not restricted to these. Collective *refoulement* represents a

⁶⁹ Source UNHCR Georgia.

⁷⁰ The practice at the Italian-French border is also analysed in more detail in an AIDA report on a fact finding visit to France: Access to asylum and detention at France's borders:

<http://www.asylumineurope.org/sites/default/files/franceborders.pdf>.

⁷¹ AIDA, Country Report France, 2018 Update, March 2019, available at:

http://www.asylumineurope.org/sites/default/files/report-download/aida_fr_2018update.pdf.

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flagrant denial of the human rights of those prevented from entering Europe, beginning with the right to access to protection, information, due process and legal assistance.

97. Migrants who arrive at the border of Council of Europe member States cannot be subjected to inhuman and degrading treatment as a result of national policies, and operational mechanisms must enable European countries to avoid the acute human suffering of all migrants, whether refugees, asylum-seekers or economic migrants, forced to live in insalubrious, unhealthy and dangerous conditions at Europe's borders. Assisted returns in line with the right to human dignity are possible and best practises should be used as a basis for EU investment, at the same time encouraging development cooperation in countries of origin, especially on the African continent, as a solution to the root causes of mass migration.

98. The draft texts for adoption contain concrete recommendations for putting an end to pushback policies and practise by Council of Europe member States. They include recommendations already made by Council of Europe bodies and by the UNHCR with reference to applicable UN and European Union legislation, as well as points which I have gathered from exchanges with NGOs such as Amnesty International and Human Rights Watch and from my experience on the ground.

99. Among these recommendations feature prominently the need for access to the possibility of making a claim for protection at borders, for legal aid, accessible and comprehensible information and to assistance from NGOs at places where human rights violations take place (transit zones along borders, in particular). NGOs must be supported by national authorities rather than being criminalised in their action and portrayed as obstacles or promoters of smuggling. Their access and capacity to act and monitor in border regions should be managed, but not limited.

100. Another problem is the lack of access or presence of medical services at borders, which means that there is often no medical care, but also no formal means of testifying to physical violence which may be carried out by border officials, and therefore no proof of the causes of the violence. Authorities often claim that injuries are caused by migrants using violence against one another.

101. Independent border monitoring is essential in putting an end to pushback practices and policies. Tripartite monitoring agreements between national authorities competent for border controls, UNHCR and NGOs specialised in asylum and immigration law are useful tools to mainstream sustainable border monitoring. This should not exclude border monitoring performed by national human rights institutions and international organisations. Any type of border monitoring should allow for unannounced visits to all border areas and the findings of border monitoring exercises should be published.

102. allegations of violence and mistreatment must be adequately addressed, and a complaints mechanism ensured. Investigation of incidents should where possible be combined with protective measures for alleged victims pending investigation. Prevention measures must be introduced against informal forced return procedures, including standardised procedures at borders and clear rules of conduct.

103. In addition, the lack of attention from the public and media which impedes legal procedures through the difficulty in substantiating evidence to use for litigation. Those cases which have been brought have been made possible by research journalism and documentation. Research should be stepped up, especially as satellite and digital data is enabling ever-growing use in registering time and location of human rights violations.

104. Finally, improved relocation is key in reducing the pressure on Europe's bordering countries, to avoid overcrowding, unnecessary detention and generally unacceptable reception conditions for asylum-seekers. At the same time, more priority should be given to integration of protected persons, generalising best practices from countries with proven success in this process.