

Questionnaire of the UN Special Rapporteur on the human rights of migrants: pushback practices and their impact on the human rights of migrants

Submission of the Secretariat of the Council of Europe

I. Introduction

The Secretariat of the Council of Europe extends its gratitude to the UN OHCHR Special Rapporteur on the human rights of migrants, Felipe González Morales, for the opportunity to submit information to inform his forthcoming report to the 47th session of the Human Rights Council in June 2021, exploring ways and means to address the human rights impact of pushbacks of migrants on land and at sea. These comments reflect the views of the Secretariat of the Council of Europe and do not necessarily reflect the official position of its member states.

This contribution has been coordinated by the office of the Special Representative of the Secretary General of the Council of Europe on Migration and Refugees (“the SRSG”).

The [mandate](#) of the Special Representative was established in 2016 in response to the humanitarian crisis following the refugee and migration movements so as to provide immediate assistance and support to member states concerned by complementing activities of other relevant Council of Europe bodies and by co-ordinating action with other international partners. The mandate includes liaison and exchange of information with relevant international organisations and specialised agencies, as well as with migration authorities in member states.

While the European Convention on Human Rights does not provide for a right to asylum, the principle of *non-refoulement* is at the heart of the European Court of Human Rights’ jurisprudence on migration. When controlling entry to their territories which remains within their remedy, states must exercise this right in accordance with the provisions of the Convention. These provisions are applicable to everyone falling within the states’ jurisdiction, including migrants. It is to this end that the principle of *non-refoulement* imposes certain limitations on the right of states to turn away from their borders the person potentially in need of international protection¹. Relevant actors within the Council of Europe undertake activities to address pushback activities within their competences.

II. Overview of the Council of Europe Standards on pushbacks

The European Court of Human Rights requires the individual assessment of protection needs and 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 expulsion under Article 4 of Protocol No. 4 to the Convention². A summary of the Court’s case-law on pushbacks and collective expulsions can be found

¹ See *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 9214/80, 28 May 1985, Series A no. 94, *Gebremedhin [Gaberamadhien] v. France*, 25389/05, ECHR 2007-II and *Saadi v. Italy [GC]*, 37201/06, ECHR 2008.

² See *Hirsi Jamaa and Others v. Italy [GC]*, 27765/09, 23 February 2012

in the Court's case-law guides on [Immigration](#) and on [Article 4 of Protocol No. 4](#) (prohibition of collective expulsion of aliens).

The [Handbook on European law relating to asylum, borders and immigration](#) jointly produced by the European Court of Human Rights and the European Union Agency for Fundamental Rights and updated in 2020 includes a section on pushbacks and pullbacks at sea and highlights the issue of compatibility with the principle of *non-refoulement* and the right to leave any country as well as setting out the relevant case-law of the ECtHR.

In March 2020 the SRSG produced a joint note with FRA on the [fundamental rights of refugees, asylum applicants and migrants at the European borders](#), summarising some key safeguards of European law (both EU and Council of Europe norms) as they apply at the EU's external borders.

In 2005 the Committee of Ministers adopted [Twenty Guidelines on Forced Return](#). These guidelines expressed concern about the risk of violations of fundamental rights and freedoms which might arise in the context of forced return and recalled that every person seeking international protection had the right for his or her application to be treated in a fair procedure in line with international law.

III. Country visits and other advocacy activities against pushback policies

Special Representative on Migration and Refugees

Under the terms of his [mandate](#) the SRSG can “seek, collect and analyse information, including though fact-finding missions, on the human rights situation of refugees and migrants and report to the Secretary General” and has conducted [fact-finding missions](#) which have included the consideration of push-backs, the latest in this respect being to Bosnia and Herzegovina and Croatia in 2018.

The SRSG regularly participates in webinars, such as the one recently organised by Human Rights Watch, Refugee Rights Europe and the End Pushbacks Partnership on 18 November 2020 on “*Pushbacks and Rights Violations at Europe's Borders: From Evidence to Action*”. The SRSG emphasised that pushbacks are in clear violation of the rights of asylum seekers and refugees, of Article 3 of the European Convention on Human Rights and of the principle of non-refoulement.

Commissioner for Human Rights

The Commissioner for Human Rights promotes compliance with human rights in the member states of the Council of Europe, and carries out country visits, engages in dialogue with authorities, and undertakes other awareness-raising activities.

Since the start of her mandate in April 2018, the Commissioner has addressed pushbacks and related practices in various country and regional situations. She has done so repeatedly in relation to Croatia, in a [letter](#) to the government in 2018, in the context of her visit to Bosnia and Herzegovina in [2019](#), in a [statement](#) calling for an end to impunity for pushbacks in 2020, and through an [intervention](#) with the European Court of Human Rights in 2021, highlighting the systemic and often violent nature of this practice. The Commissioner also addressed the undermining of the right to seek asylum by Hungary, in her [2019 country visit report](#). As regards Greece, her [2018 country visit report](#) expresses concern about “persistent and documented allegations of summary returns to Turkey”. She also

addressed human rights violations at the Greek-Turkish border in [March 2020](#), and reports of pushbacks at sea in [September 2020](#). She made an [oral intervention](#) in a hearing before the Grand Chamber of the European Court of Human Rights in a case on alleged pushbacks by Spain in 2018 (in which the Court did not find a violation).

As regards Malta, in 2020, she [wrote](#) to the government in view of reports of pushbacks and instructions issued to private vessels to return rescued migrants to Libya. She has repeatedly addressed support provided to the Libyan Coast Guard, indirectly leading to returns to human rights violations, especially with Italy through an [intervention](#) with the European Court of Human Rights in 2019, and [statement](#) and [letter](#) to the government in 2020. Concerning pushbacks and pullbacks at sea more generally, the Commissioner published a [Recommendation](#) in 2019, including detailed recommendations to member states to prevent such practices, which she has reiterated repeatedly, including in the context of the [Covid-19 pandemic](#).

The Commissioner has publicly called attention to the general issue of pushbacks, including through [statements](#) and [lectures](#). She has emphasised, for example, the importance of member states holding each other to account and collective political action to address this Europe-wide problem. She has also signalled the problematic tendency of member states to try and circumvent the case law of the European Court of Human Rights on this issue, and has noted the importance of the role of [National Human Rights Institutions](#) and other independent bodies in addressing this practice.

The Commissioner has emphasised the need to tackle pushbacks with the statutory bodies of the Council of Europe, such as in exchanges with the Committee of Ministers and with the [Parliamentary Assembly](#). The Commissioner also engaged on this issue with EU partners, such as in exchanges with the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), and with the [European Commission](#), especially as a priority issue to be addressed in the EU Pact on Migration and Asylum.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)

The CPT provides for the setting up of an international committee empowered to visit all places where persons are deprived of their liberty by a public authority. The committee, composed of independent experts, may make recommendations and suggest improvements in order to strengthen, if necessary, the protection of persons visited from torture and from inhuman or degrading treatment or punishment. [The Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment](#) has addressed the principle of non-refoulement and pushbacks in many of its reports, including its [2009 report to the Italian Government](#); [2019 report to the Greek Government](#) and its [2020 report to the Greek Government](#).

The Parliamentary Assembly (PACE)

Resolution 2299 (2019) [Pushback policies and practice in the Council of Europe member States](#) was adopted by the Parliamentary Assembly on 28 June 2019. The Parliamentary Assembly expressed concern about the persistent and increasing practice and policies of pushbacks, which are in clear violation of the rights of asylum seekers and refugees, including the right to asylum and the right to protection against *refoulement*. The resolution urged member States to provide adequate protection

to those arriving at their borders, to refrain from pushbacks, to allow for independent monitoring and to fully investigate all allegations of pushbacks.

On 4 December 2020, the PACE Committee on Migration, Refugees and Displaced Persons appointed a rapporteur [on pushbacks on land and sea: illegal measures of migration managements](#).