

ODIHR's input for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants

In June 2020, the Human Rights Council decided to “examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of migrants, recognizing the particular vulnerability of women, children and those undocumented or in an irregular situation”.¹ This contribution by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) outlines commitments and measures from OSCE participating States to respect the rights of migrants, including in irregular situations.

Across the OSCE, participating States have deployed border police and other law enforcement agencies at land and sea borders. States have the right and responsibility to protect their borders, and may establish mechanisms to control their borders including forming border management co-operative arrangements of multiple states. Examples of this in the OSCE region are the Police Co-operation Convention for Southeast Europe (11 state members), the Baltic Sea Region Border Control Co-operation (10 state members) and the European Border and Coast Guard Agency (Frontex), which is regulated by the EU.

Commitments

OSCE participating States have made numerous commitments to protect the human rights of migrants at international borders. Initially, they highlighted “the importance of existing international standards and instruments related to the protection of and assistance to refugees” (Helsinki 1992). Specifically, participating States have committed to respect the right to seek asylum and crucially to facilitate voluntary return of refugees in dignity and safety (Istanbul 1999). Furthermore, in regard to border crossings, participating States have agreed “to promote dignified treatment of all individuals wanting to cross borders, in conformity with relevant national legal frameworks, international law, in particular human rights” (Ljubljana 2005).

These commitments clearly protect not only the right to seek asylum but also protect the principle of *non-refoulement*, which prohibits States from moving individuals outside their territories if there is substantial reason to believe that this could lead to harm of the individual.² These two principles form the basic protection against pushbacks at borders. The right to seek asylum and the principle of non-refoulement are also both enshrined in international law, most prominently in the Convention Relating to the Status of Refugees of 1951 (herein after the *Refugee Convention*).

The role of ODIHR

According to the UNHCR Global Trends Report 2020, there are approximately nine million refugees and asylum-seekers in the OSCE region. ODIHR works with participating States across the OSCE to help defend migrants' rights and is tasked to provide expertise, deliver support and assist participating States, for example by supporting the development of policies in line with OSCE commitments and good practices on the ground.

Last year, the impact of COVID-19 on undocumented migrants and asylum-seekers was highlighted by ODIHR in a number of meetings and statements. The ODIHR Director highlighted the problem of overcrowded shelters in a statement on 4 May 2020, noting that “ODIHR offers a forum to share the numerous good practices from around the OSCE region to encourage States to work together to find

¹ <https://undocs.org/A/HRC/RES/43/6>

² <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf>

solutions in the best interests of migrants”³. Alternatives to detention were also discussed at an ODIHR meeting held on 8 September 2020.

ODIHR is aware of the particularly vulnerable situation that migrant children can be in, and underlined this in a statement regarding the UN Convention of Rights of the Child on 20 November 2019, noting that “the dire situation of many migrant children shows that the Convention is not yet a reality for all”.⁴ ODIHR held a webinar on the rights of migrant children on 7-8 December 2020.

Concerns in relation to reports of pushbacks

There have been reports of alleged pushbacks in the OSCE region.⁵ As stated above, pushbacks are violations of asylum-seekers’ right to seek asylum and the principle of *non-refoulement*. ODIHR therefore welcomes inquiries to assess these alleged incidents, both by Frontex itself⁶ and by outside institutions.⁷ Furthermore, ODIHR highlights that effective monitoring can have a preventive and corrective function and can help address systemic shortcomings, including pushbacks. ODIHR stands ready to assist participating States in developing adequate monitoring mechanisms to ensure that human rights at borders are respected in line with the human dimension commitments of the OSCE.

³ <https://www.osce.org/odihr/451333>

⁴ <https://www.osce.org/odihr/439610>

⁵ <https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7>

⁶ <https://frontex.europa.eu/media-centre/news-release/frontex-launches-internal-inquiry-into-incidents-recently-reported-by-media-ZtuEBP>

⁷ <https://www.ombudsman.europa.eu/en/news-document/en/134739> and <https://euobserver.com/migration/150574>