

GENERALISED PUSH-BACK PRACTICES IN EUROPE THE RIGHT TO SEEK ASYLUM



The purpose of ITFLOWS is to provide accurate predictions and adequate management solutions of migration flows in the European Union in the phases of reception, relocation, resettlement and integration of migrants, according to a wide range of human factors and using multiple sources of information.

EXECUTIVE SUMMARY

In recent years, more and more asylum seekers trying to reach the European Union (EU) have found themselves subjected to practices that contradict the EU Charter of Fundamental Rights and the democratic principles within the Dublin III Regulation. The inalienable right of those migrants to seek asylum is violated every time that the Member States' national authorities subject them to irregular procedures and deny them their right to international protection. These practices are defined as push-backs.

This brief outlines the ways in which migrants are exposed to both 'external' and 'internal' push-backs by and between the Member States, while also underscoring the importance of safeguarding the physical safety and integrity of people seeking asylum. The document offers case studies of EU countries where push-backs have become the new normal, to highlight the main challenges in firstly identifying, and then in remedying, such practices. Finally, it asks whether the recent EU border procedure proposed in 2020 will have a positive or a negative impact on the right to seek asylum on the ground.

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SEEKING ASYLUM IN EUROPE

PUSH-BACK PRACTICES UNDER THE COMMON EUROPEAN ASYLUM SYSTEM

In Europe, the right to asylum is a key, fundamental right enshrined in the [EU Charter of Fundamental Rights](#) (Art. 18). It is legally binding for all EU institutions and Member States responsible for asylum and migration procedures. However, some Member States engage in widespread practices that subject people seeking international protection to violence, intimidation and arbitrary denial of access to asylum procedures. These practices, also known as pushbacks, are occurring both at EU borders, as well as within the EU, between Member States' shared borders. European Courts (the Court of Justice of the EU and the European Court of Human Rights), the EU's Fundamental Rights Agency and the UNHCR have found [Greece](#), [Lithuania](#), [Poland](#), [Hungary](#), [Italy](#), Spain and [Croatia](#) in violation of the right to asylum, the principle of non-refoulement and the right to an effective legal remedy, precisely because of their extensive push-back practices. Smaller scale push-backs in other EU countries have been reported by researchers, including in [Romania](#) and Bulgaria.

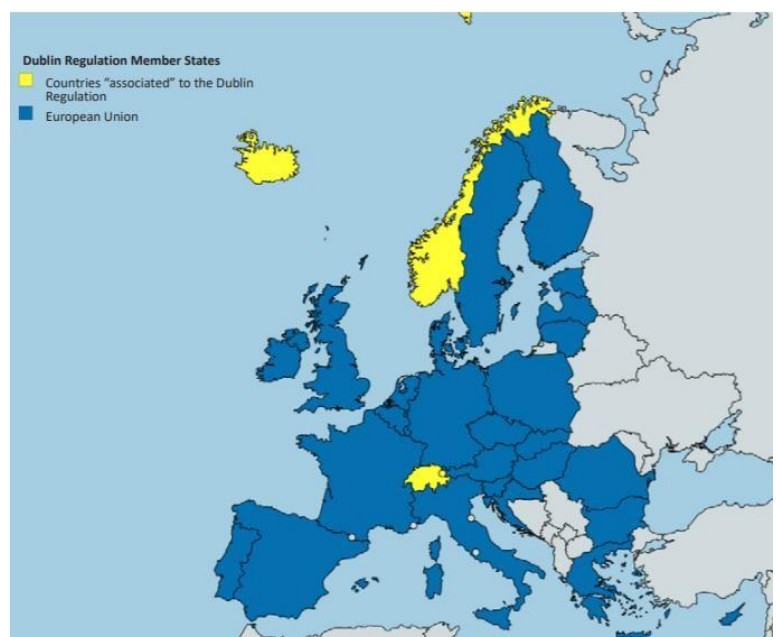
Moreover, beyond the EU border push-back practices, the 'internal' push-backs between the Member States (in Eastern Europe, see [Jafari](#); for Western Europe, see [Arib](#)) reflect a persistent lack of solidarity among the Member States. The lack of solidarity is endemic, as no one will take responsibility for asylum seekers who are then 'ping-ponged' from country to country (see the judgment of the [Serbian Constitutional Court](#) declaring push-backs from Serbia to Bulgaria unlawful). While the [Dublin III Regulation](#) and bilateral return admission agreements (under Art. 6(3) of the [Return Directive](#)) are supposed to enhance effectiveness of asylum adjudication and migrant returns, these instruments have in practice been used to achieve opposite aims: avoiding compliance with the legally binding EU right to seek asylum.

The Dublin III Regulation

The main goal of the Dublin III Regulation is to ensure quick access to asylum procedures and the examination of an application on its merits by a single, clearly determined EU country. The Regulation establishes the Member State responsible for the examination of the asylum application ([European Commission, n.d.](#)).

Some of the theoretical purposes of the Regulation are to:

- Offer quick access to protection and efficiency of asylum procedures.
- Prevent multiple applications by asylum seekers in several EU Member States.
- Reduce the number of asylum seekers transferred between EU Member States.



Source: [EASO, 2019: 15](#)

BORDER GUARDS AND COURT JUDGEMENTS

THE DECISION OF FRONTEX IN HUNGARY

The year 2021 began with the unprecedented decision of the European Border and Coast Guard Agency (FRONTEX) to suspend its activity in Hungary. This was allegedly due to this country's persistent non-compliance with the right to asylum and its guarantees, in defiance of both the European Commission's infringement procedures and a CJEU judgment that found Hungary's restrictive asylum practices in breach of the right to asylum and principle of non-refoulement. However, is this FRONTEX decision aimed at complying with human rights, or is Frontex instead simply avoiding being held jointly legally accountable?

The Frontex decision to withdraw from Hungary has left a profound gap in on-the-ground monitoring, as NGOs and the UNHCR are not allowed access to the transit zone camps. Unfortunately, the minimal EU legal compliance that was still ensured by Hungarian border guards will probably vanish. Judging by the Hungarian Ministries of Justice and Home Affairs' press releases, the judgments issued by a far-removed court (i.e. CJEU) will not ensure border guards in Hungary comply with human rights. The on-the-ground FRONTEX border guards served as some of the last effective human rights gatekeepers.

Measures taken by Hungarian law enforcement authorities against irregular migrants

	2017	Jan.	Feb.	March	April	May	June	Total
Blocked entries at the border fence		1,679	2,183	647	27	395	1,024	5,955
Escorts to the external side of the border fence		1,423	1,050	350	118	330	711	3,982
Irregular migrants apprehended		138	166	37	46	112	50	549
Total		3,240	3,399	1,034	191	837	1,785	10,486

Source: [Hungarian Helsinki Committee, 2017](#)

Transit zones in the Hungarian border with Serbia



The greatest challenge in remedying push-back practices is the difficulty in identifying and litigating them (on litigation difficulties see this webinar at [43:13](#)), which means that such practices might be even more widespread than current human rights monitoring bodies have the capacity to identify, or that courts have the ability to sanction.

A recent case of chain push-back practices taking place from Slovenia to Croatia, and then onwards to Bosnia

In this instance, around 30 third-country nationals have been forcibly escorted to Croatia by the Slovenian police without their oral asylum claims being registered, or without receiving any written decision rejecting their asylum claim or communicating a return decision. Croatian police proceeded in the same manner, forcibly escorting individuals to Bosnia without informing them of their rights to choose destinations. The case of one of these third-country nationals, who was subject to the Slovenian push-backs, is currently being presented by pro bono lawyers before the Administrative Court in Slovenia. Such a procedure allows individuals to challenge material acts that interfere with their fundamental rights. The Administrative Court's almost 200-page long judgment is an in-depth analysis and application of relevant EU legislation, CJEU and ECtHR jurisprudence to a highly political case, significant as well for the broader EU.

What the court found

The Court found violations of multiple fundamental rights, including of the right to asylum, the principle of non-refoulement and the prohibition of collective expulsion. The judgement essentially required that police forces respect the right to claim asylum, and that they fulfil their duty of cooperation as stated in Article 4 of the [Qualification Directive](#). It thus required the police forces to put an end to the arbitrary and forceable transfers of third country nationals to another Member State. The Slovenian Ministry of Interior has appealed the Administrative Court's judgement twice, and the case is now pending before the Supreme Court. The final judgment of the Administrative Court, following the Supreme Court decision, will be referential for domestic courts across the EU and lawyers litigating asylum seekers' rights, particularly in push-back cases. A commentary on the first judgment of the Administrative Court by Mohor Fajdiga can be found [here](#).

It remains to be seen whether the new EU border procedure proposed in the 2020 European Pact on Asylum and Migration will have a positive or negative impact on the right to seek asylum on the ground.

It might have a **positive impact** as all Member States will have to follow the same, mandatory border procedure for identification and registration of asylum claims, instead of the current diverse rules and arbitrary practices.

Nevertheless, it could also have a **negative impact** on the right to seek asylum, as the speedy procedure eliminates key procedural safeguards for asylum seekers and hampers identification of certain refugees and beneficiaries of subsidiary protection (in particular cases that require specialised and multiple hearings, such as victims of smuggling, trafficking, and torture, see more [here](#)).

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