

How the EU is Pushing Back against Human Rights.

By Abe de Ruijter

In early February European leaders once again convened in Brussels at a European Council meeting. One of the main points on the agenda was the topic of migration. In the words of European Commission President Ursula von der Leyen, the Council decided to “strengthen our external borders”, while keeping in line with “EU principles and values and fundamental rights” (Deutsche Welle, 2023; European Council, 2023). Behind this veil of righteousness, however, a much more insidious policy agenda is unfolding: the EU has decided to significantly increase its funding for countries' external border security – these funds will be spent on surveillance technology, drones, trucks, and even Trumpian fence-building (Lynch & Barigazzi, 2023). This decision will support Member States in pursuing their highly controversial ‘pushback’ practices, through which incoming migrants are being denied the right to seek asylum in Europe. This essay will argue that, despite legal uncertainty about pushbacks, these practices clearly violate fundamental EU principles such as human dignity, equality, and, most importantly, Human Rights. Henceforth, the EU – and its Member States – should immediately halt this anti-European policy agenda.

Definition and prevalence of pushbacks

Pushbacks – defined by the European Center for Constitutional and Human Rights (ECCHR) as “a variety of state measures aimed at forcing refugees and migrants out of their territory while obstructing access to applicable legal and procedural frameworks” (ECCHR, 2021) – have become widespread at the EU’s external borders. In 2021, Human Rights groups identified over 16 thousand cases of pushbacks at the Croatian-Bosnian border alone (Noll, 2021). Thousands of pushbacks have also been reported at the borders of Greece, Lithuania, Poland, Italy, Slovenia, Hungary, Malta, and Spain (PRAB, 2023; Greens, n.d.). Protecting

Rights at Borders (PRAB) has documented that, apart from being denied crossing borders, these migrants face physical abuse, theft of property, and arbitrary arrest (PRAB, 2023).

Henceforth, Dunja Mijatović, the Council of Europe Commissioner for Human Rights, has stated that “pushbacks are at odds with member states’ human rights obligations” (Council of Europe, 2022). Specifically, the European Convention on Human Rights (ECHR) establishes the right to life, the prohibition of torture or inhumane or degrading treatment, the prohibition of collective expulsion, and the right to an effective remedy in Articles 2, 3, 4, and 13, respectively (Council of Europe, 1963). Pushbacks at Europe’s external borders violate all of these principles. Given this clear violation of Human Rights, it might seem intuitive that European Courts would rule against pushbacks; however, as shown below, the European judicial system is less flexible than one might hope.

Legal uncertainty

In the United Nations (UN) Charter, the principle of sovereignty dictates that nation-states are free to decide who is and is not allowed into their country (U.N. Charter art. 2, para. 1). However, this same UN Charter simultaneously demands that states must not violate individual Human Rights (Noll, 2021). Regarding pushbacks, the principle of non-refoulement – established in 1951 at the Geneva Convention on Refugees – makes it illegal for states to send people back to a country where they are in danger of grave Human Rights violations. In 1963, the ECHR solidified this principle by “prohibiting the collective expulsion of aliens”; meaning that, in general, states are not allowed to evict any person without an individual assessment of their personal circumstances (Council of Europe, 1963).

Despite this, the Grand Chamber of the European Court of Human Rights (ECtHR) ruled in 2020 that pushbacks, in fact, do not violate the European Convention on Human Rights (ECHR) (Markard, 2020). In the case of *ND and NT v Spain*, two men – one from

Mali, one from Ivory Coast – climbed the border fence of Melilla, a Spanish enclave in Morocco. The Court ruled that Spain was justified in pushing them out because they could have sought asylum at a Spanish embassy or a border crossing point (MacGregor, 2022). However, in practice, there is no procedure – outside of family reunification – to apply for international protection at Spanish embassies; furthermore, NGOs have unveiled that men from sub-Saharan Africa are often denied entry from border posts (MacGregor, 2022). International legal experts have firmly spoken out against this judgement, arguing that the Court is in denial about the actual on-the-ground situation, which encompasses such discriminatory border-post denial practices, and that the Court has ignored evidence from Human Rights advocates (European Center for Constitutional and Human Rights, 2022). Wolfgang Kaleck, general secretary at ECCHR, warned that this ECtHR judgement should not be seen in isolation, but that it “will be perceived as a *carte blanche* for violent pushbacks everywhere in Europe” (Jones, 2020).

That which Really matters

Considering the *ND and NT v Spain* ruling, some individuals will argue that pushbacks are not against European law, and they will therefore rather turn a blind eye. However, despite this legal obfuscation, the moral imperative for opposing pushbacks is crystal clear: pushbacks violate human dignity. Physical abuse, being forced to undress, and seeing your personal belongings destroyed have all become common practices at the EU’s external borders (PRAB, 2023). People’s intrinsic self-worth as human beings is, thereby, blatantly disregarded. If the European Union – which boasts that the inviolability of Human Dignity is at the core of its values – does not fundamentally change course, it loses all credibility as a “value-based community” (European Union, n.d.). Consequently, halting pushbacks is not

merely the righteous thing to do; for the future of the European Union, it is the necessary thing to do.

Conclusion

Pushbacks, and their disastrous Human Rights consequences, have become ubiquitous at the EU's external borders. While they constitute a clear violation of Human Rights and diametrically oppose the EU's fundamental principles, the European Court of Human Rights has given pushbacks a judicious stamp of approval. This essay has argued that this is morally flawed, legally debatable, and politically self-defeating. To this end, EU policymakers should realise that with every person that perishes at Europe's borders, the European project perishes with it.

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