

Collective Expulsion of Migrants and its Ethical and Legal Aspects in Border Management.

Ērika Krutova

Dr.iur., assist. professor, State Police College
e-mail: erika.krutova@koledza.vp.gov.lv
Riga, Latvia

Abstract. *This publication provides a multi-faceted approach, bringing together ethical and legal aspects of migrants' collective expulsion that have so far been insufficiently studied. The aim of the publication is to study the phenomenon of migrants' collective expulsion from borders, or "pushbacks", by analysing the ethical considerations and legal effects, as well as providing practical recommendations for policy-makers and human rights defenders.*

To achieve this aim, the author analyses the ethical aspects of migrants' collective expulsion by examining human rights and humanitarian reasons, studies the legal frameworks and international conventions that govern the practice of collective expulsion, compiles precedents and court judgements that illustrate the legal effects for states and concludes with recommendations for more humane and legally compliant border management practices.

Quantitative methods, analysing data and documents, case law and precedents are used in the study. The results of the study indicate that, firstly, collective expulsion violates fundamental human rights and humanitarian principles, creating deep moral dilemmas; secondly, states that engage in collective expulsion risk violating international law, which can lead to lawsuits and sanctions; thirdly, migrants who are collectively excluded experience severe psychological and physical disruptions that have long-term effects on their well-being and generate hatred. The author concludes that there is a need to promote more humane and legally correct border management practices based on respect for human dignity and international legal standards.

Keywords: *collective expulsion, ethical considerations, human rights, migrants, pushbacks.*

Introduction

The issue of collective expulsion of immigrants has not been addressed for decades by effective legal or economic means. In the European Union it has become an increasingly urgent issue due to the increase in immigration flows, political instability and strict border control measures by various countries. The ethical and legal implications of such practices are very important, as they directly affect the human rights and dignity of immigrants. This study is topical because it addresses the issue in the context of global immigration, with the aim of drawing attention to the need to balance national security concerns with the protection of individual rights. The increasing prevalence of collective expulsions calls for a careful examination of its ethical and legal dimensions in order to improve border management



policies and practices. The study covers the period when the Baltic States were confronted with a situation at their external borders that was unprecedented until 2021. For the Member States of the Schengen area, on the other hand, the problem is a long-standing one and became particularly acute in 2015 with the massive influx of migrants. There was no common understanding among Member States on how to tackle the issue. Member States reinstated internal border controls in some cases, leaving Member States with external borders to deal with living people in a foreign land alone. The global extent of the problem is illustrated, for example, by the data of “Mediterranean missing project”: “In 2015, over 4,000 refugees and migrants are known to have died at sea while trying to reach Europe and the death toll has continued to mount since. The majority of these people are not identified, and in many cases bodies are never found” (Kerasiotis & Spiliotakara, 2016). The total number of deaths of people who wanted to reach European shores is unknown, as it is not possible to collect such data. Nor is there a proper investigation into the deaths. And those who organised unsafe and criminal journeys are not being held accountable, because law enforcement cooperation has been hampered by political motives.

Politicians in many countries watched passively the situation on borders of Greece and Italy when migrants arrived there en masse, who were supposed to provide a person with what was necessary to maintain life and then legally assess their right to stay or leave the country. In practice, the countries were unable to cope with these tasks and a practice of pushbacks was practised, with scandals involving even Frontex officials. The failure of politicians to agree in time on the necessary measures to reduce illegal migration is open to criticism, forcing the authorities to choose methods that are not always legal in order to carry out their tasks.

The aim of the publication is to study the phenomenon of migrants’ collective expulsion from borders, or “pushbacks”, by analysing the ethical considerations and legal effects, as well as providing recommendations for policy-makers and human rights defenders. The study question raised by the author is whether it is possible to implement pushbacks without violating human rights.

Quantitative methods, analysing data and documents, case law and precedents are used in the study. The results of the study indicate that, firstly, collective expulsion violates fundamental human rights and humanitarian principles, creating deep moral dilemmas; secondly, states that engage in collective expulsion risk violating international law, which can lead to lawsuits and sanctions; thirdly, migrants who are collectively excluded experience severe psychological and physical disruptions that have long-term effects on their well-being and generate hatred. The author concludes that there is a need to promote more humane and legally correct border

management practices based on respect for human dignity and international legal standards.

Illegal migration and pushback

When studying the issue of “pushback practice”, it is worth clarifying the timing of its existence or emergence. And even without going into documentary research this question could be answered very quickly and simply, as such a practice is ancient, that of the migration of people. Unfortunately, in Europe today, human migration is divided into two different types, namely legal and illegal. What Filip Kaczmarek said about illegal migration back in 2007 in the debate on “Policy priorities in the fight against illegal immigration of third-country nationals”: “Illegal immigration is a somewhat paradoxical notion. [...] I saw the words 'Nobody is illegal' painted on a wall in my home town of Poznań. It is sometimes worth pausing to consider whether a human being can actually be illegal. It is not only on the Atlantic and the Mediterranean that people put their lives at risk attempting to cross the Union's borders. Last week a Chechen woman and her three young daughters died on the border between Ukraine and Poland. They were fleeing from the tragedy that has befallen their homeland. It is hardly surprising that people are trying to escape from Chechnya, and are even prepared to risk their lives to do so.

The presence of several million immigrants in Europe, who entered the Union illegally, is a very real problem. As we strive to resolve it, however, we must keep in mind the universal values that underpin European integration. We must also remember that immigration itself is not a negative phenomenon, for the very simple reason that no human being is a negative phenomenon” (Kaczmarek, 2007).

Professor A.Vilks explains that “Illegal immigration is by its very nature an illegal movement of people across national borders, in violation of the entry, transit, residence and exit procedures established by the state for foreign nationals and stateless persons” (Vilks, 2016).

It is clear from the Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals that the term “illegal immigration” is used to describe a variety of phenomena. It includes third-country nationals who enter Member States illegally by land, sea and air, including through airport transit zones. This often involves the use of false or falsified documents, as well as organised crime networks such as smugglers and traffickers. In addition, there is a significant number of persons who enter legally with valid visas or under a visa-free regime but stay longer than authorised without consulting the competent authorities or change the purpose of their stay; lastly, there are

the unsuccessful asylum seekers who do not leave after receiving a negative final decision (Brisele, 2006).

Giving such explanations for illegal immigration, hardly anyone has imagined that in our millennium a helpless human being would also be used by policy makers as a hybrid weapon to provoke national bodies to violate international human rights norms. It is an established fact today that, throughout the world, third countries use immigration for political purposes.

In the case of illegal immigration, this is a challenge not only for the country to which people are aspiring, but also for the person who is doing it, because not everyone is capable of travelling thousands of kilometres into obscurity.

According to the 2022 public report of the State Border Guard of the Republic of Latvia, “more than 5000 persons have been returned, no illegal entry into Latvia has been allowed, 217 persons have been admitted on humanitarian grounds. The State Border Guard has been heavily criticised by non-governmental organisations and some media, but has continued to consistently assess humanitarian considerations and to protect national border of Latvia” (VRS Gada publiskais pārskats, 2022). It should be noted that the pushback practice on land and at sea has different consequences and risks to human life.

One of the scandals involving Frontex was widely reported in numerous publications and media articles (See: Glouftsiou, 2022.)

The German magazine *Der Spiegel* featured a refugee’s story of his arrival in Europe from Syria to seek shelter. But the reality turned out to be different: “Together with 21 other refugees, he had been taken in a rubber dinghy from Turkey to the Greek island of Samos. The young Syrian planned to apply for political asylum. He documented his arrival in videos. Local residents also remember the refugees.

Greek security forces captured the migrants. Under international law, it is their duty to give the new arrivals a hearing and field their applications for asylum. Instead, according to al-Badi, the officers dragged them back out to sea and released them on an inflatable rubber raft. [...] She says the Turkish coast guard held them off. Locals even have a name for the cynical game: “Greek water polo”” (Christides et al., 2020).

Such practices are not only unethical but also deeply inhumane. Empathy is gradually losing its value as a positive societal trait, being overshadowed by self-interest and indifference. As people become increasingly desensitized to the suffering of others, actions once deemed morally unacceptable are now met with apathy or even approval. This erosion of empathy threatens the foundational values of compassion and solidarity that are essential for a humane and just society.

Right to life and pushback

Article 3 of the Universal Declaration of Human Rights states that “everyone has the right to life, liberty and security of person.” Here, two crucial values—national security and the protection of human rights—are often in conflict, creating a complex challenge for policymakers and societies alike.

Statistics on immigration and international protection are collected in the European Union. However, it should be noted that under the EU framework in the field of international migration statistics, countries are free to choose the data sources. This circumstance undermines the objective data collection.

In accordance with the Regulation No. 862/2007 of the European Parliament and The Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers the Member States supply data on the number of third-country nationals refused entry to the Member State’s territory at the external border; the number of third-country nationals found to be illegally present in the Member State’s territory under national laws relating to immigration (Article 5). The number of third-country nationals found to be illegally present in the Member State who are the subject to an administrative or judicial decision or act stating or declaring that their stay is illegal and imposing an obligation to leave the territory of the Member State, disaggregated by citizenship of the persons concerned; the number of third-country nationals who have in fact left the territory of the Member State, following an administrative or judicial decision [...] (Article 7). However, no document currently requires the collection of statistics on cases of expulsion. Making it mandatory to collect this information would be essential, as such practices are, in fact, tacitly supported.

As professor A.Vilks notes, “Considering the migration problem as a whole, it must be acknowledged that illegal, undocumented and informal migration, which is not included in any form of reporting and aggregation, is particularly negative, with a process that is difficult to analyse and undetectable consequences” (Vilks, 2016).

It should be recognised here that it is almost impossible to collect data on the number of irregular migrants pushed back from borders. This could be only preliminary data.

It is worth examining what is meant by “pushbacks”. There is no internationally agreed definition of the term “pushbacks” in the area of migration. The special rapporteur on the human rights of migrants at the United Nations Office of the High Commissioner for Human Rights defines

pushbacks as “various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement” (Radjenovic, 2021).

“For the purposes of this analysis, “pushbacks” are defined as operations carried out secretly— often without any records, traceability, paperwork, or procedure—by which migrants and asylum-seekers are apprehended and detained before being expelled from Greek territory” (Analyzing Greek Pushbacks: Over 20 Years of Concealed State Policy Without Accountability, 2022).

The European Court of Human Rights (ECtHR) has condemned pushback practices as collective expulsions based on Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR). “Article 4-Prohibition of collective expulsion of aliens: Collective expulsion of aliens is prohibited” (Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR).

“Collective expulsion” is to be understood as “any measure compelling aliens, as a group, to leave the 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” (Khlaifia et al., 2016).

The volume of the publication does not allow for a detailed presentation of the substance of each infringement found by the Court. The case law of the European Court of Human Rights shows that expulsion violations are a long-standing practice, as evidenced by numerous court cases. It is worthwhile for officials who are responsible for national security to study cases such as *A.A. and Others v. North Macedonia*, 2022; *N.D. and N.T. v. Spain*, 2020; *M.A. and Others v. Latvia*, 2022; *Asady and Others v. Slovakia*, 2020; *Khlaifia and Others v. Italy*, 2016; *Andric v. Sweden*, 1999.

According to the “Report for the Special Rapporteur on pushback practices and their impact on the human rights of migrants at European land borders” faced with strong evidence of pushbacks, EU countries have simply denied the reports.

Frontex is carrying out a risk analysis on external border security, which shows that the threat will continue to grow. The Annual Risk Analysis underscores the intricate geopolitical dynamics affecting Europe’s borders. With ongoing conflicts near the EU’s periphery, such as the war in Ukraine, and the continuous instability in regions like the Middle East and the Sahel, the migratory pressures on Europe remain significant. (Frontex Releases Annual Risk Analysis for 2024/2025). This is an implicit signal that the

pushback practice will need to be legalised, with procedures and cases where it is justified.

Conclusions

In conclusion, the answer to the question whether it is possible to implement pushback practice without violating human rights must be that this is not possible. Moreover, the European Court of Human Rights (ECtHR) has condemned pushback practices as collective expulsions based on Article 4 of Protocol No. 4 to the European Convention on Human Rights. Human rights violations have been and will continue to be committed unless each case is examined on its own merits. Increasingly, children, including unaccompanied children, are among the illegal immigrants, and border crossers are aware of how to act in critical situations, or are prepared to resist. The public is not informed in detail about events at the border and speculation is therefore rife. Controversial actions in the border area cannot be supported when human rights violations are taking place.

In assessing the current situation, it is clear that the situation will not change in the near future and that the number of people who want to cross the border illegally to another country will increase due to conflicts and a large part of them will be to save their lives.

Border protection is a national task and the Member States must agree on the modalities of measures, given that each of them may face this hybrid attack where the human being has become a tool.

On the other hand, it is very dangerous that pushbacks have the secret nature. In border areas, representatives of public and non-governmental organisations are not present for independent observation. States ignore calls by the CPT to effectively evaluate pushback operations.

Different interpretations of international law lead to divergent case law, violations of rights. Improving cooperation with countries of origin could improve the situation. Dialogue and constructive support are needed.

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