

Theory Vs. Practice

The Principle of Non – Refoulment

BENJAMIN NIYONTWARI

What Is the principle of Non-Refoulment?

- The core element of refugee and asylum seeker protection. It is enshrined in international and EU law.
- It prohibits returning individuals to their countries if they are at risk of persecution, torture, Inhuman or other degrading treatments of punishments. **It applies both to refugees and asylum seekers.**
- It is found in article 33(1) of the 1951 Refugee Convention, in the authentic interpretation of Article 3 of the European Convention on Human Rights (ECHR), and in the Convention Against Torture (Article 3).
- In EU primary law, the prohibition of refoulment is found in Article 78(1) of the Treaty on the Functioning of the EU (TFEU) and in Article 18 and 19 of the EU Charter of Fundamental Rights.

Non – Refoulment Violations : Cyprus

- In Sept 2020, HRW reported that only in the first week, the Cypriot Coastguard summarily returned more than 200 persons without accessing their claims. Individuals interviewed by HRW stated that Coastguard vessels circled them at high speed, swamping their boats and in one case abandoned them at sea without fuel and food.
- The Cyprus Refugee Council reported unlawful return where persons from the Pournara camp were told they would be taken for health screening but were instead lead to a boat that transported them back to Lebanon without giving them access to the asylum procedure.
- This is a direct failure by the Cyprus government to abide by the principle of non-refoulment which is the obligation of states to recognise, secure and protect human rights of people who arrive in their jurisdiction.

Non – Refoulment Violations: Italy

- In Italy, “Refugee Rights Europe” published a report exploring issues of pushbacks. It reported on chain returns from Italy to Serbia, Libya (bilateral agreement between Italy and Serbia). The report also reports on the closed – ports policy, and critical issues pertaining to the Italian reception and detention systems, and underlines the impact these issues have on fundamental rights of migrants and asylum applicants.
- In July, the Council of State (Conseil d’Etat) ruled that the Ministry of the Interior disregarded the right to asylum when the border police sent back a woman and her five-year-old child from Menton (Department Alpes-Maritimes) to Italy, even though the woman expressed her wish to apply for asylum.

Non – Refoulment Violations: Croatia and Slovenia

- The Slovenian Administrative Court issued a judgment confirming that the Slovenian and Croatian authorities committed pushbacks, as a result of which a man from Cameroon seeking international protection in Slovenia ended up in Bosnia and Herzegovina.
- The Council of Europe Committee for the Prevention of Torture (CPT) visited reception centres and informal migrant settlements in north-west Bosnia and Herzegovina, where it interviewed many migrants who claimed they had been apprehended by Croatian law enforcement officials within the territory of Croatia and forcibly returned to Bosnia and Herzegovina.
- The NGO Centre for Peace Studies filed a criminal complaint with the State Attorney's Office against unknown perpetrators regarding an incident of torture, humiliation and pushback of 16 refugees from Croatia to Bosnia-Herzegovina. Five refugees who suffered serious injuries have testified, one of whom had both arms and a leg broken.

Risk of refoulement and police violence at borders

- The NGO Border Violence Monitoring Network (BVMN) published the “Black Book of Pushbacks” documenting hundreds of pushbacks at the EU’s external borders since 2017.
- The 1,500-page book presents 892 group testimonies, detailing the experiences of 12,654 people and the violence endured in Italy, Greece, Croatia, Slovenia and Hungary.
- The Council of Europe’s Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report on its ad hoc visit to Greece, which took place from 13 to 17 March 2020.
- The CPT reports consistent and credible allegations of migrants being pushed back across the Evros river to Turkey.
- The Committee also raised concerns over acts by the Hellenic Coast Guard to prevent boats carrying migrants from reaching Greek islands and questioned the role and engagement of Frontex in such operations.

Conclusion

- The Principle of non-refoulement states that where states are not prepared to grant asylum to persons who are seeking international protection on their territory, they must adopt a course that does not result in their removal, directly or indirectly, to a place where their lives or freedoms would be in danger on account of their race, religion, nationality, membership of a particular social group or opinion.
- However, from previous slides, this has not been the case as states continue practising heavy pushbacks without giving asylum seekers and migrants an opportunity to their rights to be heard and have their cases assessed.
- Within the framework of the 1951 Convention/1967 Protocol, the principle of non-refoulement constitutes an essential and non-derogable component of international refugee protection. The central importance of the obligation not to return a refugee to a risk of persecution is reflected in Article 42(1) of the 1951 Convention and Article VII(1) of the 1967 Protocol, which list Article 33 as one of the provisions of the 1951 Convention to which no reservations are permitted. The fundamental and non-derogable character of the principle of non-refoulement has also been reaffirmed by the Executive Committee of UNHCR in numerous Conclusions since 1977.²⁰ Similarly, the General Assembly has called upon States “to respect the fundamental principle of nonrefoulement, which is not subject to derogation

References

- [Cyprus: Devastating Conditions Push People from Lebanon to a Hostile Cyprus | European Council on Refugees and Exiles \(ECRE\)](#)
- [Cyprus: Asylum Seekers Summarily Returned | Human Rights Watch \(hrw.org\)](#)
- [Allegation of defrauding migrants in "Spursra" and sending them to Lebanon \(alphanews.live\)](#)
- [RRE AReluctantWelcome.pdf \(refugee-rights.eu\)](#)
- [Conseil d'État, 7ème chambre, 08/07/2020, 440756, Inédit au recueil Lebon - Légifrance \(legifrance.gouv.fr\)](#)
- [Launch Event: The Black Book of Pushbacks – Border Violence Monitoring Network](#)
- [Council of Europe's anti-torture Committee calls on Greece to reform its immigration detention system and stop pushbacks - 2020 News \(coe.int\)](#)

- [Slovenian court confirms - Croatia participated in a chain pushback to Bosnia and Herzegovina | CMS](#)
- [Council of Europe anti-torture Committee carries out rapid reaction visit to Croatia to examine treatment of migrants - 2020 News \(coe.int\)](#)
- [CPS filed one more criminal complaint: What is the connection between Croatian police and armed men in black? | CMS.](#)
- <https://newint.org/features/2021/04/06/feature-beaten-back>
- <https://www.unhcr.org/4d9486929.pdf>
- <https://blogs.icrc.org/law-and-policy/2018/03/30/principle-of-non-refoulement-migration-context-5-key-points/>