



SPECIAL NEWSLETTER

MIGRATION

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1. INTRODUCTION

The European Union's asylum and refugee policies are based on a combination of deterrence, defense, and fortressing of borders. Border authorities use all and any means to prevent refugees and migrants from crossing the EU's external borders. Ignoring fundamental human rights and refugee law, the EU and its member states too often deny protection to people fleeing from war, persecution and despair, and stand by as many die at the borders.

Refugees and migrants drown in the Mediterranean with alarming frequency. At the EU's land borders there are regular reports of serious violence by border guards – whether in Bulgaria, Hungary or Spain. In the Spanish enclave of Ceuta, for example, more than 15 people died in February 2014 when Guardia Civil officers attacked refugees with batons, rubber bullets and tear gas. The refugees were trying to swim around the border between Morocco and Spain.

The Spanish practice of unlawful and often brutal push-backs has now become a model for border protection along the EU's outer limits. This emphasis on return goes hand in hand with a strategy of exclusion, carried out via agreements entered into by EU countries seeking to outsource their

legal obligations to neighboring and transit states.

Politicians in many states claim that these measures against refugees and migrants are legal as well as politically important. Meanwhile, those affected are left with almost no way to enforce their rights before a national or European court. This applies especially to people in transit states like Morocco or Macedonia, where refugees face considerable barriers to accessing justice are essentially deprived of rights.

The law – which is supposed to act as a limit on politics – often seems like an afterthought when it comes to formulating current EU asylum and refugee policies. ECCHR has been challenging the EU's approach to managing migration through legal interventions since early 2014 with the aim of setting firm human-rights limits on state action. Legal instruments that can be used to achieve this goal include the initiation or support of criminal investigations against border guards in EU member states as well as complaints to the European Court of Human Rights and submissions to UN bodies.

Along with its partner organizations and cooperating lawyers, ECCHR is working with those affected to safeguard refugees' fundamental right to have rights.

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2. LEGAL INTERVENTIONS BY ECCHR'S MIGRATION TEAM

Since 2014 ECCHR has been monitoring and documenting the human rights situation at the EU's external borders. Led by lawyer Carsten Gericke, ECCHR's migration team worked with activists from Europe and Africa, organizations from Germany, Spain, Greece and Morocco as well as lawyers from several jurisdictions to assess the

scope for strategic litigation against the sweeping human rights abuses being committed in the course of regulating migration to Europe.

The practice of push-backs – *i.e.*, summary deportations – is blatantly unlawful. ECCHR's casework aims to help those affected by illegal push-backs to seek accountability for breaches of their human rights in front of European courts. Refugees and migrants are entitled to effective legal protection in the EU regardless of their immigration status.

Thanks to the support and cooperation from [Brot für die Welt](#) (since late 2014) and [Pro Asyl](#) (since spring 2016), ECCHR has been pursuing several strategic interventions at national and supranational legal forums.

The migration team brought its first case in February 2015. ECCHR has been helping victims of push-backs at the Spanish-Moroccan border to take legal action. The practice of push-backs, known in Spain as *devoluciones en caliente* or “hot returns”, has been ongoing since 2005. A law put in place in April 2015 mandates that people who are apprehended while trying to cross the high-tech border construction will be forced back, i.e. summarily deported.

1) THE CEUTA CASE: JUSTICE FOR VICTIMS OF DEADLY BORDER CONTROL OPERATION

In the Spanish enclaves of Ceuta and Melilla on the northern coast of Africa, border guards regularly engage in violent attacks on refugees and migrants. Anyone apprehended while trying to cross the border into these Spanish cities and thus in European territory is immediately returned to Morocco without any review of their asylum claim. These so-called “border protection” operations repeatedly result in deaths and injuries.

Nathan and Liliane (full names known to ECCHR) experienced firsthand the reality of what is euphemistically referred to as the “protection” of the EU’s external borders. Both were part of a group of around 400 people who tried to swim around the border between Morocco and the Spanish territory of Ceuta on 6 February 2014. As they swam, Spain’s paramilitary police force, the Guardia Civil, attacked them with tear gas and rubber bullets and beat those who swam close to the shore with batons. At least 15 people were killed and many more were seriously injured. Those who survived the swim and managed to reach the Spanish side of the beach were immediately pushed-back through a gate in the fence.

For a long time there was no prospect of prosecutions or even any political consequences following the fatal attack. In March 2015 – more than a year after the push-back – Spanish authorities heard evidence from 16 Guardia Civil officers. Ceuta’s investigating judge, however, refused to acknowledge any criminal liability on the part of the Guardia Civil for the refugees’ deaths. She found that the brutal attacks on refugees in the water were lawful and proportionate and that there was no obligation to rescue those who were in the water. The investigations were closed in October 2015.

ECCHR’s cooperating attorney Gonzalo Boye successfully appealed this decision. In January 2017, the

Audiencia Provincial regional court in Ceuta ordered the reopening of the investigations into the brutal actions by the Guardia Civil. The decision states that the autopsies carried out were considerably deficient. Moreover, the court found it insufficient to take testimonies from Spanish officers, but not from other witnesses and survivors of the push-backs.

ECCHR is assisting Nathan and Liliane as well as other survivors and eyewitnesses in cooperation with attorney Gonzalo Boye in Madrid and the NGO [Observatori DESC](#) from Barcelona, which is a joint party to the proceedings.

ECCHR staff spoke to refugees in Spain, Germany and Morocco who witnessed the Guardia Civil operation as well as those who, like Nathan and Liliane, have firsthand experience of the attack. Spanish lawyer Boye presented the evidence gathered to the domestic authorities.

The aim of the legal proceedings concerning the events of 6 February 2014 is to establish criminal liability for the deaths and bring about a change to Spain's border policies. A further goal is to highlight the fact that the practice of push-backs and the resultant legal action are not merely a domestic concern for Spain, but also an important issue for Europe as a whole.

II) THE MELILLA CASE: STRASBOURG COURT EXAMINES SPAIN'S PUSH-BACKS

The Spanish government must defend its practice of push-backs at the EU's external borders to the European Court of Human Rights (ECtHR) in Strasbourg. In July 2015 the Court called on Spain to set out the legal basis for the longstanding practice of push-backs at the Spanish-Moroccan border and to detail its position on a particular instance of collective deportation from August 2014.

The Court handed down this decision in response to complaints from N.D. and N.T. (full names omitted to protect claimants) from Mali and the Ivory Coast. The complaints were submitted with the help of ECCHR in February 2015. The two men climbed the border fences at Melilla to reach Spanish territory on 13 August 2014. Although the fences are on Spanish soil and therefore N.D. and N.T. had entered the EU, the two men were seized along with roughly 70 other sub-Saharan individuals who had climbed the fences and were immediately pushed back to Morocco by Spanish border guards. It is not known how many of them would have been entitled to asylum or subsidiary protection in Spain. They were denied any due process and had no way to apply for international protection or to appeal their imminent deportations.

The claimants are arguing before the ECtHR that Spain's push-backs violate the European Convention on Human Rights. The two claimants are represented by ECCHR cooperating lawyers in Madrid and Hamburg. Legal opinions from the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees and the Council of Europe's Commissioner for Human Rights as well as from Amnesty International and Spanish refugee organization CEAR all confirm that push-backs are unlawful. The complaints attracted much attention from the media as well as from lawyers and politicians. The case will have significant implications for the Spanish and the European border regime. A decision is expected in the coming months.

The incident in Melilla illustrates not only Spain's unlawful practice of push-backs but also more generally the human rights violations that occur in the context of the EU collaboration with Morocco. The EU works closely with Moroccan authorities as part of broader efforts to externalize border control and to take action in transit states to prevent refugees and migrants from getting to Europe.

III) THE IDOMENI CASE: REFUGEES DEMAND THEIR RIGHT TO HAVE RIGHTS AT THE ECtHR

Beginning in the fall of 2015, European leaders and political authorities made the coordinated decision to close borders along the West Balkan corridor to refugees and migrants. Countries like Hungary, Slovenia, Serbia, Croatia and the Former Yugoslav Republic of Macedonia (FYROM) built fences and denied transit first to everyone without Syrian, Iraqi or Afghan papers and eventually to refugees of all nationalities.

On March 6, 2016, the Greek-Macedonian border was officially declared closed. More than ten thousand asylum seekers – including Syrians, Iraqis and Afghans – were trapped in the self-organised refugee camp in the town of Idomeni at the Greek-Macedonian border, without a real possibility to claim asylum. The result: another humanitarian catastrophe on European territory.

On March 14, 2016, around 1500 people left the camp in Idomeni and walked to the Macedonian border to continue on their path toward safety and asylum in northern Europe. When they reached the Macedonian village of Moin, armored vehicles manned by the Macedonian army blocked the street as officials surrounded the refugees, divided them into groups, forced them to board trucks and drove them back to

Greece – making them crawl through provisional holes in the new fence.

The refugees were given no means of asserting their rights: they had no opportunity to explain their personal circumstances, to ask for international protection, or to contest their expulsion from FYROM. Eight individuals from Syria, Iraq and Afghanistan decided to act against the violations of their rights.

On March 14, 2016, the two women and six men (*names withheld for protection*) submitted a complaint to the European Court of Human Rights (ECtHR) against their unlawful push-back from FYROM.

The claimants assert that FYROM's practice of collective expulsion without an examination of individual circumstances and without access to an effective remedy is in breach of Art 4 Protocol 4 (prohibition on collective expulsion of non-citizens) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

In the beginning of 2017, the ECtHR decided to communicate the case following a preliminary examination of admissibility. The Court requested the Macedonian government to respond to several questions on the expulsions.

ECCHR and Pro Asyl are jointly supporting the individual litigation. The applicants are represented by ECCHR's cooperation attorney Carsten Gericke

from Hamburg. Those proceedings are another important step to contest [the push-back practices in Europe](#) and its external borders and to demand the fundamental “right to have rights” for refugees.

IV) THE RIGHTS OF MINORS: SPAIN MUST EXPLAIN UNLAWFUL TREATMENT OF UNACCOMPANIED MINORS TO UN COMMITTEE

Even children and minors aren't safe from Spain's unlawful push-backs. They are simply handed over to Moroccan border guards along with the adults in the group, with no due process and without any regard to their special need for protection as minors. This is clear from the case of a minor, an unaccompanied refugee from Mali, who was pushed back after he climbed the border fences at Melilla to enter the Spanish enclave in December 2014.

In response to this incident, ECCHR and the Spanish organization Fundación Raíces submitted a complaint to the UN Committee on the Rights of the Child in December 2015. In June 2016 the Committee accepted the complaint and communicated it to the Spanish government for comment.

Like the complainants in the case before the ECtHR, the boy was pushed back after he climbed the border fences and entered the Spanish enclave of Melilla. In this case D.D. (full name omitted for

his protection) argues that Spain violated several rights guaranteed to him as a minor. He says there was a total failure to have regard to his welfare and that the push-back exposed him to a real risk of inhumane treatment in Morocco. As such he says Spain breached a central provision of the UN Convention on the Rights of the Child.

As with the ECtHR case, this action is intended not just to find a legal remedy for the unlawful and brutal Spanish practice of push-backs, but also to establish legal standards that Spain must respect in political decisions.

The action aims to ensure that Spain grants unaccompanied refugee minors in particular access to due process and asylum.

The complainant wants justice and an acknowledgement of the wrong he suffered. But he also wants to highlight the violence at the EU's external borders and to improve the situation of those who will in future face the Spanish-Moroccan border.

With this case ECCHR is breaking new legal ground. The mechanism to bring an individual complaint to the UN Committee on the Rights of Child has existed only since April 2014 and the Committee has not yet issued any determinations. A decision in D.D.'s favor would therefore set an important precedent, reinforcing the rights of refugee minors.

v) THE FRONTEX CASE: SEEKING ACCOUNTABILITY FOR EU BORDER AGENCY

FRONTEX (the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) is playing an increasingly important role in efforts to seal off the EU's external borders.

The border agency is responsible for dispatching so called Rapid Border Intervention Teams to assist border control operations by EU member states, for the coordination between member states and for the collection and distribution of information on migration routes.

FRONTEX is also taking on more and more executive functions: it is a key player in the establishment of "hotspots" – sites for expedited processing of migrants on the Greek islands – and in the EU-Turkey deal to keep refugees away. And it won't stop there. Following initiatives from the EU Commission, member states are debating granting FRONTEX further powers and setting up a European coastguard and border patrol.

Meanwhile, victims of FRONTEX operations have effectively no way of challenging in court illegal acts by the agency. This makes FRONTEX essentially immune from legal claims

for human rights violations or breach of duty.

ECCHR is turning to the law to challenge this de facto immunity. After consulting with experts on issues of liability and accountability, ECCHR developed strategies to combat this blatant infringement of the rule of law.

In May 2016 ECCHR submitted a freedom of information request to FRONTEX seeking the operational plans for the agency's missions. The

focus is on Operation HERA between the Canary Islands and West Africa. FRONTEX considers HERA to have been a particularly successful mission as it significantly reduced the numbers of people fleeing to Europe via this route. ECCHR is currently assessing the information that FRONTEX has provided to date and weighing potential further legal action.

3. OUTLOOK

Alongside the ongoing casework on push-backs in Ceuta in Melilla, the rights of unaccompanied refugee minors and accountability for the border agency FRONTEX, ECCHR continues to monitor political and legal developments in asylum and refugee policies.

As noted, illegal and often brutal push-backs have become a model for keeping refugees at the EU's outer borders and Europe's internal frontiers. This is made all too clear by reports of violence along the borders Hungary-Serbia, Bulgaria-Turkey, Slovakia-Ukraine and Switzerland-Italy.

Collective expulsions are expressly prohibited under Article 4 Protocol 4 of

the European Convention on Human Rights.

Such collective actions effectively deny people the chance to explain their individual circumstances and argue against deportation. As in Ceuta and Melilla, these practices by the European Union and its neighbors show disregard for fundamental human rights and refugee rights.

To date, very few refugees and migrants have challenged this infringement of their rights. For this reason legal actions taken by those affected, like the ones initiated and supported by ECCHR, play an important role in upholding and strengthening the law that applies at the EU's outer borders, highlighting how the EU's refugee policies are leading to

human rights violations, and putting

these issued on the political agenda.



FURTHER READING

ECCHR's work on migration, available at https://www.ecchr.eu/en/our_work/international-crimes-and-accountability/migration.html

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