



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME



SEMINAR

European Convention on Human Rights and international refugee law compliant procedures at state borders Jurisprudence of the European Court of Human Rights and measures taken in the context of the execution of judgments

Closing remarks by Andreas Wissner,
Strasbourg, 25 October 2024

As we come to the end and conclusions of our conference on an extremely important subject, I would like – first of all - to express my gratitude to the Registry of the European Court of Human Rights for having co-organized today's seminar with UNHCR and to all the participants for their contributions and their daily work related to the protection of human rights of asylum-seekers and refugees.

It is clear that the contributions and discussions today have been both timely and essential, providing a unique opportunity to reflect on critical issues from the perspectives of UNHCR, ECtHR and national judges, and to engage in meaningful discussions on some of the most pressing cross-cutting challenges Europe faces in the realm of asylum and migration: guaranteeing the full respect of fundamental rights for individuals seeking international protection, especially at the critical point of cross-border movements.

There is a growing perception that Europe is facing unmanageable mass influxes, which has led to calls for significant derogations from established rules in several countries, often affecting core principles such as the rule of law and effective judicial protection.

1. UNHCR & ECtHR Cooperation

We highlighted today UNHCR's long-standing collaboration with judicial counterparts across Europe - which is a core part of our protection mandate - where we support courts in their vital role of adjudicating the claims of some of the most vulnerable persons. This task has only become more complex because asylum and migration has become core subject of political and divisive debate.

It has been stated that UNHCR, like in some 60 cases before, has recently intervened as a third party in the three pending Grand Chamber cases, *C.O.C.G. and Others v. Lithuania*, *R.A. and Others v. Poland* and *H.M.M and Others v. Latvia*. The latter are all addressing situations of so-called "instrumentalization" on which UNHCR has recently published comprehensive legal guidance.

This engagement demonstrates the importance UNHCR attaches to providing asylum-seekers and refugees with “*genuine and effective access to means of legal entry*” for an assessment of their protection claims. Equally it was reaffirmed by the Court today that access to legal entry and availability of reliable asylum procedures are both essential for safeguarding human rights under the ECHR.

The rich ECtHR jurisprudence was highlighted in cases where individuals cross a land border in an unauthorized manner and are expelled summarily; with key principles from the ECtHR’s case law on genuine and effective access to means of legal entry and asylum procedures - effective remedies available in theory and in practice - including the powers and guarantees of the competent national authority either judicial or non-judicial, access to a lawyer, information, legal aid; key safeguards completing the rights of forcibly displaced persons under refugee law.

2. Pushback - Externalization

UNHCR emphasized the growing concern over the increasing expulsions and pushbacks of refugees and asylum seekers at European borders, calling for a balanced approach to border management that upholds legal and moral obligations to protect refugees’ rights. Effective border procedures can be implemented without sacrificing refugee protection, with mechanisms such as simplified asylum processes, early identification of vulnerable individuals, and ensuring due process.

A recurring theme expressed during the seminar was externalization practices, where countries shift asylum responsibilities to third nations, often risking the safety and rights of asylum-seekers and refugees. Instead, UNHCR advocates for cooperative, regional approaches that focus on route-based solutions, aiming to save lives, improve asylum management, and provide alternatives to dangerous journeys, while ensuring asylum systems are fair and efficient. Such strategies should support and safeguard, not replace, national asylum processing.

3. Access to territory in challenging cross border management situations / instrumentalization

We recognized that mixed movements of refugees and migrants across Europe present significant challenges, often leading to security concerns among states that may be tempted to deny entry, particularly when faced with large-scale arrivals.

As highlighted in the earlier sessions, many governments have resorted to emergency measures to justify deviations from their human rights obligations. This can result in limited access to asylum procedures, judicial guarantees, arbitrary detention, pushbacks, and violations of human dignity in the name of national security. However, even in times of emergency, non-fundamental human rights, such as the protection from *refoulement*, including chain-refoulement, must be observed.

In particular, it was emphasized that the concept of ‘instrumentalization’ does not provide a basis for a general derogation from asylum, refugee protection and human rights norms. In particular, neither the 1951 Convention nor EU law provide a legal basis for derogating from the principle of non-refoulement in times of emergency or situations of so-called ‘instrumentalization’, while the ECHR excludes any derogation from its article 3, even in exceptional circumstances.

The panelists discussed the legal and human rights implications of Poland's response, which has included pushbacks and new legislation allowing temporary suspension of asylum applications at the border. The Finnish government's adoption of similar 'pushback legislation' was also examined. The key focus is on balancing state security concerns with upholding human rights obligations like the principle of non-refoulement and access to asylum procedures. References were made to relevant

ECtHR case law that outlines procedural safeguards states must follow in expulsion cases. Similarly, we have heard about the crucial importance of the implementation of the Court's judgment from State Parties to strengthen national asylum systems and address human rights violations, including at State borders.

UNHCR also recognized the EU Pact on Migration and Asylum as a positive step forward. If implemented with the necessary safeguards, the Pact could enhance coherence and coordination in the EU's response, ensuring access to territory and asylum for those in need. However, as underlined by **ECRE**, we cannot ignore the challenges posed by some of the new rules, particularly around border procedures, judicial guarantees, and detention. These challenges and the complexity of the new legal framework itself may challenge the practical implementation of the Pact.

4. Removal to "safe 3rd country"

Allow me also a few remarks on "removal to a safe third country which was the topic of today's afternoon session: According to UNHCR, the 'safe third country concept' may apply under certain conditions in cases where a person could, in a previous state, have applied for international protection, but has not done so, or where protection was sought but status was not determined.

UNHCR considers that the removing State must assess, prior to the removal and subject to procedural safeguards, the appropriateness of the removal for each person individually. To be compatible with international law the removing State must ensure that the third country will treat the person in line with internationally accepted standards, will ensure protection against refoulement, and will allow the person to seek and enjoy asylum.

5. Key role of the judiciary

In an evolving normative landscape, the judiciary's role will be even more indispensable, interpreting and applying these new regulations while safeguarding fundamental rights, provide the necessary limitations to executive power and ensure protection.

Finally, as UNHCR, we reaffirm our commitment to continue engaging with courts and tribunals across Europe, including the European Court of Human Rights and the Court of Justice of the EU. We look forward to ongoing collaboration in ensuring that those seeking international protection receive the rights and protections they are entitled to.

In this context, and despite shifts in the political landscape and increasing political pressure, the judiciary will remain vital in ensuring fair processes and protecting fundamental rights for both refugees and asylum seekers.

Your role as national and European judges is now more important than ever, and we regard gatherings like this as essential for enhancing judicial dialogue across Europe, fostering a community of judges who share knowledge and

Let us work together to build and uphold fair and effective asylum systems in Europe.

The legal reflections we have shared over the course of today will undoubtedly contribute to strengthening the legal frameworks and interpretation necessary to uphold the human rights of refugees and asylum seekers at Europe's borders. Moving forward, it is incumbent upon all of us—as judges, legal practitioners, members of IOs - to remain vigilant in protecting these rights, ensuring that the laws we apply are not only just on paper but real in their effect.

Now I will hand over to Deputy Registrar Abel Campos from the ECtHR. Thank you all for your participation and valuable contributions.