

## **Access to asylum at the EU external borders: implications and recommendations regarding the rule of law**

There are several issues that should be addressed when talking about the access to asylum at the EU external borders, taking in consideration especially Croatia as the currently most exposed Member State. While doing that, it has to be kept in mind that the respect for the rule of law and human rights forms the essence of the protection of refugees.

The first issue that has to be addressed is the need for more accountability of the actors that are in charge of protection of the border and prevention of irregular migrations, while at the same time being in charge of providing (or preventing) access to territory and access to asylum for those in need of international protection. As it is clear from numerous reports of both international and local actors, the main problem are incessant allegations of pushbacks, collective expulsions and violence at the external borders of the EU. In that respect, the need for accountability is multifold, and it includes political-democratic accountability of public administration towards (primarily) Parliament and the obligation to respect substantive and procedural rules governing administrative action. Moreover, it includes higher-level control of not just lawfulness but also purposefulness of work of hierarchically lower levels. In addition, infringement of ethical norms should result in disciplinary accountability of police officers in question.

In that respect, the accountability of border police officers could be increased through three practical instruments:

- Ministry of Interior/Border Police might establish an independent body that would be in charge of investigating complaints made against the work of border guards. For example, appointment of the members of the Commission for Review of Complaints Made Against Police Officers is currently in the Parliamentary procedure in Croatia. It has the potential to serve as an independent body for investigations of complaints against the work of border police, and the Ministry should ensure efficient and transparent work of that Commission. Alternatively, Ministry of Interior might consider establishing a separate, independent body whose sole work would be to conduct investigations of allegations about the pushbacks, collective expulsions and violence at the borders done by the police officers working on the protection of the State border. Its work, again, should be transparent and conclusions publicly available.

- In order to gain better insight into allegations made by individuals currently residing in the third country who reported pushbacks or violence at the border, the Ministry of Interior should

conduct thorough examination of those allegations. Given the issue of jurisdiction, that should be done through cross-border cooperation with the relevant third state authorities. Modalities of that cooperation could include, among other things, conducting interviews by special police officers - investigators in order to receive more information about locations, timeline, injuries and other details of the incident in question. That would ensure follow-up of the allegations, instead of dropping majority of cases due to 'insufficient information'.

- As it is less likely that illegal conduct of border guards would happen in the presence of police officer of another country, another way of improving individual accountability would be creation of joint border patrols. Joint border patrols would consist of police officers from two neighbouring countries, members of which would rotate regularly to minimize the possibility of creating misplaced alliances or undue influence.

The second issue is the need for more transparency when it comes to how border police is using its authority. However, it is important to keep in mind that this is not a problem specific for this situation, but that the lack of transparency is the very essence of police work in general, as the police often keeps information about the use of force hidden from public view. Nevertheless, transparency plays a pivotal role in creating metrics for accountability and perception of both police legitimacy and fairness.

In that respect, transparency of border police can be increased through following practical instruments:

- Ministry of Interior/Border Police should establish practice of regularly informing the public about the number of received complaints and subsequently conducted investigations of allegations about the pushbacks, collective expulsions of third country nationals and violence at the borders. It should include detailed information about the measures that have been taken, including the status and the outcome of the disciplinary action that was taken against police officers.

- Ministry of Interior/Border Police should establish and regularly update publicly available database with reliable, up-to-date and comprehensive migration and protection of borders statistics. It should include, among other things, a number of detected irregular crossings, a number of deterrence procedures conducted under the Schengen Border Code, a number of individuals that have been returned in accordance with the Returns Directive or based on the readmission agreements with the third states etc.

Finally, and thirdly, a message has to be sent to EU institutions and Member States that are not placed at the EU external borders, especially those that are perceived as destination countries for majority of refugees and migrants. We plead for more cooperation and solidarity within the EU.

In that respect:

- EU should settle on and provide clear message concerning EU policy priorities to the Member States located at the external EU borders, in a way that would make it clear that respect for human rights has the priority over the protection of the borders. Unfortunately, policy priorities and accompanying messages seem to be set in reverse at this moment.

- In order to ensure, on the one hand, protection of the right to seek asylum, and, on the other, a sustainable asylum system, EU and its Member States should work together to introduce an efficient, flexible, and fair mechanism for processing manifestly unfounded claims for international protection. Lack of such a mechanism, unfortunately, endangers the system of asylum protection as it was envisioned and developed in the decades after the Second World War.