

Protection Against Expulsion

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ABSTRACT

This chapter explores the international legal duties related to the expulsion of individuals, as shaped by Council of Europe standards. It starts by presenting the core principles of international human rights law, paying particular attention to the European Convention on Human Rights (ECHR) and its additional protocols. The discussion focuses on key restrictions, such as the ban on expelling nationals of a country and the prohibition of collective expulsions of foreigners, as well as the procedural guarantees that must be observed during expulsion processes. These aspects are examined not only through the wording of treaty provisions but also in light of the case law of the European Court of Human Rights, which has played a central role in defining the meaning and scope of these safeguards. The chapter then describes how these protections intersect with the principle of non-refoulement, stressing its absolute nature under Article 3 of the ECHR and based on an analysis of its application in present-day migration contexts. By linking the legal framework with practical mechanisms and recent developments – such as large-scale migration movements and the adoption of the new European Union Pact on Migration and Asylum – the text sheds light on the ongoing tension between state sovereignty and international commitments. The chapter concludes with reflections on the shifting balance between national security concerns and the obligation to protect fundamental rights, offering broader insights into the resilience and adaptability of the European system of human rights protection.

KEYWORDS

expulsion of nationals, state sovereignty, collective expulsion, non-refoulement

1. Introduction

International human rights law constitutes one of the most fundamental pillars of public international law as understood within the classical, state-centred conception of international law.¹ The significance of this legal system is growing, particularly in light of the dynamic changes and events affecting the current state of global society.

1 Sohn and Buergenthal, 1973; Matscher and Macdonald, 1993; Robertson and Merrills, 1996; Cross, 1999; Moreno-Lax, 2018.

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Armed conflicts, pandemics, political shifts, as well as social and migration changes are merely examples of factors driving the development and contemporary perception of human rights. This perception has evolved over time; it is not static but rather exhibits characteristics of a dynamic process. As T. Jasudowicz once stated, six stages can be distinguished in the development of human rights: idealisation, conceptualisation, narrativisation, constitutionalising, internationalisation, and implementation.² Accepting this framework as valid, it is important to note that the stages of human rights development presented here are model-based, which does not imply that any of the six stages have reached completion. Moreover, these stages may overlap. This suggests, which is not difficult to accept, that many human rights and freedoms have yet to emerge,³ with many still awaiting the constitutionalising or internationalisation phases. The perception of human rights evolves over time, as evidenced by the implementation stage, which is marked by the active engagement of international judicial or quasi-judicial institutions. Such institutions frequently alter the interpretation of specific legal norms within the field of human rights protection; this is particularly so in recent times, by imposing additional positive and negative obligations on responsible entities. Consequently, a substantial layer of obligations is added to the edifice constructed by the international human rights system, especially when a new armed conflict arises globally or a wave of refugee migration sweeps across a continent. In such situations, one may speak of a test of the effectiveness of the obligated entities. One area where such dilemmas at the intersection of law, ethics, and morality are particularly evident is the broadly understood domain of the rights of foreigners. Here, a dilemma arises concerning the balance between safeguarding national security or public interest and respecting individual rights. This dilemma often escalates into broader discussions about reconciling state sovereignty with the fulfilment of international obligations by nation-states. In this context, the system established by the Council of Europe (CoE) plays a central role, introducing extensive requirements and striving to protect individual rights from abuse or violation. The subject of the current study falls within this scope, focusing on the prohibition of both the expulsion of nationals and the collective expulsion of aliens, along with procedural safeguards relating to the expulsion of foreigners. In this study, the aims are to conduct an analysis to reveal the spectrum of international obligations in this domain and, accordingly, to draw well-founded conclusions. The main part of the study focuses on the relevant legal foundations, accompanied by a discussion and an examination of the appropriate and relevant interpretations by competent authorities. The analysis also addresses issues significant to the current challenges of human rights implementation in the context of the migration crisis. The study presents findings that contribute to the ongoing discourse on the preservation of state sovereignty,

2 Jasudowicz, 2010, pp. 23–39.

3 For example, this refers to human rights issues related to the application of so-called artificial intelligence. See: Aloamaka and Omozue, 2024, pp. 189–201.

which is burdened with numerous international obligations, particularly in the face of events that rapidly trigger these obligations.

2. Prohibition of the Expulsion of Nationals

2.1. Article 3 of Protocol No. 4 of the European Convention on Human Rights

Article 3 of Protocol No. 4 to the European Convention on Human Rights (ECHR)⁴ is a vital component of the European system for the protection of individual rights, aimed at ensuring citizens' inalienable right to nationality and security within the territory of their own country. The provision states:

1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. 2. No one shall be deprived of the right to enter the territory of the state of which he is a national.

This is one of the most significant provisions safeguarding individuals against forced expulsion from their country of origin. The norm contained within it categorically prohibits state parties to the ECHR from employing any measures that would result in the expulsion of their own citizens beyond the borders of the state. This provision applies to scenarios where the government might attempt to deprive its citizens of the right to remain within the territory of their own country, regardless of the circumstances. It is directly linked to the protection of human rights, particularly the right to nationality and freedom of movement.⁵

The introduction of Article 3 of Protocol No. 4 to the ECHR was a response to events that took place during the 20th century when mass deportations were used as a political tool to eliminate groups perceived as a threat to those in power. Such actions often targeted against citizens based on their views, nationality, religion, or social affiliation led to forced departure from their homeland. Consequently, the prohibition against the expulsion of nationals by the state, as enshrined in this article, became not only a form of individual rights protection but also a symbol of resistance against abuses of power. This provision creates a significant barrier to any attempts to deprive citizens of their right to remain in their own country. It serves as a safeguard against arbitrary decisions and repressive actions by the government, while also emphasising that every citizen has the right to live in a stable and secure environment. This right enhances individual security and underscores the state's responsibility to protect its citizens from social and political exclusion.⁶

4 Council of Europe, 2021.

5 Cassese, 1990; Mowbray, 2004; Bradley and Cohen, 2010, pp. 95–142; Alston and Goodman, 2013; Majcher, 2019.

6 Arendt, 1951/1973; Weis, 1979; Van Waas-Hayward, 2008; Blitz and Lynch, 2011; Nowak, 2021.

This provision plays a fundamental role in ensuring the right of every individual to nationality and protection against actions that may lead to social exclusion or statelessness. Statelessness carries severe consequences, as a person deprived of nationality is restricted in their access to fundamental rights such as the right to work, education, healthcare, and participation in social life. The absence of formal state affiliation often results in legal invisibility, where the individual lacks support from social security systems and is frequently excluded from official state structures, leading to even deeper marginalisation. Protection against such situations is crucial, as it guarantees that every person, regardless of political or social circumstances, has the right to a formal place in society. It is therefore reasonable to assert that the state bears the responsibility to prevent statelessness, ensuring that no one is at risk of losing their nationality, which is a foundational element of identity and legal stability. Such safeguards in international law protect against arbitrary decisions by authorities and serve as a basis for individuals to live within society with a sense of security, granting them access to fundamental rights, services, and freedoms. These are often guaranteed not only by the state's negative obligations but, more importantly, by its positive actions and commitments.⁷

2.2. State Sovereignty Versus Individual Rights

The traditional concept of state sovereignty assumed full authority and independence in decision-making within a state's own territory, covering issues such as national security, public order, and immigration policy. However, the development of international human rights standards has imposed new constraints on states, which redefine the notion of sovereignty in the modern context.

Current international norms assert that state sovereignty is no longer an absolute right but is instead linked to specific obligations towards individuals, including both citizens and foreigners. The international community places an expectation on states to respect at least basic standards of human rights protection. In the European context, this role is fulfilled by the ECHR, which establishes a binding regional system that restricts state discretion through enforceable obligations, as interpreted by the European Court of Human Rights (ECtHR). The Court applies these obligations with reference to the principles of subsidiarity and the margin of appreciation. Although the Convention does not have a global reach, its impact goes beyond the CoE: the extensive case law it has generated has influenced national constitutions, secondary European Union (EU) legislation, and the broader principles of European public

7 Batchelor, 1995, p. 232; Piechowiak, 2004, pp. 33–54; Bauböck, 2006, p. 128; Guild, 2006, pp. 1–6; McAdam, 2007; Bhabha, 2011; Buitrago, 2011, pp. 7–23; Eriksen and Fossum, 2013; Gragl, 2013; Chetail, 2014; Goodwin-Gill, 2014, pp. 36–47; UNHCR, 2014; Rainey, McCormick and Ovey, 2021.

order. In practice, this means that states' freedom of action is significantly narrowed whenever the protection of individual rights is at issue.⁸

One of the key challenges for states is balancing national interests with the obligation to protect individual rights. In the interest of national security or public order, states often implement measures that may lead to restrictions on certain individuals' rights. However, international human rights standards require that such measures be proportionate, justified, and consistent with international norms. For example, states cannot make decisions resulting in the expulsion of individuals to countries where they face the risk of torture or inhuman treatment. Thus, sovereignty entails not only the right to protect one's own territory but also the responsibility to ensure protection for those under their jurisdiction.⁹

The modern understanding of sovereignty also encompasses the principle of mutual recognition among states, which obligates every sovereign state to respect the sovereignty of others and adhere to the international standards it has committed to. This means that when states make decisions affecting individuals, they must take into account international reactions and potential consequences. Thus, international law governs not only the domestic actions of states but also their interactions with each other, establishing a framework of global responsibility for upholding human rights standards.¹⁰

In light of the above facts, sovereignty is increasingly perceived not only as a privilege but also as an obligation to comply with universally recognised international norms. States have a duty to protect their citizens; however, they cannot do so at the expense of other individuals' fundamental rights. The incorporation of human rights norms into international law requires states to make decisions that reconcile their sovereignty with the demands of international responsibility. Modern international relations are characterised by a tension between sovereignty and individual rights. While sovereignty grants states broad authority to take actions within their territory, international norms, particularly those related to human rights protection, impose significant limitations on this freedom. As members of the international community, states are obliged to act with respect for individual rights and strive for their protection, which forms the cornerstone of the contemporary international legal system.

8 Raab, 2004; Murray, 2007; Lodge, 2007, pp. 309–335; Solove, 2008; De Schutter, 2010; Shaw, 2011; Barnard-Wills, 2011; Sorell and Briskman, 2013; Fuster, 2014; Schrems, 2014, pp. 1145–1170; Murphy and Acquisti, 2014, pp. 330–347; Lyon, 2014; Kosta, 2015; Zureik and Hindle, 2015; Martin, 2015, pp. 607–622.

9 Henrard, 2000, vol. 62; Meijknecht, 2001, vol. 10; Bigo and Guild, 2005; Foster, 2007, No. 51; Lodge, 2007; Murray, 2007; Gondek, 2009; Solove, 2010; Kosta, 2013, vol. 3; Fuster, 2014, vol. 16; Lyon, 2015; Schabas, 2015; Słapczyński, 2018, pp. 45–50; Bianchini, 2018, pp. 39–73; De Schutter, 2019.

10 Guild, 2006, pp. 1–6; Saul, 2008; Moeckli, 2008; Baldaccini, 2008, pp. 31–49; Weill, 2014; Dembour, 2015; Barnard-Wills, 2016; Van Dijk and Van Hoof, 2023.

2.3. Case Law Review

Modern states face the challenge of reconciling sovereignty with the requirements of human rights protection – a dilemma that is particularly evident in case law of the ECtHR. An analysis of cases examined by the ECtHR helps to understand how the Court delineates the boundaries of state actions when public interest conflicts with the fundamental rights of individuals. In this context, the case of *Bojilov v. Bulgaria* serves as an example where the ECtHR was required to take a position on the issue of proportionality in the state's interference with an individual's right to privacy, emphasising the importance of balancing public interest against the protection of individual human rights.¹¹

The case of *Bojilov v. Bulgaria* concerned violations of Article 5 of the ECHR, which relates to the right to liberty and security of the person.¹² The applicant alleged that he had not been promptly brought before a judge following his arrest, and that his pre-trial detention was unduly prolonged without sufficient justification. Furthermore, delays in his release and the lack of an opportunity to obtain compensation constituted violations of paragraphs 1, 3, and 5 of Article 5 of the ECHR. The ECtHR ruled that the actions of the Bulgarian authorities were inconsistent with the ECHR, highlighting inadequate procedural safeguards and the absence of an effective remedy.¹³

The case of *Haralambie v. Romania* concerned violations of the right to a fair trial (Article 6 of the ECHR) and the right to respect for private life (Article 8 of the ECHR).¹⁴ The applicant, Nicolae Haralambie, a Romanian citizen, sought access to his personal file, which had been compiled by the communist secret services. Although the documents had been available since 1996, Haralambie was granted access only six years after submitting his request, significantly exceeding the 60-day deadline stipulated by domestic law. The ECtHR found that this delay constituted a violation of Article 8 of the ECHR, as there was no effective procedure in place to ensure timely access to information. Additionally, the national courts refused to consider the applicant's claim regarding the restitution of his mother's property, which violated his right to a fair hearing (Article 6 of the ECHR). The ECtHR awarded Haralambie compensation for both material and non-material damages, affirming the state's obligation to provide effective remedies and access to documentation related to an individual's private life.¹⁵

Contemporary challenges in the protection of human rights underscore the need to balance state sovereignty with international obligations, as reflected in case law of

11 Peers, 2001, p. 141; Brouwer, 2008; Murphy, 2012; Mowbray, 2012; Schabas, 2015; Harris et al., 2023.

12 *Bojilov v. Bulgaria*, Application no. 45114/98, Judgment 22 December 2004.

13 Dembour, 2006; Voeten, 2007, pp. 669–701; Keller and Sweet, 2008; Bates, 2010; Schabas, 2015; Goold and Lazarus, 2019.

14 *Haralambie v. Romania*, Application no. 21737/03, Judgment 27 October 2009.

15 Arai-Takahashi and Arai, 2002; Book Review: National Security and the European Convention on Human Rights, 2004, pp. 695–698; Fuster, 2014; Schabas, 2015; Mowbray, 2016, pp. 287–304; Harris et al., 2018; Rainey, McCormick and Ovey, C., 2021.

the ECtHR. In cases such as *Bojilov v. Bulgaria* and *Haralambie v. Romania*, the ECtHR clearly delineated the limits of state actions, emphasising that even in matters of national security or public interest, respect for individual rights must remain a priority. In the first case, the ECtHR highlighted the necessity of a thorough assessment of the risks associated with deportation and the need to ensure access to effective remedies. In the second case, involving access to personal documents collected by the secret services, the ECtHR underscored the importance of protecting private life and the state's obligation to provide a timely and transparent procedure. Both judgments clearly indicate the importance of adhering to international human rights standards and the role of the ECtHR as a guarantor of these rights, reminding states that sovereignty does not absolve them from the responsibility to uphold recognised international principles, including the principle of non-refoulement and the right to a fair trial.

2.4. Dual Nationality, Denaturalisation, and Terrorism-Related Expulsions

In the context of international human rights standards, issues related to the deprivation of citizenship and expulsions in cases of suspected terrorist activity raise serious controversies and are the subject of intense legal debate.¹⁶ These issues primarily affect individuals with dual citizenship, against whom states often apply legal provisions that allow for the revocation of citizenship or expulsion from the country. While such decisions are frequently justified on the grounds of national security and public order, they raise questions about their compliance with the principles of non-discrimination and the prohibition against depriving individuals access to legal protection. These practices can result in situations of statelessness, which severely limit individuals in exercising many fundamental rights and international guarantees, such as the right to a fair trial, protection from inhuman treatment, and participation in social and political life. Debates in this area focus on the principle of proportionality in State actions and the need to ensure minimum standards of human rights protection. A key issue is whether such measures are compatible with the ECHR and other international instruments, which require that actions taken in the name of national security be balanced and not lead to arbitrary restrictions on individual rights.¹⁷ Nevertheless, dual citizenship provides States with the option to revoke the citizenship of individuals deemed a threat, allowing some countries to sidestep concerns related to statelessness. Meanwhile, in cases involving individuals who hold only a single citizenship, revoking it may result in statelessness, which can constitute a violation of human rights, particularly in the context of international conventions such as the 1961 Convention on the Reduction of statelessness.¹⁸

16 Brouwer, 2002, p. 399; Forcese, 2013, p. 551; Dickson, 2016, pp. 213–232.

17 Van Waas, 2016, pp. 469–487; Strik, 2019; Bolhuis and Van Wijk, 2020, pp. 338–365.

18 Convention on the Reduction of Statelessness of 1961; Weissbrodt and Collins, 2006, pp. 245–276; Blitz and Lynch, 2009; Molnár, 2014, p. 67; Vlieks, 2022.

The revocation of citizenship should be based on clear and precise legal regulations that meet the requirements of necessity, proportionality, and procedural fairness. Any decision to withdraw citizenship must be adequately justified and provide for the right of appeal, in accordance with the requirements of the European Convention on Nationality.¹⁹ It is worth noting that in the context of suspected terrorist activity, many states require a criminal conviction before proceeding with the revocation of citizenship. This requirement aims to prevent situations where the withdrawal of citizenship becomes a form of administrative sanction or repression imposed without prior proof of guilt, which could violate individual rights and undermine public trust in the legal system. This also carries the risk of social alienation and the escalation of radicalisation, especially when individuals deprived of legal protection and support are left without any viable options. Such circumstances may lead them to seek connections with criminal or terrorist organisations. Exclusion and the lack of state protection often result in marginalisation and alienation, which may only deepen extremist attitudes rather than prevent them. It is important to note that stripping individuals of citizenship shifts the problem to other states, potentially exacerbating global challenges related to international security.²⁰

In the face of growing terrorist threats, states are confronted with the challenge of reconciling their security interests with the obligation to respect individual rights. Measures such as the revocation of citizenship can only be justified if they meet the criteria of necessity, proportionality, and compliance with international human rights standards. Such actions should be taken only in exceptional cases and with the highest level of procedural transparency, to strike a balance between state sovereignty and the protection of the rights of individuals under its jurisdiction.

3. Prohibition of the Collective Expulsion of Aliens

3.1. Article 4 of Protocol No. 4 of the ECHR

The provision in Article 4 of Protocol No. 4 to the ECHR plays a crucial role in the protection of the rights of foreigners, prohibiting their collective expulsion from the territory of a state. The purpose of this regulation is to guarantee every foreign individual legal protection, particularly in situations where there is a risk of mass deportation without consideration of the personal circumstances of each case. This provision addresses the need to protect groups that might be deemed a threat to public or political security due to their national, ethnic, or social affiliation. The introduction of this article was a response to instances where states used collective expulsions as a

19 European Convention on Nationality, 1997.

20 Zedner, 2016, pp. 222–242; Jaghai and Van Waas, 2020, pp. 153–179; Paulussen, 2021, pp. 605–618.

political tool, thereby depriving foreigners of the opportunity to individually defend their rights.²¹

The obligation for states to individually assess the circumstances of each foreigner before making a decision on expulsion serves as a safeguard for the dignity and rights of individuals. It also aims to prevent situations where governments make arbitrary decisions, thereby subjecting foreigners to unjust deprivation of the opportunity to live in the host country. The prohibition of mass expulsions provides robust protection against potential abuses and human rights violations, counteracting situations where individuals are forced to leave the country without a thorough examination of their personal, health, or social conditions.²²

Article 4 of Protocol No. 4 plays a crucial role in preventing mass displacements, which can lead to severe humanitarian crises, especially when groups of people are forced to leave a country without being granted basic rights or access to international protection. This provision requires that decisions on the expulsion of foreigners be made on an individual basis, with respect for their rights and in consideration of their specific circumstances. Such a requirement reinforces international standards for the protection of refugees and migrants, enhancing their safety and ensuring more humane treatment.

By implementing this provision, state parties to the ECHR contribute to building a fairer system for the protection of foreigners, which takes into account their individual rights and needs. This article serves as a reminder of the state's responsibility towards individuals present on its territory, emphasising the obligation to uphold human rights regardless of a person's nationality or status. It is, therefore, a fundamental component of the human rights protection system, acting as a safeguard against abuses that could lead to violations of individuals' fundamental rights, while simultaneously promoting responsibility and a humane approach in migration policy.

3.2. Case Law Review

A direct reference to case law illustrates various situations in which states have carried out deportations, often justifying them by the need to protect public interest. The ECtHR, in assessing these cases, sets the framework within which states may undertake such actions while indicating when these interferences become excessive and disproportionate. One such case is *Conka v. Belgium*, where the ECtHR had to consider the compatibility of the state's actions with the protection of fundamental human rights, including the right to a fair trial and protection against discrimination.

The case *Conka v. Belgium* involved a Roma family from Slovakia who sought asylum in Belgium, fearing persecution in their home country.²³ Belgian authorities summoned the Conka family, along with other Roma individuals, to a police station

21 Schabas, 2015; March, 2024, p. 2; Czepek, 2024, pp. 48–60.

22 Grześkowiak, 2018, pp. 199–217.

23 *Čonka v. Belgium*, Application no. 51564/99, Judgment 5 February 2002.

under the pretext of completing additional asylum documentation. Upon their arrival, they were detained and swiftly deported to Slovakia. The applicants argued that the deportation was carried out deceitfully, depriving them of the opportunity to effectively appeal and defend their rights. The ECtHR found that Belgium's actions violated Articles 5 and 13 of the ECHR, concerning the right to liberty and right to an effective remedy, as well as Article 4 of Protocol No. 4 to the ECHR, which prohibits the collective expulsion of foreigners. The Court held that Belgian authorities had failed to provide the necessary procedural safeguards required in the expulsion of foreigners, and that the use of a deceptive summons for their detention was unethical and discriminatory. In the Court's view, the manner in which the deportation was carried out demonstrated a disregard for the prohibition on collective expulsion, as the entire group was deported without an individualised assessment of their circumstances. Furthermore, the ECtHR noted that using an administrative invitation as a means to achieve deportation undermines trust in asylum procedures, which are expected to be transparent and aimed at protecting those seeking international protection.

Another relevant case is *Hirsi Jamaa and Others v. Italy*, which concerned a group of migrants from Somalia and Eritrea intercepted by the Italian Coast Guard in the Mediterranean Sea while attempting to reach Europe to seek asylum.²⁴ In accordance with its policy of preventing illegal migration, Italy returned the intercepted migrants directly to Libya without conducting an individualised assessment of their applications for international protection or evaluating the risk of human rights violations in the country to which they were deported. The migrants argued that being sent back to Libya exposed them to persecution, torture, and inhuman or degrading treatment, as well as to the risk of further deportation to their countries of origin, where their lives would be in danger. The ECtHR found that Italy had violated Article 3 of the ECHR, which prohibits inhuman and degrading treatment, as well as Article 4 of Protocol No. 4, which prohibits the collective expulsion of foreigners. The Court held that the state had a duty to individually assess each migrant's circumstances and evaluate the risk associated with their return to Libya. Additionally, the lack of access to effective remedies constituted a violation of Article 13 of the ECHR, which guarantees the right to an effective legal remedy. The ECtHR emphasised that Italy's actions failed to meet the required procedural safeguards, thereby disregarding the migrants' fundamental rights and need for protection.

This ruling established an important precedent, emphasising that states cannot transfer their responsibility for protecting the rights of migrants to third countries by returning them without a thorough risk assessment. The case of *Hirsi Jamaa and Others v. Italy* contributed to strengthening the protection of migrants' rights in the context of migration control measures, highlighting the need to provide adequate procedural safeguards even when state actions occur outside their territory.

In analysing these cases, the ECtHR has established a legal framework that imposes on states the obligation to maintain proportionality and procedural fairness

24 *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment 23 February 2012.

and to conduct an individualised assessment of each person whose expulsion is being considered. Practices that fail to meet these requirements and instead result in the collective expulsion of foreigners without assessing their individual circumstances are deemed by the ECtHR to be incompatible with the ECHR. The Conka case highlighted the importance of transparency and fairness in asylum procedures, while the Hirsi Jamaa case set a significant precedent, reminding states of their duty to provide legal protection for migrants even when control measures are implemented beyond the state's borders. These rulings indicate that migration control, though necessary, must be conducted with respect for fundamental human rights. The conclusions drawn from these cases reinforce international standards for the protection of foreigners, affirming that states cannot evade their responsibility for the rights of asylum seekers. Accordingly, the ECtHR clearly delineates the boundaries between legitimate security measures and arbitrary decisions that may lead to violations of individual rights.

3.3. Application to Recent Mass Migration Issues in Europe

In recent years, Europe has become one of the main target regions for mass migration triggered by armed conflicts, persecution, economic disparities, and political destabilisation. This phenomenon has imposed unique legal and political challenges on the Member States of the EU, requiring them to simultaneously ensure border protection, public security, and compliance with fundamental human rights. As the number of migrants and asylum seekers continues to rise, the need to balance the protection of national security interests with respect for international asylum obligations, such as the Geneva Convention and the ECHR, has become the subject of intense debate. While the 1949 Geneva Conventions²⁵ remain central to international humanitarian law in armed conflict situations, protection against expulsion and return in peacetime is primarily governed by the 1951 Geneva Refugee Convention (Article 33) and by human-rights instruments such as the ECHR (Article 3), the International Covenant on Civil and Political Rights (ICCPR) (Article 7), and the Convention Against Torture (Article 3). Therefore, in this chapter, the analysis of non-refoulement is grounded in the 1951 Convention and international human rights law, while recognising that the 1949 Geneva Conventions acquire direct relevance when expulsion measures overlap with armed conflict contexts.²⁶

Discussions on the effectiveness of the current legal framework focus on the need to establish a system that addresses both the obligation to protect individuals fleeing persecution and the capacity of states to manage migration in a manner that does not compromise their sovereignty. This issue also touches upon the question of burden-sharing among EU Member States and the necessity for a more equitable common migration policy. The current situation highlights the urgent need to strike a balance between migration control and the protection of individual rights – an

25 The Geneva Conventions of 12 August 1949.

26 Okolski, 2000, pp. 329–341; Kahanec and Zimmermann, 2010, pp. 63–94.

ongoing challenge that requires continuous dialogue and updating of legal provisions in response to shifting geopolitical realities.²⁷

Article 4 of Protocol No. 4 of the ECHR prohibits the collective expulsion of foreigners, establishing the principle that each migrant's case must be examined individually to ensure full respect for their rights. However, in practice, the increasing number of people arriving at Europe's borders puts pressure on states, prompting them to implement various migration control strategies. One such measure involves the so-called push-backs – the forced return of migrants across the border without the prior opportunity to file an asylum application or undergo an individual assessment of their situation. These practices have faced criticism from stakeholders in human rights organisations, who argue that such actions violate individuals' rights to a fair asylum procedure and access to international protection. Critics contend that push-backs pose a significant threat to the fundamental rights of migrants, depriving them of the right to an individualised assessment, which can lead to inhumane and degrading consequences, particularly when individuals are returned to countries where their safety is at risk.²⁸

The ECtHR's case law on deportations and expulsions, such as in *Conka v. Belgium* and *Hirsi Jamaa and Others v. Italy*, emphasises the necessity of respecting individual rights, even in the context of measures undertaken by states in public interest. In analysing these cases, the ECtHR highlights key principles that states must adhere to when implementing deportation measures, including proportionality, individualised consideration, and the guarantee of procedural fairness. These rulings delineate the boundaries within which states may operate, while avoiding disproportionate and arbitrary interference with human rights. The case *Conka v. Belgium* underscored the importance of transparency and fairness in asylum procedures, indicating that deceptive practices and the absence of a thorough assessment of individual circumstances violate the rights of foreigners. By contrast, the ruling in *Hirsi Jamaa and Others v. Italy* established a critical precedent, reminding states that the protection of migrants' rights does not end at national borders but requires adequate procedural safeguards, even in actions taking place at sea or in third countries. The conclusions drawn from these judgments strengthen international standards for the protection of migrants, affirming that states cannot evade their responsibility for the rights of asylum seekers by transferring them to third countries without a comprehensive risk assessment. The ECtHR's rulings emphasise that while migration control is important for public security, it must be carried out in a manner that respects fundamental human rights, striking a balance between public interest and the protection of individuals. Thus, the ECtHR sets clear limits to ensure that legitimate migration control measures do not become abuses but remain consistent with the principles of international law.²⁹

27 Ohlsson, 2015; Garlick, 2016; Mavropoulou, 2021.

28 Augustová, 2023.

29 Karageorgiou, 2013; Smouter, 2015.

In the face of an escalating migration crisis, the EU has introduced the new Pact on Migration and Asylum, aimed at modernising the existing framework and implementing a more effective EU migration and asylum policy.³⁰ The Pact sets out a framework on migration and asylum developed by EU Member States. Importantly, it focuses on elements essential for holistic migration management that is both humane and effective. One of the key components of this initiative is the European Commission's proposal to standardise border procedures, subjecting all third-country nationals without authorisation to pre-entry checks to enter EU Member States. Equal emphasis is placed on integrated and unified border management. This involves enhanced cooperation through the establishment of a special Schengen forum by the European Commission, with full participation from the Ministries of Interior and border police forces. The new Pact on Migration and Asylum underscores the importance of solidarity among Member States receiving the highest number of immigrants. The European Commission outlined the measures that should be undertaken by Member States to assist a country struggling with an excessive influx of immigrants. Primarily, it proposes the relocation of a portion of asylum seekers to alleviate pressure on the most affected states. Alternatively, Member States may assume responsibility for the repatriation of individuals who do not meet the requirements to remain in the EU. Additionally, operational support is envisaged, including the deployment of personnel and logistical resources for border control, as well as cooperation with countries of origin to limit the inflow of migrants. A crucial element of the Pact is also the financial support provided for the most burdened countries, proportionate to their capacities, measured by gross domestic product and population size. The next step envisioned by the Pact is attracting highly skilled migrants from third countries, aimed at addressing labour shortages in EU Member States and countering the effects of population aging in Europe. As part of these efforts, the finalisation of the reform of the EU Blue Card Directive, the creation of an EU Talent Pool, and changes to long-term residence regulations are planned to facilitate legal migration. Cooperation with third countries, based on a flexible approach, is also intended to support migration management by combating migrant smuggling, improving the readmission system, and establishing legal migration pathways. The so-called Talent Partnerships are of particular importance, aimed at better matching job opportunities with the skills of migrants, thus contributing to labour market strengthening and social integration.³¹

In summary, it is crucial to underscore the complexity of the challenges faced by the EU in managing migration and asylum, particularly in light of the increasing influx of migrants driven by conflicts, persecution, and economic disparities. A key feature of the new approach is the effort to strike a balance between effective border control and adherence to international legal obligations, such as the Geneva Convention and the ECHR. The new Pact on Migration and Asylum emphasises solidarity among Member States, proposing mechanisms for relocation and repatriation, as

30 European Parliament, 2024.

31 Pietrzak, 2021, pp. 137–151.

well as operational and financial support for the most burdened countries. These initiatives aim not only to address the immediate challenges posed by migration but also to facilitate the long-term attraction of skilled workers and the development of partnerships with third countries, which will strengthen the labour market and help counter the effects of population aging in Europe. The analysis highlights that continuous dialogue and legal updates are necessary to ensure effective, humane, and human rights-compliant migration management, taking into account both public interest and the individual needs of those seeking protection. It is also significant that every EU Member State is simultaneously a member of the CoE, presenting an additional challenge of ensuring regulatory balance and consistency between these two international legislative bodies. It appears that the EU, in its efforts on asylum and migration, is attempting to create a fair system that aligns with the standards established by the CoE, aiming for their practical application in the current circumstances in Europe. Only time will tell if the new Pact on Migration and Asylum can be seen as a genuine adaptation of CoE requirements and standards to the current situation within the EU.

4. Procedural Safeguards Relating to the Expulsion of Aliens

4.1. Article 1 of Protocol No. 7 of the ECHR

Article 1 of Protocol No. 7 to the ECHR constitutes a significant extension of the existing measures protecting the rights of foreign nationals, introducing procedural safeguards in cases of expulsion decisions from the territory of a CoE Member State. This provision was designed to complement the already binding provisions of the ECHR, such as the prohibition of inhuman and degrading treatment (Article 3 ECHR) and the right to respect for private and family life (Article 8 ECHR). Its primary purpose is to ensure minimum procedural standards aimed at protecting against arbitrary decisions by the authorities and safeguarding the fundamental rights of foreign nationals who may be at risk of unfair treatment.³²

Article 1 of Protocol No. 7 to the ECHR applies exclusively to foreign nationals lawfully residing in the territory of Member States. Importantly, individuals who are present illegally cannot benefit from its safeguards unless their legal status is regularised in accordance with national regulations. This provision introduces three key procedural protections in the event of an expulsion decision. First, the foreign national has the right to present arguments against expulsion, allowing for individual consideration of circumstances such as the risk of persecution or threat to life in the destination country. Second, the expulsion decision must be reviewed by an independent authority, ensuring impartiality and fairness in the proceedings, thereby minimising the risk of abuse. Third, the foreign national has the right to legal

32 Karlsson, 2021.

representation, including the option to be assisted by a lawyer. Legal support enables an effective defence, increasing the likelihood of a fair assessment of the case.³³

The provision in question constitutes a vital element in the protection of the rights of foreign nationals lawfully residing in the territory of Member States. It introduces significant procedural guarantees aimed at preventing arbitrary expulsion decisions and ensuring a fair process. The provision mandates that any expulsion decision must be preceded by an opportunity for the foreign national to present their arguments; a thorough examination of the case by an independent authority; and the assurance of the right to representation and defence, including legal assistance.³⁴

While Article 1 of Protocol No. 7 provides essential procedural safeguards, it also includes exceptions that may apply in extraordinary circumstances. According to para. 2, states may decide to expel a foreign national without first allowing them to exercise their rights if required by national security or public order. However, such decisions must comply with the principle of proportionality and be based on a specific risk assessment, and the expelled individual should still have the opportunity to appeal the decision, even after leaving the state's territory. The introduction of Article 1 of Protocol No. 7 strengthens the system of protection for the rights of foreign nationals in Europe, promoting state accountability and raising the standards of procedural justice. This provision emphasises the individual examination of each case, aiming to prevent arbitrary and disproportionate actions by authorities. It serves as an important complement to other ECHR provisions, such as the prohibition of inhuman treatment (Article 3 ECHR) and the right to respect for private and family life (Article 8 ECHR).³⁵

The conclusions drawn from this provision indicate that in cases of expulsion of foreign nationals, states must adhere to fundamental principles of procedural fairness. This article establishes clear legal standards obliging states to ensure transparency and accountability in deportation proceedings. In doing so, it contributes to building trust in the European human rights protection system and strengthens the protection of individual rights, particularly in the context of migration.

4.2. Rights of Aliens Under Expulsion Orders

Deportation decisions concerning foreign nationals often carry the risk of violating their fundamental rights, particularly if made without appropriate procedural safeguards. In this context, the ECHR and other international legal instruments impose an obligation on states to uphold minimum standards for the protection of the rights of individuals facing expulsion.³⁶

Foreign nationals subject to expulsion orders have the right to a fair procedure and access to effective remedies. Under Article 13 of the ECHR, everyone whose rights

33 Wojnowska-Radzinska, 2017, p. 59.

34 Jabłoński, Węgrzyn and Rzucidło, 2011.

35 Goold, Lazarus and Swiney, 2007; Anastasopoulos, 2023, pp. 1–55.

36 Nafziger, 1983, pp. 804–847; Molnár, 2017, p. 40.

protected by the ECHR have been violated is entitled to an effective legal remedy before a competent national authority. In practice, this means that foreign nationals should have the opportunity to appeal against a deportation decision, and their case must be reviewed by an independent and impartial body. These procedures are essential to ensure that expulsion decisions are not arbitrary but instead take into account the individual's personal circumstances, based on a thorough and comprehensive assessment of their situation.³⁷

In the context of expulsion decisions involving foreign nationals, the right to respect for private and family life, as guaranteed by Article 8 of the ECHR, plays a significant role. The ECtHR has repeatedly emphasised that when making deportation decisions, authorities must consider the impact of such actions on the family life of the foreign national, particularly if they have strong ties to the host country, such as the presence of family, a partner, or children attending school. In cases where the foreign national is well integrated into the host country's community, an expulsion order may violate their right to family life. Failure to take into account substantial personal and social ties, as well as the possibility of the foreign national's integration, may result in a disproportionate interference with their family life, constituting a breach of the human rights protections provided by the ECHR.³⁸

The previously discussed prohibition of collective expulsion, set out in Article 4 of Protocol No. 4 to the ECHR, serves as a crucial pillar in the protection of the rights of foreign nationals, requiring that each case be assessed individually, without the use of simplified group procedures. This provision aims to prevent situations where expulsion decisions are made en masse, without consideration of the specific circumstances of each individual. Equally important is the principle of *non-refoulement*, recognised as a cornerstone of international law, which prohibits the return of individuals to countries where they may face torture or inhuman or degrading treatment. States are obliged to conduct a thorough risk assessment before making deportation decisions to avoid violations of fundamental human rights and ensure effective protection from persecution. The protection of the rights of foreign nationals at risk of expulsion is grounded in the commitment of CoE Member States to adhere to international human rights standards. Deportation decisions must be made in accordance with the applicable law, respecting the principle of proportionality and the full observance of individual rights. Failure to meet these requirements can lead to serious legal consequences, including state liability before the ECtHR, which has repeatedly underscored the necessity of upholding fundamental rights and procedural guarantees in deportation proceedings.³⁹

In summary, adherence to the principles of procedural fairness and human rights in expulsion processes not only contributes to the creation of a more balanced

37 Guild and Lesieur, 1998, pp. 313–318; Cuenca, 2012, pp. 449–466; Morawska, 2019, pp. 159–185.

38 Thym, 2008, pp. 87–112; Burbergs, 2013, pp. 315–329; Thym, 2014, pp. 106–144.

39 Lauterpacht and Bethlehem, 2003, pp. 87–177; Goodwin-Gill, 2017, pp. 187–208; Grześkowiak, 2018, pp. 199–217.

migration system but also reinforces trust in European standards of individual rights protection, forming the bedrock of a democratic legal order.

4.3. Case Law Review

In its analysis of cases involving the expulsion of foreign nationals, the ECtHR has placed particular emphasis on the need to adhere to international standards of individual rights protection and provide appropriate procedural safeguards. Cases such as *Jabari v. Turkey* and *Sisojeva and Others v. Latvia* highlight the importance of an individualised approach to each case and the necessity of a comprehensive risk assessment before considering expulsion.

The case *Jabari v. Turkey* involved an Iranian national who sought asylum in Turkey, fearing persecution and the threat of the death penalty for adultery.⁴⁰ Her application was rejected by the Turkish authorities due to late submission, without conducting a thorough examination of the arguments she presented and without granting her the opportunity to appeal the decision. Jabari argued that her expulsion to Iran would expose her to the risk of torture, inhuman treatment, or even execution. The ECtHR ruled that Turkey had violated Article 3 of the ECHR, which prohibits inhuman and degrading treatment, as well as Article 13, which guarantees the right to an effective remedy. The Court emphasised that the Turkish authorities had failed to conduct an adequate risk assessment regarding the potential consequences of her expulsion to Iran, thus breaching the principle of non-refoulement. This judgment serves as a significant reminder of the need to protect asylum seekers from deportation to countries where they may face serious human rights violations. The ECtHR clearly highlighted that states are obliged to ensure procedures that comply with international standards of individual rights protection, particularly by providing a thorough assessment of each case and the availability of effective remedies.

In the case *Sisojeva and Others v. Latvia*, the ECtHR examined issues related to the expulsion of a group of individuals who had resided in Latvia for many years but lacked formal legal status.⁴¹ The applicants, members of the Sisojev family, had arrived in Latvia during the Soviet era and remained there following the dissolution of the Soviet Union. Despite their long-term residence in the country, the Latvian authorities denied them the right to legal residency, which put them at risk of deportation. The applicants argued that the expulsion decision violated their right to respect for private and family life, as protected by Article 8 of the ECHR.

The ECtHR ruled that the actions of the Latvian authorities constituted a violation of Article 8 of the ECHR, as they failed to sufficiently consider the strong social and familial ties that the applicants had established during their extended stay in Latvia. The Court emphasised that expulsion decisions must be based on an individual assessment of each case, taking into account factors such as social integration, length of residence, and existing personal ties. In the case at hand, the deportation

40 *Jabari v. Turkey*, Application no. 40035/98, Judgment 11 July 2000.

41 *Sisojeva and Others v. Latvia [GC]*, Application no. 60654/00, Judgment 15 January 2007.

order was deemed a disproportionate interference with the applicants' family life, leading to a breach of their fundamental rights. The ECtHR's judgment in *Sisojeva and Others v. Latvia* sets an important standard for the protection of the rights of foreign nationals who have resided in the host country for a long period. The Court reiterated that deportation decisions must respect the principle of proportionality and take into account the specific circumstances of the individual, including their social integration and family ties. This ruling underscores that arbitrary expulsion decisions, which do not fully consider the personal and social context, may result in serious human rights violations.

The analysis of the abovementioned cases demonstrates the importance of respecting international human rights standards in the context of expulsion decisions concerning foreign nationals. The ECtHR has made it clear that these proceedings must take into account the individual circumstances of each person and be based on a thorough risk assessment. The Court emphasised the need to apply the principles of non-refoulement and proportionality, particularly when deportation decisions may result in serious violations of individual rights. The ECtHR also set standards for the protection of private and family life, reminding states that arbitrary expulsions, which disregard long-standing social and familial ties, are incompatible with the ECHR. The conclusions drawn from these cases highlight that Member States are obligated to ensure procedures that are in line with their international commitments, providing effective legal protection and upholding the fundamental rights of foreign nationals.

5. Intersection With the Non-Refoulement Principle

5.1. Non-Refoulement Under the ECHR

The principle of non-refoulement is one of the cornerstones of the ECHR, offering protection to individuals who, if returned to their country of origin, may face serious human rights violations, such as torture or inhuman or degrading treatment. The foundation of this principle lies in Article 3 of the ECHR, which unequivocally prohibits any form of torture or cruel treatment. The ECtHR has consistently emphasised that this prohibition is absolute, meaning that no exceptions are permitted, even in cases where the expulsion of a foreign national is motivated by national security concerns. While the Court consistently treats Article 3 of the ECHR as absolute (non-derogable under Article 15), contemporary scholarship nuances its operation by focusing on scope and jurisdiction rather than balancing. Thus, debates concern extraterritorial application, the procedural intensity of risk assessment, and state practices of cooperative deterrence designed to avoid jurisdictional contact. Recent analyses have mapped how non-entrée measures challenge the effectiveness of non-refoulement without clear accountability chains, with a recommendation to reinforce access to territory and remedies. At the same time, the Court's Article 3 Guide reiterates the absolute character of the prohibition while refining evidentiary thresholds for risk. The principle of

non-refoulement is of particular importance for safeguarding individuals from deportation to countries where their life, health, or dignity may be at risk, thereby reinforcing the humanitarian dimension of international human rights protection. States have a duty to conduct a careful and comprehensive assessment of each case before making a decision on expulsion, to avoid the risk of violating fundamental rights.⁴²

This obligation requires states to thoroughly examine the circumstances of the individual facing deportation, taking into account the political and social contexts, as well as the risk of persecution in the destination country. An individualised assessment of each case is crucial to prevent expulsions that could lead to serious human rights violations. States must conduct a reliable risk assessment, guided by the precautionary principle, and consider up-to-date information about the situation in the country to which the person is to be returned. Failure to conduct such an analysis may result in disproportionate decisions that do not comply with international standards. Moreover, the principle of non-refoulement under the ECHR is closely linked to the right to an effective remedy, as guaranteed by Article 13 of the ECHR. Individuals at risk of expulsion must have a genuine opportunity to appeal the decision and present their arguments before an independent and impartial body. The appeal process must be transparent and fair to ensure protection against erroneous decisions and guarantee that each case is assessed thoroughly and in accordance with the principles of procedural fairness.⁴³

In practice, the principle of non-refoulement plays a fundamental role in the human rights protection system, obliging states to refrain from deporting individuals who may face serious danger in the destination country. The absolute nature of this prohibition means that states must comply with international human rights standards, regardless of national security considerations. This principle reflects the ethical and humanitarian commitment of the international community to ensure that no person is returned to a place where their life or health may be at risk, forming a crucial pillar of the global human rights system.

5.2. Case Law Review

The ECtHR has frequently had the opportunity to interpret and develop the principle of non-refoulement in its judgments, defining the limits that State Parties to the ECHR must not exceed when making expulsion decisions concerning foreign nationals. Cases such as *Soering v. the United Kingdom* and *Saadi v. Italy* have set standards for protection against expulsion in situations where there is a real risk of torture or inhuman or degrading treatment. The analysis of these cases helps clarify how the principle of non-refoulement has been reinforced under the ECHR framework and how it influences state actions, even in the context of national security concerns.

42 Allain, 2001, pp. 533–558; Arai-Yokoi, 2003, pp. 385–421; Palmer, 2006, pp. 438–452; Smet, 2013; Mavronicola, 2021, p. 224.

43 Cuenca, 2012, pp. 449–466; Lee, 2015, pp. 33–4.

The case *Soering v. the United Kingdom* concerned a German national, Jens Soering, who was accused of murder in the United States, where he faced the threat of the death penalty.⁴⁴ The British authorities agreed to extradite Soering to the United States; however, Soering lodged a complaint with the ECtHR, arguing that his extradition to a country where he could face the death penalty would violate Article 3 of the ECHR, which prohibits inhuman or degrading treatment. Soering contended that the prolonged psychological suffering caused by awaiting execution, known as the ‘death row phenomenon’, would amount to inhuman treatment due to the mental anguish associated with prolonged uncertainty. The ECtHR held that Soering’s extradition to the United States under these circumstances would indeed violate Article 3 of the ECHR, recognising that the death penalty and conditions accompanying it could lead to inhuman and degrading treatment. The Court emphasised that State Parties to the ECHR have an obligation to consider the potential risk of human rights violations before deciding on extradition. This judgment set an important precedent by extending protection against refoulement to cases where extradition could expose an individual to serious human rights violations, even when involving countries with well-developed legal systems.

Continuing the analysis of judgments related to the principle of non-refoulement, the case *Saadi v. Italy* is particularly noteworthy, as it deepened the discussion on the limitations imposed on states concerning the expulsion of foreign nationals in the context of national security threats.⁴⁵ The case *Saadi v. Italy* involved Nassim Saadi, a Tunisian national who had been convicted in Italy for involvement in terrorist activities and was subsequently subject to an expulsion order to Tunisia. Saadi argued that his deportation would expose him to the risk of torture and inhuman treatment in his country of origin, which would violate Article 3 of the ECHR. The ECtHR faced the challenging task of balancing the need to protect national security against the absolute prohibition of torture. The ECtHR ruled that the prohibition of inhuman and degrading treatment under Article 3 of the ECHR is absolute and admits no exceptions, even in cases involving individuals deemed a threat to national security. The Court held that concerns related to terrorism cannot justify deportation to a country where there is a real risk of torture. The judgment in *Saadi v. Italy* reinforced the protection standards under the principle of non-refoulement, highlighting the unconditional nature of Article 3 of the ECHR. The ECtHR emphasised that states must conduct a detailed assessment of the risk of human rights violations before expelling an individual, regardless of their criminal background or the potential threat they may pose. This case solidified the view that the right to protection from torture takes precedence over political or security considerations, establishing clear guidelines for states to follow to avoid human rights violations in the context of expulsions. Together with *Soering v. the United Kingdom*, the judgment in *Saadi v. Italy* establishes a clear boundary that states must not cross, even in the face of national security threats. Both

44 *Soering v. The United Kingdom*, Application no. 14038/88, Judgment 7 July 1989.

45 *Saadi v. Italy*, Application no. 37201/06, Judgment 28 February 2008.

cases underscore the importance of the principle of non-refoulement as a cornerstone of international human rights protection, reminding states of their responsibility to safeguard individuals from serious human rights violations, irrespective of the circumstances.

5.3. Meaning of Non-Refoulement Today

The significance of the principle of non-refoulement extends beyond the scope of the 1951 Geneva Convention relating to the Status of Refugees. Its reach encompasses a range of international legal instruments, such as the ICCPR⁴⁶ and the ECHR. The contemporary understanding of this principle confers upon it the status of a peremptory norm of international law (*ius cogens*). This means that adherence to non-refoulement is mandatory for all states, regardless of exceptional circumstances, such as a state of emergency or armed conflict, permitting no exceptions or derogations.⁴⁷

The contemporary understanding of the principle of non-refoulement has expanded significantly beyond the traditional protection of refugees, now also encompassing individuals who do not meet the formal criteria for refugee status but may face serious human rights violations in the country to which they are to be expelled. Interpretations of this principle, particularly as developed through international jurisprudence, including the ECtHR, recognise protection against deportation even for individuals at risk of torture or inhuman or degrading treatment. This approach underscores the humanitarian dimension of the principle of non-refoulement, highlighting its primary role as a guarantor of fundamental rights and freedoms, regardless of an individual's migration status.

One of the most significant challenges to the effective implementation of the principle of non-refoulement is the dilemma between the need to protect human rights and the imperative of ensuring national security. States often justify expulsion decisions by citing threats of terrorism or other serious risks to public order. Despite such arguments, the ECtHR consistently reiterates that the prohibition of torture and inhuman or degrading treatment is an absolute norm, which cannot be overridden by any considerations, including national security interests. In this context, the principle of non-refoulement serves as a crucial benchmark, reminding states that the protection of an individual's life and dignity takes precedence over political and security calculations, and that the obligation to uphold this norm remains inviolable. The principle of non-refoulement occupies a central place in the international human rights protection system, especially in light of contemporary migration challenges. It serves as a safeguard against expulsion to countries where there is a risk of serious human rights violations, making it a cornerstone of humanitarian migration policy. The development of international jurisprudence and the ongoing reinterpretation of this principle have significantly elevated its status, establishing it as one of the pillars

46 International Covenant on Civil and Political Rights, adopted on 16 December 1966 by General Assembly resolution 2200A (XXI).

47 Takács, 2022, pp. 75–93.

of international humanitarian law. It serves as a reminder to states of their absolute duty to protect asylum seekers, regardless of the political context or security-related concerns, underscoring the primacy of human rights over national interests.⁴⁸

In summary, the principle of non-refoulement extends beyond merely prohibiting the expulsion of individuals to countries where they may face serious danger; it also serves as a fundamental pillar of the human rights protection system. It is a mechanism that promotes fairness, justice, and respect for individual rights within migration procedures. Adherence to this principle is essential for building a coherent international framework for the protection of refugees and migrants, serving as an effective safeguard against arbitrary state decisions and ensuring that all deportation measures comply with the highest standards of international law.

6. Conclusion

The analysis presented above has yielded conclusions related to the issue of balancing state sovereignty with the scope of international obligations. These conclusions appear more appropriate than a traditional summary, which would merely reiterate the points made earlier. The issue of sovereignty versus international law in the field of human rights protection is a significant and pressing problem in the context of human rights implementation. In times of heightened mass obligations under international human rights law, many states invoke their sovereign prerogatives to either refuse or limit compliance with these obligations.

First, for most international obligations, invoking national security or public interest should suffice as a justified reason for derogation. Only a few human rights are considered non-derogable, and their scope should be subject to strict oversight by the international community. However, as revealed by this analysis, with each significant ECtHR judgment in this area, the Court has interpreted new positive or negative obligations for the states involved. While it is not claimed that these obligations are unjustified or purely creative, there is a concern whether the ECtHR takes into account the practical limits of each state in meeting increasingly stringent human rights standards within the CoE framework. Regarding derogable international obligations, it is important to note that while derogation is possible, it is contingent upon the existence of justifying conditions. Invoking national security or public interest in this context is an expression of state sovereignty, avoiding the need for more extreme measures.

Second, it is indeed true that some human rights obligations, as previously noted, are non-derogable. These obligations are generally absolute, and even the outbreak of an armed conflict, which typically suspends the human rights protection system and enforces international humanitarian law, does not affect their applicability. An example of such a legal norm is Article 15 of the ECHR, which lists Article 3 (the prohibition of torture) as a non-derogable obligation. Here, the reconciliation with state

48 Allain, 2001, pp. 533–558.

sovereignty becomes fundamentally complex. The act of binding oneself to a non-derogable international obligation is an expression of sovereignty. Should a state wish to disregard such a commitment, it essentially has three options: (1) withdrawal from the international obligation in accordance with international law norms; (2) deliberate non-compliance with the obligation, facing the consequences of such actions; or (3) attempting to influence the international interpretation of the legal norm and exerting pressure for possible legal changes. Given that the first and second options may lead to international isolation, the third option remains the most realistic.

Third, it is undeniable that committing to international human rights norms results in a reduction of state sovereignty. However, in the modern world, scarred by the horrors of wars – especially the First and Second World Wars – such a reduction was deemed necessary. The current challenge does not lie in the legal provisions themselves but in their interpretations, which often overlook the practical limits faced by individual states. This discrepancy fuels discussions about the feasibility of implementing these norms, leading to an erosion of the envisioned framework. This erosion is most evident when large numbers of people, invoking their rights enshrined in numerous European documents, arrive at the borders of Europe, and states find themselves unable to bear the burden. Consequently, mechanisms are introduced that result in the denial of these rights for various reasons – sometimes justified, sometimes less so, or not at all. Human rights and their application, enforcement, and realisation represent a significant step forward in civilisation, aimed at providing a specific set of rights to every individual simply by virtue of being human. In this sense, international human rights law can be viewed as a constraint on national sovereignty, but this constraint is not negative; it is grounded in humanitarian and human considerations. Nation-states voluntarily and in good faith agree to participate actively in the global human rights protection system. Furthermore, this limitation on sovereignty is stringent only in the case of non-derogable obligations, where national security or public interest cannot be invoked as grounds for exemption.

Nevertheless, this does not mean that there are no problems. The issue lies in the overly expansive interpretation of international obligations by the authorised bodies. The analysis presented here has effectively demonstrated how many additional obligations, not explicitly stated in the ECHR, have been identified by the ECtHR in its jurisprudence, adding further layers of burden to the human rights protection framework. This framework now appears heavily strained, and it would be reasonable to seek legal means of alleviation, consistent with international law and human rights. One example of such an approach could be to focus on the requirements that individuals requesting or demanding their rights within the ECHR's jurisdiction must meet. Emphasising individual responsibilities, rather than solely focusing on state obligations, could significantly alleviate challenges to the system in times of crisis. However, such interpretations fall under the jurisdiction of the ECtHR, which should consider this as a desirable direction for legal interpretation. Nonetheless, it must be clearly stated that the potential application of the principle of reciprocity – known in international law – would neither be possible nor desirable in the context of human

rights protection, as it would effectively undermine the entire human rights protection framework.

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