

ECJ Rules on Frontex Obligations in Joint Return Operations and Pushbacks

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On 18 December 2025, the ECJ issued two judgments on Frontex activities in joint return operations (*Case C-679/23 P, WS and Others v Frontex*) and pushbacks (*Case C-136/24 P, Hamoudi v Frontex*). Upon appeal, the Grand Chamber of the ECJ largely set aside the judgments of the General Court and referred the cases back to it.

Background of the cases

Both cases were brought by Syrian nationals who, despite having expressed a desire for asylum, were relocated to Türkiye as part of a joint return operation and a pushback, both supported by Frontex, after their arrival in Greece. Taking the view that their transfer to Türkiye constituted an unlawful refoulement and that their fundamental rights were infringed during that transfer, they applied to the General Court of the EU to order Frontex to pay compensation for the material and non-material damage allegedly caused by the agency's conduct. The General Court dismissed the actions in both cases.

Regarding the joint return operation, the General Court argued that there was no causal link between the allegedly illegal conduct of Frontex and the damage suffered, without assessing the other conditions for liability. It held that, since Frontex had no competence as regards either the assessment of the merits of return decisions or the examination of applications for international protection, it could not be held liable for any damage connected with the return of those persons to Türkiye (*Case T-600/21, WS and Others v Frontex*).

Regarding the pushback by Frontex, the General Court argued that the evidence produced by the applicant did not demonstrate conclusively that he had been present at the pushback (*Case T-136/22, Hamoudi v Frontex*).

The joint return operation case

Looking at the appeal in the case of the joint return operation, the ECJ held that EU law imposes on Frontex a set of obligations intended to ensure respect for fundamental rights in the context of joint return operations. It reiterated that joint return operations may concern only those persons who have been the subject of enforceable written return decisions. In detail:

- Frontex is required to verify that such decisions exist for all the persons whom a Member State intends to include in joint return operations, in order to ensure that those operations respect the principle of non-refoulement.

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- The General Court had erred in considering that Frontex provided only technical and operational support to Member States, without being obliged to verify whether there was a return decision.
- The General Court had also erred in finding that any infringements of fundamental rights occurring during a return flight fall within the sole responsibility of the host Member State, to the exclusion of any responsibility on the part of Frontex.

The ECJ therefore set aside, in large part, the judgment under appeal taking into account Frontex's obligations in connection with the protection of the fundamental rights of persons included in joint return operations.

The pushback case

Regarding the alleged pushback, the ECJ found that the General Court had infringed the applicant's right to effective judicial protection by not correctly applying the rules on the burden of proof and the taking of evidence:

- The ECJ recalled that Frontex is legally responsible for activities which it oversees or coordinates. During those activities, Frontex must ensure respect for fundamental rights and the principle of non-refoulement.
- The right to an effective remedy, as guaranteed by Art. 47 of the EU Charter of Fundamental Rights, would be illusory if victims of a pushback in a zone in which Frontex was conducting operations were required to demonstrate, by way of conclusive proof, that that pushback had occurred and that they had been present at it. Frontex, however, is likely to possess information making it possible to prove the existence of pushbacks, given its task of collecting operational data and its obligation to ensure respect for fundamental rights during its operations.
- Consequently, the ECJ found that the right to effective judicial protection requires an adaptation of the burden of proof, such that a person who claims to be a victim of a pushback involving Frontex need not produce conclusive proof but rather sufficiently detailed, specific, and consistent *prima facie* evidence that that pushback occurred and that he/she was present at it.

The ECJ stated that, if such *prima facie* evidence is produced, the General Court is required to investigate the case in order to be able to assess the truth of said pushback and of the applicant's presence at it.

Put in focus

The ECJ's two rulings in *WS* and *Hamoudi* are likely to send a strong signal. They take account of the changing role of Frontex, meaning that the EU border and coast guard agency can no longer be viewed merely as a technical support unit, but must actively ensure that fundamental rights are upheld.

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