

Beaten, punished and pushed back

A pattern of institutionalised human rights violations at EU borders reconfirmed: How pushbacks remained the standard practice and a *de facto* tool for border management in 2022

JANUARY 2023



**Protecting Rights
at Borders**

Photo credit: Mauro Ujetto

Summary

The reporting on rights violations at the European Union (EU) borders in 2022 reconfirmed the pattern of a systematic use of pushbacks. In total, **between 1 January and 31 December 2022**, PRAB partners recorded pushback incidents involving **5,756 persons**. Many of these victims were not merely prevented from crossing a border. The data collected by PRAB partners further documents and explains how they were ‘welcomed’ at the doorstep to the EU with a **denial of access to asylum procedures, arbitrary arrest or detention, physical abuse or mistreatment, theft or destruction of property**. People from Afghanistan, Syria and Pakistan reported most frequently being the victims of pushbacks, and in **12% of the recorded incidents children were involved**. This data is unfortunately only the top of the iceberg.

This PRAB report further elaborates how in Croatia, a **border monitoring mechanism** has been instituted in 2022, while the data collected by PRAB partners during this period, proves that the mechanism **has not ended pushbacks**. Accountability for transgressions at the borders remains absent. On the contrary, this mechanism might wrongfully send the signal that Croatia has been improving their procedures, while rights violations at borders continue as a daily practice. Lessons about the failing mechanism in Croatia have not translated into a better proposal to monitor the ongoing violations at Greece’s borders. **Attempts to legitimising pushbacks**, both in public rhetoric by government officials and/or in legal proposals, remain a reality in at least Lithuania, Hungary, and Poland. It appears evident that EU Member States continue **making access to international protection as difficult as possible** by putting up new fences (such as at the borders with Belarus), or by using technology to detect and stop crossings instead of providing assistance (such as at Greece’s external borders). The European Commission also contributed to **preventing people from reaching safety in the EU**, with the Central Mediterranean and Western Balkan Action Plan.

These developments are a **stark contrast to the solidarity with Ukrainians in 2022**. Never before has the EU managed to provide such rapid and large-scale protection in its own territory – at least on paper – and in this instance to 4.9 million people. The triggering of the Temporary Protection Directive was a historic decision, but one based on a double standard. Welcome at one border, pushed back at another. This is the reality at EU borders. The number of crossings at other EU borders amounts only to 6% of the total number of people who were allowed to enter the EU from Ukraine. It is **high time to end the malpractice of turning a blind eye to human rights violations at EU borders, and to uphold, respect and enforce the rights of those at Europe’s doorstep**. Therefore, it is required that:

1. **Human rights and human dignity are upheld** at all borders, for all people irrespective of their nationality.
2. The systematic (and often state-instructed) **use of pushbacks**, as a *de facto* migration management tool, is **ended**.
3. **Effective independent border monitoring mechanisms**, mandated to ensure accountability, are set up at all EU borders.
4. **A culture of rights** at borders prevails, enforced by political courage to support people in need of protection at EU’s external and internal borders.
5. **Safe and legal pathways** become an effective reality, not on paper for the lucky few but in practice for a high number of people in need of protection.

Finally, this PRAB report includes insights in some of the different strategic litigation actions in which PRAB partners were involved in 2022. As EU Member States fail to implement human rights compliant border management, strategic litigation often is the last resort – and possibly the only way - to uphold rights and ensure accountability at EU borders.

The PRAB initiative gathers partner organisations operating across eight countries in Europe: Belarus ([Human Constanta](#)); Bosnia and Herzegovina ([Danish Refugee Council \(DRC\) BiH](#)); Greece ([Greek Council for Refugees \(GCR\)](#) and [DRC Greece](#)); Italy ([Associazione per gli Studi Giuridici sull'Immigrazione \(ASGI\)](#), [Diaconia Valdese \(DV\)](#) and [DRC Italy](#)); Lithuania ([Diversity Development Group](#)); North Macedonia ([Macedonian Young Lawyers Association \(MYLA\)](#)); Poland ([Stowarzyszenia Interwencji Prawnej \(SIP\)](#)); Serbia ([Humanitarian Center for Integration and Tolerance \(HCIT\)](#)); and Belgium ([DRC Brussels](#)).



*All references to Kosovo shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.



The PRAB project has been supported by the European Programme for Integration and Migration (EPIM), a collaborative initiative of the Network of European Foundations (NEF). The sole responsibility for the project lies with the authors and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

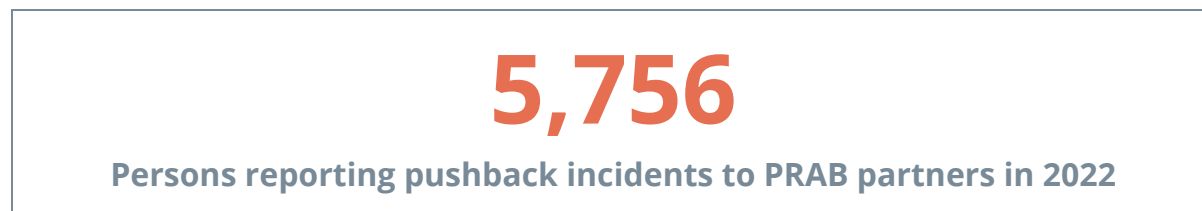
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PRAB is also supported, in part, by a grant from the Foundation Open Society Institute in cooperation with the Europe and Eurasia Program of the Open Society Foundations.

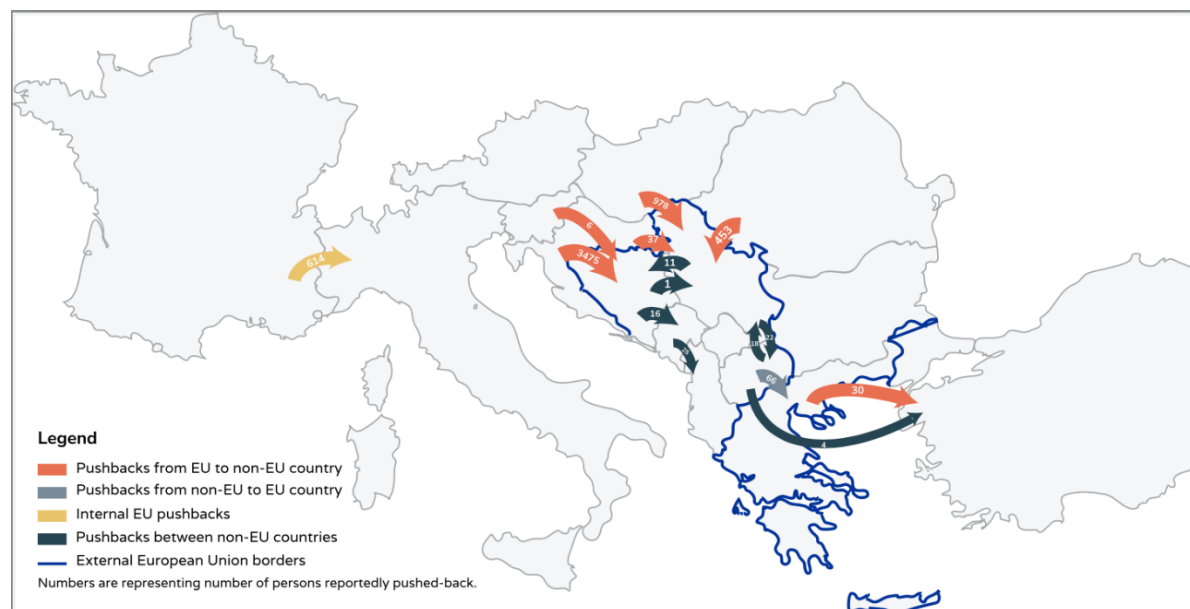
1. Rights compliant border management: An utopia at EU borders?

Confirming the pattern: Pushbacks as a *de facto* tool for keeping people out

Between 1 January and 31 December 2022, PRAB partners systematically recorded pushback incidents involving 5,756 persons through a joint data collection tool.



This number is only a fraction of the people who are pushed back at EU borders. According to some sources, including public information made available by [Hungarian](#), Polish, Lithuanian and Greek authorities, pushbacks and access barriers are more prevalent and happen at an even larger scale than those recorded by PRAB partners. The number of pushbacks from France to Italy recorded through the PRAB project, for instance, also represents a fraction of the overall number of persons reporting pushbacks to Diaconia Valdese’s outreach teams. In Ventimiglia and Oulx in Italy, Diaconia Valdese has records of as many as 2,703 persons, and 2,583 persons, respectively, who reported experiencing pushbacks. If compared to other available statistics, even higher pushback numbers were recorded at the borders between Italy and France in 2022: In Ventimiglia, Italy, at least 17,749¹ persons were pushed back by French Authorities, while in Oulx, Italy, it was at least 3,690² persons.



¹ No. extrapolated by the serial number present on the official documentation (Refus d’Entrée) delivered to people at the border by the French Police in 2022.

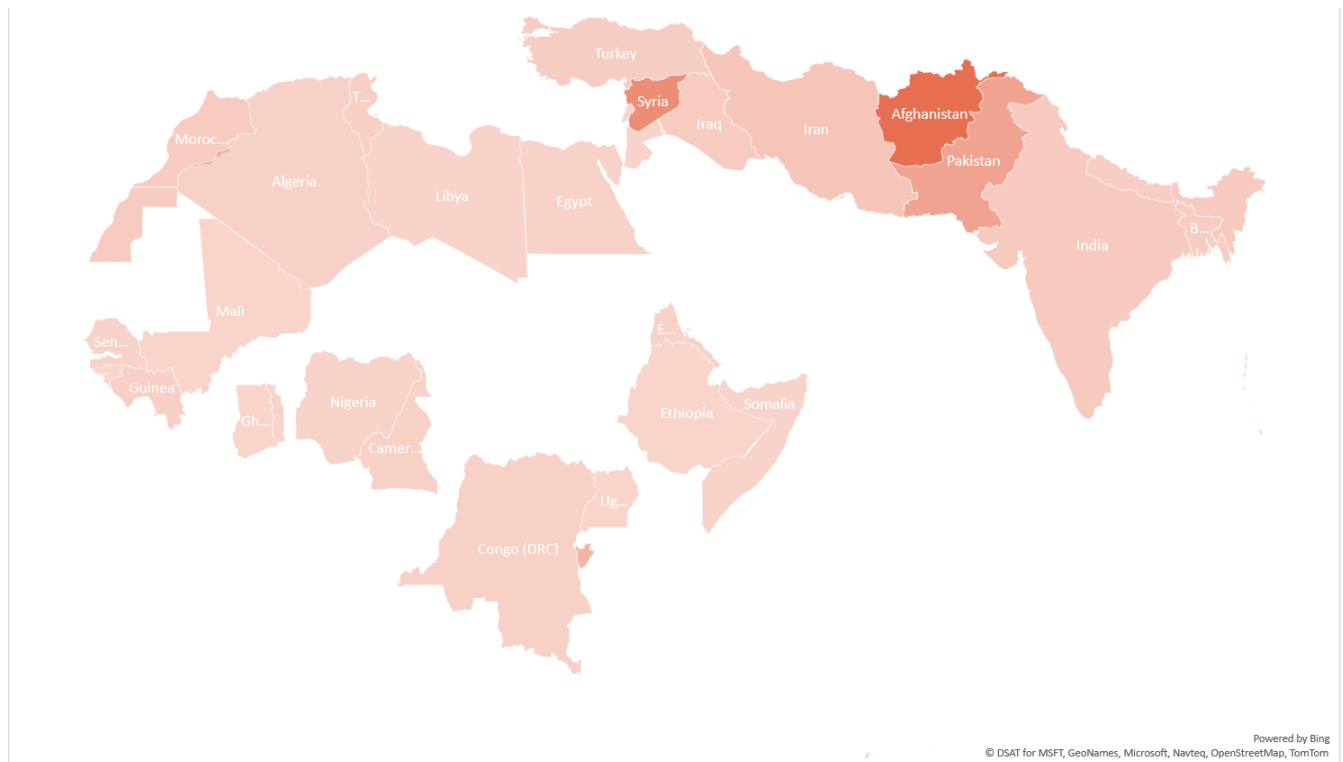
² No. elaborated on the basis of the Entry Log of the Refuge (hosting people pushed back by French authorities) for 2022.

³ Please note that all infographics in the report are based on inputs into the PRAB joint data collection tool. The numbers are – as is elaborated in the report – higher at many different borders.

While thousands of people were prevented from entering the EU during 2022, due to the *de facto* use of pushbacks as a border management tool, Frontex – the European Border and Coast Guard Agency - recorded the highest numbers of arrivals through the Western Balkan, Eastern Mediterranean, and Central Mediterranean routes since 2016. Until November 2022, Frontex [reported](#) 281,00 arrivals, an increase of 77% in comparison to the same period in 2021. While some politicians have used these higher arrival numbers for public outcry, stating that the EU is once again facing a mass influx from these routes, it is important to put the numbers into perspective. The total number of irregular arrivals, via the Western Balkan, Eastern Mediterranean, and Central Mediterranean routes merely equal 6% of the total number of Ukrainians who requested Temporary Protection within the EU.

In line with the reports of new arrivals across the countries in Europe of PRAB partner presence, the top three nationalities reporting pushbacks during 2022 were Afghans, Syrians and Pakistanis, followed by nationals of (North) African countries⁴. A total of 12% of all recorded pushback cases involved children, of whom the majority (9%) travelled in families, while 3% crossed borders without the presence of an adult.

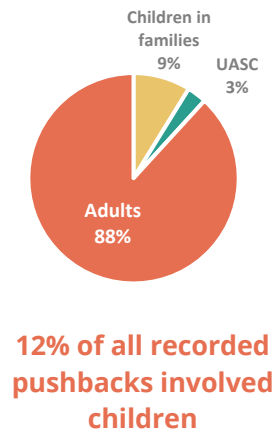
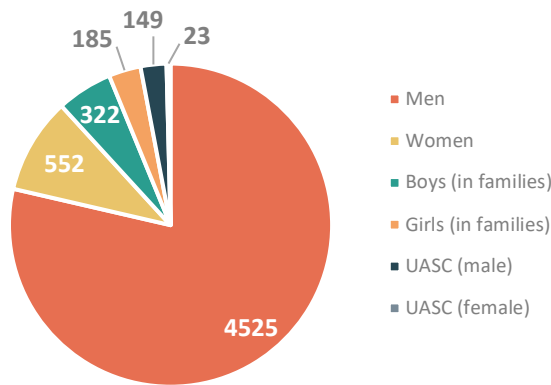
COUNTRY OF ORIGIN OF PERSONS REPORTING PUSHBACKS⁵



⁴ The nationalities, however, may vary country to country – for instance in Poland, according to the statistics on decisions of immediate removal, top three nationalities were Syrian, Iraqi and Afghan.

⁵ Please note that all infographics in the report are based on inputs into the PRAB joint data collection tool. The numbers are – as is elaborated in the report – higher at many different borders.

AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS⁶



	Children travelling with family members			Unaccompanied and separated children	
	0-4	5-12	13-17	5-12	13-17
Female (Icon)	39	102	44	0	23
Male (Icon)	54	171	97	6	143

Despite their systematic pushbacks, Croatia is welcomed into the Schengen zone - and Greece is setting up (another) “monitoring” mechanism

‘Everyone fleeing persecution or serious harm in their own country has the right to ask for international protection’, as clearly stated in Article 18 of the European Charter of Fundamental Rights. The Schengen Regulation further confirms the obligation of all Schengen members to act in full compliance with relevant EU law. The obligation in the legal framework contradicts the reality faced by hundreds of people crossing into Europe via Croatia (an EU member state since July 2013) each month.

People fleeing persecution or serious harm and in search of protection, aiming to enter the EU via the Bosnian-Croatian border have over the past years been denied access to asylum procedures, faced arbitrary arrest or detention, experienced physical abuse or mistreatment, and become victims of

⁶ Please note that all infographics in the report are based on inputs into the PRAB joint data collection tool. The numbers are – as is elaborated in the report – higher at many different borders.

theft or destruction of property. These continuing abuses have been well documented by [DRC](#), including in previous PRAB reports. The violations are ongoing, as the testimony provided in July 2022 by two persons from Bangladesh below outlines:

'We continued walking through Croatia and at around four in the afternoon, we descended from one hill towards a water stream. That is when we heard dogs barking nearby... and then silence... so, we drank water and refreshed. After five minutes, we heard and noticed a drone flying above us, and then almost immediately some 20-30 police officers surrounded us. They caught all 16 of us, no one escaped, and not anyone even tried to. All the police officers were in black uniforms. They had 'police' written on their shoulders and on their chests, carried pistols on their hips, and wore black boots. One of them was female police officer. She was tall and fit, had black shoulder-long hair. They ordered us to lay down. After that, they ordered us to stand in a line. As we were passing through a row of police, they hit us with their batons. They asked if we had phones, power banks, money, or anything in our possession. We had to put everything in a bag, and another row of police searched us and took anything that they would find, even lighters or paper bags. Then they ordered us to go to their vehicle and we had to pass through one more row of police where they would again hit us. It continued and as we were nearing the vehicle, police would hit us, and even in the vehicle they hit some of us. One fat police officer was one of the most aggressive hitting us the hardest. They crammed us into the police vehicle. It had no seats and no windows. The last of us who entered were kicked and pushed with a leg to cram us into the vehicle. It was hot and suffocating during the ride, also blowing hot air from the car ventilation, and the route was with a lot of zigzag and corners. The ride took about 20-30 minutes. They took us to some remote location and ordered us to get out. We got out but could not move, and some of us were just catching our breath, some were feeling unwell and dizzy. We asked for water and for our phones, but they refused to give them to us, and chased us away. After one hour of walking, we reached a Bosnian house and were given water and food. And from there, we continued to the bus station in Velika Kladusa where some organisations helped us and gave us coupons worth of 40 Bosnian Mark (20 Euro) to buy food ourselves.'

Croatia

The numerous reported rights violations by Croatian border personnel seem to have been dismissed when Croatia was eventually welcomed to officially join the Schengen zone as of January 2023. EU institutions once again turned a blind eye to human rights violations at Croatia's external border. Human rights were sacrificed on the path to reach political compromises in the EU. This sets another dangerous precedent of disregarding rights abuses, even more worrisome in countries with poor Rule of Law thresholds. Accountability and access to rights and procedures at the border between Croatia and Bosnia and Herzegovina remain far from reality, impunity continues to prevail, and the effectiveness of the renewed border monitoring mechanism⁷, only called independent by those not aware of the Paris Principles⁸, remains ambiguous.

⁷ Croatia had set up a border monitoring mechanism in the summer of 2021. This initial mechanism had a duration of 1 year. Civil society widely criticised the mechanism for a lack of independence^{and} shortcoming mandate. More information can be found here:

<https://www.amnesty.org/en/documents/eur64/4546/2021/en/#:~:text=Croatia%20EU%20Croatia%E2%80%99s%20recently%20announced%20border%20monitoring%20mechanism%2C,human%20rights%20and%20humanitarian%20aid%20organisations%20said%20today.> The mechanism was renewed in the autumn of 2022.

⁸ UNGA resolution 48/134 of 20 December 1993, on the Paris Principles.

https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fganhri.org%2Fwp-content%2Fuploads%2F2019%2F10%2FParis-Principles_ENG.docx&wdOrigin=BROWSELINK

The renewed border management mechanism still lacks transparency, as per established practice, which makes any scrutiny difficult to impossible. Furthermore, the limited scope of the mechanism seems to indicate a choice to construct it deliberately to fall short to deliver on its task. While many question marks about the renewed mechanism remain, pushbacks are still recorded to date. The main conclusion is therefore that the mechanism has not been relevant or able to end this practice, nor has it set out pathways to accountability for the pushback victims.

Greece

Following discussion between the EU Commission and the Greek Authorities on a 'new proposal to mainstream fundamental rights' within the Greek asylum system,⁹ a Fundamental Rights Officer (FRO) and a Special Commission on Fundamental Rights Compliance (Task Force for Fundamental Rights Compliance) within the Ministry of Migration and Asylum have been instituted in July 2022.¹⁰ The Greek authorities previously denied the need to establish any border monitoring mechanism.

The independency, impartiality, and effectiveness of the set-up and the mechanism is largely disputed. The FRO is selected by a five-member assessment Committee with government majority, composed of three government officials, the President of the National Commission for Human Rights (NCHR), and the Ombudsman.¹¹ Both the NCHR and the Ombudsman, effectively independent actors, have voiced serious concerns about membership of a committee underpinned by 'majority participation of representatives of the Administration', as incompatible with their mandates.¹² The first FRO appointed in December 2022, is a former Armed Forces official.¹³ The FRO is tasked with 'collection and preliminary assessment of complaints on alleged violations of fundamental rights during the reception of third-country nationals and procedures for granting international protection thereto, as well as transmission thereof to the National Transparency Authority (NTA) or competent bodies, as the case may be'.¹⁴ FRO's mandate does not include fundamental rights violations related to border management, i.e. push backs. It remains to be seen whether such allegations will be dealt with by the FRO. Moreover, the effectiveness of the NTA, to which FRO transmits relevant complaints, in investigating pushback allegations, has already been criticised following the issuance of the first NTA investigation report.¹⁵

As for the Special Commission on Fundamental Rights Compliance (Task Force), this is a seven-member Committee composed by a majority of officials appointed by the Administration (three government officials and the FRO who is appointed by an assessment Committee with government majority).¹⁶ The competence of the Committee is defined by law as the '*monitoring of procedures and of*

9 Euronews, 'Violent and illegal' migrant pushbacks must end now, EU warns Greece', 8 June 2022, <https://www.euronews.com/my-europe/2022/07/04/violent-and-illegal-migrant-pushbacks-must-end-now-eu-warns-greece>.

10 Articles 49 and 50 L 4960/2022.

11 Article 49 (5) L 4960/2022.

12 Greek Ombudsman, 'Articles 49 & 50 L 4960/2022', 42673/2022, 29 July 2022,

<https://www.synigoros.gr/en/category/deltia-typoy/post/epifyla3eis-toy-synhgoroy-toy-polith-gia-th-symmetoxh-toy-se-epitropes-toy-ypourgeiou-metanasteyshs-kai-asyloy>; National Commission for Human Rights, 'Επιστολή της ΕΕΔΑ προς τον Γ.Γ. του Υπουργείου Μετανάστευσης και Ασύλου', 18 October 2022,

<https://www.nchr.gr/%CE%B5%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CE%AC-%CE%BA%CE%B5%CE%AF%CE%BC%CE%B5%CE%BD%CE%B1/1496-sxedio-epistolis-tis-eeda-pros-ton-g-g-tou-ypourgeiou-metanastefsis-kai-asylou.html>.

13 Ministry of Migration and Asylum, 'Ορίστηκε ο Υπεύθυνος Προστασίας Θεμελιωδών Δικαιωμάτων στο Υπουργείο Μετανάστευσης & Ασύλου', 2 December 2022, <https://migration.gov.gr/oristike-o-ypeythynos-prostasias-themeliodon-dikaiomaton-sto-ypourgeio-metanasteyshs-asyloy/>

14 Article 49(1) L 4960/2022.

15 See *inter alia* GCR & Oxfam International & Save the Children International Bulletin - July 2022, https://www.gcr.gr/media/k2/attachments/GCR_OXFAM_STC_Bulletin_July_2022_final.pdf, p. 5.

16 Article 50 L. 4960/2022. The three government officials are appointed by the Ministry of Migration and Asylum, Minister of Citizens Protection and Ministry of Marine.

implementation of national, EU and international legislation in the areas of border protection and of the granting of international protection'.¹⁷ The Law additionally provides that the responsibilities and the powers of the Committee can be further specified by a Joint Ministerial Decision (JMD).¹⁸ The Ministry of Migration and Asylum publicly announced the first meeting of the Committee in August 2022, even though no JMD has been adopted to define its exact responsibilities.¹⁹ No further information has been made available by the Ministry on the work of the Committee to date. Both the Ombudsman and the National Commission for Human Rights have explicitly called upon the government to reconsider the above reform, highlighting that neither of the bodies suffice as independent monitoring mechanisms on fundamental rights compliance.²⁰

While the practice of setting up border monitoring mechanisms would in fact be welcomed by civil society, the mechanisms in Greece and Croatia do not meet minimum requirements in order to ensure effective and impartial monitoring and investigation of pushback allegations. These mechanisms are unlikely to ensure effective accountability. On the contrary, they might be abused as a justification of effective action taken by the Member States.

As in Croatia, it remains common practice also in Greece to use pushbacks as a *de facto* tool for border control. '*In Greece, pushbacks at land and sea borders have become de facto general policy*' notes the UN Special Rapporteur on the Human Rights of Migrants in a report issued in June 2022.²¹ From 1 January to 20 November 2022, UNHCR reported 12,787 third country nationals entering Greece by land and sea. The Greek Ministry of Migration and Asylum reported 9,116 arrivals recorded in Reception and Identification Centers (RICs) from April to September 2022.²² Significantly higher number of persons trying to reach protection and the territory of Greece, never managed to do so. Recent [statistics provided by the Hellenic Police](#) show that from January to October 2022, a total of 230,993 persons were prevented from entering Greek territory.

Furthermore, the Greek Ministry of Migration and Asylum announced that from November 2022 and for three years, EU-funded drones will be deployed to track people at the borders.²³ The surveillance project - covered widely by [international media](#) when it was launched - is funded with 3.7 million Euro.

For those who do manage to reach the territory of Greece, access to asylum procedure is far from ensured. In practice access to the asylum procedure was ensured only for those transferred to a RIC facility on the islands or Evros, the northern most regional unit of Greece. While until August 2022, the only available access to the asylum procedure was via a commercial online communication platform (via Skype that was not operating efficiently), a new platform was launched in September 2022 by the Greek Ministry of Migration and Asylum for asylum seekers on the mainland to register their will to request for international protection. The platform, however, does not ensure smooth access to the procedure, as asylum seekers face significant difficulties in filing their claims. As a result, the introduction of an online system has far from improved access to asylum procedures.

17 Article 50(1) L 4960/2022.

18 Article 50(3) L 4960/2022.

19 Ministry of Migration and Asylum, '1η συνεδρίαση της Ειδικής Επιτροπής για τη Συμμόρφωση με τα Θεμελιώδη Δικαιώματα', 23 August 2022, <https://migration.gov.gr/1i-synedriasi-tis-eidikis-epitropis-gia-ti-symmorfosi-me-ta-themeliodi-dikaiomata/>

20 Greek Ombudsman, 'Articles 49 & 50 L 4960/2022', 42673/2022, 29 July 2022; National Commission for Human Rights, 'Επιστολή της ΕΕΔΑ προς τον Γ.Γ. του Υπουργείου Μετανάστευσης και Ασύλου', 18 October 2022.

²¹ United Nations, Report of the Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, Human rights violations at international borders: trends, prevention and accountability, A/HRC/50/31, para. 32.

²² The statistic can be found on this link: <https://bit.ly/3In4EF7>

²³ <https://www.ertnews.gr/roi-idiseon/n-mitarakis-me-drones-i-fylaxi-ton-synoron/>. The drones will be activated from 2023 onwards.

Online submission of asylum claims in Greece

From 1 September 2022, people who want to register their asylum claim should book an appointment with the Reception and Identification Service through an online platform launched by the Ministry of Migration and Asylum. The asylum claims are registered in two closed facilities (Reception and Identification Centres in Malakasa and Diavata). Since the launch of the platform, it has been observed that:

1. Due to technical issues, the platform is not always accessible and thus booking an appointment is not always possible.
2. Appointments for lodging the asylum applications may be scheduled many months after the day the asylum seeker accessed the platform.
3. While waiting for the day of their appointment, contrary to the EU Law, the Greek Authorities do not consider these persons as asylum seekers. This happens despite the fact that they have clearly expressed their will to file an asylum application and as the system does not provide the applicants with a document proving that they have expressed their will to file an asylum application. This means that they do not have access to rights provided to asylum seekers by EU law (reception conditions etc.) and that they are at risk of being arrested and detained under the assumption of their irregular presence in the country.
4. Upon entry in the above Reception and Identification Centres (RICs) beneficiaries may face decisions of restriction of their personal liberty for a period of up to 25 days (de facto detention), which constitutes a deterrence factor for applying through the platform.
5. The rules applicable for the examination of the asylum claims after their registration in the RICs are not clear, nor public. For example, it was observed that only the claims of applicants from safe countries of origin are examined in the RICs, while the claims of vulnerable and of non-vulnerable applicants who are not nationals of safe countries of origin are examined by the asylum offices. This means that these categories of applicants are not hosted in the RICs - instead, they are given the asylum seeker's card after their registration and as they leave the site.
6. No special protective measures are foreseen for asylum seekers with vulnerabilities.

New EU Action Plans as a smokescreen for stemming irregular arrivals?

Access to international protection, within the EU, is far from safeguarded - not merely due to a systematic use of pushbacks across EU borders or the unwillingness to let boats disembark, but also due to other policy developments. By the end of 2022, the European Commission proposed an [Action Plan for the Central Mediterranean](#) and an [Action Plan for the Western Balkan](#). These two Action Plans consolidate an EU policy approach aimed at stemming irregular movements, unsurprisingly emphasising the need to strengthen border management capacities and disrupt cross-border smuggling networks. However, these EU actions plans are not new inventions. Based on the examples below, they rather appear as a formalisation of the practices used by some EU Member States in the past years.

Refoulements from **Italy to Libya** have continued in 2022 in collaboration between the governments of Italy and Libya and thanks to the recent renewal of the Italy-Libya Memorandum (on 2 November 2022²⁴) for the next three years. **Italy** also continues to support **Tunisia** in border patrol activities and in fighting migrant trafficking. To counter the significant increase of arrivals from Tunisian coasts, the Italian government has sped up the procedure to foster repatriations of Tunisian citizens. The situation at the so-called Lampedusa hotspot remains critical as needs remain high and compliance with EU law is a challenge.²⁵

²⁴ Il Sole 24 Ore. 2022. The Memorandum between Italy and Libya is renewed for another three years. Available in Italian at: <https://www.ilsole24ore.com/art/migranti-termina-scaduto-si-rinnova-altri-tre-anni-memorandum-italia-e-libia-AE1NzHDC>

²⁵ See https://www.ansamed.info/ansamed/en/news/regions/sicily/2022/11/07/lampedusa-hotspot-overcrowded-four-kids-die-during-crossing_0f46ccb3-d7d0-481d-b98e-6b827fd22a7c.html

During 2022, pushbacks **from Italy to Greece and Albania** were also recorded. Through the monitoring activities carried out by PRAB partner ASGI and the organisations of the Network of the Adriatic Ports, testimonies of refusal of entry and readmissions from the Adriatic ports to Greece and Albania - even for those who claim asylum, for unaccompanied minors (UAM) and vulnerable persons - have been collected. The testimonies document incidents that amount to inhuman treatment, such as confiscation and destruction of personal belongings, forced undressing, and exposure to extreme temperatures.

In Serbia, pushbacks **from Hungary and Romania** in the north of the country continued in 2022 at similar rates to those of 2021. Pushbacks were largely reported by Syrians and Afghans, followed by nationals of Tunisia and Morocco. More than 50% of persons interviewed by PRAB partner HCIT reported being physically abused, while a third of the interviewees reported experiencing theft or extortion. The perpetrators in most of the incidents were allegedly Hungarian police officers and Hungarian military officers. As a disturbing development, refugees and migrants started mentioning so-called 'border hunters' - special forces on the Hungarian border, particularly cruel towards people on the move. The following testimony was given in October 2022, by a woman in her thirties from the Democratic Republic of Congo to HCIT in Subotica in the north of Serbia:

Woman from the Democratic Republic of Congo was expelled from Hungary to Serbia, even though she was never in Serbia before. The interviewee reported that she flew from Athens in Greece to Budapest in Hungary, and during passport control, she was apprehended by the members of the Hungarian Border Police. She said that they were verbally abusive towards her, but not physically. During the incident, her blood pressure was high, so she was hospitalised for two days in Hungary with hypertension. After that, she was expelled to Serbia, early in the morning on 11 October 2022.

In November 2022, despite the ongoing **pushbacks from Hungary**, an Agreement between Serbia, Hungary and Austria on readmission and further deportation of 'illegal migrants' to their countries of origin, was reached. The agreement among the three countries comes as a response to the increased number of arrivals to the EU, and because of 'EU's failed asylum system'. The Hungarian Prime Minister further remarked how one of the agreement's priorities is to be the 'defense' of Serbia's southern border with North Macedonia.

Meanwhile, **in North Macedonia**, pushbacks largely happened in 2022 at the southern border with **Greece**. In rare cases, pushbacks were recorded on the north border with **Serbia**, as well - mostly involving persons who entered North Macedonia from Serbia. Pushbacks were usually preceded by detention (without legal grounds) in the Temporary Transit Centre (TTC) Vinojug, as well as TTC Tabanovce. Even though in some cases expulsion orders were issued, the actual return happened outside of the formal procedure and in those cases, persons pushed back to Serbia ended up being pushed back from one border to another. The following testimony was collected from an 18-year-old from Afghanistan in August 2022:

'I walked towards the Macedonian border in a large group of people. During the day, we slept in forests, and at night, we moved. In the first attempt, when I entered Macedonia, I got on the train with 34 other people. But we were apprehended by the police at one of the railway stations and pushed back to Greece. In the second attempt, I was also in a large group of more than 100 migrants. We went through Macedonia on foot for about 10 days. I injured my leg and foot, and the smuggler then left me near Tabanovce. After four hours, the mobile team of the Red Cross found me and transported me to TTC Tabanovce.'

These are concrete examples of how policy choices are effectively preventing people from accessing international protection within the EU. The consequence of these practices and policies are that human suffering increases, as the lack of safe and legal pathways leaves people no other option than to opt for dangerous routes. These Action Plans are a textbook example and evidence of the EU's externalisation policies, aimed at preventing migrants and refugees from entering the legal jurisdiction or territories of the EU.

Entry for Ukrainians not a guarantee, while safety for those crossing from Belarus mostly out of reach

In 2022, the highest number of new arrivals to the EU were people fleeing Ukraine. UNHCR [recorded](#) more than 7.9 million refugees from Ukraine across Europe, of which 4.9 million registered for Temporary Protection or similar national protection schemes in Europe. The successes of Temporary Protection for Ukrainians can only be measured by analysing whether those registered have effective access to the rights granted. The number of crossings into the EU is unprecedented in the history of the EU. The [previous PRAB report](#) elaborated upon the difference in treatment between Ukrainians and third country nationals, leaving Ukraine, as well as with regards to those arriving at others borders of the EU.

Ukraine

While previously, Ukrainians did not report any issues when aiming to enter the EU, PRAB partner SIP started recording pushbacks of Ukrainians at the Polish border in recent months. Numerous decisions on refusal of entry have been issued at the Polish-Ukrainian border in 2022. They concerned *inter alia* persons fleeing the war in Ukraine (first-time entrants) and temporary protection beneficiaries (persons recognised as Temporary Protection beneficiaries in Poland who returned temporarily to Ukraine).

A Ukrainian national with her children were recognised as Temporary Protection beneficiaries in Poland shortly after the war started on 24 February 2022. In June 2022, they returned to Ukraine for over three weeks to benefit from expert medical assistance there. Returning to Poland, the mother was denied entry because she exceeded the allowed 90-day visa-free stay in the EU. At the time, Poland did not issue any residence permits to Ukrainian nationals who had been recognised as Temporary Protection beneficiaries. According to the Polish Border Guard, in those circumstances, they needed to be entitled to the visa-free movement or have a visa in order to enter Poland. As the mother had no visa and was no longer entitled to visa-free movement, she was denied entry into Poland. Due to the refusal, she was also at risk of losing her Temporary Protection in Poland as it is withdrawn if a person concerned leaves Poland for longer than one month.

In the period of March to December 2022, a total of 12,899 Ukrainian nationals were refused entry at the Polish border for diverse reasons. The impact of these border practice in the longer term – in particular the many pendular movements – is to be monitored closely.

Belarus

The reality of Poland's other external border gives an even bleaker picture. At the **Polish-Belarusian border**, third-country nationals are still being pushed back violently, irrespective of their vulnerability or age. Pushbacks are reported by, *inter alia*, families with children, pregnant women, elderly, persons with disabilities and with health issues.

Some persons are being pushed back without any decision being issued or even without their identification or registration in any official records. Others receive decisions based on Article 303b of the Act on Foreigners enabling order of an immediate removal of a person who crossed a border in an irregular manner and has been immediately apprehended. Polish officers were also reported to purposefully deceive foreigners and force them to sign a document where they agree to a 'voluntary' return. The claims for asylum were reportedly ignored in most cases.

While Frontex reported a 30% decrease in irregular arrivals through the Eastern Land border, compared to same reporting period in 2021, the real number of pushbacks is unknown. According to the official data made available to SIP, 588 third-country nationals were discovered or arrested upon trying to cross the Polish-Belarusian border in an irregular manner.

However, in 2022, the Border Guard also issued 2,549 decisions ordering an immediate removal from Poland of persons intercepted near the border (based on Article 303b of the Act on Foreigners). Moreover, the Border Guard registered 12,144 'preventions of irregular crossings of the border'. This number includes both persons who managed to avoid interception at the border (e.g. they run away from Polish officers to Belarus) and persons who were returned to Belarus in accordance with the Regulation in force since August 2021 (entitling to return a person identified away from the official border crossings without any decision being issued). According to different data (given to Egala), since August 2021, the Border Guard removed 50.668 persons from Polish territory immediately upon their arrival from Belarus.

As reported by Grupa Granica, the informal collaboration of Polish NGOs (including SIP), a total of 1,814 individuals reported being pushed back during 2022. From May to 31 December 2022, a total of 360 persons were pushed back more than once.²⁶ Most of those persons reported being pushed back two to six times, and at least seven persons said that they were pushed back around 20 times.

In June 2022, the Helsinki Foundation for Human Rights [noticed](#) a rise in the level of violence used by the Polish and Belarusian authorities. Persons experiencing pushbacks reported that they suffered the following forms of abuse from the Polish officers: 'Intimidation, derision, threatening to use firearms, pushing, forcing to cross a razor wired fence over to the Belarusian side, hounding with dogs, use of tear gas, forcing persons to enter a river despite cold temperatures, refusing humanitarian and medical aid, destruction of telephones and SIM cards, deliberate deception, and transporting people to the Belarusian border despite them being freezing and exhausted.'

Later on, Grupa Granica repeatedly [reported](#) of increasing violence by the Polish authorities, including beatings, using tear gas and destruction of phones. Since May 2022, a total of 266 persons informed Grupa Granica that they had experienced violence from Polish forces. However, when asked about the experienced violence, they referred only to physical violence. Threats and destruction/stealing of their property are frequent at the Polish-Belarusian border to the extent that this is often not mentioned any longer. The true level of violence is, according to Grupa Granica, much higher than what is reported.

Two major operational changes at the Polish-Belarusian border in the second half of 2022:

1. A fence has been built at the border. On 30 June 2022, Polish authorities announced that 170 km – out of 186 km – of the fence is completed. It is 5.5 m high and topped with razor wire. Since the beginning of July, the fortification continued, namely the installation of electronic devices (e.g. cameras, detection cables). First stage of an 'electronic fence' [was finished](#) in November 2022.

²⁶ A part of the data is publicly accessible on these links: <http://hfhr.pl/aktualnosci/pazdziernik-listopad-2022-w-grupie-granica-podsumowanie-i-wyzwania-> and <https://hfhr.pl/aktualnosci/dzialania-grupy-granica-od-lipca-do-pazdziernika-2022>



Photo credit: Aleksandra Chrzanowska

2. On 1 July, after 301 days, the scope of the prohibition of mobility in the near-border area [changed](#) – access was restricted in the area of 200 m from the border, instead of 3 km. The access/movement restriction was officially justified by the construction of a fence with the supporting infrastructure, including electronic systems. The decision remained in place until the end of 2022.

A razor wired fence at the Polish-Belarusian border did however not stop third-country nationals from crossing this border but contributed significantly to their increased suffering. Grupa Granica has further [reported](#) that many persons have suffered injuries while climbing and coming off the fence. Crossing the border through swamps, wetlands, and rivers - now even more due to the construction of the fence - increased risk of drownings, injuries, hypothermia or death. The ambulances have been called for by Grupa Granica only rarely since the Border Guard was known for taking third-country nationals from hospitals and pushing them back to Belarus. In consequence, in the second part of 2022, the increasing number of interventions of Grupa Granica required providing expert medical assistance.

Lack of access to asylum procedure even at official border crossings

In the second half of 2022, pushbacks at the regular border crossing points at the Polish-Belarusian border were increasingly reported, mainly by Russian nationals. Some persons approaching those check points and asking for international protection were denied entry and issued with a decision on refusal of entry due to the lack of needed documents to cross the border. Such pushbacks have been reported *inter alia* by families with children and ill persons. While decisions on a refusal of entry can be appealed, it has been proven repeatedly before the ECtHR that it is an ineffective remedy as it does not entail a suspensive effect. Thus, civil society organisations try to assist prospective asylum seekers from the Russian Federation by sending individual interventions to the Border Guard.

This anti-immigration policy initiated in 2015/2016 was repeatedly condemned by the European Court of Human Rights – with the most recent judgments as of 30 June 2022: *A.I. and Others v. Poland*, no. 39028/17, and *A.B. and Others v. Poland*, 42907/17. It proves that third-country nationals who access regular border crossings between Belarus and Poland also cannot effectively initiate asylum procedure, incentivizing third-country nationals to use other – irregular – pathways of entry.

Lithuania

For people aiming to seek asylum in Europe crossing from the east, the border with **Lithuania** appears neither to be an option. The total number of pushbacks from Lithuania in 2022, as reported by the [Lithuanian State Border Guard Service](#) as of 15 December, was more than 11,100. There was a noticeable increase of pushbacks in August and September 2022: The number of persons prevented from entering the territory of the Republic of Lithuania reached 2,231 in August and 2,717 in September 2022. By the middle of October, the flows decreased at the Lithuanian border. However, the increase of the attempts to get to the territory of Latvia and Poland slightly increased²⁷.

In May 2022, the head of the Lithuanian State Border Guard Service reported that the countries and regions of origin of irregular migrants have changed. Before May 2022, mostly persons from Iraq and Kurdistan were recorded, while after May 2022, nationals of India, Sri Lanka, Cuba, Syria and Afghanistan were primarily recorded. The head of the State Border Guard Service also reported a change of the route of irregular migration. Since May 2022, instead of reaching Belarus directly by plane from Iraq, most arrive from the Russia Federation.²⁸ Similar trends have been recorded by Human Constanta. According to interviews with refugees, most refugees during 2022 came from the territory of the Russian Federation, since there was no patrolled land border between the two countries.

[According to Doctors without Borders \(MSF\)](#), several persons had been repeatedly pushed back and forth across the border over days, or even weeks. Overall, the experience of being pushed back is traumatic, often suffered by migrants who are likely to have been previously exposed to violence in their home countries. Detention and discriminatory treatment of migrants by Lithuanian authorities significantly contributes to their [suffering and deterioration of their mental health](#).

There were [additional reports](#) in November 2022 about irregular migrants suffering from frostbite and even losing limbs due to the weather conditions and inadequate clothing, and nine people have been reported to be receiving hospital treatment. The Lithuanian Minister of Interior commented that ‘the fact that people arrive at the border barefoot will not be a reason to let them in’.

The State of Emergency on the Lithuanian border with Belarus and Russia (which is the legal basis for the Lithuanian Minister of the Interior to allow Lithuanian Border Guard Service to use pushbacks) was extended twice in 2022: On 13 September for three months and again on [13 December 2022 \(for 3 months\)](#). The Ministry of Interior has publicly expressed an intention to legalise pushbacks by passing national legislation, as an alternative to following a temporary executive order. However, no such law has been submitted to the Lithuanian Parliament for deliberation yet. Thus, the legal background remains largely unchanged in Lithuania.

²⁷ Full article in Lithuanian can be accessed here: <https://www.lrt.lt/naujienos/lietuvoje/2/1802436/lietuvoje-sumazejus-neteisetu-migrantu-srautams-isaugimas-pastebimas-lenkijoje-ir-latvijoje-vsat-pirstu-beda-i-baltarusijos-tarnybas>

²⁸ Full article in Lithuanian can be accessed here: <https://www.delfi.lt/news/daily/lithuania/vsat-vadas-atsidarius-naujam-neteisetos-migracijos-keliui-pakito-kilmes-salys-is-kuriu-atvyksta-migrantai.d?id=90231467>

And an even bleaker picture on the Belarusian side of the border

In 2022, Human Constanta interviewed 131 persons of concern. Countries of origin of those interviewed were Afghanistan, Cameroon, Cuba, Egypt, Eritrea, Iran, Iraq, Liberia, Morocco, Syria, Togo, and Yemen. Among those interviewed, 26 persons had not yet tried to cross the border into EU (at the moment of the interview), while others reported experiencing pushbacks (105 persons in total).

At least a quarter of the respondents were women, others came to Belarus with their families which also included women and children. The reasons that caused people to become forced migrants vary. Most refugees indicated that they were trying to escape physical threats and menaces in their home countries. A quarter of the interviewed refugees were tortured or feared such a threat in the future. At the same time, people said that they did not have the opportunity to work in their home countries, that the infrastructure in their hometowns was destroyed, and that the children had no access to education. Some of the respondents came with children who had serious diseases, which could not be treated at home and indicated seeking medical help as a reason for migration.

Intimidation, violence and illegal practices by Belarusian border guards were reported by the interviewees. According to the numerous reports from the refugees in transit, Belarusian border guards are directly pushing them to cross the border illegally. In case of unsuccessful attempts to cross the border, refugees in transit find themselves stranded in the forest, trying to survive without shelter, food, water, or access to medical care. Many remain in the forest and experience daily abuse from the Belarusian border guards, who use 605s – being xx - and violence to force people to cross the border into the EU countries. Human Constanta recorded several stories of refugees who were robbed by Belarusian border guards. The appeals to the Belarusian State Border Committee with a request to evacuate people from the forest on the border were often ignored. However, the only agency that can directly help migrants in the restricted border zone is the State Border Committee.

2. Litigation: The last resort?

When rights compliance becomes a political bargaining chip, there is little to no trust in decision makers' intention or their will to radically change towards ensuring accountability and upholding the Rule of Law. The consequences of trading Rule of Law in the short term might affect specific groups (in this case migrants, asylum seekers and refugees), but in the longer run, such cracks deepen and spread far wider – and the examples are already evident across a growing number of EU Member States. The last line of defense remains with the work of national and international courts. Throughout 2022, PRAB partners continued engaging through strategic legal action to hold Member States accountable.

Cases before national courts

In **Italy**, after the adoption of Inter-Ministerial decrees and the attempt to allow only 'vulnerable' migrants to disembark, 200 doctors filed a complaint for the violation of deontological rules by colleagues from the Maritime, Air and Border Health Unit (USMAF), who boarded the ships and 'selected' vulnerable and non-vulnerable migrants.²⁹

²⁹ <https://mediterraneaescue.org/news/comunicato-stampa/oltre-200-medici-denunciano-usmaf-all-ordine/>

Several organisations signed an appeal denouncing the illegitimacy of the decrees. In particular, ‘by invoking the ground of a general danger to Italy’s security related to the landing of shipwrecked persons’, improperly invoking Article 19(2)(g) of the UN Convention on the Law of the Sea, the government prevents the conclusion of rescue operations of shipwrecked people. In fact, the obligation to provide rescue dictated by the Hamburg International SAR Convention is not limited to the act of rescuing shipwrecked people from the danger of being lost at sea, but it also provides for the related accessory and consequent obligation to disembark them in a place of safety (High Court of Cassation, third criminal section, Judgment No. 6626, February 20th, 2020).³⁰

Given the unlawfulness of the administrative acts (the Inter-Ministerial Decrees from 4 November and from 6 November 2022), PRAB partner ASGI appealed both provisions in front of the Administrative Court of Rome. The procedure is ongoing. At the same time, ASGI submitted a fast request (Article 700 of Italian Civil Procedure Code) to the Civil Court of Rome asking the judicial authority to order the Italian authorities to offer the rescued people to enter the territory and apply for international protection.

In **North Macedonia**, there are two ongoing procedures before the national Ombudsman on the prolonged period of decision-making process for asylum for two asylum seekers, beyond the stipulated deadlines. The asylum seekers are waiting for a decision, one of them for 12 months and the other for 13 months. The process towards making the decision went beyond the legal deadlines and because of that, PRAB partner MYLA followed up on the case to the Ombudsman office.

In **Poland**, PRAB partner SIP, engaged on several fronts to address the legitimisation of pushbacks as well as the interlinkages between detention and pushbacks:

A. Repealed orders that attempted to legitimise pushbacks

Two men were pushed back from Poland to Belarus after the decisions ordering their immediate removal had been issued by the Border Guard. The Provincial Court³¹ repealed those decisions, reminding that the principle of non-refoulement still applies during the humanitarian crisis at the Polish-Belarusian border. Moreover, appeals from decisions ordering deportation must entail suspensive effect. It is not guaranteed in the respective Polish law. The third-country nationals were not interviewed and their situation upon return to Belarus was not scrutinised. Irrespective of their illegal entry, it should have been assessed whether their rights would be violated upon return to Belarus, and especially that they would not be subject to torture, inhuman, or degrading treatment.

B. Illegal detention of three Afghan men prior the pushback

In August 2021, activists found three Afghan men in the woods near the Polish-Belarusian border. The Border Guard took them to the station in Narewka where they stayed for a couple hours without any contact with their lawyer. Next, in the middle of the night, despite oral pleadings for international protection, the Afghan nationals were illegally deported to the strict nature reserve of the Białowieża Primeval Forest and pushed back to Belarus. The Border Guard explained that it was not a deprivation of liberty, but that they just wanted to feed the third-country nationals and give them a possibility to

³⁰ <https://www.asgi.it/asilo-e-protezione-internazionale/il-governo-ritiri-subito-i-decreti-che-impediscono-lo-sbarco-dei-naufraghi-nei-nostri-porti/>

³¹ Provincial Administrative Court in Warsaw (Wojewódzki Sąd Administracyjny w Warszawie), Judgments of 27 April 2022, no. IV SA/Wa 471/22, and 26 April 2022, no. IV SA/Wa 420/22. <https://interwencjaprawna.pl/en/obligation-to-examine-whether-migrants-in-belarus-are-at-risk-of-torture-and-other-inhumane-treatment/>

rest. The District Court³² stated that it was a deprivation of liberty, and that the real motive of the Border Guard was not humanitarian. Knowing that the pushback was forthcoming, they wanted to hide foreigners from the public view. In fact, deporting the foreigners to the woods, without proper equipment and in the middle of the night, was highly inhumane. The detention was based on the law (Regulation of the Ministry of Interior and Administration of 20 August 2021) that was incorrectly adopted. Moreover, procedural rights of the third-country nationals were also breached. Their detention was not documented, no interpreter was made available, the legal representative was not able to contact them, and they were not informed about their rights. Thus, their detention was illegal, incorrect, and unjustified.

C. Compensation for unlawful detention of the pushback victims from Afghanistan

On the Polish-Belarusian border, a family from Afghanistan (parents with three children) was repeatedly pushed back by the Polish authorities. When the family finally managed to cross the border, they were placed in the detention centre in Kętrzyn, where they applied for international protection. Next, they were transferred to the detention centre in Biała Podlaska. The family spent a total of 97 days in detention. The stay in the centres was a traumatic experience for the family and amplified trauma from their country of origin and from the Polish-Belarusian border. During the detention in Biała Podlaska, the mother had a miscarriage. She was not provided with adequate medical care during the pregnancy and prior to the miscarriage. PRAB partner SIP assisted the family with the application for compensation for unlawful detention. This case remains pending before the District Court.³³

Cases before European courts

Italy: In October, PRAB partner ASGI's project In Limine³⁴ submitted applications for interim measures to the European Court of Human Rights (ECtHR) in order to get the immediate transfer of three families from the Lampedusa hotspot³⁵.

- A. The first case concerns a Tunisian family composed of parents and two minors, one and five years old, who arrived at Lampedusa on 21 October 2022, and applied for asylum at the hotspot's Immigration Office, without receiving any receipt of their application. The Court did not adopt any measures in this case because the family had been transferred the day after filing the appeal.
- B. The second application concerns the family unity of a Moroccan family, with a nine-month-old child, who arrived at the hotspot of Lampedusa on 16 October 2022, and immediately applied for international protection in the hotspot's Immigration Office. The intention to seek asylum had been strengthened by sending a formal communication through certified email. Nonetheless, the Italian Government stated that they did not apply for asylum. On 10 November 2022, the Court ordered the immediate transfer of the family to a suitable reception facility - which took place the following morning - as well as the adoption of all

³² District Court in Bielsk Podlaski, VII Penal Division in Hajnówka (Sąd Rejonowy w Bielsku Podlaskim, VII Zamiejscowy Wydział Karny w Hajnówce), order of 28 March 2022, no. VII Kp 203/21 <https://interwencjaprawna.pl/en/pushbacks-are-inhumane-illegal-and-based-on-illegal-regulation/>.

³³ pending before the District Court in Olsztyn (Sąd Rejonowy w Olsztynie) <https://interwencjaprawna.pl/en/we-submit-an-application-for-compensation-for-stay-in-guarded-centers-for-foreigners-on-behalf-of-a-family-from-afghanistan/>

³⁴ <https://inlimine.asgi.it/>

³⁵ https://inlimine.asgi.it/diritti-violati-nell-hotspot-di-lampedusa-per-la-cedu-il-trattamento-e-disumano-e-degradante-solo-per-le-famiglie-con-minori%ef%bf%bc/?utm_source=sendinblue&utm_campaign=InLimine%2052022&utm_medium=email

necessary measures to ensure adequate living conditions for the applicants.

- C. The third case concerns a Tunisian couple, who arrived in Lampedusa on 8 October 2022. The couple reported that they had applied for international protection in the hotspot's Immigration Office, but the Government claimed they did not. In this case, the Court with a decision communicated on 10 November 2022, does not order the transfer of the couple and generically ordered the adoption of all necessary measures to ensure adequate living and reception conditions for the applicants pursuant to Article 3, the European Court of Human Rights (ECHR).

Greece: Between March and September 2022, the **Greek Council for Refugees (GCR)** has represented 444 Syrian and 32 Turkish refugees, including many children, before the ECtHR, by filing 19 applications for Interim Measures (Rule 39), requesting the Applicants to be granted humanitarian assistance and access to the asylum procedure. The Court granted the requested interim measures for all cases and ordered the Greek Government not to remove the Applicants from the country's territory and to provide them with food, water, and proper medical care. The ECtHR also requested to be informed by the Greek Government, amongst others, on whether the refugees have submitted an asylum application and whether they have access to the asylum procedure and to legal assistance. Full Applications have been filled in eight cases now pending before the ECtHR.³⁶

Some of the refugees within these 19 groups have been formally arrested by the Greek authorities but most of them complain they have been pushed back to Turkey. It should be noted that the refugees, even from the groups that were formally arrested, complain that in the past they had been subjected to violent and informal return (pushback) to Turkey from Greece.

However, in the majority of cases, both with respect to those stranded on the islets and those in the Greek mainland, refugees allege that they have been **pushed back in Turkey while the Court's decision was pending** (five groups including 65 persons in total) or even **after the Court's decision granting the Interim Measures requested** (seven groups including 279 persons in total).³⁷ In these cases, the Applicants complain that they were subjected to a chain of events by first being informally arrested by the Greek authorities, then informally detained for a few hours in an unspecified detention facility in the Evros region, and treated with violence, before they were transferred to the Evros river bank, from where they were forcibly put in boats and pushed back to Turkey.

Moreover, in July 2022, the European Court of Human Rights issued a long awaiting judgment on the case *Safi and others v. Greece*,³⁸ known as the Farmakonisi case,³⁹ which has been supported by PRAB partner GCR together with other organisations. The case from January 2014, concerned the sinking of a fishing boat transporting 27 foreign nationals in the Aegean Sea, off the island of Farmakonisi, resulting in the death of 11 people. According to the allegations of the applicants, the coastguard vessel was travelling at very high speed in order to push the refugees back towards Turkish waters,

³⁶ For all cases in details see Greek Council for Refugees, GCR's Information Note on interventions and on interim measures granted by the ECtHR in cases regarding pushbacks (updated on 1st September 2022), <https://www.gcr.gr/en/news/press-releases-announcements/item/1984-information-note>.

³⁷ Greek Council for Refugees, GCR's Information Note, *ibid*.

³⁸ ECtHR, *Safi and others v. Greece*, application no 5418/15, 7 July 2022.

³⁹ See *inter alia* Greek Council for Refugees, BACKGROUND BRIEFING ON THE INVESTIGATION INTO THE FARMAKONISI BOAT WRECK OF 20.1.2014, 31 July 2014, <https://www.gcr.gr/en/ekdoseis-media/echr-cases/echr-cases-decisions/item/413-farmakonisi-briefing-latest>; Amnesty International, Greece: Farmakonisi migrant tragedy – one year on and still no justice for victims, 20 January 2015, <https://www.amnesty.org/en/latest/news/2015/01/greece-farmakonisi-migrant-tragedy-one-year-and-still-no-justice-victims/>

and this caused the fishing boat to capsize, which the Greek Authorities refuted. The Court found a violation of Article 2 ECHR on both procedural and substantial limb and a violation of Article 3 due to the treatment of the Applicants, survivors of the shipwreck, once transferred to the Greek island of Farmakonisi. In this case, the Court stated that *'it could not express a position [...] on whether there had been an attempt to push the applicants back to the Turkish coast'*. However, having already found a violation of the procedural aspect of Article 2 ECHR, the Court pointed out that *'this inability stemmed largely from the lack of a thorough and effective investigation by the national authorities'*.⁴⁰

More precisely, the Court found a violation of the procedural aspect of Art. 2 ECHR due to the serious flaws occurred in the judicial procedures initiated in Greece against the coastguards involved in the events (serious problem of interpretation in the records of the statements of the Applicants, denial of the authorities to provide access to evidences which were only to the knowledge of the authorities) and the fact that the competent Public Prosecutor decided to discontinue the case by merely stating that *'there [was] no practice of pushbacks as a procedure for removal or towing ... to Turkish territorial waters...'*.⁴¹ Moreover, the Court additionally found a violation of the substantial aspect of Article 2 ECHR on the grounds that the Greek authorities had not done all that could reasonably be expected of them to provide the applicants and their relatives with the level of protection required by Article 2 of the Convention. According to the Court, the Government had not provided any explanation as to the specific omissions and delays and further mentioned that serious questions arose as to the manner in which the operation had been conducted and organised. *Inter alia*, the Court noted that there was no explanation as to how the authorities had intended to transport the applicants to safety using a vessel which was a speedboat and lacked the necessary rescue equipment and that the coastguards had not requested additional assistance or a vessel more suitable for a rescue operation.⁴²

In **Poland**, since the beginning of the crisis at the Polish-Belarusian border, SIP initiated multiple proceedings before the ECtHR:

- A. A case concerning 32 applicants stuck for over two months at the Polish-Belarusian border, has been communicated already by the ECtHR and the Polish Human Rights Commissioner submitted a third-party intervention.⁴³
- B. A case on pushbacks of a married couple from Algeria.⁴⁴ The case concerns a married couple from Algeria, who tried to enter Poland to apply for international protection. The applicants were pushed back to Belarus several times by the Polish Border Guard. They were shoved and ridiculed by the Polish Border Guard. Before the pushback, the applicant lost her pregnancy, and was in a poor medical and psychological condition. Her vulnerability was not taken into account by the Polish authorities. As a result of their pushbacks, they were forced to spend several days in the forest under inhuman conditions, without shelter, medicine, food and drinking water. No decisions were made before the pushback. The application indicates that Poland violated Articles 2, 3 and 13 of the ECHR as well as Article 4 of Protocol no. 4 to the ECHR. The case has not been communicated yet.

⁴⁰ *Safi and others v. Greece, ibid.*, para. 155.

⁴¹ *Safi and others v. Greece, ibid.*, paras. 121-128.

⁴² *Safi and others v. Greece, ibid.*, paras. 154-167.

⁴³ The R.A. and Others v. Poland case, submitted with the Helsinki Foundation for Human Rights, already communicated: no. 42120/21, <https://hudoc.echr.coe.int/eng?i=001-214195>.

⁴⁴ More about the case: <https://interwencjaprawna.pl/en/we-are-suing-poland-for-push-backs-on-the-border-with-belarus/>

- C. A case regarding the pushback and inhuman detention of two refugees from Afghanistan.⁴⁵ In August 2021, in the middle of the night, despite oral pleadings for international protection, two Afghan nationals were illegally deported to the strict nature reserve of the Białowieża Primeval Forest and pushed back to Belarus. They spent the night there without proper clothing, food, drinking water, shelter, and medical care. The men were finally allowed into Poland. They were placed in a detention centre in inhuman and degrading conditions. The application invokes violations of Article 2, 3, 5, 8 and 13 of the ECHR as well as Article 4 of Protocol no. 4 to the ECHR. The case has not been communicated yet.
- D. Finally, a case addressing the inhuman and unlawful detention of family from Iraq.⁴⁶ The case concerns a family from Iraq (parents with two children) who repeatedly attempted to cross the Polish-Belarusian border. The family spent a total of 21 days at the border. During this period, they were pushed back seven times by the Polish authorities. The foreigners experienced violence from the Belarusian Border Guard. Pushbacks had been a traumatic experience for the whole family. In particular, they had a negative impact on the physical and mental health of children. Upon finally being allowed to enter Poland, the family has been placed in the detention centre for over six months. A long-term detention had a negative impact on the psychological condition of children and deepened their trauma related to the circumstances of crossing the Polish-Belarusian border. One of the children has been struggling with health problems throughout the detention. The application submitted to the ECtHR indicates that Poland violated Articles 3 and 5 of the ECHR. The case has not been communicated yet.

3. Another year of abuses at borders. Will 2023 become the year where a culture of rights prevails?

The reporting on rights violations at EU borders in 2022 reconfirmed the pattern of a systematic use of pushbacks. PRAB partners recorded that in all 1,000 pushback cases recorded from Croatia and Hungary to Serbia, victims reported a denial of access to asylum procedures. The lack of access to asylum procedures was also recorded in 69% of the pushback cases at the internal EU border between France and Italy. Further 41% of the pushback victims between the border between Croatia and Bosnia and Herzegovina, and 50% of those who aimed to cross between Greece and Turkey reported theft, extortion or destruction of property. Still, the recorded pushbacks are a mere indication of the reality in the ground, as rights violations remain largely undetected and unreported.

To end these violations at EU borders - internal and external - five key actions are critical:

1. **Uphold human rights and human dignity.** Pushbacks, whether violent or not, are a violation of the right to seek international protection. Each person has the right to an individual assessment of their protection claim. States have the right to respect their borders, however, this must happen in compliance with their obligations under international human rights law.
2. **End the practice of systematic pushbacks.** Pushbacks are not isolated cases; they are happening systematically and can be considered as a tool of border management. It is essential that all states contribute to providing safety for people in need of protection, while pushbacks effectively outsource the responsibility for protecting people from one EU Member state to another, or from EU Member States to neighboring countries.

⁴⁵ More about the case: <https://interwencjaprawna.pl/en/sip-complains-about-the-inhumane-treatment-of-refugees/>

⁴⁶ More about the case: <https://interwencjaprawna.pl/en/pleading-against-poland-for-the-detention-of-a-traumatised-family-with-children/>

3. **Effective independent border monitoring mechanisms.** Although there is no direct evidence that the number of pushbacks will decrease, when there is a monitoring mechanism, States should be obligated to have one in place. National independent mechanisms to monitor the border and automatically start investigations, once evidence is collected by the mechanism or is referred to it, would be a tool to hold perpetrators accountable, end impunity, and ensure access to justice.
4. **Political courage to actively change towards a culture of rights.** Human rights are not, and should never become, a 'race to the bottom'. It is time to make a radical switch and have a rights-based approach to border management, with policies that are there to protect people in the move, instead of practice that prevent them from crossing borders.
5. Migration will not be stopped, even if extreme violence at EU borders is used as a strategy. **Safe and legal pathways** are required, both for refugees as well as those searching for economic opportunities in the EU.

The crisis at the EU's borders is not one of numbers. Instead, it is a crisis of human dignity and political will, created due to failure to implement existing legal frameworks and enforce judicial rulings. This pattern should not be seen in isolation. It is part of a wider Rule of Law crisis. It is high time to end the practice of turning a blind eye to human rights violations at EU borders, and to start to uphold, respect and enforce the rights of people at Europe's doorstep.

