

## **Pushing Back Responsibility.**

Rights Violations as a “Welcome Treatment” at Europe’s borders



## **Protecting Rights at Borders**

**APRIL 2021**

## Summary

Between January and April 2021 civil society organizations in 6 different countries collected testimonies of 2162 cases of pushbacks, including chain pushbacks over multiple countries. The rights violations were recorded at different borders in Italy, Greece, Serbia, Bosnia-and-Herzegovina, North Macedonia, Hungary. Over a third of pushbacks were accompanied by rights violations (denial of access to asylum procedure, physical abuse and assault, theft, extortion and destruction of property), at the hands of national border police and law enforcement officials. This is however merely the tip of the iceberg, as pushbacks and these types of rights violations are likely to occur even more frequently, but go often undetected. Further, testimonies collected at different borders seem to point to cooperation practices between different EU Member States, to circumvent their responsibility and push unwanted groups outside of the EU. It goes without saying that these practices have to stop. States should comply with international law, and not use violence at their borders as a deterrence or effective part of their border management. An independent border monitoring mechanism is required to ensure that rights violations are monitored and effective investigations into evidence submitted by civil society actors are conducted. The violence must end and perpetrators must be held accountable.



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## Pushing Back Responsibility. Rights Violations as a “Welcome Treatment” at Europe’s borders

Along the Central Mediterranean and Western Balkan routes, as well as at the EU’s internal borders, pushbacks are no exception. If states complied with their obligations under international (and European) human rights law, these rights violations would not be happening. States have the right to control movement across their borders, however this has to happen in compliance with their obligations under international (human rights) law. Resorting to pushbacks (regardless of whether or not these involve violence) as a means of protecting states’ borders constitutes illegal practice, risks violating the principle of *non-refoulement*, as well as the prohibition of collective expulsion, and prevents access to procedures for international protection.

The Protecting Rights at Borders (PRAB) initiative is formed by protection and legal aid organizations focusing on human rights compliance at the EU’s external and internal borders. Building upon the extensive experience and ongoing work of different partners, the PRAB Initiative, aims to:

- Document and collect testimonies of these well-established and systematic rights violations.
- Trigger and support legal action, when relevant and feasible.
- Highlight accountability issues, as well as the need for Independent Border Monitoring mechanisms.

The PRAB initiative includes partner organizations operating across a range of different countries: Italy ([Associazione per gli Studi Giuridici sull’Immigrazione \(ASGI\)](#), [Diaconia Valdese \(DV\)](#) and [Danish Refugee Council \(DRC\) Italy](#)); Hungary ([Hungarian Helsinki Committee](#)); Bosnia and Herzegovina ([DRC BiH](#)); Serbia ([Humanitarian Center for Integration and Tolerance \(HCIT\)](#)); North Macedonia ([Macedonian Young Lawyers Association \(MYLA\)](#)); Greece ([Greek Council for Refugees \(GCR\)](#) and [DRC Greece](#)); and Brussels ([DRC Brussels](#)).

Since January 2021, the PRAB partners have harmonized data collection methods and strengthened a coordinated evidenced-based approach to ending rights violations at Europe’s borders. The present report brings together:

- Data on pushbacks, as well as rights violation during these illegal practices, for a multitude of borders at the EU’s internal and external frontiers.
- An overview of increasing protection concerns and a lack of legal pathways.
- An update on legal venues addressed and relevant jurisprudence.
- Policy recommendations, as good faith is not enough to ensure that border management is human-rights compliant.



## Pushbacks from EU Member States and Neighboring Countries Continue on a Daily Basis

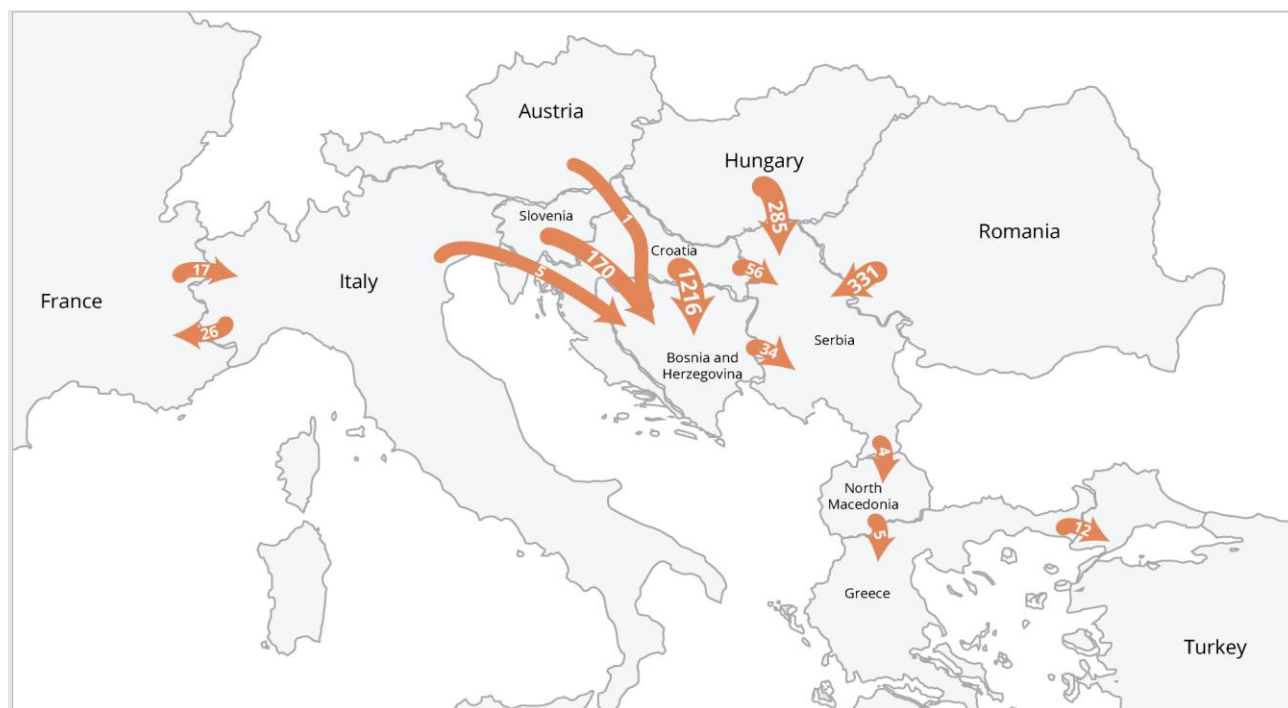
PRAB partners developed a joint tool for collection of evidence and testimonies of cases of pushbacks reported directly to the teams present on the ground. Between January and April 2021, a total of 2162 pushbacks (out of which 176 chain pushbacks) were recorded by PRAB partners across the countries of presence:

# 2162

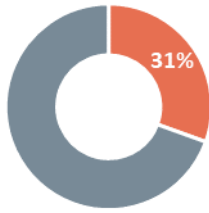
Total # of persons reporting pushback incidents

**The number of pushbacks recorded does not necessarily reflect the total number of pushbacks occurring along the monitored routes. Based on available information, pushbacks occur on much wider scale than that directly recorded by PRAB partners.** Obvious challenges to documenting the extent of illegal practices are posed by access issues, e.g. pushbacks happening in securitized or militarized areas (as is the case in the Evros area, on the Greece-Turkey land border), where NGO's presence is forbidden and risks their targeting and prosecution; the reluctance of persons involved in pushbacks to report due to fear of repercussions on their status or possibilities for onward movement; as well as the lack of trust that reporting will result in concrete changes in policies and practices.

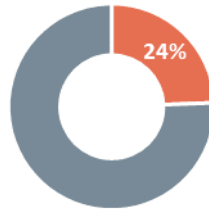
The challenges faced by NGOs, volunteers and other actors highlight the need for recognized and effective Independent Border Management Mechanisms to document, act on and prevent these practices from continuing.



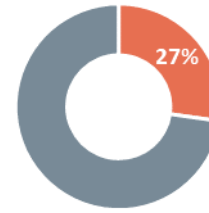
## % OF PERSONS REPORTING SPECIFIC TYPE OF VIOLENCE DURING PUSHBACK INCIDENTS



Denial of access to asylum procedures

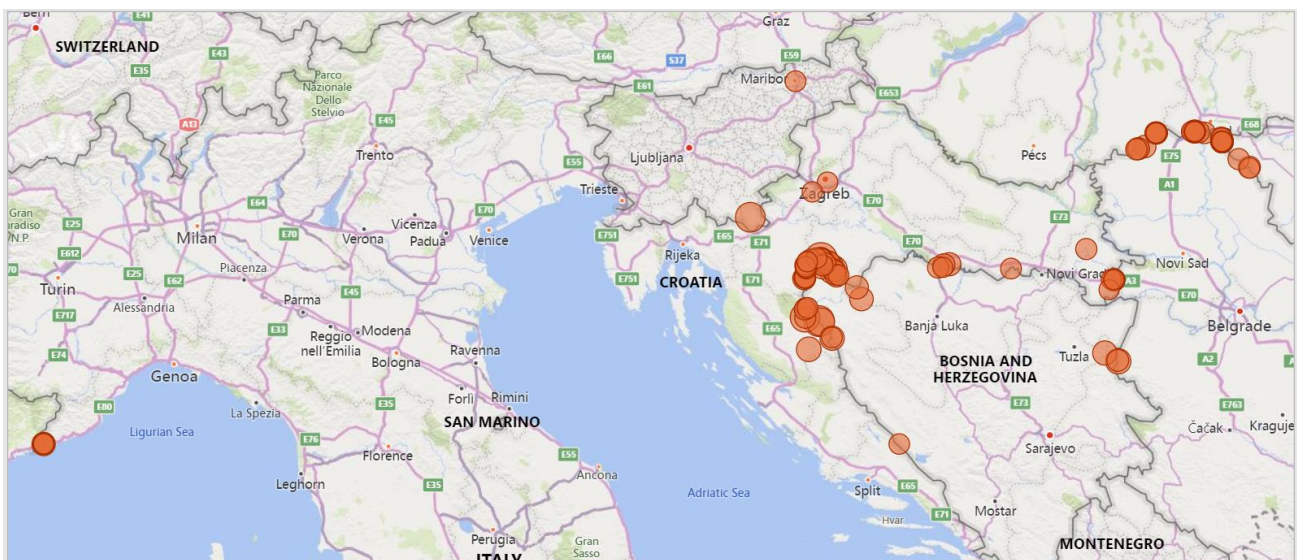


Physical abuse/assault



Theft, extortion or destruction of property

## HEATMAP OF PUSHBACK LOCATIONS



### Pushbacks from EU Member States

**France-Italy border:** According to the testimonies collected by DV and DRC Italy teams, people on the move attempting to cross or having just crossed the border between Italy and France generally report rights violations by French law enforcement officials. After being intercepted by the French border police along the coastal border, asylum seekers and migrants are detained for the night at the French police border station, are denied their right to apply for asylum, receive insufficient food, water and blankets, and are not provided with interpretation or medical assistance. The next day they are returned to Italy. Furthermore, particularly vulnerable people such as unaccompanied minors, single women and women with children are detained together with single men, thus violating their right to a safe space. Additionally, during the last six months, DV recorded at least 300 underage migrants that have been falsely identified as adults, at times even when presenting valid ID cards, pushed back and therefore not referred to local protection systems. At the mountain border, asylum seekers and migrants are not allowed to access France or are intercepted on French territory and directly transferred to the only shelter present in the town of Oulx (Italy), managed by civil society organisations and volunteers, without any individual hearing of their cases.

**Italy-Slovenia border:** The return of asylum seekers and migrants across Italy's northeastern land border to Slovenia has been one of the most visible occurrences of pushbacks in the EU, also due to a flawed agreement signed between Italy and Slovenia in 1996, when the two countries agreed on the return of third country

nationals entering Italy irregularly and apprehended up to 10 km from the border. In July 2020, during a Parliament hearing, a representative of the Minister of Interior confirmed that pushbacks were happening “without any sort of formal administrative procedure”, “due to a consolidated praxis”, and “even when the intention of requesting international protection was manifested”. Different informal procedures have been reported accompanying pushbacks from Italy to Slovenia. Some of the interviewees reported being registered by the Italian police (their fingerprints and photographs recorded), others reported being apprehended and sent back to Slovenia without any type of registration. Both types of returns are not officially reported by the authorities. It remains unclear whether the authorities officially register the unlawful returns, and if official registries are existing, as information collected by the government on the return practices is not publicly accessible. Regardless of the (lack of) formal procedures applied, pushbacks are reportedly coordinated between Italian and Slovenian border police, as interviewees report being “handed over” from the Italian to the Slovenian border police in the border areas, which then proceeds to push them back to Croatia, where they are finally transferred to Bosnia and Herzegovina, outside the EU. These chain pushback exercises seemed a coordinated practice by the different national law enforcement teams.

‘Chain pushbacks’ is the terminology used to refer to forced expulsions across multiple borders, where migrants or refugees are – via an informal cooperation between different states – sent from one state (for instance Austria or Italy), through others (including Slovenia and Croatia) to a third country (e.g. Bosnia-and Herzegovina), without often having been there in the first place. Chain pushbacks through different EU Member States are occurring entirely outside of formally established mechanisms and aim to circumvent their obligations under European and international human rights law as well as the EU’s asylum and migration *acquis*. This results in asylum-seekers, refugees and migrants being held outside of official police centers or detention facilities, without a documented paper trail, and/or receiving treatment that is far from dignified.

The terminology ‘chain pushbacks’ has to be distinguished from **chain refoulement** or **indirect refoulement**. Chain *refoulement* is when a person is returned to a country, where that person is at risk of being returned to his or her country of origin. A chain pushback can amount to chain *refoulement*; however, the terminology of chain pushbacks focusses on the chain/sequence of pushbacks that is coordinated between different states.

# 176

## Total # of persons reporting chain pushbacks

In 2021, PRAB partners recorded at least 176 chain pushbacks across borders (5 pushbacks from Italy through Slovenia and Croatia to BiH, 1 pushback from Austria through Slovenia and Croatia to BiH and as many as 170 pushbacks from Slovenia through Croatia to BiH).

**Hungary-Romania-Serbia borders:** Refugees and migrants reporting pushbacks to Serbia to HCIT teams complained of different types of mistreatments and abuse that they were subjected to. For example, every other pushback from Romania reportedly involved violence, and in two cases of reported pushbacks from Hungary, interviewees testified that they had been bitten by dogs, unleashed by border patrol units. Interviewees regularly report to HCIT teams that Romanian patrols/border police tend to round them up immediately after being identified walking from the direction of the border belt. Interviewees further report slapping, kicking, beatings with police batons, being punched on their backs, hands and legs. The majority of refugees and migrants interviewed reported that they were ordered to sit on the ground, to kneel despite



rain or snow, that they were searched, and that their mobile phones were smashed on the ground and not returned. When a person asked about asylum, the response was often that “it is not possible in Romania”, according to interviewees’ statements.

When it comes to reported violations, all interviewees pushed back **from Hungary** reported denial of access to asylum procedures (285 persons), physical abuse was reported by every third interviewee (93 persons – 33%), while theft, extortion and destruction of property were reported by 23% of interviewees (66 persons).

Pushbacks **from Romania** appear to be more violent, with almost every other interviewee reporting experiencing physical abuse (151 persons – 46%). At the same time, theft, extortion and destruction of property were reported by 14% of interviewees (46 persons), while access to asylum procedures was denied for 24% of interviewees (79 persons).

**Croatia-BiH border:** Pushbacks from Croatia to BiH continued on daily basis. Compared to the end of 2020, significantly fewer pushbacks have been recorded in the first four months of 2021, however a gradual increase has been recorded every month of 2021 – reflecting the trends of movement towards the borders. Despite the lower numbers, the rates of rights violations accompanying pushbacks remain at levels similar to those recorded in 2020, with every third person reporting physical abuse (459 persons – 36% of interviewees), while as many as 62% reported theft, extortion or destruction of their personal belongings (777 interviewees). Denial of access to asylum was reported by 23% of interviewees (293 persons).

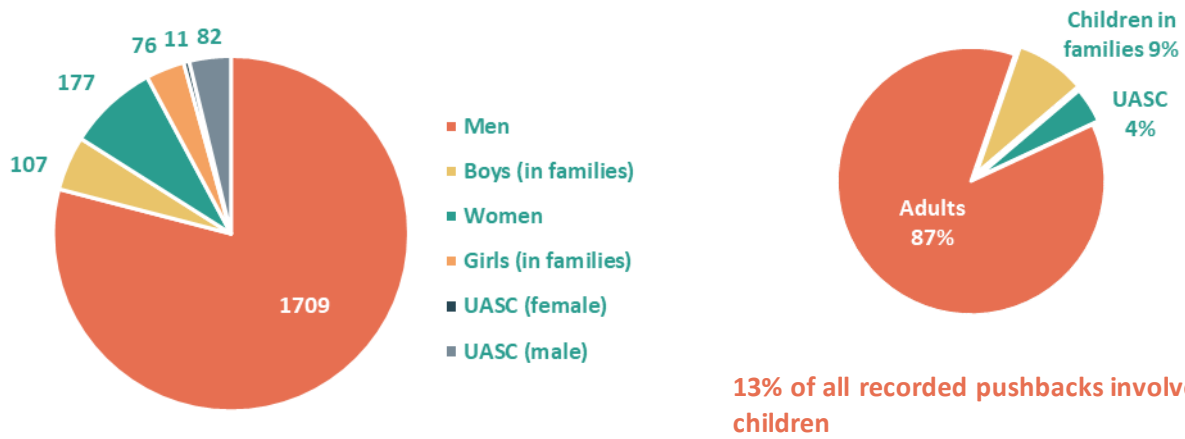
**North Macedonia – pushbacks from Serbia and to Greece:** Since the beginning of the year, 22 persons reported experienced pushbacks to MYLA lawyers (4 from Serbia to North Macedonia, 5 from North Macedonia to Greece, twelve from Greece to Turkey and one from Croatia to Bosnia and Herzegovina). However, pushbacks from Serbia and particularly from North Macedonia to Greece are likely to be happening on a much larger scale. MYLA field reports and data received from key informants show that as many as 4000 persons may have experienced pushbacks to Greece, during the first three months of 2021. Persons apprehended in their movement across the country or identified in the north of the country are supposedly transferred to the reception center in the south of the country in order to be registered. The majority of these persons are returned/pushed back immediately after the registration. Interviewees also reported, to MYLA in North Macedonia, that different rights violations accompanied the pushbacks. Physical violence is the most common reported violation, followed by cases of theft and destruction of property. Cases of abusive and degrading treatment and destruction of personal documents are also commonly recorded. There were testimonies where a group of migrants from Morocco were beaten and forced to enter to the river of Maritsa (Evros).

**Greece-Turkey Border:** Incidents at the Greek-Turkish border in February-March 2020 led to increased securitization and militarization of the Evros border, and the heavy policing of the Aegean Sea by the Hellenic Coast Guard. A sharp decrease in arrivals to Greece has been recorded since the beginning of April 2020. While the access of NGOs and volunteers to the Evros area continues to be a challenge, as a Greek legal framework effectively forbids access to non-authorized actors (including lawyers, NGOs, international organisations, etc.), the question remains how far the drop in the number of arrivals can be attributed to increased pushbacks to Turkey, particularly considering the open risk of chain-refoulement. While organisations based in Greece have been recording pushbacks at the country’s land and sea borders over the last years, the situation has escalated in the last year. Dozens of complaints, substantiated by evidence (videos, testimonies and photos) have been recorded by civil society organisations and UN agencies.

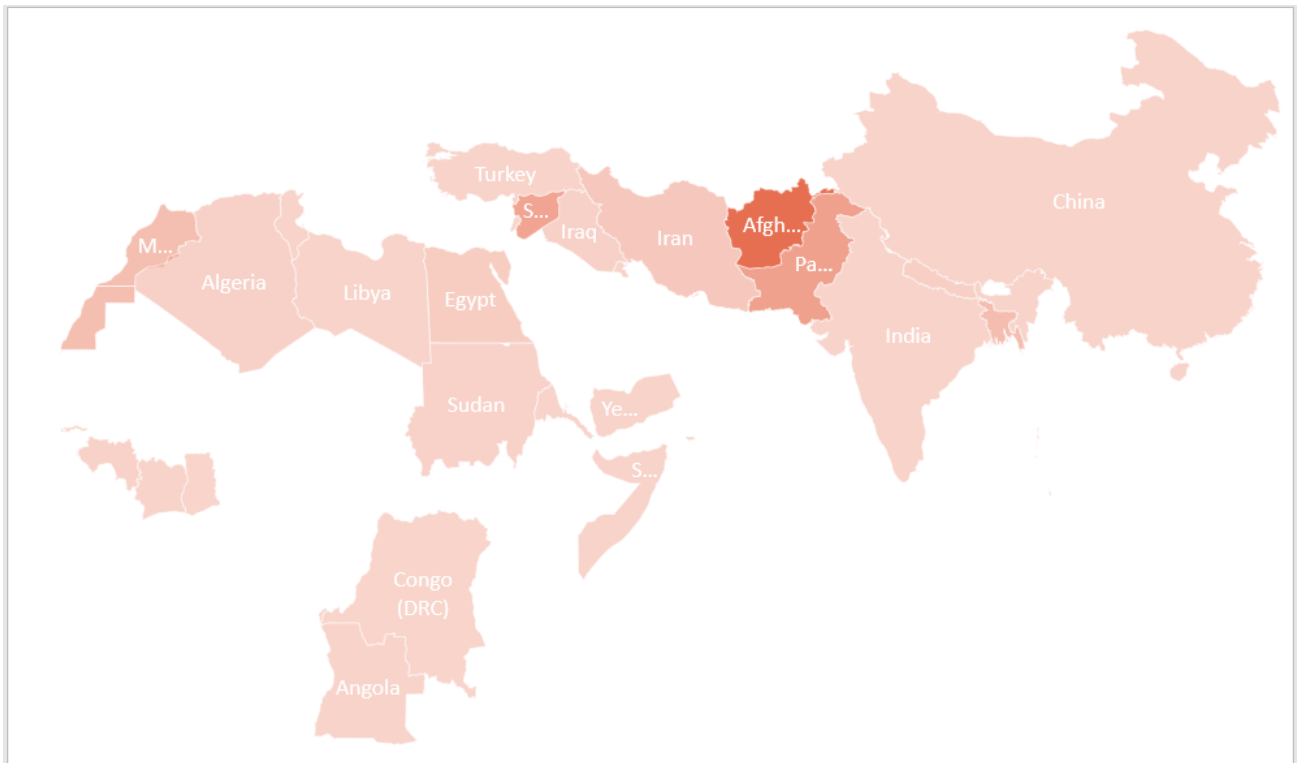
Kindly note that the initiative does not focus on the Central Mediterranean route and the potentially unlawful practices ongoing across the SAR zones, that are extensively reported by other actors (see:

<https://alarmphone.org/en/>; <https://mediterraneaescue.org/en/>; <https://sea-watch.org/en/> among others).

### AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS



### COUNTRY OF ORIGIN OF PERSONS REPORTING PUSHBACKS



## Lack of Legal Pathways for Onward Movement and Increasing Protection Concerns

Since 2016, legal pathways for onward movement to the EU have been gradually limited, leaving an increased number of people stranded in limbo in Greece, Italy and in countries in the Balkans. Facing uncertainty around their status, access to rights and services, and limited integration options, refugees and migrants are



continuously exploring perilous routes and turning to smuggling networks, avoiding institutional mechanisms.

In **Serbia**, hundreds of persons were observed sleeping rough in the vicinity of the Romanian and Hungarian borders, living in dire conditions in makeshift camps and abandoned houses in small villages near the borders, specifically near the Romanian border, despite temperatures often below zero. During February and March, approximately 300-400 persons, including UASCs, were identified sleeping rough in the north of Serbia, in several locations along the border areas, at any given moment. Some of them were new arrivals into Serbia, mostly using the route across North Macedonia (and Kosovo as well), but the majority had already been residing in Serbia for few months. With warmer weather, HCIT observed that refugees and migrants started again gathering in larger groups, in forest areas – to avoid police patrols, but also the local population that has expressed increasingly negative attitudes towards the migrant population during the past year.

In **BiH**, more than 1200 persons, including families and UASCs, were observed sleeping rough in the border areas in the north of the country (Una Sana Canton). A growing number of families and UASCs resort to staying in inadequate conditions, despite the available reception capacities in the country, attempting to cross the border on a daily basis. Only in March 2021, DRC BiH recorded reports of at least 7 persons assumed to have lost their lives in the attempt to cross rivers in the border areas between Croatia and BiH. Furthermore, there is a significant risk of incidents for persons of concern crossing through unsecured and/or mined areas, as also highlighted by BVMN in the most recent [report](#).

In Serbia and BiH, arrivals through **North Macedonia** are regularly recorded, however only a limited number of persons are accommodated in the two transit centers in the country (RTCs Vinograd and Tabanovce). At the moment, the procedure for accessing the RTCs is not clearly defined. The border police decide who can enter the RTC due to lack of formal procedure for assessment, leaving the selection method unclear. In essence, entry is in theory allowed for UASCs, families and persons with health issues, i.e. vulnerable categories. However, people not belonging to these categories were also often accommodated in the transit centers, while – more importantly – vulnerable people that needed to be accommodated were not. Moreover, the status of the persons residing in the reception and transit centers remains unclear, especially when it comes to the rights they enjoy in North Macedonia, leaving them in an insecure legal position.

In **Italy**, both arrivals from the sea and the land border have been increasing steadily, surpassing the previous seasonal averages. In 2020, around 34,000 people reached Italy via sea, and at least 15,000 via the land border from the Western Balkan route. In the first months of 2021 only, the number of refugees and migrants arriving in Italy has tripled compared to the same period last year. Over 8,400 people have arrived from the desperate crossings of the Central Mediterranean route between January and March, while the Western Balkan route registered an increase of 73% in arrivals. During the winter, an almost daily transit of pregnant women was registered in Oulx, some around the 7th and 8th month of pregnancy, with walking difficulties, bleeding problems, others with manifested depression symptoms. Men frequently arrive to the Italian borders with orthopaedic pathologies and leg infections, due to the beatings and violence suffered in Croatia and the many months of walking in the Western Balkan “Jungle”, while the general presence of psycho-physical vulnerabilities is observed in all locations on Oulx, Ventimiglia and Trieste. Around 85% of the caseload arriving from the Western Balkan route is represented by large families with children or infants, who face the lack of adequate health and shelter provision in the border areas. In all three contexts, people of all ages often sleep rough in the streets, the lack of a comprehensive humanitarian response leaves them exposed to protection and health risks, specifically lacking access to legal aid assistance, healthcare and housing.

There are more than 11000 migrants on the **Greek islands**. More than 9000 live cramped in reception camps where living conditions are appalling. The conditions are catastrophic in the temporary facility in Mavrovouni,

also referred to as “Moria 2.0”, given the risk of lead poisoning, power cuts, insufficient sanitation facilities and tented living under harsh weather conditions, while in the Samos reception centre, 2423 people live in a facility which should host 648 migrants. On the **Greek mainland**, almost 60000 asylum seekers and refugees reside in open camp facilities where living conditions vary significantly, with most locations being far from urban services, and in apartments through the state run ESTIA project. Since the closure of borders within the EU and the Balkans in February 2016, which quelled the onward movement of people, and the EU – Turkey Statement of March 2016, the Greek hotspot approach seeks to contain new arrivals to the islands, restricting access to mainland Europe. It also effectively leads to a two-track system with significant differences in context between the islands and mainland.

## Legal Venues Addressed and Relevant Jurisprudence

### Italy

On the 18<sup>th</sup> of January, in case [56420/2020](#), the Court of Rome found that Italy violated the rights of a Pakistani man pushed back from Trieste to Bosnia and Herzegovina in the summer of 2020. The Court of Rome (Section for the rights of the person and immigration rights) declared that the “informal re-admissions” carried out on the basis of a 1996 bilateral agreement between Italy and Slovenia violate the Italian Constitution, the European Convention of Human Rights and the EU Charter of Fundamental Rights, among others.

According to the ruling, the pushback is not only illegitimate under Italian and European law, but was also conducted without any formal procedure, nor an examination of individual situations, contradicting the right for defense and appeal. Additionally, the pushback violated the right of non-refoulement, exposing the foreigner to the risk of inhumane and degrading treatment at the Croatian border, which has been extensively documented by numerous NGOs and international actors.

On 3 May 2021, the Civil Court of Rome, deciding on the appeal submitted by the Government, overturned the previous decision, not by questioning the illegality of the readmissions, but by challenging the solidity of the proof of the applicant's arrival in Italy. The Court refused to listen to the applicant, who in the meanwhile arrived in Italy with a Visa issued by the Italian Embassy in Sarajevo and formalized the asylum application, considering the in-depth examination of the issue not compatible with the precautionary phase of the procedure.

### Hungary

The Hungarian Police continued with pushbacks despite the CJEU judgment in case [C-808/18](#), delivered in December 2020. The Hungarian Police publishes daily statistical updates on pushbacks of third-country nationals staying unlawfully in the country, this practice being specifically prescribed by the national law. Between 1 January and 31 March 2021, a total of 10153 pushbacks took place.

Following the CJEU judgment in case C-808/18 (link above), and in light of the Hungarian authorities’ disregard of its findings, the Hungarian Helsinki Committee (HHC) requested in the beginning of January 2021 that Frontex suspend its operations in Hungary to avoid complicity in unlawful practices. At the end of January, Frontex, for the first time in the Agency’s history, decided to suspend its activities in Hungary, following increased attention from media, the European Parliament and the European Commission.

At the end of February, the Hungarian Minister of Justice requested the interpretation of the Hungarian Fundamental Law (the Constitution) by the Hungarian Constitutional Court, arguing that the implementation

of the CJEU judgment regarding pushbacks would be in breach of the Fundamental Law. The case is now pending at the Constitutional Court.

## Serbia

In February 2021, the Serbian Constitutional Court, through the decision no. [UŽ 1823-2017](#), officially ruled that the Republic of Serbia, Border Police Administration – Border Police Station Gradina has violated rights of a group of Afghan refugees who were unlawfully and arbitrarily detained and then expelled to Bulgaria in a manner that contradicts the prohibition of collective expulsions.

On February 3 2017, a group of 25 persons (9 children) from Afghanistan who entered Serbia from Bulgaria were arrested by the Border Police and detained in a basement of the police station. They were not informed about their rights i.e. the right to have legal representative. After almost 12 hours, the group was taken to the Misdemeanor Court in Pirot, facing trial for illegal entry. The acting judge dropped the charges, stating that the defendants were in need of international protection, and that they should not be removed to Bulgaria due to poor living conditions in reception centres and because ‘they might be victims of human trafficking’. The judge ordered the police to issue the applicants with asylum certificates and to take them to an asylum centre. Instead, the police drove the asylum seekers close to the border with Bulgaria and collectively expelled them.

The Constitutional Court found that Gradina officers had violated the applicants’ right to liberty and security (Article 27 (3) and Article 29 (1) of the Constitution) by denying them the possibility to challenge the lawfulness of their detention with the assistance of competent legal representative. Additionally, the Court determined that the applicants were expelled to Bulgaria outside any legal procedure, without examining the individual circumstances of every applicant and without the possibility to provide arguments against their expulsion.

## Greece

On April 28, 2021, the Greek Ombudsman published an interim [report](#) on alleged illegal pushbacks of foreign nationals from Greece to Turkey, in the area of Evros river, presenting key results of the Ombudsman’s own-initiative inquiry from June 2017 through the end of 2020, including reported incidents, records of the handling of the allegations by the Greek authorities and proposals towards shielding legality, enhancing transparency, and ensuring full respect for the principles of the rule of law.

The Ombudsman addressed all the state services involved in the reception of foreign nationals in the area of Evros river. The replies sent by the reception and identification service, the asylum service, the local police authorities and the Ministry of Citizen Protection noted that their respective services and agents perform their duties in line with the Greek and European legislation, fully respecting and protecting the rights of those who cross from Turkey to Greece including their right to apply for asylum, if they so wish.

The National Mechanism for the Investigation of the Arbitrary Incidents, operating within the Ombudsman that is responsible to receive and to refer and/or examine ex officio cases of police violence, was notified of cases of pushback from the mainland to Turkey. While the investigation of none of the six complaints filed with the Mechanism since 2019 has been finalized, in 2021 at least one case was referred by the Ombudsman for investigation to the Hellenic Police; it has been observed that in specific occasions pushbacks target residents of the hosting sites and even beneficiaries of international protection that are entitled to reside legally in the country.

On 12 April 2021, [the Legal Centre Lesvos \(LCL\) filed a new complaint](#) before the European Court of Human Rights (ECtHR) regarding “pushback” operations in the Aegean Region by the Hellenic Coast Guard. In the

present case, LCL's lawyer represents 11 Syrian nationals who were part of a group of 180-200 people violently expelled from Greece to Turkey on 20-21 October 2020.

## Good Faith Is Not Enough to Ensure That Border Management Is Human-rights Compliant.

Pushbacks continue to be **systematically used** by EU Member States and neighboring countries, as highlighted by the data presented in this report, and can be considered a *de-facto* **tool for border management** by some countries. Pushbacks are illegal and violate EU law, irrespective of whether they are implemented by law enforcement personnel of an EU member state or by an EU agency, such as Frontex (the European Border and Coast Guard).

Although there is no direct evidence that the number of pushbacks would decrease if monitoring mechanisms were in place, states should be obligated to have such mechanisms in place. Mere **good faith, in states' respect for and implementation of human rights has frankly led to widespread abuses, as reported by UN agencies, NGOs, and national Ombudsperson offices.** The mutual trust in states' compliance with fundamental rights has not been re-assuring. Rights violations and pushbacks are happening – as the data presented in this report once again re-affirms. Compliance with fundamental rights should not be seen as an obstacle to ensure migration management. On the contrary, a rights-based-approach is an essential element of border management, an obligation that cannot be disregarded or applied on an *à-la-carte* basis.

To re-establish real trust and – more importantly – to monitor respect for rights, it is essential to set up **national independent mechanisms to monitor borders and automatically start investigations** once evidence is collected by the mechanism or is referred to it. This would be a tool to hold perpetrators accountable, end impunity and ensure access to justice. To this end, there is no need to “re-invent the wheel”, as there are many monitoring mechanisms that already exist. It is nevertheless required that the mechanism can effectively execute its mandate and that its findings are respected and implemented.

The **European Commission's proposal on this, as part of the pre-entry screening regulation** in the proposed EU Pact on Migration and Asylum, can potentially be seen as a first step in the right direction, although it risks not being effective to end violations, as monitoring mechanisms must:

- Have a scope that applies to all reported fundamental rights violations by national border management authorities and/or during border control activities;
- Be independent of national authorities, and rely on national human rights institutions and/or civil society organizations, supported with independent funding;
- Effectively investigate allegations, to put an end to abuse, guarantee access to justice and ensure transparency;
- Include enforceable consequences if governments fail to cooperate with an independent and effective mechanism, do not set it up, or ignore its findings.

These essential elements are not only applicable to the proposed mechanism under the Commission's Pact, but should also be respected for all national border monitoring initiatives that are being discussed. Current examples include **the MoU that the Commission is currently discussing with Croatia, or the Structured Dialogues that are ongoing with the Greek authorities on this matter.** Concessions cannot and should not be made on mechanisms' scope, independence, effectiveness, or enforceability, as otherwise those mechanisms will become mere fig-leaves.

Furthermore, there are currently many ongoing investigations into **Frontex's** role and involvement in reported pushbacks incidents. The lack of transparency on Frontex's role and contributions makes it particularly challenging to hold Frontex accountable. The Final Report of the Frontex Management Board Working Group on [Fundamental Rights and Legal Operational Aspects of Operations in the Aegean Sea](#) concluded that it has not been possible to completely resolve the incidents beyond any reasonable doubt. It remains to be seen whether other investigations, such as those undertaken by the Frontex Scrutiny Group in the European Parliament or the investigation of the European Ombudsman's Office, will lead to similar conclusions – or whether the exceptionally high burden-of-proof threshold will be reviewed, as national and European courts have not required as high a threshold for similar incidents.

Finally, it is important to note that rights violations at borders are not an isolated issue. There is an overall trend, a so-called race to the bottom, with regards to respect for the fundamental rights of migrants, asylum-seekers and refugees. While governments - deliberately - do not respect and often directly violate migrants', refugees' and asylum seekers' rights under human rights law, humanitarian organizations are often prevented from providing assistance in line with their humanitarian mandates. The shrinking space for human rights defenders and humanitarian agencies is no longer an exception in the EU, or our neighboring countries.

