

Human dignity lost at the EU's borders

Thousands of men, women and children await winter at EU borders without access to rights, justice or basic assistance to survive

DECEMBER 2021



**Protecting Rights
at Borders**

Summary

Throughout the past months, more than 6.000 men, women and children have experienced illegal pushbacks at the EU's external and internal border. Testimonies document unlawful, yet seemingly tolerated and ongoing, pushbacks involving physical abuse, harassment, extortion, destruction of property, theft and denial of access to seeking asylum. But it is not only theft of people's belongings, it's also a loss of EU's basic value of human dignity and respect for people's fundamental rights.

Collected from July to November 2021, the report shows that by far, the highest rates of pushbacks have been recorded at the border between Croatia and Bosnia and Herzegovina. Overall, Afghan nationals are the largest population reporting pushbacks. 10 percent of all incidents of pushbacks involved children.

An overview of the developments at the EU's eastern borders with Belarus is also provided in the report. Here, the situation is deteriorating on a daily basis, and has tragically resulted in loss of life already.

With winter approaching, temperatures dropping below zero and snow a common phenomenon in the areas where most of the affected people are stranded, needs will increase. With ill-treatment and unlawful practices continuing at the borders, thousands of men, women, and children await a winter in uncertainty and legal limbo, in dire conditions without basic assistance to survive and without access to rights and legal remedies.

The report is **the third under the Protecting Rights at Borders (PRAB) initiative** launched in January this year by DRC and six civil society organisations across Europe. The initiative focusses on human rights violations at the EU's external and internal borders – and provides evidence of the illegal practice of pushbacks.

Throughout the reporting period of almost a full year, the PRAB initiative has collected close to 12.000 reports involving pushbacks employed by border police, law enforcement officials or other authorities experienced by migrants and asylum seekers.

The trend of border violence, amounting in many cases to collective expulsions, is systematic and widespread at internal and external EU borders. Further, the sheer number of reported pushbacks reflects the normalization of the practice, as a border management tool.

The risks refugees, asylum seekers and migrants face along the route, as well as the humanitarian crises at different borders have been exacerbated by EU policies aimed at keeping people out and proposals aimed at legalizing derogations of basic rights.

While the practices must simply end, the instalment of an effective and independent border monitoring mechanism can be a tool to hold perpetrators accountable and ensure paths to justice for victims.

The PRAB initiative gathers 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 \(DRC\) Italia](#)); **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](#)).

Diversity Development Group (DDG) in Lithuania has also contributed to the report with an overview of the situation at the Lithuania – Belarus border.



This 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 organiser(s) and the content may not necessarily reflect the positions of EPIM, NEF or EPIM's Partner Foundations.

1. Pushbacks remain widely applied across the region

Between 1 July and 30 November, PRAB partners recorded pushback incidents involving 6.336 persons.

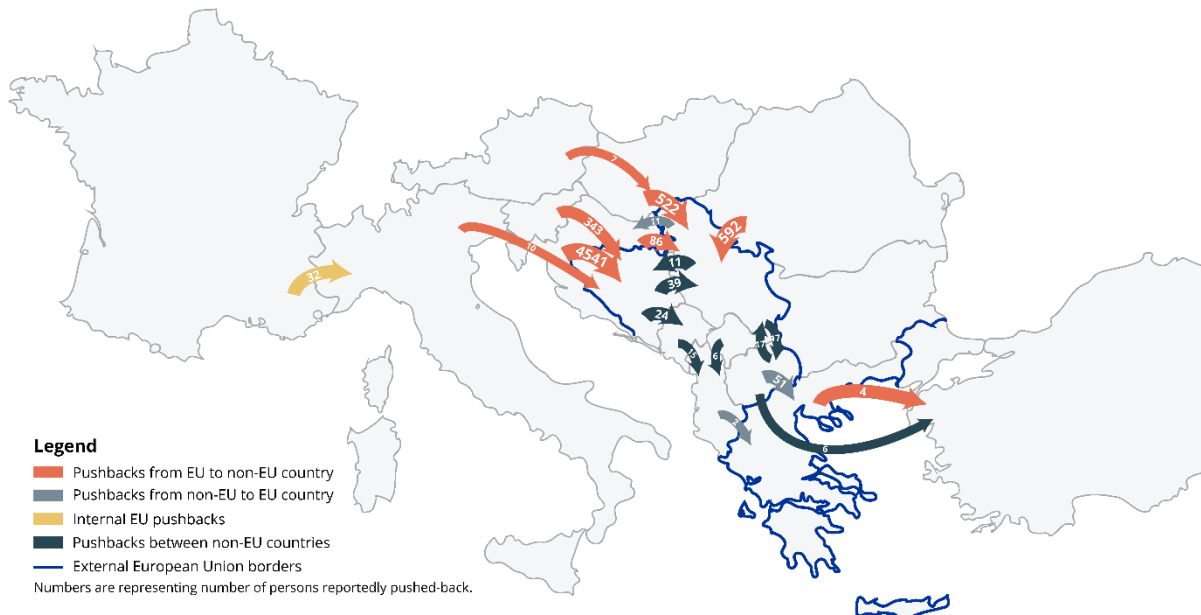
6336

Total # of persons reporting pushback incidents in the reporting period

11901

Total # of persons reporting pushback incidents since January 2021

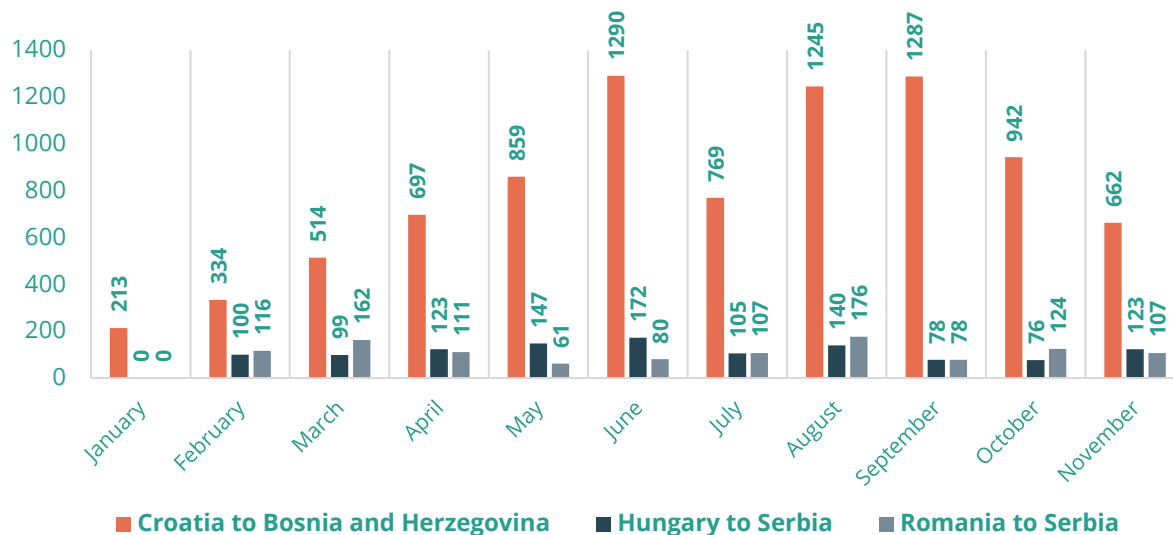
The data collected during the reporting period (July to November 2021) provides further evidence of pushbacks as a normalized practice in the EU's border management across the region. PRAB partners collected again new testimonies of cases of pushbacks from France, Austria, Italy, Slovenia, Hungary, Romania, Greece, Albania, Serbia, BiH, Montenegro, Kosovo¹ and North Macedonia. Interviewees also reported experiencing chain pushbacks from Austria through Hungary to Serbia; from Italy through Slovenia and Croatia to BiH; from Hungary through Romania to Serbia; and from North Macedonia through Greece to Turkey.



¹ All references to Kosovo in this report should be understood to be in the context of United Nations Security Council Resolution 1244 (1999).



Comparing data recorded during the reporting period (July-November) and the first 6 months of the year, no major changes in trends have been recorded. By far, the highest rates of pushbacks reported to PRAB partners have still been recorded at the border between Croatia and BiH, with a total of 4.905 persons affected, followed by 592 persons pushed back at the border between Romania and Serbia and 522 from Hungary to Serbia.

NUMBER OF PERSONS REPORTEDLY PUSHED BACK IN 2021

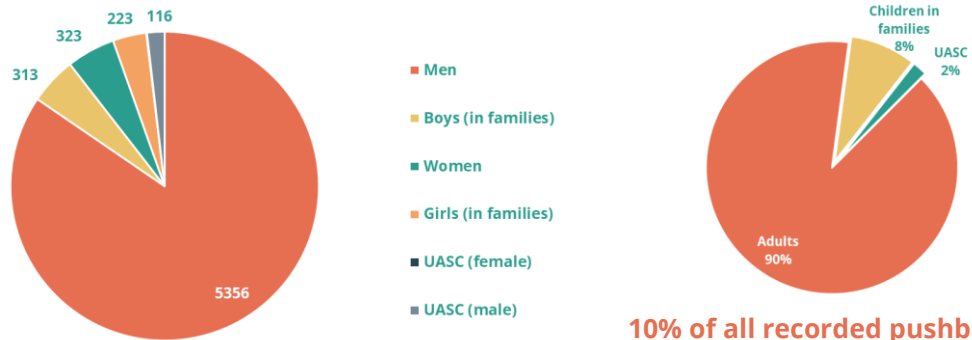


Families with children pushed back in 18% of all cases recorded

Pushbacks of children (including unaccompanied and separated children – *hereafter UASC*), women and the elderly have been recorded by PRAB partners, as well as those of single adult men. The following graphs present the age and gender breakdown of all interviewed persons between July and November 2021:

	Single Adults	Family members		UASC
		Adults	Children	
	36	287	223	5
	5038	318	313	116

AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS

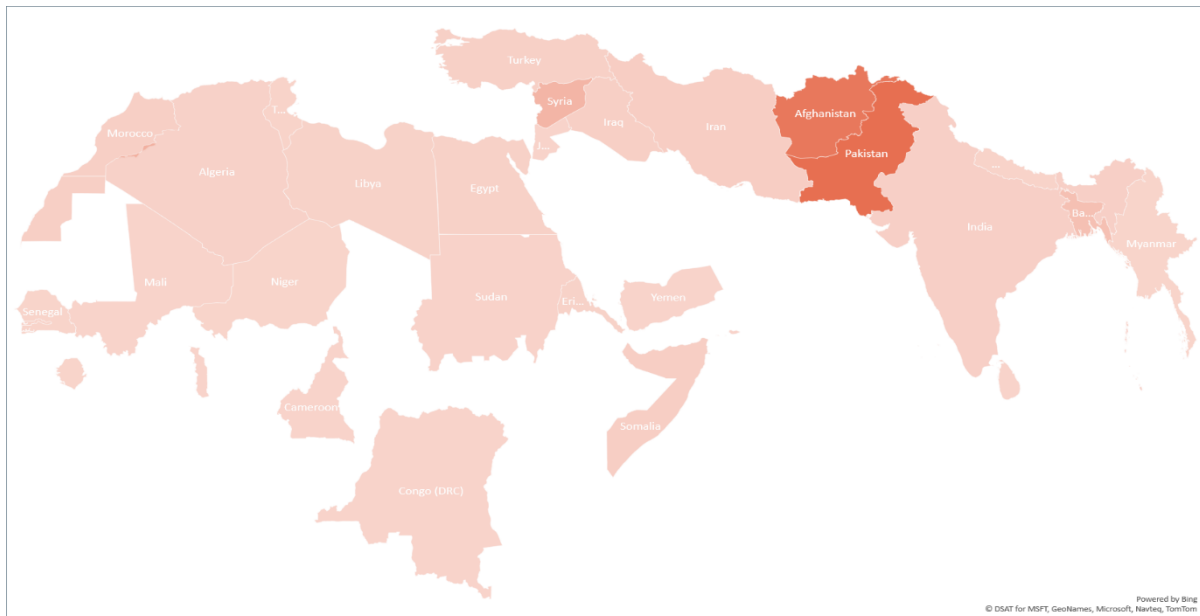


10% of all recorded pushbacks involved children

32% of all pushbacks recorded reported by Afghan nationals

Pakistan nationals make up the largest population reporting pushbacks at EU borders (2.220 persons recorded), followed by Afghanistan (2.027), Syria (674), Bangladesh (428), Iran (140), Somalia (115), Iraq (101), Morocco (95), India (90), Turkey (82), Egypt (56), Algeria (55), Eritrea (42), Libya (40), Sudan (28) and other (143), as shown in the map below.

COUNTRY OF ORIGIN OF PERSONS REPORTING PUSHBACKS



No major changes have been identified when it comes to rights violations accompanying pushbacks at the EU's internal and external borders, as well as at the borders of neighbouring states (*for more details on rights violations at different borders, kindly see the Annex at the end of this report*).

New Trends of Movements and Pushback Practices:

- Mixed migration movements (mainly of persons from Cuba and India) from Serbia through North Macedonia towards Greece have been recorded in the reporting period. In addition to previously recorded pushbacks from North Macedonia to Greece, new trends of pushbacks from North Macedonia to Serbia have been recorded as well.
- The majority of those reporting pushbacks identified by HCIT during the reporting period, claimed that they entered the EU through Hungary and Romania.
- According to their testimonies, the main “entrance” to Romania leads from the triple border area (90%) especially from villages Majdan and Rabe, entering mostly on foot, using only GPS on their cell phones. Once identified by police, the interviewees very often report to have been beaten, threatened, denied access to asylum and expelled back to Serbia, usually near Majdan village. Similarly, when crossing into Hungary, the majority of interviewees reported entering the country on foot. Refugees and migrants were usually expelled back to Serbia somewhere around Sombor, or if they managed to walk through Hungary for a longer distance, they would be transported by police to the Hungarian border with Serbia, close to the villages of Kelebija or Bajmok.
- As per the official statistics of Hungarian Police, there were 4.392 pushbacks carried out to Serbia in July, 7.755 in August, 11.392 in September, 10.066 in October, 9.095 in November.

2. Outsourcing responsibility: consequences of the EU shifting responsibility for protection to its neighbours

EU policies have since 2016 focused primarily on protecting the EU’s external borders from a larger mixed migration influx into the EU. Combined with the lack of effective legal pathways for seeking international protection within EU Member States, this has led to an increase in pressure on third countries along the mixed migration routes. Furthermore, the risks refugees, asylum seekers and migrants face along the route, as well as the (recurring or newly emerging) humanitarian crises at different borders have been exacerbated by EU policies aimed at keeping people out.

A. Winter is coming - humanitarian situation and protection concerns at the EU’s external and internal borders

With the winter months approaching, the difficult humanitarian situation of asylum seekers and migrants stranded at the EU’s external (and internal) borders keeps deteriorating.

Significant numbers of asylum seekers and migrants stranded in a limbo between the **Hungarian, Romanian and Serbian** borders, have been identified in dire condition – with vulnerable individuals, women and children among them. According to testimonies collected, interviewees reported being pushed back to Serbia, despite never having passed through the country beforehand. Among the hundreds of persons identified staying at the borders, the majority is in constant need of humanitarian aid. HCIT interviewed seven persons who reported experiencing chain pushbacks from Austria through Hungary to Serbia. As a result of chain pushbacks, not only are asylum seekers and migrants being denied access to the territory and hence access to protection, they are also denied access to basic

humanitarian assistance. Many continue sleeping rough after being pushed back to Serbia, which only worsens their already vulnerable situation.

Compared to previous years, the number of persons staying in the **BiH border areas with Croatia** (mainly in Una-Sana Canton) has significantly decreased in the second half of 2021. However, on average, up to 500 persons could be identified sleeping rough (in improvised tented settlements or squats), despite the ongoing efforts of humanitarian actors to encourage persons of concern to move (back) into the reception centers with available capacities. The majority of those identified at these locations have experienced pushbacks not once, but multiple times. They are staying mainly in abandoned buildings in ruins or in makeshift camps, without water, electricity or means to make their shelter weatherproof. Having to cook in highly unhygienic conditions, often using water of unknown quality (from rivers or outside faucets), men, women and children staying at these sites are continuously exposed to health risks. Additional health risks result from the lack of access to WASH facilities, while persons of concern could be identified maintaining personal hygiene in a nearby river. These risks are additionally aggravated by the lack of access to basic humanitarian assistance, access to public services (such as local transportation), and so on.



Domino Squat, Velika Kladusa, DRC BiH, October 2021

Challenging humanitarian conditions are not only identified at the EU's doorstep, but also at its internal borders. **In Ventimiglia (southern Italian – French border)**, despite the burning need for provision of basic assistance – such as food, water and sanitary facilities, structured humanitarian response is sorely lacking. The distance between the French border and Ventimiglia is almost 10km. For the last two months, persons who have been pushed back from France and have no means or possibility to buy bus tickets, have been forced to reach Ventimiglia on foot. Specifically, throughout the reporting period, access to healthcare, shelter and basic needs deteriorated, resulting in growing demand for basic services. In addition, a rise in mental health vulnerabilities, including increasing symptoms of depression, have been documented. Specific risks to safety and mental wellbeing have been identified specifically among vulnerable migrants such as minors, women travelling alone and women with children that were held together with single men, increasing the risks of gender-based violence and violating their right to a safe space.

In Oulx (northern Italian – French border), mainly persons from Afghanistan, Pakistan and Iran could be identified during outreach and legal aid work, reporting pushbacks involving arbitrary detention

for several hours, as well as physical and verbal mistreatment. In addition to experiencing pushbacks from France, asylum seekers and migrants report being exposed to various risks and challenges. For instance, modification of public transport has left people on the move stranded in Oulx for several days in the Rifugio Fraternità Massi, causing overcrowding, lack of space and tensions. Furthermore, due to freezing temperatures, travelling on foot is increasingly risky and difficult. On 5 October, 16 missing persons were reported to the authorities, and later [recovered by the French mountain rescue](#).



Ventimiglia, Liguria, Diaconia Valdese, May 2021

In Greece, access of humanitarian workers or aid providers to persons who have crossed the border is not feasible according to national legislation and official arrest procedures. Interventions with the authorities regarding new arrivals, before their official registration, could result in [criminal sanctions](#). Additionally, as humanitarian responders have limited access to persons who just entered the country or reported experiencing pushbacks, their already difficult position is further exacerbated. Those in an emergency may fear requesting assistance, choose more perilous ways of fending for themselves and remain in unsafe environments, without proper shelter and facilities, and without access to adequate food and water, and so on. GCR receives calls for intervention regarding people stranded at the border, shortly after having crossed it, in fear of being unofficially arrested and pushed back. GCR intervenes by addressing letters to the competent police authorities, asking for the search and rescue of those people and for the official procedures to take place. This intervention is the only possible means to provide aid to people not (yet) tracked down by the police. Risks are extremely high for people who sustained injuries, due to the treatment of either Greek or Turkish authorities or due to the inherent dangers in the border crossing routes (by sea or by land) and are in dire need of medical aid and/or hospitalization. A serious phenomenon, documented in one of the recent Border Violence Monitoring Network (BVMN) reports, is the [abandonment of victims of pushbacks](#) on small islets in the middle of Evros river, causing deaths that could have been avoided.

The antagonism between Greece and Turkey over refugee flows is putting human lives at further risk. One of the examples was a serious event that took place in late October 2021, [when a boat with 375 refugees](#) (originally intended to reach Italy) was left for 4 days in the middle of the Aegean Sea. Greek authorities asked their Turkish counterparts to receive the boat back to Turkish waters; eventually,

the passengers, mostly Afghans, were disembarked on Karpathos island. Another example, reported by Watch The Med platform, is when a [30-year old Syrian refugee was left wounded](#) in a small islet in Evros river on 30 August 2021 and eventually died on 2 September 2021.

- Throughout recent years, the lack of effective legal pathways for seeking protection in the EU lead people to choose different and more perilous ways of reaching the EU. In attempting to avoid being pushed back, and exposed to further dangers, men, women and children steer away from reception centers and appropriate facilities that should be able to provide them with essential support (appropriate shelter, WASH, food and other services), risking their safety and wellbeing. Despite the approaching winter months, hundreds of persons of different age and gender stay in the border areas in squats and makeshift camps with inadequate and insufficient services provided.
- The practices of different authorities imposing restrictions on access of humanitarian workers to migrants and asylum seekers not only endangers the most vulnerable persons by unnecessarily delaying possible emergency assistance, but in addition pushes refugees and asylum seekers into the hands of smugglers and traffickers, creating greater safety and protection risks.

B. Borders of Solidarity with people of Afghanistan

Months after the departure of international troops from Afghanistan and the Taliban takeover, a humanitarian crises in the country unfolded, with almost a half of the country's total population being [in need of humanitarian assistance](#). While [more than twenty thousand persons](#), including Afghan nationals, have been evacuated to 24 EU Member States, thousands more continued trying to find ways to flee the country, most of them in vain, as borders with Pakistan and Iran were closed soon after. In the aftermath of the Taliban takeover, across the EU, fears of another migration crisis, similar to the one in 2015, were growing. EU high officials stressed the need to work more closely with the neighbouring countries to ensure migration management (as per well-established practices with Turkey and Libya), while supporting the emergency humanitarian needs of those who remained in the country. However, for several years, thousands of Afghan nationals have been stranded at the EU's external borders. They are facing the lack of access to effective legal pathways to enter the EU, most commonly ending up in legal limbos, facing prolonged asylum procedures and lacking integration.

In the months following the Taliban takeover, countries in the region of PRAB partners' presence have not seen a dramatic rise in the number of new arrivals from Afghanistan. Those attempting to flee Afghanistan face multiple obstacles on their way, including closed borders, both in Iran and Turkey, as well as pushbacks happening daily at the land and sea borders between Greece and Turkey, and other European borders.

The new developments in Afghanistan have not significantly affected the attempts of border crossings [into Greece](#). However, some "high-profile" refugees [have arrived in Greece](#) and been provided with temporary protection², following efforts made by the Greek government. However, Afghan citizens attempting to enter Greece are not treated differently to other nationalities - all of them are possibly subjected to arbitrary practices at the borders. The Ministerial Decision that established Turkey as a

² 819 Afghans by November 2021, Ministry of Migration and Asylum, Press release, 23 November 2021, <https://migration.gov.gr/afixi-119-afganon-metanaston-sti-thessaloniki/> (in Greek).

safe third country for 7 nationalities, including Afghan citizens, leads to their automatic detention upon arrest (which is in line with the country's detention policy in general) and the examination of Afghans' asylum request in terms of admissibility, thus posing severe issues regarding the proper examination of their asylum claim and leading to the prolongation of their detention. As a response to the crisis in Afghanistan, the former Minister of Citizen Protection announced the [construction of a 5-meter tall, 40 km wide wall at the Evros border](#), including a surveillance mechanism (8 observation towers, high-tech and automated electronic monitoring and a radar able to trace people up to 15 km beyond the Greek-Turkish Border), aiming to prevent any major arrivals or movement towards Greece.

In North Macedonia, a total of 239 refugees from Afghanistan have been registered in two transit centers in the country, as per available information from MYLA. No major changes have been noticed in terms of new arrivals, following the developments in Afghanistan. In September and October, four Afghan refugees applied for asylum in North Macedonia. Furthermore, the Sector for Asylum granted subsidiary protection to one asylum seeker from Afghanistan. Aside from the camps, North Macedonia hosts around 400 Afghans who were evacuated in August. They have tourist visas and have 90 days permission for stay in North Macedonia. The majority of them are already under programs for visas in Canada or USA.

In Serbia, during the reporting period, HCIT identified more than 600 newly arriving Afghans. More than 95% were single men. As per the interviews conducted, around 300 (half of the new arrivals identified), identified in the north of the country, reported having left their country after the events in August.

At the border between **Italy and France**, the number of Afghans increased in the past couple of months. DV met 24 Afghan families pushed back during the reporting period and 3 of those arrived to Italy through the humanitarian corridor called "Evacuation Afghanistan". In some cases, the French police pushed people back to Italy even when they had not been registered in any EU country yet, thus denying them the right to seek asylum at the border.

Treatment of Afghan nationals at the border between Croatia and BiH

Between August and November 2021, a total of **1.696 persons from Afghanistan** reported experiencing pushbacks from Croatia to BiH, including 61 persons that experienced chain pushbacks from Slovenia, through Croatia to BiH. The number included **65 unaccompanied and separated children** (UASC), as well as 154 families, with a total of **368 family members**, including **163 children**.

Among the interviewed Afghan family members, other rights violations were reported in addition to pushbacks:

- 60% reported denial of access to an asylum procedure (216 persons out of 368 family members)
- 54% reported arbitrary arrest or detention (200 persons out of 368 family members)
- 51% reported abusive and degrading treatment (189 persons out of 368 family members)
- 16% reported physical abuse (60 persons out of 368 family members)
- 64% reported theft, extortion and destruction of property (235 persons out of 368 family members)
- 1% reported retention/destruction of personal documentation (4 persons out of 368 family members interviewed)

While the majority of Afghan nationals currently in BiH (and in the region) indeed fled their country before the Taliban takeover in August and might have been on the route for an extended time, the nature and the reasons for their flight are continuously unaddressed at EU borders, while their vulnerabilities are hardly ever assessed and considered. Journalists, translators and activists, vulnerable women and girls have been identified as seeking protection in the region for years, fearing persecution and retaliation against themselves or their families. Many have still remained in Afghanistan fending for themselves. While the EU seeks ways of sharing the responsibility to protect with neighboring countries, there can be no excuses for rights violation at their borders. In addition, those that are pushed back from EU Member States face the additional risks of being left in legal limbo without access to protection, while not being able to return to their country of origin.

The following testimony was collected from an Afghan family of 8 (including three children, 9, 8 and 2 years old) on September 3, 2021, identified by the Croatian police in the vicinity of Slovenian border:

“ Five days ago, together with our six children (all underage) we crossed the Croatian border near Bosanska Bojna. We were walking for five days through Croatia and we came near the Slovenian border. On the fifth day, the Croatian police officers found us. While we were hiding from the Croatian police officers which were in front of us, my wife fell down from a smaller cliff. Due to the fall, she injured her shoulder and started to scream with pain. At that moment the police officers found us. There were four police officers in black uniforms. They immediately surrounded us. The police officers approached my wife and looked at her shoulder. One of the police officers told her to lift her arm up. When my wife lifted her arm halfway up, the police officer told us that she did not need to go to the hospital. We asked the police officers several times to send her to the hospital, but they didn't want to help us. One of them told us: "When you go back to Bosnia, you can go to a hospital". They called a police van to pick us up. The van arrived 45 minutes later. The police officers didn't hit us or take

our belongings, but the police officers at the location where we were deported took everything from us. When the van arrived, they ordered us to get inside the car. After approx. 3 hours of driving, the police officer opened the door, and we were in a forest. It was around 1AM. At the location there were four different police officers. They took everything that we had from us. Even from our children. The police officers took bags and everything. They showed us the way and told us to go back to Bosnia. When we came back after two-hours walk, we were near Velika Kladusa.

- Pledges to assist those facing a dire humanitarian situation in Afghanistan should go hand in hand with providing actual access to protection for those stranded at the EU's doorstep. Regardless of whether or not persons from Afghanistan entered the EU countries irregularly, access to individual asylum procedures and protection, must be guaranteed.
- Counting on the support of neighboring states to take a part in managing migration flows to the EU, regardless of the imminent risks of breach of the principle of *non-refoulement*, and turning a blind eye to pushbacks of Afghan persons from EU Member States does not "ring" the solidarity bell – quite the opposite, in fact.

C. Protection takes a back seat to Political Power Struggles

The second half of 2021 brought the EU's eastern border with Belarus into the spotlight. Since June 2021, increased arrivals of asylum seekers and migrants from Belarus have reached unprecedented levels, with Belarus being accused of "instrumentalization of migrants for political purposes". Thousands of persons have been reportedly stranded in forests between the Polish and Belarusian border, without access to humanitarian aid and assistance. The recent developments in the beginning of November further escalated the political crisis between the EU (and its Member States) and Belarus, **at the expense of people's lives and safety**. It is estimated that thousands of people have been pushed back towards Belarus and left in limbo and in precarious humanitarian condition, while at least 10 persons have died at the border between Poland and Belarus to date. The "state of emergency" introduced in the summer of 2021, in Lithuania first, (which extended the "state of emergency" for a month as of November 10) and then in Poland and Latvia, affected not only the position of refugees, asylum seekers and migrants seeking protection in these countries, but also CSOs, lawyers and independent media. Their access to the border territory and their ability to provide immediate assistance, including legal aid, and to report on the situation has been limited, causing great concern for the state of human rights, the humanitarian situation and the rule of law.

Due to the lack of transparency, independent monitoring and access to the border by both journalists and NGOs, there is no official information on persons who were pushed back at the border. In addition, there is no procedure that would help to identify the vulnerabilities and special needs of irregular migrants. In late August and early September, the European Court of Human Rights approved interim measures, demanding that Latvia and Poland provide humanitarian assistance to stranded migrants and that Lithuania halt the removal of five Afghan nationals to Belarus. Last, but not least, all asylum applications are fast-tracked, with no consideration of individual circumstances and applicants being pressured to accept voluntary return or be deported.

Poland, Lithuania and Latvia, are signatories of the European Convention on Human Rights and therefore have an obligation to respect Article 4 of Protocol 4 prohibiting collective expulsion of aliens.

Furthermore, EU Member States are bound by the European Charter of Fundamental Rights to guarantee the right to asylum with respect for the rules of the Geneva Convention (Article 18). Irregular entries do not absolve the states from their responsibility to carry out individual assessments or provide an excuse for collective expulsions to be carried out. States have a duty to ensure effective access to the territory, as well as access to asylum procedures and individual status determination procedures. This responsibility cannot be avoided by amending national legislation and de-facto legalizing pushbacks. Looking at the example of Hungary, a similar legal framework had been found in breach of EU law (kindly note the Court of Justice of the European Union [Judgement](#) in the case C-808/18, Commission v Hungary). The EU Commission [announced](#) on 9 November that they are assessing the legislative changes made by Poland, Lithuania and Latvia, and suggested they might require further amendments, without specifying which ones, despite significant causes for concern that the adopted changes drift away from EU law (kindly see ECRE's [Legal Note](#) on the Lithuanian case) Furthermore, the return of an individual to a country where they could face torture, cruel, inhuman or degrading treatment or punishment and other irreparable harm amounts to a breach of the principle of *non-refoulement*.

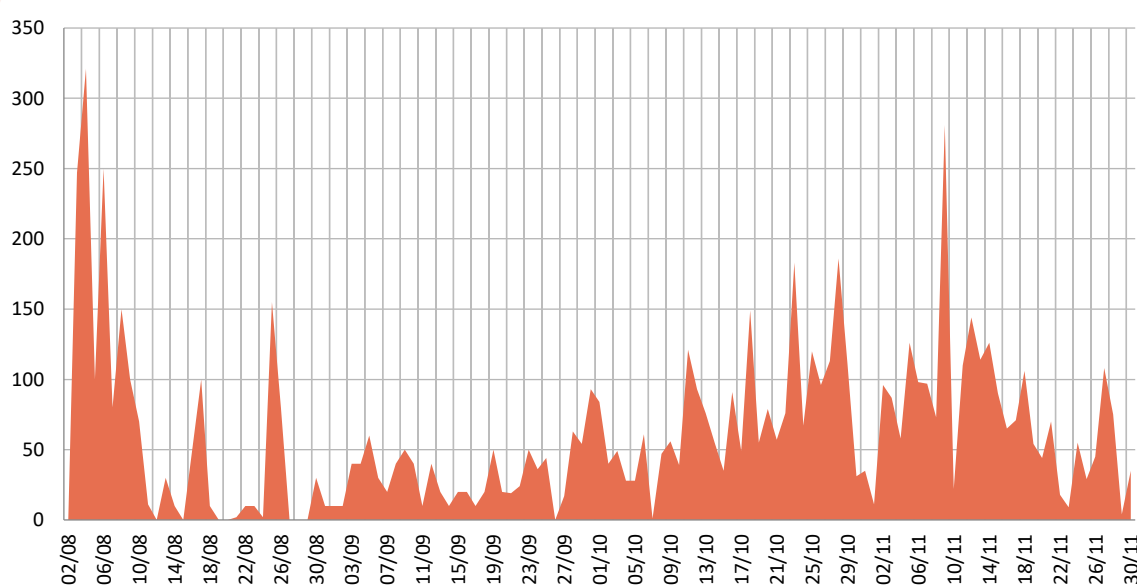
On 1 December 2021, the European Commission proposed [temporary legal and practical measures to address the emergency situation at the EU's external border with Belarus](#). While these measures are still merely a proposal and require the Council's agreement (meaning the EU's Member States), it can be considered a new low in EU's asylum and migration politics. The proposed measures allow Poland, Lithuania and Latvia to deviate from the EU's asylum acquis and lower the standards that are normally applicable for people in need of international protection. The proposed measures include a delayed registration for claims for international protection and allow for the asylum and return procedure to be conducted from the border area, equalling severe limitations to the legal safeguards. A derogation from the normally applicable reception conditions is further likely to result in unacceptable situations where people who committed no crime – including children and other vulnerable groups – are detained for long periods of time. The proposal by the Commission has refrained from using this moment to set the record straight and highlight that pushbacks are illegal and a violation of European and international human rights law. These derogations are in addition likely to set a dangerous precedent, as they legitimize EU Member States' unwillingness to comply with existing legal frameworks. These measures further risk undermining the global protection of refugees, within the EU, with our neighbours or elsewhere in the world, as we should recall that countries outside the EU host the vast majority of the world's refugees. The proposed measures are entirely disproportionate. To get the facts straight: the European Union, 27 of the richest countries in the world with 450 million inhabitants, is not able to provide assistance in line with its own legal frameworks to approximately 10.000 people. Among the people who remain trapped in the border areas, are vulnerable groups, such as families with children, pregnant women, and elderly, and many have fled war and conflict from countries like Syria, Yemen, Afghanistan, and Iraq. It is essential that humanitarian aid can reach those at the EU's border and within its territory without any limitations, ensuring a dignified arrival for all. Finally, the European Parliament has again been side-lined – as happened with previous migration-related policies that were contested by human rights experts (such as the EU-Turkey Statement). The European Parliament will likely challenge the legal basis for these proposals and the lack of democratic scrutiny.

What we (don't) know about pushbacks from Lithuania

On August 10th, the Law on the Legal Status of Aliens was amended to stipulate that in an extraordinary situation, asylum applications of undocumented migrants would be accepted only at official border crossing points or Lithuania's embassies abroad with potential exceptions for vulnerable persons (*note: the vulnerable persons "may" (rather than "must") be admitted*). In practice, both options are hardly possible. By mid-November, only 5 asylum applications have been submitted at the embassy of the Republic of Lithuania in Minsk and 5 more at an official border crossing point on the Belarusian-Lithuanian border.

No official aggregate data and no details on demographic characteristics of those who have been pushed back are available. **The State Border Guard Service announces daily press releases on the number of persons "denied entry" to the country**, yet sometimes only an approximate figure is reported. The age, gender, health conditions as well as nationalities of people pushed back remain unclear. As the media or NGOs are not allowed to properly monitor the situation at the border, there are no alternative sources to the government data. It hence remains unknown whether all vulnerable persons, such as UASC, persons with disabilities or persons in need of medical attention have been allowed to enter.

Based on the figures reported by the State Border Guard Service, the highest numbers of persons who have been refused entry were reached in August 2021, following the proclamation of the extraordinary situation at the border. From the 3 to 10 August, between 70 and 321 migrants were pushed back every day. Later, the daily figure dropped, as routes changed towards the Polish – Belarus border. Yet, pushbacks intensified again in October and November (see [Graph below](#)). From 2 to 15 November, between 58 and 281 migrants were pushed backed every day. It is important to note that temperatures in October and November were low, which meant increased risk of health complications and even death for persons being stranded in the borderland zones without proper clothing or equipment.



Documented cases of pushbacks

Due to access restrictions, only a few cases of pushbacks have been well documented. In September, five Afghan nationals were pushed back to Belarus despite the European Court of Human Rights' approval of [interim measures](#) demanding that Lithuania halt the removal of these nationals. While the aforementioned persons eventually re-entered and were allowed to apply for asylum, it was only after journalists documented their coordinates revealing that the Afghans were in the territory of Lithuania.

At the end of November, 14 persons, 6 minors among them, were found sheltering in tents in the territory of Lithuania. After the attention this case received in the media, the group was taken to a Frontier Station to be provided with humanitarian aid, but were then pushed back to the territory of Belarus later. While the State Border Guard Service states that the group members (including UASC) chose to voluntarily go back to Belarus, one of the group members [reported](#) that they had not been provided with an opportunity to apply for asylum.

Changes in the state response

At the end of October, the decision was made by the Ministry of the Interior to start organizing the [delivery of packages with the humanitarian items most urgently needed](#) to migrants that are being pushed back, including water, food and some clothing. While the packages are prepared in collaboration with NGOs, they are issued by guards of the State Border Guard Service.

On 10 November, in response to the arrival of some 5.000 migrants at the Belarusian-Polish border, the Lithuanian parliament declared the state of emergency coming into effect within the 5-kilometer territory from the border with Belarus as well as at the migrant detention facilities. Furthermore, [the state of emergency](#) enabled easier engagement of the army and its resources, as well as the use of violence by the border guards if the latter is perceived as needed. The state of emergency also had an effect on media and NGOs' access to the border zones (*for more details, please see the section below*).

Media and NGO access

Since the introduction of the extraordinary situation in Lithuania, the access of journalists as well as NGOs to the border zone was restricted. While there was a *de jure* possibility to apply for a permission to enter the border zone for both journalists and NGO representatives, there were attempts by the border guards [to obstruct journalists' work](#). On 6 September, Lithuanian media outlets issued a joint statement calling on the authorities to allow them near the border with Belarus amid the ongoing migration crisis.

When the state of emergency came into force in November, journalists were banned from coming closer than 1 kilometer from the Lithuanian-Belarusian border. In response to the messages of disapproval of the new regulation, the restriction was amended, allowing for journalists to work up to 100 meters from the border. The [situation remains more difficult for the NGO workers and volunteers](#) providing humanitarian aid, as they can be denied access to enter the 5-kilometer zone.

International responses

In late August, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, sent an [open letter](#) to the Prime Minister of Lithuania calling on Lithuania to comply with its human rights obligations, to ensure fair asylum procedures and to prevent collective pushbacks. In October, the EU border agency Frontex [announced](#) that between 17 and 20 Serious Incident Reports concerning violations of fundamental rights were reported in Lithuania and that there are questions about the compatibility of the EU legislation and the revised Lithuanian law. Responding to the increased tensions and migrant deaths at the Belarusian-Polish border, the UN Refugee Agency (UNHCR) and the International Organization for Migration (IOM) [called for the Lithuanian, Polish and Latvian governments](#) to ensure that the safety and human rights of migrants and refugees are upheld, and that access to humanitarian assistance as well as access to asylum are guaranteed. Concerns about pushbacks of children were [also expressed by UNICEF](#).

3. One step forward, three steps back: fading trust in “accountability mechanisms”, a focus on safe with the neighbours and flagrant refusals to enforce court rulings

A. Border Monitoring Mechanisms – a mere tick-the-box-exercise?

In June 2021, a new **Border Monitoring Mechanism** was announced by the Croatian Government. The mechanism has been supported and is funded by the European Commission, under the EMAS 2021 grant. Labelled “the first of its kind” by the Croatian Ministry of Interior, it is intended to set an example to other EU Member States of how to ensure accountability at the borders, in line with article 7 of pre-entry screening, as proposed by the Commission under the EU Asylum and Migration Pact.

The fanfare over the mechanism did, however, not last for long, as a series of [media reports](#) documenting pushbacks and cruel and degrading treatment at the Croatian and Greek borders – since the mechanism became operational - were published in October 2021. Lighthouse Reports managed to document the practices that have, for years, been reported by the UN as well as local and international organizations – masked men in uniform, without visible insignia, pushing back a group of men, one by one, to BiH.

The lack of transparency around the Croatian mechanism, including the fact that the cooperation agreement was not publicly accessible, had human rights organisations and monitors quite concerned – and even cynical – about the mechanism’s mandate, independence, and effectiveness. While precaution remains required with regards to access to justice and accountability, effective investigations of misconduct, the mechanism’s scope and complementarity with other mechanisms as well as measurable targets and periodic review; the truly first intermediate report was a step in the right direction. It included as an annex the cooperation agreement – finally ensuring some transparency – and it also mentioned that – in line with PRAB and other reports – that illegalities in the conduct of police officers had been identified on a large scale. The initial intermediate report highlighted that police carry out pushbacks, prevent individuals from applying for asylum (without verifying that protection can be obtained elsewhere), and that the burden of proof in relation to the admissibility of people on the territory lies with the State. Unfortunately, the initial report was taken offline a couple of hours after its release and the updated version describes pushback practices as rather unique occurrences instead of widespread. While it was in part re-assuring that the initial report

addressed these rights violations, the updated report's changes in language are exceptionally problematic. Not only must the independence of the report – and to a further extent the mechanism? – be questioned, it further stresses how inept mechanisms can be (ab)used to whitewash human rights violations. It remains to be confirmed with effective actions whether a credible explanation on the changes in the report can be given, whether steps are taken to further investigate the cases, whether access to justice will be provided to the victims and whether the perpetrators will be held accountable.

Pushing out EU citizens, another line crossed, more proof of systematic rights violations and lacking accountability

Beginning of November, a group of members of the Association for Juridical Studies on Immigration (ASGI) was taken into custody by a mixed patrol of Greek policemen, border police and Frontex agents during a technical-legal visit at the Greek-Macedonian border near Idomeni, in Greece. While the delegation was equipped with the necessary documents, crossed via an authorized crossing point without entering the transit zone (which was visibly delimited by barbed wire fences), they were brought to the local police station and afterwards forced to return on foot to Macedonian territory for the border crossing point.

ASGI delegation members, without having committed any offence, have been deprived of their freedom of movement. They further were without receiving any explanation as to the reasons of their detention - forcefully returned from an EU Member State to a third country in an informal manner.

This episode demonstrates clearly what happens to people, often third country nationals, intercepted along that section of the border. ASGI and other PRAB partners are deeply concerned about the violation of rights and the systematic violence by the European authorities against people, often third country nationals, including those in vulnerable conditions, but even European citizens. The Greek government has repeatedly denied the very well documented pushbacks at its borders, this incident nevertheless flags how systematic the practice is when even EU citizens are pushed outside the Union. Another line that has been crossed, another one that remains without consequences?

Further, despite the systematic criticism from NGOs and International and Peripheral Organisations and Institutions, and despite the numerous incidents that are continuously brought to light, proving the standardized practice of pushbacks, the **Greek** authorities are insisting on refusing allegations and dismissing them as “fake news”. The case of the Frontex employee being illegally returned almost ironically, being employed by an EU agency, indicates that pushbacks are nevertheless taking place systematically. In this regard, UNHCR released its "Ten points to guide the establishment of an independent and effective national border monitoring mechanism in Greece", according to which the government should be considering the establishment of a mechanism. Furthermore, the European Commission has been in structured dialogues with the Greek authorities on the establishment of an independent border monitoring mechanism for multiple months. The Commission has made the release of the Greek's EMAS funding even conditional upon setting up a mechanism. Those following the developments closely hope that this mechanism is not merely a tick-the-box-exercise, but a mechanism that will effectively be able to monitor independently and effectively.

Despite increasing political (and financial) pressure, the Greek Minister for Migration and Asylum denied the existence of a plan to proceed with a monitoring mechanism, which, he considers, to be an infringement of national sovereignty. The official position of the Ministry is that existing mechanisms and the justice system are sufficient for addressing allegations. Recently, the Minister stated that all allegations will be investigated by the National Transparency Authority, which,

according to its [mission statement](#), works towards “the design and implementation of a framework of coherent policies both to identify and repress acts of corruption and to prevent and deter them”.

It is important to recall that each border monitoring mechanism, for it to be independent and effective, 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;
- Ensure effective investigation of 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.

B. From protection elsewhere to protection nowhere?

In June 2021, Greece declared Turkey *ex tunc* a safe third country for Afghans, Syrians, Somalis, Pakistanis and Bangladeshis. The relevant legislation, [based on an “Opinion” issued by the Head of the Asylum Service](#), became applicable for all pending cases (ie. asylum claims filed before the publication of the law in the official gazette). According to the relevant [Ministerial Decision](#), asylum applications made by applicants of the nationalities concerned can be rejected as inadmissible, without an assessment of the merits of their individual claim. According to the UNHCR portal, in 2020, close to 66% of asylum applications in Greece were submitted by nationals from these five countries. At the same time, concerns over fundamental rights, the rule of law and democratic values in Turkey, were raised at the 24-25 June 2021 European Council meeting.

Legal aid actors in Greece observed that the Greek Asylum Services began implementing the legislation and interviewed those applicants, including UASC and those who have been present in Greece prior to the adoption of the JMD, by merely looking at their relationship with Turkey. However, the standard operating procedures of the Greek Asylum service were amended in October 2021, providing that applicants from the five nationalities will have their claims examined on the merits and not on admissibility grounds if they have not been in Turkey for more than a year. In addition, some Appeals Committees overturned the decisions of the Asylum Service that rejected the claims as inadmissible and granted international protection status.

This policy undermines the principle of *non-refoulement*, puts asylum seekers at further risks and directly impacts their wellbeing. Given that Turkey has not been accepting returns under the EU-Turkey deal since March 2020, people whose applications are deemed inadmissible may be placed in indefinite pre-return detention and will be excluded from reception conditions. The decision is bound to cause further distress to already vulnerable people who may face risks of *refoulement* and the so-called chain-pushbacks. In addition, people whose case is deemed inadmissible but cannot be returned to Turkey, may end up undocumented and thus without any access to services in Greece.

Declaring Turkey a ‘safe third country’ for multiple nationalities by Greece is in line with the trend of European Member States opting for “protection elsewhere” instead of providing access to international protection on their own territories. While international law does indeed not provide a clarification on which state is responsible to provide international protection towards refugees, policies such as the safe-third-country-concepts risk eroding the global refugee protection regime and undermine EU Member States’ commitment to take their fair share. Again, it should be noted that the

vast majority (85%!) of refugees are hosted by developing countries, close to their country of origin. The main risk, as is well established for the case of Greece above, is that people end up without protection: unable to be returned to the so-called safe-third-country and unable to receive assistance in the EU as their claim for international protection is considered inadmissible. Lithuania and [Latvia](#) are applying a similar school of thought towards Belarus: declaring Belarus safe aims to limit their responsibility. It is of paramount importance that safety presumptions are verified, through a thorough individual assessment and by ensuring that people can effectively access protection in Belarus.

C. Infringement procedures: a toothless tool?

At the end of September 2021, an Afghan man, who overstayed his study visa in Hungary, wanted to apply for asylum due to the recent seizure of his country by the Taliban. Mr. H. Q. showed up in person at the Asylum authority and expressed his wish to seek asylum. Instead of being admitted into an asylum procedure, the same day, only a couple of hours later, the Hungarian police summarily removed him from Hungary to the external side of the Hungarian border fence situated at the official Hungarian-Serbian state border.³ He was left in the middle of nowhere and had to enter Serbia - a country where he had never been before - irregularly.⁴

His asylum application was rejected as inadmissible, holding that based on Section 32/F(1)b) of Act LXXX of 2007 on Asylum, he is requesting something that is impossible. In the decision, the Asylum authority cites Act LVIII of 2020 on the transitional measures following the termination of the state of danger, according to which asylum applications cannot be submitted in Hungary; but rather, only a “statement of intent” can be submitted at the embassies of Hungary in Belgrade or in Kyiv. The Asylum authority held that it therefore had no competence to examine this asylum application and it further held that there shall be no appeal against this decision. Nevertheless, the applicant appealed the decision and requested to be granted the right to remain on the territory during the appeal procedure. However, the Hungarian Police drove the applicant to the Serbian border and escorted him through the gate in the fence, despite being aware of his interim measure request and the suspensive effect that such a request should have. The removal took place outside the scope of the readmission agreement with Serbia and without the presence of Serbian border guards/police officers, leaving Mr H. Q. on his own without any assistance. Mr H. Q. was left with nothing other than what he had on him; the Hungarian Police had not even given him the chance to go home and pick up his most essential belongings before he was forcibly removed. He had no other choice than to enter the Serbian territory irregularly and with the camps in Northern Serbia running above their capacity, remained sleeping rough. He reported being subjected to physical violence while sleeping rough and the Serbian police twice refused to register him as an asylum seeker, and even assaulted him physically after one of his attempts to register.

On 12 November 2021, the European Commission decided to refer Hungary to the Court of Justice of the European Union, requesting that the Court order the payment of financial penalties for Hungary's failure to comply with a Court ruling of 17 December 2020 (Case C-808/18, Commission v Hungary).

³ Such summary removals have been recently found in breach of Article 4 of Protocol 4 by the European Court of Human Rights in the case *Shahzad v. Hungary*, Appl. no. 12625/17; the legislation allowing this practice was found to be in breach of EU law by the Court of Justice of the EU in December 2020 in C-808/18.

⁴ For more information on the case please see: <https://telex.hu/english/2021/09/30/english-refugee-afghanistan-taliban-hungarian-helsinki-committee>.

Hungary has since not taken the measures necessary to ensure effective access to the asylum procedure.⁵

The European Commission is obligated, as the guardian of the EU's treaties, to follow up on this ongoing procedure but also in addition, to start infringement procedures towards other EU Member States' flagrant breaches of the EU's asylum acquis. Those violations are not only reflected in practices within different EU Member States' treatment of asylum-seekers, refugees and migrants at their borders (as extensively reported in this report), but these violations are in addition even written in some Member States' national legal frameworks. Political sensitivities around starting infringement procedures or following up on ongoing procedures risk that this legal tool ends up not being used, respected or even implemented. Holding member states accountable to ensure that the EU's acquis is respected is the least one can expect of a Commission that declared the Rule of Law a priority.

4. Conclusion

The PRAB initiative has been working across multiple EU borders by assisting people whose rights have been violated at borders and by collecting data on pushbacks, to facilitate advocacy and strategic litigation to end these illegal practices. A number of important conclusions, following the first year of PRAB, are summarized below – unfortunately, however, there is little to celebrate...

First, the numbers of pushback cases recorded have not lowered; instead the trend of border violence, amounting in many cases to collective expulsions, has been reaffirmed as systematic and widespread at internal and external EU borders. In addition, the number of rights violations monitored have not decreased either, and one could argue that some EU Member States are ensuring that these rights violations are less visible... This to say, cases of extreme violence – such as severe beating or dog bites - have decreased. While this clearly indicates that extensive media coverage can ensure some type of change in policy, it also confirms a normalization of pushback practices. Almost as if pushbacks are acceptable – and most likely tacitly approved by other Member States - when the violence does not amount to public outcry. Member States being “smarter about it”, is also reflected in the destruction of evidence by police and border guards. The practice aims to erase all traces of the person's presence on its territory and is often part of chain-pushbacks. The evidence of pushbacks happening remains nevertheless conclusive and the existence of the no longer rare cases where people with a legal status (such as interpreters or others) are pushed back too, further reflects the normalization of the practice as a border management tool. While the practices must simply end, the instalment of effective and independent border monitoring mechanism, not fig leaves that hardly pass a tick-the-box-exercise, can be a tool to hold perpetrators accountable and ensure paths to justice for victims.

Second, in mid-August, the world was shocked by the Taliban taking control of Kabul and words of support to the Afghan population were repeated. The European Commission and many European Member States had, from the start, nevertheless largely focused on supporting the safety of Afghan people in the region, instead of providing safe and legal pathways to Europe (with the exception of those Afghans who worked at EU embassies or with NATO). This focus on protection elsewhere and safe with the neighbors is no exception in EU migration and asylum policies, as it is part of the wider trend to externalize migration policies and responsibilities. Afghans were reaching Europe prior to mid-August and Afghans will continue to come in the near (and far) future – as Afghanistan can be described as a crisis in a crisis, not merely political or from a human rights perspective, but also a humanitarian crisis with close to 20 million people in need of humanitarian assistance. Our data indicates that Afghans have reported 4.067 – pushback cases in 2021 (2.377 before August 2021 and 1.690 after). The data further indicates that while some Afghans have been en route for multiple years,

⁵ https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801.

a couple merely left when the crisis in their home country unfolded. Whenever they have left, it goes without saying that pushing Afghans back is illegal (as are pushbacks for each nationality). They should be granted the right to apply for international protection when arriving at the EU's doorsteps and in addition, safe and legal pathways should be made available.

Third, significant numbers of asylum seekers and migrants are stranded at the EU's internal and external borders in dire circumstances. While the extreme situation at the EU-Belarus border has been widely covered in media over the last months – and is also included in this report – it is no exception and humanitarian needs have been growing at other borders, too. People around multiple European borders are sleeping rough, often in improvised tented settlements or squats, lacking access to basic services, including medical aid and basic facilities and/or shelter. If reception facilities are available, people are sometimes reluctant to enter those as they fear being obstructed from moving onwards, being detained or generally mistrust government institutions, following previous violent encounters with police or border officials. With winter approaching, temperatures dropping below zero and snow not being an exception, people's needs will increase while access to humanitarian assistance is often obstructed. Humanitarian access should not be politicized nor compromised. Life-saving assistance and humanitarian aid should be made available to all those stuck at the EU's borders, irrespective of political power games that might be ongoing. Limiting access to basic services will deteriorate protection concerns, and people will not be left with any other option than turning towards smugglers and more dangerous routes.

Four, legitimization of states' unwillingness to ensure compliance with the European asylum acquis, by even proposing a derogation in times of a 'crisis' sets the wrong precedent and risks becoming a race to the bottom. European and international human rights law leaves no room for interpretation: people have the right to request international protection and states have the obligation to assess such requests individually; collective expulsions are illegal; and states should, under all circumstances, respect the non-refoulement principle. The tricks used to make the conditions and requirements to request international protection harder and less human are a clear indication of states' unwillingness to comply with human rights and EU law, as well as to take responsibility as outlined in this report.

Finally, it is time to return to European values and start welcoming people with dignity, decent reception facilities and individual assessments of their applications for international protection, in line with the Member States legal obligations. It is high time for EU Member States to practice what they preach toward other third countries at their own borders: a positive obligation to respect fundamental rights and a negative obligation to refrain from violating people's rights.

OVERVIEW OF PREVAILING RIGHTS VIOLATIONS ACROSS BORDERS

