



When there's a will, there's a way to protection

Since the start of war in Ukraine, several million people have sought protection in Europe, with an unprecedented show of solidarity from the EU. For thousands of “others” however, protection in the EU remains mostly out of reach.

APRIL 2022



**Protecting Rights
at Borders**

Summary

Since the beginning of the Russian Federation's military offensive on Ukraine on 24 February 2022, over 5.5 million people have fled the country; the vast majority of whom have sought protection in the EU and other neighbouring countries. In an unprecedented response, the EU activated the [Temporary Protection Directive](#) (TPD) for the first time. Less than 10 days into the crisis, on the 3 March 2022, the EU responded by triggering this legal framework, which is designed to respond to a mass influx of displaced persons by ensuring their access to a status, as well as rights. Meanwhile, across the EU and its borders, little has changed when it comes to the treatment of persons from Asia, Africa and the Middle East who try to seek protection. In only the first three months of 2022, the PRAB initiative collected **almost two thousand reports** of pushbacks experienced by men, women and children at the EU's external and internal borders.

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 \(DRC\) 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](#)); Poland ([Association for Legal Intervention](#)); Lithuania ([Diversity Development Group](#)), Belarus ([Human Constanta](#)); and Brussels ([DRC Brussels](#)).

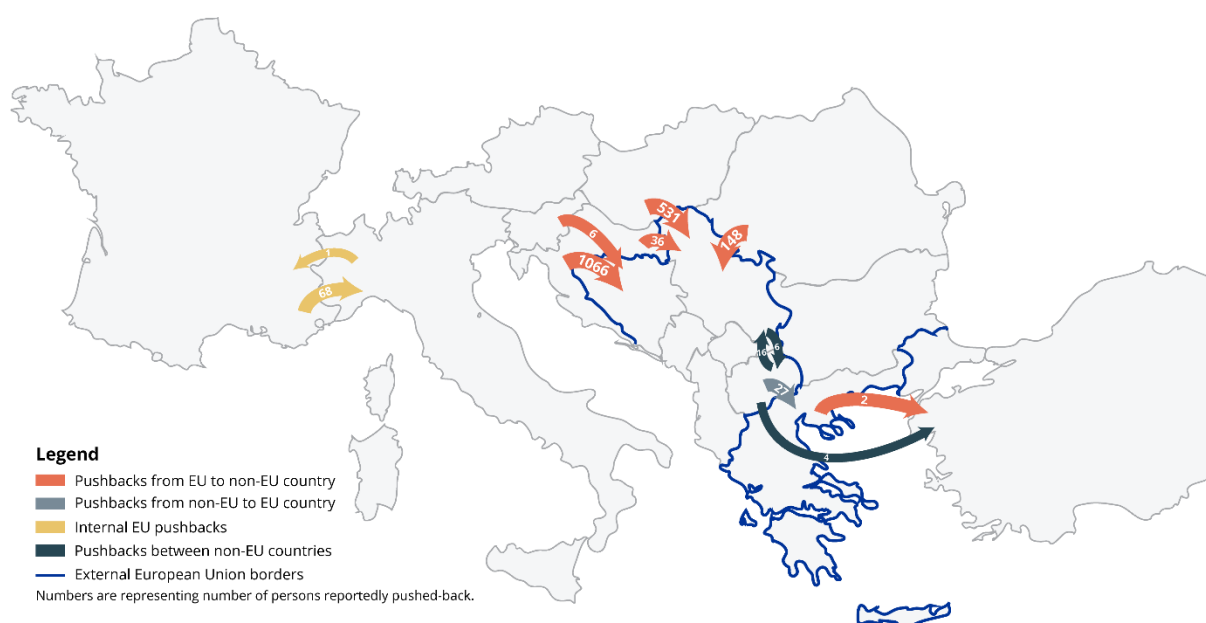


*All references to Kosovo shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

1. Ongoing pushbacks at what cost and to what effect?

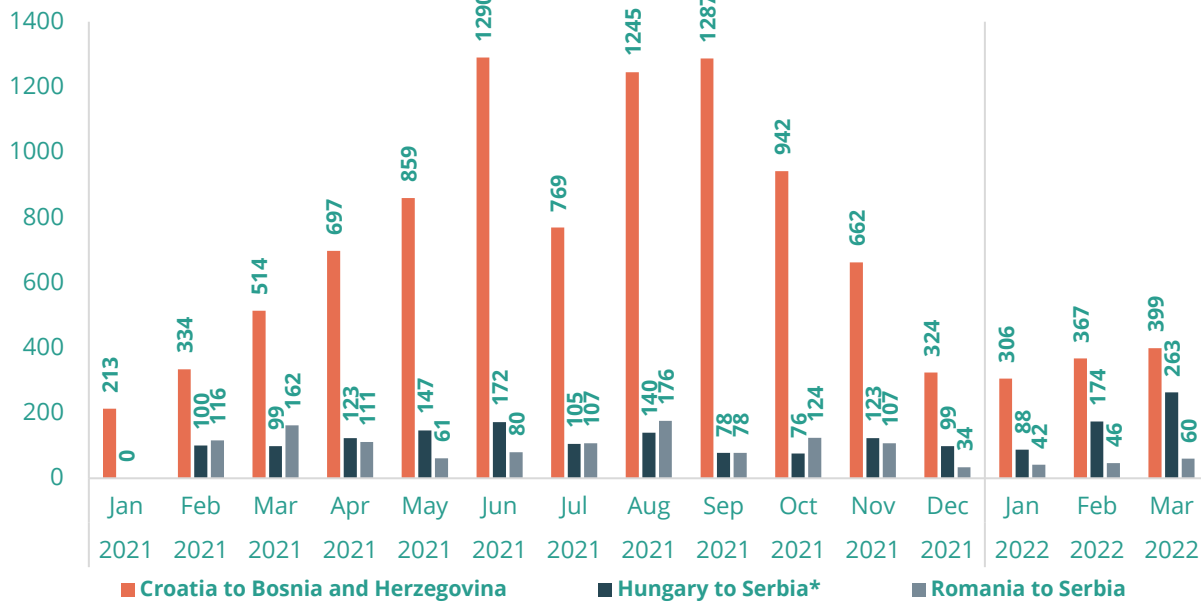
Between 1 January and 31 March, PRAB partners recorded pushback incidents involving 1,911 persons. Compared to the first three months of 2021, the overall trends of pushbacks recorded, remain at similar rate.

1911
Total # of persons reporting pushback incidents to PRAB partners in the reporting period



Looking into Frontex reported data for the first three months of 2022, it seems that pushbacks do not keep people on the move outside of Europe's borders. According to the [Frontex report](#) for the first quarter of the year, between January and March of 2022, the number of "illegal crossings" detected saw an increase of 57% compared to a year ago. Such high trends of arrivals have not been recorded since 2016, according to Frontex. The Western Balkan route, for instance, "accounted for nearly half of all the illegal border crossings in the first three months of this year", and most of the pushbacks recorded by PRAB partners have been detected specifically on the Western Balkan route.

NUMBER OF PERSONS REPORTEDLY PUSHED BACK IN 2021 AND 2022



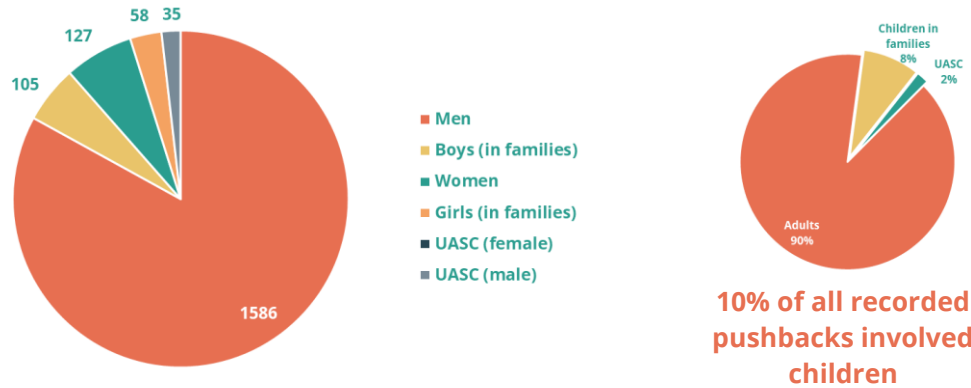
Number of indicated pushbacks from Hungary to Serbia represents only the number of persons interviewed and reporting pushbacks directly to PRAB partners, however Hungarian authorities continue publicly reporting on the number of pushbacks conducted (having legalized the practice). **Hungarian police reported as many as 19.283 pushbacks carried out during the same reporting period, January to March 2022.*

Since 2016, EU member states and their neighbouring countries have invested extensively into limiting arrivals – but at what cost and to what effect?



The cost of preventing people’s access to safety in the EU is primarily borne by men, women and children, who are left with little option but to embark on more perilous, often life-threatening journeys in the absence of effective access to protection in the EU or neighbouring countries. More than half of those reporting pushbacks to the PRAB network, between January and March 2022, came from Afghanistan, including families with elderly, women and children. Even when people reach the EU’s territory, despite physical barriers to entering EU Member States’ territories and **dangerous deterrent practices at land and sea**, they are met with additional obstacles by some of the EU Member States aimed at making asylum claims almost impossible. In Hungary, the persistent large-scale violation of human rights is underpinned by the **dysfunctional embassy system of the asylum procedure** initiated in 2020. Consequently, it is almost impossible to lawfully seek asylum in the territory or at the border of Hungary. While those who try to bypass the deliberately impeding obstacles of the asylum procedure are exposed to daily pushbacks.

The hugely concerning framework of the Hungarian expulsion scheme **does not envisage any assessment of the individual conditions or people’s vulnerabilities and needs**. Expulsion immediately follows apprehension, without assessment of individual or special needs or vulnerabilities. The well-established practice of collective expulsion means that women and children fleeing their country of origin are denied entry to Hungary and seek asylum daily when they are forced back to Serbia. The self-explanatory violation of standards of international law through the pushback scheme was confirmed in the 2020 [decision of the CJEU](#).

AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS



During only the first three months of 2022, 10 in every 100 persons reporting pushbacks to PRAB partners **was a child**:

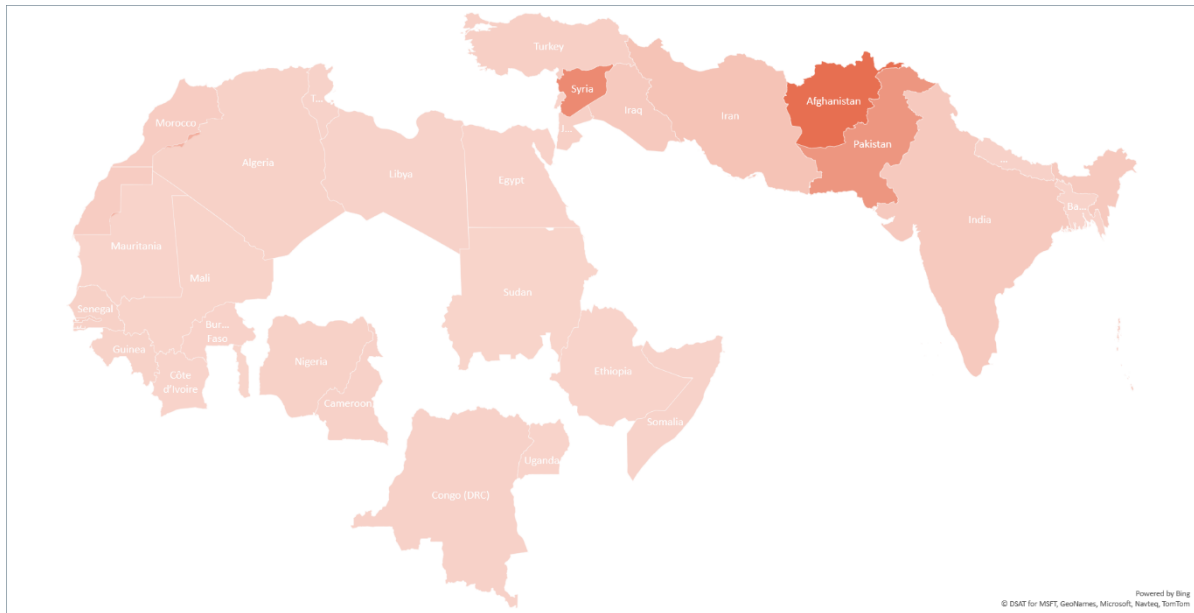
| | Children travelling with family members | | | Unaccompanied and separated children |
|---|---|------|-------|--------------------------------------|
| | 0-4 | 5-12 | 13-17 | 13-17 |
|  | 14 | 34 | 10 | 0 |
|  | 14 | 62 | 29 | 35 |

Two faces of Europe: welcoming at one border, rejecting at the other

The following case recorded involved a 17-year-old from Somalia on 14 March 2022, at the border tripoint between Poland, Lithuania and Belarus:

He flew to Minsk from Somalia some 20 days before the pushback; for about 12 days, he has been wandering around the tripoint. He reported having been pushed back three times from Poland to Belarus. He also reported having attempted to reach Lithuania from Belarus, but it turned out to be impossible. While Polish police have not been aggressive, he was not allowed to stay in Poland. On the other hand, he reported brutality on Belarussian side of the border, having been bitten by a dog, causing movement impairment.

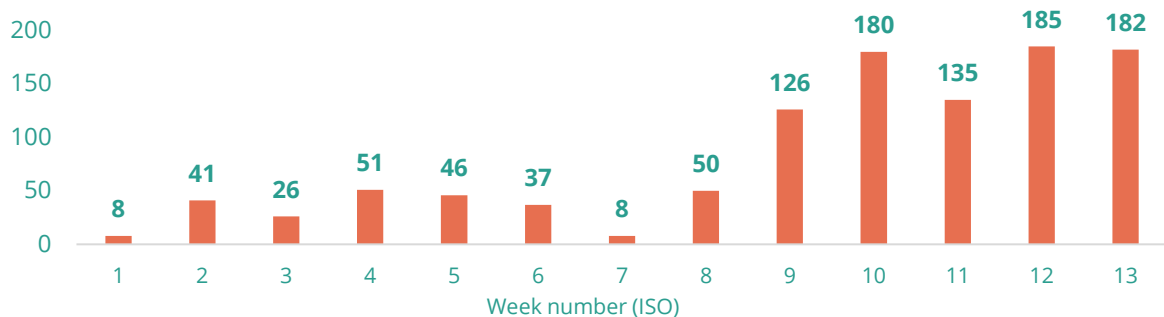
COUNTRY OF ORIGIN OF PERSONS REPORTING PUSHBACKS¹



In **Poland**, the prohibition of mobility in the near-border area (with Belarus) has been recently (as of 1 March 2022) prolonged until 30 June 2022. Humanitarian aid workers, doctors and lawyers are prohibited to move near the border and provide humanitarian, medical or legal assistance. It is in rare cases that those providing aid at the border manage to alert the Border Police about the health conditions of migrants. Consequently, their health often deteriorates tremendously, leaving the Border Police no other option than to either drive them to the hospital or call an ambulance.

Lodging an asylum application in the border zone is close to impossible. It is more common that people who are apprehended by the Border Police (when not immediately pushed back to Belarus), are placed in detention. Only after a couple of weeks they are then given an opportunity to ask for international protection. There are no official statistics on asylum applications in 2022 or even the last months of 2021. Based on the experience of the Association for Legal Intervention from regular visits to the detention facilities, persons who crossed the Poland-Belarus border and declared an intention to lodge an asylum application, eventually do lodge such an application.

NUMBER OF PERSONS* PUSHED BACK TO BELARUS *AS REPORTED BY THE STATE BORDER GUARD SERVICE IN LITHUANIA



¹ The overall number of persons reporting pushbacks to PRAB partners includes as well 57 persons from Cuba (not visible on the map).

When pushed back to **Belarus**, people report experiencing violence, including beatings, kicking, being forced back to the border with Poland, being deprived of food, water, money and having their phones destroyed. The following testimony illustrates the experience of a family from Iraq with 7 children:

On March 23, the mother and three children (Iraqi Kurds) crossed the border with Poland. Due to one of the children health condition the Border Guard from Lipsk called an ambulance, which took the family to the hospital in the Augustów. Border Guards prevented the father and the other four children from crossing the border. They continued staying in the vicinity of the border, close to Wołkusz. The family reported being pushed back before, when the entire family managed to cross the border, but were caught about 700 meters into the Polish territory and pushed back to Belarus. The family reported that upon the first pushback, Polish Border Guards (army member) "looked after" them through wires - they received food, drinks, shoes and clothes.

From the moment the mother with three of their children managed to cross into Poland there was a reported change in the behavior of Border Guards. Part of the family that remained in Belarus stopped receiving food. On 29th of March, the father with four children made three more attempts to cross the border, experiencing three pushbacks during a single night.

Meanwhile, at Augustów Border Guard Post, an application for international protection from the mother and three children was accepted. The court in Augustów issued a decision not to place them in the Immigration Detention Center or in the regular Refugee Center and ordered for them to be placed in the Dialog Foundation Center. Next day, the father makes next attempts to get to Poland, but he was pushed back again. On 30th of March the Father let the interpreter know that he would try to cross the border again at night. Since then, there had been no contact for 2 days. He was trying to get to Poland every night. On the night of 1 April 2022, the father, with four of his children, crossed the border line. Before 5:00 am, he was arrested by the Border Guard.

Further concerns for protection of refugees, migrants and asylum seekers stuck in Belarus came out after the closure of the accommodation center in Bruzgi, on 22 March 2022, as announced by the Belarus National Border Committee. Previously, as of 8 February 2022, there were 713 persons in the center, including 270 children. On 22 March, 98 persons left the country with an evacuation flight from Minsk to Erbil at 02.55 AM. The repatriation was organized within the framework of IOM's Assisted Voluntary Return and Reintegration Program. Belarus National Border Committee reported that the rest of the foreigners, at their request, were temporarily settled in hotels and other assigned facilities to wait for subsequent evacuation flights. However, very soon, information was received from sources in both Belarus and Poland, that all those who refused to take an evacuation flight were taken to forests next to Polish border in Bialowieza Forest, at the risk of their own safety. Similar testimonies have been reported on [by media](#), whereby "dozens of asylum seekers stuck for months in a makeshift dormitory in Bruzgi, a village in Belarus less than a mile from the Polish border, were ordered by a group of Belarusian soldiers on 5 March to leave the building at gunpoint and given two options: crossing the border into Poland, where guards have beaten them back, or entering Ukraine".

The little worth ascribed to people's safety and wellbeing continues to be displayed across other EU external borders, including sea and land borders between **Greece** and Turkey. While reports of pushbacks at sea are widely accessible, pushbacks in the Evros Region (at the border between Greece and Turkey) are less visible and covered, as the border area between Greece and Turkey remains less accessible for monitoring groups. Despite everything done to silence critical voices, reports are collected, among others by GCR in detention facilities (protective custody as well as in reception and identification centers). These reports highlight that the phenomenon of pushbacks, despite the silence

and denial of the competent bodies and authorities, has not decreased and remains a standard practice in Greece.

On March 12, 2022, 30 Syrian refugees, amongst them two pregnant women and seven minor children, had been stranded on an islet in the Evros River for six days. They did not have access to water, food, medical care, or any means to keep warm, and were exposed to the cold. In a video sent to Greek Council for Refugees and Human Rights³⁶⁰, it was reported that they were eating garbage leftovers from those who had previously crossed the path and reported the tragic drowning of the 4-year-old son of one of the refugees.

The Greek Council for Refugees, along with HumanRights360, were informed about the incident on 14 March 2022. Since then, the two organizations had repeatedly appealed to the competent authorities. Two days later, the two organizations succeeded in having an interim measure granted (Rule 39) by the European Court of Human Rights (ECtHR). The [interim measure](#) called on the Greek authorities to address the issue.

Legal aid has been provided, by both the Greek Council for Refugees and Human Rights 360, to support the people with their request for international protection and to follow up on the severe rights violations endured during their six-day stay on the islet.

[In April](#), the Greek Council for Refugees (GCR) has represented the Syrian refugees, including 44 children, before the ECtHR, by filing 5 applications for interim measures (R 39), requesting for the Syrian refugees to be granted humanitarian assistance and access to the asylum procedure.

The Court granted the requested interim measures for all cases and ordered the Greek government not to remove the refugees from the country's territory and to provide them with food, water and proper medical care. The ECtHR also requested to be informed by the Greek government, amongst others, on whether the Syrian refugees have submitted an asylum application and whether they have access to the asylum procedure and to legal assistance.

Readmissions from Italy to Greece continued during 2022, [based on the readmission agreement between Italy and Greece](#). On February 7 2022, the Adriatic Ports Network (including ASGI) sent [a new communication](#) to the Council of Europe Committee of Ministers to ask for the continuation of the procedure for supervising the implementation of the ECtHR ruling in the case *Sharifi and Others v Italy and Greece*. The communication included the reference to the more recent [readmission case](#) that took place on January 22 2022 from the port of Bari and that involved a 15-year-old Afghan minor, reported by Border Violence Monitoring Network (BVMN).

These testimonies highlight the high cost that pushbacks incur; people's physical and mental wellbeing is sacrificed, as those crossing EU borders often experience one or multiple pushbacks and various rights' violations. While the aim is to deter people from arrival in the EU, the real (and only measured outcome to date) is that people are pushed into the hands of human smugglers. The European Commission's [renewed action plan on human smuggling](#) unfortunately fails to address the effective reasons why smuggling is the only lifeline for people on the move. While the "fight against smuggling" is a key priority for the EU and its MS in their efforts towards achieving more orderly migration; the EU's approach, focussed on increased and intensified cooperation with third countries, wrongly assumes that countering human smuggling presents the key remedy for addressing human rights abuses along migratory routes. One of the main (unintended?) consequences of the anti-smuggling policies is the migration routes have become more dangerous for those on the move. Rights violations, when crossing borders – if not prevented from doing so, and during transit have been widely reported.

The Commission's [Legal Migration Package](#), presented 27 April 2022, further assumes a causal link between attacking skills and talent and reducing irregular arrivals to the EU. This assumption does not seem to be based on empirical research, as those people arriving to the EU irregular, often facing multiple pushbacks and violations of their rights at borders. While the Legal Migration package is an essential step to increase labour mobility to and within the EU, those arriving at the EU's external borders without safe and legal pathways today are unlikely to qualify for one of the schemes in the latest Commission's proposal.

- Pushbacks are continuously recorded across EU external and internal borders, as well as from neighbouring countries. While the EU Commission has given significant attention to the issue through the course of 2021, the practice remains in place. Further, there is a risk that the ongoing crisis in Ukraine would provide an excuse, both to the Commission and to Member States, to hide the prevailing rights violations and accountability crisis under the rug.
- The cost of these illegal and ineffective practices is primarily borne by the most vulnerable persons seeking protection in Europe – their safety, physical and mental wellbeing affected, while being pushed into further protection risks. Arrivals to Europe, however, will continue, as root causes of migration (e.g. war, persecution, economic hardship, shrinking space for human rights defenders, ...) are not addressed. Instead of exchanging practices on these human rights violations, Europe should focus on building rights based and effective systems of migration management, while ensuring protection for those in need.
- The practice of dismissing and ignoring reports of aid and legal organisations, shrinking the space for civil society engagement and criminalising assistance impacts the safety and wellbeing of the most vulnerable, and will negatively affect access to rights and liberties in the EU and its Member States in the long-term.

2. What will it take for protection to be granted to all?

Following the Russian Federation's military offensive on Ukraine on 24 February 2022, over 5.5 million people have fled the country, the vast majority of whom have sought protection in the EU and other neighbouring countries. In an unprecedented response, the EU activated the [Temporary Protection Directive](#) (TPD) for the first time. Less than 10 days into the crisis, on the 3 March 2022, the EU responded by triggering this legal framework, which is designed to respond to a mass influx of displaced persons and ensure their access to protection.

The TPD aimed to provide fast access to rights and services, without the risk of overwhelming Member States asylum systems due to the high number of people arriving. The decision to activate the TPD came nevertheless with a compromise – mostly at the expense of non-Ukrainian nationals fleeing from Ukraine. While the Commission's initial proposal included all people fleeing Ukraine since 24 February 2022, Member States limited the scope to only Ukrainians, their family and stateless people residing in Ukraine. EU Member States can include other third country nationals (non-Ukrainians) under the TPD, but it remains at their discretion. This difference in treatment - and consequently difference in access to protection, rights and services – has been questioned by many and raised many concerns.

The examples below, as collected by PRAB partners, further demonstrate the risks of people – covered by the TPD and others – not having effective access to rights.

Two tracks to ensure (at least the perception/availability of) protection

Poland has experienced the largest influx of people fleeing Ukraine so far – with over 3 million² people displaced across the borders by the end of April 2022.

There are two regimes under which temporary protection is being implemented in Polish law.

Firstly, on 12 March 2022 the Polish government passed a law that allows for any Ukrainian (and their spouse) fleeing the war, who crossed the border from Ukraine to Poland starting 24 February onwards, to stay legally in Poland for 18 months. As long as they register and receive PESEL (a Polish ID number), those refugees have access to medical assistance, benefits and social assistance as available to Polish citizens, as well as a small additional amount of financial support. They also have facilitated access to the labour market. The beneficiaries, however, do not receive a residence card and cannot apply for a residence permit for the first 9 months of their stay.

Secondly, since 12 March 2022, Poland also grants temporary protection directly under the TPD. The personal scope of the TPD is not extended (so it includes only Ukrainians, their family members and stateless people). There are a few provisions in the national law which support the execution of the TPD, but also modify it contrary to the European provisions, e.g. beneficiaries of temporary protection do not receive a document (residence card), but rather just a certificate, which can be used to prove to service providers/employers their right to services but can't be used as a travel document nor to prove one's identity. Financial and medical support is guaranteed only for the first 2 months, as afterwards it will be provided depending on the state resources. Access to complementary rights for Ukrainians falling under the scope of TPD can be described as basic but existing. But the situation is dire for the third country nationals (TCNs) falling out of the scope of the TPD. They can only rely on NGOs and private persons, unless they apply for international protection which is the only way to get access to medical assistance and financial support or accommodation. According to available information, between 24 February and 24 April 2022, 2.756 applied for asylum in Poland, including **less than 1000 citizens of Ukraine who were uncertain about their status at the beginning of the displacement crisis.**

In contrast to what is a routine practice of pushbacks and refusals to accept asylum claims at the Polish-Belarusian border, no obstacles in access to temporary protection or international protection were observed. However, there is a worrying practice of placing non-Ukrainians, third country nationals who have fled Ukraine, in detention upon their arrival to Poland. For example, there is a rather large group (30 persons) of non-Ukrainian students placed in the detention center in Lesznowola, based on the court decision, due to the lack of personal identification documents.

Hungary was one of the first EU Member States initiating a national temporary protection scheme on 24 February for people fleeing Ukraine. The scope of the national temporary protection included Ukrainian citizens directly entering from Ukraine and third country nationals who stayed lawfully in Ukraine and arrived directly from there as well. The national Temporary Protection regime was repealed on 8 March when the implementation of the TPD was triggered. Nevertheless, the Government Decree transposing the TPD **excluded third country nationals** with long-term residence permits in Ukraine from the scope of the temporary protection. As it remains impossible to seek asylum in Hungary, this exclusion is at odds with the Council Decision.

² As per UNHCR data update: <http://data2.unhcr.org/en/situations/ukraine>

Per the Hungarian Government Decree: *“In accordance with Article 2(2) of the Council Decision, Hungary shall not apply the provisions of the Council Decision concerning temporary protection who are stateless persons and third-country nationals who can prove that, before 24 February 2022, they were, in accordance with Ukrainian law on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who cannot return in safe and sustainable conditions to their country or region of origin.”*

While Article 2 (2) of the Council Implementing Decision reads: *“Member States shall apply either this Decision or adequate protection under their national law, in respect of stateless persons, and nationals of third countries other than Ukraine, who can prove that they were legally residing in Ukraine before 24 February 2022 on the basis of a valid permanent residence permit issued in accordance with Ukrainian law, and who are unable to return in safe and durable conditions to their country or region of origin.”*

As a consequence of the incorrect implementation of the TPD, third country nationals fleeing Ukraine are granted with a temporary residence permit of 30 days as a practice in Hungary. According to the [report of the National Directorate-General for Aliens Policing \(NDGAP\)](#), until 22 March, 9 940 such temporary residence permits had been issued.

The 30-day margin of lawful stay provided to third country nationals is meant to secure enough time for these people to arrange their return to their country of origin. **However, the regime also applies for those who cannot return safely to their country of origin in fear of persecution or serious harm or for any other pressing legal or durable practical reason.** When the temporary residence permit expires, those who cannot manage to leave Hungary in the given timeframe would be at risk of pushbacks to Serbia according to the current Hungarian regulations. Given that Hungary is the only EU Member State where access to the asylum procedure is impossible within the territory or at the border of the state, third country nationals are excluded from all kinds of protection. The HHC has submitted a formal complaint to the European Commission.

Third Country Nationals fleeing Ukraine also at risk of pushbacks

Only two months after the escalation of conflict in Ukraine, PRAB partners already started collecting reports of pushbacks at the EU’s external, as well as internal borders, linked to people who were previously residing in Ukraine.

The following testimony was collected from a vulnerable 3-member family from Afghanistan (including a mother and two children), travelling with a student from India who fled Ukraine, at the beginning of the conflict, **pushed back from Croatia to BiH on 18 March**:

“ We crossed the border here on Siljkovaca in the village of Kramarice. We walked for an hour and then we came across 3 policemen in blue uniforms. We asked for asylum immediately, but they told us that there was no place in the camp and that we should go back. We begged them to let us pass, but they said that we should try to cross border somewhere else, that we should not try here again. Then came a van with 4 other policemen in black uniforms. They put us in a van and drove us back to the border and told us to go back to BiH.”

The single women from India, travelling with the family, stated that she fled Ukraine a few days before, where she allegedly studied. She had a student card from Ukraine. She stated that she fled Ukraine together with her brother at the very beginning when the first conflicts in Ukraine began. She left Ukraine for Romania and her brother went to Poland. Then she went to Serbia and from Serbia to BiH.

At the border between France and Italy, seven third country nationals (3 persons from Nepal, 1 from Nigeria, 2 from Algeria, 1 from India), with regulated stay in Ukraine prior to the military offensive, were met in Oulx by the officers of Diaconia Valdese. They reported that they had been pushed-back by the French police at the Italian-French border. Six of them had in their possession Ukrainian temporary residence permit for students, apart from the person from India who had a permanent residence permit. Despite the rights violations faced, none of them decided to stay in Italy to apply for international protection. Rather, all of them opted to try and irregularly cross the border on the mountains to reach other EU countries where they had parents/friends.

Similarly, in Ventimiglia, the officers of Diaconia Valdese, identified 6 single males from Pakistan, 7 single males from Bangladesh, 1 family of 4 and 4 single males from Nigeria, that fled Ukraine and reported being pushed back to Italy by the French border police.

On 28 March, a man from Lebanon who resided in Ukraine, reported being **pushed back from Hungary to Serbia**, to HCIT:

He reported that he left Lebanon in 2020 and went to Ukraine legally, with an airplane, having obtained a working permit. In the meantime, he met his wife there and he had a child with her. They lived in the town of Maryanivka, near Lutsk. He was working close to the Hungarian border a couple of times a week. With the conflict escalation, he fled Ukraine via Hungary (on February 25th), using his Lebanese passport and his temporary residence card, while he was supposed to meet up with his wife and child in Poland. However, after around 70 kilometers within Hungarian territory, a group of Hungarian police officers stopped him. They took him to a police station and then to Nyirbator Asylum Detention Center in Hungary. He was detained there for around 3 days. During that time, he was questioned a couple of times. He claimed that he was forced to sign a document that stated that the interpreter was present and that all of his belongings were returned to him, but he said that neither of those things were accurate. He claimed that no interpreter was present and that the questioning was done without an interpreter and conducted in the English language and that they took away his watch, credit cards, Lebanese passport, Ukrainian temporary residence card, clothes, phone, and money. He was expelled to Serbia, even though he had never been to the country previously. He was not sure where exactly (but he thinks it was around Horgos Village), nor which date it was, since they took away all of his belongings and he lost a sense of time, but he said it was probably around March 1st, since he spent a couple of days in the Detention Center. He first went to Belgrade, to the Ukrainian Embassy, where he presented his situation, was registered and provides with clothes, a phone, a hotel in Belgrade, and some money.

The use of pushbacks, at the EU's external and internal borders, is this systematic and widespread that it also affects third country nationals who are searching for protection in the EU after having fled the war in Ukraine. This practice, which clearly violates the EU acquis, is observed not when crossing from Ukraine to a neighboring country, but when moving onwards or residing in a neighboring country (in the example elaborated upon on Hungary).

Treatment defined on the basis of nationality/ethnicity instead of individual needs

Concerning practices of assuming people's needs of protection, based on their country of origin, nationality or ethnicity have been long observed and reported on throughout Europe. More recent practices recorded by PRAB partners (included in the testimonies below), indicate not only the general lack of effective access to asylum for individuals, but also the systematic discriminatory application of policies set by the Member States.

Based on the amendment to the Lithuanian Law on Legal Status of Aliens approved on the 10 August 2021, asylum applications continue to be accepted only i) when submitted to the State Border Guard Service at an official border crossing point or in transit zones; ii) when submitted to the Migration Department, provided that the applicant entered Lithuania legally; iii) when lodged outside Lithuania at a diplomatic mission or consulate. The provisions apply only upon declaration of martial law, a state of emergency, or an emergency event 'caused by a mass influx of foreigners'.

While exceptions can be made depending on a person's individual circumstances or their vulnerability, in the first quarter of 2022, only the citizens of Belarus were allowed to enter and apply for asylum when crossing the border irregularly, as statistics imply. The Lithuanian State Border Guard Service provided data regarding differences in treatment based on third country nationals' nationality when crossing borders irregularly.³ Despite crossing the border between Belarus and Lithuania irregularly, over the past months, Belarusians have been able to successfully submit asylum applications in Lithuania. More precisely, eight Belarusians in January and nine Belarusians in February, applied for international protection in Lithuania. Official data for March are unknown, but on 28 March the Chief of the Lithuanian State Border Guard Service provided information on a radio show that 35 citizens of Belarus had submitted their asylum applications in March. It remains unclear where or how the applications were submitted, and if those people crossed the border irregularly.⁴ However, and most importantly, the aforementioned numbers for the past 3 months correspond to the official statistics of persons who entered irregularly but yet were allowed to submit their asylum applications and enter Lithuania as a result of individual circumstances or their vulnerability. This implies that in 2022, only citizens of Belarus have been able to apply for access to international protection.

Similarly, profiling practices have been observed by PRAB Initiative partners at the internal EU borders. ASGI is carrying out periodical technical-judicial missions on the Italian-France border and during the missions it was observed that ethnic profiling during the police checks is occurring. At the Ventimiglia railway station, only black people or people with Asian features are stopped for document checks. ASGI also carried out a technical-judicial mission on the Italian-Austrian border between March 9 and March 11 2022. During the mission it was observed that ethnic profiling during police checks is also taking place at this border. At the Bolzano railway station, again, only black people or people with Asian features are stopped for document checks. It was also noted that when the Italian police get on the trains arriving from Austria and Germany at the Brenner station (border point) to deliver the information form prepared by the Ministry of Interior to inform Ukrainians of their rights in Italy, the police only convey the message to people who appear to be Ukrainians and not to the third countries nationals.

³ The data was sent to Diversity Development Group, Lithuania by the Lithuanian State Border Guard Service in response to our inquiry (received on 21st March).

⁴ BNS, LRT.lt, 28 March 2022, <https://www.lrt.lt/naujienos/lietuvoje/2/1655717/vsat-vadas-daugeja-prieglobscio-prasanciu-baltarusiu-ir-rusu-bet-masinio-atvykimo>

- While adoption of the Temporary Protection Directive is commendable, concern remains over the limited scope when it comes to protection of third-country nationals fleeing Ukraine, including those searching for international protection in Ukraine.
- For persons applying for international protection, access to normal (not accelerated or other 'fast' track examination) asylum procedures with necessary safeguards needs to be ensured. It is important that asylum seekers have the possibility to understand and participate in the asylum procedure, and that legal aid is provided throughout the procedure.
- All persons fleeing Ukraine should be ensured safe access to the EU's territory without discrimination. Ethnic profiling must stop. Pushbacks must stop.

3. Pushbacks from Croatia recognised in recent court rulings

While the effectiveness of the Border Monitoring Mechanism introduced in Croatia is yet to be observed, pushbacks from Croatia continue to be documented and more importantly, they have a clear impact on the take-back and take-charge requests under the Dublin Regulation within the EU. Since the beginning of the year, two important court rulings have had a direct impact on the return procedure to Croatia, under the Dublin III regulation.

In its judgment of January 6, 2022, the Federal Administrative Court (TAF) in Switzerland concluded that **it was impossible to return an Afghan asylum seeker from Switzerland to Croatia**. As [reported](#), it could not be excluded that the asylum seeker was exposed to violence in Croatia, which emerges from the credible descriptions of ill-treatment, torture, and imprisonment of the latter. In addition, the State Secretariat for Migration (SEM) in Switzerland failed to sufficiently clarify the "pushbacks" at the borders allegedly suffered by the asylum seeker by the Croatian police. Therefore, the **SEM should not have relied on the general fact that Croatia is an a priori safe host country for asylum seekers**, it was required to examine the individual and concrete case in more depth before ordering a referral."

Second such [ruling](#) by the Council of State in Netherlands was published on 13 April 2022. The highest administrative court in the Netherlands has found that the State Secretary for Justice and Security in Netherlands must investigate whether transferring foreign nationals to Croatia on the basis of the European Dublin Regulation is contrary to the European Convention on Human Rights (ECHR). The Council of State found that pushbacks are taking place on a large scale in Croatia. It was further elaborated that pushbacks do not only take place when people are trying to cross the border, but that there is also a significant risk of pushbacks to affect Dublin-returnees or other who are within the Croatian territory (not only within border areas). **The State Secretary can no longer assume without further investigation that Croatia is complying with the requirements of the ECHR and the principle of non-refoulement.**

The devastating practice of pushbacks and their consequences have been re-confirmed, as the Grand Chamber Panel of the European Court of Human Rights rejected the referral request of the Republic of Croatia in the case of [M.H. and Others v. Croatia](#), delivering justice to late Madina Hussiny and her family. These court rulings are utmost important as they provide a final layer of protection, contrary to state practices, courts and the judiciary are providing a final – but most required - safeguard aiming to ensure that asylum seekers are not returned to a country which might violate their rights, including but not limited to the risk of refoulement. These court rulings further have a broad impact on the EU

asylum acquis because these court rulings confirm that EU member states are not all respecting their obligations under EU human rights law. It is further not uncommon that other Member States would follow this legal reasoning, something that has to be monitored over time.

The lack of effectively holding Croatia accountable – and ending the rights violations at its borders – has far reaching consequences for the EU’s asylum acquis and raises questions (as rightly pointed out in the court rulings cited above) on whether the principle of mutual trust remains a reality or is becoming a fiction. To turn the tide, pushbacks and rights’ violations at the EU’s borders must end. It is also within Croatia’s own interest, as well as the interest of the European Commission as the guardian of the treaties, to ensure that the border monitoring mechanism, as set up in Croatia is translated into an effective and independent mechanism.⁵ Especially the renewal of the mechanism’s mandate in June 2022, as financed by the Commission, provides an important opportunity to ensure that the mechanism is more than a fig leaf. It can be concluded that only by ensuring accountability at borders and compliance with fundamental rights at EU borders, the principle of mutual trust can remain enforced between EU Member States with regards to the implementation of the EU asylum acquis.

4. Conclusion

On 7 April, the Council of Europe Commissioner for Human Rights published a [Recommendation to member states’ governments and parliamentarians](#) outlining the widespread occurrence of pushbacks and related human rights violations at land and sea borders across Europe.

Releasing the Recommendation, the Council of Europe Commissioner for Human Rights, Dunja Mijatovic, underlined that while “the immediate response of European countries (to Ukraine crisis) shows that it is possible to put the protection of human dignity and the observance of international obligations at the centre of state action”, “such a principle should apply also to the protection of refugees, asylum seekers and migrants coming from other parts of the world”.

PRAB Initiative strongly concurs with the recommendations of the Council of Europe, as enlisted in the Recommendations and calls for the immediate change of the practices at borders and accountable and rights compliant system to be put in place.

⁵ More recommendations on the required changes to the Croatian Border Monitoring Mechanism can be found here: <https://drc.ngo/about-us/for-the-media/press-releases/2021/8/croatia-eu-border-monitoring-system-effective-mechanism-needed-independent-broad-mandate-adequate-resources/>.

OVERVIEW OF PREVAILING RIGHTS VIOLATIONS ACROSS BORDERS

