

**BLACK  
BOOK  
OF  
PUSHBACKS**

**EXPANDED & UPDATED EDITION**

**Volume I**

The Black Book of Pushbacks was produced by a group of independent experts from the Border Violence Monitoring Network (BVMN) and their partners. The BVMN is a horizontal self-organised network denouncing pushbacks, other human rights violations and broader forms of violence against people-on-the-move at and within European borders. We act in solidarity with those affected irrespective of status, built on anti-fascist and anti-racist values, to challenge existing border regimes and propose viable alternatives. We monitor and document the situation on the ground by recentering lived experiences, and collect evidence to hold perpetrators and facilitators accountable. We believe in freedom of movement and seek safe and legal passages and shifts that establish the politics of solidarity and justice. Our aim is to end all forms of violence and injustice deriving from the current European migration regime and the politics of criminalization of movement. We envision accountable institutions respective to human rights and human dignity.

Our members include the Civil Society Organisations (CSOs) Are You Syrious, Centre for Peace Studies, Collective Aid, InfoKolpa, Mobile Info Team, No Name Kitchen, Mare Liberum, Rigardu, Blindspots, I Have Rights, Legal Centre for the Protection of Human Rights and the Environment, Pushback Alarm Austria, and others who wish to remain anonymous. In addition to coordinated monitoring and reporting, these groups perform a huge spectrum of activities; from humanitarian relief, providing integration support and legal assistance, to advocacy work.

Editors: Hope Barker, Milena Zajović  
Statistics: Ben Juchniewicz  
Design: Alexandra Mitchell  
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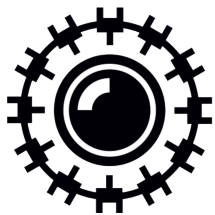
This book was commissioned and financed by The Left political group in the European Parliament



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**Border Violence  
Monitoring Network**

# CREDITS

**Editors:** Hope Barker, Milena Zajović

**Foreword:** Cornelia Ernst, Kostas Arvanitis, Malin Björk, Clare Daly, José Gusmão, Anne-Sophie Pelletier, Sira Rego, Miguel Urban Crespo

**Authors:** Gigi Aulsebrook, Iker Babero, Matt Baillie, Elena Beck, Saskia Berger, Alexandra Bogos, Joseph Cripps, Giulio D’Errico, Giacomo Donadio, Natalie Faddul, Pauline Fritz, Natalie Gruber, Saša Hajzler, Nicolai Kissling, Isa Krischke, Andrés Léderer, Petra Leschanz, Claudia Lombardo Díez, Manon Louis, Tegan Louis-Puttick, Petra Molnar, Chloé Powers, Urša Regvar, Julian Schröder, Johanès Si Mohand, Tit Starc, Iza Thaler, Alice Troy-Donovan, Miha Turk, Betty Wang, Jošt Žagar, members of the Legal Centre Lesvos and the ASGI Medea Team

**Testimony reviews:** Pauline Fritz, Claudia Lombardo Díez, Manon Louis, Annie Lovisetto, Annie Molloy, Chloé Powers, Tigs Louis- Puttick, and others who chose not to be named

**Statistics and testimony exports:** Ben Juchniewicz

**Design:** Alexandra Mitchell

**Contributing NGOs - members of the BVMN:** Are You Syrious (AYS), Blindspots, Centre for Peace Studies (CMS), Collective Aid, I Have Rights, InfoKolpa, Legal Centre for the Protection of Human Rights and the Environment (PIC), Mare Liberum, Mobile Info Team (MIT), No Name Kitchen (NNK), Pushback Alarm Austria, Rigardu, and others who wish to remain anonymous

**Contributing NGOs - partners of the BVMN:** The Association for Juridical Studies on Immigration (ASGI), Hungarian Helsinki Committee (HHC), Legal Centre Lesvos (LCL), and Grupa Granica

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All photos in this book have been taken by members of the Border Violence Monitoring Network, unless stated otherwise.

**The Black Book of Pushbacks is dedicated to all survivors of border violence and other human rights violations. Thanks to all those who chose to share their stories with us.**



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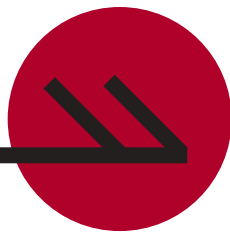
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MEP Cornelia Ernst presenting the Black Book of Pushbacks to the Croatian Minister of Interior Davor Bozinovic, State Secretary Terezija Gras and the Head of Border Police Zoran Niceno



# FOREWORD

Two years after the first edition of the Black Book of Pushbacks, we would have wished, as Members of the European Parliament, not to have to publish a new edition containing countless new testimonies depicting the everyday violence experienced by women, men and children on the move at the EU's external and internal borders. We had hoped that the first edition and the tireless work of NGOs, activists and media exposing these violations would have led to real and meaningful action to end border violence once and for all.

We would have wished that the European Commission had started infringement proceedings against all the Member States that push back people trying to seek safety in the European Union, denying them the right to asylum.

We would have wished that the EU's funding of border forces perpetrating violence and violating the rights of people on the move would be suspended till these violations end.

We would have wished that, after the resignation of the FRONTEX executive director, the new leadership would abide by the FRONTEX regulation withdrawing financing and suspending its operations in all Member States "where there are violations of fundamental rights or international protection obligations related to the activity concerned that are of a serious nature or are likely to persist".

We would have wished that Member States would simply abide by and implement EU and international law and enable women, men and children to request asylum on the EU's territory.



On the contrary: over these past two years, whether in Calais, Velika Kladusa, Bihac, Lesbos, Samos, Evros or Melilla, we have listened to more testimonies of survivors of border violence by the EU's border authorities. We have witnessed the severe mental and physical trauma this systematic border violence has visited on women, men and children.

We have heard women, men and children calling search and rescue coordination centres as their boats were sinking, being denied the right to life and left adrift. We have heard testimonies of people being kidnapped on EU soil and being pushed-back at sea and on land.

We have seen Member States like Poland, Lithuania and Latvia adopting laws aiming at legalising pushbacks, laws that are in violation of EU and international law. We have seen the silence of the Commission despite our constant call on them to act against these laws. We have seen the European Commission proposing instead to legalise internal pushbacks with their new proposal of the Schengen Borders Code.

This new edition of the black book aims at holding the responsible governments as well as the EU accountable for torture, inhumane and degrading treatment, and the violation of the right to life; violations that people seeking safety in the European Union face every day.

Once again, we would like to thank the activists and NGOs that have been and are documenting border violence, gathering testimonies and locations at the high risk of being heavily criminalised by European governments - without them this book would not exist. Many of them have been suffering attacks for speaking out against the violence and pushbacks carried out by law enforcement authorities, and we would like to express our strong support and solidarity to them.

*Cornelia Ernst, Kostas Arvanitis, Malin Björk, Clare Daly, José Gusmão Anne-Sophie Pelletier, Sira Rego, Miguel Urban Crespo*

### **Members of The Left Group in the European Parliament, LIBE Committee**



MEPs Miguel Urban Crespo and Malin Björk bringing the Black Book to the European Commission



# INTRODUCTION

*Authors: Hope Barker and Milena Zajović (BVMN)*

It was December 2020 and we were in an online event hosted by the Left in the European Parliament, presenting the first edition of the Black Book of Pushbacks. It was the peak of the second lockdown and COVID vaccines were still largely unavailable. Determined to maintain the high level of our advocacy engagement, even in a state of additional crisis where the plight of people-on-the-move was pushed even further away from the public eye, we promised to publish a new version of the Black Book every year until the culture of impunity ends.

At the time, however, we weren't completely able to foresee the situations that would unfold in the coming years, directly affecting people-on-the-move and hindering our own work.

The first obstacles started emerging during the repeated lockdowns, when most of the big NGOs began evacuating from the border areas, concerned for the wellbeing of their own staff members. Left out of basic provisions, far from the eyes and the minds of European citizens, many people-on-the-move couldn't afford to worry about the pandemic: locked up behind the wire fences of overcrowded EU-funded camps or in the squalid conditions of freezing squats with no access to running water, let alone the possibility to self-isolate, they were running more desperate than ever. While the entire world was standing still, it seemed that their only chance of survival was to keep moving.

However, the evacuation of international organisations from the border areas didn't only mean a decline in basic support. It also meant no one was there to document what became an unprecedented rise in the most brutal violence against people-on-the-move along the EU's external borders. Aware of this lack of witnesses, border guards of Croatia, Greece, Albania, North Macedonia, Hungary, Slovenia, Italy, Austria, Romania, Bulgaria, Serbia, Bosnia and Herzegovina, Poland and other affected countries started implementing gruesome "deterrence tactics": these included extreme and prolonged beatings, the shaving of heads, forced undressings, sexual assaults, dog attacks, non-consensual medical treatments, and attacks with Electric Discharge Weapons, among others.

In such an environment, despite the recommendations to leave the border areas, it became clear that most of the BVMN members could not and would not leave the victims of these brutalities with no support: medical volunteers were hiking for hours through inaccessible terrains to treat the wounds of pushback victims, food and hygiene products were delivered to the doorsteps of squats to avoid queuing or moving during the curfews, we found new ways to record the testimonies, remotely if needed, and our projects were running under the new health and safety regulations that allowed us to fill a critical gap in institutionalised support for the people-on-the-move without endangering anyone further.

During this period, we witnessed a concerning rise in sophisticated methods of torture at Croatian and Greek land borders that included gun violence and rape,



throwing individuals into rivers, their hands sometimes still locked with zip ties, and the systematisation of forced undressing which culminated in a group of 19 people freezing to death near the Evros river. We became aware of the rising numbers of dead and missing throughout the regions of our work, and we also started engaging more actively with the European Court of Human Rights, especially in requesting interim measures that would prevent further abuse of the stranded groups of people-on-the-move. This, unfortunately, didn't come without a cost. The governments of Croatia, Turkey and Greece have proven to be the most brutal in their reprisals, targeting not only our activists but also their family members, forcing BVMN member projects such as Josoor to shut down, and leading many of our key staff members to leave their countries of residence. This again hindered the reporting work of the BVMN and forced us to reconsider the public visibility of some of our most exposed members.

In February 2022, when we were preparing to launch expanded and updated editions of the Black Book of Pushbacks Volumes I and II, another crisis unfolded: Russia launched a full-scale invasion of Ukraine and in the following months 7.8 million refugees fled to European states seeking protection. These events proved that the founding values of the European Union still exist, with the unprecedented launch of the Temporary Protection Directive guaranteeing swift access to safety, regularisation and rights. However, this response remained exclusive for Ukrainian refugees, while the others, including the young Russians and Chechens fleeing the other side of the same war, were rejected, put in arbitrary detentions and/or exposed to the same gruesome methods of border violence we've been documenting for years.

The stark contrast between the two refugee realities was most visible in Poland, a Member State praised for its open arms for a large number of Ukrainians. Yet, it was the very same Member State that, in July 2021, introduced a state of emergency that saw mass human rights violations proliferate at its border with Belarus and led to a reported 19 deaths of people-on-the-move - a number that has been estimated as far higher by our partners on the ground.

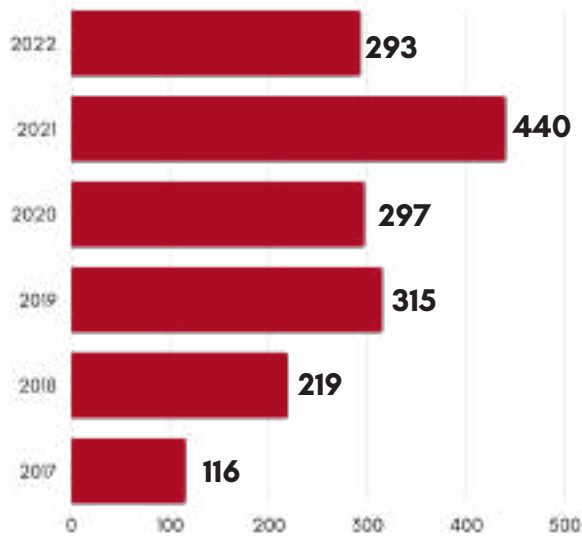
Whilst the widely documented situation of Ukrainian refugees pushed the plight of people seeking protection further into the political mainstream, and has shown us how the European Union can, and **should**, respond to such events, we have sadly not seen similar attitudes developed in response to all persons fleeing their countries. In fact, as the so-called Balkan Route has become more active this year, the EU-led responses seem to be limited to formulating a 'plan' for further limiting the movement on the route that has its echoes in the mass trauma of the closure of the humanitarian corridor in 2016.

In the politically precarious context at the end of 2022, the future of the people we serve, as well as our own, seems more uncertain than ever. But there's one thing we're certain about: we **will** continue publishing these books until we fulfil the promises we made to everyone who decided to share their stories with us. Impunity must end, perpetrators must be held accountable, and Europe must find a way to express solidarity with all people-on-the-move, regardless of their nationality.

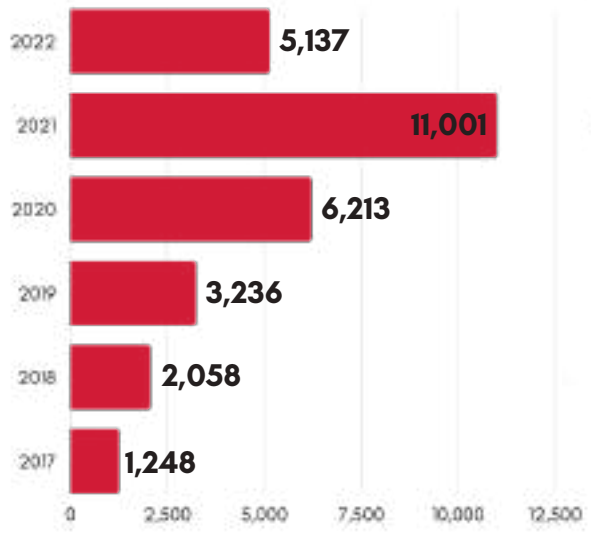


# FACTS & FIGURES

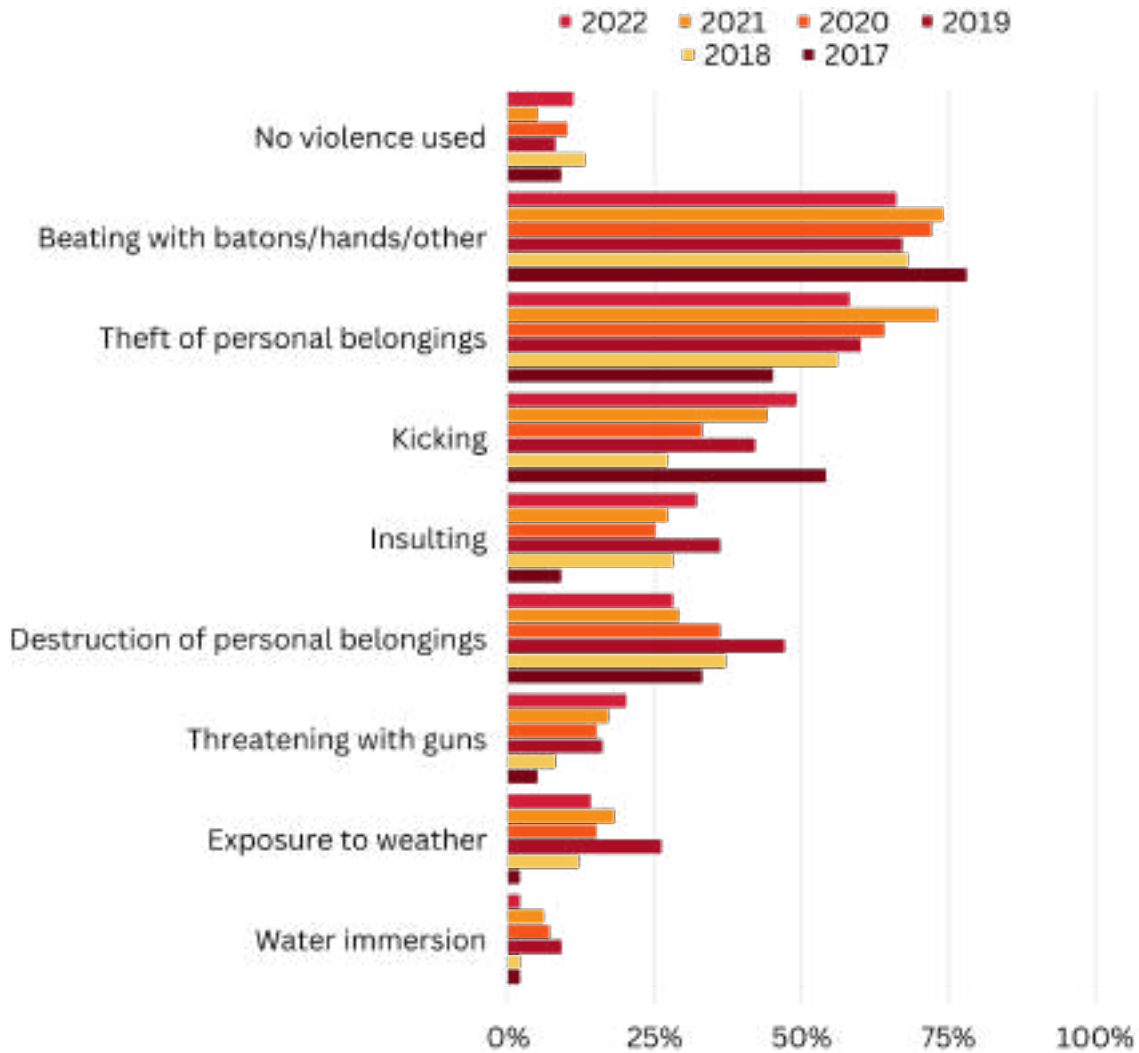
NUMBER OF TESTIMONIES



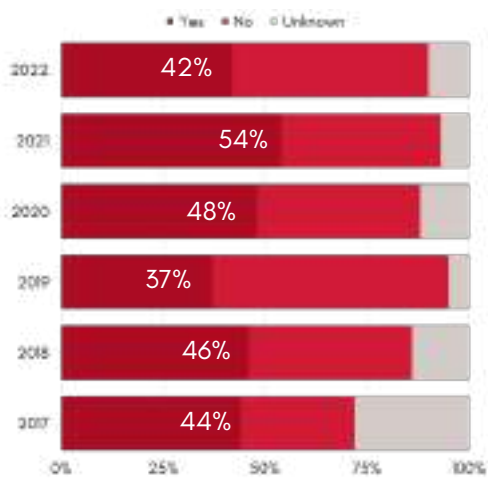
NUMBER OF PEOPLE AFFECTED



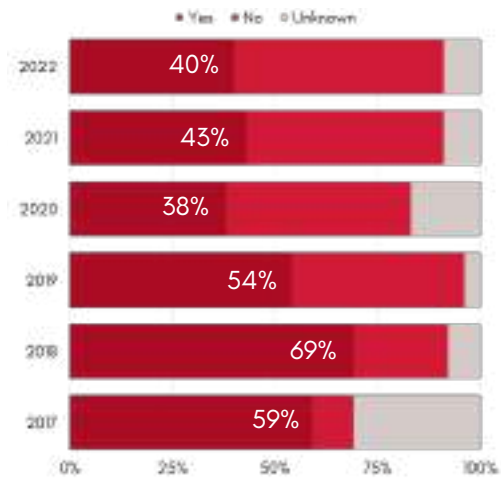
VIOLENCE DURING PUSHBACKS



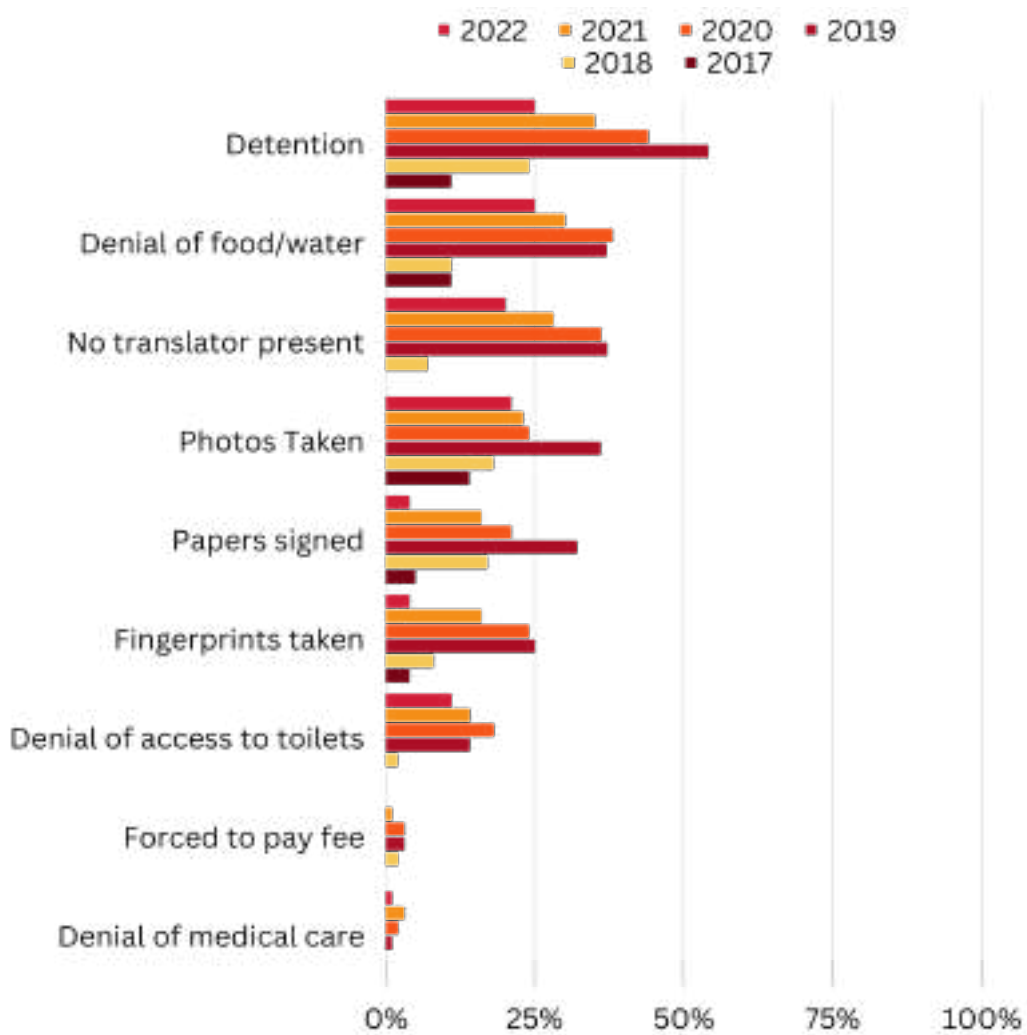
### % TESTIMONIES INVOLVING MINORS



### % TESTIMONIES ASKED FOR ASYLUM



### DETENTION STATISTICS







Presentation of the Black Book of Pushbacks Volumes I and II in Vienna

## **METHODOLOGY**

BVMN documents cross-border pushbacks and broader types of violence enacted by authorities against people-on-the-move. The network collates this information in a shared, open source database which acts as a living archive, visualising trends in border control and acting as a repository of cases for the use of advocacy, media and litigation.

Each case entered into the database represents the experience of an individual or transit group who was removed from one or more territories. In order to collect these lived experiences, field reporters work in various border areas and state interiors, conducting in-depth oral interviews.

The methodological process for these interviews leverages the close social contact that BVMN member organisations have as actors supporting people-on-the-move with essential humanitarian aid and legal services. As such, if individuals present with significant injuries or require material support, these needs can be addressed first, before providing a safe environment for stories of abuse to be shared. BVMN's trained reporters and translators will then sit down with respondents to collect their testimony, ensuring clear communication and understanding is established prior to starting. Although the testimony collection itself is typically with an individual or small group, the number of those pushed back which they represent can exceed 100.



BVMN has a standardised recording framework. It blends the collection of hard data (timings, dates, locations, officer and vehicle descriptions, photos of injuries, medical reports and other corroborating evidence) with qualitative narrative accounts of the pushback incidents. Reporters are trained in testimony collection before leaving their home country and then retrained on the field. The trainings delivered by BVMN cover topics of informed consent, the importance of privacy and anonymity, establishing trust and rapport with respondents, lessons learned on retraumatisation, among others.

The data collected is coded by certain characteristics. These include age, nationality, gender, types of violence used, police involved, treatment in detention and attempted asylum claims among others. This has allowed BVMN to trace the use of different physical, structural and psychological violations, and to identify the locations and perpetrators involved. The personal data of respondents is anonymised, and any recordings of the interviews taken are deleted after transcription to protect respondents' safety and prevent recriminations from perpetrating State authorities.

While the Network has been using the same method of oral interviews since its inception, reports have significantly advanced and become lengthier with the application of new investigative methods, and the expansion of the BVMN reporting team. Therefore some reports from 2017 to 2018, though still meeting the requirements of core data for our database, may be of shorter length. In addition, some reports include fewer details as respondents cannot recall precise information, particularly as many pushbacks occur at night and are traumatic experiences, which can influence an individual's memory. To counter the distortion of memory as a result of factors like trauma, BVMN attempt to collect testimonies as promptly as possible following the pushback incident.



BVMN team interviews the victims of pushbacks in an abandoned house in Šturlić area, BiH, accompanied by the MEP Cornelia Ernst and her team. Photo: Louise Schmidt

# GLOSSARY OF TERMS AND ABBREVIATIONS

## — People-on-the-move:

The term people-on-the-move (POM) includes those who, for a variety of reasons, have left their country of origin. The goal is to expand on the definition of refugees by considering the impact of, among others, climate change, economic and social inequalities, political conflicts, terrorism, colonial legacies and organised crime. In addition, the term specifically includes those who are in the process of moving and are still in transit, or those who are stranded.

## — Pushback:

“Pushbacks are the informal cross-border expulsion (without due process) of individuals or groups to another country. This lies in contrast to the term ‘deportation’, which is conducted in a legal framework, and ‘readmission’ which is a formal procedure rooted in bilateral and multilateral agreements between states. In the past five years, pushbacks have become an important, if unofficial, part of the migration regime of the EU countries and elsewhere. The term ‘pushback’ itself is a definition that came to initially describe the unfolding events along the EU borders of Hungary and Croatia with Serbia in 2016, after the closure of the so-called Balkan route. The practice is now a hallmark of border externalisation which reaches from the Greek-Turkish border, all the way to the Slovenian-Italian border”.

## — Countries:

ALB - Albania  
AUT - Austria  
BGR - Bulgaria  
BiH - Bosnia-Herzegovina  
BLR - Belarus  
CRO - Croatia  
CZE - Czech Republic  
ESP - Spain  
FRA - France  
GRC - Greece  
HR - Croatia  
HUN - Hungary  
ITA - Italy  
MNE - Montenegro  
MNK - North Macedonia  
POL - Poland  
ROU - Romania  
SRB - Serbia  
SVN - Slovenia  
TUR - Turkey



## **EU Terminology:**

AIA- Artificial Intelligence Act  
AIDA - Asylum Information Database  
AMIF - Asylum, Migration and Integration Fund  
APD - Asylum Procedures Directive  
CEAS - Common European Asylum System  
CFREU - Charter of Fundamental Rights of the European Union  
CJEU - Court of Justice of the European Union  
CONT - Committee on Budgetary Control  
CPT - European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment  
DPO - Data Protection Officer  
EBCG - European Border and Coast Guard Agency  
EC - European Commission  
ECHR - European Convention on Human Rights  
ECtHR - European Court of Human Rights  
EES - Entry/Exit System  
EP - European Parliament  
EU - European Union  
EUAA - European Union Agency for Asylum  
EURODAC - European Asylum Dactyloscopy Database  
FRA - European Agency for Fundamental Rights  
FRO - Fundamental Rights Officer  
GDPR - General Data Protection Regulation  
IBMF - Integrated Border Management Fund  
IMM - Independent Monitoring Mechanisms  
IPA - Instrument for Pre-Accession Assistance  
ISF - Internal Security Fund  
JORA - Joint Operations Reporting Application  
LIBE - Committee on Civil Liberties, Justice and Home Affairs  
MEP - Member of the European Parliament  
MFF - Multiannual Financial Framework  
MS - Member State  
MYLA - Macedonian Young Lawyers Association  
OLAF - European Anti-Fraud Office  
RBI - Rapid Border Intervention Team  
RCD - Reception Conditions Directive  
SBC - Schengen Borders Code  
SCO - Safe Country of Origin  
STC - Safe Third Country  
TCN - Third-country nationals  
TFEU - Treaty on the Functioning of the European Union

## Other Terminology:

- AI - Artificial Intelligence
- ASGI - Association for Juridical Studies on Immigration
- BVMN - Border Violence Monitoring Network
- CCAC - Closed Controlled Access Centres
- CCPA - Police and Customs Cooperation Centres
- CSO - Civil Society Organisation
- EAD - National Transparency Authority
- EDW - Electric Discharge Weapon
- FOI - Freedom of Information Request
- HCG - Hellenic Coast Guard
- HHC - Hungarian Helsinki Committee
- HRD - Human Rights Defender
- ICRC - International Committee of the Red Cross
- IOM - International Organisation of Migration
- Mol - Ministry of Interior
- MoMA - Ministry of Migration and Asylum
- MSF - Medecins sans Frontieres
- MYLA - Macedonian Young Lawyers Association
- NGO - Non-Governmental Organisation
- PAF - Police aux Frontieres
- POM - People-on-the-move
- PTSD - Post-Traumatic Stress Disorder
- RAO - Regional Asylum Office
- RIC - Reception and Identification Centres
- RTC - Reception and Transit Centres
- SAR - Search and Rescue
- SLAPP - Strategic Lawsuits against Public Participation
- TCG - Turkish Coast Guard
- UAMs - Unaccompanied Minors
- UNHCR - United Nations High Commissioner for Refugees



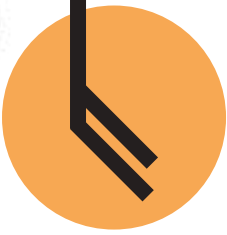


Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C

# LEGAL DEVELOPMENTS

*Authors: Alexandra Bogos (BVMN) and Iza Thaler*

The Border Violence Monitoring Network has documented over the years a deterioration in the protection of human rights throughout Europe. The respect for rule of law in European countries has become a salient concern and many predict a deepening crisis in the absence of a functional, independent and a shielding judiciary to maintain checks and balances.

In Greece, an official policy of pushbacks seems to have contaminated the judiciary.<sup>1</sup> Legal aid organisations supporting victims of pushbacks to litigate in domestic courts had their cases closed by public prosecutors who invoked a lack of evidence, whilst simultaneously refusing to interview witnesses or rejecting evidence. Many of the cases have been referred to the European Court of Human Rights (ECtHR) as domestic remedies were clearly ineffective. Legal practitioners similarly resorted to litigating cases directly to the ECtHR or to UN Committees.<sup>2</sup>

In the past two years, the ECtHR communicated 10 cases of pushbacks against Greece under Art. 3 ECHR (prohibition of torture and inhuman or degrading treatment), gathering 53 applicants and 2 complaints on access to asylum (Art. 13, effective remedy).<sup>3</sup> At the ECtHR, complainants cannot invoke they have been subjected to collective expulsions as Greece has failed to sign and ratify Protocol 4 to the Convention prohibiting collective expulsions. Most pushback cases could find remedy in Art. 3, since a pushback is illegal under the general principle of international law of non-refoulement, or under Art. 2 (right to life) if the person's life was endangered or the person died, as well as Art. 13 (effective remedy) if the person's right to apply for asylum was denied.

Notably, in 2022, the ECtHR released a judgement in *Safi and Others v. Greece*. The case emerged from the sinking of a vessel in the Aegean Sea where 11 people died. The judgement came 8 years after the events, and the Court found violations of Art. 2 and Art. 3. The Court condemned the Greek state's failure to adequately engage in Search and Rescue (SAR) and to properly investigate the incidents. Moreover, the Court found violations of Art. 3 with regards to the body searches of some of the survivors by the authorities.<sup>4</sup> The case could be a milestone in SAR operations and potentially with regards to allocating responsibility for pushbacks.

In Slovenia, the case of A.M. was positively decided at the Slovenian Supreme Court. A.M. sought asylum in Slovenia twice in 2019 and both times was readmitted to Croatia on the basis of a bilateral agreement. The Court found that Slovenia violated the applicant's right to access asylum, prohibition of collective expulsions and prohibition of torture, which includes the prohibition of refoulement.<sup>5</sup>

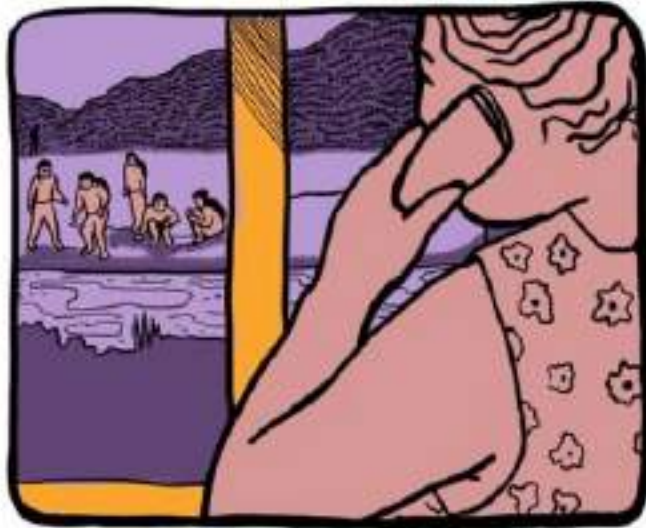


Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C

The Croatian authorities subsequently pushed A.M. back to Bosnia after accepting the applicant from Slovenia, a practice BVMN has identified as “chain pushbacks”.<sup>6</sup> The Court found that, not only does the principle of non-refoulement establish the right not to be returned to a country where the individual is at risk of torture, it also creates an obligation on the authorities to make an assessment about the safety of the individual upon return to the country, even in between European Union Member States.<sup>7</sup> Despite the Court's positive judgement, the Slovenian government refused to issue A.M. a visa, thwarting access to a guarantee that A.M. had an entitlement to.

The UN Committee on the Rights of the Child recently communicated a pending case against Croatia and Slovenia for the chain refoulement of a Rohingya minor. The minor was brutalised by Croatian border officers, had his belongings burnt and his shoes taken before being pushed back on numerous occasions, including being the victim of a “chain pushback” from Slovenia.<sup>8</sup>

Furthermore, “chain pushbacks” have been confirmed illegal in Austria. The Administrative Court of Styria ruled in favour of the applicant in the case of a readmission to Slovenia and subsequent pushbacks to Croatia and finally to Bosnia. The Court recognized that the Slovenian police's compliance with readmissions from Austria without objections “can be explained by the subsequent chain deportation to Croatia and finally to Bosnia and Herzegovina”. The Court also found that readmissions to Slovenia without due process are a common practice of Austrian border guards as “the described procedure of the interrogated security bodies gave the Court the impression that the method of “push-backs” is frequently applied”.<sup>9</sup>

In November 2021, ECtHR recognized, for the first time, that Croatian authorities perpetrated pushbacks in the long-awaited case of M.H. and Others against Croatia. The case concerned a family of asylum seekers from Afghanistan who, upon entry to Croatian territory in 2017, were denied access to asylum and were pushed back to Serbia. During the night, Croatian border guards transported the family in a van to the border and instructed them to follow train tracks towards Serbia which resulted in a train hitting and killing their youngest daughter, six-year-old Madina Hussiny. The Court found that Croatia violated several rights protected by the Convention: the right to life for ineffectively carrying out an investigation into the death of little Madina, degrading treatment of the surviving children who were detained for longer than two months and whose prolonged detention lacked justification, and the right to individual application for the failure of Croatian authorities to comply with the interim measures and denying the lawyer access to the family in detention. Remarkably, the Court found in the case



of the Hussiny family that Croatia violated Article 4 of Protocol 4 prohibiting collective expulsions.<sup>10</sup>

In addition, the importance of the case lies also in the fact that the Court acknowledged the modus operandi of pushbacks: people's phones, documents, and belongings are taken and destroyed making it difficult for victims to bring evidence in courts. The Court relied on the similarity between the victims' account and available reports on pushback practices.<sup>11</sup> The Court also acknowledged that the Croatian state intentionally hindered the work of our member organisations Are You Syrious? and Centre for Peace Studies, as well as their lawyers, in order to prevent the case from reaching Strasbourg.<sup>12</sup>

At the same time, the ECtHR appears to have lowered protection standards in other cases of pushbacks. *A.A. and Others v North Macedonia*<sup>13</sup> originated from events that took place on March 15-16, 2016, with the official closure of the Balkan route, when N. Macedonia summarily returned over 1,500 people to Greece. This constituted a large-scale pushback event and a case of collective expulsion. The Court, instead of condemning the acts, expanded the exception in *N.D. and N.T. v Spain* and blatantly ignored evidence provided in the case that legal pathways, while available, were ineffective and inaccessible at the time.<sup>14</sup>

Despite consistent reports from civil society organisations (CSOs), United Nations (UN) Rapporteurs' and international media coverage, pushback practices, both at the EU's external borders and within the bloc, has continued uninterrupted. The opening of a new route to safety through Belarus, and the Baltic states' response confirmed pushbacks as the preferred policy instrument to address the issue of a chronic rift between the principle of freedom of movement and the need to migrate and seek safety on the one hand, and the flawed migration policy of 'Fortress Europe' on the other.



Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C



Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C.

While the identities of the men in black remains unknown, the Border Violence Monitoring Network's report shows that such attire is consistent with the Croatian Ministry of Interior's Intervention Police Units.

# OBSERVED FORMS OF TORTURE

Across Europe, border regions, detention centres, and remote locations have now become hotbeds of extreme cruelty, violence and torture. Evidence collected by the Border Violence Monitoring Network (BVMN) and affirmed by dozens of other NGOs, human rights watchdogs and international monitoring bodies show the acute violation of the rights of men, women and children transiting through Europe.

Despite extensive documentation, there has been a continued failure by States to launch investigations or hold individuals accountable. The failures of multiple States to prevent, punish and investigate, show how the use of torture has become a symptom of the externalization policy central to the European migration and border management regime.

Further to this, we are also concerned with the growing number of countries using disputed border regions, and so-called 'neutral zones' or 'no-mans lands' as a location of torture and inhuman treatment against people-on-the-move. Multiple well-publicised cases have demonstrated how hundreds of men, women and children have been pushed back to and left stranded in between official border crossing points or on islets with disputed claims, facing days or weeks of inhuman and degrading conditions.<sup>15</sup>

Through analysing over 1,633 pushback testimonies since 2017, recalling the experience of over 24,990 people, BVMN has identified six common typologies of torture and inhuman treatment used during pushbacks. These include the excessive and disproportionate use of force, Electric Discharge Weapons (EDWs), forced undressing, threats or violence with a firearm, inhuman treatment inside a police vehicle and inhuman treatment inside a police station.

Across all countries of reporting, reports of excessive and disproportionate force, including assaults using police batons, fists, kicking, police dogs or improvised weapons such as metal poles or tree branches are the most frequent in the testimonies collected. Testimonies from pushback survivors recall lengthy attacks by multiple police officers, sometimes lasting up to an hour, resulting in severe and long-lasting injuries. These attacks



have been carried out indiscriminately, with men, women and children all being subjected to extreme brutality at the hands of police or border authorities. It is now rare for people-on-the-move not to experience some form of excessive force during their detention and expulsion; 5.6% of testimonies collected by BVMN in 2021 do not recall excessive force being used against people-on-the-move.

Often in conjunction with the excessive and disproportionate use of force, police officers are regularly using gunshots or threats with firearms to induce fear among people-on-the-move. Testimonies have previously recalled officers enacting mock executions by holding a firearm directly to a person's head and have recalled officers firing directly towards people aiming their shots at their feet or close to their bodies. Evidence clearly depicts how in the majority of cases of threats or violence with a firearm, people are already detained and are complying with police direction. We, therefore, consider that this typology of torture is being used with the single aim to induce extreme fear and suffering.

In addition to gunshots and threats with firearms, BVMN has observed the regular and punitive use of Electric Discharge Weapons (EDWs) on people-on-the-move. The UN General Assembly established that EDWs are used to avoid lethal outcomes, yet they are "designed to inflict pain or suffering as a means of repelling or otherwise coercing the targeted persons".<sup>16</sup> While Electronic Discharge Weapons may, in some circumstances, be seen by policing authorities to be an appropriate last resort response when responding to violence, the Border Violence Monitoring Network has consistently documented the punitive and abusive use of EDWs across all countries of reporting, including Greece, Italy, Croatia, Romania, Bulgaria, Slovenia and Northern Macedonia. Since the beginning of BVMN's work in 2017, it has documented the use of EDWs in at least 57 incidents involving 1,213 people, 57% of these incidents involving minors.

*Activists and volunteers receive pictures from people on the move about the beatings and torture endured while undergoing pushbacks.*

*Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C*



Alongside the extreme violence that people transiting through Europe face, people-on-the-move are also routinely subjected to the cruel and inhuman practice of forced undressing. In 2021 and 2022 alone BVMN reported 160 incidents of pushbacks in which people-on-the-move were forcibly stripped of their clothing and belongings. In at least 115 of these incidents, minors were among the group being pushed back. Victims also testify to being forced to undress completely while being searched, and then being left to endure severely cold temperatures for as long as 8 hours. Often the undressing is followed or preceded by brutal beatings or other forms of physical violence. In an overwhelming number of incidents, victims report their belongings being stolen, including phones, money and identity documents.

The detention of people-on-the-move has become an intrinsic part of the European pushback process, and thus increasingly sites of mass torture have shifted from only occurring in remote border regions away from the purview of accountability mechanisms, to also occurring in police stations and detention facilities. Consistently, testimonies describe dilapidated detention conditions without proper sleeping or bathroom facilities, the withholding of food, water or medical treatment, or the use of incommunicado detention. Often, people-on-the-move recount detention facilities to be in “very dirty” conditions, foul smell, and no proper facilities like beds and functioning toilets. Multiple testimonies reported officers have responded with violence, namely hitting or beating, including against minors, when people-on-the-move have requested access to necessities, such as food, water, and bathroom facilities. BVMN has also recorded multiple testimonies which recall the use of informal and incommunicado detention sites, such as abandoned buildings and farm outbuildings, prior to pushbacks. There are few features to distinguish between treatment or conditions in official and unofficial detention sites, with testimonies recalling pushback victims being forced to drink from dirty communal toilets, overcrowding in detention cells or rooms and excessive violence being used at both types of sites.

Despite having already likely already been subjected to torture or inhuman treatment during apprehension or detention, the police authorities still concoct cruel and barbaric ways to endure suffering amongst people-on-the-move whilst being transported to border areas to be pushed back. Testimonies have depicted the use of extreme overcrowding in police vehicles, where people are crammed in so tightly that it is difficult to breathe. Additionally, testimonies have shown how police use extreme driving, speeding up and slamming on the breaks to throw the people detained in the vehicle from side to side, or forward and back. This often results in motion sickness and vomiting. Other survivors have explained how, in an attempt to avoid any scrutiny or oversight, the police have used non-official police vehicles, such as freezer trucks, to detain and transport them.

From apprehension, detention, to explosion, all aspects of a pushback are deliberately designed to inflict suffering on the victim. The methods of extreme cruelty that policing authorities use are indiscriminate with men, women and children all being subjected to human rights violations that we assert amount to torture and inhuman treatment.

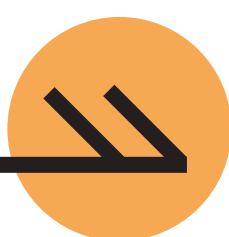






Illustration by Hannah Kirmes Daly, Brush&Bow C.I.C.

IOM camps in Bosnia have been set up to assist people on the move stuck in Bosnia. As Bosnia is not a EU member, these camps only provide a place of temporary stay as most people seek to apply for asylum in Europe.



# NEW PACT

*Authors: Hope Barker (BVMN), Milena Zajović (BVMN)*

In September 2020, the European Commission presented its plans for the future of migration and asylum management in Europe.<sup>17</sup> Whilst it has been widely acknowledged that an overhaul of the current system is imperative, the New Pact does little to quell concerns from NGOs, civil society groups, and human rights watchdogs. It has been widely criticised as a repackaging of the EU's failed 'hotspot' approach which saw thousands trapped in camps at borders and on islands in geographically disadvantaged states least equipped to deal with influxes, such as Greece and Italy.<sup>18</sup> Since then, key components of the New Pact have come under scrutiny in the European Parliament and in some cases started to be implemented. In this chapter we will focus our attention on the proposed pre-screening procedures, independent border monitoring mechanisms, the Schengen Borders Code (SBC) reform and the Instrumentalisation Regulation as files of particular importance.

## **Pre-screening mechanisms:**

Under the New Pact, proposed pre-screening procedures will hold all incoming third country nationals (TCNs) in de facto detention upon arrival pending health and age assessments, confirmation of identity, and a first assessment of their application for international protection, before being granted entry into the territory of any Member States (MS). These procedures would apply to all TCNs at external EU borders who cross

outside of official crossing points, present themselves at official crossing points without fulfilling entry requirements, are disembarked from SAR operations, or are apprehended within MS territory without fulfilling entry conditions. The move towards pre-screening centres normalises extremely rigid migration policies, adds further administrative barriers to accessing the asylum system and relies heavily on detention procedures which stand in direct contradiction to international human rights instruments. According to the current Reception Conditions Directive,<sup>19</sup> an applicant for international protection should not be detained on the basis of their status as an asylum applicant, and the Geneva Convention forbids detention for the sole reason of lodging an application for international protection. Although the time spent in so-called pre-screening centres does not formally constitute detention, it represents an extreme violation of the right to liberty as the norm when detention should always be a measure of last resort.

The pre-screening mechanisms proposed are reminiscent of failed approaches to managing migration in EU Member States (MS) over the last seven years. One chilling example is that of the Hungarian ‘transit zones’, which were created in 2015 after the erection of razor-wire topped fences along the borders with Croatia and Serbia.<sup>20</sup> In these zones, individuals were held in prison-like conditions in shipping containers whilst their applications for international protection were processed – in some cases this led to detention for up to 400 days.<sup>21</sup> Cases of extreme human rights abuses were uncovered in these centres, for example in the systematic starving of detainees.<sup>22</sup> The sites, in Röske and Tompa, were closed in 2020 when the Court of Justice of the EU (CJEU) found Hungary was in breach of EU law by unlawfully detaining applicants of international protection.<sup>23</sup>

A more recent example comes from Greece, another EU MS at the external borders that has been found to be in violation of a number of fundamental rights guarantees in its actions concerning border management. In September 2021, Greece inaugurated its first Closed Controlled Access Centre (CCAC) (or Multipurpose Identification and Reception Centre – MPRIC – in EU terminology) on the island of Samos, which has the first of five facilities built on the Aegean islands of Samos, Lesbos, Chios, Kos and Leros. The project was funded by €250 million from the EU, with €43 million dedicated for Samos CCAC alone.<sup>24</sup> As announced in a circular issued by the Ministry in 2021,<sup>25</sup> these centres are now the only places in which individuals can lodge their applications for international protection – in spite of only two centres (one on the islands and one on the mainland) functioning at the time of the announcement. These centres are subject to increased and centralised surveillance through the new CENTAUR surveillance system, described as an ‘Integrated Digital Electronic and Physical Security management system’, which monitors the perimeter and interior of the premises using camera and motion analysis algorithms.<sup>26</sup> This new strategy appears to comprehensively monitor each inhabitant of these new prison-like structures and includes central management from the seat of the Ministry of Migration and Asylum (MoMA), who preside over the system. It is clear that these new centres, along with their accompanying security apparatus, are being used to justify the arbitrary detention of asylum seekers who are housed in these structures in spite of numerous reports that have detailed their detrimental effects. These examples evidence previous and current attempts at establishing pre-screening mechanisms in MS, and how those attempts have been found in breach of international human rights law or are unfolding in a way that implies further violations which are to come.

### — Independent Monitoring Mechanisms (IMM):

The proposal for the implementation of pre-screening procedures also foresees the creation of an IMM to “investigate allegations of non-respect for fundamental rights in relation to the screening”.<sup>27</sup> On the topic, Commissioner Johansson proposed the creation





Militarization of the border zone and Podlasie region, Poland

of ‘a new independent monitoring mechanism for all Member States [...] to make sure that there are no pushbacks at the borders’.<sup>28</sup> This point is crucial, in that the monitoring mechanism currently laid out in the New Pact is limited in scope to only monitoring potential human rights violations within the proposed new screening procedures at official sites (ex. police stations, reception or detention centres, etc) leaving unmonitored vast stretches of green and blue borders – such a limited scope sets the proposed mechanism far from its stated goal of stopping pushbacks at the borders. As it stands, Member States are required to set up IMMs in compliance with EU and national law and to ensure that allegations of potential violations are dealt with “effectively and without undue delay”. Particular emphasis is placed on ensuring compliance with national laws on detention. The mechanism also obliges states to provide “adequate safeguards to guarantee the independence of the mechanism”, guidelines and training around which will be provided by the EU’s Fundamental Rights Agency (FRA). The Pact leaves fairly open-ended provisions around who would run the mechanism.

Across the last two years there have been attempts to set up IMMs in both Croatia and Greece, both of which have been plagued by mismanagement, cover ups and ultimate failure. Following the investigation of the EU Ombudswoman in their failure to establish the independent monitoring mechanism,<sup>29</sup> in July 2021, Croatian authorities announced the commencement of a pilot project titled the ‘Independent Mechanism for Monitoring the Conduct of Police Officers in the Area of Illegal Migration and International Protection’ for a period of one year.

Croatian civil society actors and international organisations raised several alarms<sup>30</sup> regarding the announced mechanism, among them: a lack of unlimited and unannounced visits to the green border areas where most human rights violations occur, the selection process for candidates carrying out the monitoring which was managed entirely by the Croatian Ministry of Interior (Mol), and the allocation of funding, which was also managed by the Croatian Mol. In spite of this, the first interim report of the IMM was published in December 2021 and explicitly mentioned pushbacks three times. It was, however, deleted from the internet within less than 24 hours of its publication and was re-published a week

later with these crucial mentions removed again demonstrating the ways in which the mechanism is subject to political pressure and unable to function independently.

The yearly report<sup>31</sup> published by the Mechanism in 2022 again failed to recognise the systematic nature and illegality of pushbacks. Even though it did casually mention “illegal conduct of Croatian police officers towards migrants was registered (e.g. use of force) aimed at their forcible return”, it qualifies this illegal expulsion as one of the “difficulties” that migrants “face”, and not as potentially criminal acts, the supervision and prevention of which was precisely the main purpose behind the creation of the Independent Monitoring Mechanism.

Following a 6-month delay, the Mechanism was renewed in November 2021, and the Croatian Ministry of the Interior signed the agreement with the same implementers. The renewed Agreement<sup>32</sup> seemingly expands the mandate of the Mechanism: in addition to the “announced observations”, which means observations based on previous written notification, the Mechanism is now granted the mandate for “unannounced observations”. However, the Agreement explicitly defines them as observations which are carried out “with a prior oral notification and the arrival of monitors at the police station”, thus automatically annulling the idea of the unannounced border visit, which was a critical issue and recommendation by multiple actors, including the Advisory Board of the Mechanism.

In August 2021, amid mounting evidence and condemnation of pushbacks perpetrated by Greek authorities, the European Commission reiterated its demand for an IMM in Greece, this time as a precondition for the release of €15.83 million requested for the Hellenic Coast Guard.<sup>33</sup> By September, contradictory statements had appeared with Greek Minister for Migration, Mitarakis, stating that Greece had “no plans” to set up such a mechanism<sup>34</sup> and Commissioner Johansson releasing a statement that “an independent and credible monitoring mechanism is being developed by the Commission and the Greek authorities”.<sup>35</sup> Following the publication of further visual evidence of pushbacks in the Aegean by Lighthouse Reports in October,<sup>36</sup> the Greek government announced the designation of the National Transparency Authority (EAD) to act as the independent body running the IMM in Greece. The EAD is a relatively new agency, established in 2019 to take on public auditing duties. The current director of the EAD is a relative of the current Greek Prime Minister and Governor of Athens, again demonstrating an immediate lack of independence from the ruling government. The first press release was published in March 2022 following up on Lighthouse Report’s findings. The EAD stated they had found no evidence of pushbacks and initially refused to publish the full report.<sup>37</sup> In May the full report was made public but had to be swiftly removed due to improper redaction which gave away the personal details of individuals and also revealed that individuals working within security bodies and immigration-related authorities, including the Hellenic Coast Guard and Hellenic Police, constituted 45% of the participants interviewed about allegations of illegal pushbacks.<sup>38</sup> As the conditions for people-on-the-move in Greece have continued to deteriorate in the areas of access to asylum, housing and education and the general protection of fundamental rights guarantees, there have been no further attempts by the Greek state or the Commission to ameliorate the issues that have sprung from having the EAD function as the head of the IMM in Greece. In fact, on 24th November this year the Commission Vice President, Margaritis Schinas, announced an additional €1.9 billion of funding to support Greece with “migration issues”.<sup>39</sup>

While a truly independent monitoring mechanism (IMM) with the ability to protect fundamental rights and hold human rights perpetrators accountable is welcomed, BVMN is concerned that a mechanism that lacks methodological scope, capacity, independence and institutional accountability will not only be incapable of monitoring and defending fundamental rights but may also be used to discredit claims of human rights violations



and as a white-washing tool for member states perpetrating abuses and the EU's border management.

### — The Schengen Borders Code (SBC) Reform and the Instrumentalisation Regulation:

Another file proposed under the New Pact is a reform of the Schengen Borders Code (SBC)<sup>40</sup> that defines rules for the movement of people and goods within the Schengen zone. The Commission Proposal introduces several amendments that would have devastating consequences for the fundamental rights of people-on-the-move, namely Article 1 on 'situations of instrumentalisation of migrants', which must be analysed together with the Instrumentalisation Regulation, and Article 23a on internal readmission procedures.

The concept of 'instrumentalisation' is central to the New Pact and springs directly from the events at the Greece-Turkey land border in March 2020,<sup>41</sup> at the Morocco-Spain border in Ceuta in May 2021,<sup>42</sup> and at the Poland-Belarus forest border in May and July 2021.<sup>43</sup> Each of these situations had devastating consequences for people-on-the-move and resulted in numerous deaths, the accurate figures of which are impossible to attain. However, the Commission seeks to formalise their response by writing it into legislation via the New Pact. The term 'instrumentalisation' is used to describe a situation where a third country "instigates irregular migratory flows into the Union by actively encouraging or facilitating the movement of third country nationals to the external borders" in a way that may "put at risk essential State functions, including its national integrity, the maintenance of law and order or the safeguard of its national security". In these situations, both the SBC reform and the Instrumentalisation Regulation codify that Member States may derogate from their responsibilities under the EU asylum acquis. The mechanism is permanently available to MS meaning they can essentially derogate at will from their obligations. Furthermore, there is a distinctive lack of objective elements and facts when determining a situation of 'instrumentalisation' which leaves the regulation even more open for interpretation by MS. The SBC puts forward the imposition of restrictive measures such as limiting border traffic and closing border crossing points as actions that may be taken during such situations, again erecting numerous more barriers to those seeking to access the asylum system. The amendments laid out in the SBC Reform and in the Instrumentalisation Regulation constitute potential violations of the Asylum Procedures Directive, the EUCFR (Articles 4, 18 and 19), and the ECHR (Articles 3 and 4). A number of CSOs have come out against the codification of the instrumentalisation concept into law, calling it disproportionate, counterproductive and misguided,<sup>44</sup> but negotiations in the Parliament continue.

The Proposal also seeks to implement a procedure for the transfer of TCNs apprehended "in the vicinity of the internal border" in Article 23a but fails to consider that secondary movements largely involve people-on-the-move in search of protection, whose attempt to move within EU Member States must be addressed according to the EU asylum acquis, and in particular through Regulation 2013/604. Since 2015 Member States have resorted to simplified and informal return procedures to manage migration flows at internal borders. The Italian experience allows us to state that the existence of bilateral readmission agreements with neighbouring countries is a tool that offers possibilities for a distorted use of transfer procedures precisely because of the systematic misapplication of the guarantees provided to protect the right to asylum and the right to an individual assessment of the entry conditions. Several Courts in different Member States have recognized that such "internal pushbacks" were characterised by the lack of an individual assessment and the unlawful involvement of children. In July 2021, the Austrian Administrative Court Steiermark ruled that the readmission of a Moroccan national at the border with Slovenia was unlawful as his request for asylum was ignored. In Slovenia, the Administrative Court ruled that the Republic of Slovenia violated the applicant's right to asylum, the prohibition of collective expulsions and the principle of non-refoulement by denying a Cameroonian



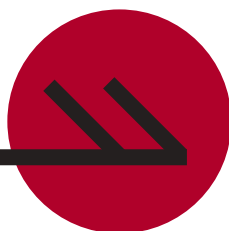
national access to asylum. This ruling has been confirmed by the Slovenian Supreme Court in April 2021. In 2020, cases of readmissions to Slovenia from Trieste and Gorizia were massively implemented without any formal procedure or decision. On 18th January 2021, the Civil Court in Rome ruled that such practices were in breach of international and European law, because they violated the right to *non-refoulement*, the right to apply for asylum and the procedural right to an individual assessment and an effective remedy.<sup>45</sup> The new text of Article 23a (Council general approach, pp. 15-16 and 31-33) leaves wide autonomy for states to activate the new transfer mechanism, in addition to or as an alternative to the application of bilateral agreements and in many ways seeks to legalise these “internal pushbacks” that have widely been condemned in national courts. The risk is an escalation of violations and increased difficulty in intervening to protect the rights of migrants.

### — Conclusion:

Since the Pact was presented in September 2020, negotiations have remained largely at a standstill with disagreements between the MED 5, who largely bear the weight of managing new arrivals into the bloc, and Northern European Member States proliferating throughout the ongoing debates.<sup>46</sup> At the same time, an increase in irregular arrivals throughout 2022<sup>47</sup> and increased pressure on Austrian reception and condition facilities<sup>48</sup> has seen a return to the ‘crisis’ narrative of 2015, with a recent emergency meeting of the Justice and Home Affairs Council on 25th November this year.<sup>49</sup> In light of this, a new plan for the Western Balkans is set to be announced on the 8th December,<sup>50</sup> to go alongside new provisions provided in the Pact. This book evidences how the majority of EU MS are in violation of the EU asylum acquis, denying individuals the right to access asylum, arbitrarily detaining them, and illegally pushing them back. The New Pact should have been an opportunity to prioritise a fair and humane policy framework for the management of migration, but instead seems only to strengthen and repackage failed approaches.

Opening of  
Kos refugee  
camp





# FRONTEX

*Authors: Alexandra Bogos (BVMN), Giulio D'Errico (AYS), Elena Beck (BVMN)*

Frontex, or the European Border and Coast Guard Agency (EBCG), was created to streamline cooperation in security practices at the EU's external borders, through training, staff deployments and joint operations. It has been operative since 2005 but its mandate and budget has expanded manifold in the last years. At the end of 2021, Frontex had a budget of €725,464,528 and an overwhelming number of 1,544 staff, 861 temporary agents, 506 contract agents and 187 seconded national experts, doubling in size from two years before.<sup>51</sup>

Regulated by the 2019/1896 EU Regulation,<sup>52</sup> Frontex provides informational and technical support to Member States (MS), non-EU countries and, more recently, to non-European countries. The Agency is now in charge of pivotal aspects of the Union's border security architecture: EUROSUR<sup>53</sup> – continent-wide surveillance system that uses drones, reconnaissance aircrafts, offshore sensors and satellite remote sensing; the forthcoming Entry/Exit System (EES) – a large-scale IT system for the automatic monitoring of the border crossing of all third-country nationals; and the Union's deportation and 'voluntary return' mechanisms.

Whilst Frontex can deploy its personnel and officers only at the request of Member States, since 2020 it has been training its own standing corps, an independent border and coast guard army which counted 629 officers at the end of 2021. The Regulation granted staff powers to use force and to carry its own weapons.<sup>54</sup> A supervisory mechanism on the use of force was established,<sup>55</sup> however one can anticipate its success to be similar to that of its fundamental rights office.

As of 2020 Frontex came under increased scrutiny when activists and the media published reports on the Agency's involvement in pushbacks and other human rights violations in border zones.<sup>56</sup> Since then an internal inquiry on fundamental rights violations<sup>57</sup> took place, the European Court of Auditors audited the Agency,<sup>58</sup> the European Anti-Fraud Office (OLAF) concluded one investigation;<sup>59</sup> the European Ombudsman opened multiple inquiries into Frontex's complaints mechanism and debriefing interviews,<sup>60</sup> as well as into the Agency's failure to respond to requests for public access to documents<sup>61</sup> and to maintain a public registry of documents;<sup>62</sup> the Frontex Scrutiny Working Group was created by the LIBE Committee,<sup>63</sup> and the European Parliament froze part of the Agency's budget<sup>64</sup> and later in 2022 overall refused the discharge of 2020 budgets.<sup>65</sup> Under mounting pressure, Fabrice Leggeri resigned. The reasoning for this became clear when the OLAF report was leaked and made public, despite the Agency's refusal to disclose it.<sup>66</sup>

None of these measures dampened the spirit of the Agency; Frontex deployed a rapid border intervention team (RBI) to Greece in March 2020,<sup>67</sup> at the same time as the country was suspending the right to asylum.<sup>68</sup> Since then, it has expanded its operations in the Balkans, launching its first operations in Montenegro<sup>69</sup> and Serbia,<sup>70</sup> strengthening its agreement with Albania where it deployed standing corps officers,<sup>71</sup> and organised a photo competition.<sup>72</sup> The Agency has deployed officers to Lithuania and Latvia,<sup>73</sup> provided Cyprus with support in returns, strengthened its cooperation with Morocco,<sup>74</sup> increased cooperation with Senegal and Mauritania, agreed to send officers to North Macedonia,



sent a plane to survey the English Channel<sup>75</sup> and rebranded itself as a feminist,<sup>76</sup> LGBTQ+ friendly<sup>77</sup> and green<sup>78</sup> Agency. No less significant, Frontex began construction of its new headquarters in Poland.<sup>79</sup>

While the Agency has been celebrating alleged successes, BVMN has recorded an unparalleled number of reports of pushbacks and an increase in violence against people-on-the-move in Frontex operational areas across the past 2 years.

At the Greek-Turkish land border, one recorded practice is the abandonment of transit groups on small, uninhabitable islets along the Evros river.<sup>80</sup> Upon urging the Agency to intervene, BVMN was told that the islets are not in Frontex's operational area.<sup>81</sup> In the Aegean sea border, Frontex has been found to be complicit in fundamental rights violations in the leaked OLAF report. There is a recorded instance in which the Agency deliberately pulled its aerial surveillance assets so as not to be witness to violations perpetrated by the Hellenic Coast Guard (HCG). A recent advocacy campaign by member organisation I Have Rights,<sup>82</sup> found that regardless of knowledge of such events there have been no Serious Incident Reports (SIR) filed on the island of Samos in over 1,000 days. In total, BVMN has alerted Frontex of over 10 situations of people-on-the-move on Greek territory in need of rescue and fundamental rights safeguards<sup>83</sup>.

Statewatch and BVMN jointly submitted an unanswered letter of concern to Frontex about egregious fundamental rights violations at the North Macedonian-Greek border.<sup>84</sup> The Agency refused to disclose their presence in this region, while people-on-the-move were reporting the involvement of foreign officers in pushbacks conducted in the area. Eventually, it was made known that Frontex had indeed deployed officers at this border location, on Greek territory, when Italian human rights defenders were pushed back. The four human rights defenders were apprehended by Frontex officers who, together with national authorities, escorted them back to the border despite being legally in the country.<sup>85</sup>

Pushbacks from Albania to Greece have become a prevalent practice among Albanian authorities, coupled with a systematic denial of access to asylum. BVMN addressed a letter of concern to Frontex's former Executive Director, Leggeri, as these violations occurred in their operational area.<sup>86</sup> BVMN has also presented evidence to the Frontex Scrutiny Working Group together with B. in an informal hearing. B. presented video, audio and photographic evidence of his pushback from Albania, after being apprehended and debriefed by Frontex. Photographs showed Frontex vehicles in the camp in Kapshtice from where he was pushed back and from where others confirmed being pushed back as well.

In July 2021, Frontex deployed troops to Lithuania's border with Belarus.<sup>87</sup> A month later, the Lithuanian government approved a new border management procedure that allows for the indefinite detention of asylum seekers, prevents them from registering an application if they had entered irregularly, and permits their immediate removal across the border. In July 2022, the Court of Justice of the European Union (CJEU) found that the Lithuanian migration legislation was in violation of EU law.<sup>88</sup> Nevertheless, Frontex continues to apprehend and hand over people-on-the-move to Lithuanian authorities.

Discussions about Search and Rescue (SAR) within Frontex go back to its creation, and at the European level even earlier. Coordination of SAR operations between EU countries have historically been difficult, especially due to "heterogeneous legal frameworks on SAR"<sup>89</sup> and to the first country of asylum principle, which convinced national authorities to look with distrust at any coordination attempt. While insisting that it is not a "SAR

Agency”, Frontex has increasingly rebranded its operations as life-saving missions. In line with this, SAR responsibilities are prescribed in the Regulation (EU) 656/2014<sup>90</sup> yet, without challenging it, this regulation is now being used to rebrand maritime pushbacks as ‘prevention of departure’.<sup>91</sup> More thoroughly, a joint investigation by Lighthouse Reports, Der Spiegel, Libération, and ARD<sup>92</sup> revealed that Frontex’s aerial surveillance in the Central Mediterranean Sea is essential and directly contributes to the interception and return of people fleeing from Libya. This includes cases where Frontex alerted the so-called Libyan Coast Guard when NGO rescue vessels or commercial ships were closer.

In an attempt to clarify Frontex’s role in pushbacks, Keady-Tabbal and Bachiller Lopez coined the concept of ‘division of labour’.<sup>93</sup> Frontex officers assist national authorities in surveilling the border areas or in apprehending people-on-the-move. They proceed to notify or hand over the persons to national authorities who then push them back. That is not to mention the direct role Frontex officers play in pushbacks when vessels stir waves to prevent boats from entering territorial waters.<sup>94</sup>

It has become increasingly clear that Frontex severely lacks accountability mechanisms both within the Agency and outside of it. It sidelines fundamental rights in its operations and cannot be held accountable. The resignation of the former Executive Director is a meagre measure in an EU Agency overrun by mismanagement, harassment, cover-ups of crimes committed by EU Member States and violations of the rights of people-on-the-move. What can be taken positively is that recent investigations have managed to reveal without doubt, to both policy-makers and citizens, that Frontex is perpetrating fundamental rights violations and needs to be held accountable and controlled. In spite of a number of civil society organisations (CSOs) calling for Article 46 to be triggered and for Frontex to withdraw from Member States that are in direct contravention of EU law, the Agency has insisted that such a state of affairs calls for them to have increased presence in these regions. However, the above evidence demonstrates the plethora of ways in which increased Frontex presence has not amounted to increased accountability for Member States and further compliance with EU law.



Frontex armbands spotted at a gas station near the Greece-Türkiye land border crossing.



Intervention at the Polish-Belarusian border zone.  
Photo: Soja Photography



# CRIMINALISATION

*Authors: Natalie Gruber, Gigi Aulsebrook (BVMN), Elena Beck (BVMN), Miha Turk (Infokolpa)*

The securitisation of migration and criminalisation of movement has been developing across the last three decades but was markedly accelerated by the terrorist attacks of September 11, 2001 in the US, and the Madrid (2004) and London (2005) bombings. These global events were rhetorically linked by world leaders to incoming migratory flows, and thus marked the initiation of a state of exception in handling the issue of migration. This has led to a process of rebordering across Europe through the construction of walls and fences both at external and internal borders, resulting in mounting hurdles to access asylum, the expansion of detention and deportation capacities, and the proliferation of criminal sanctions for 'migration offences'.<sup>95</sup>

The phenomenon of criminalisation targets, first and foremost, people-on-the-move themselves.<sup>96</sup> Across Europe, thousands are imprisoned with absurd sentences after crossing borders, and without fair trial. In Greece, foreigners now make up ~60% of the prison population.<sup>97</sup> Serving the purpose of deterring people from entering European territory, the criminalisation of those on the move has been extended to the secondary criminalisation of Human Rights Defenders (HRDs) in order to deter those working in solidarity with people-on-the-move from continuing their support work, while discouraging others from engaging in similar activities. These developments are additionally linked to the phenomenon of a 'shrinking space' for civil society that, in combination with increasing implementation of restrictive legislation for civil society organisations (CSOs), has resulted in a limited scope of action for HRDs committed to monitoring access to asylum and documenting fundamental rights violations.<sup>98</sup> These dynamics extend to additional

groups, such as journalists reporting on related matters as well as lawyers representing people-on-the-move and unaffiliated activists.<sup>99</sup>

In recent years, the criminalisation of people-on-the-move<sup>100</sup> and HRDs increased dramatically, occurring in several different forms.<sup>101</sup> Thousands of people-on-the-move and HRDs have been detained or arraigned across Europe, oftentimes subject to strategic lawsuits against public participation (SLAPP). Charges against people-on-the-move often refer to 'illegal stay' in the country when, in a number of Member States, access to asylum is blocked and there are limited, if any, options to regularise a person's stay. Another common charge is the 'facilitation of illegal entry' which is used disproportionately against people-on-the-move for driving boats in the Aegean and Mediterranean, often under coercion or to avoid shipwrecks and loss of life.<sup>102</sup> Furthermore, it is used to criminalise HRDs who are supporting people-on-the-move with accessing their right to lodge an asylum application and monitoring fundamental rights violations at and within the EU's borders. For example, in Croatia, Dragan Umičević, a volunteer of BVMN member Are You Syrious (AYS), who was involved in monitoring access to asylum was charged with an unprecedented fine of 43,000€ and imprisonment.<sup>103</sup> While some of the charges were dropped in 2021 after an appeal, the volunteer was fined 8,000€, additionally ordering him to pay for the court costs.<sup>104</sup> In other cases, anti-terror charges such as 'espionage' and 'violation of state secrets' have also been used against HRDs.<sup>105</sup> BVMN members Mare Liberum and Josoor have been accused of these charges in Greece<sup>106</sup> for documenting and reporting on pushbacks in the Aegean Sea. While, until this day, no court trial has taken place, the incident has created increasing pressure on the accused individuals, and initiated negative media coverage and defamation of the Civil Society Organisations (CSOs) involved.<sup>107</sup>

Informal criminalisation is the form of criminalisation most observed with BVMN member organisations. Acts of informal criminalisation can be categorised as acts of repression, threats, intimidation, and the disturbance or destruction of services. Of increasing concern is the attributed threat or use of physical violence. Informal criminalisation is no less destructive than formal criminalisation, rather the arbitrariness of these actions threatens to erode rule of law and makes spaces for people-on-the-move and humanitarian work insecure and unpredictable.<sup>108</sup> For instance, BVMN observed an increase in incidents targeting organisations' premises or other properties (e.g. vehicles). However, volunteers and employees, as well as their work, are also targets of harassment. BVMN has observed verbal violence in several forms, among them "yelling, insults, aggressive questioning, sexual harassment, and threats" and the targeting of "indirect supporters", like members of the local community. While incidents targeting premises and properties mainly stem from non-governmental actors, verbal violence stems from both police and other authorities as well as non-governmental actors.<sup>109</sup>

Another salient example of informal criminalisation and pressure on HRDs took place in Croatia, Omer Essa Mahdi, the partner of Tajana Tadić, then employee of Are you Syrious? (AYS), had his international protection revoked after he refused to become an informant for the Security and Intelligence Agency (*Sigurnosno-obavještajna agencija* or SOA). The revocation was based on unsubstantiated allegations that he represents a "threat to national security" while the authorities were fully aware of the nature of his relationship with a HRD<sup>110</sup> involved in public advocacy and strategic litigation against Croatian authorities,<sup>111</sup> and comes after years of intimidation and harassment.

Following the Croatian example of misuse of secret services against activists, in January 2022, the now-former Slovenian government accepted an Action Plan (AP) on Countering Terrorism and Violent Extremism 2022-2024 that would give the authorities legal justification for surveillance of the civil society under certain conditions. The AP put



a heavy focus on “cross-border” and “international” organizations, speculating that these provisions could be used by the authorities to justify the surveillance of NGOs.

Although the Action Plan was valid for 8 months, the Ministry of the Interior has stated that it has not conducted any surveillance of NGOs and has not instructed other state agencies to do so as these provisions have been removed from the AP in September 2022. Nevertheless, the inclusion of non-governmental organizations in the AP made under the pretext of being criminal societies was a dangerous step towards the use of police surveillance and control over the activities of organizations that publicly oppose state violence against migrants. Slovenian political newspaper Mladina explicitly warned<sup>112</sup> that under such provisions organizations such as Border Violence Monitoring network and its members could be targets of surveillance.

Another form of informal criminalisation is constituted by disproportionate scrutiny of CSOs by governmental actors.<sup>113</sup> Forms of scrutiny might involve harassment through excessive administrative controls or audits and surveillance by law enforcement. Arbitrary acts of policing of people-on-the-move and CSO members have become regular occurrences. Arbitrary detention or body and house searches, either backed up by baseless accusations or without reasons given, frequently lead to people being held in both formal and informal custody for hours, days, or even weeks before being released free of charges. This is usually accompanied by threats, aggressive interrogations and intimidation. BVMN is observing increasing incidents of scrutiny in nearly all countries where members are active, but in particular in Greece, Croatia, Bosnia and Herzegovina and Serbia.<sup>114</sup> For Croatia, these incidents were mainly linked to the two member organisations’ (AYS and Centre for Peace Studies) advocacy and strategic litigation in the case of the tragic death of 6-year old Afghan refugee Madina Hussiny.<sup>115</sup> In Greece, BVMN member organisation Mare Liberum has repeatedly experienced harassment in the form of excessive administrative controls or audits, surveillance by law enforcement, and serious threats by the Hellenic Coast Guard (HCG) in the form of threatening with firearms. At the same time, different forms of surveillance technologies are increasingly deployed in Greece, in order to monitor HRDs and journalists working on the topic of migration.<sup>116</sup>

BVMN observes an increase in criminalisation incidents related to visa applications and other forms of stay permits, in particular an increase in bureaucratic hurdles for their international volunteers and employees when applying for a visa in order to work with local grassroots organisations. The imposition of increasing challenges to uphold one’s visa status often results in the individuals leaving the country, making it more challenging for CSOs to continue their operations. In particular, along the so-called Balkan route organisations primarily depend on international team members. Particularly, for non-EU nationals, among them former people-on-the-move, this introduces the danger of deportation to their country of origin.

Aforementioned forms of direct interference in CSOs’ operations by police and other state actors are usually accompanied by smear campaigns and defamation in the media, often following statements made by high-ranking government officials. These feed into the narrative of migration as a security threat, incite hatred, further stigmatise and dehumanise people on the move, while delegitimizing supporters and discrediting HRDs while legitimising threats and violent attacks.<sup>117</sup> BVMN observes this form of criminalisation in particular in Greece.<sup>118</sup> The most recent example is from May and June 2022, linked to NGOs filing Rule 39 submissions to the ECtHR on behalf of pushback survivors being stuck on small, uninhabitable islets in the Evros river. Newspaper articles were mentioning details on investigations against the involved NGOs, including the undisclosed member of the BVMN, while at the same time wrongfully implying their involvement in smuggling activities.<sup>119</sup>

The consequences of criminalisation for HRDs and people-on-the-move are immense. Many CSOs are forced to change location or quit crucial support work altogether, others have to spend considerable resources combatting criminalisation and smear campaigns. Some BVMN member organisations have chosen to remain anonymous in order to protect their support projects, and avoid being targeted due to their advocacy work. This fear is more than justified: 8 of 12 of BVMN's member organisations have been targeted by criminalisation, either in a formal or informal way.

Since the beginning of 2021, this has only led to the withdrawal of funding for one member organisation,<sup>120</sup> but has severely impacted their operations: in February 2022, BVMN member Mare Liberum "had to halt [their] operations at sea due to a change in Greek law",<sup>121</sup> resulting in the non-existence of independent monitoring activities in the Aegean Sea.<sup>122</sup> In addition, in 2022, BVMN member Josoor was forced to dissolve, in part due to a series of criminalization attempts. This occurred against a backdrop of new laws and changes which made Josoor's operations in Turkey impossible.<sup>123</sup>

The intensification of criminalisation has mainly impacted people-on-the-move, by limiting their access to essential services and fundamental rights as provided for and monitored by CSOs. Through the criminalisation of CSOs, people-on-the-move are often left without the provision of crucial support and direct aid that governments are not supplying them with, while at the same time stifling monitoring activities around access to and violation of fundamental rights.

Criminalisation is an evolving phenomenon which, arguably, aims to deter people-on-the-move in an attempt to end irregular migration into Europe by reducing safe and legal pathways that allow individuals to claim their rights as enshrined in international law. It forces individuals to take evermore dangerous routes and engage with actual criminal networks to reach Europe and claim asylum which puts them at risk of exploitation by smuggling networks. The criminalisation of migration has led to frightening levels of stigmatisation and dehumanisation, a stifling effect on civil society, and therefore the increasing stigmatisation of people-on-the-move and those supporting them. In a landscape where illegal pushbacks have been systematised and violence at borders normalised, these developments, which leave thousands of people vulnerable to vicious attacks, threaten to undermine rule of law and democracy in Europe.



Graveyard of people-on-the-move, Evros, November 2021.  
Photo: Petra Molnar



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