

Surprisingly surprised

While undeniable evidence on the systematic use of pushbacks as a de facto tool for border management prevails, some remain bewildered when the rights violations are put in the spotlight.



Protecting Rights
at Borders

SEPTEMBER 2023

Pushbacks are “various measures taken by States which result in migrants, including asylum-seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of non-refoulement”

– United Nations Office of the High Commissioner for Human Rights¹

Summary

Surprisingly surprised is the seventh report in the series published by Protecting Rights at Borders (PRAB)², an initiative aiming to document evidence of the use of illegal pushbacks in the context of border management in Europe. The initiative, through its collaborative efforts, also serves to advance strategic litigation across borders for people affected by widespread and systematic pushbacks and other rights violations at Europe’s doorstep. Data is gathered by non-governmental organisations (NGOs) and grassroots initiatives across Europe who have joined forces in the PRAB initiative to create a solid evidence-base, anchored in direct observation and interviews with persons on the move.

This report covers the period from 1 May to 31 August 2023. Data collected directly by PRAB partners or obtained from Government sources document a total of **9,515** pushback instances during the four-month reporting period. As part of the documentation, 2,030 persons were interviewed by PRAB partners to record the details of their demographics, migratory routes, and the rights violations they reported being exposed to. While the 9,515 pushbacks documented by PRAB during the past four months may seem a high number, it is evident that these represent only a small sample of the actual number of illegal pushbacks at European borders.

The vast majority (over 83%) of those reporting having been pushed back are adult males. Nearly every third pushback (31%) involved children. Of particular significance are the pushbacks of 141 unaccompanied and separated children. Numerous reports of violence, as well as inhuman and degrading treatment, are collected, particularly at the borders between Croatia and Bosnia and Herzegovina and between Hungary and Serbia. Lack of access to asylum procedures is also documented, especially from people at the Hungarian-Serbian border and the French-Italian border.

During the period covered by this report, events took place that exacerbated the challenges experienced by persons on the move. They include:

- Continued cases of fatalities in the pursuit of reaching and crossing borders, as well as many people reported missing.
- **Belarus** granting visas to growing numbers of persons from Middle Eastern, African and Latin American countries, with a resulting augmented pressure on the border with the EU.
- **Poland** increasingly militarising the border with Belarus and starting to insist asylum claims can be accepted only at official crossing points along that border.
- **Lithuania** detaining higher numbers of persons entering from Latvia.
- **Croatia** strengthening the use of drones, and resorting to cameras, to identify people.
- **Italy** expelling people based on discrepancies between the personal data contained in the *refus d’entrée* issued by French authorities and those registered upon first entry to Italy and requesting discretionary documentation to grant access to asylum procedures, while being unable to accommodate all asylum seekers in reception centres.
- In **Greece**, persons on the mainland not being able to access asylum procedures as the online platform, representing the only channel, was not in operation during most of the reporting period (only resuming operating on 21 August 2023).

¹ www.ohchr.org/en/special-procedures/sr-migrants/report-means-address-human-rights-impact-pushbacks-migrants-land-and-sea.

² See: <https://pro.drc.ngo/what-we-do/core-sectors/protection/pushback-protecting-rights-at-borders/>.

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



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



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

OPEN SOCIETY FOUNDATIONS

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

Table of contents

1. Status quo at Europe's borders = acceptance of pushbacks?	p. 4
1.1 Overview of pushback numbers and trends	p.4
1.2 Pushbacks from 01 May to 31 August 2023	p.7
1.3 Denial of access to EU territory remains common, and expulsions continue along with other rights violations	p.9
2. Turning people away - a common tactic used by EU Member States and the European Commission	p.11
2.1 Limiting protection space and legalising pushbacks - a prevailing trend that became an accepted practice?	p.11
2.2 More deals to stem arrivals by preventing departure towards the EU?	p.13
3. Is accountability at EU borders asking the impossible?	p.14
3.1. Border monitoring mechanisms appear designed to be vague	p.14
3.2 The court, the last resort and only hope to access justice and uphold the Rule of Law?	p.15
4. Access to information – an international right, but out of reach for those 'welcomed' with rights violations at Europe's border	p.16

List of Acronyms

ASGI	Associazione per gli Studi Giuridici sull'Immigrazione
DRC	Danish Refugee Council
DV	Diaconia Valdese
ECRE	European Council on Refugees and Exiles
EPIM	European Programme for Integration and Migration
EU	European Union
FRONTEX	European Border and Coast Guard Agency
GCR	Greek Council for Refugees
HCIT	Humanitarian Center for Integration and Tolerance
IOM	International Organization for Migration
MoU	Memorandum of Understanding
MYLA	Macedonian Young Lawyers Association
NEF	Network of European Foundations
NGO(s)	Non-Governmental Organisation(s)
PRAB	Protecting Rights At Borders
SIP	Stowarzyszenie Interwencji Prawnej
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

1. Status quo at Europe's borders = acceptance of pushbacks?

1.1. Overview of pushback numbers and trends

Between 1 May and 30 August 2023:

9,515 instances of pushbacks at European Union borders were documented by the PRAB initiative and/or via Governments' procedures.³

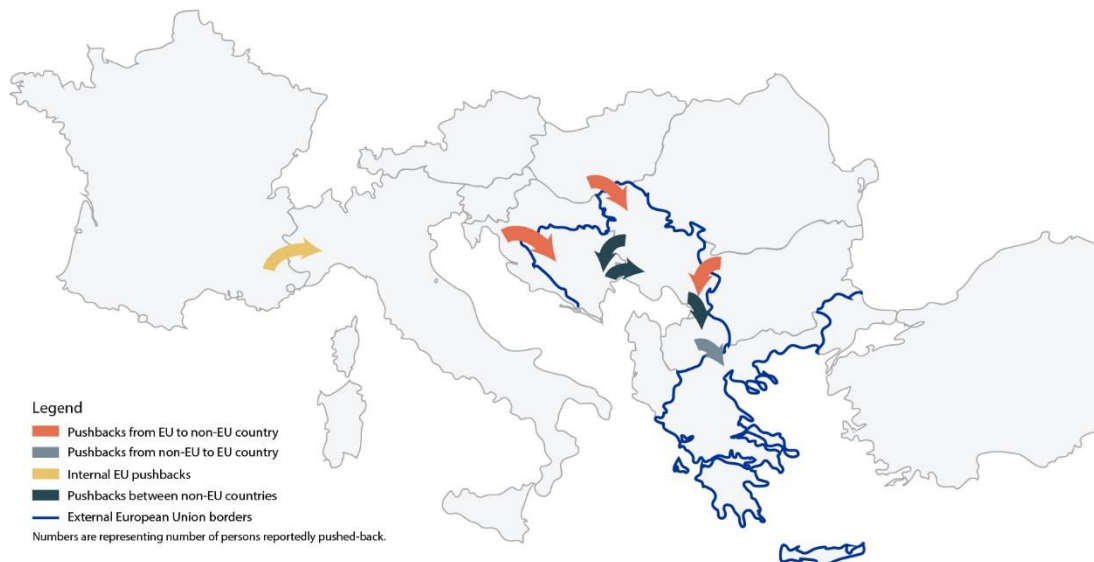
2,030 persons from those reporting being pushed back underwent a thorough interview process by a PRAB partner using the joint PRAB data collection tool to record their demographics, migratory routes, and the rights violations they reported being exposed to. The infographics in this report refer to this cohort.

To preserve the integrity of the data collection process, these numbers do not include secondary sources such as information available from other NGOs and UN Agencies working at borders. In this light, they should be interpreted as representative of a comparatively small sample in relation to the magnitude of the phenomenon.

The numbers reported by the PRAB initiative represent a fraction of the people who are pushed back at EU borders. The nature of European border areas and the methods utilised for crossing (at official border crossing points or patrolled spots, in remote areas, etc.) make it difficult to reach all people who experience pushbacks and related violations. Additionally, pushback recording depends on the time of the event, the presence of PRAB staff in the area, and the willingness of the victims to report. As documented by PRAB partners, many pushback victims are afraid to report the incident, fearing that this will negatively impact their possibility to enter or stay in an EU Member State.

The numbers here reported refer to pushback cases witnessed first-hand by PRAB partners - at times thoroughly detailed with the help of the victims - substantiated by numbers reported by Government agencies from the start of May until the end of August 2023. They provide concrete testimonies on deviations from national legal frameworks and EU directives at EU internal and external borders.

³ The 9,515 instances were documented as follows: 1,599 at the border between Bosnia and Herzegovina and Croatia; 3,452 at the border between Italy and France; 463 at Lithuanian borders; 3,346 at the border between Belarus and Poland. The number does not include persons fleeing Ukraine.



In May 2023, media⁵ reported that the Russian Federation started to issue a higher number of visas to migrants from Middle Eastern countries. Journalists revealed that the route followed to reach the EU entailed transiting through Türkiye and Russia, then crossed into **Belarus** where, in the absence of border checkpoints, they remained unregistered. Similarly, and simultaneously, other media⁶ reported of a decree by the Belarusian President waiving visa requirements for participants and guests of the July Art Festival from 73 countries, including the Middle East, Africa and Latin America. Some new arrivals into EU countries reported they were forced to cross the border from Belarus, and other media reports referred to third-country nationals stranded at the border between Belarus and the EU⁷.

In **Bosnia and Herzegovina**, the PRAB partner identified **1,599** persons who reported being pushed back. According to their observation, movement through Bosnia and Herzegovina was faster than in previous years, as people cited the precarious economic situation and lengthy asylum procedures in the country as deterrents for staying. The majority of individuals reporting pushbacks are single males, predominantly from Afghanistan and Morocco. Victims of pushbacks at the border with Croatia report that border police increased the use of drones to identify people’s location prior to them crossing the border and that, once they reach Croatian territory, cameras placed on trees in forest areas monitor movements.

At the time of reporting, data available from UNHCR⁸ indicate that 10,880 persons entered **Greece** by sea and land borders between 1 April and 20 August 2023. The number of pushbacks could not be recorded due to challenges faced by NGOs in accessing areas such as the militarised Evros border. Pushbacks by Greek authorities were denounced by UNHCR’s Assistant High Commissioner for Protection, Gillian Triggs, in an interview published by Greek media on 1 August 2023⁹. The Working Group of Experts on People of African Descent¹⁰, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance¹¹, the Special Rapporteur on extrajudicial, summary or arbitrary executions¹² and the Special Rapporteur on the human rights of

⁴ Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back.
⁵ <https://www.bild.de/bild-plus/regional/dresden/dresden-aktuell/asyl-putin-und-erdogan-schicken-uns-immer-mehr-fluechtlinge-83764738.bild.html>.
⁶ <https://www.reuters.com/world/europe/belarus-art-festival-could-renew-pressure-polands-border-official-says-2023-06-01/>.
⁷ <https://www.abc.net.au/news/2023-06-01/families-trapped-between-belarus-poland-living-in-forest/102414474>
⁸ <https://data2.unhcr.org/en/situations/mediterranean/location/5179>.
⁹ <https://www.tovima.gr/print/world/oi-epanaprothiseis-lfto-asilo-kai-oi-diakinites/>.
¹⁰ <https://www.ohchr.org/en/special-procedures/wg-african-descent>.
¹¹ <https://www.ohchr.org/en/special-procedures/sr-racism>
¹² <https://www.ohchr.org/en/special-procedures/sr-executions>

migrants¹³ called for safe, impartial border policies and practices, while FRONTEX requested information on non-compliance with the fundamental rights of migrants from the Greek authorities¹⁴.

In **Italy**, PRAB partners recorded **3,452** pushbacks in Oulx and Ventimiglia in the north at the border with France. Of concern was the presence among them of several unaccompanied minors who were refused entry to France due to having been previously registered as adults in Italy upon disembarkation despite their declarations and, in some cases, despite having produced photographs and birth certificates to the authorities. A new trend observed during the reporting period by Italian PRAB partners consists of expulsions by Italian authorities based on discrepancies between the personal data contained in the *refus d'entrée* issued by French authorities and those registered upon first entry to Italy. Of note, expulsions were issued also to persons coming from non-safe countries such as Afghanistan, Eritrea, South Sudan and Sudan.

In **Lithuania**, the State Border Guard reported having turned away **463** persons during the reporting period, while 23 requests for international protection were lodged at border crossing points during the same months. In August 2023, the Government temporarily closed two of six border checkpoints with Belarus amidst tensions over the presence of the Wagner Group.

A total of 3,642 persons entered **North Macedonia** during the reporting period, the majority of whom were from Syria, Morocco, Pakistan and Afghanistan¹⁵, as recorded by a PRAB partner. An increase in arrivals from Morocco was noted. Pushbacks mainly occurred at the southern border with **Greece**. The persons thus intercepted were either directly pushed back to Greece or transported to Transit Centres for registration and fingerprints collection first, and before then being pushed back. The PRAB partner further observed that those declaring their intention to seek asylum were mostly brought to the Vinojug Transit Centre (near the border with Greece), where they could remain for a few days. A few pushbacks occurred on the northern border with Serbia, and they affected those who attempted to cross into the country from Serbia. From May to August 2023, 56 applications for international protection were submitted in North Macedonia, a decrease from the 70 reported in the previous reporting period.

Pushbacks persist at the **Polish-Belarusian border**, which has increasingly been militarised since June 2023. Official figures refer of 3,346 pushbacks, and PRAB partners directly recorded 249 cases related to individuals who were pushed back more than once. Reports of persons being pushed back without being granted access to interpreter, legal representation, and information on appeal channels and, in some cases, without a decision being issued, were also regularly recorded. Moreover, the Polish Border Guard continue to be reported as resorting to practices such as pushing third-country nationals back to Belarus through gates for animals in the border fence, also at night¹⁶.

Pushbacks are recorded also at the **Polish-Ukrainian border**. According to official statistics¹⁷, between May and August 2023, a total of 4,051 persons were denied entry at this border, including 3,462 Ukrainian nationals. A total of 3,801 Ukrainian nationals were denied entry at Polish borders due to the lack of relevant documents. According to NGOs¹⁸, Temporary Protection holders, as well as first-time entrants seeking protection due to the war, were denied entry to Poland. Pendular movement of Ukrainians with Temporary Protection in Poland was seen to be possible during the reporting period, albeit in some instances hampered. Of note, Polish authorities require a specific declaration upon each instance of re-entry by Temporary Protection holders, but access to information on this requirement was not readily available. If this declaration was missing, the entry to Poland was not properly registered, which in many instances led to losing Temporary Protection status and all associated benefits. Termination of Temporary Protection was instated automatically, without informing the holder.

¹³ <https://www.ohchr.org/en/press-releases/2023/08/greece-un-experts-call-safe-impartial-border-policies-and-practices>.

¹⁴ <https://www.ekathimerini.com/news/1214437/frontex-seeks-answers-from-greece-on-alleged-pushbacks-of-migrants/>.

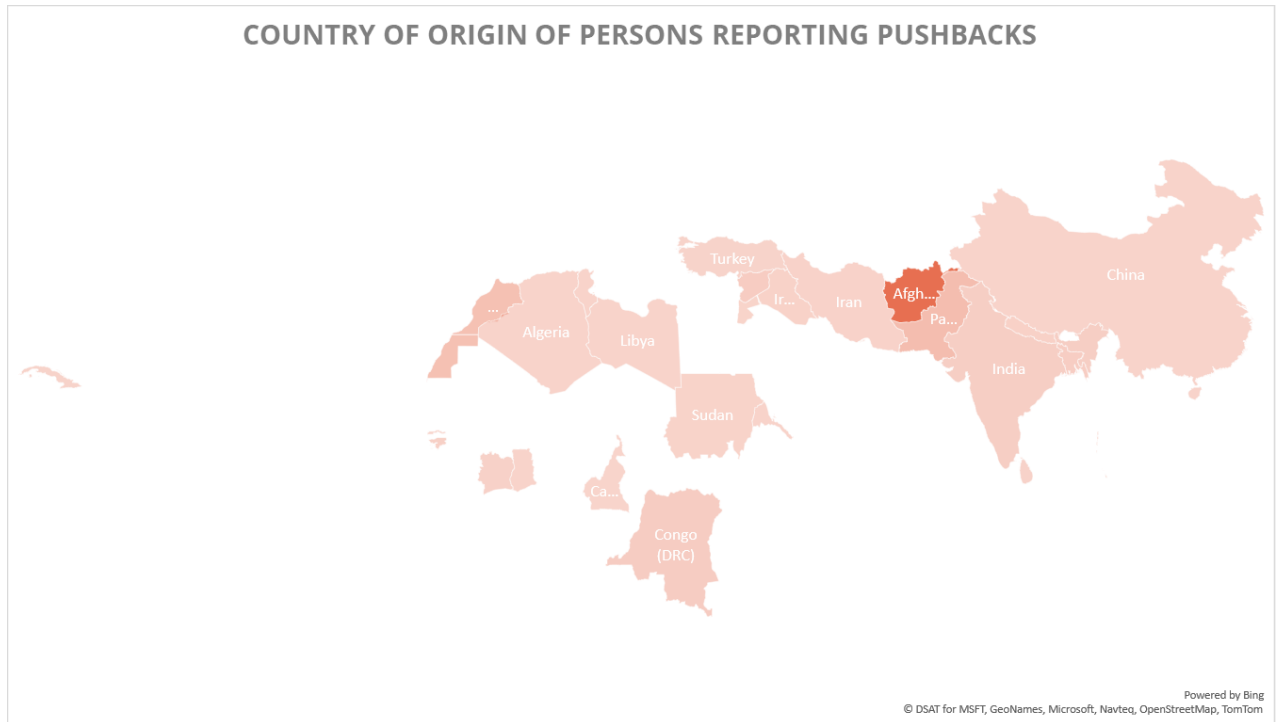
¹⁵ Please note that countries of origin are listed to mirror group size.

¹⁶ <https://balkaninsight.com/2023/07/19/how-smugglers-bring-migrants-into-eu-despite-polands-new-wall-on-belarus-border/>

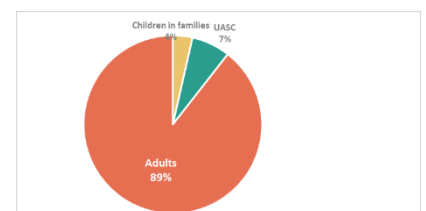
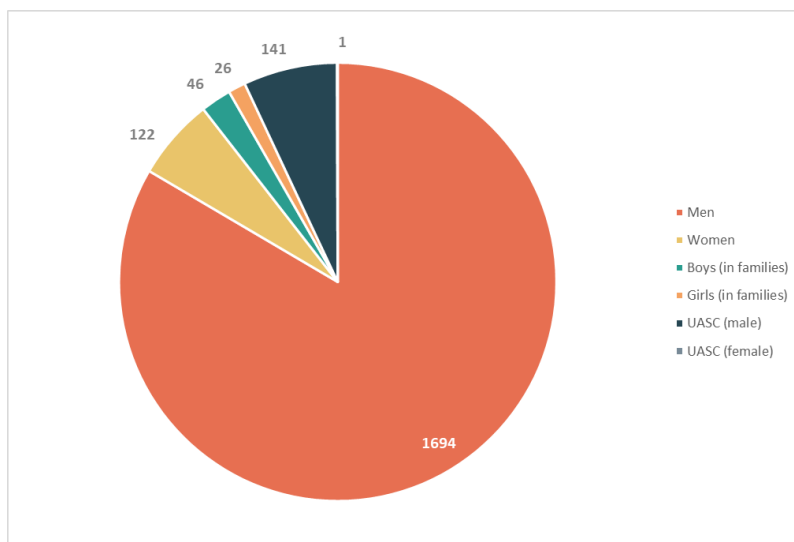
¹⁷ <https://strazgraniczna.pl/pl/granica/statystyki-sg/2206,Statystyki-SG.html>.

¹⁸ https://interwencjaprawna.pl/wp-content/uploads/2021/01/Statement_Stanowisko_HIAS_SIP_R2P.pdf.

1.2. Pushbacks from 1 May to 31 August 2023¹⁹





AGE AND GENDER BREAKDOWN OF PERSONS REPORTING PUSHBACKS



31% of all recorded pushbacks between May and August 2023 involved children

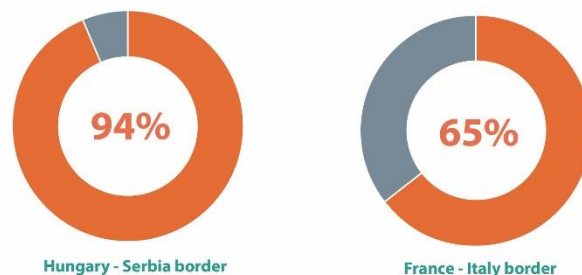
¹⁹ Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back.

	Children travelling with family members			Unaccompanied and separated children	
	0-4	5-12	13-17	5-12	13-17
	8	11	7	0	1
	7	20	19	4	137

1.3. Denial of access to EU territory remains common, and expulsions continue along with other rights violations

In addition to being prevented from effectively accessing a certain state’s territory in the European Union, most victims of pushbacks faced additional rights violations.

% of people who reported being denied access to asylum



20

Between May and August 2023, the online platform representing the only channel to access asylum procedures in Greece was not in operation. As a result, persons wishing to lodge an application could not do so, neither did they have access to reception assistance nor protection from arrest and detention. Further, people were arrested outside the Malakasa Reception and Identification Center, where they had arrived to seek asylum.

Testimony from a Moroccan national explaining about the experience in Greece

“I flew to Türkiye and started walking since then. From the start I am with two of my friends. We were in Türkiye for about one month and a half. We were not staying anywhere, we were just walking through forests, road and hiding. Then, we arrived in Greece and walked through it. Greek police beat us and took all our baggage and money from me and my two friends, everywhere they found us – on the road, at the border, everywhere.”

²⁰ Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back. During the reporting period, PRAB partners collected 49 testimonies of people reporting pushbacks at the border between Hungary and Serbia, of whom 46 reported having been denied access to asylum procedures. Similarly, at the border of France and Italy, 283 pushbacks were recorded, of which 183 related to people reportedly not granted access to asylum procedures.

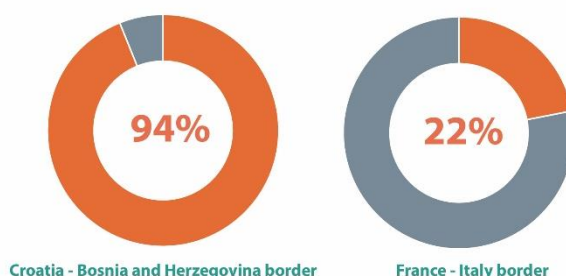
In the Imperia and Turin areas (in the provinces of **Italy** including, respectively, Ventimiglia and Oulx), documentation not required by law, such as passports and hospitality declarations, was often requested to lodge an asylum claim, and asylum seekers were denied access to reception facilities due to full capacity. As a result, the number of persons living and sleeping in the streets increased, as they attempted for months to access the offices where they could schedule an appointment to officially initiate the procedure and to be added to the waiting list for asylum seekers centres.

In **Poland**, seeking asylum by persons irregularly crossing the Polish-Belarusian border continues to be hampered. Polish authorities state, against the law, that asylum claims can be submitted exclusively at official crossing points. However, the actual submission of asylum applications at those border crossing points has been challenging for years. As a result, most persons entering Poland irregularly do not have access to asylum procedures.

Testimony from an Afghan national stuck between the Polish fence and the Belarussian barrier

“I am currently stuck between the border of Poland and Belarus, no side is giving me permission, it has been 10 days, I have no new facilities I am alone. I haven't eaten anything for 10 days. I lost all my friends. It [Belarussian Army] doesn't allow me anywhere, I'm stuck, I can't find a solution. The police of Poland and Belarus have beaten me a lot, they are very cruel. I used to work for the previous government of Afghanistan. Currently, the government of Afghanistan has collapsed and I fled. I also fled Russia because the Russian government was taking us to the Ukraine war. We didn't want to run away. Our legs were bitten by Belarusian dogs. I can't go to Afghanistan, neither Russia nor Belarus, please help me, they want to use me like a fuel stick to the war in Ukraine.”

% of people who reported experiencing inhuman and degrading treatment



21

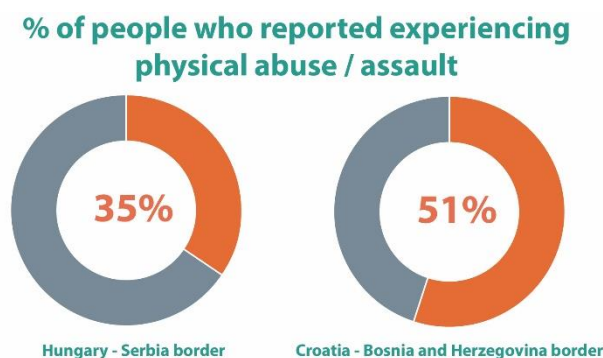
Analysing data submitted in the PRAB joint data collection tool indicates that, in countries where high levels of physical abuse at borders are reported, comparatively lower numbers of rejected asylum claims are recorded. This may suggest that, where border practices are particularly violent, individuals' access to asylum procedures is impacted.

An increase in the number of foreigners entering from Latvia who are detained in **Lithuania** has been recorded by PRAB partners with respect to previous reporting periods. Typically, this occurs at border checkpoints that independent NGOs cannot access, and information is received from relatives of those detained. Relatives report that detainees are deprived of their right to communicate externally as their mobile phones are confiscated, and that they are denied access to the asylum procedure without the intervention of a lawyer. When private legal aid is not available, detainees are often returned to Latvia

²¹ Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back. During the reporting period PRAB partners collected 1,586 testimonies of people reporting pushbacks at the border between Croatia and Bosnia and Herzegovina, of whom 1,493 reported having experienced inhuman and degrading treatment. Similarly, at the border between France and Italy, PRAB partners recorded 283 pushbacks, of which 62 of persons claiming to have received inhuman or degrading treatment.

in accordance with an existing bilateral agreement.²² Concerns were expressed in August 2023 by the Children Rights Ombudsman Institution in relation to minors’ access to legal representation, state assistance and right to seek asylum, as well as their return to a third country and basic treatment standards.

In **Poland**, NGOs and media²³ reported of persons being left behind and pushed back without receiving (adequate) medical treatment. Civil society expressed concerns over the treatment of third-country nationals and stateless persons who were hospitalised, including in relation to family unity²⁴.



25

During the May-August 2023 period, at the Polish-Belarusian border, 402 persons informed PRAB partners that they were subjected to violence by Polish forces, while 321 persons said that they were subjected to violence by Belarusian forces. These third-country nationals reported having been subjected to beating (with hands and batons), fully undressing, insults, derision, denying access to toilet or food, and destruction of possessions: clothes, shoes, phones and food. Tear gas is reportedly regularly used, also towards minors. Third-country nationals reported also about being subjected to a full body search, including the orders to crouch and cough. Some persons claimed that they asked for water while being apprehended at the border, but their request was denied. Médecins sans Frontières reported treating seriously injured individuals, some of whom required hospitalisation, as a result of attempting to cross the Belarusian-EU border.²⁶ Coincidentally, activists and NGOs reported substantial challenges in accessing the areas where their persons of concern may be found, due to lengthy checks and unfounded fines, along with instances of ill-treatment. This has been the case since mid-June, when soldiers started to patrol the border. Ill-treatment is also reported by journalists at the border.

Testimony from a Syrian national, with a chronic disease, needing medical assistance stuck between the Polish fence and the Belarussian barrier

“I can't return to Syria and as you know I am from Idlib and that cause a lot of problems as Syrian police always threatening me. Plus, I participated in the Syrian revolution in demonstrations. I tried to [go to] Poland 3 times. First try: 24 June, second: either 27-28 June, third: 1 July. And [I am] still in forest with no food and water. In first and second try to Poland police spray pepper on our face and burn our eyes, they took my passport and my money and my bank card and ID and my phone. When I [was] pushed back to forbidden Belarus catch me and humiliated me, hit me and left me without

²² More information on existing readmission agreements can be found in the second PRAB policy note “When the ends seems to ‘justify’ the means: Pushing those unwanted out instead of using existing readmission agreements – the way forward?” https://pro.drc.ngo/media/5iububwg/readmission-vs-pushbacks-_policy-note.pdf

²³ <https://oko.press/uchodzaca-z-granicy-polsko-bialoruskiej-nareszcie-w-szpitalu-ale-co-z-innymi-wyrzuconymi-za-mur>.

²⁴ An example of reported cases may be found here: <https://oko.press/straz-graniczna-wywiozla-syryjke-do-szpitala-a-jej-17-letnia-corke-wypchnela-do-bialorusi>.

²⁵ Please note that all infographics in the report are based on data entered into the PRAB joint data collection tool. The data is – as is elaborated in the report – only representative of a small sample of the people who were pushed back. At the border between Serbia and Hungary, PRAB partners recorded 49 pushbacks, of which 17 related to persons claiming to have been subjected to physical violence. Similarly, at the border between Croatia and Bosnia and Herzegovina, 1,586 pushbacks were recorded, of which 873 related to people reporting having been subjected to physical violence.

²⁶ <https://msf.org.uk/article/eu-migration-four-deadly-policies-being-pushed-european-leaders>.

clothes (they said you rubbish die here in forbidden [zone]). My health condition is bad, I am suffering from chronic dizzy and lost almost 15 kg.”

Reaching Europe remains one of the deadliest journeys for persons fleeing their countries. On 14 June 2023, a tragic **shipwreck** in the Mediterranean took place off the coast of Pylos, in **Greece**. While 104 passengers were rescued, over 80 bodies were recovered. Hundreds continue to be missing. In the second part of August, the largest **wildfire** recorded on EU territory occurred, with the authorities recovering 18 bodies (including two children) who were alleged as persons trying to reach Greece. The authorities further arrested several individuals after they had streamed on social media their initiatives to “protect the area” from third-country nationals, whom they held responsible for attempting arson. In **Poland**, media²⁷ reported of 50 persons losing their lives at the border with Belarus, while over 300 persons have gone missing since 2021, of which 35 disappearances occurred during the reporting period.

2. Turning people away - a common tactic used by EU Member States and the European Commission

2.1. Limiting protection space and legalising pushbacks - a prevailing trend that became an accepted practice?

On 3 May 2023, an amended Law on the state border and its protection came into force in **Lithuania**.²⁸ The new law legalises the policy of turning away migrants at the border. “**Turning away**” in this case refers to the official position of the government on its actions on the border with Belarus, as the government denies carrying out any pushbacks.

According to the amended Law, in the event of a declared state of emergency due to a mass influx of foreigners, the Government of Lithuania may adopt a decision that foreigners intending to cross or who have crossed the state border in places not designated for that purpose or in places designated for that purpose, but who have violated the procedure for crossing the state border, and who are present in the border section (border section is defined as territory within five kilometres from the official border line), shall not be allowed to enter the territory of Lithuania. Given that state of emergency remains in force since August 2021, the provision is effectively applied.

The law envisages several so called “**safeguards**” to be applied when a foreigner is stopped while or after crossing the border irregularly. Firstly, the provision cannot be applied if it is established that the foreigner is fleeing from the **armed conflicts listed** in the Government's decision, as well as from persecution within the meaning of the Convention Relating to the Status of Refugees or is seeking to enter the territory of the Lithuania for humanitarian purposes. However, the Lithuanian Government have not, to date, included the list of armed conflicts in its implementing decision which came into force on 4 May 2023.²⁹ Consequently, the first safeguard is not applied. Secondly, foreigners who are not admitted to the territory of Lithuania shall be subject to an **individual assessment and emergency medical or humanitarian assistance** shall be provided to those in need. This assessment is carried out by the State Border Guard Service, which confirmed that their staff is qualified to carry out such an

²⁷ <https://oko.press/migranci-zgineli-w-wypadku-samochodowym-uciekajac-przed-straznikami-granicznymi>. Note that, on the Belarusian side, border guards reported having recovered five bodies.

²⁸ The official text of the amendment in Lithuanian language can be accessed here: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ff701250e35a11eda305cb3bdf2af4d8?jfwid=1b93pge4qa>

²⁹ The implementing decision by Lithuanian Government can be accessed here: <https://www.e-tar.lt/portal/lt/legalAct/2a4e76c0e9ae11ed9978886e85107ab2>

assessment, but did not communicate details on how such an assessment is to be carried out and what criteria are applied.³⁰

The effective impact of the new legal framework on the State Borders Guard Services' daily work remains unclear, as pushbacks were recorded also prior to the implementation of the law. But the State Border Guard Services' expanded powers and lack of clarity on the safeguards *de facto* result in any person, who entered Lithuania irregularly and who did not manage to move further than five kilometres from the border, can be denied access, be turned away or be pushed back (including by force) in case of disobedience.

In June 2023, the **Latvian** government also introduced a special emergency regime³¹ in the eastern border region whereby, if a disproportionate number of cases of illegal border crossings are detected, including attempted, it can declare an enhanced border security regime for a period of six months with the possibility of extension. This entails the potential for persons in need of international protection to become at risk of pushbacks and ill-treatment.

In **Poland**, the laws attempting to legitimise pushbacks have been in force since 2021 (Regulation of 20 August 2021 and Article 303b of the Aliens Act). Moreover, Article 33(1a) of the Act on Protection remains in force. On its basis, the Head of the Office for Foreigners can **refuse considering an asylum application** of a person who has been apprehended just after their irregular crossing of the border, unless they arrived directly from a territory where they were in danger, reasonably explained the irregular entry, and applied for international protection straightaway upon this entry.

While according to the Office for Foreigners, in the period of January-August 2023, this provision was not applied in practice, pushbacks have been taking place and many asylum applications of persons irregularly crossing the Polish-Belarusian border were not registered.

The Polish legal framework was further **criticised by the Special Rapporteur on Human Rights of Migrants**³² who, with regard to the laws adopted to legitimise pushbacks in Poland, remarked that: *"in the absence of an individualised assessment of each migrant concerned and other procedural safeguards, pushback practices always result in human rights violations incompatible with the prohibition of collective expulsion and refoulement. Domestic legislation, including legislation aimed at legalizing pushbacks, does not absolve States of their obligations under international law."*

The Special Rapporteur was also concerned that the above-mentioned legislation adopted by Poland in 2021 allows authorities to disregard applications for asylum if the applicant has been stopped immediately after having crossed the border outside an official border crossing. The Special Rapporteur urges Poland to review its legislation and to put an end to pushback practices, to respect fully the prohibition of collective expulsion, to uphold the principle of non-refoulement and to ensure access to asylum procedures and individual assessments of the protection needs of migrants, without discrimination, regardless of their status and country of origin. In July, the Polish Commissioner for Human Rights³³ mirrored the Rapporteur's recommendations and urged the Ministry of Internal Affairs and Administration to repeal the Regulation of 20 August 2021 (that allowed for immediate pushbacks without any decision being issued).

In **Italy**, the parliament approved on 6 May 2023 a legal decree³⁴ to impose **restrictions** on foreigners, asylum seekers and beneficiaries of international protection. The legislative reform imposed **restrictive**

³⁰ Communication from Lithuanian State Border Guard Service

³¹ <https://rus.lsm.lv/statja/novosti/analitika/23.06.2023-evropa-latviju-za-vytalkivanie-bezencev-ne-poxvalit-yurist.a514027/>

³² <https://www.ohchr.org/en/documents/country-reports/ahrc5326add1-visit-poland-report-special-rapporteur-human-rights-migrants>

³³ <https://bjp.brpo.gov.pl/pl/content/rpo-pushbacki-prawo-usuniecie-mswia-odpowiedz>

³⁴ Law no. 50, which constitutes the conversion into law of the Legislative Decree No. 20/2023.

measures on complementary protection, expulsion, repatriations and most significantly, the right to defence for foreign citizens and asylum-seekers. This is another example of EU Member States circumventing their responsibilities, as outlined in the EU Charter for Fundamental Rights and the wider EU asylum acquis, which results in a restricted protection environment for displacement-affected populations. Instead of preventing the most vulnerable persons, the rights of those seeking safety are being applied narrowly and even denied.

2.2. More deals to stem arrivals by preventing departure towards the EU?

PRAB partners recorded that the highest number of arrivals to Italy in the May-August reporting period came via **Tunisia**. As a response to the increased number of arrivals, a **Memorandum of Understanding³⁵ (MoU) was signed between the European Union and Tunisia** in mid-July 2023, and the European Commission further released a 10-point action plan for Lampedusa³⁶ in mid-September 2023. The MoU indicates an allocation of 105 million Euros of European funds to reduce irregular migration both into and out of Tunisia. The agreement has repeatedly been presented by the European Commission as a 'blueprint for the future', clearly indicating the Commission's ambition to set up similar agreements with other third countries.³⁷ The 10-point action plan outlines immediate actions to be exercised aiming to support Italy with the unfolding crisis: increasing solidarity between EU Member States, strengthening the role of relevant EU agencies, and preventing the arrival of people to Lampedusa with all means by referring to the MoU and by placing primary responsibility on smugglers in relation to Europe's reception crisis.

The MoU has **received loud criticism**, from civil society³⁸, and from Members of the European Parliament belonging to different political groups³⁹, while the European Ombudsman initiated an own initiative procedure to assess respect for fundamental rights in EU agreement with Tunisia.⁴⁰ The agreement disregards the detrimental human rights effects of such cooperation on displaced populations in partner countries, which research commissioned by the EU has evidenced not solely as an isolated unintended consequence, but as a systematic characteristic across country contexts.⁴¹ Comprehensive research⁴² clearly demonstrates the adverse effects of the cooperation agreements on the protection of rights and on the ability for asylum seekers and refugees to find protection and solutions.

The co-occurrence of the announcement of the EU-Tunisia 'agreement' with the deteriorating protection environment for refugees and migrants in Tunisia and the alleged expulsion of asylum seekers, refugees and migrants to remote and desolate areas⁴³ on the border with Libya and Algeria put on full display the disrespect for human rights and lives. The cruelty, rights violations, and deaths

³⁵ https://ec.europa.eu/commission/presscorner/detail/en/statement_23_3881

³⁶ https://ec.europa.eu/commission/presscorner/detail/en/ip_23_4503

³⁷ As for instance during the State of the Union by European Commission President during her in September 2023, https://ec.europa.eu/commission/presscorner/detail/en/speech_23_4426

³⁸ For instance, ECRE, <https://ecre.org/editorial-the-eus-dodgy-deal-with-tunisia-is-a-classic-of-the-genre-undemocratic-unlawful-and-unlikely-to-work/> and Amnesty International, <https://www.amnesty.org/en/latest/news/2023/07/eu-tunisia-agreement-on-migration-makes-eu-complicit-in-abuses-against-asylum-seekers-refugees-and-migrants/>

³⁹ European Parliament, Plenary hearing 12 September 2023, <https://www.europarl.europa.eu/plenary/en/debate-details.html?date=20230912&detailBy=date> ; <https://euobserver.com/migration/157411>

⁴⁰ EU Ombuds, SI/5/2023/MHZ, <https://www.ombudsman.europa.eu/en/news-document/en/175203>; EU watchdog launches rights probe into Tunisia agreement (euobserver.com)

⁴¹ ASILE project, <https://www.asileproject.eu/asylum-for-containment/>

⁴² Ibid.

⁴³ Press release, UNHCR and IOM appeal for urgent solutions for refugees and migrants stranded in Tunisia and Libya borders (27.07.2023) <https://www.unhcr.org/news/press-releases/unhcr-and-iom-appeal-urgent-solutions-refugees-and-migrants-stranded-tunisia>

of people seeking safety and better lives⁴⁴ accepted by States in the trade-off with third countries with the view to stem arrivals to the EU's borders appears boundless.

Under international and European human rights law, everyone has the right to seek asylum and the denial of access to a territory without safeguards cannot be justified on the grounds of any exceptional operational challenge, such as the size of migratory movements. Instead of templating this agreement with other third countries, this MoU should be put on hold pending effective guarantees of the full stop for expulsions and mistreatment and the availability of safe and legal pathways from Tunisia to the EU.

3. Is accountability at EU borders asking the impossible?

3.1. Border monitoring mechanisms appear designed to be vague

Previous PRAB reports⁴⁵ have analysed in-depth the **existing border monitoring mechanisms** in Croatia and Greece. They revealed that these mechanisms do not exist of independent actors, do not effectively provide pathways to justice and do not accurately record pushback, due to their limited scope and/or mandate. The European Parliament's push to make the proposed border monitoring mechanism under article 7 of the pre-entry screening is a step in the right direction, as has been detailed in the previous PRAB report⁴⁶, and it remains to be seen whether this strengthened proposal will be adhered to during the triologue negotiations of the EU Pact on Asylum and Migration, as states have to date refused effective pathways to accountability.

The need for effective investigations, including discussing the case with the witnesses of possible wrongdoing by border and coast guards, has also been a call after the Pylos shipwreck.⁴⁷ International organisations and institutions, including the Commissioner for Human Rights of the Council of Europe⁴⁸ and the LIBE Committee in the European Parliament⁴⁹ urged Greece to carry out a full and effective investigation into the circumstances of the shipwreck. While a preliminary investigation of potential liability of the Coast Guard was initiated by the Naval Court, today – up to three months after the shipwreck – survivors have not been called to testify on the circumstance of the shipwreck that is under investigation or to provide any evidence. Allegations by survivors that the assistance they had called for was provided with delay, and that the Greek Coast Guard attempted to tow the boat to the Italian Search and Rescue (SAR), which resulted in the boat effectively sinking, remained unconsidered. Following in-action by the government, 40 survivors of the Pylos shipwreck have filed a criminal complaint before the Naval court to demand an immediate, thorough and reliable investigation and the attribution of criminal responsibility of the acts and omissions to the Greek authorities.⁵⁰

⁴⁴ EU Observer, Lethal week for EU-bound migrants, as 68 more people die
https://euobserver.com/africa/157330?utm_source=euobs&utm_medium=email.

⁴⁵ <https://pro.drc.ngo/resources/documents/prab-reports/>

⁴⁶ https://pro.drc.ngo/media/3h1d5s5r/vi-prab-report_-what-we-do-in-the-shadows_-jan-to-april-2023.pdf

⁴⁷ <https://www.amnesty.org/en/latest/news/2023/06/greece-catastrophic-pylos-shipwreck-highlights-desperate-need-for-safe-and-legal-routes-to-europe/>

⁴⁸ <https://www.coe.int/en/web/commissioner/-/pylos-shipwreck-the-greek-authorities-must-ensure-that-effective-investigations-are-conducted>

⁴⁹ https://multimedia.europarl.europa.eu/en/video/exchange-of-views-on-the-migrant-boat-shipwreck-off-the-coast-of-greece-extracts_1243537

⁵⁰ <https://rsaegean.org/en/pylos-shipwreck-criminal-complaint/>

3.2. The court, the last resort and only hope to access justice and uphold the Rule of Law?

From 1 May until end of August, PRAB partners have used (strategic) litigation as the last resort to provide a pathway to justice for victims of pushbacks. Hereby sharing a short overview of the most relevant cases.

In **Italy**, a national court highlighted in two cases the **illegitimacy of informal readmission procedures**. Firstly, the Rome Tribunal⁵¹ granted compensation for what the victim of a chain pushback from Italy to Bosnia and Herzegovina, via Slovenia had to endure. The Rome Tribunal reiterated that the informal readmission procedures carried out based on the bilateral readmission agreements with Slovenia were illegitimate. These procedures, relied as their legal basis on an agreement never ratified by Parliament, irreparably clashed with the right to access asylum, the guarantees of the Dublin Regulation, and the guarantees of participation in the administrative process as they were executed without handing over documents to the individuals to explain what was happening and allow them to exercise their rights of defence. Furthermore, by detaining individuals at the border police facilities and forcibly loading them onto vans headed to a foreign state, they engaged in de facto detention, without any formal decision and, most importantly, without the endorsement of the judicial authority: an arbitrary and unjustified violation of personal freedom contrary to the protections offered by Article 13 of Italy's Constitution and the European Convention on Human Rights. Secondly, the Rome Tribunal⁵² accepted an urgent appeal by recognising the illegitimacy of the deportation of a minor asylum seeker, ordering the administrative authorities to allow the person to enter Italy by issuing a humanitarian visa and to register their application for international protection. The Tribunal emphasised that the Italian state did not "verify the specific condition of the applicant and therefore did not ascertain the consequences that he would have suffered as a result of readmission, noting that it carried out readmission despite having knowledge (or at least being in a position to have knowledge) of the applicant's peculiar position and of the violations and systemic deficiencies to which he would have been exposed in Greece.

In **Greece**, six Rule-39 Interim Measures were requested and granted within the reporting period. All cases address third country nationals who were pushed back from Greece to Türkiye. The first two concern two Afghan families, of which one (according to the other applicants) were deported from Türkiye to Afghanistan.⁵³ The third was submitted on behalf of 36 Syrian, Iraq, Turkish and Palestinian applicants, among whom three have been reported as missing/drowning in the Evros river.⁵⁴ The fourth concerns a recognised refugee in Greece, who entered from Türkiye to Greece, and he has been repeatedly pushed back by the Greek police officer, even after showing a copy of his passport, residence permit (in Greece).⁵⁵ The applicant state that he was abandoned on the islet In the Evros River, after his latest pushback, and that he swam back to Turkey. The fifth considers nine Afghan applications (including five unaccompanied minors, including one of only nine years old) who remained in a forest area near the Evros region for five days.⁵⁶ Unfortunately, they went missing while the decision of the Court was pending and there is no news or indication about the circumstances under which they disappeared. Finally, the last application was also initiated for people stuck at a forest area in the Evros region, in this case 27 applications of whom 19 Syrians and 8 Iraqis, of which 12 minors.⁵⁷ The Applicants, according to their testimony, were violently pushed back to Türkiye during the night.

⁵¹ <https://medea.asgi.it/illegitimacy-of-informal-pushbacks-at-adriatic-ports-and-humanitarian-visa/>

⁵² <https://medea.asgi.it/balkan-route-evidence-and-testimonies-confirm-chain-readmissions-ministerial-liability-for-compensation-for-damages/>

⁵³ Interim measures granted on 20/6/2023

⁵⁴ Interim measures granted on 20/6/2023

⁵⁵ Interim measures granted on 12/7/2023

⁵⁶ Interim measures granted on 28/8/2023

⁵⁷ Interim measures granted on 1/9/2023

In **Poland**, the Provincial Administrative Court in Warsaw⁵⁸ considered the pushback of a third-country national, who was seeking help for an Ethiopian woman in a worsening medical condition, to be illegal and ineffective. Considering that the foreigner's entry to Poland was not registered by the Border Guard and their removal to Belarus was not preceded by an official decision, the court concluded that the statements of the third-country national are the most important source of information as regards the pushback. The Border Guard deprived the complainant of their right to seek asylum and did not examine whether, upon their return to Belarus they would be in danger. Moreover, the court reminded that the prohibition of refoulement is absolute: it cannot be excluded by the rules of national law, factual circumstances (i.e. the crisis at the border) or an irregular entry of the person concerned. Applying the Regulation of 20 August 2021, without taking into account other prevailing Polish law (of a higher rank), EU and international law, was considered as a significant violation of the law.

In another case, the Supreme Administrative Court⁵⁹ ruled in favour of the third-country national and repealed the pushback decision. The court reminded that rules of the administrative procedure apply to the proceedings concerning immediate removals at the Polish border (based on Article 303b of the Aliens Act). A decision on immediate removal must contain a reasoning: both factual and legal. While states can refrain from initiating regular return proceedings in particular circumstances, then those circumstances must be specified in the documentation. Moreover, the Court stressed that the principle of non-refoulement applies in all circumstances and a third-country national has a right to seek asylum.

These rulings highlight that litigation before national courts, as well as the European Court of Human rights, remains essential to prevent expulsions, request compensation for the damages done when people are being pushed back, stress the need for individual assessments, provide pathways to justice and ensure a form of accountability – as well to uphold the Rule of Law. However, Courts cannot be left alone in this fight and effective and independent border monitoring mechanisms aiming to ensure accountability on states should be set up, without undermining their aim by designing them defective.

4. Access to information – an international right, but out of reach for those ‘welcomed’ with rights violations at Europe’s border

People arriving at Europe’s doorstep should be provided with information about their rights, including the right to asylum or their right to appeal against the decision on immediate return. However, victims of pushbacks and other rights violations at European borders often do not receive this information as government actors or institutional actors are absent or omitting their obligations in this regard. PRAB partners confirm that according to testimonies, **victims of pushback do not receive relevant information**, including by not being referred to centres where such information should be available. In some instances, documents provided might contain certain contacts, such as at the **Italian-French** border, however contact details included in the *refus d’entrée* are nevertheless merely a tick-the-box exercise, without that those who are expelled can effectively follow-up. It is also reported that migrants are purposely provided with misleading information, as well as deliberate deception. Persons interviewed by PRAB partners referred that the **Polish** border guards regularly misinform about the decisions/documents they issue (e.g., foreigners are not informed that the decision on an immediate

⁵⁸ Provincial Administrative Court in Białystok (Wojewódzki Sąd Administracyjny w Białymstoku), <https://orzeczenia.nsa.gov.pl/doc/97BC34FB4Fof> 30 May 2023, no. II SA/Bk 244/23, <https://orzeczenia.nsa.gov.pl/doc/97BC34FB4F>; More about the case: HFHR, Prosił o pomoc dla umierającej towarzyszkę podróży, został wywieziony do Białorusi. Sąd uznał, że wywózka obywatela Etiopii była niezgodna z prawem, 3 July 2023. Similar judgment: Provincial Administrative Court in Białystok (Wojewódzki Sąd Administracyjny w Białymstoku), judgment of 13 April 2023, no. II SA/Bk 145/23, described here: HFHR, Sąd uznał relację uchodźcy za wiarygodne potwierdzenie pushback’u, 12 May 2023.

⁵⁹ Supreme Administrative Court, judgment of 10 May 2023, no. II OSK 1735/22, <https://orzeczenia.nsa.gov.pl/doc/A3E68F81BF>; More about the case: SIP, <https://interwencjaprawna.pl/zasada-non-refoulement-na-granicy-polsko-bialoruskiej/> (6 July 2023).

removal contains an entry ban) and the situation of detained third-country nationals in Poland (to scare pushed-back persons from coming back or seeking asylum in Poland). Moreover, third-country nationals report being regularly forced to sign documents before the pushback without any explanation on, or translation of, what they are signing. Some persons even reported being forced to sign the documents prepared by the Border Guard by threats, denying them access to toilet, water or food.

This **deprives people of the opportunity to effectively be informed about their rights and possibly initiate remedies against the violations of their rights**. Knowledge, about one's rights as well as about how to claim fundamental rights, is a form of power. Victims of pushbacks are often reluctant to claim their rights, fearing it would negatively impact their possibility to enter or stay in a certain country. Undermining pushback victims' empowerment plays in the cards of the rights violation perpetrators. Civil society attempts – to the extent possible and/or allowed, as many border areas are militarised and access limited by national legal frameworks, to compensate this shortage of knowledge by providing information orally, via flyers or booklets about people's rights, in a language understood by the pushback victims or by calling in translators.



DRD DANISH
REFUGEE
COUNCIL



**Diconia
Valdese
CSD**



DIVERSITY
DEVELOPMENT
GROUP



**GREEK
COUNCIL
OF REFUGEES**



HCIT

**human
constantia**



MYLA



STOWARZYSZENIE
INTERWENCJI
PRAWNEJ

