



# Submission to EUAA Annual Asylum Report

February 2022

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Last years final submission: <https://euaa.europa.eu/sites/default/files/BVMN.pdf>

## **Abbreviations:**

AYS - Are You Syrious?

BVMN - Border Violence Monitoring Network

CPS - Center for Peace Studies

CCAC - Closed Control Access Centres

CSO - Civil Society Organisation

ESTIA - Emergency Support to Integration and Accommodation

JMD - Joint Ministerial Decision

LCL - Legal Center Lesvos

PRDC - Pre-Removal Detention Center

MIT - Mobile Info Team

POM - people on the move

RIC - Reception and Identification Centre

RSA - Refugee Support Aegean

PRAB - Protecting Rights at Borders

## **1. Access to territory and access to asylum procedures**

Between January 2021 and January 2022, [1] BVMN collected 471 pushback testimonies from EU countries affecting approximately 11636 people on the move (POM). [2] Pushbacks *ipso facto* deny people access to a territory and violate the principle of *non-refoulement* in at least two ways. Firstly, pushbacks always result in a procedural violation of the principle of *non-refoulement* as people are denied their right to have their circumstances individually assessed.



During 46% of all pushbacks recorded by BVMN in 2021, the intention to ask for asylum was expressed by the respondents and ignored by the authorities. [3] This figure does not sufficiently represent the scale of the systematic procedural violation of *non-refoulement* as it does not only apply to asylum seekers, but also to groups beyond Article 1 of the Geneva Convention. Moreover, due to the declaratory nature of refugeehood, the law does not require that someone explicitly claims asylum in order to be protected from *refoulement*. [4]

Secondly, pushbacks often result in substantive violations of the principle of *non-refoulement* as they frequently return people to places where they face persecution, risk to their lives or face inhuman or degrading treatment. It is important to stress that pushbacks often substantively violate the principle of the prohibition of torture. [5]

### **Greece**

In 2021, BVMN reported 78 pushbacks from Greece to Turkey affecting approximately 6344 POM, a figure which accounts for only a fraction of the violent daily removals at the border. All of the pushback testimonies contained one or more types of torture or ill-treatment. [6]

In more than 50% of the testimonies of Greek pushbacks collected in 2021, the intention to ask for asylum was actively expressed by the respondents and deliberately ignored by Greek authorities. [7]

Turkish nationals who are pushed back to Turkey are often directly returned to their persecutors. Non-Turkish nationals are often returned to inhuman and degrading treatment. For example, they risk being detained in inhumane conditions as a result of having left the country illegally, have their residence status revoked, and are exposed to the risk of chain-refoulement from Turkey [8] which has been well documented by various NGOs. [9]

### **Croatia**

In 2021, BVMN alone recorded 221 pushback testimonies from Croatia, affecting thousands of people, including pregnant women and children. [10] Practises of pushbacks include a variety of physical and sexual violence. The combination of theft / destruction of personal belonging and sexual abuse is a common part of pushbacks [11], while 87% of all pushbacks recorded by BVMN are perpetrated with one or more forms of torture or ill-treatment. [12]

After the publication of several investigations, i.a. conducted by BVMN, and the increase in public scrutiny, BVMN has observed a shift in *modus operandi* of Croatian pushbacks where it seems that the authorities are more ‘careful’ in hiding their involvement in pushbacks. [13] For example, BVMN testimonies recount officials taking care not to leave visible injuries from physical violence [14] and concealing insignias and patches from their uniforms during pushbacks. [15]

### **Italy**



In 2021, BVMN recorded 12 testimonies of pushbacks from Italy, affecting an estimated 60 people, representing only a fraction of the total number of who have been pushed back by Italian authorities. Again, in more than half of documented pushbacks by BVMN, the intention to claim asylum was expressed and knowingly ignored by authorities. [16]

### **Chain Pushbacks**

Chain pushbacks are a routine fixture of the EU border regime, where migrants are violently *refouled* through several countries, constituting 21% of all pushbacks recorded by BVMN. [17] Common chain pushback routes include: (1) from Bulgaria to Greece and then subsequently to Turkey and (2) from Italy or Austria to/or Slovenia to Croatia and then to BiH and Serbia. It is reported that chain-pushbacks can last multiple days, include detention under poor conditions, provision of little to no water or food, and scant access to legal support (see Q7). [18]

### **Border surveillance and drones**

These trends are accompanied by an increase in border surveillance at the external borders to the EU. [19] One of the tools increasingly deployed are drones, frequently implemented to detect POM in remote border areas. [20] Several member states have increased their investment in border mechanisms; Croatia, for example, has deployed several drones, which have been used to detect POM. [21] Drone data is frequently used to apprehend and later pushback POM. [22] Since 2021, BVMN recorded 12 pushback testimonies involving drones which affected 493 people. [23] BVMN is greatly concerned that increased surveillance, in particular the use of drones, at the EU's borders is being used to facilitate pushbacks and prevent access to asylum.

## **2. Access to information and legal assistance**

Access to information is widely understood as being fundamental to the fulfilment of guaranteeing access to asylum procedures and international protection. [24] Yet, in several EU states, access to information is routinely denied. This denial is perhaps most acute during pushbacks where asylum seekers are denied the right to seek asylum and prevented from receiving legal assistance. In most cases, they often remain on a territory for minimal time, while at the same time being highly criminalised and experiencing violence, torture and inhuman and degrading treatment. [25] Pushbacks, by design, do not allow people to access informational, legal assistance or protection mechanisms.

In 2021, ENNHRI reported that POM, in particular those in remote areas and those who are pushed back, have limited access to information in Europe. [26]

Until November 2021, the registration of an application for asylum in mainland Greece, as well as on Crete and Rhodes, took place via the Skype pre-registration system. Research conducted by BVMN partner organisation Mobile Info Team (MIT) points to the fact that



only 8% of POM in Greece received information on the pre-registration via Skype by NGOs and the Greek state, whereas the remaining 92% used the refugee community and *Facebook* groups as source of information, where outdated information on the Skype system was often circulated. MIT found that misinformation, “*perpetuated uncertainty, worry and anger [...], a lack of clear and concrete knowledge on the official procedure and a reliance on information from the refugee community caused people to make uninformed decisions which has had profound effects on their life in Greece.*” [27] MIT also expressed concern that misinformation on the Skype system led to many being exploited by lawyers who promised to help people pre-register their asylum claims for a high fee despite, in practice, not being able to actually do so. [28]

Moreover, information provided by the Ministry of Migration and Asylum on the Skype system was often insufficient and incorrect. For example, for a year the Skype caller ID for the Urdu line was incorrect. In addition, information on asylum procedures was rarely given by government officials. Only 4% of the persons interviewed in the study conducted by MIT received information on the asylum procedure by a state authority. In addition, when POM approached police officers for information, they were in many cases provided with wrongful, misleading or none information on the asylum procedures. [29]

The Skype system was abruptly closed in November 2021, with the government announcing that all future asylum claims must be registered from reception centres. Yet, at the time of writing, no system for claiming asylum has been put in place in the mainland of Greece, Rhodes and Crete as such reception centres are not yet operational. [30] According to MIT, “*there are currently no details available on how and when individuals can enter the asylum system. It is deeply concerning that the Greek authorities are denying people access to the asylum system without offering any interim measures or information on how and when people can expect to register their asylum claims.*” [31]

In 2021, the Legal Center Lesbos (LCL) articulated its concern on the lack of access to information and legal aid concerning asylum on the island of Lesbos, as POM arriving on the island had their asylum interviews scheduled directly after they were released from COVID-19 quarantine. In quarantine they were not provided with information nor legal aid and as the interview itself was scheduled directly afterwards, there was no opportunity to access legal aid when being released. LCL also noted that access to information and legal aid is becoming more challenging for people forced to live in the Reception and Identification Centre (RIC) in Kara Tepe. Residents are only permitted to leave the RIC once per week and have therefore been *de facto* detained since March 2020. This limits their access to information and legal services, many of which are outside the RIC. [32]

In Croatia, “*foreigners arriving at the borders generally did not have access to information about the procedure.*” [33] In Croatia, people have to register for an asylum application at the police, which is particularly problematic, as they are the perpetrators of pushbacks. [34] In



addition, when being approached at the border, police officers in practice do not actively give information on the relevant asylum procedures. [35]

### 5. Special procedures

#### Turkey as a safe third country

In Greece in June 2021, the Joint Ministerial Decision (JMD) declared Turkey as a ‘safe third country’ for nationals from Syria, Afghanistan, Pakistan, Somalia and Bangladesh. Together, they make up 70% of all asylum seekers in Greece. [36] Legal organisations criticised this decision, highlighting its lack of legal reasoning, and explained that Turkey is *prima facie* not safe for people from the aforementioned countries. [37] Moreover, according to a joint policy note published by HIAS-Greece and Equal Rights Beyond Borders, the JMD actively places people seeking asylum from these nationalities in a ‘legal limbo’, as they both face possible rejection from the Greek Asylum System and Turkey’s refusal to allow readmissions on its territory. [38]

### 6. Reception of applicants for international protection

#### Greece

In July 2021, the General Secretary for the Reception of Asylum Seekers, Manos Logothetis, announced that the 5-year-old RIC, Vathy, on Samos island, would close by the end of September, with a new EU-funded structure in Zervou to be inaugurated on 18th September. [39] In the same statement, two crucial points about Greece's plans and approach to refugee reception as part of the National Strategy for Immigration 2020-2021. First of all, Samos will act as a 'pilot' for assessing the feasibility of the other four CCACs. These are currently under construction on the other Aegean islands and are entirely funded and supported by the EU Commission. [40] Second, the design of these isolated, highly controlled, structures is clearly informed by a logic of deterrence, reflected in the statement that: “[t]he new structure of Samos, together with the operation of the Pre-Departure Detention Center [PROKEKA] is expected to function as a deterrent for new arrivals on the island”. [41]

After the inauguration of the camp on 18th September, wide criticisms followed. The CCAC is surrounded by double fences and a highly surveilled basin, located remotely at the centre of the island. [42] Three-metre-high chain-link fences, watchtowers and uniformed security personnel patrolling inside and outside the CCAC 24 hours a day, making it look, and feel, very much like a prison. [43]

#### Closure of the cash assistance program in Greece

The Greek Migration Ministry decided to conclude the UNHCR’s cash assistance program at the end of September 2021. [44] This means that no financial assistance will be given to asylum seekers who are not accommodated in formal housing structures recognized by the



Greek authorities. According to media reports, in March 2021, the number of people living outside these structures amounted to 25,000 in Greece, while the total number of people receiving financial assistance was 64,500. [45]

From October 2021, the Greek authorities have been responsible for providing assistance to asylum-seekers. The Ministry has announced that asylum seekers of the “urban population” should submit a housing request in case they lack the financial resources to cover their basic needs. [46] At the same time, mainland camps and Emergency Support to Integration and Accommodation (ESTIA) lack sufficient capacities to accommodate these people and waiting periods for state housing can last months. [47] This leaves many people at risk of becoming homeless, struggling to survive without any support. [48] Additionally, the Ministry of Migration announced the closure of some mainland camps, such as Skaramangas, putting pressure on already over capacity camps to shelter more people. [49]

### **Wildfires on refugee camps**

In July and August 2021, Greece was heavily affected by massive wildfires. Those living in camps and in highly affected areas were evacuated, however there were considerable delays evacuating individuals in Amygdaleza Pre-Removal Detention Center (PRDC) and Malakasa Camp. [50]

### **Construction of walls**

Construction of three-metre tall concrete walls began around Ritsona, Diavata, and other refugee camps on the Greek mainland, with plans to build them around 23 other camps [51], as announced in January 2021. [52] The estimated cost for these walls is around 28.4 million euros, which will be largely funded by the European Commission. [53] The justification used by the Ministry of Migration for the wall’s construction has been that it is for the “protection” of those living inside of the camp. [54] In addition to the walls, there are further plans to implement extensive security systems within camps, including the use of drones, magnetic gates with integrated thermographic cameras, x-ray machines and security cameras at the entry and exit points. [55] These surveillance systems will be installed in 39 camps across the mainland and Greek islands, while 75 % of the costs will be covered by the European Internal Security Fund. [56]

## **7. Detention of applicants for international protection**

“The detention of POM has become an intrinsic part of the European pushback process. Testimonies collected by BVMN regularly indicated that whilst in these detention facilities, such as police stations or PRDCs, POM are regularly withheld access to medical assistance, translators, access to information and effective remedy, washroom facilities or food and water. Consistently, testimonies describe dilapidated detention conditions without proper sleeping or bathroom facilities with people often being held in overcrowded rooms.” [57]



For instance, in June 2021, BVMN recorded a testimony of a pushback in which around 60 POM, including women and children, were confined in a small, mixed-gender cell, without mattresses or functioning facilities before violently being pushed back from Greece to Turkey. [58] At least 83% of the testimonies about Greek pushbacks collected by BVMN in 2021 involved inhumane treatment or conditions in detention. [59] This echoed in the statement:

*“BVMN is concerned about the use of unofficial detention sites and the growing use of incommunicado detention. Numerous testimonies from both Greece and Croatia indicate the widespread and frequent use of barns, garages or abandoned buildings being used to detain, house or process POM. [60] We assert that the continued and unnecessary use of informal detention sites serves as a mechanism allowing police to escape legal or administrative oversight whilst conducting pushbacks.” [61]*

BVMN recorded numerous testimonies of POM directly being pushed back from PRDCs. [62] For instance, in January 2021, a group of 6 POM had been taken out of the PRDC in Xanthi and pushed back to Turkey after having been detained for 6 months. [63]

In the first half of 2021, 9,575 decisions for administrative detention had been issued [64], while in June 2021, 3,000 people were actively held in detention with almost 50% of them having been detained for more than 6 months. [65] Seven out of 10 POM entering the country irregularly are put into detention. [66]

According to EU law, use of detention during an asylum application should only be granted in very specific cases. [67] Despite national Greek law mirroring this requirement, asylum seekers are “likely to find themselves in detention, regardless of their individual circumstances”. [68] Through the International Protection Act (IPA; 2020), national legislation was amended to permit Greek authorities to impose detention orders without the obligation to examine alternative measures. This makes detention of POM in Greece “the rule rather than the exception”. [69] This legal amendment likely violates the EU Return Directive which only permits detention in cases where less coercive measures cannot effectively be applied. [70]

As of June 2021, 2,392 people were held in pre-removal detention; nearly half of them for more than six months. [71] The IPA extended the use and time-frame of detention, “which may reach 36 months if added to immigration detention”. [72] The IPA’s overall effect is the legitimisation of detention in return procedures. [73]

In addition to the arbitrary nature of detention, conditions of detention in Greece, especially in PRDCs, are substandard. [74] The overall conditions of detention are carceral and of a “prison-like design”, seriously lacking sufficient hygiene and non-food items, including clothing and clean mattresses/blankets. Facilities are overcrowded and lack the presence of



recreational activities [75], as well as there being extremely limited access to medical, legal or psychological help, despite being required by law. [76]

Greek detention conditions amount to torture and inhumane treatment, lead to serious physical and psychological damage, and even causing the loss of life: in March 2021, two POM died while in Greek detention. İbrahim Ergün is thought to have committed suicide after Greek authorities ruled for the prolongation of his detention. [77] Waiting for the decision on his asylum application, 44-year-old Macky Diabate died in detention in Kos, where he did not receive sufficient medical care for a treatable disease. [78]

### **8. Procedures at first instance**

In Greece, until November 2021, POM seeking asylum had to pre-register via Skype in order to enter into procedures of first instance. [79] By calling a specific Skype ID, POM would receive their registration appointment at the asylum office. [80]

The pre-registration procedure posed several issues. According to a report by MIT released in November 2021, people had to wait for an average of 14 months to pre-register and in some cases up to 2 years. Due to the undocumented nature of an individual waiting to pre-register their asylum claim, this carries a high degree of precarity and a likelihood of homelessness, exploitation, as well as a lack of access to basic services. [81] One of the reasons for the long waiting time is the government's failure to respond to the needs of POM and employ sufficient staff in the responsible administration offices. [82] In a report from April 2021, the UNHCR similarly confirmed the mentioned issues. [83]

The fact that the Skype pre-registration procedure can only be accessed with a working smartphone or computer [84] poses particular challenges as many POM reach Greece after several attempts to cross the border, during which they have been pushed back. Part of this systematic practice is, in multiple cases, the unlawful confiscation and destruction of phones, [85] leaving them without a device to access the pre-registration procedure. This also applies for POM being pushed back from neighbouring countries into Greece territory that then try to apply for asylum there. [86]

The abrupt closure of the Skype pre-registration system without the implementation of an effective alternative has presented new and pressing concerns regarding accessing the asylum procedure at first instance. [87] Since the closure of Skype, asylum applicants can only be registered in the closed RICs. [88] The RICs in the Evros region which are responsible for the procedures on the mainland [89], at the moment lack the capacity to hold the number of POM accessing Greece territory at the corresponding land border. Therefore, POM who were on mainland Greece at the time of the closure of the Skype system effectively do not have access to the asylum system. [90]





As a consequence, lack of access to asylum results in many POM living under precarious conditions, without adequate access to shelter or food. [91] The only alternative on the mainland to registering in the RICs is to approach the police, which can entail being placed in detention. [92] This is particularly concerning as BVMN recorded an increase in the number of pushbacks from detention facilities, often including involvement of police officers (see Q7). [93]

In response to accusations that access to asylum has been more or less rendered otiose, the Ministry of Immigration and Asylum has sought to placate concerns by publishing statistics which allegedly prove ‘effective’ access to asylum. However, these statistics have been shown to contain unrelated and misused data. [94]

Concerning access to procedures for first instance asylum applications on the islands, Legal Centre Lesvos (LCL) stated, in January 2022, that *“in Lesvos, during the COVID-19 pandemic, the Greek authorities’ disproportionate and discriminatory use of quarantine measures resulted in vulnerable applicants being denied access to registration and asylum procedures for up to two months and held in effective detention”*. [95]

LCL reported in November 2021 on *“expedited interviews”* for people from Afghanistan, where consideration was not made of the situation in their home country and ultimately led to a rejection at first instance. [96]

In addition, LCL in August 2021 made the observation of *“gross procedural irregularities [in increasing numbers of negative asylum decisions at first instance], including ‘copy-paste’ decisions issued by the Greek Asylum Service and the European Asylum Support Office (EASO), for instance indicating that Afghan nationals could “return to (their) country of origin, Turkey,” or that an Iraqi national could “return to (his) country of origin, Afghanistan”*.” [97]

In Croatia, access to procedures at first instance are also consistently limited. As BVMN member organisation Center for Peace Studies (CPS) stated in June 2021, an increasing number of POM reached out to them in order to ask for support in seeking asylum. From January to June 2021, CPS received a total of 224 inquiries from 178 groups involving at least 658 persons, of which the majority sought help in accessing the asylum system while being on Croatian territory. It is evident that there exists no assurance that access to asylum is guaranteed, it being noted that *“[o]f all the groups, just 10 finally got access to the asylum protection system in Croatia”*. [98] Reasons for POM reaching out to the CPS lay mainly in access to the asylum procedure in Croatia being practically available only by approaching the police; this carried with it concomitant risk that they would be pushed back by the police. [99]



### 9. Procedures at second instance

The very nature of pushbacks makes it challenging for POM to access procedures at second instance. This is of concern to BVMN as, in 2020, there was an increase of pushback testimonies, where people living in Greek refugee camps were apprehended and subsequently pushed back from deep inside the mainland. [100] In addition, several testimonies refer to the destruction of ID documents like valid asylum documents and resident permits stolen and destroyed during pushbacks. [101]

In Greece, appeals against asylum decisions have to be filed in the “*form of an administrative appeal (ενδικοφανής προσφυγή) before the Independent Appeals Committees Ανεξάρτητες Επιτροπές Προσφυγών) of the Appeals Authority under the Ministry of Migration and Asylum*”. [102] Following the reform of the judicial review process in 2020, Refugee Support Aegean (RSA) has articulated serious concerns about the independence and impartiality of these bodies. This is due to the incorporated rules of review, according to which judges on a lower level review the decisions of those on a higher level. [103]

In particular, during procedures at second instance, there was an ongoing lack of access to courts by POM. According to RSA, this situation deteriorated in 2021, in particular in refugee camps, as the “*Ministry of Migration and Asylum officials have often required lawyers to obtain authorisation prior to entering facilities to meet with their clients*”. [104]

Additionally, there are considerable delays in proceedings before first instance Administrative Courts, as well as the Council of State, both responsible for appeal procedures. Many appeal proceedings last up to several years due to repeated postponement of hearings. For example, the appeal cases AK255/2020, from the beginning of 2020 at the Administrative Court of Athens, as well as E1686/2018, from 2018 in front of the Council of State, are still pending. [105]

In addition, RSA has raised concerns about whether remedies are effective, as “[t]he rate of positive decisions on the merits of appeals was no more than 5.2% in 2020. As for judicial review, only 1.8% of Administrative Court decisions were positive.” [106] This has proven to be a continuous issue; these statistics aligned with the number of successful second instance decisions from January until June 2021. Out of 7,575 decisions by the Appeals Committees, only in 622 cases (8.2%) refugee or subsidiary protection status was granted. [107]

Moreover, the obligation “*to appear in person or to submit a residence certificate before the Appeals Committee*” [108] led to the systematic rejection of 1,121 appeals between its entry into force at the end of 2019 and June 2021. [109] Combined with an existing lack of access to legal aid, this raises particular concerns. [110] UNHCR, IOM and UNICEF, additionally identified in April 2021 the issues of “*inappropriate notifications, need for providing detailed reasons for appeal, without full and effective access to free legal aid, as well as short deadlines particularly in border procedures*” resulting from the introduction of the new legislation. [111]



The lack of access to legal aid for POM is particularly concerning as appeals have to be filed in Greek in order to avoid being rejected as inadmissible. [112] In January 2021, the Greek Council for Refugees raised concerns as legal aid was not available to POM on Lesbos, while at the same time they were notified about rejections on the first instance procedure, having a deadline of 10 days to submit an appeal. [113] Filing an appeal without legal aid amounts to a significant obstacle, which in practice *“means that applicants [...] will not be able to appeal against their decision legally and admissibly, as their right to free legal aid in the second instance has not been guaranteed.”* [114]

Even though asylum seekers at the appeal stage have the right to free legal aid, LCL regard the provision of legal aid as insufficient, with POM having *“reported difficulties or impossibility in contacting their state appointed lawyers. Those that have met with their lawyers, are in some cases not informed of all the reasons for their rejection, and are not provided with a translation of the Greek decision, so often are not able to provide information or evidence that could support their asylum claims.”* [115] Hence *“among other restrictions, legislative reforms have undermined judicial protection of refugees by restricting access to the Appeals Committees and pose undue constraints on the scope and quality of the asylum appeal procedure.”* [116]

### 11. Vulnerable applicants

85% of pushbacks recorded by BVMN contain “one or more features of torture, inhuman or degrading treatment”. [117] Considering that Article 20(3) of the Asylum Qualification Directive defines survivors of torture as vulnerable people, [118] pushbacks therefore *create* vulnerable people. This is particularly concerning as pushbacks often include persons with pre-existing vulnerabilities. Of the 471 pushbacks from EU countries recorded by BVMN in 2021, minors were affected in at least 253 cases, as well as at least 138 cases of women and people that identify themselves as LGBTIQ+ were recorded. [119] This is corroborated by the *Protecting Rights at Borders* (PRAB) project, which reported that of 2162 pushbacks conducted in European countries between January and April 2021, in 276 cases minors were involved, as well as women in 177 cases. [120]

#### Minors

In 2021, BVMN member Josoor collected a testimony of a woman who was part of a transit group of 11 people, including a 16-year-old minor. The group was apprehended in Greece and brought to a detention centre, where they were held overnight before being pushed back in a group of 130 persons, including minors, at the Evros river. During the pushback they were forced to undress, the women in the group were sexually assaulted, they were threatened with a gun and beaten. *“When asked for clarification, the respondent explains that only the men were hit, not the women, but also the 16-year-old (male) minor”.* [121]



In Greece, 87 % of the pushbacks recorded by BVMN in 2021 involved minors. [122] This aligns with the findings of a LCL study (2021), according to which children were present in all 17 analysed cases. [123] appropriate

In most cases, pushbacks are conducted with violence perpetrated against minors as well or with minors witnessing. Therefore, pushback practices exposes minors to torture, inhuman or degrading treatment and extralegal detention. [124] In 2021, BVMN recorded how a 23-year-old man begged the police not to push back his transit group, including his 14-year-old brother. When expressing the intention to claim asylum, the men in Greek police uniform, as recounted by the respondent, “*started laughing and humiliating us. [...] They didn't accept our asylum claim. I even begged them for my little brother, but they just laughed and hit us*”. [125]

In Croatia, minors were involved in 110 of the 221 pushback cases recorded by BVMN in 2021 (49%) [126], which aligns with findings of Refugee Rights Europe. [127] The Danish Refugee Council reported an increasing number of pushbacks including families with young children, as well as unaccompanied minors, from Croatia in the spring of 2021. [128]

In other EU countries, BVMN observed testimonies of pushbacks involving minors. In Spain (Ceuta), member organisation *No Name Kitchen* reported on high numbers of minors being pushed back to Morocco. According to their reports “*Spanish police forces initiated a hunt for undocumented people in the streets, collecting them using violent methods [...]. Many of these were unaccompanied minors*”. [129]

BVMN attests that pushbacks often result in unnecessary separation of children from their families. Moreover, when children are already unavoidably separated, as is the case with unaccompanied minors, pushbacks systematically and by design, deny children the right to access procedures, thus hindering their access to family reunification processes, protection systems and deny them their right to “be provided with alternative care”. [130]

BVMN's reports of minors being pushed back are confirmed by UNICEF findings. [131]

### **Women and LGBTQI+**

BVMN collected several testimonies of women and people identifying as LGBTQI+ who experienced pushbacks in 2021. [132] For example, in January 2021, numerous cases of pregnant women which had been pushed back from Greece to Turkey and were left on an islet in the river, “*without food, water or shelter [and] at direct risk of drowning*” were recorded. [133] People identifying as LGBTQI+ are criminalised and their rights are violated; both in countries of origin as well as the transit countries they are pushed back to. [134] This has been the case in a violent pushback including three LGBTQI+ POM recorded in May 2021. [135] These are only two examples of many instances of pushbacks and violence inflicted on women and LBTQI+ people. [136]



## **16. National jurisprudence on international protection in 2020**

### **Italy**

In Italy, BVMN partner organisation *ASGI* supported an applicant who was subject to an illegal chain pushback from Italy, via Slovenia and Croatia, to Bosnia-Herzegovina. In January 2021, the Court of Rome found unequivocal evidence of violations of international law, and acknowledged the applicant's right to enter Italy as well as the applicant's access to the asylum system. [137]

<https://bit.ly/3sWTAfu>

### **Slovenia**

In Slovenia, member organisation *InfoKolpa* supported the case of an asylum seeker from the dissident anglophone region of Cameroon who was returned to Croatia by Slovenian authorities in August 2019. [138] In January 2021, "*the Administrative Court established [...] that the Republic of Slovenia violated the applicant's right to prohibition of collective expulsions, his right to prohibition of torture and his right to access to the asylum procedure*". [139] The Court ordered that the asylum seekers be allowed entry and access to international protection. In April 2021, the Slovenian Supreme Court dismissed the appeal of Slovenia against this decision. [140]

<https://bit.ly/36hpWmv>

### **Austria**

In February 2022, the Regional Administrative Court of Styria, found that readmissions from Austria to Slovenia are systematic and illegal. The case concerned a Somali applicant, a minor at the time. He had entered Austrian territory and expressed his will to apply for asylum to border guards. Nonetheless, the border guards notified their Slovenian counterparts and the minor was readmitted to Slovenia. The Administrative Court stated that the readmission to Slovenia was unlawful and that Austrian authorities deprived the applicant of a fundamental right to initiate asylum proceedings and thus protection against deportation.

The Regional Administrative Court of Styria referenced its earlier judgement of July 2020. The case concerned the readmission of a Moroccan national from Austria to Slovenia, who was then subsequently pushed back to Croatia and, finally, to Bosnia. The applicant had also expressed his will to apply for asylum in Austria. The Court found then and reiterated in its most recent judgement that pushbacks are systematically employed in Austria. The Court found that Austrian police acted unlawfully in both cases.

The cases were supported by BVMN member organisation Push-Back Alarm Austria.

More information:



- Case of January 2022: <https://bit.ly/3BKSBpy>
- Case of July 2021: <https://bit.ly/3s5JJhp>

### **Croatia**

In March 2021, the Constitutional Court of the Republic of Croatia issued the first ruling confirming violations of refugees' constitutional rights in the country. The case concerned an Afghan family, and their daughter Madina, six-year-old, who died following a pushback, where the Croatian police officers ignored the family's pleas for international protection, and ordered them to return to Serbia following train tracks. [141]

<https://bit.ly/3p4eGAy>

The Court held that Croatia exposed the family to the risk of torture and ill-treatment. The Court stated that Croatian authorities failed to make an individual assessment of Serbia as a safe third country for the family. In this sense, the Constitutional Court took the view that in assessing a country as "safe" it is obligatory to take into account "*relevant reports by bodies concerned with the protection of refugees and NGOs in order to determine the real treatment of persons*". [142] The case was supported by BVMN member organisations Are You Syrious? (AYS) and CPS.

### **Greece**

Victims of pushbacks do not have reliable access to criminal proceedings. After victims bring the crime of torture to the attention of the public prosecutor, proceedings are at the prosecutor's discretion. [143] So far no perpetrators have been charged with crimes in relation to pushbacks. [144] Instead, Greek prosecutors have found the claims of Greek authorities practising pushbacks "*manifestly ill-founded in substance*", despite the existence of reliable evidence proving otherwise. [145] Since 2019, the Greek Council for Refugees has filed several complaints on behalf of pushback victims before the responsible Public Prosecutor, all of which were dismissed due to a lack of evidence. Submitting a written statement in support of the accusation, did not result in better consideration of the submitted evidence. Appeals against two of the decisions by the NGO's lawyers were rejected in 2021, among the reasons stated was the fact that there was no additional evidence submitted. One of these cases has since been communicated by the ECtHR against Greece.

## **17. Other important developments in 2021**

### **Criminalisation**

BVMN member organisations have been increasingly criminalised during the last years and hindered in their work to support POM to access basic needs and exercise their rights.



CSOs reporting on pushbacks were framed as spreading “*fake news*” by governmental actors in Greece. [146] This is particularly problematic, should their actions be considered in the light of the newly established criminal act on fake news which makes sharing 'fake news', which is vaguely defined, a criminal offence. [147]

In September 2020, the Greek government accused 33 members of CSOs of forming a criminal organisation, espionage, facilitation of illegal entry and violation of state secrets [148], among them volunteers of two BVMN member organisations, Mare Liberum and Josoor. [149] The defendants were not informed of the accusations by governmental bodies and neither a trial nor an indictment took place. [150] Thus, the case can be seen as continuous harassment in the form of legal action against the volunteers in question, while at the same time leading to negative media coverage and defamation. [151] BVMN partner Josoor has been informed of a second criminal case, accusing the organisation of paying money for fake testimonies of human rights violations at the hands of the Greek police and thus spreading fake news.

Mare Liberum, which monitors human rights violations in the Aegean Sea, is often harassed by the Greek authorities through excessive administrative controls or audits, surveillance by law enforcement, as well as serious threat by the Hellenic Coast Guard, including weapons being pointed at them during their missions. [152] Recurring incidents resulted in a decrease of Mare Liberum’s missions.

In Croatia, AYS and CPS experienced an increase of criminalisation in the context of strategic litigation on the death of 6-year old Afghan refugee Madina Hussiny [153] they supported. Dragan Umičević, a volunteer of AYS, was “*charged with assisting in the illegal crossing of the state border*” of the Afghan family. He supported AYS in monitoring the family’s access to asylum, after they had been pushed back twice. In December 2021, the High Misdemeanour Court of Croatia fined him HRK 60,000 (€8,000). [154]

Furthermore, AYS volunteers have been held in Croatian police stations for up to 10 hours when they would present themselves to monitor access to the asylum of their clients. During this informal detention, they were regularly threatened with criminal prosecution, humiliated and then released with no formal charges. This led to AYS stopping their monitoring services with regards to access to asylum in Croatian police stations in 2021, as it could not guarantee the safety of its volunteers.

Additionally, CPS and AYS report on defamation of their work in national media, leading to a negative attitude towards their work in the general public. [155] The Minister of Internal Affairs publicly stated that the named CSOs smuggle migrants from Serbia, providing them with money, phones, and directions on how to enter Croatia.

### **Third Country Nationals (TCNs) working with Greek Authorities**



Testimonies from 2021 mentioned in several cases TCNs working with Greek authorities to facilitate pushbacks. [156] This trend has been observed in reports since 2020; TCNs assisting in perpetrating pushbacks are promised legal documentation in Greece or other compensation for their actions. [157]

For instance, an August 2021 testimony recounts that a group of 8 Syrians facilitated a violent pushback from Greece to Turkey. While crossing the river, the respondent recalled that he was told in Arabic: “[A]ctually we are Syrians. We are working with the police in order to get papers so we can go to Germany and to Europe. That’s what they promised us and that’s why we’re doing this.” [158]

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