

## **PRAB: Policy Note I**

**Destruction of property or evidence of people's presence on EU Member States' territory: a tactic that might erase some traces but fails to eradicate the marks on pushback victims**



**Protecting Rights  
at Borders**

The PRAB initiative gathers partner organizations operating across a range of different countries: **Italy** (Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), Diaconia Valdese (DV) and Danish Refugee Council (DRC) Italia); **Hungary** (Hungarian Helsinki Committee); **Bosnia and Herzegovina** (DRC BiH); **Serbia** (Humanitarian Center for Integration and Tolerance (HCIT)); **North Macedonia** (Macedonian Young Lawyers Association (MYLA)); **Greece** (Greek Council for Refugees (GCR) and DRC Greece); and **Brussels** (DRC Brussels).



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## **Destruction of property or evidence of people's presence on EU Member States' territory: a tactic that might erase some traces but fails to eradicate the marks on pushback victims**

When pushbacks occur, national border police and Frontex agents (when present) conducting the illegal practice aim to eliminate evidence of people having been on the territory. Destruction of property of the victims of pushbacks and/or evidence happens at most of the EU's borders, although, the subtleties of how it occurs, vary.

This policy note aims to outline the scope of the practice, the consequences for litigation and last but not least, to provide some testimonies of people who have faced this practice, often in combination with other severe rights violations.

**Testimony 1:** A group of 4 from Afghanistan, reported as part of their testimony on the pushback experienced (from Croatia to Bosnia), about the treatment by police officers in an unknown location, after being apprehended while hidden in a freight container: *"Police officers ordered us to **take off our jackets, shoes, socks, and took our phones and money.** Around 11 pm, the police put us in the van and transported us to a border region with BiH, near Velika Kladusa. There were waiting 9 police officers in black uniforms wearing black balaclavas on their heads. They were holding sticks and had flashlights attached on their heads. Policemen ordered us to get out of the van and to lay down on the ground with our faces down. The ground was covered with a snow. Police officers were holding us in that position for approximately one hour. We were freezing because we were barefoot and without jackets. Several times, police officers hit us with sticks and took snow from the ground and were stuffing it into our mouths."*

**Testimony 2:** A Group of 3 Afghan men reported the following very violent episode, near the Slovenian border at the Croatian territory, once they were found by 6 police officers in black uniforms with the help of a thermal imaging camera: *"As soon as they approached us, they started beating us with their fists and kicking us. After that, they ordered us to get out to the main road, which was some 150 meters away. When we got out, the police officers **immediately started throwing things out of our backpacks by the side of the road.** They ordered us to slowly take off piece by piece the clothes they had inspected in detail. During the inspection, they left only our underwear on us. They even **took out the insoles from sneakers in search of money.** They found two phones and 140 KM with us, which they **immediately confiscated.**"*

## **Erasing traces: pushing people over borders without their personal belongings**

While on some EU borders a more brutal method/approach is used by taking away all personal belonging; others have a more meticulous approach of checking belongings and removing or destructing merely the personal items that might amount to evidence of the pushback.

The widely occurring practice includes in almost all cases:

- Checking for valuable items, such as money, jewelry, and electronic devices, including more expensive mobile phones, or other essential non-food-items such as backpacks, clothes, and shoes.
- Systematic deprivation and confiscation of personal belongings. While items of value will be kept, others are just taken away (for the purpose of taking away) at border crossings.
- Elimination of items which might provide evidence of the person's actual presence at the EU's territory (such as bus tickets, registration papers, or identification documents). This can take different formats: sometimes papers are burnt, and on other occasions phones which might include pictures are smashed on the floor and purposefully broken.

The motivation for the destruction of property can therefore be considered twofold: firstly, for ensuring evidence is destroyed, secondly, for lucrative purposes.

**Testimony 3:** A group of 10, existing of 8 Somalis and 2 Eritreans, an adult man, woman and 8 minors (3 females and 5 males), reported as part of their testimony on the chain pushback experienced (from Italy to Bosnia, through Slovenia and Croatia) that the Croatian officials did not return their personal belongings but instead provided them with money. *“Police officers ordered them to leave the van and to walk towards Bosnia. PoCs requested their personal belongings to be returned. **Police officers told them that their phones cannot be returned, but they will give them 20 kuna for each person. Police explained PoCs that 20 kuna can be exchanged for 100€.** PoCs took the money and walked for about two hours and have reached TRC Miral.”* [Note that 20 Kuna equals less than 3 euros.]

The destruction of migrants' personal belongings constitutes a violation of a specific right, the right to property, which is protected by Article 1, Protocol 1 of the European Convention on Human Rights (ECHR). According to Article 17 of the Charter of Fundamental Rights of the European Union, as well as national legislation of the individual Member States and various instruments of international law, a violation of the right to property must be taken into consideration by national and European judges. Furthermore, when this practice is accompanied by the use of force, violence, threats and other humiliating behavior, it can amount to inhuman and degrading treatment, which is among others prohibited by Article 3 of the ECHR, or it could be in violation of Article 8 of the ECHR.

## The bigger picture: ordered obstacles to pursue legal action

It has been an ongoing challenge for lawyers and legal aid providers to challenge pushbacks in national court systems as evidence to substantiate the claims of the victims has often been erased or is not considered credible. The burden of proof that lays on victims of pushbacks and other human rights violations or on applicants of international protection is high, and states rarely collaborate with investigating matters in a transparent and thorough way. This has led in different cases to national lawsuits being archived by competent authorities or dismissed due to a 'lack' of evidence. The public prosecutor's inability to identify the perpetrator, linked in many cases to national border police or Frontex agents having face masks, further causes difficulty in ensuring that victims of pushback cases have an effective path to justice and accountability. Limiting access to border areas – which are in addition often militarized zones – further prevent journalists, civil society actors and other independent third parties from reporting upon human rights violations taking place.

**Testimony 4:** In the city of Didimoticho in Evros, Greece, a Syrian man who was seeking asylum had several important documents confiscated: *“I showed them all the documents I had with me (full registration card, official memo, mental health certification from Médecins Sans Frontières (MSF) Organization). Despite all that, they asked me to follow them; I tried to explain to them that I am an asylum seeker and I have all the legitimate documents so that they could explain to me what was wrong, but they hit me and then they drove me out of the bus station, where they forced me to board a light blue van. The **two aforementioned men took my mobile phone, my money and all the documents I had at my disposal**”.*

Lawyers, legal aid providers and humanitarian organisations providing assistance to victims of pushback cases have been working across borders to collect information, testimonies and proof of the practice of destruction of property of the victims and/or evidence of presence on the territory of (different) EU Member States.

The PRAB initiative is but one example of several reports, where humanitarian organisations have investigated the occurrence and prevalence of theft and destruction of property and/or evidence of

presence of the victims in the EU's territory.<sup>i</sup> For example, organisations such as the Danish Refugee Council and Border Violence Monitoring Network monitor and report on pushbacks, violence, theft and destruction of property at the border between Croatia and Bosnia, or the border between Greece and North-Macedonia.<sup>ii</sup> Several NGOs do the same along the Greek-Turkish border in the Evros region of Greece.<sup>iii</sup> Human rights organisations such as Human Rights Watch and Amnesty International likewise monitor and report on pushbacks and the insidious accompanying practices that occur with them at several EU borders, Greece and Croatia being but two examples in this regard.<sup>iv</sup> Furthermore, the Fundamental Rights Agency (FRA), the European Committee against Torture and Inhuman and Degrading Treatment and the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, have similarly reported on confiscation and destruction of property of the victims at border zones in the Evros region and between Croatia and Bosnia and Herzegovina.<sup>v</sup>

In light of the very well documented human rights violations at the EU's border, both by civil society actors and multiple media outlets – such as in the Light House Reporting in October 2021 - the question remains as to what additional evidence is needed to prove the practice of pushbacks and ensure accountability at the EU's borders, both the internal as well as external ones.

Luckily, reports from human rights organisations as well as media coverage are often used to start litigation at national, or once exhausted, European courts, or to provide proof of the practice more broadly. This has also led to some successful cases by judiciaries in different EU member states (among others in [Italy](#), [Croatia](#), and [Slovenia](#)). These court rulings condemn the well-established practice of pushbacks and a pattern of human rights violations at the different borders.

As some states use all means at their disposal to erase evidence of pushbacks, it is crucial that reports from civil society actors outlining the practices and rights violations are taken on board by national and regional courts when addressing the cases brought by victims of pushbacks and/or other human rights violations at the borders.<sup>vi</sup> Conducting investigations should further not be optional or left to the discretion of the authority committing the violations in the first place. The lack of an effective investigation might also mean a breach of Article 2 or 3 of the ECHR.<sup>vii</sup>

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<sup>i</sup> Protecting Rights at Borders (2021) *Pushing Back Responsibility: Rights violations as a "Welcome Treatment" at Europe's borders*. Available online at [prab-report-january-may-2021-final\\_10052021.pdf \(drc.ngo\)](#) (accessed 3 December 2021); Protecting Rights at Borders (2021) *Doors Wide Shut: Rights violations at borders re-confirmed, while the door for justice and the path to accountability remain closed*. Available online at [prab-report-april-to-june-2021.pdf \(drc.ngo\)](#) (accessed 3 December 2021).

<sup>ii</sup> [Danish Refugee Council's Monthly Border Monitoring Factsheets](#) (available from December 2019 to October 2021); Border Violence Monitoring Network (2020) *Annual Torture Report*. Available online at <https://www.borderviolence.eu/wp-content/uploads/Annual-Torture-Report-2020-BVMN.pdf> (accessed 6 December 2021).

<sup>iii</sup> Greek Council for Refugees (2018) *Reports and testimonies of systematic pushbacks in the Evros region*. Available online at <https://www.gcr.gr/media/k2/attachments/ReportZ08032018.pdf> (accessed 3 December 2021); Greek Council for Refugees, ARSIS and HumanRights360 (2018) *The new normality: Continuous push-backs of third country nationals on the Evros river*. Available online at <https://www.gcr.gr/en/news/press-releases-announcements/item/1028-the-new-normality-continuous-push-backs-of-third-country-nationals-on-the-evros-river> (accessed 3 December 2021); HumanRights360 (2020) *Defending human rights in times of border militarization*. Available at: <https://www.humanrights360.org/wp-content/uploads/2020/10/Evros-Report-19.10.pdf> (accessed 12 December 2021); Mobile Info Team (2019) *Illegal Pushbacks in Evros: Evidence of human rights violations at the Greece/Turkey border*. Available online at <https://www.statewatch.org/media/documents/news/2019/dec/gr-tu-mobile-info-team-pushbacks-report-11-19.pdf>; Legal Centre Lesvos (2021) *Crimes against humanity in Greece*. Available online at: <http://legalcentrelesvos.org/wp-content/uploads/2021/02/Collective-Expulsions-in-the-Aegean-LCL-01.02.2021-1.pdf> (accessed 3 December 2021).

<sup>iv</sup> Human Rights Watch (2020) *Greece: Investigate Pushbacks, Collective Expulsions*. Available online at [https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions?fbclid=IwAR1KFOXZq9kDfpyMrlx0C39Kx2bB5ex1GBqVsnBkRp\\_9HTo57B4JyKk5cwa](https://www.hrw.org/news/2020/07/16/greece-investigate-pushbacks-collective-expulsions?fbclid=IwAR1KFOXZq9kDfpyMrlx0C39Kx2bB5ex1GBqVsnBkRp_9HTo57B4JyKk5cwa) (accessed 25 May 2021); Amnesty International (2021) *Greece: violence, lies and pushbacks – refugees and migrants still denied safety at asylum at Europe's borders*. Available at [Report \(amnesty.org\)](#) (accessed 3 December 2021).

<sup>v</sup> European Union Agency for Fundamental Rights (2020) *Migration: Fundamental Rights Issues at Land Borders*. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-land-borders-report\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-land-borders-report_en.pdf) (accessed 6 December 2021); European Committee for the Prevention of Torture and Inhuman and Degrading Treatment (2020) *Report to the Greek Government on the visit to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020*. Strasbourg: Council of Europe. Available at <https://rm.coe.int/1680a06a86> (accessed 3 December 2021), at paragraphs

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53-56; Felipe González Morales, Special Rapporteur on the human rights of migrants (2021) *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, A/HRC/47/30, at paragraph 56.

vi This point was addressed more extensively in *M.H. v Croatia*, where the ECtHR highlighted that where there is *prima facie* evidence of pushbacks, including in reports from civil society actors and international organisations, as well as video surveillance and GPS tracking, the burden of disproving pushbacks shifts to the state (paragraphs 270-274). In this regard, it is also incumbent upon states to conduct effective investigations into alleged violations of the right to life as enshrined in Article 2 of the European Convention on Human Rights, including by establishing whether a pushback has occurred, and whether it could have contributed to harm caused in breach of the Convention (paragraphs 149-164).

vii See for instance, ECtHR, *M.H. and Others v. Croatia* (applications nos. 15670/18 and 43115/18), 18 November 2021

