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4.1.2. Situation along the Balkan routes

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In 2021, several EU+ countries in central Europe and along the Balkan routes received considerably more applications for international protection than in 2020. This included Austria (39,000 applications, +162%), Bulgaria (11,000, +212%), Romania (9,600, +56%), Slovenia (5,300, +49%) and Croatia (2,900, + 83%) *(see Figure 4.2).* The significant increase in Austria made it one of the top five receiving countries among EU+ countries. This was partly due to Syrians lodging three times as many applications in Austria as in 2020, remaining by far the largest applicant group.

In addition, Afghan applicants strongly contributed to the increases in all five countries: their number more than doubled in Austria and Croatia, and more than tripled in Bulgaria and Slovenia. Afghans were by far the largest applicant group in Bulgaria, Croatia, Romania and Slovenia, as well as the second-largest in Austria. Detected illegal border-crossings along the Western Balkan route rose steeply in August and September 2021, which coincided with the Taliban takeover of Afghanistan. Overall, illegal border-crossings detected on this route were significantly higher than in 2020, in every month after January 2021.

In Austria, the Regional Administrative Court of Styria condemned the return of a Moroccan national who was arrested at the border with Slovenia. Despite the fact that a clear wish to apply for asylum was expressed, the authorities proceeded to return him to Slovenia, from where he was deported to Croatia, and subsequently returned to Bosnia and Herzegovina. In this case, the court noted that the deportation by Slovenian police to Croatia, and the onward deportation from Croatia to Bosnia and Herzegovina without examining the person’s individual situation, amounted to chain *refoulement*.

Rising applications in countries along the Balkan routes

Figure 4.2. Asylum applications in selected EU+ countries along the Balkan routes (left) and detections of illegal border-crossings (right) on the Western Balkan route, 2021 compared to 2020

Figure 2 Asylum applications in selected EU+ countries along the Balkan routes

Source: Eurostat [migr_asyappctza] as of 22 April 2022 and Frontex [Detections of illegal border-crossings] as of 8 March 2022.

In Bulgaria, the ECtHR found a violation when a Turkish national who had irregularly crossed the border in 2016 by hiding in a heavy goods vehicle and who expressed fears of ill treatment if returned to Turkey was not given the opportunity to submit an application for international protection and was instead handed over to Turkish authorities at a border post.

In Croatia, following reports of alleged pushbacks, border violence and allegations of impunity for law enforcement officers in 2020,[332] the Council of Europe's Commissioner for Human Rights reiterated her call "to stop pushbacks and border violence and eradicate impunity of serious human rights violations committed against migrants by law enforcement officers".[333] In response, the Ministry of the Interior signed a new agreement on an independent monitoring mechanism with academia and civil society organisations working in the field of human rights protection and legal and medical sciences. The mechanism aims to ensure transparent investigations and full respect for fundamental rights.[334]

The ministry underlined that an independent monitoring mechanism of police action toward migrants has been running in Croatia since 2008 by NGOs. The mechanism was carried out by the Croatian Legal Centre in cooperation with the Ministry of the Interior and the Ministry of Foreign Affairs of the Netherlands between 2008 and 2011, and by the Croatian Legal Centre in cooperation with UNHCR between 2012-2014 and 2018-2019. The process of drafting a legal basis for the independent monitoring mechanism was launched in 2020 in cooperation with the European Commission and led to the conclusion of the new agreement. The national Office of the Ombudsperson participated in the first meeting of the advisory board of the newly-established national independent border-monitoring mechanism.[335] The Ombudsperson also launched an investigation into reports and footage of human violations by police officials at the Croatian border.[336]

In a judgment decided in November 2021, the ECtHR found violations of the European Charter of Human Rights (ECHR) by Croatia, after a 6-year-old girl died on the tracks when ordered to return to Serbia from Croatia in 2017. The court noted that the Croatian authorities failed to conduct an effective investigation into the circumstances leading to the girl's death and concluded a violation of the ECHR, Article 2 from a procedural aspect. Regarding the complaint that the applicants were subjected to collective expulsion without an individual assessment of their circumstances, the court considered it was unable to establish whether Croatia provided the mother applicant and her five children with genuine and effective access to procedures for a legal entry to the country, and thus concluded that their removal was in breach of Protocol No 4 of the ECHR, Article 4.

In January 2021, the Commissioner for Human Rights published written observations in three ECtHR cases against Croatia[337] concerning Syrian applicants summarily returned from Croatia to Bosnia and Herzegovina in 2018. In her observations, the Commissioner stated that, "based on her own observations and numerous consistent and credible reports… [there was] widespread ill treatment of migrants by Croatian law enforcement personnel in the context of

collective returns", as well as a lack of independent, prompt and effective investigations of such treatment which consequently leads to impunity amongst law enforcement officers.338

In its report analysing the situation in 2020, a network of civil society organisations claimed that the Croatian state was in direct violation of the ECHR, Article 3 through the organisation of premeditated and coordinated pushbacks and ill treatment of migrants.339 The NGO Centre for Peace Studies reported that a 5-year-old boy drowned in the Una River in Bosnia and Herzegovina while his family was attempting to cross the Croatian border.340

The transit zones at the Hungarian-Serbian border were closed in May 2020 as a response by the Hungarian authorities to the FMS and Others judgment in Joined Cases C-924/19 PPU and C-925/19. However, in March 2021, the ECtHR ruled that the extended stay of asylum applicants in these transit zones previously, the considerable delays in examining their application, the conditions of their stay and the lack of a judicial review of their detention within the transit zone constituted a violation of the ECHR, Articles 55(1) and 55(4) *(see Section 4.8).* In 2021, judgments related to the now defunct transit zones were still pending.

The special conditions to submit an asylum application which were introduced by the Hungarian government in May 2020 were extended until 31 December 2022.341 According to these rules, applicants must submit a declaration of intent at a Hungarian embassy in a non-EU country, which is then assessed by the asylum authority. Infringement procedures launched by the European Commission in 2020 were still ongoing and a referral to the CJEU was made in July 2021.342 UNHCR also expressed concern about legislative measures in Hungary which impede access to the asylum procedure.343

The Budapest Regional Court declared an administrative act from the asylum authority to be unlawful as it rejected an asylum claim without a substantive examination for an applicant who was already on the territory but lost his lawful residence title in the meantime. According to the asylum authority's decision, the applicant could have only submitted his intent to apply for asylum at the embassy in Belgrade, Serbia. The court concluded that the applicant was subject to unlawful discrimination, as the court was made aware of at least one case when an asylum application was examined on its substance without the applicant having submitted a declaration of intent prior to applying for asylum. In addition, the CJEU held that Hungary had breached EU law by criminalising the facilitation of lodging an asylum application by persons who are not entitled to international protection under Hungarian law.

In a final judgment from the ECtHR dated October 2021, a violation was found against Hungary when a Pakistani national, who irregularly crossed the border in 2016 and told Hungarian police officers that he wanted asylum, was returned to Serbia without being allowed to lodge an asylum application. In February 2021, the Hungarian Helsinki Committee made submissions to the UN Special Rapporteur on the human rights of migrants when it documented several instances of pushbacks to Serbia; pushbacks from the international airport in Budapest; and pushbacks after failed official deportation to the country of origin.344

In Romania, the authorities introduced a card document for asylum seekers which was intended

to prevent the circulation of forged documents.

In March 2021, the Slovenian National Assembly adopted amendments to the International Protection Act.345 The corresponding implementing regulation was adopted on the procedure for foreigners who wish to apply for international protection and the procedure for accepting applications for international protection.346 The changes included amendments to the border procedure, providing for clearer provisions, appropriate care of vulnerable persons and changing the time limit for the border procedure from 2 weeks to 3 weeks. As a result of COVID-19 measures, the possibility of lodging and submitting an asylum application electronically was introduced.

A network of civil society organisations reported alleged chain pushbacks from Slovenia to Croatia, Bosnia and Herzegovina, and Serbia.347 Allegations of pushbacks at the borders were addressed by the Human Rights Ombudsperson in the annual report for 2020, where concern was expressed about Slovenian authorities not taking into account the intentions expressed by foreigners to apply for asylum, and consequently law enforcement officers concluding that they are economic migrants.348 The Slovenian government rebutted the allegations, stating that the irregular migrants did not apply for international protection and were returned. The authorities noted that irregular migrants change their identity and statements to conceal the circumstances of irregular crossings, and the police take measures to ensure that national and international legal requirements are all met.349

In April 2021, the Slovenian Supreme Court upheld a decision on a breach of the prohibition of *refoulement* and collective expulsion and the right to access the asylum procedure. A Cameroonian national who applied for international protection in Slovenia was transferred to Croatia and subsequently to Bosnia and Herzegovina. The court ruled that Slovenia breached the prohibition on collective expulsions as the competent authorities did not objectively assess individual circumstances.

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