

OBSERVATION REPORT - SUMMARY

SCHENGEN: INTERNAL AND EXTERNAL BORDERS

# WITHIN AND OUTSIDE: EUROPE CLOSES ITSELF OFF

OBSERVATIONS OF THE MECHANISMS OF MONITORING AND SORTING OF MIGRANTS  
AT THE BORDERS OF FRANCE, HUNGARY, AND IN THE MEDITERRANEAN

## INTRODUCTION

# “Save Schengen”, the deceptive pretext for reinforcing the borders

Since 2015 and the arrival of a significant number of people in search of protection in the European territory, the migration question has been at the center of many European and national debates. Citing a “refugee crisis” situation, the European Union (EU) and its Member States have taken advantage of the situation by reinforcing the existing controls, surveillance, confinement, and sorting at the internal and external borders of the Schengen area. Furthermore, the practice of push backs from one country to another has intensified. In this context, Hungary seems to have transformed into a veritable laboratory of European policies, stretching the logic of blocking and detaining foreigners to an extreme.

Whereas the politicians continue to invoke the absolute imperative to “save Schengen”, systematic controls at the internal borders of the Schengen area have returned in force in numerous countries, impeding the freedom of movement established in legislation. In this respect, unprecedented means have been deployed by France to its border with Italy, purportedly to combat terrorism, but in reality, it is to block and push back exiles who wish to enter France.

Simultaneously, the EU has undertaken a vast reform of the European legislation relative to migration, notably those relating to asylum such as the Dublin regulation, and has invested enormous diplomatic and financial efforts in intensifying the outsourcing of its migration policies by increasingly subcontracting these to third-party countries such as Niger, Afghanistan, or even Turkey<sup>1</sup>. These initiatives are characterized by the same obsession: to limit the possibilities of accessing or staying in Europe. The migratory routes towards Europe are not necessarily closed, but they are nonetheless increasingly selective, long, and dangerous.

Running counter to the speeches of many politicians who back their containment policies by claiming that European populations are reluctant to welcome foreigners, these populations actually rally and organize themselves to receive migrants.

1. For a decoding of the cooperation between the EU and several African countries in migration terms: inter-associative report La Cimade, Loujina Tounkaranké, Migreurop, *Chronique d'un chantage – Décryptage des instruments financiers et politiques de l'Union européenne*, December 2017.

### MISSIONS AT THE BORDERS AND METHODOLOGY OF REPORT

The observations and information present in this report originate from field missions conducted at the internal borders (France with its neighboring countries) and the external borders of the Schengen area (Hungary/Serbia and the Mediterranean) in 2017 and 2018. The contents of the report have also been supplied by monitoring work, documentary research, and analysis carried out since 2015 by La Cimade on the mechanisms and decisions relative to the surveillance of the internal and external borders of Europe.

During these missions and within the framework of their preparation, numerous interviews, formal and informal, were conducted with a plurality of actors, such as the representatives of the authorities or of different institutions, NGOs, militants, and lawyers, but also with with people in exile having suffered being sorted and being blocked at the border.

The context, rapidly shifting and uncertain since 2015, has been updated to May 2018 and therefore does not take into account potential and probable changes since then.



The double fence at the Serb-Hungarian border, March 2018. © Elsa Putelat

## 01

## Multiplying the borders for a single objective: to limit the movement of migrants

For over two decades, increasingly repressive migration policies have been implemented across the Schengen area in order to limit access. The wrongly-named “refugee crisis” of 2015 – in reality much more of a crisis of European migration and reception policies – served as a perfect pretext for the unprecedented reinforcement of the mechanisms for sorting, blocking, and detaining at the external borders of the EU. Simultaneously, the mechanisms of control and screening as well as the push back practices at the borders have multiplied in every part of the Schengen area.



Gendarmerie patrol in the Clarée valley, Névache, December 2017. © Jean Larive / MYOP

### 1.1 BLOCK, CONTROL, SCREEN: THE DEVELOPMENT OF THE MECHANISMS OF SORTING IN THE EUROPEAN TERRITORY

Revealed in spring 2015 in the European Agenda on the subject of migration, the hotspots approach is presented by the EU as a way to resolve the “the immediate problem that the arrival of migrants poses to the Member States situated on the front line”<sup>2</sup>. Several months later, it was the need to organize resettlement that justified the implementation of hotspots in Greece and Italy. After virtually three years of operation, the observations of civil society organizations and the testimonies of exiles demonstrated that these places serve, above all, as mechanisms of sorting and detention, rather than as places of reception. The hotspots approach has widely influenced the redefinition of migration policies in several European countries and the proliferation of screening locations at the borders.

In Hungary, after the passage of a high number of people in search of protection in summer 2015, the

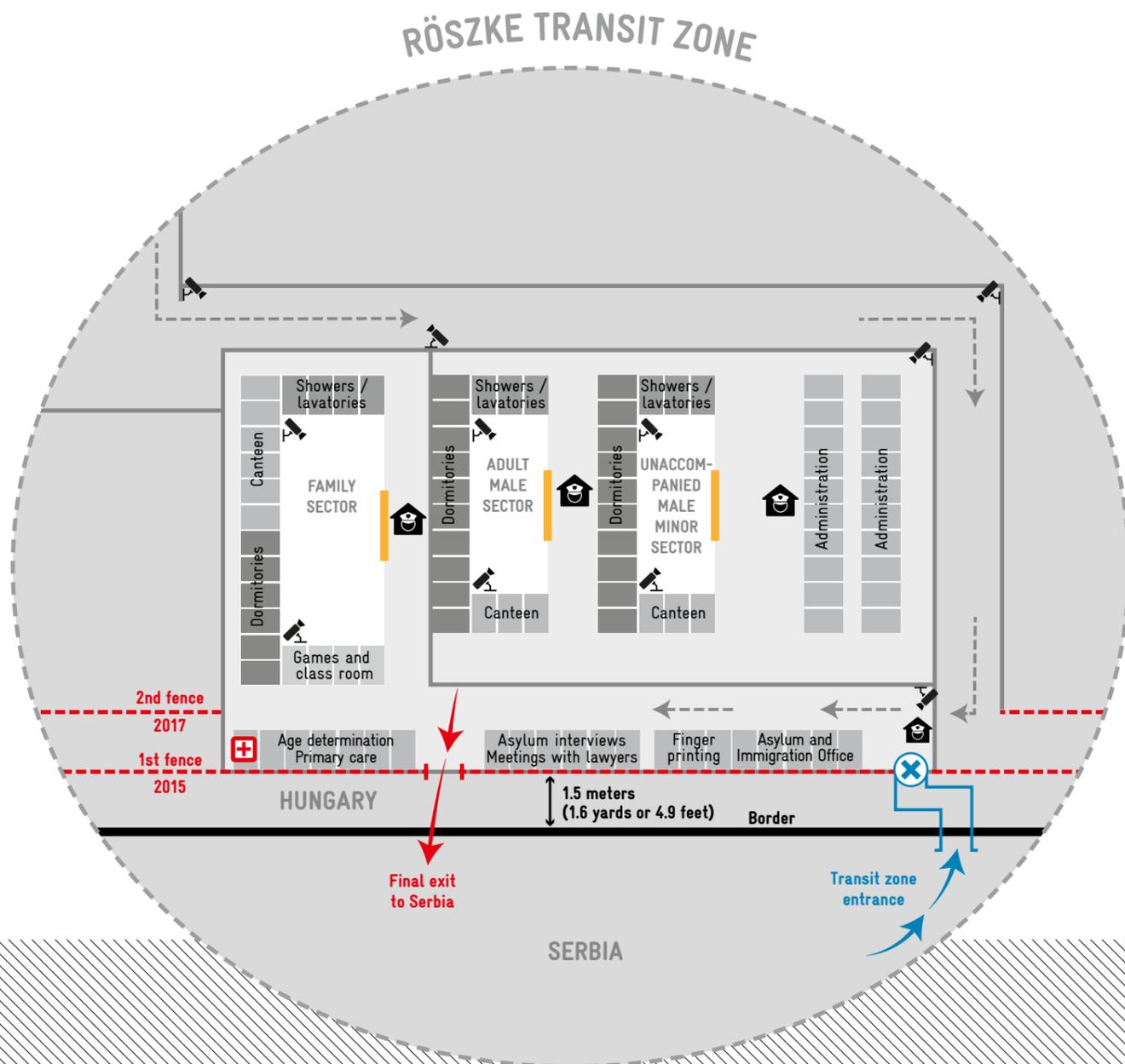
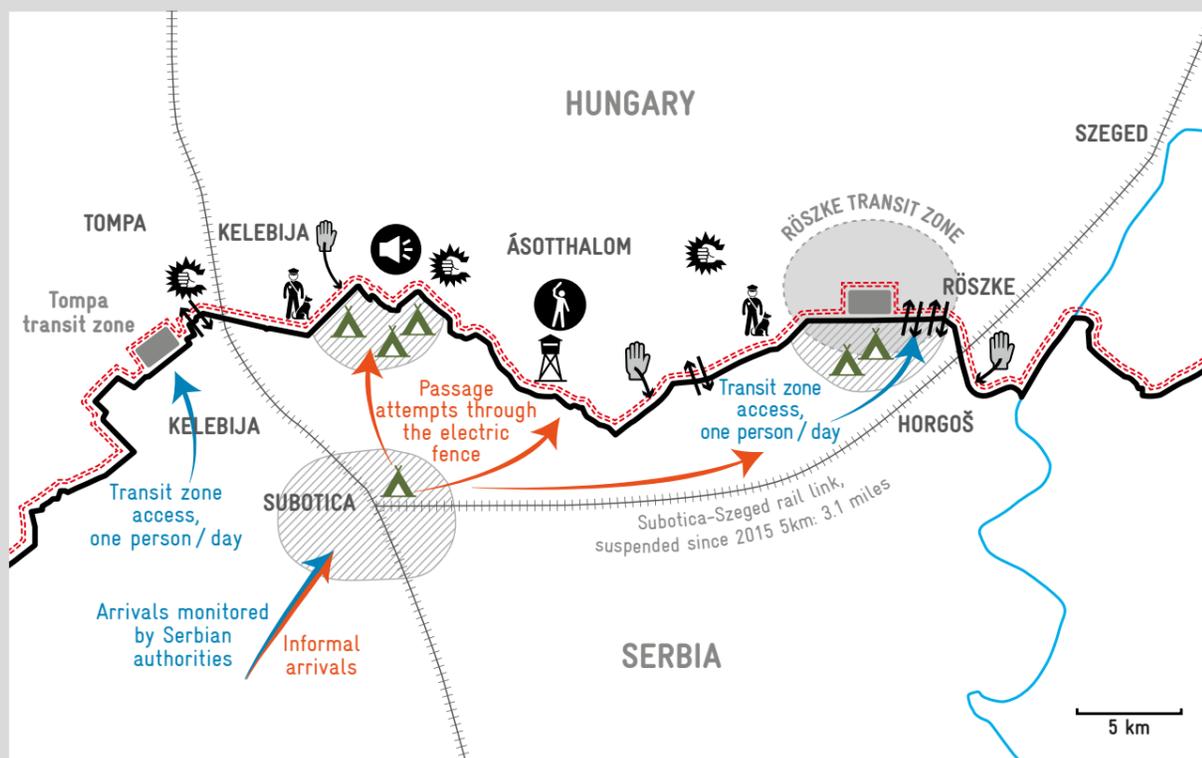
authorities constructed a wall at the borders with Serbia and Croatia and installed two transit zones to screen asylum requests. Hungarian legislation allows for the automatic detention in detention centers of people seeking asylum, notably minors ages 14 to 18, as well as families. Admission is possible for only one person per day and per zone which, in these non-transparent and arbitrary conditions, renders access to European territory virtually impossible. At the beginning of 2018, nearly 500 people seeking asylum were detained there.

In parallel to the proliferation of locations for sorting and screening at external borders, several Schengen area countries such as France and Germany have unilaterally decided to reestablish controls at their internal borders, the argument of terrorist threats being used by some, the failure of external border control by others. In practice, there are nearly 10 European countries that have reestablished syste-

<sup>2</sup> European Commission, *European Agenda on migration*, 13 May 2015

# Barbed wire and detention at the Serbia-Hungary Border

The Serb-Hungarian border looks like Europe is at war: electrified double fence, military and police patrols, helicopters, transit zones where people are being detained, militias, etc. All are signs of the increasing militarisation of this European external border, which the Serbian authorities claim to defend. Faced with this human, material and technological arsenal, people in exile seeking protection find themselves increasingly vulnerable, abused, locked-up and expelled at the confines of the European Union.



## A BORDER EQUIPPED WITH MILITARY SURVEILLANCE

- 175 km of electrified double fence (110 miles)
- Official border crossing
- Border militias, no legal basis
- Message broadcast at the border in 6 languages: "You are not authorized to enter Hungary"
- Technical surveillance methods: infrared cameras, watchtowers, vehicles, helicopters
- Surveillance border patrols: armed police with dogs, military, Frontex.

## A VIOLENT BORDER

- Extensive police violence along the border
- Push backs to Serbia through the fence
- Squats and informal camps
- Lack of all primary needs

## DETENTION AS A METHOD TO MANAGE ASYLUM SEEKERS

- Containers of the transit zone with obstructed outside windows
- Exit of a closed "sector" under permanent police surveillance
- Fixed police station inside the transit zone

Sources: observation mission and interviews at the Serb-Hungarian border in February 2018

- +70**  
cameras
- 1**  
person accepted  
per day
- Capacity of 250**  
people
- Up to 9 months**  
of detention



Containers of the transit zone in Rösztke with obstructed outside windows, February 2018. © Maité Fernandez

matic control at their internal borders since 2015, juggling with the articles of the Schengen border laws in order to prolong these measures, and this done in contradiction to the principle of freedom of movement in this area. In this respect, France has, since November 2015, reactivated the 285 crossing points authorized for its internal borders, notably those with Italy and Spain in order to reinforce the controls.

## 1.2 AN UNPRECEDENTED DEPLOYMENT OF MEANS OF SURVEILLANCE

At the borders observed within the framework of this report, unprecedented reinforcement of means of surveillance has been detected, whether material, technological, or human. Under the pretext of saving lives by preventing exiles from traveling by sea, the European Union and its Member States have heightened their repressive measures, moving from the proliferation of surveillance operations and systems to the outsourcing of European migration policies, to third countries considered to be strategic. Today, to monitor the European borders, military (EUNAVFOR Med) and civil operations (Thémis) are deployed in the Mediterranean in order to prevent departures of boats bound for Europe, notably by training Libyan border guards. The reinforcement of prerogatives and the budget allotted to the Frontex agency, whose mission is to combat irregular border crossing, shows the priority given to surveillance. At the borders Hungary shares with its Serbian and Croatian neighbours, more than 200 kilometers of an electrified double fence was built as early as 2015. This is equipped with cameras, thermal imagery mechanisms, an alarm system, and loud speakers broadcasting a warning message in multiple languages to migrants.

Furthermore, the Hungarian government now uses drones and helicopters to monitor its borders and has recruited thousands of border control agents to patrol and intercept all foreigners trying to enter European territory. Hungary also benefits from support from the Frontex agency and personnel from neighbouring countries in order to conduct its quasi-militaristic surveillance actions.

The state of emergency and establishment of systematic controls has permitted French authorities to mobilize significant resources, material and human, to the internal borders of the Schengen area. This is especially the case for the Franco-Italian border where various law enforcement agencies (CRS, police at the borders, gendarmerie, army etc.) are deployed

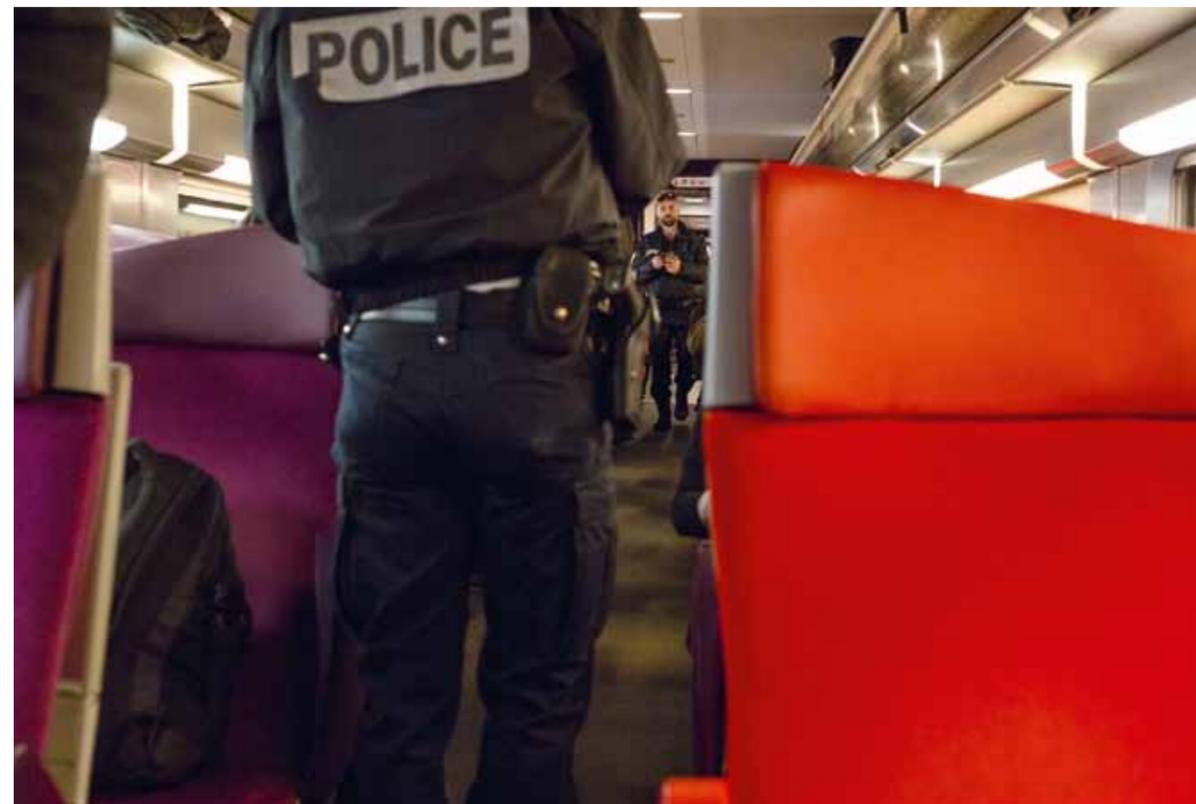
*The reinforcement of prerogatives and the budget allotted to the Frontex agency shows the priority given to surveillance.*

throughout remote areas such as the Alpine passes above Briançon. To monitor these crossing points, vehicles, helicopters, infrared binoculars, snowmobiles, and remotely monitored surveillance systems are used.

## 1.3 A CLOSURE SYSTEM THAT VARIES DEPENDING ON THE OBJECTIVES

Observation work carried out at France's internal borders during 2018 has brought to light an extreme variation of investment in controls, according to the objectives pursued by the authorities. Thus, while certain crossing points are permanently maintained with systematic controls, others have been completely deserted by law enforcement agencies, even though they represent major crossing points in terms of daily flow. Generally speaking, the borders with Spain and Italy are subject to special efforts, whereas the borders with Switzerland, Germany, Luxembourg, and Belgium are controlled sporadically.

While French authorities justify the reinstatement of internal border controls by citing the battle against terrorism, field observations show that migration control takes precedence over any other consideration. Out of 75 000 entry refusals delivered in 2017 at land borders, only 20 people had been prohibited from



Border police control in the train between Oulx and Paris, at the Italian border, December 2017. © Jean Larive / MYOP

entering due to the motive "threat to public order". At the Franco-Italian border, the objective is to block the entry of exiles coming from Italy, while at the Franco-Spanish border, controls aimed at international buses allow border police to achieve their target numbers in terms of arrests and placements in holding centers.

On the other side of Europe, in Hungary, we also observe varying levels of border monitoring. The main resources are concentrated on the border with Serbia, while the border with Romania is subject to more random surveillance. Furthermore, all the local actors encountered in Hungary and Serbia highlight the current corruption involved in reaching Euro-

pean territory. Indeed, the numerous testimonies report that the Hungarian police regularly leave the doors in the fence open or neglect to monitor at specific times, to allow exiles to reach a car parked on the other side. It is becoming easier to employ a smuggler rather than to respect the crossing procedure in the zone of transit. In this respect, people who have the financial means to resort to smugglers end up being forced to do so, including those who did not have this intention initially. It is often those without resources, or relatives to help support them, who are blocked in their repeated attempts to reach Hungary, being repelled, violently, as many as 20 times.

## 02

## Violent borders: endangerment and violation of the rights of exiles

The proliferation of quasi-militaristic mechanisms of surveillance and sorting done at the borders with the aim of reducing the territorial access available to migrants is accompanied by dissuasive practices and serious violations of the rights of exiles. The practices of detainment and pushbacks without legal process have become routine of physical violence and severe psychological traumas, at the expense of thousands of deaths and missing persons at our borders, at the expense of a decline in rights, in words and in practice.



Informal camp under a bridge in Ventimiglia, along the Roya river, February 2018. © Amanuel Ghirmai Bahta

### 2.1 ACCESS TO RIGHTS FOR MIGRANTS: A WIDE GAP BETWEEN THEORY AND PRACTICE

The reinforcement of the mechanisms of blocking and sorting at the border has a direct impact on the exercising of rights by exiles. In the zones we observed, the access to the asylum procedure for persons in search of protection is greatly hindered, either because the people don't even reach the state in which they wish to request protection, or because they are expelled to the other side of the border without their request being taken into account. In Hungary, those who have succeeded in being accepted into the transit zones see that their request for asylum is treated incompetently, without real legal assistance or thorough consideration of their case. In France, the authorities have been condemned for sending back to Italy a family which expressed desire to ask for asylum at the border. Numerous cases of pushing back asylum seekers to Italy have been documented by local associations.

Minors also pay the price of this systematic willingness to block migrants at the border. While according to European and international conventions, children must be protected and sheltered in all circumstances, at least until they are identified as minors, the reality is much different. In Hungary,

isolated minors between the ages of 14 and 18 are detained in transit zones for the duration of their asylum procedure. Their age is determined in several minutes by a military doctor under criteria such as hair distribution or tooth size. At the Franco-Italian border, law enforcement agencies have put in place diverse and variable strategies in order to evade the imperative of protection: sending people back by train without legal process, estimating their age as over 18 years old in spite of the person concerned declaring their minority. The administrative tribunal of Nice condemned the prefecture of Alpes-Maritimes for its practices following evidence collected by local observers<sup>3</sup>.

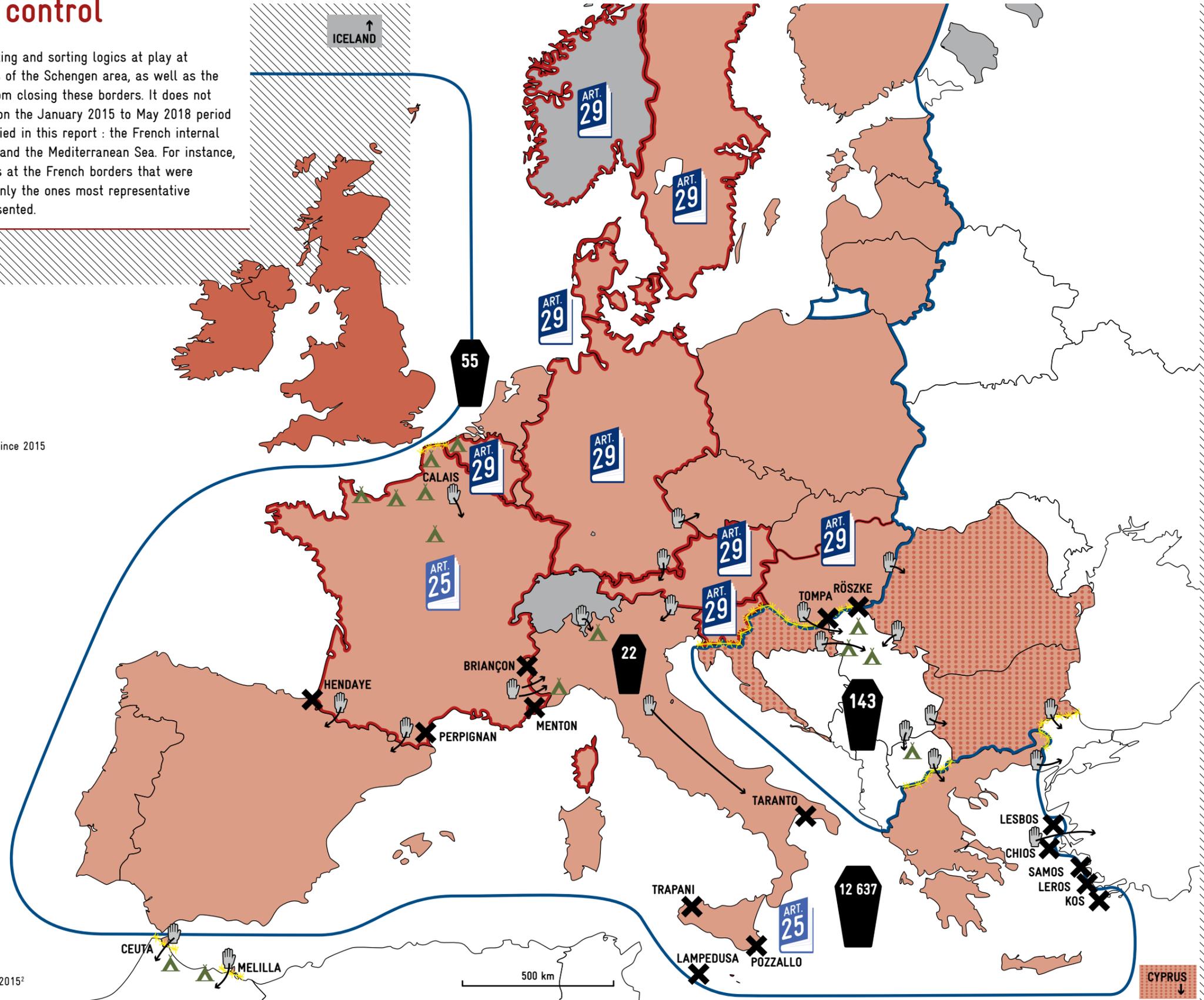
The proliferation of various actors in controlling the borders, associated with the implementation of special legal systems, such as the migratory state of emergency in Hungary or the reinstatement of internal border controls, fosters much confusion regarding the implementation of the rights of migrants and the responsibilities incumbent upon authorities. Indeed, the shuffling of the applications of different national and European regulations generates legal

3. Administrative Tribunal of Nice, 23 February 2018, n°1800702.

# Schengen area: sorting under the pretence of control

This map aims to highlight the blocking and sorting logics at play at certain external and internal borders of the Schengen area, as well as the consequences for asylum seekers from closing these borders. It does not claim to be exhaustive and focuses on the January 2015 to May 2018 period in the three geographical zones studied in this report : the French internal borders, the Serb-Hungarian border, and the Mediterranean Sea. For instance, of the 285 authorized passage points at the French borders that were re-activated since November 2015, only the ones most representative of the highlighted policies are represented.

- Members of both the EU and the Schengen area
- Members of the EU but not of the Schengen area
- Countries having applied to enter the Schengen area
- Members of the Schengen area but not of the EU
- External borders of the Schengen area
- Countries having reintroduced controls at their internal borders since 2015
- ART. 29 Countries having reintroduced controls at their internal borders on the basis of Article 29 of the Schengen Borders Code "Failure of controls at the external borders"
  - Germany: since September 2015
  - Austria: since September 2015
  - Belgium: from February to April 2016
  - Denmark: since January 2016
  - Hungary: in October 2015
  - Norway: since November 2015
  - Slovenia: from September to October 2015
  - Sweden: since November 2016
- ART. 25 Countries having reintroduced controls at their internal borders on the basis of Article 25 of the Schengen Borders Code "Severe threat to public order and internal security"
  - France: since November 2015
  - Malta: from November to December 2015
- Walls and physical fences
- Blocking and sorting points<sup>1</sup>:
  - Authorized passage points (France)  
Hendaye, Perpignan, Briançon, Menton
  - Transit zones (Hungary)  
Tompá, Röszke
  - Hotspots (Greece and Italy)  
Lesbos, Chios, Samos, Leros, Kos, Lampedusa, Pozzallo, Trapani, Taranto
- Setting-up of camps
- Expulsion of people migrating
- 22 Number of people deceased or disappeared at the borders since 2015<sup>2</sup>



1. For a global view of the increase of systems to detain foreigners in Europe, see the 2016 map of camps by the Migreurop network (6<sup>th</sup> edition)

2. In total, more than 40 000 people fleeing their countries lost their lives at the European borders since the early 1990s and the push towards increasingly repressive border policies. The number of deceased in the Mediterranean particularly increased since 2011.



Fence installed on the railway line at the Serb-Hungarian border, March 2018. © Elsa Putelat

vacuums into which fall a fraction of migrants at the borders, accelerating their vagrancy and insecurity.

## 2.2 DETENTION AND PUSH BACKS AS LEGITIMIZED, LEGALIZED PRACTICES?

One of the most concrete consequences of the reinforcement of controls at internal and external borders is the generalization of the practice of pushing back migrants all over Europe and its borders. Despite the different names – push backs, immediate readmissions, interceptions – the logic remains the same: to prevent people from entering the territory and, once they are already there, returning them by force to the other side of the border. These practices are contrary to the European and international provisions dedicated to the principle of non-refoulement. Adopted in March 2017, a Hungarian law legalized the practice of push backs towards Serbia, allowing law enforcement agencies to send back through the fence anyone who attempted to access the territory. There were more than 20 000 people who were

turned away in 2017. In the Mediterranean, the increasing delegation of interceptions to Libyan coast guards follows the same logic. From push back conducted by the border authorities of EU Member States, we move, in the Mediterranean, to a pull back conducted by the Libyan coast guards. Orchestrated at a distance by Italy, on behalf of the EU, they allow and encourage a direct return to Libya, delivering, de facto, exiles into the hands of their executioners. Finally, at France's borders with Italy and Spain, thousands of people are forced back each year without legal procedure or according to procedures that do not respect the principle rights of apprehended persons.

The reinforcement of surveillance mechanisms and controls at the European border are accompanied by the proliferation of detention areas for migrants. In the border zones we observed, the detention of exiles before their expulsion can range from several hours to an entire night at the Franco-Italian border, or whole months in the Hungarian transit zones. In all cases, the exiles are held in undignified conditions and frequently suffer from psychological problems and depression linked to their detention.

## 2.3 BRUTALITY AND INSECURITY IN THE BORDER ZONE: EXILES INCREASINGLY VULNERABLE

The blocking of the borders and the impossibility for migrants to continue their journeys at any given moment leads to a multiplication of informal camps, in which the living conditions of migrants are most often undignified and can make their situations even more vulnerable and precarious. In Ventimiglia, many people have found themselves under the bridges of the Roya river following the closing of the French border, dependent on mobile aid teams for their basic needs (food, water, hygiene, and first aid). This is also the case in Serbia, in the border zones or even in Belgrade, where exiles wishing to continue their journey find themselves blocked in horrible living and hygiene conditions, and also weakened by police violence.

Violence is everywhere in the testimonies made by exiles about their journey. It takes various forms and gets out of control. Beyond the symbolic and physical violence involved in militarized borders that are electrified and monitored, beyond the violence of undignified living conditions, migrants are also victims of violence inflicted by different actors they meet along their journey, be they representatives of the authorities, residents of the places travelled through, or even compatriots. Many sources document violence committed against migrants on their way, from Libya up to the Balkans.

At the Serb-Hungarian border, the practice of push backs conducted by Hungarian law enforcement agencies are regularly accompanied by acts of violence towards migrants (beatings, humiliations and insults, dog bites, tear gas, etc.) with no condemnation from Hungarian authorities or even from the European Commission or the Frontex agency deployed to that border.

The increase in the number of persons who have died or disappeared at European borders is one of the most dramatic consequences of border shutdown policies. This number has continued to increase as surveillance systems and border blockages have multiplied, highlighting the notorious contradiction in many

**The risks for migrants are aggravated by the shifting of routes that these border shutdown policies provoke.**

politicians' arguments that they are saving lives by reinforcing controls. On the contrary, the risk is aggravated by the shifting of routes that these policies provoke: the new routes are always longer and riskier. In fewer than 3 years of border closures in the north of Italy, 22 exiles, often very young, have died trying to cross.

# High tension on the France - Italy border

Since June 2015, French authorities have enforced automatic controls at the Italian border in order to block people from migrating, regardless of their will to ask for asylum or the need for protection of minors. Unprecedented human and material means have been deployed at the border's main points of passage, at the southern border – Menton and the Roya valley, and at the northern border – valley of Briançon. Faced with the intensification of blockages and pushbacks, citizens are organizing to help people in exile to enforce their rights. This map focuses mainly on these two control zones of that border.

FROM DECEMBER 2015 UP TO NOW 14 citizens are being sued for having supported people in exile

**2018**

- FEBRUARY/MARCH 2018** Citizen watch at the border in Menton and Ventimiglia and strategic litigation
- FEBRUARY 2018** Conviction of the Alpes-Maritimes Prefet for failure to protect isolated minors at the border
- 18 DECEMBER 2017** Solidarity roped party at the col of Échelle
- SUMMER/AUTUMN 2017** Deployment of police backup throughout the Briançonnais
- SUMMER 2017** Citizens open welcome centres in Briançon

**2017**

- SPRING 2017** Organisation of emergency centres in Briançon
- MARCH 2017** Conviction of the Alpes-Maritimes Prefet for hindering the right to seek asylum

**2016**

- WINTER 2016/2017** First search and rescue hikes in the cols of the Briançonnais
- MAY 2016** Opening of the San Antonio church in Ventimiglia (centre for families and minors)

**2015**

- 13 NOVEMBER 2015** Official reintroduction of controls at the French internal borders
- SUMMER 2015** People in exile camp on the rocks of Ventimiglia and demonstrate to open the border
- SINCE JUNE 2015** Systematic controls between Menton and Ventimiglia

### A BORDER UNDER STRICT SURVEILLANCE...

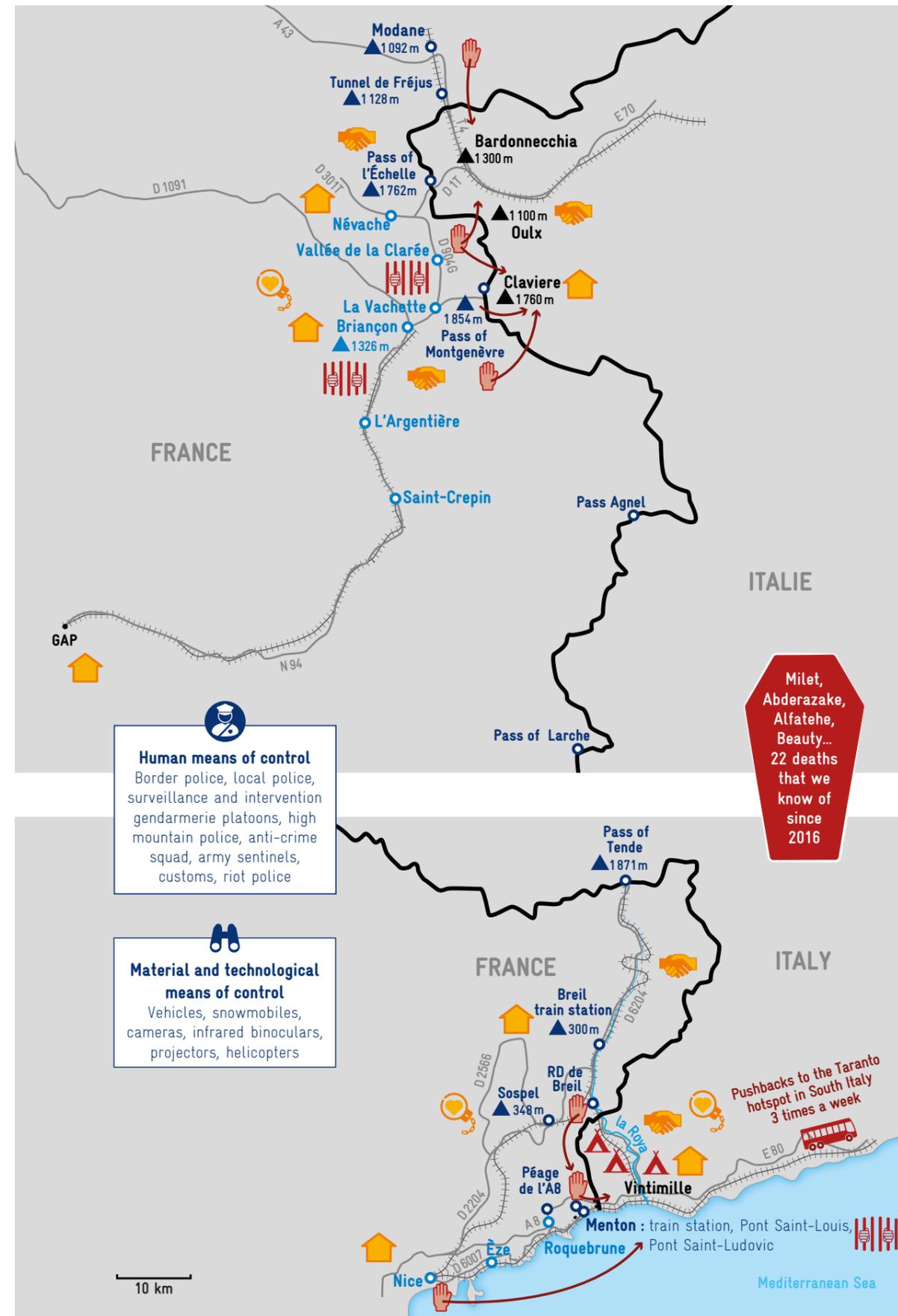
- APP: authorized Passage Points, permanently controlled  
Modane, Tunnel de Fréjus, Pass of l'Echelle, Pass of Montgenèvre, Pass Agnel, Pass of l'Arche, Pass of Tende, train station Breil-sur-Roya, RD de Breil-sur-Roya, Sospel, péage de l'A8, Menton: train station, Pont Saint-Ludovic, Pont Saint-Louis
- Frequently controlled areas  
Névache, Vallée de la Clarée, La Vachette, Briançon, L'Argentière, Saint-Crépin, Roquebrune, Èze, Nice

### ...WHERE MIGRANTS RIGHTS ARE RECURRENTLY VIOLATED

- Push backs of migrants, including unaccompanied minors and asylum seekers
- Development of camps and situations of great precariousness
- Detentions without legal basis: Briançon, Col de Montgenèvre, Menton Pont Saint-Louis

### ...WHERE SOLIDARITY AND RESISTANCE IS DEVELOPING

- Welcome centres of people in exile and citizen lodging initiatives
- Citizen search and rescues (rescue, food, equipment, medical care)
- Intimidations, lawsuits, and sentencing of citizens who have helped



Sources: EU Council and observations by La Cimade as well as numerous associations at the France-Italian border including Anafé, Roya Citoyenne, Tous Migrants, between June 2015 and May 2018

## 03

## Resisting against all odds

While walls are being built and the rights of migrants are being widely violated, citizens are mobilizing with migrants in order to organize their welcome and to lay claim to a different Europe. These citizens show places where support and welcoming initiatives flourish. Yet, far from having disappeared, the offence of solidarity has been brought back to the center stage of France and elsewhere in Europe.



After having been rescued at the pass of Montgenèvre, twelve young migrants share a meal at the Collective Refuge Solidaire (CRS), Briançon, December 2017. © Jean Larive / MYOP

### 3.1 ALL OVER EUROPE AND THE MEDITERRANEAN, SOLIDARITY DOES NOT WAIT FOR GOVERNMENTS

Resistance and solidarity movements around the question of migration have existed for many years and carry out enormous work in the field in order to defend and ensure broad access to rights for all. All over Europe, local and national associations, and also individuals, implement initiatives of solidarity: mobile aid teams, civil housing, legal aid, language classes, campaigns to raise awareness, offering support for professional and social integration, etc. The site Sursaut Citoyen has listed more than one thousand solidarity initiatives with foreigners in France. Quite often, these initiatives also compensate for the failures of the states in terms of receiving and taking responsibility for migrants, as do NGOs who carry out rescue operations in the Mediterranean, such as MSF and SOS Méditerranée, or citizens carrying out observation missions at the borders and litigation to respect migrants' rights.

In Hungary, new initiatives have been launched since 2012, such as the collective Migszol, composed of foreign persons and Hungarians, who, for several years, have done work in documenting the situation of migrants and in mobilizing to publicise the voices of exiles, who are often rendered invisible in Hungary. Other organizations such as the Hungarian Helsinki Committee continue to denounce human rights violations and attempt to have them condemned. Facing states' repressive policies and recurring attempts to render them invisible, migrants and their families are organizing themselves to make their voices heard, to reclaim their rights, and to demand a change to migration policies. In the southern Mediterranean, in Tunisia, Algeria, or even Morocco, there are many families of those who have died or disappeared at sea who demand that they have a "right to know".

### 3.2 IN FRANCE, WHO SAID THAT THE CRIME OF SOLIDARITY NO LONGER EXISTS?

In the context of the state of emergency in France and the reinforcement of border controls, we have seen since 2015 a surge in legal proceedings aiming to prevent the expression of solidarity towards migrants, whether it is for undocumented people, refugees, people perceived as part of the Roma population, etc. These proceedings are based on numerous and diverse offenses, notably on the basis of texts with no relation to immigration. This can result in intimidation towards those people who show solidarity towards migrants, but also, unfortunately, condemnations. It is this that associations have labelled the crime of solidarity.



Gathering of the Délinquants Solidaires Collective in Paris the 9<sup>th</sup> of February 2017. © Rafael Flichman / La Cimade

Especially in border zones, but also in large cities, citizens are pursued and sometimes condemned for having "aided with entry, movement, and residence of foreigners in an irregular situation"<sup>4</sup>. This is notably the case of Pierre-Alain Mannoni, Martine Landry, Cédric Herrou, residents of Nice, Menton and Breil-sur-Roya, who have received or transported migrants in need. This legal article, which has existed since 1938, does not allow for the proper protection of people acting out of solidarity and not for financial gain. In spite of the addition of certain very strict immunities, the prosecutions and condemnations continue: at the start of May 2018, three people were detained for a week for having participated in a spontaneous protest between Italy and France and having also crossed the border along with dozens of exiles.

With the addition of various legal immunities not having put an end to the crime of solidarity, true

reform remains to be accomplished, in order to clarify the rights and guarantee the protection of those standing in solidarity with migrants. This is what the National Council of Human Rights (CNCDH) as well as the collective Délinquants Solidaires have advocated. By clearly excluding activities that draw no financial gain from "irregular crossing", France could be in compliance with European and international law, as well as encouraging solidarity instead of criminalizing it.

### 3.3 THE CRIMINALIZATION OF SOLIDARITY IN OTHER PARTS OF EUROPE

Instead of supporting the various movements and citizens' initiatives in solidarity with migrants, which routinely provide hospitality in Europe, national and European authorities seek to dissuade them by any means: discourse denigrating the actions of NGOs at sea, the adoption in Hungary of repressive legislation aiming to put political and financial pressure on actors who support migrants, direct attacks against individuals who are engaged in these battles whether they be Europeans or exiles...these are the procedures currently in place to criminalize active solidarity actions.

In the Mediterranean, NGOs conducting rescue missions have been targets, since 2016, of recurring attacks on the part of the Italian courts, political

**For several years, various Hungarian civil society organizations have been the target of defamation campaigns led by the authorities.**

personalities, the Frontex agency or even on the part of the European extreme right on the pretext of being in collusion with smugglers. Impoundment of boats, personnel investigations, suspicion of Italian prosecutors raised in the media before the investigation even ends, etc. have widely weakened NGOs, whose only actions were to make up for states' failures to rescue at sea, and have never been convicted, due to

4. Article L 622-1 Code for Entry and Residence of Foreigner and the Right to Asylum (CESEDA)



Rescue operation by SOS Méditerranée in international waters off the coast of Libya, October 2017. © Anthony Jean

lack of evidence. In the summer of 2017, there were as many as ten boats patrolling the seas. As of June 2018, this is down to only two.

For several years, various Hungarian civil society organizations have been the target of defamation campaigns led by the authorities, and have seen their capacity for action diminished in the face of the adoption of repressive legislative provisions. Through the defamation campaigns orchestrated by the

authorities aiming to silence all critical discourse, associations such as the Hungarian Helsinki Committee or Amnesty International are designated as "enemies of the nation". Furthermore, a law adopted in 2017 obliges all Hungarian structures receiving foreign funds to register themselves. Cutting European funds distributed by the Hungarian authorities to civil society is another means of stifling actions of solidarity towards migrants.

# CONCLUSION

For over 20 years, the EU and its Member States have persisted in reinforcing migration policies that do not work. This is evident by the increase each year in the number of people who have lost their lives at the European borders. Sadly, Europe is today one of the most dangerous places in the world to seek protection. The crisis of reception and welcome in European countries, that has manifested since 2015 after the arrival of many people in search of protection, is also a crisis of solidarity.

Many political, economic, and social challenges face the European Union today, far beyond the migration issue. European responses need to live up to its ambitions, which are to be creative, supportive, and protective of human rights. It is urgent that the EU take note of the failure of its migration policies and devise ambitious policies favouring mobility instead of hindering it, reinforcing the mechanisms of reception, welcome, and integration of migrants on its territory and protecting human rights and the right to asylum. The future of the European vision and the rights of all are at stake.

## Recommendations

La Cimade asks the European Union and its Member States to:

1. Put in place an ambitious European immigration policy by concentrating on the means of reception, the protection of people, and on genuine reflection in order to concretely implement freedom of movement rather than the surveillance of borders and outsourcing.
2. Unconditionally respect international law (the Universal Declaration of Human Rights, the Geneva Convention Relating to the Status of Refugees, the European Convention on Human Rights, the International Convention on the Rights of the Child) and European legislative texts (the treaties of the EU Charter of Fundamental Rights, etc.) dedicated to the right to asylum and guarantee the fundamental rights of migrants: the freedom to leave any country, including their own, and to return to their own country, the right not to be subjected to inhuman or degrading treatment, the right not to be arbitrarily detained, etc.
3. Break with policy dedicated to the detention of migrants as a favoured method of management. Immediately put an end to confinement – in any form whatsoever – of all foreign minors, people requesting asylum at the borders, as well as on the rest of the territory.
4. Put an end to current controls in the Schengen area and defend the principal of unconditional freedom of movement within it: the reintroduction of temporary internal border controls must be truly justified and limited to situations that are truly exceptional.
5. Open more legal routes to access the European territory.
6. Renounce the hotspots approach and close locations of sorting at the borders.
7. Allow unconditional access to the European territory for persons blocked at the external borders.
8. Abolish impunity for violence committed towards migrants and for practices violating fundamental rights and notably the obligation of non-refoulement of asylum seekers. Member States such as France, Greece, or Hungary must be condemned for the push back practices at their borders.
9. Order the responsible authorities (EU Member States and/or local authorities) to respect the decisions of the justice when they are condemned.
10. Halt all Frontex operations and close this agency whose mission and actions are incompatible with the respect of fundamental rights.
11. Implement an international identification procedure for victims of shipwrecks, and impose said implementation on the states.
12. Defend solidarity as a fundamental value in our society: it must be encouraged by politicians and must not be criminalized. The EU must order its Member States to put an end to the prosecution and condemnation of those who stand in solidarity with exiles.

## RESOURCES

### Associative Reports

- Anafé, Analytical note, *Rétablissement des contrôles aux frontières internes et état d'urgence - Conséquences en zone d'attente*, May 2017.
- Hungarian Helsinki Committee, *Two years after*, September 2017.
- Médecins Sans Frontières, *Serbia – Games of Violence*, October 2017.
- Migreurop, *Atlas des Migrants en Europe*, 2017.

### Institutional and University Reports

- Charles Heller and Lorenzo Pezzani, *Blaming the rescuers*, June 2017.
- Christoph Tometten, *La fortification juridique de l'asile en Europe*, *La Revue des droits de l'homme*, 7 November 2017.
- European Parliament, *The Future of the Schengen Area: Latest Developments and Challenges in the Schengen Governance Framework since 2016*, March 2018.
- Senate, *Rapport fait au nom de la commission d'enquête sur les frontières européennes, le contrôle des flux des personnes et des marchandises en Europe et l'avenir de l'espace Schengen*, n°484, 29 March 2017.

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### Internet Sites

Réseau Migreurop: <http://migreurop.org>  
 Collectif Délinquants Solidaires: <http://delinquantssolidaires.org>  
 Hungarian Helsinki Committee: <http://helsinki.hu>  
 Plateforme Ask The EU: <http://AsktheEU.org>  
 Tous Migrants: <https://tousmigrants.weebly.com/>

### Missions and observations conducted

**Hungary/Serbia:** observations and 17 interviews conducted during a mission in February 2018  
**Franco-Italian border:** numerous observations between May 2017 and June 28 and 24 interviews conducted during a mission in May 2017  
**Franco-Spanish border:** observations and 5 interviews conducted in September and November 2017  
**Franco-Belgian border:** observations in August 2017  
**Franco-German border:** observations in summer and autumn of 2017  
**International transport stations (Paris, Lille, Lyon):** observations in spring and summer of 2017

### Partner organisation



### With the support of



# La Cimade

### To assist migrants and defend their rights

Every year, La Cimade receives and advises more than hundred thousand migrants, refugees and asylum seekers in various places in France. It also provides housing to two hundred refugees and asylum seekers its two shelters located in Béziers and Massy.

### To act for detained foreign nationals

La Cimade works in eight Administrative Retention Centres and provides legal support to foreigners, assisting them in accessing their rights. La Cimade also support foreigners in about a hundred prisons.

### To build International Solidarity

Together with partner associations in Southern countries, La Cimade takes part in projects for the defence of migrants and refugees' rights in various countries along the migratory route. It also promotes the construction of peace especially in Israel-Palestine.

### To bear witness, inform and mobilize

La Cimade leads advocacy actions towards decision makers; it informs and raises awareness on migrations among the public opinion: demonstrations, press work, website, social networks, Migrant'scène festival. La Cimade makes propositions for a change in the migratory policies.

### Some figures

- 100 000 persons receiving advices, support or housing every year
- 98 reception centres
- 115 places where legal advices are provided
- 2 500 volunteers in 90 local groups
- 65 partner associations in France, Europe and in the world



All these actions are possible thanks to our donors; they guarantee the independence of our association and its freedom of speech.

### To support La Cimade:

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