



Border Violence Monitoring Network

January 2024

UF v Croatia and Slovenia

Third Party Intervention to the UN Committee on the Rights of the Child





**Border Violence
Monitoring Network**

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Committee on the Rights of the Child
Palais des Nations
1211 Geneva 10
Switzerland
Submitted via email

Date: 15 January 2024

Application nos. 195/2022 and 196/2022
U.F. v Croatia and Slovenia

Third Party Intervention on behalf of Border Violence Monitoring Network

Pursuant to the Working Group on Communications, and in accordance with Rule 23(1) of its Rules of Procedure under the Optional Protocol and its Guidelines on Third-Party Interventions

Summary

1. Border Violence Monitoring Network (hereinafter BVMN) is a network of non-governmental organisations situated along the Balkan and Greek migration route, which monitors, documents, and advocates against human rights violations at Europe's borders.¹ Since 2017, BVMN has collected more than 1,800 testimonies of summary expulsions (pushbacks). With such evidence, BVMN produces comprehensive reports, analysing trends in border violence.² BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including third party interventions to the European Court of Human Rights and legal briefings to Special Rapporteurs on states' use of torture during pushbacks.³

2. The case of *U.F. v Croatia and Slovenia* is evidence of the *modus operandi* of pushbacks from Croatia and Slovenia, including the practice of "chain" pushbacks. The acts perpetrated by the Croatian and Slovenian authorities constitute violations of a myriad of rights under the Convention on the Rights of the Child (CRC), which both Croatia and Slovenia have ratified, including Article 2 (non-discrimination), Article 3 (best interest), Article 6 (right to life), Article 20(1) (special protection and assistance) and Article 37 (freedom from torture or other cruel, inhumane or degrading treatment). In particular, both Croatia and Slovenia systematically and deliberately fail to identify vulnerable persons, including unaccompanied minors, and deny such persons the rights prescribed in the Convention, and other human rights instruments. Pushbacks are conducted in an arbitrary manner towards people on the move.

3. The violations are also in breach of other international human rights provisions, including the universal binding rule of *non-refoulement* and Article 33 of the Convention Relating to the Status of Refugees (Refugee Convention); Articles 2 and 3 of the UN Convention against Torture (CAT); Articles 2, 6, and 7 of the UN Convention on Civil and Political Rights (ICCPR); and Articles 2, 3, 5 and 13 of the European Convention on Human Rights (ECHR). They represent a broader pattern of detention, cruel, inhumane, or degrading treatment, and forced expulsion experienced by people on the move who attempt to enter the European Union through the Balkan route.

4. In the following submission, BVMN will demonstrate the *modus operandi* of chain pushbacks, involving both Slovenia and Croatia. The report focuses mainly on incidents happening in 2020 and 2021, to cover the period at issue in the present case. However, more recent data will also be highlighted to show that these practices still take place indicating the pervasiveness of pushbacks.

I. General Information of Chain Pushbacks from Slovenia and Croatia

¹ BVMN is represented under the legal framework of Rigardu e.V., Wurzner Str. 34, 04315 Leipzig, Germany

² All testimonies and reports are published on BVMN's official website: <https://borderviolence.eu/>. See also BVMN. *Black Book of Pushbacks - Volumes I&II*. 2020. Available at: <https://left.eu/issues/publications/black-book-of-pushbacks-volumes-i-ii/>. Accessed on 13.01.2024.

³ See for example: BVMN. *Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina*. 27.09.2024. Accessed 14.01.2024. Available at: <https://borderviolence.eu/reports/submission-to-cescr-on-bih/>; BVMN. *Submission to the UN Rapporteur on Torture Regarding Greece*. 06.10.2023. Accessed 14.01.2024. Available at: <https://borderviolence.eu/reports/submission-to-the-un-special-rapporteur-on-torture-regarding-greece/>; BVMN. *B.T. v Greece and B.C. v Greece. Application nos. 16089/20 and 16186/20. Third Party Intervention to the European Court of Human Rights*. 14.04.2023. Accessed 14.01.2024. Available at <https://borderviolence.eu/reports/application-nos-16089-20-b-t-v-greece-and-16186-20-b-c-v-greece/>

5. BVMN uses the term ‘people on the move’ (rather than legally limiting and categorising terms such as ‘asylum-seekers’ ‘refugees’ or ‘irregular/undocumented migrants’) to include all people, irrespective of their legal status, who are trying to cross borders to reach a place of safety. ‘Pushbacks’ constitute the informal and illegal cross-border expulsion of individuals or groups to another country without due process. They occur when people are forced over borders without individualised assessment, access to material reception conditions, right to appeal, or effective remedy, and may constitute cases of refoulement. They are often accompanied with various measures of physical and psychological violence.

6. ‘Chain pushbacks’ constitute successive pushbacks that run across several borders, as in the current case from Slovenia to Croatia and then onwards to Bosnia and Herzegovina (BiH). They have become a routine fixture of the European border regime. The continued refoulement leaves the affected people without the possibility of challenging the return. The states involved do not take into account, or willingly accept, the potential risks of human rights violations to which people are potentially exposed to in the state into which they are expelled. Common chain pushback routes run from Italy or Austria to Slovenia, further to Croatia and from there to BiH and/or Serbia.⁴ Chain pushbacks can last multiple days, include frequent use of violence by law enforcement officials, including beating, destruction or robbing of personal belongings, forced undressing, detention under poor conditions, provision of little to no water or food, and scant access to legal support (see Section II).

7. BVMN and its member organisations have documented the widespread use of chain pushbacks in which people on the move are refouled through multiple consecutive countries and subjected to multiple forms of torture or ill treatment across multiple consecutive countries.⁵ First testimonies of chain pushbacks from Slovenia, via Croatia, to Serbia were secured in 2017. In 2020, BVMN collected 39 testimonies of chain pushbacks, affecting approximately 795 people, revealing that the practice was observed in Slovenia, Croatia, Italy, Austria, North Macedonia and Bulgaria. Out of these numbers, an estimated 346 persons became victims of chain pushbacks from Austria to/or Slovenia into Croatia, and then to BiH or Serbia.⁶ In 2020, the European Council on Refugees and Exiles (ECRE), based on multiple reports, including published by BVMN,⁷ reported about several chain pushbacks from Austria via Slovenia to BiH.⁸ In its monthly report from October of the same year, the Danish Refugee Council (DRC) equally stated that the 26 persons reported to have been expelled from Slovenia, through Croatia, to BiH in that month.⁹

8. In 2020 already, the illegality of the practice of (chain) pushbacks, disregarding the right to asylum and the right to protection from torture and collective expulsions, was recognised by the Supreme Court in

⁴ See InfoKolpa. *Chain Pushbacks and State Violence on the Balkan Route Slovenia (2019-2021)*. September 2021. Accessed 13.01.2024. Available at: <https://push-forward.org/sites/default/files/2021-11/Report%202019-2021.pdf>

⁵ For more details see also Section II.

⁶ *Annual Torture Report 2020*. Accessed 13.01.2024. Available at: <https://borderviolence.eu/reports/annual-torture-report-2020/>, pp. 39-40.

⁷ BVMN. *Pushed back from Austria*. 09.05.2020. Accessed 13.01.2024. Available at: <https://borderviolence.eu/testimonies/september-5-2020-1930-near-laafeld-austria/>

⁸ ECRE. *Austria: Chain Pushbacks to Bosnia Amid Growing Evidence of Widespread Abuse in the Balkans*. 20.11.2020. Accessed 13.01.2024. Available at: <https://ecre.org/austria-chain-pushbacks-to-bosnia-amid-growing-evidence-of-widespread-abuse-in-the-balkans/>

⁹ Ibid.

Slovenia,¹⁰ the Court in Rome,¹¹ a regional court in Austria,¹² as well as by the European Court of Human Rights (ECtHR).¹³ Moreover, the Slovenian Human Rights Ombudsman investigated two incidents of non-refoulement at the Slovenian borders. One case concerned a Turkish girl who drowned at the border between Croatia and Slovenia in December 2021; the second one an Afghan national who was pushed back twice in 2021. In both cases, the Ombudsman found violations of the prohibition of collective expulsions, the principle of non-refoulement, the right to an effective remedy and the right to asylum in the procedure.¹⁴

9. Access to asylum in **Slovenia** is systematically denied in the border procedure. Based on readmission agreements with neighboring countries,¹⁵ the Slovenian border police regularly return people on the move to the country from which they entered the country, mainly Croatia.¹⁶ The 2021 and 2022 Asylum Information Database (AIDA) country reports, coordinated by ECRE, inform that through these informal procedures, people neither receive return decisions, nor do they have the opportunity to appeal the return decision. Moreover, based on reports by the Slovenian Ombudsman, it is further highlighted that no assessment of whether a return could be in violation of the principle of non-refoulement is conducted and police documentation fails to record whether a person expressed an intention to apply for asylum or whether the police provided information on seeking asylum.¹⁷

10. In its August 2020 fact-finding mission to **Croatia**, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) identified three courses of action to which the Croatian authorities resorted, all of which included deprivation of liberty. Firstly, police was instructed to drive people on the move, who were intercepted within the country, including those readmitted from Slovenia, the police station closest to the point of illegal entry. There, they were kept sometimes for several hours before being subsequently expelled from the country. Secondly, people on the move caught within the area of responsibility of a border police station, e.g. at the border with BiH, were usually transported directly to the “green border” without any identification or processing of their cases. Thirdly, in a small number of cases, people on the move were formally arrested by the Croatian police for illegal border crossing based on Article 130(3) of the Law on Foreigners.¹⁸ Moreover, children,

¹⁰ BVMN. Press Release from BVMN-member InfoKolpa on Slovenian Court Ruling. 12.01.2021. Accessed 13.01.2024. Available at: <https://www.borderviolence.eu/press-release-from-bvmn-member-infokolpa/>.

¹¹ Euro-Med Human Rights Monitor. *Rome Court decision against Italy's illegal migrant pushbacks is a significant step*. 26.01.2021. Accessed 14.01.2024. Available at:

<https://euromedmonitor.org/en/article/4120/Rome-Court-decision-against-Italy%E2%80%99s-illegal-migrant-pushbacks-is-a-significant-step#:~:text=On%2018%20January%202021%2C%20with%20signed%20in%201996%20and%20never>

¹² EEUA. Austria, Administrative Court [Verwaltungsgericht]. Applicant (Morocco) v Austrian Police. LVwG 20.3-2725/2020-86, 01 July 2021. EEUA Case Law Database. Accessed 11.01.2024. Available at <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1998>.

¹³ ECtHR. First Section. Applications nos. 15670/18 and 43115/18. Case of M.H. and Others v Croatia. Judgement of 18 November 2021. Par. 325-337. Accessed 13.01.2024. Available at: <https://hudoc.echr.coe.int/eng/?i=001-213213>.

¹⁴ Cited in PIC. *AIDA Country Report: Slovenia - 2022 update*, pp. 24-25.

¹⁵ Legal Centre for the Protection of Human Rights and the Environment (PIC). *AIDA Country Report: Slovenia - 2022 update*. Edited by ECRE. May 2023. Accessed 13.01.2024. Available at: <https://asylumineurope.org/reports/country/slovenia/>.

¹⁶ PIC. *AIDA Country Report: Slovenia - 2021 update*. Edited by ECRE. May 2022. Accessed 13.01.2024. Available at: <https://asylumineurope.org/reports/country/slovenia/>, p. 24

¹⁷ PIC. *AIDA Country Report: Slovenia - 2022 update*. Edited by ECRE. May 2023. Accessed 13.01.2024. Available at: <https://asylumineurope.org/reports/country/slovenia/>.

¹⁸ Council of Europe. *Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020*. CPT/Inf (2021) 29. 03.12.2021. Accessed 13.01.2023. Available at <https://rm.coe.int/1680a4c199>, p. 9.

pregnant women and sick persons reported to the CPT that they had been pushed back from Croatia into BiH with requests for asylum or emergency medical assistance being ignored.¹⁹ BVMN's member organisation InfoKolpa confirmed the findings of the CPR. InfoKolpa provided a detailed description of systemic and increasingly violent, demeaning and humiliating acts by Croatian law enforcement officials between 2019-2021.²⁰ Both the CPT and InfoKolpa underpinned their reports with photographic evidence.

11. Reporting on chain pushbacks, which span from Austria and Italy to BiH and Serbia through Croatia, and on extreme violence has not subsided since. Human rights watchdogs and institutions such as Human Rights Watch,²¹ the European Center for Constitutional and Human Rights (ECCHR),²² the Danish Refugee Council²³ and BVMN²⁴ continued to report on numerous incidents in 2022 and 2023. In March 2023, respondents reported to BVMN a new practice by Croatian officials in which people on the move were intercepted throughout the country, temporarily detained and forced to sign documents in Croatian language without interpretation or translation being provided before being driven in buses to the border with BiH, where they were handed over to Bosnian officials.²⁵ Subsequently, similar accounts of violence in pushback practices from Croatia to BiH have been reported.²⁶

II. BVMN Testimonies on Chain Pushbacks from Croatia and Slovenia

12. Since 2017, BVMN member organisations, in the context of monitoring border violence, record incidences of pushbacks and other human rights violations at the borders.²⁷ Between August 2017 and October 2022, approximately 881 testimonies of pushbacks from Croatia and/or Slovenia, impacting an estimated 9,571 people, were collected.²⁸ Of these, 101 reports comprised chain pushbacks, affecting an estimated 834 persons. The following analysis concentrates on these 101 reported cases.

13. In 68 out of 101 cases (67%), the chain refoulement took place from Slovenia to Croatia and then to BiH; in 27 (26%) cases from Slovenia via Croatia to Serbia. Four times (4%) the chain pushbacks started in Italy and ended up in BiH. One time (1%), people were pushed back from Croatia to Serbia, from there

¹⁹ Ibid., p. 29

²⁰ InfoKolpa. *Chain Pushbacks and State Violence on the Balkan Route Slovenia (2019-2021)*.

²¹ Human Rights Watch. "Like We Were Just Animals" Pushbacks of People Seeking Protection from Croatia to Bosnia and Herzegovina. May 2023. Accessed 13.01.2024. Available at:

<https://www.hrw.org/report/2023/05/03/we-were-just-animals/pushbacks-people-seeking-protection-croatia-bosnia-and>

²² ECCHR. *Croatia's Pushback Policy: A System of Unlawful, Covert, and Perpetuated Expulsions*. February 2023. Accessed 14.01.2024. Available at: https://www.ecchr.eu/fileadmin/user_upload/ECCHR_Croatia_factsheet_February_2023.pdf.

²³ Danish Refugee Council. *Protecting Rights at Borders (PRAB) Reports*. Accessed 13.01.2024. Available at

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

²⁴ BVMN. *Balkan Regional Report - October 2023*. 15.12.2023. Accessed 13.01.2024. Available at:

<https://borderviolence.eu/reports/balkan-regional-report-october-2023/>

²⁵ BVMN. *Croatia carries out mass deportations of people on the move to Bosnia and Herzegovina*. 31.03.2023. Accessed 13.01.2024. Available at

<https://borderviolence.eu/reports/press-release-croatia-carries-out-mass-deportations-of-people-on-the-move-to-bosnia-and-herze>

[govina/](https://borderviolence.eu/reports/press-release-croatia-carries-out-mass-deportations-of-people-on-the-move-to-bosnia-and-herze)

²⁶ BVMN. *Balkan Regional Report - October 2023*. See also Section II.

²⁷ BVMN has a standardised recording framework in which hard data (timings, dates, locations, officer and vehicle descriptions, photos of injuries, medical reports and other corroborating evidence) is blended with qualitative narrative accounts of the pushback incidents. The testimonies are collected by trained field reporters and translators and in compliance with high standards of protection for the participants. The collected data is inserted into BVMN's database, which is publicly available:

<https://borderviolence.eu/testimonies/>.

²⁸ The cases were extracted from the BVMN's public database of testimonies on pushbacks, available at

<https://borderviolence.eu/testimonies/>.

to BiH and then back to Serbia. Once (1%), the pushback route constituted BiH, Croatia and then Serbia. In the process of the chain refoulement, the people were regularly driven from one border to the next by law enforcement personnel and either abandoned at the border or passed on to the authorities of the recipient country. At least 34 times, minors between under one year and 17-years-of-age were part of the groups. In 70 cases, the intention to seek asylum was expressed, but ignored. In 86 cases, people were apprehended and taken to a police station at least once in the course of the consecutive pushback.

14. The cases also reveal the systemic use of violence during those pushbacks. Acts of violence reported by the interviewees included beating with batons, hands or other means (61 times reported), kicking (34), pushing people to the ground (17), electric shock (4), pepper spray (3), water immersion (2), gunshots (5), pointing at people with guns (1), dog attacks (5), threatening with dogs (1), threats (2), forcing to undress (25), humiliation (1), spitting (1), theft of personal belongings (70), destruction of personal belongings (41), money taken (1), theft of official documents (1), reckless driving (30), repeatedly abrupt stopping (1), causing vomiting (1), exposure to extreme temperatures during car ride (24), insulting (20), denial of appropriate sleeping equipment during night detention (1), and withholding of sanitary facilities (1). Only in less than 10%, no use of violence was indicated.

III. Statement of Relevant Laws

15. The sources mentioned above demonstrate that the actions carried out by the Croatian and Slovenian authorities violate numerous rights under the CRC, namely Articles 2, 3, 6, 20(1) and 37. Evidence also shows violations of other international and regional human rights legal frameworks.

Principle of non-refoulement and prohibition of torture or other cruel, inhuman or degrading treatment

16. The non-refoulement principle forms an essential protection under international human rights, refugee, and customary law. It was first enshrined in Article 33 of the 1951 Convention relating to the Status of Refugees,²⁹ and has been subsequently included in international and regional human rights legal instruments. For example, Article 3 CAT explicitly prohibits to expel an individual “to another State where there are substantial grounds” for believing that he or she would be exposed to torture. States also must take into account all significant considerations to determine the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.³⁰

17. While refugee law limits non-refoulement protection to persons entitled to refugee status and allows for exceptions based on considerations of national or public security, no limitation or exception whatsoever is permissible where deportation would expose the person in question to a real risk of torture or ill-treatment.³¹ Articles 6, enshrining the right to life, and 7 ICCPR prohibiting torture or other cruel,

²⁹ Article 33 Refugee Convention: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

³⁰ Article 3, UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. 10 December 1984. General Assembly resolution 39/46

³¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (23 November 2018) A/HRC/37/50 para 10

inhuman or degrading treatment,³² are read as a prohibition of the return of persons to their country of origin or to a third country where they may be subject to such treatment, even though they do not directly refer to the principle of non-refoulement.³³ Similarly, Article 37(a) CRC states that “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”³⁴

18. At the regional level, Article 3 ECHR prohibits torture or other inhuman or degrading treatment and the case law of the ECtHR emphasized that states have an obligation to protect individuals from such treatment.³⁵ This includes refraining from removing any person to a receiving country where they would be at risk of such treatment.³⁶ The obligation also includes the risk of onward removal, i.e., of chain refoulement or chain pushbacks, to other countries where individuals may face similar risks.³⁷

19. (Chain)-Pushbacks can be evaluated within the framework of torture based of their inherent features. Indeed, pushback operations are incompatible with the prohibition of refoulement as they inherently involve several elements that result in deliberate and often serious and cruel suffering inflicted upon people with the purpose of intimidating them to dissuade them from seeking protection in a certain country,³⁸ such as the use of unjustified and disproportionate physical force, redirecting individuals to dangerous terrain, and removing essential protective items, such as warm clothing and mobile devices, which could be used to request assistance.³⁹

20. In the context of chain pushbacks involving Slovenia, Croatia, and Bosnia and Herzegovina (BiH), the practice of refoulement at national borders leading to subsequent chain pushbacks have been ruled unlawful by several domestic courts. In April 2021, the Slovenian Supreme Court, referring to the Charter of Fundamental Rights, confirmed a violation of the prohibition of refoulement,⁴⁰ and the right of access to asylum,⁴¹ in the case of a Cameroonian national who was in 2019 transferred from Slovenia to Croatia and subsequently to BiH despite his international protection request in Slovenia. The Court also found a breach of the prohibition of collective expulsions,⁴² as the competent Slovenian authorities had failed to objectively assess the applicant’s individual circumstances.⁴³ In July 2021, the Regional Administrative Court of Styria, in Austria, condemned the arrest and subsequent refoulement of a Moroccan national

³² Articles 6 and 7, International Covenant on Civil and Political Rights, 16 December 1966. General Assembly resolution 2200A (XXI)

³³ Ruma Mandal, No. 9: Protection Mechanisms Outside of the 1951 Convention ("Complementary Protection") (June 2005) PPLA/2005/02

³⁴ Article 37 UNCRC

³⁵ Furthermore, if an individual has an arguable complaint that his or her removal would expose him or her to treatment contrary to Article 2 (right to life) or Article 3 ECHR, he or she must have an effective remedy both in practice and in law at the domestic level, in accordance with Article 13 of the ECHR. See: ECtHR, ‘Guide on the case-law of the European Convention on Human Rights: Immigration’, (31 August 2022), available at: https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf.

³⁶ See for example: ECtHR, *Hirsi Jamaa and others v. Italy* Application No. 27765/09. 23 February 2012. Para 123

³⁷ See for example: ECtHR, *Sharifi and Others v. Italy and Greece* Application No. 16643/09. 21 October 2014. Para 166.

³⁸ This mirrors the definition of torture contained in Article 1 CAT.

³⁹ Human Rights Council, ‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment’ (26 February 2018) A/HRC/37/50 p. 15

⁴⁰ Article 4, European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02

⁴¹ Ibid Art 18

⁴² Ibid Art 19

⁴³ European Union Asylum Agency. Slovenia, Supreme Court [Vrhovno sodišče]. Applicant v Republic of Slovenia (Republika Slovenija). DPRs Judgment I U 1686/2020. SI:VSRS:2021:I.UP.23.2021. 09 April 2021. Link redirects to the English summary in the EUAA Case Law Database. EEUA Case Law Database. Accessed 11.01.2024. Available at <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2165>. Also available at: <https://fra.europa.eu/en/caselaw-reference/slovenia-supreme-court-i-232021>

from Austria to Slovenia, despite his request to apply for asylum, resulting in chain refoulement from Slovenia via Croatia to BiH.⁴⁴ In Italy, in a decision following an appeal by a national of Pakistan, the Court of Rome stated that the practice of pushing back migrants and asylum seekers to Slovenia, where they would be subject to chain pushbacks to Bosnia, was illegal.⁴⁵

21. With respect to the obligations under Articles 6 and 37, States Parties to the CRC should not return a child where there are substantial grounds for believing that there is a real risk of irreparable harm to the child or in any country in which the child may subsequently be removed.⁴⁶ Thus, when providing appropriate care for unaccompanied or separated children, States must fully adhere to non-refoulement obligations as outlined in international human rights and refugee law.⁴⁷ In the case *D.D. v Spain*, the first UNHCR decision on pushbacks, the Committee found a violation of Articles 3 (best interest) and 37 of the Convention due to the fact that Spain did not ascertain the identity of the unaccompanied child, did not investigate his personal circumstances and did not conduct a prior assessment of the risk and/or irreparable harm in the country to which he was to be returned.⁴⁸ The Committee also determined that the manner in which the individual was deported, as an unaccompanied child deprived of his family environment and in a context of international migration, after having been detained and handcuffed and without receiving the assistance of a lawyer or interpreter and without regard to his needs, constitutes treatment prohibited under Article 37 of the Convention.⁴⁹

22. As the first UNHCR case on pushbacks, *D.D. v Spain* contributed to shaping international legal standards for the treatment of unaccompanied minors at borders, as acknowledged by the ECtHR in *M.H. and others v Croatia*.⁵⁰ This latter case pertains to the death of a six-year-old Afghan child, MAD.H., near the Croatian-Serbian border as well as the lawfulness and conditions of the applicants' placement in a transit immigration centre, the applicants' alleged summary removals from Croatian territory, and the respondent State's alleged hindrance of the effective exercise of the applicants' right of individual application. The ECtHR found multiple violations of the ECHR, including, *inter alia*, ineffective investigation into the child's death (violation of Article 2), degrading treatment of child applicants who were detained for more than two months (violation of Article 3) and collective expulsion by Croatian police outside official border crossing and without prior notification of Serbian authorities (violation of Article 4 of the Protocol No. 4 to the ECHR).

⁴⁴ EEUA. Austria, Administrative Court [Verwaltungsgericht]. Applicant (Morocco) v Austrian Police. LVwG 20.3-2725/2020-86, 01 July 2021. EEUA Case Law Database. Accessed 11.01.2024. Available at <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=1998>.

⁴⁵ Euro-Med Human Rights Monitor. Rome Court decision against Italy's illegal migrant pushbacks is a significant step. January 2021. Accessed 13.01.2024. Available at: <https://euromedmonitor.org/en/article/4120/Rome-Court-decision-against-Italy%E2%80%99s-illegal-migrant-pushbacks-is-a-significant-step#:~:text=On%2018%20January%202021%2C%20with,signed%20in%201996%20and%20never>

⁴⁶ UN CRC General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin (1 September 2005) CRC/GC/2005/6 para 27; see also Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration para 46.

⁴⁷ Ibid para 26, 1951 UN Convention on the Status of Refugees Art 33, UNCAT Art 3

⁴⁸ UN Committee on the Rights of the Child. *D.D. v Spain*. 31 January 2019. CRC/C/80/D/4/2016 para 14.6

⁴⁹ Ibid para 14.8

⁵⁰ ECtHR, *M.H. and others v Croatia* Application nos. 15670/18 and 43115/18. 18 November 2021.

23. In the context of chain pushbacks involving unaccompanied minors coercively sent back to BiH via Slovenia and Croatia, conditions similar to those of the case *D.D. v Spain* can be noticed, as BVMN testimonies confirm.⁵¹ Given the systematic, indiscriminate, and violent nature of pushbacks, unaccompanied minors are subjected to refoulement without having their identity and their personal circumstances adequately investigated. Moreover, it is evident that no rigorous prior assessment of the risk and of the harm they would have faced once returned to BiH was conducted. Indeed, reception procedures available to people on the move in BiH illustrate that pushbacks to the country breach the international principle of non-refoulement.⁵² In June 2022, the Committee on the Rights of the Child recommended that Croatia end the practice of forced returns and protect families and minors from refoulement; thus highlighting the ongoing and official practice of pushbacks in contrast with the principle of non-refoulement.⁵³ This constitutes a continuous infringement of torture or other cruel, inhuman or degrading treatment prohibited under Article 37 CRC.

Best interest of the child and special protection and assistance for children deprived of their family environment

24. In all actions concerning children, the best interests of the child must be the primary consideration. This applies to actions taken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.⁵⁴ Additionally, when a child is temporarily or permanently deprived of his or her family environment, he or she is entitled to special protection and assistance provided by the State.⁵⁵

25. The Committee on the Rights of the Child confirms that the State's obligation to provide special protection and assistance to unaccompanied children apply even "with respect to those children who come under the State's jurisdiction when attempting to enter the country's territory".⁵⁶ Thus, the enjoyment of rights enshrined in the CRC apply to all children, including asylum seeking, refugee and migrant children, irrespective of their nationality and immigration status.⁵⁷ The positive aspect of these protection

⁵¹ See for example: BVMN. *Croatia carries out mass deportations of people on the move to Bosnia and Herzegovina*. 31.03.2023. Accessed 13.01.2024. Available at

<https://borderviolence.eu/reports/press-release-croatia-carries-out-mass-deportations-of-people-on-the-move-to-bosnia-and-herzegovina/>; BVMN. 2021. "You can not seek for asylum here!" Accessed 14.01.2024. Available at:

<https://borderviolence.eu/testimonies/october-12-2021-0000-chain-pushback-first-pushback-near-ponikve-8261-slovenia-location-of-the-second-pushback-kroatia-to-bosnia-unknown-probably-near-bihac-coordinates-of-the-f/>; BVMN. 2021. The men were forced to undress while the police officers were reaching for their genitals. Accessed 14.01.2024. Available at:

<https://borderviolence.eu/testimonies/september-14-2021-0000-ponor-korenicki/>

⁵² United Nations Bosnia and Herzegovina. 2021. Press Release: The UN in Bosnia and Herzegovina is concerned by violent pushback of migrants, asylum seekers and refugees. Accessed on 14.01.2024.. Available at:

<https://bosniaherzegovina.un.org/en/123914-un-bosnia-and-herzegovina-concerned-violent-pushback-migrants-asylum-seekers-and-refugees>

⁵³ UN Committee on the Rights of the Child. Concluding observations on the combined fifth and sixth periodic reports of Croatia CRC/C/HRV/CO/5-6. June 2022. Accessed on 14.01.2024. Available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FHrv%2FCO%2F5-6&Lang=en

⁵⁴ UN CRC Article 3

⁵⁵ Ibid Article 20(1)

⁵⁶ UN CRC General Comment No. 6 para 12.

⁵⁷ Ibid

obligations also extend to requiring States to take all necessary measures to identify children as being unaccompanied or separated at the earliest possible stage, including at the border.⁵⁸

26. Recalling its General Comment No. 6 “Treatment of unaccompanied and separated children outside their country of origin”,⁵⁹ in *D.D. v Spain*, the Committee on the Rights of the Child outlines that the State must conduct an initial assessment, prior to any removal or return, in order to comply with its obligation under Articles 3 and 20(1) CRC. The State is required to assess whether the person concerned is an unaccompanied minor and, in case of uncertainty, it has to accord the benefit of the doubt and treat him or her as such. The State also has to verify the child’s identity through an initial interview and assess his or her specific situation and eventual particular vulnerabilities.⁶⁰

27. As shown by BVMN collected numerous testimonies of (chain) pushbacks involving unaccompanied minors, both Slovenia and Croatia clearly fail to fulfill the obligation under article 3 CRC of acting considering the best interests of the child and their obligation under article 20(1) CRC of providing special protection and assistance to children deprived of his or her family environment.⁶¹ The failure in meeting their obligation is shown by the indiscriminate policy of pushbacks at the border applied uniformly to vulnerable individuals, such as families with children and (unaccompanied) minors.⁶² This evidence demonstrates the large-scale lack of individual assessment of vulnerabilities, including age assessment for potential minors and, consequently, the absence of special measures and assistance and protection.

Principle of non-discrimination

28. Article 2(1) CRC puts an obligation on States Parties to “respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.⁶³ The same non-discrimination principle is enshrined in Article 2(1) ICCPR.⁶⁴ The Committee on the Rights of the

⁵⁸ Ibid para 13

⁵⁹ Ibid para 31

⁶⁰ UN Committee on the Rights of the Child. *D.D v Spain*. 31 January 2019. CRC/C/80/D/4/2016 para 14.3.

⁶¹ See for example: BVMM. 2020. Why you come? Why you come? Accessed 14.01.2024. Available at: <https://borderviolence.eu/testimonies/october-22-2020-0000-near-rodik-65-slovenia/>; BVMN. 2020. He was asked for his age and was slapped every time he gave the answer '16'. Accessed 14.01.2024. Available at: <https://borderviolence.eu/testimonies/november-14-2020-1600-pljesevica-mountain-near-bihac-bosnia/>

⁶² See Are You Syrious? 2018. Daily Digest: Two refugee children shot by Croatian police. Accessed 14.01.2024. Available at: <https://medium.com/are-you-syrious/ays-daily-digest-31-05-2018-two-refugee-children-shot-by-croatian-police-5c3c811e0f07>; Save the Children. 2022. Wherever we go, someone does us harm: Violence against refugee and migrant children arriving in Europe through the Balkans. Accessed 14.01.2024. Available at: https://resourcecentre.savethechildren.net/document/wherever-we-go-someone-does-us-harm-violence-against-refugee-and-migrant-children-arriving-in-europe-through-the-balkans/?_ga=2.216426975.818857840.1671024487-1803662207.1670929786&_gl=1*9hjsol*_ga*MTgwMzY2MjIwNy4xNjcwOTI5Nzg2*_ga_646SWQJ0VB*MTY3MTAyNDQ4Ny4yLjEuMTY3MTAyNTc0OS42MC4wLjA*_ga_GRKVSTV36C*MTY3MTAyNDQ4Ny4yLjEuMTY3MTAyNTc1MC42MC4wLjA; Der Spiegel. 2021. *Wir sind für sie wie Tiere*. Accessed 14.01.2024. Available at: [Kroatien: Videos dokumentieren systematische Pushbacks - DER SPIEGEL](https://www.spiegel.de/international/germany/kroatien-videos-dokumentieren-systematische-pushbacks-der-spiegel-a-123456789.html).

⁶³ UNCRC Article 2(1)

⁶⁴ ICCPR Article 2(1): Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Child specifically addressed this principle with respect to underage people on the move in its General Comment No. 6. In particular, it specifies that the discrimination on the basis of the status of a child as being unaccompanied or separated, or as being a refugee, asylum seeker or migrant is prohibited.⁶⁵

29. As the UN Special Rapporteur on Racism pointed out already in 2018, border policies result in racial discrimination on the ground, including during pushbacks.⁶⁶ Indeed, people on the move are often subjected to racial profiling and prevented from accessing border crossings, which hinders their ability to submit claims for protection.⁶⁷ Made to cross borders irregularly, they are then pushed back after being racially profiled again.⁶⁸ It is impossible to avoid such discriminatory treatment, as all documents, including those that may prove regular presence on the territory, are not considered and are often destroyed.⁶⁹ Moreover, as BVMN has reported, the violence characterizing pushbacks is explicitly racist and discriminatory. For instance, a testimony recorded in 2018 involving five individuals, including two minors, described Slovenian authorities physically and verbally abusing them because of their being Muslims.⁷⁰ This example is not an isolated episode, but represents a recurrent and widespread behavior.⁷¹

30. While these last-mentioned testimonies referred to facts that occurred in 2018, internal reports as well as field testimonies collected, show that the same conduct is continuing today.⁷² The widespread and systematic nature of pushback, connected with the proven racial component of the practice, constitute a clear infringement of Article 2(1) CRC and Article 2(1) ICCPR.

⁶⁵ Id. footnote 53. UN CRC General Comment No. 6 para 18.

⁶⁶ UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Statement by eight Representatives of UN Special Procedures, 18.09.18, p.3.

⁶⁷ See for example: BVMN. *Balkan Regional Report - October 2023*. 15.12.2023. Accessed 13.01.2024. Available at: <https://borderviolence.eu/reports/balkan-regional-report-october-2023/>; BVMN. *Croatia carries out mass deportations of people on the move to Bosnia and Herzegovina*. 31.03.2023. Accessed 13.01.2024. Available at <https://borderviolence.eu/reports/press-release-croatia-carries-out-mass-deportations-of-people-on-the-move-to-bosnia-and-herze-govina/>

⁶⁸ UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of Bosnia and Herzegovina, (04.11.19) para 31. Accessed on 14.01.2024. Available at: <https://www.ohchr.org/en/documents/concluding-observations/cmwcbihco3-committee-protection-rights-all-migrant-workers-and>

⁶⁹ Amnesty International. *Pushed to the edge: Violence and abuse against refugees and migrants along Balkan Route*. 13 March 2019. Accessed 14.01.2024. Available at: <https://www.amnesty.org/en/documents/eur05/9964/2019/en/>

⁷⁰ BVMN. *The Black Book of Pushbacks*. 18 December 2020. Accessed 14.01.2014. Available: <https://left.eu/issues/publications/black-book-of-pushbacks-volumes-i-ii/> p 1294.

⁷¹ For other examples of islamophobic behavior of authorities during pushback, see *ibid* pp.1123, 1263, 1288, 1299. For more recent examples see also: BVMN. 2021. *I Was Bleeding So Much From My Nose and Mouth*. Accessed 14.01.2024. Available at: <https://www.borderviolence.eu/violence-reports/march-10-2021-1930-kestenje-croatia/>; BVMN. 2021. *The Policeman Said "Moroccan Come Here I Give You Cigarette"*. Accessed 14.01.2024 Available at: <https://www.borderviolence.eu/violence-reports/may-12-2021-0000-samobor-croatia/>; BVMN. 2021. *We Were All Looking As He Touched Every Part Of Her Body*. Accessed 14.01.2024. Available at:

<https://www.borderviolence.eu/violence-reports/february-13-2021-0000-near-bordercrossing-between-sturlic-and-bogovolja/>;

BVMN. 2021. *We Were Begging Them To At Least Keep The Kids Clothes and the Quran*. Accessed 14.01.2024. Available at: <https://www.borderviolence.eu/violence-reports/march-2-2021-1000-near-buzeta/>

⁷² See for example: BVMN. 2022. *We knew they were making fun of us, and they were enjoying hitting us*. Accessed 14.01.2024. Available at: <https://borderviolence.eu/testimonies/october-10-2022-1900-rajnovac-bosnia/>; BVMN. 2023. *They started hitting us with an iron stick [...] then they ordered us to get on our knees and started slapping us. They told us never to come back to Croatia*. Accessed 14.01.2024. Available at: <https://borderviolence.eu/testimonies/october-16-2023-maljevac-croatia/>