



Border Violence Monitoring Network

22 December 2022

SM against Croatia

Third Party Intervention
to the UN Human Rights Committee





Border Violence Monitoring Network

Office of the United Nations High Commissioner for Human Rights
Palais Wilson 52 rue des Pâquis CH-1201
Geneva, Switzerland

22 December 2022

To the UN Human Rights Committee,

1. Pursuant to Rule 96 of the Rules of Procedure of the Human Rights Committee, the Border Violence Monitoring Network (BVMN) registered as a charity under the legal framework of Rigardu e.V., at Wurzner Str. 34, 04315 Leipzig, Germany, respectfully submits a third-party intervention in the case of *S.M. against Croatia*.

Information about the Intervenor

2. 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 1,600 testimonies of illegal summary expulsions (pushbacks), affecting more than 24,990 people. 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 the United Nations Human Rights Committee, including legal briefings to Special Rapporteurs on states' use of torture during pushbacks.³ The extent of systematic pushbacks at Croatian borders observed by BVMN represents only a fraction of

¹ BVMN is represented under the legal framework of Rigardu e.V.

² See for example: BVMN. 2021. *Annual Torture Report 2020*. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks> [Accessed 29 March 2022].

³ See for example: BVMN. 2021. *Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina*. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. *Submission to the UN Rapporteur on Torture Regarding Greece*. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

the actual number of people affected by border violence, as many victims cannot report the violation for reasons including fear, lack of knowledge or awareness, or lack of access to justice.

3. Our intervention in the present case will show how pushback practices violate Articles 2(3), 7 and 16 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Croatia on October 12 1992. The human rights violations evident in *S.M. v Croatia* represent an expansive pattern of cruel, inhumane, or degrading treatment and pushbacks or summary expulsions experienced by migrants along the Balkan migratory route. In particular, *S.M.* alleges that the applicant was subjected to six instances of violent pushbacks to Bosnia and Herzegovina (BiH) at the hands of masked armed Croatian police officers. The applicant alleges that they were deliberately denied access to asylum, to an individual assessment, or to legal information and then illegally forced back over the border to Bosnia.
4. Throughout this submission, BVMN will highlight the modus operandi of systemic pushback practices along the Croatia-BiH border. These practices are carried out under the instruction of the Croatian government including full acquiescence to the rights violations that accompany these pushbacks. Our intervention in the present case will elucidate how pushbacks lead to violations of the International Covenant on Civil and Political Rights (ICCPR), namely Articles 2(3), 7 and 16.

Documented modus operandi of pushbacks at the Croatian border

5. Pushbacks or summary expulsions are contrary to article 2 (3), article 16 and article 7 of the International Covenant on Civil and Political Rights⁴ and have been a source of concern and condemnation for the Council of Europe's Human Rights Commissioner, the UNHCR and other international and national Non-Governmental Organisations (NGO) and Civil Society Organisations (CSO).⁵ 63% of the total number of testimonies collected by BVMN since 2017, have been pushbacks from Croatia, while 45% have been pushbacks to Bosnia and Herzegovina.⁶ The Danish Refugee Council reported an average of 1600-1700 pushbacks every month from May 2019 until November 2020 from Croatia to Bosnia and Herzegovina.⁷ Testimonies which refer to a period that pre- and post-date the events of the

⁴ United Nations General Assembly. 1966. *International Covenant on Civil and Political Rights*. [Online]. [Accessed last 20.11.2022]. Available at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁵ Human Rights Watch. 2018. *Croatia: Migrants pushed back to Bosnia and Herzegovina*. [Online]. [Accessed last 02.11.2022]. Available at: <https://www.ecchr.eu/en/case/croatia-to-answer-to-european-court-of-human-rights/>
<https://www.hrw.org/news/2018/12/11/croatia-migrants-pushed-back-bosnia-and-herzegovina>

⁶ Border Violence Monitoring Network. 2022. *Statistics about the countries of pushbacks*. [Online]. [Accessed last 23.11.2022]. Available at: <https://www.borderviolence.eu/statistics/countries-of-push-backs/>

⁷ Danish Refugee Council. 2021. Submission to Special Rapporteur's Report on Pushback Practices and their impact on Human Rights of Migrants. [Online]. [Accessed last 04.12.2022]. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/DRCSubmission-final.pdf>

case of S.M. can give crucial insight into pushback operations during the years of 2018 and 2019 as similar tactics were applied throughout.⁸

I. The systemic use of pushbacks by Croatian authorities

6. Following the formal closure of the Balkan route in 2016, migrants, asylum seekers and refugees were forced to take more dangerous and life-threatening routes to enter Europe in search of asylum. For Bosnia and Herzegovina, the tightening of border control between Serbia and Croatia meant that it became the necessary transit country on the Western Balkan route in 2018.⁹ As Croatia has the longest external land border in the European Union, the number of people crossing the green border from Serbia and Bosnia and Herzegovina into Croatia increased from 8,207 people in 2018 to 20,278 people in 2019, and more than 16,000 in 2020.¹⁰ Croatia addressed the rise in irregular entry by deploying an extra 6,500 officers along its border, acquiring stationary and mobile thermo-vision devices and drones, increasing the systematic perpetuation of pushbacks, and making use of an aircraft for aerial surveillance deployed by Frontex, the European Union's European Border and Coast Guard Agency.¹¹ Croatian police forces are reported to have participated in the pushback process.¹²
7. Coinciding with the aforementioned assessments, reports and testimonies have been published detailing the accounts of pushback survivors by the Croatian police by a myriad of sources.¹³ Every activity report of the Croatian Ombudsperson from 2016-2020 shows the

⁸ Border Violence Monitoring Network. 2022. *Statistics about the countries of pushbacks*. [Online]. [Accessed last 23.11.2022]. Available at: <https://www.borderviolence.eu/statistics/countries-of-push-backs/>

⁹ Council of Europe. 2019. *Report of the fact-finding mission by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees, to Bosnia and Herzegovina and to Croatia*. [Online]. [Accessed last 05.11.2022]. Available at:

<https://rm.coe.int/report-of-the-fact-finding-mission-by-ambassador-tomas-bocek-special-r/1680940259> p3.

¹⁰ Minister Davor Bozinovic. 2020. *Croatia stopped 16,000 migrant border crossings since January*. [Online].

[Accessed last 27.10.2022]. Available at:

<https://www.infomigrants.net/en/post/27384/croatia-stopped-16000-migrant-border-crossings-since-january>

¹¹ Total Croatia News. 2019. *6500 police officers protecting Croatian borders against illegal migration*. [Online].

[Accessed last 01.12.2022]. Available at: <https://www.total-croatia-news.com/politics/35510-illegal-migration>

¹² BVMN. 2019. *Torture and cruel, inhumane and degrading treatment of refugees and migrants in Croatia in 2019*. [Online]. [Accessed last]. Available at:

<https://www.borderviolence.eu/wp-content/uploads/CORRECTEDTortureReport.pdf>

¹³ The Guardian. 2020. *Croatian police accused of "sickening" assault on migrants on Balkans trail*. [Online].

[Accessed last 15.12.2022]. Available at:

<https://www.theguardian.com/global-development/2020/oct/21/croatian-police-accused-of-sickening-assaults-on-migrants-on-balkans-trail-bosnia>, Lydia Gall. 2020. *Violent pushbacks on Croatia border need EU Action*. [Online].

[Accessed last 20.11.2022]. Available at:

<https://www.hrw.org/news/2020/10/29/violent-pushbacks-croatia-border-require-eu-action>, Danish Refugee Council. 2021. *Submission to the Special Rapporteur's Report on Pushback Practices and their impact on Human Rights of Migrants*. [Online]. [Accessed last 02.12.2022]. Available at:

<https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/pushback/DRCSUBMISSION-final.pdf>

coordinated denial of rights protected under domestic¹⁴ and international law¹⁵ year after year.¹⁶ The persistent denial and violations of fundamental rights at Croatian borders take place in different forms but most include the structural denial of recognition as persons before the law for migrants, asylum seekers and refugees, constituting a potential breach of Article 16 ICCPR. Furthermore, legal remedies are inaccessible as no formal identification and documentation procedures are followed, as reported by the UN Special Rapporteur on the Human Rights of Migrants in 2019.¹⁷ This clearly endangers rights guaranteed under article 2(3) of the ICCPR. Many of the testimonies gathered mention multiple forms of illegal abuses and violations including theft and destruction or damage of personal property, degrading treatment and physical and psychological violence.¹⁸ BVMN has identified seven typologies of torture and inhuman treatment which are most pervasive during pushbacks, including the excessive and disproportionate use of force, the use of electric discharge weapons, forced undressing, threats or excessive force with firearms, inhumane treatment inside police vehicles, and detention without basic facilities.¹⁹

8. The 2019 Asylum Information Database Update by the European Council on Refugees and Exiles (ECRE) corroborates BVMN's reports regarding the organised approach used by Croatian officials during pushbacks at the border. First, migrants are captured through the use of surveillance equipment; then, they have their clothes and other personal belongings stolen; and finally, they are subjected to extreme levels of violence and occasionally, deliberate dog attacks, in order to physically and mentally exhaust people and deter them from returning to the country.²⁰ The frequency of violent pushbacks from Croatia to Bosnia and Herzegovina is demonstrated in UN Committee and European Court of Human Rights cases such as *U.F. v Croatia and Slovenia*²¹ or *S.B. v Croatia*.²²

¹⁴ Law on Foreigners/Zakon o strancima, OG 130/11, 74/13, 69/17, 46/18, 53/20, in force: 26.5.2018. - 31.12.2020.

¹⁵ United Nations General Assembly. 1966. *International Covenant on Civil and Political Rights*. [Online]. [Accessed last 20.11.2022]. Available at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

¹⁶ Republic of Croatia, Croatian Ombudsperson, Report for 2018, Zagreb, March 2019. Available at:

<https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5fc7950f7fca11606915343>

¹⁷ Felipe González Morales. 2019. *End of visit statement of the UN Special Rapporteur on the Human Rights of Migrants*. [Online]. [Accessed last 13.12.2022]. Available at:

<https://www.ohchr.org/en/statements/2019/10/end-visit-statement-un-special-rapporteur-human-rights-migrants-felipe-gonzalez?LangID=E&NewsID=25088>.

¹⁸ Milena Zajović. 2022. *The Game*. [Online]. [Accessed last 02.11.2022]. Available at:

[Umschlag_Studie-2022_Test_v01 \(cornelia-ernst.eu\)](https://www.umschlag-studie-2022-test_v01.cornelia-ernst.eu).

¹⁹ Ibid.

²⁰ European Council on Refugees and Exiles. 2019. *AIDA 2019 Update: Croatia*. [Online]. [Accessed last 17.11.2022]. Available at: <https://ecre.org/aida-2019-update-croatia/>.

²¹ European Centre for Constitutional and Human Rights. 2021. *Rohingya child alleges Croatia and Slovenia over violent pushbacks*. [Online]. [Accessed last 20.12.2022]. Available at:

https://www.ecchr.eu/en/case/pushbacks-un-child-rights-croatia-slovenia/#case_case.

²² European Court of Human Rights. 2020. *S.B. v Croatia*. [Online]. [Accessed last 22.12.2022]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202733%22%7D>.

II. Torture, cruel/inhuman or degrading treatment

9. Reports of violence at the Croatian border have been recorded by various human rights organisations, bodies of the Council of Europe and the United Nations.²³ In 2022, 79% of all pushbacks from Croatia, recorded by BVMN, included reports of disproportionate and excessive use of force. In fact, data collected by BVMN in 2019, indicates that up to 90% of all pushbacks may be impacted by one or more forms of torture, cruel or degrading treatment. This treatment can vary from physical violence to psychological abuse, humiliation, and degradation.

Physical Violence

10. There are numerous concordant testimonies from asylum seekers and refugees recounting the physical ill-treatment they experienced at the hands of Croatian authorities. These include the following: “slaps, kicks, blows with truncheons and other hard objects (like butts/barrels of firearms, wooden sticks or tree branches) to various parts of the body”,²⁴ being forced to march through the forest barefoot or being thrown into the Korana river while their hands were zip-locked, and having officers discharging their weapons right next to people laying face down on the ground.²⁵

11. From 2017 to 2022, BVMN has recorded a total of 956 pushback testimonies from Croatia affecting over 10,323 people.²⁶ From 2017 to the end of 2019, BVMN recorded 23

²³ Amnesty International. 2019. *Croatia: EU complicit in violence and abuse by police against refugees and migrants*. [Online]. [Accessed last 15.11.2022]. Available at: [Croatia: EU complicit in violence and abuse by police against refugees and migrants - Amnesty International](#) and BVMN. Last update 2022. *Reports Archive*. [Online]. [Accessed last 10.11.2022]. Available at: [Reports Archive – Border Violence Monitoring Network](#) and Council of Europe Commissioner for Human Rights. 2018. *Letter by the Council of Europe Commissioner for Human Rights*. [Online]. [Accessed last 17.11.2022]. Available at: [CoE-CommDH – Council of Europe - Commissioner for Human Rights: “Letter by the Council of Europe Commissioner for Human Rights”, Document #1445749 - ecoi.net](#) and United Nations Human Rights Office of the High Commissioner. 2020. *Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned*. [Online]. [Accessed last 12.11.2022]. Available at: [Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned – UN Special Rapporteurs | OHCHR](#)

²⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment. 2021. *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)*. [Online]. [Accessed last 13.11.2022]. Available at: [Council of Europe anti-torture committee publishes report on its 2020 ad hoc visit to Croatia - News 2021 \(coe.int\)](#)

²⁵ Ibid

²⁶ BVMN. 2022. *Black book of pushbacks - Expanded and updated edition*. [Online]. [Accessed last 12.12.2022]. Available at: <https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3Acb5a9aaa-ee62-3286-a505-0d9122b69b8f&viewer%21megaVerb=group-discover>

testimonies that involved electric discharge weapons and 16 pushback testimonies referring to the use of pepper spray. In 2017 and 2018, preceding the events of the case at hand, 76.03% of testimonies included beatings either by hand, batons or other instruments, while 28.77% reported being kicked by Croatian police officers.²⁷ Other forms of violent behaviour from Croatian authorities during this time included cases where a person's head was pushed underwater in a swamp, shoving people to the ground as well as rape with tree branches and other objects.²⁸ In the case concerning sexual assault, the doctor who had examined the victim confirmed that while he had never seen any case of the same severity, it was one of many instances of sexual violence reportedly perpetrated by Croatian officials that he had come across.²⁹

12. The testimonies collected are periodically supplemented with visual proof of the abuse which discloses additional evidence of the violations committed against asylum seekers, migrants and refugees. Specific examples of footage are physical beatings, the use of electric shocks, and forced river crossings in dangerous circumstances. These incidents have been investigated and reported on by various media outlets like SRF Rundschau,³⁰ Der Spiegel,³¹ Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD)³² and the Lighthouse Reports³³ which also brought to light the routine monitoring of areas by Croatian police officers using binoculars to ensure there are no witnesses to the pushbacks.³⁴ Based on the whistleblower testimonies within the Croatian police force, this operation is called "Korridor".³⁵

13. Another strategy used by Croatian officials is to direct people towards dangerous river crossings or mountainous regions. Amnesty International reported that in the first 10 months

²⁷ BVMN. Last updated 2022. *Reports Archive*. [Online]. [Accessed last 14.11.2022]. Available at: <https://www.borderviolence.eu/violence-reports/>

²⁸ Ibid

²⁹ The Guardian. 2020. *Croatian police accused of "sickening" assault on migrants on Balkans trail*. [Online]. [Accessed last 14.11.2022]. Available at: [Croatian police accused of 'sickening' assaults on migrants on Balkans trail | Migration and development | The Guardian](https://www.theguardian.com/migration/2020/oct/28/croatian-police-accused-of-sickening-assaults-on-migrants-on-balkans-trail)

³⁰ Schweizer Rundfunk und Fernsehen. 2021. *Video Beweis: Kroatische Polizisten prügeln Migranten aus der EU*. [Online]. [Accessed last 12.11.2022]. Available at: <https://www.srf.ch/news/international/pushbacks-an-eu-grenze-video-beweis-kroatische-polizisten-pruegeln-migrant-en-aus-der-eu>

³¹ Der Spiegel. 2021. *Wir sind für sie wie Tiere*. [Online]. [Accessed last 13.11.2022]. Available at: <https://www.spiegel.de/ausland/kroatien-videos-dokumentieren-systematische-pushbacks-a-4463a93d-0467-4960-814a-6d959e1df193>

³² Tagesschau. 2021. *Kroatien schiebt Schutzbedürftige ab*. [Online]. [Accessed last 24.11.2022]. Available at: <https://www.tagesschau.de/ausland/pushbacks-grenze-101.html>

³³ Lighthouse Reports. *Unmasking Europe's shadow armies*. [Online]. [Accessed last 14.11.2022]. Available at: <https://www.lighthousereports.nl/investigation/unmasking-europes-shadow-armies/>

³⁴ Tagesschau. 2021. *Kroatien schiebt Schutzbedürftige ab*. [Online]. [Accessed last 12.11.2022]. Available at: <https://www.tagesschau.de/ausland/pushbacks-grenze-101.html>

³⁵ Westdeutscher Rundfunk. 2021. *Operation Korridor - Rechercheoperation belegt schwere Misshandlungen von Flüchtenden an EU-Außengrenzen*. [Online]. [Accessed last 19.11.2022]. Available at: https://presse.wdr.de/ploungewdr/programm/2021/10/20211006_rechercheoperation_eu_aussengrenzen.html

of 2018, at least 12 migrants died in remote areas close to the Croatian border. Most of them were hit by cars while they were walking along unlit country roads.³⁶ These instances show similarity to the case of *M.H. v Croatia*, in which people were instructed by Croatian police to walk back to Serbia along the train tracks, which resulted in the death of a child.³⁷

14. Evidence collected by “Save the Children” shows how minors are not excluded from the prevalent violence at the Croatian-Bosnian border.³⁸ In 2018, two 12-year-old children on the move were shot in the face by Croatian border police near Bosnia and Herzegovina.³⁹ This shows that violent pushbacks are carried out indiscriminately and lack any regard for the assessment of vulnerabilities.

Psychological Abuse

15. BVMN has recorded many incidents of Croatian authorities' behaviour amounting to torture and inhuman or degrading treatment. The following tactics illustrate the brutality migrants face at the hands of Croatian perpetrators: a mock execution in which a person was hung by his neck; peoples' heads being smeared with food or spray painted with crosses, or groups being forced to undress (in some cases completely) and hand over their clothes before being pushed back over the border without their belongings.⁴⁰ Often, Croatian officers' actions are meant to humiliate, degrade, and mentally exhaust persons, as is seen in the case where men had condiments rubbed into their wounds by Croatian authorities.⁴¹ The forced undressing of people despite adverse weather conditions and gender-insensitive body searches also qualify under the physiological abuse measures instigated by Croatian officials. These strip searches are conducted in the absence of lawful requirements to ensure security, as the individuals are not being formally arrested for committing criminal offences nor are accused under

³⁶ Amnesty International. 2019. Pushed to the edge: Violence and abuse against refugees and migrants along the Balkan route. [Online]. [Accessed last 20.12.2022]. Available at:

<https://www.amnesty.org/en/documents/eur05/9964/2019/en/>.

³⁷ European Court of Human Rights. Final judgment 2022. *M.H. and Others v Croatia*. [Online]. [Accessed last 24.11.2022]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-213213%22%7D>.

³⁸ Save the Children. 2022. *Wherever we go, someone does us harm: Violence against refugee and migrant children arriving in Europe through the Balkans*. [Online]. [Accessed last 23.11.2022]. 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_GRKVVSTV36C*MTY3MTAyNDQ4Ny4yLjEuMTY3MTAyNTc1MC42MC4wLjA.

³⁹ Are You Syrious? 2018. Daily Digest: *Two refugee children shot by Croatian police*. [Online]. [Accessed last 17.11.2022]. Available at:

<https://medium.com/are-you-syrious/ays-daily-digest-31-05-2018-two-refugee-children-shot-by-croatian-police-5c3c811e0f07>

⁴⁰ Ibid.

⁴¹ BVMN. 2020. *Annual Torture Report*. [Online]. [Accessed last 19.11.2022]. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>.

suspicion of such as in *McFeely and Others v United Kingdom*.⁴² Therefore, these informal searches seem to lack the required legitimate purpose and show similarity to the disproportionate strip search in *Safi and Others v Greece*.⁴³

III. Croatia's deliberate denial of fundamental rights

16. The obligation to refrain from refoulement applies respectively to everyone within the “effective authority and control” of a State.⁴⁴ Hence, States that detain or otherwise control a person outside extraterritorially must also respect the duty. Furthermore, the rejection of migrants at the border does not release the State from this obligation.⁴⁵ BVMN notes that the obligation not to extradite, deport or otherwise transfer pursuant to Article 6 of the Covenant is broader in scope than the principle of *non-refoulement* under international refugee law, since it may also require the protection of aliens not entitled to refugee status.⁴⁶

17. According to statistics published by the Croatian Ministry of Interior in 2018, 8207 people irregularly crossed Croatian borders. While 1438 of these people were allegedly readmitted, 1068 applied for asylum and 536 were placed in detention, there is no information provided on what procedures were implemented for the remaining 5165 people who were apprehended.⁴⁷ In 389 pushback testimonies collected from 2017-2019, respondents unsuccessfully stated their request for international protection while engaging with Croatian officials. Many recounted how authorities had told them there “is no asylum for Muslims here”, or that asylum didn’t exist at all in Croatia.⁴⁸ Some respondents recalled how their claim was blatantly ignored, they were told to “shut up”,⁴⁹ or it was followed by a beating from the officers with metal batons.⁵⁰ Moreover, the lack of individual assessment of each

⁴² European Court of Human Rights. 1980. *McFeely and Others v United Kingdom*. [Online]. [Accessed last 07.12.2022]. Available at:

<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-92713&filename=MCFEELEY%20AND%20OTHERS%20v.%20THE%20UNITED%20KINGDOM.pdf>.

⁴³ European Court of Human Rights. Final judgment 2022. *Safi and Others v Greece*. [Online]. [Accessed last 21.11.2022]. Available at: https://www.refworld.org/cases/ECHR_62de68304.html

⁴⁴ Human Rights Committee. General comment No. 31, para. 10.

⁴⁵ UNHCR Advisory opinion on the extraterritorial application of non-refoulement obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 2007, paras. 20 and 35. General Assembly resolution 2312 (XXII), art. 3(1) on rejection at frontiers.

⁴⁶ Human Rights Committee. 2018. *General Comment No.36 on Article 6 of the ICCPR, on the right to life*. Para 31.

⁴⁷ Ministry of the Interior of Croatia. 2019. Statistički Pregled. [Online]. [Accessed last 18.11.2022]. Available at: <https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>, p. 146.

⁴⁸ BVMN. (2020). *Black book of pushbacks, Volume 2*. From page 675. Available at:

<https://acrobat.adobe.com/link/track?uri=urn:aaid:scds:US:b10a04a4-25dd-45f1-8b2d-e9c25946cb44>

⁴⁹ Ibid.

⁵⁰ BVMN. 2017-2019. *Reports Archive*. [Online]. [Accessed last 11.12.2022]. Available at:

<https://www.borderviolence.eu/violence-reports/?ri-incident-date-range=2016-01-01%20to%202019-12-31&ri-incident>

explicit asylum request has been recorded also by other NGOs such as Amnesty International,⁵¹ Médecins sans Frontières,⁵² Human Rights Watch⁵³ as well as the Danish Refugee Council, among other organisations. As confirmed by a whistleblower of the Croatian Border Police, “There is no asylum, that doesn’t exist, only - if ever - in extraordinary situations, when something is under media watch”.⁵⁴ Collectively expelling asylum seekers and refugees without individually assessing their claims to protection might constitute a breach their right to recognition before the law under article 16 of the ICCPR.

18. Testimonies given by police officers, published by journalists,⁵⁵ addressed to the Croatian Ombudswoman, show how Croatian officials are explicitly instructed to commit human rights abuses. Police officers explicitly described how they were instructed to “return everyone without papers, no traces, take money, break mobile phones or take for ourselves, and forcefully return refugees to Bosnia”.⁵⁶ The clear instruction to expel people without papers demonstrates that the Croatian authorities knowingly undermine the recognition before the law, guaranteed in article 16 ICCPR as well as the right to seek legal remedies for any violation, guaranteed under article 2(3) ICCPR.⁵⁷
19. Video footage shows how vulnerable groups of migrants including families with young children, minors with disabilities and pregnant women are removed from Croatia.⁵⁸ This evidence clearly demonstrates the lack of individual assessment of vulnerabilities as well as the denial of access to legal pathways for migrants, asylum seekers and refugees, contrary to articles 2(3) and 7 of the ICCPR. The Ministry of Interior’s response to these unlawful

[ent-date-start=20160101&ri-incident-date-end=20191231&ri-incident-location-geo-radius=50&ri-pushback_from=Croatia&ri-pushback_to=Bosnia&ri-underage-involved=all&ri-intention-asylum-expressed=all&ri-page=1](#).

⁵¹ Amnesty International. 2020. *Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers*. [Online]. [Accessed last 26.11.2022]. Available at:

<https://www.amnesty.eu/news/croatia-fresh-evidence-of-police-abuse-and-torture-of-migrants-and-asylum-seekers/>.

⁵² Médecins sans Frontières. 2018. *Pushbacks, violence and inadequate conditions at the Balkan route’s new frontier*. [Online]. [Accessed last 27.11.2022]. Available at:

<https://www.msf.org/push-backs-violence-and-inadequate-conditions-balkan-route%E2%80%99s-new-frontier>.

⁵³ Human Rights Watch. 2019. *EU: Address Croatia Border Pushbacks*. [Online]. [Accessed last 01.12.2022].

Available at: <https://www.hrw.org/news/2019/11/08/eu-address-croatia-border-pushbacks>.

⁵⁴ Croatian Ombudswoman. 2019. *No institutional reaction to alleged illegal police treatment of migrants*. Available at: <https://www.ombudsman.hr/en/no-institutional-reaction-to-alleged-illegal-police-treatment-of-migrants/>.

⁵⁵ Barbara Matejčić. 2019. *Prvi intervju u kojem hrvatski policajac tvrdi: šefovi nam naređuju da ilegalno protjerujemo migrante /First interview in which a police officer claims: our bosses order us to illegally expel migrants*. [Online]. Accessed last 19.12.2022]. Available at:

<https://www.telegram.hr/price/prvi-intervju-ukojem-hrvatski-policajac-tvrdi-sefovi-nam-nareduju-da-ilegalno-protjerujemo-migrante/>.

⁵⁶ BVMN. 2019. *Complaint by Croatian police officers who are being urged to act unlawfully*. [Online]. [Accessed last 17.12.2022]. Available at:

<https://www.borderviolence.eu/complaint-by-croatian-police-officers-who-are-being-urged-to-act-unlawfully/>.

⁵⁷ United Nations General Assembly. 1966. *International Covenant on Civil and Political Rights*. [Online]. [Accessed last 30.11.2022]. Available at:

<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

⁵⁸ Der Spiegel. 2021. *Wir sind für sie wie Tiere*. [Online]. [Accessed last 13.11.2022]. Available at: [Kroatien: Videos dokumentieren systematische Pushbacks - DER SPIEGEL](#).

tactics is to legitimise them under grounds of necessary border deterrence.⁵⁹ In 2019, Croatia's then President, Kolinda Grabar-Kitarović admitted that expulsions of transit groups from Croatia to Bosnia happen regularly and that “a little bit of force” is always used during the unlawful operation.⁶⁰

20. The conduct of Croatian authorities potentially in breach of Article 16 is not confined only to the border. Structural obstruction of the right to apply for international protection and the lack of accountability for unlawful actions also occurs further within Croatia: Lawfully registered asylum seekers that have been living in the country for years have been pushed back. The extent of racial profiling is so prolific, that in 2019, two Nigerian students with valid visas competing in a sports competition were expelled to Bosnia purely due to racial profiling.⁶¹ The Ministry of Interior of Croatia refused to extend apologies to the victims and to conduct an efficient investigation into the matter and defended the actions of the Croatian police.

IV. Lack of access to Justice

21. The Croatian Ombudswoman's Activity Reports have shown that numerous asylum seekers and refugees are denied access to international protection⁶² as the Act on Foreigners is not lawfully adhered to, and no remedies are available. The conduct of the Croatian police described in the report potentially forms both a material and procedural breach of Article 3 of the ECHR,⁶³ as it constitutes acts of torture, inhuman and degrading treatment, as well as a failure in the duty to investigate potential violations. Data collected by BVMN in 2020 indicates that up to 90% of all pushbacks may be impacted by one or more forms of torture, cruel or degrading treatment.

⁵⁹ Ministry of Interior of the Republic of Croatia. 2018. *Video footage released by the non-governmental organisation BVM*. [Online]. [Accessed last 18.11.2022]. Available at: [Ministarstvo unutarnjih poslova Republike Hrvatske - Video footage released by the non-governmental organisation BVM](#)

⁶⁰ Schweizer Radio und Fernsehen. 2019. *Kroatiens Präsidentin Grabar-Kitarović zur Balkanroute*. [Online]. [Accessed last 15.11.2022]. Available at: https://www.srf.ch/play/tv/tagesschau/video/kroatiens-praesidentin-grabar-kitarovi-zur-balkanroute?urn=urn:srf:video:68ae3d79-230b-4af6-a318-717b9aa8a514&fbclid=IwAR0thheIG9J0CfzWBYn1aRqtM1m4Z7KPA-d_k8WkPvcQnEyS8AMeVZuZdgA.

⁶¹ Al Jazeera. 2019. *Croatia “wrongly deports” Nigerian table tennis players to Bosnia*. Available at: <https://www.aljazeera.com/news/2019/12/4/croatia-wrongly-deports-nigerian-table-tennis-players-to-bosnia>

⁶² Ombudswoman Laura Vidović. 2016, 2017, 2018, 2019. *Annual Ombudswoman Report*. Available at: <https://www.ombudswoman.hr/en/reports>.

⁶³ Council of Europe. 2010. *European Convention on Human Rights as amended by Protocols Nos, 11 and 14, supplemented by Protocols 1, 4, 6, 7, 13, 13 and 16*. [Online]. [Accessed last 01.12.2022]. Available at: <https://edoc.coe.int/en/european-convention-on-human-rights/8363-european-convention-on-human-rights-as-amended-by-protocols-nos-11-and-14-supplemented-by-protocols-nos-1-4-6-7-12-13-and-16.html>.

22. The Committee for the Prevention of Torture (CPT) has stated major concerns in its 2020 report.⁶⁴ The CPT was met with restrictions by police on access to relevant information necessary to carry out their mandate as well as information on detention and deprivation of liberty for migrants, asylum seekers and refugees. The CPT criticised the lack of effective accountability mechanisms to identify the perpetrators in cases of violations and also highlighted the absence of specific guidelines from the Croatian Police Directorate on documenting “diversion operations”, meant to apprehend people entering irregularly onto the territory and identifying asylum seekers. Moreover, the CPT condemned the fact that an independent police complaint mechanism which can undertake effective investigations into allegations of human rights violations did not exist.⁶⁵
23. The practice of illegal expulsions orchestrated by Croatia and the shortcomings in investigating such violations was confirmed in the European Court of Human Rights judgement in *M.H. v Croatia*, where a six-year-old died after being pushed back to Serbia with her family.⁶⁶ The Court found that the treatment of Croatian authorities to deprive children of their right to liberty constituted a violation of Article 5 (1) ECHR, regarding the lawfulness of the detention. The Court found that the authorities subjected the children to degrading treatment in breach of Article 3 ECHR by detaining them in unsuitable conditions for a protracted amount of time. Significantly, the Court found a violation of Article 4 Protocol 4 ECHR, prohibiting collective expulsions. In its judgement, the Court recognized that there there” was prima facie evidence in favour of the applicant’s version of events” with regard to allegations of pushbacks from Croatia into Serbia relying on reports from NGOs and Council of Europe institutions and reverted the burden of proof to the state, which was unable to refute. The applicants were prevented from accessing their lawyer to which the Court stated that the Croatian authorities restricted the “effective exercise of individual petition hindered through restriction of contact with the chosen lawyer, and pressure placed on the lawyer aimed at discouraging pursuit of case” in breach of Article 34 ECHR.⁶⁷ In *M.H v Croatia*, it is essential to recognise that the victim’s family were unable to seek justice within Croatia for the death of their child. The Office for the Suppression of Corruption and Organised Crime (OSCO) rejected the claim, placing full confidence in the findings by the Ministry of Interior which had failed to examine the victims’ and witnesses’ testimonies properly. Both the Osijek County and the Constitutional Court of Croatia denied appeal proceedings arguing that the investigations had complied with Article 2 ECHR.⁶⁸ In addition to this, it is extremely concerning that the footage from the thermal image cameras

⁶⁴ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 2020. *Report to the Croatian Government on the visit to Croatia*. [Online]. [Accessed last 28.11.2022]. Available at: <https://rm.coe.int/1680a4c199>.

⁶⁵ Ibid.

⁶⁶ European Court of Human Rights. *M.H. and Others v Croatia*. Final judgment 2022. [Online]. [Accessed last 21.11.2022]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-213213%22%7D>.

⁶⁷ Ibid.

⁶⁸ Ibid.

operating the night Madina Hussiny died have vanished,⁶⁹ and the investigation by the Croatian Ombudswoman had been obviated.⁷⁰ This case is exemplary in showing the unavailability of legal remedies for migrants, asylum seekers and refugees in Croatia, which may violate article 2(3) of the ICCPR.

V. Bosnia and Herzegovina as a “safe third country”

Failure of the reception system and access to asylum

24. Despite the adoption of the migration and asylum strategy and action plan in 2016, it quickly became clear that Bosnia and Herzegovina was ill-prepared for the number of irregular migrants entering the country. The lack of preparedness initially revealed by a sudden change in the geopolitics of migration continues to be the status quo in BiH more than 6 years later, indicating deliberate policies of denying protection to asylum seekers, refugees and migrants.⁷¹ Until mid-2018, only one employee was responsible for reviewing all asylum claims filed in BiH,⁷² while over 24,000 new arrivals were registered that year, and the only two reception centres in the country (Delijas and Salakovac) could accommodate no more than 400 people,⁷³ resulting in thousands of people being forced to live outside potential shelters and therefore being denied access to lodge an asylum application.

25. The Council of Europe High Commissioner for Human Rights, Dunja Mijatović, condemned Bosnia and Herzegovina for failing in its duty to systematically respond to a humanitarian crisis by establishing adequate reception systems for migrants, asylum seekers and refugees arriving in the country. Countless people, including families, were forced to sleep in the streets and only had access to food irregularly.⁷⁴ The following year, the EU Commission described the reception services and procedures for migrants, asylum seekers and refugees in Bosnia and Herzegovina as “largely insufficient”, and criticised that, despite

⁶⁹ BVMN. 2021. *Press Release: ECtHR judgement confirms that the Croatian police are guilty of Madina’s death*. [Online]. [Accessed last 16.11.2022]. Available at: [Press Release: ECtHR judgement confirms that the Croatian police are guilty of Madina’s death – Border Violence Monitoring Network](#).

⁷⁰ European Court of Human Rights. Final judgment 2022. *M.H. and Others v Croatia*. [Online]. [Accessed last 21.11.2022]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-213213%22%7D>.

⁷¹ Marta Stojić Mitrović and others. 2020. *The dark sides of Europeanisation*. Rosa Luxemburg Stiftung - Southeast Europe. Belgrade, Serbia. Page 75.

⁷² Ibid.

⁷³ United Nations Development Programme. 2018. *Interagency refugee and migrant operational update - December*. [Online]. [Accessed last 01.11.2022]. Available at: <https://www.undp.org/content/dam/undp/bih/PDFs/UNCTBiHSitReps/Inter-agency%20refugee%20and%20migrant%20operational%20update-%20December%202018.pdf>.

⁷⁴ Commissioner for Human Rights. 2018. *Letter to the authorities regarding the migration situation in Bosnia and Herzegovina*. [Online]. [Accessed last 27.11.2022]. Available at: <https://rm.coe.int/commdh-20181-2-letter-to-the-authorities-regarding-the-migration-situa/1680870e4d>.

financial funding from the EU, no additional reception facilities had been established.⁷⁵ Moreover, in the same year, the European Parliamentary Research Service stated that a humanitarian crisis was unfolding in the Una-Sana Canton due to the lack of appropriate policy response.⁷⁶ Bosnia and Herzegovina could not be qualified as a safe third country to which persons could be readmitted or returned due to the treatment and conditions of asylum seekers, refugees or migrants that could potentially amount to inhuman and degrading treatment, and therefore a breach of the principle of non-refoulement.

26. In 2018, according to Human Rights Watch, over 19,900 people expressed their wish to apply for asylum in Bosnia,⁷⁷ but UNHCR showed that only 1,572 managed to file an application.⁷⁸ This is largely due to the abandonment of the asylum procedure resulting from frustration with the inefficient system, not due to the merit of the claim.⁷⁹ Competent institutions are under-resourced and therefore constitute serious obstacles to the right of accessing asylum. Local authorities had not yet taken legal responsibility for the camps in the Una-Sana Canton, meaning that the camps did not qualify as valid residential addresses needed for asylum applications. This left people in legal limbo and effectively denied access to asylum for thousands of people, as they needed to register an official address upon lodging an application.
27. Between 2018-2019, Dunja Mijatović, Council of Europe Commissioner for Human Rights, condemned the local authorities for the “lack of a systematic response” to the humanitarian needs of migrants, asylum seekers and refugees.⁸⁰ Bosnia and Herzegovina has a complex administrative organisation, a direct result of post-war agreements which often leaves an “unclear division of responsibilities”.⁸¹ As a result, Una Sana Canton, the region bordering Croatia, was designated as a separate entity regarding the management of migration. At the

⁷⁵ EU Committee on Foreign Affairs. 2019. *Report on the 2019-2020 Commission Reports on Bosnia and Herzegovina*. [Online]. [Accessed last 8.12.2022]. Available at: https://www.europarl.europa.eu/doceo/document/A-9-2021-0185_EN.html.

⁷⁶ European Parliamentary Research Service. 2019. *Situation of migrants in Bosnia and Herzegovina*. [Online]. [Accessed last 19.11.2022]. Available at:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644174/EPRS_BRI\(2019\)644174_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644174/EPRS_BRI(2019)644174_EN.pdf).

⁷⁷ Human Rights Watch. 2019. *Bosnia and Herzegovina - Events of 2018*. [Online]. [Accessed last 22.12.2022]. Available at: <https://www.hrw.org/world-report/2019/country-chapters/bosnia-and-herzegovina>.

⁷⁸ UNHCR. 2021. *Bosnia and Herzegovina*. [Online]. [Accessed last 20.12.2022]. Available at: <https://www.unhcr.org/bosnia-and-herzegovina.html>.

⁷⁹ Global NGO Impact News. 2019. *Bosnia and Herzegovina: RRSEE - Asylum Statistics - Summary of key trends observed*. [Online]. [Accessed last 02.12.2022]. Available at: <https://globalimpactnews.com/2019/09/16/bosnia-and-herzegovina-rrsee-asylum-statistics-summary-of-key-trends-observed-as-of-31-july-2019/>.

⁸⁰ Dunja Mijatović. 2018. *Letter to the authorities regarding the migration situation in Bosnia and Herzegovina*. [Online]. [Accessed 04.12.2022]. Available at: <https://rm.coe.int/commdh-20181-2-letter-to-the-authorities-regarding-the-migration-situa/1680870e4d>.

⁸¹ Delegation of the European Union to Bosnia and Herzegovina. 2022. *Public Administration Reform*. [Online]. [Accessed last 30.11.2022]. Available at: https://www.ceas.europa.eu/delegations/bosnia-and-herzegovina/public-administration-reform_en?s=219. See also: Bennett, C. 2017. *Bosnia's paralysed peace*. New York, Ny: Oxford University Press.

entrance of the Canton in Velečevo near Ključ, an unlawful police checkpoint was set up in October 2018 for migrants, asylum seekers and refugees.⁸² Bosnian police stopped buses and vehicles there in search of migrants, asylum seekers and refugees who, if found, were forced to exit the vehicles and told to leave the country. Reportedly, over a period of 13 months, around 7,000 people were stopped and ordered to return to Sarajevo or elsewhere on foot instead of being referred to asylum or other procedures such as the protection of vulnerable populations.⁸³ Red Cross volunteers provided the only support base on the ground, which caused Vaša prava, a free-legal aid organisation, to file a complaint challenging the legality of the checkpoint with the Office of the Ombudsperson on grounds of unlawful restrictions of the freedom of movement.⁸⁴

Inhuman and degrading living conditions of Bosnian camps

28. Bosnia and Herzegovina saw an increase in migration in 2018 as approximately 24,000 people irregularly crossed into BiH as legal pathways were unavailable to them.⁸⁵ By the end of 2021, this number had risen to an estimated 85,000.⁸⁶ The authorities, unwilling to make the necessary adjustments to address the needs of people in need of protection, left people with substandard support potentially amounting to degrading treatment while leaving institutional responsibility undefined.⁸⁷ The response was the enforcement of unjust mechanisms like the unlawful restriction of movement and the forced transfer of people to sites that are unfit for human habitation due to severe health and safety risks.

29. In October 2018, several hundred migrants, asylum seekers and refugees protested against the border crossing at Maljevac and demanded humane living conditions in BiH. The police intervened violently.⁸⁸ As both the Miral and Bira camps were filled to their maximum

⁸² International Federation of Red Cross and Red Crescent Societies. 2019. *Emergency Plan of Action Operations Update No.3, Bosnia and Herzegovina: Population Movement*. [Online]. [Accessed on 01.12.2022]. Available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/MDRBA011ou3.pdf>.

⁸³ Radio-Televizija Una Sana Kanton. *Velecevo kod kljuca zivot nadomak*. [Online]. [Accessed last 20.11.2022]. Available at: <http://www.rtvusk.ba/vijest/velecevo-kod-kljuca-zivot-nadomak-nevidljive-granice-do-bihaca/33431>.

⁸⁴ Marta Stojić Mitrović and others. 2020. *The dark sides of Europeanisation. Rosa Luxemburg Stiftung - Southeast Europe*. Belgrade, Serbia. Page 78.

⁸⁵ European Parliamentary Research Service. 2019. *Situation of migrants in Bosnia and Herzegovina*. [Online]. [Accessed last 19.11.2022]. Available at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644174/EPRS_BRI\(2019\)644174_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644174/EPRS_BRI(2019)644174_EN.pdf).

⁸⁶ UNHCR. 2021. *Bosnia and Herzegovina*. [Online]. [Accessed last 20.11.2022]. Available at: <https://www.unhcr.org/bosnia-and-herzegovina.html>.

⁸⁷ Mladen Lakic - Balkan Insight. 2019. *Bosnia authorities argue over responsibility for migrants*. [Online]. [Accessed last 17.11.2022]. Available at: <https://balkaninsight.com/2019/02/14/bosnia-authorities-argue-over-responsibility-for-migrants/>.

⁸⁸ Liam Deacon. 2018. *Violent Clashes as hundreds in migrant caravan blocked by police at Croatian border*. [Online]. [Accessed last 28.11.2022]. Available at: <https://www.breitbart.com/europe/2018/10/25/video-violent-clashes-hundreds-migrant-caravan-blocked-croatian-border/>.

capacity. The establishment of the Vučjak camp, which lacked any form of infrastructure or solid buildings, leaving people to sleep in tents in the cold, followed.⁸⁹ The inhumane and precarious living conditions of the so-called “camp”, founded on a garbage dump surrounded by landmines, were underscored in a 2019 BBC documentary. The footage showed, for example, that the lack of medical care available to residents left most of them infested with scabies and without access to treatment. People reported going days without food, warm clothes or heating, while many were forced to sleep on cold floors due to an insufficient number of beds.

30. Contrary to the legal obligation seen in *Tarakhel v Switzerland*⁹⁰ to classify them as a “vulnerable group”, minors were among the people subjected to inhuman and degrading conditions in the camp.⁹¹ People were housed in makeshift tents, without heating, access to water, electricity, medical care or adequate sanitary facilities. Video footage released shows that.⁹² Bosnian officials forcibly relocated people to the “camp” to substandard conditions that could amount to inhuman and degrading treatment.⁹³ Commissioner of Human Rights, Dunja Mijatovic called for its closure for the winter months in order to prevent loss of life as a result of the harsh weather conditions.⁹⁴ In 2019, the UN Security Council appealed that urgent measures were needed in BiH to manage migration and ensure lawful access to the asylum system. In order to achieve this, the Council highlighted coordination between competent authorities as a key aspect and ordered the closure of the Vučjak camp which finally followed in December of 2019.⁹⁵

31. The Sedra camp was established in 2019 to accommodate “vulnerable” groups. Sedra was founded on a privately owned hotel which was planned for demolition and previously

⁸⁹ Deutsche Welle. 2019. *Vučjak: Migrants, mines and a road to nowhere*. [Online]. [Accessed last 20.12.2022]. Available at:

<https://www.dw.com/en/bosnias-vucjak-camp-migrants-a-garbage-dump-and-a-road-to-nowhere/a-51279684>. See also: International Federation of Red Cross and Red Crescent Societies. 2019. *Migration: Alternative to Vučjak camp needed now*. [Online]. [Accessed last 04.12.2022]. Available at:

<https://www.ifrcnewsroom.org/story/en/291/migration-alternative-to-vucjak-camp-needed-now>.

⁹⁰ European Court of Human Rights. 2014. *Tarakhel v Switzerland*. [Online]. [Accessed last 10.12.2022]. Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-148070%22%7D>};

⁹¹ BBC. 2019. *Inside Bosnia's nightmare camp for migrants trying to enter the EU*. [Online]. [Accessed last 28.11.2022]. Available at: <https://www.bbc.com/news/av/world-europe-50132250>.

⁹² Una Sana Kanton Info YouTube Channel. 2019. *Grupa od hiljadu migranata sprovedena na Vučjak*. [Online]. [Accessed last 03.12.2022]. Available at: <https://www.youtube.com/watch?v=S8uvVjDRqx8&t=10s>.

⁹³ Red Cross EU Office. 2019. *An emerging crisis at the EU's border*. [Online]. [Accessed last 05.12.2022]. Available at: <https://redcross.eu/latest-news/an-emerging-humanitarian-crisis-at-the-eu-s-border>.

⁹⁴ Euronews. 2019. *European rights chief Dunja Mijatović demands closure of freezing Bosnia migrant camp*. [Online]. [Accessed last 13.12.2022]. Available at:

<https://www.euronews.com/2019/12/03/european-rights-chief-mijatovic-demands-closure-of-freezing-bosnia-migrant-camp>.

⁹⁵ Delegation of the European Union to Bosnia and Herzegovina & European Union Special Representative in Bosnia and Herzegovina. 2019. *EU Statement – United Nations Security Council: Situation in Bosnia and Herzegovina*. Available at: <https://europa.ba/?p=66470>.

scrutinised over serious workers' rights violations.⁹⁶ The reception procedures available to migrants, asylum seekers and refugees in Bosnia and Herzegovina illustrate that pushbacks to the country can breach the international principle of non-refoulement.⁹⁷ The operation of the widely criticised Vučjak camp directly aligns with the time period in which the applicant in the case at hand was pushed back to Bosnia and Herzegovina. Therefore, providing a puissant potential breach of his right to freedom from torture, and inhuman or degrading treatment, article 7 of the ICCPR.

32. Many have reported violations of their right to freedom of movement and deprivation of liberty, for example by being removed in buses and trains with the intent to be unlawfully expelled from the country,⁹⁸ and being subjected to physical abuse like being dragged out of recreational establishments, to being physically assaulted by police.⁹⁹ These testimonies are almost always accompanied by accounts of theft of personal belongings (money, phones, sim cards and backpacks, clothes, sleeping bags et al.); a tactic that routinely leaves transit groups with no possibility to buy water, food or warm clothes.¹⁰⁰ The denial of food and water during detention has been reported several times,¹⁰¹ and in situations where food was provided, the portions were insufficient and included inedible food. Hygiene articles and showers are rarely provided, amounting to a potential breach of article 7 of the ICCPR, regarding subjection to degrading treatment.¹⁰² The hostile environment created by anti-immigration policies and poor asylum systems was heightened by thousands of locals

⁹⁶ Marta Stojić Mitrović and others. 2020. The dark sides of Europeanisation. Rosa Luxemburg Stiftung - Southeast Europe. Belgrade, Serbia. Page 78.

⁹⁷ 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*. [Online]. [Accessed last 23.11.2022.]. Available at: <https://bosniaherzegovina.un.org/en/123914-un-bosnia-and-herzegovina-concerned-violent-pushback-migrants-asylum-seekers-and-refugees>.

⁹⁸ BVMN. 2020. *Bosnia and Herzegovina - Internal violence report*. [Online]. [Accessed last 18.11.2022]. Available at: <https://www.borderviolence.eu/wp-content/uploads/IV-BiH5247.pdf>.

⁹⁹ BVMN. 2019. *Is Bosnia and Herzegovina a safe country to readmit to?* [Online]. [Accessed last 27.1.2022]. Available at: <https://www.borderviolence.eu/is-bosnia-and-herzegovina-a-safe-country-to-readmit-to/>.

¹⁰⁰ BVMN. 2017-2019. Reports Archive. [Online]. [Accessed last 23.11.2022]. Available at: https://www.borderviolence.eu/violence-reports/?ri-incident-date-range=2017-01-01%20to%202019-12-31&ri-incident-date-start=20170101&ri-incident-date-end=20191231&ri-incident-location-geo-radius=50&ri-pushback_from=Croatia&ri-pushback_to=Bosnia&ri-underage-involved=all&ri-intention-asylum-expressed=all&ri-page=1.

¹⁰¹ BVMN. 2019. *If I Try 100 Times And They Push Me Back No Problem*. Available from: <https://www.borderviolence.eu/violence-reports/may-18-2019-1000-bileca-bus-station-bosnia-herzegovina/>. [Accessed 26/08/2021]. See also: BVMN. 2019. *Don't Beat Me On My Head*. [Accessed 26/11/2022]. Available at: <https://www.borderviolence.eu/violence-reports/may-17-2019-1800-divin-bosnia-and-herzegovina/>. See also: BVMN. 2019. *They Made Fun of Us*. [Accessed 25/11/2022]. Available at: <https://www.borderviolence.eu/violence-reports/may-17-2019-0800-metaljika-bosnia-herzegovina/>.

¹⁰² BVMN. 2019. *They Are Going To Deport You Through Legal Crossing Inside The Land. If They Don't Have This, They Just Let You Out Somewhere In Forest*. [Online]. [Accessed 25/08/2021]. Available at: <https://www.borderviolence.eu/violence-reports/june-14-2019-0000-hum-scepan-polje-road-border-bosnia-and-herzegovina-montenegro/>.

protesting the presence of migrants, asylum seekers and refugees in the area.¹⁰³ Moreover, those who want to provide aid for transit groups are prohibited from providing them with accommodation, impeding the ability to allow citizens the right to provide vulnerable people access to basic needs such as shelter, water, food and medical care. Therefore, further enforcing the exposure to conditions in breach of article 7 of the ICCPR.¹⁰⁴ In fact, people trying to help those transit groups are often intercepted by Bosnian authorities who conduct house-to-house searches.¹⁰⁵

VI. Continuing potential violations of the ICCPR

33. The countless human rights violations mentioned throughout this submission have not ceased since 2018 and 2019, the year the applicant S.M. alleges human rights violations were perpetrated against them when pushed back from Croatia to BiH.¹⁰⁶ In April 2021, the United Nations in Bosnia and Herzegovina called for urgent action to end violent pushbacks and collective expulsions of migrants, asylum seekers and refugees along the Croatian border with BiH.¹⁰⁷ Reports of torture and inhuman and degrading treatment persist. Common examples include insults and humiliation, as well as being locked into closed vans, driven around for hours and then abandoned in the middle of a forest or mountainous region, at times without warm clothes or devices to help guide the person back to safety.¹⁰⁸
34. The theft of mobile phones can be specifically distressing for migrants, asylum seekers and refugees. Many of them store important documentation and personal data on their phone, which can be necessary to produce when attempting to apply for asylum and seek international protection. Illegally confiscating electronic devices could prevent people on the move from being able to communicate their desire to claim asylum upon entering a country where they do not speak the language. This impedes their ability to exercise their right to claim international protection and to challenge deportation orders, contrary to rights

¹⁰³ Balkan Insight. 2018. *Anti-migrant protest held in Bosnian border town*. [Online]. [Accessed last 27.11.2022]. Available at:

<https://balkaninsight.com/2018/10/23/bihac-residents-stage-protest-against-migrants-and-refugees-10-22-2018/>.

¹⁰⁴ N1 BiH. 2020. *Conclusions of the operational group regarding the situation with migrants*. [Online]. [Accessed last 02.12.2022]. Available at:

<https://ba.n1info.com/vijesti/a474817-zakljucci-operativne-grupe-u-vezi-desavanja-sa-migrantima/>.

¹⁰⁵ Balkan Insight. 2019. *Bosnia police search homes for migrants, refugees*. [Online]. [Accessed last 16.12.2022]. Available at: <https://balkaninsight.com/2019/06/17/bosnia-police-search-homes-for-migrants-refugees/>.

¹⁰⁶ Schweizerische Flüchtlingshilfe. 2022. *Polizeigewalt in Bulgarien und Kroatien: Konsequenzen für Dublin-Überstellungen*. [Online]. [Accessed last 04.12.2022]. Available at: [Bericht \(fluechtlingshilfe.ch\)](https://www.fluechtlingshilfe.ch/Bericht-fluechtlingshilfe.ch)

¹⁰⁷ United Nations Bosnia and Herzegovina. 2021. *The UN in Bosnia and Herzegovina is concerned by violent pushback of migrants, asylum seekers and refugees*. [Online]. [Accessed last 01.12.2022]. Available at:

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

¹⁰⁸ BVMN. 2022. *Balkan Region Monthly Report September*. [Online]. [Accessed last 02.11.2022]. Available at: <https://www.borderviolence.eu/wp-content/plugins/pdfjs-viewer-shortcode/pdfjs/web/viewer.php?file=/wp-content/uploads/MonthlyReportSep2022vA..pdf&dButton=true&pButton=true&oButton=false&sButton=true#zoom=auto&pagemode=none>.

guaranteed under article 2(3) ICCPR. Moreover, many transit groups and individuals use digital GPS maps to navigate their routes. Seizing their electronic devices limits their ability to navigate safer terrain and migratory routes where they don't have access to maps of the area. It also prevents them from contacting first responders, legal services or shelter and food providers, putting them in excessive and avoidable dangerous circumstances. It is usually at the point of apprehension that personal belongings are forcibly taken and rarely returned to the owners.¹⁰⁹ In 2021, it was reported that border authorities were burning people's personal belongings in front of their eyes and intentionally breaking the charging ports of mobile phones by using a metal wire before returning them to the owners.¹¹⁰ This degrading treatment, publicly regarded as 'concerning' by the United Nations in Bosnia and Herzegovina,¹¹¹ intimidates and humiliates victims, showing a potential breach of article 7 ICCPR.

35. In conclusion, BVMN asserts that human rights violations of freedoms and rights granted by the ICCPR have been and are currently routinely violated in Croatia, Bosnia and Herzegovina and especially in the border region. The potential breaches of articles 2(3), 7 and 16 of the ICCPR alleged by the applicant, based on the context outlined in this submission, therefore are highly cogent.

¹⁰⁹ BVMN. 2022. *Balkan Regional Report - August*. [Online]. [Accessed last 29.11.2022] Available at: <https://www.borderviolence.eu/balkan-regional-report-august-2022/#more-20915>.

¹¹⁰ Ibid.

¹¹¹ United Nations Bosnia and Herzegovina. 2021. *The UN in Bosnia and Herzegovina is concerned by violent pushbacks of migrants, asylum-seekers and refugees*. [Online]. [Accessed last 25.11.2022]. Available at: <https://reliefweb.int/report/bosnia-and-herzegovina/un-bosnia-and-herzegovina-concerned-violent-pushback-migrants-asylum>.