



MAPPING LEGAL STRUGGLES: TOOLKIT FOR LEGAL ACTION ACROSS THE BALKAN ROUTES

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**Border Violence
Monitoring Network**

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WHY THIS GUIDE?

The aim of the guide is to map possible legal complaint mechanisms on border human rights violations at domestic and European level for the purposes of Border Violence Monitoring Network[1] and the network's partners, to share experience and propose some concrete actions to take against human rights violations.

It is important for us that the guide is not trying only to simplify and combine legal information and sources, but represents a tool with room for practical experience and knowledge from actual cases to be shared amongst partners and readers. Of course, litigation in specific cases should be carried out by qualified lawyers, but spreading knowledge and understanding of the existing legal remedies and the law, which is so brutally disregarded on the borders of Fortress Europe, can only contribute to better and more thorough advocacy and a deeper understanding of the scope of the issue. More than that, there are official mechanisms and procedures to be used in establishing responsibility and seeking redress for human rights violations, which do not require extensive legal background and experience.

We want to encourage people on the move, activists and civil society actors to engage in legal procedures and seek justice with the use of legal remedies, even though we are aware of the shortcomings of the legal systems and the grave injustices that remain unanswered even after engaging the highest courts. If not else, engaging with the courts and official institutions can expose their inherent contradictions and deficiencies.

In practice, people on the move are one of the social groups with the most limited access to justice in Europe. It is extremely hard, impractical and precarious to sue a country from which you have been violently and illegally pushed back. In addition to, in most cases, while the deadline for legal remedy expires, the victims find themselves in an unsafe and extremely precarious position, amounting to inhumane and degrading circumstances in terms of Article 3 of the European Convention on Human Rights (per example in the camps or woods of Bosnia and Herzegovina). Often, people on the move also do not have access to free legal aid, and some countries not only do not want to investigate pushback cases, but actively obstruct any such investigations.

To bridge these obstacles we invite prospective people, also with background in law to engage in legal procedures, safeguarding rights of people on the move, pro bono, and we encourage legal scholars to use the space of law clinics and the energy of the students and the faculty to partake in bringing the perpetrators of these atrocious practices to justice.

We have to underline that this toolkit has the purpose to be an alive document to be nurtured, changed, enriched with experience of other individuals and collectives that will have the fueling energy to fight together these injustices. Still, the toolkit should not be intended or used as an authoritative legal source, as laws and other information might change. We are open for corrections and additions of relevant information and experience, and we invite each of you to reach out in order to collectively enrich this useful tool.

We encourage each reader of this toolkit to think carefully and act wisely, by engaging those with a legal background to cooperate with legal clinics, legal scholars and other activists.

[1] BVMN is a network of watchdog organisations active in Greece and the Western Balkans including No Name Kitchen, Rigardu, Are You Syrious, Mobile Info Team, Disinfo Collective, Josoor, [re:]ports Sarajevo, InfoKolpa, Centre for Peace Studies, Mare Liberum, Collective Aid and Fresh Response.



Illustration by
Hannah Kirmes-Daly

International Covenant on Civil and Political Rights (ICCPR)

Article 6

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN CAT)

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

European Convention on Human Rights (ECHR)

Article 2

Right to life

(1) Everyone's right to life shall be protected by law.

Article 3

Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 4 Protocol no. 4

Prohibition of collective expulsion of aliens

Collective expulsion of aliens is prohibited.

Charter Of Fundamental Rights Of The European Union (CFR)

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.



Illustration by
Hannah Kirmes-Daly

PUSHBACKS AND LEGAL REMEDIES

Pushbacks are practices of refusing entry and removal of aliens without an individualized assessment of the need for protection. Lack of such an assessment may result in refoulement, i.e. illegal expulsion or return of a person to an area where their life or liberty would be endangered (because of their racial, religious, or national affiliation or because of belonging to a particular social group or political opinion) (Art. 33 UN Convention relating to the Status of Refugees).

Such practices may also lead to state liability for violations of the right to life and prohibition of torture (Art. 2 and 3 of the ECHR) if substantial reasons are shown for believing that an alien, in the country to which he or she is being returned, would face a real risk of being subjected to torture or inhuman or degrading treatment or punishment.

Should a pushback involve violations of Art. 2 and 3 of the ECHR, the authorities are under obligation to conduct an investigation in accordance with the standards set by the ECtHR. Such an investigation must be effective in such a way that it is conducted by a body, independent of suspected civil servants, and that it can lead to the identification and

punishment of those responsible. In doing so, the European Court of Human Rights requires effective criminal law provisions to effectively deter civil servants from abuse that calls into question fundamental values. Civil remedies cannot be considered sufficient to meet the obligations of states under Art. 3 ECHR.

Depending on the circumstances of the case, pushbacks may also constitute other violations of human rights, such as the prohibition of collective expulsions (Art. 4 of the Protocol 4 ECHR), where measures compelling aliens, as a group, to leave a country are prohibited, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.

During our research on domestic legal remedies against illegal expulsions, we came to the conclusion that in many states they are rare and particularly hard to employ. On the one hand this is due to the precarious situation of the victims and on the other due to the inherently extra-legal situation of pushback procedures, where people are treated as objects and are not recognized as persons before the law."

ACRONYMS

BiH	Bosnia-Herzegovina
BVMN	Border Violence Monitoring Network
CAT	Committee Against Torture
CFR	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
CPS	Centre for Peace Studies
GCR	Greek Council for Refugees
DORH	State Attorney's Office of the Republic of Croatia
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GNCHR	National Commission for Human Rights in Greece
HRCOM	Human Rights Committee
HRC	Human Rights Council
HRD	Human rights defender
ICCPR	International Covenant on Civil and Political Rights
IK	InfoKolpa
LFIP	Turkish Law on Foreigners and International Protection
NGO	Non-Governmental Organization
NPM	National Preventive Mechanisms
PIC	Legal centre for the protection of human rights and environment
PPJ	Platform for Peace and Justice
TCC	Turkish Constitutional Court
UNCAT	United Nations Convention against Torture
UNHCR	United Nations High Commissioner for Refugees
UN	United Nations
USKOK	Office for the Suppression of Corruption and Organized Crime
VP	Vaša Prava
WGC	Working Group on Communications of the United Nations Human Rights Council
WGS	WGS Working Group on Situations of the United Nations Human Rights Council

TERMINOLOGY

We would like to call attention to and motivate the use of some specific terminology, to both support you in navigating through the document, and to explain some of our political and lexical choices.

Alien:

Refers to foreigners / non-citizens as usually used in official translations of laws and regulations.

Admissibility:

Checking on whether an issue is considered satisfactory and acceptable in front of a court. Also a stage in the procedure in front of the court. A complaint has to first be admissible, to be subsequently decided on on the merits.

Interim measures: urgent measures which a Court may apply where there is an imminent risk of irreparable harm even before it takes a final decision on the merits. Very important in deportation cases, where a real risk of ill-treatment exists for the applicant if deported.

International protection/ Asylum:

Asylum is protection granted by a state to someone who has left their home country as a refugee; a person, who is outside their own country and unable to return home because they would be at risk there, and their country is unable or unwilling to protect them. In the EU 'asylum' is referred to as 'international protection', because it includes refugee status as well as subsidiary protection for people, who face death penalty, torture or serious harm due to arbitrary violence as part of an armed conflict (war) in their country which is unable or unwilling to protect them. Some countries offer other additional forms of humanitarian or temporary protection.

Ombudsperson:

Is an official who is usually appointed by the government or by parliament but with a significant degree of independence. The typical duties of an ombudsperson are to investigate complaints and attempt to resolve them, usually through recommendations (binding or not) or mediation. Although it is often referred to in official documents as "ombudsman", as most of the persons having this role in the mentioned countries are women, we decided to use the alternative "ombudsperson".

Person/people on the move:

With this term, we want to talk about those who identify themselves as refugees, asylum-seekers and/or migrants. We decided to use the term "person/people on the move" to describe people who are on the move, who have left their countries and have crossed borders. The terms "migrant" and "refugee" are often used interchangeably but there is a difference in rights and obligations bestowed on both according to different laws and regulations. As this is a legal guidebook, we preferred to use a more inclusive term. We consciously won't use the acronym POM: we do see and act with individuals, and not with labels or codes. A different choice has been made when we talk about organizations and institutions as they do have acronyms when identifying themselves as legal entities.



TURKEY

Turkey currently hosts some 4 million refugees and asylum seekers, including over 3.6 million Syrians under temporary protection and over 330,000 international protection status holders and asylum-seekers of other nationalities, according to the UNHCR.[1] Most of the registered people-on-the-move have only temporary protection and it is extremely difficult to receive refugee status. Often, people are deported regardless of whether there is a war raging in their countries of origin or they would individually be persecuted there. Such deportations are framed as being voluntary by the Turkish authorities, but refugees report they had been pressured into signing documents stating that they wanted to return.[2]

There are frequent issues with independence, impartiality, bias and corruption in the Turkish judiciary.[3] During the state of emergency and its aftermath throughout 2018 to 2019, the independence of the Turkish judiciary has seriously eroded,[4] with the judiciary becoming increasingly pro-government, affecting all aspects of society. Ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors were suspended during the two-year state of emergency.[5] Furthermore, there were significant constitutional changes regarding the Council of Judges and Prosecutors, which were in clear contradiction with the Council of Europe (CoE) standards.

To illustrate the scope, in one year after the failed military coup in 2016, a third of judges were dismissed and more than 100,000 people, including lawyers, elected officials and journalists arrested.[6] Turkish president Erdogan ramped up persecution of opposition, the civil society and human rights defenders.

The Commissioner of the Council of Europe (CoE)

sees the misuse of criminal investigations, proceedings, detentions and sentences to silence human rights defenders and the discouragement of civil society engagement as the most severe symptom of the mounting pressure human rights defenders are facing in Turkey.[7] Turkey strongly refutes these findings of the CoE Commissioner for human rights.[8]

I. Complaint to the Ombudsperson

Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution

The Turkish Ombudsperson examines complaints of violations of human rights or fundamental freedoms by Turkish administrative bodies and private entities providing public services. It also investigates complaints against these bodies for not acting in conformity with Turkish law or Constitution. The Ombudsperson cannot make inquiries on their own initiative.[9] Moreover, certain complaints fall outside the scope of the Ombudsperson's jurisdiction. These are complaints against: a) acts of the President on his/her own competence and the decisions and orders signed by the President *ex officio*, b) acts regarding the use of the legislative power, c) acts regarding the use of judicial power, d) acts of the Turkish Armed Forces, which are purely of military nature.[10],[11]. The Ombudsperson will not examine complaints concerning disputes that have already been decided by other judicial bodies.

You **do not need a lawyer** to file a complaint to the ombudsperson.

During the examination of the file, the Court can decide for temporary measures they deem necessary for the protection of the applicant's fundamental rights. In case of a removal decision, an interim measure[20] can be taken to halt the deportation, meaning the court can

How to file a complaint:

- You can file the complaint based on an issue that has happened to you personally.

***If you want to file a complaint in the name of another person, they will need to issue an authorization letter to you (a power of attorney).**

- The complaint has to be written in Turkish.
- The complaint cannot be anonymous. You need to include: full name, signature, address, passport number.
- The complaint can be lodged by hand, through electronic media or through a legal representative and via provincial or district governor's offices.
- The deadline to file a complaint is 6 months from the incident.
- In your complaint you should describe as clearly as you can: what has happened to you, what state institutions were involved, when and where it happened.

intervene and prevent an imminent deportation. In case of a decision on violation, a judgment may be issued on the actions to be taken in order to abolish the violation and its consequences.

The Ombudsperson examines and investigates all kinds of acts, actions, attitudes and behaviours of the administrative bodies. If it finds the complaint justified, it issues a recommendation to the relevant institution on which actions to take to correct the injustice incurred.

*The Ombudsperson may **only issue recommendations** and not binding decisions. This means the administrative body is not bound to change its' practice.*

There have been concerns expressed as to the independence of Chief Ombudsperson Mr. Seref Malkoç, since he previously served as President Erdogan's chief advisor.[12]

II. Appeal to the Administrative Court

[Law No 6458 on Foreigners and International Protection \(LFIP\)](#)

Applicants for international protection in Turkey have the right to remain on the territory of Turkey throughout the procedure. However, an exception to this rule was introduced, providing that a deportation decision “**may be taken at any time during the international protection proceedings**” against an applicant for reasons of: (i) leadership, membership or support of a terrorist organisation or a benefit-oriented criminal group; (ii) threat to public order or public health; or (iii) relation to terrorist organisations defined by international institutions and organisations.[13] These grounds remain largely vague and could be interpreted broadly to fit repressive agendas. This provision has been

criticised for facilitating and exacerbating **risks of arbitrary deportations** jeopardising the life and safety of people-on-the-move.

An appeal against the decision before the Administrative Court has **immediate suspensive effect**: meaning that the deportation will be suspended until the appeal is finalised. However, the appeal must be lodged within a tight deadline of 7 days from the notification of the removal decision, which is extremely short to gather information and prepare for such an appeal. This short deadline has a negative effect both on access to justice and the quality of the lawyer-client relationship.[14] The administrative court must take a decision within 15 days. **The decision is final** and there is no option of appeal. What remains is to lodge an application at the Turkish Constitutional Court.

Lawyers in Van, Izmir and Antakya expressed serious concerns about clients being forced to sign voluntary return forms.[15] A case from 2019, exemplifies the use of the remedy. In Izmir an appeal was accepted based on a need to undertake a careful assessment as per Article 54 of the Law on Foreigners and International Protection (LFIP)[16]. In this case, the person-on-the-move was Malian, although the Turkish government claimed he was lying and was in fact Cameroonian and wanted to deport him on these grounds. The Administrative Court ruled there was not enough due diligence, including an inadequate assessment to find out the returnee's real name and nationality. The court therefore annulled the deportation.

III. Constitutional Complaint

[Law No 6216 on the Formation and Procedures of the Constitutional Court](#)

The Constitutional Complaint Mechanism is an individual application system[17] enabling any person in Turkey to lodge a complaint with the Constitutional Court if he or she considers that one of his or her fundamental rights and freedoms within the scope of the European Convention on Human Rights, which are guaranteed by the Constitution, has been violated by public authorities.

In order to make an application, ordinary legal remedies must be exhausted. There is also a strict deadline of 30 days for application to the Constitutional Court.[18] Meaning, 30 days after the violation or 30 days after final exhaustion of relevant legal remedies, depending on the specific case.[19]

There have been increased concerns about recent developments jeopardizing the effectiveness of individual applications to the Constitutional Court as a domestic remedy for human rights violations.[21] What is more, there have been instances where first instance courts refuse to apply the Constitutional Court's judgements, thus defying the basics of rule of law.[22]



Illustration by Hannah Kirmes-Daly

In Rıda Boudraa case[23] (in 2013) The Turkish Constitutional Court gave its first decision on interim measures about the principle of non-refoulement.

The Court stated that it would be against this principle to expel the applicant without concluding his application for refugee status. After this case, the Court took a number of interim measure decisions. In these cases it was found that there was a serious danger towards the life, material or moral integrity of the applicant regarding the principle of non-refoulement.

In case of Y.T.[24] (in 2019) the TCC delivered a pilot judgement, proclaiming Art. 53(3) and 54 of LFIP should be revised and appeals against removal should have suspensive effect, especially where deportation could create a structural problem and severe human rights violations. The LFIP was subsequently changed and thus now the appeal to the administrative court has automatic suspensive effect.[25]

IV. Criminal complaint

[Law No 6458 on Foreigners and International Protection \(LFIP\)](#)

There is of course a possibility to file a criminal complaint against individual perpetrators of human rights violations, but the lack of independence and impartiality, as described above, hinders procedures of filing complaints of human rights violations and pushbacks.



FOOTNOTES - Turkey

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[2] Amnesty International, 2020. Turkey 2020. Available at: <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>

[3] Platform for Peace and Justice, 2018. 'The comprehensive report on the Turkish judiciary'. The key findings indicate that all the four layers of Turkey's courts are not independent or impartial, nor do they meet the provisions of the European Convention on Human Rights. It cannot be said that there is an effective remedy that can be exhausted in domestic law, when applying to international tribunals such as the European Court of Human Rights or the United Nations Human Rights Committee. PPI recommends that the merits of complaints to these courts should be reconsidered. Available at: <http://www.platformpj.org/2917-2/>

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[11] Art. 4 of the Regulation on Procedures and Principles Concerning the Implementation of Law on the Ombudsman Institution.

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[13] Art. 54(2) LFIP.

[14] AIDA. 2020. Country Report: Turkey. Available at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf

[15] AIDA. 2020. Country Report: Turkey. Available at: https://asylumineurope.org/wp-content/uploads/2021/05/AIDA-TR_2020update.pdf

[16] Art. 54 LFIP.

[17] Art. 148.3 Turkish Constitution. Available at: <https://www.ilo.org/dyn/travail/docs/2435/Constitution%20of%20Turkey.pdf>

[18] Art. 47(5) Law on the establishment and rules of procedure of the Constitutional Court in Turkey.

[19] Mechanism regulated by law on the establishment and rules of procedure of the Constitutional Court in Turkey. Available at: https://www.legislationline.org/download/id/3612/file/Turkey_Law_establishment_rules_procdr_const_court_2011.pdf

[20] Article 73 of the Rules of Court: "(1) Upon learning that there is a serious danger towards the life or material or moral integrity of the applicant, the necessary measures can be ruled upon ex officio by the Sections during the examination on merits or upon the request of the applicant." Available at: <https://www.anayasa.gov.tr/en/legislation/internal-regulations-of-the-court/>

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TABLE OF CONTACTS

Advocates Abroad

About: Volunteer attorneys, interpreters, asylum experts and medical professionals providing free aid to refugees and asylum seekers. They operate in Greece, Turkey, Switzerland, and Italy.

- Website: advocatesabroad.org
- Social media: [Facebook](#)
- Email: cases@advocatesabroad.org

Refugee Rights Turkey (Mülteci Haklari Merkezi)

About: Independent NGO providing specialised legal information, services and assistance services to asylum seekers and other vulnerable migrants in Turkey, incl. persons in immigration detention. Help includes: legal counselling, assistance services, litigation interventions.

- Website: www.mhd.org.tr
- Social media: <https://www.facebook.com/refugeerightsturkey/>
- Address: Refik Saydam Cad. Dilber Apt. No:39 Kat:4 Daire:11 Sishane, Beyoglu - Istanbul (Headquarters); Izmir and Edirne (Field Offices)
- Contact Numbers: +90 212 292 48 30 (General Tel); 0549 510 52 02 (for Arabic, English and French calls); 0549 510 52 03 (for Farsi and Turkish calls)
- Email: info@mhd.org.tr

Association for Solidarity with Refugees (Mülteci-Der / Mültecilerle Dayanışma Derneği)

About: Legal counselling to asylum seekers, migrants, refugees, in particular to those in need of international protection.

- Website: www.multeci.org.tr
- Social Media: [Facebook](#), [Twitter](#)
- Address: Anafartalar Caddesi, Salepcioglu Ishani, No.96/511, Konak-Izmir, Turkey
- Contact numbers: +90 232 483 54 21 (Telephone); +90 549 483 54 21 or +90 549 483 54 22 (Mobile)
- Email: bilgi@multeci.org.tr

Human Rights Agenda Association (HRAA)

About: NGO founded in Izmir. HRAA has three offices: Ankara (main office), Izmir and Diyarbakir. Monitoring activities on the status of human rights in Turkey and neighbouring countries (from minority rights to women rights to constitutional rights), promoting European law rights.

- Website: <http://www.rightsagenda.org>
- Social media: <https://www.facebook.com/HumanRightsAgendaAssociation/>
- Address: Güniz Sokak 38/8 06700 Kavaklıdere/ Ankara, TURKEY
- Contact Number: 0090 312 428 06 10-11
- Email: refugee@rightsagenda.org

Helsinki Citizens' Assembly - Turkey

About: NGO that focuses on: ensuring the legal protection of refugees and vulnerable migrants in Turkey; monitoring state policies and practice in the area of asylum and irregular migration control; encouraging public awareness and local ownership.

- Website: <https://hyd.org.tr/en>
- Social media: [Facebook](#)
- Address: Dr. Refik Saydam Cad. Dilber Apt. No: 39 Daire: 12 Kat: 4 Şişhane, Beyoğlu, İstanbul
- Contact Number: +90 212 292 68 42 - 43
- Email: iletisim@hyd.org.tr

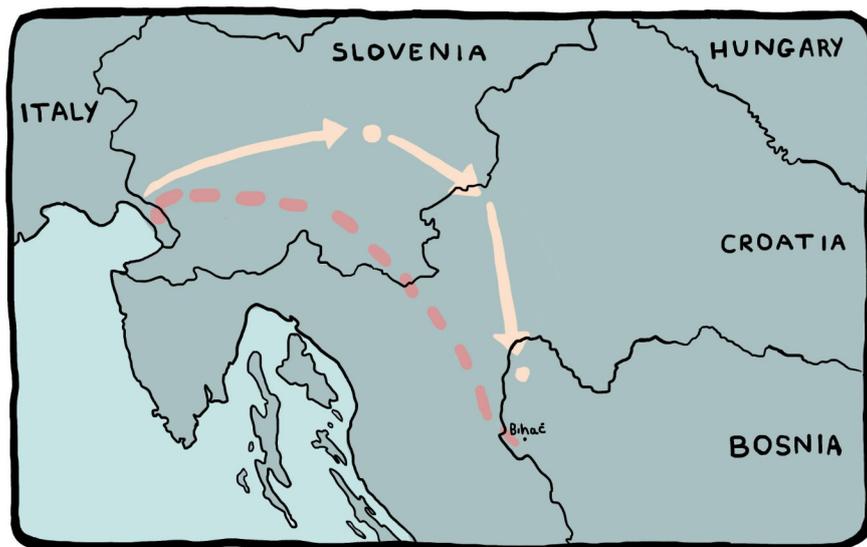
GREECE

Illustration by Hannah Kirmes-Daly

As one of the main entry points into the European Union, Greece has, for years, hosted large numbers of asylum seekers and refugees fleeing conflict and poverty. Mainly people-on-the-move reach Greece from Turkey, risking their lives in dangerous sea crossings to Greek islands in the northern Aegean Sea or through the heavily guarded land border near Edirne. The UNHCR reported at the end of 2019 that Greece was hosting 190,900 people of concern.[1] Due to an EU containment policy, the ones that arrive on the islands are blocked from moving to the mainland.[2] They are trapped by the thousands in overcrowded and abysmal conditions with limited access to basic life necessities, such as adequate water, sanitation, health care and accommodation.[3] With a new asylum law in January 2020 the grounds on which international protection can be denied were expanded and the use of detention, including of unaccompanied children, was normalized.[4] CSOs, aiding refugees, face criminalisation and a smear campaign, led by government officials.[5] People on the move are regularly arbitrarily detained and pushed back from the border area, inside the territory or at sea. After pressure and repeated complaints by CSOs the Supreme Court Prosecutor opened a criminal investigation in June 2020 into the shooting and deaths of two persons-on-the-move, Mohammad (al) Arab and Muhammad Gulzar by Greek security forces during pushbacks at the Evros border in March 2020.[6]

Greek courts take an average of 1,580 days or 50 months to reach a final ruling in a case, placing it in the 155th position in the world among the countries that delay trials.[7] There have been multiple cases brought to the ECtHR regarding delays in court proceedings.[8] It might be advisable to invoke such argumentation of ineffective legal remedy because of delays and reluctance to prosecute in a claim to the ECtHR. In such cases of non-exhaustion of domestic legal remedies, when going straight to the ECtHR, it might be easier to litigate when the applicants are not on Greek territory.

Furthermore, apart from chronic ineffectiveness of the judicial system, there are worrying developments as to the impartiality and independence of the prosecution and the courts in Greece. These recent developments are most evident in the case of the so-called Moria 6 defendants, which relates to the fires that destroyed Moria refugee camp in September 2020. On 9 March 2021 at Juvenile Court of Mytilene, A.A. and M.H. were found guilty of arson and sentenced to 5 years in prison, despite a severe lack



of credible evidence, obstruction of the defendants' right to choose their own legal representation, violation of the right to hear (the main!) incriminating witness directly, violation of the minors' right to privacy and other violations, all combined resulting in a gross miscarriage of justice. The Legal Centre Lesbos, who represented the defendants commented: *"The tragic result of today's trial appears to form part of a systematic effort to crush any resistance to Europe's border regime through collective punishment, by arbitrarily arresting and pressing criminal charges against migrants following migrant-led resistance, such as in the case of the Moria 35."*[9]

I. Complaint to the Ombudsperson (Συνήγορος του Πολίτη)

[Law No. 3094/2003](#)

The Greek Ombudsperson has competence in matters relating to all the public sector, such as ministries, offices, police stations, prisons, etc., state legal entities of private law, public undertakings and undertakings, where the management is appointed by the State, directly or indirectly etc. In cases of violations of children's rights and the anti-discrimination provisions, the Ombudsperson also has competence over the private sector or specific individuals. The Ombudsperson can make visits, location inspections, and make recommendations to the government; it can, per example, visit hotspots and detention centres. The Ombudsperson investigates violations of human rights and maladministration and issues **proposals and recommendations**.^[10]

*The Ombudsperson **may only issue recommendations** and cannot enforce its' decisions. The only alleyway for the Ombudsperson's office to pressure the administration in case of disregard to its recommendations is to bring cases into the media spotlight.*

How to file a complaint:

- Before resorting to the Ombudsman, you should have contacted the public service involved in the case first

***We believe that in the case of violent pushbacks we can argue that this step could be omitted**

- You can file the complaint based on an issue that has happened to you personally.

***If you want to file a complaint in the name of another person, they will need to issue an authorization letter to you (a power of attorney)**

***Exceptionally, no authorization is required when filing a petition on behalf of someone who, due to special circumstances, is prevented from signing**

***In case of violation of children's rights, the complaint can also be filed by a third party who has witnessed or has evidence of breach of the child's rights**

- The complaint has to be made in writing, but necessarily in Greek
- In your complaint you should describe as clearly as you can: what has happened to you, what state institutions were involved, when and where it happened, any actions already taken and their results, any evidence or information which might assist in the investigation of the complaint & that you are asking the Ombudsperson for intervention
- No anonymous complaints! The complaint needs to include full identification data and signature and contain a postal address and telephone number. But the Ombudsman can keep the data of the victim secret if that is requested in writing and if the investigation of the complaint is possible without notification to the competent public service
- The complaint can be lodged:
 - ◆ in person at the Ombudsperson's building (Monday to Friday, 8:30 to 14:00 and Wednesday until 16:30)
 - ◆ by post: 17 Halkokondyli St, 104 32 Athens GREECE
 - ◆ by fax: (+30) 213 1306 800 and (+30) 210 729 21 29
 - ◆ <https://www.synigoros.gr/?i=submission-system.en.complaint-submission>
 - ◆ The deadline to file a complaint is 6 months from the incident.

If your complaint is deemed admissible, the Ombudsperson opens an investigation in which the views of all parties involved in the dispute are sought.

The effectiveness of the Greek Ombudsperson's office in the area of access to asylum and territory in relation to gross and well-documented violations of human rights in the Aegean sea and elsewhere has been disputed in recent years. In 2019 there were 397 admissible complaints filed to the Ombudsperson regarding entry and stay of foreigners (in 2018, 395 complaints were registered on the same topic). The Annual Report for 2019 states that 72.8% of ALL admissible complaints were resolved following the intervention of the Ombudsperson.[11] But despite this official data, it is not at all clear what exactly the Ombudsperson had been doing in relation to pushbacks committed by the Greek authorities in the past few years. Under pressure from the media and the NGOs, it initiated an investigation on its own accord, where it has in December 2020

produced an Interim report. [12]

Despite the toothlessness of an Ombudsperson complaint mechanism, it is our opinion that it makes sense to alert such institutions with the aim of inclusion of pushback incidents and issues in the annual and special reports, which can be later used as corroborating evidence in court proceedings.

II. Lawsuit at the Administrative Court

Bringing cases in front of the Administrative Court is used as a measure for very vulnerable victims, to stop returns of asylum seekers whose lives are at risk, and as a tool for strategic litigation. Court fees are very high (between 900-1200 EUR), excluding legal representation fees, making it hard to access. Legal aid organizations are carefully choosing cases to take on, while applicants do not have the financial means to pay for private legal representation. The cases are evaluated on procedural errors and not on merit.[13]

III. Criminal Complaint

Law of 283/1985, penal code. Available at: <https://www.kodiko.gr/nomothesia/document/434231>

Criminal proceedings can give compensation for damages suffered to the victim and can result in prison sentences to the perpetrators. To start the criminal proceedings, the victim or his authorized representative must file a criminal complaint to the public prosecutor or police.[14] The criminal complaint should include the facts which constitute a criminal offence and alleged perpetrators if known, and if possible the articles of the criminal law that were breached.

Crimes often committed during pushbacks are the following:

- Torture (Article 137A), which only applies to cases where the authorities are torturing the victim in order to intimidate him or others, or to get a statement or confession from the victim. It can be difficult to prove in practice.

- Articles 308, 308a, 309 and 310 which are the articles on causing bodily harm in case there has been physical violence used. Article 308 is simple bodily harm, Art. 308a is for situations where the assault is unprovoked, Art. 309 is for acts that could have resulted in serious injuries and Art. 310 is when the act resulted in serious bodily harm.

- Article 322a and 322b, referring to illegal detention can also be applicable, if the pushback involved extrajudicial detention in unknown locations without proper arrest warrants.[15]

- Article 372 referring to theft can be applicable but it would require the authorities to take personal items or money from the victims for use, and not just to throw away or break. However, breaking or throwing away phones or clothes could come under Art. 381 - damaging personal property.

One of the main obstacles is that the criminal complaint has to be filed in Greece, which is of course hindered by the act of a pushback itself, where the victim is removed from the Greek territory or barred from accessing it. It can be filed through an authorized representative, but with a verified signature for filing the complaint. In principle, that can be done with a notary in Turkey and then taking it to Greek embassy. In theory, the authorized person does not have to be a lawyer but it could be beneficial to have a lawyer assisting in the process.

After submitting the criminal complaint, the public prosecutor examines the complaint and either starts the proceedings or rejects it, in case he finds it inadmissible, not to be based on law, or obviously unfounded.[16] In case of rejection, it is possible to appeal to a competent appellate prosecutor within 15 days from receiving the rejection. The appeal costs 250 EUR which is returned to the victim if the appeal is successful.[17]

Legal aid in Greece is unavailable for people without legal or habitual residence in the EU.[18]



FOOTNOTES - Greece

[1] Refugees, people in "refugee-like situations," asylum seekers, and stateless individuals.

[2] Reliefweb, 2020. Issue Brief: Blocked at Every Pass: How Greece's Policy of Exclusion Harms Asylum Seekers and Refugees. Available at: <https://reliefweb.int/report/greece/issue-brief-blocked-every-pass-how-greece-s-policy-exclusion-harms-asylum-seekers-and>

[3] HRW, 2021. Greece: events of 2020. Available at: <https://www.hrw.org/world-report/2021/country-chapters/greece>

[4] Reliefweb, 2020. Issue Brief: Blocked at Every Pass: How Greece's Policy of Exclusion Harms Asylum Seekers and Refugees. Available at: <https://reliefweb.int/report/greece/issue-brief-blocked-every-pass-how-greece-s-policy-exclusion-harms-asylum-seekers-and>

[5] HRW, 2021. Greece: events of 2020. Available at: <https://www.hrw.org/world-report/2021/country-chapters/greece>

[6] Greek Helsinki, 2020. Launching of criminal investigations into the deaths of Mohammad Al-Arab and Muhammad Gulzar, following 2 GHM complaints. Available at: <https://greekhelsinki.wordpress.com/2020/06/20/2-102/>

[7] Greek Reporter, 2016. Slow Greek Courts Lag Behind in Rulings With 50-Month Verdict Delays. Available at: <https://greekreporter.com/2016/10/08/slow-greek-courts-lag-behind-in-rulings-with-50-month-verdict-delays/>

[8] CoE, 2018. EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights. Available at: <https://rm.coe.int/cepej-2018-26-en-rapport-calvez-regis-en-length-of-court-proceedings-e/16808ffc7b>

[9] Legal center Lesvos, 2021. Justice for Moria 6. Available at: <https://legalcentrelesvos.org/2021/03/09/justice-for-the-moria-6/>

[10] The Greek Ombudsman, Processing Citizens complaints. Available at: <https://www.synigoros.gr/?i=stp.en.processing>

[11] The Greek Ombudsman, 2020. Annual Report 2019. Available at: https://www.synigoros.gr/resources/annual_report_2019.pdf

[12] The Greek Ombudsman, 2020. Alleged pushbacks to Turkey of foreign nationals who had arrived in Greece seeking international protection, Interim Report. Available at: https://www.synigoros.gr/resources/060521-pushbacks-interim-report_eng.pdf

[13] Experience of partner lawyers.

[14] Art 42 of 4620/2019 Greek code of criminal procedure.

[15] Penal code was amended by the law of 4268/2014, Ratification of the International Convention for the Protection of All Persons from Enforced Disappearance and Adaptation of Greek Law and Other Provisions Art 2 to add the crime of illegal detention by state authorities. Available at: <https://www.kodiko.gr/nomothesia/document/81408>

[16] Art 51of 4620/2019 Greek code of criminal procedure.

[17] Art 52 of 4620/2019 Greek code of criminal procedure.

[18] Art 1 Law of 3226/2004, Code for providing legal aid to low-income citizens and other provisions. Available at: <https://www.kodiko.gr/nomothesia/document/11689>

TABLE OF CONTACTS

Greek Council for Refugees (multiple locations)

About: individual representation, currently 5 pushback cases taken to Greek courts, advocacy (on pushbacks since 2016), strategic litigation.

- **Website:** <https://www.gcr.gr/en/>
- **Social media** - help desk: [facebook](#), [facebook posts with contacts](#)
- **Phone:** (+30)210-3814710
- **Email:** pyxidaesp@gcr.gr

Legal Centre Lesvos (Lesvos, Athens)

About: individual representation, open-door policy for interview preparation and legal information, reporting on human rights violations, strategic litigation, cases in international courts.

- **Website:** <http://legalcentrelesvos.org/>
- **Social media:** https://www.facebook.com/LesvosLegal/about/?ref=page_internal
- **Address:** Sapfous 2, Mitilene, Lesvos, Greece 81100
- **Phone:** +30 694 961 8883 (WhatsApp)
- **Email:** info@legalcentrelesvos.org

HIAS Greece (Athens, Lesvos)

About: individual representation, strategic litigation.

- **Website:** <https://www.hias.org/where/greece>
- **Social media:** <https://www.facebook.com/HIASGreece>
- **Phone:** +(30) 22510-55488
- **Email:** vassilis.kerasiotis@hias.org

European Lawyers in Lesvos (ELIL) (Lesvos, Samos, Athens)

About: individual representation

- **Website:** <https://www.europeanlawyersinlesvos.eu/>
- **Social Media:** <https://www.facebook.com/EuropeanLawyersInLesvos/>
- **Address (Lesvos, Samos, Athens):** P. Kountouriotou 47C Mytilene, Lesvos, Greece (Lesvos), Matrozou 831 00 Samos, Greece (Samos), Marni 12 Athens 10433, Greece (Athens)
- **Phone:** +30 6946234282 (Lesvos), +30 6940974002 (Samos), +30 6947208773 (Athens)
- **Email:** lesvos@europeanlawyersinlesvos.eu (Lesvos), samos@europeanlawyersinlesvos.eu (Samos), athens@europeanlawyersinlesvos.eu (Athens)

Equal Legal Aid (ELA) (Thessaloniki)

About: individual legal support, interview preparations

- **Website:** <https://www.equallegalaid.org/>
- **Social media:** https://www.facebook.com/Equal-Legal-Aid-108741030988917/?view_public_for=108741030988917
- **Phone:** +30 697 001 7915 (Whatsapp)
- **Email:** contact@equallegalaid.org

Metadrasi (Athens, Thessaloniki)

About: individual representation for unaccompanied minors, legal guardianship

- **Website:** <https://metadrasi.org/en/home/>
- **Social media:** <https://www.facebook.com/metadrasi/>
- **Address:** 7, 25 Martiou, 17778 Tavros (Athens, Greece), 7, Vilara Street, 54625 (Thessaloniki, Greece)
- **Phone:** (+30) 2310 501151 (Thessaloniki), (+30) 214 100 8700 (Athens)

ARSIS (multiple locations)

About: individual representation for unaccompanied minors, family reunification, reporting on human rights violations

- **Website:** <http://www.arsis.gr/en/home/>
- **Social media:** https://www.facebook.com/arsis.gr/about/?ref=page_internal
- **Address:** 43 Mauromateon street, 10434 Athens, Greece; 26 Leontos Sofou street, 546 25 Thessaloniki Greece (for addresses in Makrinitza, Kozani, Alexandroupoli and Iwannina visit <http://www.arsis.gr/en/contact/>)
- **Phone:** (+30) 210 8259880 (Athens), (+30) 2310-526150 (Thessaloniki), (+30) 24280-99939,44 (Makrinitza), (+30) 24610-49799 (Kozani), (+30) 2551038952 (Alexandroupoli), (+30) 2651400823 (Iwannina)
- **Email:** arsisathina@gmail.com (Athens), infothes@arsis.gr (Thessaloniki), arsis.xenonas@hotmail.com (Makrinitza), infokoz@arsis.gr (Kozani), arsisalex@gmail.com (Alexandroupoli), arsishpeiros@gmail.com (Iwannina)

Praksis (multiple locations)

About: individual support and legal representation for families and unaccompanied minors

- **Website:** <https://praksis.gr/en-about/>
- **Social media:** <https://www.facebook.com/ngopraksis>
- **Address:** Stournari 57 Athens 104 32, Greece
- **Phone:** (+30) 210 520 5200
- **Email:** info@praksis.gr

Solidarity Now (Athens, Thessaloniki)

About: individual legal representation, support to unaccompanied minors.

- **Website:** <https://www.solidaritynow.org/en/>
- **Social media:** <https://www.facebook.com/SolidarityNow/>
- **Address:** 4, Monis Petraki str., 115 21 Athens (headquarters office)
- **Phone:** (+30) 210 67 72500 (headquarters office),

Equal Rights Beyond Borders (Athens, Chios, Kos)

individual representation, reporting on human rights violations, cases sent to international courts

- **Website:** <https://equal-rights.org/>
- **Social media:** <https://www.facebook.com/EqualRightsBB/>
- **Address:** Emmanouil Mpenaki 69A 106 81 Athens, Mitropolitou Polikarpou 1 821 00 Chios, Agiou Georgiou 85 300 Pyli, Kos
- **Phone:**
 - **Athens:** (+30) 694 671 6406 (French and English), (+30) 694 694 1716 (Arabic) (more info for other languages on: https://equal-rights.org/site/assets/files/1036/bc_athens.jpg)
 - **Kos:** (+30) 698 988 7971 (French and English), (+30) 698 746 1732 (Arabic) (more info or other languages on: https://equal-rights.org/site/assets/files/1119/bc_kos.jpg)
- **Email:** athens@equal-rights.org, chios@equal-rights.org, kos@equal-rights.org

Mobile Info Team (MIT) (Thessaloniki)

About: legal information, referral to other organizations.

- **Website:** <https://www.mobileinfoteam.org/>
- **Social media:** <https://www.facebook.com/mobileinfoteam/>
- **Phone (Whatsapp):** +30 694 222 2535, +30 695 538 8283 (hotline)
- **Email:** contact@mobileinfoteam.org

Diotima

About: individual legal support for women and girls.

- **Website:** <https://diotima.org.gr/en/>
- **Social media:** <https://www.facebook.com/NGOdjotima/>
- **Address:** Marni 13-9, Athens 104 33, Greece
- **Phone:** +30 21 0324 4380
- **Email:** helpdesk.diotima@gmail.com

KHORA Asylum Support Team (Athens)

About: individual legal support, legal information, family reunification.

- **Website:** <https://www.khora-athens.org/asylum-support-team>
- **Social media:** <https://www.facebook.com/KhoraAthens>
- **Address:** Aiginis 9, Athina 113 62, Greece
- **Phone:** +30 21 5565 4233
- **Email:** khora.athens@gmail.com

Refugee Legal Support (Athens)

About: individual legal support, legal information, family reunification.

- **Website:** <https://www.refugeelegalsupport.org/>
- **Social media:** <https://www.facebook.com/RLSAthens/>
- **Address:** 10440 Athens, Greece
- **Phone:** +306940662583 (Whatsapp)
- **Email:** rlsunitedkingdom@gmail.com

Refugee Law Clinic Berlin (Samos)

About: individual legal support, legal information, family reunification, cases in international courts.

- **Website:** <https://en.rlc-berlin.org/samos>
- **Social media:** <https://www.facebook.com/rlc.berlin>
- **Address:** Kanari 23, Samos 831 00, Greece
- **Phone:** +49 177 2131739
- **Email:** info.samos@rlc-berlin.org

Legal Centre Samos. Avocats Sans Frontières (ASF) (Samos)

About: individual legal support, legal information, family reunification, cases in international courts.

- **Website:** <https://www.avocatssansfrontieres-france.org/en/>
- **Social media:** <https://www.facebook.com/LegalCentreSamos/>
- **Phone:** +30 698 759 4375
- **Email:** samos@avocatssansfrontieres-france.org

Fenix Legal Aid

About: individual legal support, legal information, family reunification, protection, reporting on human rights issues.

- **Website:** <https://www.fenixaid.org/fenixaid>
- **Social media:** <https://www.facebook.com/FenixAid>
- **Email:** info@fenixaid.org

Elpida Home (Thessaloniki)

About: individual legal representation, protection.

- **Website:** <https://elpidahome.org/>
- **Social media:** <https://www.facebook.com/elpidahome/>
- **Address:** Danaidon 8 54625 Thessaloníki, Greece
- **Email:** info@elpidahome.org

Refugee Support Aegean (islands and mainland Greece)

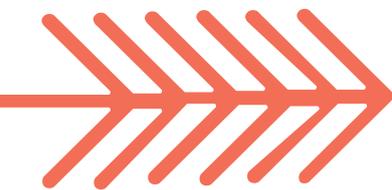
About: strategic litigation, legal and case analysis, cases on national and European level.

- **Website:** <https://rsaegean.org/en/>
- **Social media:** <https://www.facebook.com/rsaegean/>
- **Address:** Efstratiou Argenti 7, 82100 Chios, Greece
- **Phone:** +30 22711 03721
- **Email:** info@rsaegean.org

Human Rights 360

About: strategic litigation, cases in International courts.

- **Website:** <https://www.humanrights360.org/>
- **Social media:** <https://www.facebook.com/HumanRights360org/>
- **Address:** Vasilissis Sofias 95, Athens 115 21, Greece
- **Phone:** +30 210 64 00 214, +30 210 64 00 215
- **Email:** contact@humanrights360.org



BOSNIA AND HERZEGOVINA

Since the beginning of 2018, close to 70,000 people on the move have arrived to Bosnia-Herzegovina (BiH).[1] Where around 8,000 refugees and migrants are currently present in the country. The vast majority had earlier crossed through or stayed in Greece. A significant number arrived from Bulgaria and Serbia. Both the Ombudsperson and UNHCR offices in BiH warned that the existing legislation and procedures for international protection are ineffective or not enforced, thus only about 7% of arriving people-on-the-move filed asylum applications in BiH. There is a chronic lack of information and legal aid, the procedures involve a number of deadlines and other obstacles, rendering them inefficient. Furthermore, BiH border police pushes back people without giving them a chance to file the asylum request,[2] reported by several survivors, activists and organizations in the region.[3] From January to November 2019, border police prevented entry for 10,861 people[4]. BVMN has recorded testimonies of numerous people who witnessed violent pushbacks from BiH to Montenegro and from BiH to Serbia[5]. Despite numerous reports of violent pushbacks from BiH, there is no publicly available information on any potential ongoing criminal or other investigation of these crimes.

According to the Expert Report on Rule of Law issues in Bosnia and Herzegovina[6], the complex architecture of the BiH Constitution, adopted as an integral part (Annex IV) of the Dayton General Framework Agreement for Peace, aggravates the rule of law situation in BiH. Institutional fragmentation as well as frequent disputes on the distribution of competences between levels of government have

contributed to a difficult situation, not least in the area of rule of law. “Constitutional complications” however cannot be considered as the only cause for rule of law shortcomings in BiH. Many problems are unrelated and could therefore be addressed despite those complications. Frequently, referring to the complex constitutional architecture and the difficulties in revising the constitutional set-up appears to serve as an excuse for inaction.

I. Complaint to the Ombudsperson

[Rules of procedure of the Institution of human rights Ombudsman of Bosnia and Herzegovina](#)

The Office of the Human Rights Ombudsperson of BiH is responsible for investigations into human rights violations committed by any state institution in BiH. It can initiate an investigation based on an individual complaint or on its own initiative. If the Ombudsperson establishes there was a violation of human rights, they may issue recommendations to the relevant state bodies and officials, recommending them to adopt specific measures.[7] However, the decisions or recommendations addressed to the state authority in question **are not legally binding**. Furthermore, the ombudsperson’s office also issues annual reports related to the institution’s activities and may issue special reports related to certain problem areas in society. The last special report relating to migration was issued in 2018[8] and the situation on the ground has since then changed significantly.

How to file a complaint:

- You can file the complaint based on an issue that has happened to you personally.

***If you want to file a complaint in the name of another person, they will need to issue an authorization letter to you (a power of attorney).**

- The complaint can be written in English.
- The application form is available [here](#). It can be lodged in writing, by mail, fax, e-mail or through personal contact.
- The deadline to file a complaint is 12 months from the incident.
- In your complaint you should describe as clearly as you can: what has happened to you, what state institutions were involved, when and where it happened

According to the EU Expert Report on Rule of Law issues in BiH[9] the institution of the Ombudsperson is deeply politicised and lacks independence. The report argues: “Taking into account its broad competence, [the Ombudsperson] should be more proactive in carrying out its mandate and fully using its powers, based on a non-ethnic approach. In particular, the Ombudsperson should use its competence to initiate or intervene in judicial proceedings, which may result in legally binding decisions of the court. It should not limit itself to issuing primarily non-binding recommendations - which undoubtedly prevail.”

II. Constitutional complaint

Every person that considers their fundamental rights and freedoms to be violated by public authorities, is able to submit an appeal before the Constitutional Court of BiH. According to the Constitutional Court procedure law of BiH, the applicants are not obliged to pay any fee in the proceedings before the Constitutional Court.

However, the Constitutional Court shall examine an appeal only if all available effective remedies for the challenge of a judgement or appeal decision have been exhausted. Moreover, the appeal will only be considered if it is filed within a 60 days deadline, starting from the date on which the decision on the last remedy used by the applicant was served on him/her.



Illustration by Hannah Kirmes-Daly

FOOTNOTES - Bosnia and Herzegovina

[1] European Commission, data updated in January 2021. Available at: https://ec.europa.eu/echo/where/europe/bosnia-and-herzegovina_en

[2] Refugees Rights Europe, 2020. Limits to access to asylum along the Balkan Route. Available at: https://refugee-rights.eu/wp-content/uploads/2020/07/RRE_LimitedAccessToAsylumAlongTheBalkanRoute.pdf

[3] ECRE, 2020. Balkans: New Report Details Illegal Pushbacks and Border Violence. Available at: <https://www.ecre.org/balkans-new-report-details-illegal-pushbacks-and-border-violence/>

[4] Slobodna Evropa, November 2020. Available at: <https://www.slobodnaevropa.org/a/srbija-i-bih-ilegalni-prelasci-na-drini/30972686.html>

[5] Border Violence Monitoring Network, testimony database. Available at: <https://www.borderviolence.eu/violence-reports/>

[6] Expert Report on Rule of Law issues in Bosnia and Herzegovina Brussels, 2019, available at: http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf?utm_source=Klix.ba&utm_medium=Clanak

[7] Art. 36 of the Rules of Procedure of the institution of Ombudsman on Human Rights.

[8] Bosnian Ombudsperson, 2018. Special report in Bosnia and Herzegovina on situation in the area of migrations. Available at: https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019010713545979eng.pdf

[9] Expert Report on Rule of Law issues in Bosnia and Herzegovina, December 2019. Available at: <http://europa.ba/wp-content/uploads/2019/12/ExpertReportonRuleofLawissuesinBosniaandHerzegovina.pdf>

TABLE OF CONTACTS

List of NGOs in BiH providing free legal advice and support:

Vaša Prava (VP BiH)

About: In cooperation with UNHCR, VP BiH offers free legal information, legal counselling and legal assistance to asylum seekers in BiH. The NGO advises and helps with the asylum procedure in BiH. Their staff are present at the reception centers in BiH.

- **Website:** <https://pravnapomoc.app/ba?fbclid=IwAR1uDtD1GpQVu2n4WLIZa4P6RgCcAhH9m2FglISCy6cEYqjzKD1Kg2ISjDM>
- **Social media:** <https://www.facebook.com/vasaprava/>
- **Address:** Safeta Hadžića 66a, 71000 Sarajevo
- **Phone:** + 387 61 102 035 or +387 61 102 034
(Contact can be established via SMS, WhatsApp, Viber and via regular call from 9:30 to 16:00, from Monday to Friday)
- **Email:** admin@vasaprava.org



SERBIA



Illustration by Hannah Kirmes-Daly

Serbia is one of the main transit countries for refugees and other migrants on the way to EU countries. After the long “summer of migration” in 2015, and despite the de-facto closure of the Balkan corridor in early March 2016, refugees and other people-on-the-move continued to arrive in Serbia, mainly from North Macedonia, Albania, Montenegro, Bulgaria, and Bosnia and Herzegovina. Since 2015, more than 1.5 million refugees and other people-on-the-move have passed through Serbia, of which between a quarter and a third were children. During 2020, the number of refugees and migrants present in Serbia at any given time was around 7,000, of which around 6,000 were accommodated in the 20 reception, transit, and asylum centers[1].

Pushbacks and collective expulsions are a sad reality in Serbia: UNHCR and its partners indicated that Bosnia, Croatia, Hungary and Romania, have pushed back more than 25,000 persons to Serbia. Moreover, Serbia as well engages in collective expulsions, especially at the southern border with North Macedonia where the Government has built a

barbed-wire fence.[2] End of 2020 the Serbian Constitutional Court confirmed for the first time that illegal summary expulsions have been carried out by the authorities.[3]

I. Complaint to the Ombudsperson

[Law on the Protector of Citizens](#)

The complaint to the Ombudsperson can be filed by an individual, an NGO, or a group of people. The areas on which the Ombudsperson accepts complaints include: unlawful, irregular, malicious activity of the state administration bodies, bodies authorized for legal protection of property rights and interests of the Republic of Serbia, and other bodies and organizations, authority. Filing of a complaint and the entire procedure that follows is free of charge. Several requirements must be met for the Ombudsperson to review the complaint. If some requirements are not met, the Ombudsperson will either reject it and inform the person who filed the complaint about it, or invite the person to supplement the complaint.

You do not need a lawyer to file a complaint to the ombudsperson.

How to file a complaint:

- **The complaint cannot be anonymous and must bear the details and signature of the affected party. But the Ombudsperson can decide not to disclose the identity of the complainant.**
- **You can file the complaint against an issue that has happened to you personally.**
- **The complaint can be lodged by hand, through electronic media[1] [2] or through a legal representative. Send to: zastitnik@zastitnik.rs**
- **The deadline to file a complaint is 12 months from the incident.**
- **In your complaint you should describe as clearly as you can: what has happened to you, what state institution was involved, when and where the violation happened, and documented evidence of used legal remedies**
- **On the official website of Ombudsperson of Serbia the complaint form is available in English, Farsi, Urdu, Pashto and Arabic language[4]**

II. Constitutional complaint

Constitutional complaints provided by Article 170 of the Constitution can be filed against individual acts or actions of state bodies or organizations entrusted with public authority, which violate human or minority rights and freedoms guaranteed by the Constitution, if all other legal remedies have been exhausted or are not provided. **In cases of pushbacks no other legal remedy is available, so a constitutional complaint can be directly filed.**

Another person or organization can file a constitutional complaint in the name of a person whose rights were abused with the written authorization by that person. The constitutional complaint can be used in any case of abuse of human rights protected by the Constitution or other international instruments that Serbia is obliged to follow. The constitutional complaint has to be filed within 30 days of the delivery of the other court decision, or within 30 days of the act of violation of rights. If a person has a good reason for missing a deadline, they can file a complaint within a 15 day period after the mitigating factor has ceased to impede their filing of the complaint. If an individual act has violated the rights of more people, but just one person is filing a complaint, the final decision applies to all people involved.[5]

Up until the landmark decision of the Serbian Constitutional Court in December 2020, all other Constitutional Complaints were unsuccessful, with the Court rejecting the use of established CSOs' (such as Amnesty International) and international organisations (such as UN CAT) reports as corroborating evidence of structural deficiencies in Northern Macedonia's asylum system, in defiance of established ECtHR jurisprudence.[6]

The landmark case[7] concerned a group of 17 Afghani asylum seekers (6 men, 4 women and 7 children), who were apprehended by Serbian police on Serbian territory in February, 2017. They were arbitrarily detained and illegally deported, despite having even encountered a judge while staying in Serbia, who explicitly ordered the Serbian law enforcement to treat the group as asylum seekers and provide them with access to asylum and accommodation. But the security agents ignored the court order, forced the group into a police van, took them to the border with Bulgaria and forced them to cross it.[8]

FOOTNOTES - Serbia

[1] UNHCR, 2020. Map of the reception, transit and asylum centers in Serbia. Available at: <https://data2.unhcr.org/en/documents/details/55034>

[2] AIDA, 2021. Country Report: Serbia (2020). Available at: https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf

[3] DW, 2021. Serbia: Court confirms illegal pushbacks into the EU. Available at: <https://www.dw.com/en/serbia-court-confirms-illegal-pushbacks-into-the-eu/a-56312136>

[4] Serbian Ombudsman: <https://www.ombudsman.org.rs/>

[5] More on: https://www.paragraf.rs/propisi/ustav_republike_srbije.html <http://www.ustavni.sud.rs/page/view/sr-Latn-CS/65-101110/postupak-po-ustavnoj-zalbi> <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2014/01/Ljudska-prava-u-Srbiji-2018.pdf> (p 48-49)

[6] Experience of partner lawyers.

[7] Constitutional Court, Decision No. UŽ 1823/2017, Decision of 29 December 2020, EDAL, available at: <http://bit.ly/2YIXJhi>.

[8] DW, Serbia: Court confirms illegal pushbacks into the EU. Available at: <https://www.dw.com/en/serbia-court-confirms-illegal-pushbacks-into-the-eu/a-56312136>

TABLE OF CONTACTS

List of NGOs in Serbia providing free legal advice and support:

Belgrade Center for Human Rights

About: The Belgrade Centre for Human Rights is a non-partisan, non-political and non-profit association of citizens concerned with the advancement of theory and practice of human rights. It assembles persons of various professions and backgrounds – jurists, attorneys, sociologists, economists, writers, teachers, students and entrepreneurs.

- Webpage: <http://www.bgcentar.org.rs/bgcentar/eng-lat/>
- Social media: <https://www.facebook.com/BGcentarzaljudskaprava/>
- Address: Kneza Miloša 4, 11000 Beograd
- Phone: +(381 11) 3085 328
- E-mail: bgcentar@bgcentar.org.rs

Centar za zaštitu i pomoć tražiocima azila - Asylum Protection Centre (APC)

About: APC is an independent, non-profit, but professional and skilled organization that provides legal, psychosocial and other support and protection to asylum seekers, refugees, displaced persons and any other persons who are in trouble of migrating and is raising awareness of asylum procedures and integration of migrants.

- Webpage: <http://www.apc-cza.org/en/pravna-pomoc-pocetna.html>
- Social media: <https://www.facebook.com/AzilUSrbiji/>
- Address: Sime Igumanova Street no. 14, 11118 Belgrade, Serbia
- Phone: +381 11 2457-376; +381 63 704-7080
- E-mail: sediste@apc-cza.org; rados.djurovic@apc-cza.org; administrative@apc-cza.org; snezana.petijevic@apc-cza.org

Humanitarian Center for Integration and Tolerance (HCIT)

About: Since 1999, HCIT has had the status of an executive partner of UNHCR in legal protection and assistance to refugees, and since 2012 to asylum seekers in the Republic of Serbia.

- Webpage: <http://hcit.rs/about-us-o-nama/>
- Social media: <https://www.facebook.com/HCITSerbia/>
- Address: Vojvođanskih brigada 17, 21 000 Novi Sad // Office in Šid: Janka Veselinovića 19
- Phone: +381 21 528-132; for Subotica: +381646577052; for Šid: +381656177255 // Fax: +381 21 520-030
- E-mail: office@hcit.rs

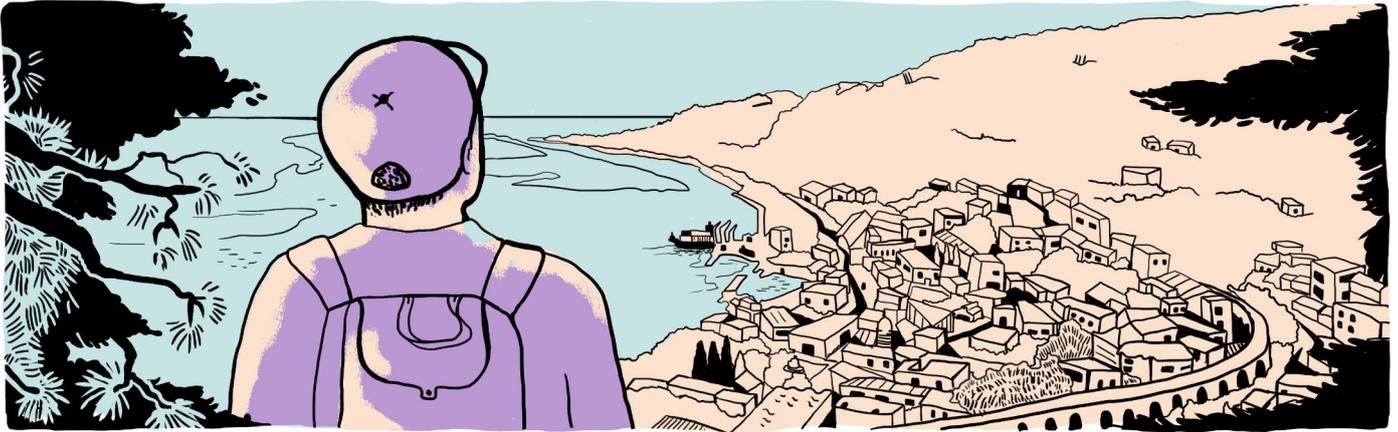
KlikAktiv - Center for Development of Social Policies

About: Provides legal and social support to the people on the move, collect testimonies on the violent push-backs and fight against the criminalization of solidarity. Currently located in Belgrade with the regular visits to border areas, especially cities Sid (Croatian border), Sombor, Subotica (Hungarian border), Majdan (Romanian border), Banja Koviljaca and Loznica (Bosnian border).

- Webpage: <https://klikaktiv.org/about>
- Social media: <https://www.facebook.com/klikaktiv/>
- Address: Resavska 48, Belgrade Serbia 11040
- Phone: +381 64 6599177
- E-mail: info@klikaktiv.org

CROATIA

Illustration by Hannah Kirmes-Daly



Croatia is sadly well-known as a country where its state authorities systematically perpetrate pushbacks and deny access to asylum. As all bodies are obliged to respect, protect and fulfill human rights - various legal remedies are at a person's disposal for the protection of different fundamental rights. For example, as torture is in itself a crime and a human rights violation - this will be examined firstly in the criminal procedure, namely by the State Attorney offices depending on their jurisdiction. Meanwhile access to asylum will firstly be examined in administrative procedures.

It is necessary to state that these are available remedies, however their effectiveness is another matter. In fact, for most of the pushback victims, legal remedies are inaccessible because the pushbacks have become a systematic and widespread - although still vehemently denied - 'official' policy in violation of the very rule of law in Croatia.

When it comes to criminal procedures regarding violent pushbacks from the territory of Croatia we are witnessing that the remedies are not effective, because the investigations are ineffective. There have been thousands of victims' testimonies regarding grave human rights violations and not one efficient investigation - because they either lacked independence, promptness or due diligence - or all of these elements combined.

According to the surveys on the perception of citizens, but also to some objective indicators, there are systematic and overwhelming issues in the Croatian judiciary. Processes are excessively long, the outcome of the process is uncertain, which negatively affects economic development, but also the situation in society in general. In her annual reports, the Ombudsperson continuously analyzes the situation in the judiciary, primarily on the basis of complaints received from citizens, most of which relate to delays in proceedings and abuse of office.

The European Commission's Rule of Law Report for 2020 shows that the level of perception of the independence of the judiciary in the Republic of Croatia is the lowest in the EU, and citizens cite the impression that the government and politicians interfere in the work of courts and put pressure on judges. Within the judiciary, as many as 97% of citizens point out corruption, as shown by the results of a special Eurobarometer survey on corruption from June 2020^[1], according to which the Republic of Croatia is among the EU member states with the worst perception of citizens about corruption^[1]. The same survey shows that 80% of citizens think institutions do not deal with corruption in a timely manner^[1]. In complaints to the Ombudsperson, citizens often point out the inconsistency of court practice, which undermines their trust and casts doubt on the impartiality of the courts. Due to the inconsistency of court decisions of lower courts, higher courts repeal them, which leads to lengthy court proceedings, violating legal certainty and citizens' trust in the judiciary. Also, according to the data from the EC Report "Review of the situation in the field of justice in the EU for 2020", the rate of publishing judgments on the Internet in the Republic of Croatia is the lowest in the EU, which does not contribute to transparency of courts and increase public confidence in the judiciary^[1].

I. Complaint to the Ombudsperson

[Zakon o pučkom pravobranitelju \(NN, br. 76/12\)](#)

The Ombudsperson protects and promotes human rights and freedoms, and is the central national body for combating discrimination. It carries the responsibility of the National Preventive Mechanism (NPM)^[2] for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and an external body for reporting irregularities.

The Ombudsperson may give recommendations, opinions, proposals and warnings to state bodies, bodies of local and regional self-government units and legal persons with public authority, and in accordance with

special laws to legal and natural persons. It may request all necessary information, data, explanations and other documentation from them, and they are obliged to submit them within the deadline.

The Ombudsperson submits a regular annual report to the Croatian Parliament, and may also submit special reports on issues of human rights violations.

Anybody can file a complaint to the Office of the Ombudsperson of the Republic of Croatia. It is necessary that the person who is filing the complaint is directly affected by the violation of rights

guaranteed under the Constitution and/or other laws. If, because of some circumstances, another person/organisation/lawyer is submitting the complaint in the name of the affected person - it is necessary to enclose **the person's written and signed consent** to the Ombudsperson to initiate and conduct an examination procedure regarding the violation (it is necessary to indicate which violation one is referring to). Also, if the complaint was not written by the person themselves, it is important for the organisation/person representing the victim **to be formally authorised to do so**. Filing of a complaint and the procedure that follows is free of charge.

How to file a complaint:

- **The complaint cannot be anonymous.**
- **You can file the complaint against an issue that has happened to you personally.**
- **The complaint can also be filed by an NGO or a group of people with the consent of the person (letter of authorization).**
- **The complaint can be filed in person; sent via mail to the Office of the Ombudsperson of Croatia (address: Trg hrvatskih velikana 6, 10000 Zagreb); via telefax (nr. 01 6431 628); or via email (info@ombudsman.hr).**
- **The necessary data that need to be stated in the complaint include:**
 - **Name, surname and the address**
 - **Name of the body/institution the complaint concerns**
 - **The number of the ongoing case in front of the relevant body (if one exists)**
 - **Enclose the copies of the documents/decisions in the relevant procedure and other documents relevant to the case**
 - **Description of the issue: explain what constitutes the violation of rights.**
- **In your complaint you should describe as clearly as you can: what has happened to you, what state institution was involved, when and where has it happened, and documented evidence of used legal remedies**

Then the Office will initiate the examination procedure where it will ask all the relevant data, information, documents from the body that the complaint concerns. If she acts on the complaint, the ombudsperson initiates an investigation. After the procedure, there will be a final report on the case and it will be sent to the complainant and to the state body concerned.

In the past five years, the Croatian Ombudsperson has done a remarkable work, consistently reporting on violent summary expulsions from Croatia, despite facing severe blockades and backlash from the Croatian state officials.



II. Constitutional complaint

Constitutional complaint is an additional way of protecting human rights which are guaranteed under the Constitution. It may be initiated after exhaustion of available domestic remedies. Exceptionally, constitutional court proceedings may be initiated even before the available legal remedies have been exhausted in two situations: (1) when the court has not decided on the rights and obligations of the party, or on the suspicion or accusation of a criminal offence, within a reasonable time; or (2) when the challenged individual act grossly violates constitutional rights, and it is completely clear that failure to initiate constitutional court proceedings could lead to severe and irreparable consequences for the applicant.

The obligation of the Constitutional Court is to protect the rights of the person that submitted the constitutional lawsuit when these rights are being violated. It can be done both by a judgement or other decisions of the public authorities. The instructions on how to submit the lawsuit as well as its form can be found on the Constitutional court's website.[3]

Besides in the Constitution, human rights are protected under different laws, and therefore different courts and procedures will be available depending on the violation.

III. Criminal Complaint

[Criminal Code, no. 71-05-03/1-11-2](#)

If a criminal offense has been committed within the framework of a pushback, and especially if the rights from Art. 2 and 3 of the ECHR have been violated, a criminal complaint may be filed with the State Attorney's Office of the Republic of Croatia (DORH), as an independent and autonomous judicial body authorized and obliged to act against perpetrators of criminal and other criminal offenses.

Several crimes are usually committed during pushbacks, including:

- *Criminal offence against official duty by abuse of position and authority and*
- *Criminal offence of torture and other cruel, inhuman or degrading treatment or punishment,*
- *as well as other accompanying crimes.*

The victim can thus initiate a criminal procedure by filing a criminal complaint. As the perpetrators are police officials, the competent body would be *Ured za suzbijanje korupcije i organiziranog kriminaliteta*, Office for the Suppression of Corruption and Organized Crime (USKOK). This is a specialised Office under the State Attorney (the Prosecution). Even if a person files a complaint to another part of the State Attorney structure (there are Municipal attorneys,

County level ones as well as State Attorney of the Republic of Croatia) they have an obligation to delegate to the competent body. There is no form prescribed when it comes to the criminal complaints, and it can be filed in several ways: written, in person, over the phone etc. The most common way is the written submission: either by mail (address: Vlaška ulica 116, 10 000 Zagreb) or e-mail: tajnistvo@uskok.dorh.hr One can also file a criminal complaint through the police, but that rarely happens in pushback cases - since the suspects are police officers themselves.

IV. Administrative Court

[Zakon o upravnim sporovima](#) (in CRO)

For the denial of access to the asylum procedure and violations of rights regarding the right to asylum, an administrative lawsuit against violation of rights may be submitted. The competent Administrative Court in the pushback cases (when the person is outside of Croatia as a result of pushback) will in most cases be the court located in the area where the violation took place. At the first instance there are Administrative Courts (for example, Administrative Court in Zagreb), and at the second instance there is a High Administrative Court of Croatia.

Centre for Peace Studies (CPS) has initiated several procedures in cases of human rights violations in the past.

When it comes to pushbacks, 8 criminal complaints have been submitted in total by the CPS - some involving multiple pushback cases. Regarding 2020:

- **Criminal complaint May 2020:** The criminal complaint was submitted for four separate cases due to similarities in treatment. In particular,, all victims suffered torture and degrading treatment, among other violations. The police marked them with permanent, orange spray all over their heads. The victims were violently pushed back using batons, guns, and punches, violating human dignity and safety by taking people's clothes off in the middle of the forest and taking away everything they had.
- **Criminal complaint July 2020:** Eight armed men wearing unmarked black uniforms and ski masks, most probably members of a special police unit or an operation codenamed Corridor, tortured, inhumanely treated and pushed back 16 people from Croatia to Bosnia-Herzegovina. The armed men tied the people to trees, fired shots from pistols close to their ears and feet, beat them up using multiple blunt objects, and took away their belongings threatening them with death. In the end, the men humiliated the refugees by rubbing mayonnaise, ketchup and sugar into the injuries they had previously inflicted on them, CPS activists said. The men then handed over the people to four police officers who then pushed them back to Bosnia and Herzegovina while many of the people could not even walk as a result of the injuries.
- **Criminal complaint December 2020/1:** On 12 October, five Afghans, including a minor, crossed the Croatian border from Bosnia-Herzegovina. On the same day, an

uniformed police officer stopped them and then called two more officers. One of the migrants ran, and the other four were detained at a police station without access to a translator, legal aid, food nor water for two days. Two days later they were taken to court, where they say they were to “appear as witnesses in the case launched against the fifth member of the group – the one who escaped”, who had been accused of violent behaviour towards police. After witnessing, the police officers took them “to some unknown location, where they were put in a van in the charge of 10 armed people, dressed in black and with full face balaclavas, army boots and with flashlights on their foreheads”. The detainee/s/people money was taken, their belongings torched and they were ordered to strip to their underwear. The migrants allege that they were forced to lie face down on the ground. One group member, MK, says at this point he was raped by a man using a tree branch. Afterwards, they were pushed back to Bosnia and Herzegovina.

- Criminal complaint December 2020/2: On the 15th October 2020, three refugees were stopped by the police officers. The police allegedly ordered them to strip naked before loading them into a van and taking them to a sort of garage, where five other people, among which one minor, were being detained prior to being pushed back to Bosnia and Herzegovina. There was no translator, legal aid, nor food. All 8 persons were taken with a police van to the location near the border where the officers in black uniforms awaited. “They started to beat us with batons, and the third one took his mobile phone and took a selfie with us without clothes,” the Pakistani man said. “The first four of us were on the ground, and we lay next to each other, naked and beaten, and the other four were ordered to lie on us, so we lay motionless for 20 minutes. The last one was a minor. I saw when the police officer asked him where he was from. He tried to say that he is a minor. He was beaten a lot, and

when it was his turn to take off his clothes, he was beaten even more.” After torture and degrading treatment, police threatened them and pushed them back to Bosnia and Herzegovina.

In all of the cases described above, as well as three additional cases, CPS has filed a complaint to the Ombudsperson on behalf of the victims. When it comes to other human rights violations, CPS has filed complaints to the Ombudsperson against discrimination or other violations, and criminal complaints against hate crimes.

Also, the Ombudsperson has on several occasions submitted to the DORH for competent treatment. The submissions include the results of investigative procedures and observations from NPM visits conducted at police stations, border police stations and police administrations, which relate to numerous complaints about pushbacks. The Ombudsperson also informed the State Attorney's Office about the received anonymous complaint alleging illegal actions of police officers based on orders from superiors, submitted anonymously by a police officer. Apart from the knowledge that the DORH conducted an investigation in a few individual cases, the Ombuds Office has no knowledge of the results of the pushback investigations. Therefore, in the Ombudsperson's Annual reports from 2018 onwards, is pointed out that an effective investigation into actions that may constitute violations of Art. 3. ECHR, is imperative[4].

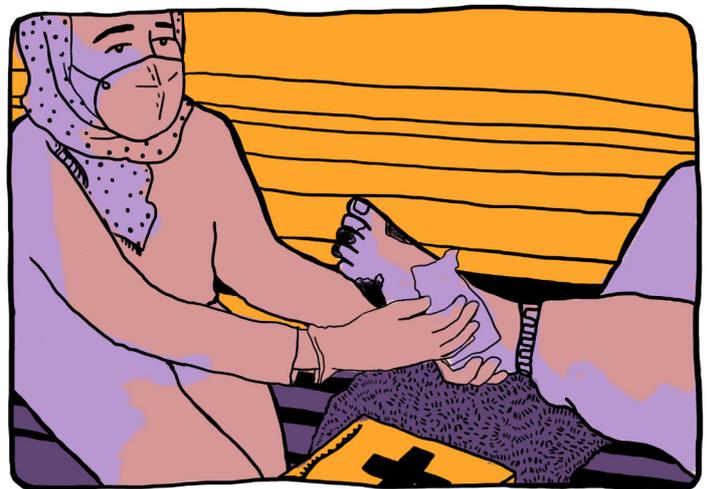


Illustration by Hannah Kirmes-Daly

FOOTNOTES - Croatia

[1] Interview conducted with the Ombudsperson office, April 2021.

[2] National Preventive Mechanisms (NPMs) are independent visiting bodies established at domestic level, composed of one or more bodies, for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. More available at: https://www.ohchr.org/Documents/Publications/NPM_Guide_EN.pdf

[3] Available at: <https://www.usud.hr/hr/ustavne-tuzbe-upute>

[4] Interview conducted with the Ombudsperson office, April 2021.

TABLE OF CONTACTS

List of NGOs in Croatia providing free legal advice and support:

Borders:none

About: none provides legal assistance to asylum seekers in the asylum process: information on the procedure, support in preparing for the interview, gathering evidence and documents relevant to the case, representation before the Ministry of Interior, writing submissions; providing legal advice to asylum seekers; providing legal assistance to refugees in the return process

- Webpage: <https://www.facebook.com/bordersnone/about/>
- Social media: <https://www.facebook.com/bordersnone/>
- Address: Trg sejskih uskoka 3, 10000 Zagreb, Croatia
- Phone: +385 97 700 1652
- E-mail: info@bordersnone.com

Centar za Mirovne Studije - Centre for Peace Studies (CPS)

About: CPS is a non-governmental and non-profit organization promoting non-violence and social change through education, research and activism. CPS offers free legal advice (asylum and status rights)

- Webpage: <https://www.cms.hr/en/pravna-pomoc-azil-i-statusna-pitanja>
- Social media: <https://www.facebook.com/CentarzaMirovneStudije>
- Address: Kuća ljudskih prava, Selska cesta 112a, 10000 Zagreb, Croatia
- Phone: +385 01 482 0094
- E-mail: cms@cms.hr

Hrvatski Pravni Centar - Croatian Law Centre

About: HPC, as an implementing partner of UNHCR, provides free legal assistance to asylum seekers, and conducts monitoring of asylum seekers and migrants' rights in Croatia. The goals of the project are ensuring access to the territory and the asylum system for all persons in need of protection and provide legal information to asylum seekers to ensure a fair and effective determination of refugee status.

- Webpage: <http://www.hpc.hr/azil/>
- Social media: <https://www.facebook.com/hrvatskipravnicentar/>
- Address: Bednjanska 8a, 10000 Zagreb, Croatia
- Phone: +385 (1) 4854-934
- E-mail: hpc@hpc.hr

Isusovačka Služba Za Izbjeglice - Jesuit Refugee Service (JRS)

About: JRS Croatia provides education, legal assistance, and psychosocial support to forced migrants in the Centre for the Integration of Refugees "SOL".

- Webpage: <https://jrs.net/en/country/croatia/>
- Social media: <https://www.facebook.com/JRSizbjeglice/>
- Address: Maksimirska cesta 286, 10000, Zagreb
- Phone: +385 98 979 2298
- E-mail: info@jrs.hr

Projekt Građanskih Prava Sisak - Civil Rights Project (PGP)

About: PGP Sisak is non-governmental organisation that provides free legal aid in accordance with the Law on Free Legal Aid. Among others, they provide legal aid on status rights.

- Webpage: <https://www.crpsisak.hr/besplatna-pravna-pomoc/bpp/?lang=en>
- Social media: <https://www.facebook.com/PGPSisak/>
- Address: Stjepana i Antuna Radića 6/5, Second floor, 44000 Sisak, Croatia
- Phone: +385 44 571 752; Free legal number 0800 200 098
- Email: pgp-sisak@crpsisak.hr

Pravna klinika fakulteta u Zagrebu - Law Clinic of the University of Zagreb Faculty of Law

About: The Legal Clinic provides general legal information, drafts and provides legal advice, and assists parties in drafting various letters and submissions. The Legal Clinic is not authorized to represent the parties in court proceedings.

- Webpage: <http://klinika.pravo.unizg.hr/law-clinic-zagreb>
- Social media: <https://facebook.com/PravnaKlinikauZagrebu>
- Address: Ul. Jurja Žerjavića 6, 10000, Zagreb
- Phone: every working day from 10 to 12,, Wednesdays and Thursdays from 5 pm to 7 pm: +385 97 6529 891; +385 97 6529 892; +385 97 6529 902
- E-mail: klinika@pravo.hr

How to file a complaint:

- The complaint is your description of your problem. It is also a description of all the procedures you have taken to solve this problem until you no longer know how to proceed.
- You can also file a complaint on behalf of someone else (the victim), but you must have their consent, which you attach to the complaint.
- The complaint can be filed in your mother tongue.
- The application can be written as a simple letter or in a form, which is available here. It can be lodged by mail, email or through personal contact at the Office. The address is: Varuh človekovih pravic, Dunajska 56, 1000 Ljubljana, Slovenia
- The deadline to file a complaint is 12 months from the incident, but can be extended in exceptional cases.
- In your complaint you should describe as clearly as you can: what has happened to you, what state institutions were involved, when and where it happened.

In the past, the Ombudsman's institution had initiated several investigations into allegations of pushbacks and found violations of fundamental rights of the people on the move in police procedures.[8] However, due to the scale of the violations and practice, more should be done to halt these illegal expulsions, which directly expose the returned people on the move to severe beatings and ill-treatment by the Croatian officials.

Despite toothlessness of an Ombudsperson complaint mechanism, it is our opinion that it makes sense to alert such institutions with the aim of inclusion of pushback incidents and issues in the annual and special reports, which can be later used as corroborating evidence in court proceedings.

II. Lawsuit at the Administrative Court

[Administrative Dispute Act](#) (SLO)

A so-called subsidiary administrative dispute can be initiated against any state authority for its' execution of an official act or action against the applicant, which violated his or her fundamental rights. In general, it is the last resort, when no other legal remedies exist and it is the relevant remedy to be used in cases of pushbacks from Slovenia.

The lawsuit must be filed with the Administrative Court which takes a decision after a court procedure and may also organise an oral hearing. The deadline to initiate the administrative dispute is 30 days from the incident, which is **very short**. The applicant may represent himself or may file the lawsuit through a certified lawyer. An application for interim measures can be filed throughout the procedure as well.

After the judgement at the Administrative Court is issued, there is a possibility of appeal to the Supreme

Court. In case of violations of human rights throughout the proceedings which are not rectified by the two courts, there is a further possibility of a **complaint to the Constitutional court**. It is extremely important that the complainant draws attention to relevant human rights violations throughout the proceedings in front of all the courts.

A subsidiary administrative dispute in cases of pushbacks has been twice initiated in Slovenia. Both Administrative Court rulings are final.

Case no. 1[9]: was initiated in September 2019 and the final judgement by the Supreme court was issued in April 2021. The procedure was initiated on the grounds that with the pushback of the applicant - an asylum seeker from a Sub-Saharan country - to Croatia (and from there, further, illegally, to Bosnia) the Slovenian police violated the applicant's rights of access to international protection, prohibition of torture and inhumane treatment and prohibition of collective expulsion. The case was very lengthy and tiring with many documents and evidence filed. There were two judgements issued by the Administrative Court, the first one was overturned by the Supreme Court, while the second one was finally confirmed by the Supreme Court. The Courts ordered the Republic of Slovenia to allow the applicant to enter to Slovenia and apply for international protection, as this is the only way to remedy the violation of human rights committed against him. The Ministry of Interior refuses to abide by the judgement.

Case no. 2[10]: revolved around an asylum seeker, whose asylum claim had been officially and finally denied by the Slovenian authorities. Afterwards, he was expelled into Croatia, instead of his country of origin. After a complicated procedure, the Supreme Court decided there was no violation of access to effective remedy and that no

return decision should have been issued by the police before the deportation. Unfortunately, the Supreme Court did not receive a possibility to adjudicate on the conditions and risks to which the applicant was exposed after deportation. The case is now in front of the Constitutional Court.

A comprehensive report, involving specific cases, was presented to the Specialist State Attorney Department (prosecution) by InfoKolpa in 2019. There is no information on any act or investigation started by the prosecution or any other relevant authority.

III. Criminal complaint

Criminal Code

The officials, involved in pushbacks could be investigated on suspicion of committing the below crimes:

- Abuse of Office or Official Duties (Art. 257)
- Misfeasance in Office (Art. 258)
- Threatening the Security of Another Person (Art. 135)
- Violation of Human Dignity by Abuse of Official Position or Official Rights (Art. 266)
- False Imprisonment (Art. 133)

A criminal complaint can be filed at the police or in this case rather at the State Attorney's Office (the prosecution)[11]. There is no specific form, it can be filed orally or in writing. No legal representation is required, but it would be beneficial to approach with legal representation with the aim of safeguarding the victim's rights.



Illustration by
Hannah Kirmes-Daly

FOOTNOTES - Slovenia

[1] Dnevnik, 2018. "Ali v Sloveniji res ni več mogoče zaprositi za azil? Kaj naj storimo zdaj?" Available at: <https://www.dnevnik.si/1042825662/Slovenija/ali-v-sloveniji-res-ni-vec-mogoce-zaprositi-za-azil-kaj-naj-storimo-zdaj>.

[2] Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the readmission of persons whose entry or residence is illegal. Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4624>

[3] More information available at: https://en.wikipedia.org/wiki/The_Erased

[4] Lukenda v. Slovenia, no. 23032/02, ECHR 6 October 2005. Available at: <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%7B%22lukenda%20v.%20slovenia%22%22documentcollectionid%22:%7B%22GRANDCHAMBER%22%22CHAMBER%22%22itemid%22:%7B%22001-70449%22%7D%7D>

[5] PMVD, 2021. Komentar izjav notranjega ministra. Available at:

<https://pravna-mreza.si/komentar-pmvd-na-7-izjav-notranjega-ministra-hoja/>

[6] RTVSLO, 2021. Intenzivno kadrovanje na vrhu policije, sočasno pa pomanjkanje kadrov za avtocestno enoto. Available at: <https://www.rtvsl.si/slovenija/intenzivno-kadrovanje-na-vrhu-policije-socasno-pa-pomanjkanje-kadrov-za-avtocestno-enoto/582802>

[7] CoE, 2021. Memorandum on freedom of expression and media freedom in Slovenia. Available at: <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-slovenia/1680a2ae85>

[8] Slovenian Ombudsperson, 2019. FINAL REPORT ON THE TREATMENT OF POLICE PROCEDURES WITH FOREIGNERS IN THE AREA OF THE ILIRSKA BISTRICA POLICE STATION. Available at: <https://www.varuh-rs.si/sporocila-za-javnost/novica/koncno-porocilo-o-obravnavi-policijskih-postopkov-s-tujci-na-obmocju-policijske-postaje-ilirska-bist/>

[9] BVMN, 2021. PRESS RELEASE FROM BVMN-MEMBER INFOKOLPA ON SLOVENIAN COURT RULING. Available at: <https://www.borderviolence.eu/press-release-from-bvmn-member-infokolpa/>

[10] Dnevnik, 2020. Sodišče: Prepuščanje migrantov hrvaški policiji brez presoje okoliščin ni zakonito. Available at: <https://www.dnevnik.si/1042920553/slovenija/sodisce-prepuscanje-migrantov-hrvaski-policiji-brez-presoje-okoliscin-ni-zakonito>

[11] More info available at: <https://www.dt-rs.si/okrozna-drzavna-tozilstva>

TABLE OF CONTACTS

List of NGOs in Slovenia providing free legal advice and support:

Legal centre for the protection of human rights and environment (PIC)

About: Offers legal counseling and information to refugees, asylum seekers, foreigners (regarding managing of their status, protection and their access to social, economic and other rights).

- Website: <https://pic.si/about/>
- Social media: <https://www.facebook.com/pic.ljubljana.3>
- Address: Metelkova 6, 1000 Ljubljana
- Phone: +386 1 521 18 88, +386 51 681 18
- Email: pic@pic.si

Briefly on the International Mechanisms - UN Treaty Bodies



Illustration by Hannah Kirmes-Daly

On the international level, within the framework of the United Nations, there are established human rights mechanisms that invite individual complaints from victims of human rights violations. In Europe, the regional European Court of Human Rights has been the more popular alternative, since it holds a more reliable and effective enforcement process and it had produced an extensive jurisprudence on the issue of violations of human rights of asylum seekers, refugees and migrants. But especially since the unusual, shocking judgement of *N.D. and N.T. v. Spain*, "the Court lost credibility as an effective defender of human rights in times of crisis."^[1] Legal practitioners are turning towards the UN human rights bodies in seeking justice and due process for the travelling individuals, victims of an EU policy of externalisation and fortress Europe.

Comprehensive information on the workings of the UN human rights bodies can be accessed here: <https://ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#individualcomm>, where the process by which an individual can seek to address an alleged human rights violation is most referred to as an 'individual communication'. Some treaties may alternatively refer to them as 'complaints', 'applications' or 'petitions'.

The purpose of an individual communication is to address a violation carried out by a State party, that is in contradiction to its obligations under a treaty. Unlike other non-judicial reporting processes within the UN system, the communication process operates in a similar manner to a legal proceeding within a domestic setting. In the end, there is a decision ('Views') issued by the relevant Committee, which can include recommendations to the State party in question. The implementation of the recommendations is then periodically assessed

through other mechanisms for monitoring and reporting on the human rights situation in a given country.

Individual communications can be filed with the following UN treaty bodies, each of them safeguarding a UN convention:

- Committee against Torture (CAT)
- Human Rights Committee
- Committee on the Rights of the Child
- Committee on the Elimination of Discrimination against Women
- Committee on the Elimination of Racial Discrimination
- Committee on Rights of Person with Disabilities
- Committee on Enforced Disappearance

The treaty bodies may only receive and consider individual communications against States that are parties to the relevant Conventions and Protocols and have thus recognized the competence of the UN body. This can be checked here: <https://indicators.ohchr.org/>

When submitting a communication, at any stage prior to the final decision being made by the relevant treaty body committee, a treaty body may determine that interim measures are needed. This can be very useful especially in cases where a deportation measure is incumbent, but has not been carried out yet. The author of the communication should not attempt to imply that the request for interim measures will reflect a positive outcome by the committee, as the overall merits and admissibility of the communication must still be determined.

All communications to treaty bodies follow the same chronological profile[2]:

- Receipt of a complaint
- Initial consideration to make sure that:
 - It concerns a State part to the relevant convention that has also accepted the individual complaint procedure (and the specific competence of the body where applicable);
 - The facts complained of relate to the subject-matter of that treaty;
 - There is a genuine possibility that a violation of a specific treaty provision may have occurred
- Assessment of the admissibility of the complaint, including an opportunity for both parties to submit their observations (this step is sometimes combined with the considerations of the merits - you will be informed if this is the case)
- Consideration of the merits of the complaint, including an opportunity for both parties to submit their arguments, and (depending on its exact powers) for the international body to collect information about the case that will help it to reach a decision. This may include oral and/or written pleadings, fact-finding, and consideration of expert evidence or amicus curiae briefs
- A decision by the body on whether or not a violation has occurred, and, depending on the bodies exact powers, what, if any, remedy should be awarded.

In addition to communications under the treaty body procedure, victims or their representative may alternatively seek to address the complaint through the complaints procedure of the Human Rights Council (HRC). Unlike treaty body communications, complaints to the HRC do not refer to individual breaches of human rights but instead seek to address patterns of 'gross and reliably attested violations'. This complaint procedure is confidential in nature, but the victim centred approach of the council means that both the victim and the author are made aware if their complaint has been determined to be inadmissible.

When submitting a communication or complaint, the following information should be included[3]:

- Name, nationality, occupation, postal address and signature of the complainant, or the name and signature of the legal representative (and a letter of authorization)
- Name of the State Party against which the communication is directed
- Provision(s) of the treaty that has been violated

- An account of the acts or acts alleged
- An indication that the state is responsible either through action or inaction.
- Information on the efforts made to exhaust domestic remedies and their outcomes
- Indication of the extent to which the same matter is being examined under another procedure of international investigation

- An indication of any part of the communication that should remain confidential

To further support the complaint, where possible, the following should be included[4]:

- Any petitions or complaints made to the authorities
- Any domestic judicial and administrative decision in the case
- Victim statements
- Witness statements
- Medical report or certificates, including both physical and psychological assessments
- Autopsy reports
- Photographs
- Media reports
- General information indicating a wider practice of rights violation (NGO reports)

Be careful not to exceed any deadline for complaint submission (deadlines should be indicated in the respective Conventions and protocols). The complaint cannot refer to a violation that has occurred before the relevant treaty has come into force for a specific State party. The complaint has to be compatible with the scope of the treaty - it has to argue that a specific right, stemming from the respective convention had been breached by the State party.

There is no obligation to be represented by a lawyer in front of the committee, anyone can file a communication in their own name or they can also represent the victim of a human rights violation (with authorization). The procedure is free of charge.

On the issue of exhaustion of domestic remedies: As an admissibility requirement, effective domestic remedies have to be exhausted by the author of the communication, before applying to the UN bodies. Although, in cases of pushbacks, the Human Rights Committee has already explained that an effective legal remedy in cases of violation of the principle of non-refoulement has to be suspensive in order for it to be effective.[5] That means that it has to be able to halt a deportation.

FOOTNOTES



[1] Pichl, Schmalz, 2020. "Unlawful" may not mean rightless. Available at: <https://verfassungsblog.de/unlawful-may-not-mean-rightless/>

[2] University of Essex: Human Rights Centre. (2015). The Torture Reporting Handbook.

[3] Bayefsky, A. 2003. How to complain to the UN Human Rights Treaty System.

[4] Ibid.

[5] HRC, 'Concluding Observations' on Belgium (12 August 2004, CCPR/CO/81/BEL), Finland (2 December 2004, CCPR/CO/82/FIN), Germany (12 November 2012, CCPR/C/DEU/CO/6) and Lithuania (31 August 2012, CCPR/C/LTU/CO/3).

[6] More information about the case available at: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CATC67D8572017.pdf>
<https://balkaninsight.com/2018/02/14/serbia-will-face-uncat-process-for-extraditing-kurd-02-13-2018/> <https://www.dw.com/en/serbia-extradites-kurdish-politician-cevdet-ayaz-to-turkey-despite-un-warning/a-41950875> <http://www.bgcentar.org.rs/bgcentar/eng-lat/committee-torture-cruel-inhuman-degrading-treatment-punishment-finds-serbia-violation-convention-torture-extraditing-kurdish-political-activist-cevdet/>

[7] UN CAT, Fact Sheet No.17, The Committee against Torture. Available at: <https://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>

Some experiences from the European Court of Human Rights

The European Court of Human Rights has developed extensive and detailed jurisprudence on the issue of refoulement. It was the first court to adjudicate on and establish the non-refoulement principle, obligating the states parties to the convention not to deport, expel, remove or otherwise refool an individual to another state, when the individual is exposed to a real risk of being subjected to treatment contrary to the prohibition of torture (Art. 3 ECHR) and/ or right to life (Art. 2 ECHR) in the receiving state.[1] More information on the extensive case-law and legal principles of the ECtHR can be found in their guidebooks (see per example Guidebook on immigration[2], Guidebook on Art. 13 (effective remedy)[3], Guidebook on Art. 4 to Protocol 4 (prohibition of collective expulsion)[4]).

When the ECtHR finds a violation of the ECHR and, as a consequence, imposes obligations on the country (e.g. to modify its legislation or to remedy an individual human rights violation), a speedy and complete implementation of such a decision by the respective competent authority is **a binding obligation for a Council of Europe Member State**. Political obstacles, practical difficulties or even a lack of funding cannot be excuses for not implementing an ECtHR ruling.[5]

In pushback cases ECtHR can be used as a *remedy* when a pushback happens or as a *prevention mechanism (interim measures)*. In the letter type of urgent cases the procedure before ECtHR is faster than a usual complaint.

So far, there are no pushback related cases at ECtHR lodged against BiH or Slovenia. But our partners have had some experience with the ECtHR in Serbia and Croatia.

Experience from Serbia

The ECtHR remedy is being used by Belgrade Centre for Human Rights and Asylum Protection Centre. According to the legal advisor Milica Švabić from KlikAktiv, it has also been used in the years 2015 and 2016. In Serbia it's mostly used when a person arrives in Serbia by plane and asks for asylum at the airport. In the event of a person asking for asylum at the airport, police often either force a person to take the next flight back to the country the person flew from, or send them on the next plane going to the final destination of the ticket (in cases where that wasn't Belgrade). In some cases with using the ECtHR as a prevention mechanism, the pushback has been prevented, but in the majority of the cases not. That is because asylum seekers usually don't get a chance to call a legal NGO/lawyer.

In the instances where asylum seekers got in contact

with the legal NGO, the pushback was prevented in about half of the cases. ECtHR was contacted directly through a fax machine - an application was filed, including basic information and a short description of the risk of pushback of the applicant and a proof of the individual's location. In practice, that meant sending the location of the person and a photo (for example a selfie in front of a road sign) - providing proof that the person is in the territory of that country.

If ECtHR is working, which is from 8 am to 4 pm (CET), they respond immediately by calling the person who sent the fax document and then contact the relevant government. If they decide that the application is justified, ECtHR sends a written document requiring the State to act according to law.

In the concrete case, where the pushback wasn't successfully prevented it was due to not having enough time to start and go through with the procedure, before the person was already on the plane and outside of Serbia.[6]

Serbia - ECtHR pending cases

At the moment, there are four cases against Serbia on the grounds of violation of non-refoulement pending in front of the ECtHR: M.W. v. Serbia, no. 70923/17,[7] M.H. v. Serbia, no. 62410/17,[8] A.K. v. Serbia, no. 57188/16,[9] A and Others v. Serbia, no. 37478/16.[10] All of them are still in communication phase, so no decision has been made yet. They are from the years 2016 and 2017. In all the cases, the applicant's asylum request was rejected and they got cancellation of stay with the order to leave the territory of the Republic of Serbia in a specific number of days. In one case the applicant also complained to the national Ombudsperson and in two cases the applicants complained to the Constitutional Court[11].

Experience and pending cases from Croatia

ECtHR's case law demands that legal remedies in these situations must have a suspensive effect in order to be deemed effective, which in Croatia is clearly not the case. Victims in such cases are pushed back to a third country without access to any suspensive remedies by which to lodge their complaints and to obtain assessment of their request before the removal measure is enforced.

M.H. v. Croatia: 2 applications: 15670/18 and 43115/18 (divided by the Court)

CPS has been following the case from the beginning. In 2017 a refugee family, a mother with 6 children, was stopped by Croatian police on the territory of Croatia and

communicated their intention to seek asylum. The policemen ignored their intent and ordered them to follow the railway line back to the territory of Serbia during the night. The officers also ignored the requests of the mother to allow them to stay with the police over night. While they were following the tracks back to Serbia, as ordered by the officers, a train came and killed 6-year old girl Madina. At national level, prior to going to the ECtHR the case has exhausted all the domestic legal remedies.

S.B. v. Croatia, A.A. v. Croatia and A.B. v. Croatia, no. 18810/19:[12]

These cases relate to the summary returns of the three applicants, who are nationals of Syria, from Croatia to Bosnia and Herzegovina. CPS has intervened in order to present to the Court relevant data and evidence on the existence of the systematic practice of violent pushbacks from the territory of Croatia in the last four years, and no access to suspensive legal remedies regarding these violations. The analysed practice shows continuous violations of Articles 3 and 13, as well as Article 4 of Protocol 4 of the European Convention on Human Rights.

In the case of M.H. the family used all the available legal remedies available and went to the ECtHR after exhausting them. In this specific case, the criminal complaint was submitted and later it was rejected. Also, four Administrative Court procedures were initiated because of the unlawful detention of victims. The ECtHR has decided on the preliminary measure, and finally the Constitutional Court of Croatia has rejected the constitutional lawsuit.

However, in the cases S.B. v. Croatia, A.A. v. Croatia and A.B. v. Croatia the applicants are in the

Netherlands and Germany and had no effective remedies to use in Croatia. They were removed from Croatia to Bosnia and Herzegovina without having access to any procedure or remedy to challenge their removal. According to the ECtHR case law, the legal remedy after such an event is not to be considered an effective remedy according to ECtHR's jurisprudence, since for the remedy to be considered effective, the remedy must have a **suspensive effect**.

FOOTNOTES

[1] Soering v. United Kingdom, Ser. A No. 161 ECHR (1989).

[2] Available at: https://www.echr.coe.int/Documents/Guide_Immigration_ENG.pdf

[3] Available at: https://www.echr.coe.int/Documents/Guide_Art_13_ENG.pdf

[4] Available at: https://www.echr.coe.int/Documents/Guide_Art_4_Protocol_4_ENG.pdf

[5] Sejdīć and Finci v. Bosnia and Herzegovina, no. 27996/06 and 34836/06, ECHR, 22.12.2009.

[6] Interview with Milica Švabić, 10.12.2020.

[7] Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-192720%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192720%22]})

[8] Available at: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-187836%22\]}](https://hudoc.echr.coe.int/eng#{%22tabview%22:[%22document%22],%22itemid%22:[%22001-187836%22]})

[9] Available at: [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2257188/16%22\],%22itemid%22:\[%22001-188503%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2257188/16%22],%22itemid%22:[%22001-188503%22]})

[10] Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179960%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179960%22]})

[11] More information available at: [https://hudoc.echr.coe.int/eng#{%22tabview%22:\[%22document%22\],%22itemid%22:\[%22001-187836%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-192720%22]}) [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2257188/16%22\],%22itemid%22:\[%22001-188503%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2257188/16%22],%22itemid%22:[%22001-188503%22]}), [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-179960%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-179960%22]})

[12] Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-202733%22\]}t17en.pdf](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202733%22]}t17en.pdf)

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As mentioned, this is a living document, and we actively encourage people to get in touch if they have any updates or additional information they would like to contribute. If you would like to know more about BVMN and the work of the legal team, please write to mail@borderviolence.eu.

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