



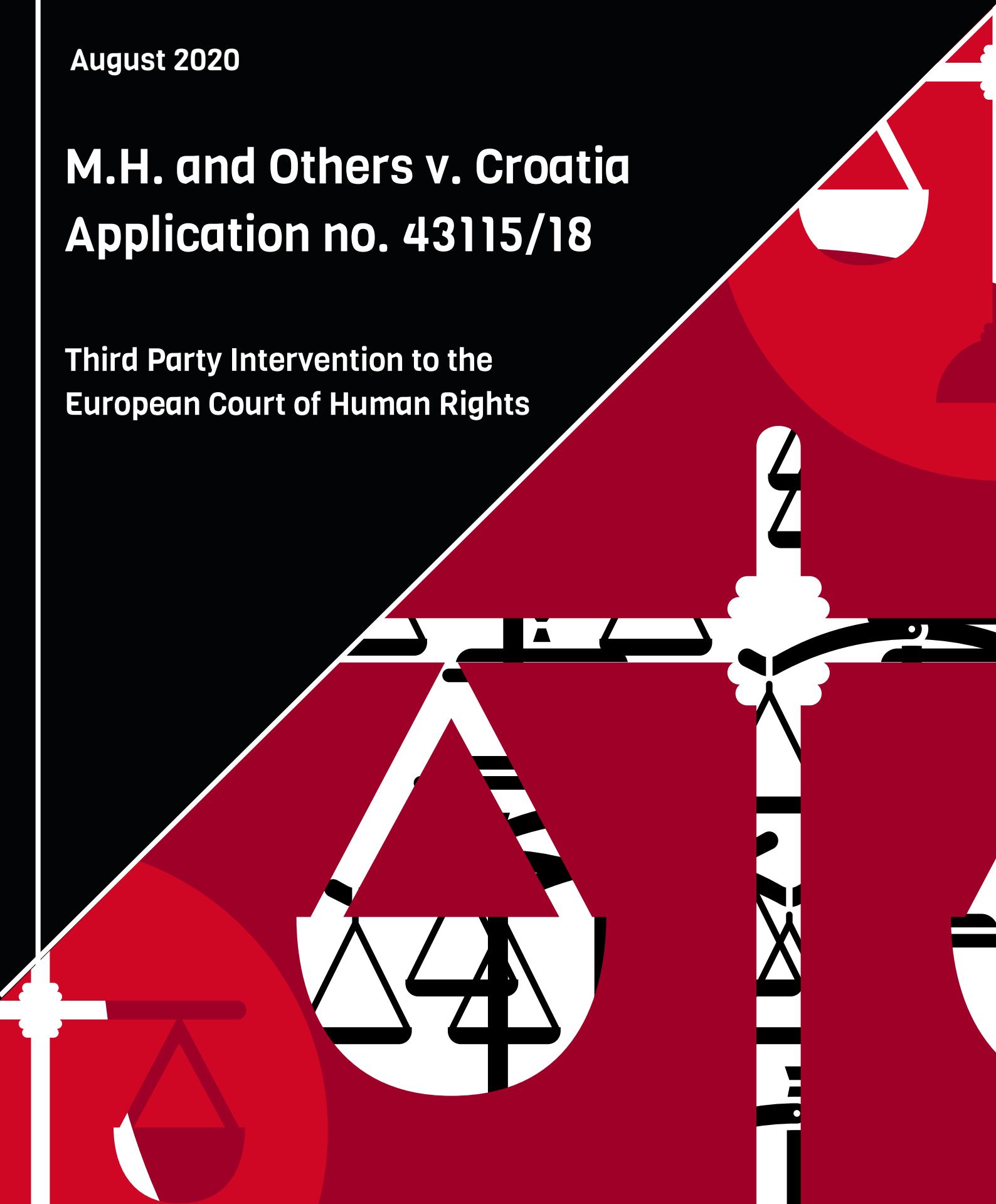
Border Violence Monitoring Network

August 2020

M.H. and Others v. Croatia

Application no. 43115/18

Third Party Intervention to the
European Court of Human Rights



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Third party intervention

by Rigardu e.V.

under Article 36, paragraph 2, of the European Convention on Human Rights

Application no. 43115/18

M.H. and Others (no.2) against Croatia

August, 2020

Summary

- I. The intervenors bring to the Court's attention numerous corroborating independent reports of police practices of violent push-backs from the territory of Croatia into Serbia and Bosnia and Herzegovina. These include different methods of cruel and inhumane treatment, including: beating people with batons, confiscation of property, chasing by dogs, forcing people to walk for many kilometers without shoes or completely in the nude in adverse weather conditions. There are additionally numerous reports of practices that can only be described as torture, for example smearing sauces and food into the open wounds of migrants, tethered onto trees. Since 2017, 19% of all recorded pushback cases from Croatia involved the use of firearms, affecting 1279 people. From the relevant reports and the conduct of Croatia's officials in the wake of such allegations it can only be concluded these practices are implemented intentionally and systemically with the aim to deter migrants from crossing into the European Union and lodge applications for international protection.
- II. In order to fully comply with the positive obligations arising from Article 2, to protect individuals whose right to life is at risk, the Contracting Party must take preventive operational measures. The intervenors hold that Croatia has failed to take any preventive operational measures to protect the push-back victims against real and imminent risks that Croatia knew, or ought to have known about, arising from the inherently dangerous practice of push-backs. Croatia's contribution to the risks faced by the victims further accentuates the need to uphold their positive obligations to ensure the right to life of push-back victims.
- III. In relation to the procedural aspect of Article 2, the intervenors emphasise the importance of compliance with the procedures required for an investigation to be effective. This is with special regard to the tendencies in other procedures involving asylum seekers to discredit statements for which they cannot provide evidence. Furthermore several statements from Croatian authorities are presented in order to point out the categorical lack of adequate response from Croatia regarding the illegal push-backs and related law enforcement brutality. In connection with this, the intervenors argue that there are systematic circumstances that should be taken into consideration when assessing the effectiveness of investigation.

A. Background information on the situation on the border between Croatia and Serbia since 2016

Croatian police practice of push-backs

1. This intervention illuminates practices of violent expulsions of aliens which have been employed by the Republic of Croatia and other Contracting Parties along the Balkan migratory route in recent years. **The exposed reports reveal how people are regularly informally and arbitrarily expelled from one territory to another across the region, often with the use of brutal violence by state authorities, causing serious bodily and psychological harm and even death.**
2. In late 2015 the state authorities along the Balkan corridor officially organised the transfer of migrants across the Western Balkans towards Northern and Western European countries, effectively suspending the Schengen Border Code.¹ In relation to arbitrary and informal expulsions from Croatia specifically, independent activists from the Moving Europe Project first reported in 2016 that the practice of informal expulsions by Croatian law enforcement had started before the 18th November 2016, when the state-controlled movement of asylum seeking migrants through the Balkan Corridor became restricted for people without Syrian, Iraqi or Afghani travel

¹ van Bijlert, M., Bjelica, J., Afghan Exodus: The opening and closing of the Balkan corridor. Afghanistan Analysts Network, 2016. Available at: <https://www.afghanistan-analysts.org/en/reports/migration/afghan-exodus-the-opening-and-closing-of-the-balkan-corridor/> [accessed 9 August 2020].

documents.² The Moving Europe Project noted, “as a consequence of their denial to travel on the official route, people started to find other ways to move towards the North. These ways often entail walking for days through forests with no possibility to receive any form of support. In the current cold winter weather, with rain, snow and minus temperatures this is a dangerous endeavour that puts people in a vulnerable position.”³ Furthermore, their report included accounts and testimonies of police violence on the part of Croatian police and violations of the right to seek asylum.⁴

3. In the upcoming months the practice was further bolstered and testimonies of violent push-backs increased. In January 2017 UNHCR, in its’ Serbia Update of 23-25 Jan 2017,⁵ mentions individuals sleeping rough in Belgrade city center claiming “to have been expelled from the neighbouring Hungary and Croatia”. In the Serbia Update of 2-5 Feb 2017⁶ UNHCR writes: “During the last four days over 60 asylum-seekers informed UNHCR and partners to have been denied access to asylum procedures in Hungary and Croatia but instead been collectively expelled back into Serbia, many alleging serious maltreatment by the authorities of these EU member states.” Similar claims of collective expulsions are summarily reported in most of the UNHCR Serbia Updates of 2017, indicating the new practice was not a single event, but a coordinated shift in policy on the part of Croatian (and Hungarian) police.
4. In April 2017 Belgrade Centre for Human Rights and Macedonian Young Lawyers Association produced a report⁷ with testimonies from 140 migrants, including refugees, gathered between 30 January and 17 February 2017. Of the 140 people interviewed, 75 had been expelled from Hungary to Serbia, 19 from Croatia to Serbia, 44 from Serbia to either Bulgaria or Macedonia, one from Macedonia to Greece and seven from Bulgaria to Turkey. Some were expelled multiple times and from more than one location. The vast majority came from Afghanistan, the others from Pakistan, Syria, Iraq, Iran, Egypt and Lebanon. The report cites Nabil, from Afghanistan, on his experience in Croatia: “I am very sad. I have attempted 20 crossings. Once a boat we were in capsized. There were a lot of people in the water. The police caught us and put us in an air conditioned car. It was very cold. They took us to a railway track and they took off our clothes, shoes and everything. They beat us again and again.” Aarif, from Afghanistan, on his experience in Croatia: “Yes, I have tried three or four times to cross the Croatian border. I was caught on the other side by the police, who put us in a car and turned on the airconditioning. It was very cold. Then they threw away our blankets and jackets, and left us on the Serbian border. They took our mobiles and our money, and beat us so harshly we couldn’t get up. They beat my friend and broke his head.”
5. In 2017 Médecins Sans Frontières (MSF) produced a report⁸ of their findings while providing health services for migrants stranded in Belgrade, Serbia, entitled ‘Games of Violence’. In the section about push-backs from Croatia, they reported that from January to June 2017, across Serbia they “treated and documented a total of 24 cases of intentional trauma of which 18 of them occurred between the end of May and June. Since then, MSF medical teams have continued to treat the victims of violence in this border area. The injuries reported follow similar patterns to

² Banich, S., Gerbig, L., Homberger, A., Report on Systemic Police Violence and Push-Backs against Non-SIA People Conducted by Croatian Authorities. Moving Europe, Belgrade, 2016, p. 2. Available at: http://moving-europe.org/wp-content/uploads/2016/01/28.01.2016_Report-Police-Violence-and-PushBacks.pdf [accessed 9 August 2020].

³ *Ibid.*

⁴ Banich, S., Gerbig, L., Homberger, A. (2016) Report on Systemic Police Violence and Push-Backs against Non-SIA People Conducted by Croatian Authorities. Moving Europe, Belgrade, 2016, p. 7.

⁵ Available at: <https://data2.unhcr.org/en/documents/details/53339> [accessed 9 August 2020].

⁶ Available at: <https://data2.unhcr.org/en/documents/download/53567> [accessed 9 August 2020].

⁷ Belgrade Centre for Human Rights, Macedonian Young Lawyers Association, A DANGEROUS ‘GAME’: The pushback of migrants, including refugees, at Europe’s borders. Oxfam International, 2017.

⁸ Médecins sans frontières, Games of Violence. 2017. Available at: <https://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf> [accessed 9 August 2020].

those observed in December last year: beatings with sticks, kicking and punching, robbery, and the destruction of personal items notably mobile telephones.”⁹ They noted: “While smugglers and traffickers continue to be responsible for a small percentage of the violence 8% (5), the great majority of children cared for by MSF named state authorities as perpetrators (76%), of which majority (92%) were EU border forces: Bulgaria 48% (30), Hungary 27% (17) and Croatia 13% (8). In the first 6 months of 2017 69% (86) of MSF’s mental health patients under 18 reported experiencing direct violence. The majority 57% (71) had visible physical injuries, including cuts with razor blades and knives, severe beatings, food and water deprivation, sensory deprivation. The youngest patient treated was just 12 years old.”¹⁰ In the section ‘Winter as a weapon’ they observed that “many who attempted to cross during the winter reported degrading and inhumane treatment, including being forced to strip naked, stand in the snow and walk barefoot back to Serbia in sub-zero temperatures”.¹¹ Reports with similar content were produced by Amnesty International.¹²

6. In July 2017 the intervenors produced a report¹³ of testimonies of push-backs from Croatia to Serbia, gathered while doing field work in Šid, Serbia, noting: “Since the middle of May we have seen more and more people coming back from the border with strong injuries. In the following days people continuously came to us, showing new bodily harms. We began to document and record them. ... // ... Our documented cases reinforce the suspicions of observers on the ground, that these attacks are part of a systematic deterrence strategy. The fear of becoming a victim of violence is supposed to deter people attempting a border crossing and to destroy their hope of success.”¹⁴ In the report 10 cases of recorded violent push-backs between 31st May and 13th July 2017 were presented. These included the following forms of violence used by Croatian law-enforcement: beating (with hands, feet, wooden sticks, batons), swearing, destroying of phones, dragging across the ground, photographing without consent, hitting the head with the butt of a gun, use of EDWs, shining light in the eyes, taking valuables etc. One victim was kicked in the head until they lost consciousness¹⁵, one victim received hematomas on their back, contusion at the kneecap¹⁶, and in several cases there were minors involved¹⁷.
7. It is notable from all reports of so-called push-backs conducted by Croatian police that the expulsion of aliens is not conducted in an official manner or through an official procedure, and completely disregards any national, EU or international legal or administrative framework established for procedures concerning aliens, asylum seekers, detention, the use of force by police etc. The persons, who are in fact arrested and detained by Croatian police, are in general not informed of their rights or reasons for arrest, they are not provided with legal aid or access to legal remedy, they are not given a chance to state the reasons for their stay in Croatia, and they

⁹ *Ibid.*, p. 9.

¹⁰ *Ibid.*, p. 4.

¹¹ *Ibid.*, p. 12.

¹² Amnesty International, Amnesty International Report 2017/18 - Croatia, 22 February 2018. Available at: <https://www.refworld.org/docid/5a9939204.html> [accessed 9 August 2020]; Amnesty International, Pushed to the edge: violence and abuse against refugees and migrants along the Balkans route. Amnesty International, 2019. Available at: <https://www.amnesty.org/download/Documents/EUR0599642019ENGLISH.PDF> [accessed 9 August 2020]; Amnesty International, Croatia: EU complicit in violence and abuse by police against refugees and migrants, 13 March 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/03/croatia-eu-complicit-in-violence-and-abuse-by-police-against-refugees-and-migrants/> [accessed 9 August 2020].

¹³ Rigardu e.V., Violence Reports: documented by Rigardu team members at the Serbian-Croatian border (2017). Available at: https://rigardu.de/wp-content/uploads/2017/07/Rigardu_report_may_july.pdf [accessed 9 August 2020].

¹⁴ *Ibid.*, p. 2.

¹⁵ *Ibid.*, p. 7.

¹⁶ *Ibid.*, p. 15.

¹⁷ *Ibid.*, p. 5, 7, 9, 13.

are not given a chance to ask for international protection. They are not informed of the aim of the “procedure” and do not know what is going to happen to them. **It is evident from the described characteristics that persons find themselves in the position of an object of the “procedure” relating to their status and their person. Such practice is in direct contradiction to any notion of human dignity and therefore in direct opposition to the very essence of the Convention, which is “respect for human dignity and human freedom”.**¹⁸

8. Numerous reports in the months and years following 2016 confirm the systematic nature of violent police practices and detail increasingly brutal and degrading methods¹⁹, used indiscriminately against children, unaccompanied minors and other notably vulnerable groups.²⁰ Reports expose use of gun violence against intercepted migrants as a form of threat and also the shootings of migrants by Croatian authorities.²¹ In November 2019, ‘Are You Syrious?’ reported that *“The Border Violence Monitoring Network have shared their dataset of firearms incidents, proving the regular and systematic use of guns by the Croatian police during pushback operations. The statistics, drawn from the common database, show: 19% of all recorded pushback cases from Croatia involved gun use, affecting 1279 people. In 2019, the pushbacks of 770 people from Croatia involved gun use. Of the 54 group cases: 31 cases gunshots were fired by police officers; in 33 cases guns were used to threaten respondents. In October 2019 alone, 17% of recorded pushback cases from Croatia involved the threatening with, or shooting of firearms by police. This firearms use targeted a total of 285 people. Across the Balkan Region, BVMN has recorded 107 incidents of gun use by police, including: 63 cases where gunshots were fired by police officers; 63 cases where guns were used to threaten respondents.”*²² With many occurrences undocumented, the actual number of cases is likely to be much higher. The Border Violence Monitoring Network additionally issued a comprehensive report examining Croatian police methods of torture and inhumane treatment in 2019.²³ In 2020 there were new horrifying practices reported, such as the case of a group of migrants and asylum seekers who were “bound, brutally beaten and tortured by officers who mocked their injuries and smeared food on their bleeding heads to humiliate them”²⁴ and the spray-painting of victims heads with crosses²⁵. A

¹⁸ *Christine Goodwin v. the United Kingdom*, no. 28957/95, 11 July 2002, § 90; *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, 17 July 2014, § 118; *Pretty v. the United Kingdom*, no. 2346/02, 29 April 2002, § 65.

¹⁹ Per example: No Name Kitchen, Re:Ports Sarajevo, Border Violence Monitoring (2019) Illegal pushbacks and border violence reports Šid Serbia, December 2018 - march 2019. Available at: <http://www.nonamekitchen.org/wp-content/uploads/2019/04/SidreportsMarch.pdf> [accessed 9 August 2020].

²⁰ Per example: Border Violence Monitoring Network, Centre for Peace Studies, Society for Psychological Assistance, Welcome Initiative (2020) Pushback report on children and unaccompanied children in Croatia, Centar za mirovne studije, Zagreb. Available at: https://www.cms.hr/system/article_document/doc/647/Pushback_report_on_children_and_unaccompanied_children_in_Croatia.pdf [accessed 9 August 2020].

²¹ Per example: AYS Special: It is proven, Croatian police regularly shoots at people. 19 November 2019. Available at: <https://medium.com/are-you-syrious/ay-special-it-is-proven-croatian-police-regularly-shoots-at-people-45f2308ce0a1> [accessed 9 August 2020].

²² *Ibid.*

²³ Border Violence Monitoring Network, Torture and Cruel, Inhumane or Degrading Treatment of Refugees and Migrants in Croatia in 2019. BVMN, 2020. Available at: <https://www.borderviolence.eu/wp-content/uploads/CORRECTEDTortureReport.pdf> [accessed 9 August 2020].

²⁴ Amnesty International, Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers, 11 June 2020. Available at: <https://www.amnesty.org/en/latest/news/2020/06/croatia-fresh-evidence-of-police-abuse-and-torture-of-migrants-and-asylumseekers/> [accessed 9 August 2020].

²⁵ Tondo, L., Croatian police accused of spray-painting heads of asylum seekers. Guardian, 12 May 2020. Available at: <https://www.theguardian.com/global-development/2020/may/12/croatian-police-accused-of-shaving-and-spray-painting-heads-of-asylum-seekers> [accessed 9 August 2020].

physician in Velika Kladuša, BiH told AI that approximately 60% of migrants and asylum-seekers who required medical treatment reported that their injuries were inflicted by the Croatian police while they were trying to cross the border, noting: “*Many injuries involve fractures of long bones and joints. These bones take longer to heal and their fractures render the patient incapacitated for extended periods of time. This appears to be a deliberate strategy – to cause injuries and trauma that take time to heal and would make people more reluctant to try to cross the border again or any time soon*”.²⁶

B. The international and European standards relating to Positive obligation of the Contacting Parties to protect the Right to life

9. Right to life, the first right guaranteed in the Convention, is absolute and “*enshrines one of the basic values of democratic societies making up the Council of Europe*”.²⁷ Article 2 places upon states a positive obligation to protect the right to life, meaning that states must not only refrain from the intentional and unlawful taking of life, but also “take appropriate steps to safeguard the lives of those within their jurisdiction”.²⁸ The Court has established that this involves a primary duty on behalf of the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by legal avenues for the prevention, suppression and punishment of breaches of these provisions.²⁹ This appropriate legal and administrative framework calls for regulation of the conduct of police and other state agents, as well as of activities and situations that may involve a risk to life.³⁰ The Court has reiterated, in its extensive jurisprudence, that a legal and administrative framework should define the limited circumstances in which law-enforcement officials may use force and firearms, with respect to the international standards which have been developed for this purpose.³¹
10. Furthermore, in addition to the legal and administrative framework, the Court has found that “Article 2 of the Convention may also imply in certain well-defined circumstances a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual”.³² To establish the scope of obligations on the part of the authorities in specific cases, the Court has developed *the Osman test*: “*it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*”³³
11. While the *Osman test* was originally used for threat of violence from non-state actors, it is important to note that the test has been used in a wide array of circumstances. The Court has used it to test for breaches of Article 2 in natural disasters in the case of *Öneryıldız v. Turkey*, and the Inter-American Court of Human Rights has gone further to employ the *Osman test* for situations of inadequate living conditions of indigenous peoples.³⁴

²⁶ *Ibid.*

²⁷ *McCann and Others v. the United Kingdom* [GC], no. 18984/91, 27 September 1995, § 147.

²⁸ *L.C.B. v. the United Kingdom*, no. 23413/94, 9 June 1998, § 36.

²⁹ *Makaratzis v. Greece* [GC], no. 50385/9, 12 December 2004, § 57.

³⁰ Harris, D., O’Boyle, M., Bates, E., Buckley, C., *Law of the European Convention on Human Rights* (third edition), Oxford University Press, Oxford, 2014, p. 204.

³¹ *Makaratzis v. Greece* [GC], no. 50385/9, 12 December 2004, § 59.

³² *Osman v. the United Kingdom*, No 23452/94, 28 October 1998, § 115.

³³ *Ibid.*, § 116.

³⁴ IACHR, *Sawhoyamaya Indigenous Community v Paraguay*, Judgment of March 29, 2006 (Merits, Reparations and Costs) § 155. and IACHR, *The Xákmok Kásek Indigenous Community v. Paraguay* Judgment of August 24, 2010 (Merits, Reparations, and Costs) § 188-193. The IACHR found in both cases that the indigenous

12. The first dynamic to be established for the Osman test is whether there is a risk to right to life which is “real” and “imminent”. “*Real and imminent risk*” should be understood as a risk that is not speculative but is objectively given and has a certain likelihood of materializing at any time.³⁵ However, the jurisprudence of the Court and other international tribunals show that the criteria of “real and imminent risk” should not be interpreted too restrictively. In *Maiorano v. Italy*³⁶ the Court established that “real and imminent risk” does not necessarily mean “over 50% likely”. The court held that the criminal past and general dangerousness of a prisoner going on parole for one day was a fulfilment of “real and imminent risk”, without the prisoner having any plans for violent crimes when leaving for parole. Furthermore, the IACHR has interpreted “real and imminent risk” as “specific danger ... that could materialize in situations that would affect the civilian population.”³⁷, without the need to know a specific time and date of the harm. In other words, the “real and imminent risk” requirement has not been interpreted with any specific percentage in mind and must not be understood too strictly with the byproduct of excluding legitimate existing risks.
13. Secondly, under the Osman test it must be established that “*authorities knew or ought to have known*” the existence of the risks. This knowledge can be established with empirical evidence to confirm the knowledge that there exists a risk to life, so to say “a violation of a human right is just another case waiting to happen.”³⁸ Accordingly, empirical knowledge of push-back situations should confirm that push-backs in the border zone between Croatia and Serbia are inherently dangerous. Furthermore, Croatia has received reports of push-back practices as early as 20th December, 2016,³⁹ clearly demonstrating Croatia’s awareness of issues relating to push-backs. The intervenors will also draw attention to the fact that push-backs often involve children, either in family groups or unaccompanied. The court has ruled that the authorities must pay special attention to children, who cannot be expected to act with the same standard of predictability as adults.⁴⁰ Moreover, the IACHR contributed another relevant case, ruling in its decision of the *Pueblo Bello Massacre v. Colombia* that when the state contributes to the creation of a dangerous situation it can contradict state’s positive obligations to prevent harm and protect individuals under its jurisdiction.⁴¹ **With the aforementioned illegal practices of push-backs by Croatian law-enforcement so far acting with impunity and even condoned by state officials, it is established without doubt that Croatia has contributed to the creation of the dangerous situation related to the push-backs and therefore Croatia’s positive obligations to prevent harm should be accentuated.**
14. Thirdly, in the Osman test, there must be “*an identified individual or individuals*” whose right to life is being endangered. In each specific case of push-backs the victims are clearly an identifiable group of migrants or individual migrants.

communities were living in a state of nutritional, medical, and health vulnerability, which gave rise to the positive obligations of the state to ensure that their right to life would be respected.

³⁵ Stoyanova, V., Causation between State Omission and Harm within the Framework of Positive Obligations under the European Convention on Human Rights. 18 Human Rights Law Review, 2018, p. 309, 335-336.

³⁶ *Maiorano v. Italy*, no. 28634/06, 15 December 2009.

³⁷ IACHR, Case of the Pueblo Bello Massacre v Colombia, Judgment of January 31, 2006 (Merits, Reparations and Costs), § 125.

³⁸ Xenos, D., *The Positive Obligations of the State under the European Convention of Human Rights*. Routledge, 2012, p. 82.

³⁹ HRW, Croatia: Asylum Seekers Forced Back to Serbia. January 20th, 2017. Available at: <https://www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia>. “*Human Rights Watch wrote to Croatia’s Interior Ministry, on December 20, informing officials of the findings and requesting comment but has yet to receive a response.*”

⁴⁰ *Pasa and Erkan Erol v. Turkey*, no. 51358/99, 2006, § 36.

⁴¹ IACHR, Case of the Pueblo Bello Massacre v. Colombia Judgment of January 31, 2006 (Merits, Reparations and Costs) § 126.

15. Lastly, the authorities must have “*failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*” Similarly, the Court has found that the positive obligation “... must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.”⁴² In light of the above, the intervenors call attention to the fact that Croatia has failed to take any preventive measures to protect the people who are pushed-back, and indeed abandons them to their fate. Even the simple measures of choosing a more adequate time of the day for the push-back, warning individuals of the possible dangers on the way, or advising on the safest routes, have not been reported in any of the push-back cases and could be reasonably judged to be expected to avoid the risk to life inherent to push-back practices.
16. In fact it could be argued that Croatian law-enforcement intentionally choose especially dangerous methods, exacerbating risk to life, with the intent to deter migration. Similar observations were made, for example, by the UN Special Rapporteur on the Human Rights of Migrants, Felipe González Morales, in his end of visit statement on Bosnia and Herzegovina, which occurred between 24 September and 1 October 2019. The Special Rapporteur was describing push-backs into Bosnia specifically, but the same implications may be drawn for the case of push-backs into Serbia.⁴³ The Special Rapporteur remarked that, “*as most of the migrants in BiH have attempted to cross the border to Croatia, I have received reliable information about violent pushbacks of migrants and asylum seekers by Croatian border police into the territory of BiH. According to the testimonies that I received, many migrants were forcibly escorted back to BiH without going through any official procedure. The concrete tactics vary; however, common patterns include the capture of people on the move, confiscation of their properties, especially communication equipment, beating with batons and chasing by dogs with the purpose of physically exhausting them and preventing them from attempting another crossing. A number of male migrants were reportedly stripped, beaten and forced to walk back to BiH barefoot. The abusive actions by the Croatian border police clearly violate the human rights of these individuals. In reality, this pushback approach has not deterred people on the move from advancing towards the European Union territory. Instead, it has led to a flourishing network of smugglers and organised criminal activities, which require immediate attention and action by all countries in the region.*”
17. That such violent, dehumanizing and potentially life-endangering practices are employed intentionally is also implied if we examine the methods of push-backs. One notable trend is the practice of stripping people of their clothes and shoes and forcing them to walk, even under threat of gun shots, for 20 or more kilometers in very low temperatures and even snow.⁴⁴ Walking for hours without shoes, navigation, food or water while being exhausted undeniably poses serious risk to life.
18. The intervenors furthermore emphasize that in *Öneryildiz v. Turkey*, the Court also stressed the relevance of ‘the potential risks inherent’ to the activity in question and the context of any activity, whether public or not, in which the right to life may be put at stake⁴⁵ in relation to an accident at waste collection operations which, according to the Court, were inherently dangerous. The intervenors submit that the data collected in the reports on push-backs, which show widespread dangers and risks to the people on the move, demonstrates that push-backs are inherently dangerous. It can therefore be argued that the inherent dangers of push-backs oblige that states enforce adequate safeguards to protect those under their jurisdiction.

⁴² *Osman v. the United Kingdom*, No 23452/94, 28 October 1998, § 116.

⁴³ Due to the sheer amount of reports with similar violent practices of Croatian police.

⁴⁴ Amnesty International, Croatia: EU complicit in violence and abuse by police against refugees and migrants, 13 March 2019. Available at: <https://www.amnesty.org/en/latest/news/2019/03/croatia-eu-complicit-in-violence-and-abuse-by-police-against-refugees-and-migrants/> [accessed 9 August 2020].

⁴⁵ *Öneryildiz v. Turkey* [GC], no. 48939/99, 2004, § 65 and 71.

19. Moreover, the Court has ruled that Article 2 cannot be interpreted as a guarantee of an absolute level of security in all cases, especially regarding careless travellers.⁴⁶ However, the reports and testimonies show that the victims of push-backs cannot be deemed careless. When the victims do not have any information on how or where to go and are, in effect, acting under duress from state authorities, they cannot be considered careless travellers.

C. Importance of persistent implementation of European standards relating to procedural obligations of Article 2 and acknowledgment of systemic deficiencies

20. This intervention reiterates that the obligation to Article 2, to protect the right to life, also imposes a procedural obligation upon the state to investigate deaths, whether they occur at the hands of State agents, private persons or persons unknown. The obligation extends beyond violent deaths, to all cases of deaths other than from natural causes.⁴⁷ The essential purpose of investigation is to secure the effective implementation of those domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.⁴⁸ Such procedural obligations are paramount to upholding the rule of law in democratic societies, especially in the event that the legal and administrative framework relating to protecting right to life is infringed upon - especially when done so by the state authorities. Accordingly, the Court observed in *Ramsahai and Others v. Netherlands*, that when State agents with a capacity for the use of force are involved, “*what is at stake here is nothing less than public confidence in the State’s monopoly on the use of force*”.⁴⁹
21. Several elements must be met for the investigation to be effective. Among others, the investigation must be adequate in the sense that it takes all the reasonable steps available to determine the relevant circumstances of the case.⁵⁰ It is also necessary for the persons, responsible for and carrying out the investigation to be independent from those implicated in the events.⁵¹ This means not only a lack of hierarchical or institutional connection but also a practical independence: a person who has the obligation to carry out the investigation cannot only or heavily rely on the statements of one of the involved parties, for example on a gendarmerie incident report in the case where gendarmes were implicated in the incident.⁵²
22. The intervenors predicate these two elements must be given special consideration in cases involving state actors authorized for use of force, and cases of migrant deaths and severe injury, since it has been acknowledged that there are certain difficulties in asylum procedures regarding the assessment of the credibility of statements.⁵³ Basic challenges such as multi-lingual and

⁴⁶ *Bone v. France* (dec.), no. 69869/01.

⁴⁷ Harris, D., O’Boyle, M., Bates, E., Buckley, C., *Law of the European Convention on Human Rights* (third edition), Oxford University Press, Oxford, 2014, p. 214.

⁴⁸ *Kelly and Others v. the United Kingdom*, no. 30054/96, § 94.

⁴⁹ *Ramsahai and Others v. the Netherlands*, no. 52391/99, § 325.

⁵⁰ *Hugh Jordan v. the United Kingdom*, no. 24746/94, § 107.

⁵¹ *Ibid.*, § 106.

⁵² *Ergi v. Turkey*, no. 66/1997/850/1057, § 83-85.

⁵³ See for example: Evidence and credibility assessment in the context of the Common European Asylum System, EASO, 2018, p. 31-32. Available at:

https://www.easo.europa.eu/sites/default/files/EASO%20Evidence%20and%20Credibility%20Assesment_JA_EN_0.pdf [accessed 9 August 2020]. See also: Beyond Proof Credibility Assessment in EU Asylum Systems, UNHCR, May 2013. Available at: <https://www.unhcr.org/51a8a08a9.pdf> [accessed 9 August 2020]: “*A common trend that UNHCR identified in its 2010 study on the implementation of the Asylum Procedures Directive in 12 EU Member States, based on an audit of more than 1,000 cases, was that negative decisions were often made on credibility grounds and failed to apply the criteria of the Qualification Directive to accepted facts. In France, for instance, the great majority of negative decisions audited were cases where the application was rejected on credibility grounds [‘faits non établis’]. In Germany, in about 75 per cent of the cases audited by UNHCR in which refugee protection was denied, decisions were based on the assessment that the applicant’s presentation of the facts was not credible.*”

cross-lingual communication can be translated to other procedures as well, constituting an existing risk of the tendency to discredit asylum seekers⁵⁴ testimonies for which they cannot provide evidence and stronger reliance on official reports, which can only be limited by complying with the standards of effective investigation as established by the Court. In cases involving the arrest and detention of people, whether executed in accordance with legal provisions or, as in the case of push-backs by Croatian police authorities, when arrest and detention is more of a factual nature than a legal one,⁵⁵ the importance of shifting the burden of proof onto the Contracting Party to provide immaculate evidence of the whole procedure must be reiterated. To ensure effectiveness and promptness of investigation into allegations of systemic violations of basic human rights on the part of the state authorities, the intervenors further submit that the Contracting Party should be responsible for setting up an independent mechanism to investigate these systemic violations of fundamental human rights, such as the right to life.

23. In light of aforementioned standards and conceptions, the intervenors emphasize a categorical lack of adequate response from Croatian authorities in regards to illegal push-backs and related law enforcement brutality, and ardent denial of any allegations.

24. There are several statements from Croatian authorities denying the illegality of police practices despite numerous contrary reports. For example, an official statement from the Ministry of Interior was issued in 2019 claiming that *“all reports from non-governmental organizations and other organizations received by the Ministry so far about alleged use of coercive measures against migrants by police officers have been verified, bearing in mind that, as a rule, these reports do not contain sufficient information needed for criminal investigation. [...] An examination of the allegations has so far identified several cases of false declarations.”*⁵⁶ Such “verification” of “all reports from non-governmental organizations and other organizations received by the Ministry so far” was never presented to the public in any way and due to the sheer amount of reported cases (the figures of reported cases of push-backs since 2016 are in the thousands) raises serious doubt over the requirement that the *investigation must be adequate in the sense of taking all the reasonable steps available to determine the relevant circumstances of the case.*
25. The most recent indication that there is a corresponding wider political indifference towards the existence of the illegal practice, which enables a lack of national response, is an article the Guardian published in June 2020 which exposed correspondence between EU officials on deciding against the full disclosure of Croatia's lack of commitment to border brutality monitoring mechanisms.⁵⁷ After several years of reports of serious allegations and numerous fact-finding missions, conducted not only by non-governmental organisations but also by international bodies such as the UN Special Rapporteur on the human rights of migrants, Felipe González Morales⁵⁸ and Ms Tineke Strik, Rapporteur for CoE PA Committee on Migration,

⁵⁴ This term is used involving migrants, who are en route to safe regions where they will be enabled to effectively file for international protection as is their right according to international and EU law and are thus not yet officially recognized as asylum seekers, since they had not yet been able to officially institute the proceedings.

⁵⁵ Since as explained above, there is no documentation of the arrests issued to the persons involved, no official records of arrests, no basic rights to legal aid, statement, judicial review etc.

⁵⁶ Response of the Ministry of the Interior to the report of Human Rights Watch, 9th November 2019, available at: <https://mup.gov.hr/vijesti/response-of-the-ministry-of-the-interior-to-the-report-of-human-rights-watch/285859?fbclid=IwAR0Y6bmGwk4Ui-3uPeaxzzZCLKfm3cYzaaIU2VLpnlJc8UkuzUPYiWfGE> [accessed 9 August 2020].

⁵⁷ EU 'covered up' Croatia's failure to protect migrants from border brutality, 15th June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/15/eu-covered-up-croatias-failure-to-protect-migrant-s-from-border-brutality> [accessed 9 August 2020].

⁵⁸ End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, Bosnia and Herzegovina 24 September – 1 October 2019, available at:

Refugees and Displaced Persons⁵⁹, confirming said allegations, and specifically receiving allocated funding by the European Union, **Croatia still has not implemented an independent monitoring mechanism**. While Croatian authorities continue to refuse to assist the Croatian Ombudswoman in her investigation of push-back cases.⁶⁰

26. At the same time there are statements from state officials that confirm illegal practices with a concerning tone in their endorsement. The already cited statement from the Ministry of Interior also maintains that the police “*allow them [migrants] access to the international protection system if they need such protection*”, which clearly indicates that they - the police - are the authority adopting the decision who “needs” international protection and who does not.⁶¹ There is also a statement from Croatian president at the time, Kolinda Grabar-Kitarović, denying that push-backs are illegal and admitting that police officers use force during push-backs, in fact claiming: “*I have spoken with the interior minister, the chief of police and officers on the ground, and they assured me they have not been using excessive force. Of course, a little bit of force is needed when pushing people back*”.⁶²
27. The Court has already considered statements from state officials in establishing the applicability of the Convention. In the case of *Hirsi Jamaa and Others v. Italy* when assessing whether there has been an “expulsion” even though the persons in question were not on Italian territory, it concluded that “*the operation resulting in the transfer of the applicants to Libya was carried out by the Italian authorities with the intention of preventing the irregular migrants disembarking on Italian soil*” essentially based on the statements given by the Italian Minister of the Interior to the press and State Senate.⁶³ And in the case of *Pitsayeva and Others v. Russia*, the Court held that although recourse to criminal justice will often be necessary in order to fulfil the procedural obligations of Article 2, it will not suffice in some situations where effective criminal investigation is, to all intents and purposes, ineffective because of a systemic problem.⁶⁴ **Thus, the intervenors argue that there are similar systematic circumstances that should be taken into consideration when assessing the conduct of the Contracting Parties’ pertaining to the respect for the basic human rights of migrants and asylum seekers, and the effectiveness of any investigation following allegations of violations of rights of the forenamed group on the**

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25088&LangID=E> [accessed 9 August 2020].

⁵⁹ Report: Pushback policies and practice in Council of Europe member States, Doc. 14645, Reference 4414 of 21 January 2019.

⁶⁰ No institutional reaction to alleged illegal police treatment of migrants, Pučki pravobranitelj, Republika Hrvatska, 25 July 2019. Available at: <https://www.ombudsman.hr/en/no-institutional-reaction-to-alleged-illegal-police-treatment-of-migrants/> [accessed 9 August 2020].

⁶¹ Response of the Ministry of the Interior to the report of Human Rights Watch, 9th November 2019. Available at: <https://mup.gov.hr/vijesti/response-of-the-ministry-of-the-interior-to-the-report-of-human-rights-watch/285859?fbclid=IwAR0Y6bmGwk4Ui-3uPeaxzzZCLKfm3cYzaaUrU2VLpnlJc8UkuzUPYiWfGE> [accessed 9 August 2020].

⁶² The whole interview, entitled *Kroatiens Präsidentin Grabar-Kitarović zur Balkanroute*, published on 6th July 2020 on Swiss television SRF is available at: https://www.srf.ch/play/tv/tagesschau/video/kroatiens-praesidentin-grabar-kitarovi-zur-balkanroute?id=68ae3d79-230b-4af6-a318-717b9aa8a514&fbclid=IwAR0thheIG9J0CfzWBYn1aRqtM1m4Z7KPA-d_k8WkPvcQnEyS8AMeVZuZdgA [accessed 9 August 2020].

Article mentioning the President’s statements, entitled *Croatian police use violence to push back migrants, president admits*, published on 16th July 2020. Available at: <https://www.theguardian.com/world/2019/jul/16/croatian-police-use-violence-to-push-back-migrants-says-president> [accessed 9 August 2020].

⁶³ *Hirsi Jamaa and Others v. Italy*, no. 27765/09, § 181.

⁶⁴ *Pitsayeva and Others v. Russia*, nos. 53036/08, 61785/08, 8594/09, 24708/09, 30327/09, 36965/09, 61258/09, 63608/09, 67322/09, 4334/10, 4345/10, 11873/10, 25515/10, 30592/10, 32797/10, 33944/10, 36141/10, 52446/10, 62244/10 and 66420/1, § 471.

part of State actors. From the statements regarding push-backs by Croatian State agents it is clear that there exists a context within which cases involving push-backs and/or border violence tend to be summarily dismissed.