



Border Violence Monitoring Network

September 2023

B.U. v Czechia **Application no. 9264/15**

**Rule 9 Communication to the
Council of Ministers Council of Europe**





Border Violence Monitoring Network

Border Violence Monitoring Network (BVMN)

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Submission by the Border Violence Monitoring Network (BVMN) pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, on the implementation of *B.U. v. The Czech Republic (Application no. 9264/15)*¹.

I. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments, the Border Violence Monitoring Network ("BVMN") hereby presents a **communication with regard to the execution of the general measures** in the European Court of Human Rights ("the Court" or "ECtHR") judgment in *B.U. v. the Czech Republic*
2. BVMN is a network of non-governmental organizations situated along the Balkan and Greek migration route, whose purpose is to monitor and document human rights violations at European borders.² **BVMN works to denounce pushbacks and guarantee safe access to asylum. Since 2017, BVMN has collected more than 1,600 testimonies of pushbacks.** Using this evidence, BVMN

¹ <https://hudoc.exec.coe.int/eng?i=004-62356>

² BVMN is represented under the legal framework of the charity Rigardu e.V., Wurzner Str. 34, 04315 Leipzig, Germany.

produces comprehensive reports, analyzing trends in border violence.³ As well as coordinating participation in legal processes at national, regional and international levels, BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including legal briefings to Special Rapporteurs on the use of torture during pushbacks.⁴ BVMN wishes to provide **input on international legal standards linked to the prohibition of *refoulement*, the prohibition of torture, the right to life and the right freedom from arbitrary detention** and other specific obligations in relation to people's rights at borders.

II. Executive Summary

1. The case of *B.U. v. The Czech Republic* concerns the **alleged ill-treatment of a Turkish asylum-seeker by Czech police**, during the applicant's detention at Prague airport for administrative expulsion proceedings.
2. Whilst the Court were **unable to conclude** beyond all reasonable doubt **that the applicant was subjected to ill-treatment** (contrary to Article 3), holding that the police officers' coercive measures were not disproportionate.
3. The Court **did conclude** that the **Czech Republic had not fulfilled its procedural duty** to conduct an effective investigation into the applicant's allegations of ill-treatment. It was held that the Czech General Inspectorate of Security Forces (GIBS) failed to interview the applicant about his complaint, did not inform him of the results of the investigation and ignored his request to take evidence.
4. There was therefore a breach of the **procedural aspect of Article 3 of the Convention**.
5. The judgment became final on 06/01/2023.
6. In light of the systematic nature of the violations found in the case of *B.U. v. The Czech Republic*, BVMN calls on the Committee of Ministers to:

General Measures

- A. Classify the case under enhanced supervision, considering that human rights violations perpetrated by Czech Police Officers' are a widespread practice and an underlying systemic problem, as evidenced below in this submission with regards to operations carried out in North Macedonia and Hungary by Czech officers.

³ See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

⁴ See for example: BVMN. 2021. Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

- B. Ensure that the Czech Republic will conduct more effective investigations into alleged violations of Article 3 ECHR, by improving the effectiveness and independence of the independent monitoring mechanisms.

III. General Measures

A. Enhanced Supervision

1. We recommended that the Committee of Ministers classifies the case to **enhanced supervision**, considering that **human rights violations** perpetrated by the Czech authorities are a **widespread and systematic practice**.
2. Since 2020, BVMN has recorded 16 testimonies from people on the move, who have mentioned the presence or involvement of Czech officers. Czech officers are mainly present in operations at the Hungarian border with Serbia, and at the North Macedonian border with Greece (this operation was terminated in April 2023 with the arrival of Frontex). This is as a result of an ongoing bilateral agreement between Czechia and North Macedonia, and Hungary respectively, to provide assistance in intercepting and apprehending people on the move. Between 2019 and 2020, 706 Czech police officers have been dispatched to North Macedonia.⁵ In the testimonies collected by BVMN, the Czech officers were identified by their uniform, which read 'POLICE' and included the Czech flag on the shoulders.
3. Included in these testimonies are reports of perpetrated violence by Czech officers against people on the move, which would amount to inhuman and degrading treatment or torture. Across all 16 testimonies collected by BVMN, 15 of them (94%) refer to respondents being beaten and 10 refer to respondents being kicked (62.5%). This exemplifies the systematic use of excessive force to apprehend and pushback people on the move.
4. At Hungarian borders, respondents reported that officers hit them using their flashlights, used electric discharge weapons and pepper-sprayed them. Respondents also state that they were kicked in the ribs and hit after they were commanded to kneel. One respondent stated that the Czech officer told him that 'if they catch me again they're going to break my legs. They said, 'I'll remember you'.⁶ Another respondent stated that after being told to lie on the ground, a Czech and a Hungarian officer proceeded to repeatedly kick him in the ribs (resulting in a hematoma and possible fracture of the ribs) and hit him over the head with a flashlight (resulting in a 5 cm wound).⁷

⁵ Macedonian Young Lawyers Association. October 2020. Common Western Balkan Migration Policy: Borders and Returns Regional Policy Paper II. Pages 7. Available at: https://myla.org.mk/wp-content/uploads/pdf/BRMC-Policy-Paper-website.pdf#new_tab and BVMN. Pushback from North Macedonia: Visual Analysis. Page 9. Available at: <https://borderviolence.eu/app/uploads/Pushback-from-North-Macedonia-Visual-Analysis-6.pdf>, p. 9

⁶ BVMN. August 24, 2022. Everyone was injured, all broken, no one could walk. Available at:

<https://www.borderviolence.eu/violence-reports/august-24-2022-1400-horgos-serbia/>

⁷ BVMN. June 20, 2022. Hit and kicked by a Czech officer, a man is pushed back injured to Serbia. Available at: <https://www.borderviolence.eu/violence-reports/june-20-2022-0400-horgos-serbia/>

5. In North Macedonia, respondents reported how Czech officers apprehended them, whilst on a train to Gevgelija (located in the South, near the Greek Border). Respondents mentioned that these officers became extremely violent with them. There are reports of officers using batons, flashlights and their bare fists to beat respondents, kicking them, using verbal violence and taking or destroying their personal belongings. Respondents recount having their hands tied behind their back whilst being kicked, whilst another respondent was attacked by a police dog.⁸ One respondent recounts the officers saying: ‘we are from Czech. We hate immigrants. So if you come again, we are going to beat you.’⁹
6. In addition, Czech officers have potentially assisted in human rights violations. They have apprehended people on the move, handing them over to national authorities, despite holding knowledge that they would be pushed back. Between 2017 and 2020, Czech police officers have reportedly been responsible for the apprehension of 28,647 people on the move in North Macedonia, Hungary, Serbia and Slovenia.¹⁰ In November 2022, BVMN published a detailed report analyzing 2 pushbacks experienced by a respondent from North Macedonia to Greece. During the second pushback, the respondent was able to obtain video footage while being held at the Vinojug Temporary Transit Center. This footage highlights that a Czech officer (‘officer 2’) was a party to the pushback.¹¹ In addition, officers’ have witnessed violence perpetrated against people, which may be considered to amount to aiding or abetting torture or inhuman and degrading treatment.
7. At least two testimonies report that foreign officers were taking photos and videos of people on the move as violence was perpetrated against them, or that they were watching silently as the other officers were beating and pepper-spraying people in their custody.¹²
8. Reports of pushbacks and ill-treatment from North Macedonia to Greece, in areas where Czech officers are deployed, have also been recorded by the Fundamental Rights Officer of Frontex in his Human Rights impact assessment from 20 March 2023, prior to the deployment of Frontex officers in the area. According to data, between October - November 2022 10,533 people were returned from North Macedonia to Greece. (Please see the Annex 1, page 10, table). Important to

⁸ BVMN. 16 August 2020. They don’t care if he hit you in the eyes, in your head and just he hit you and push you in the Greek side. Available at:

<https://www.borderviolence.eu/violence-reports/august-16-2020-0100-kisava-north-macedonia/>

⁹ BVMN. January 27, 2020. We are from Czech. We hate immigrants. So, if you come again, we are going to beat you. Stop coming here. Available at:

<https://www.borderviolence.eu/violence-reports/january-27-2020-1845-gevgelija-north-macedonia/>

¹⁰ BVMN. Pushback from North Macedonia: Visual Analysis. Available at:

<https://borderviolence.eu/app/uploads/Pushback-from-North-Macedonia-Visual-Analysis-6.pdf>, p. 9

¹¹ Officer 2, Video 3, p. 5 [can be accessed by clicking on the page]

<https://borderviolence.eu/app/uploads/Pushback-from-North-Macedonia-Visual-Analysis-6.pdf>

¹² BVMN. August 3, 2020. European officers watched silently as the North Macedonian police was brutally beating the people. Available at:

<https://www.borderviolence.eu/violence-reports/august-3-2020-1200-prdejtsi-north-macedonia/> and BVMN. August 17, 2023.

They don’t care where they hit you. They hit you in your eyes, everywhere. Available at:

<https://www.borderviolence.eu/violence-reports/august-17-2020-1330-gevgelija-north-macedonia/>

note that Czech officers were withdrawn from North Macedonia in April 2023 when the European Border and Coast Guard Agency commenced operations in the country.

9. Furthermore, on Wednesday 19th April 2023, a 23-year-old woman from Sierra Leone was shot and killed by a police officer at the Greece - North Macedonia border - an area where Czech officers are present.¹³ Czech officers cannot operate in areas where human rights violations occur. States are obliged to adhere to international norms, even when performing acts outside their territory governed by bilateral (police) agreements. Failure to comply with these obligations might constitute a violation of the ECHR.
10. In the judgment *B.U. v. The Czech Republic*, the evidence presented to the case was not sufficient for the Court to rule that, beyond all reasonable doubt, the Czech police officers' had violated Article 3. This was partly due to a lack of effective domestic investigation by the Czech authorities. BVMN argues, based on evidence of similar practices, that whether in this case the authorities did or did not violate Article 3, ongoing violations of human rights are intentionally perpetrated by Czech police in a systematic and widespread manner that calls for enhanced supervision.

B. *Independent monitoring mechanisms*

1. In *B.U. v. The Czech Republic*, the Court was unable to rule on whether there was a violation of Article 3, partly due to lack of effective investigation by the government. It is for this reason that an independent monitoring mechanism is essential, both as a means to find the truth when the facts are contested by the parties, and also as a preventative measure to ensure police officers' abide by international law during detention proceedings.
2. **Serious doubt must be casted on the suitability and efficacy of GIBS to act as an independent monitoring mechanism.**
3. As an organizational component of the state, GIBS is not a truly independent body. The Agency **receives its funding directly from the government** in the budget, which is assessed and modified each year. Additionally, **the director of the organization** is appointed and dismissed by the Government.¹⁴
4. In our own dealings with GIBS, it has become apparent that the case of *B.U. v. The Czech Republic* is not an anomaly. On 8 November 2022, BVMN sent a notification to GIBS, requesting the initiation of an investigation into potential human rights violations perpetrated by Czech

¹³ InforMigrants. 20 April 2023. Migrant accidentally shot dead by North Macedonian police. Available at: <https://www.infomigrants.net/en/post/48348/migrant-accidentally-shot-dead-by-north-macedonian-police>

¹⁴ Generální inspekce bezpečnostních sborů. 2021. VÝROČNÍ ZPRÁVA O ČINNOSTI GENERÁLNÍ INSPEKCE BEZPEČNOSTNÍCH SBORŮ ZA ROK. Available at: https://www.gibs.cz/images/podstranky/cinnost-analyza-ukonu/zprava_cinnosti_2021.pdf

officers deployed in Hungary and North Macedonia.¹⁵ Their mandate stipulates that any person can notify GIBS of ‘an act that fulfills the characteristics of a criminal act, misdemeanor or disciplinary offense’ perpetrated by a law enforcement officer. The Government Commissioner for Human Rights and the Council for Human Rights were equally notified.

5. BVMN received no response from GIBS within 30 days of the notification, contravening the prescribed time period which is expected. On 8 December 2022, GIBS responded, stating that the investigation of the case was to continue as the ‘police authority had not yet secured all the documents necessary for its decision’.
6. Following a request for further information by GIBS on 27 January 2023, BVMN provided contact details for a person on the move who was available to be interviewed, alongside the contact details of two of BVMN’s field reporters who had collected multiple interviews from those pushed back between North Macedonia and Greece.
7. Despite two follow-up emails (13 March 2023 and 10 May 2023) inquiring about the progress of the investigation. There has been no response from GIBS and no contact with the three people prepared to provide interviews.
8. On 28 August 2023, BVMN was notified that GIBS had initiated an investigation and had pursued the investigation but that it found no evidence and that the complaint was “so unspecific that no criminal proceedings” were launched. Please see attached Annex 2 (an English translation is provided as of page 11). GIBS solely interviewed police officers as part of the investigation and no other persons were subjected to inquiry. It did not consult any official documentation according to the findings. BVMN provided the phone number of one of the person pushed back from North Macedonia but GIBS failed to interview the person. In the report it is stated that the person could not be reached, yet BVMN was not contacted again to request the contact information of the person, which BVMN could have provided if notified. BVMN also submitted the email addresses of two volunteers who collected testimonies of pushbacks and met with survivors. Neither of these volunteers were contacted nor interviewed by GIBS.
9. On this note, we argue that national human rights institutions and national preventive mechanisms such as **the Czech National Council for Human Rights and the Czech Ombudsman**, which are regularly assessed for their independence or are subject to international standards guaranteeing independence, as well as non-governmental organisations and international bodies, should be tasked with **investigations into alleged ill-treatment by Police Officers**.
10. Regarding the funding of the independent mechanism, we argue that any financial resources should be made available directly under funding, such as the EU’s Integrated Border Management Fund and under other non-national sources, and **provided directly to the monitors**. A

¹⁵ Border Violence Monitoring Network. November 18, 2022. BVMN Statement on Czech Officers’ Involvement in Fundamental Rights Violations. Available at: <https://borderviolence.eu/app/uploads/BVMN-statement-czech-officers.pdf>

mechanism wholly funded by the same authorities that should be under investigation is susceptible to both financial and political pressure from national authorities and can never truly achieve the goal of human right protection.

11. In order to be effective, the independent border monitoring mechanisms must have frameworks in place to hold States and Institutions accountable for abiding by the agreed mechanism, while ensuring transparency and access to justice. The mechanism must have the power to trigger investigations into misconduct at its own initiative, and have access to documentation, places of detention and other relevant sites to conduct such investigation.¹⁶

¹⁶ Human Rights Watch. 2020. *Turning rhetoric into reality: New monitoring mechanism at European borders should ensure fundamental rights and accountability*. Available at: <https://www.hrw.org/news/2020/11/10/turning-rhetoric-reality-new-monitoring-mechanism-european-borders-should-ensure>