

## Report for the Special Rapporteur on pushback practices and their impact on the human rights of migrants at European land borders

The European Center for Constitutional and Human Rights (ECCHR) is a not-for-profit NGO based in Berlin (Germany) with ECOSOC Consultative status, whose work addresses grave human rights violations with legal interventions. In the field of migration, ECCHR focuses on pushbacks at Europe's borders.

### I. A Systemic Issue

1. The practice of pushbacks<sup>1</sup> is long standing.<sup>2</sup> It is the shadow side of the European Union's migration policy of fortressing, externalisation and containment.<sup>3</sup> Pushbacks can be simple summary returns, involving no paperwork or procedure. They also occur as automatic returns with a rubber-stamping procedure.<sup>4</sup>

2. Since 2016 pushbacks are used systematically by EU states and partner third countries as a form of border control<sup>5</sup> – referred to by governments as “border protection”.<sup>6</sup> In preparation for the EU-Turkey statement and its related policy of containment in hotspots, EU countries with land borders have been made to toughen their border control practices.<sup>7</sup> They built border

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<sup>1</sup> This report will take the definition provided by the Special Rapporteur in his call, with the *caveat* that it will also include measures forcing people on the move out of a territory and into any bordering country, irrespective of whether this was in fact the country from which they came.

<sup>2</sup> For Spain see Spanish Defensor del Pueblo, [Annual Report for 2005](#), 2006, p.293. For Greece see Human Rights Watch (“HRW”), [Stuck in a Revolving Door](#), 26.11.08.

<sup>3</sup> Médecins sans Frontières (“MSF”), [Violence, Vulnerability and Migration: Trapped at the Gates of Europe](#), 13.03.13; Amnesty International (“AI”), [The Human Costs of Fortress Europe](#), 09.07.14, p.5, which mentions unlawful pushbacks in Spain, Greece and Bulgaria; AI, [Fear and Fences](#), 2015 (AI, 2015), p.10; Council of Europe's Parliamentary Assembly (“PACE”), [Countries of transit: meeting new migration and asylum challenges](#), Report, 11.09.15 (PACE, 2015), p.1 and §12 on containment in transit countries; PACE, [Human rights impact of the “external dimension” of European Union asylum and migration policy: out of sight, out of rights?](#), Report, 13.06.18 (PACE, 2018).

<sup>4</sup> These types of fast-track procedure pushbacks are mentioned to occur in France, Italy, Slovenia and Germany in FRA, [Fundamental Rights report 2019](#), 2019 (FRA, 2019), p.135. Indeed, these fast-track procedure pushbacks also meet the Special Rapporteur's definition of pushbacks in relation to his forthcoming report to the 47th session of the Human Rights Council, namely as, “various measures taken by States which result in migrants, including asylum seekers, being summarily forced back to the country from where they attempted to cross or have crossed an international border without access to international protection or asylum procedures or denied of any individual assessment on their protection needs which may lead to a violation of the principle of *non-refoulement*.” See his [Call for inputs for the Special Rapporteur's report on pushback practices and their impact on the human rights of migrants](#).

<sup>5</sup> PACE, 2018 (footnote 3), §4.

<sup>6</sup> See the declaration made by the Croatian Ministry of Interior after the publication of a shocking video (referred to below at §12 and footnote 71). See Hina, [MUP o snimkama: Drugi val neutemeljenih optužbi na račun hrvatske policije](#) (“MoI on the videos: Second wave of unfounded accusations at the expense of the Croatian police”), N1, 19.11.20.

<sup>7</sup> PACE, Countries of transit: meeting new migration and asylum challenges, [Addendum Report](#), 28.09.15, §§3.

fences,<sup>8</sup> adopted pushback practices<sup>9</sup> and sometimes even included them within national law.<sup>10</sup> EU's policies of border control externalisation also results in the systematic use of pushbacks in partner third countries.<sup>11</sup>

3. The number of persons pushed back with no identification and consideration for their protection needs is in the tens of thousands yearly. FRA and Frontex<sup>12</sup> assess over 35 000 cases for 2019 alone, a tenth of which were children.<sup>13</sup> The number of deaths in the hands of officers in such pushback operations remains unknown,<sup>14</sup> but the violence involved<sup>15</sup> – often amounting to torture – is well reported.<sup>16</sup>

4. The UN Special Rapporteur on Racism highlights that current border policies result in racial discrimination on the ground,<sup>17</sup> including during push backs.<sup>18</sup> Thus people on the move are racially profiled and impeded from approaching border crossings – and potentially submitting protection claims.<sup>19</sup> Made to cross borders irregularly, they are then pushed back after being racially profiled again.<sup>20</sup> There is no possibility to escape such racial treatment, as

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<sup>8</sup> See EU Fundamental Rights Agency (“FRA”), [Migration: Fundamental Rights – Issues at Land Borders](#), 2020 (FRA, Land Borders, 2020), pp.13-14, where the agency lists the 10 EU countries which have built a fence at their borders (Bulgaria, Estonia, Greece, Hungary, Lithuania, Latvia, Slovenia, Spain and France), 8 of which after 2015.

<sup>9</sup> PACE, 2015 (footnote3), §49 refers to Bulgaria, Greece and Spain. In addition FRA, mentions pushbacks in Hungary, Poland, Lithuania, Belgium, France, Italy, Slovakia and Romania. FRA, 2019 (footnote 4), pp.131-134; FRA, Land Borders, 2020 (footnote 8), p.19.

<sup>10</sup> Spain and Hungary. See PACE, 2015, (footnote 3), §9 on Spain; PACE, 2019 (footnote 11), p.16, §49; FRA, FRA, Land Borders, 2020 (footnote 8), p.118.

<sup>11</sup> For example Serbia, Northern Macedonia and Georgia. See PACE, 2015, (footnote 3), §49; PACE, [Pushback policies and practice in Council of Europe member States](#), Report, 08.06.19 (PACE, 2019), pp.22 ff. Pushbacks from Morocco are also mentioned in La Cimad, [Les autorités marocaines ont repris le renvoi de personnes non ressortissantes marocaines noires vers la frontière avec l'Algérie](#), 14.03.17.

<sup>12</sup> The question of Frontex' role in those illegal pushbacks and the obstacles for accountability will not be addressed here for lack of space. See for example Rijpma & Fink, [The Management of the European Union's External Borders](#), 01.11.20, Forthcoming in: De Bruycker & Tsourdi (eds), *Research Handbook on EU Asylum and Migration Law* (Edward Elgar 2021).

<sup>13</sup> FRA, Land Borders, 2020 (footnote 8), p.16.

<sup>14</sup> Ibidem.

<sup>15</sup> AI, 2015 (footnote 3), p. 10. Also FRA, 2019 (footnote 4), pp.131-134, reports violent pushbacks in Croatia, Greece, Belgium, France and Italy.

<sup>16</sup> See Border Violence Monitoring Network (“BVMN”), [The Black Book of Pushbacks – Vol. I and II](#), 18.12.20 (BVMN, The Black Book, 2020).

<sup>17</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Report on racial discrimination in the context of citizenship, nationality and immigration status](#), 25.04.2018, §30. UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Statement by eight Representatives of UN Special Procedures](#), 18.09.18, p.3.

<sup>18</sup> UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Report on digital borders and racial discrimination](#), §§3 and 12; UN Committee on the Elimination of Racial Discrimination, [Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary](#), 06.06.19, §§23 ff.

<sup>19</sup> As to racial profiling at the Spanish-Moroccan land border, see Sánchez & Sánchez, [La ONU y los datos de Interior desmontan el último discurso de Zoido para defender las devoluciones en caliente](#), 13.10.2017, El Diario. This practice and the evidence of it was illustrated in a video by FA and ECCHR, [Pushbacks in Melilla: ND and NT v. Spain](#), 15.06.2020. The systematic use of racial discrimination by Moroccan officers in enforcing their border partnership with Spain and the EU was confirmed in UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, [Report on visit to Morocco from 13 to 21 December 2018](#), 28.05.2019, §§53 ff.

<sup>20</sup> The most striking example is that of two Nigerian students apprehended in Zagreb after they had taken part in an international sports event. See below, §11 and footnote 59; see also UN Committee on the Protection of the

all documents – including those which may prove regular presence on the territory – are not considered and often destroyed.<sup>21</sup> The violence during pushbacks is also increasingly expressly racist.<sup>22</sup>

5. Governments continue to justify pushback practices by referring to their obligation to protect borders under the EU Schengen Border Code (“SBC”).<sup>23</sup> Yet EU policy makers consistently ignore pushbacks<sup>24</sup> and invariably fail to address the link between their policy focus on “prevent[ing] unauthorised border crossings”<sup>25</sup> and the widespread and systematic use of pushbacks.<sup>26</sup>

6. This report shows that despite the existence of a legal framework protective of those who cross borders irregularly (II), pushbacks practices are allowed to continue and increase in violence because of politics of denial (III) and complete impunity (IV).

## II. In Theory: Protective Legal Framework

7. Though an obligation to prevent unauthorised border crossings is defined under the SBC,<sup>27</sup> it is limited by further obligations to (i) make decisions on an individual basis<sup>28</sup> (ii) respect asylum and international protection provisions<sup>29</sup> and (iii) apply the SBC in compliance with the Geneva Convention and the EU Charter for Fundamental Rights<sup>30</sup> - including articles 19 (*non-refoulement* and the prohibition of collective expulsions), 4 (the prohibition of torture, inhuman or degrading treatment), 18 (right to asylum) and 47 (effective remedy). Further the

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Rights of All Migrant Workers and Members of Their Families, [Concluding observations on the third periodic report of Bosnia and Herzegovina](#), 04.11.19, §31.

<sup>21</sup> AI, [Pushed To The Edge: Violence And Abuse Against Refugees And Migrants Along The Balkans Route](#), 2019 (AI, 2019), p.5.

<sup>22</sup> For explicit islamophobia during pushbacks by Croatian officers, see BVMN, *The Black Book*, 2020 (footnote 16), pp.1123, 1263, 1288, 1294, 1299. See also Lorenzo Tondo, [Crosses on our heads to 'cure' Covid-19: refugees report abuse by Croatian police](#), *The Guardian*, 28.05.20 (*The Guardian*, 28.05.20). See also for Greece FRA, [Fundamental Rights report 2018](#), 2018 (FRA, 2018), p.130.

<sup>23</sup> See for example the Spanish Secretary of State for Security Mr Martínez Vázquez’ declaration in *La Vanguardia*, [El Gobierno niega devoluciones en caliente sino rechazos en frontera](#), 19.09.14.

<sup>24</sup> See the Council of Europe Committee of Ministers’ Reply to the PACE recommendation on pushbacks (as referred to above, PACE, 2019, footnote 11). The reply is a two-page document which reaffirm most of the legal principles listed in our part I without providing a shred of practical steps to be taken to investigate, stop or decrease the practices of pushbacks and/or obtain any type of accountability from the states which practice them systematically.

<sup>25</sup> This obligation is defined in article 13(1) SBC.

<sup>26</sup> As examples:

European Commission, [Report to the Council and the European Parliament on the Functioning of the Schengen Evaluation and Monitoring Mechanism pursuant to Article 22 of Council Regulation \(EU\) No 1053/2013](#), 25.11.20. In this report, there is not a single mention of pushbacks in the relevant sections, including section 3.2.1 on external border management.

Council of the EU, [Council conclusions on enhancing cooperation with Western Balkans partners in the field of migration and security](#), 05.06.20. Though the report addresses ways to make the external border control more efficient and targeting illegal migration, the issue of pushbacks is not addressed at all. The Council, however, ironically underlines that it is “welcoming the strong commitment by the Western Balkans partners to the primacy of democracy and the rule of law, especially the fight against corruption and organised crime, good governance, as well as respect for human rights, gender equality and for rights of persons belonging to minorities” (§4).

<sup>27</sup> As previously stated under article 12 SBC.

<sup>28</sup> Art. 4 SBC.

<sup>29</sup> Art. 13(1) SBC.

<sup>30</sup> Art. 4 SBC.

EU Asylum Procedures Directive<sup>31</sup> obliges member states to facilitate access to their asylum procedures to individuals, “who can be understood to seek refugee status”,<sup>32</sup> including “at the border, in the territorial waters or in transit zones.”<sup>33</sup> This entails providing information on asylum procedures, access to lawyers and interpreters,<sup>34</sup> and registering individual asylum claims.<sup>35</sup> Finally, both the Asylum Procedure Directive<sup>36</sup> and the Return Directive<sup>37</sup> provide specific safeguards for unaccompanied minors.

8. Pushbacks are also incompatible with states’ obligations under many international human right conventions. Pushbacks violate the Refugee Convention,<sup>38</sup> the European Convention on Human Rights (“ECHR”),<sup>39</sup> the UN Convention against Torture (“CAT”),<sup>40</sup> the UN Convention on Civil and Political Rights (“CCPR”) <sup>41</sup> and the UN Child Rights Convention (“CRC”).<sup>42</sup>

9. This strongly protective framework is not applied at borders and the reality of people on the move continues to be largely ignored both by governments and legal institutions.

### III. In Practice: Evidence Ignored, Reality Denied

10. Faced with strong evidence of pushbacks, EU countries have simply denied the reports.<sup>43</sup> For example in Croatia whenever the government faced overwhelming evidence of pushbacks, it chose to resort to denial and victim-blaming. This position necessitates the underlying assumption that all international human rights organizations, institutional bodies and media outlets listed below publish fabricated claims. Within the EU framework described above, Croatia’s efforts to join the Schengen zone is tied to its systematic pushback practice<sup>44</sup> which in turn continues to be tacitly condoned by the EU.<sup>45</sup>

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<sup>31</sup> Directive 2013/32/EU.

<sup>32</sup> *Idem*, article 2(b).

<sup>33</sup> *Idem*, article 3 (1) ; see also FRA, Land Borders, 2020 (footnote 8), p. 22.

<sup>34</sup> *Idem*, article 8.

<sup>35</sup> *Idem*, article 8(2).

<sup>36</sup> Article 3(9).

<sup>37</sup> Directive 2008/115/EC, article 10.

<sup>38</sup> PACE, 2019 (footnote 11), p.9, §11.

<sup>39</sup> In particular articles 3 (the prohibition of torture and cruel, inhuman or degrading treatments), 4 protocol 4 (the prohibition of collective expulsions) and 13 (effective remedy). See judgments from the European Court of Human Rights, such as [Hirsi Jamaa and others v. Italy](#), European Court of Human Rights (“ECtHR”), Grand Chamber judgment of 23.02.12 (Application no. 27765/09) and [M.K. and others v. Poland](#), ECtHR, Chamber judgment of 23.07.20 (Applications nos. 40503/17, 42902/17 and 43643/17). See also FRA, [Scope of the principle of non-refoulement in contemporary border management: evolving areas of law](#), 2016 (FRA, 2016), pp.13-14.

<sup>40</sup> Committee Against Torture, [General Comment No. 4 \(2017\) on the implementation of article 3 of the Convention in the context of article 22](#), 09.02. 18, §§13 & 18.

<sup>41</sup> Including articles 7 (the prohibition of torture or cruel, inhuman or degrading treatment or punishment), 2(1) (non-discrimination) and article 16 CCPR (right to be recognised as a person before the law). See also FRA, 2016 (footnote 39) and Human Rights Committee, [Concluding observations on the sixth periodic report of Spain](#), 20.07.15, §18.

<sup>42</sup> In particular articles 3 (best interest), 20 (the protection of unaccompanied minors), 37 (the prohibition of torture, inhuman and degrading treatment), 8 (right to identity), 12 (right to be heard) and 2 (non-discrimination). See also D.D. v. Spain, UN CRC Comm. No. 4/2016, [Adopted Views of 12.02.18](#).

<sup>43</sup> See FRA, Land Borders, 2020 (footnote 8), p.20, on the Greek government’s reaction to a CPT report.

<sup>44</sup> Croatian Minister of Interior Davor Božinović, [Reply to the Council of Europe Human Rights Commissioner](#), 03.10.18.

<sup>45</sup> AI, [Croatia: EU complicit in violence and abuse by police against refugees and migrants](#), 13.03.19.

11. Reports of pushbacks from Croatia date back to January 2016. Initial reporting by BBC<sup>46</sup> was followed by Deutsche Welle,<sup>47</sup> Reuters,<sup>48</sup> Al Jazeera,<sup>49</sup> The Guardian,<sup>50</sup> Der Spiegel,<sup>51</sup> amongst countless other international and local media outlets. Yet the practice continues unabated, and its cruelty intensifies oftentimes amounting to torture and inhuman and degrading treatment. Extensive documentation thereof was provided by UNHCR<sup>52</sup>, HRW,<sup>53</sup> AI,<sup>54</sup> MSF,<sup>55</sup> EU FRA,<sup>56</sup> Save The Children,<sup>57</sup> and Oxfam,<sup>58</sup> all pointing to a systematic indiscriminate and racist<sup>59</sup> practice of pushbacks by Croatian authorities and a lack of accountability. Much of this

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<sup>46</sup> Damian Grammaticas, [Migrant crisis: Temperatures plummet as thousands make crossing](#), BBC News, 08.01.16. Later reporting includes Guy Delauney, [For refugees in Bosnia, a bombed ruin is the only refuge](#), BBC News, 07.07.18; BBC, ['Beaten and robbed': How Croatia is policing its borders](#), BBC, 29.07.19 (BBC News, Beaten and robbed); Jean Mackenzie, [Inside Bosnia's 'nightmare' camp for migrants trying to enter the EU](#), BBC News, 24.10.19.

<sup>47</sup> DW, [Croatia police accused of abusing refugees](#) (DW, 16.08.18); Amir Purić, [Refugees on new Balkan route stuck in limbo](#), 03.07.18; Igor Lasić, [Nasilje nad izbjeglicama u Hrvatskoj postaje sve raznovrsnije](#), DW, 12.07.20.

<sup>48</sup> Fedja Grulovic, [Migrants in Bosnia complain of beatings by Croatian police](#), Reuters, 22.08.18.

<sup>49</sup> Nidžara Ahmetašević, [#MeToo at Fortress Europe's borders](#), Al Jazeera, 08.09.18; Mersiha Gadzo, [Refugees stranded in Bosnia allege Croatian police brutality](#), Al Jazeera, 15.09.18; Zekerijah Smajić, [Migrantski sukobi u BiH odjeknuli do Brisela](#), Al Jazeera, 10.06.19; Laurence Lee, [Croatia police criticised for attacking refugees at border](#), Al Jazeera, 15.01.20; Al Jazeera, [Injured migrants allege Croatian police brutality, pushback](#), 07.08.19.

<sup>50</sup> Emma Graham-Harrison, ['They treated her like a dog': tragedy of the six-year-old killed at Croatian border](#), The Guardian, 08.12.17; Shaun Walker, [Refugees crossing from Bosnia 'beaten and robbed by Croatian police'](#), The Guardian, 15.08.18; Shaun Walker, [Croatian police use violence to push back migrants, president admits](#), The Guardian, 16.07.19; Lorenzo Tondo, ['Blood on the ground' at Croatia's borders as brutal policing persists](#), The Guardian, 22.12.19; The Guardian, 28.05.20 (footnote 22); Lorenzo Tondo, [Croatian police accused of 'sickening' assaults on migrants on Balkans trail](#), The Guardian, 21.10.20.

<sup>51</sup> Markus Sehl, [Beamte zwingen Geflüchtete über EU-Grenze](#), Der Spiegel, 15.05.19; Thore Schröder, [Als sie uns schlugen, haben sie gelacht](#), Der Spiegel, 06.08.19.

<sup>52</sup> UNHCR, [Desperate Journeys – Refugees and migrants arriving in Europe and at Europe's borders: January – August 2018](#), November 2018; UNHCR, [Quantitative Snapshot of the UNHCR Serbia 2018 Programme](#), February 2019, p.7; see also UN Country Team (UNCT) BiH, [Inter-agency operational update – Refugee and migrant situation – Bosnia and Herzegovina, 1-31 May 2018](#) (UNCT, June 2018) and preceding monthly reports by the same UNCT.

<sup>53</sup> HRW, [Croatia: Asylum-seekers forced back to Serbia](#), 20.01.17; HRW, [Croatia – Migrants Pushed Back to Bosnia and Herzegovina: Violence, Abuse; Denied Opportunity to Apply for Asylum](#), 11.12.18 (HRW, 11.12.18); HRW, [EU: Address Croatia Border Pushbacks](#), 08.11.19; HRW, [Croatia Slams Door on Migrants](#), 08.11.19.

<sup>54</sup> AI, [Refugees in Serbia left out in the cold](#), 23.01.17; AI, 2019 (footnote 21); AI, [Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers](#), 11.06.20.

<sup>55</sup> MSF, [Serbia – Games of Violence: Unaccompanied Children and Young People Repeatedly Abused by EU Member State Border Authorities](#), October 2017, p.10; MSF, [Push-backs, violence and inadequate conditions at the Balkan route's new frontier](#), 17.08.18.

<sup>56</sup> EU FRA, [Periodic data collection – February Highlights](#), February 2018, p.2; numerous preceding monthly reports.

<sup>57</sup> Save The Children, [Reports about Push Backs and Violence Against Children at the Western Balkan Borders: July-September 2019](#), 11.12.19.

<sup>58</sup> Oxfam, Belgrade Center for Human Rights and Macedonian Young Lawyers Association, [A Dangerous 'Game': The pushback of migrants, including refugees, at Europe's borders](#), April 2017, p.2.

<sup>59</sup> Two Nigerian students who had come with visas to participate in a sports event in Pula were picked up by Croatian authorities from the streets of the capital Zagreb and expelled at gunpoint into BiH on the sole account of their skin colour; see Lorenzo Tondo, [Nigerian students deported from Croatia had visas to stay](#), The Guardian, 13.12.19; Zoran Arbutina, [Nigerian students experience a nightmare in Croatia](#), DW, 07.12.19; BBC, [Nigerian table tennis players home from Bosnia camp](#), 21.12.19.

reporting relies heavily on the work of local NGOs.<sup>60</sup> However, all these publications as well as additional institutional reporting by EU Parliamentarians,<sup>61</sup> the CoE's Commissioner for Human Rights,<sup>62</sup> Special Representative on Migration and Refugees,<sup>63</sup> CPT,<sup>64</sup> PACE,<sup>65</sup> and the Croatian Ombudswoman<sup>66</sup> eventually led to consistent denial by Croatian authorities.<sup>67</sup>

12. This denial was even upheld after a string of published video recordings. Firstly, the Guardian published video footage of injured individuals in the aftermath of a violent pushback at the Bosnian-Croatian border.<sup>68</sup> This was followed by extensive footage of Croatian officers pushing back groups of people into BiH territory published at the end 2018.<sup>69</sup> During 2019 and 2020, more footage of Croatian pushbacks was released by SRF<sup>70</sup> and the Spiegel.<sup>71</sup> Each publication was forcefully challenged by the Croatian authorities, thereby allowing for an increase in both the violence and occurrence of pushbacks, imbedded within an atmosphere of impunity. When under immense media pressure, Croatian officials promised independent investigations and monitoring activities, these have not materialized<sup>72</sup> and form the subject of an EU Ombudswoman investigation.<sup>73</sup> Most recently, the EU commissioner Ylva Johansson

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<sup>60</sup> Are You Syrious & the Welcome Initiative, [Report On Illegal And Forced Push Backs Of Refugees From The Republic Of Croatia](#), 24.01.17; Are You Syrious, Centre for Peace Studies, and Welcome Initiative, [5th Report on Pushbacks and Violence](#), 03.04.19; Border Violence Monitoring Project, [Monthly Violence Reports](#), from October 2018 onwards; The Centre for Peace Studies, BVMN, Are You Syrious, Asylum Protection Centre and No Name Kitchen, [What is happening at Croatia's external border?](#), January 2020; BVMN, [Torture and Cruel, Inhumane, or Degrading Treatment of Refugees and Migrants in Croatia in 2019](#), 15.01.20; Centre for Peace Studies, [Criminal complaint against Croatian policemen for inhumane treatment of refugees](#), 05.06.20.

<sup>61</sup> [Letter from 30 EU Parliamentarians to EU Commissioner of Migration and Home Affairs and EU Commissioner of the European Civil Protection and Humanitarian Aid Operations](#), 02.04.19; most comprehensive reporting in BVMN, *The Black Book*, 2020 (footnote 16).

<sup>62</sup> Letters and new report (2020)

<sup>63</sup> Tomáš Boček, [Report of the fact-finding mission to Bosnia and Herzegovina and to Croatia 24-27 July and 26-30 November 2018](#), CoE, 23.04.19, p.38.

<sup>64</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), [Council of Europe anti-torture Committee carries out rapid reaction visit to Croatia to examine treatment of migrants](#), CoE, 18.08.20.

<sup>65</sup> PACE, 2019 (footnote 11).

<sup>66</sup> Croatian Ombudswoman, [Annual Report of the Ombudswoman for 2017](#), March 2018, pp.240-249; and preceding annual reports.

<sup>67</sup> A mere selection of such official denials include: Croatian Ministry of Interior, [Reagiranje na optužbe Komesarijata za izbjeglice i migracije Republike Srbije](#), 22.09.19; Croatian MoI, [MUP odbacuje navode portala H-Alter](#), 24.09.19; Anja Vladislavljevic, [Croatia Suggests Police Unintentionally Shot Migrant](#), Balkan Insight, 18.11.19; Croatian MoI, [Reagiranje MUP-a na članak britanskog portala The Guardian](#), 13.05.20 in response to the Guardian's coverage in Lorenzo Tondo, [Croatian police accused of spray-painting heads of asylum seekers](#), The Guardian, 12.05.20; Croatian MoI, [Reagiranje Ministarstva unutarnjih poslova Republike Hrvatske na objavu Amnesty International](#), 11.06.20; Lorenzo Tondo, [Croatia denies migrant border attacks after new reports of brutal pushbacks](#), The Guardian, 23.10.20.

<sup>68</sup> Lorenzo Tondo, ['They didn't give a damn': first footage of Croatian police 'brutality'](#), The Guardian, 14.11.18.

<sup>69</sup> BVMN, [Proof of Push-Backs on the Border of Croatia and Bosnia-Herzegovina](#), December 2018.

<sup>70</sup> Nicole Vögele, [Kroatische Polizei bei illegaler Abschiebung gefilmt](#), SRF, 15.10.19, from min.03:50.

<sup>71</sup> Steffen Lüdke & Nicole Vögele, [Video Documents Illegal Refugee Pushbacks in Croatia](#), Spiegel, 18.11.2020.

<sup>72</sup> Hina, [CMS: There has not been an effective investigation into the treatment of refugees in four years](#), N1, 19.11.2020 and N1 Croatia, [Centre for Peace Studies: Bozinovic's statements are unconvincing](#), 19.11.2020.

<sup>73</sup> European Ombudsman, [Ombudsman inquiry opened on how European Commission seeks to ensure protection of fundamental rights in border management operations by Croatian authorities](#), 10.11.20; see also Anja Vladislavljevic, [EU Ombudsman Launches Probe After Claims Croatia Abused Migrants](#), Balkan Insight, 10.11.20. Lorenzo Tondo and Daniel Boffey, [EU 'covered up' Croatia's failure to protect migrants from border brutality](#), The Guardian, 15.06.20.

requested Croatia to disclose the number of allegations received and investigated by its authorities as well as how many of them have resulted in follow-up action.<sup>74</sup>

13. Croatian officials which continue to publicly deny all pushbacks include the Interior Minister Božinović<sup>75</sup> and the Prime Minister Andrej Plenković who simply, “*denied any wrongdoing and questioned the sources of the information.*”<sup>76</sup> This refusal to acknowledge that persons subjected to pushbacks were on Croatian territory and in the custody of Croatian authorities is in effect a denial of their status as right holders – for example as refugees entitled to access to protection. In fact, the Croatian authorities affirm that persons who entered Croatia irregularly have no right to claim asylum in Croatia,<sup>77</sup> a point of view defended by both the Interior Minister and the Croatian Chief of Border Management.<sup>78</sup>

14. These government officials’ statements are not the result of a poor understanding of the law but rather the expression of a political perspective under which people apprehended by the authorities and suspected of having irregularly entered the territory hold no rights whatsoever. This is particularly evident in the statement of the then Croatian President herself – Ms. Grabar-Kitarović, “*Illegal pushbacks? Why do you think they are illegal? We are talking about illegal migration, people trying to cross into Croatia illegally and the police pushing them back into Bosnia-Herzegovina,*”<sup>79</sup> before adding, “*Of course when you are pushing people back, there is a little bit of force.*”<sup>80</sup> Nevertheless, the government’s denial continued after this statement, even though courts outside of Croatia, such as the Slovenian Administrative Court<sup>81</sup> and the Swiss Federal Administrative Court,<sup>82</sup> acknowledged the persistent pushbacks practice in Croatia.

15. Denial is only made possible by consistent efforts to destroy and hamper the gathering of evidence and the conduct of any investigation. Indeed people on the move have their mobile phones systematically broken or stolen.<sup>83</sup> Domestic organizations working in the field of migration and asylum face constant pressure, criminalization and attacks from the highest governmental authorities following their reports on pushback practices.<sup>84</sup> Officials seeking to investigate or halt the practice are also targeted: In October 2018 the Croatian Ombudswoman

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<sup>74</sup> Nikolaj Nielsen, [EU demands answers on Croat border attacks against migrants](#), EUobserver, 12.11.20.

<sup>75</sup> See above, footnote 43.

<sup>76</sup> HRW (footnote 53, 11.12.18) p.2.

<sup>77</sup> AYS, CMS and Welcome Initiative (footnote 60, 03.04.19) pp.2-3.

<sup>78</sup> HRT, [Otvoreno: Ugrožavaju li migranti sigurnost u Hrvatskoj?](#), 18.12.18, starting at min. 19:54 in the video, “*First, people have to enter Croatia to ask for asylum. Thus, in the institution of deterrence [original in Croatian: odvracanje] the people are not... that is, they are not present in Croatia but we are deterring them from entering the Republic of Croatia.*” *Idem*, at min. 29:23 he further states: “*They are not refugees, one has to be clear here. These are people who crossed five borders by then: from Turkey to Greece, from Greece to Albania, from Albania to Montenegro, to Bosnia and Herzegovina and so on. And everywhere, in all these countries, they requested international protection and after that they escaped. So, we are speaking about a phenomenon which is problematic for all of Europe, not only for Croatia, and we in any case cannot tolerate such illegal crossing.*” See also Al Jazeera Balkans, [Revizija: Na granici razdvajanja](#), 25.03.19, at min. 28:50.

<sup>79</sup> SRF, [Kroatiens Präsidentin Grabar-Kitarović zur Balkanroute](#), 09.07.19, at min. 01:10; see also HRW, [Croatia: President Admits Unlawful Migrant Pushbacks](#), 15.07.19.

<sup>80</sup> *Idem* at min. 01:55.

<sup>81</sup> Centre for Peace Studies, [Slovenski sud potvrdio – Hrvatska sudjelovala u lančanom nezakonitom protjerivanju migranata](#), 20.07.20.

<sup>82</sup> ECRE/European Database of Asylum Law, [Switzerland: Suspension of Dublin transfer due to summary returns at border with Bosnia-Herzegovina](#), 12.07.19.

<sup>83</sup> HRW, 11.12.18 (footnote 52), p.4.

<sup>84</sup> Statewatch, [Croatia - Criminalising solidarity - Are You Syrious](#), 26.09.18. For an overview see BVMN, [Shrinking Spaces: Report on Criminalisation of Solidarity in the Western Balkans](#), 05.11.20. For the link between denial, criminalization and impunity, see PACE, 2019 (footnote 11), p.8, §6.

revealed that her efforts to investigate the long-standing reports of violent unlawful pushbacks had been constantly hindered by the Croatian Ministry of Interior, the State's Attorney's Office and individual police officers.<sup>85</sup>

16. Nothing changed after two whistleblowers amongst the Croatian border officers came forward first in a letter to the Croatian Ombudswoman,<sup>86</sup> then in interviews to the BBC,<sup>87</sup> Telegram<sup>88</sup> and TRT.<sup>89</sup> The officer interviewed stated that the orders to pushback migrants and refugees came from the Ministry of Interior. Officers are instructed to catch people before they reach anywhere or anyone – including explicitly human rights groups – where access to asylum might be facilitated and evidence gathered. The officer concludes, “it is as if we have never found or taken them to the border.”<sup>90</sup> This interview confirmed the link between pushback practices in Europe and enforced disappearances.<sup>91</sup>

17. These revealing statements reflect not only the systematic nature of pushbacks but also the specific context in which pushbacks are permitted to occur, that is within a geographical, political and legal blind spot. The location of pushback operations – at the margin of the territory and away from any witnesses, the lack of any documentation, the constant denial, the extreme vulnerability of the victims - who effectively hold no civil or political rights - and the related lack of political consequences result in a culture of complete impunity surrounding pushbacks.

#### IV. In Reality: Impunity Perpetuated

18. As addressed above, systematic pushbacks have been practiced in Europe for a long time.<sup>92</sup> They affect tens of thousands of people yearly.<sup>93</sup> By being placed outside of the protection of the law, persons who are pushed back are at the complete mercy of officers and thus utterly vulnerable to abuse.<sup>94</sup> Indeed pushbacks are often violent, sometimes even lethal,<sup>95</sup> and the violence is well-documented.<sup>96</sup> However most countries have never had a pushback

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<sup>85</sup> Croatian Ombudswoman, [Letter to the Parliamentary Committee on Human and National Minority Rights](#), 17.10.18, p.2.

<sup>86</sup> Croatian Ombudswoman, [Institucije bez reakcije na anonimnu pritužbu policijskog službenika o nezakonitim postupanjima](#), 16.07.19.

<sup>87</sup> BBC News, [Beaten and robbed](#) (footnote 46).

<sup>88</sup> Barbara Matejčić, [Prvi intervju u kojem hrvatski policajac tvrdi: šefovi nam naređuju da ilegalno protjerujemo migrante](#), Telegram, 24.07.19.

<sup>89</sup> TRT World, [Beaten by the Border](#), 25.07.19.

<sup>90</sup> BVMN, [Illegal Pushbacks and Border Violence Reports – Balkan Region July 2019](#), July 2019, pp.6-8.

<sup>91</sup> Indeed every deprivation of liberty - including in the course of pushbacks - when followed by a refusal of acknowledgement is an enforced disappearance prohibited under Art. 16 ICCPR. See Grażyna Baranowska, [Disappeared Migrants and Refugees: The Relevance of the International Convention on Enforced Disappearance in their search and protection](#), German Institute for Human Rights, October 2020, p.22. See also Global Legal Action Network, [Press release: International complaint against Greece's violent pushbacks at the Evros border](#), 2020.

<sup>92</sup> See above at §§1 ff.

<sup>93</sup> See above at §3.

<sup>94</sup> PACE, 2019 (footnote 11), p.8 §5.

<sup>95</sup> An example is that of the death of at least 15 persons at the Spanish-Moroccan border during a pushback operation. For details see Caminando Fronteras, [Informe de análisis de hechos y recopilación de testimonios de la tragedia que tuvo lugar el 6 de febrero de 2014](#), March 2014.

For a more recent death at the Greek-Turkish border in March 2020, see Christides et al., [The Killing of a Migrant at the Greek-Turkish Border](#), Der Spiegel, 08.05.20. This article reports on an open source investigation done by Forensic Architecture (“FA”), Bellingcat and Lighthouse Report, which is explained in a [Bellingcat article](#) and a [FA video](#). A further death at the same border in March 2020 was also investigated by FA and HR360, as explained in a [FA video](#).

<sup>96</sup> See above at §11. See also PACE, 2019 (footnote 11), p.20 §81.



investigated.<sup>97</sup> Complaints by NGOs, human rights institutions and individuals are often ignored.<sup>98</sup> Those investigated have not resulted in criminal convictions,<sup>99</sup> further to being handled inefficiently.<sup>100</sup> Media efforts to attempt to mitigate with the lack of official investigations have not yet resulted in the opening of state investigations.<sup>101</sup>

19. In identifying reasons to explain this gap, FRA lists (i) the inexistence of a formal decision which would record what happened and/or could be challenged in a court and (ii) the consequent lack of sufficient information as to the locations and times of pushbacks.<sup>102</sup> The PACE Committee on Migration, Refugees and Displaced Persons further lists (iii) states' vilification and blame of victims and those organisations attempting to support victims' access to justice,<sup>103</sup> (iv) the lack of impartiality of investigating authorities<sup>104</sup> and (v) an increasing refusal from states to allow independent inquiries into serious allegations.<sup>105</sup> National institutions such as Ombudspersons may take up complaints,<sup>106</sup> but prosecutors do not.<sup>107</sup>

20. Having dedicated a program in attempting to obtain accountability for pushback practices since 2014, ECCHR can identify a number of additional factors.

- (i) Victims and witnesses of pushbacks are immediately expelled from the territory, often without being identified. This renders identifying and interviewing victims and/or witnesses difficult. Thus pushing back people on the move not only impedes their access to protection; it also perpetuates impunity. Even when acknowledged, those actions are rarely sanctioned in criminal proceedings. No negative inferences are drawn from the fact that the pushback itself represents an attempt to silence victims and/or witnesses and interfere with justice.
- (ii) The lack of formal decisions and resulting lack of data as to expulsions could be palliated by gathering alternative evidence, such as data from mobile phones, audio and visual evidence and/or testimonies from witnesses. However state agents systematically hamper<sup>108</sup> and/or destroy such evidence.<sup>109</sup> Yet again no negative inferences are drawn

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<sup>97</sup> FRA, Land Borders, 2020 (footnote 8), p.23.

<sup>98</sup> In relation to Croatia see [Report of the fact-finding mission by Tomas Bocek, Special Representative of the Secretary General on migration and refugees, to Bosnia and Herzegovina and to Croatia 24-27 Jul and 26- 30 Nov 2018](#), 23 April 2019, p.27; Center for Peace Studies, [Third Party Intervention in S.B. and others v. Croatia \(ECtHR\)](#), 08.01.21, §§34-5; PACE, 2019 (footnote 11), p.19, §§71 ff; FRA, Land Border, 2020 (footnote 8), p.19.

<sup>99</sup> FRA, Land Borders, 2020 (footnote 8).

<sup>100</sup> See for example the investigation of the Playa del Tarajal tragedy by the Spanish judiciary. In Gálvez & López-Fonseca, [Años de obstáculos para investigar la tragedia del Tarajal](#), El Diario, 02.11.2019. In contrast, criminal investigations against migrants and refugees who are pushed back are expedited. See Spanish Defensor del Pueblo, [Annual Report for 2018](#), p.209. For Croatia, see FRA, Land Borders, 2020 (footnote 8), p.21.

<sup>101</sup> For examples of media investigations, see above, footnote 95. See also PACE, 2019 (footnote 11), p.23, §102.

<sup>102</sup> FRA, Land Borders, 2020 (footnote 8), p.11 §25.

<sup>103</sup> PACE, 2019 (footnote 11), p.4 §9 and p.19 §75.

<sup>104</sup> Idem, p.19 §71.

<sup>105</sup> Idem, p.4 §9 and p.19 §75.

<sup>106</sup> For Greece, see PACE (2019), FRA, Land Borders, 2020 (footnote 8), p. 11 §24. In the case of Croatia, the Ombudsperson's investigations were systematically obstructed by state authorities. See FRA, 2019 (footnote 4), p.133.

<sup>107</sup> FRA, 2018 (footnote 22), p.130.

<sup>108</sup> See in [ND and NT v. Spain](#), ECtHR, Grand Chamber judgment of 13.02.20, Applications nos. 8675/15 and 8697/15, §81.

<sup>109</sup> For an example as to Croatia, see above, §15. See also PACE, 2019 (footnote 11), p.20. The same practice is used by Greek officers. See Greek Refugee Council et al., [The new normality: Continuous push-backs of third country nationals on the Evros river](#), 2018.

during criminal proceedings. Even officers wanting to testify are not protected at all from the obvious consequences that would otherwise await them.<sup>110</sup>

- (iii) Most victims and/or witnesses will be in another country. Their involvement in an investigative or judicial process in the country of the pushback will only be possible with transnational judicial cooperation and adequate translation.
- (iv) Victims may encounter hurdles specific to each country, such as the obligation to have notarial powers of attorney (for example in Spain) or the complete inexistence of legal aid for them to benefit from legal support – without which their participation from abroad as a civil party is practically impossible.
- (v) Many victims and/or witnesses of pushbacks remain in precarious situations for considerable periods of time. They are often still undocumented or without stable status and thus still vulnerable. They may suffer from untreated trauma from the multiple pushback experiences. In light of their previous experiences of the relevant states' authorities and the declared political unwillingness of states to acknowledge pushback practices – let alone investigate them adequately – victims and/or witnesses may not be necessarily willing to approach those authorities again to obtain justice.
- (vi) Despite their status as victims and their consequential increased vulnerability,<sup>111</sup> those subjected to pushbacks are vilified by governments and state representatives as “illegal migrants”.<sup>112</sup> This rhetoric builds on the unauthorised character of the border crossings, and puts blame on the very victims of a dysfunctional protection system.<sup>113</sup> Sadly this negative attitude is largely reflected in judicial systems. The particular and multiple vulnerabilities of pushback victims are not acknowledged so that no mechanisms are put into place to address the many obstacles to accountability which exist. Unlike traffic victims, pushback victims have no guarantee that their involvement as civil parties or witnesses in judicial proceedings will not have negative consequences on their protection claims, liberty or other aspects of their lives regulated by immigration authorities. In fact in Croatia some of those who came forward clearly bore the consequences of their acts.<sup>114</sup>

21. As to rulings by administrative courts confirming the illegal character of pushback practices, they have no effect on the persistence of pushbacks, as observed in France<sup>115</sup> and Poland.<sup>116</sup> This is also true of rulings from international quasi-judicial bodies, as the Spanish example shows.<sup>117</sup> European states simply violate national and international law, hamper access

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<sup>110</sup> See for example above, §17. Journalists at scenes are often stopped from filming or from approaching/staying.

<sup>111</sup> PACE, 2015 (footnote 3), p.3 §5; UN OHCHR, [Report on the promotion and protection of the human rights of migrants in the context of large movements](#), 13.09.16, §§32 ff.

<sup>112</sup> See above, §14.

<sup>113</sup> AI (2015), ft 3 [fears and fences], p.9; PACE, 2019 (footnote 11), p.3.

<sup>114</sup> See the treatment to which was subjected the applicant family of M.H. and others v. Croatia, ECtHR Application no. 43115/18, [Court's Statement of Facts](#), 11.05.18. This treatment was the subject of a further ECtHR applications: M.H. and others v. Croatia, ECtHR Application no. 15670/18, [Court's Statement of Facts](#), 23.03.20.

<sup>115</sup> PACE, 2019 (footnote 11), p.22, §94.

<sup>116</sup> PACE, 2019 (footnote 11), p.14, §42 for the national court rulings; Helsinki Foundation for Human Rights, [Access to asylum procedure at Poland's external borders](#), April 2019, p.9 on the continuity of pushback practices after the court rulings.

<sup>117</sup> Indeed despite Spain's condemnation by the UN CRC for its pushback practise and recommendation for a change in its border practices (see D.D. v. Spain, footnote 42), the Spanish Ministry of Interior has simply

to justice and/or disregard those legal institutions and/or human rights authorities condemning their border practices.

22. In this context, the silence of European Union institutions – those which shape European states’ border policies and which could have an impact on their practices – is deafening.<sup>118</sup> It has only been broken by disturbing supportive statements of pushback practices.<sup>119</sup> This climate of complete disregard for the rule of law doubled with utter state impunity explains the persistence of pushback practices in Europe, their increased use<sup>120</sup> and their escalating violent character.<sup>121</sup>

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informed the UN CRC that it disagrees with its decision and thus does not intend to take its recommendations into consideration.

<sup>118</sup> Though FRA mentions investigations by the Commission (see FRA, Land Borders, 2020 (footnote 8), p.18), these were announced in 2015 and no further information was shared as to their outcome. The investigated countries (Spain, Bulgaria and Greece) have continued their pushback practices, with Spain rooting them into national law in 2015.

<sup>119</sup> Thus the brutal pushback operations of Greece which resulted in at least 2 deaths (see above, footnote 95) were heavily backed up by all EU institutions and qualified as acts “to effectively protect EU’s external borders” from “illegal crossings.” In Council of the EU, [Statement on the situation at the EU's external borders](#), 04.03.20. Not a word is said of the mistreatment of people on the move or their rights, as addressed in detail above (II).

<sup>120</sup> PACE, 2019 (footnote 11), p.8, §§3-4.

<sup>121</sup> *Idem*, p.8, §4; FRA, 2018 (footnote 22), p.129; FRA, 2019 (footnote 4), pp.133-4; PACE, Land Borders, 2019 (footnote 11), §51.