

Submission to the Special Rapporteur on Human Rights of Migrants:

**Human Rights Violations at International Borders: Trends, Prevention and Accountability
in Croatia**

Report for the 50th Session of the Human Rights Council

Submitted by:

Border Violence Monitoring Network

Reporting Organisation:

Border Violence Monitoring Network (BVMN) is a coalition of organisations working to document illegal pushbacks, collective expulsions and police violence along the EU's external borders in the Western Balkans, Greece and Turkey since the network's formulation in 2016. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field experts who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

Recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021

1. In Croatia, there have been no changes to domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021.
2. In Croatia, border entry, asylum and other international protection procedures for non-nationals are regulated by the Law on Foreigners and the Law on International and Temporary Protection to which relevant EU directives and regulations are transposed, as well as by the Schengen Borders Code.

Recent or current border management legislation/policies/measures with the view to control, reduce or prevent migrant arrivals in Croatia

3. The Border Violence Monitoring Network, and other similar human rights watchdog organisations, have consistently asserted that the systematic use of collective expulsions and pushbacks, and the prevalent attributed rights violations of torture and inhuman treatment, is so habitual and widespread that they would constitute as a hallmark of border management policy by the multiple European States.
4. We assert the mass proliferation of pushbacks by Croatian authorities shows that they are being used as a state practice with the view to control, reduce or prevent migrant arrivals.
 - 4.1. Since documentation efforts started, BVMN recorded 853 testimonies of pushbacks affecting at least 9,685 people.
 - 4.2. Only in the past two years, the Border Violence Monitoring Network recorded 339 cases of pushbacks from Croatia to BiH and Serbia, including in total 4,720 persons. In 2020, BVMN recorded 128 cases including 1,849 persons pushed back to BiH and Serbia. In 2021, the Border Violence Monitoring Network recorded 2,871 people pushed back from Croatia to BiH and Serbia.¹
 - 4.3. Furthermore, in 2021, there was a significant increase in the number of pushed back children, who were present in at least 50% of all recorded pushback cases. Also, figures

¹ Source: Border Violence Monitoring Network, exported testimonies for 2020 and 2021 from the database, <https://www.borderviolence.eu/export-testimonies/>

show that a significant majority of pushed back persons expressed their intention to seek asylum.²

- 4.4. In the past two years, since the outbreak of the COVID-19 pandemic, violent pushbacks of refugees that entail inhuman and degrading treatment causing severe injuries have increased. The majority of collected testimonies show the gravity of violence Croatian police officers use when executing pushbacks. This violence leaves not only physical but also severe mental trauma. This continuous and systemic process of stripping refugees and other migrants of their dignity has long-lasting consequences.
- 4.5. Finally, in case of pushbacks persons have no access to an effective remedy according to the standards established by the case-law of the European Court of Human Rights. BVMN member Centre for Peace Studies submitted five criminal complaints to the State Attorney's Office against unknown perpetrators from the police force who tortured, humiliated and pushed back refugees from the territory of Croatia to Bosnia and Herzegovina in the past two years.
- 4.6. Although there have been numerous allegations of torture and violence and, to our knowledge, at least 21 criminal complaints for illegal expulsion and/or violence against refugees and other migrants - no indictments have been brought so far and, accordingly, no perpetrators of reported crimes have been identified, prosecuted or sanctioned in any of the reported cases.

Information on application of the "safe third country" concept and bilateral and multilateral agreements on collective/automatic re-admission of migrants of specific nationalities

5. In Croatia, safe country concepts started being applied in 2016 under the Law on International and Temporary Protection. The Law on International and Temporary Protection defines a safe third country as a country where the applicant is safe from persecution or the risk of suffering serious harm and where he or she enjoys the benefits of non-refoulement, and the possibility exists of access to an effective procedure of being granted protection, pursuant to the 1951 Convention.³
6. In 2016, a Decision on the list of safe countries of origin⁴ was adopted. The list includes the following countries: People's Democratic Republic of Algeria, Bosnia and Herzegovina, Montenegro, Kingdom of Morocco, Republic of Albania, Republic of Kosovo, Republic of North Macedonia, Republic of Serbia, Republic of Turkey, Republic of Tunisia.
7. The Ministry of the Interior has an obligation to regularly inform the European Commission about the countries to which the concept of safe third country has been applied. The safe third country

² Source: Border Violence Monitoring Network, exported testimonies for 2020 and 2021 from the database, <https://www.borderviolence.eu/export-testimonies/>

³ Croatia, Law on International and Temporary Protection (*Zakon o međunarodnoj i privremenoj zaštiti*), Article 45, Official Gazette 70/15, 127/17

⁴ Croatia, Decision on the list of safe countries of origin in the process of approval of international protection (*Odluka o Listi sigurnih zemalja podrijetla u postupku odobrenja međunarodne zaštite*), Official Gazette 45/2016, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/full/2016_05_45_1166.html

concept was applied to 29 persons from Afghanistan in 2018, while no information was available for 2019 and 2020.⁵

8. In 2018, negative decisions based on the concept of safe country of origin were issued in 76 cases. 39 of those concerned citizens of Algeria, 13 Morocco, 13 Tunisia, 5 Kosovo, 4 Serbia and 2 Bosnia and Herzegovina, while no information on decisions based on the concept of safe country of origin was available for 2019 and 2020.⁶
9. In March 2021, the Constitutional Court of the Republic of Croatia issued a decision⁷ in a case concerning an Afghan family whose cases were dismissed by the Ministry of Interior on the basis of the safe European third country concept.
 - 9.1. In addition to violating the refugee family's right to asylum, the Ministry of the Interior's decision, which was later upheld by the Administrative and High Administrative Courts, exposed them to the risk of abuse, torture and/or inhuman treatment due to the failed assessment of Serbia as a safe third country.
 - 9.2. It was the concept of a safe (European) country that was central in this ruling, and the Constitutional Court found that in the conducted proceedings "it was not established with sufficient certainty that the Republic of Serbia is a safe European third country". Therefore, the Constitutional Court on its own assessed the situation in Serbia with regard to: status of rights of asylum seekers and whether they are threatened with expulsion to a third country without conducting a proper procedure. It assessed that the Republic of Serbia is not a safe third country for refugees, relying on NGO reports as indicators of the real situation in the country.
 - 9.3. The Constitutional Court has taken the view that in assessing a country as "safe" it is not enough to rely on the normative framework and the numbers of approved asylum applications, but that it is obligatory to take into account "relevant reports by bodies concerned with the protection of refugees and NGOs in order to determine the real treatment of persons".⁸

⁵ Croatian Law Centre, Aida report on Croatia, Safe third country, last updated in May 2021, available at: <https://asylumineurope.org/reports/country/croatia/asylum-procedure/the-safe-country-concepts/safe-third-country/>

⁶ Croatian Law Centre, Aida report on Croatia, Safe country of origin, last updated in May 2021, available at: <https://asylumineurope.org/reports/country/croatia/asylum-procedure/the-safe-country-concepts/safe-country-origin/>

⁷ Constitutional Court of the Republic of Croatia, Constitutional complaint: U-III-4865/2018, 4 March 2021, available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C125868F002CFA0E>

⁸ Centre for Peace Studies, The significance of Constitutional Court ruling for the protection of refugees' rights in Croatia, 30 April 2021, available at: <https://www.cms.hr/en/azil-i-integracijske-politike/vaznost-presude-ustavnog-suda-za-zastitu-prava-izbjeglica-u-hrvatskoj>

10. Croatia has bilateral readmission agreements with Slovenia⁹, Bosnia and Herzegovina¹⁰ and Serbia¹¹. According to publicly available information, no nationalities have been listed in these agreements, the agreements regulate the surrender and reception of persons whose entry or stay is illegal.

Information on progress made in developing independent border monitoring mechanism(s) in Croatia

11. Since 2015 Croatia has received 163.13 million EUR of EU support for managing migration.¹²
12. In December 2018, the European Commission awarded Croatia with 6.8 million EUR to help reinforce border management at EU's external borders by covering the operational costs of 10 border police stations through the provision of daily allowances, over-time compensation and equipment. In a press release announcing this emergency assistance (EMAS) to Croatia, the Commission explicitly referenced the establishment of a monitoring mechanism “to ensure that all measures applied at the EU external borders are proportionate and are in full compliance with fundamental rights and EU asylum laws.”¹³ According to European Commission sources, a sum of 300,000 EUR was earmarked for the mechanism, but they could not assess its outcome before Croatia’s report due in early 2020.¹⁴
13. Furthermore, the EC acknowledged that it relied on the EMAS 2018 monitoring mechanism as a guarantee of respect for fundamental rights when allocating funds and giving Croatia the green light to join Schengen.
14. The fact that the Commission did not insist on the existence and proper functioning of the monitoring mechanism, did not effectively employ and use monitoring to ensure fundamental rights compliance or did not separately investigate the likely use of EU funds for unlawful practices, along

⁹ Croatia, Law on Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Slovenia on the Surrender and Acceptance of Persons Whose Entry or Stay is Illegal (*Zakon o potvrđivanju Sporazuma između Vlade Republike Hrvatske i Vlade Republike Slovenije o predaji i prihvatu osoba kojih je ulazak ili boravak nezakonit*), Official Gazette 5/2006, available at: https://narodne-novine.nn.hr/clanci/medunarodni/2006_06_5_74.html

¹⁰ Ministry of the Interior of the Republic of Croatia, Croatia and BiH sign Agreement on Surrender and Acceptance of Persons (*Hrvatska i BiH potpisale Sporazum o predaji i prihvatu osoba*), 11 March 2001, available at: <https://mup.gov.hr/vijesti/hrvatska-i-bih-potpisale-sporazum-o-predaji-i-prihvatu-osoba/85321>

¹¹ Croatia, Law on Ratification of the Agreement between the Government of the Republic of Croatia and the Government of the Republic of Serbia on the surrender and acceptance of persons whose entry or stay is illegal (*Zakon o potvrđivanju Sporazuma između Vlade Republike Hrvatske i Vlade Republike Srbije o predaji i prihvatu osoba kojih je ulazak ili boravak nezakonit*), 4 February 2010, available at: <https://zakon.poslovna.hr/public/sporazum-izmedu-vlade-republike-hrvatske-i-vlade-republike-srbije-o-predaji-i-prihvatu-osoba-kojih-je-ulazak-ili-boravak-nezakonit/499118/zakoni.aspx>

¹² European Commission, *Managing Migration EU Financial Support to Croatia*, published in January 2021, available at: https://ec.europa.eu/home-affairs/system/files/2021-01/202101_managing-migration-eu-financial-support-to-croatia_en.pdf

¹³ European Commission, *Commission awards additional 305 million to Member States under pressure*, 20 December 2018, available at: https://ec.europa.eu/commission/presscorner/detail/en/IP_18_6884

¹⁴ Foreign Policy, *Croatia Is Abusing Migrants While the EU Turns a Blind Eye*, published on 6 December 2019, available at: <https://foreignpolicy.com/2019/12/06/croatia-is-abusing-migrants-while-the-eu-turns-a-blind-eye/>

with the lack of full transparency when communicating on this issue¹⁵, prompted the EU Ombudsman to open an inquiry into the possible failure of the European Commission to ensure that Croatian authorities respected fundamental rights while conducting EU-funded border operations against migrants and refugees.¹⁶

15. In June 2021, Croatian authorities finally announced the establishment of the Independent Border Monitoring Mechanism which is meant to provide for independent human rights monitoring of border-related operations involving migrants and asylum-seekers.
16. Following the lack of transparency regarding the process of establishing the mechanism, human rights and humanitarian aid organisations warned that the model adopted in Croatia fell short of the standards needed to ensure its independence and effectiveness.
17. There was no public call for the participating organisations and members nor information about the selection criteria. The authorities have also refused to publish the Cooperation Agreement, which serves as a basis for the work of the monitoring mechanism and includes details about its structure, scope and functioning. Furthermore, the members of the monitoring mechanism lack political and financial independence from the Ministry of the Interior, and the mechanism's financial independence is undermined by the EU's 2021 Emergency Funding (EMAS) grant being processed through the Ministry of the Interior, instead of being directly granted to the mechanism, as demanded by human rights organisations.
18. According to the information released by the Ministry of the Interior and members of the mechanism's Coordination Committee, the mechanism's mandate seems to be limited to an administrative review of files and paper trails concerning closed cases of complaints of alleged police misconduct and an analysis of the legislative and judicial system that regulate the borders, without access to victims of alleged human rights violations during the monitoring process.
19. Also, the announced visits to the green border area require logistical support and accompaniment by the Ministry of the Interior. The Cooperation Agreement was later published as part of the Mechanism's half-year report, and it clearly states that activities of the monitoring mechanism include "announced visits to the green border".
20. On 3 December, the Independent Monitoring Mechanism published its first half-year report on the website of the Croatian Public Health Institute, which disappeared only a day later. The withdrawn working version stated that the mechanism has "detected irregularities in police conduct", explaining that "the police carry out unlawful deterrence (pushbacks) and do not record deterrence permissible under Article 13 of the Schengen Borders Code." The Minister of Health later stated

¹⁵ The Guardian, *EU 'covered up' Croatia's failure to protect migrants from border brutality*, published on 15 June 2020, available at: <https://www.theguardian.com/global-development/2020/jun/15/eu-covered-up-croatias-failure-to-protect-migrants-from-border-brutality>

¹⁶ European Ombudsman, *Ombudsman inquiry opened on how European Commission seeks to ensure protection of fundamental rights in border management operations by Croatian authorities*, published on 6 November 2020, available at: <https://www.ombudsman.europa.eu/en/news-document/en/134797>

that the publishing of the working version was a result of a human error and that therefore it was taken off the official website.

21. A week later, on 10 December, a new version of the first half-year report of the independent mechanism for monitoring the conduct of police officers of the Ministry of the Interior in the field of irregular migration and international protection was published on the website of the Center for Cultural Dialogue¹⁷. The final version of the report was, however, significantly changed only regarding the findings related to irregularities that were detected in the report released just a week earlier. The new version reported that the mechanism only found that “the police carry out permissible deterrence under Article 13 of the Schengen Borders Code, although they do not record them, while in mine suspected areas, in isolated cases, they also allow illicit deterrence.”¹⁸

¹⁷ Center for Cultural Dialogue, *Prvo polugodišnje izvješće Nezavisnog mehanizma nadzora (lipanj - prosinac 2021.)*, published on 10 December 2021, available at: <https://ccd.hr/prvo-polugodisnje-izvjesce-nezavisnog-mehanizma-nadzora-lipanj-prosinac-2021/>

¹⁸ Centre for Peace Studies, *First half-year report of the Independent Monitoring Mechanism*, published on 21 December 2021, available at: <https://www.cms.hr/en/azil-i-integracijske-politike/prvo-polugodisnje-izvjesce-nezavisnog-mehanizma-nadzora>