

CASE REPORT _____

Joining Schengen at any price?

Push-backs by Croatian authorities within the framework of EU migration policy

Since 2016, Croatia has collectively and summarily pushed back countless migrants and refugees from its territory back to Serbia, and more recently, Bosnia and Herzegovina (BiH), under the threat or use of excessive violence. The European Court of Human Rights will examine the Croatian practice of collective expulsions for the first time in a [case submitted by three young Syrian men](#), supported by [ECCHR](#) and its partner lawyer, Carsten Gericke.

In 2018, AA, AB, and the minor SB were all compelled to flee BiH due to its dysfunctional asylum system and intolerable living conditions. In their separate attempts, they were all summarily and forcefully pushed back to BiH by armed Croatian officers. They are now claiming their rights at the ECtHR, and assert that their collective expulsions to BiH, lacking any examination of their individual circumstances or access to a domestic remedy to challenge their expulsions, breach Article 3, Article 4 Protocol 4 and Article 13 of the European Convention on Human Rights. [ECCHR](#), [PRO ASYL](#) and partner lawyer Carsten Gericke support the litigation against Croatia and human rights violations at the EU's external land borders.

Context: The “closure” of the Balkan corridor and its consequences

Collective expulsions of migrants and refugees from Croatia, known as “push-backs,” have been documented since early 2016. Prior to that, the so-called Balkan corridor was seen as a relatively safe and fast route for migrants passing through Greece, through the Balkans and on to Northern and Western Europe. During the winter of 2015/16, this route was gradually shut as states introduced stricter border controls. In March 2016, the European Council [announced](#) that irregular flows of migrants along the Western Balkans route had come to an end.

However, the Balkan route was neither “closed,” nor have people stopped migrating along it. Its official closure simply changed the route's characteristics. Many arriving on Greek shores are now contained in [EU-funded hotspot camps](#), such as [overcrowded and squalid Moria](#), which has been described as a “living hell” – filled to over ten times capacity, full of [physical](#) and [psychological](#) violence, and growing [levels of suicide](#). The only alternative for many

desperate to escape these inhumane conditions is what refugees sarcastically refer to as the “game,” – repeated attempts to irregularly cross borders, often leading to violent push-backs or even [death](#).

Systematic collective expulsions from Croatia

The push-backs experienced by the applicants are not isolated incidents, but part of a systematic practice of collective expulsions at the Croatian border, which is [replicated across Europe](#) in Spain, Hungary, Greece, Italy, Bulgaria, Poland and Slovenia. There are no conclusive figures on push-backs from Croatia to BiH, but a damning letter from [EU parliamentarians](#) to Croatia in April 2019 estimated that over 7000 people had been summarily expelled from Croatia, 80 percent of whom were subject to a push-back, the majority of which were violent, and also directed at children.

Croatia’s unofficial practice has met both international condemnation and broad tacit approval. A Council of Europe [resolution from June 2019](#) noted the parliamentary assembly was “extremely worried about persistent reports and evidence of inhuman and degrading treatment” in the context of push-backs, in particular from Croatia, and urged states to halt the practice and extend access to protection. Yet Croatia’s efforts to join the Schengen Area has meant violating the human rights of migrants and refugees. Furthermore, the fortification of Croatia’s borders is actively supported by the EU and its border agency, Frontex. It has been tacitly condoned by the EU Commission and [praised by German Chancellor Angela Merkel](#). The Croatian Minister of the Interior Davor Božinović [connected](#) Croatia’s intensified use of deterrents at the border with Croatia’s intention to join the Schengen Zone and its obligation to fend off illegal crossings. Following the European Commission’s concerns about its porous border with BiH, Croatia pledged to reinforce border surveillance with increased patrols, helicopters, thermovision vehicles, and dogs. After that, the commission deemed Croatia ready to join the Schengen Zone. The use of “[a little bit of force](#)” has also been defended by Croatia’s former President Kolinda Grabar-Kitarovic, who added that it remains proportionate. Still, in early 2020 and after [regularly doing so for years](#), Interior Minister Davor Božinović [continued](#) to deny the practice of violent expulsions.

These denials have become increasingly difficult to sustain, however, in face of recent reports of the first border casualties, emerging video evidence, Croatian police whistleblower testimony, and continued, [wide-ranging reports from NGOs and the media](#). Up to a fifth of all recorded push-backs from Croatia involve the use of guns, according to the [Border Violence Monitoring Network](#). In November 2019, the Croatian Interior Ministry confirmed an investigation into a casualty – [a man shot in the stomach and chest](#) close to the Slovenian border. Additionally, in December 2018, [video footage](#) emerged from cameras hidden in the Croatian forest documenting 54 push-backs in the space of 10 days, some involving small children, where assaults, shots and screams are heard, and migrants visibly injured. Further [footage](#) emerged in May 2019. This violent practice was corroborated by a Croatian police whistleblower in an [anonymous letter](#), detailing orders to “return everybody, without

paperwork, without track, to take their money, to smash their cellphones ... and return the refugees to Bosnia by force.”

Reports of push-backs from Croatia date back to January 2016. The practice continues unabated, and its cruelty appears to intensify. Following documentation by activists, the first report came from the [BBC](#), followed by [Deutsche Welle](#), [Reuters](#), [Al Jazeera](#) and [The Guardian](#). Extensive documentation was later published by [UNHCR](#), [Human Rights Watch](#), [Amnesty International](#), [Médecins sans Frontières](#) and the EU’s [Fundamental Rights Agency](#), all pointing to a systematic practice of summary violent and indiscriminate expulsions by Croatian authorities and a lack of accountability. Media reports on violent and abusive push-backs continue from the [BBC](#), [Open Democracy](#) and [Foreign Policy](#). Much of this reporting relies heavily on the extraordinary work of local grassroots monitoring NGOs, such as [Are You Syrious](#), [No Name Kitchen](#), and the Border Violence Monitoring Network’s [monthly reports](#).

Yet these organizations face constant [pressure](#), [criminalization](#) and attacks from the highest governmental authorities. On the other hand, officials seeking to investigate or halt the practice have failed to hold Croatia accountable, or even make a notable impact on the number of push-backs. The Croatian Ombudswoman’s attempts to investigate push-backs have been repeatedly [hindered](#) by the Croatian Ministry of the Interior and State Attorney’s Office. The Ombudswoman criticized the Croatian authorities’ disregard for asylum claims, beatings with batons, use of violence against children, theft of money, seizure and destruction of mobile phones, informal detention in police stations, and complete absence of translation and record-keeping. Her BiH counterpart [mirrored](#) her findings.

Living conditions for asylum-seekers and the asylum system in BiH

More than 15,000 people sought international protection in BiH in 2018, according to local authorities, [evidenced](#) by their registered but unprocessed asylum claims. In fact, only a fraction, [reportedly only 7 percent](#), could register their claim. In a country still plagued by the effects of the 1990s war, where mass unemployment, poverty and corruption caused a nationwide uprising as recently as 2014, the asylum system functions no better than deficient state services do for citizens. In fact, the deficiencies of the Bosnian asylum system, already pointed out in a May 2018 [letter](#) from the Council of Europe Commissioner for Human Rights, take on various forms. The International Organization for Migration-run camps for asylum-seekers do not serve as a registered address required to lodge an asylum application. Furthermore, the UN [pointed out](#) that access to healthcare was “a major concern,” and food was limited to one meal per day. More generally, asylum-seekers’ right to accommodation could not be fulfilled for all single men throughout most of 2018, even though they constitute the largest contingent of BiH’s migrant and refugee population at any given time. A number of IOM-run [emergency shelters](#) have opened since the end of 2018. However, living conditions in these camps are [extremely insufficient](#), and migrants and refugees’ situation is [dangerously precarious](#). Unfortunately, nearly all of these deficiencies remain characteristic of

BiH's dysfunctional asylum system and there is no indication that the situation will significantly improve in the near future.

The living conditions for asylum-seekers in BiH create a context that leaves no alternative to trying to move on to other European countries.

Legal action in front of the European Court of Human Rights: *SB, AA, and AB v. Croatia*

The three applicants, including a then unaccompanied minor, have now all been granted protection in Europe and are in a better position to challenge the violations they suffered at the hands of Croatian authorities. They thus decided to claim their rights in front of the European Court of Human Rights. Their applications argue that their collective expulsions – without examinations of their individual circumstances and access to any national remedy – breach Article 4 Protocol 4 (prohibition of collective expulsions) and Article 13 (right to an effective remedy) of the European Convention on Human Rights. They also claim that their expulsions back to BiH violated Article 3 of the convention (prohibition of torture, inhuman and degrading treatment), as the Croatian authorities failed to assess the risks they faced in light of the living conditions in BiH and the country's systemic deficiencies in accessing asylum and providing accommodation for asylum seekers.

The three collective expulsions took place on separate dates and each has specific characteristics, yet all three cases follow a similar *modus operandi* described above. Facing the asylum system's severe deficiencies and inhumane living conditions in BiH, the applicants entered Croatia from BiH with groups of people on different days in October 2018. At some point, each was apprehended as part of their group, put in a van unfit for human transportation, and coerced to cross the border back into BiH by armed Croatian officers. Two of the applicants were held in informal custody before being taken to the border. All of this was done outside any legal framework – national or European. None of the applicants were given access to any of the safeguards the law provides, such as an asylum procedure or protection for the applicant who at the time was an unaccompanied minor. All the applicants were made to cross back into BiH outside of official border crossing points, out of BiH officers' sight.

At no point between the applicants' apprehension and their expulsion from Croatia did any of the three different groups have an opportunity to ask for international protection or challenge their expulsion from Croatia, nor did the Croatian authorities carry out any risk assessment of asylum seekers' living conditions in BiH. This was despite publicly available information about the asylum seekers' inhumane living conditions and the lack of a functioning asylum system in BiH. Thus, the applicants' expulsions constitute a violation of two of the convention's absolute prohibitions: Article 3 (prohibition of torture, inhuman and degrading treatment) and Article 4 Protocol 4 (prohibition of collective expulsions).

The applicants also claim that their lack of access to any administrative or legal procedures to contest their expulsion from Croatia breached their right to an effective remedy, protected

under Article 13 of the convention. The absence of an individualized procedure, through which one could challenge her expulsion before it is executed, implies the lack of an effective remedy to challenge unlawful treatment by Croatian authorities – a de facto denial of the right to have rights.

Legal interventions against collective expulsions

These cases in front of the European Court of Human Rights are a continuation of previous ECCHR litigation against collective expulsions at the EU's external land borders, including *AA and others v. FYROM* in relation to the Balkan route, as well as cases addressing the situation at the Spanish-Moroccan land border, namely *ND and NT v. Spain* and *DD v. Spain* at the UN Committee on the Rights of the Child. All cases address the right to have rights at the border.

Croatia's migration policy is based on grave human rights violations at the border, yet it is still tacitly condoned by the EU and its member states. Social movements and civil society's duty to confront governments and speak out against injustice is key. This is even more so when injustice targets people who seek refuge from harm and surrogate protection.

ECCHR's Migration program is trying to do its part. Since 2014, it has used strategic litigation to seek to hold governments and [the EU](#) accountable for the inhumane consequences of migration control. Its work strives to stand in solidarity with those struggling to cross Europe's seemingly lawless borders, and to fight for safer and fairer migratory routes.

Last updated: June 2020

European Center for Constitutional and Human Rights (ECCHR) e.V.

www.ecchr.eu