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EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

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BY POST AND FAX

Zagreb, 8th of December 2020

Application no. 18810/19

S.B. v. Croatia

Third party intervention on behalf of the Centre for Peace Studies

Pursuant to the Registrar's notification dated 17 November 2020 that the Vice-President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights

A. The persistence of illegal practices of Croatian authorities which include violent collective expulsions of refugees and other migrants

A.1. The systematic nature and violence of widespread collective expulsions from the territory of Croatia

- 1. Reports and testimonies of the collective expulsions from Croatian territory have been well-documented¹** together with the widespread violence inflicted on refugees and other migrants for the past four years. These expulsions are carried out informally and arbitrarily in absolute lack of identification and documentation, with denial of access to the asylum system, and violations of the procedural rights for interpretation and legal assistance. As a consequence of the non-implementation of any legal procedures, there are no remedies available. **Often with the use of brutal violence by state authorities, causing serious bodily and psychological harm and even death.**
- 2. In 2016, first cases of expulsions without complying with any legal procedures from the territory of Croatia were reported.²** From then, numerous sources including national and international NGOs have collected testimonies and have continuously been reporting on these unlawful actions. **All of the reports throughout the whole period of four years are consistent and complementary with each other, even though they use different methodologies. The persistence of the practice confirmed by numerous complementary reports indicate such practice not as a single event, but as a coordinated shift in policy on the part of Croatian police.**
- 3. The complaints and reports are highlighted in all the Croatian Ombudsperson's Activity Reports within the period 2016-2020. In her Activity Report for 2018³ she finds especially worrying** *"the complaints referring to police treatment of migrants apprehended in irregular crossing of the state border or immediately after, which are very similar and usually begin with allegations of crossing the state border, apprehension on the territory by police officers, seeking international protection and ignoring such requests, pushing in the van and even beating, even with batons, taking money and all valuables, destroying cell phones, either by destroying the charging port with a screwdriver or by pouring water over it, and returning through the green border, without conducting any legal procedure."*
- 4. The above mentioned reports by the Ombudsperson and the CSOs show the described expulsions take place without implementing any procedure prescribed by the Law on Foreigners⁴, where the apprehended person finds themselves in the position of an object of an arbitrary procedure, without any possibility to influence the outcome or the conduct of the police, which acts with the competence of a state authority but outside any legal provisions. **Such practice is in direct contradiction to any notion****

¹ For example: Centre for Peace Studies (CMS), Are You Syrious (AYS), and the Welcome! Initiative, "5th report on the pushbacks and violence from the Republic of Croatia: Illegal practices and systematic human rights violations at EU borders", Zagreb, 3rd of April 2019, available at:

https://www.cms.hr/system/article_document/doc/597/5_5TH_REPORT_ON_PUSHBACKS_AND_VIOLENCE_20052019.pdf and other yearly Pushback Reports from the same authors; Médecins Sans Frontières, Serbia: Games of Violence, 4 October 2017; Save the Children, Refugee and migrant children injured in border pushbacks, 24 January 2017; No Name Kitchen: Illegal Pushbacks and Border Violence Reports, Balkan Region, October 2019, available at: http://www.nonamekitchen.org/wp-content/uploads/2020/02/October_Report_2019_.pdf; No Name Kitchen, Violence Reports, on monthly basis available at: nonamekitchen.org/en/violence-reports/; Border Violence Monitoring Network Reports, available at: borderviolence.eu/category/monthly-report/

² See: Moving Europe, Report on Push-backs and Police violence at the Serbo-Croatian border, 2.2.2016., available at: <http://moving-europe.org/report-on-push-backs-and-police-violence-at-the-serbo-croatian-border-2/>

³ Republic of Croatia, Croatian Ombudsperson, Report for 2018, Zagreb, March 2019. Available at: <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmid=6777&refresh=5fc7950f7fca11606915343>

⁴ Law on Foreigners/Zakon o strancima, OG 130/11, 74/13, 69/17, 46/18, 53/20, in force: 26.5.2018. - 31.12.2020.

of human dignity and therefore in direct opposition to the very essence of the Convention, which is “respect for human dignity and human freedom”.⁵

5. The persistence of the described practice of violent arbitrary expulsions of aliens was further reported in 2019 by Felipe Gonzales Morales, the UN Special Rapporteur on the human rights of migrants⁶, who noted after the conclusion of his visit to Bosnia and Herzegovina that he has *“received reliable information about violent pushbacks of migrants and asylum seekers by Croatian border police into the territory of BiH. According to the testimonies that I received, many migrants were forcibly escorted back to BiH without going through any official procedure. (...)common patterns include the capture of people on the move, confiscation of their properties, especially communication equipment, beating with batons and chasing by dogs with the **purpose of physically exhausting them and prevent them from attempting another crossing.** A number of male migrants were reportedly stripped, beaten and forced to walk back to BiH barefoot.”*
6. The Border Violence Monitoring Network has also established a publicly available database of detailed testimonies of victims affected by the violence and arbitrary operation of Croatian state actors, which is updated on a regular basis and so far (from 1 January 2018 until 6 December 2020) contains 440 testimonies of *push-backs*, i. e. informal expulsions (without due process) of individuals or groups from Croatia to Bosnia, which affected 5369 persons. With many occurrences undocumented, the actual number of cases is likely to be much higher.
7. Regarding the statistics, it is important to note the worrying inconsistencies in data collected by the Ministry of the Interior of Croatian Republic. For example, in 2018 the Ministry of the Interior (MI) reported 8207 illegal border crossings⁷, among which 2961 tries of “illegal exits from Croatia” to Slovenia and 8 to Hungary; and 1829 tries of “illegal entries in Croatia” from Serbia, 676 from Bosnia and Herzegovina, 19 from Montenegro, and 15 from different locations, while 2699 people were caught in “an unknown part of the border - inside the Croatian territory”. From the above mentioned 8207 people, 1438 were sent back to third countries, 1068 applied for asylum, 536 were placed in detention. It follows that the Ministry of the Interior **did not submit any information on the procedures applied in the remaining 5165 cases of persons who were noted as apprehended by the Croatian authorities attempting to enter or cross Croatian territory in an irregular manner.** The national and international humanitarian and non-governmental organisations have collected data on a disproportionately larger number of persons testifying to have been illegally expelled from the Republic of Croatia to Serbia and Bosnia and Herzegovina in the same time period. In regards to illegal expulsions to Bosnia and Herzegovina, No Name Kitchen⁸ reported that 1503 people have been pushed back in the surroundings of the border crossing close to Velika Kladuša between June 2018 to January 2019. Border Violence Monitoring Network states there were 368 people who have been pushed back in the vicinity of the border crossing close to Bihać between 29th September and 10th October 2018. It is also telling that despite the increase in migration, the Republic of Croatia recorded a decrease in the number of applications for international protection by 43.4% in 2018 in relation to 2017.⁹

⁵ Christine Goodwin v. the United Kingdom, no. 28957/95, 11 July 2002, § 90; Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, 17.7.2014, § 118; Pretty v. the United Kingdom, no. 2346/02, 29.4.2002, § 65.

⁶ End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, 2019. Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25088&LangID=E>

⁷ Official Ministry of the Interior data available at:

<https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>, p. 146.

⁸ No Name Kitchen, Illegal pushbacks and border violence reports, Bosnia and Herzegovina, January 2019, p. 8, available at: <http://www.nonamekitchen.org/wp-content/uploads/2019/02/January-2019-Violence-Reports.pdf>

⁹ Republic of Croatia, Croatian Ombudsperson, Report for 2018, Zagreb, March 2019. Available at: <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmml=6777&refresh=5fc7950f7fca11606915343>, p. 300.

8. Numerous reports reveal the systemic nature of the violent police practice and detail increasingly brutal and degrading methods¹⁰, used indiscriminately against children and other specifically vulnerable people.¹¹ Border Violence Monitoring Network issued a comprehensive report examining Croatian police methods of torture and inhumane treatment in 2019.¹² In 2020 there were new horrifying practices reported, such as a case of a group of migrants and asylum seekers who were “bound, brutally beaten and tortured by officers who mocked their injuries and smeared food on their bleeding heads to humiliate them”¹³ and spray-painting of heads with crosses¹⁴.
9. **The systematic nature of collective expulsions** in Croatia was confirmed through two separate testimonies of Croatian police officers shared by journalists and through complaints of police officers to the Croatian Ombudsperson¹⁵. **These testimonies are consistent with each other and with thousands of testimonies of refugees and other migrants collected between 2016 and 2020**, and describe practices that are contrary to any prescribed procedures in the Law on Foreigners or Law on International and Temporary Protection¹⁶. On 24th of July 2019, one Croatian police officer stated¹⁷: *“My fellow policemen and I have executed illegal returns of migrants from Zagreb to the border line between Croatia and Bosnia and Herzegovina or Serbia. We would bring them to the ‘green’ borderline and order them to cross back to Bosnia and Herzegovina or Serbia. We did not take any records of the identities. We received these orders from our superiors at the police station”*. He also explained in detail how the collective expulsions are being carried out: *“I call my boss and say that we have a group of migrants. (...) Boss calls me on my private phone on which the conversations are not recorded, and says to take them to the border. Migrants say: ‘Asylum’, we respond: ‘No asylum’, we put them in vans and turn off the connection that shares the GPS signal, so it is not possible to track us”*. On 9th of December 2019 another police officer gave inside information on the organisation of these actions and on the unit called **“Corridor” which allegedly carries out the collective expulsions**¹⁸: *“Now they simply call themselves the Corridor. They have WhatsApp and Viber groups for exchanges of*

¹⁰ For example: No Name Kitchen, Re:Ports Sarajevo, Border Violence Monitoring (2019) Illegal pushbacks and border violence reports Šid Serbia, 12/ 2018 - 03/ 2019. Available at: <http://www.nonamekitchen.org/wp-content/uploads/2019/04/SidreportsMarch.pdf>

¹¹ For example: Border Violence Monitoring Network, Centre for Peace Studies, Society for Psychological Assistance, Welcome Initiative (2020) Pushback report on children and unaccompanied children in Croatia, Centar za mirovne studije, Zagreb. Available at:

https://www.cms.hr/system/article_document/doc/647/Pushback_report_on_children_and_unaccompanied_children_in_Croatia.pdf

¹² Border Violence Monitoring Network, Torture and Cruel, Inhumane or Degrading Treatment of Refugees and Migrants in Croatia in 2019. BVMN, 2020. Available at:

<https://www.borderviolence.eu/wp-content/uploads/CORRECTEDTortureReport.pdf>

¹³ Amnesty International, Croatia: Fresh evidence of police abuse and torture of migrants and asylum-seekers, 11 June 2020.

Available at: <https://www.amnesty.org/en/latest/news/2020/06/croatia-fresh-evidence-of-police-abuse-and-torture-of-migrants-and-asylumseekers/>

¹⁴ Tondo, L., Croatian police accused of spray-painting heads of asylum seekers. Guardian, 12 May 2020. Available at: <https://www.theguardian.com/global-development/2020/may/12/croatian-police-accused-of-shaving-and-spray-painting-heads-of-asylum-seekers>

¹⁵ The copy of the complaint available in: Republic of Croatia, Croatian Ombudsperson, *Report on the performance of the activities of the national preventive mechanism for 2019*, p.27.,

<https://www.ohchr.org/en/hrbodies/opcat/pages/annualreportsreceivedfromnpm.aspx>

¹⁶ Law on International and Temporary Protection/Zakon o međunarodnoj i privremenoj zaštiti, OG 70/15, 127/17

¹⁷ The full testimony available in the interview: Barbara Matejčić, *Prvi intervju u kojem hrvatski policajac tvrdi: šefovi nam naređuju da ilegalno protjerujemo migrante /First interview in which a police officer claims: our bosses order us to illegally expel migrants*, Telegram, 24. 07.2019., available at: <https://www.telegram.hr/price/prvi-intervju-u-kojem-hrvatski-policajac-tvrdi-sefovi-nam-nareduju-da-ilegalno-protjerujemo-migrante/>

¹⁸ The full testimony available in the interview: Đurđica Klancir, *ZASTRAŠUJUĆA DEVIJACIJA ‘KORIDORA’: ‘Policija sve dogovara na Whatsappu, a poseban zadatak u hvatanju migranata imaju taksisti!’*, Net.ht, 09.12.2019, available at: <https://net.hr/danas/hrvatska/zastrasujuca-devijacija-akcije-koridor-policija-sve-dogovara-na-whatsappu-a-poseban-zadatak-u-hvatanju-migranata-imaju-taksisti/>

information and photographs of groups of migrants ... Significantly, they operate throughout Croatian territory, therefore, they move like a real mobile unit. I think that it is already clear within the system that whenever they come to a certain area, soon there is information about police shootings, robbery, beating...”.

10. Described practices of Croatian police and statistical discrepancies are also in breach of the Ordinance on the Treatment of Third-country Nationals in Article 20¹⁹, which states that a person is to be arrested in the event of unlawful entry, and **the actual content of the certificate of arrest is clearly prescribed, with the exception of arrest in case a third-country national has declared his intent to seek international protection.** Finally, in the mentioned **Ordinance, Article 64** stipulates that the police administration or police station will **keep a database of:** third-country nationals denied entry and denied entry to third-country nationals for whom a measure to secure return has been applied, temporarily retained foreign travel documents and taken fingerprints, biometric data, and photographs of a third-country national in respect to the measures that have been taken to ensure return. From the reports of NGOs and Croatian Ombudsperson, discrepancies in the official MI statistics, as well as testimonies of migrants and police officers - the proscribed official data and police files are non-existent.
11. **The Croatian Ministry of Interior have consistently denied any wrongdoing**, in general and in any specific case which had been brought forward. In the response to the allegations brought publicly the MI responds within hours denying that such events ever took place, while it is obvious that not even internal investigation could have been carried out in such a short period of time. The response relies on the non-existence of official data that the police officers carried out these activities. As seen from above and as the Croatian Ombudsperson has frequently warned - the data is not being collected in a lawful manner, while the police officers testimony imply that it is done intentionally. Moreover, the unfounded denials were on several occasions followed by the **disinformation on the asylum system, also given by the Ministry of Interior himself**, where he for example stated that *“the person must legally enter the territory of Croatia in order to be granted asylum”*.²⁰
12. Centre for Peace Studies (CPS) daily receives requests from the refugees in the territory of Croatia to communicate their location and intention to seek asylum to the nearest police station. For example, **in November 2020**, the CPS contacted the police upon the request of 25 groups, including in total at least 159 persons and children in each of the groups. Out of those 25 groups, for only two groups the MI confirmed they were granted access to asylum and put in the Reception centre. For most of the cases there was no response from the police, and **for 9 groups the police responded that the persons were not found, while most of the same groups informed the CPS that after arrival, the police has put them in a van and pushed them back to Bosnia and Herzegovina without access to asylum or to medical aid.** Out of the groups that contacted CPS in the second half of November 2020, at least 6 groups report they were pushed back multiple times.
13. Moreover, the Ombudsperson notes in her 2018 report²¹, that during 2018 the MI unlawfully prevented the Ombudswoman from directly accessing the cases and information on treatment of irregular migrants in the MI's Information System, which is also the only source of such information. Such obstruction of the Ombudsperson's inquiry happened on 6 police stations, showing that it was not a result of a misunderstanding but rather that the **directive for non-disclosure of information** to the

¹⁹ Croatian Ordinance on the Treatment of Third-country Nationals/Pravilnik o postupanju prema državljanima trećih zemalja, Official Gazette 68/2018

²⁰ HINA, *MINISTAR UNUTARNJIH POSLOVA BOŽINOVIĆ 'Svi kojima je odobren azil u Hrvatskoj su boravili zakonito'*, 30.12. 2017., available at: <https://www.jutarnji.hr/vijesti/hrvatska/bozinovic-svi-kojima-je-odobren-azil-u-hrvatskoj-su-boravili-zakonito-6889380>

²¹ Republic of Croatia, Croatian Ombudsperson, Report for 2018, Zagreb, March 2019. Available at: <https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=5fc7950f7fca11606915343>, p. 298.

Ombudsperson was coordinated. She notes that during visits to police stations in general “they usually had to wait for some time and thus miss the main point of unannounced visits, i.e. the surprise element”.

14. Violent, illegal and forced expulsions, together with the denial of access to the asylum system, endanger persons’ lives, dignity and safety while they are under exclusive control and within the power of the Croatian authorities. In addition the described factual background shows the increasingly brutal collective expulsions as a state strategy to deter migration through the territory of the Republic of Croatia.

Collective expulsions of groups that include children and unaccompanied children

15. The Border Violence Monitoring Network data shows a continuous and high frequency of violations against children during collective expulsions from Croatia. Between 2017 and 2019, **the number of cases involving an underage person was consistently between 30%-50%**. In 19% of recorded cases, groups including children and unaccompanied children were beaten by Croatian police during their collective expulsions. Multiple testimonies in the BVMN database allude to cases of indiscriminate violence against children when they were part of a group of adults. Meanwhile, other testimonies describe the children as witnesses to the violence carried out against adults in their presence.²²
16. In the Activity Report for 2017, the Croatian Ombudsperson for Children has warned about the discrepancy in data of the Croatian institutions and expressed that these raise grounded suspicions of the illegal actions of the Ministry of the Interior. Specifically, data of the Ministry of the Interior state that **846 children were recorded to have illegally crossed the border in 2017**. There were 261 children who required international protection in Croatia. Pursuant to the *Article 6 of the Protocol on the Treatment of Unaccompanied Children - Foreign Nationals*, a competent social welfare centre is to be immediately informed about every child (foreign national) found unaccompanied in the territory of Croatia, irrespective of their status or whether the child is seeking international protection. However, according to data presented by the Ministry of Demography, Family, Youth and Social Policy, **the social welfare system recorded 334 children**, 30 of them younger than 14 years of age (with 2 children younger than 4 years of age). This discrepancy between Ministry of the Interior data and data presented by the Ministry of Demography, Family, Youth and Social Policy shows there is a **gap of 512** for whom the procedure prescribed by the named Protocol, meaning that the relevant institutions have not been informed about the presence of children in the Croatian territory.²³
17. The previously mentioned provisions of the Protocol are in line with the decision of the UN Committee on the Rights of the Child which in the case *D.D. v. Spain* (No. 4/2016) emphasized that the child, no matter the documentation or lack of it, has to have access to the territory and “be referred to the authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards.” This principle has been implemented in the Croatian national law in Art. 6 of the Law on International and Temporary Protection and Art. 126 of the Law on Foreigners. The later Article also stipulates an obligation to determine “whether a minor in the country of return will be handed over to a family member, designated guardian or appropriate reception institution”. The illegality of analysed practices towards children lays also in failing to take into account the best interest of the child, family life, and the state of health – requirements to meet the threshold of returns.²⁴

²² For more information see: CPS, Welcome Initiative!, BVMN, Society for Psychological Assistance, Pushback report on children and unaccompanied children in Croatia, 2020, available at: https://www.cms.hr/system/article_document/doc/647/Pushback_report_on_children_and_unaccompanied_children_in_Croatia.pdf

²³ Republic of Croatia, Ombudsperson for Children, Summary Report on the Work of the Ombudsperson for Children for 2017, Zagreb, March 2018, p.23, available at: <https://dijete.hr/en/reports-of-the-ombudsperson-for-children/>

²⁴ See also: DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Art.5; Croatia, Law on Foreigners (Zakon o strancima), Article 101. Official Gazette NN 53/20

18. Described unlawful collective expulsions carried out by the state authorities form violations of the right to seek international protection but also **breach of obligation to ensure that the best interest of the child has been assessed and taken as a primary consideration in decisions and actions taken by the state authorities and institutions, as well as forms torture, inhuman and degrading treatment.**²⁵ The ECtHR has ruled that the extreme vulnerability of a child takes precedence over the person's status as a migrant in an irregular situation.²⁶

A.2. Multifaceted violations of Article 3 in practice of collective expulsions from the territory of Croatia

The denial of access to the asylum system accompanied with non-assessment of the risk of refoulement

19. **The content of the prohibition of torture and inhuman or degrading treatment or punishment includes the absolute non-refoulement norm, as developed by jurisprudence of the ECtHR.** The practice of collective expulsions described under A.1. of this submission is in most cases carried out without any legal procedure implemented, intentionally denying access to the asylum system, while authorities deliberately do not provide any individual assessment of risk of *refoulement*.
20. According to the **EU Directive on Asylum Procedures (2005/85/EC)**, every person has the right to seek asylum and to have access to the information about the asylum system. The aim of the set legal provisions transposed also in national laws is to offer procedures that will **safeguard human rights of persons in the immediate control of police officers and prevent the arbitrary actions of the police.** In the Activity Report for 2019²⁷, the Croatian Ombudsperson confirmed the cases of ill-treatment of asylum seekers and pushbacks, where police ignored asylum requests, including from families and children, took money and cell phones, and ordered migrants at the border to go back to Bosnia, threatening them with firearms.
21. In the Activity Report for 2018, the **Croatian Ombudsperson explicitly reported on the numerous complaints on the deliberate prevention of access to the asylum system and police violence** towards migrants who have crossed the border irregularly, **while the effective investigation into these is lacking.**²⁸
22. Fundamental Rights Agency (FRA) in its Quarterly Bulletin continuously reports on the breach of *non-refoulement* and police violence in Croatia. For example, in one of the Quarterly Bulletin that reflects on 2018, it is mentioned that: "Asylum requests are being ignored and people, including children, continue to be pushed back from Croatia."²⁹
23. **The denial of access to the asylum system is therefore the direct intention of the acts of expulsions that are being carried out.** In the already mentioned testimony of a policeman he has stated that he has carried out his first pushback in 2017, following the orders of his superiors, and how the practice was the following: "Migrants say: *Asylum*, we respond: *No asylum* and put them in a police van where we turn off the connection, which usually sends the GPS signal – so that no one knows where we are".³⁰
24. **Therefore, there is no lawful procedure implemented during which one would have a thorough assessment of the risk of non-refoulement,** and there are **no translators** involved which would enable

²⁵ As stipulated in UN (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 14, p. 5.

²⁶ See, for example, *N.T.P. and Others v. France*, no. 68862/13, § 44, 24 May 2018, and the judgments cited therein, and *Khan v. France*, No. 12267/16, §74

²⁷ Republic of Croatia, Croatian Ombudsperson, Zagreb, March 2020, available in Croatian: <https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvje%C5%A1%C4%87e-pu%C4%8Dke-pravobraniteljice-za-2019.pdf>

²⁸ Croatian Ombudsperson, Report for 2018, op.cit., p.303.

²⁹ FRA, *Migration: Key fundamental rights concern*, 1.11.2018- 31.12.2018, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-1_en.pdf

³⁰ Barbara Matejčić, *Prvi intervju...*, op.cit.

the persons to understand their rights and obligations, meaning that they are not given the mere possibility to voice the risk of *refoulement*.

25. **Described systematic collective expulsions of third-country nationals from the territory of Croatia to Serbia and Bosnia and Herzegovina, without assessing each individual case, and especially while ignoring their need for international protection and usage of severe violence should be considered torture under the Article 3 of the ECHR.**

Active severe violence, torture, inhuman and degrading treatment used in collective expulsions

26. Documented complaints to the Ombudsperson contained allegations of police abuse where police officers have allegedly beaten the apprehended people, forced them to take off their clothes, they were forbidden to speak and their possessions were taken. The Ombudsperson has warned about the high number of these complaints, as well as the details and proofs within them, including dates and places of the border crossing and medical documentation. Finally, she warned that **these behaviours might present the violation of the Article 3 of the ECHR - in both material and procedural aspects: the active torture and degrading treatment of persons, and the obligation of the State to carry out effective investigations that need to be adequate and detailed.**³¹
27. In line with the Ombudsperson's reports, the reports of NGOs active in the region reveal the constant elements of torture, inhuman and degrading treatment during the pushbacks. Namely, in the **Report for October 2018**, the No Name Kitchen has shared reports of pushbacks, where in all of the victims state that they have experienced severe violence, while most of them experienced threats, destruction of phones, thefts and degrading treatment in form of forced stripping.³²
28. The Report for October 2018 does not defer greatly from the other documented incidents of torture inflicted during the collective pushbacks from 2017 onwards. Moreover, the AIDA's *2018 Update "County Report: Croatia"* summarises the main violations reported during 2018 and highlights that "many of the reports in 2018 noted that the Croatian police continues to use force against migrants to push them back to neighbouring countries after they have crossed the Croatian border in an unauthorised manner."³³ These findings are corroborated also by FRA reports.³⁴
29. The overview of the methods used by the Croatian police is given in the Report *Torture, inhuman, or degrading treatment of refugees and migrants in Croatia in 2019* by the Border Violence Monitoring Network, where "by analyzing data on violent pushbacks across Croatian borders in the course of 2019, the report demonstrates how the **systematic violence by Croatian authorities constitutes clear and purposeful cases of torture or cruel, inhumane and degrading treatment**"³⁵. It focuses analysis on the 2019 where in more of 80% of the collected cases "contained one or, in most cases, multiple features of violence indicating either torture or cruel, inhumane and degrading treatment". The found methods include the use of electric discharge weapons, forced undressings, the use of excessive and disproportionate force, threats or excessive force committed with firearms, detention with no basic facilities, and inhumane treatment inside of police vehicles.
30. Therefore, the statistics show that from 2017 onwards the pushbacks are mostly carried out by using active torture, inhuman and degrading treatment.

³¹ Croatian Ombudsman, Report 2017, p. 241., available at: <https://www.ombudsman.hr/en/reports/>

³² No Name Kitchen, Illegal push-backs and border violence Reports October, Velika Kladuša, BiH, available at: <http://www.nonamekitchen.org/wp-content/uploads/2018/11/Violence-Reports-October.pdf>

³³ AIDA, Country Report Croatia, p.21-22, available at: <https://www.asylumineurope.org/reports/country/croatia>

³⁴ FRA, Periodic data collection on the migration situation in the EU, May 2018, available at: <https://fra.europa.eu/en/publication/2018/periodic-data-collection-migration-situation-eu-november-2018-highlights>

³⁵ Border Violence Monitoring Network, *Torture and Cruel, Inhumane...*, op.cit.

Failure to investigate allegations of the violations of Article 3

31. From the 2016 to this day, there was no effective investigation into the allegations of pushbacks and of torture against the refugees and other migrants.
32. In terms of actions that indicate a violation of Art. 3 ECHR, read in conjunction with the State's general duty under Art. 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms", requires that there should be an effective official investigation.
33. **The European Court of Human Rights has developed three criteria, which the State must meet in order for the investigation to be considered "effective"**.
34. The first is that **the persons responsible for the investigation and those carrying out the inquiries are independent of those involved in the events, which presupposes "not only a lack of hierarchical or institutional connection but also a practical independence"**³⁶. The requirement of independence is especially important in the context of investigating violent collective expulsions, since they are carried out by the police officers³⁷. The extensive evidence, including the testimonies of the police officers, points towards the conclusion that several structures under the Ministry of Interior are involved in carrying out the collective expulsions - therefore its systematic nature. **Therefore, any internal investigation within the Ministry or bodies who are not hierarchically and practically independent do not suffice and therefore do not meet the "effectiveness" threshold**. The findings of the CoE mission to Croatia in 2018 reveal that "since 2016, the Ministry of Interior has received 193 complaints concerning allegations of ill treatment at the border and of confiscation and destruction of possessions". There was no effective investigation in any of these, since the police stated that "the **police inquiries** were made", which found no violations in any of the cases.³⁸
35. The second condition is that the **investigation be prompt, speedy and thorough**. The Croatian NGOs Centre for Peace Studies and Are You Serious? have filed **in total eight criminal complaints to the State Attorney's Office** from the beginning of 2017. To the knowledge of the filers, there were **no effective investigations into any of these cases**. The Centre for Peace Studies has filed seven criminal complaints for 67 cases of pushback in total - which include at minimum 453 victims, while the majority of cases concerned includes suspicion of torture, degrading treatment, theft - endangering their lives and bodily integrity. The perpetrators of these crimes are to date not found and therefore are not sanctioned. Moreover, the Centre for Peace Studies states that the State Attorney Office has recently been contacted about two submitted criminal complaints - for one almost two years after the criminal complaint was submitted (submission: Dec 2018; first communication: July 2020), and for the other after two months (submission: July 2020; first communication: Sep 2020). **This shows the lack of effectiveness, since these cannot be considered prompt nor speedy**.
36. Moreover, it shows that Croatia has not taken all the steps available to identify and punish the perpetrators. On the contrary, the Croatian authorities have for four years simply dismissed complaints

³⁶ In particular, Barbu Anghelescu v. Romania, 5 October 2004; Bursuc v. Romania, 12 October 2004; Nachova v. Bulgaria [GC], 6 July 2005.

³⁷ Barbu Anghelescu, op.cit.

³⁸ Report of the fact-finding mission by Tomáš Boček, 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, available at: <https://rm.coe.int/report-of-the-fact-finding-mission-by-ambassador-tomas-bocek-special-r/1680940259>

in this regard. For example, during 2018 the Council of Europe Commissioner for Human Rights³⁹ and Members of the European Parliament⁴⁰ **have called on Croatia to investigate allegations of collective expulsions of migrants and of excessive use of force by law enforcement officers.** In response, the Government has denied allegations and questioned the sources of the information.⁴¹

37. The Ombudsperson stressed that the Ministry of the Interior is “**persistently refusing**” to investigate **the reported illegal acts towards the migrants found in the depths of Croatian territory.** The Ombudsperson has dismissed the arguments of the Ministry of the Interior which repeatedly and continuously states that the statements of migrants about the police officers’ behaviour are false and motivated by the need of revenge on their way to the countries of destinations. Specifically, **she pronounced Ministry of the Interior arguments as unacceptable and stated that they do not meet the criteria of an effective investigation.**

B. Art 13: No access to effective suspensive remedies

38. The absence of actually carrying out the effective investigations is also to be considered in the light of the Article 13, since it makes the remedies inaccessible and not guaranteed to the victims of the described crimes.⁴²
39. However, in the context of collective expulsions, pushbacks and with it related torture inflicted, even if the criminal procedure would be available, that would not suffice the criteria of the effectiveness - as the legal remedy after such event is not to be considered an effective remedy according to ECtHR’s jurisprudence. The Court established that in these cases for the remedy to be considered effective, **the remedy must be suspensive.**⁴³
40. From the analysis of the Chapter A it is visible that one of the main elements of the analysed practice is the non-consideration of the *non-refoulement* principle and the **complete absence of any due procedure** – in violation of the very rule of law in Croatia, which makes legal remedies **inaccessible in practice.** Victims in such cases are **pushed back to a third country without access to any suspensive remedies** by which to lodge their complaints and to obtain assessment of their request before the removal measure was enforced.⁴⁴
41. Any form of forced return must ensure the effective legal remedy and due procedure under the Article 13 of the EU Return Directive and the Article 106 of the Croatian Law on Foreigners. Also, a police officer to whom a person has communicated their intention to seek international protection is obliged to enable the person access to the asylum procedure. However, the Ombudsperson in her Activity

³⁹ Council of Europe, ‘Commissioner calls on Croatia to investigate allegations of collective expulsions of migrants and of violence by law enforcement officers’, 5 October 2018, available at: <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-croatia-to-investigate-allegations-of-collective-expulsions-of-migrants-and-of-violence-by-law-enforcement-officers>

⁴⁰ European Parliament, Written question: Dramatic situation in Bosnia and Herzegovina, E-004570-18, 7 September 2018, available at: https://www.europarl.europa.eu/doceo/document/E-8-2018-004570_EN.html?redirect

⁴¹ Ministry of Interior, Letter to the Council of Europe Commissioner for Human Rights, 3 October 2018, available at: <https://rm.coe.int/letter-croatia-interior-minister-2018-10-en-and-hr-versions/16808e3b09>; ‘Navode provjeravamo i oni nisu potvrđeni’, 11 October 2018, available in Croatian at: <https://mup.gov.hr/vijesti/navode-provjeravamo-i-oni-nisu-potvrđeni/283077>

⁴² Since Article 13 takes the form of a guarantee and not of a mere statement of intent or a practical arrangement (Čonkav. Belgium, 2002, § 83; Gebremedhin v. France, 2007, § 66; Singh and Others v. Belgium, 2012, § 98; A.C. and Others v. Spain, 2014, § 95; Allanazarova v. Russia, 2017, § 97).

⁴³ See for example: Conka v. Belgium, 51564/99, §§ 79 et seq.

⁴⁴ Contrary to the Court’s decision in Hirsi Jamaa and Others v. Italy [GC], 2012 (§§ 201-207)

Report for 2018 has highlighted the **lack of legal procedure even regarding the cases where persons would be handed the return decisions**. Particularly, during her NPM visits at the relevant timeframe the Ombudsperson found that in almost all administrative procedure cases there was no mention of the time in which a person was brought to or released from the given police station, if they have expressed their intent to seek asylum in the Republic of Croatia and whether they need medical assistance.⁴⁵ In these instances, the return decision has been issued with the deadline to leave the EEA within seven days. However, due to the lack of documents and no possible ways of issuing those in Croatia - many persons are objectively not able to leave and she found that these persons were then taken to the police station in the rural, hardly reachable areas. As found by the Ombudswoman's Office, **“everything points to the conclusion that the purpose of transporting them to remote and transport-isolated police stations is to remove them from Croatia through the green border”**.

42. Further on, there is a procedure prescribed in the strictly border procedures, in cases where a third country national is in the border sector or in a vehicle which has not stopped since the border, there is no obligation to apply the return procedure, but the Art. 33 of the *Ordinance on the Treatment of the third-country nationals*. According to said Article, one will be given the Form 11, **which itself does not point out to any legal remedies**, and therefore there is no “close scrutiny by a ‘national authority’”⁴⁶. The Law on foreigners however, provides that the appeal against this decision can be raised “through a diplomatic mission of the Republic of Croatia” - while also clearly states that the **appeal does not have a suspensive effect**. Also, although Form 11 does state that the TCN in question is supposed to raise the risk of *refoulement*, it is not sure who would assess such risk or under which procedure - also because this decision can be done without the previous interview of the person concerned (except if one is an unaccompanied minor) according to the Article 38 (1) LoF. However, victims of pushbacks do not report being part of this procedure.
43. **Since there is no guarantee of the lawfulness of the procedures, or any form of procedure whatsoever, there is no suspensive remedy available⁴⁷ which could prevent the execution of collective expulsions - whose effects are irreversible.**
44. Moreover, the **collective expulsions are mostly being carried out within one day from the apprehension**, therefore without any former examination of the measures before the authorities of their compatibility with the Convention.
45. **The reports show that the individual situation is not assessed and there are generally no interpreters or legal advisers during the process of collective expulsions. Moreover, the policemen generally give victims no information on where they are taking them.**
46. The systematic practice of collective expulsions is done in deliberate lack of data collected by the police, without implementing any lawful procedure and by avoiding any possible trails of police action towards the third country nationals, which consequently leads to complete lack of legal remedies one can use against the acts of pushbacks.

⁴⁵ Croatian Ombudsman, Report for 2018, op.cit., p. 295.

⁴⁶ see *Shamayev and Others v. Georgia and Russia*, no. 36378/02, § 448, ECHR 2005-III; see also *Jabari* § 39

⁴⁷ As described in *Čonka v. Belgium*, 2002, §§ 79 et seq.