

**DOCUMENTING
HUMAN RIGHTS
VIOLATIONS ON THE
SERBIAN-CROATIAN
BORDER: GUIDELINES
FOR REPORTING,
ADVOCACY AND
STRATEGIC
LITIGATION**

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Documenting Human
Rights Violations on the
Serbian–Croatian
Border: Guidelines for
Reporting, Advocacy
and Strategic Litigation

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Introduction

Serbia lies on the 'Balkan Route' and is an entry point to countries that form part of the EU's external borders. For this reason, the consequences of the illegal border practices of neighbouring states are visible on a daily basis. Despite the international and domestic legal framework imposing obligations on each state to respect, protect and fulfil human rights of refugees, asylum seekers and other migrants at the borders, harmful border practices have been applied intensively since the end of 2015, and especially after March 2016 when the EU and Turkey signed the EU–Turkey statement.¹

In the border areas next to Croatia, Hungary and Romania, every single day dozens of people who may be in need of international protection, as well as other vulnerable categories of migrants, are denied access to territory and are subjected to collective expulsions (pushbacks) without procedural guarantees against refoulement, torture and other forms of ill treatment; the short-term arbitrary deprivation of liberty and extortion. In relation to the listed practices, and due to the nature of human rights violations that are happening at the border and that result in removal to the territory of another state, refugees, asylum seekers and migrants are also denied access to justice.²

Illegal border practices have been flagged by the most distinguished bodies for the protection of human rights, such as the Human Rights Committee,³ Committee against Torture,⁴ Committee on the Rights of the Child,⁵ Committee on the Elimination of Racial Discrimination,⁶ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families,⁷ Special Rapporteur on Torture,⁸ Rapporteur on Human Rights of Migrants,⁹ Council of Europe Commissioner for Human Rights,¹⁰ Council of Europe Special Representative of the Secretary General on Migration and Refugees¹¹ and

1 European Union: Council of the European Union, EU–Turkey statement, 18 March 2016, 18 March 2016, available at: <https://bit.ly/3ubqIbd>.

2 ECRE, Serbia: Country Report, AIDA, available at: <https://bit.ly/3DVkyBT>.

3 HRC, Concluding observations on the sixth periodic report of Hungary*, 9 May 2018, UN Doc. CCPR/C/HUN/CO/6, available at: <https://bit.ly/2Zl5oDf>, para. 45–48; Concluding observations on the third periodic report of Serbia*, 10 April 2017, UN Doc. CCPR/C/SRB/CO/3, available at: <https://bit.ly/3jZNOYt>, para. 32–33; Concluding observations on the fourth periodic report of Bulgaria*, 15 November 2018, UN Doc. CCPR/C/BGR/CO/4, available at: <https://bit.ly/3m2SMdP>, paras. 29–30.

4 CAT, Concluding observations on the second periodic report of Serbia**, 3 June 2015, UN Doc. CAT/C/SRB/CO/2*, available at: <https://bit.ly/3jZNOYt>, para. 14–15; Concluding observations on the sixth periodic report of Bulgaria*, 15 December 2017, UN Doc. CAT/C/BGR/CO/6, available at: <https://bit.ly/2RmRLiR>, paras. 23–24.

5 CRC, Concluding observations on the sixth periodic report of Hungary**, 3 March 2020, UN Doc. CRC/C/HUN/CO/6*, available at: <https://bit.ly/32by2IU>, para. 38–39; Concluding observations on the combined second and third periodic reports of Serbia*, 7 March 2017, UN Doc. CRC/C/SRB/CO/2–3, available at: <https://bit.ly/32e8Rp8>, paras. 56–57.

6 CERD, Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary**, 6 June 2019, UN Doc. CERD/C/HUN/CO/18–25*, available at: <https://bit.ly/3idWsHx>, paras. 24–25; Concluding observations on the combined ninth to twelfth periodic reports of Albania**, 2 January 2019, UN Doc. CERD/C/ALB/CO/9–12*, available at: <https://bit.ly/2GJjcwM>, paras. 31–32; Concluding observations on the combined twentieth to twenty-second periodic reports of Bulgaria*, 31 May 2017, para. 31; UN Doc. CERD/C/BGR/CO/20–22, available at: <https://bit.ly/2Zl5oDf>, paras. 21–22.

7 CMW, Concluding observations on the second periodic report of Albania*, 8 May 2019, UN Doc. CMW/C/ALB/CO/2, available at: <https://bit.ly/3hebBXV>, paras. 29–30.

8 SRT, Report on the visit to Serbia and Kosovo*, 25 January 2019, UN Doc. A/HRC/40/59/Add.1., available at: <https://bit.ly/2FnCj9O>, para. 54–56.

9 SRM, Report on the visit to Hungary, 11 May 2020, UN Doc. A/HRC/44/42/Add.1, available at: <https://bit.ly/3ieu4VD>.

10 CoE HRC, Report on visit to Hungary, 21 May 2019, CommDH (2019)13, available at: <https://bit.ly/3oInfgj>.

11 CoE SR on Migration and Refugees, Report of the fact-finding mission to Bosnia and Herzegovina and to Croatia, 23 April 2019, SG/Inf(2019)10, available at: <https://bit.ly/2F5GWzb>; Report of the fact-finding mission to Bulgaria, 19 April 2018, SG/Inf(2018)18, available at: <https://bit.ly/3hedxQb>; Report of the fact-finding mission to Serbia and two transit zones in Hungary, 13 October 2017, SG/Inf (2017) 33, available at: <https://bit.ly/3k0smYj>.

the Committee for Prevention of Torture and Inhuman and Degrading Treatment and Punishment.¹² Despite the high number of arguable claims relating to the above-described practices and the number of reports (from both domestic and international entities) of such practices, human rights violations on the external borders of the EU continue. Also, the lack of individual responsibility on the part of border officials involved in unlawful practices gives serious reasons for concern. In other words, it has become evident that numerous advocacy activities have produced limited results over the last few years, and the perpetrators are acting without fear of being held responsible.

These guidelines aim to improve the documenting of and reporting on harmful border practices and human rights violations committed at the border between Serbia and Croatia. They place particular emphasis on the practice of refugee and other migrant pushbacks. These have been implemented in a steady and consistent manner since the end of 2016. Moreover, during this period many civil society organisations (hereinafter: CSOs) in several countries in the region have been involved in various kinds of activities that aim to protect the rights of refugees and other migrants, while calling for an end to human rights violations along the border. These efforts have been based mainly around reporting, advocacy and public condemnation, with only a few cases of strategic litigation. In other words, it is now clear that collective expulsions, ill treatment and the arbitrary deprivation of liberty have been occurring along the Serbian–Croatian border from 2016 to 2021 despite all the efforts of CSOs. Therefore, besides effective reporting, testimony collection and advocacy, efforts and capacities around strategic litigation should be increased. Thus, these guidelines contribute to goals such as:

- 1.** Providing guidelines for CSOs on where, how and when to document and legally challenge unlawful border practices along the Serbian–Croatian border
- 2.** Increasing the credibility and reliability of reports published on individual incidents by applying a multidisciplinary approach
- 3.** Informing the reader of possible legal avenues open at the national and international level for fighting harmful border practices. These legal avenues could be investigated jointly by Serbian and Croatian CSOs, alongside independent lawyers, and they could potentially lead to strategic litigation.

¹² CPT, *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 26 October 2017*, 18 September 2018, CPT/Inf (2018) 42, available at: <https://bit.ly/2Rc2VGZ>.

COLLECTIVE EXPULSIONS FROM HUNGARY TO SERBIA

YEAR	2016	2017	2018	2019	2020	2021	TOTAL* ¹
Number of persons denied access to territory	8,466	9,259	4,151	11,101	25,603	46,162 ¹	104,742



COLLECTIVE EXPULSIONS FROM SERBIA TO BULGARIA AND NORTH MACEDONIA

YEAR	2016	2017	2018	2019	2020	2021	TOTAL
Number of persons denied access to territory	AT LEAST 18,000* ²	AT LEAST 21,000* ³	AT LEAST 23,000* ⁴	20,221* ⁵	38,226* ⁶	N/A	AT LEAST 120,447

*1 Official data of the Hungarian Ministry of Interior. 2021 (1 January - 6 October).

*2 Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

*3 Alo, 'Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!', 22 July 2017, available in Serbian at: <http://bit.ly/2DGDgRx>.

*4 Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EoIHol>.

*5 BETA, 'MUP: Na dnevnom nivou spreči se ilegalni ulazak 2'0 do 50 ilegalnih migranata', 26 November 2019, available (in Serbian) at: <http://bit.ly/2TdLuYL>.

*6 Danas, 'Vučić: There are currently 3,977 migrants in Serbia, last year we prevented more than 38,000 illegal crossings', 17 June 2021, available (in Serbian) at: <https://bit.ly/3koFNVO> and Ministry of Interior, Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година, available at: <https://bit.ly/3Dtss4r>, p. 10.



**COLLECTIVE EXPULSIONS FROM ROMANIA
TO SERBIA*7**

YEAR	2018	2019	2020	TOTAL
Number of persons denied access to territory	AT LEAST 700	AT LEAST 1,857	AT LEAST 13,459	AT LEAST 16,016



*7 Available at: <https://asylumineurope.org/reports/country/serbia/>.

**COLLECTIVE EXPULSIONS FROM CROATIA
TO SERBIA*⁸**

YEAR	2018	2019	2020	TOTAL
Number of persons denied access to territory	AT LEAST 6,200	AT LEAST 3,280	AT LEAST 1,975	AT LEAST 11,455



CROATIA TO BOSNIA*⁹

YEAR	2018	2019	2020	TOTAL
Number of persons denied access to territory	AT LEAST 6,881	AT LEAST 16,465	AT LEAST 7,203	AT LEAST 30,549

*8 Available at: <https://asylumineurope.org/reports/country/serbia/>.

*9 Available at: <https://drc.ngo/our-work/where-we-work/europe/bosnia-and-herzegovina/>.

1. Relevant national and international human rights standards regarding access to territory for refugees, asylum seekers and migrants

1.1. Relevant European Union standards

The Charter of Fundamental Rights of the European Union¹³ prohibits torture and other forms of ill treatment¹⁴ in an absolute sense, and it explicitly envisages the right to asylum¹⁵ and the prohibition of collective expulsion alongside the principle of *non-refoulement*.¹⁶ It further provides the right to an effective legal remedy as well as the right to receive legal aid, legal advice and legal representation to facilitate effective access to justice.¹⁷

The Treaty of the European Union (as amended by the Treaty of Lisbon, which entered into force on 1 December 2009)¹⁸ stipulates in its general provisions on the areas of freedom, security and justice that:

The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

It [...] shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals.¹⁹

The EU treaty further states that the Union shall develop a policy with a view to:

- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders
- (c) the gradual introduction of an integrated management system for external borders.²⁰

Additionally, European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

- (b) the checks to which persons crossing external borders are subject. [...]
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders.

Article 78 (1) of the EU Treaty envisages that the EU 'shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement'

13 European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <https://bit.ly/37ptYa3>.

14 *Ibid.*, Article 4.

15 *Ibid.*, Article 18.

16 *Ibid.*, Article 19.

17 *Ibid.*, Article 47.

18 EU, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at: <https://bit.ly/3arl3G4>, hereinafter: EU Treaty.

19 *Ibid.*, Article 67.

20 *Ibid.*, Article 77 (1).

and in line with the 1951 Convention relating to the Status of Refugees²¹ and the 1967 Protocol.²² Article 79 further stipulates that the EU shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of – and enhanced measures to combat – illegal immigration and trafficking in human beings. This will be done through the adoption of measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification [...]
- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.²³

The Schengen Borders Code²⁴ stipulates that border control is in the interest not only of the Member State at whose external borders it is carried out, but also of all Member States that have abolished internal border control. Border control should help combat illegal immigration and trafficking in human beings and prevent any threat to the Member States' internal security, public policy, public health and international relations.²⁵ Border checks should be carried out in a way that fully respects human dignity. Border control should be implemented in a professional and respectful manner and be proportionate to the objectives pursued.²⁶ Article 4 (1) of the Schengen Borders Code states that external borders may be crossed only at border-crossing points and during fixed opening hours. The Member States shall introduce effective, proportionate and dissuasive penalties, in accordance with their national law, for the unauthorised crossing of external borders at places other than border-crossing points.²⁷

The Schengen Borders Code further states that:

Border guards shall, in the performance of their duties, fully respect human dignity.

Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.²⁸

And furthermore:

Cross-border movement at external borders shall be subject to checks by border guards [...]

All persons shall undergo a minimum check in order to establish their identities on the basis of

21 UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://bit.ly/2GCMu4R>.

22 UNGA, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://bit.ly/3kbPLpf>.

23 EU Treaty, Article 79.

24 EU: Council of the European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders*, 15 March 2006, OJ L. 105/1–105/32; 13.4.2006, (EC) No 562/2006, available at: <https://bit.ly/3drTv6F>, hereinafter: Schengen Borders Code.

25 *Ibid.*, Point 6.

26 *Ibid.*, Point 7.

27 *Ibid.*, Article 4 (3).

28 *Ibid.*, Article 6 (1) and (2).

the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border [...]

On entry and exit, third-country nationals shall be subject to thorough checks.²⁹

Refusal of entry is governed by Article 13 of the Schengen Borders Code, which stipulates that a third-country national who does not fulfil all the entry conditions shall be refused entry to the territories of the Member States. However, this shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.³⁰

The Return Directive³¹ sets out common standards and procedures to be applied in Member States for returning third-country nationals who are residing in Member States illegally. This directive is in line with fundamental rights as general principles of European Union law as well as international law, including refugee protection and human rights obligations.³² The Return Directive applies to third-country nationals residing illegally on the territory of a Member State. However, the Member States may decide not to apply this directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not later obtained an authorisation or a right to stay in that Member State.³³ Special attention should be paid to the non-refoulement principle and the best interest of a child, the right to a family life and the state of health of the person subjected to return.³⁴

Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies. The information on reasons in fact may be limited in cases where national law allows for the right to information to be restricted, in particular in order to safeguard national security, defence, public security or for the prevention, investigation, detection and prosecution of criminal offences.³⁵ However, foreigners are entitled to lodge an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or before a competent body composed of members who are impartial and who enjoy safeguards of independence,³⁶ if this body has the power to suspend the enforcement, unless a temporary suspension is already applicable under national legislation.³⁷ A foreigner is entitled to obtain legal advice, representation and – where necessary – linguistic assistance, free of charge.³⁸

29 *Ibid.*, Article 7.

30 *Ibid.*, Article 13.

31 European Union: Council of the European Union, *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*, 16 December 2008, OJ L 348/98–348/107; 16.12.2008, 2008/115/EC, available at: <https://bit.ly/2Zo7lcz>, hereinafter: Return Directive.

32 *Ibid.*, Article 1.

33 *Ibid.*, Article 2.

34 *Ibid.*, Article 5.

35 *Ibid.*, Article 12.

36 *Ibid.*, Article 13 (1).

37 *Ibid.*, Article 13 (2).

38 *Ibid.*, Article 13 (3) and (4).

The Asylum Procedure Directive³⁹ prescribes that Member States shall ensure that each adult with a legal capacity has the right to make an application for asylum on their own behalf and that an application can also be made on behalf of their dependants.⁴⁰ Applicants are allowed to remain in the Member State for the sole purpose of this procedure, until the determining authority has made a decision.⁴¹ Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole grounds that they were not made as soon as possible.⁴² Applicants enjoy special guarantees enshrined in Article 10 of the Asylum Procedure Directive regarding the use of their language, communication with UNHCR, legal aid, etc.

1.2. Relevant standards of the Council of Europe

The Committee of Ministers of the Council of Europe (hereinafter: CoE) issued Guidelines on Forced Return.⁴³ These guidelines state that a decision reached by law is required to issue a removal order. It further stipulates the following:

A removal order shall only be issued where the authorities of the host state have considered all relevant information that is readily available to them, and are satisfied, as far as can reasonably be expected, that compliance with, or enforcement of, the order, will not expose the person facing return to:

- a. a real risk of being executed, or exposed to torture or inhuman or degrading treatment or punishment;
- b. a real risk of being killed or subjected to inhuman or degrading treatment by non-state actors, if the authorities of the state of return, parties or organisations controlling the state or a substantial part of the territory of the state, including international organisations, are unable or unwilling to provide appropriate and effective protection; or
- c. other situations which would, under international law or national legislation, justify the granting of international protection.

The relevant standards of the European Court of Human Rights (hereinafter: ECtHR) on the prohibition of collective expulsion are among the most relevant standards relating to denial of access to territory. First, the states are, as a matter of well-established international law, and subject to their treaty obligations, entitled to control the entry, residence and removal of undocumented persons.⁴⁴ The state also has a right to establish its own immigration policy, which must include policy provisions in line with its obligations stemming from membership of the EU.⁴⁵

39 European Union: Council of the European Union, *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <https://bit.ly/37vMeim>.

40 *Ibid.*, Article 6.

41 *Ibid.*, Article 7.

42 *Ibid.*, Article 8 (1).

43 CoE: Committee of Ministers, *Twenty Guidelines on Forced Return*, 4 May 2005, available at: <https://bit.ly/3u7brt7>.

44 ECtHR, *Paposhvili v Belgium*, Application No 41738/10, Judgment of 13 December 2016 [GC], EDAL, available at: <http://bit.ly/2YtHcyE>, para. 172.

45 ECtHR, *Khlaifia and Others v Italy*, Application No 16483/12, Judgment of 15 December 2016 [GC], EDAL, available at: <https://bit.ly/2Bojevu>, para. 241.

The ECtHR has also recognised the importance of managing and protecting borders and of the role therein played by the Schengen Borders Code for those states concerned.⁴⁶ For this reason, contracting states may in principle establish arrangements along their borders designed to allow access to their national territory only to persons who fulfil the relevant legal requirements.⁴⁷ The court has also been aware of the challenges facing European states in terms of immigration control as a result of the economic crisis and recent social and political changes that have had a particular impact on certain regions of Africa and the Middle East.⁴⁸ Nevertheless, the court has also stressed that the problems that states may encounter in managing migration flows or in receiving asylum seekers cannot justify recourse to practices that are not compatible with the ECtHR.⁴⁹

In terms of the right to access territory and the prohibition of collective expulsions, the ECtHR has reiterated that these rights cannot be theoretical or illusory – they must be practical and effective.⁵⁰ Hence, the domestic rules governing border controls may not render inoperative or ineffective the rights guaranteed by the European Convention on Human Rights and the related protocols, and in particular Article 3 of the Convention and Article 4 of Protocol No. 4.⁵¹ Moreover, ‘non-admission’, ‘escort to the border’, ‘rejection at the border’, ‘refusal of entry’ or any other term that describes different practices and acts at the border must be conducted in line with the principle of non-refoulement.⁵² The sole fact that a state refuses to admit to its territory an undocumented person who is within its jurisdiction does not release that state from its obligations towards the person concerned that arise from the prohibition of refugees’ refoulement.⁵³ Thus, all of the above-mentioned terms and notions fall under the generic label of ‘expulsion’, which refers to any kind of forcible removal of an undocumented person from a state’s territory, irrespective of the lawfulness of the person’s stay, the length of time they have spent on the territory, the location in which they were apprehended, their status as a migrant or an asylum seeker and their conduct when crossing the border.⁵⁴ This standing equally refers to Article 4 of Protocol No. 4 and Article 3 and Article 13 of the ECtHR.⁵⁵

As concerns access to the asylum procedure, the ECtHR has clearly stated that in the specific context of migratory flows at borders, the wish to apply for asylum does not have to be expressed in a particular form. Rather, it may be expressed through any conduct that clearly signals the person’s wish to submit an application for protection.⁵⁶

46 ECtHR, *N.D. and N.T. v Spain*, Application No 8675/15 8697/15, Judgment of 13 February 2020 [GC], EDAL, available at: <http://bit.ly/3ey6FfH>, para. 168.

47 *Ibid.*

48 ECtHR, *M.S.S. v Belgium and Greece*, Application No 30696/09, Judgment of 21 January 2011 [GC], EDAL, available at: <http://bit.ly/30U-aUhX>, para. 223.

49 ECtHR, *Hirsi Jamaa and Others v Italy*, Application No 27765/09, Judgment of 23 February 2012 [GC], EDAL, available at: <http://bit.ly/2R-5G6Em>, para. 179.

50 *Ibid.*, 175.

51 *N.D. and N.T.*, para. 171.

52 *Ibid.*, para. 178.

53 *Ibid.*, para. 181.

54 *Ibid.*, para. 185.

55 ECtHR, *Ilias and Ahmed v Hungary*, Application No 47287/15, §§ 123–28, 21 November 2019 [GC], available at: <https://bit.ly/37uFdOB>, para. 123–28.

56 ECtHR, *M.A. and Others v Lithuania*, Application No 59793/17, Judgment of 11 December 2018, EDAL, available at: <http://bit.ly/2Zv7cJJ>, 109.

Collective expulsion refers to both migrants and asylum seekers and is defined by the ECtHR as any expulsion of undocumented persons as a group, which lacked a reasonable and objective examination of the particular case of each undocumented individual of that group.⁵⁷ For this reason, Article 4 of Protocol No. 4 requires the state authorities to ensure that each of the undocumented persons concerned has a 'genuine and effective possibility' to submit arguments against their expulsion.⁵⁸

The cases of *Hirsi Jamaa and Others v Italy* and *Sharifi and Others v Italy and Greece*⁵⁹ concerned the removal to Libya and Greece respectively of a group of people who had been intercepted at sea without their identity or individual circumstances being considered. In *Hirsi Jamaa and Others v Italy*, the applicants had not undergone any identity checks and the authorities had merely put the migrants, who had been intercepted on the high seas, onto military vessels to return them to the Libyan coast. In *Sharifi and Others v Italy and Greece* the court found that the authorities had intercepted the migrants in Adriatic ports, and subjected them to 'automatic returns' to Greece, depriving them of any effective possibility of seeking asylum. In both cases, many of the applicants were asylum seekers whose complaints were directed at the respondent state, under Article 3 of the ECtHR. They claimed they had not been afforded an effective possibility of challenging their return. The applicants' main allegation in these cases, therefore, was that their return to Libya and Greece respectively would clearly expose them to a real risk of ill treatment or of being repatriated to Eritrea, Somalia and Afghanistan.⁶⁰

In the *Khlaifia and Others v Italy* judgment, the applicants had arrived in Italy after travelling across the Mediterranean, and the Italian authorities had returned them to Tunisia. In the proceedings stated before the court, they did not allege a violation of Article 3 on account of that expulsion. The court found that, in order to determine whether there had been a sufficiently individualised examination, it was necessary to consider the particular circumstances of the expulsion and the 'general context at the material time'.⁶¹ In comparison with the *Hirsi Jamaa* and *Sharifi* judgments, the Italian authorities issued the applicants with expulsion orders and informed them of their right to apply for asylum (which the applicants decided not to use), giving them the opportunity to put forward arguments against their expulsion to the competent authorities on an individual basis.⁶² Still, ECtHR reiterates that Article 4 of Protocol No. 4 does not guarantee the right to an individual interview in all circumstances, as the requirements of this provision may be satisfied where each undocumented person has a genuine and effective possibility of submitting arguments against their expulsion, and where those arguments are examined in an appropriate manner by the authorities of the respondent state.⁶³

And finally, the applicant's own conduct is a relevant factor when assessing the protection to be afforded under Article 4 of Protocol No. 4. According to the court's case law, there is no violation of Article 4 of Protocol No. 4 if the lack of an individual expulsion decision can be attributed to the applicant's own conduct. This can occur through:

57 *Khlaifia and Others v Italy*, para. 237.

58 *Hirsi Jamaa and Others v Italy*, para. 177.

59 ECtHR, *Sharifi and Others v Italy and Greece*, Application No 16643/09, Judgment of 21 October 2014, EDAL, available at: <http://bit.ly/3qA-0cHp>.

60 *Ibid.*, paras. 135, 180 and 215 and *Hirsi Jamaa and Others v Italy*, paras. 131 and 158.

61 *Khlaifia and Others v Italy*, para. 171.

62 *Ibid.*, para. 239.

63 *Ibid.*, 248.

- the lack of active cooperation with the available procedure for conducting an individual examination of the applicant's circumstances
- the crossing of a border in an unauthorised manner that deliberately takes advantage of large numbers and uses force in a manner that creates a clearly disruptive and difficult-to-control situation, and that endangers public safety (and at a location where the state provides a genuine and effective means of legal entry, i.e. border procedures).⁶⁴

1.3. Domestic legal framework

Article 50 of the Croatian Foreigners Act governs the procedure for refusal of entry of a third-country national into the Republic of Croatia. It states the following:

A third-country national who does not meet the conditions for entry prescribed by the Schengen Borders Code shall be denied entry into the Republic of Croatia, on which the Ministry, through the police station responsible for controlling the crossing of the state border, shall issue a decision.

The decision referred to in paragraph 1 of this Article shall be issued without hearing a third-country national, unless it is an unaccompanied minor.

No appeal shall be allowed against the decision referred to in paragraph 1 of this Article, but an administrative dispute may be initiated.

If the departure of a third-country national referred to in paragraph 1 of this Article from the border crossing to a third country is not possible even after eight days from the day of arrival at the border crossing, measures to ensure return shall be applied.

The Minister shall prescribe by an ordinance the manner of treatment of third-country nationals and the appearance and content of the decision form on refusal of entry and technical conditions for staying at the border crossing.

Therefore, there is only one legal remedy available to challenge the refusal of entry to Croatia: an administrative dispute can be initiated by filing a lawsuit to the administrative court within 30 days of the date of receipt of the decision on refusal of entry. However, the administrative lawsuit does not have a suspensive effect.

The refusal of entry can only be issued at the border crossing, but there is also another situation prescribed in Article 33 of the Ordinance on the Treatment of Third Country nationals. This regulation details the procedure applicable when 'deterrence measures' prescribed by the Schengen Borders Code (Art. 13) may be applied. Deterrence measures are exclusively limited to 'third-country nationals found at the border with a third country at the time of or immediately following illegal entry'. In this case, the authorities are obliged to issue a notice on the procedure at the border to the third-country nationals. This notice needs to be signed by the third-country national and the police officer present. Also, the authorities have a duty to recognise vulnerable groups and victims of torture, as well as the necessity of protecting persons who would be under threat if returned to their country of origin. There is no legal remedy against this notice.

⁶⁴ *N.D. and N.T. v Spain*, para. 201.

In situations in which a person is apprehended on Croatian territory, they can be issued an expulsion decision because of an 'illegal stay and the illegal crossing or attempt at the illegal crossing of the state border'.⁶⁵ Article 196 (4) of the Croatian Foreigners Act further stipulates that: 'If a third-country national has entered the Republic of Croatia illegally, a decision on return may be issued on a form'. One has a right to file an administrative lawsuit against this decision within 30 days of it being issued, but the lawsuit does not have a suspensive effect. The forms for the decision on refusal of entry, the decision on expulsion and the notice on the procedure at the border are prescribed in the ordinance on the treatment of third-country nationals.

Article 207 of the Croatian Foreigners Act transposes the principle of non-refoulement by prohibiting the forced return of a third-country national to a country where their life or freedom could be endangered because of their race, religion and nationality, social group membership or because of a political opinion, or if they may be subjected to torture or inhumane or degrading treatment or punishment such as the death penalty, or to a country in which they are threatened with compulsory deportation to such a state.

2. The geographical area covered by the guidelines

According to the numerous reports and testimonies of victims, the vast majority of pushbacks occur in the area around the Serbian town of Šid. This does not mean that illegal border practices are not being applied along the border with Serbia further north, but research has shown that refugees, asylum seekers and other migrants are mainly experiencing pushbacks in the following areas: the Batrovci area, the Ilinci area, the Šid–Tovarnik railroad and the Batrovci–Bajakovo border crossing.⁶⁶

These guidelines therefore build on the pushback victims' testimonies collected by different CSOs that mention this geographical area.⁶⁷ As a result, the guidelines have been put together based on the experience of violence and harmful practices on this limited geographical area. It is to be used primarily by the CSOs' lawyers, activists and researchers whose work is focused on the violations of human rights in these areas. However, the methods here can be applied, with adequate adjustments, to the other geographical areas where refugees and other migrants are being pushed back from or to.

3. Locations where victims of illegal border practices from Croatia usually gather and reside in Serbia

Persons of Concern (hereinafter: PoCs) who have endured unlawful border practices frequently reside in formal and informal settlements in Serbia.

There are several locations close to the border with Croatia where people live and reside outside of Serbia's official asylum and reception centres.

The informal settlements include:

⁶⁵ Croatian Foreigners Act, Article 190 (2).

⁶⁶ Information obtained during the fact-finding mission that preceded the drafting of these guidelines, but see also <https://www.borderviolence.eu/>, https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SR_2020update.pdf,

⁶⁷ For instance: <https://ian.org.rs/documenting-abuse-and-collective-expulsions-of-refugees-and-migrants/>.

- two hotspots located in the forest in the Morović area⁶⁸
- the buildings of the old and abandoned Grafosrem factory⁶⁹
- an abandoned building behind two large fields in the centre of Šid⁷⁰

The formal settlements where victims of unlawful border practices can be found are the following:

- the reception centre in Šid⁷¹
- the reception centre in Adaševci⁷²
- the reception centre in Principovci⁷³

The list of locations where researchers may come across victims of unlawful border practices is incomplete, because refugees and migrants often travel by bus or train from other cities and reception facilities located in other parts of Serbia.⁷⁴ Thus, it is highly likely that researchers can find PoCs in reception centres in other parts of Vojvodina (such as Sombor, Subotica or Kikinda), or even in Belgrade (Krnjača or Obrenovac).⁷⁵

Accessing the formal facilities for refugees and migrants is possible. Researchers should submit a formal request to the Serbian Commissariat for Refugees and Migration⁷⁶ in order to gain access to facilities and PoCs.⁷⁷

Also, interviews can be conducted with PoCs in front of the centres and in other locations such as local restaurants or coffee places where PoCs gather.⁷⁸ Moreover, the field visits should always encompass a visit to the areas around Ilinći and Batrovci where the researcher can encounter PoCs right after a push-back has taken place and obtain information on the spot.

4. Civil society organisations, state institutions and other entities that could be a relevant source of information

Along the border with Croatia, there are several CSOs that work on documenting illegal border practices and providing other forms of support. The CSOs that may have relevant information include:

⁶⁸ Location is available at: <https://bit.ly/2RuHswN>.

⁶⁹ Location is available at <https://bit.ly/3hPfmqC>.

⁷⁰ Location is available at <https://bit.ly/3ypshW6>.

⁷¹ Location is available at: <https://bit.ly/3fapjgl>.

⁷² Location is available at: <https://bit.ly/3fGPOUW>.

⁷³ Location is available at: <https://bit.ly/3ywbXmB>.

⁷⁴ The location of the train station in Šid is available at: <https://bit.ly/3yq9LNv>.

⁷⁵ The list of all reception facilities in Serbia with contacts and addresses is available at: <https://bit.ly/3fxoOME>.

⁷⁶ Hereinafter: CRM.

⁷⁷ Official website of CRM is available at: <https://kirs.gov.rs/lat>.

⁷⁸ Such as the restaurant right next to the reception centre in Šid

- Humanitarian Center for Integration and Tolerance (HCIT)⁷⁹
- No Name Kitchen (NNK)⁸⁰
- Médecins Sans Frontières (MSF)⁸¹
- KlikAktiv⁸²
- Asylum Protection Center (APC)⁸³
- Fresh Response⁸⁴
- Center for Research and Social Development IDEAS⁸⁵

All the CSOs conduct different activities, but one of their tasks is to document and report on illegal border practices. Refugees and migrants are familiar with their work, and so initially approaching local CSOs can help researchers get in touch with PoCs.

On the other side of the border, in Croatia, there are several NGOs and initiatives that seek to protect the rights of refugees and other migrants in Croatia by providing different kinds of support:

- Centre for Peace Studies⁸⁶
- Are You Syrious?⁸⁷
- Welcome Initiative⁸⁸
- Croatian Law Centre⁸⁹
- Borders: none⁹⁰
- Jesuit Refugee Service⁹¹
- Civil Rights Project Sisak⁹²

As they provide various forms of support to different groups of refugees and other migrants in Croatia, they may prove helpful in providing some essential information on the Croatian asylum system, the legal framework in general, or the legal remedies available to the researcher and PoCs.

The researcher can also request information from the Croatian authorities by phone or email, with details available on the official websites, and they can report violations or request action.

79 Official website of the HCIT is available at: <https://hcrit.rs/>.

80 Official website of the NNK is available at: <http://www.nonamekitchen.org/>.

81 Official website of the MSF is available at: <https://www.msf.org/serbia>.

82 Official website of KlikAktiv is available at: <https://klikaktiv.org/>.

83 Official website of the APC is available at: <http://www.apc-cza.org/en/>.

84 Official website of Fresh Response is available at: <http://freshresponse.org/>.

85 Official website of IDEAS is available at: <https://ideje.rs/>.

86 Official website of the CPS is available at: <https://www.cms.hr/>.

87 Official website of AYS is available at: <https://areyousyrious.eu/>.

88 Official website of the Welcome! Initiative is available at: <http://welcome.cms.hr/index.php/about/>.

89 Official website of the Croatian Law Centre is available at: <https://www.hpc.hr/>.

90 Official Facebook page of the Borders: none is available at: <https://www.facebook.com/bordersnone/>.

91 Official website of the JRS Croatia is available at: <https://bit.ly/3ykHg2F>.

92 Official website of the CRP Sisak is available at: <https://www.crpsisak.hr/?lang=en>.

5. Contact with PoCs and interviews

5.1. Qualifications and information

To conduct a thorough interview for either credible reporting or litigation, the researcher should be familiar with the trends and geographical locations provided in these guidelines, as well as with the basic international standards that govern mainly the prohibition of collective expulsions. This will allow the researcher to understand the nature of the information gathered through the interview and how the information should be compiled.

The researcher should conduct regular visits to the border area with Croatia to keep up with trends and possible changes. Such a regular presence will lead to a relationship built on trust being established with the refugee and migrant community. This will lead to further referrals suggested by the refugees and migrants.

5.2. Translation and interpreting

A researcher working on documenting cases of illegal border practices should approach PoCs with an interpreter for the language that the refugees and migrants usually speak. Bearing in mind that the main subject of an interview deals with a traumatic experience, it is a great help if the researcher can secure the services of an interpreter who has significant experience in working with PoCs.

Another viable option is to hire interpreters from the refugee population. There are at least 120 persons who have been granted asylum in Serbia and who have decided to remain in the country and begin integrating. Many of them work as translators and interpreters for national or international organisations. Moreover, many of them were victims of illegal border practices that they experienced on their way to Serbia or after their arrival when they attempted to cross over into one of the neighbouring states. The fact that the team consists of people who can relate to PoCs can help establish a relationship based on trust.

5.3. The interview time and location

As many of the PoCs choose to reside outside the formal reception facilities, the researcher should be aware that interviews must very often be conducted in an unusual environment. Examples include local cafes, abandoned facilities or even outdoors. It goes without saying that the PoC is the person who should decide how, when and where the interview will take place. The researcher should also bear in mind that PoCs who were pushed back recently may be tired, exhausted or unwilling to conduct an interview on the spot. At the same time, interviews conducted right after the pushback can provide the researcher with an opportunity to collect the most detailed data on the incident.

For those PoCs accommodated in one of the reception centres, the researcher should submit a formal request to the Commissariat for Refugees and Migration, Republic of Serbia (KIRS) to obtain permission to conduct an interview in one of the reception facilities.

And finally, the best-case scenario would be to conduct an interview in the premises of the CSO or initiative where the researcher is active. Office spaces provide the best conditions for a thorough interview and are an environment in which the PoC will feel safe, with enough privacy guaranteed.

5.4. Initial information before an interview

The researcher should give the PoC the following information:

1. their name and the name of other members of the team
2. their CSO affiliation
3. a statement declaring that all the information gathered will be secured and not shared with anyone else, except for the mentioned research purposes and for reporting and potential legal procedures

The proposed text of the consent form is as follows:

- a) I consent that the information that I here gave and hereby certify is shared with other parties for the purposes of them providing legal services All given information shall be treated with respect and confidentiality.
- b) I consent that the anonymised information that I here gave and hereby certify can be used for the purpose of reporting and advocacy.
- c) I wish that the information that I here gave and hereby certify stay confidential between the organisation conducting the interview and me.

5.5. Explaining the purpose of the interview and information on the PoC's rights

After the introduction, the researcher should explain to the PoC why they are obtaining this data. First, the researcher should make it clear to the PoC that they are aware of the problems that the PoC is facing and that the main reason why they are gathering information on illegal border practices is to try and pressure the relevant state authorities to refrain from such behaviour. They should add that they potentially wish to, exclusively with the consent of the PoC, initiate a procedure in which the individual responsibility of the alleged perpetrator can be assessed. This message should be conveyed in a way that does not mislead the PoC to reach the incorrect conclusion that illegal practices will stop after the interview and that they will be able to cross over the border. The researcher should be very clear on this issue – they should not provide the PoC with any assistance on crossing the border irregularly.

The researcher should then explain that pushbacks, violence and other harmful practices are illegal under both Serbian, Croatian and international law and that both the state and border authorities are not allowed to behave in such a way. The fact that the PoC was subjected to such a practice provides them with the potential opportunity to lodge a formal complaint. Once again, the researcher should make it clear that lodging a formal complaint will not provide the PoC with an opportunity to enter Croatia, nor mislead the PoC by suggesting that the complaint will likely result in a positive outcome. The researcher should be clear that initiating legal action does not guarantee success.

As researchers come from a variety of backgrounds, they should inform the PoC about different CSOs and individuals who can provide different services – legal, medical, psychosocial etc. In other words, it is reasonable to assume that these guidelines will be used mostly for reporting and advocacy purposes and that this will be the primary information conveyed to refugees and migrants. Any further work with PoCs that implies potential individual legal initiatives or a detailed medical examination will most likely be conducted after the initial contact. Still, this does not mean that the researcher should not strive to collect as much data as possible because this will increase the effectiveness of any further work with PoCs.

The purpose of a formal complaint against the border authorities' unlawful behaviour should be explained in the following order:

1. the PoC as a victim of human rights violations is entitled to lodge a formal complaint against the unlawful acts of border authorities
2. the formal complaint will initiate a procedure in which they may receive recognition from the official state authorities that their rights were violated
3. they may be awarded pecuniary damages, non-pecuniary damages, or both

Besides the above-listed regular outcomes, the researcher should inform the PoC about the wider implications of their complaint. First, they should tell the PoC that such complaints have been quite rare during the last couple of years, and that the idea behind this approach is to legally challenge practices that have been ongoing for years. The researcher should underline that success in the complaints procedure can positively affect other refugees and migrants who have also been subjected to these kinds of practices. More simply put, their complaint can also help others because it discloses unlawful practices in a formal procedure, knowledge of which can then form the foundation for border guards' actions and their individual responsibility. The final consequence of a positive outcome can be a strong deterring effect.

The researcher should also explain to the PoC the different procedures that can be initiated on the PoC's behalf, with the caveat that these procedures usually take a lot of time. The researcher should highlight that this is not an obstacle in any way, and that the PoC will not be required to stay in Serbia or in Croatia throughout the procedure. It should be clearly explained to the PoC that this procedure will not undermine their plans in any way and that they have a chance to obtain fair redress. Moreover, the fact that the PoC's individual case will be documented by a legal or other (medical or psychological) professional can be useful for legal procedures in the destination country. For instance, a credible report on the PoC's case can be used to dispute a Dublin transfer to Croatia.⁹³ Also, the researcher should explain to the PoC that there have been successful cases in the past where the PoC remained in touch with their legal representatives and received recognition as victims as well as financial compensation.⁹⁴

5.6. Staying in touch with the PoC

Given the inadequate reception-centre conditions and the ineffectiveness of the asylum system in Serbia on the one hand, combined with systematic pushbacks from Croatia, the inaccessibility of the asylum system and excessively long asylum procedure periods in Croatia on the other hand, it is highly likely that the PoC will seek protection elsewhere. It is therefore highly likely that the resolution of any legal procedures initiated on behalf of the PoC will happen when they are already in another country. It is also possible that some of the PoCs will return to their countries of origin or countries of permanent residency. These circumstances can place serious obstacles before the legal representatives in procedures initiated against the state or individual perpetrators. The procedure, especially those involving international bodies for the protection of human rights, will be discontinued in a scenario wherein the PoCs lose contact with their representatives.

93 One of the authors of these guidelines has provided refugees with copies of reports containing information on unlawful treatment that they had been subjected to by Croatian border police. The reports were used in their asylum procedures in order to dispute the safety of their stay in Croatia, understood as a safe third country where they could enjoy effective protection.

94 ECtHR, *Ilias and Ahmed v Hungary*, Application No 47287/15, §§ 123–28, 21 November 2019 [GC], available at: <https://bit.ly/37uFdOB> or Constitutional Court of the Republic of Serbia, Decision No. UŽ 1823/17, Decision of 29 December 2017, available in Serbian at: <https://bit.ly/3fk0aPD>.

Thus, the researcher should strive to obtain available contact information that will provide legal representatives with an opportunity to maintain contact with PoCs: a phone number (WhatsApp, Viber, Signal, Telegram or other messaging service), email, Skype, Facebook, Instagram, Twitter etc. The researcher should emphasise to the PoC that staying in touch is of immense importance for their case and possible redress.

5.7. Equipment for fieldwork

The researcher should always have:

1. a cell phone
2. a portable scanner or cell phone with a scanning application
3. power of attorney if the researcher is a legal professional
4. a confidentiality form
5. laptop, iPad or another device that can open Google Maps
6. internet access

5.8. Interviewing the PoC

The interview should be conducted thoroughly, and the researcher should strive to obtain as much information as possible on the PoC's individual circumstances. The researcher should explain to the PoC that detailed information will increase the credibility of their case and that these details are very important for increasing the chances of a positive legal outcome.

I. Personal information and details regarding the PoC's journey

Name and last name:

Date, country and place of birth:

Country of origin:

Identification document/s:

[The researcher should list all available identification documents such as: passport, ID card, birth certificate, driving licence, tazkira, documents issued by transit states and their authorities, medical documentation or any other document that can prove the identity and/or origin of the PoC. If possible, scan or photograph all available documentation. These documents will simplify any possible procedure initiated at national or international level. Bear in mind that most of the refugees, migrants and asylum seekers do not have original documentation on them but they very often have pictures of various documents stored on their phone.]

Family members travelling with a PoC:

[List all the family members travelling with an individual. This does not preclude the need to fill out a questionnaire for all adult family members. It is very important to collect cohesive data from all the members of one family.]

Reasons for leaving country of origin and evidence that can support their arguable claim:

[This part is important for determining whether an individual is potentially in need of international protection. Persons who are likely in need of international protection are considered to have a higher level of vulnerability. This information creates better grounds for establishing an arguable claim before the ECtHR, UN treaty bodies or other international bodies working on the protection of human rights. However, it is not necessary to go into detail. Instead, flag facts that may indicate persecution as defined in the 1951 Refugee Convention or serious harm as defined in the conditions that one must fulfil for subsidiary protection.]

Transit countries – third countries through which an individual has travelled before coming to Serbia:

[This part should highlight harmful practices that an individual has been subjected to such as: violence committed by state or non-state actors; living conditions in asylum or reception centres; living conditions, living regimes and detention length; homelessness, lack of healthcare and other harmful practices. Separate the data in terms of transit countries. This data will help fieldworkers to obtain information that could point to other aspects of an individual's vulnerability, which are not necessarily connected to their reasons for leaving a country of origin.]

Possible countries of transit: Iran, Pakistan, Lebanon, Turkey, Greece, Albania, Bulgaria, North Macedonia, Montenegro, Bosnia and Herzegovina or other.

II. Particular vulnerabilities

[In this chapter, the researcher should highlight the PoC's particular vulnerabilities. This section can also include the data collected in the previous section related to harmful practices in countries of origin or third countries. All these individual circumstances should have been assessed prior to any formal or informal expulsion procedure, and they are considered circumstances that contribute to an arguable claim of ill treatment, violation of the non-refoulement principle etc.]

1. Unaccompanied or separated child

[Provide relevant facts that prove this status, and indicate whether the child enjoys the support of a legal guardian in Serbia.]

2. Family with small children

[Provide relevant facts that prove their status.]

3. Pregnancy

[Provide relevant facts that prove this status.]

4. Victims of sexual or gender-based violence

[Provide relevant facts that prove this status.]

5. Victim of trafficking in human beings

[Provide relevant facts that prove this status.]

6. Torture victim

[Provide relevant facts that prove this status.]

7. Persons with a severe medical condition

[Describe the scope and nature of the medical condition and, if possible, obtain copies of medical documentation.]

8. Mental-health issues

[Provide the relevant facts that prove this status.]

9. Other

[Provide the relevant facts that prove this status.]

III. Circumstances of the PoC's stay in Serbia before the irregular crossing attempt

How long have you been in Serbia?

[This question refers to the PoC's total stay in Serbia, regardless of whether they resided outside Serbia for a certain period of time, e.g. they had spent some time in Bosnia and Herzegovina, or they were pushed back to North Macedonia and then returned to Serbia, etc.]

Where have you resided in Serbia?

[List all places of residence, formal and informal and the length of residence in each place. Indicate if the PoC resided in an informal system e.g. if they were homeless etc.]

Have you ever been issued with any document by the Serbian authorities, and can you please provide us with a copy of such a document?

[In this section it is important to outline the facts and documents that will allow us to determine what kind of status the person had before attempting to irregularly cross the border – were they registered in Serbia, and was their status legal or illegal under the terms of the Foreigners Act. The legal status may indicate whether an individual was enrolled in an asylum procedure, or if they were subjected to any form of forcible removal procedure. This can be very important in determining whether an individual will be entitled to regulate their stay in Serbia and enjoy basic rights. These circumstances must have been assessed before the return. If possible, collect copies or scan available documents.]

Possible documents: certificate on an intention to submit an asylum application, a decision on a return/expulsion decision, a misdemeanour judgment, an asylum or reception-centre ID card, an asylum seeker ID card, asylum application, asylum hearing minutes, decision(s) on an asylum application (from the Asylum Office, Asylum Commission or Administrative Court), detention order and others.

Have you ever applied for asylum in Serbia and what was the outcome of that procedure?

[If possible, collect or scan asylum documents and obtain data on the PoC's legal representatives.]

Have you ever been subjected to any harmful practices in Serbia?

[This part should contain data on the following harmful practices: violence committed by the state authorities, violence committed by non-state actors such as smugglers, human traffickers, or Serbian citizens or groups such as Narodne patrole, Levijatan, Četnici, or other formal or informal groups; detention and living conditions while in detention; inadequate living conditions in reception or asylum centres (Adaševci, Principovci, Šid, Obrenovac etc.) and descriptions of everyday routines, security, healthcare, psychosocial support, potential overcrowding etc.; pushbacks to neighbouring states, etc. All these circumstances must be considered prior to any expulsion because all these practices potentially consist of inhumane and degrading treatment at the very least.]

Please describe in detail the last place of residence before an irregular border-crossing attempt

[This section should primarily contain data on the living conditions in the relevant asylum or reception centre, as well as data on stays in informal settlements, with an emphasis on forest hotspots, abandoned settlements (e.g. the Grafosrem factory), security in such places, access to healthcare, violence, ill treatment, etc. This data should be combined with the data on vulnerability, as well as data on possible negative legal statuses and reasons for leaving the country of origin. An expulsion authority must assess these facts and circumstances cumulatively.]

IV. Data on border crossing and movements on Croatian territory

What was the time, place and wider area of the border crossing as well as the weather conditions?

[Pictures of the geographical location of the border crossing should be shown during the interview and possible GPS data should be extracted from refugees' phones, as well as pictures made at certain locations that can be tracked via a GPS signal. The GPS data can be used as evidence that the PoC entered and resided for a brief period at least on Croatian territory. This will allow the fieldworker to gather general data on trends regarding border crossings, and to determine the exact time of expulsions that occurred right after the border crossing, bearing in mind the fact that the border police possess advanced border-monitoring technology.]

From which location in the Šid area did you decide to go to the border? Could you please briefly describe the route and the means with which you reached the border area:

[The researcher should use the map and assist the PoC in describing the route that they used to reach the border area. This may be:

- on foot or by taxi from one of the reception centres such as Adaševci, Šid or Principovci
- on foot or by taxi from the train station in Šid
- on foot from one of the informal settlements located in the Batrovci region on the Serbian side in the forest areas, or in abandoned houses such as those in the villages near Vašica
- by train from Belgrade, Obrenovac, Subotica, Sombor or another town in Serbia where refugees can reside either in asylum or reception centres, private accommodation or in informal settlements
- another route and manner to the above-listed]

V. Movement within Croatian territory outside inhabited places and the place of encounter with Croatian state authorities

[Use the map to try to determine the PoC's movement within Croatian territory from the place of border crossing to the place of encounter with the Croatian authorities. GPS data should be extracted from refugees' phones if possible, as should accompanying pictures that confirm the GPS location. The GPS data can be used as evidence that the PoC entered and resided at least briefly on Croatian territory. This will also allow the fieldworker to gather general data on trends regarding border crossings.]

What was the route that you planned to take?

[In this part of the interview, the PoC should clarify the specific route that they planned to use, or the fieldworker should just state that there was no specific plan.]

Movement within Croatian territory within inhabited places and the place of encounter with Croatian state authorities

[Use the map to try to determine the PoC's movements within Croatian territory from the place of border crossing to the encounter with Croatian authorities close to or within inhabited places.]

- Lipovac
- Apševci
- Podgrađe
- Nijemci
- Tovarnik
- Ilača
- Šidski Banovci
- Vinkovački Banovci
- Đeletovići
- Orolik
- Spačva

VI. Encounter with the Croatian state authorities

VI.1. Time and place of encounter and other general data

Can you point to the exact place where the interception and deprivation of liberty took place? Can you try to describe that place as precisely as possible?

[The researcher should always be equipped with technology that can provide the PoC with the opportunity to identify the place of interception – this may be a cell phone, iPad or other adequate technology. GPS data should be extracted from refugees' phones if possible, and photographic images taken at the place of interception may be used to determine the exact location. The pictures of different geographical locations included in these guidelines should be used all the time.]

Can you recall the exact time of interception or at least the approximate time or part of the day?

[This information can help determine the police shift, i.e. the members of the police force on duty at that time. Also, the police officers use cell phones or other technology that broadcasts a signal, and which can be extracted from telecommunications providers in line with Articles 257, 262 and 263 of the Croatian Criminal Procedure Code.]

For how long did you remain at the place of interception?

Was your phone turned on or off?

Did you notice whether any of the state agents used cell phones, walkie-talkies or other means of communication?

How many state agents were involved in your interception, apprehension, or both?

Specify the weather forecast on the day of the incident

Were there any other people who were not police officers present, and would you be able to recognise them?

[For instance, members of the local population where the apprehension took place, travellers at the INA petrol station in Spačva, travellers on the train, etc.]

If you were apprehended in an inhabited place, did you have any other encounters with the local population?

[For instance, did you buy anything in a local store, such as water, food or cigarettes, or did you buy a train ticket, bus ticket etc. Collect, or at least take pictures of the products and other evidence.]

VI.2. The description of the police officer or other state agent involved in the alleged incident

Clothing, footwear and caps

1. Describe the caps that the border police officers were wearing

2. Describe the uniforms that the border police officers were wearing

3. Describe the ranks that the police officers had on their uniform

4. Can you recall the name tag or badge number (it should be located on the right-hand side of the uniform)?

5. Did you notice police officers with marks of other states?

6. Did you notice other persons wearing civilian clothes?

Equipment and vehicles

1. Can you please describe the vehicles used by the border police?

2. Can you recall the plate numbers of the vehicles?

**3. Can you identify the technology that the border police used to track you down?
[thermovision cameras, drones, cameras, binoculars, movement sensors etc.]**

Personal description of the police officers

[Noting a detailed description of the acting police officers is crucial in order to create a database of descriptions that will be later used to compare the collected data and for the possible identification of police officers who regularly participate in illegal border practices. This section of the guidelines should be filled in for every individual police officer that an interviewed PoC can remember.]

- Approximate weight

- Approximate height

- Physical constitution

[obese, skinny, muscle type, etc.]

- Tan
[pale, dark, red, white, etc.]
- Haircut and colour of the hair
- Moustache
- Beard
- Eyes
- Temples
- Eyebrows
- Ears
- Chin
- Cheeks
- Facial scars
- Lips
- Tattoos
- Other relevant marks

VI.3. The PoC's treatment

How would you describe first contact with the police?

Did the police use any form of ill treatment?

[Link the individual police officers or other state agents described in the previous part of the questionnaire with the acts of violence provided below.]

If the answer to the previous question is affirmative, can you please describe the police violence you experienced in terms of the specific categories below:

- yelling or shouting
- swearing and offensive language
- threatening to use firearms
- pointing firearms

- shooting in the air
- punching
- slapping
- kicking
- beating with a rubber truncheon
- hitting with a flashlight
- hitting or beating with other non-standard objects (wooden sticks, metal bars, baseball bats, binoculars etc.)
- handcuffing
- handcuffing in a painful position
- restraining you in other ways in a painful position
- using pepper spray or other chemical agents
- using devices that give you an electric shock
- forcing persons to lie down on the floor face down on the ground
[please specify for how long.]
- forcing persons to kneel with their hands behind their back
[please specify for how long.]
- forcing persons to sit on the ground
[please specify for how long.]
- detaining persons in a police van or other police vehicle
[please specify for how long and how many persons in total were detained with you in the vehicle.]
- depriving persons of food and water
- failing to provide medical treatment
- taking clothes and shoes
- taking phones
- taking money
- taking other personal property
- other, please specify

If an individual has suffered injuries, the researcher should do the following:

- take pictures of the injuries in daylight conditions if possible
- mark every injury, and try to take a detailed description of how the injury was inflicted
- obtain detailed information about the clothes that the individual was wearing
- obtain detailed information about the surface on which the individual may have fallen during the ill treatment

If the injuries are visible, severe and highly credible with the statement, the researcher should also:

- refer the description from this part of the questionnaire to a forensic medical expert, and try to facilitate a forensic medical examination as soon as possible in order to document injuries in line with the Istanbul protocol

In which language did you communicate with the police, and were you able to properly communicate with the police?

If stated in English, were you able to understand what the border police were saying to you?

Was there a translator or interpreter present for a language that you understand?

Since you have stayed in Serbia for a significant period, were you able to recognise what the police officers were saying among themselves, and can you please state in detail what they were discussing, and give their names or nicknames and other details?

[This question is relevant for refugees and migrants who have stayed in Serbia long enough to master the basics of the Serbian language.]

Were you informed that you have a right to legal counsel (a lawyer)?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that you have a right to inform a third person of your detention and whereabouts?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that you have the right to be examined by a doctor?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed of the reasons for your apprehension in a language that you understand?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed of the procedures that might be applied to you (expulsion, readmission, etc.)?

[This question is relevant for assessing both the lawfulness of the deprivation of liberty and the risk of refoulement.]

Were you informed that you have a right to apply for asylum in Croatia, or did you ask for asylum?

[This question is relevant for assessing the effectiveness of the procedure for access to asylum.]

If you asked for asylum, what was the response to your question?

[This question is relevant for assessing the effectiveness of the procedure for access to asylum.]

Did the police provide you with a paper, information note, leaflet or any other document that was drafted in a language that you understand, and that provided you with detailed information on your rights as a person deprived of liberty?

[This question is relevant for assessing both the lawfulness of deprivation of liberty and the risk of refoulement.]

Did the border police issue you with any document or a decision on deprivation of liberty?

[Collect a copy of the document.]

Were you offered the opportunity to challenge your deprivation of liberty before a judicial body?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that the police were attempting to expel you to Serbia?

If your answer to the previous question was positive, were you issued with an individual decision stating that you will be expelled to Serbia, issued in a manner that implies a procedure where you had the opportunity to:

[This question is relevant for assessing both the lawfulness of deprivation of liberty and the risk of refoulement.]

- gain access to a lawyer
- follow the expulsion procedure in a language you understand
- provide facts and evidence against expulsion to Serbia
- challenge an expulsion decision by pursuing a legal remedy that has automatic suspensive effect

VII. Onward treatment – (possible) police custody

After your apprehension and the above-described treatment, can you please explain where the police took you?

If you were put in a vehicle, can you please tell us which of the above-described kinds of vehicles you were put in?

Were you able to see where they were taking you when looking through the vehicle window?

Did you still have a phone with you while you were in the vehicle, and were you able to communicate with other people, take pictures or film videos?

[collect all available information from the phone.]

How many of you were put in the vehicle?

For how long were you driven from the place of apprehension to another place (the place of expulsion, a police station or other location)?

If you were taken to a police building, can you please describe it?

[The person of concern should, if possible, describe the entrance to the building, the yard surrounding the building, the fence, the parking lot in front of the building, the colour of the building, the colour of the roof and any other architectural features, windows, the number of floors etc.]

Can you please describe the entrance to the building?

[The person of concern should describe the door, i.e. its colour and other features.]

Can you describe the inside of the building to which you were taken?

[The person of concern should describe the colour of the walls, the length of the hallway, and the side doors, which could be police offices.]

Where were you taken inside that building?

[The person of concern should describe whether they were taken upstairs or downstairs, whether they were told to sit down, e.g. on a bench in front of the office and wait to be called for an interview.]

If you were taken to a police cell, can you please describe the cell as follows:

- the (approximate) size of the cell in square metres
- artificial light
- natural light
- ventilation
- hygiene and your general impressions of the conditions in the cell
- the number of persons detained in one cell
- toilet (if present); also, was the toilet separated from the rest of the cell, and was it clean?
- drinking water
- the location of the police cell – above or below ground
- the description of the door (metal, wooden, with or without metal bars) and the window (metal, wooden, with or without metal bars or other covering)
- the cell walls (colour, condition of walls, names or words written on the walls, etc.)
- heating (was it hot or cold?)
- damp
- furniture (was there a bed, table or chair?)
- mattress and bed linen

Did the police use any form of ill treatment?

[link individual police officers or other state agents described in the previous part of the questionnaire with the acts of violence listed below.]

If the answer to the previous question is positive, could you please describe the violence applied by the police and link it to the categories below:

- yelling or shouting
- swearing and offensive language
- threatening use of firearms
- pointing firearms
- punching
- slapping
- kicking
- hitting an individual with a rubber truncheon
- hitting an individual with a flashlight
- hitting an individual with other non-standard-issue objects (wooden sticks, metal bars, baseball bats, binoculars etc.)
- handcuffing
- handcuffing an individual in a painful position
- forcing an individual to remain in a painful position
- using pepper spray or other chemical agents
- administering electric shocks
- forcing persons to lie down on the floor face down
[please specify for how long.]
- forcing persons to kneel with their hands behind their back
[please specify for how long.]
- forcing persons to sit on the floor
[please specify for how long.]
- depriving persons of food and water

- failing to provide medical treatment
- taking clothes and shoes
- taking phones
- taking money
- taking other personal property
- other, please specify

If an individual has suffered injuries in police custody, the researcher should do the following:

- take pictures of the injuries in daylight conditions if possible
- mark every injury, and try to take a detailed description of how the injury was inflicted
- obtain detailed information about the clothes that the individual was wearing
- obtain detailed information about the surface on which the individual may have fallen during the ill treatment

If the injuries are visible, severe and highly credible with the statement, the researcher should also:

- refer the description from this part of the questionnaire to a forensic medical expert, and try to facilitate a forensic medical examination as soon as possible in order to document injuries in line with the Istanbul protocol

Were you informed that you have a right to legal counsel (a lawyer)?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that you have a right to inform a third person of your detention and whereabouts?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that you have the right to be examined by a doctor?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed of the reasons for your apprehension in a language that you understand?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed of the procedures that might be applied to you (expulsion, readmission, etc.)?

[This question is relevant for assessing both the lawfulness of deprivation of liberty and the risk of re-foulement.]

Were you informed that you have a right to apply for asylum in Croatia, or did you ask for asylum?

[This question is relevant for assessing the effectiveness of the procedure for access to asylum.]

If you asked for asylum, what was the response to your question?

[This question is relevant for assessing the effectiveness of the procedure for access to asylum.]

Did the police provide you with a paper, information note, leaflet or any other document that was drafted in a language that you understand, and that provided you with detailed information on your rights as a person deprived of liberty?

[This question is relevant for assessing both the lawfulness of deprivation of liberty and the risk of refoulement.]

Did the border police issue you with any document?

[Obtain a copy of the document.]

Were you offered the opportunity to challenge your deprivation of liberty before a judicial body?

[This question is relevant for assessing the lawfulness of deprivation of liberty.]

Were you informed that the Croatian police were attempting to expel you to Serbia?

If an answer to previous question is positive, were you issued with an individual decision stating that you will be expelled to Serbia and in a manner that implies a procedure where you had the opportunity to:

[This question is relevant for assessing both the lawfulness of deprivation of liberty and the risk of refoulement.]

- gain access to a lawyer
- follow the expulsion procedure in a language you understand
- provide facts and evidence against expulsion to Serbia
- challenge an expulsion decision by pursuing a legal remedy that has automatic suspensive effect

VIII. Onward treatment after the first encounter or after detention at a police station – collective expulsion

Can you please describe how you were taken to the Serbian border?

[in vehicles and, if so, in which one of those identified above. Were you escorted to the border line or to the official border crossing on foot.]

Did the police use any form of ill treatment during your transfer to the border?

If the answer to the previous question is positive, could you please describe the violence applied by the police and link it to the categories below:

- yelling or shouting
- swearing and offensive language

- threatening use of firearms
- pointing firearms
- punching
- slapping
- kicking
- hitting an individual with a rubber truncheon
- hitting an individual with a flashlight
- hitting an individual with other non-standard-issue objects (wooden sticks, metal bars, baseball bats, binoculars etc.)
- handcuffing
- handcuffing an individual in a painful position
- forcing an individual to remain in a painful position
- using pepper spray or other chemical agents
- administering electric shocks
- forcing persons to lie down on the floor face down
[please specify for how long.]
- forcing persons to kneel with their hands behind their back
[please specify for how long.]
- forcing persons to sit on the floor
[please specify for how long.]
- depriving persons of food and water
- failing to provide medical treatment
- taking clothes and shoes
- taking phones
- taking money
- taking other personal property
- other, please specify

If an individual has suffered injuries in police custody, the researcher should do the following:

- take pictures of the injuries in daylight conditions if possible
- mark every injury, and try to take a detailed description of how the injury was inflicted
- obtain detailed information about the clothes that the individual was wearing
- obtain detailed information about the surface on which the individual may have fallen during the ill treatment

If the injuries are visible, severe and highly credible with the statement, the researcher should also:

- refer the description from this part of the questionnaire to a forensic medical expert, and try to facilitate a forensic medical examination as soon as possible in order to document injuries in line with the Istanbul protocol

Were you informed that Croatian police plans to expel you to Serbia in a manner which implies an individual decision rendered in a procedure where you had the possibility to contest your removal, in which you could:

- gain access to a lawyer
- follow the expulsion procedure in a language you understand
- provide facts and evidence against expulsion to Serbia
- challenge an expulsion decision by pursuing a legal remedy that has automatic suspensive effect

IX. Data and geographical location relating to the collective expulsion

Can you describe the time, place and area or region in which the collective expulsion took place and the weather conditions on the day of the incident?

[Pictures of the border crossing's geographical location should be shown during the interview, and possible GPS data should be extracted from refugees' phones, as well as pictures taken at locations, which can be identified via a GPS signal.]

If you were expelled at the official border crossing, can you please indicate whether:

- you surrendered to the Serbian border police

If the answer to the previous question is affirmative, please indicate if you were:

- allowed to leave and go back to one of the camps (If so, please indicate which camp or which hotspot you went to)
- taken to a police station or other building?

- taken to the misdemeanour court and sentenced (e.g. with a fine, prison sentence, etc.)
[The researcher should strive to collect all copies of misdemeanour court documentation, because the reasoning underpinning these judgements always includes data on cooperation between the Serbian and Croatian border police.]

If you were taken to a police station, can you please provide information on the following:

- were you provided with a translator so you could communicate with the police?
- were you issued any document(s), and did you understand the content of the document(s)?
- were you informed of your right to legal counsel?
- were you allowed to inform a third person of your whereabouts?
- for how long were you detained in the police facility?
- did they take your picture and your fingerprints?
- where did they take you next?

[If the person of concern was taken to the misdemeanour court, go to the questionnaire section that contains data on the misdemeanour proceedings.]

If you were detained in a police cell, could you please provide information on the following:

- the (approximate) size of the cell in square metres
- artificial light
- light
- ventilation
- hygiene and your general impressions of the conditions in the cell
- the number of persons detained in one cell
- toilet (if present); was the toilet separated from the rest of the cell and was it clean?
- drinking water
- the location of the police cell – above or below ground
- the description of the door (metal, wooden, with or without metal bars) and the window (metal, wooden, with or without metal bars or other covering)
- the cell walls (colour, condition of walls, names or words written on the walls, etc)

- heating (was it hot or cold?)
- damp
- furniture (was there a bed, table or chair?)
- mattress and bed linen

If you were taken to the misdemeanour court, could you please indicate in which town?

[The researcher should use a map to determine the city or town in which the court is located.]

Can you provide the following information on the misdemeanour proceedings?

[All the following questions aim to prove that refugees, migrants and asylum seekers are frequently denied the right to a fair trial. This denial further leads to their obtaining a status as an illegal migrant, which puts them at risk of expulsion.]

- were you provided with a translator?
- were you provided with a lawyer?
- were you allowed to follow the proceedings in a language you understand?
- were you provided with the opportunity to contest the charges brought against you?
- were you informed that you have a right to appeal against the first-instance decision?
- if you are a minor, were you designated a person who told you that they will look out for your best interests?

If you were expelled in the green border area, please provide information on where you travelled to next:

- one of the informal settlements or hotspots near the border area
- RC Šid
- RC Principovci
- RC Adaševci
- RC Sombor
- RC Subotica
- RC Obrenovac
- RC Kikinda

- another reception or asylum centre

- a medical institution (please indicate which medical institution and what kind of treatment you received)

Can you please describe how you travelled to one of the above-mentioned places?

[Refugees, asylum seekers and migrants who are collectively expelled from Croatia are usually forced to walk for hours until they reach a place where they can get some rest, receive medical treatment or obtain food or water.]

- on foot

- in a vehicle; please specify if it was a taxi or other kind of vehicle

If you went to an informal settlement, can you please provide a detailed description of the living conditions in the settlement:

[There are several informal settlements in the Šid area where refugees, asylum seekers and migrants are deprived of their basic needs. This, in combination with their vulnerability and how they are treated by the border police, is an example of inhumane and degrading treatment.]

- access to water

- access to food

- access to healthcare

- access to shelter and a description of the shelter

- access to hygiene kits

- other relevant information

If you went to one of the asylum or reception centres, can you please indicate whether:

- you were allowed instant access to the centre or you had to wait (provide information on how long you had to wait)

- you had your own bed

- you had access to sanitary facilities

- you had enough personal space (state how many people you shared a room with)

- you felt safe in the reception or asylum centre

Time and Place of Interview

6. Power of Attorney and Legal Representation (relevant for researchers with a legal background)

After the interview is concluded, the PoC should sign the following powers of attorney (hereinafter: PoAs):

6.1. PoA of an attorney at law who will represent the PoC as a victim in criminal proceedings

The fact that the PoC was submitted to unlawful border practices, especially in situations of ill treatment, falls under several different criminal offences in the Croatian Criminal Code:

- Criminal offence against official duty by abuse of position and authority (Article 291)
- Torture and other cruel, inhumane or degrading treatment or punishment (Article 104)

Frequently it also involves:

- Committing a criminal offence within a criminal association (Article 329)
- Unlawful deprivation of liberty (Article 136)
- Robbery (Article 230)
- Other offences (these depend on the individual case)

The criminal procedure begins with the filing of a criminal complaint, in cases where the state attorney is obliged to investigate *ex officio*. As cases pertaining to pushbacks almost always necessarily include a criminal offence that contradicts a member of the police's official duty, the competent body in Croatia would be USKOK (Office for the Suppression of Corruption and Organised Crime).⁹⁵ This is a specialised office that reports to the state attorney. Even if a person files a complaint to another part of the state attorney structure (there are municipal attorneys, county attorneys, and the state attorney of the Republic of Croatia), they have an obligation to delegate to the competent body.

6.2. PoA of an attorney at law that will represent the PoC in the civil proceedings

The fact that the PoC was subjected to an illegal practice provides them with an opportunity to seek pecuniary or non-pecuniary damages, and in line with the Croatian Civil Procedure Act, one can claim damages by filing a civil lawsuit at the relevant municipal court. According to Article 186a of the same law, when one wants to file a lawsuit against the Republic of Croatia, one is obliged to issue a request for peaceful resolution of the dispute to the public prosecutor. According to Article 48(3), if the plaintiff has no residence or headquarters in Croatia, in case of disputes against the Republic of Croatia, the court in the judicial district home to the Croatian Parliament holds general territorial jurisdiction.

6.3. PoA for representation in the administrative procedure

In cases where the PoC was subjected to an expulsion procedure for which the guarantees against re-

⁹⁵ For more information see here: <http://www.dorh.hr/Default.aspx?sec=18>.

foulement were not respected, and where their individual circumstances were not examined, especially in cases where they were issued a decision on expulsion or refusal of entry without taking into consideration the individual circumstances, one can file an administrative lawsuit within a period of 30 days from receipt of the decision. This can also be used as a legal remedy against denial of access to the asylum system. The competent administrative court in the pushback cases (when the person is outside of Croatia because of a pushback) will in most cases be the court in the area where the violation occurred. In the first instance there are administrative courts (for example, the Administrative Court in Zagreb⁹⁶), and the next level up is the High Administrative Court of Croatia.⁹⁷

6.4. PoA for representation before the Croatian Ombudsperson

Anybody can file a complaint on violations of human rights to the Office of the Ombudsperson of the Republic of Croatia.⁹⁸ The person filing the complaint needs to be directly affected by the violation of rights guaranteed under the Croatian Constitution, other laws, or both. If another person, organisation, or lawyer is filing the complaint in the name of the affected person, then they need to enclose the person's written and signed consent to the Ombudsperson to initiate and conduct an examination procedure regarding the violation (they must also indicate which violation is in question). Also, if the complaint was not written by the person themselves, it is important for the organisation or person representing the victim to be formally authorised to file it. They must have the PoA to submit the complaint to the Ombudsperson's office and to represent the person in the procedure if needed.

6.5. PoA for representation before the Croatian Constitutional Court

According to Article 125 of the Croatian Constitution, the Constitutional Court decides on constitutional lawsuits that fight the individual decisions of state bodies, the bodies of local and regional self-government units and legal persons with public authority, in cases where these decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution. According to the Article 62 (2) of the Constitutional Law of the Constitutional Court of the Republic of Croatia: if another legal remedy is allowed due to the violation of constitutional rights, a constitutional lawsuit may be filed only after that legal remedy has been exhausted. Therefore, a constitutional lawsuit is an additional and irregular way of protecting human rights that are guaranteed under the Constitution. Only in exceptional circumstances can this remedy be used before the prior legal remedies have been exhausted. According to Article 61, these exceptional circumstances include: when the rights and obligations of the party, or the suspicion or accusation of a criminal offence have not been decided by a court within a reasonable time, or in the case when the disputed individual act grossly violates constitutional rights, and it is clear that failure to initiate Constitutional Court proceedings could have irreparable consequences. The Constitutional Court has the obligation to protect the **constitutional rights of the person that submitted the constitutional lawsuit when these rights are being violated by a judgment or other decisions of the public authorities.**⁹⁹

96 Official website of the Administrative Court in Zagreb available at: <https://sudovi.hr/hr/uszg>.

97 Official website of the High Administrative Court of Croatia available at: <https://sudovi.hr/en/vusrh>.

98 Official website of the Croatian Ombudsperson: <https://www.ombudsman.hr/en/>.

99 The instructions on how to submit the lawsuit as well as its form can be found on the Constitutional Court's website: <https://www.usud.hr/hr/ustavne-tuzbe-upute>

6.6. PoA for representation before the European Court of Justice

If a person has suffered damage as a result of action or inaction directly by an EU institution or its staff, they can take action against them in court, in one of two ways: indirectly through national courts (which may decide to refer the case to the EU Court of Justice) or directly before the General Court of the CJEU – in cases where a decision by an EU institution has affected a person directly and individually.¹⁰⁰

Additionally, the person can also complain about the country's infringement of EU law, and for that there is an officially prescribed procedure to be followed: at national level, EU level or both.¹⁰¹

6.7. PoA for representation before the European Court of Human Rights

Even though the ECtHR has a subsidiary nature, refugees and migrants who were submitted to a systemic and well-known practice may directly address this body. This does not exclude the use of the other above-mentioned legal remedies, but ECtHR practice has demonstrated that applicants are not obliged to use legal remedies that are theoretical and illusory. This is usually the case where the entire treatment received at the border was applied outside of any legal procedure, and where the PoCs are expelled to the jurisdiction of another state from where they cannot effectively access justice and effective legal remedies.¹⁰² Addressing domestic and international bodies at the same time in a parallel process is also not excluded. In addition, for the ECtHR, regular contact with the victim must be maintained. Otherwise, the case will be struck off the list.

6.8. PoA for representation before United Nation Treaty Bodies

The UN treaty bodies also have a subsidiary nature, and so the same arguments could be used as with the ECtHR. Moreover, the number of pushbacks, and thus the number of victims, provides legal representatives with the opportunity to draw on different international bodies, both regional and global, and to address unlawful border practices before various jurisdictions. It is not possible to litigate one case at the same time before the EU, CoE and UN bodies. The UN treaty bodies that have a mandate to examine individual communications in relation to Croatia are the following: Human Rights Committee, Committee against Torture (CAT), Committee on Elimination of Discrimination against Women (CEDAW) Committee on the Rights of Persons with Disabilities (CRPD), Committee on the Rights of the Child (CRC).

6.9. PoA for representation before UN Special Procedures

As charter-based bodies, UN Special Procedures can be addressed through urgent appeals or individual communications. The Special Procedures that have a mandate for the type and nature of human rights violations committed by border police may include the following:

¹⁰⁰ More about the Court of Justice of the EU available here: https://europa.eu/european-union/about-eu/institutions-bodies/court-justice_en

¹⁰¹ More on the relevant procedures is available at: https://ec.europa.eu/info/about-european-commission/contact/problems-and-complaints_en

¹⁰² On how to make a valid application see: <https://bit.ly/2QKuR8j>.

- Working Group on Arbitrary Detention¹⁰³

- Special Rapporteur on the Human Rights of Migrants¹⁰⁴

- Special Rapporteur on Torture and other Cruel, Inhumane or Degrading Treatment or Punishment¹⁰⁵

There is no obstacle to addressing the UN Special Procedures alongside the ECtHR or UN Treaty body with regard to an individual case.

103 More on the mandate of the Working Group on Arbitrary Detention is available at: <https://bit.ly/2Rxje1B>.

104 More on the mandate of the Special Rapporteur on the Human Rights of Migrants is available at: <https://bit.ly/2Rwu4Z3>.

105 More on the mandate of the Special Rapporteur on Torture and other Cruel, Inhumane and Degrading Treatment or Punishment is available at: <https://bit.ly/34a8g8a>.

Nikola Kovačević is a human rights lawyer from Serbia. He won the 2021 Nansen Refugee Award for Europe for his contribution to the development of the Serbian asylum system (representing almost 30% of persons granted asylum in Serbia) and his work on documenting and legally challenging illegal border practices. Nikola has been a writer for AIDA since 2015 and involved in ELENA as a coordinator for Serbia since 2016. ELENA and AIDA both operate under the auspices of ECRE. He has almost ten years of experience in litigating asylum cases at the national and international level, including in cases that imply a need for cross-border cooperation with CSOs and individuals from Hungary, Croatia and Bulgaria. He has litigated cases of collective expulsions, the arbitrary deprivation of liberty at transit zones, the flawed application of the safe third-country concept and others. Nikola is also a teaching assistant at the Union University School of Law where he teaches criminal law while studying for his PhD.

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