

**Third party intervention
by the Council of Europe Commissioner for Human Rights**

under Article 36, paragraph 3, of the European Convention on Human Rights

No. 18810/19, 18865/19 and 23495/19

S.B. v. Croatia, A.A. v. Croatia and A.B. v. Croatia

Introduction

1. On 18 June 2020, the Council of Europe Commissioner for Human Rights (hereinafter: ‘the Commissioner’) informed the European Court of Human Rights (hereinafter: ‘the Court’) of her decision to intervene as a third party in the Court’s proceedings in accordance with Article 36, paragraph 3, of the European Convention on Human Rights (hereinafter: ‘the Convention’), and to submit written observations concerning the cases of *S.B. v. Croatia* (No. 18810/19), *A.A. v. Croatia* (18865/19) and *A.B. v. Croatia* (23495/19). These cases relate to the summary return of the three applicants, who are nationals of Syria, from Croatia to Bosnia and Herzegovina.
2. Under her mandate, the Commissioner promotes the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, particularly the Convention; identifies possible shortcomings in laws and practices concerning human rights; and provides advice and information regarding the protection of human rights across the region.¹
3. Owing to the alarming trends in the treatment of asylum seekers and migrants in Europe, protecting the human rights of migrants, including asylum-seekers and refugees, continues to be a priority theme for the Commissioner. She has repeatedly stressed the importance of guaranteeing the individual right to seek and enjoy asylum and has issued a number of relevant recommendations to member states in this respect.
4. This intervention is based on the Commissioner’s work on Croatia (including a letter to the Croatian authorities published in September 2018 and a statement issued in October 2020),² and on Bosnia and Herzegovina (including letters to the authorities of Bosnia and Herzegovina published in May 2018 and December 2020,³ and a visit to Bosnia and Herzegovina from 2 to 6 December 2019),⁴ along with her continuous monitoring of these countries.
5. Section I of the present written submission provides background information and the Commissioner’s observations on summary expulsions of migrants by Croatia, including issues concerning access to international protection and effective domestic remedies in this context. Section II comprises the Commissioner’s observations on Croatia’s response to concerns raised about its expulsion practices. In Section III the Commissioner addresses some aspects of the situation as regards migration and asylum in Bosnia and Herzegovina, which she considers relevant for assessing the individual implications of returning people there. It is followed by the Commissioner’s conclusions.

I. The Commissioner’s observations on summary expulsions by Croatia

The well-documented and consistent nature of summary expulsions by Croatia

6. The Commissioner has been aware of reports about summary returns of migrants and asylum seekers from Croatia to Bosnia and Herzegovina and Serbia since at least 2016. However, these reports intensified in 2018, and have continued to reach the Commissioner since. These returns occur in such a way that those involved are unable to raise arguments against their expulsion, and they are deprived of a real possibility of drawing the Croatian authorities’ attention to any issue that could affect their status and entitle them to remain in Croatia. The way in which these expulsions have been carried out has prevented those affected from lodging an application for international

¹ [Resolution \(99\)50](#) on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² [Letter](#) from Dunja Mijatović, Commissioner for Human rights, to the Prime Minister of Croatia, 20 September 2018; [statement](#) by the Commissioner (“*Croatian authorities must stop pushbacks and border violence, and end impunity*”), 21 October 2020.

³ Commissioner’s [letter](#) to the Minister for Human Rights and Refugees and the Minister for Security, published in May 2018, and [letter](#) to the Chairman of the Council of Ministers and the Minister for Security, published on 11 December 2020.

⁴ Commissioner for Human Rights, Observations following a visit to Bosnia and Herzegovina, [Bosnia and Herzegovina must immediately close the Vučjak camp and take concrete measures to improve the treatment of migrants in the country](#), 6 December 2019.

protection in Croatia, and from giving reasons why deficiencies in the asylum and reception system in Bosnia and Herzegovina may have precluded their return to that country. The practice of immediate expulsions from Croatia to Bosnia and Herzegovina also makes it impossible for migrants to challenge the legality of their expulsion, or to complain to a competent authority about any ill-treatment inflicted during the expulsion. No written, individualised and reasoned decision is presented to persons who are summarily returned to Bosnia and Herzegovina.

7. The Commissioner first raised her concerns over consistent and substantiated information concerning a large number of collective expulsions from Croatia to Bosnia and Herzegovina and Serbia in a letter to the Prime Minister of Croatia published on 5 October 2018.⁵ In this letter she refers to UNHCR reports according to which, from January to September 2018, Croatia had collectively expelled 2 500 persons, 1 500 of whom were denied access to asylum and 700 of whom reported violence and theft by law enforcement officers during the expulsions. The Commissioner emphasised that all efforts by Croatia to manage migration should be strictly in line with the rule of law and binding international principles. Lastly, she called on the Croatian authorities to carry out prompt, effective and independent investigations into all recorded cases of collective expulsions, allegations of violence against migrants and other alleged crimes such as theft by law enforcement officers, and to take all the necessary measures to stop such practices and prevent their recurrence.
8. Other Council of Europe bodies have also been preoccupied with the migration situation in countries on the so-called Balkan route, including Croatia and Bosnia and Herzegovina. The Special Representative of the Secretary General on migration and refugees and the Committee on Migration, Refugees and Displaced Persons of the Parliamentary Assembly carried out fact-finding missions in the region, followed by reports in April 2019⁶ and June 2019,⁷ respectively. They both noted allegations of pushbacks from Croatia and instances of *refoulement*.
9. Concerns about systematic pushbacks of migrants by Croatia have also been expressed by members of the European Parliament (MEPs). In a [letter](#) of 2 April 2019 to the Commissioner for Home Affairs and the Commissioner for Crisis Management, a group of MEPs called on Croatia “to halt the violence and the practice of pushbacks” and to “ensure that people who enter Croatia are being provided with the possibility to ask for asylum and are transferred to reception centres for asylum seekers in accordance with international, European and Croatian law”. They also asked the European Commission to report back on the various activities it had initiated with the Croatian authorities, concerning allegations of violent pushbacks and denial of international protection.
10. At United Nations level, the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, stated in his conclusions following a visit to Bosnia and Herzegovina in October 2019 that he had received reliable information about violent pushbacks of migrants and asylum seekers by Croatian border police into the territory of Bosnia and Herzegovina. According to the testimonies that he had received, many migrants had been forcibly escorted back to Bosnia and Herzegovina outside the scope of any official procedure.⁸
11. Some courts in other countries have looked in some detail at allegations of pushbacks by Croatia when assessing asylum claims submitted to their national courts. One example of this is the [judgment](#) of the Federal Administrative Court of Switzerland of 12 July 2019, suspending the transfer of a Syrian asylum seeker to Croatia under [Dublin Regulation 604/2013](#) because of the prevalence of summary returns at the Croatian border with Bosnia and Herzegovina. The Court acknowledged the increasing number of reports that the Croatian authorities were denying access to asylum procedures and that large numbers of asylum seekers were being returned to the border

⁵ [Letter](#) from Dunja Mijatović, Commissioner for Human Rights to the Prime Minister of Croatia, 20 September 2018.

⁶ [Report](#) on the fact-finding mission to Bosnia and Herzegovina and to Croatia by Tomáš Boček, Special Representative of the Secretary General on Migration and Refugees, 23 April 2019.

⁷ PACE, Committee on Migration, Refugees and Displaced Persons, [Report](#) on Pushback policies and practice in Council of Europe member States, 8 June 2019.

⁸ [End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales](#), 1 October 2019; see also the UN Special Rapporteur’s [report on the visit](#), presented to the forty-fourth session of the Human Rights Council, 15 June-3 July 2020, doc. A.HRC/44/42/Add.2, 12 May 2020, paragraph 64.

with Bosnia and Herzegovina, where they were forced to leave the country. It also held that the lower court failed to examine the risk of chain *refoulement* from Croatia and whether the alleged ill-treatment by the Croatian authorities could have reached the threshold of a possible violation of rights protected by Article 3 of the European Convention of Human Rights.

12. NGOs, such as the Croatian Law Centre, Are You Syrious and the Border Violence Monitoring Network, have also documented and reported on pushbacks on the Balkan route, including pushbacks from Croatia to Bosnia and Herzegovina. In their descriptions they highlight the fact that this is now a systematic practice of the Croatian law enforcement officers and that the Croatian authorities bring pressure to bear on lawyers and civil society organisations who provide support to migrants and asylum seekers.⁹

Access to international protection

13. Under the Croatian Law on International and Temporary Protection of 2018, a person is considered an asylum seeker from the moment they express their intent to seek asylum (i.e. even before they lodge a formal asylum application), and this should entitle them to accommodation in a reception centre until the completion of asylum procedures, and to food, clothes, financial assistance, education, health care, and work.¹⁰
14. An expression of intent to apply for asylum can be made either during a border check at a border crossing point (Article 33, paragraph 1, of the above-mentioned law) or at a police station or reception centre when a person is found on Croatian territory (paragraph 2). This means that if a migrant is intercepted on Croatian territory during an attempt to cross the border irregularly,¹¹ they should be taken to the police station for identification and assessment of their protection needs. This will be followed either by initiation of the return procedure or by referral to an asylum reception centre, depending on whether they expressed their intent to seek asylum.
15. The Croatian authorities therefore have a clear legal obligation to make it possible for migrants who have expressed their intent to seek asylum to submit an asylum request, regardless of whether they did so at a border crossing or they were apprehended on Croatian territory having crossed into the country irregularly. In the light of the widespread practice described in paragraphs 6 to 12, the Commissioner considers that the authorities have systematically deprived migrants crossing into Croatia irregularly of the right to seek asylum, despite these clear obligations.
16. Furthermore, the Commissioner is concerned that, even for those who are readmitted by Croatia from other EU countries, notably Slovenia, there are significant barriers to accessing a fair and efficient asylum procedure. In this respect, the Commissioner points to consistent reports that persons who have been returned to Croatia from other member states are routinely returned onwards by Croatia to Bosnia and Herzegovina and Serbia (in so-called chain pushbacks) while being given no opportunity to apply for asylum or, alternatively, to be afforded an individualised expulsion procedure.¹² It should be noted in this respect that in July 2020, the Slovenian Administrative Court gave a [judgment](#) finding that the Slovenian police was responsible for one such chain pushback, which had resulted in a person seeking international protection in Slovenia

⁹ See, *inter alia*, Centre for Peace Studies, Are You Syrious and Welcome Initiative, [5th report on pushbacks and violence from the Republic of Croatia](#), 3 April 2019.

¹⁰ [Report](#) on the fact-finding mission to Bosnia and Herzegovina and to Croatia by Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 23 April 2019, p. 28.

¹¹ According to the Law on Foreigners of 2018 “illegal” crossing of a third country national for the purpose of this law are, *inter alia*, crossing of a state border outside of the designated place and time for border crossing and crossing to avoid border control.

¹² See, for example, [Input](#) by civil society to the EASO Annual Report 2019; European Council on Refugees and Exiles (ECRE): [Report on Illegal Pushbacks and Border Violence in the Balkan Region](#), 12 March 2020, and [Austria: Chain Pushbacks to Bosnia Amid Growing Evidence of Widespread Abuse in the Balkans](#), 20 November 2020; Amnesty International, *Pushed to the Edge: Violence and Abuse Against Refugees and Migrants Along the Balkans Route*, 2019, and Refugee Rights Europe/End Pushbacks Partnership, *Pushbacks and Rights Violations at Europe’s Borders: The State of Play in 2020*, November 2020.

being sent back to Bosnia and Herzegovina via Croatia. The Court ordered that the migrant should be returned to Slovenia and given an opportunity to seek asylum again.¹³

Croatia's deterrence policy

17. The Commissioner notes the concern expressed by the Parliamentary Assembly's Committee on Migration, Refugees and Displaced Persons that "the European Union's request for 'expediency' at borders, even accompanied by the need for due process, encouraged Schengen countries to process and return cases without sufficient individual guarantees of access to information and assistance, and [that] the Schengen implementation rules allowed for border authorities to 'discourage' potentially illegal entrants, which allowed a margin of interpretation leaning towards *refoulement*".¹⁴ Moreover, the Special Representative of the Secretary General on migration and refugees has noted that Croatia's border policies are characterised by a deterrence approach to the admission of migrants and refugees in the country, in particular at the Croatian-Bosnian border.¹⁵
18. While states have the right to exercise control over irregular migration into their territories, the Commissioner stresses that this cannot override member states' obligations to ensure that their undertakings under the Convention are fully observed. Furthermore, as noted by PACE,¹⁶ such activities must be compatible with the entire EU asylum and migration *acquis*, which also establishes a clear right to claim asylum, regardless of the manner of entry.
19. In this respect, the Commissioner is concerned that the Croatian authorities' focus on deterring irregular arrivals is causing the above-mentioned failures to observe procedural safeguards during expulsion proceedings and a systematic denial of access to asylum to those found to be crossing the country's borders irregularly.
20. The Commissioner observes that despite UNHCR's assessment that migratory flows to Europe in recent years have been mixed, which means that they include refugees, asylum seekers, economic migrants and other migrants, the Croatian authorities have continuously labelled migrants attempting to cross into Croatia as 'economic migrants', including in their reply to the Commissioner's letter of 2018. Public statements to this effect have also been made by Croatian officials, including the Minister of the Interior and the former Croatian President, who have both stated that most people trying to cross into Croatia were not refugees, but economic migrants.¹⁷ The Commissioner takes the view that this public stance by the authorities contributes to a situation in which the potential protection needs of those arriving in Croatia remain unacknowledged, and in which deterrence is applied not only to prevent irregular migration, but access to protection more generally.

Violence and ill-treatment as a common feature of expulsions by Croatia

21. An overwhelming number of reports by international organisations, the Croatian Ombudswoman and international and domestic NGOs point to an established practice of ill-treatment of migrants by Croatian law enforcement officers in the course of pushbacks from Croatia to Bosnia and Herzegovina. These include reports by UNHCR, the [Border Violence Monitoring Network](#), Amnesty International, Human Rights Watch, Doctors Without Borders, Save the Children, and a joint report

¹³ Statewatch, [Court judgment confirms that Slovenia and Croatia committed "chain pushbacks"](#), 3 August 2020.

¹⁴ PACE, Committee on Migration, Refugees and Displaced Persons, [Report](#) on Pushback policies and practice in Council of Europe member States, 8 June 2019, para. 73.

¹⁵ [Report](#) on the fact-finding mission to Bosnia and Herzegovina and to Croatia by Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 23 April 2019, p. 28.

¹⁶ PACE, [Resolution](#) 2299 (2019) Pushback policies and practice in Council of Europe member States, para. 18.

¹⁷ See, Human Rights Watch, [Croatia: President Admits Unlawful Migrant Pushbacks](#), 15 July 2019, and the Croatian Ministry of Interior, [Minister Božinović dismisses allegations about ill-treatment of migrants by Croatian police](#), 28 January 2020 (*in Croatian*).

by Centre for Peace Studies, Are You Syrious and the Welcome Initiative.¹⁸ As the UN Special Rapporteur on the human rights of migrants notes, while the actual tactics vary in practice, some common patterns of ill-treatment include the capture of people on the move, the confiscation of their property, especially communication equipment, and beating with batons and chasing by dogs so as to physically exhaust migrants and prevent them from attempting another crossing. A number of male migrants are reported to have been stripped, beaten and forced to walk back to Bosnia and Herzegovina barefoot.¹⁹

22. In the aforementioned letter of 2018 to the Croatian authorities, the Commissioner expressed her concerns about allegations of the systematic use of violence by Croatian law enforcement officers against migrants, including pregnant women and children, in the context of pushbacks. The letter referred to reports by UNHCR according to which 700 of the 2500 migrants who were collectively expelled from Croatia, from January to September 2018, reported violence and theft of their personal belongings. The Commissioner called on the Croatian authorities to initiate and carry out prompt, effective and independent investigations into all recorded cases of collective expulsions, allegations of violence and other alleged crimes such as theft, and to take all the necessary measures to stop such practices and prevent their occurrence.
23. During her visit to Bosnia and Herzegovina in December 2019, the Commissioner was informed by migrants and NGO representatives about summary expulsions of migrants from Croatia and ill-treatment of migrants by Croatian law enforcement officers. She was particularly alarmed by stories of migrants being beaten and stripped of their belongings, including their shoes, and forced to walk across rough terrain back to Bosnia and Herzegovina. Noting that despite her previous call on the authorities to stop such practices the situation had only worsened, the Commissioner reiterated that the Croatian authorities should put an end to the practice of pushing migrants back and carry out independent and effective investigations into the reports of collective expulsions of migrants and ill-treatment by law enforcement officers.²⁰
24. The Commissioner's most recent intervention in this regard was a [statement](#), published on 21 October 2020, following reports she received of new allegations of collective expulsions of migrants, denial of access to asylum and extreme violence by Croatian law enforcement used in this context.²¹ The Commissioner stressed that these new and disturbing reports suggested that violence and dehumanising acts during pushbacks were increasing, and that it seemed that Croatian law enforcement officers continued to enjoy impunity for such serious human rights violations. The Commissioner was also concerned that the Croatian government's reaction had been to dismiss reports published by NGOs or resulting from investigative journalism. She reiterated her call for the Croatian authorities to stop pushbacks and border violence and eradicate impunity for serious human rights violations committed against migrants by law enforcement officers. In the spirit of full transparency, she called on the Croatian authorities to publish the report by the Council of Europe Committee for the Prevention of Torture (CPT) on their [rapid reaction visit](#) to Croatia in August 2020 as soon as possible after its adoption.²² This report included interviews and reports of medical examinations of many migrants who claimed they had been apprehended by Croatian law

¹⁸ Croatian Ombudswomen, Annual [Report](#) for 2018; UNHCR, [Desperate Journeys - January to December 2018](#), pp. 294-295; [Inter-Agency Operational Update – 1 to 30 January 2019](#), available at: <https://bit.ly/33P2ZBL>; [Inter-Agency Operational Update – 1 to 30 April 2019](#), available at: <https://bit.ly/33XQ9I7>; HRW, [Croatia: Migrants Pushed Back to Bosnia and Herzegovina](#), 11 December 2018; Amnesty International, [Croatia: EU complicit in violence and abuse by police against refugees and migrants](#), March 2019; MSF, [Beaten, cold, sick and stranded: migrants and asylum seekers in Bosnia](#), 15 November 2019; Save the Children, [Reports about push-backs and violence against children on the move at the Western Balkans Borders, January and July -September 2019](#); Centre for Peace Studies, Are You Syrious and Welcome Initiative, [5th report on pushbacks and violence from the Republic of Croatia](#), 3 April 2019.

¹⁹ [End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales](#), 1 October 2019; see also the UN Special Rapporteur's [report on the visit](#), presented to the forty-fourth session of the Human Rights Council, 15 June-3 July 2020, doc. A.HRC/44/42/Add.2, 12 May 2020, paragraph 64.

²⁰ Commissioner for Human Rights, [Bosnia and Herzegovina must immediately close the Vučjak camp and take concrete measures to improve the treatment of migrants in the country](#), 6 December 2019.

²¹ ECRE, [Balkans: New Brutal Pushbacks from Croatia to Bosnia, where a Humanitarian Crisis Unfolds](#), 30 October 2020.

²² The CPT [adopted](#) this report at its 103rd plenary meeting, which was held from 3 to 6 November 2020.

enforcement officers within the territory of Croatia and forcibly returned to Bosnia and Herzegovina. The Commissioner also stressed that the authorities should co-operate fully with independent monitoring mechanisms, especially the Office of the Croatian Ombudswoman.

II. Croatia's lack of engagement with persistent concerns over its expulsion practices

25. The Commissioner notes with regret that the Croatian authorities' have failed to adopt a constructive approach to addressing the numerous allegations of summary expulsions, denial of access to asylum and ill-treatment of migrants. This is best illustrated by several failures by the authorities to co-operate with the Croatian Ombudswoman and the National Preventive Mechanism run by her office. One such case was the refusal by the Ministry of the Interior to provide the Ombudswoman with access to files and data relating to allegations of human rights violations in the treatment of migrants in 2018.²³ Another example was the lack of any institutional response to the Ombudswoman's request for an investigation of allegations of ill-treatment of migrants by border police, which were brought to her attention in an anonymous complaint by a person who claimed to be a border police officer. This person alleged that police officers had received orders to push back all migrants without documents, regardless of their age or sex, to confiscate their money and their mobile phones and to leave no trace of such actions.²⁴
26. In this connection, the Commissioner also notes that the authorities have systematically dismissed NGO reports about pushbacks and/or ill-treatment of migrants, including those of Amnesty International²⁵ and Human Rights Watch, along with media reports, and accused them of spreading misinformation, while questioning these organisations' motives in focusing on these issues.²⁶ Ms Tineke Strik, the PACE Rapporteur who visited Croatia in 2019, noted in her report that the authorities expressed "mistrust of NGOs, seen as questioning unnecessarily the country's border management and accusing the Croatian police of mistreatment where cases were extremely rare, and in some cases encouraging border crossing of illegal migrants".²⁷
27. Against this background, the Commissioner considers that despite repeated calls from her and other human rights institutions, including UN Special Rapporteurs,²⁸ for the authorities to initiate effective and independent investigations into pushbacks and ill-treatment of migrants, there has been no appropriate follow up by the authorities. As a result, Croatian law enforcement agencies continue to enjoy impunity.
28. In this connection, the Commissioner notes that on 6 November 2020, the European Ombudsman [opened](#) an inquiry into how the European Commission seeks to ensure the protection of fundamental rights in border management operations by the Croatian authorities. The inquiry was triggered by a complaint by Amnesty International, in which it raised concerns about border management and drew attention to alleged human rights violations linked to 'pushbacks' of migrants and other border operations. The complaint relates in particular to whether Croatia has set up a 'monitoring mechanism' to ensure that border management operations are fully compliant with fundamental rights and EU law, given that it has received EU funding for this purpose. At the time when this submission was being prepared the inquiry was ongoing.

²³ The Croatian Ombudswomen, Annual [Report](#) for 2018, p. 298.

²⁴ See [Statement](#) by the Croatian Ombudswomen: No institutional reaction to alleged illegal police treatment of migrants, 25 July 2019.

²⁵ See, Croatian Ministry of Interior, Minister Božinović's [reply](#) to allegations by Amnesty International, 13 March 2019. (*in Croatian*)

²⁶ BalkanInsight, [Croatia Accused of Slurring Watchdogs in Police Violence Dispute](#), 14 May 2020.

²⁷ PACE, Committee on Migration, Refugees and Displaced Persons, [Report](#) on Pushback policies and practice in Council of Europe member States, 8 June 2019, para. 70

²⁸ OHCHR, [Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned – UN Special Rapporteurs](#), 19 June 2020.

III. Observations on the situation in Bosnia and Herzegovina

29. The Commissioner has already observed that the practices described above also fail to take account of the situation that those returned to Bosnia and Herzegovina may be subjected to in that country. Bosnia and Herzegovina has seen a substantial increase in arrivals of migrants and refugees since 2018, following the introduction by Hungary of restrictive measures at the border with Serbia, and a consequent shift of the migration route through Bosnia and Herzegovina. The increased flow of migrants has put great strain on the country's reception capacity and has exposed many structural problems in its asylum system, together with the institutional and co-ordination weaknesses of the relevant authorities at various levels in Bosnia and Herzegovina. In view of this, the Commissioner provides the following observations on the implications of this situation for access to international protection and reception conditions in Bosnia and Herzegovina, including for unaccompanied minors

Access to international protection

30. Bosnia and Herzegovina is a State party to the 1951 Convention and its 1967 Protocol relating to the Status of Refugees. Under the Law on Asylum of 2016 persons wishing to claim asylum in Bosnia and Herzegovina must begin by expressing their intent to seek asylum to the Service for Foreigners' Affairs and then, within 14 days, submit an asylum claim to the Asylum Sector of the Ministry for Security, located in Sarajevo. The State Ministry for Refugees and Displaced Persons takes charge once a person has been granted refugee status or subsidiary protection.
31. According to UNHCR, in 2018, 1567 migrants lodged an asylum claim with the Asylum Sector. By the end of 2018, only 16 of these people had received international or subsidiary protection, 1009 were waiting for an asylum interview and/or decision and 891 had not yet had their claim registered by the Asylum Sector.²⁹ The following were the main reasons for this situation: firstly, the Asylum Sector had limited capacity to register and process asylum claims and it had refused to re-issue certificates confirming intent to seek asylum after the expiry of the aforementioned 14-day deadline; second, many people were unable to meet the requirement that they had to have a registered address or reside in a reception centre to be entitled to lodge an asylum claim, a problem compounded by the shortage of places in these centres; third, interpretation for languages spoken by potential asylum applicants was often not available; and fourth, restrictions on the movement of migrants were imposed by the authorities of the Una-Sana Canton in October 2018. UNHCR also reported that access to legal aid for asylum seekers was limited, because the State Ministry of Justice, which is responsible for providing asylum seekers with legal aid, had not established a free legal aid office.³⁰
32. In her aforementioned letter of 2018, the Commissioner raised concerns with the authorities of Bosnia and Herzegovina about obstacles faced by potential asylum seekers in accessing asylum. This referred in particular to the situation of migrants who were not accommodated in reception centres and had had to register an address with the Service for Foreigners' Affairs before the expiry of their temporary certification so as to be able to submit their application to the Asylum Sector. Owing to this requirement many migrants who were located in the Canton of Una-Sana, a region from which most attempted border crossings are launched and where most of those returned by Croatia end up, could not access the asylum procedure, as they were unable to register an address in time.
33. The Commissioner also expressed concern about these matters in the context of her visit to Bosnia and Herzegovina in 2019, when she noted that the dysfunctional asylum system made it much harder to identify migrants and their protection needs, ensure access to asylum and protect victims of trafficking and children, especially unaccompanied minors. She pointed out in particular that the registration of migrants and their referral to state agencies should be happening more quickly, and

²⁹ Inter-Agency Operational [Update](#), Bosnia and Herzegovina, December 2018.

³⁰ Inter-Agency Operational [Updates](#), Bosnia and Herzegovina, [1-31 October 2018](#) and [1-31 January 2019](#).

that there should be better co-ordination among the authorities at state, entity, cantonal and municipal levels.³¹

34. Most of these concerns were still valid in 2020 and were addressed by the Commissioner in her letter to the authorities of Bosnia and Herzegovina in December 2020. She noted that many migrants faced difficulties in obtaining confirmation of their intention to seek asylum and had to wait for excessively long periods for an asylum decision. As noted in the letter, according to UNHCR, asylum decisions given in October 2020 took at least 313 days on average. The Commissioner also pointed out that the insufficient access to registration in Una-Sana which she had noted when visiting the country in 2019 still seemed to apply, and could be accounted for in particular by the fact that there were no Asylum Sector officials in reception centres in this canton or in Sarajevo. The Commissioner also received reports that, owing to the lack of interpreters for languages spoken by migrants and asylum seekers, many migrants did not understand the steps they needed to take to receive international protection once they had obtained confirmation of their intention to seek asylum.

Reception conditions

35. The Commissioner has consistently pointed to serious obstacles facing migrants and asylum seekers in accessing adequate accommodation in Bosnia and Herzegovina. In her letter of 2018 to the authorities, the Commissioner raised her concern about the lack of reception capacity, noting that only the asylum centre in Delijaš in Trnovo near Sarajevo, with an official capacity of 154 places, had been opened up for use, even though there were 1138 migrants in the country, 21 of whom were unaccompanied migrants. She called on the authorities to open the refugee reception centre in Salakovac, near Mostar in the Federation of Bosnia and Herzegovina. The Commissioner expressed her concern that owing to the lack of reception facilities, many refugees and migrants, including families with children, slept rough on the streets, and had irregular access to food, while access to primary health care had only been provided to the persons accommodated in the asylum centre. The Commissioner also noted that because of these shortcomings, the specific needs of vulnerable groups, such as unaccompanied migrant children, were difficult to identify and meet.
36. While the authorities have since opened additional temporary reception facilities in Una-Sana, and in the Canton of Sarajevo, bringing their total number to eight, there is still not enough capacity, and many of the other shortcomings identified by the Commissioner have persisted.
37. The Commissioner visited Bosnia and Herzegovina from 2 to 6 December 2019, where she witnessed the dire living conditions in the Vučjak camp, and called for its closure. She noted that while the overall situation in the other reception centres that she had visited was clearly better than in Vučjak, conditions were still substandard in several cases, particularly in the Bira reception centre, where some 1,800 people, including hundreds of unaccompanied migrant children, were accommodated in a disused refrigerator factory. The Commissioner called on the authorities to take immediate steps to address this situation, and to adopt long-term measures to solve the structural shortcomings with regard to the treatment of migrants and asylum seekers.
38. Given the persistent shortcomings in the authorities' management of migration, the Commissioner sent a letter to the Chairman of the Council of Ministers of Bosnia and Herzegovina and the Minister for Security of Bosnia and Herzegovina in December 2020, in which she warned about a serious humanitarian crisis unfolding in the Canton of Una-Sana. This related in particular to the seriously substandard conditions, including a lack of electricity and running water and overcrowding, in the newly created Lipa emergency tent camp, and the situation of migrants and asylum seekers who sleep rough or in abandoned buildings in Una-Sana and elsewhere in the country. The number of these persons, including many families with children and unaccompanied migrant children, was estimated to be between 2 000 and 3 500 in October 2020. The Commissioner called on the authorities to ensure as a matter of urgency that basic needs such as adequate accommodation

³¹ Commissioner for Human Rights, Observations following a visit to Bosnia and Herzegovina, [Bosnia and Herzegovina must immediately close the Vučjak camp and take concrete measures to improve the treatment of migrants in the country](#), 6 December 2019.

and access to health care, food, water and clothing were met regardless of the legal status of the persons involved, or whether they were considered to be in transit or intended to stay in the country.

The situation of unaccompanied migrant children

39. The Commissioner observes that the many obstacles to the enjoyment of human rights by migrants and asylum seekers in Bosnia and Herzegovina, as discussed above, affect unaccompanied migrant children disproportionately, as one of the most vulnerable groups. In her letter of 2018 to the authorities, the Commissioner noted that gaps in the protection system in Bosnia and Herzegovina made the specific needs of vulnerable groups, including unaccompanied migrant children, difficult to identify and meet.³² She reiterated her concerns in this regard following her visit to Bosnia and Herzegovina in 2019, during which she could see first-hand the difficulties facing unaccompanied migrant children, particularly their dire living conditions.³³
40. In her letter of 2020 to the authorities, the Commissioner reiterated her concerns in this respect, noting that there was a lack of protection for unaccompanied migrant children and due regard for their best interests, including in matters relating to their identification as unaccompanied minors, age assessment, accommodation and access to international protection. She noted that because of these problems and the systemic shortage of adequate accommodation, many unaccompanied migrant children lived in dire conditions, often together with unrelated adults and households, which could put their well-being at risk. The Commissioner also pointed to the shortcomings in the social care system, which meant that most unaccompanied migrant children did not have a legal guardian appointed by the authorities. She also expressed her concern that access to mainstream education was not provided for all migrant children uniformly throughout the country.
41. Others have also highlighted the problems faced by unaccompanied children. The Special Representative of the Secretary General on migration and refugees and the UN Special Rapporteur on the human rights of migrants both addressed the situation of unaccompanied migrant children in Bosnia and Herzegovina in the context of their country visits in July 2018 and in September-October 2019 respectively. In addition to the problems identified by the Commissioner, referred to above, the Special Representative expressed his concern that domestic legislation provided for detention of unaccompanied children and called on the authorities to address this as a matter of urgency, while the UN Special Rapporteur emphasised that there were hardly any shelters or safe houses for child victims of violence or abuse besides one shelter in Bihać run by an NGO.³⁴

Conclusions

42. In conclusion, the Commissioner considers that:
- all the information available points to the existence of an established practice of collective returns of migrants from Croatia to Bosnia and Herzegovina, which are carried out outside of any formal procedure and without identifying the persons concerned or assessing their individual situation. This practice prevents the persons concerned from properly exercising their right to seek international protection, which clearly also applies under Croatian law to those crossing borders irregularly, and deprives them of effective remedies.
 - her own observations, supported by numerous consistent and credible reports, point to widespread ill-treatment of migrants by Croatian law enforcement officers in the context of collective returns and to a lack of prompt, effective and independent investigation of such treatment, as a result of which law enforcement officers continue to enjoy impunity.

³² [Letter](#) from Dunja Mijatović, Commissioner for Human Rights, to the Minister for Human Rights and Refugees and the Minister for Security, published in May 2018.

³³ Commissioner for Human Rights, Observations following a visit to Bosnia and Herzegovina, [Bosnia and Herzegovina must immediately close the Vučjak camp and take concrete measures to improve the treatment of migrants in the country](#), 6 December 2019.

³⁴ [Report](#) on the fact-finding mission to Bosnia and Herzegovina and to Croatia by Tomáš Boček, Special Representative of the Secretary General on migration and refugees, 23 April 2019, p. 21; [End of visit statement of the UN Special Rapporteur on the human rights of migrants, Felipe González Morales](#), 1 October 2019.

- the above-mentioned practices also fail to have due regard for the individual implications of returning a person to Bosnia and Herzegovina, especially in view of the long-standing and serious structural problems in the field of migration and asylum, which have had dramatic humanitarian consequences for thousands of migrants and asylum seekers. This includes insufficient reception capacity, serious obstacles to accessing asylum and a lack of adequate protection for vulnerable groups, all of which are well documented.