



Men in Belgrade, Serbia, sleeping in sub-zero temperatures, warm themselves while waiting for another opportunity to make the border crossing into the European Union. Credit: Miodrag Ćakić

A DANGEROUS 'GAME'

The pushback of migrants, including refugees, at Europe's borders

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People who are trying to access the EU in search of safety and dignity are being routinely abused by law enforcement officials in countries in the Western Balkans. State agents responsible for upholding fundamental rights are instead subjecting people to violence and intimidation and denying access to asylum procedures to those seeking international protection. Governments in the region must immediately end these violations and initiate processes to ensure safety and dignity for people on the move in their territories.



Belgrade Centre
for Human Rights



Macedonian Young Lawyers Association



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SUMMARY

'They put us in a cage, and didn't give us food for three days. They beat us so badly. They even gave us electric shocks.'

Issaq, from Afghanistan, on his experience in Bulgaria

In 2015 and 2016, more than a million people arrived in Europe after crossing the sea from Turkey to Greece and continuing their journey along the so-called Western Balkan route. In response, European Union Member States and other European countries hastily erected fences on their borders. In March 2016, Slovenia, Croatia, Serbia and former Yugoslav Republic of Macedonia¹ shut their borders and left thousands of people stuck in limbo, many in inadequate or unsafe accommodation. At present, there are about 7,800 displaced people in Serbia, and 350 people in Macedonia. Many of these people have come from conflict affected countries seeking protection, including Afghanistan, Pakistan, Iraq and Syria. Roughly 1,100 of those in Serbia and over 200 in Macedonia are not housed in government-run facilities and are forced to sleep rough.²

Rather than being places of safety, countries on the Western Balkan route have failed to offer protection or due process to many new arrivals and instead have pushed them back to their previous country of transit or even another country, without giving them a chance to claim asylum. Pushbacks are happening in different ways. Hungary and Croatia – both EU member states – have used brutal tactics, such as attack dogs and forcing people to strip naked in freezing temperatures. The Serbian authorities have generated a climate of fear and uncertainty amongst migrants by expelling groups of people who have been legally registered and were expecting to receive their right to an individual hearing. This practice meant that in mid-winter, in freezing temperatures of -20°C, people were afraid to stay in government centres for fear of being pushed back to Macedonia or Bulgaria. Interviewees also accused Bulgarian authorities of treating people in such a brutal manner that they are afraid to return.

The people who are moving through the Balkans, with cynical humour, call their efforts to continue their dangerous journey the 'game', a cruel 'game' where safety and protection are replaced with violence and intimidation from people in authority. As they attempt to move to a place of safety, people are forced to take enormous risks and suffer abuse at the hands of people smugglers, brave freezing temperatures in winter and negotiate unknown and dangerous terrain, including forests and fast-flowing rivers. This is an often terrifying situation where beatings, dog attacks and robbery are rife, leading to serious injuries and even death.³

No one, regardless of their reason for moving via the Western Balkans route, should experience the violence and aggression which is being used by authorities. For refugees and others who have the right to international protection from persecution and serious human rights violations, pushbacks stand in the way of seeking protection and enjoying

their right to an individual assessment of their claims. Brutality, intimidation and devious tactics by authorities also engender a climate of fear and mistrust amongst people on the move. This report aims to firmly put the spotlight on the acts of abuse being perpetrated by state authorities, and the failure of European countries to uphold people's rights. We are calling for the responsible governments to immediately change their practises and hold perpetrators accountable.

Oxfam and its partners, the Belgrade Centre for Human Rights (BCHR) and the Macedonian Young Lawyers Association (MYLA), are providing support to migrants, including refugees, in Serbia and Macedonia. Together, we call on the governments of Serbia, Macedonia, Croatia, Hungary and Bulgaria to:

- Immediately review all procedures at their borders to ensure that they are in compliance with Article 3 of the European Convention on Human Rights (ECHR), i.e. the prohibition on inhumane and degrading treatment, and Article 4 of Protocol No. 4 to the ECHR, i.e. the principle of non-refoulement and the prohibition of collective expulsions. Also, ensure that the quality and outcome of these procedures can be scrutinized before a national authority, including by providing access to an effective remedy, in compliance with Article 13 of the ECHR.
- Conduct an independent and rigorous assessment of each individual's claim for international protection in order to ensure that they have access to an individual asylum determination procedure, with full rights to representation and interpreter services and with the right to appeal the decision, with any deportation proceedings suspended pending the outcome of the appeal.
- Urgently investigate and take action against all perpetrators of crimes against migrants, including all forms of inhuman or degrading treatment by law enforcement officers, physical violence, and robbery
- Introduce preventive measures against future violations, including a rigorous hiring process for law enforcement officers before deployment, incorporation of improved technical equipment such as body-worn cameras, and mandatory training on European and international human rights and refugee law. A high level of applicants to the Hungarian police force did not pass a psychological test in 2016. Therefore all officers hired in 2015 – at the peak of the crisis in Hungary – should also be required to undertake a psychological test and any who do not pass must be removed from the force immediately.⁴
- Allow Ombudsman offices (in charge of existing National Preventive Mechanisms) and relevant civil society to have full and unimpeded access to border areas in all the countries concerned as a matter of urgency as outlined in Article 3 and 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

1 INTRODUCTION

'Pushback' is the term used to describe the practice by authorities of preventing people from seeking protection on their territory by forcibly returning them to another country. By pushing back those seeking safety and dignity over a border, states abdicate responsibility for examining their individual cases. Pushbacks encompass the legal concept of collective expulsion, which is prohibited in Article 4 of Protocol No 4 to the European Convention on Human Rights (ECHR). This refers to the 'prohibition of collective expulsion of aliens', which occurs when a group is compelled to leave a country without reasonable and objective examination of individual cases.⁵ Pushbacks violate international and EU law because they undermine people's right to seek asylum, deny people of the right to due process before a decision to expel them is taken, and may eventually risk sending refugees and others in need of international protection back into danger.

The Belgrade Centre for Human Rights (BCHR) and the Macedonia Young Lawyers Association (MYLA) collected testimonies from 140 migrants, including refugees, between 30 January and 17 February 2017. Researchers spoke to 100 people in Serbia and 40 in Macedonia who had attempted to move between countries in the weeks and months previously. In Serbia, interviews were conducted in Belgrade, on the Serbian-Hungarian border in the north around the city of Subotica and on the Serbian-Bulgarian border in the east, around the town of Dimitrovgrad. The interviews in Macedonia were conducted in the village of Tabanovce in the north of the country, near the border with Serbia.

Of the 140 people interviewed, 75 had been expelled from Hungary to Serbia, 19 from Croatia to Serbia, 44 from Serbia to either Bulgaria or Macedonia, one from Macedonia to Greece and seven from Bulgaria to Turkey. Some were expelled more than once and from more than one location. The vast majority came from Afghanistan, the others from Pakistan, Syria, Iraq, Iran, Egypt and Lebanon.

The findings of this research suggest that abuses are being perpetrated across the region by government authorities and reinforce those of UNHCR,⁶ Amnesty International,⁷ Human Rights Watch,⁸ MSF⁹ and others: namely that people are regularly being informally and arbitrarily expelled from one territory to another across the region, often with the use of brutal force. All names have been changed to protect people's identities. For ease of reading, in each testimony the name of the country committing the act of abuse has been highlighted.

2 TESTIMONIES¹⁰

Violence and intimidation

'We crossed the border into Hungary but the police caught us. They forced us to take off all our clothes and sit in the snow. They poured cold water over us.'

Majeed. from Afghanistan

Authorities in both Hungary and Croatia have been accused of using brutal tactics to forcibly push people back to the places they have come from, including beatings with batons, setting dogs on them and forcing them to remove their clothes in freezing temperatures. Bulgarian authorities have also been accused of abuse and in one instance of administering electric shocks. Such acts of violence are truly shocking. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates that any act committed against a person by a public official that inflicts severe pain or suffering, whether physical or mental, in order to punish or intimidate him or her, amounts to torture and it also prohibits other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when committed by or with consent of public officials. The International Covenant on Civil and Political Rights stipulates that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 3 of the ECHR also prohibits the use of torture or of inhuman or degrading treatment or punishment. Yet throughout the 140 interviews conducted in the course of this research, accounts of violence for the purposes of intimidation and/or punishment were regularly repeated. The individual testimonies below demonstrate the physical risks facing people who engage in the 'game'.

Hamid's experience in Croatia: Hamid, a 25-year-old man from Afghanistan, had left his war-torn home country eight months previously. He met 20-year-old Tariq along the way. The two men are now in Serbia but have not applied for asylum and have not stayed in any asylum or reception centres there, as they are eager to reach their destination as soon as possible and do not see staying in Serbia as an option.¹¹ Their goal is to reach France, Italy or Belgium, by any means available. They have tried several times to cross the border into Hungary and Croatia, but each time have been turned back. On one occasion, they claim Croatian police forced the group they were with to take off their clothes and shoes and to walk back along the train tracks into Serbia, running a gauntlet of about 10 officers who lined up along the tracks and beat them with batons.

Tariq's experience in Hungary: In another incident at the beginning of this year, Tariq tried to cross the Hungarian border in the middle of the night, in a group of 22 men. They cut their way through Hungary's steel and razor-wire border fence, but very soon afterwards were intercepted by men who appeared, due to their uniforms, to be law enforcement officers. He said that these men took their mobile phones from them,

beat them with batons and set dogs on them in an attempt to push them back to Serbian territory. They were not taken to a police station, but were forcibly returned to Serbia after two hours. Some of Tariq's companions had managed to cross the Hungarian border the night before, but were soon intercepted by law enforcement patrols. When asked why they were in Hungary, they said that they were only seeking a better life and that they wanted to move on. They claimed that the officers reacted by setting their dogs on them and ordering them to go back. Researchers observed that one of the men had injuries on his face, which he said occurred when one of the dogs attacked him.

A group's experience in **Bulgaria**: Another group of 12 men from different parts of Pakistan came to Serbia 'to save their lives'. They met in Serbia, and are now close friends. Zahid (29 years old) from Punjab province told researchers that he had begun his journey a year earlier, and to reach Serbia he had crossed Iran, Turkey and Bulgaria, spending 3–4 months in each of these countries. In Bulgaria he had sought asylum and was accommodated in a government facility. However, he and his fellow travellers described their time in Bulgaria as one of hardship, even though they were formally registered there. As one example, he said that on one occasion they left the camp to buy food at the market, but were stopped by police and then locked up for 24 hours in a police station.

Zahid's experience in **Hungary**: Zahid does not know where he is going, but he mentions Italy and Austria. He has managed to cross the border into Hungary seven times since the beginning of 2017, each time in a small group of about 10 people. Once he managed to get more than 50km inside Hungarian territory. The group of 12 he was with, each of whom also spoke with the researcher, were waiting at a station for a train to Budapest, but Zahid says that a local person called the police to report them and they were intercepted by law enforcement officers at 3am. He asserts that police beat them with batons and police dogs ripped their clothes. They were unable to defend themselves. After this, they were put in a police van and taken back to the border, where a gate in the fence was opened and they were forced to return to Serbia. One of the men in this group had a seriously injured arm following a similar incident five days earlier when he also managed to cross the border into Hungary. He was hospitalized in Serbia and his arm is still in plaster, but he said that this would not stop him trying to cross the border again and again, until he succeeded. For him, and many others with whom the researchers spoke, the prospect of getting beaten is not as scary as going back home and risk getting killed

Zahid's experience in **Croatia**: Zahid has also tried to cross the border into Croatia twice, the first time in a group of 18 people. He says that some of the group were seriously injured as law enforcement officers beat them with batons, kicked them with their boots and set dogs on them. They were then put in a police vehicle and returned to the border, where they were forced to return to Serbia. The second time, Zahid was in the company of a family with children and was again pushed back, but this time without violence. The next time he will try via Hungary, despite the steel wire fence along the Serbian border. According to Zahid the road from Afghanistan to Serbia was hard enough and nothing will stop

him now. Police violence does not deter him in the slightest, as he has nowhere to go back to and nothing to lose.

Farooq's experience in **Hungary**: Farooq (25), a dairy farmer from Lahore, Pakistan, left his country 14 months ago. To reach Serbia, he had crossed Iran and Turkey, spending 10 days in each of these countries. In Iran, he was cheated by a smuggler who not only failed to honour a deal to get him to the EU for €400, but also robbed him and beat him. He then went to Bulgaria, where he had stayed in a people smuggler's house for three days. He arrived in Serbia in February 2016 and lived rough in parks in Belgrade for three months, after which he went to a reception centre. After being in Serbia for eight months, Farooq has little faith in the quality of life for refugees there. He registered his name on a list for admission to Hungary and waited patiently at the reception centre each week for it to appear among those to be admitted in the next seven days. However, after eight months this had still not happened, which was why he had decided to try to cross the Hungarian border irregularly through the fence.

Farooq has already tried to cross the border twice, but both times he was pushed back. The first time he was in a group of around 20 people from Pakistan, Afghanistan and Bangladesh. They got 60km into Hungarian territory, but on the E75 highway were intercepted and returned to the village of Horgos, back across the Serbian border. Farooq claims that the whole group were attacked with tear gas, batons and dogs after encountering the Hungarian police (identifiable as the men were dressed in navy blue uniforms with the word 'Police' written in English in white lettering). The police took them back to the border, where another eight border police vehicles were parked, and beat them. They fractured the skull of one man, who is still being treated in hospital in Belgrade. Another man was so badly beaten that he had to be treated by doctors on the spot in Hungary. After his wounds had been stitched up, police officers forcibly shoved the doctor's sign-off order into his mouth and pushed him back across the border. This story was independently corroborated by members of the Serbian authorities, who intercepted him on the Serbian side of the border and who spoke to our researchers off the record. They also claimed to have witnessed people coming back from Hungary with serious wounds, and even a pregnant woman with bruises from being beaten.

Other testimonies are also disturbing.

Maalik from Afghanistan, on his experience in **Hungary**: 'When I first went for the game, we crossed through the wire and walked for 30 minutes. Police saw us and set their dogs on us. The dogs didn't bite us, but they scared us a lot. When the police caught us, they treated us badly. There was a lot of snow. They took our clothes and made us sit in the snow and ice – we were frozen. They broke our mobile phones and took our money, and beat us badly. Then they put us in a car and took us back to the border. The second time we went to the border but we couldn't cross, so we cut the wire in one place. The police spotted us and chased us on their side of the wire for a long time, but they didn't catch us.'

'They took our clothes and made us sit in the snow and ice – we were frozen. They broke our mobile phones and took our money, and beat us badly.'

Maalik from Afghanistan, in Hungary

Nabil, from Afghanistan, on his experience in **Croatia**: 'I am very sad. I have attempted 20 crossings. Once a boat we were in capsized. There were a lot of people in the water. The police caught us and put us in an air conditioned car. It was very cold. They took us to a railway track and they took off our clothes, shoes and everything. They beat us again and again.'

Aarif, from Afghanistan, on his experience in **Croatia**: 'Yes, I have tried three or four times to cross the Croatian border. I was caught on the other side by the police, who put us in a car and turned on the air-conditioning. It was very cold. Then they threw away our blankets and jackets, and left us on the Serbian border. They took our mobiles and our money, and beat us so harshly we couldn't get up. They beat my friend and broke his head.'

Isaaq, from Afghanistan, on his experience in **Bulgaria**: 'I came from Afghanistan through Iran, Iran to Turkey, Turkey to Bulgaria, and Bulgaria to here. All the way, we were treated so cruelly. In Iran we were treated so badly. In Turkey they were chasing us, so we escaped and came to Bulgaria. The Bulgarian police treated us so harshly that we will never forget it as long as we live – not only me but also all my brothers standing here faced cruelty in Bulgaria. They crossed the limit of cruelty. They put us in a cage, and didn't give us food for three days. They beat us so badly. They even gave us electric shocks.'

'They put us in a cage, and didn't give us food for three days. They beat us so badly. They even gave us electric shocks'

Isaaq from Afghanistan, in Bulgaria

Fahim, from Afghanistan, on his experiences in **Croatia** and **Bulgaria**: 'I came to Serbia and I have tried more than 12 times to cross the Hungarian or Croatian borders. Once I managed to get as far as Zagreb and I asked for asylum there. They asked me: "Why aren't you going to Europe? There are richer countries there, like Germany Sweden...". I told them I wanted to stay there. They lied to me. They brought some paper to me and said: "Okay, sign this paper – we will send you to the camp." Then they deported me back to Serbia and they beat me, they took my phone and everything. Before that we were in Iran and we spent a lot of time without food or water, and after that we came to Turkey and from Turkey I came to Bulgaria. But the Bulgarian police broke my arm, and then deported me back to Turkey. In Turkey I asked doctors for help, but because I didn't have any documents they refused. I had to bandage my arm myself, and it has still not healed properly.'

Collective expulsions

They were put in a police van and told that they would be taken to a refugee reception centre. Ninety minutes later the van stopped in the forest and they were taken out and told in English, 'Go to Bulgaria'.

Experience of a group from Afghanistan in Serbia

Testimonies collected by our researchers indicate that there have been cases of people being collectively expelled from a country. For example in Serbia, instead of being allowed access to asylum procedures and accommodation in asylum centres, migrants, including refugees, have been rounded up and forcibly expelled to Bulgaria and Macedonia, where

often their human rights are being violated. In 2016 there were 77 documented incidents of people being pushed back from Serbia to Bulgaria, involving 1,411 individuals.¹² Our research also indicates that there have been cases where people have tried to stay in a country of transit and authorities have ignored their intention to apply for protection, even when they have been granted permission by a court to remain in the country.

Collective expulsion is illegal under Article 4 of Protocol No. 4 to the ECHR (which covers all the countries mentioned in this report). Collective expulsion occurs when a group of people are returned from one country to another outside of legally established procedures, without consideration of the individual circumstances of each person, without legal assistance and an interpreter for the language that they understand, and without the possibility of appeal, which would suspend any expulsion pending the outcome of the appeal. The concept of collective expulsion was established to further strengthen Article 3 of the ECHR, which prohibits torture and 'inhuman or degrading treatment or punishment', and obliges signatory countries to consider the risk of refoulement. **Box 1** outlines a recent court ruling against Hungary's actions in this regard.

Box 1: Court ruling highlights violations of human rights

On 14 March 2017, the European Court of Human Rights found multiple violations of the European Convention on Human Rights in its judgment in the case of *Ilias and Ahmed v. Hungary* (application no. 47287/15). The two asylum seekers from Bangladesh were removed from a Hungarian transit zone on the basis of a government decree that listed Serbia as a safe third country. The Court found that the Hungarian authorities had not implemented the procedure for returns in accordance with the EU Return Directive and that refugees had no effective remedy at their disposal to challenge the decision to return them to Serbia. The Court ruled that the return of refugees put them at risk of chain refoulement (i.e. an indirect return to a safe third country which would then return them to an unsafe country) and of inhuman or degrading treatment prohibited by the Convention.¹³

Some people have such a strong distrust of the authorities and such a deep fear of being deported that they opt to avoid official centres (when there are spaces available), even in temperatures of -20°C in Serbia over the past winter. As the testimonies below show, people's fears are based on their own experiences.

The BCHR has been following the case of one group in **Serbia**: On 17 December 2016, an unidentified group of uniformed officers intercepted a bus carrying seven Syrian asylum seekers of Kurdish origin who had been registered and assigned to a refugee reception centre in Bosilegrad in southeast Serbia, near the border with Bulgaria. The refugees, including an unaccompanied 16-year-old girl and a two-year-old child, were removed from the bus and taken in a police van to a checkpoint near Vlasina Lake. In the middle of the night, the group were driven into a forest and abandoned there in temperatures of -11°C.¹⁴ One of the group had a mobile phone and managed to find a signal and send their GPS

coordinates to Info Park, a Belgrade-based NGO that provides assistance to refugees. The group were saved only due to the intervention of Info Park activists and the help of a local village police officer. By the time the village policeman found them, two members of the group had lost consciousness due to hypothermia. To date, the prosecutor's office assigned to investigate this incident has not collected any witness statements. Officials from the Serbian Ministry of Defence and the Chief of General Staff have denied that the police or army were in any way responsible and even that the incident had taken place at all.¹⁵

A similar incident was recorded by BCHR on 25 November 2016, when a group of nine Iraqi Kurdish refugees were left in the forest after a court had granted them permission to stay in Serbia. They lived in the forest for a few days before managing to find their way back to Belgrade. Following these incidents, BCHR has focused on monitoring the situation on Serbia's eastern border in order to establish the extent of the violations taking place.

The experiences of a group in **Bulgaria** and **Serbia**: The testimony of six Afghan nationals aged 16–22 provides further evidence of the hardships that refugees face in travelling across Bulgaria and Serbia. Five of them come from Shakar Dara, a village near Kabul, while one boy is from Jalalabad. The boy from Jalalabad (who had no prior connection with the others) had left home four months previously, and the others (who are all related) two months previously. All the members of the group from Shakar Dara expressed their intention to go to Germany, while the boy from Jalalabad was unsure of his final destination or whether he would like to stay in Serbia.

The group from Shakar Dara had travelled from Afghanistan through Iran and Turkey, arriving in Bulgaria in spring 2016. After crossing the border from Turkey into Bulgaria, they claim that they were stopped by men who they believe were police officers, on the evidence of their uniforms. They were searched thoroughly and all of their valuables, including phones, clothes and money, were taken from them. The officers then physically pushed them back across the border to Turkey. The police had stolen their shoes, so they walked barefoot for hours before reaching the nearest village, Sükrüpasa, the next day. They attempted several more times to cross the border but each time were thwarted by the police. Finally, they managed to enter Bulgaria and were registered and admitted to the Harmanli refugee centre near the border with Turkey, where they lived for the next six and a half months. They said that they were mistreated in this centre and neglected; the rooms were dirty and they were only given toast and water every day. The conditions were similar to what they imagined a prison would look like. The only reason they sought asylum in Bulgaria was because they were threatened with deportation if they decided otherwise. However, they knew that they would not find protection in a place where their human rights were being violated, and so decided they had to leave.

They were searched thoroughly and all of their valuables, including phones, clothes and money, were taken from them.

Experience of a group of men from Afghanistan in Bulgaria

During the night of 2–3 February 2017 the group successfully crossed into southern Serbia. Having reached a small town, they say they were stopped by police and told they must go with them and be registered. They were taken to a court in the city of Pirot, where a judge informed them that proceedings were being initiated on the basis of illegal entry into the country. The judge questioned them thoroughly about their personal histories and asked them whether they intended to seek asylum in Serbia. As this was the first time they had been given such an opportunity since leaving Afghanistan, they declared that they would like to do this. The judge ordered the case for illegal entry to be dismissed, citing the principle of non-punishment of refugees, and instructed the police to issue certificates to all the members of the group, documenting their intention to seek asylum.

The police officers searched them, and took the documents they had been issued by the court and destroyed them on the spot.

Experience of a group of men from Afghanistan in Serbia

Several hours later the police officers returned from the station with the certificates. The group, along with 19 others, were put into a police van and told that they were being taken to the refugee reception centre to which they had been assigned. However, 90 minutes later the van stopped in a forest, and everyone was told to get out. The police officers searched them, and took the documents they had been issued by the court and destroyed them on the spot. The police did not show any interest in their other belongings, but simply told them (in English), 'Go to Bulgaria'. The police van drove off and they were all left in the cold. The group lit a camp fire and waited until morning, and then set off down the road. In a village they were spotted by local people and soon a police car arrived; it was then that they discovered they were back in Bulgaria. The Bulgarian police officers told them that they had to go to the Voenna Rampa or Harmanli refugee centres, but they did not have enough money to return to Harmanli and were afraid to go back to the centre after the bad experiences they had had there.

During the night of 10 February they again entered Serbia, this time through more difficult terrain near the town of Bosilegrad. They managed to find a refugee reception centre in the town, but someone had already called the police who, when they arrived, forced them to get into a police vehicle. The group were taken into a forest near the village of Belut (which they established from a GPS signal on a mobile phone). The police told them to keep moving in the direction of the Bulgarian border, which is about 3km to the east of the village; they were afraid and complied with the order. However, their phone batteries ran out and they lost track of time and of where they were. After walking for several hours, they found themselves back in Bosilegrad on the morning of 12 February. On this occasion BCHR was informed of their arrival and alerted international organizations and state authorities, and the group were finally taken to a reception centre for refugees near Divljana. One woman was in such bad shape that she was taken to hospital.

Box 2: UN Human Rights Committee called on Serbia to respect obligations

The UN Human Rights Committee found in its Concluding observations on the third periodic report of Serbia, adopted in March 2017, that there is a concern regarding the reported cases of 'push-backs' denying access to Serbian territory and asylum procedures and collective and violent expulsions. The Committee declared that Serbia should respect its national and international obligations by [inter alia] refraining from collective expulsion of aliens and by ensuring asylum applications are assessed on an individual basis with full respect for the principle of non-refoulement, adopted by the HRC on 23 March.

Denial of access to asylum processes

As well as violent pushbacks and collective expulsions, the testimonies collected for this research show that people are regularly being denied access to proper information and to processes for claiming asylum. In some cases requests for asylum are being completely ignored. It is unsurprising therefore that, despite the risk of violence and even death, people continue to cross borders in the hope of reaching a better life.

In Serbia, only 160 asylum interviews were conducted in the whole of 2016.¹⁶ In Macedonia, numerous cases have been reported of people not being allowed to submit an application for asylum even after expressly stating their intention to do so.¹⁷ Hungary allows just 10 people a day to cross the border from Serbia and access its asylum system. Having put their names on a list for entry to Hungary, many hundreds of people spend weeks or months at the border in makeshift camps, waiting to see if their name will be one of the 10 called that day, which would allow them to cross. The system is opaque and information is scarce. The long wait and the lack of information lead many people to turn to smugglers rather than stay where they are.

Those who are returned to Serbia from Hungary also face problems in re-entering the system. The repeated experience of BCHR is that unless their lawyers intervene, the Serbian authorities will deny people who have been returned from Hungary access to the asylum system.

The experiences of brothers Ahmad and Bilal in **Hungary** and **Croatia**: Ahmad (25 years old) and Bilal (24) are Palestinian refugees who were born in Tripoli, Lebanon, but who left the country in July 2016 with their sister and her husband. One is a painter and the other a cook. They have spent most of their time since then in Serbia, first in Subotica, then Principovac and then Krnjaca in Belgrade municipality. Their father and younger brother are in Germany, but their mother is still in Lebanon. She applied for family reunification more than a year ago, but has still not received a decision from the German authorities. Ahmad and Bilal have tried to cross into Hungary and Croatia seven times in total now, but each time they have been caught. Once they got to the outskirts of Budapest. They stayed away from the main road but nevertheless the police stopped them, photographed them and then put them in a van and drove

They repeatedly tried to tell the officers that they were refugees, but they did not listen.

Experience of brothers Ahmad and Bilal from Palestine in Croatia

them back to Serbia. They repeatedly tried to tell the officers that they were refugees, but the officers did not listen. They claim that on the occasions when they were caught nearer to the border, the police put them in handcuffs and released dogs with muzzles to scare them. The police then removed the handcuffs and ordered them back into Serbia. Because of the situation they now think it might be best to stay in Serbia; however, for now they have to sleep on the streets, as their places in the reception centre have been given to other people.

The experiences of Ahmed in **Hungary** and **Serbia**: Ahmed (22 years old) from Idlib, Syria, left his home in February 2016. He travelled to Turkey, where he stayed for a few days, and then travelled through Greece and entered Macedonia and then Serbia without problems. He arrived in Presevo in southern Serbia on 8 March 2016 and was told to get some rest, as the police would not register him until the following day. The next day, however, everyone in Presevo was informed that the route had been closed and that they would not be transferred to Croatia but would have to stay in Serbia instead.

The reception centre in Presevo provided him with everything he needed in a material sense in terms of food, hygiene items and clothes, but conditions were very basic. The facility was slowly emptying as people attempted to continue their journeys on their own. He and a few other Syrians whom he met in Presevo took a taxi all the way to Serbia's northern border with Hungary, where they waited for almost two weeks. The Hungarian police demanded that they organise a list of people seeking entry at the border, and so they drew up a list containing the names of 15 Syrians and 15 Afghans to enter each day. The Serbian authorities refused to provide any assistance in this transit zone, and there were a number of incidents. Once someone fainted; other refugees tried to alert the police on the Hungarian side, but an officer responded by using pepper spray on them.

Ahmed was finally invited to enter and submit his case by a clerk. He was taken to a small room with several others, and they were called for examination. A Hungarian police officer searched each person and removed any items that could be considered dangerous. Ahmed had a short interview that lasted for about 10 minutes; via a Syrian translator he was asked basic questions and gave personal data, but there was no lawyer present. In this first interview, he was asked if he would like to submit an official application for asylum in Hungary; however, as he was signing the application form the translator had already taken out a document which he said refused the application and told him to sign his name to a handwritten appeal. The only document he received in Arabic described his rights in general, while all the documents relating to his case were in Hungarian only. He never fully understood the nature of the proceedings or the kind of decisions that were being made. He was told that Hungary considered Serbia to be a safe country and that he had three days to rebut this claim. The officer asked no detailed questions about his personal circumstances or why he had left Syria and why he could not go back.

As he was signing the [asylum] application form the translator had already taken out a document which he said refused the application and told him to sign his name to a handwritten appeal.

Experience of Ahmed from Syria in Hungary

After this he was taken to a secure area. On this site about 10 shipping containers were being used for accommodation, with another two as bathrooms and one as a prayer room. The conditions were decent but the religious practices of the refugees were not respected – for example, they were given food that contained pork, which many of them did not eat. About a week later he was called for a second interview, and was asked to bring his mobile phone with him. This time there was a different translator, from Jordan. Ahmed was asked very similar questions to those in the first interview, but was also asked to describe the situation back home in more detail. He was asked to hand over his phone and to describe his connection to all the contacts listed in it. The officer wrote down all the phone numbers, but did not ask any follow-up questions. A few hours after the interview the first translator from Syria came and told him that he needed to go to the prayer room with his belongings. There he was told that his application had been refused and that there was no right of appeal. Ahmed asked if he could talk to a lawyer, but was told that this was not possible. There were a number of armed soldiers present, and he and a few other refugees were quickly escorted to the fence dividing Hungary and Serbia. One soldier opened the gate while another pushed them through, closing the gate behind them.

In Serbia, no one was waiting for them and he has since faced extreme difficulties in being readmitted to the asylum process because he filed an application in Hungary. He is unsure whether he should stay in Serbia, as the country has no family reunification procedures, refugees are unable to obtain travel documents and there is no possibility of him continuing his studies. At the same time, he does not want to try to go back to Hungary as the heavily armed transit zone at the border with its guns, soldiers and the constant noise of helicopters reminded him of the war back in Syria. Unlike many others, he never really wanted to go to Germany – he just wanted to find a country where he could study and work in peace until the war was over and he could go back home. His only wish is to see his mother again.

3 CONCLUSION AND RECOMMENDATIONS

The testimonies above are shocking in their brutality and show how high the stakes are for migrants and refugees in the 'game'. It is clear that authorities are determined to illegally push people back using violent tactics that are almost certainly criminal and which may constitute torture in some cases. However, it is equally clear that people are determined to continue their journeys in search of safety and dignity. Until authorities adopt humane and fair procedures for people coming across borders, and expand safe and regular routes of travel, the 'game' looks set to continue, at a high cost to those who take on the challenge. Refugees and migrants in desperate need of security are not deterred by the violence they may encounter – but the violence itself undermines the proper role of law enforcement officers and emboldens further abuse, as there is little oversight or accountability.

Oxfam, the Belgrade Centre for Human Rights and the Macedonian Young Lawyers Association call on **the governments of Serbia, Macedonia, Croatia, Hungary and Bulgaria** to commit to the following:

- Immediately review all procedures at their borders to ensure that they are in compliance with Article 3 of the European Convention on Human Rights (ECHR), i.e. the prohibition on inhumane and degrading treatment, and Article 4 of Protocol No. 4 to the ECHR, i.e. the principle of non-refoulement and the prohibition of collective expulsions. Also, ensure that the quality and outcome of these procedures can be scrutinized before a national authority, including by providing access to an effective remedy, in compliance with Article 13 of the ECHR.
- Conduct an independent and rigorous assessment of each individual's claim for international protection in order to ensure that they have access to an individual asylum determination procedure, with full rights to representation and interpreter services and with the right to appeal the decision, with any deportation proceedings suspended pending the outcome of the appeal.
- Urgently investigate and take action against all perpetrators of crimes against migrants, including all forms of inhuman or degrading treatment by law enforcement officers, physical violence, and robbery
- Introduce preventive measures against future violations, including a rigorous hiring process for law enforcement officers before deployment incorporation of improved technical equipment such as body-worn cameras, and mandatory training on European and international human rights and refugee law. A high level of applicants to the Hungarian police force did not pass a psychological test in 2016. Therefore all officers hired in 2015 - at the peak of the crisis in Hungary - should also be required to undertake a psychological test

and any who do not pass must be removed from the force immediately.¹⁸

- Allow Ombudsman offices (in charge of existing National Preventive Mechanisms) and relevant civil society to have full and unimpeded access to border areas in all the countries concerned as a matter of urgency as outlined in Article 3 and 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Oxfam, BCHR and MYLA call on **the European Union and its member states** to:

- Expand the range of safe and regular channels – both temporary and permanent – for entry into the EU, as an essential part of the responsible and humane migration management. This should include resettlement, more flexible family reunification procedures and increased use of humanitarian visas. It should also include more and varied channels for labour migration.
- Set an example for countries to follow by guaranteeing the safety, dignity and rights of people on the move, in line with obligations under EU and international law. In particular:
 - Ensure that people in need of international protection have access to fair and effective asylum procedures in compliance with Article 6 of the EU Procedures Directive.
 - Ensure that everyone who has submitted an application for international protection is living in adequate conditions that provide safety and dignity and that their rights are protected throughout the process of review and decision making on their application in compliance with the Asylum Procedures Directive.

NOTES

- 1 From here onwards this will be referred to as Macedonia.
- 2 UNHCR (2017). *UNHCR Serbia Update, 13 - 19 March 2017*. <http://reliefweb.int/report/serbia/unhcr-serbia-update-13-19-march-2017>
- 3 Dazed Digital (2017). *The 19-Year-Old Who Died in a River Trying to Reach Safety*. <http://www.dazeddigital.com/artsandculture/article/34778/1/the-19-year-old-who-died-in-a-river-trying-to-reach-safety>
- 4 Quartz (2017). *Hungary's Police Say Their "Border-Hunters" Squad is Overrun with Unsavory Applicants*. <https://qz.com/911364/hungarys-police-say-its-border-hunters-squad-is-overrun-with-unsavory-applicants/>
- 5 European Convention on Human Rights. http://www.echr.coe.int/Documents/Convention_ENG.pdf
- 6 UNHCR (2016). *UNHCR Concerned Hungary Pushing Asylum Seekers Back to Serbia*. <http://www.unhcr.org/news/latest/2016/7/5788c85a4/unhcr-concerned-hungary-pushing-asylum-seekers-serbia.html>
- 7 Amnesty International (2016). *Hungary: Appalling Treatment of Asylum-Seekers A Deliberate Populist Ploy*. <https://www.amnesty.org/en/latest/news/2016/09/hungary-appalling-treatment-of-asylum-seekers-a-deliberate-populist-ploy/>
- 8 Human Rights Watch (2017). *Croatia: Asylum Seekers Forced Back to Serbia*. <https://www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia>
- 9 Médecins Sans Frontières (MSF) International (2017). *Serbia: MSF Denounces The Widespread Violence On Migrants And Refugees At The Serbian/Hungarian Border*. <http://www.msf.org/en/article/serbia-msf-denounces-widespread-violence-migrants-and-refugees-serbianhungarian-border>
- 10 The full transcript of the interviews that these testimonies are taken from are on file with the Belgrade Centre for Human Rights
- 11 The UN High Commissioner for Refugees (UNHC) does not consider Serbia to be a safe third country of asylum, due to its lack of a fair and efficient asylum system. It is also not considered to be a country where asylum seekers can expect to get full protection. UNHCR (2012). *Serbia as a Country of Asylum: Observations on the situation of asylum-seekers and beneficiaries of international protection in Serbia*. <http://www.refworld.org/docid/50471f7e2.html>
- 12 According to the Bulgarian Helsinki Committee and UNCHR (statistics not published).
- 13 Belgrade Centre for Human Rights (2017). *The European Court of Human Rights Established that Hungary Violates the Rights of Refugees*. <http://www.bgcentar.org.rs/bgcentar/eng-lat/european-court-human-rights-established-hungary-violates-rights-refugees/>
- 14 Yahoo! News (2016). *Balkan Countries Illegally Push Back Migrants*. <https://www.yahoo.com/news/balkan-countries-illegally-push-back-migrants-unhcr-135827185.html>; and N1 (2016). <http://rs.n1info.com/a215445/Vesti/Vesti/Paunovic-lzbevljce-odvedene-u-sumu-i-tamo-ostavljene.html>,
- 15 Insajder (2017). <https://insajder.net/sr/sajt/vazno/2958/Kovačević-za-Insajdernet-lzbevljce-ostavljene-u-šumi-niko-nije-saslušao.htm>
- 16 Of 12,821 people who expressed their intention to seek asylum, the Asylum Office managed to take applications from 574 (involving biometric registration and filling out a basic questionnaire), and 160 were interviewed.
- 17 Oxfam (2016). *Closed Borders*. https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/closed_borders_en_g_low.pdf
- 18 Quartz (2017). *Hungary's Police Say Their "Border-Hunters" Squad is Overrun with Unsavory Applicants*. <https://qz.com/911364/hungarys-police-say-its-border-hunters-squad-is-overrun-with-unsavory-applicants/>

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Belgrade Centre for Human Rights

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Macedonian Young Lawyers Association

MYLA is a non-governmental, non-profit and non-political professional organisation of lawyers founded in 2004 with the aim of promoting human rights and the rule of law and developing the legal profession in Macedonia.

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