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Global Refugee Studies

Master thesis

Violence – necessary ingredient in the course of migration

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Abstract

People on the move have been increasingly depicted as criminal, deviant, and illegal. An adoption of more punitive, criminal measures has followed the change of the discourse, resulting in increased criminalisation of migration. This case study of Croatia adopts the theoretical framework of *crimmigration* to answer the following research question: *How do migration policies of Croatia and the EU relate to violence experienced by the people on the move?* To answer this question, the paper examines violence in different forms. Concretely, three forms of violence are analysed through three different analytical chapters. First analytical chapter analyses direct physical violence that follows illegal expulsions of people on the move outside of Croatia. Testimonies by people who expressed their wish to seek asylum in Croatia show they were driven closer to the border, their belongings destructed or stolen, and they beaten with batons by unidentifiable officers and then forced to return to the countries they just arrived from without possibility to apply for international protection. Not only is Croatia in breach of several conventions and human rights, but is in the breach of absolute prohibition, that on torture. Under the *Rome Statute of International Criminal Court*, I argue that violent pushbacks can be characterised as *crimes against humanity*. Second analytical chapter analyses indirect violence towards migrants in the form of criminalisation of solidarity. I analyse political pressure towards Croatian NGOs providing humanitarian assistance for people on the move, as well as the only formal case of criminalisation of solidarity, that of Dragan Umičević, a volunteer found guilty of aiding and abetting the illegal entry into Croatia when he notified police there are asylum seekers already on Croatian territory. Lastly, this paper studies structural violence and criminalisation of migration on a greater, EU level. Through interviews with professionals and volunteers in Serbia and Bosnia, I analyse EU's externalisation policies, while I zoom out of Croatia, and observe it solely as a piece of the puzzle on migration towards the EU. Striving for development, Croatia, and even more so, its non-EU neighbours are imposing crimmigration as a development and a chance to get closer to the EU. All of the observed forms of violence are forms of criminalisation of migration, and EU, with all of its members and partners, is practicing politics of exhaustion, implementing extreme measures to slow down, or even prevent migration. All of the countries along the migration routes are playing their role for that goal.

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1. INTRODUCTION

Before the start of my studies in the field of migration, my idea of borders was oversimplified. Or better yet, I rarely thought about borders. In my mind, they were stable and permanent, but as the refugee crisis¹ has thought us, that is furthest away from the truth possible.

“These borders are constantly being relocated, established and abolished, abandoned and determined, materialised and de-materialised. Even in an ideal type form they overlap, complement and cancel each other out. By going into the territories of individual countries or transcending them on several levels, these diffuse and stratified borders form a sort of constantly changing and frightening live trap for the undesirables” (Hameršak and Pleše, 2018, p.10).

During the course of the refugee crisis, especially at its beginning² in 2015/2016, the borders were being erected in places where they do not usually exist, they have been moved and pushed outside and even inside.

Although Schengen zone permits movement inside its area, borders of nation states should not be observed as non-existent (Anić, 2022). They are re-erected as needed, such was, in form of a fence, a border that Hungary erected first with Serbia, and then with Croatia. In June 2015, France intensified its border with Italy as well (Hameršak and Pleše, 2018). Materialisation of these borders once again, had its selectively permeable purpose, to stop the flow of third-country nationals³. However, in recent years we have observed some borders of EU nation states becoming non-permeable amid the global pandemic in unique situations where more conditions needed to be met besides EU passport, and in some cases, where no such conditions could have been met as the borders were completely closed. Borders not only appear and disappear in a selectively permeable state to control the long-term migration but have done the same to control

¹ In this paper, I adopt the term “refugee crisis” for what is also widely known as “migrant crisis” and signifies large movement of people towards Europe started in mid-2015 with raging wars in Syria, Iraq, Afghanistan and others.

² I say beginning as I argue that it is still ongoing, the discourse around it just does not perceive it as crisis anymore.

³ Non-EU citizens

the movement of all amid global pandemic, even those who always had regimes of mobility playing their favour and allowing them to move freely and easily (Glick Schiller and Salazar, 2013).

Aside from their abolishment and establishment in times of need, borders also get relocated, and in terms of the EU it does not only signify relocation of the nation-state borders to the outside borders protecting the Schengen zone, but the borders are also pushed outside of this zone through border externalisation (Hameršak and Pleše, 2018). Border externalisation entails “*processes of border management and “remote management” of migrations*” (ibid, p.13), which are softer words for what actually is financing a third country to keep the migrants out. In relation to the EU there are numerous examples of externalisation policies, such as financial help to third countries such as Serbia, and North Macedonia, later also Bosnia, as well as transnational police operations such as operation Hera in Mauritania and Senegal, but also various major deals, such as EU-Libya deal and EU-Turkey deal (Hameršak and Pleše, 2018). All of these act to displace the borders outside of the territory of Schengen, EU, or even Europe altogether.

Finally, the borders can be moved inside nation states, where they factually do not exist, in the process of interiorisation (Hemeršak and Pleše, 2018). This interiorisation is carried out through police controls of “suspicious persons”, but also through delegation of these controls to, for example, hospitality personnel, travel agents, or concerned citizens (ibid, p.14). Perhaps the most common form of interiorisation is through detention centres in which ones who entered the state without permission are detained (ibid), and in EU sense, these detention centres are mobile and punctiform structure of the re-territorialised European borders (Rahola, 2016). According to Global Detention Project (<https://www.globaldetentionproject.org/>) platform, there is more than 400 detention centres in Europe, or 260 functional ones with a capacity for over 32,000 people, creating a thriving business (Arbogast, 2016).

This paper is not focusing on borders, or at least not on borders alone. It explores a seemingly simple construct of violence in its relation to migration in a country on the gates of the EU, a country that takes the role as the gatekeeper of plentiful life in the EU perhaps too seriously - Croatia. I attempt to depict violence in all its complexity. In that attempt, I undoubtedly fail, simply because the matter is far too complex to be depicted in one short paper. Direct violence

experienced by migrants is explored on the Croatian borders, and structural violence is explored through examples of EU externalisation policies, all through the application of the theory of crimmigration. Interiorisation policies are only briefly touched upon, but due to the complexity of the topic, not thoroughly analysed. Although seemingly not directed towards migrants, I argue that the violence directed to activists and humanitarian workers aiding migrants is in fact violence towards migrants, and an excellent example of crimmigration in all its wideness.

Chapter two zooms into the research design, and presents methodological approaches for this study, strongly relying on qualitative approach, but allowing for statistical data to support the findings. Chapter three brings theoretical framework into focus and crimmigration is explained and presented. Chapter four will bring context in focus, with three subchapters, one explaining Balkan Corridor, one presenting the public and media discourse around migration in Croatia, and the last exploring legal framework, as well as new legislation on EU level. First analysis chapter, chapter five, contains the analysis of already gathered data, mostly by Border Violence Monitoring Network, an independent network of NGOs monitoring violence on the external borders of EU (<https://www.borderviolence.eu/>). Additionally, Pushback⁴ Reports from the Croatian NGO Centre for Peace Studies are also analysed. This chapter analyses direct violence, accompanied by pushbacks out of the territory of Republic of Croatia experienced by the migrants themselves. In second analysis chapter, I analyse criminalisation of solidarity. Case of Dragan Umičević, volunteer of *Are You Syrious* and his conviction of assistance for illegal crossing of Croatian borders will be in focus of this chapter, as it is the only formal case of criminalisation of solidarity in Croatia. It is to show the diversity of violence in the field of migration and the fact that it leaves no one intact. Third chapter of analysis will step away from Croatia as a case and concentrate on the externalisation of EU borders towards Serbia and Bosnia. Final chapter will conclude and suggest implications for future studies.

⁴ The term ‘pushback’ is a non-technical term emerged from the discourse of refugee advocates to refer to a violation of *non-refoulement* (Keady-Tabbal and Mann, 2021)

2. RESEARCH DESIGN

“no one leaves home unless home is the mouth of a shark.
no one puts their children in a boat unless the water is safer than the land.
no one leaves home until home is a sweaty voice in your ear saying-
leave, run away from me now, i dont know what i've become
but i know that anywhere is safer than here.” - Warsan Shire

The concept of violence is at the spotlight of this research and will be thoroughly analysed using the theoretical framework of *Crimmigration*, which can be understood as increased entanglement between criminal and immigration procedures (Kogovšek Šalomon et al., 2020, p.3).

This is a single case study that focuses on Croatia with its unique geographical and political position. Croatia is, from 2013, a member of the European Union, but is not, yet, included into Schengen. Its accession to Schengen zone is under process and there are indications that it will soon be finalised, as the country has fulfilled all the requirements, Council of the European Union decided on December 9, 2021. International non-governmental organisation *Human Rights Watch* (2019) criticised this conclusion and urged the EU not to allow Croatia to join the Schengen zone, stating that “*Croatia’s unlawful and violent summary returns of asylum seekers and migrants should disqualify it from joining the Schengen Area*”. Geographically, Croatia lies heavily on the Balkan Route, with ‘heavy traffic’ of migrants from Middle East and Africa, sharing a very long land border with Bosnia, Serbia on the east, Hungary on the north and Slovenia on the northwest. Out of those, Serbia and Bosnia are not part of the EU, but both wish to become, while Hungary and Slovenia are both part of the EU and part of Schengen, with Hungary, during the operation of the Corridor, and beyond, remaining largely closed to migrants, not allowing even transit through its country, and erecting fences.

Although Croatia is in focus of this research, it is still observed as a part of the puzzle of migration towards the EU, which is why this research zooms out as well, observing the bigger picture and focusing on the externalisation policies of the EU.

2.1. Research Question

Although seemingly complicated, including three different analytical chapters, this research, in its simplicity, is an intertwinement between migration and violence. It observes violence as an almost constantly present ingredient in the course of migration but focuses on the violence experienced by migrants upon starting their move and leaving the country in which they may have also experienced violence. In its entirety, this paper will answer following research question:

How do migration policies of Croatia and the EU relate to violence experienced by the people on the move?

A simple, single theoretical background will be applied in the analysis of the collected data, and that is the theory on *Crimmigration*. However, what is peculiar about this research and the applied theory is their broadness. As explained, crimmigration observes criminalisation of immigration, and can be understood through various different actions and policies, including violence on the borders and prevention of entry, increased detention of migrants and asylum seekers, complicated, lengthy and unattainable asylum proceedings, border monitoring and deterrence techniques, all accompanied by the change in legislation and adoption of restrictive policies.

To be able to understand violence towards migrants, as well as the theory of crimmigration, this topic will be dissected and separated in three different analytical chapters, each combating a different type and form of violence, as well as different part of crimmigration. To help bind the analytical chapters together, ensuring they are still working towards the answer to the research question, each analytical chapter will have a separate working question.

2.1.1. Direct Physical Violence

When it comes to violence, the first thought that pops into most people's minds is physical violence. The first analytical chapter will focus on the direct, physical violence that people on the move experience when trying to enter the EU through Croatia, only to be violently expelled out of the country back to Serbia or Bosnia. Violence that the migrants experience upon their attempt

to cross the Croatian border among the other includes beating with fists and batons, kicking, forcing to undress, insulting, theft or destruction of personal belongings, and is nothing at all playful, although the attempt is paradoxically known as ‘the Game’ (Minca and Collins, 2021).

The mere act of pushback, as it signifies forced expulsion out of the country and prevention of asylum application, can be understood as violence, although the physical violence that accompanies it is in the focus of this analytical chapter. As there is already a vast number of reports on this matter coming from large international organisations, as well as from the independent local organisations on the field, I decided against collecting the primary data for this part of the analysis. Instead, I use the testimonies gathered by the *Border Violence Monitoring Network* (henceforth BVMN), a collective of organisations that gather testimonies from people on the move who have experienced violence on the external borders of the EU and have been pushed back out of the country. My focus is on Croatia, and I analyse testimonies of people who experienced pushbacks from Croatia to Bosnia. Along with the testimonies from BVMN, I analyse reports on illegal pushbacks made by the Croatian NGOs *Are you Syrious?* and *Centre for Peace Studies* along with the *Welcome! Initiative*.

Use of direct, physical violence is the single most prominent example of crimmigration, and even of dehumanisation, as people on the move are stripped of their dignity and their mobility criminalised and their rights to international protection denied. To explore this type of violence and a form of crimmigration, analysis of this chapter will be led by the following working question:

How does the physical violence experienced during pushbacks relate to criminalisation of migration?

2.1.2. Migration Violence Beyond Migrants

Second analytical chapter goes beyond people on the move, and focuses on criminalisation of solidarity, as a form of violence not directed towards people on the move, but towards people helping them. Although it is not the violence that the migrants can experience directly, I argue that this is still a form of criminalisation of migration. Not only that, but it shows the depth and

width of both violence and criminalisation of migration, as it moves beyond people on the move themselves.

Throughout this chapter, I will partly use the interviews with NGO representatives and volunteers, but will put the context in the Croatian framework as well and analyse the case of Dragan Umičević, a volunteer of Croatian *Are you Syrious?*, who was facing charges for ‘aiding and abetting the asylum seekers’ illegal crossing of Croatian border’ upon notifying the police that a family wishing to apply for asylum is on the Croatian soil. He was eventually fined with approximately €8,000, and the story created a strong media, and public response.

Focus of this analytical chapter is to show formal and informal ways of criminalisation of solidarity experienced by the non-governmental organisations in Croatia, as well as organisations working with migrants who are unable to reach Croatia due to the combination of structural and direct physical violence when they are pushed back to Bosnia. In order to portray this type of violence, the chapter will answer the following working question:

How does criminalisation of solidarity relate to the violence experienced by migrants?

2.1.3. Structural Violence

The final, third analytical chapter has a goal of understanding violence on a greater level and zooming out of Croatia as the main perpetrator of the violence. Through this analysis chapter, Croatia is understood under the role it is playing as the ‘protector’ of the EU’s external borders and a ‘gatekeeper’ to Schengen. Thus, the focus of this chapter is not solely on the Croatian policies and actions but is on the correlation and a response of these policies and actions to policies and actions of the EU.

To understand this greater picture, the analysed data for this chapter consists of interviews conducted with NGO representatives, volunteers and activists working in Bosnia and Serbia. Along with EU’s incentives in Serbia and Bosnia, EU-Turkey deal has a big role in shaping the Balkan route. Although Croatia does not share a border with Turkey, nor is Turkey a member of the EU, it still remains a crucial part of the puzzle that the migration towards the EU is. Turkey hosts the largest refugee community in the world with 4 million refugees, including 3,7 million refugees from Syria. The EU facilitates for basic needs, education, and protection services with

more than €6 billion as a part of the EU-Turkey deal (European Commission, 2021a). EU-Turkey deal is an agreement between the EU and Turkey aimed to stop ‘illegal’ migration towards the EU, making Turkey the real gatekeeper of the EU. Among the other, the agreement entails:

“3) Turkey will take any necessary measures to prevent new sea or land routes for illegal migration opening from Turkey to the EU, and will cooperate with neighbouring states as well as the EU to this effect” (European Council, 2016b).

The wording of this is particularly powerful as it is not suggesting, but clearly focused on the fact that Turkey “*will take any necessary measures*” leaving no room for interpretation. As the agreement affects the land routes as well, this externalisation policy affects the situation on Croatian borders as well, as well as the role that Croatia plays in the migration towards the EU. Besides the EU-Turkey deal, which may serve as a very visible example of an externalisation policy, the more subtle examples will be discussed, as I research what is happening just outside of Croatia’s borders, mainly in Bosnia and Serbia, and pinpoint EU’s role in these non-member countries.

In this analytical chapter, I analyse the violence that happens along with the direct physical violence, arguing that the latter is just one form of violence towards people on the move. Thus, this analytical chapter shows what happens on the EU level, and how EU is criminalising migration and expressing violence towards people on the move. To help address this, the second analytical chapter will answer the following working question:

How does the EU influence migration and keep it outside its borders?

2.2. Data Collection

During the research I use a combination of data collection methods including semi-structured qualitative interviews with professionals and volunteers supporting people on the move in Croatia, Bosnia, and Turkey, as well as secondary data collection methods, using readily available testimonies collected by the BVMN, as well as reports created by the Croatian NGOs *Are you Syrious* and *Centre for Peace Studies*.

2.2.1. Interviews

I opt for semi-structured ethnographic interviews as their open nature encourages depth and allows for new concepts to emerge (Dearnley, 2005). In order to create interview guides for the interviews I conduct with NGO professionals and volunteers, I adopt Spradley's (1979) guide on how to conduct ethnographic interviews. Spradley's (1979) guide focuses on meeting the interlocutors where they are, and allowing them to speak in their own words, through a casual, friendly conversation. My success in this changes throughout the interviews, based on the level of comfort the interlocutors are feeling and perhaps the experience they have in being interviewed.

In total, I conducted three interviews that gave me a greater insight in political and legal situation surrounding the work with people on the move in and around Croatia. In the analytical chapters, I refer to my recordings using timestamps and possess recordings of the interviews for a possibility of checking the data.

The first interview I conducted was with Stacey⁵, volunteer for the *No Name Kitchen*, an independent movement working alongside the Balkans, providing humanitarian aid and political action for those who suffer the violent pushbacks (<https://www.nonamekitchen.org/>). *No Name Kitchen* does not only work in Bosnia, but Stacey has volunteered in and around Bihać, a city in Bosnia in a very close proximity to Croatian bordered, which is one of the two major hotspots on the Balkan route. I interviewed Stacey online, via Zoom platform.

Second interview I conducted was with Veronika, working for a non-governmental organisation supporting people on the move in Bosnia, with the primary work in Velika Kladuša, also a city in Bosnia in a close proximity with the Croatian border, the second major hotspot on the Bosnian part of the Balkan route. Veronika spent some time in and around Velika Kladuša but is currently not in the country. The interview I conducted with Veronika took place online, via Zoom platform. This organisation, as well as *No Name Kitchen* are part of *Border Violence Monitoring*

⁵ Pseudonym is used as per the interlocutors request.

Network meaning that part of their work consists of gathering reports from people on the move who have experienced violent pushbacks.

Finally, Radoš from *Asylum Protection Center*⁶ (hencefort APC) spoke to me about Serbian perspective on migration. Lawyer by education, Radoš has been working in APC for a long time, providing information, legal aid, psychological support, and support for integration of refugees. Radoš describes the position of the organisation as half-institutional, as it is deeply rooted in the system, cooperating with the Serbian government, as well as with other non-governmental actors. APZ has its headquarters in Belgrade, capital of Serbia, but is working all over the country.

Although not numerous, these specific interviews have a great diversity, showing experience from both shorter-term volunteers to professionals working in the field for more than ten years. Additionally, as they spread across both Serbia and Bosnia, but

2.2.2. Participant Observation

Although participant observation might be more difficult in an online setting as a large part of people's behaviour as lost as the researcher is not able to fully observe the body language of the interlocutor, there are also some advantages of the online interviews. The main advantage of it lies in the fact that the interviews are record using video as well, which allows me, as a researcher, to go through the interview again, and focus solely on body language, tone of voice, and general behaviour. Additionally, it allows me to meet people in their comfort zone, as the interlocutors get a chance to choose the time, and the place from which they will join the online interview.

2.2.3. Secondary Data

Border Violence Monitoring Network provides extensive database of testimonies of people who experienced pushbacks and the webpage makes it easy to sort the data by the period, country of pushbacks, used violence, asylum claim and other. Data is available from beginning of 2017, meaning that it does not include the time period right after the closure of the Corridor, but as it

⁶ *Centar za zaštitu i pomoć tražiocima azila* in Serbian

includes written testimonies, number of which is extensive, it would be impossible for me to use all of the data anyways. Thus, I still used the longest possible timeframe, from January 1, 2017, to the date I exported the testimonies, May 10, 2022. I have not filtered through the used violence but have only included the testimonies from people who expressed their wish for asylum in Croatia but were still pushed back to Bosnia. This resulted in 665 pages containing 186 reports. It is perhaps important to mention that most of the reports describe pushbacks of multiple people instead of only one individual, meaning that the amount of people who were violently pushed back is much greater.

Along with the testimonies collected by the BVMN, I make use of the *Reports on illegal violent pushback of refugees out of Croatia*, four of them in total, which include the similar time period as the database. The reports are made by the Croatian NGOs *Are you Syrious* and *Centre for Peace Studies* and are made based on ethnographic fieldwork and interviews with pushed back people on the move.

The main difference between these two sources of secondary data is that the testimonies collected by the BVMN contain direct quantifiable descriptions of pushbacks, which do not always include direct words quotes from the people who experienced the violence. However, the testimonies do, in a way, contain, raw, unanalysed data, as opposed to the reports created by the Croatian NGOs which, although based on testimonies, are already analysed with a formed conclusion.

2.3. Limitations and Delimitations

The most obvious and prominent limitation to this study, and one that I am the most aware of, is researcher bias. I am a Croatian national, constantly torn between being extensively critical towards the policies and actions of my country of origin and being dismissive over the responsibility that Croatia has for its policies and actions, regardless of the effect and influence of the EU. I have only become familiar with the severity of this human rights violations performed by Croatia when I moved out of the country and started studies of forced migration. It is also worth mentioning that the topics that I am studying here, are sensitive, as violence, migration, politics, and culture usually are. Perhaps my own beliefs and experiences influence

how I interpret the data and understand the research. In order to mitigate this limitation, or at least bring it to a lower level, I am analysing different types of violence, including different actors. In order not to be overly critical on sole responsibility of Croatia, I decided to include externalisation policies in this research and explore the influence of the EU on migration, and violence that is practiced along the migration routes. Using both perspectives prevent me from leaning too much towards a single perception and allows me to lower my researcher bias.

Another important limitation to this research is the limited data usage due to the limited time frame that I had to collect and analyse the data. Time limitation, as well as accessibility to the region prevented me to conduct ethnographic field work, even though that was my initial idea. This is partly a delimitation as well, as it concerns the choice on the type of data I collect and analyse and the decision I made is to opt for secondary data in part of my research, which allowed me to use the greater variety of data and analytical methods.

Concretely, I have conducted only three interviews. Initially, more was planned, and agreed upon, but reaching interlocutors has proved itself to be a difficult task. Although I had already had a research cooperation with both *Are you Syrious* and *Centre for Peace Studies*, I did not manage to reach them and arrange an interview this time, as I stumbled upon unresponsiveness from their side. This is a shame specifically for the second analytical chapter, where I could have used their perspective, and the view on criminalisation of solidarity and first-hand experience of political pressure they have experienced. As priorly mentioned, in the use of secondary data, I only use testimonies from people violently pushed back to Bosnia, and due to the huge amount of testimonies, I have completely neglected pushbacks to Serbia, and Montenegro.

2.4. Data Analysis Method

The method of thematic analysis is the prevalent one when analysing interviews. As the name suggest, this analysis method attempt to find patters and themes among the data. For this paper, I use slightly altered version of thematic analysis, although researchers have developed a vast number of thematic analysis methods, and this perhaps might just be one of them.

Implemented analytical strategy, as introduced by Schmidt (2004) specifically for the analysis of semi-structured interviews, contains five stages. During the first stage, I read the transcribed

interviews multiple times, with all the knowledge I have on the topic, and the research question in mind (ibid, p. 254). While reading the transcripts, I notice topics or themes that occur in the conversation and write them as my notes. On the basis of these topics and aspects, I formulate analytical categories (ibid, p.255). In the second stage, the analytical categories are assembled into a guide for coding, which contains detailed descriptions of categories and helps in the coding process of the third stage (ibid). In the third stage, each interview is assessed and classified, and coded accordingly to the categories in the previously developed coding guide (ibid). Additionally, the amount of information is reduced in this stage. In the next stage of the analysis, the results of coding are quantified, which includes making tables with the clear presentation of the results (ibid, p.257). The fourth stage is a prelude to the detailed case interpretations, which are the last stage of the analytical strategy (ibid).

I adopt the variation of this single analysis method, both when analysing the interviews I conducted, and to the testimonies and reports I use as secondary data. The principle is the same, although the method slightly changes, as testimonies make it easier to find topics and themes and the stage of quantification of the data is shown to be incredibly useful for managing this data. Contrastingly, as the primary data I collected is not extensive, and only contains four interviews, it is easier to manage. However, the interviews contain vast amount of different information, which made the stage of identifying all the topics and creating analytical categories more daunting but helped narrowing and managing the diverse data.

3. CONTEXT

Since violence in the course of migration is so complicated and includes much more than just the perpetrator and the victim, a thorough context is necessary to help the reader understand the research better. As briefly as possible, this context chapter explains three crucial topics: the Balkan Corridor, public and media discourse, and legal background. As migration on a large scale through Croatia began in 2015, when the Corridor was established, for the understanding of the organisation of migration through Europe, it is crucial to explain the Corridor. The official closure of the Corridor did not stop the migration, but the violence in and around Croatian borders intensified. Through the context of the Corridor, refugee crisis can be more easily understood on a European level, and as such, Croatia can be more easily understood as only a smaller part of a much larger picture.

In the second part of the context, public and media discourse towards migrants and refugees intertwine, and the chapter presents how they influence one another. For the position of Croatia as a transit country in refugee crisis, but also as a homogenous, religious society that is hardly used to immigration, public and media discourse are important to pinpoint.

“...discrimination does not occur only in the most obvious acts of inhuman treatment, such as pushbacks, but also in the language the media use when reporting on migration process.” (Dobrić Basanež and Ostojić, 2021, p.5).

Lastly, the subchapter on legal background goes beyond just depicting whether Croatia, and thus EU as well, are in the breach of *non-refoulement* since they clearly are. Instead, the legal subchapter debates non-derogability and *jus cogens* status of *non-refoulement*. At the end, *New Pact on Migration and Asylum* is briefly presented.

3.1. The Balkan Corridor

When it comes to the course of migration in relation to Croatia there is before and after. The before marks the period of the beginning of refugee ‘crisis’ in 2015, when the Balkan Corridor (henceforth *Corridor*) was established, and after marks the time after the closure of the Corridor in March 2016. To understand the significance of the Corridor, we need to depict the chronology

and the establishment and closure of the Corridor in all its complication and messiness (Santer and Wriedt, 2017). Balkan route, following land borders from Turkey, to Greece, North Macedonia, Serbia, Croatia and further to central and west Europe served as an alternative to deadly Mediterranean sea route. However, the land route had its casualties and difficulties.

The Schengen Agreement, the Dublin Convention⁷, and the EU's Visa Regulation subject different individuals to different kind of borders, and “*render legal access to the Schengen zone quasi impossible for individuals required to meet unfulfillable visa requirements*” (Bigo and Guild, 2005, as cited in Santer and Wriedt, 2017, p.143). Inability to meet the requirements and the lack of legal routes forced many to take “illegal”⁸ routes, up until migrant movements destabilised regime of control and partial suspension of restrictive legal measures was in action (Santer and Wriedt, 2017, p.143). It started with North Macedonia's (FYROM at the time) attempt to close Greek-Macedonian border amid large influx of people in August 2015. Upon the realisation that they cannot stop the migration, North Macedonian government organised train transit across the country. The same month, Germany opened their borders for refugees and Hungary's Viktor Orban was desperately trying to stop the migration through his country (Abikova and Piotrowicz, 2020). Upon the discovery of the bodies of 71 migrants in a truck near the border with Hungary, Austrian police reinforced border controls and thus blocked the passage to Germany (ibid). From September 4, 2015, the refugee crisis got the media spotlight as well, when people stuck at Keleti train station in Budapest reclaimed their mobility and walked to the Austrian border in what is known as the “March of Hope” (Santer and Wriedt, 2017, p.144). Germany declared that it would keep its borders open, and ten days after the “March of Hope”, Hungary erected a fence on its border with Serbia thus re-routing the Corridor (Abikova and Piotrowicz, 2020). Serbian government eventually established a transportation system towards Croatian border, and after its slow initial reaction, Croatia followed (Santer and Wriedt, 2017). In October 2015, Hungary closed the border with Croatia as well, erecting another fence,

⁷ Regulation 604/2013 of the European Parliament and of the Council of 26 June 2013 Establishing the Criteria and Mechanisms for Determining the Member State Responsible for Examining an Application for International Protection Lodged in One of the Member States by a Third-Country National or a Stateless Person (Recast), OJ L 180/31, 29 Jun. 2013.

⁸ Used in quotation marks to signify that international protection should not be considered illegal in any shape, but as this paper does not attempt to differentiate people escaping persecution that are thus eligible for international protection from economic migrants, it cannot fully claim that all the migrants would be eligible for international protection.

which additionally re-routed the Corridor, which was, at this point, established along the whole route (Abikova and Piotrowicz, 2020).

The Corridor not only provided a safer and more humane transit, but it gave a legal framework to previously unauthorized, “illegal” movement, and this is perhaps where its significance lies (Santer and Wriedt, 2017, p.145). There should not be misconceptions, though. The purpose of the state organised transport was to regain and maintain control over the movement, and the restrictions have gradually increased (Kasperek, 2016, p.6). The beginning of the end of the Corridor began in November when Slovenia closed the borders from anyone not coming from Syria, Afghanistan or Iraq. Croatia, Serbia and North Macedonia followed, each with its own form of discrimination practice (Santer and Wriedt, 2017). North Macedonia was a forerunner in this closure. It first closed its borders so that only people with registration papers stating Afghanistan, Syria or Iraq were allowed to pass. Eventually, Afghanis were also excluded, and the number of Syrian and Iraqis was reduced (ibid).

Migrants were arriving to North Macedonia only after passing through Greece, where reception certainly was not a five-star hotel. Greece was experiencing the arrival of hundreds of migrants from Turkey daily and it adopted the ‘hotspot’ approach (Abikova and Piotrowicz, 2020, p.251), establishing five hotspots on Greek islands. The position Greece had in 2015/2016 and the one that it still has is crucial in the understanding of the development of the Corridor. Moreover, perhaps all the positions are worth mentioning. Greece is an EU country, surrounded by non-EU countries. Turkey has been in negotiations to join the EU more than a decade, and North Macedonia is also a candidate. In the sandwich of these countries, Greece needed to identify, register, and fingerprint incoming migrants, for them to continue their journey through the Corridor (ibid). The number of refugees arriving on islands of Greece became too large for the country to handle and the conditions that were waiting for migrants after their difficult journey to Greece were poor, and this only continued in other countries as well, all of them unprepared for the large migration wave (ibid). The Corridor was eventually closed on 7 March 2016 with European Council stating that “[i]rregular flows of migrants along the Western Balkans route have now come to an end” but that they are going to “continue to cooperate closely with the non-EU countries of the Western Balkans and provide any necessary assistance” (European Council, 2016a).

The Corridor is not significant for the context of the story of violence towards migrants because after its closure the violence began. Violence was omnipresent throughout the Corridor's operation and can be observed as more structural, e.g., in the inability to even cross the border and ask for asylum because they are carrying the "wrong passport". The nationality itself as a determining factor changed during the transit along the Corridor. Everyone was allowed at one point, then just Afghanis, Syrians and Iraqis, and then Afghanis were excluded, while Syrians and Iraqis were limited. In the countries that positioned themselves solely as transit countries, direct violence was accompanying the structural; violent pushbacks were adopted (Abikova and Piotrowicz, 2020). With Hungary closing its borders and Slovenia not being able to accept this large number of migrants, Croatia began slowing down the flow, keeping migrants in the transit centre or pushing them back to Serbia (ibid). Croatia is a member of the EU but is not a member of Schengen area and has been trying to fulfil all the requirements to join the area. Thus, on the Balkan Corridor route, it is acting as a gatekeeper to Schengen.

3.2. Public and Media Discourse Towards Migrants in Croatia

Media and public discourse have a strong power that can incite violence, or solidarity. Thus, it is important to understand them and the role they play in explaining violence towards migrants in Croatia. Even more so, as presented research on this topic will show, public, media and even political discourse are all intertwined and influence one another, and for it is, thus, for the understanding of violence on Croatian borders, important to understand this part of the context.

3.2.1. Periphery Complex

After enmity and war in the nineties, Croatia had a stinging ongoing friction with its neighbours fuelled by the perceived differences. When the refugee crisis started in Croatia, those differences were left aside and the differences between two civilisations, Croatian and Muslim were in focus (Vuković, 2018).

In their analysis of media, both centralised institutional media such as television, newspapers, and radio, as well as private and public conversations on social media, the author observed a

steep rise in xenophobic discourse, but also a rise of solidarity movements and NGO emergence. Theme of the war certainly has not been abandoned, but Croatians' still recent memory of war and exile did not incite solidarity, but connections such as "*It was the same in the nineties when we had to defend our country... Now we are defending our country once again.*" (Vuković, 2018, p. 175). Not only where these opinions so unconsciously shared on the Internet, but some Croatian politicians have directly or indirectly stated their opinion of terrorists among the refugees, framing it in a form of a fact (ibid, pp. 178-179). Hate speech on the theme of animalism and filth has also been widely represented, both by individuals on social media, and politicians. "*One example is particularly illustrative – it is the image of a mouse with an English caption “born in the horse barn” and the following comment: “If Ahmed is a German, then little mouse below is in fact-a horse”*" (Vuković, 2018, p.182). Author further explained how symbolic it is that this has found its place in a Croatian Facebook group, written in English, when a lot of Croatians who emigrated "*are in fact in the mouse's shoes*" (ibid, p.183). As Vuković (2018, p.183) further explains, this is far from the only symbolic irony in xenophobic expressions as the direct hate speech observed on social media is a result of "periphery complex", stemming from the fact that the Balkans⁹, which Croatia is, at least culturally, a part of, are "the Other" from European position. Violent gestures that Croatians are adopting are replications of the same they are experiencing, being seen by the Western Europe as dirty, disorganised, corrupted, and chaotic Balkan (ibid, p.183).

Priorly mentioned *periphery complex* is particularly interesting to understand the reasoning behind xenophobic behaviour. In the analysis of it, the author dug deep in the subconscious, explaining it through Freud's psychoanalytic ideas (Vuković, 2018). For the purpose of providing context, I do not think it is of that significance to try to underpin the subconscious mind of Croatians who are indulging into hate speech online. Instead, I believe it is important to have the existence of *periphery complex* in mind, as it explains why Croatians, who have a rather fresh personal experience with conflict and exile it produces, do not have empathy for the people who have found themselves in almost identical situation. It can also help us to better understand how, in connotation with the war, migrants are placed almost in a position of aggressor that one

⁹ I say "at least culturally" since Balkan is not a clearly defined region, and different authors and conceptualisations include different countries. According to some, Northern half of Croatia does not geographically belong to Balkans.

must defend themselves from, instead of being viewed as people who have experienced extreme hardships and thus needed to leave their homes and search for international protection.

3.2.2. Media Framing

The discourse of the refugees and the refugee crisis was not constant throughout the entire timeframe of the crisis. Slijepčević and Fligić (2018) observed media coverage of the refugee crisis in two major online media portals, and two major newspapers in Croatia, during the first week of the crisis in mid-September 2015, comparing it with the coverage during one-week mid-November 2015, which was a week after the terrorist attacks in Paris (ibid). In their analysis, the authors used *framing* theory, which basically includes selection and emphasis of the part of the reality, while other parts' importance is downplayed or ignored (Kunczik and Zipfel, 2006, as cited in Slijepčević and Fligić, 2018, p.34). Journalist's interpretation frame, according to which the content has been chosen and represented directly influences the interpretation frame of the receiver of the information, and the significance and meaning one will assign to the story upon reading it (Kunczik and Zipfel, 2006, as cited in Slijepčević and Fligić, 2018, p.34). Although this might be too strong of a conclusion, it is inevitable that the approach that the media takes is implicitly teaching the public how to understand societal problems (Nelson, 1997, as cited in Slijepčević and Fligić, 2018, p.35).

So, how did Croatian media frame the refugee crisis? Slijepčević and Fligić (2018) observed whether a positive or a negative frame was used while presenting refugees and while presenting Croatia. They have described the positive frame of refugees as them being presented as victims¹⁰, and the negative frame presenting them as a threat. Using positive frame, Croatia was presented as humane/friendly, or unfriendly/hostile in the negative frame (ibid). In the first week of the refugee crisis in mid-September 2015, observed Croatian media used positive frame when presenting refugees in 46% of cases (ibid, p.39). Croatia was framed neutrally in 59% of the cases, and positively, emphasising its humanity, and occasionally, national pride, in 33% of the cases (ibid). In the week after the terrorist attacks in Paris in November 2015, refugees were framed as a threat in 58% of the cases, which is an increase of 49%, as compared to the

¹⁰ I do not agree with the positive frame presenting refugees as victims, and it is solely the opinion of the authors of this particular research on media coverage.

beginning of the crisis (ibid, p.43). Interestingly, the newspaper that has presented the refugees the most positive of all observed, in 38% of the cases, with only 1% of negative framing in the first week, has presented the refugees using negative frame in 100% of the cases in November (ibid). In the case of framing Croatia, such a steep rise of negative framing was not observed when the authors compared first week of the crisis and the week after the terrorist attacks in Paris. However, a major shift towards a more neutral frame happened in the media coverage, framing Croatia neutrally in 85% of the cases (ibid, p.44).

Using the same framing theory, Čepo et al. (2020) also analysed how media portrayed migrants and refugees, but using different periods, namely first observed period was from September 2015 to September 2016, and the second period from July to November 2018¹¹. Additionally, the choice of media is also interesting in this case, as Čepo et al. (2020) choose two most widely read newspapers, but also two regional daily newspapers, one issued and read in the Eastern part of Croatia where the transit of refugees took place during the time Corridor was open and that is a less developed and predominately conservative part of Croatia, and the other issued in a progressive, liberal city in the West of Croatia, unaffected by migration routes.

Overall, their analysis showed rather neutral representation of refugees and migrants, with positive framing outnumbering the negative in the first observed period (Čepo et al., 2020, p.489). However, in the second period, although the framing remained predominately neutral, negative framing outnumbered the positive, with only 6% of positive framing, and 12% negative framing in the second period, as compared to 17% of positive and 8% of negative framing in the first period (ibid, p.489).

Čepo et al. (2020) argue that media framing is following the political discourse around the problem. During the operation of the Corridor, Croatian authorities created the discourse of Croatia being solely a transit country, in which refugees are not interested in staying in, simply passing through (Bužinkić, 2017, as cited in Čepo et al., 2020, p.489). This discourse helped to tone down the negative framing and approaching a more humanitarian than securitising approach. However, at the time of the second observed period, and also, as Čepo et al. (2020,

¹¹ Authors claim this is the period when irregular border crossings from Bosnia to Croatia escalated (Čepo et al., 2020, p.478)

p.489) argue, even after, the new securitising discourse, created by the new “*centre-right, but with strong nationalist bent*” government influenced the shift in media framing of the refugees.

3.2.3. Public Discourse

In a very significant timeframe, which included the closure of the Corridor, from February to October 2016, *Centre for the Study of Ethnicity, Citizenship and Migration* (henceforth CEDIM¹²) conducted qualitative research with four different groups: general population, national minorities, refugees and asylum seekers, and system stakeholders (state representatives, civil society representatives, media, international organisations) (Baričević and Koska, 2017). 120 interviews and 3 focus groups were conducted. Interviews with general population and national minorities are conducted in various cities all over Croatia, while the interviews and focus groups with system stakeholders were conducted in Zagreb, where most were active (ibid). Interviews with refugees and asylum seekers were also conducted in Zagreb, although some asylum seekers were accommodated in reception centre for asylum seekers in Kutina¹³ (ibid).

Interviews with general population have shown that the one of the most represented themes in the aspect of challenges/dangers of immigration for Croatia as a host country is the problem of different cultures, particularly connected to different religions – Catholicism/Islam (Baričević and Koska, 2017, p.22). The second biggest concern among general population is that of safety, connected to the perception of threat of terrorism, with greater number of interlocutors mentioning they are feeling concerned about possible terrorist attacks, and some believing that behind the migration movements are thought through plans of organisations from Syria looking to Islamise Europe (ibid, p.23-4). On the positive note, smaller number of people believe that immigration holds the threat of increase in crime rates (ibid).

When it comes to the perception of Croatia in the refugee crisis, interlocutors mostly observed it from the humanitarian perspective, feeling satisfied that Croatia treated refugees ‘humanely’ during the refugee crisis (Baričević and Koska, 2017, p.25).

¹² Croatian abbreviation for Centar za Istraživanje Etničnosti, Državljanstva i Migracija

¹³ Town in central Croatia with some 13,000 inhabitants, approximately 90 minutes drive from Zagreb

“Croatia is the most altruistic country in the world, at least something we can be positive and popular for” (Baričević and Koska, 2017, p.25).

If the above statement of a Croatian citizen was less general, it could have served as a hypothesis to be disproven in this research. However, altruism of a country is not something that would be possible to measure and then compare to all the other countries to find the one that is ‘the most altruistic’.

Moreover, the interviews conducted with refugees and asylum seekers in Zagreb confirm that Croatians have prejudice against them based on their status, but it is unclear what is the concrete content of these prejudices (Baričević and Kosta, 2017, p. 33). Refugees and asylum seekers mention that the prejudices are based on the ethnicity and skin colour, as well as their Islamic religion (ibid, p.34). Reasons and motives of their arrival and stay in Croatia are often questioned and discrimination is connected to their status of refugee/asylum seeker as that is connected to negative characteristics (ibid, p.34). Baričević and Kosta (2017, p.36) were not able to find a conclusion on whether the prejudices that the interlocutors are facing are results of specific societal stereotypes connected to asylum seekers/refugees or they are a part of wider anti-immigrant ideas.

General population has a hard time in understanding the differences between asylum seekers, and refugees, occasionally mixing the terms with economic migrants (ibid). Prevalent is also an opinion that asylum seekers are looking for assistance from the state in terms of accommodation, food, job, social security, which inevitably puts an economic strain on the receiver country (ibid).

Anti-immigration opinions are usually more prevalent among more homogenous environments, meaning that countries and places with larger number of migrants usually have lower rates of negative perceptions towards immigrants (Crawley, 2005, as cited in Baričević and Kosta, 2017, p.42). When immigrants do exist in a certain area, contact theory suggests that the type of contact between the citizens and immigrants is crucial, as incidental/rare contact leads to strengthening of the negative perceptions while real acquaintance leads to weakening of the negative perceptions (Fetzer, 2000, as cited in Baričević and Kosta, 2017, p.42). Having this in mind, it is crucial to understand the level of homogeneity in Croatia, where, according to the last

census in 2011¹⁴, 90% of population declared themselves as Croatians, and 86% have declared themselves as Catholic (Državni Zavod za Statistiku, 2011). Research shows that more religious Croatians tend to perceive asylum seekers more as a threat, both in terms of cultural threat, as well as an economic-security threat, than their non-religious counterparts (Župarić-Iljić and Gregurović, 2020).

3.3. Border Violence as Crime

In the field of migration, or in any field played an in international arena, where the lines of individual accountability become blurry, fight against impunity, although stronger than ever, is not producing many results (Mann, 2020). This legal subchapter goes beyond depicting whether the duty of *non-refoulement* has been ignored in Croatia and whether Croatia is, thus, in the breach of the 1951 Refugee Convention. The reports on violent pushbacks from Croatia have been so vast, so detailed, and reported by so many that they are impossible to ignore. Surely, Croatia does not share direct borders with any of the countries from which vast majority of asylum seekers and refugees are arriving from, thus not deporting them back to the country of their persecution, but simply expelling them out of the EU. If no country or person was in breach of the duty of *non-refoulement* and if everyone had a chance to ask for asylum and their application to be processed fairly and their refugee status then determined, could migrants escaping persecution and conflict not simply walk, fly, or drive to the borders, and ask for asylum? Would that prevent thousands of dying in the Mediterranean Sea trying to reach European land? Would it not prevent violence and inhumane treatment on and around the borders? As Costello and Foster (2015, p.275) notice:

“Evidently, legal protections for refugees are elusive in many contexts.”

Simply, research on whether legal protections for refugees are internationally available and practiced would be a short one, with a negative conclusion. Instead of that, this subchapter, which already has borrowed a title from Mann’s (2020) article, presents the author’s debate on

¹⁴ National census is conducted every 10 years, and the last one was in 2021, but as the census was slightly postponed due to COVID19 pandemic, only very limited preliminary results were available in April 2022, which is why the data is so old.

anti-impunity in the field of migration and principle of *non-refoulement* as *jus cogens*. Additionally, New Pact on Asylum and Migration will be discussed for all the novelty it brings, and all that it missed to implement.

3.3.1. Anti-Impunity in the Course of Migration

Request for anti-impunity of border violence includes advocates' appeal to the criminal law to establish liability for border violence, arguing that criminal law is central for ensuring accountability for gross violations of human rights (Mann, 2020, p.678).

International Criminal Court was established in 2002 with the intention to ensure "*that the most serious crimes of concern to the international community as a whole must not go unpunished...*" with the drafters "[d]etermine[d] to put an end to impunity for the perpetrators of these crimes." (Mann, 2020, p.680). Is this a beginning of "*individual criminal accountability as a central feature*" (Moyn, 2016, as cited in Mann, 2020, p.681)? This year marks 20 years from the establishment of the International Criminal Court and in the field of migration, this move towards anti-impunity is yet to be seen. However, some spheres have been moved from the realm of human rights in that of criminal justice, such as human trafficking, and in some instances, violence against women (Mann, 2020). Upon Mackinnon's (2009, as cited in Mann, 2020, p.682-3) argument that violence against women is the "*longest-running siege of crimes against humanity in the real sense*" and accusing societies and their leaders for complicity in a worldwide criminal scheme, Mann (2020) drew comparisons to the same rhetoric in the migration context, claiming that the mere difference is that the rhetoric in the migration context is yet to be developed.

Anti-impunity requests do not focus on states, but demand *jus cogens*, emphasising criminal accountability without explicit state consent (Mann, 2020, p.685). This seemingly complicated sentence, would, in an example of borders violence and violent pushbacks mean that, even without the state's consent, officials working at the borders would have to adhere to the principle of *non-refoulement* or otherwise, they could be individually criminally charged. Does the principle of *non-refoulement* have *jus cogens* status, though? Well, it depends. Costello and Foster (2015) argue that it depends on the connection of the principle of *non-refoulement* to

prohibitions that hold *jus cogens* status. For example, prohibition of torture or prohibition of genocide do hold *jus cogens* status so if the breach of the *non-refoulement* principle meant a person would be returned to place where they would face genocidal violence or torture, then the breach of principle of *non-refoulement* would be a breach of a norm with *jus cogens* character (ibid).

Costello and Foster (2015, p.323) concluded that *non-refoulement* is “ripe for recognition as a norm of *jus cogens*” but have wondered what difference does *jus cogens* character make. For one, the *jus cogens* norms have a feature of non-derogability, meaning the norm must not be infringed, and cannot be set aside in cases of emergency (ibid). However, authors explain that non-derogability differs from absolute prohibition, which does not allow any exceptions in individual cases (ibid). In its essence, *non-refoulement* is a non-derogable norm, and recognising it as *jus cogens* would solidify its non-derogability even in cases of mass influx (ibid, p.311). Costello and Foster (2015, p.311) “*envisaged that countries of first asylum would be required to offer temporary protection, and that other states would offer the full protections the Refugee Convention envisaged over time.*”

This is the intersection for legislation and practice. The status of *jus cogens* of *non-refoulement* is still under a certain debate and its questionable whether the pressure would be such that it would invoke non-derogability and pressure countries to take collective action, and not only for the front-line countries being the most affected and struggling under the burden of providing refuge for millions. European Union and its citizens still tend to forget that the greatest burden of the crisis in Syria, Iraq, Afghanistan and other countries that produced a lot of refugees has not been handled by the European Union, but by the neighbouring countries such as Lebanon, Turkey, Iran and Pakistan. Given that we are talking about millions of people displaced in developing countries, a frame of a *burden* is still, I believe, a correct one. However, if what Costello and Foster (2015, p.311) envisaged does come true and with countries take collective actions to “*offer the full protections the Refugee Convention envisaged over time*” the narrative of *burden* would not be a necessary one.

Nevertheless, applying all of this to ‘refugee crisis’ of 2015/16 in the EU, we observed that some countries erected non-permeable borders like Hungary, while Slovenia was also struggling to admit so many refugees, so Croatia was slowing down the migration. Are these examples of non-

derogability of *non-refoulement*? What is even more troublesome, the narratives of forced migration needed to change as allegations of torture were not only directed towards the states producing refugees, but also on the host and transit countries, and especially against border enforcement agencies and corporations implementing border policies for developed countries (Mann, 2020, p.688). As previously explained, non-derogability is not the same as absolute prohibition, but prohibition of torture is, in fact, an absolute prohibition (Costello and Foster, 2015). However, even when something is absolutely forbidden, it does not mean it does not happen.

3.3.2. New Pact on Migration and Asylum

As the previous subchapter has pointed out, legislation does not necessarily ensure implementation, nor does even absolute prohibition ensure that the prohibited action will face prosecution and that someone will be held accountable. This is not to say that improvements and advancements in legislations are not needed in the field of forced migration. If anything, the 2015-16 ‘refugee crisis’ *“unveiled the shortcomings of the current EU migration regime”*, with lack of solidarity and cooperation causing intolerable death toll on the Mediterranean (Partipilo, 2021, p.242), as well as immense suffering and inability to acquire international protection on the land borders. Thus, the idea of the New Pact on Migration and Asylum (henceforth *the Pact*) is to propose *“broad framework based on a comprehensive approach to migration management, promoting mutual trust among Member States. Based on the overarching principles of solidarity and a fair sharing of responsibility, the new Pact advocates integrated policy-making, bringing together policies in the areas of asylum, migration, return, external border protection and relations with third countries.”* (European Commission, 2020).

It did not take long for criticism to arrive for the Pact, primarily for the approach remaining focused on securitisation, managing irregular migration, preventing arrival on the EU territory and enabling a faster return process for the migrants not allowed to stay in the EU (Partipilo, 2021, p.242). The Pact failed to bring what it emphasised, which is coordination and solidarity between EU member states. Not only that, but it did the opposite, by allowing EU members to sponsor the return of migrants instead of choosing to relocate them (ibid). Additionally, the Pact failed to replace or improve the Dublin system, which remained in force. As it is already

noticeable, this will continue the trend of first entry states such as Greece, Italy and Malta to avert the arrival of migrants, either through agreements with third countries, or through various forms of pushbacks on the sea (ibid). The Pact received criticism even from the EESC, claiming that it focused too much on migration management and too little on improving legal migration pathways (ibid). The IOM criticised Pact's failure to save lives at the sea, without ensuring any improvement for search and rescue (henceforth SAR) operations, with even an increasingly negative stance towards SAR NGOs which are trying to fill the gaps of EU's failures (ibid).

What numerous critiques towards the Pact miss, argues Hadj-Abdou (2021), is that the Pact reflects current political realities in the EU and its member states. The author explains that the political climate in the EU has seen the rise of anti-migration political parties with the ideas that migration needs to be controlled and downsized (ibid). However, I doubt that critics to the Pact have simply missed to take into consideration the political reality in the EU regarding migration. On the contrary, criticism exists despite the political climate, which, when it comes to human lives, millions of them, might not need to be in the primary focus for a reason. This is not the say that Hadj-Abdou's (2021) conclusions are erroneous; they are clear and correct, but also are nothing new. The mere fact that the political climate surrounding migration in the EU harsh and focused almost exclusively on migration management on every cost is known, but it is also in a need of change. Unfortunately, the Pact does not even offer a hint of that change. Even its formation, presented as a simple communication indicates its lack of intention for major changes (De Bruycker, 2022). As mentioned, solidarity remains the main issue of the Pact and of migration management in the EU in general, since allowing countries to choose between relocation and return sponsorship *"will not contribute to building a new consensus on the asylum policy in the EU, but on the contrary confirm all Member States in their own position."* (De Bruycker, 2022, p.40).

4. THEORETICAL FRAMEWORK - Crimmigration

Do liberal democratic societies have moral obligations to admit immigrants or are they free to restrict migration? (Wilcox, 2009). Are we morally obliged to accept immigrants as a response to global inequalities, injustices, and poverty? (ibid) Are open borders truly the most efficient and easiest way to solve poverty and reduce inequality? If open borders are not a solution, where should the line be drawn on who gets protection and who does not? If a severe drought causes unprecedented famine, should the people in the region be eligible to receive protection of another country, or are conflict and persecution the only basis for protection? All of these are very pressing questions, and to each, a separate master thesis would not be enough for a debate. However, they can be good guidelines to keep in mind one discussing criminalisation of migration, as this will be presented in this theoretical chapter, and later used in the analysis.

Theoretical framework of *Crimmigration* that will be used to analyse the collected data in the following chapters is presented. Causes and consequences of crimmigration are briefly laid out and argued, as well as examples of crimmigration, some that will be thoroughly analysed through the rest of the paper such as violent pushbacks, and some, such as incarceration and detention, for which there is no great room in this paper. Although this paper does not thoroughly analyse incarceration rates and detention, these are still presented in the theoretical chapter, as they are the most obvious case of migration criminalisation in which migrants are physically deprived of their liberty. This is followed by previous research on criminalisation of solidarity, including the legal basis of it and its change through time.

4.1. Gulf Between Law and Morality¹⁵

“Empathy and xenophobia are two sides of the same coin.” – Rutger Bregman

Theoretical background I am using for this paper is both extremely simple and extremely complicated, with my attempt to keep it closer to the former rather than the latter.

¹⁵ Webber (2017, p.20)

Crimmigration is a meeting point of criminal and immigration procedures (Kogovšek Šalomon et al., 2020). Even more so, it is a point when the two get intertwined and entangled so much that the criminalisation of immigration has become something we take as given. Crimmigration emerged as a response to increased migration and mobility, politicisation of the topic, and a cultural shift in how immigration is perceived (ibid, p.4). This is to say that people have migrated before, but their mobility has not been perceived as danger in a measure that is perceived nowadays. The shift towards criminalisation of migration has multiple devastating consequences, including, but not limited to border violence, exclusion, inequality, xenophobia, and an assault of dignity and rights of migrants (ibid, p.4). Crimmigration makes one guilty for who they are, instead of what they have done (Holiday, 2020), often resulting in migrants being treated worse than criminals, regardless of being innocent at most times (Jalušič, 2020).

There are two different crimmigration trends, one focused on the increased criminalisation of border crossings, and the other focused on the criminal deportability for the non-citizens already present in the country (Stumpf, 2013, as cited in Kogovšek Šalomon, 2020). This paper mainly has a focus on the former, with the latter only being briefly touched upon. According to Kogovšek Šalomon et al. (2020), criminalisation of migration is manifested on many levels, in strengthening border control – with police, but also with the emergence of new agencies such as Frontex, through increased confinement of irregular migrants to detention centres, with often mandatory, indefinite detentions, penalisation for irregular border crossing offences, anti-terrorist laws aimed at racial profiling of individuals from the Middle East, and the disproportionate incarceration of migrants. However, this is not an unchallenged view. Perhaps it even is, it is just that the terminology is different.

4.1.1. Securitisation or Criminalisation?

Kogovšek Šalomon et al. (2020) mention that strengthening the border control, along with which came the establishment of European Border and Coast Guard Agency – Frontex is only one of many manifestations of criminalisation of migration. Some other scholars call this simply: securitisation. Neal (2009) wrote about the establishment of Frontex in 2004, with the debate on whether or not it rose as a response to general securitisation of migration after the terrorist attacks of 9/11. The conclusion was that it generally has not, since Frontex reacts to risk instead

of acting as a securitising body and because there was no sense of urgency – 9/11 happened in 2001, and Frontex was established in 2004 (Neal, 2009).

Nevertheless, what is happening in the EU, and perhaps all over the world, Neal (2009, p.353) describes as *governmentality of unease*, following the ideas of Bigo (2002). In their work, Bigo (2002) focused on answering the overarching question of why migration is linked to terrorism, unemployment, and crime, but not to new opportunities, cosmopolitanism, and new understanding of citizenship. After all, there is powerful proof showing lack of link to the former, but no one still cares. The author claimed this is due to *governmentality of unease* which institutions use to affirm their role as security providers and mask some of their failures, framing migration as a danger to homogeneity of people (ibid). Great role in this is played by security professionals who create unease by offering lack of precision in their information, masking everything as a top secret (ibid). Similar is described by Wæver (1993) when they describe securitisation as a speech act by fulfilling three criteria, namely a claim that the object is existentially threatened, demanding extraordinary countermeasures to deal with the threat, and convincing the audience that the rule-breaking measures are needed. Shortly, labelling something as a security dramatizes the issue as one of supreme priority (Wæver, 1993).

How does such a need for securitisation exist at the same time of an emphasis on human rights and a self-perception of humanitarianism by the EU Member States themselves? How do we justify the inhumane treatment of people conducted by humanitarian countries in humanitarian EU? Aas and Gundhus (2015) have wondered the same while taking Frontex under the spotlight, interviewing Frontex officers and analysing their self-presentation concerning their professional identity and cultural values. They found that Frontex partly legitimises its existence through humanitarian narratives and is actively implementing the language of human rights in the training of border guards (Aas and Gundhus, 2015). However, there is still not a systemic count of migrants' deaths, nor the consequences of Frontex operations on migrant security and for the principle of *non-refoulement*, even though Frontex does have the possibility to keep track of it (ibid). Authors call this dichotomy *humanitarian borderlands* when the border is neither lawless or marked by well-functioning wall, it is neither regulated or unregulated, and the conditions are neither humane nor inhumane (ibid, p.14).

Rare are the issues such as migration, with as many conflicting ideas, even in the sphere of academia. I understand the discourses of securitisation and criminalisation not to be conflicting, but rather supplementing one another. Discourse of criminalisation simply dug a bit deeper into the whole array of problems than did the discourse of securitisation. Or maybe not even that, but simply taking a harsher stance against what is going on. If a person is physically assaulted, not given right to claim international protection, or is locked up without having committed a crime, is that an act of securitisation or criminalisation of migration? I argue for the latter, which is why I use the theoretical background of crimmigration but found the importance in addressing and showing that this is not an unchallenged view.

4.1.2. Causes and Consequences of Crimmigration

The answer to why is there such an apparent rise in crimmigration has partly been answered, although a different discourse has been used – with Bigo’s (2002) explanation of *governmentality of unease*. However, this is a complex issue and there is more than one answer to the question, and perhaps none will be sufficient. Kogovšek Šalomon et al. (2020, p.7) note that there is a lack of interest and/or ability to understand, acknowledge and deal with the root causes of migration. In the case of the EU, understanding of the migration is limited to framing it as a problem that must be fought (Učakar, 2020). Additionally, discourse of a threat has already been discussed, and Doğar (2020) notes that what states have been increasingly focused on, and that is that the migration flows are mixed, and they do contain *foreign fighters*¹⁶, as well as asylum seekers, and host states increasingly decide to treat everyone as criminals. Similarly, Bajt (2020, p.171) observes the process from otherness perspective, noting that crimmigration is rooted in the negative perception of *the Other* and nationalism, together with the fear of weakening the welfare state and *collective paranoia*.

What was described by Wæver (1993) as securitisation as a *speech act*, Billings (2020) notes as a tightening of legislation and politicians’ justification of alleged community expectations that are

¹⁶ “individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict” (UN Security Council, Resolution 2178 (2014), UN Doc. S/RES/2178, as cited in Doğar, 2020, p.235)

addressed while the existing opposing view is ignored. Additionally, that one of the main goals of harsher migration policies has been to reduce the attractiveness of countries of destination and discourage new arrivals (Učakar, 2020; Billings, 2020; Pittioni and Gregorc, 2020). According to Bužinkić (2018), Croatia fits in this category as well, with its strong attempt to portray itself solely as a transit country.

“That identity and the transition factor are clearly reflected in the infrastructure for the initial refugee reception and care, specifically its limited capacity, as well as in numerous other aspects of the so-called management of migration processes – primarily in rising securitisation or the increase in border surveillance and investments in the so-called security infrastructure, the training of police officers in control and surveillance but not in issues of human rights, trauma or support provision to refugee groups, as well as in the ease with which refugee labels and prejudices were construed in order to justify Croatia’s identity as a transit state, and finally in the unlawfulness and immorality of political decisions shaped by transnational political agreements that directly harm human lives, their safety and dignity (cf. e.g. Cobarrubias et al. 2015).” (Bužinkić, 2018, p.145).

In other transit countries, especially the ones that are not yet part of the EU, such as Serbia and Bosnia, that are important for this paper, crimmigration attitudes are caused by the wish of these countries to get closer to the EU, and Kogovšek Šalomon et al. (2020, p.9) note that there, *“crimmigration is, paradoxically, the sign of development, as understood and defined by the West.”*

Consequences of crimmigration, similarly to its causes, are numerous and complex. To start with, crimmigration changes the way migration unfolds (Kogovšek Šalomon et al., 2020, p.10). Due to crimmigration, prevalent way in which migrants who flee their countries enter the host country is clandestine (Garcia Hernández, 2020). Crimmigration creates a situation in which those who are eligible for international protection cannot simply walk to the border and apply for asylum. Furthermore, Jalušič (2020) claims crimmigration creates changes in legislation and the nature of law, creating two parallel legal regimes, for *us* and *them*, making entire groups of people controlled and seen as *unlawful*. The author takes a powerful statement that law changes its character, becomes a source of harassment and distress, and a denial of justice (Jalušič, 2020).

Norms and laws are constantly revised which makes it possible for criminalisation of migration to become a prevalent system (ibid). Jalušič (2020) notes there are four steps in the process of changes towards crimmigration, namely: creation of *criminal suspects* and erasure of the term *refugee*, followed by creation of legal category of *illegals*, criminalisation of migrants as a whole, as well as those who assist them, and finally, spreading criminalisation on wider levels. All of this is labelled as *pragmatic use of law* (Jalušič, 2020, p.74).

Not only does crimmigration change laws, but it undermines human rights, with numerous devastating examples. Firstly, the right for international protection is constantly out of reach, which undermines the whole Refugee Convention (Hernández, 2020). In many cases, migrants and asylum seekers get detained, and their access to legal assistance, as well as their access to financial resources is lacking or non-existent (ibid). Additionally, there is a problem of family separation, and if all of that was not enough, there is a huge amount of physical and emotional violence inflicted mostly on borders, as well as large human toll of all the people who die on their way, as they must take on clandestine, dangerous, deadly ways with no guarantees of success.

4.1.3. Migrant Detention and Incarceration

Criminalisation of migration does not end after migrants cross the borders and manage to enter the host country, nor is it reserved solely for forcibly displaced migrants. It is an ongoing process, and this short subchapter describes what happens after migrants enter the country, but also how legislations are directly changed to envision crimmigration.

As a result of crimmigration, simultaneously with *de-bordering* of the western world amid economic globalisation, process of *re-bordering* against global migrations has taken place (De Giorgi, 2010, p.147). In other words, globalisation has made it possible for the oil to travel freely and easily from the Middle East to the western world, but people from the region have not been of the same luck. De Giorgi (2010) has been talking about hyper-criminalisation of immigration, particularly in Europe, already in 2010, before the refugee crisis and mentions it has been ongoing from the mid-1970s. Specifically, “*non-western immigrants are targeted by prohibitionist immigration policies which in fact contribute to the reproduction of their status of*

illegality; on the other hand, the systematic use of incarceration (together with administrative detention and deportation) as the main strategy in the ongoing war against unauthorized immigration configures a dynamic of hyper-criminalization of immigrants, whose result is the intensification of their socioeconomic and political marginality across Europe.” (De Giorgi, 2010, p.147).

Average migrant incarceration rate is 433/100,000 across Europe, meaning migrants are imprisoned on average 6.2 times more often than citizens (De Giorgi, 2010, p.155). This data speaks in favour of Wacquant’s argument that European penal practices will in some ways follow US penal practices, where the rate for black males in state and federal prisons is 3161 per 100,000 population compared with a rate of 487 for white males (Wacquant, 2005). The author argues that we cannot correctly measure whether migrants are incarcerated at so disproportionately higher rates because their overall rates of offending are higher, so we must partly take into the consideration that they are targeted by the police and treated differently by the courts (ibid, pp. 35-36). Wacquant (2005, p.44) also claims that these policies force *“foreigners to live in a submerged world in the shadow of legality, setting off a fatal dialectic of criminality and criminalization that becomes self-sustaining, with the added pressing demands of the journalistic and political field for dramatic displays of the state’s capacity to tame this insidious threat to national cohesion and European integrity”*.

For the forcibly displaced migrants who find themselves inside the borders of the EU, criminalisation does not end after their application for international protection. Secondary movement, which in EU terms is widely regulated with the Dublin Regulation¹⁷, is becoming the biggest concern for the EU in terms of asylum (Majcher, 2021, p.1). This is why the European Commission presented a plan to amend the EU’s asylum framework and reshape the Reception Conditions Directive¹⁸ to limit secondary movement (ibid). Changes of the Reception Conditions Directive enlarge the restrictions on asylum seekers’ freedom of movement and indirectly justify their detention (ibid, p.4). In other words, these proposed changes make it easier to detain asylum seekers if they move from a country where they have already applied for an asylum to another

¹⁷ Meant to ensure that the person will have access to asylum procedures in only one EU member state and in most cases makes the country of first arrival responsible for the asylum application (Majcher, 2021, p.2)

¹⁸ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 Laying down Standards for the Reception of Applicants for International Protection (Recast), OJ L 180/96, 29 Jun. 2013.

EU member country. This is problematic as the detention in question is an administrative/preventive detention, as opposed to penal/punitive detention, which means that a person is deprived of their liberty without criminal charges, and as such, should only be used as an exceptional measure (ibid, p.5-6). In order for the detention to remain a non-punitive measure, it must comply with the principles of necessity and proportionality, and it should be ordered as a last resort and of the shortest duration necessary (ibid, p.9). In her analysis of asylum detention and the proposed changes of the Reception Conditions Directive, Majcher (2021, p.24) concluded that asylum detention may function as deterrence and coercion as Reception Conditions Directive allows detention to be used in systemic manner and maintained during the whole asylum procedure. However, due to its administrative nature, although some parts indicate its punitive nature, asylum detention avoids fair trial guarantees that is available for punitive detention (ibid).

Paradoxically, in 2016, the year that changes were proposed for the Reception Conditions Directive, Alice Bloomfield (2016, p.8) published an article containing analysis and predictions for the alternatives to immigration detention (henceforth ATD) in which she mentions the recast of the Reception Conditions Directive from 2013 which “*explicitly requires Member States to establish national rules concerning alternative schemes, and lists examples of ATD*”. The push towards the alternatives to detention is part of the advocacy of civil society, particularly the International Detention Coalition (henceforth IDC), established in 2006 (ibid). Together with IDC, UNHCR launched a five-year *Global Strategy to Support Government to End the Detention of Asylum Seekers and Refugees*¹⁹ that ended in 2019 (ibid). Has the Global Strategy managed to yield positive results, then? Questionable. Immigrant detention is far from being an eradicated problem, but some move in the positive direction has been made. In their May 2022 report, IDC mentions that the most significant development on a global level is the adoption of *Global Compact for Migration* (henceforth GCM) in December 2018 (IDC, 2022). The GCM introduces an objective of using immigration detention only as the last resort and is the first intergovernmental agreement to cover all the dimensions of international migration (ibid, p.9). It

¹⁹ UNHCR, *Beyond Detention: A Global Strategy to Support Governments to End the Detention of Asylum Seekers and Refugees*, Geneva, UNHCR, 2015, available at: <http://www.unhcr.org/53aa929f6.pdf>

was adopted by 164 governments (ibid). Upon the adoption of the GCM, *The United Nations Network on Migration Working Group on ADT* was established (ibid).

4.1.4. Crimmigration in Croatia – Pushback as a Technology

Webber (2017, p.20) wrote that the EU had the opportunity to require from the member states to exempt humanitarian smuggling but failing to do so shows the *gulf between law and morality*. I have adopted this term as a headline for the theoretical subchapter in which crimmigration is discussed and previous research and ideas are laid out. As crimmigration is a crossroad between migration and criminal law, I believe it is also a gulf between law and morality. Field of forced migration gets me to almost habitually wonder how did we, as a society, reach a point where migration violence is almost a normative, where migration detention is common, and where something so simple as moving from a place to place is so difficult for so many as it is criminalised in so many different ways. This theoretical section also contains information on migrant detention and migrant incarceration, to show the devastating effects of migrant criminalisation and the systemic violence they are experiencing. However, the main point of analysis for this paper is direct violence experienced by migrants on Croatian borders, accompanied by pushbacks as a way of preventing the transit and the asylum applications.

Bužinkić and Avon (2020, p.159) call the pushback a *technology of crimmigration* and state that Croatian borders and police stations are locations of crimmigration, where accounts of violence and dehumanisation are taking place. They, too, claim that this is a form of systemic violence and criminalisation of migration (ibid, p.162). During the refugee crisis, two contrasting representations of the refugee emerged: one framed them as “*weak, suffering and help seeking subjects*” while the other framed and “*racialised refugees as dangerous subjects*” and the authors make a powerful claim that the latter prevailed due to political motives of framing refugees as enemies to the nation and individual safety (ibid, p.162). What is more, Bužinkić and Avon (2020, p.162) claim that the term *refugee crisis* is also coined for *enemising* and criminalising refugees. At the beginning of this paper, I mentioned that the term *refugee crisis* is widely used for the period of time when the Corridor has also been operating, but that my stand is that the crisis is still ongoing. However, perhaps Bužinkić and Avon (2020) have a point. I have only observed the term *crisis* as crisis of human rights, meaning that what is happening to

(forcibly displaced) migrants is a *crisis*, and not what is happening to the host and transit countries, and a discourse of *refugee crisis* in terms of countries does have a frame of emergency that does require urgent and strong actions.

During the time when the Corridor was still operating, in October 2015, eight African men were pushed back from Slovenia to Croatia (Bužinkić and Avon, 2020). This prompted a meeting between the heads of police of Austria, Slovenia, Macedonia, Croatia, and Greece where they legalised racial profiling and expulsion of refugees based on the decision on who is *the real and true refugee* (ibid, p.163). On the accounts of this racial profiling, Syrians were framed as *real* refugees, Iraqis and Afghans as *semi-real*, and all the rest as *economic migrants* (ibid). Similar was already described in the chapter about the Corridor, when the borders were semi-permeable based on the nationality. Bužinkić and Avon (2020, p.167), who are both activists and researchers of Croatian *Centre for Peace Studies*, concluded that pushbacks are not isolated act conducted by the Croatian police but “*a chain reaction within the border control regime deployed by all the EU Member States and the Balkan countries from Croatia to Greece*”. However, it is a technology of crimmigration, and there is a need to “*reframe illegality of this securitisation doctrine and its regimes of policing and militarisation actions and regard them as legal and/or becoming legal-ized*” (ibid, p.168). Although illegal as it denies access to international protection, pushback has a materialised legality stemming from the Schengen Borders Code, which requires countries to protect EU’s borders (ibid).

Rutger Bregman, with whose quote I started this subchapter of crimmigration, is a Dutch historian exploring society and human nature. In his book *Humankind – a Hopeful History* he claims that “*Empathy and xenophobia are two sides of the same coin.*” Empathy works as a spotlight making us forget all but the subject of our empathy, Bregman claims, backing it with numerous scientific research. It is thus important where the spotlight is. If it is on the national security, and the citizens of a certain country simply trying to protect their own, we tend to look back from the migrants, as they are seen as a threat, and are not the subject of our empathy. They can only be on the other side of the coin, as the subject of our xenophobia. It is time for compassion, rather than empathy, as it allows us to look at both sides, Bregman argues.

4.2. Criminalisation of Solidarity in the EU

When it comes to migration management in the EU, it is not only that the focus is set on the securitisation, which was brought to a larger scale during the ‘refugee crisis’ but the Facilitation Directive also allowed criminalisation of humanitarians as people smugglers (Fekete, 2018). The Facilitation Directive, or in its full name, the *Directive of the Council Defining the Facilitation of Unauthorised Entry, Transit and Residence* together with the *Council Framework Decision on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorized Entry, Transit and Residence* form Facilitators Package with the aim to reduce irregular migration in order to protect migrants from violence and exploitation (European Commission, 2017, as cited in Čuča, 2019, p.46). Additionally, the Facilitators Package aims to protect “*Member States’ territorial integrity, social cohesion and welfare through well-managed migration flows.*” (European Commission, 2017, as cited in Čuča, 2019, p.49). To achieve the aforementioned, the Facilitators Package obliges for criminalisation of “*aiding of unauthorised transit, entry and residence in the EU*”, regardless of whether the *intentional assistance* included financial gain or not (Directive 2002/90/EC). However, the next paragraph allows member states to decide not to impose sanctions when assistance is offered as a humanitarian assistance (Directive 2002/90/EC). Nevertheless, as Čuča (2019, p.50) notices, there is a difference in the wording of the paragraphs with one prescribing the obligation to implement punitive measures, while the other serves more as a recommendation and “*leaves it to the States to determine whether there will be space for humanitarian assistance in the national legal framework.*” Criminalisation of solidarity is only one aspect of a greater, more complex problem, which is the criminalisation of migration. It serves as an indicator of the depth of the problem which is further analysed throughout the rest of the paper.

As noticeable, criminalisation of solidarity in the EU is nothing new, it just reached a much larger scale from 2015 onwards, which is when solidarity and humanitarian assistance was for the first time presented as a “pull-factor” of migration (ibid, p.66). When the large wave of migration started in 2015, the EU decided for a securitising, military approach rather than ensuring safe, legal access to international protection for millions of forcibly displaced people. This has seen a rise in solidarity movements all over Europe, with emerging NGOs, grassroots organisations or simply individuals willing to go to great lengths to help migrants on the move

(ibid). The same happened and was already mentioned in the case of Croatia. Although large migration movement brought a rise in anti-immigrant and xenophobic discourse in Croatia, the emergence of solidarity movements and NGOs establishment followed (Vuković, 2018).

“...border violence and death at the border is not a kind of tragic side-effect of border policing, but it is really a structural outcome, even at times a deliberate goal, of it.”
(Fekete, 2018, p.71).

Across Europe, criminal law is being used as a weapon to punish and deter those seeking to uphold standards of decency through criminalisation of providing humanitarian assistance (Webber, 2017, p.7). Beyond the land, this means criminalising search and rescue, and at the internal borders and within them, it means criminalising those providing shelter, food, and transportation.

“Across the continent, criminal laws designed to target organised smuggling gangs and profiteers are distorted and stretched to fit an anti-refugee, antihumanitarian agenda, and in the process, criminalise decency itself.” (Webber, 2017, p.7).

Not only legislation acts as a powerful method of deterrence, but also the unpatriotic frame that is surrounding these acts of solidarity. The lack of public distinguish between smuggling and trafficking does not help in this matter. All of the EU member states have legislations against human trafficking, as it is an act of exploitation of human beings, with coercion into labour, prostitution or organ donation, without any possibility of something as humanitarian trafficking (Webber, 2017). Contrastingly, smuggling has a long history as an act of human solidarity, with examples such as bringing Jews out of Nazi Germany, or helping people cross the Berlin Wall, as the most dominant ones (ibid, p.7). Using these two terms interchangeably, both deliberately or by accident, *“demonises all transport of migrants and refugees as inherently evil.”* (Webber, 2017, p.7). Smuggling can, of course, be as far as possible from human solidarity, with a purpose of material benefits. According to the UN Protocol (2000), carrying migrants or providing assistance is not a crime unless done for profit. However, *“Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law”* (Article 6.4.).

Regulations concerning human solidarity in the course of migration are indirect and open for various interpretations. Both the UN Protocol, and the EU Facilitators Package are leaving it to the states to determine whether they will exempt criminalisation of solidarity. Not many do. In the EU, only seven member states have incorporated the optional exemption from prosecution for humanitarian assistance (Webber, 2017, p.19). Since 2002, when the Package came in force, smuggling has increased, proving that the Package is not acting as a successful enough deterrence against it (Webber, 2017).

The principle of solidarity is embedded in the very foundation of the EU's legal system (Morano-Foadi, 2017), which makes it even more ironic that is the very legal system that is criminalising the solidarity. In the field of migration, solidarity has two different meanings, one in terms of solidarity as a shared 'burden' of providing international protection for refugees inside EU, and the other as the solidarity of individuals and NGOs, filling the gaps of the failed solidarity of a shared 'burden' (Tazzioli and Walters, 2019). Solidarity of the shared 'burden' is, in many ways, a failed idea. Some countries, such as Poland and Hungary ignored the overly mildly imposed quotas, while some needed to share the heavier burden (ibid). However, in essence, the main reason why solidarity as a shared 'burden' failed is simply because there was no burden. The EU as a whole has turned towards securitisation instead of solidarity, going to extreme measures to ensure that refugees do not even reach the EU leaving no burden to be shared in between its member states. Right there, when the solidarity failed as a principle of the EU, individuals picked it up, some going to extreme lengths to help, and some doing it just as they are passing by, because that is what humans sometimes do – help each other, without putting too much thought into it. That very solidarity, fundamental for the EU's legal system, is criminalised by the same, and regardless of the extensive proof of it, European Commission's evaluation of the effectiveness of the Package failed to find extensive proof of the criminalisation of the solidarity, so although changes were demanded, the demands were not met (Webber, 2017).

The excuse of lack of evidence is not exactly correct, but the fact that these prosecutions are hard to be traced in a clear matter of statistics is the case, since statistic on smuggling prosecutions do not differ on the reasons, making solidarity smuggling or humanitarian assistance falling in the same category as profiteering smuggling (ibid). Croatian legislation on the matter is aligned with

that of the EU and according to the Criminal Code of Croatia, and according to it a person may face from one to eight years in prison for allowing or helping another person to illegally enter, move, or reside in the Republic of Croatia (Kazneni zakon, NN 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21). According to the statistics of the Croatian Ministry of Interior (MUP, 2019; 2020; 2021), there is noticeable large increase of the reports for the criminal act of allowing or helping to illegally enter, move, or reside in Croatia with almost seven times as many reports in 2019, as compared to 2014. 2015 saw the lowest numbers of reports towards this criminal act, probably due to the fact that the Corridor was open at least part of that year, ensuring organised transit of migrants through Croatia. However, ever since its closure, statistics is showing a rise in the reports for this crime. The nature of the crime is unknown, and it is impossible to tell whether, and in which percentage do the reported for this crime also include those who acted out of solidarity, without profit.

Reported for allowing or helping another person to illegally enter, move or reside in the Republic of Croatia						
2014.	2015.	2016.	2017.	2018.	2019.	2020.
140	68	156	356	619	946	698

Table 1. Art.326 CC of Republic of Croatia – reported crimes

5. ANALYSIS

The analysis consists of three different chapters, corresponding to the theoretical background of the Chapter 4. Each chapter analyses a different form of violence that migrants are experiencing either directly or indirectly.

Focusing on the direct physical violence that people on the move experience during expulsions from Croatia, the first chapter relies on the testimonies gathered by the *Border Violence Monitoring Network* on violent expulsions from Croatia to Bosnia, backed up with secondary testimonies from Stacey, former volunteer of the *No Name Kitchen*, and Veronika, from another organisation working in Bosnia. Along with the direct testimonies, the chapter brings attention to the *pushback reports* made by the Croatian NGOs *Centre for Peace Studies* and *Are you Syrious*. The reports contain already analysed data, sometimes from the NGOs' visits to the border region, and sometimes taken from the BVMN. However, the reports put the border violence in Croatian political context, and comment on the statements of the government, and eventually create a timeline of events in terms of border violence, unfortunately not signifying any progress. Following the logic of Kalpouzos and Mann (2015), I argue that violent pushbacks could also be characterised as *crimes against humanity* under *Rome Statute of International Criminal Court*.

Second, smaller analytical chapter focuses on criminalisation of solidarity in Croatia and the region. Along with indirect actions aimed to scare and obstruct the work of the organisations warning on human rights breaches, the chapter focuses on the direct case of criminalisation of solidarity, that of Dragan Umičević, volunteer of *Are you Syrious*, along with allegations that the criminalisation is part of political pressure towards the NGO. The chapter relies on the statements of the organisation itself, with an attempt to remain unbiased, as the situation is rather politicised, with motives indirect and hidden.

Finally, third chapter focuses on a wider frame, taking EU's externalisation policies to the spotlight. Analysis is conducted using data gathered through the interviews with non-governmental organisations working outside of the EU, in the bordering third countries, Serbia and Bosnia. Although the EU-Turkey deal partly shapes the migration throughout the Balkan route, the same is not stopped, perhaps only slowed down. Thus, to understand the bigger picture of migration through the Balkans and the EU, neighbouring countries along the route must be

taken into focus. Out of those, I have chosen Serbia and Bosnia, both candidates to join the EU, and both Croatia's direct neighbours, facing thousands of migrants pushed back from Croatia. This chapter depicts how Serbia and Bosnia are dealing with these migrants, and what role does the EU have in all of it.

5.1. Pushback as a Technology of Crimmigration²⁰

Understanding severity of a problem can be difficult if we are struggling to understand the extent of it. When it comes to illegal pushbacks and violence on the Croatian borders, cases reach the public's reaction occasionally. However, Croatian authorities, including the minister of defence, Croatian president, politicians, Croatian MEP, all spoke about isolated incidents, rejecting the claims of systemic violence and illegal actions (cf. Pavičić, 2021; Polsakpalatinus, 2021; Fenix Vijesti, 2021; Večernji.hr, 2021). The last such incident, with a video of masked Croatian border officers hitting migrants with batons as they were making them run back towards Bosnia was covered all over media in October 2021. As the public and the media demanded answers and solutions, police suspended the three officers in question, and no further sanctions were made, as Croatian director of police argued there are no special orders from the top, and the officers were acting on their own (Milina, 2021, as cited in Ivanda Rožić, 2021). Interestingly, Croatian authorities are not acting typically in the process of securitisation. Their words could not fall into a category of *speech act*, as introduced by Wæver (1993), nor could they be characterised as what Billings (2020) describes as politicians' justifications of alleged community expectations. On the contrary, Croatian politicians' approach includes negation, despite all the evidence proving contrary to their words. This is important to note, because of the influence media and public discourse have on one another, as it was described and presented in the Context chapter.

The statistics on the illegal pushbacks and violence on borders do not really exist and are practically impossible to systemically track. European Commission (2021b) is reporting almost 200,000 irregular border crossings in 2021, an increase of 60% as compared to the year before, which includes more than 87,000 land border crossings in 2021, an increase of 125% compared to 2020. This signifies and even larger increases on land migration, which is a trend that has been

²⁰ Bužinkić and Avon (2020, p.159)

ongoing for years, due to the deadliness of the Mediterranean. BVMN (n.d.) reports that 63% of all the pushbacks testimonies are documenting expulsions from Croatia. When migrants living in Bihać and Velika Kladuša²¹ responded to a *Harvard Trauma Questionnaire*, 98.14% reported experiencing multiple forms of torture, 70.4% stated they have been physically harmed during migratory transit, and 50% fulfilled the criteria for post-traumatic stress disorder (Guarch-Rubio et al., 2021). This information signifies a few key points: migration is increasing, and will probably continue to do so, especially on the land routes. If the opportunities for asylum applications are not improved and institutionalised support bettered, this will only increase the amount of violence on the borders.

Violence does not only happen on the borders. People on the move do manage to cross the borders, but are sometimes caught afterwards, on their way through Croatia, as it was the case with a group of 10 people, aged 21-56 from Iran, Morocco, and Algeria, that were caught in the forest near Petrova Gora, transported close to Velika Kladuša where other officers wearing balaclava masks were waiting for them and kicking them with batons as they forced to run back to Bosnia (BVMN, n.d., p.63).

“At the border, they were shouting at us: ‘Go, go, go, go!’ and beating us with batons. Open car and one by one, pa pa pa pa with baton. I fell and broke my leg.” (ibid, p.64).

Same situation played out with a group of 9 people from Iran and Morocco, aged 30-40 that were caught in Pašin Potok, Croatia, driven with a van close to the border, where there were physically attacked with batons by the officers shouting at them to go back to Bosnia.

“Three times or four times, they hit me by baton, into my head and they also hit my friend. Five or six times beat me under my back and legs. They could not beat me in the upper part of back because I had my bag on. And after, they pushed me into the river. After, I run away, actually it was hard night, hard night.” (BVMN, n.d., p.61).

The person giving this statement already tried to claim asylum in the EU four time, but was each time violently pushed back from Croatia to Bosnia. On one occasion they paid the smuggler

²¹ Cities in Bosnia in a very close proximity to Croatian border, two major entry points to Croatia in terms of migrant routes

€2300 to get them from Bosnia to Italy, but were caught and pushed back, with their money lost. (ibid, p.61).

“When they were deporting me, they were beating me very hard. They were beating also other people. Two men beating us, they also threw us to river, and kept pushing us to the river. They were behaving like animals.” (BVMN, n.d., p.54).

Spotted in the forest close to Slivnjak, Croatia, 8 people aged 20-30 from Afghanistan were in a same way deported in a van, and then beaten close to the border with Bosnia where they were forced to go. During this pushback, their personal belongings were either stolen or destructed by the police officers (BVMN, n.d., p.54).

“And this is the problem with the Croatian police because this is not only one time, many time they act like this and with other people, not only with me. People have broken hands, fingers, legs.” (ibid, p.54).

Smaller group of 3 people from Morocco and Algeria aged 30-40 had a similar experience with being pushed back to Bosnia. (BVMN, n.d., p.50)

“They [the policemen] put us into a big car and drove it very fast, so that we were falling from one side to another. They turned on the heater really high, and after switched on air conditioning very high, so we had problems to breath and felt sick. They stopped the car in some abandoned place. We were sitting and waiting inside the car for a very long time. I suppose that the policemen were waiting until it got very dark outside, so that no one could see how they were attacking us. When it could be around four in the morning [on the 3rd October], they told us to get out of the car. It was really dark: the lights of the police car were also switched off. We started feeling the hits by batons from all sites and could hear the screams of the police officers attacking us. I think all of them, 10 officers, were beating us and shouting at us to go back to Bosnia. I did even not know from where the hits were coming from, we could just feel them, everywhere, on our back, legs, head, face. This is racism.” (BVMN, n.d., p.51).

A person from a group of 6 from Algeria, aged 25-34, describes their gruesome experience of group first being beaten, then taken into a van, driven close to the border, forced to undress, their

clothes burned, and their possessions destroyed and stolen, made to walk back to Bosnia, explaining it was *"Everything as usual."* (BVMN, n.d., p. 488).

"Then you have to walk back to Velika Kladuša and you have nothing. Really nothing. No phone, no money, no food, no clothes. They take everything from you. Not only your things but also your mental and your physical health." (ibid, p.488)

Reckless driving intentioned to make people sick, beating with batons, forcing to undress, theft and destruction of personal belongings is described by a group of 14 people, aged 32-52 from Afghanistan, Iran, Morocco, and Algeria, as they were taken near Hrvatska Kostajnica, Croatia and pushed back to Bosnia (BVMN, n.d., p.422-6).

"...sometimes police search around with light because they are afraid someone is filming or taking photos of them because they are doing an aggression" (BVMN, n.d., p.425).

Indeed, these cases have a striking resemblance to a video that brought Croatian media and public on their feet in October 2021, as they describe a very similar situation. The above-described cases happened in various areas in Croatia, and thus included various police officers who all did the same line of action, which indicates it is a common procedure, and not an isolated act of three officers that had been suspended after the video reached the media.

The laid-out examples, speak in the favour of Bužinkić and Avon's (2020, p.157) argument that people on the move are repeatedly criminalised and dehumanised through physical police violence and denied the access to international protection. The authors further argued that illegality of pushbacks needs to be discussed and reframed (ibid). Indeed, as practice of violence against people on the move rarely undergoes criminalisation (ibid, p.157), which can be observed from the case that brought attention to Croatian media and public in 2021 which was framed as an *'isolated incident'* resulting only in suspension of three officers upon investigation.

[00:30:25] *"So the problem is the pushbacks. Like that is the main problem. And then the violence that comes from the pushbacks and the violence is obviously extremely severe. I mean, I saw people in absolutely horrible conditions."* [00:30:41][15.3]– Stacey

[00:31:23] *"With the border violence comes many other problems. I mean, psychological trauma is is really severe. People are suicidal. They will tell you all the time that they*

want to kill themselves and they mean it. People are just depressed in general. Um, hopeless.” [00:31:44][21.6] – Stacey

Volunteering for *No Name Kitchen* in border region in Bosnia has allowed Stacey to see the wounds of people on the move firsthand, and to hear the wounds on the inside that cannot be visible with the naked eye. She described that the volunteering ensured daily encounters with people on the move, many of which she met often, due to their inability to move further to Croatia and Stacey’s months-long involvement in the area.

Isakjee et al. (2020, p.1768), paradoxically call this type of direct physical violence, common on Croatian borders, *liberal violence*, but go on to explain that this type of violence includes structural obscuring of violence, which sustains the contradiction that the violence has for the liberal values of human rights, dignity, and asylum. The European liberal thought, they further explain, has showed deep inconsistencies in applying liberal rights to racialised groups, which finds its roots in European colonialism (ibid, p.1768). In present, post-colonial times, this inconsistency is practised through violence directed at migrants as racialised outsiders (ibid, p.1769).

The obscurity of the practised violence, along with practices of outsourcing and responsibility avoidance make it questionable whether individual liability can be held and whether international criminal court is fitting for such an action (Kalpouzos, 2020). However, as priorly mentioned and explained in Chapter 2, prohibition of torture is, in fact, an absolute prohibition (Costello and Foster, 2015), one that is non-derogable and absolutely prohibited, but still happens, with almost no one being held accountable for it. Kalpouzos and Mann (2015) argue that immigration detention developed by European states in cooperation with Frontex satisfies the legal definition of a crime against humanity. Nevertheless, they state that the International Criminal Court (henceforth ICC) is predominantly focused on ‘spectacular’ violence committed by tyrants and rebels, and not ‘banal’ violence, seemingly a by-product of global inequality, enshrined in European migration policy (ibid).

Following the same logic as Kalpouzos and Mann (2015) argued for the immigration detention, under the *Rome Statute of the International Criminal Court*, Article 7(1) on *Crimes against humanity*, following parts can be applied to violence against migrants:

“(d) Deportation or forcible transfer of population;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” (International Criminal Court, 1998).

Articles 7(1)(d) and 7(1)(k) are relatively straightforward and it is understandable how these articles can be understood in cases of violence that is happening in an around Croatian borders. The above examples of violence showed a practice of deportation and physical violence, often accompanied with theft and destruction of personal belongings as well as a force to undress, as dehumanising additions to an already degrading practice. However, article 7(1)(h) can cause confusion on how it applies to these cases. Isakjee et al. (2020) offer an explanation with their argument that race, and racism have remained absent in much migration research although *“structural forces of race, racism and racialisation shape border governance and border imperialism. Without an analysis that considers race centrally, the various technologies of violence may appear to be an almost unintentional, spontaneous, unpredictable result of shifts in the modes of liberal governance; an innocent side effect of advanced liberal bureaucracies, governmentalities, and technologies of bordering. The racial violence of the border outlined in this paper is no eccentricity or mistake, it is the foundation upon which border regimes are built”* (Isakjee et al., 2020, p.1769-70).

The situation is paradoxical in more than one way. As per the 1951 Refugee Convention, people outside of their country who have a *“well-founded fear of being persecuted for reasons of race, religion, nationality...”* (Article 1(1)). In other words, refugees escape their countries out of fear of persecution, only to find themselves persecuted on the grounds on their race, as they are trying to apply for international protection. Or put even more simply, they often run away from violence straight into violence. Needless to mention, without allowing people to apply for asylum and processing their application, one cannot surely claim that all people on the move

would fulfil the conditions to be granted international protection, nor is the discussion on the narrowness of the definition well-fitted here, but without allowing for the application for international protection one can also claim that all the people on the move are refugees. Similarly, Croatian police and border control seemingly decides all the people on the move are illegal migrants without grounds for international protection, thus not allowing anyone to apply for asylum. Additionally, it is paradoxical that people on the move are criminalised to such an extensive exercise of violence, when that violence is the one that should be criminalised.

As people on the move find no way to cross the Croatian border, to come up with new, dangerous ways to reach the international protection that should be granted to them in any case. Stacey describes these types of ‘game’, as well as a new one, that emerged, to her knowledge, around the time she was volunteering in Bosnia, in 2021, which included people taking different substances to appear sick and not be pushed back.

[00:45:01] *“I began to hear really disturbing reports of people deliberately overdosing on opioids or other types of substances with the hope that they would appear very sick, and the police wouldn’t push them back. People were ingesting the inside of a cigarette which would make them throw up. People were drinking shampoo also makes them throw up. So and I interviewed a lot of people about that and came to understand that this was really something a lot of people were doing. And some people had success with it. They were throwing up in front of the police and the police took them to a hospital in Zagreb and they did not push them back. So, more people began to hear these stories and then they were like, ‘okay, I can try this too’ And again, this is like what the border does is it forces people to make these decisions and to do truly insane things that they would not do otherwise.”* [00:46:20][8.3] – Stacey

The report from the Croatian NGOs *Are you Syrious* and *Welcome! Initiative* observed a similar pattern in pushbacks to Serbia as well. Precisely, they conclude that all the testimonies have the same line of action during the pushbacks: theft and destruction of personal property, insulting, physical violence, and inability to apply for international protection (Are you Syrious and Welcome! Initiative, 2017). During their ethnographic research, they talked to several migrants

who were either spotted somewhere in Croatia, or there went to the police stations themselves to ask for asylum but were deported to Serbia (ibid).

The next report on pushbacks finds the increase in the migrants' expulsions, as well as official police orders from 2016 which "*very probably ordered systemic illegal treatment by the police*" (Are you Syrious et al., 2018, p.2). 2018 has seen the institutions reacting to these breaches of human rights and international conventions, so the Ombudsman reported to the State Attorney of Republic of Croatia²² which held a meeting 'Abridgment of international protection in Republic of Croatia' (ibid, p.3). The official orders from the Croatian police resulted in greater number of pushbacks to Serbia from the time the order was given, in November 2016 (ibid, p.4).

The end of year 2017, November 21, 2017, to be precise, is the day of the greatest tragedy of the violence on the Croatian borders, or at least the greatest that ever find its way to media, public, and eventually European Court of Human Rights (henceforth ECHR). On that day, an Afghan mother with six children walked from Šid, Serbia to Croatia (ibid, p.13). Family was relieved to have spotted the Croatian officers, as they were ready to ask for international protection.

However, Croatian police officers denied them the right and have instead driven them near to the border with Serbia and ordered them to cross the border on foot. Before the border there was a railway on which, upon crossing, the train hit a little girl and killed her. The mother was deported to Serbia along with other five children while Madina, little girl hit by the train, was transported to the hospital in the ambulance (ibid, p.13). Croatian police later denied that the family was in Croatian territory in the first place while the video footage mysteriously disappeared. Family sued the unknown perpetrator for manslaughter and the case eventually went to the ECHR which in November 2021 ruled that Croatia is guilty and must pay the family €40,000 (Tondo, 2021).

Following report that came out in 2019 reported no positive changes, perhaps only worsening of the situation (Are you Syrious et al., 2019). Croatian NGOs are reporting on the statistic of the Croatian Ministry of Interior that counted 8207 people who have crossed Croatian borders illegally (ibid, p.2). Out of that number, 1438 has been returned to the third countries, 1068 applied for asylum, and 536 was detained, but there is no information for more than 5000 people. The NGOs suspect they have been secretly, illegally pushed back (ibid). Additionally, UNHCR

²² Državno Odvjetništvo Republike Hrvatske (DORH)

Serbia reported that 10432 people have been pushed back from Croatia to Serbia in 2018 (ibid, p.3). I priorly mentioned the inexistence of the statistics on illegal pushbacks, as it is simply inaccurate. It can be used to show a trend, but as it is based on reports and testimonies and as there are various actors on the field, international such as UNHCR and smaller, independent NGOs, such as BVMN members, it is hard to keep a systemic track. Additionally, as the areas of Croatia, Bosnia, and Serbia, are still not de-mined from the war in the nineties, at least 20 people have lost their lives trying to cross Croatian borders, but the number might be much greater (ibid, p.5). This is to show that although the tragic death of Madina from the year before managed to get attention and shed more light on the dangers of the violent illegal pushbacks, so many more have lost their lives.

The final report, written in the context of Covid-19 pandemic argues that Croatian police and the political leadership used the media and public occupation with the pandemic as an opportunity for torture, inhumane and degrading treatment on the borders, as well as inside the territory of Croatia (Centre for Peace Studies and Welcome! Initiative, 2021, p.4). The years of 2020 and 2021, have showed evermore proof of systemic violent, illegal pushbacks. Croatian NGOs are reporting a surge in violence that has become even more dehumanising, including tying people to the trees, spreading ketchup or sugar on their wounds, kicking their head with police car doors, as well as one case of rape (ibid, p.5). The report describes the officers in black clothes, with balaclavas on their heads, probably belonging to the special unit '*Koridor*' (engl. The Corridor), founded in 2017, and who now operate without writing official reports (Klancir, 2019). The special secret unit, paradoxically named '*the Corridor*', unlike the Corridor when it was operating, does not provide a transit through Croatia to the western countries of destination in the EU, but rather a 'transport' back to Serbia or Bosnia, is a great example of *governmentality of unease* as introduced by Bigo (2002) and described in Chapter 3. The special police unit surrounded with the vail of secret partly fits the idea of governmentality of unease, and partly is perhaps only secretive as it is conducting operations that, although come as orders from the Croatian authorities and police are, in fact, illegal.

Regardless of thousands of accusations and numerous reported crimes, not a single criminal charge has been made, report warns (Centre for Peace Studies and Welcome! Initiative, 2021, p.7). The report concluded there has been at least 16,400 illegal pushbacks in 2020 and 9,114 in

2021, although the number might be much higher (ibid, p.29). Additionally, Council of Europe anti-torture Committee published a report after its visit to Croatia which clearly shows that Croatia tortures and treats inhumanely thousands of refugees and migrants (Council of Europe, 2021).

The physical violence that migrants experience on the borders and inside the territory of Croatia not only relates to the criminalisation of migration but is the direct indicator of the criminalisation. The chapter shows the pattern in the violent expulsions and leaves no room for speculations that the violence and expulsions might be sporadic, isolated cases. On the contrary, the pushback is an act that can, in Croatian terms, be easily defined, as it does contain prevention of access to international protection, physical and mental violence conducted by masked, unidentifiable officers, along with various attempts of deterrence, including theft and destruction of personal property, reckless driving and confinement in small spaces and extreme heat. As argued by numerous reports and showed through this analytical chapter, the torture that often accompanies illegal expulsions of people on the move and the inaccessibility of international protection, is not only a breach of numerous national and international legislations and conventions, but a direct criminalisation, as the asylum seekers are not given the right to ‘seek’ for an asylum, but are treated as illegal immigrants, without a possibility to prove otherwise. Thus, I leave the statement of the volunteer of *No Name Kitchen*, who, during her time in Bosnia, conducted a study that included around 2,000 people on the move. The former *No Name Kitchen* volunteer has not yet published the study, but once it is published, it will show:

[00:48:04] *“Something like 93% of people that they had said that they had experienced violence from the Croatian police. Most people said that Croatia was the most violent country or had the most violent police.”* [00:48:21][17.4]- Stacey

5.2. Humanity as a Crime

Describing the interview with Veronika, in Chapter 2, I failed to mention the name of the organisation she is working for. Due to Bosnian regulations that do not allow systemic, permanent volunteer work in the country without a working permit, Veronika asked me not to mention the name of the organisation. She explained to me how their work in Bosnia is sort of

‘under radar’. The organisation is registered in an EU country, where it has its headquarters while part of the staff is permanently in Bosnia. However, that staff changes, and often also includes volunteers, making it difficult to track, but it would be even more difficult for all of them to obtain work permits in this, non-EU country. This is not exactly an example of criminalisation of solidarity, but as this analysis chapter will further display, humanitarian work and acts of solidarity are often directly or indirectly obstructed, in Croatia, and the surrounding countries, with one, direct case of criminalisation of solidarity in Croatia.

[00:45:36] *“Well, I mean, in generally you are not allowed to take people on the move in your car because it always can be a case of aiding, supporting people on their illegal migration. And there is also, the systematic, voluntary work in Bosnia is also like forbidden or criminalized because the point of view of the state and the police is that voluntary work means work. For that, you would need a working visa. And, this is not so easy to get. Systematic, voluntary work is something that they criminalize this way.”*

[00:46:59][83.2] – Veronika

In their report from 2018, Croatian NGOs supporting people on the move state that their volunteers are often experiencing pressure from the police. Usually, this happens in the form of excessively long interrogation process and keeping in the police station when volunteers accompany asylum seekers to the police station to ask for international protection, in order to ensure that an application will be given to them (Are you Syrious et al., 2018). In one case, AYS volunteer spent 8 hours in police station in Zagreb and was threatened with criminal charges, although she only accompanied asylum seekers to the police station once they were already in Zagreb (ibid, p.10). Similarly, a police officer asked for a phone number of a CPS volunteer who accompanied a group of asylum seekers to police stations claiming that *“police know who they are dealing with, and perhaps someone from CPS is a human smuggler”* (ibid, p.10). Even the Croatian prime minister publicly stated, *“some non-governmental organisation for human rights protection, which have a goal of ensuring the transfer of the largest possible number of illegal migrants in European Union member states are putting pressure on Croatian police because it is conducting prescribed measures which are in its jurisdiction”* (Hina, 2018).

The lawyer of the family Hussiny, who pressed criminal charges against unknown perpetrator for manslaughter, when their 6-year-old daughter Madina died after being hit by a train upon illegal expulsion from Croatia, stated that her communication with her clients was obstructed by the police, who brought the signature of the mother giving power to the attorney in question (G.D., 2019). The lawyer claims police came to her office “*trying to scare her*” and that she “*never experienced something like that in [her] career*” (ibid).

Although these cases act as a deterrence, more than an actual criminalisation, they obstruct the work of the organisations that provide support and primarily exist because the state has not been compliant with laws and regulations and thus breaches human rights. The only case of actual criminalisation of solidarity in Croatia is connected to the Croatia’s most ‘famous’ pushback, that of Madina Hussiny and her family. Four months after the tragic death of the girl, the Hussiny family has entered Croatia in yet another attempt for asking for international protection (Are you Syrious, 2018). The family was not alone, there was in total 11 children and minors in a field close to Strošinci village. They contacted *Are you Syrious* which contacted their volunteer, Dragan Umičević, who was the closest to the location to go to police and inform them there are minors on Croatian territory wishing to apply for international protection (ibid). Later on, Dragan faced charges for aiding and abetting illegal border crossing. The Croatian NGO interpreted this as a political pressure, stating:

“This grotesque accusation can only be interpreted as a tool of political pressure on AYS, who were the first organisation to bring to light the information on the death of little Madina, and has continuously been speaking out on the issue of the illegal treatment of refugees on the borders of Croatia, enacted by the Croatian police, which is also the context in which our government is being talked about in the European Parliament lately. (...) Additionally, it’s interesting that in the indictment motion, the MOI, among other things, asked for “the prohibition of work in Croatia for the legal entity.” Taking into consideration the fact that Dragan is not a legal entity, this could only mean the prohibition of work for AYS.” (Are you Syrious, 2018).

Dragan Umičević, who is a retired Croatian Defender²³, was eventually fined with 60,000 HRK (around €8000), which was covered with the donations of citizens, after the news reached the media. *Are you Syrious* stated again that this was a political attack to them as an organisation, bringing to public's attention other forms of political deterrence, such as cancellation of the asylum for an Iraqi refugee in Croatia, who was a partner of one of the NGO's activist (Lukić, 2021). The NGO claims that the Iraqi refugee was called by the Croatian Security and Intelligence Agency asking him to alert the agency of other migrants entering Croatia, which the Iraqi refused, and consequently, lost asylum in Croatia (ibid). Although these claims are very difficult to factually check, the pressure of the government towards *Are you Syrious* reached international reports, such one of Amnesty International, as well as the Study of Council of Europe in 2019, and 37 MEPs wrote a letter to the Croatian prime minister, to state their concern for the pressures of the government towards *Are you Syrious* (ibid).

Criminalisation of solidarity in Croatia, and region, often happens as an indirect deterrence and obstruction of humanitarian work, and human rights activism, particularly directed towards the two organisations that act as the biggest activists in the field of migration, particularly focusing on bringing attention to the issue of border violence and illegal pushbacks from Croatia. As the prior chapter has shown that the Croatian government and police do not use *speech act* as an act of securitisation, but instead negates and denies the existence of a pattern and systemic pushbacks from Croatia, it is not unusual that the same Ministry of Interior and the government is doing all in its power to obstruct the work of organisations bringing proof to what they are denying. In 2018, this has had its formal continuation, when AYS volunteer was charged and fined for aiding and abetting illegal border crossing in the case of Hussiny family, a case that has already put the Ministry of Interior in the spotlight due to the tragic death of little Madina. Given that Dragan Umičević was not sentenced to a jail time, and the fine, although big for his personal income, is not an incredibly large sum, my conclusion is that this is a form of another deterrence method and a stricter warning towards the organisations and humanitarians aiding people on the move, which, hopefully, will still not stop them. Nevertheless, this formal criminalisation of solidarity, as well as all the method of deterrence influence people on the move and contribute to their criminalisation. Through criminalisation of solidarity, the position of a person on the move,

²³ A person who has fought in Yugoslav War, in Croatia known as Croatian Homeland War in 1990s.

as a criminalised subject, is even more solidified, with their status and actions being so criminalised, that even aiding them is criminalised. Although there is no proof of it, an assumption can be made that this deters regular citizens from aiding migrants on the move, and that it perhaps also deters a certain number of potential activists to fight against human rights violations.

5.3. Taking a Wider Frame

Understanding migration, its patterns and routes, cannot be done taking a single country in the focus. It would be far too nation-centric to overemphasise the role and actions of Croatia on the migration towards the EU. After all, Croatia is just a part of a puzzle in the migration towards the EU, the puzzle that includes the countries of origin of the people on the move, as well as all the countries on their way to the future they want to have. The fact that Croatia plays a large role in hardening that path, and making the future unattainable, does not come from Croatia alone. Similarly to how the analysis in the previous chapters has shown, migration is a highly politicised issue, and its politicisation in Croatia is not an exception, but rather the confirmation of that rule. This chapter presents the situation in surrounding countries and puts the Balkan route in the context of the EU, arguing that, regardless of the monstrosities and the extreme violations of human rights Croatia is conducting with violent pushbacks, it is also doing so to fulfil a greater role in the migration towards the EU.

The European Union has 27 member states, each with clear borders, ensuring, thus, that the borders of the EU are equally clear. It is vastly unclear to many people how a country like Mali in Africa, or Azerbaijan on the intersection of Europe and Asia, could have any connections to the borders of the EU, and yet, they do. The aforementioned countries are just two examples of countries with which the EU has an externalisation agreement with. EU has been developing policies to externalise its borders, from 1992, and more aggressively since 2005 (Akkerman, 2018). The collaboration with third countries entails training of police and border officials in the third countries, donation of surveillance and monitoring equipment, and, in most cases, third countries' acceptance of deported persons (ibid). Akkerman warns that most of the countries that the EU has agreements for border externalisation have authoritarian government, poor human development indicators and are known for human rights abuses (2018). This paper does not

focus on any authoritarian country, but instead focuses on Croatia's third country neighbours, Serbia and Bosnia, as countries that are faced with the majority of migrants who are pushed back from Croatia. Both countries wishing to join the EU, Serbia and Bosnia take migration as an opportunity for development.

5.3.1. Serbia

[00:21:32] *"Serbia is the last frontier in that sense to the EU and some external European borders. So, in that sense its position and importance is very high, regarding irregular migration, also serve as a good partner in the eyes of the EU to work on migration management of challenges. Especially because of the constitutional capacity, more or less, it functions as a state compared to maybe Macedonia or Kosovo or others. (...) And Serbia is also trying to be a partner, a reliable partner to the EU. In that sense, their interests are in compliance and Serbia is fulfilling what's being asked, essentially, I would say. But again, this one side of the coin. Other side is that actually Serbia is afraid of keeping people here. Serbia is trying to practice to send a message to people that they should not stay here."* [00:22:51][12.9] – Radoš

As it can be seen from Radoš' explanation, as a third country wishing to join the EU, Serbia is in an unfavorable position. From one side, the country wishes to progress, maintain and improve its successful strategic partnership with the EU, but at the same time does not have the capacity or wish to house all the migrants that EU is pushing out of its borders.

[00:44:11] *"This year in the first three months. Just. One person was granted asylum, out of these 688 people expressing intention. So, it shows that the system is inefficient."*
[00:44:35][23.1] – Radoš

Radoš has given me statistics for the last couple of years which show this trend of extremely low numbers of granted international protection in Serbia, although the wish does exist. He explained that the system is very difficult, stating that in even asylum applications are very complex. Even then, as it can be observed from the statistics he gave me, chances of success are extremely low.

[00:45:23] *“So, hardly anyone. Just some have strength, are lucky, encouraged to submit a request, either in support of the lawyer or themselves. Themselves, almost impossible. So, with the lawyer.”* [00:45:36][13.2] – Radoš

From building a fence on the south with North Macedonia, through complicated, lengthy, and inefficient process of international protection, to moving people from migrant camps on the north to the ones on the south, Serbia is going to extreme measures to prevent people from staying in their country, Radoš explained.

[00:48:17] *“Now it's clear from the Serbian example that actually EU has a policy of containment, migration containment, actually trying to slow down migration pressures for European Union for now, across Balkans. Or in the next stage, it will eventually be total lockdown, attempt to totally seal up the borders and to ensure that only those who deserve asylum protection, refugee international protection, would reach EU.”*

[00:48:45][27.8] – Radoš

Portraying his vision of the future, lawyer with the vast experience in asylum protection in Serbia, envisions that the EU's externalisation will reach similar one to that of Australia, in which the asylum process is held outside of the borders of a country (or in this case a union) and only those granted asylum are allowed to enter. Radoš' vision is not far from the reality. Indeed, there were suggestions to establish asylum processing centres in Libya and refugees to be resettled on quota system (Leonard and Kaunert, 2016, as cited in Nakache and Losier, 2017). However, the process is deemed to be a breach of Refugee Convention, especially provisions of *non-refoulement* which is why it has not been implemented by the EU (Nakache and Losier, 2017). It is of great importance to notice, though, that the EU is already breaching the provisions of *non-refoulement* through violent expulsions from Croatia, Hungary, Italy, Greece, as well as with the EU-Turkey deal, or the controversial deal with Libya. Perhaps this would make the breach more obvious, and official, but looking at EU-Turkey deal, it does not seem to me as if the EU is very concerned with it. Moreover, in geographical sense, Australia and the EU are largely different in terms of their accessibility. The Mediterranean kills thousands of people trying to reach EU's shore, and death is a possibility with land migrations as well, but access to EU is still easier than it is to Australia. However, an important lesson is that migration is

impossible to stop. It can be slowed down, with immense efforts, but no fence can be high enough to stop people. Contrary to my belief, Hungarian four meters high fence does not fully prevent migrants from entering. Barbed wire and steel column fence, cameras, 3,000 soldiers, heat sensors and loudspeakers in several languages warning against illegal entry (Rigby and Crisp, n.d.) are all not enough to keep the migrants away. Because Hungary is in the Schengen zone, people on the move are still drawn to enter through Hungary as they believe this will ensure their passing through the EU will be easier, Radoš explained to me.

[00:35:03] *“Fences are not stopping people but raising the cost of smuggling. So eventually everyone will manage to cross, either below or up, over the fence, but certainly with support from smugglers, with a lot of money spent, but also lot of lives lost. Physical borders, not even those that are so strongly defended, like Hungarian border, are not unbridgeable chance for people that lost everything, for people that actually lost any other chance.”* [00:35:37][33.9] – Radoš

Despite the difficulties they are experiencing, people are still trying to cross the borders and staying close to them to be able to attempt ‘the Game’. With 19 camps in Serbia, accommodation for the 5000-6000 people on the move is still under capacitated, as many need to live outside of the camps, Radoš explained. The camps are financed by the EU, as is everything else in the asylum system of Serbia.

[00:28:56] *“The whole system of asylum and migration is financed by the EU. So, predominantly. So, it means that actually starting with the health care, accommodation, nutrition, education, to some extent access to education, but also police, everything is financed by the European Union. So whole asylum reception system is strongly predominantly financed by the EU.”* [00:29:27][30.3] – Radoš

However, as it became clear from our conversation, the asylum system is not working systematically in Serbia, and the country is reluctant to ensure international protection to refugees, perhaps implying that the system should be referred to as ‘migration management system’, as it provides only a temporary solution. No investments seem to be made to integrate the people or even ensure international protection. Similar lack of integration was observed all

over the EU, as Mestheneos and Ioannidi (2002) found that one of the most fundamental barriers comes from racism and ignorance, experienced at personal, as well as institutional level at 15 EU member states. Nevertheless, as this paper shows, the problem starts much sooner than at the integration level, as people are not allowed to enter the country at the first place, with borders of the EU being pushed out of the EU. Then there is no need to discuss integration, as the majority does not even get an opportunity to apply for international protection, and the problem is pushed out of the borders of the EU. The capacity for integration and even international protection is not strengthened in the third countries dealing with the migration management of the EU, and the situation is not fairly managed inside the EU either. Thus, a case for a common European refugee policy, argued by the incompatibility of refugee crisis management in the hands of national governments inside an integrated economic area with abolished internal borders (Bordignon and Mariconi, 2017, p.1) does exist. The authors argue that inexistence of the common European refugee policy is causing inequity and inefficiency, as well as distortions of the labour market and wishes for refugees to seek asylum in very specific countries (ibid). Indeed, not all EU countries are aspired destination for refugees, but until common refugee policy is set, nothing will change. Moreover, an even bigger problem is the refugee relocation programme, with the inefficient Dublin Regulation, making the countries of first entry under primary burden of refugee protection (ibid).

The EU's inability, or better yet, unwillingness to systematically and fairly manage the refugee crisis, the one which started in 2015 and the end of which is nowhere in sight, has left Serbia with consequences as well. Although it initially applied a humanitarian approach, with the change of political discourse in connection with the EU accession, it shifted more towards securitisation, Bobić and Šantić (2020) argue. Mitrović (2014, p.1116-7) argued similar a year before the start of the refugee crisis; Serbia had a humanitarian approach before the start of the crisis, but the geopolitical situation can have a very strong influence. However, as the author states, the context was much different before, as well.

"The dominant perspective was humanitarian and nationalistic: the refugees were not "real" foreigners, they spoke the same language, were born in the same country, had similar behavioural patterns, even had relatives in FRY, they also had almost the same

legal rights as the FRY citizens and since 1997 could obtain citizenship very easily”
(Mitrović, 2014, p.1117)

The perspective of humanitarian approach towards refugees that are not treated much differently than the citizens of a country can actually be visible throughout Europe at the moment, in context of the war between Russia and Ukraine. Whether it is a proof that countries are reluctant towards different cultures and races, while eager to show prodigious generosity towards those perceived similar to their citizens, or European countries are simply afraid of the widening of the war, is unknown. However, what is known is that the geopolitical situation is strong, ensuring that pressure on the countries to react similarly is large, whether it is in humanitarian approach like in situation towards Ukrainian refugees, or securitising, as it is towards all the rest. Serbia, Croatia, nor almost any country cannot act independently on the matter, but must follow the majority, especially if their future development is dependent on the EU and its other member states.

[01:00:56] *“So the idea is that each of the countries has its own role in preventing or stopping or postponing migration. And Croatia plays this card parts of violence, pushing people back. But on the other side, it's, of course, more or less tolerated by the countries in surrounding, Serbia, Bosnia and especially, of course, Macedonia as well. And also all others are informed of this idea undertaking chained refoulement, chained pushbacks (...) So you see that there is some kind of coordination depending on the circumstances and depending how much straight, how much intensive, but coordination exists.”*

[01:01:54][57.8] – Radoš

Referring to the 17-point plan that the European leaders on the Balkan route agreed to in 2015, Radoš explained that it is visible that the countries are still playing its role in the plan, which is primarily focused on the migration management, with for example:

“11. Stepping up national and coordinated efforts to return migrants not in need of international protection, working with Frontex;” (European Commission, 2015, as cited in European Western Balkans, 2015).

In that 17-point plan, great emphasis is put on the EU-Turkey deal, which Radoš claims is also crucial to slow down migration on the Aegean sea, with the policies on the Balkan route being

strengthened simultaneously with the EU-Turkey deal, which is just part of the puzzle of slowing down migration.

[01:05:28] *“EU-Turkey deal was signed to buy time to build its capacities and its system of fences and borders and controls and pushbacks along the Balkan route. They're buying time with this EU-Turkey deal in order to be prepared for further migration challenges that will come. But essentially, I would not say that your EU-Turkey deal stopped the migration. It, didn't. Obviously, migration is quite active.”* [01:05:56][27.6] - Radoš

5.3.2. Bosnia

Contrary to what is happening in Serbia, camps in Bosnia are not full, with hundreds of people deciding to live outside of the official camps. The problem lies in the distance of the camp from the border, restriction of movement under pandemic measures, and overall inadequacy of the camp.

[00:11:54] *“They want to try to game as soon and as often as possible. And when they live in the official camps, they are far away from the from the border. So, it's not possible to try it as often as if they would live in the in the wild squats in the forests near the border, and also cannot be so autonomous if they are in the camps, because most of the times they cannot cook for themselves. So, they have to eat food they don't like, and they have to follow the timetables of the camps. They are not allowed to go and leave whenever they want. They have to register their pandemic times. They have always thrown the ten days quarantine, so they are ten days off and the possibility to try the game.”* [00:12:53][59.3] – Veronika

[00:18:28] *“No Name Kitchen typically only supports people who live outside camps, which is the vast majority of people. I mean, at the time that I was there, the vast majority of people lived outside the camp.”* [00:18:43][15.1] - Stacey

[00:21:33] *“It's under capacity because it's terrible. There aren't enough toilets or enough showers. It's very dirty. People sleep on the floor. People don't get blankets. They*

get, you know, no pillow or a very old pillow. You know, the food is not adequate (...)
They restrict, obviously, your freedom of movement in the camp. And pretty much no one
who is traveling through Bosnia wants to stay in Bosnia. No one actually wants to claim
asylum in Bosnia. Bosnia does not give asylum anyway.” [00:22:31][40.8] – Stacey

Moreover, not staying in the camp might be an act of rebellion as well, as Stacey describes the resentment towards the International Organisation for Migration (henceforth IOM), which runs the camps. To her understanding, the IOM also has a poor understanding of where people are and with their outreach team, only visits few larger squats, neglecting the others. What is more, their presence and assistance is not something people can count on, as the IOM is apparently unreliable.

[00:39:35] *“However, the majority of people hate IOM because they know that IOM runs the camp. They know that IOM is sort of the authority. They see IOM as complicit with what the Croatian police is doing. So, there's a lot of distrust of IOM.” [00:40:37][62.2]*
– Stacey

Veronika also noted that the IOM often notifies Bosnian police where the squats are, and the police, although not nearly as violent as Croatian police, attempts to evict people from the squats and make them live in camps.

[00:13:58] *Well, their task is the migration management and what they mainly do, or at least this is my point up here, is to give consultations for people on the move how they can return to their home countries. And they visit the squads and count the people, and then they tell the police how many people live there. So, the Bosnian police goes there and directs the squats and brings the people to the camp. [00:14:51][53.1] - Veronika*

The situation described in the camps, with its poor conditions and imposed restrictions brings a question of humanity when delivering humanitarian work with refugees. According to Harrell-Bond (2002), humanitarian assistance is inhumanely delivered to refugees, and this will continue as long as refugees do not have access to effective legal remedies. In the description of the camp, Harrell-Bond (2002) describes how humanitarian workers have the power to distribute the gift,

based on their portrayal of good or bad refugees. Thankless or dangerous, ‘bad’ refugees are stripped out of particular rights (ibid).

[00:20:21] *“And you hear stories from people that like depending on their nationality, that they are not allowed in the camp. I mean, this is sort of like unverified, but you hear that a lot from like, for example, from people from North Africa who are, I would say, discriminated against by both Bosnian and Croatian authorities because they are seen as not real refugees, you know, because and also because they have, let's say, a bad reputation as being thieves or like bad boys, sort of. I mean, this is just like what people told me. So, they say like, ‘oh, yeah, they don't let me into the camp because I'm Moroccan’. Whereas I know personally of like Syrian guys who just went up to the camp and said that they were from Syria and they were allowed in.”* [00:21:18][34.5] – Stacey

Harrell-Bond (2002) warns that the image of a ‘good’ refugee is also hurtful, as it portrays refugees as malleable, in need of assistance and without incentive to act independently. Perhaps the situation with the camps in Bosnia are slightly different, as it is a camp for people on the move, not even applying for international protection in Bosnia. As such, perhaps the perception is not a dichotomy between ‘good’ and ‘bad’, but a perception between a ‘real refugee’ and an ‘economic migrant’, an option based on personal thoughts of humanitarian workers, and not on official asylum applications. Humanitarian workers often lack skills needed to work in the environments of forced migration, but the donors are more interested in donating money for the refugees, than for the needed training for the staff, Harrell-Bond (2002) explains. Author’s notes on humane humanitarianism, although applicable, focuses on refugees, and the problem described in this paper is in people’s inability to acquire or even apply to be recognised as refugees. Thus, similarly to the problem of integration, a huge problem is preventing the tackling of these major issues, and that is the lack of international protection.

[00:26:45] *“There are camps for people on the move, but they don't want to go there. And if there would not be these pushbacks, there would not even be a reason to go into the camps. Because nobody wants to have Bosnia as its final destination. And so, they just want to pass through Bosnia and pass into the European Union. So actually, there's no need for camps. But because the European Union counts on the pushbacks, or they tell*

the police to do so, there is then the need for the camp. You know, there is the EU who wants Croatia to protect the border. And so, to do the pushbacks. So, that's why they need the camps, and they finance the camps. And also, the EU finances the Bosnian police.”

[00:28:19][34.5] – Veronika

As Veronika described the situation so bluntly, I have also found myself realising how obvious this situation is, and how there is no need for camps in Bosnia, nor Serbia. This brings Radoš' idea of the next step of EU's externalisation to be pushed outside of the borders of the EU even more relevant, as this portrays how that step of externalisation is already happening, it is perhaps only in its informal form.

The ping-pong game that the EU is playing with human lives, constantly shifting responsibility as further away as possible, is not only a breach of human rights and international conventions, but is in its whole, a clear example of criminalisation of migration. As their entry and seeking of international protection is made harder and pushed outside of the EU, refugees are not given the right to access international protection, being criminalised instead of protected.

6. CONCLUSION

Legislative, political, media, and public discourse to forcibly displaced migrants have largely changed to depict such individuals a criminal, dangerous and deviant (Banks, 2008). Policy response has followed with the increase of punitive crime control mechanism employed (ibid). The increased use of criminal law and its procedures on migration is known as crimmigration, and it has been used a theoretical background for this research.

Due to Croatia's specific position as a member of the EU, but not of the Schengen zone, and being surrounded by the non-EU members such as Serbia, Bosnia and Montenegro, Croatia is acting as a gatekeeper to Schengen, and thus the EU on the land borders. From the time known as the 'refugee crisis', Croatia has found itself on the path of one of the biggest migration routes towards the EU. While the Mediterranean sea route is still very relevant, with the most heavy traffic, land routes have gained bigger significance from 2015 onwards, as they presented a longer, but safer alternative. However, the EU has taken a securitising approach even long before the so-called 'refugee crisis', and perhaps the first formal sign of it was establishment of Frontex in 2004 (Neal, 2009). Thus, the reactions of the EU have been predominantly focused on migration management, in some instances on the cost of human rights and human lives.

Taking Croatia as single-case study, this paper observed violence in the course of migration in three different forms; direct physical violence, structural violence, and indirect violence in form of criminalising solidarity towards migrants. Direct physical violence has been explored with violent, illegal pushbacks, i.e., expulsions out of Croatia without the possibility to apply for international protection. The analysis of testimonies collected by the *Border Violence Monitoring Network* and reports on pushbacks made from Croatian non-governmental organisations *Centre for Peace Studies* and *Are you Syrious*, revealed that the pushbacks conducted by the Croatian authorities were systemic, and followed a similar line of actions including reckless driving close to the border (if people on the move were found further from the borders), destruction and theft of personal belongings, beating with batons by unidentifiable officers wearing balaclavas, and then forcing to go back to Serbia/Bosnia. Reports and testimonies that were used for this study are some of the numerous that exist, by smaller independent actors, as well as by big international organisations such as Amnesty International, UNHCR, and the Danish Refugee Council. Despite all the proof, Croatian authorities and politicians have not attempted to use

securitisation as a speech act, such as Wæver (1993) describes, nor they have tried to justify it with community expectations of them, as Billings (2020) suggests. They have simply, repeatedly denied the pushbacks, and have treated them as sporadic, isolated cases, instead of systemic violence ordered from the higher grounds (cf. Pavičić, 2021; Polsakpalatinus, 2021; Fenix Vijesti, 2021; Večernji.hr, 2021). The direct physical violence is the most obvious act of criminalisation of migration, as all the people on the move are considered illegal, without given an opportunity to apply for international protection and prove their right to it. All of the testimonies I have analysed gathered by the BVMN were given by the migrants who expressed their intention to apply for asylum in Croatia, yet that intention was ignored, and they were expelled out of the country as they were all illegal immigrants. Following the logic of Kalpouzos and Mann (2015), I argue that violent pushbacks could also be characterised as *crimes against humanity* under the *Rome Statute of the International Criminal Court* as they include forced deportation, persecution for a group on racial, ethnic, cultural, religious terms, and suffering caused by physical and mental violence (International Criminal Court, 1998). Not to mention that the torture that the Croatian officers are inflicting on humans is not only a breach of human rights, but prohibition of torture is a non-derogable and absolute prohibition, but fight against anti-impunity in the field of migration is still ongoing and results are nowhere in sight (Mann, 2020).

Another point of this study is that violence is not always direct and simple, and neither is criminalisation of migration. Thus, the second analytical chapter discusses criminalisation of solidarity, and increased political pressure on organisation attempting to assist people on the move and provide humanitarian assistance. In a legal sense, this is largely coordinated by the Facilitators Package which obliges for criminalisation of “*aiding of unauthorised transit, entry and residence in the EU*”, regardless of whether the *intentional assistance* included financial gain or not (Directive 2002/90/EC). Although the Facilitators Package allows for exemptions for humanitarian assistance, not many countries do formally exempt it. In the short analytical chapter on this matter, several informal acts of political pressure, rather than formal criminalisation of solidarity have been presented for the case of Croatia. *Centre for Peace Studies* and *Are you Syrious* have repeatedly stated that they, as organisations, as well as their volunteers, have been constantly pressured (Ćuća, 2019). The chapter on the criminalisation of

solidarity has been a shorter analysis, aiming to show the depth of the criminalisation of solidarity and how it can be aimed at others, and not just migrants themselves.

As an important step on the Balkan route towards the EU, Croatia is not a fully independent actor, but a piece of a puzzle of migration to the EU. As Bužinkić (2018) observes, Croatia has positioned itself solely as a transit country, without working on its reception or integration. This has functioned fairly well during the operation of the Corridor in second half of 2015 and beginning of 2016 when states organised transport of immigrants wishing to reach western Europe. However, amidst Slovenia and Austria not managing to cope with a big number of immigrants the Corridor slowly began to close, first by discriminating immigrants by nationality, and then by closing of completely in March 2016 (Santer and Wriedt, 2017). To better understand how the borders of EU, although not formally changing, are pushed away from the EU for people on the move in the process of border externalisation, the third analytical chapter zooms out of Croatia and observes it solely as a part of the EU policies. Taking a look at Serbia and Bosnia through interviews with professionals and volunteers on the field, I have analysed EU's externalisation policies and the role of Croatia's third-country neighbours. Indeed, through financial incitements and investments in the migration management system in these two countries, EU is shaping the migration and the borders. As one of my interlocutors observed, camps that exist in Serbia and Bosnia are built with the idea that Croatia is going to conduct pushbacks and that these people will be left stranded in Bosnia and Serbia where they do not want to stay. Moreover, as observed from the Serbian example, there is no intention to accept immigrants and ensure international protection in Serbia either, but there is still a wish for a portrayal as important partner to the EU due to the wish for a development and admittance to the EU (Kogovšek Šalomon, 2020). Each of these countries, EU or non-EU, along with Turkey in the EU-Turkey deal, are playing their part in slowing down the migration towards the EU, with unsuccessful attempts to stop it.

Throughout different chapters of analysis, one case has been present and put into a spotlight - the case of Madina Hussiny and her tragic death. In the discourse of crimmigration in Croatia, that case serves as a great example in several parts. To start with, it shows the depth and tragedy of crimmigration and the irremediable losses it can cause. However, it is important to note that this is not the only case of death on Croatian borders, it is simply one that managed to get attention of

the public, and the media, taking a spotlight for our empathy. Additionally, it is one of the rare cases, if not the only one, that was eventually criminalised, with Croatia lawfully condemned for its acts of illegal pushbacks and preventing the access to international protection by the International Court of Human Rights.

Another precedential ruling was made in the connection to the same case, and that is the punishment to Dragan Umičević, a volunteer of Croatian NGO *Are you Syrious* that notified the police that Hussiny family, along with others, is on Croatian territory and wishes to apply for international protection. He was fined with about €800, which is the only formal case of criminalisation of solidarity in Croatia. The reason for it perhaps even lies in the importance that case gained in the media and public and how it has shaped the discourse towards people on the move towards empathy and compassion, instead of perceived threat.

Lastly, major evidence for this case came from Serbia, as Croatian authorities claimed that thermo-cameras magically stopped working and could not be submitted as the evidence. However, as the train track on which little Madina was killed passes through both Croatia and Serbia, and the area was so close to the border, Serbian police also arrived at the scene. Their evidence, as well as the statement from the train driver was the crucial proof that the family was on the Croatian territory, contradictory to the claims of Croatian authorities.

To conclude, this study has showed numerous examples of criminalisation of migration, observing it from a legal side, from a side of policy, taking into consideration the affect of media and public discourse, all while zooming in on direct physical violence on Croatian borders, structural violence through EU's externalisation policies, and even violence that affects migrants indirectly, through criminalisation of solidarity. Although seemingly impossible to sum up, de Vries and Guild (2019), p.2156) have summed up similar through their notion of '*politics of exhaustion*', highlighting the impact and character on migration management and their accumulated effects over time and spaces. Migration management, similarly to securitisation, or just milder terms for what is, in reality, crimmigration. The EU, along with its many non-EU partners is criminalising migration on all fronts, ultimately practicing *politics of exhaustion* as one form of violence is not preventing migration, but a triangulation of methods is used, in hopes that migrants will eventually be exhausted, and give up.

Future research could expand on the data I have used in this study, which, although comprehensive, still included only three interviews, and has missed to analyse testimonies on pushbacks to any other country besides Bosnia. Additionally, minors were excluded from this research, and a potential future research could focus solely on the violence that even more vulnerable groups, such as unaccompanied minors, are experiencing on the EU borders. Sole focus on the third-countries outside of the EU and their reception of pushed back migrants, as well as cooperation with the EU would also give a great addition to already existing literature.

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