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Bouncers at the EU Club: European external border regime in Croatia

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MASTER THESIS

**Bouncers at the EU club:
European external border regime in Croatia**

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1 INTRODUCTION

The so-called migration crisis that started in 2015 has demanded a swift, organised, and coordinated response from the European Union (EU) and its member states in order to deal with the significantly increased influx of immigrants. Legal measures, policy changes, and other strategies have been implemented both on the EU level and on national levels. They all have one shared objective: managing, limiting, and preventing migration at external borders of the EU.

The Western Balkan migration route has been one of the most active routes in Europe, and a significant number of immigrants enter the EU through it. After Hungary closed its border with Serbia, between the late 2015 and beginning of 2016, the so-called Western Balkan migration corridor had a brief period of activity. This was a corridor that enabled the transit of immigrants from North Macedonia to Austria and Germany, facilitated by the authorities (Lunaček Brumen in Meh 2016). After its closing, the policy of migration management shifted to sealing off the external border of the EU in Croatia, and to a much stricter border regime and contested practices. In the last few years, several non-governmental organisations (NGOs) have reported on violent practices of pushbacks at the Croatian-Bosnian border, and have called, together with the governmental representatives and the UN Special Rapporteur on the human rights of migrants, for a response from the EU (Moussaoui 2019).

As Croatia is the newest member state of the EU that has not yet become a part of the Schengen area, it has to adopt the general EU migration policy and legislative framework, and follow the recommendations of the EU in order to fulfil all the conditions to enter the Schengen area. Its border practices are thus essential both as the entry criteria and as a reflexion of the EU migration policy. This is why the main research question of this thesis is: *why have the practices at the external EU border in Croatia changed in the context of the so-called migration crisis between September 2015 and January 2020?* I analyse the changes in border management in Croatia in relation to the EU, with a special focus on human rights violations that are accompanying pushbacks at the border. I investigate the arguments for the changes in border management at the external border in Croatia, their justifications, and responses on different levels. By answering this research question, I contribute to the research on border management at the external border of the EU that happened in the context of migration crisis of 2015.

2 THEORETICAL FRAMEWORK

To be able to contextualise and analyse the situation in Croatia and in the EU in general since the beginning of migration crisis 2015, I first provide the theoretical framework. I discuss the general concept of border (Chapter 2.1), border management in the EU (Chapter 2.2), and development of the European migration policy, focusing especially on the Dublin system and Schengen area (2.3).

2.1 BORDER

The focus of border studies has shifted in the last few decades to the process of social construction of borders, and studies are now answering the question how borders are constructed rather than what borders are. Sendhart (2013) does not perceive borders as something that is natural or given, but as something that is potentially always a subject to political contestation and change, and something that is always acquiring societal relevance as a consequence of political processes. As social constructs, there are different types of borders besides territorial, such as functional borders that separate functional systems (politics, science, sports, law), and symbolic borders that constitute collective identities and distinguish between the self and the other (Sendhardt 2013). In this context, borders perform not only a crime-fighting and trading function but are also an element in building the international identity, and serving as an internal security rationality where border management is a strategy to protect Western societies from the underdeveloped ones (Collantes-Celador and Juncos 2012).

Mezzadra and Nielson (2013) similarly described borders as complex social institutions, characterised by the tensions between border reinforcement practices and border crossings. Borders have become an instrument for managing, assessing, and governing movements of people, money, and things. They not only divide territories but also make a division in social and legal sphere between different categories of people. After 9/11, borders became “crucial sites of ‘securitarian’ investment” in political discourse and politics of control (Mezzadra and Nielson 2013, 7). Mezzadra and Nielson (2013) highlighted the distinction between the border and the frontier, where the border is considered as a line, and the frontier as an open and expansive space. Following this, the borders of the current space of the EU fall into the category of a frontier, since they are expanding into surrounding territories.

The same argument is made by Walters (2006) who described the separation of border functions away from the border as decolonisation of the border, meaning that policing and control functions that have been previously concentrated in special border space, are now dispersing away from the border. This goes both for expansion of the territories of control (remote control), and agents of control. Along with law enforcement and civil servants in migration field, other agents have been urged to control the undocumented migration, such as health care staff, employers, local social services, or travel agents.

In the context of border and security, Bigo (2006) develops the concept of ban-opticon – a mechanism established in relation to a state of unease. By establishing the idea of global insecurity, attributed to security threats such as terrorism and international crime, it calls for a globalised security from collaboration of international actors that renders national borders obsolete. The notion of ban shows how routines and acceptance of daily surveillance protect some while excluding the other by declaring them an exception. These practices of exceptionalism, profiling and containing foreigners, and normative imperative of mobility are all features of the governmentality of unease. The latter increases the exception and banalizes it.

Even if certain acts stem from declaring the state of emergency and exception, Bigo (2006) claimed they do not alter the rule of law; a large majority of states do not declare the state of emergency/exception but merely implement old and new surveillance technologies. Those technologies and the attitudes towards them have shifted and have become a part of everyday life. Furthermore, Basaran (2008) highlighted that the whole legal design of border zones establishes a space in which excessive policing powers and restrictions of outreach of rights for specific categories of people are justified within the system, and not as an exception. They are intentionally constituted as in-between, extra-territorial spaces that can present a legal black hole.

2.2 BORDER MANAGEMENT IN THE EUROPEAN UNION

Border security is seen as a foundation of a successful European project. As Hills (2006) pointed out, in order to fully comprehend European security analysis of border security is essential. She defines border management in the EU context as entailing rules, techniques, and procedures that regulate activities and traffic across the borders. It is an activity defined in

terms of border checks and surveillance at authorised crossing points and spaces between those points.

The concept of border management has several dimensions, such as security, trade or business, and foreign policy. However, the security aspect remains central in the EU's border strategy, making other objectives, such as justice, freedom, and development subordinated to security if needed (Collantes-Celador and Juncos 2012).

Migration management is an essential aspect of border security in the EU. EU policies facilitate the construction of migration as a destabilising and dangerous issue. These developments are a consequence of wider political and societal changes. The state has always interpreted what Weber and Bowling (2008) call the movements of surplus populations as problem of order, which has been met with coercive responses. The use of such measures is aimed at defending the boundaries, geographical, legal, and social. Constructions of disorder and unwanted categories of people shift, and usually emerge in transitional periods. Following the collapse of feudal society, the categories of "masterless men" and "valiant beggars" were demonised and feared; when mercantilism was on the rise in Tudor times, these categories were "rouges and vagabonds"; harsh measures also targeted identified groups such as "Blackamores" or "Egypcians" (Weber and Bowling 2008, 356).

With the rise of the nation state, the focus of surveillance shifted to national borders instead of local and regional, and the problem of the stranger became the problem of the migrant (Feldman 2003). With the end of the Cold War, the whole concept of security has started to change, and the states have identified new threats, such as terrorism and international crime, which both merge in the image of the immigrants (Atak and Crépeau 2013). The argument of internal threats with external origins reflected concerns over border security in the light of growing numbers of irregular migration, applications for international protection, and anti-immigrant policies. Irregular migration was constructed not only as a challenge to territorial sovereignty but also to the welfare state, and as a security risk, which led to securitisation of migration. Asylum seekers and irregular immigrants became interchangeable because they tend to use the same routes and means to reach their destinations. Consequently, "the condition of the refugee is no longer humanitarian or human rights issue – but a *law enforcement and national security problem*" (Atak and Crépeau 2013, 231). Categories of people that do not belong have been targeted with measures aimed to either immobilise or expel, the latter being the preferred option.

Green and Grewcock (2002) highlighted that when the state uncritically takes the right to control irregular immigration it becomes systematically involved with the organised crime it is set to combat in the first place. Irregular migration is seen as inextricably connected to organised crime of human smuggling and trafficking. By connecting the immigrants to the criminal breaches, states criminalise, stigmatise, and dehumanise immigrants as “illegals”, “clandestines”, and “bogus” (Green and Grewcock 2002, 88).

2.2.1 PUSH OUT – PUSH BACK TECHNIQUES

Similar to Weber and Bowling’s (2008) terms of expulsion and immobilisation, Klaus and Pachocka (2019) discuss the so-called push out – push back model that refers to the practices of Global North to refuse and prevent the entry of the immigrants from the Global South. The push out factors are defined as both classic factors pushing immigrants out of their countries of origin, and pushing them out of their potential destination countries. In many cases, the countries do not provide safety of any kind for immigrants, such as covering their basic needs (shelter and food), health care, education, social services. This is what Edmond-Pettitt (2017) calls a hostile environment in which the state creates disadvantaged conditions for immigrants, marginalises them to the maximum, and deters them from settling in the territory, making them the push out factor. This means isolating immigrants not only in a legal way but also socially (Provera 2015).

The push back factors are defined as various obstacles that prevent immigrants from entering the territory of the states. The political idea that underlies them is based on categorisation of immigrants according to their countries of origin (Klaus and Pachocka 2019). Some immigrants from the Global South are welcomed or at least tolerated because they are needed to fill the gaps in the labour market (i.e. bona fide travellers), while others are considered unwanted (i.e. crimmigrants). Selection is carried out through social sorting which has become increasingly automated with mechanisms of visa regimes, biometrics, and databases. Especially after 9/11, criteria have become even stricter and is building even more obviously on the categories of race, class, and gender (Weber and Bowling 2008). Contrary to international commitments, citizens of the Global North expect the numbers of unwanted immigrants will be reduced by the actions of their governments. Authorities thus use diverse techniques to prevent the unwanted categories of immigrants from reaching their territories. Following the Klaus and Pachocka (2019) categorisation, these techniques can be divided in three groups.

The first group are passive techniques that include different types of physical obstacles (i.e. fences) to close the border, electronic surveillance systems, and formal entry restrictions. They are aimed at making it difficult or impossible to enter the state's territory. Physical obstacles contribute to escalation of violence by forcing the immigrants to turn to more dangerous routes and smugglers' services, and have also contributed to the increase in numbers of deaths at the border. Measures such as visa restrictions and creation of buffer zones before the territorial borders can also be placed in this category. These prevent citizens of certain "deviant" states to enter (Klaus and Pachocka 2019, 286), and place the responsibility for protection against unwanted immigrants to the neighbouring countries. As Mezzadra and Nielson (2013) and Walters (2006), Klaus and Pachocka (2019) point out that with these measures the borders have expanded beyond the territories in order to detain immigrants at earlier stages of their journeys, preventing them from reaching geographical order. This leads to externalisation of migration policy and its instruments, where the Global North is supporting their partner countries, such as Libya, Albania, or Turkey, both financially and through capacity building activities.

The second group of techniques are active, aimed at turning back those who manage to reach the border, or are heading in its direction, i.e. pushbacks, and at deporting those already in the state. When pushed back, immigrants often do not have the possibility of applying for international protection, which was recognised as a violation of the international law by the European Court of Justice (see *Hirsi Jamaa and Others v Italy* 2012). In order to keep these populations outside of the territory, states have developed the so-called early warning systems, i.e. pre-emptive strategies that hinder immigrants' arrival in the countries of origin or other third countries that are immobilising the unwanted immigrants. In the EU context, the focus is on the defence of the external border and thus on cooperation with either aspiring EU members, countries that are included in the European Neighbourhood Policy (including the Eastern Partnership countries), and other states that have bi- or multilateral agreements with the EU and/or their member states (e.g. Sudan) (Weber and Bowling 2008). The main goal of these agreements is to prevent immigrants from falling under the EU jurisdiction (Klaus and Pachocka 2019).

Pre-emptive strategies have shifted the border in space and time, thus shifting from designating the irregular border crossings as crimes of arrival to focusing on the non-arrival methods that immobilise the immigrants. Immobilisation techniques are carried out in transnational border zones where the legal and moral authority is not clear, and there is no responsibility for the

welfare of immigrants (Webber and Bowling 2008). Since immobilisation techniques do not stop the immigration, countries of destination have resorted to administrative detention that does not have to only be physical but is also present in the web of surveillance and enforcement that operates in workplaces, healthcare system, education system, and housing market (the aforementioned hostile environment (Edmond-Pettitt (2017))).

When immigrants do reach the EU territory, the states have been increasingly denying them applications for international protection, and forcibly turning immigrants away. As Klaus and Pachocka (2019) warn, this is happening without proper assessment of individual applications for international protection. In some cases, this is done simply by ignoring the immigrants' expressed intentions to apply for international protection. The official stance is that immigrants can apply for international protection in the states where they are returned to, which is rarely the case. One of the main focus of the European migration policy is the return policy which is presented as a viable solution for the migration crisis. Immigrants are being deported to certain countries (e.g. Mauritania) with which the EU has signed agreements. None of the countries monitor the situation of returnees, despite the fact that there is high risk of facing different kinds of persecutions upon their return (Klaus and Pachocka 2019).

As Weber and Bowling (2008) note, the methods of expulsion have become more violent as resistance has become stronger. This manifests for example, in increasing use of charter flights to carry out the removals secretly, in revocations of residency permits of people with fragile immigration status on the grounds of good character, or in using Dublin system to expel immigrants to a safe third country in more orderly process. At the same time, lack of cooperation with countries of origin, the forged documents that immigrants are forced to use in order to travel, and legal challenges in cases of statelessness have created a category of people that is unremovable. As there is nowhere to expel these people, states resort to closing their doors to the "surplus populations" (Weber and Bowling 2008, 361).

The third group constitutes of symbolic measures that are designed to send a deterring message that immigrants are not welcome in the host country. These actions are symbolically violent, are inherent in the functioning of civil society and authorities, and lead to inequality and exclusion of certain categories of people. It can manifest in cultural violence in the spheres of religion, ideology, language or art, or in its most drastic form in combination with physical violence as detention, depriving people from liberty. Detention enables total surveillance, reinforces management of migration, and facilitates deportation. As Klaus and Pachocka

(2019) point out, it demonstrates the full and discretionary power of the state over immigrants, their non-belonging, and the unequal status of their rights compared to the citizens. Detention further strengthens the connection between immigrants and the notion of illegality and criminality, and presents a vital part of the process of criminalisation of migration (see Stumpf 2006, Palidda 2008, Provera 2015, Mitsilegas 2015). Deportation can also be seen as part of the symbolic violence since it acts as a potential threat that immigrants can face upon reaching the state's territory, and is used to reinforce fear among immigrants; for example, in 2014, 25 EU member states carried out the Operation Mos Maiorum which aimed at identifying, arresting, and expelling as many undocumented immigrants as possible in two weeks.

Another aspect of symbolic violence against immigrants are failed integration policies, such as extremely low or non-existent financial support for refugees, housing options, or integration programmes. Last but not least, public discourse that emphasises the fact that the immigrants are unwanted and unwelcome in the host society affects both immigrants and the host society. The public rhetoric focuses on xenophobic messages, denying immigrants the membership and constructs them as a threat to security or economy, which can translate to official policies when the governments decide to address public concerns (Klaus and Pachocka 2019). These techniques are often used simultaneously and work in a complementary way. They are essential from the political point of view since they convey the message that the governments are taking care of their citizens' security by controlling the influx of unwanted immigrants.

2.2.2 JUSTIFICATION AND COSEQUENCES

Since the 1970s, migration has been increasingly securitised, and consequently the new regulations and policies that have been aimed at reducing the number of immigrants ever since (see Chapter 2.3). As Klaus and Pachocka (2019) point out, the securitisation discourse and perspective has been so deeply embedded in core institutions in the EU that the states which try to liberalise their policies are being called out. Humanitarian aid has been replaced by the militaristic approach and border surveillance. Surveillance systems at the EU level have become a tool for European integration, and an export to third countries, especially in Eastern Europe and Northern Africa, which additionally strengthens the supranational structures. States give away the function to control migration under their own terms in order to join the EU or get other benefits (Fekete 2001). The main argument for strengthening of surveillance and defining current systems of governance is prevention of the cross-border crime, i.e. terrorism,

human trafficking, smuggling, and illicit arms traffic. Looking at the recorder activity of the Schengen system, however, shows that irregular migration is its main preoccupation – around 80% of entries in the Schengen database refer to illegal aliens. Defining unauthorised mobility as a crime justifies the strengthened surveillance, and fuels the day-to-day EU police cooperation (Franko Aas 2011).

As Bigo (2004) argued, securitisation of migration occurs in times of economic and urban crises. Instead of addressing those challenges, authorities manufacture social unease and threats to society and citizens that are then tackled instead of the core issues. This way, authorities reinforce the feeling that they are in control of the issues. These threats are created by security professionals which are holding established and legitimate positions, and are operating with privileged knowledge, which increases the trust in them and emphasises the weight of the threats.

The Refugee Convention obliges the states to assess applicants for international protection once they reach the state's territory, but the states are not obliged to accommodate immigrants outside their territory. This is why the states are imposing restrictive policies to limit the number of immigrants that arrive to their territory, and push them to seek international protection in another country or region (Thielmann and Armstrong 2013). This leads to member states competing in restrictive measures as none of them wants to give out the impression of being too soft, and hence face disproportionate arrivals of immigrants. As Thielmann and Armstrong (2013, 151) point out, such “race to the bottom” can lead to breaches of international law.

These push out – push back practices together with border control and bi-/multilateral agreements between the EU and third countries are problematic because of the human rights violations, as the EU Commissioner for Human Rights (2010) has asserted. Preventing people to leave their own country is violating Article 2 of the Protocol no. 4 to ECHR, which grants the right to leave any country, including their own. Preventing people to leave only certain countries is discriminatory against foreigners without justification, hence violating Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms' general duty (Tubiana et al. 2018).

Denying entry to those coming from territories where they experience torture, inhuman or degrading treatment or punishment, regardless of their irregular entry, breaches Article 3 of the

European Convention for the Protection of Human Rights and Fundamental Freedoms, and Article 31(1) of the Convention and Protocol Relating to the Status of Refugees (Tubiana et al. 2018). States are obliged not to expel or return a person by the *non-refoulement* principle set out in Article 33 of the United Nations Convention of the Status of Refugees, Article 3 of the European Convention on Human Rights, and Article 3 of the United Nations Convention Against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment. The principle of *non-refoulement* applies to all refugees, including those who have not been formally recognised as such, or are still in the asylum procedure (Council of Europe 2019a).

Mass expulsions and criminalisation also violate Article 6 of the ECHR which demands that any criminal charges should go fair trial obligations. Furthermore, externalisation of migration policies to countries with authoritarian regimes and known human rights issues not only legitimises these regimes, but also enables further militarisation and destabilisation of the state (Tubiana et al. 2018).

Already in 2015, the Council of Europe Parliamentary Assembly has expressed concerns about the situation in the Western Balkans, as the statement following the informal EU summit on 23 September 2015 was mainly focused on keeping immigrants on the brinks or outside of EU (Council of Europe 2015). When immigrants do reach the EU territory, there is reluctance to accept protection responsibilities, resettlement obligations, and burden sharing measures among the member states. The Assembly also mentioned continuing reports on unlawful push backs and human rights violations despite the judgement of the European Court of Human Rights (Council of Europe 2015).

As Strik (Council of Europe 2019) pointed out, the practice of refusing entry and expulsions without individual assessment has become a part of national migration policies rather than incidents. Strik also stated that the push back practices and policies in states on the external border of the EU are, at least partially, a result of the failures of the Dublin system, and the attempts of responsibility sharing among member states (Council of Europe 2019).

2.3 EUROPEAN MIGRATION POLICY

With the ending of the economic boom after the Second World War and the end of the Cold War, the perception of immigrant workers and refugees shifted from regarding them as assets to perceiving them as a threat, both to national economy and welfare, and general social order

(Lindstrøm 2005, 589). In order to reverse the immigration trends of the past decades, governments tried to change the policy venue. The immigration issue was transferred to the trans-governmental venue which was dominated by the Interior and Security actors. Even after cooperation took place within the EU framework, and other actors joined, the latter did not question the policy goals of filtering out the so-called migratory risks, and the Interior and Security actors kept dominating the decision-making process. The actors that joined later were versatile, ranging from NGOs and international organisations, such as International Organisation for Migration (IOM), to private companies that provide surveillance technologies and security services. All these actors compete to influence the policy image and decision-making (Guiraudon 2017).

Ferreira (2018) highlighted the Single European Act of 1986 as the first crucial moment since it established the idea of free movement of people, goods, services, and capital. Furthermore, she mentioned three major legislative moments that have strongly influenced the policy making in the field of migration and asylum: the Maastricht Treaty in 1992, the Amsterdam Treaty in 1997, and the Lisbon Treaty in 2009. These legislative changes have been complemented by ad hoc cooperation regarding migration and asylum issues, and discussed at intergovernmental fora, such as the Trevi Group or the Schengen Group.

The Maastricht Treaty of 1992 aimed to harmonise matters of migration and asylum by integrating them in the European *acquis* (Ferreira 2018). The Maastricht Treaty established three legal pillars:

- 1) European Communities, dealing with economy (supranational);
- 2) Common Foreign and Security Policy, dealing with military matters;
- 3) cooperation in Justice and Home Affairs, dealing with criminal matters.

The Maastricht Treaty placed the matters of migration and asylum under the third pillar of the EU, and made them subject to intergovernmental dynamic (Ferreira 2018). By doing so, it also added incentive for the Common Foreign and Security Policy development, making migration and asylum an issue that spanned through multiple overlapping areas of competence (Lindstrøm 2005). Each pillar dealt with different issues, and was defined by different legal decision-making processes between the European Commission, European Parliament, and national governments. National governments and the European Commission can initiate

legislation in matters of the third pillar, but in order to pass certain legislation the voting requires unanimous support from the European Council (Feldman 2011).

The Amsterdam Treaty of 1997 transferred the matters of migration and asylum in the first pillar, instilling a supranational character to the migration policies, and foresaw their communitarisation (Ferreira 2018). Despite being considered common policies, Ferreira (2018, 75) emphasised they were still subject to “the principle of unanimity”, unlike other common policies, thus not under the co-decision process. This process of increasing communitarisation of migration gave momentum to the security logic, and led to the institutionalisation of the security paradigm (Ferreira 2018).

Another significant step towards a common migration policy was made in 2000 with the presentation of a communication from the Commission on the Community immigration policy: “this initiative suggested a standard approach to migration management, taking into account the reception capacity of each Member State, the situation in the countries of origin and the need to develop specific immigration policies” (Ferreira 2018, 77). After the 9/11, the Laeken Council in 2001 additionally emphasised the need for valid immigration policy. The Laeken Declaration also made the connection between migration and terrorism, and the post-9/11 climate created a momentum to adopt certain measures that were previously discussed but the member states were reluctant to adopt, concerning judicial and police cooperation, and strengthening of border controls (Ferreira 2018).

The beginning of the 21st century also saw the development of the “managed migration paradigm” which focused on distinction between desired migration (i.e. highly qualified immigrants that contributed to the EU’s competitiveness and economy), and undesired migration (asylum seekers and irregular immigrants that did not fit the economic rationale) (Geddes 2015, 75). This dichotomy between openness and closure is not, however, the most important element of the European policy – that is rather the fact that the migration policies now relate to the constitution of the EU as a governance system, and to its legal, social, and political power. Migration policies are developed based on material factors of economic integration and security that interact between each other, and create tensions between inclusion and exclusion rather than openness and closure (Geddes 2015).

In 2002, the European Commission adopted a communication aimed at developing a common policy on the management of external borders. This was the first step towards the integrated

border management (IBM). The 2002 Seville Council resulted in a much stronger cooperation on strengthening border control, calling for more joint operations at airports and seaports, an intergovernmental coordinating unit consisting of heads of national border control agencies, and a review of visa requirements, aimed at harmonisation (Feldman 2011). As Feldman (2011) identified, external border control presents the easiest domain for cooperation among the member states. It functions as an additional layer of integration, added to the basic border management practices (Ferreira 2018). The Seville Council also laid the cornerstone for Frontex¹ that was established in 2004 (Feldman 2011). Establishment of Frontex represents “the institutionalisation of the European border management policy” (Ferreira 2018, 93), and its mission is to coordinate the national efforts in border management, and facilitate the implementation of the EU standards and measures in the field of border management. It also incorporates the idea of IBM as a part of the border management by establishing a set of standards working principles, offering training resources to the staff, and enhancing the cooperation among different agencies and the member states (Ferreira 2018).

The 2004 Hague Programme introduced the Area of Justice, Freedom, and Security into the migration field, and in combination with robust commitment to border management, developed a policy vision of the EU as “morally elevated space composed of decent individuals in need of protection from the threats of transnational criminal and terrorist networks” (Feldman 2011, ch. 3). The Hague Programme discussed priorities for building an Area of Justice, Freedom, and Security that effectively manages migration, such as border management, fighting transnational crime and terrorism, tackling illegal migration etc. Feldman (2011) argued that migration management expanded from the matter of issuing visas at the national level to a full-scale monitoring of transnational movements of people along the entire external border of the EU; from isolated bureaucratic processes to an enormous multinational apparatus.

Ferreira (2018) described the first decade of the 21st century as the decade of European integration process deepening. This led to the Lisbon Treaty of 2009 which “aimed to modernise and reform the Union and brought improvements to the decision-making process” (Ferreira 2018, 76). Migration and asylum issues have fallen under the shared competences. They are subject to co-decision process, thus facilitating cooperation on these issues. This rapid communitarisation of migration policy was also due to the 2004 and 2013 enlargements, when

¹ This agency was previously European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, now the European Border and Coast Guard Agency.

thirteen new member states joined altogether. In concern about border security capacity in new member states, the requirement for measures related to border control and security became an essential condition (Geddes 2015).

Member states see the supranational cooperation also as a potential means for expansion of their domestic control of migration over other member states, using the EU level as a channel. As Parkes (2015) argued, the northern member states aim to create a framework that would give them a greater oversight of southern member states and their border control standards, while southern member states benefit from the support and solidarity when facing increased income of immigrants.

The Lisbon Treaty also highlights the importance of the Area of Freedom, Security and Justice, which builds on the area of free movement, guaranteed and secured by the security measures at the external border, and in the field of migration, asylum, and fight against organised crime. As Ferreira (2018) pointed out, the Area of Freedom, Security and Justice in this sense maintains the conflict between internal security and human rights.

2.3.1 SCHENGEN AND DUBLIN SYSTEM

The most important systems in the area of migration management are the Dublin system and the creation of Schengen area. The so-called Dublin system was designed in 1989 in the light of internal border control abolition, which potentially enabled asylum seekers to move between member states more easily. This was prevented by the Dublin system that puts the responsibility for carrying out the asylum procedure on only one state, to which the applicants are returned in case they go to another member state. The Dublin system comprises of three pieces of legislation (the Dublin Convention of 1990, the Dublin II Regulation of 2003, and Dublin III Regulation of 2013), and three directives (the Qualification Directive (2001/95/EU), the Asylum Procedures Directive (2013/32/EU), and the Reception Conditions Directive (2013/33/EU)) (Poon 2016). It also includes the Eurodac, a database system used for exchanging of information on asylum seekers in order to make sure that only one member state is responsible for asylum procedure (Ferreira 2018).

The Dublin system presents one of the core elements of the EU's internal security acquis, closely linked to the Schengen Agreement, and specifically covering the issues of border control, asylum, and irregular migration (Thielmann and Armstrong 2013). In early

negotiations for the Dublin system, a direct link was made between its success and prevention of irregular migration and cross-border crime. With assigning the responsibility for asylum seekers to the first country of entry, not only the responsibility but also the costs of securing the EU's external border falls on the member states at the external border of the EU. This system resulted in a highly inequitable distribution of responsibilities and costs, and arguably advantages the wealthier, core member states in comparison to those at the external border (Thielmann and Armstrong 2013).

The Dublin Convention also declared that the asylum decisions have to be respected by all member states. One of the effects of the Dublin Convention and the Schengen Agreement was consolidation of the policy ideal of coherent European space, and transformation of this ideal into practical reality (Feldman 2011, ch. 3). The Schengen and the Dublin system introduced the concept of a safe third country, which consists of two parts: the safe third country of origin, and the safe third country rule. This gives the member states a right to send asylum seekers to a third country, i.e., a non-EU country, in compliance with the Geneva Refugee Convention of 1951. Every member state has its list of safe third countries, and a web of bilateral readmittance agreements that determine the conditions (Möhle et al. 2017).

The Schengen area was created in 1985 with an agreement between the then five members of the European Economic Community, and was implemented into the EU framework with the Schengen Convention of 1990. The main legal document is the Schengen Borders Code.² The Schengen Convention abolished the border control at internal borders of the EU, and created the external border where the border control is carried out for the whole of the EU (Geddes and Taylor 2013). Border checks are carried out according to a common set of rules, such as the common visa policy, police and judicial cooperation, and the Schengen Information System that enables pooling and sharing of data (Geddes and Taylor 2013). The Schengen system is considered to be one of the greatest achievements in the EU since it abolished internal borders and guaranteed the free movement as a fundamental right. Establishing the Schengen Area with no internal borders and the freedom of movement right for European citizens brought new dimensions of state sovereignty and its definition of insiders and outsiders (Bufon 2008).

The Schengen Agreement, controlled by the Interior ministers, became a new, trans-governmental venue for migration management. The Agreement incorporates two most

² Regulation 562/2006 establishing a Community code on the rules governing the movement of persons across borders

important instruments of the policy: visas and carrier sanctions (Guiraudon 2017). These two measures are aimed at preventing immigrants from reaching the EU in order to apply for asylum, but instead limits their movement in their countries of origin, and thus transfers the decision process on their claims to their national authorities.³ Incorporation of these two instruments contributed to an increase in irregular migration significantly, since it did not deter immigrants from trying to reach the EU, it only pushed them into using irregular routes and means on their way (Guiraudon 2017).

The two instruments of the Schengen Agreement fall under two categories that Lindstrøm (2005) recognised in the restrictive policies of control: 1. internal – non-arriving measures that directly hinder the entry (visa regimes, carrier sanctions, interdictions at sea), and deterrence measures that are targeting the incentives to migrate (detention, limitations in employment, welfare, and accommodation, temporary protection); 2. external – diversion policies that shift the responsibility of granting asylum and protection, and containment policies that tackle the root causes of migration.

The Schengen Agreement was made into European law by the 1997 Amsterdam Treaty, which established the Area of Freedom, Security and Justice, and a Directorate-General for Justice and Home Affairs (Lindstrøm 2005). This resulted in integration of security and judicial branches, and communitarisation of the formerly third-pillar domains. Policies in the area of visa, asylum, immigration, and free movement of people have become fundamental Treaty objectives, now in the first pillar. By doing so, the migration policy broadened, and included the entire notion of free movement within police and judicial matters. Furthermore, the first pillar permits legislation changes to be initiated only by the European Commission, and accepted only by the qualified majority of the European Council. This means that the EU-wide legislation no longer needs to be a result of inter-member states negotiations (Feldman 2011, ch. 3). By 2010, almost all Member States incorporated the Schengen Agreement into their national legislation.

The establishment of the Schengen area requires that the EU performs as a security actor because the freedom of internal movement cannot come at the expense of security (Ceccorulli 2019). At the same time, abolition of borders has to maintain credibility in order to keep the Schengen and to further extend it (Bufon 2008). This is why security had to be strengthened at

³ This has been criticised since there is a high chance that, for example, a Kurd fleeing persecution would not be able to obtain a passport and a visa, and get past Turkish security staff (Guiraudon 2017).

the external border of the EU, and the member states at the external border assumed the responsibility for managing the external border on the behalf of all the member states (Ceccorulli 2019).

Examples of exceptions to Schengen are the movement of citizens from the new member states in the phase-in period (Bufon 2008), as well as the instance of serious threats to public policy or security, in which case the member states have the right to reintroduce border controls under two conditions: 1. controls are limited in duration; 2. other member states, the European Parliament, and the European Commission are notified in advance (Ceccorulli 2019). In addition, border controls can be reintroduced if the frontier member state exhibit “persistent and serious deficiencies in the carrying out of external border control” that endanger the functioning of the Schengen area as a whole (Ceccorulli 2019, 304). This is done to protect the common interests of the Schengen area, and is perceived as a last resort that should also be of limited duration and introduced as a coordinated action among the member states and the EU.

Free movement in the Schengen area thus also requires deeper cooperation since it is imperative to see common issues and challenges, and consequently same potential solutions. This is challenging because cooperation also requires integration of “core state powers” (Von Sydow 2019, 2018), which has been linked to institutional, territorial, and political fragmentation rather than consolidation. Ceccorulli (2019, 303) claimed that due to its value for the member states and the Union, “the Schengen agreement has acquired the status of a security referent for its members”. It impels collective action when it comes to border security, and it is sustained by common interests. Both the action and the interests have been threatened by the migration crisis in 2015, and caused securitisation of Schengen that called for provision of internal order and coordinated action by otherwise uncoordinated member state action (Ceccorulli 2019).

In the EU context, hardening the external border presents an external shield for the otherwise open internal market (Collantes-Celador and Juncos 2012). This is the reason an efficient border security is a crucial requirement for potential new member states – the Schengen rules have been incorporated in the *acquis* and as such become a condition for candidate countries. In addition, export and externalisation of EU migration governance to both (potential) new member states and to non-member states links the opening of new migration channels to stricter controls. This is the case particularly in new member states and those who want to join the EU,

as the EU can exert significant leverage over them through migration governance (Geddes 2015).

New member states adhere to the Schengen provisions for the benefits they get with becoming a full Schengen member: free movement of their citizens in the EU. Empirical evidence shows that among the top ten nationalities that have benefited most from the free movement in the EU are those from the external border states (Thielmann and Armstrong 2013). This seems to be a trade-off between the core member states that open themselves for inter-EU migration in exchange for the commitment by the new member states to take the responsibility for securing the external EU border.

2.3.2 SCHENGEN SYSTEM IN THE CONTEXT OF MIGRATION CRISIS

In 2015, when the migration crisis began unfolding, EU's response had two main objectives: preventing the loss of lives, and securing EU borders. As Ceccorulli (2019) noted, the latter objective took precedence. This could be observed in the member states' disregard of certain measures proposed by the EU, and in the events that happened in parallel.

In May 2015, the first implementation package of the Agenda on Migration was issued, with the main objective of enforcing the relocation plan, thus relieving the pressures on the states at the external border of the EU and preventing the deaths at sea. Following the Italian and Greek requests, the EU Commission introduced a temporary relocation scheme that would relieve the pressure in Italy and Greece, and prevent uncontrolled secondary movement of immigrants in the member states. As Ceccorulli (2019) highlighted, the main emphasis was on solidarity with the frontier states. While the decision was being prepared at the European level, the number of immigrants arriving rose significantly over the summer of 2015, and the migration route shifted towards Hungary and the Western Balkans. Consequently, Hungary was included into the relocation scheme as well, even though Hungary never committed to implementing the plan. Ceccorulli (2019) argued that these changes caused the changes in policy rhetoric that now addressed not only the external challenge of migration but also the internal challenge to the Schengen regime. The latter was manifested in the perception of Greece as incapable of controlling the external borders, and in the decision of several member states to introduce temporary internal border controls. The Second Implementation Package consequently shifted from its primary objective of saving lives to preservation of Schengen (Ceccorulli 2019).

Migration crisis revealed the unwillingness among member states to coordinate actions, despite Commission's attempts and even threats of infringement procedures. Since member states kept on resorting to reintroduction of internal border controls, the normalisation of Schengen, i.e. lifting of these internal border controls, became Commission's key priority. Greece's inability to control the external border was seen as failure that contributed to the pressure on the European asylum system. Due to Greek deficiencies in asylum system, the Dublin transfers to Greece were halted since 2011, and increasing numbers of immigrants were entering Greece in order to reach other member states (Ceccorulli 2019).

The Third Implementation Package that was put forward in December 2015 had a very clear objective of managing the external borders and protecting the normal state of Schengen area without internal border controls (Ceccorulli 2019). Despite those efforts, member states remained discontent, kept introducing internal border controls, and discussing the future of Schengen, pointing to an internal crisis of the Schengen area. This led to further collective securitisation of Schengen. The security governance conditions that were to normalise Schengen were stated in the Communication from the Commission to the European Parliament, the European Council and the Council (2016), and repeated in the Statement by EU Heads of State or Government in March 2016 (European Council 2016). This statement focused on three points: improving Greek deficiencies in border management, stopping the wave-through approach in the Western Balkans, and consolidating a coordinated approach among all member states that would eventually result in normalisation of the Schengen area, hence abolishing the internal border controls once more (Ceccorulli 2019).

Consequently, Greece had to improve the robustness of its asylum system, and eliminate the incentive for secondary movement (Ceccorulli 2019). In case of the Western Balkans, the states were to apply a coordinated approach instead of unilateral decisions. The wave-through approach was deemed unacceptable both politically and legally (European Commission 2016). Legally, it went against the Dublin system since the states of entry have not taken the responsibilities for asylum procedures, and against the Schengen Borders Code since the states did not refuse entry to those who did not satisfy the entry conditions. This approach undermined the functioning of the relocation scheme, and the coordinated European approach as a whole (European Commission 2016).

The EU responded to the inadequacies with successful establishment of the European Border and Coast Guard agency after failing to do so repeatedly in the past, and establishing the so-

called hotspot approach for the identification, fingerprinting, and registration of immigrants upon arrival. Other agencies and systems also contributed to the acceleration of relocation, proper implementation of Dublin Regulation, and the returns of irregular immigrants (Ceccorulli 2019).

3 METHODOLOGY

The main research question of this thesis is: *why have the practices at the external EU border in Croatia changed in the context of the so-called migration crisis between 2015 and January 2020?*

Following Klaus and Pachocka's (2019) theory on the push out – push back model, the EU and Croatia as a member state have the ultimate goal to refuse and prevent the entry of the immigrants from the Global South to their territory. As the number of immigrants increased since the summer of 2015, member states at the external border of the EU have been looking for ways to keep the immigrants out of the EU territory by strengthening their border security (Ceccorulli 2019). Considering the fact that Greece's response was deemed a failure as the state was not able to prevent immigrants from entering the EU, other member states also had to strengthen their border security in order not to be sanctioned. Since every state is responsible for immigrants on their territories, and since the Dublin system puts the responsibility for the asylum seekers on the first country of entrance, it can be expected that the member states at the external border of the EU aim to prevent the immigrants from accessing their territory. This was partially done when the Western Balkan corridor was established since all the involved countries were trying to avoid the responsibility of processing immigrants' data and their international protection claims. As this approach did not comply with the EU legal framework, states had to introduce different tactics to lower the pressure of immigrants arriving. Increased number of immigrants reaching the Croatian border then seems to be an argument for Croatia to strengthen its border control, and it is expected that the actions at the border become more severe when the numbers of immigrants increase. This is why I expect the percentage of reported violence to correlate to the number of immigrants reaching the Croatian border. Based on this, the first hypothesis I test is *H1: When the numbers of immigrants at the border in Croatia increased, the percentage of reported cases of violence increased.*

Croatia as a new member state has to implement Schengen acquis in its entirety, which is non-negotiable (Walker 2002). Becoming a full EU member requires two steps, the first one being the effective strengthening of the external border control, and consequently becoming a full member of Schengen by abolishing the internal border with other member states. As the securitisation is deeply imbedded in the Schengen area and core European institutions, member states that try to liberalise their policies are being called out (Klaus and Pachocka 2019). Croatia thus has to adopt the Schengen acquis and its restrictive policies that include the measures that

Lindstrøm (2005) described as non-arriving and deterring measures. Among those restrictive policies are also the active push back factors and techniques that are turning back the immigrants who manage to reach the border (Klaus and Pachocka 2019). Based on this, the second hypothesis I test is *H2: Croatia's accession to the EU caused an increase in border violence.*

These two hypotheses help answer the main research question since they examine three different possible reasonings of the change in border management in Croatia since 2015. The first one addresses the pressure on Croatia due to significantly increased number of incoming immigrants. The second one explores the requirements of the broader European migration policy and regulations that Croatia as a new member state had to implement in order to become a full member of the EU by becoming a part of the Schengen area.

Following the explanatory nature of the research question, this research will explore the causal mechanisms in a single-case research design. The case of my study is Croatia and its border regime changes since 2015. Border regime is operationalised as a sum of practices at Croatia's external border, carried out by the Croatian border control and law enforcement.

I analyse the changes of border practices since 2015. This year marks the beginning of the so-called migration crisis which was characterised by increased influx of immigrants in the EU, and the start of significant changes in the border regime in Croatia, and on the Balkan migration route. I particularly focus on the EU's response in the cases of violent pushbacks in Croatia that have been gaining traction both on national and international level. I analyse the situation up to January 2020 due to the fact that in the beginning of 2020 a global crisis of Covid-19 pandemic started, and has significantly influenced the situations at the borders of the EU not only for immigrants but for everyone. Analysing the ability to access the territory and apply for international protection since the beginning of the pandemic would be too extensive for the purposes of this work, and could constitute an independent analysis.

In my analysis, I review responses by the Croatian government and its officials that justify their border management practices, focusing on the responses to allegations of violations of human rights. I use reports from the Croatian and international non-governmental organisations on cases of violent push backs by the Croatian law enforcement and/or border control. I use data by the Croatian Law Centre that has been actively engaged in the Croatian asylum system since 2003, and systematically follows legislation, its implementation, and changes. Their reports are

used primarily for statistical data, and public policies and legislation analysis and changes. I complement these reports with media reports.

Furthermore, I use reports from different non-governmental organisations on cases of violent push back practices at the Croatian border. My primary sources are reports collected by the Border Violence Monitoring Network (BVMN), which is an independent network of non-governmental organisations and associations, mainly based in Western Balkans. BVMN developed a common framework for recording testimonials and supporting evidence of violent push backs along the Balkan route, and publishes monthly reports.⁴ I complement these with reports from Human Rights Watch, UNHCR, Amnesty International, EU Fundamental Rights Agency, and reports from the Ombudswoman of Croatia.

In my analysis, I also include the responses by the national and European officials, using reports by the European Commission, and statements issued by the national authorities, mainly the Croatian Ministry of Interior.

4 EMPIRICAL ANALYSIS

In order to provide some context for the following reports and responses, I will briefly explain the development of events in the start of the migration crisis in 2015.

In Croatia, the main body responsible in the Ministry of Interior. Procedures in Croatia are regulated by the Law on International and Temporary Protection (LITP) as of July 2015 (Croatian Law Centre 2016), which replaced the Law on Asylum as a part of the adoption of the EU legislation (ECRE 2016). With the start of migration crisis in 2015, two key elements influenced Croatia's response to the increased numbers of immigrants. First was the formalisation of the so-called Balkan corridor that enabled immigrants to travel from Greece across the Balkan peninsula towards the western and central EU states unhindered. The second was establishment of strict physical and legal barriers in Hungary that diverted the Western Balkan Route towards Croatia (ECRE 2016).

⁴ Border Violence Monitoring Network; reports available at <https://www.borderviolence.eu>

4.1 WESTERN BALKAN CORRIDOR

Lunaček and Brumen (2016) define the Western Balkan Route as migratory path starting in Turkey, passing Greece, Macedonia, Bulgaria, or rarely also Montenegro or Albania, reaching Serbia, and then continuing towards the member states from Serbia. This route is one of the migratory routes that is commonly used by immigrants to reach the EU. Reports on the Western Balkan route include only the number of immigrants that cross the borders irregularly – Frontex (Figure 1) shows an increase in irregular border crossings from 2009 to 2014, a significant spike in 2015 and 2016 due to migration crisis, and again a significant decrease in 2017 and 2018.

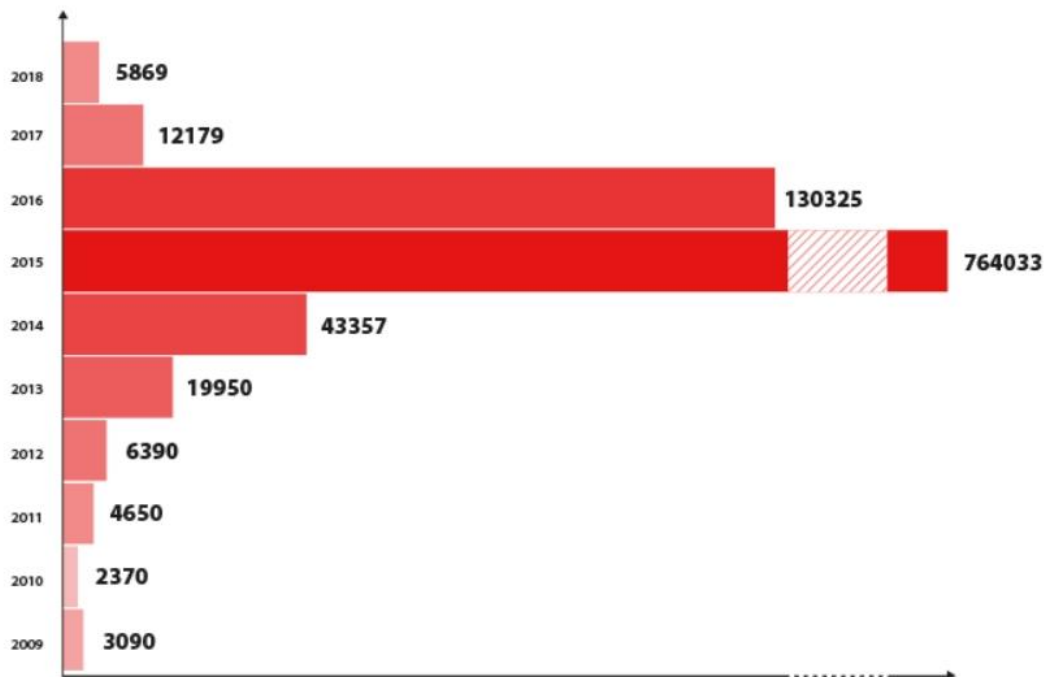


Figure 1 Number of irregular crossings on the Western Balkan Route 2009-2018. Source: Frontex (n.d.)

On the contrary, the Balkan corridor was a temporarily open corridor that enabled safer and faster travelling along the Western Balkan migratory route, facilitated or at least tolerated by the states along the route. As Lunaček and Brumen (2016) report, the start of the corridor can be placed on 15 September 2015 when Hungary closed its border with Serbia, and the migratory route turned towards Croatia. The corridor started closing on 18 November 2015 when only Syrians, Afghans, and Iraqis were allowed to pass, and was closed on 8 March 2016 when no one was allowed to pass anymore. Lunaček and Brumen (2016) point out that the distinction between the route and the corridor is essential. While the corridor can be closed, as it was, the

route cannot be closed but movements across it can merely be illegalised, which is important for understanding the broader migration policy.

The issue that emerged with the corridor was in the fact that it breached the European migration policy and legal framework, which is why the European Commission adopted an infringement decision in December 2015, concerning Greece, Italy, Malta, Hungary, and Croatia. Croatia did not fully transpose and implement the Common European Asylum System, more precisely the Eurodac Regulation which requires effective fingerprinting of asylum seekers, and sharing of data to the central Eurodac system within 72 hours (European Commission 2015). Eurodac Regulation is essential for the proper functioning of the Dublin system which has been reaffirmed as the cornerstone of the Common European Asylum System despite being denounced in the beginning of migration crisis as ineffective and dysfunctional (ECRE 2016).

Because Croatia facilitated the transfer of immigrants across the Western Balkan corridor in 2015 and the beginning of 2016, there were not many long-term settlements from the outset but instead, there was a significant number of returns under the Dublin system. The number rose from 24 transfers in 2015 to 3793 in the period from 1 January to 30 November 2016 (ECRE 2016). In addition, Croatia was required to relocate 1617 asylum seekers from Greece and Italy until September 2017 under the Relocation Decisions. In 2016, there were five officials working in the Asylum Department within the Dublin Unit (ECRE 2016).

Numbers of returns confirm that other European countries have triggered the Dublin procedures while the corridor was still open. The EU Fundamental Rights Agency (FRA) reported that there were cases of transfers from Austria to Croatia under the Dublin system that included people who have been living in Austria for more than a year, and have already been integrated in the society (ECRE 2016). Furthermore, Austria adopted the waive-through approach of the corridor but still initiated the Dublin procedures for Croatia. These actions shifted the responsibility to other countries on the Western Balkan corridor despite the fact the corridor was an agreed-upon approach, as a collective action was deemed to be the only successful solution on the Western Balkan Summit of 25 October 2015 (ECRE 2016). Returns are also debatable from a legal point of view since the movements of immigrants are not directly irregular, given that the movements were facilitated by the states.

In March 2016, the European Council and Turkey reached an agreement on the Joint Action Plan that would tackle the flow of irregular migration across Turkey to Europe. The so-called

EU-Turkey deal's main requirement was that all new irregular immigrants arriving from Turkey to the Greek islands whose applications for international protection are declared inadmissible should be returned to Turkey – for every Syrian citizen returned from Greece to Turkey another Syrian citizen would be resettled to the EU. Additionally, the agreement determined that the EU would reduce visa restrictions for Turkish citizens, contribute €6 billion to Turkey in order to improve the reception conditions for immigrants, update the customs union, and revisit the negotiations on Turkey's accession to the EU. Turkey, on the other hand, would strengthen its border surveillance and cooperation with the bordering EU countries in prevention of irregular migration (European Council 2016).

The EU-Turkey deal was criticised by several international organisations and NGOs. Human Rights Watch (2016) warned that the deal is only deepening the humanitarian disaster of people trapped in Greece, and that it enables fast-track collective expulsions without examining individual applications for international protection. In addition, they highlighted the crackdown on human rights in Turkey, which the EU should condemn instead of support. Similarly, ECRE (2018) emphasised that the main aim behind the deal was to prevent people from leaving Turkey, i.e. from reaching the EU. In return, Turkey got political leverage over the EU, and a certain level of immunity from the EU critique and influence on the Turkish internal changes. Migration Policy Institute (2021) also warned about the difficult conditions Syrian immigrants have been facing in Turkey, lacking access to the labour market, social support, and education, which raises the question on whether Turkey is a safe enough country for them to be returned to. Amnesty International (2016) similarly reported on immigrants being subject to human rights violations, including arbitrary detention, and denial of access to legal representation. In addition, their report pointed out that the deal did not mention non-Syrian immigrants at all.

Despite the criticism, the EU-Turkey deal is considered to be successful to at least a certain extent. It was praised by political leaders on both sides. German Chancellor Angela Merkel said it was effective in stemming irregular migration, and suggested it could be a model pact. Similarly, the EU policy official Josep Borell said a comparable agreement has to be done in the future, with the Turkish Deputy Foreign Minister Faruk Kaymakci echoing his words, stating that renewing and revisiting the agreement is in the interest of all involved parties (Migration Policy Institute 2021).

4.2 NUMBERS OF IMMIGRANTS ARRIVING VS. NUMBERS OF PUSHBACKS

In December 2020, the Border Violence Network Monitoring (2020a) published a special report in two volumes, *The Black Book of Pushbacks*, containing all the testimonies on pushbacks they collected by 2020. The second volume contains exclusively reports on pushbacks from Croatia (785 pages in total), including the statistics on how many testimonies on pushbacks they analysed. Based on their data, and statistics provided by the Croatian Ministry of Interior (n.d.), the graph below was formed.

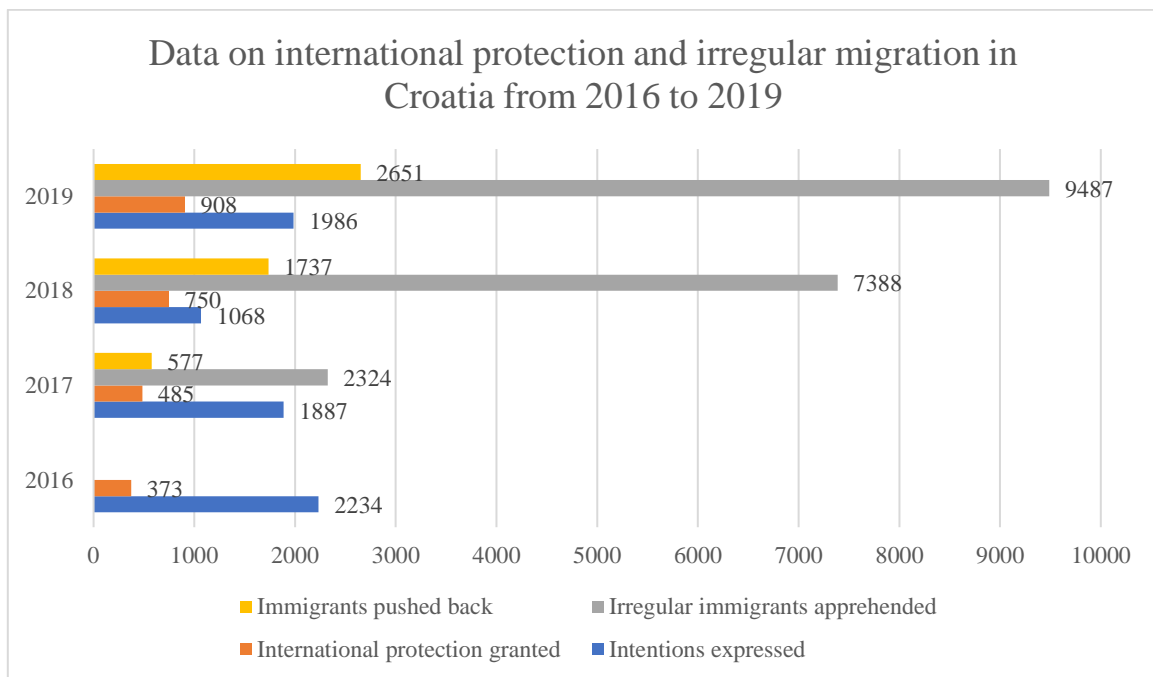


Figure 1 Data on international protection and irregular migration in Croatia from 2016 to 2019

The graph shows the changes in number of expressed intentions to apply for international protection, the number of international protection statuses granted, the number of apprehended immigrants crossing the border irregularly, and the number of immigrants pushed back from Croatia. Since the migration crisis started in the second half of 2015, the chart shows data from 2016 until 2019. In 2016, there is no available data on the number of immigrants apprehended for crossing the border irregularly, and the number of immigrants being pushed back from Croatia.

Available data shows that all numbers except for number of expressed intentions to apply for international protection have increased between 2016 and 2019. The most significant increase was in the number of immigrants pushed back from Croatia (359% increase). The second most significant increase was in the number of immigrants apprehended for crossing the border irregularly (308%). The number of international protection statuses granted grew 232%. On

the contrary, the number of expressed intentions to apply for international protection dropped 11% from 2016 to 2019.

Further interpretation of this data is discussed in Chapter 4.4.

4.3 REPORTS ON PUSHBACKS

Prior to 2015, there were no reports on pushbacks at the Croatian border. When the Western Balkan corridor started closing in November 2015, new practices of separating immigrants that were not coming from war-torn countries was introduced for several days, which presented a risk of a breach of the *non-refoulement* principle. At the same time, in the course of the migration crisis in 2015 there were very few intentions for international protection expressed, since the majority of people either gave up, or had not applied for international protection in the first place (Croatian Law Centre 2016).

When people express intentions to apply for international protection at the border, officials refer the immigrants to the Reception Centre for Applicants for International Protection, as regulated in the LITP. In practice, such intentions can be expressed also when immigrants cross the border irregularly, in the procedure carried out by the police. In this case, the police procedure is stopped, and the procedure for international protection starts. Immigrants that express the intention to apply for international protection have to report to the Reception Centre for Asylum Seekers. If they fail to do so without a justified reason, they are treated as irregular immigrants, and can be detained and removed from the territory (Croatian Law Centre 2016). In 2016, there were 2,234 expressed intentions for international protection but as Croatian Law Centre (2016) reports, only a small number of those were expressed during the border checks on the Serbian border (32 in total).

4.3.1 FIRST REPORTS ON PUSHBACKS IN 2016

By the end of 2016, reports on unlawful pushback practices from Croatia to Serbia started being published. UNHCR Serbia received considerable claims from immigrants crossing the border irregularly that they have been apprehended by Croatian border officers, and sent back to Serbia without having the opportunity to apply for international protection (ECRE 2016). Many reports alleged disproportionate use of force by Croatian police, leaving some in need of medical treatment in Serbia due to the sustained injuries. UNHCR shared this information with

Croatian authorities but at the time of the report release none of the allegations have been investigated since there were no precise dates and locations stated in the reports. As ECRE's (2016) report states, one possible explanation for this is the fact that the majority of immigrants have been apprehended by Croatian police in the woods and forests near the Serbian border, making it impossible to provide detailed information on their locations.

In January 2017, two initiatives present in the area, Are You Syrious and Initiative Welcome (2017), first reported about illegal pushbacks from Croatia, accompanied by violent acts by the law enforcement. They reported about their conversations with thirty immigrants, mainly from Afghanistan, but also Iraq, Pakistan, Syria, and other countries. Many of them have expressed the intention to apply for international protection in Croatia on more than one occasion, sometimes even in a self-degrading way (i.e. kissing the hands and feet of police officers) (Are You Syrious and Initiative Welcome 2017). It is highlighted that the report is based on a small number of conversations, and that there is a growing concern that the number of pushbacks is even higher. Analysed cases were not the examples of returns and readmissions of immigrants but "illegal pushbacks from Croatia to Serbia that are carried out by the Croatian police, and are accompanied by violence and degradation" (Are You Syrious and Initiative Welcome 2017, 2).

Similarly, Human Rights Watch (2017a) interviewed 10 Afghans who stated that they were forced back to Serbia in November 2016, after being apprehended in Croatia, and denied the right to apply for international protection. Nine of the interviewees experienced violence by Croatian law enforcement (kicking and punching), and had their personal items taken. Interviewees described how they were allegedly allowed to lodge an asylum claim, were told that they are going to be transferred to a refugee camp but were then driven to the Serbian border, beaten, laughed at, had their possessions taken, and were forced back to Serbia. Human Rights Watch also wrote to Croatian Ministry of Interior on 20 December 2016 (Human Rights Watch 2017a).

Save the Children (2017) reported in the same month that there have been alleged 1,600 cases of illegal pushbacks carried out from Hungary and Croatia to Serbia, making it an average of 30 cases per day. Article is citing data collected by the UNHCR, stating that there were 317 documented pushbacks from Croatia to Serbia since 30 November 2016 (Save the Children 2017). Save the Children called for the EU to increase the funding for emergency shelters, and for support by the Serbian authorities.

In 2016, there was no border monitoring projects implemented, only UNHCR carried out its border monitoring visits under its mandate (Croatian Law Centre 2016). During 2016, UNHCR carried out three visits, during which no unlawful practices were identified. The representatives of the UNHCR did state that it is likely that immigrants have been sent back from Croatia without being able to apply for international protection, but since there were no further investigations carried out no conclusions were drawn. It was expressed that continuing systematic border monitoring activities in 2017 are essential in order to ensure compliance with the *non-refoulement* principle (Croatian Law Centre 2016).

In 2017, there were still no border monitoring projects implemented in Croatia. UNHCR continued with its visits, and carried out four of them in 2017. No unlawful practices were identified (Croatian Law Centre 2017). In December 2017, the Croatian Ministry of Interior, UNHCR, and the Croatian Law Centre signed a tripartite protocol relating to the implementation of the project *Monitoring the conduct of police officers of the Ministry of Interior in the field of illegal migration and asylum* (Croatian Law Centre 2017). This project planned 13 visits to selected police administrations in 2018, having access to case files on the treatment of irregular immigrants that are potential applicants for international protection, in order to get an insight into the access to the international protection.

However, reports on unlawful pushbacks from Croatia kept on being recorded by UNHCR Serbia, NGOs, and international organisations during 2017. In their Annual Report 2017/2018, Amnesty International (2018) reported on continued pushbacks from Croatia to Serbia, denying immigrants right to access to apply for international protection. Based on reports from Are You Syrious and Centre for Peace Studies Croatia, at least 30 asylum applications had been dismissed by the Security and Intelligence Agency on the grounds of “security concerns” (Amnesty International 2018, 139). Since these notes were marked as classified, they could not be seen and rebutted or challenged by the applicants or their legal representatives, which led to an automatic rejection by the Croatian Ministry of Interior. These applications included families with children.

In July 2017, the Court of Justice of the European Union ruled that Croatia breached EU law in the corridor period since it allowed immigrants to travel to Slovenia and Austria without examining their asylum applications first (Human Rights Watch 2017b). Human Rights Watch (2017b) reported that by August 2017, 1,262 immigrants applied for international protection in

Croatia, including those who were returned to Croatia under the Dublin system, and only 76 of applicants have been granted international protection.

In a joint action briefing paper, Oxfam, Belgrade Centre for Human Rights, and Macedonia Young Lawyers Association (2017) report on the 140 testimonies the Belgrade Centre for Human Rights and the Macedonia Young Lawyers Association collected between 30 January and 17 February 2017. Out of those 140 testimonies, 75 have been expelled from Hungary to Serbia, 19 from Croatia to Serbia, 44 from Serbia to either Bulgaria or Macedonia, one from Macedonia to Greece, and 7 from Bulgaria to Turkey, with some of them being expelled more than once, and from more than one location. As stated in the briefing paper, these findings suggest that pushbacks and abuses accompanying them are systemic actions carried out by the state authorities in the whole region (Oxfam, Belgrade Centre for Human Rights and Macedonia Young Lawyers Association 2017).

4.3.2 ESCALATION OF PUSHBACKS IN 2018

In November 2017, a 6-year-old girl named Madina was hit by a train on the border between Croatia and Serbia, after her family was pushed back from Croatia to Serbia without being able to apply for international protection. This case attracted a lot of international attention as it was reported on by The Guardian (2017). The Serbian Ministry of Interior stated that the Croatian border authorities had not acted in accordance with the legislation and agreements between the two countries. The Croatian Ministry of Interior responded that the Croatian police did not contribute to the accident in any way (Croatian Law Centre 2017). National media meanwhile reported on other incidents on the border that resulted in death, making it clear the Madina case was not the only one (Glas Slavonije 2018).

In 2018, the number of reports on violent pushbacks increased. NGOs and initiatives based and active in the region started collecting the testimonies on pushbacks systematically, and publishing them in monthly reports (see the No Name Kitchen and the Border Violence Monitoring Network).⁵ In February 2018, organisations Are You Syrious, No Name Kitchen,

⁵ No Name Kitchen started publishing monthly reports in June 2018, and has published them until January 2019. They are also a part of the Border Violence Monitoring Network which an independent network of NGOs and initiatives that have been based in the Western Balkan region. They started publishing the testimonies by immigrants who have been pushed back, interviewed by volunteers and workers on the route. First published testimonies of pushbacks from Croatia date to March 2017. They started publishing monthly reports in February 2019.

Centre for Peace Studies Croatia, and Initiative Welcome published their fourth report on pushbacks from Croatia. Testimonies collected by these organisations contain statements on police violence (verbal and physical, including threats and mockery), forced signing of documents in languages that the person did not understand, having their possessions taken away and/or destroyed, and being expelled despite expressing the intention to apply for international protection (Croatian Law Centre 2018). Reports of abuse were documented by the Jesuit Refugee Service (2018) as well, after interviewing 17 people in Croatia and Serbia.

In reports from 2018 the use of violence by the Croatian police at the border was the main issue. In May 2018, Croatian police injured nine people when it fired at a van carrying 29 immigrants that did not stop at the roadblock that was set up by the police (Reuters 2018). The authorities claimed the police reaction was justified as the van did not stop, however, the Minister of Interior did state that police did not use the spike strips in order to stop the van. If the police used the spike strips, they would not have to shoot at the van (Index HR 2018). In November 2018, The Guardian (2018) published audio recordings and video footage of immigrants after being attacked by the Croatian law enforcement, and pushed back to Bosnia and Herzegovina.

UNHCR (2018) stated in their report that they received reports of roughly 2,500 immigrants who were pushed back from Croatia, with over 1,500 being denied the right to apply for international protection, and over 700 experiencing violence and theft. European Union Fundamental Rights Agency (2018) reported that the Croatian police continued to use force against immigrants while pushing them back to neighbouring countries. Human Rights Watch (2018) interviewed 20 people that were apprehended deep inside Croatian territory, and pushed back to Bosnia and Herzegovina without having the chance to apply for international protection. Sixteen of them were beaten by Croatian police, and had their possessions taken and/or destroyed. Amnesty International Slovenia (2018) conducted six interviews with immigrants, stating that the Croatian police took and/or destroyed their mobile phones in order to prevent them or make it harder for them to cross the border again, using online maps.

In 2018, Are You Syrious and Centre for Peace Studies Croatia accused the Croatian Ministry of Interior of pressuring human rights organisations and lawyers in the Madina case in order to divert the public attention from the investigation (Croatian Law Centre 2018). The two organisations announced a press conference on 18 April 2018 in order to share the methods used to cover up the truth about Madina's death with the public. Involved activists were,

however, visited by the police the evening before the conference, and notified that they are scheduled to attend informational talks at the police station at the exact same time as the press conference was supposed to happen. Furthermore, the lawyer representing the family involved in the case reported that she was denied access to her clients by the police. The lawyer was also visited by the National Police Office for the Suppression of Corruption and Organised Crime to investigate the validity of the power of attorney on claims that the parents' signatures were not authentic (Croatian Law Centre 2018).

In 2019, UNCHR (2019) reported of 384 incidents involving 2,674 people who were pushed back from Croatia to Serbia, and 289 incidents involving 2,194 people who were pushed to Bosnia and Herzegovina. Immigrants entering Croatia from Bosnia and Herzegovina faced an even greater risk since they crossed areas marked as mine fields (Croatian Law Centre 2019). Report by Save the Children (2019) highlighted the violence against children on the move, involving 222 cases of pushbacks from Croatia that involved children. Furthermore, the Commissariat for Refugees and Migration of the Republic of Serbia issued a statement on torture of immigrants by the Croatian police, following the testimony of a 16-year-old boy from Afghanistan who was beaten and tortured by Croatian police officers, including electric shocks (Croatian Law Centre 2019).

In 2019, the level of recorded violence has also increased, as many reports involved cases of shootings, accidents, and also deaths (Croatian Law Centre 2019). The Border Violence Monitoring Network (2019) published a special report on torture of immigrants in Croatia in 2019. As stated in the report, more than one type of violence can be documented in individual testimonies, which is often the case.

Types of violence used in 2019

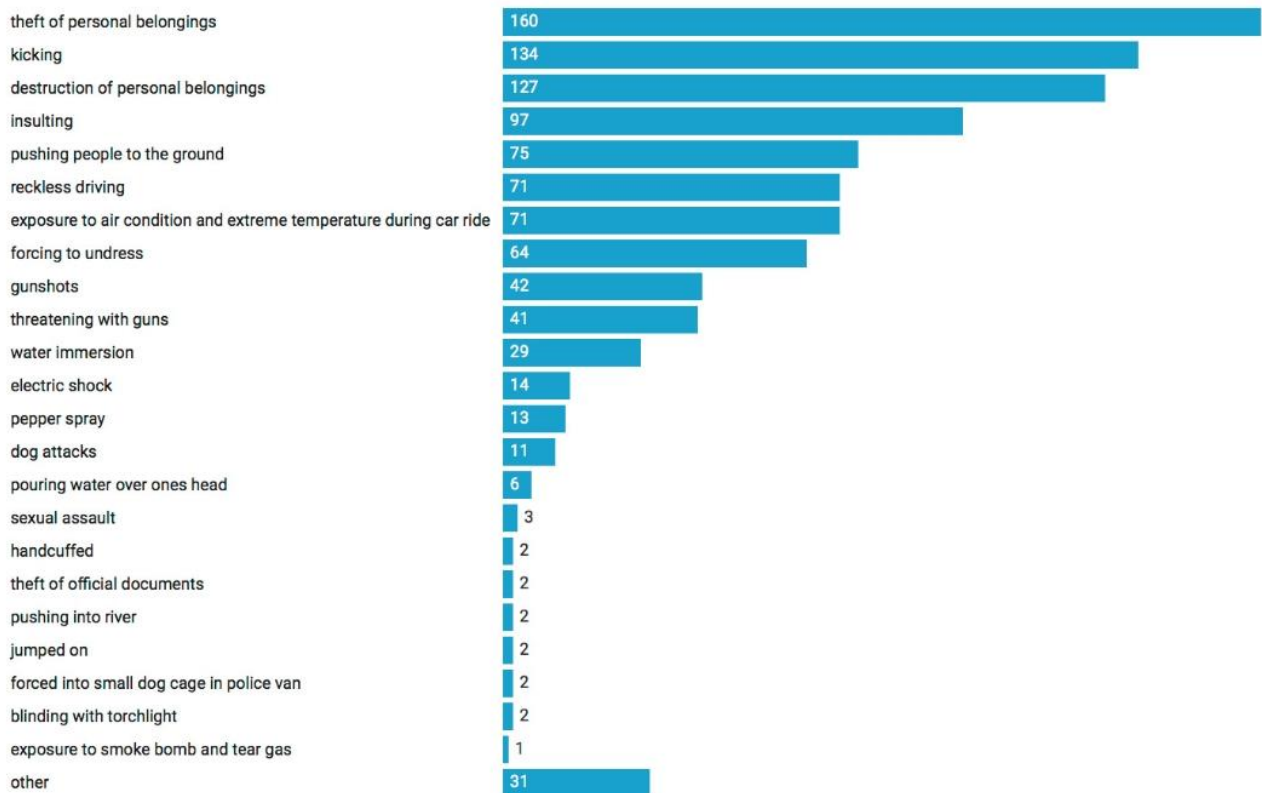


Figure 3 Types of violence used in 2019 at the Croatian border. Source: Border Violence Monitoring Network (2019)

4.4 REPONSES FROM NATIONAL AND EUROPEAN AUTHORITIES

In 2018 and mostly in 2019, all the reports on pushbacks started getting addressed on both national and European level.

The first case that received wider publicity and therefore demanded a response by the Croatian authorities was the case of the six-year-old Madina. Following the case, the Croatian Ombudswoman (2018a) submitted a letter to the State Attorney General, containing all the relevant information collected about the Madina case. The Ombudswoman also stated that there are many indications of police misconduct regarding irregular immigrants, which has raised concerns about the proper application of the relevant national legislation. Meanwhile, Croatian police claimed that there were no thermal imaging camera shots preserved in the Madina case (Croatian Law Centre 2017).

In March 2018, the Domestic Policy and National Security Committee of the Croatian Parliament discussed international protection in Croatia in response to media reports, a report

from the Croatian Ombudswoman, and reports and calls from NGOs (Croatian Law Centre 2018).

In September 2018, the EU Commissioner for Human Rights addressed a letter to the Croatian Prime Minister (then Andrej Plenković), in which she expressed her concerns about the alleged collective expulsions from Croatia to Serbia and to Bosnia and Herzegovina, and has called on Croatia to investigate these allegations (Council of Europe 2018a). Minister of Interior responded to this letter in October 2018 (Croatian Ministry of Interior 2018a). In this letter, the Minister stated that as a member state and a state intending to join the Schengen Area in the near future, “the Republic of Croatia has the sovereign right to control the entry of aliens in its territory as it has the obligation to protect the state border from illegal crossings” (Croatian Ministry of Interior 2018a). He stated that the capacities to monitor the border with both Bosnia and Herzegovina, and Serbia have been increased according to the Schengen Border Code that regulates deterrence measures. It is also stated that Frontex is monitoring the Bosnian-Croatian border with an airplane since 18 July 2018. Furthermore, the Minister stated that all reports by NGOs regarding the allegations of use of violence have been examined “according to our capacities given the fact that generally there is not enough concrete data for criminal investigation” (Croatian Ministry of Interior 2018a).

The Minister furthermore stated that accusing Croatian police of violence is a strategy used by immigrants so they can re-enter Croatia, and then continue their journey towards the states that are their desired final destination. He referred to the issue of secondary movement of immigrants after they enter Croatia, and how Croatia is addressing it. It is mentioned in the letter that under the Dublin System, 1,042 people were returned to Croatia from 2016, that being 637 people in 2016, 311 people in 2017, and 94 people in 2018 (Croatian Ministry of Interior 2018b). The Minister referred to the discontent expressed by the secondary movements within the EU, and the conclusions made by the European Council in June 2018, when the member states were invited to “take all necessary internal legislative and administrative measures to counter such movements and to closely cooperate amongst each other to that end” (Council of Europe 2018b). As the Minister pointed out, the provision on cooperation and support of the partners in the Western Balkans region was included upon the proposal and the request of Croatia (Croatian Ministry of Interior 2018a).

The second part of the Minister’s letter refers to the UNHCR’s report on the situation at Croatian border (UNHCR 2018). Minister stated that the report is referring to unconfirmed and

alleged accusations, including an article by The Guardian, that are based on “unverifiable information from unknown migrants or quotes of non-governmental associations”, including those that have in the past “used social networks to invite migrants in the Republic of Serbia” to protest and try to break through the border control of Croatia (Croatian Ministry of Interior 2018a). The Minister stated that this places pressure on the Ministry of Interior to “yield when it comes to carrying out consistent surveillance of the European Union external border” (Croatian Ministry of Interior 2018a).

4.4.1 INCREASED PRESSURE ON THE GOVERNMENT OF CROATIA

In September 2018, a group of Members of the European Parliament addressed a question to the Commission regarding the situation in Bosnia and Herzegovina, and the allegations of use of violence by the Croatian authorities (European Parliament 2018). On the behalf of the European Commission, Mr Avramopoulos responded that the Commission has provided financial and humanitarian aid to address the situation in Bosnia and Herzegovina, and that the negotiations on deployment of the Frontex along the Bosnian-Croatian border is finalised. The representative also stated that the Commission is in contact with Croatia regarding the implementation of the Common European Asylum System and the allegations of mistreatment of immigrants (European Parliament 2019).

In October 2018, the Committee on Human Rights and Rights of National Minorities of the Croatian Parliament discussed migration in a thematic session. In this session, the Ombudswoman emphasised that she has addressed the allegations to the Ministry of Interior several times, and also that her work was obstructed in 2018. This was due to the fact that the Ministry limited her access to information on the treatment of immigrants by police, the application of security measures in the return process, and the treatment of applicants for international protection (Croatian Parliament 2018). It was also pointed out that Croatian police is criticised in reports of international institutions, such as UNHCR and the EU Commissioner for Human Rights, precisely because individual cases and cases the Ombudswoman raised were ignored. Representative of the Ministry of Interior stated that all the allegations towards police were being inspected (Croatian Parliament 2018).

Following this session, the Ombudswoman also addressed a letter to the Committee on Human Rights and the Rights of National Minorities of the Croatian Parliament. In the letter, she highlighted how the police did not provide complete information in cases she raised, and that

the Ministry did not respond to her inquiries about it (Croatian Ombudsperson 2018b). Ministry of Interior, however, denied all the accusations, and stated that everyone who requested information, including the Ombudswoman, has received all the information and answers. Ministry stated that the Ombudswoman addressed the Ministry 23 times in 2018, and that only 3 of her inquiries remained unanswered (Croatian Ministry of Interior 2018b). Ministry denied all the accusations regarding the mistreatment of immigrants by police, and stated that these allegations and the testimonies they are based on are unfounded. In addition, Ministry stated that police are going to make all necessary efforts to “protect their national interests and the national border from illegal immigration”, and provide protection to those who need it (Croatian Ministry of Interior 2018b).

In December 2018, Commission awarded additional €305 million to states under migratory pressure, of which Croatia received €6.8 million to help reinforce border management “in full respect of EU rules” (European Commission 2018). This funding was to cover operational costs of 10 border police stations, and the setting of a monitoring mechanism that would ensure all measures at the border are in full compliance with fundamental rights and EU asylum laws.

In the beginning of the 2019, Amnesty International released a report on pushbacks at Croatian borders, reporting that human rights violations and denying of access to international protection was common practice at the Bosnian-Croatian border (Amnesty International 2019). In March 2019, Croatian Minister of Interior (Croatian Ministry of Interior 2019a) responded to this report, stressing that Croatia’s assignment as a member state is to protect its national border that is also the external border of European Union, and that it is doing so in compliance with the national and European legislation. The Minister also stated that all reports of violence have been investigated by the Ministry, despite the reports of NGOs and other organisations lacking sufficient data for criminal investigation, finding no evidence of unlawful use of force. Furthermore, the Minister stated that false accusations against the police are a tactic used by those immigrants who were denied entry to Croatia because of their irregular entry, hoping that they will be readmitted to the country in order to continue their way to their preferred destinations (Croatian Ministry of Interior 2019a).

In March 2019, the Croatian Ombudswoman received an anonymous complaint that was filed by a border police officer, reporting unlawful practices conducted by police officers, following the orders of their superiors (Croatian Ombudsperson 2019a). The Ombudswoman immediately notified the State Attorney Office of the Republic of Croatia, and requested an

investigation. In June 2019, she still did not receive a reply, which is why she complained to the Croatian Parliament and parliamentary committees, also receiving no reply. In addition, the Ombudswoman also warned the Ministry of Interior about the fact that she was denied access to relevant data on visits under the National Preventative Mechanism. Denying access to information has been a practice that started already in 2018, only in relation to irregular immigrants (Croatian Ombudsperson 2019b). In July 2019, the State Attorney Office of the Republic of Croatia (2019) responded to the Croatian Ombudswoman, stating that they have received the mentioned anonymous complaint, and have forwarded it to the competent office. The Office stated that according to the Law of Criminal Procedure, the Ombudswoman is not entitled to the information concerning the actions taken and process in work.

In April 2019, 30 Members of European Parliament signed a letter addressed to the EU Commissioner of Migration and Home Affairs, and the Commissioner of the European Civil protection and Humanitarian Aid Operations, addressing the situation at the external border in Croatia, referring to numerous reports by the NGOs and other international organisations, such as Amnesty International and Médecins sans Frontières (Members of the European Parliament 2019). The signed Members of the European Parliament mentioned the additional funds the Commission has allocated to Croatia in order to improve the situation, and establish the monitoring mechanism, but pointed out that reports from the field showed that the situation has remained the same, “both in terms of reports of violent push-backs, denial of access to asylum in Croatia and the absence of adequate investigation of past allegations” (Members of the European Parliament 2019).

In the letter, they also point out that the Ministry of Interior has responded to the absence of investigations with claims of lack of necessary information on particular cases, which the Members of the European Parliament reject as incorrect. They stated that the Are You Syrious organisation provided detailed information on numerous cases, and that the Centre for Peace Studies Zagreb has also filed complaints against police officials but received no follow-up from the authorities (Members of the European Parliament 2019). In addition, they mentioned reports by Médecins sans Frontières on increasing violence by the Serbian police and border authorities in order to prevent immigrants from leaving to Croatia. The letter calls on European Commission to request from Croatian authorities to immediately stop the violent practices at their border, ensure that people who enter Croatia are provided with the possibility to request

international protection, and monitor the use of EU funds in Croatia, Serbia, and Bosnia and Herzegovina (Members of the European Parliament 2019).

4.4.2 CONCERNS RAISED ON THE EUROPEAN LEVEL

In June 2019, Council of Europe (2019) released a report on pushback policies and practice in member states. Rapporteur Tinneke Strik visited Croatia and observed the practices on the external border, which is the longest external land border of the EU (1,300 kilometres, 1,100 of which with Bosnia and Herzegovina). She reported that the authorities she met have emphasised the closing the humanitarian corridors, setting up the hard borders, and tightening the border control is not only Croatian responsibility as a candidate country for Schengen area but also European priority. The Croatian Government has said to Strik that very few asylum seekers actually want to stay in Croatia, and that the majority enters irregularly in order to avoid having their fingerprints collected – the state that collects the fingerprints is also the responsible country for asylum procedure within the Dublin system (Council of Europe 2019).

Authorities in Croatia expressed its frustration with the Dublin system that needs to be reformed, as there would have been 600,000 asylum applicants in Croatia if the system was applied strictly while it was suspended in Greece and Italy. In fact, there have been 150 applications during this period (Council of Europe 2019).

Financial support that has been provided by the EU was considered insufficient in view of the challenges Croatia has been facing (Council of Europe 2019). Strik mentioned that an operational agreement with Frontex enabled aircraft surveillance at the border, and assignment of 20 case workers to asylum procedures. On her visit at the Bosnian-Croatian border, officers explained that Frontex aircraft controlled the border and shared relevant information, and that 6,500 officers were deployed along the border on Croatian side, while only two to four officers were deployed on the Bosnian side between sectors (Council of Europe 2019).

The State Secretary for European and International Affairs in Croatia stated for the report that the allegations of police violence were then the subject of inquiry at ministry level instead of police level to guarantee objectiveness. Nevertheless, the Secretary was persistently denying all allegations of violence and pushbacks: “According to the State Secretary, asylum seekers try to avoid contact with the Croatian authorities in order to travel further north to western European countries” (Council of Europe 2019, 18).

Strik, however, reported of large discrepancies between the statements of the authorities, and NGOs and the Ombudswoman. The latter stated that she lodged over 200 complaints with the Ministry of Interior, and has only had 1% of them declared admissible, which raised concerns about the level of independence in the processes (Council of Europe 2019).

The number of people that managed to lodge asylum claims dropped by 40% from 2017 to 2018. Suspected cases of pushbacks included “decisions concerning a large group of people turned away in 1.5 hours with exactly the same wording for each person “Economic migrants, do not wish to stay”” (European Council 2019, 19), and as Strik analysed:

“The European Union’s request for “expediency” at borders, even accompanied by the need for due process, encouraged Schengen countries to process and return cases without sufficient individual guarantees of access to information and assistance, and the Schengen implementation rules allowed for border authorities to “discourage” potentially illegal entrants, which allowed a margin of interpretation leaning towards refoulement.”

Strik also met with the mayor of Bihac in Bosnia and Herzegovina, who stated that Croatian police officers were returning immigrants across the border into Bosnian territory, not respecting the distance of the eight-kilometres zone around the border, and violating the sovereignty of Bosnia and Herzegovina. He witnessed Croatian police carrying weapons on multiple occasions. The mayor also stated that the attempts to close the external border of the EU made the situation in Bosnia and Herzegovina unsustainable, as huge numbers of immigrants are just “disappearing” into the region (Council of Europe 2019, 21).

4.4.3 CROATIAN PRESIDENT CONFIRMED THE PUSHBACK PRACTICE

On 9 July 2019, then President Grabar-Kitarović was interviewed by Swiss television (SRF 2019). In this interview, she denied that the pushbacks Croatian police is carrying out is illegal, and said that the police officers “assured me they have not been using excessive force. Of course, a little bit of force is needed when doing pushbacks” (The Guardian 2019). This statement confirmed that the pushbacks are carried out by Croatian police. President later denied her statement, accusing media of inaccurately reinterpreting her words (Telegram 2019a). Swiss television responded to her statement, stating that they have checked the translation from English to German three times before they published it, and that the President used the phrase “a little bit of force” (Jutarnji 2019).

On 12 July 2019, the Federal Administrative Court of Switzerland ruled to suspend the Dublin transfers to Croatia due to the pushbacks that Croatia has been carrying out on its border with Bosnia and Herzegovina (European Database on Asylum Law 2019). Switzerland is the only state that has suspended the returns to Croatia because of pushbacks; other suspensions of Dublin transfers have been implemented in 2020 due to COVID-19 pandemic (ECRE 2020).

On 15 July 2019, Human Rights Watch (2019a) addressed an open letter to the then Croatian president Grabar-Kitarović, asking of her to order investigations into pushbacks. President Grabar-Kitarović had not responded.

On 24 July 2019, Croatian news portal Telegram (2019b) published an interview with a police officer who revealed that officers receive orders for pushbacks from their superiors via private phone lines that are not recorded, using vans without GPS signal, and without filing a mandatory report on the transfer. These orders also include denial of access to international protection, and not collecting the data that should be collected at the border according to the EU legal and policy framework. The returns are happening as “if we have never found them nor transferred them back to the border” (Telegram 2019b). A few days later, on 27 July 2019, BBC (2019) published a video on Croatian pushbacks, including an anonymous statement from a police officer. In the video, the police officer stated that the orders on pushbacks go all the way to the top, and that instructions are to catch the immigrants before they reach the human rights organisations or any other place that would help them seek asylum. In October 2019, another police officer came forward, adding that the official reports state they found the immigrants at the border even though police captured them up to more than 50 kilometres from the border (Dnevnik.hr 2019).

Croatian government refused to respond to the BBC’s report. Their video (BBC 2019) also includes the statement made by the then Croatian president Grabar-Kitarović on her visit to the border area where pushbacks are happening. She stated that the immigrants’ injuries are caused on the journey due to the natural obstacles on the terrain. She guaranteed that police are not “brutal”, and that they use “the level of force prescribed by Croatian and EU legislation” (BBC 2019).

In August 2019, the Commissariat for Refugees and Migration of the Republic of Serbia stated that Croatian authorities caused physical and psychological torture of a minor from Afghanistan (Danas 2019). Croatian Ministry of Interior responded that they were not aware

of this particular case, and that they consider this to be one of the unfounded allegations against Croatian police without evidence, on the account of “persistency and determination to protect the national border and external borders of the European Union” (Croatian Ministry of Interior 2019b).

In October 2019, the UN Special Rapporteur on the human rights of migrants, Felipe González Morales, released a statement following his visit to Bosnia and Herzegovina (Office of the High Commissioner 2019). He stated that he received reliable information about violent pushbacks by Croatian border police, and that he addressed his concerns to the Ambassador of Croatia in Bosnia and Herzegovina.

In November 2019, the mayor of the Bosnian town of Bihac accused Croatian police of entering the Bosnian territory in order to push back immigrants (Telegram 2019c). Croatian Minister of Interior replied to these accusations, stating they were false, and that Croatian authorities have warned the Bosnian authorities about the issue of increased irregular migration via Bosnia and Herzegovina. Minister stated that the issue of irregular migration cannot be solved by allowing irregular immigrants to enter Croatia, as that is against the law, and that Croatia is increasing its law enforcement capacities at the Bosnian border, as the majority of those who enter irregularly come from the Bosnian Una-Sana canton, “clearly with the blessing of many of those who should be preventing that” (Croatian Ministry of Interior 2019c).

Following the reporting by The Guardian in 2020 on misconduct of Croatian police, Croatian Ministry of Interior expressed their assumption that this is “just one in the series of already established accusations due to the fact that Croatian police is consistently implementing measures to protect the EU’s external border, and do not tolerate illegal entries into the Republic of Croatia”, adding that Croatia is “constantly exposed to pressures from various interest groups, aimed at weakening measures at the Croatian border” (Croatian Ministry of Interior 2020). Ministry explicitly named the networks of No Name Kitchen and Border Violence Monitoring as groups that consistently accuse the police of mistreatment of immigrants for several years already. The statement declared that No Name Kitchen network led, according to the available information, the “violent breakthrough of hundreds of migrants into the Republic of Croatia across the border with Serbia in December 2018” (Croatian Ministry of Interior 2020). Ministry also stated that Border Violence Monitoring Network publishes reports on police violence that do not contain information and data which can be investigated.

4.4.4 EU GREEN LIT CROATIA'S ACCESSION TO SCHENGEN

Despite all the mentioned reports and calls for the EU to investigate and act upon Croatia's actions at the border, the European Commission announced in October 2019 that Croatia has taken all the necessary measures to meet the conditions for joining the Schengen area. Then president of the Commission Jean-Claude Juncker commended Croatia for its perseverance and efforts, while the Commissioner for Migration, Home Affairs and Citizenship Dimitris Avramopoulos stated that Croatia will contribute to further strengthening of the Schengen area as a full Schengen member (European Commission 2019).

This decision was met with criticism both by some politicians and international organisations. Slovene Member of the European Parliament, Tanja Fajon, stated that the decision is unacceptable due to the actions carried out at the border with Bosnia and Herzegovina (Schengen Visa Info 2019). Human Rights Watch (2019b) called on the EU to address Croatia's pushbacks, stating that the Commission's decision sends a message that "serious human rights abuses are no obstacle to Schengen accession". They also highlighted that one of the main requirements of the EU Schengen Borders Code is that states should act in compliance with the EU law, including the obligations of the principle of *non-refoulement* and fundamental rights, which are violated by the pushbacks carried out at the external border.

Additionally, as Oxfam, Belgrade Centre for Human Rights and Macedonia Young Lawyers Association (2017) have already stated, Amnesty International (2019, 24) emphasised in its report that

"while the behaviour of the Croatian police has received a great deal of attention in recent months, pushbacks, collective expulsions and automatic refusal to acknowledge asylum claims appear to be a silent, yet persistent, policy in other European countries on the EU external border."

Over 70% of immigrants interviewed by the Amnesty International stated that they have reached Slovenia or even Italy in their attempts to migrate. Their findings also suggest that in the summer of 2018, when the number of immigrants entering from Croatia to Slovenia increased sharply, the number of recorded intentions to apply for international protection in Slovenia declined, and the number of immigrants informally returned to Croatia increased (Amnesty International 2019). These figures suggest that the vast majority of immigrants who entered Slovenia over the summer were pushed back to Croatia. Furthermore, report from the

Border Violence Monitoring Network (2020b) analyses pushbacks from Bosnia and Herzegovina, which suggests that pushbacks are a common trend and not an isolated practice happening in one country only.

4.5 DISCUSSION

In order to address the main RQ of this thesis (*Why have the practices at the external EU border in Croatia changed in the context of the so-called migration crisis between 2015 and January 2020?*), two hypotheses have been tested.

4.5.1 RELATIONSHIP BETWEEN THE NUMBER OF IMMIGRANTS AND BORDER SECURITY MEASURES

H1 (*When the numbers of immigrants at the border in Croatia increased, there percentage of reported cases of violence increased.*) explores the relationship between the number of immigrants that arrived to Croatia from 2015 to 2020, and the increase of reports of violence that were recorded in the same time period.

As data from Frontex in Figure 1 shows (Chapter 4), there was a significant increase of irregular crossings of the border in 2015: in 2014, there were 43,357 irregular crossings recorded, and in 2015, there were 764,033 irregular crossings recorded, which is 17 times more than the year before (1662%). The number of irregular crossings dropped to 130,325 in 2016 already (83% drop), and continued to drop significantly in 2017 when 12,179 irregular crossings were recorded (90% drop), and 5,869 in 2018.

In Croatia, the number of immigrants apprehended for irregularly crossing the border also increased since 2017 (the data is not available for earlier years; see Figure 1), and kept on increasing until 2019 (308% increase). An even more significant increase was in the number of immigrants pushed back from Croatia between 2017 and 2019 (359%). At the same time, the number of intentions expressed to apply for international protection granted between 2016 and 2019 grew by 232%, while the number of expressed intentions to apply for international protection in turn dropped by 11% in the same period of time (Figure 1).

While the biggest increase in numbers of immigrants passing the Western Balkan countries was in 2015, that is not the case in Croatia. There is no data available on immigrants apprehended for irregular crossings in 2015 and 2016. Based on the comparison of numbers of

immigrants apprehended between 2017 and 2019 (Chapter 4.1, Figure 2), having 2,324 immigrants apprehended in 2017 and 9,487 immigrants apprehended in 2019, it is likely that the number of irregular crossings was lower in 2015 and 2016. This is probably due to the fact that Croatia was a part of the Western Balkan corridor on which the states facilitated transfers of immigrants rather than closing their borders. This could also explain the lack of data on irregular crossings.

The Western Balkan corridor approach made possible for Croatia to temporarily not deal with the increased numbers of arriving immigrants that would present a significant administrative challenge for the state's asylum system. Facilitating the movement of immigrants did, however, breach the Eurodac Regulation since Croatia did not effectively collect fingerprints of immigrants, and shared that data to the central Eurodac system within 72 hours (European Commission 2015). In addition, Croatia was faced with a significant increase of Dublin transfers, rising from 24 in 2015 to 3,793 in 2016, despite the fact that the corridor approach was adopted based on an agreement between the states involved (ECRE 2016).

The number of reported pushbacks did, however, rise the most between 2017 and 2019 (no data for 2016), as there was a 359% increase. Since Croatia had to deal with the Dublin transfers, and also with the transfers of immigrants under the relocation scheme commitment, it could be argued that Croatia increased the security on its borders, and implemented a much stricter criteria on who can enter the state since it already had to deal with a notable number of immigrants. As it was stated in the report of Council of Europe (2019), Croatian authorities were frustrated with the Dublin system, as Croatia would face 600,000 applications for international protection had the system been applied strictly while it was suspended in Greece and Italy. In 2018, Minister of Interior referred to the numbers of returns under the Dublin system which decreased from 1,042 in 2016 to 94 in 2018, and highlighted that it was expected of member states that they take all necessary measures to counter secondary movements within the EU (Ministry of Interior 2018b).

In order to avoid increased migratory pressure and the increasing number of immigrants they are responsible for under the EU legislation, states like Croatia often resort to imposing restrictive policies (Thielmann and Armstrong 2013). This is why exploring the relationship between the number of immigrants and reported cases of pushbacks is relevant to answer the research question, since the increased number is perceived as a valid argument for the governments to impose stricter border security measures, including the pushbacks. Increased

security and surveillance at the borders are also the most likely explanation for an increased number of apprehended immigrants crossing the border irregularly. Immigrants are both caught more often due to the increased surveillance, and are also pushed deeper into irregularity as the security policies and measures have become stricter. Increased number of apprehended immigrants can be then again used as an argument for continuously stricter border control, as the argument only considers the number, and not also the broader reasons for irregularity.

It is, however, challenging to interpret data and draw any definite conclusions, as the majority of people are pushed into irregularity, while there is only a small proportion of those who manage to apply and also receive international protection. In addition, data on granted international protection comes with a temporal delay, and does not necessarily correlate with the number of expressed intentions to apply for international protection. Further data would need to be collected and analysed to get a clearer picture on how many immigrants actually reach Croatia every year, how many of them are detained and/or are waiting for the decision on international protection, and how many of them actually continue their way to other states before the asylum procedure is finalised.

It is also important to take into consideration the broader migration policy and border management measures in the region. It is likely that official agreements, such as the EU-Turkey deal, and other states' border security activities have influenced the number of immigrants that reach Croatia significantly. This could mean that the pushbacks on the Croatian border are actually not in response to an actual increase in number of immigrants arriving, but are a part of the broader trend in the region, and at the external border of the EU in general, as it is also suggested in the report of Council of Europe (2019), and in the report of the Border Violence Monitoring Network (2020).

This is why H1 – *When the numbers of immigrants at the border in Croatia increased, the percentage of reported cases of violence increased* – cannot be either completely rejected or confirmed.

4.5.2 RELATIONSHIP BETWEEN THE EU AND CROATIAN MIGRATION POLICY

With the increasing number of reports on violent pushbacks by the Croatian law enforcement, and especially after the Madina case gained media attention, the pressure on Croatia and also the EU to tackle the allegations of pushbacks increased. As it can be seen from the responses

on the national and EU level, there have been several calls on different occasions for Croatia to investigate the allegations properly, and stop with the practices of pushbacks. These calls came from the Croatian Ombudswoman, the EU Commissioner for Human Rights, Members of the European Parliament, the Council of Europe, and the UN Special Rapporteur on the human rights of migrants, in addition to other international organisations and NGOs that have been publishing the reports on pushbacks.

To these calls, Croatian authorities have had relatively consistent responses that in the majority of cases denied all allegations, and highlighted that there is a lack of evidence to investigate these allegations. Croatian officials have stated many times that these allegations are based on false or unverifiable information, and furthermore, that they are a tactic used by immigrants who have been denied the entry to Croatia. For the report of the Council of Europe (2019) the Croatian Government stated that the majority of immigrants just want to enter Croatia irregularly in order to avoid collection of fingerprints, and then continue their way to other member states. In practice, this opinion was reflected in suspected cases of pushbacks, as the majority of people were expelled after a very short procedure with the same wording for each person: “Economic migrants, do not wish to stay” (European Council 2019, 19).

Croatian authorities have emphasised in the majority of their responses that these allegations come from the NGOs that are facilitating irregular border crossings, thus directly connecting them to criminal activities. This is an important element in the process of criminalisation of migration, criminalisation of solidarity (Provera 2015), and connects to both push out and push back techniques (Klaus and Pachocka 2019). It adds to the hostile environment (Edmond-Pettitt 2017) in which the immigrants are isolated, and also takes away the support immigrants need to enter the territory, as NGOs often offer not only humanitarian aid but also legal support.

As Ferreira (2018) argued, border security capacity is one of the main conditions for a new member state to fulfil upon joining the EU and Schengen area. Internal openness of the Schengen area has shifted the responsibility for securing the whole Schengen area to the states at the external border of the EU (Ceccorulli 2019). Croatian officials did indeed point out on several occasions that Croatia has an obligation both as a sovereign state, a member state, and a state intending to join the Schengen Area to protect both its national border, as well as the external EU border from irregular crossings (Croatian Ministry of Interior 2018a and 2019a). He also highlighted that Croatia is making sure to prevent the secondary movement in the EU that caused discontent in other member states.

The only time Croatian authorities admitted using force and carrying out pushbacks at the border was in July 2019 when then President of Croatia was interviewed by Swiss television (SRF 2019). The President later denied her statement. In addition to this statement, there have also been confessions of several police or border officers that spoke about the orders for pushbacks, denying access to international protection, and not collecting the data of immigrants found at the border, so they would not be registered anywhere as they were pushed back across the border (BBC 2019, Dnevnik.hr 2019, Telegram 2019b). This corresponds to what Klaus and Pachocka (2019) pointed out, that immigrants often do not have the possibility to apply for international protection at all, which is a violation of the international law, and that the individual applications for international protection are not assessed properly.

H2 – *Croatia's accession to the EU caused an increase in border violence* – cannot be either confirmed or rejected. It cannot be concluded that restrictive actions such as pushbacks are a part of the EU migration policy directly but considering the agreements the EU has with third countries, and the efforts it puts into preventing immigrants from reaching the EU territory, it could be argued the pushbacks are an extreme manifestation of the EU's broader restrictive policy. A similar point was also made in the report of the Council of Europe (2019). Further research is needed on practices of other states, particularly in the Western Balkans and in the EU neighbourhood to determine to which extent are the pushbacks connected to the EU migration policy.

On the other hand, the EU has mechanisms, such as the European Court for Human rights and the European Court of Justice, to legally prevent the pushbacks from happening, and to impose sanctions on the states that are not respecting the human rights and international law. It also needs to be taken into consideration that the EU is a union of different states that are sovereign, and can be relatively independent in decision making, especially in the domain of domestic security, including border regimes, which is why it is tough to agree upon a common migration policy that would satisfy all the member states. This is particularly challenging with different parties governing the states, and consequently having different opinions on topics, which can lead to coalitions such as the Visegrad group that opposes a less restrictive migration policy.⁶

The main argument that could speak in confirmation of the second hypothesis is the fact that the EU gave Croatia a green light on joining the Schengen area in October 2019, despite all the

⁶ Visegrad group is a coalition formed among Hungary, Poland, Slovakia, and Czech Republic.

calls on Croatia and the EU to investigate and stop the practice of pushbacks. In addition, EU has been accused of withholding evidence of Croatia's failure to supervise its police forces after receiving €300,000 to establish a monitoring mechanism (The Guardian 2020). This news is not included in the main empirical part since it was published outside of the analysed time frame. It does, however, show the fast-changing nature of the topic and developments in this area, which is why further research into this topic is needed in coming years to provide some more clarity.

4.5.3 ANSWER TO THE RESEARCH QUESTION

To finally answer the main research question, *why have the practices at the external EU border in Croatia changed in the context of the so-called migration crisis between 2015 and January 2020*, there are several possible explanations that seem most plausible.

Croatian border practices changed in the context of Croatia's accession to the EU and not necessarily because of the EU policy and legal framework, but more likely in the broader context of securitisation of migration, and general rise in restrictive border policies in the region. It is likely that Croatia adopted this approach for two reasons: firstly, to make the migratory pressure on the national level more tolerable since it could not deal with it administratively, and secondly, to prevent further movements towards other member states, fulfilling the role of guarding the external Schengen border, which is an essential prerequisite for normal functioning of the Schengen area. The latter is not only the EU's but also Croatia's priority since it will benefit from the free movement of people and goods. These two arguments are also reflected in responses that Croatian authorities have been giving since the first reports of violent pushbacks were published, and they had to respond.

4.6 LIMITATIONS AND FURTHER RESEARCH

The main limitation of this thesis is in the fact that it is limited both by the timeframe and by the limits of the thesis to include all the changes that are happening on the topic. This is particularly limiting when discussing data, as the timeframe is too short, and it is challenging to find comparable data from different countries. In addition, the current Covid-19 pandemic severely restricted the movement of people globally, and influenced the migration policies and border management significantly. This is also the reason why the timeframe of this thesis is restricted to January 2020.

Further research can address these shortcomings. First of all, a more in-depth (and also long-term) research on data on arriving immigrants is needed in order to better understand the relationship between the actual migratory pressure, and policies that develop in response to it. To better understand the broader context of restrictive border policies and pushbacks in the region, and also at the EU external border as a whole, further research in other countries' migration policy is needed. It would be particularly interesting to explore the connection among migration policies and border practices in the whole region of the Western Balkan, and how the EU policy, especially in the member states at the external border, influences the policy development in other states that are not (yet) members of the EU. The development on the topic of Croatian pushbacks and the response on the EU level, especially by the European Court of Human Rights and/or European Court of Justice, should be further monitored and investigated. Lastly, it should also be further researched on how the current Covid-19 pandemic influenced the ability of immigrants to access the territories, and apply for international protection.

5 CONCLUSION

Events that unfolded in the summer of 2015 put a significant pressure on the EU to deal with the number of immigrants that have been reaching its external border daily. If initially there was a brief period of open borders and fairly safe route to the EU established with the Western Balkan corridor, the general policy and measures turned much more restrictive in the following months and years. Access to the EU territory has been almost impossible, and the main actors in this restrictive approach are the states at the external border of the EU, such as Croatia.

Faced with its role as a new member state at the external border, and also a state pending its membership in the Schengen area, Croatia has had two main challenges to tackle. First one has been the challenge of the increased number of immigrants trying to enter its territory, as it became the first entry point to the EU on the Western Balkan route since Hungary closed its border in 2015. As the first country of entry, it has also become responsible for processing applications for international protection under the Dublin system, and has to process the immigrants returned to its territory from other member states. Secondly, it has to ensure that the border at the external border of the EU is safe in order for Schengen area to function properly.

Pushback practices that Croatia is carrying out now for the fifth year in a row are an extreme manifestation of the broader trend of securitisation of migration that has started already in the

1970s, and has majorly influenced the development of the European migration policy. As migration has been framed as a security issue, connected to organised crime, such as human smuggling and trafficking, and terrorism, tackling it calls for restrictive policies and heavily securitised responses that ensure the security of the EU, and keep the unwanted categories of people that are seen as a threat outside and preferably far away from European territory.

This is most likely also the explanation for EU's current responses or even more tellingly, the lack of more decisive responses to the violations of human rights that are happening at the external borders of the EU. Addressing these violations and the stances that both individual member states and the EU will take in the following years will determine the further development of the EU migration policy.

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