

DEMOCRACY AND HUMAN RIGHTS

REFUGEES AND MIGRANTS IN THE TRIANGLE OF BOSNIA AND HERZEGOVINA, CROATIA AND SERBIA

(Legal Framework and Analysis of the Situation in Certain Areas)

Dejan Lučka
Saša Čekrlija
september 2020



The public and the media rarely make a distinction between the terms “refugees” and “migrants”, and in many cases they use the phrase “illegal migrants”. It is clear that only an act itself can be held as illegal, while an individual cannot. Such terminology further dehumanizes migrants, stigmatizes and discriminates against them, and politicians, the media and institutions are reluctant to accept the use of appropriate terms.



The push-back doctrine, putting up fences, illegal deportations and “evictions”, inadequate and inhumane accommodation, disrespect for human dignity, restrictions and violations of rights, stigmatization, lack of empathy, treatment of people as commodity, racism and violence against refugees and migrants are all becoming increasingly common occurrences in BGH, Croatia and Serbia.



Those who behave in a discriminatory manner and publicly spread hatred on social media, believe that they are not doing anything wrong, but that they are practicing the “freedom of speech” in defence against the “migrant danger”.

Content

	INTRODUCTION	2
1	LEGAL REGULATION AND POSITION	3
2	TRIANGLE BORDERS AND NUMBERS	3
3	WHEN DE FACTO SUPERSEDES DE IURE	4
4	SYSTEM PUSH-BACK, VIOLENCE AND FENCES	4
5	VOLUNTARY RETURN AND DEPORTATION	5
6	INADEQUATE ACCOMMODATION AND LIFE IN LIMBO	5
7	RESTRICTIONS OF RIGHTS DUE TO THE PANDEMIC	6
8	VULNERABLE CATEGORIES	7
9	LACK OF WILL AND EMPATHY AND POLITICAL STIGMAS	7
10	TERMINOLOGY, HATE SPEECH AND COLLECTIVE RESPONSIBILITY	8
	CONCLUSION	10

Introduction

Generally, migrants are people who “migrate”, i.e. travel and emigrate from the country in which they lived, or whose citizens they are, to another country. They may relocate for economic or educational reasons, but also to avoid war, civil unrest, persecution, danger to life, or other human rights violations. Thusly, a migrant who leaves their country due to religious persecution has the right to apply for refugee status, while another migrant may be considered a so-called “economic migrant” who does not enjoy special international refugee protection, although their life may be in as great danger as the life of the former. It is difficult to correctly classify all groups of migrants, who are in various factual and legal positions, therefore we have simplified the analysis’ classification so to distinguish two groups of people who migrate, following the recommendations of the United Nations High Commissioner for Refugees.

Hence, the term “**refugee**” refers to persons who, fearing that they will be persecuted for certain reasons, find themselves outside the country of their citizenship and do not want or, out of fear, will not seek protection from that country, or who due to the development of events, if stateless and outside the country where they had their permanent place of residence cannot or, due to fear, do not want to return. The term “**migrant**” describes persons who leave their home countries for other reasons and who may return to those countries.

Human migrations are in many cases a combination of refugees and migrants. Bosnia and Herzegovina (hereinafter: B&H), the Republic of Serbia (hereinafter: RS, Serbia) and the Republic of Croatia (hereinafter: RC, Croatia) have obligations towards both groups, although they are different. Duties towards refugees are more extensive, while there is an obligation to treat all groups of people on the move with dignity and in accordance with the norms of international law.¹

¹ *Migracije i međunarodno pravo ljudskih prava – Vodič za praktičare broj 6*, [International Commission Of Jurists, Beogradski centar za ljudska prava, Beograd: 2017], Pages 44-45; Ledi Bianku, Nuala Mole, Lars Bay Larsen, Hugo Storey, *Evropsko pravo o azilu kroz sudsku praksu – Vodič za sudije, donosiocje odluka i praktičare*, [AIRE Centre: 2016], Page 17; Adrian Edwards, *UNHCR viewpoint: ‘Refugee’ or ‘migrant’ – Which is right?*, [The United Nations High Commissioner for Refugees, Geneva: 2016, (Can be found on: <https://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>), Accessed on 21/5/20 at 15:17)]; *Emergency Handbook*, „Migrant definition”, [The United Nations High Commissioner for Refugees, (Can be found on: <https://emergency.unhcr.org/entry/44937/migrant-definition>), Accessed on 21/5/20 at 15:51)]; *Convention Relating to the Status of Refugees (KSI)*, [United Nations General Assembly, Res. A/RES/429, Geneva: 1951], *Protocol Relating to the Status of Refugees*, [United Nations General Assembly, Res. A/RES/2198, New York: 1967], Article 1.

1. LEGAL REGULATION AND POSITION

B&H, Serbia and Croatia have the right to control the entry, stay and eventual expulsion of people who are not their citizens. In these countries, in addition to protection under refugee law, refugees enjoy special legal protection in accordance with domestic and international regulations relating to refugees, while Croatia provides protection by European Union norms (hereinafter: EU), and migrants enjoy protection within the framework of respect for basic human rights, with certain specifics of the law in each of these countries.

When it comes to international standards that apply to migrants and refugees, we can divide them into three groups. The first group represents the regulations specifically aimed at the protection of refugees and migrants, such as the *Convention Relating to the Status of Refugees* with the *Protocol*; the second group are regulations setting standards protecting the rights of migrants and refugees under general human rights instruments, such as the *Convention for the Protection of Human Rights and Fundamental Freedoms*; and the third group are the *acquis communautaire* on the rights of refugees and migrants, which apply in Croatia, while Serbia and B&H are in the process of harmonisation of their legislation with the EU legal framework.

Regarding domestic legal protection, it is provided to refugees and migrants through norms set in constitutions, special laws on asylum and foreigners, and through other regulations that regulate the procedures, rights and obligations of people on the move in B&H, RS and RC.

In all three countries, the **principle of non-refoulement** applies, and the asylum seeker should not be removed or returned to a country where their life or liberty would be endangered, nor to a country where they are not protected from being sent to such territory. RS, B&H and the RC also have the obligation to issue identification documents to refugees who are on their territory and who do not have valid documents. Also, asylum seekers have different rights in these three countries, from the moment of applying for asylum until obtaining refugee status. Those rights range from the right to residence, freedom of religion, primary health care and access to education and labour market, to the

right to social assistance, family reunification and integration into society.¹

2. TRIANGLE BORDERS AND NUMBERS

The mass movement of migrants and refugees from the Middle East, Asia and North Africa through the territory of Serbia and Montenegro resulted in a large concentration of people on the move in B&H, especially in the northwest, with the desire, in many cases, to go further to the EU via Croatia. To this end, RS, RC and B&H represent a sort of *triangle border* that migrants and refugees must cross in order to reach security.

In noticing clear signals that hinder the further movement of people on the move towards Western Europe, many of them decide to take a “break” in the countries where they found themselves, waiting for a more convenient moment to continue their journey to the desired destinations. In such a situation, the only logical step is to stay temporarily in B&H or RS for those who are currently there.

When it comes to the situation on the field and official reports of state institutions regarding the number of migrants in B&H, RS and RC, they often differ from the reports of independent bodies or researchers, and therefore it is not possible to determine the exact number of migrants and refugees in each of these states. This is influenced by the daily fluctuation of people on the move, but also by the technical and capacity inability of institutions to accurately record all migrants and refugees. In addition, in certain cases, it is possible that there is a deliberate failure to record all migrants and refugees, especially when the authorities intend to transfer them to a neighbouring country as soon as possible.

The numbers vary depending on who is making the assessment. However, it is true that tens of thousands of migrants and refugees have lived and are staying in the triangle of B&H, Serbia and Croatia in the last two years, and that they have wanted and

¹ *Zakon o azilu Bosne i Hercegovine*, [Parlamentarna skupština Bosne i Hercegovine, Službeni glasnik Bosne i Hercegovine, broj 11/2016], Articles 2/1, 76, 78; *Zakon o strancima Bosne i Hercegovine*, [Parlamentarna skupština Bosne i Hercegovine, Službeni glasnik Bosne i Hercegovine, broj 88/2015], Article 109; *Zakon o azilu i privremenoj zaštiti Republike Srbije*, [Narodna skupština Republike Srbije, Službeni glasnik Republike Srbije broj 24/2018], Articles 6, 59; *Zakon o međunarodnoj i privremenoj zaštiti Republike Hrvatske*, [Hrvatski sabor, Narodne novine – Službeni list Republike Hrvatske brojevi 70/2015, 127/2017], Articles 6, 64-77, 83-92; *KSI*, Article 27.

still wish to seek better life in EU countries. Some of them managed to go to the EU, while some, after “a series of failed attempts and surviving brutal violence at the EU borders”, decided to return to Serbia or B&H. However, most still hope for a new opportunity to enter the territory of the European Union. The estimates of the International Organisation for Migration (hereinafter: IOM) are that by August 2020, there were over 10,000 migrants and refugees in B&H, over 15,000 in Serbia, and over 8,000 in Croatia. Also, there has been a decline in the number of people caught crossing or attempting to cross the border since March, when measures began to be implemented due to COVID-19. However, the easing or abolition of these measures since mid-May has led to renewed migratory pressure on borders.²

3. WHEN *DE FACTO* SUPERSEDES *DE IURE*

All three states have laws relating to people on the move, and in addition, on paper, they have expressed the protection of human rights through the acceptance of international instruments that protect them. However, all of this looks nice when viewed through the letters and paragraphs in legal texts. The situation on the field is much different. Namely, the authorities often do not care what is written in the articles or legal practice, but how they can manage the state easier, have higher revenues, less tensions, and politically stable government and new votes. Thus, more often than not, the rights of refugees and migrants are violated by non-compliance with the regulations that were passed in order to protect that population.

In addition, there is a chronic ignorance of the concept of human rights and the human rights law itself by the authorities when it comes to migrants and refugees. Therefore, these authorities, from those who make decisions to those who execute them, very often grossly violate the human rights of people who came to Serbia, Croatia and B&H. Therefore, there is a discrepancy between what is prescribed (*de iure*) and what is actually happening on the field (*de facto*). Unfortunately, this gap is not in favour of migrants and refugees and leads to a serious violation of their basic rights, which they

often do not know they have due to lack of information.

4. SYSTEM *PUSH-BACK*, VIOLENCE AND FENCES

The term “*push-back*” represents state measures forcing refugees and migrants to return across the border, immediately after crossing it, regardless of their individual circumstances and without the possibility to seek asylum or argue against measures taken against them.

Although Croatian authorities state they have not recorded violations of the law by the members of the Croatian police, many organisations and media regularly report on illegal activities of the Croatian state in the transfer of migrants and refugees to B&H. Namely, Croatian police officers, often with the use of force and the threat of weapons, expel migrants and refugees from the RC. According to some reports, the brutality of the Croatian police is related to the fact that border patrols want to show migrants that they should give up trying to enter the EU. Croatia thusly systematically returns thousands of migrants illegally and, often with violent methods and humiliation, forcibly “expels” them from the EU and returns them to B&H.

One of the recent events of Croatia's ill-treatment happened at the beginning of May 2020, when, according to “*The Guardian*”, more than 30 migrants revealed details of robberies and beatings by Croatian police. Police officers spray-painted crosses on the heads of some of them, telling them it was a “cure for the coronavirus.” The Croatian police do not want to admit to the push-back, however, even the former President of the RC, Kolinda Grabar-Kitarović, has confirmed that the police are carrying out these activities.

In addition to push-backs, claims are being made in public about the need to build wire fences at the borders so that migrants cannot cross them. The latest news is that Serbia has started setting up such a fence on the border with North Macedonia, near Preševo, in order to prevent a possible mass crossing of the border. The role of the EU and its institutions in setting up these fences is unclear, with local

2 Nidžara Ahmetašević, *Ljudi u pokretu bez ljudskih prava – Izbjeglice i migranti u Bosni i Hercegovini bez ljudskih prava (LJPB)*, [Friedrich-Ebert-Stiftung, Sarajevo: 2020], Page 1; *Flow Monitoring*, [IOM: 2020, (Can be found at: <https://migration.iom.int/europe?type=arrivals>, Accessed: 31/8/2020 at 14:31)].

authorities claiming to have their support, while the EU officials denies it.³

5. VOLUNTARY RETURN AND DEPORTATION

Assisted Voluntary Return and Reintegration is an area of activity of the IOM where they provide support to migrants during voluntary return to the country of origin or to a third country where they are provided with residence. In 2019, this program covered 193 foreigners in Serbia and 837 foreigners in B&H within the activities of the IOM and the Service for Foreigners' Affairs (hereinafter: SFA). When these data are compared with the number of people in B&H and RS, they clearly indicate that most people on the move do not want to return to the countries they came from.

Certain politicians in B&H truly want to drive migrants and refugees out of the country. Therefore, various bodies are discussing ways to "solve" the issue of the stay of a large number of migrants in the country. Despite the existence of legal documents and tools that can be used if migrants and refugees want to return to

their home countries, as well as the low interest of people on the move to do so, certain political circles are constantly making plans to "expel" migrants and refugees from B&H.

In accordance with such views, in addition to announcements, statements and sporadic actions, a plan of the Minister of Security of B&H was implemented in April 2020 to have the SFA create a list of 10,000 migrants to be deported from B&H. The list was created on the basis of a questionnaire given to those who want to return to their home countries voluntarily, and according to later information provided by SFA Director Slobodan Ujić, out of 6,000 migrants, only 130 expressed a desire to return to the country of origin.⁴

6. INADEQUATE ACCOMMODATION AND LIFE IN LIMBO

The situation in temporary camps for migrants in B&H is currently very difficult and inhumane in many respects. In all camps run by the IOM, food shortages are regularly reported, as well as the fact that existing food is not adapted to everyone, including children or those who have a special diet due to health reasons. In addition to camps, many migrants and refugees stay outdoors, even during the night on the street, in parks, at train and bus stations, in abandoned buildings on the outskirts of cities and at former factories, most of them currently in the area of Velika Kladuša and Bihać. It is not uncommon for people on the move to be turned away from camps because there is not enough room for them.

In some camps, people sleep on concrete floors or on old, dirty and torn mattresses and in tents, which is a particularly big problem during the winter. Also, often hastily set up tent settlements in B&H do not have adequate and dignified access to running water and sanitation, hygienic conditions, areas for self-isolation, treatments, as well as available medical care, which puts migrants and refugees at high risk of possible infection and serious consequences. One of the last examples of the fast "opening" of a camp occurred in April 2020, when a new camp was built in Una-Sana Canton

³ Term – *Push-Back*, [European Center for Constitutional and Human Rights, (Can be found at: <https://www.ecchr.eu/en/glossary/push-back/>, Accessed: 8/7/2020 at 11:13)]; *Događaji koje hrvatska policija „nije evidentirala“: Migranti su silom, čak i prijetnjom oružjem, vraćani u BiH*, [Žurnal info: 2020, (Can be found at: <https://zurnal.info/novost/22653/migranti-su-silom-cak-i-prijetnjom-oruzjem-vracani-u-bih>, Accessed on 21/8/2020 at 11:17)]; Adelheid Wölflm, *Aufgrund der Covid-19-Pandemie fast keine Neuankommenden auf dem Balkan*, [Der Standard: 2020, (Can be found at: <https://www.derstandard.at/story/2000118986203/fast-keine-neuankommenden-auf-dem-balkan-wegen-covid-19-pandemie>, Accessed: 1/8/2020 at 7:07)]; Avdo Avdić, *Nakon što je žandarmerija zamijenila SIPA-u na granici: Za dva mjeseca iz Srbije u BiH ušlo više od 7000 migranata*, [Žurnal info: 2019, (Can be found at: <https://zurnal.info/novost/22517/za-dva-mjeseca-iz-srbije-u-bih-uslo-vise-od-7000-migranata>, Accessed on 3/8/2020 at 14:05)]; *Događaji koje hrvatska policija „nije evidentirala“: Migranti su silom, čak i prijetnjom oružjem, vraćani u BiH*, [Žurnal info: 2020, (Can be found at: <https://zurnal.info/novost/22653/migranti-su-silom-cak-i-prijetnjom-oruzjem-vracani-u-bih>, Accessed on 21/8/2020 at 11:17)]; Adelheid Wölflm, *Aufgrund der Covid-19-Pandemie fast keine Neuankommenden auf dem Balkan*, [Der Standard: 2020, (Can be found at: <https://www.derstandard.at/story/2000118986203/fast-keine-neuankommenden-auf-dem-balkan-wegen-covid-19-pandemie>, Accessed: 1/8/2020 at 7:07)]; Avdo Avdić, *Nakon što je žandarmerija zamijenila SIPA-u na granici: Za dva mjeseca iz Srbije u BiH ušlo više od 7000 migranata*, [Žurnal info: 2019, (Can be found at: <https://zurnal.info/novost/22517/za-dva-mjeseca-iz-srbije-u-bih-uslo-vise-od-7000-migranata>, Accessed on 3/8/2020 at 14:05)]; Gordan Duhaček, *Kolinda u šokantnom intervjuu priznala da hrvatska policija krši zakone*, [Index: 2019, (Can be found at: <https://www.index.hr/vijesti/clanak/kolinda-u-sokantnom-intervjuu-priznala-da-hrvatska-policija-krsi-zakone/2099829.aspx>, Accessed on 5/8/2020 at 18:56)]; Jelena Đukić Pejić, *Misteriozna ogradba protiv migranata*, [Index: 2019, (Can be found at: <https://www.dw.com/sr/misteriozna-ograda-protiv-migranata/a-54670606>, Accessed on 31/8/2020 at 20:21)].

⁴ *Migracioni profil Republike Srbije za 2019. godinu*, [Vlada Republike Srbije: 2020], Pages 25-26; *Migracioni profil Bosne i Hercegovine za 2019. godinu*, [Ministarstvo bezbjednosti, Sektor za imigraciju, Sarajevo: 2020], Pages 42-48; SRNA, *Ujić: Od 6.000 migranata, svega 130 želi da se vrati kući*, [BUKA: 2020, (Can be found at: <https://www.6yka.com/novosti/ujic-od-6000-migranata-svega-130-zeli-da-se-vrati-kući>, Accessed on 12/7/2020 at 10:37)]; SRNA, *Ujić: Pravi se spisak 10.000 migranata koji će biti deportovani iz BiH*, [Nezavisne novine: 2020, (Can be found at: <https://www.nezavisne.com/novosti/drustvo/Ujic-Pravi-se-spisak-10000-migranata-koji-ce-biti-deportovani-iz-BiH/595744>, Accessed on 12/7/2020 at 10:00)].

(hereinafter: USC) for the temporary accommodation of migrants (camp Lipa), at a location thirty kilometres away from Bihać. The construction of the camp was carried out without detailed planning, with the aim of being as far away from a larger settlement as possible, and the camp itself is in fact a tent settlement without properly installed running water or sewage systems. Conditions in the camp are below any decent standard of human dignity, and many migrants were forcibly taken there.

Also, the IOM regularly engages private security, but the violence that the security carries out against people on the move has not stopped even after a large number of complaints came from volunteers and the NGOs. In addition to the physical violence, the camp residents complain about the maltreatment by the employees.

Another problem is the overcrowding at reception centres in Serbia, where the human dignity of foreigners who stay there for more than a few days is not properly observed. In April 2020, the overpopulation rate in Sombor was as high as 448%. This has caused almost unbearable living conditions for individuals.

In general, there are numerous objections to the fact that there are no satisfactory conditions for migrants to stay in the camps and with their dignity and rights being violated, they find themselves in a limbo that oftentimes resembles hell. However, in a situation where different officials do not care much about the lives of refugees and migrants, there is incredible empathy and solidarity between activists, volunteers, locals, as well as various associations and self-organised groups, providing many things, from private accommodation to food, wardrobes and medicines for people on the move.⁵

7. RESTRICTIONS OF RIGHTS DUE TO THE PANDEMIC

The enjoyment of human rights is a *conditio sine qua non* for a dignified, equal and, to a certain extent protected by the state, life of each individual. However, the restriction and violation of various rights of migrants

and refugees has been happening practically since the first arrivals in the Western Balkans. At the time of the COVID-19 crisis, violations of migrants' human rights only spilled over from the "regular state". Thus, with movement bans, discrimination and inhumane conditions, the poor attitude of the authorities towards this population only continued, while their lives were far from dignified, equal and protected. At a time of general restrictions of human rights due to the COVID-19 pandemic, in order to reduce contacts, the authorities restricted the movement of migrants, turning accommodation facilities, by various measures, when viewed cumulatively, into *de facto* prison centres.

In Serbia, within all reception units, refugees, asylum seekers and migrants had the opportunity to use mobile phones and internet, and that was also their only contact with the outside world, because they did not have the right to go outside the centres. They were not allowed direct contact with their legal representatives, psychologists or other persons providing other types of services. During that time, citizens or foreigners who were not in asylum centres and reception centres had the opportunity to, in accordance with the regulations for that period, perform certain activities, such as going to a pharmacy or a store. Migrants were globally seen as a population to be "locked up" in camps, although there was no real need for it. The situation in B&H was almost identical.

In addition to many decisions before and during the epidemic which were disproportionate, illegal and inhumane towards the migrant and refugee population, the most recent decision in the USC stands out, which prohibits the entry and transport of migrants in this canton, as well as their accommodation in all accommodation units. In this way, the USC violated not only the international obligations of B&H, but also the laws and the Constitution itself, and thus showed that this attitude towards people on the move is becoming a matter of daily illegal work of bodies in B&H.

When talking on the topic of the restriction of rights during the pandemic, it is interesting that a very small number of people on the move actually had COVID-19, and it is not clear on what basis was a stricter regime applied to these people than that applied to other citizens. What is clearly visible from the actions of the authorities is that there was direct discrimination of this group of people, based on criteria such as their nationality, origin, residence and legal status, which grossly violated the human rights of these categories.⁶

⁵ LJPB, Page 3; Written Statement to UN Human Rights Council 44th Session (June/July 2020), [Can be found at: https://www.wilpf.org/wilpf_statements/hrc44-written-statement-on-bosnia-and-herzegovina/, Accessed on 7/4/2020 at 16:25]; Nikola Kovačević, *Lišenje slobode izbeglica, tražilaca azila i migranata u Republici Srbiji kroz mere ograničenja i mere odstupanja od ljudskih i manjinskih prava donetih pod okriljem vanrednog stanja (LSITA)*, [A 11 – Inicijativa za ekonomska i socijalna prava, Beograd: 2020]; Nevena Bogdanović, *Migranti i pandemija: 17 porodica na dva kupatila*, [Radio slobodna Evropa: 2020, (Can be found at: <https://www.slobodnaevropa.org/a/migrantski-kampovi-srbija-korona-virus/30518141.html>), Accessed on 23/8/2020 at 17:08].

⁶ LSITA; *Naredba*, [Krizni štab ministarstva zdravstva, rada i socijalne politike Unsko-sanskog kantona, 09-33-10234-2/20 od 19. 8. 2020].

8. VULNERABLE CATEGORIES

A major migration problem is the increased participation of vulnerable categories of migrants such as minors, women, the elderly, people with disabilities and trafficking and smuggling victims. It is a common occurrence to have minors and women with children staying and sleeping in parking lots, abandoned houses or other places in the open air. Children, in the conditions in which they find themselves, can hardly receive proper and adequate protection of children's rights or respect for human dignity. Also, according to reports, the Croatian police often forcibly confiscate their belongings while performing their job, and then illegally transfer them across the border in B&H.

Although minors are supposed to have access to schooling, in reality it is much different, and not all children have access to primary education. When it comes to access to secondary and higher education, this mostly depends on the validation of diplomas, as well as the readiness of schools to accept certain conditions when enrolling children of migrants and refugees.

In addition, minors often travel with adults and are not, during their journey and stay in RS, B&H and the Republic of Croatia, protected to the extent that they should be. Women and girls are at risk of sexual and gender-based violence during the migration process, and are exposed to violence or abuse by smugglers, asylum seekers or migrants, but sometimes by civil servants in host countries. Violence includes physical injury, domestic violence, forced and underage marriages, prostitution, rape, child prostitution and human trafficking. These take place while they travel, but also during the stay in the reception centres and outside them. Also, due to the gender role and specific position of women in their countries of origin and migrant communities, which do not always approve of women who violate any of the many traditional prohibitions and norms, these women are unlikely to report the violence they experience. Moreover, there is a lack of knowledge about sexual and reproductive health among migrant women and refugees due to taboos, which creates many additional problems.⁷

⁷ Vanja Stokić, *Porodice sa malom djecom spavaju na parkingu*, [E-trafika: 2020, (Can be found at: <https://www.etratika.net/drustvo/76513/porodice-sa-malom-djecom-spavaju-na-parkingu/>, Accessed on 12/8/2020 at 23:42)]; Miroslav Drašković et al., *Izazovi u sistemu azila i migracija – položaj posebno ranjivih kategorija (ISAM)*, [Grupa 484, Beograd: 2019], Page 34; Jelena Marković i Marija Cvejić, *Nasilje nad ženama i devojkama u izbegličkoj i migrantskoj populaciji u Srbiji*, [Atina – Udruženje građana za borbu protiv trgovine ljudima i svih oblika nasilja nad ženama, Beograd: 2017], Pages 7-9; ISAM, Pages 35-40.

9. LACK OF WILL AND EMPATHY AND POLITICAL STIGMAS

In B&H, which is facing a strong wave of migration, and which represents an entryway to the EU, there is a lack of agreements between politicians, institutions at various levels of government, as well as officials on the state's stance towards migration. Politicians are mostly anti-immigrant and like to express their populist views in public speeches. The authorities in the Republika Srpska are deeply opposed to the idea of setting up certain camps for the accommodation of migrants on the territory of the Republika Srpska, even if the migrants are on its territory, and have taken the official position that the Republika Srpska "will not accept centres for migrants and that the only correct policy is to deport migrants back to where they came from". B&H Presidency Member Milorad Dodik often states that the arrival of migrants is "a kind of occupation of the Christian world, not a humanitarian story", and the former Minister of Security in the B&H Council of Ministers, Fahrudin Radončić, believed that a way to deport migrants was urgently needed, because "B&H is not a parking lot for Europe".

With this situation in B&H, a regular occurrence is having the police from Sarajevo send migrants and refugees to Banja Luka, and then the police from Banja Luka transfer them to the USC, then the police from the USC return the refugees and migrants to Banja Luka. This vicious circle takes place constantly and almost on a daily basis, with everyone trying to avoid the obligations they have, without paying attention to the rights of the people themselves, who they randomly transfer from one place to another, as if they were goods and not human beings.

Although there are also disagreements and differing views on attitudes towards migrants in Croatia and Serbia, people at the top of the government in these countries rarely express public views as politicians in B&H do. There are certain deviations, harsh words and stigmatising speech, such as repeated terms "parking for migrants" by the Serbian President Aleksandar Vučić, or statements that "Croatia will never be a 'hot-spot' for any migrant" from the former Croatian President Kolinda Grabar-Kitarović. However, this does not happen on a daily basis in the RC and RS, while in B&H, attacking migrants and blaming them for their own predicaments, with accusations that they are working against the interests of the people in B&H, has become commonplace.

However, apart from political leaders, certain right-wing associations, the media, as well as individuals in Serbia, B&H and Croatia, publicly express their opposition to migrants staying in these countries and their views directed against people on the move. Also, there are ultra-right-wing politicians and their parties, who often come out with racist claims in the public. Such example was a video published by Boško Obradović, a politician and leader of the right-wing Dveri party, in which he showed how the “mixing” of migrants and refugees with the local population has the same effect as mixing differently coloured liquids in a glass.⁸

10. TERMINOLOGY, HATE SPEECH AND COLLECTIVE RESPONSIBILITY

In public opinions, political speech, media and institutions, as well as in official documents of all three countries, the term “refugees” is very rarely used with the term “migrants”, while in many cases the phrase “illegal migrants” is used with its synonyms to designate the people on the move. For some time now, the United Nations has been advocating exclusively for the use of terms such as e.g. “undocumented migrants”, instead of the term “illegal migrants”, since only the act itself can be illegal, while an individual or a person cannot be illegal.

Also, most media content does not make a conceptual distinction between migrants and refugees, but classifies these persons as one category, calling them by the common name “migrants” and “illegal” migrants. The use of such terms on a daily basis further dehumanizes migrants, stigmatises, criminalises and discriminates

against them, while the politicians, the media and institutions in all three countries do not want to harmonise their terminology, nor to accept the use of appropriate names.

Furthermore, racism, prejudice, discrimination and assigning blame to people on the move in B&H, RS and Croatia is becoming a practice that is gaining momentum among some citizens. Likewise, there are various groups on social networks that are fighting against the population of people on the move, of which the group “STOP Settlement of Migrants” (STOP naseljavanju migranata) on Facebook gathers hundreds of thousands of people, and there is even a portal called “Anti-migrant” (Antimigrant) in B&H. Through various media and social networks, migrants are being stigmatised, dehumanised and labelled as guilty of many bad things that happen in society, and they are presented in public as criminals who are destined to commit crimes wherever they go. It is often said that migrants are in fact “able-bodied men” who are a possible threat, and that there are no women and children among them at all, which is contrary to official statistics by state institutions.

Criminal and misdemeanour acts of migrants take place in temporary accommodation centres and outside them, in urban city areas, but also in rural areas. These acts are being reported by certain private and public media and posted on social media. The violence that does occur, on the other hand, in most cases represents conflicts between the people on the move themselves and is not primarily directed at the local population. Violations of the law committed by migrants do not pose an unusually great danger to the security of the domestic population or the states themselves, which RS, B&H or the RC cannot deal with. Nonetheless, it is important to note that due to poor organisation and lack of trained and professional police personnel, especially in B&H, some of the offenses and crimes committed were not prevented, although they should have been.

However, due to the acts committed by individual migrants, the public is led to think that all people on the move should be held responsible. This sets the principle of collective responsibility and imposes group guilt. The idea is being introduced into the public that all migrants or criminals are constantly in conflict with each other, or are possible terrorists and returnees from war, or pose a great danger to the domestic population for other reasons.

In addition to all of this, there is an abundance of false news about the criminal acts of migrants, and citizens are invited to establish the so-called “people's patrols” to protect themselves from the threat. These groups are

⁸ SRNA, *Srpska neće dozvoliti sabirni centar – Dodik: Jedino ispravno je da se migranti deportuju*, [Srpska info: 2020, (Can be found at: <https://srpskainfo.com/srpska-neece-dozvoliti-sabirni-centar-dodik-jedino-ispravno-je-da-se-migranti-deportuju/>, Accessed on 5/8/2020 at 11:09)]; Cvijanović: *U Republici Srpskoj neće biti kampova za smeštaj migranata*, [Radio-televizija Srbije: 2020, (Can be found at: <https://www.rts.rs/page/stories/sr/story/11/region/4062988/cvijanovic-republika-srpska-migranti-kampovi.html>, Accessed on 5/8/2020 at 11:50)]; Beta, *Dodik o migrantima: To je okupacija hrišćanskog svijeta*, [Al Jazeera Balkans: 2020, (Can be found at: <http://balkans.aljazeera.net/vijesti/dodik-o-migrantima-je-okupacija-hrisćanskog-svijeta>, Accessed on 28/8/2020 at 12:59)]; Radončić: *Migrante deportovati, BiH nije parking za Evropu*, [Radio Slobodna Evropa: 2019, (Can be found at: <https://www.nezavisne.com/novosti/bih/Radoncic-Migrante-deportovati-BiH-nije-parking-za-Evropu/595700>, Accessed on 23/7/2020 at 15:16)]; Beta, *Vučić: Srbija neće biti parking za migrante, ako zatreba zatvorimo granicu*, [Danas: 2020, (Can be found at: <https://www.danas.rs/politika/vucic-srbija-neece-biti-parking-za-migrante-ako-zatreba-zatvorimo-granicu/>, Accessed on 24/7/2020 at 15:16)]; Grabar-Kitarović protiv žice na granici s Bosnom i Hercegovinom, [Al Jazeera Balkans: 2020, (Can be found at: <https://www.slobodnaevropa.org/a/30037507.html>, Accessed on 24/7/2020 at 14:58)]; Moj stav: *Obradović: Migrantska kriza*, [Srpski pokret Dveri: 2020, (Can be found at: <https://www.youtube.com/watch?v=u-LU54cqiEA>, Accessed on 26/8/2020 at 14:47)].

modelled on certain groups from Europe, such as supremacist “Soldiers of Odin” in Finland or groups organised by the National Democratic Party of Germany. In Serbia, they even organised rallies and interceptions of migrants and refugees. However, the authorities directly opposed this practice, and so far they have not escalated into a serious threat.

A good example of spreading false news and anti-migrant campaigns aimed at mobilising people was the news that a virus epidemic and curfew were being used to permanently settle a large number of migrants in Serbia. Following this news, a member of the right-wing group “Levijatan”, driving a car at full speed, crashed through the barbed wire fence into the centre for migrants in Obrenovac, saying that he did not want a Muslim state.

Also, in addition to gatherings organised by “people’s patrols” and individual incidents, other gatherings were held, organised by citizens seeking to solve the problem of migrants. Thusly, a protest of citizens was held in Bihać, where the residents of this city and other places and cities in the USC asked the state to solve the problems, with the support of local authorities in Bihać who do not even want migrants to be allocated to other cities, but to have the funds received from the EU redirected to the deportation of migrants to their home countries.

The anti-immigrant campaign itself easily reaches hundreds of thousands of people, who represent a major group with its own ideology of “anti-immigration”, the goal “not to have migrants” in B&H, RS or Croatia, and its own information channels, from groups on social media to portals that directly fight against migrants. Those citizens, who behave in a discriminatory manner and publicly spread hatred on social media, believe that they are not doing anything wrong, but practicing the “freedom of speech” in defence against the “migrant danger”. They often see themselves as victims, and some of the individuals see themselves as a kind of crusaders in the “war” on social media and in public. Thus, open discrimination and hate speech are perceived as a kind of self-defence, not as a wrongdoing.

During this, the authorities do not want to be more specifically involved in protecting the security of migrant and refugee groups, they do not want to engage in hate speech, nor do they want to possibly enter into a campaign to fight prejudice. The state of permanent fear of migrants and the existence of anti-immigrant groups on social media and internet portals suits the authorities and the opposition, especially in B&H, at different levels of government and opposition activities, because they give the people a kind of “exhaust valve”, while simultaneously

providing them a group they can blame for many bad things that exist in society.

Reports of certain media on migrants and refugees have various forms, from stigmatising articles, to those in which they present them as criminals or a danger to citizens and those which turn to sensationalism. Media articles and reports have grown from initial empathy to sometime open stigmatisation, and often have a political overtone or indication of a security threat.

Aside of the media coverage by certain media, various comments appear on news about people on the move on portals and social media. These comments are often xenophobic, racist and often a blatant example of hate speech. In these cases, the responsibility of the portal is almost equal to those who leave such comments, unless the moderators remove them.

In a recent example from Serbia, the Press Council adopted five decisions relating to anti-migrant comments posted on media’s Facebook pages. Four decisions (related to “Blic” and “Srbija danas”) were adopted, which referred to the comments below the articles (the articles were not disputable), and which represented hate speech and were discriminatory in relation to migrants and refugees, which were offensive to them and calling for violence, noting that removing such comments is not a restriction on freedom of expression, but an obligation of the editorial staff to oppose those who violate human rights.⁹

⁹ Janis Ktistakis, *Zaštita migranata prema Evropskoj konvenciji za zaštitu ljudskih prava i Evropskoj socijalnoj povelji – Priručnik za pravnike*, [Savet Evrope, Beograd: 2016], Pages 9-10; Cecilia Malmström, *Building Capacities for Change IOM (International Organisation for Migration)*, [Geneva: 2010]; Rea Adilagić, *Od viktimizacije do demonizacije: Gdje je istina? – Istraživanje o načinima izveštavanja medija o migrantima i izbjeglicama*, [Udruženje BH novinari: 2019], Pages 5-8; *Why ‘Undocumented’ or ‘Irregular’?*, [UNHCR: 2020, (Can be found at: https://www.unhcr.org/cy/wp-content/uploads/sites/41/2018/09/TerminologyLeaflet_EN_PICUM.pdf, Accessed: 22/5/2020 at 19:29)]; Nemanja Mitrović, *Narodne patrola: Ko patrolira Beogradom u potrazi za migrantima*, [BBC News na srpskom: 2020, (Can be found at: <https://www.bbc.com/srbian/lat/srbija-51761864>, Accessed on 7/7/2020 at 16:57)]; Lazara Marinković, *„Naseljavanje migranata u Srbiji” i korona virus: Kako epidemija utiče na širenje lažnih vesti i antimigrantskih stavova*, [BBC News na srpskom: 2020, (Can be found at: <https://www.bbc.com/srbian/lat/srbija-52524776>, Accessed on 7/7/2020 at 19:14)]; N1 BiH, *Veliki protest u Bihaću: Građani traže rješenje problema migranata*, [N1 BiH: 2020, (Can be found at: <http://ba.n1info.com/Vijesti/a458297/Veliki-protest-u-Bihacu-Građani-traze-rjesenje-problema-migranata.html>, Accessed on 7/7/2020 at 20:41)]; Vidjeti odluke i žalbe na: *Žalbe*, [Savet za štampu: 2020, (Can be found at: <http://zalbe.rs/zalba/7551>, <http://zalbe.rs/zalba/7545>, <http://zalbe.rs/zalba/7546>, <http://zalbe.rs/zalba/7547> i <http://zalbe.rs/zalba/7548>, Accessed on 30/8/2020 at 20:38)].

CONCLUSION

It is apparent that the institutions in B&H, and to some extent in Serbia and Croatia do not have a clear strategy on how to manage the migration process in full respect of human rights, which is a direct consequence of the lack of consensus of leading political parties on migration (in B&H), lack of clear, enforceable, human rights-based and public strategies that are not being *pro forma* adopted, the lack of material resources and human resources coupled with the reluctance of the authorities to find a solution to the problem, and the poor attitude of decision makers and executors towards migration. In addition to this, following the example of the rest of Europe, the anti-migrant feeling in the B&H/RS/RC triangle is increasing due to the strengthening of right-wing ideology, various conspiracy theories, and the inability of state bodies to properly deal with large numbers of refugees and migrants.

In such an atmosphere and with these events, the greatest burden falls on people fleeing death, violence and conflict, as well as on those seeking a better life and a more secure future. They are often not subject to the same standards as other people, they are denied basic human rights and they often, fleeing from an environment that was unfavourable to them, come to another, which looks at them with distrust. The idea of equality of all people here fails the test of humanity.

The solution to the problems faced by migrants and refugees cannot be found by looking only at the three countries of the Western Balkans. It can only happen if there is a coordinated, humane and international law-based action by all interested countries, domestic and international organisations and especially the EU, which must start to insist more on the ideas envisioned for the united Europe, such as freedom, human rights and security. These ideas must be embodied and they must last, not only for the EU citizens and the citizens of the countries that want to become part of the EU, but also for all people in need, refugees and migrants, children, women and men. Humanity and European ideals are defended in reality, on the field, at every step the refugees and migrants take. If civilisation values and human rights have no significance in those places, then they, as Eleanor Roosevelt said, have no significance anywhere.

ABOUT THE AUTHORS

Dejan Lučka is a jurist and civil activist from Banja Luka. He is the Director of the Banja Luka Centre for Human Rights and a consultant for several domestic and international organisations. He is closely involved in human rights, cyber law and constitutional law, and is interested in new technologies, political science, history and philosophy. So far, he has published nine publications, as well as several scientific and professional papers. He is also the author of a large number of texts and articles in various magazines and portals. More about the author can be found on his website at: www.dejanlucka.com

Saša Čekrlja graduated from the Faculty of Natural Sciences and Mathematics in Banja Luka and is actively dealing with the issue of human sustainable development, what was also his doctoral thesis. He is the Director of the Centre for Asian Studies in Banja Luka, and he served as an advisor to the Minister of Foreign Affairs of Bosnia and Herzegovina. He is the author and co-author of several university textbooks, and has published several scientific and professional papers, as well as independent and group researches.

CIP - Katalogizacija u publikaciji
Nacionalna i univerzitetska biblioteka
Bosne i Hercegovine, Sarajevo

341.231.14-054.72/.73(497.5/.6+497.11)

LUČKA, Dejan

Refugees and migrants in the triangle of Bosnia and Herzegovina, Croatia and Serbia [Elektronski izvor] : (legal framework and analysis of the situation in certain areas) / Dejan Lučka, Saša Čekrlja. - El. knjiga. - Sarajevo : Friedrich-Ebert-Stiftung, 2020. - (Democracy and human rights)

Način pristupa (URL): <https://www.fes.de/>. - Nasl. sa nasl. ekrana. - Prijevod djela: Izbjeglice i migranti u trouglu Bosne i Hercegovine, Hrvatske i Srbije. - Opis izvora dana 5. 10. 2020.

ISBN 978-9926-482-07-7

1. Čekrlja, Saša

COBISS.BH-ID 40769798

IMPRESSUM

Friedrich-Ebert-Stiftung - Sarajevo office
Kupreška 20, 71 000 Sarajevo

For publisher: Dr. Peter Hurrelbrink - Direktor, FES BiH

Tel.: +387 33 720 010

www.fes.ba

Original title: Izbjeglice i migranti u trouglu Bosne i Hercegovine, Hrvatske i Srbije

Reading and translation: Dejan Lučka

DTP: Aleksandar Aničić

All rights reserved by Friedrich-Ebert-Stiftung BiH.

The views and opinions expressed in this publication are authoritative and do not represent the explicit views and opinions of the publisher. The Friedrich-Ebert-Stiftung does not guarantee the accuracy of the data presented in this publication. Commercial use of the issue is not allowed without the Foundation's written consent.

