

SUBMISSION TO THE COMMITTEE ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS

WRITTEN INPUT FOR THE 69TH SESSION OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

BORDER VIOLENCE MONITORING NETWORK



ROMANIA

I. Reporting Organisation

1. Border Violence Monitoring Network (BVMN) is a coalition of organisations working to document illegal pushbacks, collective expulsions and police violence along the EU's external borders in the Western Balkans, Greece and Turkey since the network's formulation in 2016. The collection of data on illegal pushbacks and police violence is done by a consortium of independent field volunteers who are part of or cooperate with humanitarian support groups united through the Border Violence Monitoring Network.

II. Executive Summary

2. Despite the ratification of the International Covenant on Economic, Social and Cultural Rights we assert that Romania has failed to meet its obligations under the Committee.

3. We affirm that the continuous action of pushbacks¹ and collective expulsion of refugees and migrants, carried out by Romanian authorities is illegal and in contradiction to the obligations set out under the Covenant.

4. BVMN maintains that the continued and credible allegations published by a range of NGOs and international monitoring bodies demonstrates how pushbacks carried out by Romanian authorities, are in violation of articles including but not limited to:

Article 10: International Covenant on Economic, Social and Cultural Rights

Article 11: International Covenant on Economic, Social and Cultural Rights

Article 12: International Covenant on Economic, Social and Cultural Rights

Article 13: International Covenant on Economic, Social and Cultural Rights

5. Furthermore, BVMN wishes to draw attention to the continued use of torture and inhuman treatment by Romania authorities as documented across 95% of pushbacks, highlighting how such rights violations are in direct violation of the right to the highest attainable standard of health as outlined under the Covenant.

¹ "Pushback" is a common term to denote the action of State representatives forcibly and in most cases collectively returning individuals seeking protection to another country in an irregular/informal manner and subsequently preventing or restricting them access to protection mechanisms.



III. Torture and inhuman treatment during pushbacks as a violation of the International Covenant on Economic, Social and Cultural Rights

Article 12: International Covenant on Economic, Social and Cultural Rights
CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12)

CESCR General Comment No. 20²: Non-discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

Explanatory note:

6. Article 12 of the ICESCR affirms that “the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” Furthermore, Article 12 (d) mandates “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

7. General Comment No.14 recalls that the right to health is closely related to and dependent upon the realization of other human rights, including the prohibition against torture. Furthermore, General Comment no.14 further clarifies that the freedoms include the right to be free from interference, such as the right to be free from torture.

8. We assert that the systematic use of torture and inhuman treatment during pushbacks, which includes but is not limited to; the use of excessive and disproportionate force, the punitive use of electric discharge weapons and the prolonged forced exposure to extreme weather conditions, should be viewed by the Committee as a violation of the right to the highest attainable standard of health.

9. Furthermore, the persistent absence or refusal by the Romanian authorities to provide medical treatment to people on the move, including pregnant women, minors, and victims of torture should be viewed, in the opinion of BVMN, as a subsequent violation of Article 12, specifically “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”

² UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), 2 July 2009, E/C.12/GC/20, available at: <https://www.refworld.org/docid/4a60961f2.htm>



Evidence:

10. BVMN has consistently documented pushbacks of people on the move by Romanian authorities:

10.1. In 2020, BVMN recorded 15 testimonies of pushbacks from Romania, exposing the ill-treatment and abuse of 209 people. Demonstrating the indiscriminately violent nature of pushbacks by Romanian authorities, 100% of testimonies recalled violence, abuse and mistreatment that we assert would constitute as torture or inhuman treatment under international law.

10.2. Between January and July 2021, BVMN recorded 10 testimonies of pushbacks from Romania, exposing the ill-treatment and abuse of 153 people. Consistently demonstrating the indiscriminately violent nature of pushbacks by Romanian authorities, 90% of testimonies documented within the first seven months of 2021 recall violence, abuse and mistreatment that we assert would constitute as torture or inhuman treatment under international law.

10.3. Additionally, BVMN is concerned with the high levels of children and minors involved in pushbacks by Romanian authorities, especially considering the exceptionally high level of violence already documented. In 2020, 53% of pushback testimonies from Romania described being in a pushback group with one or more children present. In 2021, 100% of pushback testimonies from Romania described being in a pushback group with one or more children present.

11. The testimonies collected by BVMN of pushbacks from Romania have demonstrated that torture and violence during pushbacks are endemic. BVMN has identified the following patterns of torture that we assert pose a direct threat to the life and health of the victims:

11.1 In 88% of pushback testimonies from Romania, respondents described being subjected to disproportionate and excessive violent force.

11.2. In 16% of pushback testimonies from Romania, respondents described being threatened by or attacked with firearms.

11.3. No less concerning is a series of uniquely cruel, inhuman or violent pushback incidents where pushback groups have been; forced into vehicles that have had gasoline poured across the holding area³, covering both the interior and as a result the people being detained; exposed to extreme weather conditions through being

³ Border Violence Monitoring Network. (2020). 'Medication Stolen to Deter Crossing Into Romania'. Available at: <https://www.borderviolence.eu/violence-reports/june-17-2020-0000-timisoara-romania/>



made to lie face down in the snow for up to five hours⁴, or coercively forcing people to stay in a river for over two hours⁵.

12. Pushback testimonies collected by BVMN and our partner organisations further illustrate how the violent nature of Romanian pushbacks should be considered as a breach of Article 12 of the Covenant.

12.1. In December 2020⁶ BVMN partner organisation Collective Aid documented the pushback of 43 people from Romania to Serbia. Up to 15 minors as young as 12 years old were also amongst this pushback group. The pushback testimony recalls how once in Romania the group was found by 10 policemen who proceeded to beat most of the transit group with batons for 15 minutes. Highlighting the indiscriminate nature of the violence, the testimony recalls how some of the minors were also attacked by the police. The respondent reported that two of the men suffered severe leg injuries.

12.2. In December 2020⁷, BVMN partner organisation Collective Aid documented the pushback of 20 people from Romania to Serbia. The pushback testimony recalls how when the Romanian border police apprehended the transit group, they confiscated all their personal belongings and threw them into a fire. The Romanian police threw a mobile phone into the fire causing it to explode in someone's face resulting in a severe burn. The Romanian police proceeded to assault the group, using sticks, punches and kicks (the interviewee reported being beaten a lot in his head and back with the sticks and all over his body with the kicks and punches).

12.3. In January 2021⁸, BVMN partner organisation No Name Kitchen documented the pushback of 17 people from Romania to Serbia. The pushback group contained minors, of which the youngest was 13. Upon crossing into Romania, the transit group was almost immediately apprehended by Romanian authorities. Recalling the experience the respondent said: “they (the Romanian officers) beat us all over the body. They didn’t care if someone had some problem, if someone was a child, they just didn’t care. (...) Some of us was too much injured by their kicks.”

⁴ Border Violence Monitoring Network. (2021). ‘They Kicked Us Harder Than The Others Because They Said You’re Underage, Why Did You Come Here?’. Available at <https://www.borderviolence.eu/violence-reports/february-1-2021-2300-kikinda-serbia/>

⁵ Ibid.

⁶ Border Violence Monitoring Network. (2020). ‘They Hit Everyone Two or Three Times Before Moving to the Next Person’. Available at: <https://www.borderviolence.eu/violence-reports/december-18-2020-0000-near-vrsac-serbia/>

⁷ Border Violence Monitoring Network. (2020). ‘See This, The Same Thing Will Happen to You, Never Come Back’. Available at:

<https://www.borderviolence.eu/violence-reports/december-16-2020-2300-near-vrsac-serbia/>

⁸ Border Violence Monitoring Network. (2021). ‘I Couldn’t Feel Anything, I Didn’t Know Where I Was (...) I Thought My Bones Were Broken, I Couldn’t Speak, I Couldn’t Breathe’. Available at: <https://www.borderviolence.eu/violence-reports/january-23-2021-0500-near-jimbolia-romania/>



Reportedly the officers hit them on the head and on the lower back for about 5 minutes. As the respondent spoke English, the Romanian authorities arbitrarily identified him as the leader of the group and pulled him to one side. After singling the respondent out, the authorities started to again beat and attack him for an estimated 10 minutes.

13. Discussing the frequency of pushbacks from Romania, UNHCR⁹ Serbia reported that 13,409 persons were collectively expelled from Romania to Serbia from 1 January to 31 December 2020. The UNHCR stated this is the highest number of pushbacks registered since UNHCR Serbia began monitoring pushbacks in the spring of 2016.

14. Discussing the frequency of pushbacks from Romania, EuroNews¹⁰ cite two unnamed Serbian NGOs. One estimates that "at least fifty" people are forcibly pushed back from Romania to Serbia every day; the other estimates an average of about 400-600 per week.

15. A range of organisations and NGOs have further documented similar evidence to that presented above, that consistently show how Romania's continued use of pushbacks is not in line with the expectations and obligations of the International Covenant on Economic, Social and Cultural Rights, specifically Article 12 related to the enjoyment of the highest attainable standard of physical and mental health.

15.1. In 2020, EuroNews¹¹ published an article entitled 'whips, sticks and batons: Romanian border police accused of violence against migrants'. The article recalled how six Syrians and an Egyptian approached a Belgrade NGO seeking help, telling the staff how they were violently pushed back to Serbia by Romanian border guards. One of them had an amputated leg; he alleged Romanian officers used his own crutches to beat him. The article further recalls how "according to reports, cables and batons are being used for beating. Migrants are being subjected to electric shocks or their clothes being set on fire as well as being intimidated by gunshots fired into the air."

15.2 The April 2021 report by Protecting Rights at Borders¹² stated that 'pushbacks from Romania appear to be more violent, with almost every other interviewee reporting experiencing physical abuse (151 persons – 46%). At the same time, theft, extortion and destruction of property were reported by 14% of interviewees (46

⁹ AIDA (2021). Country Update Serbia on the year 2020, March 2021. Available at: <https://bit.ly/3c7FB8n>

¹⁰ EuroNews. (2020). 'Whips, sticks and batons: Romania border police accused of violence against minors'. Available at: <https://www.euronews.com/2020/09/22/whips-sticks-and-batons-romanian-border-police-accused-of-violence-against-migrants>

¹¹Ibid.

¹² Protecting Rights at Borders. (2021). 'Pushing Back Responsibility: Rights Violations as a "Welcome Treatment" at Europe's'. Available at: https://drc.ngo/media/mnglzsro/prab-report-january-may-2021-_final_10052021.pdf



persons), while access to asylum procedures was denied for 24% of interviewees (79 persons).’

15.3. Furthermore, Protecting Rights at Borders¹³ also stated that every other pushback from Romania reportedly involved violence. They stated that interviewees regularly report to Serbian UNHCR partner Humanitarian Center for Integration and Tolerance that Romanian patrols/border police tend to round them up immediately after being identified walking from the direction of the border belt. Interviewees further report slapping, kicking, beatings with police batons, being punched on their backs, hands and legs. The majority of refugees and migrants interviewed reported that they were ordered to sit on the ground, to kneel despite rain or snow, that they were searched, and that their mobile phones were smashed on the ground and not returned. When a person asked about asylum, the response was often that “it is not possible in Romania”, according to interviewees’ statements.

16. Across all pushbacks from Romania documented by BVMN, medical assistance has been absent or refused. Victims of violence and torture, the elderly and pregnant women have all been refused medical treatment during the pushback process, including when detained in police stations.

17. Pushback testimonies collected by BVMN and our partner organisations further illustrate how the violent nature of Romanian pushbacks should be considered to breach Article 12, specifically the obligation of State Parties to create conditions that would assure all medical service and medical attention in the event of sickness.

17.1. In December 2020¹⁴, BVMN partner organisation No Name Kitchen documented the pushback of 27 people from Romania to Serbia. Amongst the group, there were seven women (two of whom were pregnant), five minors (a seven-month-old, a two-year-old, two seventeen-year-olds, and one sixteen-year-old) and fifteen men. The testimony recalls how, upon apprehension by the Romanian authorities, the group was driven to a nearby police station and placed in a “long” and locked room (described as a space with three layers of walls: one made of transparent glass, one obscured glass and the last made of iron). Because of this security system, the room seemed very dark. During their time in this room (around two days), they did not have access to food and medical care, although the pregnant women and two men who were beaten required medical assistance. Besides, six new people were also placed into the same room. They could only drink water from the small sink that was inside, next to the toilet. After this period,

¹³ Ibid.

¹⁴ Border Violence Monitoring Network. (2020). ‘We Felt Criminals’ Regarding Romanian Detention Center’. Available at: <https://www.borderviolence.eu/violence-reports/february-17-2020-0000-stopped-near-arad-romania/>



they were transferred to another police station and then soon after transferred to a ‘camp’ that the respondent described looked like a prison. During their detainment, the two pregnant women were denied the possibility to receive medical assistance. The oldest man – 41 years old – needed his medicine, which had been confiscated and never returned during these six days.

IV. The systematic destruction of clothing, food and personal items during pushbacks as a violation of the International Covenant on Economic, Social and Cultural Rights

Article 11: International Covenant on Economic, Social and Cultural Rights

CESCR General Comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)

Explanatory Note:

18. Article 11 of the Covenant affirms that ‘the States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.’

19. BVMN asserts that the systematic destruction of clothing, food and personal items by Romanian authorities as observed across 90% of pushbacks since 2020 is not conducive to the obligations set out under the Covenant and should be observed as a direct violation of the right to an adequate standard of living, specifically the right to adequate food and clothing. BVMN believe this serves as a cruel and punitive method to deprive people on the move of the ability to eat, stay warm or purchase further provisions during an often-lengthy transit to their final country of destination and safety.

20. The systematic destruction of clothing, food and personal items (including monies) by the Romanian authorities serve as a cruel and punitive method that deprive people on the move of the ability to eat, stay warm or purchase further provisions during an often-lengthy transit to their final country of destination and safety.



Evidence:

21. In 80% of pushback testimonies documented in 2020, Romanian police stole or destroyed food, clothing or personal belongings from pushback groups. This included Romanian police forcibly undressing members of the transit group and throwing their clothes and belongings into a fire.

22. Between January and July 2021, 100% of pushback testimonies documented how Romanian police stole or destroyed food, clothing or personal belongings from pushback groups. This again included Romanian police forcibly undressing members of the transit group and throwing their clothes and belongings into a fire.

23. Pushback testimonies collected by BVMN and our partner organisations further illustrate how the activities of Romanian authorities should be considered to be in direct opposition to the obligations set out under Article 11.

23.1. In January 2020¹⁵, BVMN partner organisation No Name Kitchen documented the pushback of 14 people from Romania to Serbia. The pushback testimony recalls how after crossing into Romania the transit group was apprehended by men wearing ski masks to cover their face and raincoats with 'Politia de Frontieră' written on them. Shortly after being apprehended, the officers asked for their mobiles and they broke them. According to the respondent, they walked with the police for about an hour before being forced to sit in the mud and beaten with batons for 5 or 6 minutes. After the attack, they were driven to the Serbian border, where they were forced to take off their shoes and jackets. The officers collected their clothes, together with the groups' bags and money and threw them into the fire. For the next four hours, before being pushed back across the border, the group were violently attacked and tormented; being forced to stand on one leg, do push-ups, drink water from muddy puddles, being forced as Muslims to eat pork or having to endure multiple police officers jumping.

23.2. In January 2021¹⁶, BVMN partner organisation Collective Aid documented the pushback of 10 people from Romania to Serbia. Included in the pushback group was a minor aged 16 years old. The testimony recalls how the group was apprehended by 6 policemen in dark blue uniforms who took everyone's phones, money and several peoples jackets. The officers proceeded to pile the items up and

¹⁵ Border Violence Monitoring Network. (2021). 'They (The Romanian Officers) Forced Five or Six Guys to Eat Pork. They Were Also Making Jokes of Our Religion'. Available at: <https://www.borderviolence.eu/violence-reports/january-5-2021-0200-near-secaseni-romania/>

¹⁶ Border Violence Monitoring Network. (2021). 'They Took Their Phones, Money and Jackets and Lit Them On Fire'. Available at: <https://www.borderviolence.eu/violence-reports/january-30-2021-0230-near-kikinda-serbia/>



set fire to them. The group was soon driven to the border, kicked and beaten with batons and forced into Serbia.

23.3. In February 2021¹⁷, BVMN partner organisation Collective Aid documented the pushback of 18 people from Romania to Serbia. Included within the pushback group were two minors aged 13 and 15. The Romanian police took their personal belongings, including phones, blankets, and food. The transit group was then kicked and beaten with batons by the officers. The respondents state they were kicked harder because they were younger. The police officers reportedly said: *“you’re underage, why did you come here?”* as they kicked them. The officers forced them to lie face down, hands behind their heads in the snow and rain for up to five hours without permission to speak, as they continued to kick them in the back and yell at them, asking who their leader was.

Recommended Questions for the State Under Review:

24. Please provide information on measures taken to ensure that refugees and asylum seekers enjoy economic, social and cultural rights, including access to international humanitarian protection at border zones.

25. Please provide information on the impact of the measures taken to ensure that police and border officials act in full accordance with the Covenant. Furthermore, please inform the Committee of measures taken by the State party to respond to violations of Covenant rights, by police or border officials, that have been brought to its knowledge.

26. What measures have been taken within the reporting period to ensure accessible, affordable and quality healthcare services for all, particularly for migrants, refugees and individuals housed within detention or pre-removal facilities.

27. Please clarify whether the State party has adopted specific legislation that protects individuals from pushbacks, collective expulsion or refoulement. Please also provide information on the measures taken to enhance the reporting and investigation of pushbacks, collective expulsion or refoulement, as well as the prosecution of those responsible, and the measures taken to improve the remedies and support provided to victims.

¹⁷ Border Violence Monitoring Network. (2021). ‘They Kicked Us Harder Than The Others Because They Said You’re Underage, Why Did You Come Here?’. Available at: <https://www.borderviolence.eu/violence-reports/february-1-2021-2300-kikinda-serbia/>



Recommendations to the Committee:

28. BVMN respectfully invites the Committee to establish a Day of General Discussion to examine the economic, social and cultural rights of migrants and refugees with the view to further establish best practices and recommendations for State Parties.

