Iza Thaler

Systemic Violations of Fundamental Rights on the Balkan Route

A Slovenian Pushback Case Review

Povzetek

Sistematične kršitve temeljnih pravic na balkanski poti: študija primera nezakonitega izgona iz Slovenije

Članek obravnava prvi sodni pokus izpodbijanja nezakonitega vračanja (pushback) v Sloveniji na primeru prosilca za azil iz Kameruna, ki je bil leta 2019 nezakonito vrnjen na Hrvaško in nato v Bosno in Hercegovino. Avtorica z uvidi, ki izhajajo iz njene neposredne vključenosti v pripravo pravne strategije spora, analizira sodno prakso nastalo v omenjenem primeru. Predstavljen je dejanski in pravni okvir spora, trditve strank in argumentacija predvsem Upravnega sodišča ter deloma tudi Vrhovnega sodišča. Sodišči sta ugotovili kršitve prepovedi kolektivnega izgona, procesne dimenzije načela nevračanja in pravice do dostopa do azila. Sodišči sta se oprli predvsem na sodno prakso ESČP in SEU ter na poročila varuha človekovih pravic in nevladnih organizacij, pri čemer sta v skladu z navedeno sodno prakso in pravili o dokaznem bremenu dokazno breme v bistvenem naložili državi. Čeprav je sodba ugotovila številne kršitve in naložila državi, da tožniku omogoči dostop do azila, v praksi to ni bilo uresničeno. Članek tako pokaže na potenciale in omejitve sodnega varstva v primeru sistematičnih kršitev človekovih pravic, pri čemer na konkretnem primeru obravnava tudi pojme strateške litigacije, krimigracij in eksternalizacije meja Evropske unije.

Ključne besede: nezakoniti izgoni, načelo nevračanja, kolektivni izgoni, pravica do azila, sodna praksa

Iza Thaler (1994) je magistra prava, ki se pri svojem raziskovalnem in praktičnem delu osredotoča na pravo človekovih pravic in se posebej specializira za pravice udeležencev v kazenskih postopkih ter za pravo migracij in azila. Delovala je pri Mirovnem inštitutu, Agenciji Združenih narodov za begunce, Infokolpi, Rožava kliče, Mladih za podnebno pravičnost in drugih civilnodružbenih organizacijah. E-naslov: iza.thaler@gmail.com

Abstract

The article examines the first judicial attempt to challenge unlawful pushbacks in Slovenia, through the case of a Cameroonian asylum seeker who was unlawfully returned to Croatia and then to Bosnia and Herzegovina in 2019. Drawing on insights from her direct involvement in the legal strategy of the case, the author analyses the case law developed in this context. The article presents the factual and legal framework of the dispute, the parties' arguments, and the reasoning of the Administrative Court and, to a lesser extent, the Supreme Court. The courts found violations of the prohibition of collective expulsion, the procedural dimension of the principle of non-refoulement, and the right to access asylum. They relied in particular on the jurisprudence of the ECtHR and the CJEU, as well as on reports by the Ombudsman and NGOs, and in line with this jurisprudence and the rules on the burden of proof, they placed the essential burden of proof on the state. Although the judgment established multiple violations and ordered the state to enable the applicant's access to asylum, it was not implemented in practice. The article thus demonstrates both the potential and the limits of judicial protection in cases of systematic human rights violations, while also, through the concrete case, addressing the concepts of strategic litigation, crimmigration, and the externalisation of the European Union's borders.

Keywords: pushbacks, non-refoulement, collective expulsions, right to asylum, case law

Iza Thaler (1994) holds a master's degree in law and focuses her research and practical work on human rights law, specializing in the rights of participants in criminal proceedings and migration and asylum law. She has worked at the Peace Institute, the United Nations Refugee Agency, Infokolpa, Rožava kliče, Youth for Climate Justice, and other civil society organizations.
Email: iza.thaler@gmail.com

Over the past decade, migration control practices at the European Union's external and internal borders—as well as in the so-called 'third countries' surrounding the EU—have become increasingly marked by practices of deterrence, violence, and expulsion, commonly referred to as *pushbacks* (Stojić Mitrović et al., 2019).[1] Several European Union member states, as well as countries along their borders, have institutionalised practices that hinder access to asylum procedures and expose people on the move to systemic violence, thereby calling into question the existence and effective application of the principle of non-refoulement within the EU.

Border violence has been well documented by monitoring networks, journalists, and, at times, Ombudsman institutions, showing that pushbacks are not isolated incidents, but structural practices embedded in official procedures (BVMN, 2020a; BVMN, 2020b; BVMN, 2022). Yet legal accountability remains elusive.

This article examines one of the early court challenges against pushbacks to Croatia, committed by Slovenian police. The case was jointly brought before the Slovenian Administrative Court by a Cameroonian asylum applicant, supported by journalists, lawyers, and an activist collective in 2019. After a long and complex court procedure, both the Administrative and the Supreme Court upheld the applicant's claims, recognising violations of the prohibition of collective expulsion, the procedural dimension of the principle of non-refoulement, and the right of access to asylum (UPRS judg. and dec. no. I U 1686/2020-126 dated 7. 12. 2020; VSRS judg. no. I Up 23/2021 dated 9. 4. 2021). In doing so, the courts explicitly relied on jurisprudence of the European Court of Human Rights (EctHR) and the Court of Justice of the EU (CJEU), refused to accept police records of the case at face value, and situated their reasoning within the broader political and factual context documented by civil society and human rights institutions, placing the bulk of the burden of proof on the state. On the other hand, the courts' decisions brought little practical relief to the applicant, as the state refused to implement them.

Against this backdrop, this article asks what the courts' decisions reveal about pushbacks and border violence in Slovenia. It situates the case within its broader political and legal context, reconstructs the proceedings before both courts and their reasoning, focusing on the detailed reasoning of the Administrative Court, and concludes by reflecting on the aftermath and the broader promise and limits of litigation and judicial review.

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1 See, for example, a recent report by a group of nine European NGOs "Pushed, beaten, left to die: European pushback report", February 2025, which recorded more than 120,000 pushbacks by EU member states in 2024 (Hungarian Helsinki Committee, 2025).

Methodology and case context

This article adopts the perspective of an activist-scholar, merging direct participation in the case with critical academic analysis. This dual position necessitates a presentation not only of the legal and procedural aspects but also of the socio-political context and the decisions and networks that shaped the case—what Blankenburg (Buckel et al., 2024: 27) called "the parties behind the parties."

The legal team consisted of activists from the Infokolpa collective, journalists from Radio Študent, lawyer Dino Bauk, and myself. Throughout the judicial process, several legal scholars and practitioners contributed valuable insights through consultations.

The decision to pursue litigation emerged after several years of the collective's humanitarian and political engagement with migrants and asylum seekers along the Balkan route. Despite recurrent media exposés of state violence, ongoing civil monitoring, and reports by the Human Rights Ombudsman, little institutional pressure was brought to bear on the state to end these practices. On the contrary, accounts of brutality, especially of the Croatian police (into the hands of which asylum seekers from Slovenia were returned), grew increasingly frequent and disturbing. At the same time, human rights defenders found themselves under growing scrutiny and stigmatisation—portrayed as acting unlawfully and fearing potential persecution by police or media outlets. In Slovenia, NGOs such as the Legal Centre for Protection of Human Rights and the Environment (PIC), which had documented police practices, were publicly discredited even as their findings were later confirmed by the courts (Katalenić, 2018). The threat of unduly criminal prosecution and discreditation also loomed over the team of activists and journalists conducting fieldwork for the case. Similar dynamics were unfolding across several EU member states, where humanitarian actors and migrant rights advocates were targeted through fabricated legal proceedings, their solidarity recast as 'aiding illegal immigration', and sometimes facing severe charges, even those of espionage. These developments—where assistance is recast as 'facilitation' and even prosecuted on expansive grounds—are well documented in the EU context (Fekete, 2018; Tazzioli, 2018; European Parliament, 2018; Amnesty International, 2020), and align with the broader crimmigration turn (Stumpf, 2006), where crimmigration refers to the convergence of criminal law and immigration law, a process through which migration control increasingly adopts the logics, tools, and punitive practices of criminal justice systems (Stumpf, 2006). It captures how states increasingly govern migration through criminalisation, treating migrants, asylum seekers, and even those who assist them as potential offenders. One of the most well-known cases of this latter kind is the one of Seán Binder and Sarah Mardini, who were trained rescue work-

ers and spent months in pre-trial detention after the Greek authorities arrested them for assisting refugees arriving on the island of Lesvos. In neighbouring Croatia, fellow collectives *Are You Syrious?* and the *Centre for Peace Studies* have been harassed, intimidated, and prosecuted for 'facilitating irregular migration' after reporting on people being violently pushed back by Croatian police at the borders with Bosnia and Herzegovina and Serbia (Amnesty International, 2020).

Against this backdrop, Infokolpa remained resolute in its conviction that the treatment of migrants along the Balkan route constituted a grave injustice and that the state's actions were intolerable. Recognising the futility of relying on media advocacy amid the prevailing anti-migration sentiment, we resolved to seek judicial confirmation that pushbacks violated human rights and contravened the law. We were under no illusion that a single case could halt these practices, yet we saw it as vital to demonstrate that our position was not marginal or illegitimate. Perhaps such litigation would have been unnecessary had mainstream legal authorities and institutions publicly addressed the issue; however, at the time, advocating for migrants' rights was politically unpopular and often met with media silence or condemnation.

Only later did we understand our initiative as a form of strategic litigation—a practice in which a collective deliberately designs a legal case to generate broader systemic impact beyond the immediate dispute (Ahlhaus, 2025; van der Pas, 2021: S124). This approach contrasts with regular litigation, where parties primarily pursue individual interests or legal redress (van der Pas, 2021: S124). Using litigation to generate impact beyond the individual case at hand demanded continuous reflexivity, particularly regarding the ethical implications of our actions. The risks of litigation were disproportionately borne by the applicant, whose courage made the case possible. The legal team was consistently transparent about the uncertainty of success and the potential for personal repercussions. Despite these risks—including public hostility, possible retaliation, and the psychological toll of revisiting past trauma—the applicant agreed to proceed. His decision reflected both individual conviction and a sense of collective responsibility.

After careful deliberation, the legal team opted to file a subsidiary administrative dispute under Article 4(1) of the Administrative Dispute Act, as neither criminal nor civil proceedings provided a feasible avenue. A criminal complaint would have transferred control of the process to state authorities, relying on the same institutions whose conduct was being challenged. A civil damages action, in turn, would have imposed an excessive evidentiary burden and exposed the applicant to prohibitive costs in case of defeat. The chosen route—an administrative dispute—allowed for a direct challenge before the Administrative Court, marking the first occasion in Slovenia that the legality of pushbacks was subjected to judicial scrutiny.

The applicant's claims

The applicant, who is a citizen of Cameroon, demanded asylum on grounds of fleeing persecution for his political activity in support of autonomy and linguistic equality for the Anglophone minority (Administrative Court Judgement, 2020: 5). He claimed to have entered Slovenian territory in August 2019 with the explicit intention of seeking asylum, which he communicated repeatedly and unequivocally to police officers at the time of his arrest and subsequent detention (Administrative Court Judgement, 2020: 6–8, 12). Police officers refused to register his intention, instructed him that "there is no asylum" (Administrative Court Judgement, 2020: 8), and ultimately transferred him to Croatian authorities, who in turn expelled him to Bosnia and Herzegovina (Administrative Court Judgement, 2020: 9). The procedure lacked any form of due process: he was detained, made to sign documents in Slovenian without interpretation or explanation as to the purpose of the procedure, denied the right to contest his removal, and misled into believing that he would be transferred to an asylum centre, only to be placed on an unmarked bus and handed to Croatian authorities without any formal decision or possibility of appeal (Administrative Court Judgement, 2020: 9, 19, 26, 27, 139).

The applicant, represented by counsel, challenged this chain of events before the court as an unlawful administrative action amounting to a refusal of access to the asylum procedure, a violation of the prohibition of refoulement, and a collective expulsion in breach of Article 18 of the EU Charter of Fundamental Rights, Article 3 of the European Convention of Human Rights (ECHR), and Article 4 Protocol No. 4 ECHR respectively (Administrative Court Judgement, 2020: 11). He emphasised that, under Slovenian asylum law, an irregular border crossing cannot be treated as illegal if the individual expresses an intention to apply for international protection "as soon as possible" (Article 35 ZMZ-1), and that police authorities have no competence to adjudicate on asylum claims or to reject such intentions (Article 36 ZMZ-1) (Administrative Court Judgement, 2020: 10).

The applicant situated his individual experience within a systemic pattern of Slovenian pushbacks. He relied on reports by the Slovenian Human Rights Ombudsman (Ombudsman of the Republic of Slovenia, 2020), NGOs PIC (2018) and Amnesty International (2018), and the civil initiative Infokolpa report (2019) (Administrative Court Judgement, 2020: 16). Statistical data also indicated a sharp decline in registered asylum intentions at the Črnomelj police station

after May 2018, which coincided with new internal police instructions[2] (Administrative Court Judgement, 2020: 17). He argued that this pattern confirmed that Slovenian police systematically obstructed access to asylum procedures and knowingly exposed individuals to chain expulsions by Croatian authorities, who were widely reported to engage in violence, property destruction, and unlawful removals to Bosnia and Herzegovina (Administrative Court Judgement, 2020: 21). The applicant's side also requested the court to compel the state to produce the relevant police files as well as internal police instructions that the police had previously refused to fully reveal to the public (Administrative Court Judgement, 2020: 14, 18).

The state's submissions

The Slovenian state, represented by the Ministry of the Interior, defended the impugned actions on both procedural and substantive grounds. Amongst others, the state argued that the applicant had effective legal remedies available against measures, such as detention orders and payment notices, which he had failed to pursue (Administrative Court Judgement, 2020: 34). The state relied on the 2006 Bilateral Agreement and Protocol between Slovenia and Croatia on the readmission of persons whose entry or residence is illegal. It invoked the EU Return Directive (2008/115/EC) exceptions allowing for exclusion of certain migrants from its scope (see Article 2(2)(a) and Article 6(3) of the Return Directive) (Administrative Court Judgement, 2020: 39–41).

Furthermore, the state insisted that Croatia, as an EU member state, is bound by EU law and international human rights obligations, and therefore must be regarded as a safe country of return (Administrative Court Judgement, 2020: 60). Allegations that Croatian police engaged in systemic ill-treatment were not concrete enough and the applicant's individual circumstances did not substantiate them. The government emphasised that the European Commission, in its 2019 evaluation of Croatia's Schengen readiness (European Commission, 2019), found no incompatibility with EU standards in the field of police cooperation (Administrative Court Judgement, 2020: 166).

The state also defended the conduct of Slovenian police. It maintained that the applicant had never expressed an intention to apply for asylum and therefore the asylum procedure under the International Protection Act was never

2 Transl. General Police Directorate, document no. 225-2/2018/13 (2131-3), subject "Procedures with migrants – directive", dated 25. 5. 2018.

triggered (Administrative Court Judgement, 2020: 51, 54). Police actions were fully compliant with the Police Tasks and Powers Act, the Foreigners Act, the State Border Control Act, and the Minor Offences Act (Administrative Court Judgement, 2020: 45). The applicant was said to have signed four documents (not three as he alleged), all of which were duly provided to him, and communication took place in English, a language he understood (Administrative Court Judgement, 2020: 46, 47). The state further stressed that Slovenian police operations with foreigners had been repeatedly monitored by external institutions (UNHCR, Slovenska Karitas, PIC, IOM, and the Ombudsman), none of which had identified systemic violations demanding immediate corrective action (Administrative Court Judgement, 2020: 43, 44). The state rejected claims of violation of non-refoulement, asserting that the applicant had failed to demonstrate any individual circumstances that would indicate a risk of human rights violations in Croatia (Administrative Court Judgement, 2020: 55, 58, 60). In sum, the state sought to frame the applicant's removal as a lawful transfer under an established bilateral mechanism, undertaken in line with EU and national legislation, and consistent with Slovenia's obligations under international law, whilst trying to portray the applicant as unreliable in his statements.

On the role of EU law

The Administrative Court began by situating the dispute within the scope of European Union law (Administrative Court Judgement, 2020: Section B.). Slovenian authorities, either when carrying out returns under the 2006 Readmission Agreement with Croatia or if they would be dealing with asylum seekers, were 'implementing Union law' within the meaning of Article 51(1) of the EU Charter of Fundamental Rights (Administrative Court Judgement, 2020: 216–229). However, according to CJEU case law in certain areas where the EU has competence, a national measure does not nevertheless trigger the application of the EU Charter of Fundamental Rights (Administrative Court Judgement, 2020: 231). The court determined that with regard to the areas and situations governed by Readmission Agreement and Protocol/2006 and Article 35 of ZMZ-1, matters are not predominantly left to national law and are not only related to the Return Directive 2008/115, but also to the Procedures Directive 2013/32/EU (Administrative Court Judgement, 2020: 233). Therefore, the provisions of Articles 19(1) and 19(2) (or Article 4) and Article 18 of the EU Charter of Fundamental Rights, the protection of which was asserted by the applicant in the lawsuit, should also be considered. This finding was crucial: it required the Court to assess the

practice not only against domestic and international standards but also against Articles 19(1) and 19(2) (or Article 4) and Article 18 of the EU Charter of Fundamental Rights. Those would have to be interpreted in light of ECtHR case law as Article 52(3) of the Charter provides that the rights in the Charter that correspond to rights guaranteed by the ECHR have the same meaning and scope as they do under the ECHR (Administrative Court Judgement, 2020: 209).

The prohibition of collective expulsion

For clarity, the court adopted a 'check-list' approach inspired by ECtHR case law on collective expulsion (Administrative Court Judgement, 2020: 247–248). It outlined the fundamental elements of the right: meaningful individual assessment of personal circumstances *("a reasonable and objective examination of the particular case of each individual alien of the group"*), effective opportunity to raise arguments against removal *("enabling [foreigners] to put forward their arguments against the measure taken by the relevant authority"*), access to interpretation and legal assistance, proper information about procedures, and the state's burden to dispel doubts as to whether such safeguards were respected. Applying these criteria, the court found that individualisation was purely formalistic (Administrative Court Judgement, 2020: 250–255). The applicant underwent identification and received standardised documents (a detention order, a fine, a record of a statement in the minor offence procedure, and a confiscation decision). Yet no genuine assessment of his personal circumstances was undertaken in relation to return (Administrative Court Judgement, 2020: 251). His interviews were tied to the offence of irregular entry, not to potential protection needs or objections to removal. State documentation was unreliable as the court noted striking inconsistencies: the applicant's statements were recorded in identical wording across different police records, making it implausible that independent interviews had been conducted. Some documents lacked signatures; others were generated after the fact (Administrative Court Judgement, 2020: 252). There was no evidence that the applicant had been informed he was in a return procedure, no provision of interpretation, and no access to legal advice (Administrative Court Judgement, 2020: 254). A generic "Notice of rights to the person who has been arrested" pertained only to detention in criminal proceedings, not to removal (Administrative Court Judgement, 2020: 254). The state's reliance on external monitoring (UNHCR, Karitas, PIC) was dismissed as irrelevant, since these mechanisms did not cover the bilateral readmission procedure at issue (Administrative Court Judgement, 2020: 256). By contrast, reports

from the Ombudsman, Infokolpa, Amnesty International, and others consistently documented systemic failures to record asylum claims and the routine use of summary removals (Administrative Court Judgement, 2020: 256–265). The court gave weight to these convergent external accounts, aligning them with the applicant's testimony. The court also considered the political and institutional context, namely the instructions issued by the Director General of Police in 2018, which (among others) encouraged immediate notification to Croatian authorities before any substantive interview, thereby structurally precluding a proper assessment of individual circumstances (Administrative Court Judgement, 2020: 265). On this basis, the court concluded that Slovenia had not discharged its burden of proof. The applicant had provided a coherent and credible account supported by independent reports. The state, by contrast, failed to dispel doubts about whether he had been given an opportunity to present arguments against removal (Administrative Court Judgement, 2020: 270). The court therefore held that the applicant's summary group return to Croatia on 16 August 2019 constituted an unlawful collective expulsion, in violation of Article 19(1) of the Charter (Administrative Court Judgement, 2020: 272–273).

The principle of non-refoulement

The court next turned to the applicant's second central claim: that his transfer to Croatia exposed him to a real risk of torture or inhuman and degrading treatment by Croatian authorities, and to onward refoulement to Bosnia and Herzegovina under conditions amounting to inhuman treatment. It examined this under Article 19(2) of the EU Charter, which specifies the prohibition of refoulement as a special dimension of the absolute ban on torture under Article 4 of the Charter (Administrative Court Judgement, 2020: 274).

Following ECtHR and CJEU jurisprudence, the court distinguished between the material and procedural components of the right (Administrative Court Judgement, 2020: 276–279). For the material limb, it recalled that inhuman treatment requires a certain threshold of severity: sustained infliction of physical or psychological suffering, or being forced into conditions of extreme destitution incompatible with human dignity, particularly for persons with special vulnerabilities and regardless of one's will and personal choice. For the procedural limb, it identified a set of obligations: an arguable claim suffices to trigger the duty of assessment; the state must consider systemic deficiencies in the receiving country; the activation of the principle of non-refoulement is not tied to an intent to seek asylum; authorities must conduct a thorough, individualised risk

assessment using reliable and up-to-date reports; effective remedies with automatic suspensive effect must exist in law and practice; and, once the applicant has discharged his initial burden, the state bears the responsibility of dispelling any serious doubts. Crucially, the Court reiterated that the prohibition on refoulement is absolute: credible evidence of a risk obliges the suspension of removal unless the state can convincingly establish safety.

The central questions were therefore twofold: whether at the time of the applicant's removal sufficient, reliable, and corroborated reports existed on Croatia's treatment of migrants and conditions in Bosnia and Herzegovina (Administrative Court Judgement, 2020: 303); and how the principle of mutual trust between EU Member States[3] affected Slovenia's obligations. The State argued that Croatia's EU membership sufficed to presume compliance with fundamental rights. The court rejected this formalist view, citing CJEU cases (N.S. and M.E., Jawo, Aranyosi, and Căldăraru) which hold that mutual trust is rebuttable where "objective, reliable, specific and properly updated" information document systemic deficiencies (Administrative Court Judgement, 2020: 295). In such cases, the sending state cannot rely on membership presumptions. Still, it must conduct a substantive risk assessment and, where necessary, seek individual assurances (Administrative Court Judgement, 2020: 296, 299) (in its later judgement, the Supreme Court noted in other areas seeking individual assurances was already an established practice in Slovenia).

Applying this standard, the court considered a wide range of sources, including reports by the Slovenian Ombudsman (2019), Amnesty International (2018, 2019), PIC (2018), Infokolpa (2019), the Border Violence Monitoring Network (2020), UN bodies, and Croatian and Bosnian media. These consistently documented systemic denial of access to asylum, routine violence by Croatian police, summary removals to Bosnia and Herzegovina, and dire humanitarian conditions in camps such as Vučjak (Administrative Court Judgement, 2020: 322–359). The Ombudsman's February 2019 report—issued just months before the applicant's removal—was given particular weight, as it had explicitly warned of unlawful practices at the Črnomelj station and provided statistical evidence of asylum denials (Administrative Court Judgement, 2020: 308–321). The Supreme Court would later stress that Slovenian police had been explicitly notified of

3 The principle of mutual trust in EU constitutional law presumes that all Member States respect EU law and fundamental rights, enabling them to recognise and enforce each other's legal decisions without extensive verification. It underpins key mechanisms such as the European Arrest Warrant, asylum procedures, and judicial cooperation, thereby enabling a system based on the mutual recognition of judicial and administrative acts. According to CJEU jurisprudence this assumption is rebuttable. It may be limited when there is a real risk of fundamental rights violations. See CJEU, Joined Cases C-404/15 and C-659/15 PPU, Aranyosi, and Căldăraru (2016).

these reports and had even issued public responses to some of them (Supreme Court Judgement, 2021: 83).

On this basis, the court held that the applicant's claim was not 'manifestly unfounded' but well supported by credible, public evidence which Slovenian authorities knew or should have known at the time (Administrative Court Judgement, 2020: 368). By failing to assess these risks or seek assurances from Croatia, the police violated their procedural obligations under Article 19(2) of the Charter (Administrative Court Judgement, 2020: 377–379).

At the same time, the Court declined to find a breach of the material limb of Article 19(2). While the applicant described fear and distress during his removal and hardship in Bosnia and Herzegovina's Miral camp, he was not considered part of a particularly vulnerable category. The evidence did not demonstrate conditions of such extreme severity—total deprivation of food, shelter, or sanitation—as to cross the ECtHR threshold (Administrative Court Judgement, 2020: 380–401).

Nevertheless, the Court concluded that procedural violations alone suffice to establish state responsibility under Article 19(2), in line with the ECtHR Grand Chamber's approach (Ilias and Ahmed v. Hungary, M. A. c. Belgique) (Administrative Court Judgement, 2020: 402). Slovenia was therefore found in breach of its obligations, even absent proof of actual inhuman treatment after removal.

The right to access asylum

The Administrative Court also assessed the challenged measure considering Article 18 of the EU Charter, which guarantees the right to asylum with due respect for the 1951 Geneva Convention and the EU Treaties (Administrative Court Judgement, 2020: 403–440). The core question was whether the applicant had effectively expressed an intention to seek asylum and whether Slovenian authorities provided him with a genuine opportunity to access the asylum procedure.

The Court noted the applicant's consistent statements that he had declared his wish to seek asylum on multiple occasions—upon apprehension near Podlog, again when being escorted to the border, and once more at the police station, where officers allegedly responded, "No asylum." The applicant also described attempts to record Slovenia as his destination country, which police corrected to "France." These testimonies aligned with external reports documenting a broader pattern at Slovenian border police stations (notably Črnomelj and Metlika), where asylum requests were routinely disregarded or misrecorded (Administrative Court Judgement, 2020: 406–409, 419, 435).

By contrast, the State relied on two police records (from April and August 2019), in which the applicant was recorded as stating that France was his destination for economic reasons. However, the Court found these records highly unreliable: they were produced in the context of minor-offence proceedings, without interpretation, and often contained identical, formulaic wording across different documents (Administrative Court Judgement, 2020: 435). Such inconsistencies raised serious doubts as to whether they accurately reflected the applicant's statements.

The court recalled that under both the Procedures Directive (2013/32/EU) and the ECtHR's jurisprudence, when it is unclear whether a third-country national expressed an asylum intention, the burden shifts to the State to demonstrate that the individual was duly informed of their right to seek asylum, had access to interpretation and legal assistance, and was effectively able to lodge a claim. None of these guarantees were present in the applicant's case. In particular, Slovenia had failed to transpose key provisions of the Procedures Directive concerning the "pre-asylum" phase—the recognition and recording of an asylum intention (Administrative Court Judgement, 2020: 415, 432).

Against this backdrop, the court held that the applicant did not have a real, effective, and simple opportunity to express his wish for protection, nor access to information, interpretation, or remedies with suspensive effect. This amounted to a violation of Article 18 of the Charter (Administrative Court Judgement, 2020: 418, 435, 440). The Court emphasised that the right to asylum is not merely theoretical but must be made practical and effective, especially at borders where individuals are entirely dependent on State authorities.

Damages and redress

The applicant also sought damages for the distress, fear, and helplessness caused by being denied access to asylum, being treated as an object of police transfers, and being left in harsh conditions in Bosnia and Herzegovina. The Court, however, declined to rule on compensation in the administrative proceedings, referring the applicant to a separate civil action to avoid prolonging the dispute (Administrative Court Judgement, 2020: 462–464).

Nevertheless, the Court went beyond a mere declaratory finding of rights violations. Relying on the principle of restitutio in integrum, as codified in Article 66 of the Administrative Dispute Act as well as anchored in Article 47 of the EU Charter of Fundamental Rights which guarantees the right to an effective remedy, it held that judicial protection of human rights must, wherever possible, re-

store the situation that would have existed absent the violation (Administrative Court Judgement, 2020: 451, 455). A simple declaration of illegality was therefore insufficient. Given the causal link between the unlawful pushback and the denial of the applicant's rights under Articles 18 and 19(1) and 19(2) of the Charter, the Court ordered the state to take concrete measures to remedy the violation (Administrative Court Judgement, 2020: 457, 458).

Specifically, it instructed the Slovenian authorities to permit the applicant's entry into Slovenia to lodge an asylum application, leaving the state discretion as to the appropriate legal vehicle—whether through a visa, an authorisation at the consulate in Sarajevo, a laissez-passer, or other means. By doing so, the Court underscored that Slovenia possessed the institutional capacity and legal duty to undo the consequences of unlawful removals, and that effective judicial protection under Article 47 of the Charter required more than symbolic recognition: it demanded practical avenues of redress (Administrative Court Judgement, 2020: 459–460).

Supreme Court's ruling and the state's obligation to restore legality

The Supreme Court upheld the Administrative Court's findings of multiple violations of the applicant's fundamental rights and dismissed all arguments advanced by the state on appeal. While its detailed reasoning cannot be reproduced here, what is crucial for this article is its confirmation of the remedy ordered by the Administrative Court: the obligation of Slovenia to eliminate the unlawful situation and restore legality by ensuring the applicant's access to the asylum procedure (Supreme Court Judgement, 2021: 50–52). The Supreme Court emphasised that this duty lies with the Republic of Slovenia itself, which must provide both the legal framework and practical avenues for the applicant to enter the territory and lodge his claim. It rejected the state's assertion that no legal basis existed for such a measure, stressing instead that Slovenia has at its disposal all necessary instruments—including, if required, the adoption of new legislation—to enable not only the applicant but also others in comparable circumstances to exercise the right to asylum guaranteed by Article 18 of the Charter (Supreme Court Judgement, 2021: 52).

The aftermath and reflections on the limits of law

Following the landmark judgments, the legal team sought clarification from the state regarding how the applicant would be permitted to re-enter Slovenia and submit his asylum claim. The Police issued a written response that effectively disregarded both the court's instructions and the applicant's circumstances. In it, the Police cynically 'explained' to the applicant's lawyer that "the final judgment will be enforced as decided in point II of the verdict." The applicant would be allowed:

> *to enter at any border crossing with the Republic of Croatia, on the basis of the final judgment of the Administrative Court of the Republic of Slovenia, No. I U 1686/2020-126 of 7 December 2020 and after completing the identification procedure. If the foreigner has a travel document or any other identification document, we recommend that they carry it with them. Upon entering the Republic of Slovenia, the police will immediately allow [the applicant] to submit an application for international protection at the border crossing, after which he will be handed over to the International Protection Procedures Sector of the Directorate for Migration and accommodated in the premises of the Government Office for the Care and Integration of Migrants. (General Police Directorate, 2021)*

The response was profoundly cynical: the described procedure corresponds exactly to the standard process already prescribed by the International Protection Act for any person seeking asylum (see Article 42 ZMZ-1). Moreover, the Police were fully aware that it was impossible for the applicant to reach a Slovenian–Croatian border crossing lawfully, as he remained stranded in Bosnia and Herzegovina, a direct consequence of the chain of refoulement perpetrated against him by Slovenian authorities. In essence, the Police indicated their refusal to implement the court's ruling.

As a result, the applicant remained in Bosnia and Herzegovina and was forced to secure his safety independently, without institutional support. While the legal team continued to pursue possible enforcement measures, including judicial penalties (Article 212 ZIZ). Before new court proceedings were initiated, the applicant succeeded in reaching Slovenia on foot and was finally admitted to the asylum procedure.

The matter of damages, however, remained unresolved. Having been referred to the civil court, the applicant filed a separate claim. There, the state refused to negotiate, repeated arguments already dismissed by higher courts, and prolonged proceedings. This demonstrates how even after judicial recognition of

violations, justice can continue to be delayed and denied. More broadly, despite the courts' unequivocal condemnation of the police, the exposure of unlawful police instructions, and the identification of systemic failures in protecting fundamental rights, no official investigation followed, nor was political or institutional responsibility assumed. The legal team issued press releases and organised an event with the BVMN to bring further spotlight to the issue and the obtained verdicts. However, due to burnout and a lack of resources, a strategic media campaign that would sufficiently utilise the courts' findings was never carried out.

In the aftermath, assessing any systemic impact of this strategic litigation on the practice of pushbacks by Slovenian police is challenging. Civil monitoring reports (BVMN, 2022: 121–124) indicate that 'bureaucratic pushbacks' from Slovenia significantly decreased in 2022, though this coincided with a change of government that announced changes in migration policy based on the protection of fundamental rights. New instructions were issued to the police: to explicitly ask irregularly arriving foreigners whether they wish to apply for asylum, whilst the border fence between Slovenia and Croatia was announced to be abolished. Meanwhile, it appeared that Croatian police refused to continue to accept readmitted individuals in large numbers (BVMN, 2022: 121–124). Broader shifts along the Balkan route, such as an increase in Dublin transfers and a significant decline in arrivals in 2025, further complicate causal attributions.

The Slovenian case thus exemplifies the conflicting dynamics of legal contestation. Litigation is not just about seeking individual redress; it can also reshape broader discursive and institutional landscapes. Here, the courts confronted the state's narrative of legality, affirmed the reach of EU and ECHR standards, and validated the evidentiary work of civil society. Yet these gains proved precarious: without compliance, judgments risk remaining aspirational statements of principle rather than instruments of change.

Another important dimension of the case is to situate it within the broader Balkan context, which underscores the role of EU externalisation. Border violence is often attributed to the 'backwardness' of Balkan states, obscuring EU responsibility for conditioning accession, visa liberalisation, and financial support on restrictive border practices. As Stojić Mitrović and colleagues (2020: 16–19) argue, states along the route assume bordering functions for the Union: some enact violent pushbacks to shield its external borders, others act as 'dumping grounds' for deterred migrants. The presented case of a chain pushback from a Schengen and EU member state through (at the time) a non-Schengen EU member state, into a 'third' state, also speaks to the structural violence of the EU's migration regime. The case can serve as an example, showcasing different roles Balkan states assume in the EU migration regime.

In conclusion, the case demonstrates both the promise and limits of litigation, as well as of the 'EU legal standards' and their use in practice. It shows courts can confront illegality, reassert rights, and produce systemic recognition. Yet without enforcement and broader societal organisation to counter systemic violence, especially the EU's policy of externalisation, victories remain fragile, offering moral validation but little material change. For the applicant, justice was partial at best. For activists and practitioners, the lesson is clear: law can challenge, but it cannot alone dismantle.

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