

National Report on the situation of human rights of migrants at the borders



Croatia

Ombudswoman of the Republic of
Croatia



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Executive Summary

The **Ombudswoman of the Republic of Croatia** is a Commissioner of the Croatian Parliament and also acts as the Parliamentary Ombudsman, the National Preventive Mechanism (NPM) and as the Central Equality Body in Croatia.

The protection and promotion of human rights of migrants became a more significant part of the work of the office of the Ombudswoman with the intensification of migratory movements through the so-called Balkan route in 2015 and 2016. The report mainly covers the activities for 2020, including monitoring visits and complaint-handling.

Returns, access to procedures, and violence at borders

In 2020, the Office of the Ombudswoman opened 39 cases regarding police treatment of irregular migrants and asylum seekers. Many cases related of pushbacks practices across the green border between Croatia and Bosnia and Herzegovina. In some cases, migrants were allegedly subjected to inhuman treatment, physical and even sexual violence. The Ministry of Interior has denied any allegation of ill-treatment of migrants by police officers. Due to limitation of means and authority within its legal mandates to assess facts and circumstances thoroughly, the Ombudswoman is often unable to reach a conclusive opinion as to whether these violations took place.

The Croatian Ombudswoman has received allegations and investigated several cases of migrants who have reported that they were not able to access asylum procedures when crossing the border to Croatia, despite the fact that they explicitly asked for it. In its Annual Report for 2020, the NHRI therefore reiterated its recommendation that the relevant authorities and the Minister of Interior must process the requests for asylum of

all migrants found in Croatian territory, including when they irregularly cross the border, in line with international and EU law.

Reception conditions and deprivation of liberty at the borders

During 2020, the Ombudswoman conducted an investigation concerning foreigners' access to free legal aid at the Detention Centre in Ježevo. It was found that the majority were not adequately acquainted with having this right, nor could they contact anyone for legal advice and/or legal representation.

Human Rights accountability at the borders

The Report highlights the issue of inadequate support to civil society organisations (CSOs) during COVID-19, currently inadequate policy framework for fostering cooperation with CSOs, lack of adequate financing for human rights NGOs and lack of access to statistical data and information, particularly by those working on migration, as well as lack of access to the reception and detention centres. In the Annual Report for 2020, the Croatian Ombudswoman also made a recommendation to the Minister of Interior to establish an independent mechanism of monitoring border procedures.

Impact of COVID-19 pandemic

The Croatian NPM suspend its visits from March until June 2020, but continued to monitor the situation of persons of concern by requesting information to national authorities and cooperating with NGOs and international organizations. Following this period, the NPM resumed the on-site visits, adhering to proscribed epidemiological measures.

Like most other EU member states, Croatia postponed transfers of asylum seekers to the states responsible for considering their application under the Dublin III Regulation.

Reception centres were adapted to epidemiological measures, daily presence of physicians was ensured, and access for persons not essential for the functioning of these facilities was restricted.



Chapter 1

ENNHRI's Project on Migrants' Rights at Borders

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. One of ENNHRI's thematic priorities is our work on "[asylum and migration](#)", which is facilitated through our Asylum and Migration Working Group, which brings together over 30 European NHRIs.

In order to support NHRIs' work to promote and protect the rights of migrants at borders, ENNHRI has initiated a project in 2019, supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations. The main objective of the project is to achieve a better promotion and protection of the

human rights of migrants at the borders through different capacity-building, advocacy, communication and reporting activities involving NHRIs in Europe.

Under this project, ENNHRI also has published several resources, such as the:

- Background Paper on "Protecting human rights of migrants at borders: evidence and work of European NHRIs", available [here](#).
- Guidance on "Monitoring Human Rights at Borders: building on the mandate and functions of NHRIs", available [here](#).
- Statement on "Stronger human rights monitoring at Europe's borders – why NHRIs are part of the solution", available [here](#).
- Complementary Guidance on "Monitoring human rights of migrants at borders during the

Covid-19 pandemic”, available [here](#).

- Article on “Protecting the rights of migrants during the pandemic: How have NHRIs responded?”, available [here](#).
- Recommendations on “Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum”, available [here](#).

In addition, under this project, five NHRIs - from Croatia, France, Greece, Serbia, and Slovenia – have developed national monitoring reports with the result of their human rights monitoring at borders. A comparative regional report will be published in July 2021, building on these findings and reflecting regional developments.

NHRIs work to promote and protect migrants’ rights at borders

NHRIs are State-mandate bodies, independent of government, with a broad mandate to promote and protect all human rights, including of migrants. They are periodically assessed against their compliance with the [UN Paris Principles](#).

European NHRIs use their unique mandate and full range functions to address the human rights of migrants, at the borders and beyond. In doing so, they also contribute to safeguarding democratic space and upholding the rule of law at borders.

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify and use information to address the human rights situation of migrants at the borders. As highlighted in [ENNHRI’s Background Paper](#), NHRIs have contributed to a growing body

of evidence indicating the existence of widespread violations of migrants’ human rights at the borders in Europe, in line with the concerns raised by civil society organisations, international and regional human rights bodies.

Among their many functions, NHRIs conduct monitoring on the respect of migrants’ rights on the ground, make recommendations to governments for reform of laws, policies and practices, and raise awareness of the rights of migrants, refugees and people seeking asylum by cooperating with regional and international human rights bodies and with civil society organisations. Some NHRIs also regularly monitor and report on immigration detention facilities and reception centres, may receive and handle individual complaints from migrants, and may be able to challenge the legality of a provision before Constitutional and/or lower courts.

During the Covid-19 pandemic, NHRIs have continued to monitor human rights violations at Europe’s borders documenting, among others, police violence and systematic pushbacks amid border closures and restrictive measures.

With this series of national reports written by NHRIs across the region, ENNHRI hopes to bring further visibility to their findings and recommendations. Mirroring the main areas identified in ENNHRI’s [Guidance on Monitoring Human Rights at Borders](#), NHRIs report on:

- Returns and violence at the borders.
- Access to relevant procedures at the borders.
- Reception conditions and deprivation of liberty at the borders.

- Human rights accountability at the borders.

National reports presented under ENNHRI's project are authored by each specific NHRI, which are ultimately responsible for their content.

The Ombudswoman of the Republic of Croatia

The Ombudswoman of the Republic of Croatia is a Commissioner of the Croatian Parliament, responsible for the promotion and protection of human rights and freedoms in Croatia. The Ombudswoman acts as the Croatian National Human Rights Institution (NHRI) and was [re-accredited](#) with A-status in March 2020, indicating its full compliance with the UN Paris Principles. The institution also acts as the Parliamentary Ombudsman, the National Preventive Mechanism (NPM) and as the Central Equality Body in Croatia.

One of the main activities of the Office is looking into citizen's complaints in relation to maladministration, human rights violations and discrimination. Based on the findings, the Office issues opinions, suggestions, recommendations or warnings to the relevant bodies and, if necessary, can report on the issues at hand to the Croatian Parliament.

The Ombudswoman's 2020 Annual Report, submitted to the Croatian Parliament in February 2021, is available in Croatian [here](#) and brings forward 142 recommendations for a stronger human rights protection in Croatia.

Cooperation with other Human Rights Defenders

The Ombudswoman, in preparation of the Annual Report to the Croatian

Parliament, publicly invites all interested civil society organisations (CSOs) to contribute to the Annual Report, including by sending tailored questions to specific CSOs, among them those working on migration issues. Therefore, their contribution is included in the Annual Report and the findings and recommendations of CSOs are duly considered when the Ombudswoman addresses the Croatian Parliament.

Furthermore, human rights defenders, including CSOs, send information on the basis of which the Croatian Ombudswoman can initiate its procedures and consider different actions to tackle human rights concerns.

Moreover, the Croatian Ombudswoman dedicates a chapter within the [Annual Report](#) on the challenges faced by CSOs in Croatia. In 2020, the Ombudswoman highlighted the issue of inadequate support to CSOs during the COVID-19 pandemic, the inadequate policy framework for fostering cooperation with CSOs, the lack of adequate financing for human rights NGOs and the lack of access to statistical data and information, particularly by those working on migration, as well as their lack of access to reception and detention centres.

Impact of the COVID-19 pandemic

Due to the COVID-19 pandemic, the Ombudswoman suspended its NPM visits from March 2020 until June 2020, in accordance with the "do no harm" principle. During this period, the NHRI relied on information obtained from the authorities, but also from NGOs and international organizations. The NHRI requested information from the Ministry of Interior (MOI) on preventive measures taken to protect from infection persons deprived of liberty, irregular migrants,

asylum seekers, as well as police officers. The NHRI also sought data on measures applied to safeguard fundamental rights, including the right of access to independent medical advice, the right to legal assistance and the right to ensure that third parties are notified of detention. Following this period, the institution resumed its NPM visits, adhering to proscribed epidemiological measures.

UNHCR estimated that the number of forcibly displaced persons globally had risen to over 80 million by mid-2020. At the same time, receiving those in need of international protection was made even more difficult by the pandemic. Epidemiological measures have reduced the general mobility of international protection seekers so that significantly fewer people managed to apply for asylum in the EU in 2020, as the EU introduced controls of its internal borders and temporary restrictions on non-essential travel. In the Republic of Croatia, however, a decrease in the number of applicants compared to 2019

amounted to only 3% - there were 1986 in 2019, and 1932 in 2020.

Like most other EU member states, Croatia postponed transfers of asylum seekers to the states responsible for considering their application (under the Dublin III Regulation).

Content of this report

The report covers the NHRI's activities during 2020. During this year, the Croatian Ombudswoman opened 39 cases regarding the treatment of irregular migrants and asylum seekers by the Croatian police. Under its NPM mandate, the institution undertook three unannounced visits to police stations (VI. police station in Zagreb in July 2020, border police station in Cetingrad in August 2020 and Hrvatska Kostajnica in December 2020) that carry out procedures towards irregular migrants, two of them being border police stations and one located deeper inside the Croatian territory.





Chapter 2

1. Returns, access to procedures, and violence at borders

The protection and promotion of the human rights of migrants became a more significant part of the work of the Croatian Ombudswoman with the intensification of migratory movements through the so-called Balkan route in 2015 and 2016. This work continued as a response to continued reports on human rights violations, for instance by several CSOs that have reported on the return of irregular migrants to Serbia by Croatian police officials without due process. Over the years the body of allegations grew. The alleged violations included denial of access to international protection and violence at the borders. This resulted in a growing number of international and national organizations in fact-finding missions, trying to document violations of human rights on the ground

Several organisations such as the [UNHCR](#), [Council of Europe Commissioner for Human Rights](#), [Human Rights Watch](#), [Amnesty International](#), [Danish Refugee Council](#), also carried out fact-finding missions, many of which contributed to documenting violations on the ground. The Croatian Ombudswoman has been receiving complaints of the same nature from these organisations and also from migrants themselves.

For example, in 2020, the Ombudswoman opened 39 cases regarding police treatment of irregular migrants and asylum seekers, some of them relating to larger groups of migrants. While most cases were opened following complaints, several cases were initiated based on publicly available information. One of these cases concerned [information](#) published by The Guardian on alleged police brutality at borders, and the other by

[Amnesty International](#) on an alleged episode of torture and abuse at borders at the hands of the Croatian police.

Details on procedures undertaken in some of those cases can be found in the Ombudswoman's Annual Report for 2020, which was submitted and presented before the Croatian Parliament.

The complaints include descriptions of police treatment towards migrants who were illegally staying in Croatia or crossing the border with Bosnia and Herzegovina. Some of these migrants, have addressed the Ombudswoman in order for the NHRI to initiate relevant procedures in relation to the events and to verify their allegations. Among others, the complainants alleged that they were forcibly returned to Bosnia and Herzegovina across the green border without any legal procedure. Some of them stated that they were also subjected to inhumane treatment, physical and/or sexual violence.

The NHRI also opened a case regarding the treatment of two Nigerian citizens who arrived in Croatia in late 2019 for an inter-university table tennis competition. According to their [allegations](#), the police stopped them in Zagreb and, as they did not have passports on them, forcibly removed them, without prior verification of their residence status, to Bosnia-Herzegovina, through a border not intended for legal border crossing. Soon after that, they were returned to Nigeria.

In following up on these allegations, as a rule, the Ombudswoman seeks information from the Ministry of Interior, including as to whether police officers did indeed subject irregular migrants in question to any conduct, and which steps were taken to ascertain whether there had been any irregularities. In their reply, the Ministry often states

that police officers did not carry out any proceedings towards the complainant, or that they did by issuing return decisions in police stations with a deadline for voluntary return, denying allegations of ill-treatment.

In such cases, the Ombudswoman is usually unable to reach a conclusive opinion as to whether these violations took place due to limitation of means and authority within its legal mandates to assess facts and circumstances thoroughly and based on available information. Therefore, it is of the utmost importance for these allegations to be effectively investigated by other independent state authorities. The Ombudswoman has reminded authorities that some allegations point to potential breaches of Article 4 of the Charter of Fundamental Rights of the EU and Article 3 of the European Convention on Human Rights (ECHR) whereby undertaking effective investigations is a positive obligation of a state. This was also [stressed](#) in multiple occasions by the Council of Europe Commissioner for Human rights.

The Croatian Ombudswoman has received allegations and investigated several cases of migrants who have reported that they were not able to access asylum procedures when crossing the border to Croatia, despite the fact that they explicitly asked for it.

In its Annual Report for 2020, the Croatian Ombudswoman reiterated its recommendation that the relevant authorities and the Minister of Interior must process the requests for asylum of all migrants found in Croatian territory, including when they irregularly cross the border, in line with international and EU law.

2. Reception conditions and deprivation of liberty at the borders

During 2020, the Croatian Ombudswoman opened a case concerning migrants' access to free legal aid at the Detention Centre in Ježevo. It found that the majority of detainees were not adequately acquainted with having the right to free legal aid, nor could they contact anyone for legal advice and/or legal representation. Since being informed and aware of their human rights is essential to make sure that persons deprived of their liberty can effectively exercise them, the Ombudswoman recommended that notifications about free legal aid be printed in all the languages migrants in return procedures frequently use, that copies of the form to request legal aid be posted on the Centre's billboards, and that the forms be submitted to each migrant when deciding on their return.

Furthermore, the Ombudswoman's proceedings regarding the apprehension of 30 persons found in the avoidance of border control, showed that they had boarded a train in Serbia, hiding in specially constructed cargo wagon hideouts, which were later loaded with clay. The migrants were found at the border crossing with Slovenia, with 15 children and four women among them, one of them pregnant. In addition to the different gender and age, the group also differed according to the countries of origin and thus the languages they could understand. Even though the group was heterogeneous and included vulnerable individuals, no interpreters were present during the return procedure. Therefore, the Croatian Ombudswoman questioned how the relationship among

individuals were determined and how authorities assessed the best interests of children involved. Additionally, during their stay, the group was kept in conditions that do not meet regional standards on detention conditions.

The Croatian Ombudswoman, in its Annual Report for 2020, reiterated its recommendation to the Minister of Interior to ensure provision of adequate interpretation service while carrying out return measures.

In 2020, Croatia imposed a self-isolation measure on newly arrived asylum seekers to the reception centres in Zagreb and in Kutina, which amounted to as many as 1348 during the year. Reception centres were adapted to epidemiological measures, daily presence of physicians was ensured, and access for persons not essential for the functioning of these facilities was restricted. It included restriction for NGOs that used to organize and provide activities for asylum seekers in these centers. The only NGOs that remained were Croatian Red Cross and Médecins du Monde.

3. Human Rights Accountability at the Borders

The Croatian Ombudswoman Office has a broad mandate to promote and protect human rights, including through cooperation with other human rights defenders.

Among other things, under the Ombudsman Act, the Ombudsman's Council for Human Rights is set up as an advisory body that considers and proposes strategic guidelines and ensures permanent cooperation between the Ombudsman, civil society, academic community and the media. It considers all issues of importance for the work of the Ombudsman in

the field of promotion of human rights and freedoms. Members of the Council are appointed by the Ombudsman for a term of 4 years. The work of the Council is further elaborated by Rules of Procedure of the Ombudsman, which define that it consists of 8 members, who are appointed by the Ombudsman following a public call. Currently, one of the representatives coming from CSOs works primarily on migration issues and regularly meets with the Croatian Ombudswoman.

Additionally, the Ombudswoman signed cooperation agreements with 11 CSOs working on anti-discrimination and equality issues, coming from all regions of Croatia, and some of them have migration high on their agenda. Finally, the Ombudswoman cooperates with representatives of NGOs registered for the performance of activities in the area of protection of human rights, including migration and academia. As previously stated, the Ombudswoman, in preparation of her Annual Report to the Croatian Parliament, invites CSOs, including human rights defenders to contribute to her Report, among them those working on migration issues as well. Hence, their contribution is included in the Annual Report.

Furthermore, human rights defenders send complaints based on which the Ombudswoman considers initiating procedures under its mandate.

In October 2019, when the European Commission confirmed that Croatia had met the conditions to join the Schengen area, it emphasised that “the protection of human rights of asylum seekers and other migrants, and the allegations of denial of access to the asylum procedure and of use of force by law enforcement officials at the border remain a challenge” ([COM\(2019\) 497](#)).

In addition, in March 2020 the Croatian Ombudswoman was approached by the European Commission to discuss the overall situation regarding irregular migrants and asylum seekers, as well as Croatia’s monitoring exercises at the external borders. This was followed by a series of meetings between the Croatian Ombudswoman and the Croatian Ministry of Interior, Frontex and the FRA.

In the Annual Report for 2020 (submitted in February 2021), Croatian Ombudswoman made a recommendation to the Minister of Interior to establish an independent mechanism of monitoring border procedures.





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