



20.01.2023

CROATIA



I. Justice System

Please provide information on measures taken to follow-up on the recommendations received in the 2022 Report regarding the justice system (if applicable)

The term 'people on the move' refers to those who, for a variety of reasons, have left their country of origin due to, among others reasons, climate change, economic and social inequalities, political conflicts, terrorism, colonial legacies and organised crime. In addition, the term specifically includes those who are in the process of moving and are still in transit, or those who are stranded.

In the Rule of Law Report 2022, the Commission called upon Croatia to "ensure a more systematic follow-up to recommendations and information requests of the Ombudsperson" (<http://bit.ly/3kmYdYA>). In the past, The Office of the Ombudsperson has recommended a reform of the "Independent Monitoring Mechanism (IMM)", including closer EU surveillance on the matter (<https://bit.ly/3CSq1ux>). There was no public call made for the new agreement, therefore lacking transparency on the selection criteria of the actors involved, which remain the same (<https://bit.ly/3J1KXmu>). Furthermore, the lack of consultation of the claims of people on the move, NGOs and CSOs remain. The reform the Ombudsperson called for cannot be seen as completed as the improvements that have been made are minor, for example the operation of the "unannounced observations" referred to in article 6 are not clear (<https://bit.ly/3J1KXmu>). Another recommendation was to address the use of strategic lawsuits against public participation (SLAPP) by tackling the abuse of defamation laws. No adjustments have been made to defamation laws to date. The reported steady increase in SLAPPs throughout 2022 shows that despite growing pressure, Croatia fails to respond to the Commission's recommendations (<https://bit.ly/3H9ohiW>).

Judicial review of administrative decisions: short description of the general regime (in particular competent court, scope, suspensive effect, interim measures, and any applicable

specific rules or derogations from the general regime of judicial review)

The Administrative Jurisdiction Division of the Council of State of the Netherlands showed that Dublin deportations to Croatia should be reconsidered due to a risk of breaching Article 4 of the Charter of Fundamental Rights and Article 3 of the ECHR. Under Article 3(2) of the Dublin Regulation, it is impossible to transfer an asylum seeker to a country where they could be subject to inhuman or degrading reception conditions, or if there are serious grounds for believing that the asylum system has systemic deficiencies. In its judgement, the court emphasised that the right to asylum has to be guaranteed in a swift and effective manner, and as Croatia routinely pushes people back and denies them their right to asylum, a sufficient risk was established (<https://bit.ly/3GMKphx>).

In the case in which a volunteer was fined a disproportionate amount of money in comparison to his monthly income for allegedly aiding illegal border crossings, no review was made. The volunteer acted lawfully in informing a family on the location of the nearest police station so that they could express their intention to claim asylum in Croatia (<http://bit.ly/3XdLkyx>). Through the judgement of M.H. and Others v Croatia, which underlined the requirement of the individual assessment of claims and the right to apply for asylum; the allegations against the volunteer seem fallacious. The lack of review of the decision in the case of the volunteer, which found a human rights defender acting within the law guilty of aiding illegal border crossings shows the widespread disregard for the fundamental right to claim asylum, not just within the executive, but also within the judiciary.

Efficiency of the justice system **Other**

Structural gaps in accountability of state actors in charge of border protection, mainly due to a lack of serious and effective investigation of reported ill-treatment and illegal actions of the police, remain a major obstacle in achieving a necessary standard of efficiency in the Croatian justice system. Despite condemnation by EU institutions, domestic

institutions, NGOs, and CSOs, the continued systematic execution of aggravated and violent pushbacks at the Croatian border by state authorities has been documented once again throughout 2022. In February 2022, the President of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (CPT), Alan Mitchell, met with Croatian Minister of Interior Davor Božinović and reiterated the need to ensure migrants are not treated inhumanely or deprived of their liberty. The fact that this issue is still being raised more than two years after their initial visit stresses the persistent existence of this major issue.

While under public scrutiny, the Ministry of the Interior (Mol) has again not been held accountable for its supervision of violence. The Croatian Internal Control Service (ICS) of the Mol has been criticised in the past by the CPT for its lack of investigations (<https://rm.coe.int/1680a4c199>). In fact, the Committee found a complete absence of an effective accountability mechanism to hold perpetrators of violence and their enablers accountable. Contrary to this review, the mandate of the ICS has been neglected and the systemic use of violence and denial of fundamental rights at the border has been allowed to continue without repercussions. This shows an inherent failure within the Croatian border control system to respect fundamental human rights as there are no viable avenues for reconciliation available following the violation of rights through violent pushbacks.

The validation of pushback testimonies by the BVMN is further supported by other NGOs and CSOs who have reported similar as well as identical patterns (<https://bit.ly/3kaC8wi>). From the 1st of January 2022 to the 31st of December, the BVMN published over 117 testimonies of pushbacks from Croatia. Additionally, the Danish Refugee Council has recorded that a total of 1,395 people have been pushed back from Croatia to Bosnia and Herzegovina between early August and the end of November 2022 (<https://shorturl.at/efTW4>).

Follow-up by the public administration and State institutions to final (national/

supranational) court decisions, as well as available remedies in case of non-implementation

On the 4th of April 2022, the Grand Chamber of the European Court of Human Rights rejected Croatia's request for reconsideration of the M.H. and Others v Croatia judgement (<http://bit.ly/3Xx2M1u>). On 03.08.2022, BVMN submitted its Rule 9 submission regarding the implementation of this case. In that submission, one of the recommendations made by BVMN was to ensure the access of the Ombudswoman of Croatia to data and to places of detention. In performing the mandate of the National Preventive Mechanism (NPM), the Ombudswoman is authorised under articles 4, 19 and 20 of OPCAT and Art. 3 and 5 of the ANPM to make unannounced visits to places where there are, or may be, persons deprived of their liberty, and to freely access any data on their treatment, that is, the treatment of anyone in any kind of detention, custody, or being held under surveillance and unable to leave of their own volition. However, in the Report on the Performance of the Activities of the National Preventive Mechanism for 2020, the Ombudswoman revealed that they were denied access to information regarding the treatment of migrants and case data on multiple occasions during unannounced visits to certain police stations (<https://shorturl.at/bgjqw>). Despite the clear violation of both the OPCAT and the ANPM taking place, Croatia did not commit to remedying this within their Action Plan which was communicated in December 2022 (<https://shorturl.at/jltwP>).

The upheld judgement solidifies the prohibition of collective expulsions and lack of effective access to legal pathways. However, throughout 2022, the BVMN has recorded numerous testimonies of pushbacks lacking individual assessment of asylum claims, showing a complete disregard for the enforcement of the judgement by Croatian officials. It further highlighted the failure of Croatian authorities to investigate these incidents accordingly. The judgement highlights major structural barriers to the rule of law in Croatia (§123).

▶ IV. Other institutional Issues related to Checks and Balances

B. Independent Authorities

Independence, resources, capacity and powers of national human rights organizations.

The border monitoring mechanism that was initiated by Croatia to independently monitor the work of national as well as international border guards and ensure that Human Rights are respected, fails to meet its goals. Reports have expressed serious concerns, particularly with respect to the mandate's effectiveness and independence. Croatia's Independent Border Monitoring Mechanism (IMM) published its annual report in which it clearly highlights the shortcomings, mainly the lack of access to areas of the "Green border" where pushbacks occur regularly. According to the Centre for Peace Studies in Zagreb, around 90% of recorded pushbacks from Croatia occurred along the "green border" (<http://bit.ly/3CQQt2eW>). In addition to this, the IMM details that it does not have access to the information system of the Ministry of Interior. The lack of independence in the IMM is demonstrated clearly by this quote: "[...] the Mechanism could not observe the actions at the green border of the Republic of Croatia, except during announced visits to the green border conducted in the presence of authorised officers of the Ministry of Interior (Moi) and in line with their instructions." (<https://bit.ly/3IV6Vrl>). In February 2022, the Ombudsperson made it clear that the delay in the creation of the monitoring mechanism itself was regrettable, especially as it was funded by the European Commission (<https://bit.ly/3CSq1ux>). In this report, the Ombudsperson also made several recommendations to the Commission on how to remedy the lack of efficacy of the IMM, however, none of these recommendations seem to have been implemented yet.

Since 2017, Davor Božinović remains Minister of Interior of the Republic of Croatia, despite

the cases of criminal activity under his supervision.

Accessibility of the Courts

According to Article 29 of the Croatian Constitution, everyone, regardless of their nationality, is guaranteed access to the courts. For numerous migrants and refugees, the struggle to enforce their constitutional rights and be heard in a court of law is very difficult, especially when the victims and potential plaintiffs of cross-border violations are no longer in the same jurisdiction as to where the violations took place. When people are subjected to pushbacks carried out by Croatian officials, they are no longer in Croatian territory or jurisdiction. They, therefore, lack access to legal or civil society services that could support their pursuit of justice against Croatian officials that breached Human Rights and illegally subjected them to violence (ENNHRI report, "Gaps in Human Rights Accountability at Borders, December 2021, page 8, <https://bit.ly/3AoJZdP>). Even for those that remain in Croatia, there is a systematic denial of access to the asylum system placing Croatia in variance with Article 29 of the constitution (ENNHRI report, "Gaps in Human Rights Accountability at Borders, December 2021, page 11, <https://bit.ly/3AoJZdP>). In 2022, BVMN's partner organisations recorded over 117 pushback testimonies involving Croatia. BVMN's testimonies alone record the treatment of thousands of people, including pregnant women and children (BVMN testimonies, <https://bit.ly/3FXE00C>). BVMN's testimonies are merely a fraction of all illegal pushbacks that are carried out on a daily basis by the Croatian authorities. For a sizeable portion of people, their experiences are unreported and unheard. Therefore, many more thousands of people were illegally denied access to the asylum process and thus, the justice system of Croatia in 2022.

Moreover, the ENNHRI highlighted that access to information is a gateway right intrinsic to guaranteeing access to courts, vital to both the rule of law in general and Article 29 of the Croatian Constitution. (ENNHRI report, "Migrants' access to information on their rights", <https://bit.ly/343nZZJ>). This gateway right is also extensively denied to migrants in Croatia. Croatian officials are described as failing to provide information to people on their rights, as well as outright lying about the meaning of certain documents, or their own intentions (<https://shorturl.at/clqAS>). This is

combined with the fact that the supposed independent monitoring mechanism at the Croatian border is still wholly ineffective, with Croatian officials even entering Bosnia in order to perpetuate pushbacks (<https://shorturl.at/bwFKY>). Hence, Croatian courts are widely inaccessible for migrants, and in this regard, the rule of law is not respected by the Croatian justice system.

Length of Proceedings

Since the beginning of 2022, Croatian police have begun handing out '7-day notice' expulsion decisions to people on the move. These documents are written in Croatian, and state that because the person has entered irregularly into Croatia, they must leave the European Economic Area within 7 days of the notice being delivered (shorturl.at/gtwX3). The document also states that should the person not follow this procedure, they will be forcibly removed from Croatia. This document is distributed only in Croatian, and without viable access to a translator, this leads to confusion among the recipients who regularly believe that it is a type of residency permit. This practice has led people on the move to seek out the document. This clearly demonstrates that Croatian police officers are not following domestic and international law as they obstruct the right to be informed about the deportation decision by not providing viable access to translations. Due to the strategically executed theft of mobile phones from people on the move by border police, (<https://shorturl.at/bP239>) it is often impossible for people served with the notice to access translations online. Over the past two years, the BVMN has recorded a total of 234 testimonies of pushback from Croatia which involved the theft of personal belongings (<https://adobe.ly/3HcMRPT>).

No appeal is allowed against the decision, however, the document states that an administrative dispute can be issued within 30 days from the date of the delivery of the decision. This 30-day deadline for appeal is too short for the vast majority of people on the move, who must first prioritise their own basic needs such as food, water and shelter, and additionally, do not have the knowledge or the expertise to initiate such proceedings within the Croatian system.

In addition to this, the administrative dispute does not have a suspensive effect, therefore anyone trying to contest their deportation will be deported regardless during the processing of the claim. The avenue of legal remedy is made further inaccessible by the fact that disputing this deportation order would not be covered in the majority of cases under the Croatian law on free legal aid (<https://shorturl.at/AGKT1>). While normally a person staying irregularly within Croatia is entitled to free legal aid when awaiting an expulsion decision, with these documents, the decision has already been made meaning no free legal aid is available. Thus, accessing a lawyer is effectively impossible for a vast majority of people on the move.

Furthermore, it must be noted that Croatian officials are acting beyond international and domestic law should this document be presented to any person who has expressed an intention to seek asylum, or where that intention should be obvious from the circumstances of the case. Issuing such a document in this case would directly violate the person's right to asylum under Article 18 of the EU Charter of Fundamental Rights. The BVMN has recorded that the distribution of this paper is carried out randomly (<http://bit.ly/3XwAWSE>).

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

The Croatian Journalists Association has recorded a significant rise in the use of strategic lawsuits against public participation (SLAPPs) in both 2022 and previous years (<http://bit.ly/3iISrQK>). These concerns are so severe that they have led to the creation of the "Centre for the Protection of Freedom of Expression" (<https://bit.ly/3ZlgLmC>). When a private organisation feels obliged to step in in order to protect a fundamental rights, it demonstrates the failure of Croatian institutions to uphold the rule of law. In January 2022, Balkan Insight reported that

Index.hr, the news portal which published the instructions for Croatian police to carry out pushbacks while avoiding cameras, is facing 65 ongoing lawsuits (<https://bit.ly/3ZGs6Dk>). "High-ranking state officials, local sheriffs and even judges themselves" are amongst those filing repressive lawsuits (<http://bit.ly/3H9ohiW>). This observation raises concerns around the impartiality of the legislative, judiciary and executive in Croatia.

The Coalition against SLAPPs in Europe (CASE) states that around 90% of lawsuits against Croatian journalists have desisted, indicative that these cases are intended to intimidate and harass instead of pursue a viable claim (<https://bit.ly/3iMLJsY>). The former President of the Croatian Journalists Association, Maja Sever, who is herself facing a lawsuit, stated that Croatian criminalisation of defamation is the main issue to address in order to prevent SLAPPs. However, according to Sever, there is a lack of political will to adjust the law in order to secure freedom of speech and the security of journalists (<https://bit.ly/3kiKrWV>). As the Commission included the reform of Croatian defamation law in relation to SLAPPs in the recommendation of the 2022 report, the conscious denial of freedom of speech without legal repercussions for journalists is being enabled by the Croatian legislative.

Other - Criminalisation of Human Rights Defenders and POM

On the 23rd of April 2022, Croatia adopted a new "Whistleblower Act" which fails to protect individuals reporting on issues of national security or defence (<http://bit.ly/3IRqVLr>). Therefore, the Act provides no protection to a large proportion of Human Rights Defenders.

The criminalisation of Human Rights Defenders and POM in Croatia is mainly based on the accusation of irregular entry, irregular stay or irregular transfer of a third-country national. These accusations are based on Article 53 of Croatia's Aliens Act. However, the interpretation of the legislation is broad, and some key terms are not clearly defined. This is for the purpose of criminalising the work of Human Rights Defenders, baselessly connecting them to smugglers and human

trafficking operations (<shorturl.at/hkuY3>). The text of the Act reads "It is prohibited to assist and attempt to assist a third-country national in illegal crossing", yet the word "attempt" is included vaguely. Simply attempting to assist a person engaged in an illegal activity creates a massive scope for interpretation of the legislation, and in practice, this is used to deter human rights defenders and limit their humanitarian activities. Furthermore, it is unclear how an individual is supposed to check if the person on the move is staying or passing through Croatia "illegally", and the legislation makes no exceptions in cases where such knowledge is impossible to obtain.

While there are humanitarian exceptions within the legislation, these are not clearly defined either. Civil society organisations in Croatia have long been calling for a legal definition of "humanitarian grounds", specifically, the Centre for Peace Studies has been proposing to add to the article the following: "Help for humanitarian reasons is considered help that does not result in any material and financial benefit for the helper, but is guided by the moral and humanitarian principle in situations of necessary help to protect the life or integrity of a person who illegally crosses the border or illegally resides on the territory of the Republic of Croatia." However, the change was rejected several times.

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

In the 2021 report, the Office of the Ombudsperson issued several recommendations regarding the treatment of people on the move. The Ombudsperson called on the Ministry of Interior to discuss or create a definition of the term "pushback" in the Croatian language, which the Mol failed to effectuate. Furthermore, it highlighted that carrying out pushbacks that lack individual assessments of claims constitutes a violation of rights under the ECHR. The "European Charter of Fundamental Rights, the UN Convention against Torture, the UN

Convention on the Status of Refugees, the Aliens Act, the International and Temporary Protection Act and other international, European and national regulations" (<https://bit.ly/3Wjpvwf>). From 31.12.2020 to 31.12.2022, the BVMN has recorded 236 testimonies of pushbacks from Croatia, affecting over 3,925 people (<https://bit.ly/3Jb7GMW>).

The Ombudswoman's recommendation number 138 implored the MoI to follow the procedures of EU and international law towards unregistered people within Croatia. However, this recommendation clearly has not been followed, with BVMN still recording testimonies of illegal pushbacks from Croatia which are affecting thousands of people (<https://shorturl.at/uFSV2>). Croatian authorities can be consistently seen violating both EU and international law regarding migrant's rights in these testimonies, with pregnant women and children frequently being the victims of this abuse. In one such testimony it was reported that once Croatian police intercepted a group of about 25 people on the move, they proceeded to beat them with sticks and use teargas on them (<https://shorturl.at/gtFUW>). This group of people consisted of children as young as six years of age.

In recommendation number 139, the Ombudswoman implored Croatia to provide national preventive mechanism representatives with access to all data on the treatment of irregular migrants, including data contained in the information system. As previously discussed in this submission, the Ombudswoman of Croatia was denied access to data on the treatment of migrants on multiple occasions during the unplanned visits of certain police stations (<https://shorturl.at/bgjqw>). This is in direct violation of both Article 19 and 20 of the OPCAT, and prevents the Ombudswoman from effectively fulfilling the mandate of the NPM. Furthermore, Croatia did not commit to remedying this within their Action Plan on the implementation of the M.H. and Others v Croatia judgement (<https://shorturl.at/bipVY>).