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Border Management and Migration Controls in Croatia

■ **ABSTRACT:** *After independence in 1991, Croatia adopted an important migration legislation, addressing issues such as Croatian citizenship, aliens, and border protection. Owing to the development of democratic institutions and the war in the early 1990s, migration regulation was not extended until the early 2000s, when accession to the European Union (EU) became the most important strategic objective. Consequently, migration governance started to develop with the EU accession process. During the massive migrations in 2015 and 2016, Croatia was a part of the Balkan corridor, especially after Hungary closed its southern border with Serbia and then Croatia. Croatia adopted a temporary humanitarian approach while providing transfers to the borders of the neighbouring country. After the closure of the Balkan corridor, the Republic of Croatia prioritised the protection of its outer borders, prioritising the region's border protection after accession to the Schengen region. This paper provides an overview of the border management and migration controls in Croatia. In addition to the most relevant legislation regulating migration governance, the paper provides available statistical data on the activities of the Croatian authorities—the Ministry of Interior and the courts. It provides an analysis of the relevant case law of the Administrative Courts and the Constitutional Court and of the jurisprudence of the European Court of Human Rights against Croatia. In its final part, the author discusses the findings and offers some concluding remarks regarding border management and migration controls in Croatia.*

■ **KEYWORDS:** border management, police, migrants, Ministry of Interior, courts

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1. Introduction

The Republic of Croatia (RoC) is a European country, geopolitically part of Central and Eastern Europe and geographically located in the southern part of Central Europe and the northern part of the Mediterranean. The RoC shares borders with Slovenia and Hungary in the north, Serbia and Bosnia and Herzegovina in the east, Montenegro in the south, and Italy in the west. After gaining independence from Yugoslavia in 1991, the RoC has been a European Union (EU) Member State since 2013, and an euro area member and a Schengen area member since 2023.

After its independence, Croatia adopted important migration legislation, which dealt with the issue of Croatian citizenship, aliens, and border protection. Owing to the development of democratic institutions and the war in the early 1990s, the immigration regulations were not expanded until the early 2000s, when accession to the EU became the most important strategic objective. Consequently, migration governance began to develop along with the EU accession process. During mass migrations witnessed in 2015 and 2016, Croatia was a crucial part of the Balkan corridor, particularly after Hungary decided to close its southern border with Serbia and subsequently with Croatia. The RoC took a temporary humanitarian approach while providing transfer to the borders of the neighbouring country. Between September 2015 and March 2016, more than half a million people were estimated to have crossed the corridor, receiving a 'hyper-temporary' legal status to facilitate the refugees' movement north. After the closure of the Balkan corridor, the priority of the RoC was to protect its outer borders, following the conditions for accession to the Schengen area.¹

Croatia is ethnically relatively diverse, with autochthonous minorities originating mainly from ex-Yugoslav countries. Croatian population by ethnic affiliation (population census 2021) includes Croats (91.6%), Serbians (3.2%), and 22 other ethnicities (less than 1% each).²

Croatian legislation on border management and migration was developed under the EU and Schengen *acquis communautaire*, and is based on the Constitution of the RoC. Article 26 of the Constitution stipulates that aliens are equal to Croatian

1 See Novak and Giljević, 2022, p. 117.

2 Census of population, households and dwellings 2021. According to the 2021 population census, the Republic of Croatia had 3,871,833 inhabitants, of which 240,079 were members of national minorities as follows: Albanians 13,817 (0.36%), Austrians 365 (0.01%), Bosnians 24,131 (0.62 %), Bulgarians 262 (0.01%), Montenegrins 3,127 (0.08%), Czechs 7,862 (0.20%), Hungarians 10,315 (0.27%), Macedonians 3,555 (0.09%), Germans 3,034 (0.08%), Poles 657 (0.02%), Roma 17,980 (0.46%), Romanians 337 (0.01%), Russians 1,481 (0.04%), Ruthenians 1,343 (0.03%) Slovaks, 3,688 (0.10%), Slovenes 7,729 (0.20%), Serbs 123,892 (3.20%), Italians 13,763 (0.36%), Turks 404 (0.01%), Ukrainians 1,905 (0.05%), Vlachs 22 (0.00%), and Jews 410 (0.01%). Retrieved from [Online]. Available at: <https://dzs.gov.hr/ufokusu/popis-2021/popisni-upitnik/english/results/1501> (Accessed: 28 July 2023).

citizens before the courts, governmental agencies, and other bodies vested with public authority. Article 33 of the Constitution states that aliens and stateless persons may be granted asylum in Croatia, unless they are being prosecuted for non-political crimes and activities contrary to the fundamental principles of international law. No alien legally in the territory of the RoC shall be banished or extradited to another State, except in cases of enforcement of decisions made in compliance with an international treaty or law.³ The main legislation that regulates border control in the RoC is the State Border Protection Act (SBPA).⁴ The Aliens Act is the main legislation in the field of migration,⁵ and regulates the entry, movement, stay, and work of aliens who are third-country nationals (TCNs). The asylum system is regulated by the International and Temporary Protection Act.⁶

This paper provides an overview of the border management and migration controls in Croatia. In addition to the most relevant legislation regulating migration governance, the present paper provides available statistical data on the activities of the Croatian authorities—the Ministry of Interior (MoI) and the courts.⁷ It provides an analysis of the relevant case law of the Administrative Courts and the Constitutional Court and of the jurisprudence of the European Court of Human Rights (ECtHR) against Croatia. In the final part, the paper discusses the findings and offers some concluding remarks regarding border management and migration controls in Croatia.

2. Legislation in regard to access to Croatian territory and the asylum system

■ 2.1. Access to the territory and the asylum

Border control has long been regarded as the exclusive privilege of each State. However, international human rights standards limit this right. That is, States have the right to decide who can enter or stay on their territory and under what conditions, but must consider the protection of human rights. In certain circumstances, international law may require States to allow migrants to enter or remain in their territory: if they meet the conditions for international protection (asylum or subsidiary protection in the RoC) or if they are needed for family reunification. However, irregular migrants caught in irregular border crossings have certain

3 Official Gazette, No. 56/1990, 135/1997, 113/2000, 28/2001, 85/2010 – consolidated text and 5/2014.

4 Official Gazette, No. 83/2013, 27/2016, 114/2022 and 151/2022.

5 Official Gazette, No. 133/2020, 114/2022 and 151/2022.

6 Official Gazette, No. 70/2015, 127/2017 and 33/2023.

7 Ministry of Interior (MoI) statistical data [Online]. Available at: <https://mup.gov.hr/otvoreni-podaci/287522> (Accessed: 1 July 2023).

human rights, the protection of which must be provided by the bodies responsible for monitoring the State border and preventing irregular migration.⁸

The right to access to territory is not explicitly mentioned in the European Convention on Human Rights (ECHR). However, the ECHR has consistently held that States have the right to control their borders and regulate the entry of non-nationals. Nonetheless, this right is not absolute and must be balanced with respect for human rights, particularly the prohibition of torture, and inhuman or degrading treatment or punishment.⁹

According to Article 5 of the SBPA, the Border Police of the MoI is the competent body for control of the State borders in the RoC. In some exceptional circumstances, the Armed Forces of the RoC may provide support for the protection of the State border when the MoI or the Croatian Prime Minister considers this necessary for security and/or humanitarian reasons. In this situation, the members of the Armed Forces should act according to the instructions of the police.¹⁰

The Border Police of the RoC supervises and protects 3,318.6 km of the border, of which 2,304.3 km is external and 1,014.3 km is internal. The State border is entirely determined and marked by the Republic of Hungary, while with other neighbouring States, interstate commissions still determine the borderline. There are 88 border crossings on the state border, of which 68 are permanent and 20 are border crossings. The largest number, 50, is located on the border with Bosnia and Herzegovina. State border control tasks are performed in 43 police stations on the external border distributed within 13 police administrations. Of that number, 32 stations are specialised (23 border police stations, 3 airport police stations, 4 maritime police, and 2 maritime and airport police), while 11 stations are of a mixed type.¹¹ The work of compensatory measures is carried out in 15 police stations distributed within 10 police administrations, and the work of suppressing illegal migration is carried out in 148 police stations distributed within 20 police administrations.¹² According to Articles 1 and 4 of the SBPA, the border police performs the tasks of supervising the State border, preventing and detecting

8 Novak, 2022; Staničić, 2022.

9 Art. 3 of the ECHR.

10 Official Gazette, No. 83/2013, 27/2016, 114/2022 and 151/2022.

11 In the MoI of the RoC, law enforcement is organised in the Directorate of Police (at the national level) as the central organisational unit and 20 police administrations with headquarters in the counties and the City of Zagreb (at the regional level). Police administrations at the local level include 160 police stations, of which 114 are mixed, 14 are traffic police stations, 23 are border police stations, 4 are maritime police stations, 3 are airport police stations, and 2 are maritime police stations.

12 Report on police work in 2022 in the RoC [Online]. Available on https://www.sabor.hr/sites/default/files/uploads/sabor/2023-05-25/203405/IZVJ_POLICIJA_2022.pdf (Accessed: 22 July 2023).

illegal entry and stay, and suppressing cross-border crime in the depth of the state territory, in addition to international border police cooperation.

According to Article 3(1) of the SBPA, the control of the State borders includes protection of the State border and control of crossing the State border (border controls), with the aim to: a) secure the inviolability of the State border and territory; b) protect human life and health; c) prevent and detect crimes and offences and the perpetrators; d) prevent illegal migration; e) prevent and detect other dangers to public security, legal order, and national security.

Regulation (EU) No. 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) No. 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No. 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC, established a new European integrated border management framework with a view to managing the crossing of the external borders efficiently. The integrated border management concept has been implemented in Croatia since 2005.¹³ On 26 September 2019, the Government of the RoC adopted a new Integrated Border Management Strategy and Action Plan for the implementation of the Strategy.¹⁴ The objectives of implementing the new Strategy in the RoC at the national level include: a) introduction of a new European concept of integrated border management to further consolidate all participants at the national and European level, with an emphasis on effective control of external borders, b) positioning the strategic role of integrated border management at the national and European level, c) harmonisation of political and operational expectations in an effective integrated approach to border management, d) establishing a vision and mission of integrated border management, and e) setting strategic goals for border management.

The Action Plan sets deadlines and determines the bodies responsible for the implementation of individual measures. The Inter-Agency Working Group for Integrated Border Management monitors the implementation of measures identified in the framework of inter-agency cooperation.¹⁵

The protection of fundamental human rights is a key element of the Croatian Integrated Border Management Strategy. The aim of the Strategy is to ensure

13 The first National Strategy for Integrated Border Management of Croatia was aligned with the regional guidelines set by the European Commission for integrated border management in the Western Balkans in 2004. The Croatian government adopted it on April 21, 2005. The Croatian Government adopted the second National Strategy for Integrated Border Management on July 16, 2014 (Official Gazette 92/2014).

14 Official Gazette, No. 91/2019.

15 The Strategy and Action Plan are jointly implemented by representatives of the MoI, Border Directorate and representatives of the Ministry of Finance, Ministry of Agriculture, State Inspectorate, Ministry of Health, Ministry of Foreign and European Affairs, Ministry of the Sea, Transport and Infrastructure, Ministry of Tourism and Personal Data Protection Agency.

the respect for fundamental human rights for all individuals and in all activities related to integrated border management in accordance with applicable national and international regulations (Article 5.1.4.).

Since Croatia's accession to the EU in 2013, the provisions of the Schengen *acquis* have been binding and applicable in Croatia. Article 4(2) of the Treaty between the Member States of the EU and the RoC concerning the accession of the latter to the former¹⁶ stipulates mandatory provisions of the Schengen *acquis* in the RoC based on the relevant decision of the Council: Regulation (EU) No. 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) is applicable in its entirety, except for the first sentence of Article 1, Article 5(4) a), Chapter III, and the provisions of Chapter II, as well as the annexes relating to the Schengen Information System.¹⁷ On 1 January 2023, the RoC gained access to the Schengen area. A comprehensive evaluation process¹⁸ started in 2016, and Croatia made significant efforts to fulfil its commitments to comply with the Schengen *acquis*.¹⁹ Following the positive opinion of the European Parliament,²⁰ the Council decided on 8 December 2022 on the full application of the provisions of the Schengen *acquis* in the RoC.²¹ The SBPA was amended in 2022, with the aim of adapting it to the Schengen *acquis*, which is applicable as of 1 January 2023 after border controls at Croatian internal borders were abolished.²²

Recent years (2019–2022) have been characterised by a large increase in the number of illegal crossings of the State border. Notably, until 2017, there was a moderate number of illegal crossings of the State border, not exceeding 5,000 per year. A certain increase was recorded in 2018, when 8,207 illegal crossings were detected. However, in 2019, as many as 20,278 illegal crossings of the State border were recorded, or 147% more than the previous year. The situation worsened further in 2020, when as many as 29,904 illegal crossings were recorded; however, in 2021, 17,404 illegal crossings (a decrease of 40.2%) were recorded.²³ Neverthe-

16 OJ L 300, 9 November 2013.

17 See more Staničić, 2015, p. 124.

18 See more about Schengen evaluation Vulas 2017 (Report on the Implementation of the National Strategy for Integrated Border Management 2022, p. 1).

19 To efficiently fulfil its duties and meet the requirements for EU accession in border control, the MoI has made significant efforts to uphold its commitments to comply with Schengen regulations and enhancing the administrative capacities of the Croatian border police. See Communication from the Commission, COM(2023) 274 final (2023) *State of Schengen report 2023* [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023DC0274> (Accessed: 28 July 2023).

20 European Parliament Legislative Resolution of 10 November 2022 on the draft Council decision on the full application of the provisions of the Schengen *acquis* in the Republic of Croatia (10624/2022 – C9-0222/2022 – 2022/0806(NLE)).

21 Council Decision (EU) No. 2022/2451 of 8 December 2022 on the full application of the provisions of the Schengen *acquis* in the Republic of Croatia.

22 Official Gazette, No. 114/2022 and 151/2022.

23 See Staničić, 2022, p. 111.

less, 2022 was marked by a significant increase in the number of irregular arrivals. According to the MoI official report, 50,624 irregular arrivals were recorded in Croatia or 190.9% more than in 2021. The top five countries whose nationals accounted for almost 70% of all illegal border crossings (69.5%) in 2022 were Afghanistan (14,877; 29.4%), Iraq (6,334; 12.5%), Burundi (5,465; 10.8%), Pakistan (4,429; 8.7%), and Turkey (4,110; 8.1%).²⁴ Compared to 2021, there is a significant increase of Burundi nationals, considering no Burundi nationals illegally crossed the RoC border in 2021. Other top countries of origin remain the same: Afghanistan, Pakistan, and Turkey.

The MoI declared in February 2022 that the Draft Migration Strategy of the RoC will provide an overview of the measures adapted to the needs and characteristics of several target groups of wanted immigrants, including foreign students, researchers, working migrants, Croatian emigrants, and their descendants. After the coordination and consultation process between the MoI and other competent State authorities, the document was sent to further regulation procedures. The deadline for the final adoption of the migration strategy was not specified, and at the time of this writing, the strategy was still not adopted. The government adopted at its session on 16 December 2022 a decision on the establishment of the intersectoral working group (WG) for drafting the immigration policy of the RoC.²⁵ In 2022, 124,121 permits for the residence and work of aliens were approved. In 2023, this number increased by more than 40% to 174,499. The WG proposed a new mechanism for attracting migrants to Croatia by issuing residence and work permits without a contracted workplace.²⁶

3. Access to protection in practice in Croatia

■ 3.1. Expressions of intention and applications for international protection

According to the MoI, in 2022, 12,872 persons expressed their intention to apply for international protection.²⁷ This is an exceptional increase compared to the 2021 number of 3,039 people. The top five countries whose nationals expressed their intention to apply for international protection were Iraq (2,434; 18.9%), Russia (2,064; 16%), Burundi (2,051; 15.9%), Turkey (1,572; 12.2%), and Afghanistan (1,390; 10.8%).

24 MoI statistical data [Online]. Available at https://mup.gov.hr/UserDocsImages/statistika/2023/Statisticki_pregled_2022_za_webfinal.pdf (Accessed: 20 July 2023).

25 CLC, 2023, p. 12.

26 Grgas, 2023.

27 MoI statistical data [Online]. Available at https://mup.gov.hr/UserDocsImages/statistika/2023/Statisticki_pregled_2022_za_webfinal.pdf (Accessed: 20 July 2023).

Table 1. Number of asylum applications in the RoC from 2015–2022²⁸

Year	Number of asylum applications
2015	211
2016	2,232
2017	1,887
2018	1,086
2019	1,986
2020	1,932
2021	3,039
2022	12,870

The highest number of intentions was expressed at border police stations (10,087; 76%), followed by police stations (2,318; 18%), the reception centre for foreigners (138; 1%), Pleso Airport police station (137; 1%), police administrations (112; 0.80%), Transit Reception Centre Tovarnik (50; 0.38%), and Transit Reception Centre Trilj (30; 0.23 %).²⁹

Numerous applicants of international protection left the Croatian territory during the procedure. This reveals that a majority of asylum seekers do not intend to stay in the RoC for a prolonged period, leading to the conclusion that Croatia is still primarily perceived as a transit country. In most cases, their objective is to go to other EU Member States to apply for international protection. Therefore, migrants generally do not want to apply for international protection under the Convention and do not want to hand over their fingerprints to Eurodac. Indeed, there are examples that even those who have been granted international protection in the RoC leave to other EU Member States after some time.³⁰

This is a continuation of the trend observed in earlier years, indicating a persistent challenge in managing and processing the influx of asylum seekers. The increasing strain on resources and infrastructure underscores the need for collaborative efforts at both national and international levels to address the root causes of displacement and enhance the effectiveness of the asylum application process.

The RoC has a low percentage of cases in which the MoI issues decisions restricting the freedom of movement of asylum seekers; this percentage has decreased continually, from 3.37% in 2018 to 0.9% in 2021.

28 Ombudswomen's Office, 2023, p. 202.

29 CLC, 2023.

30 Response of the Croatian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its ad hoc visit to Croatia [Online]. Available: <https://rm.coe.int/1680a5acfc> (Accessed: 24 July 2023).

According to Ombudswomen's reports from 2017–2022, Croatian Ombudswomen received some complaints by migrants and associations pointing to hampered access to international protection and violence against migrants caught in illegal border crossings, with little to no efficient investigations.³¹ The Ombudswoman of the RoC also stated in the report that it is unacceptable and unlawful for the MoI to deny the Ombudswoman direct access to the information on actions taken against irregular migrants in its information system, which is the sole source of relevant data; this prevents the Ombudswoman and authorised staff of the office—the National Preventive Mechanism (NPM)—from efficiently exercising the tasks and competences stipulated by the NPM Act, and violates the Ombudsman Act and Data Protection Act.

In the Ombudswomen's report from 2019, 124 States recommended that the relevant authorities and the MoI must process requests for asylum of all migrants in Croatian territory, including when they irregularly crossed the border, in line with international and EU law.³² In its Annual Report for 2020 and 2021, the Ombudswomen reiterated the former recommendation.³³

According to the Ombudswomen's report in 2022, the number of complaints in relation to pushbacks decreased, and various civil society organisations that monitor access to the asylum system continue to testify against pushback practices. In the same report, the problematic nature of the decisions for voluntary departure from the European Economic Area was pointed out as a measure to ensure return (issuance of the so-called 7-day papers), considering that numerous migrants do not have personal/travel documents and, as a rule, cannot obtain them due to the absence of diplomatic consular missions. In 2022, the MoI issued 30,595 voluntary return decisions.

Two local government units—Rijeka and Zagreb—organised a humanitarian support station for refugees and migrants in cooperation with the MoI. The humanitarian station serves as a short-term refreshment station and offers a hot meal, hygiene facilities, a heated tent, and showers every day from 8 a.m. to 8 p.m.

In 2022, U.F., a Rohingya child, submitted complaints against Croatia and Slovenia to the UN Child Rights Committee for multiple violations of the Convention on the Rights of the Child. The child spent over a year in Bosnia and Herzegovina from 2020 to 2021. During this time, U.F. stated he was pushed back five times, from Croatia to Bosnia and Herzegovina and subjected to violence. In Slovenia, he was subjected to a 'chain' pushback, forcibly returned first to Croatia by Slovenian

31 The emphasis on safeguarding and advancing the human rights of migrants grew in prominence within the Ombudswoman's office duties as migratory movements intensified along the Balkan route in 2015 and 2016. See Ombudswoman of the Republic of Croatia, 2021.

32 Ombudswomen's Office, 2020, p. 168.

33 Ombudswomen's Office, 2021, p. 190 (recommendation 133); Ombudswomen's Office, 2022, p. 179 (recommendation 138).

authorities, and then onwards to Bosnia and Herzegovina by Croatian authorities. These are the first complaints of their kind against Croatia. The complaints were filed against Croatia and Slovenia with the support of the European Centre for Constitutional and Human Rights and Blindspots. The litigation forms part of the Advancing Child Rights Strategic Litigation Project.³⁴

Since 2016, the RoC has encountered impediments regarding the practice of preventing access to the territory and the asylum system, along with reported instances of pushbacks involving forced returns to neighbouring countries. Persistent issues include difficulties in accessing the international protection system and reported incidents of police violence against migrants. These practices were reported by, among others, the following organisations: Danish Refugee Council, Border Violence Monitoring Network, Are You Serious?, ‘Welcome!’ Initiative, Centre for Peace Studies, and the PRAB Initiative.³⁵

In the 2017–2022 period, there were numerous warnings and reports by international and Croatian non-governmental organisations on pushbacks of refugees and migrants from Croatia, coupled with limited access to international protection. The reports stressed that pushbacks was accompanied by violence and degrading treatment by the border police.³⁶ The responsible MoI denied all accusations and stated that access to asylum was thoroughly respected.³⁷ Numerous civil society organisations that monitor access to the asylum system continue to testify that pushback practices continue at Croatian borders. According to the Border Monitoring Factsheets published on a monthly basis by the Danish Refugee Council, the total of 3,461 persons reported being pushed back from Croatia to Bosnia and Herzegovina in 2022.³⁸

4. Monitoring mechanism

The European Commission proposed a screening regulation on 23 September 2020 which included an obligation for Member States to establish an independent monitoring mechanism.³⁹ The EU Agency for Fundamental Rights (FRA) prepared general guidance in the light of Article 7(2) of the proposed screening regulation.

34 ECCHR, no date.

35 Protecting Rights at Borders Initiative (PRAB), 2023.

36 Croatian Law Centre (2022) *The Croatian Asylum System in 2021 – National Report*; Croatian Law Centre (2023) *The Croatian Asylum System in 2022–National Report* [Online]. Available at: <https://www.hpc.hr/wp-content/uploads/2023/06/Croatian-Asylum-System-in-2022-national-report.pdf> (Accessed: 10 July 2023).

37 Novak and Giljević, 2022, pp. 117–118.

38 CLC, 2023, p. 14.

39 Proposal for a Regulation of the European parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No. 767/2008, (EU) No. 2017/2226, (EU) No. 2018/1240 and (EU) No. 2019/817.

According to Article 7 of the screening regulation, each Member State shall establish an independent monitoring mechanism: a) to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening; b) where applicable, to ensure compliance with national rules on the detention of the person concerned, particularly regarding the grounds and the duration of the detention; c) to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.

Furthermore, the FRA shall provide assistance to Member States with setting up such national monitoring systems and Member States may request the FRA to support them in developing their national monitoring mechanism.

In October 2022, at the request of the European Commission, the FRA published guidance to assist Member States in setting up national independent mechanisms to monitor fundamental rights compliance at the EU external borders. The FRA organised a follow-up meeting with experts from national human rights institutions, as well as representatives from selected EU entities and international organisations. The experts stressed the need for coherence with other national bodies entrusted with the protection of fundamental rights; underlined the important role of national human rights institutions; and flagged the need to develop protocols for accessing information and data relevant to fundamental rights from surveillance assets.⁴⁰

In June 2021, the Croatian authorities established, as a pilot project, a mechanism to monitor actions by police officers against people having entered Croatia in an irregular manner, to check whether fundamental rights were being respected.⁴¹ During the first year of operations, the monitors concentrated on border police stations, border crossings, and reception facilities, where no irregularities in the rights to asylum or access to asylum procedures were detected. This mechanism coexists with other constitutional bodies aimed at ensuring the protection of human rights in Croatia, such as the Ombudswomen. Its advisory committee, of which the FRA is a member, proposed in 2022 to expand the scope of the mechanism, allowing monitors to make unannounced visits to sections of the border outside the border crossings and providing access to the MoI information systems, while addressing these gaps, at least to some extent; however, monitoring missions had not yet resumed after the end of the pilot in March 2023. This is the only new monitoring mechanism established in an EU Member State.⁴²

40 FRA, 2023, p. 13.

41 In the 2020 Annual Report (recommendation 135, p 190.), the Croatian Ombudswoman proposed to the MoI the establishment of an Independent Mechanism of monitoring border procedures.

42 FRA, 2023, p. 13.

The Independent Mechanism for monitoring the actions of MoI police officers in the field of illegal migration and international protection (hereinafter: the Independent Mechanism) was established by the Agreement of 8 June 2021 between the MoI on the one hand and the Croatian Academy of Medical Sciences, the Croatian Academy of Legal Sciences, the Centre for the Culture of Dialogue, the Croatian Red Cross, and Prof. Ph.D. Iris Goldner Lang, on the other. The supervisory activities of the Independent Mechanism, as well as the manner and place of their implementation, are defined by the Agreement. The powers of the Independent Mechanism include observing the behaviour of police officers toward migrants and applicants for international protection in the implementation of regulations governing the monitoring of the state border and the provision of international protection; inspecting files that have been legally finalised following complaints submitted about the alleged illegal treatment of irregular migrants and applicants for international protection; and inspecting the activities and reports of the Police Directorate regarding the alleged illegal treatment of the mentioned categories of persons.

In November 2022, a new Cooperation Agreement was signed, by which the work of the independent monitoring mechanism continued, between the MoI and civil society organisations, to monitor the work of MoI officials in the field of border protection, irregular migration, and international protection.⁴³ The following organisations are included in the Mechanism: the Croatian Academy of Medical Sciences, the Croatian Academy of Legal Sciences, the Centre for the Culture of Dialogue, the CRC, and one independent expert. Special emphasis is placed on respecting the principle of prohibition of: forced removal or return, collective expulsion, and torture or other forms of ill-treatment. The Annual Report published in July 2022 concludes that ‘based on observations, irregularities regarding the right to seek asylum and access to the asylum procedure were not established in border police stations’ but noted that police officers in isolated cases conducted illicit deterrence in mine-suspected areas. The report made several recommendations to improve the identification of applicants for international protection at the border and enhance training for border guards.⁴⁴ The report lists the implemented activities and findings of the Mechanism’s supervision related to the area of irregular migration and international protection, as well as irregularities

43 MoI official webpage, published on 4 November 2022 [Online]. Available at: <https://mup.gov.hr/vijesti/potpisan-sporazum-o-suradnji-radi-provedbe-nezavisnog-mehanizma-nadzora-zastite-temeljnih-ljudskih-prava-u-postupanju-policijskih-sluzbenika-ministarstva-unutarnjih-poslova-u-podrucju-zastite-granica-nezakonitih-migracija-i-medjunarodne-zastite/289002> (Accessed: 4 July 2023).

44 Annual report of the Independent Mechanism Oversight for the period from June 2021 to June 2022, published in July 2022 [Online]. Available at: https://www.hck.hr/UserDocImages/dokumenti/Dokumenti%20uz%20vijesti/Mehanizam/Godisnje%20izvjesce%20Nezavisnog%20mehanizma%20nadzora_1%20srpnja%202022a.pdf?vel=5786027 (Accessed: 17 July 2023).

in the work of police officers and examples of good practice, in addition to the difficulties encountered by irregular migrants themselves.

The establishment of an Independent Mechanism is an important tool for the protection of human rights, and we welcome the decision to create a national mechanism dedicated to monitoring the situation at the Croatian border. Nevertheless, there are several shortcomings in the Independent Mechanism that need addressing.⁴⁵

First, transparency issues arise regarding its establishment, as the selection process and criteria for its members remain unknown. Given the politically sensitive nature of migration and border policies, the independence of these mechanisms, both in their formal structure and functioning, is a prerequisite for effectively monitoring, resolving, and preventing human rights violations at the border. The Commission for Complaints in the MoI and the Council for Civil Supervision over the application of certain police powers are established in accordance with the law (Police Act and Police Duties and Powers Act), with members appointed by the Croatian Parliament through a public call. The establishment and appointment of members to independent bodies foster public trust and transparency in public authorities, ultimately contributing to the promotion of the rule of law.

Second, the competences of the Independent Mechanism overlap with the Commission for Complaints in the MoI, particularly in dealing with complaints about illegal treatment by police officers toward irregular migrants and applicants for international protection (Article 5(1), Item 3 of the Agreement). Despite their overlapping authorities, there is no envisaged mutual collaboration between them. Therefore, incorporating cooperation between the Commission for Complaints within the MoI and the Independent Mechanism is imperative for several reasons. One, both entities share jurisdiction in addressing grievances concerning alleged mistreatment of irregular migrants and applicants for international protection by police officers. Two, the necessity for mutual cooperation between the Commission and the Independent Mechanism arises from the need to bolster the protection of human rights and freedoms and to rely on the input from those with experience and expertise in conducting human rights monitoring. By working together, these entities can contribute to a more robust and effective framework that safeguards the rights of every individual, particularly in the context of police interactions with irregular migrants and those seeking international protection.

45 Similarly, the EU Ombudsman pointed out significant shortcomings in how the monitoring mechanism ensured compliance with fundamental rights. The Ombudsman called on the European Commission to play an active role in overseeing the monitoring process and to request clear and verifiable information from Croatian authorities regarding their actions in investigating reports of collective expulsions and mistreatment of migrants and asylum seekers (Bochenek, 2023, p. 16).

This cooperative approach can enhance the overall integrity of the system and promote a fair and just resolution of complaints.

5. Case law concerning access to Croatian territory and the asylum system

■ 5.1. The Constitutional Court's and Administrative Courts' rulings

One of the most interesting decisions of the Constitutional Court regarding the detention of migrants is the case of *MAD.H. and Others*,⁴⁶ which ended with the judgement of the ECHR (see more in the next chapter).⁴⁷

The applicants took the prosecution before the investigating judge of the Osijek County Court who dismissed the applicants' request in August 2018. The applicants' appeal against this decision was again dismissed in December 2018 by the Osijek County Court appeal panel. In December 2018 and March 2021, the Constitutional Court dismissed two separately lodged constitutional complaints regarding, inter alia, the efficiency of the investigation into the death of *MAD.H.* The Constitutional Court found that there had been no violation of Article 2 of the Convention in its procedural limb (*M.H. and Others*, paras. 24, 27, 139). In July 2019, the Constitutional Court dismissed the applicants' constitutional complaint.

Subsequently, the applicants lodged administrative actions against the decision of the MoI which declared the applicants' requests for international protection inadmissible on the grounds that they return to Serbia, which was considered a safe third country, with the Osijek Administrative Court. In June and July 2018, this court dismissed the applicants' administrative actions and, subsequently, the High Administrative Court dismissed their further appeals. On 4 March 2021, the Constitutional Court quashed the judgements of the High Administrative Court and the Administrative Court and remitted the case. It held that the courts failed to properly examine whether Serbia could be considered a safe third country.

The case law of the Croatian Administrative Courts in terms of the detention of migrants has been analysed on the basis of the decisions available in the Supreme Court's official database.⁴⁸ In the analyses of Staničić & Horvat of judicial

46 U-IIIBi-1385/2018 of 18 December 2018.

47 ECtHR, *M.H. and Others v. Croatia* (Application Nos. 15670/18 and 43115/18), Judgment, 18 November 2021.

48 According to Art. 216 of the Aliens Act against the decision on accommodation in the centre (detention) or on extending the accommodation, an alien can initiate an administrative dispute. The MoI must send a case file on detention to the administrative court immediately after the decision has been issued. The court has to decide whether an alien is to be released from the centre within ten days of the delivery of the case file. The administrative court may annul or confirm the decision on extension of detention, within five days of delivery of the case file.

control of the lawfulness of decisions on placement in detention centres in the RoC from 2012–2020, there were a total of 1,959 decisions on placement in detention centres before administrative courts in Zagreb, Osijek, Rijeka, and Split. Administrative courts have mostly confirmed the decision of the MoI (1,743), representing 88.97%, while 167 were annulled, accounting for 8.52%.⁴⁹

Most of the available case laws relate to the judicial review of the legitimacy of the decision on the detention of migrants.⁵⁰ In most cases, the courts have confirmed administrative decisions of the MoI, typically stating that ‘the decision-maker correctly established the existence of circumstances indicating the existence of a risk of avoiding the obligation to leave the EEA, that is the RoC.’⁵¹

In one of the most recent and intriguing decisions on accommodation in the centre (detention), however, the Administrative Court in Zagreb annulled the MoI’s administrative decision stating that:

This court found in cases submitted thereto by the Stara Gradiška Border Police Station that conversations with aliens were always conducted in English, from which it follows that the Stara Gradiška Border Police Station can never find an interpreter for any foreign language, not even by phone, while, evidently, all aliens who are caught for illegal stay in the territory of the Stara Gradiška Border Police Station speak and understand the English language. Bearing in mind that other police stations, which deliver to the court similar cases for judicial control, manage to find suitable translators because not all aliens speak English, the court assesses that in the concrete case, the provision of Article 196 Paragraph 1 of the Aliens Act is violated, according to which a citizen of a TCNs who resides illegally and who does not understand the Croatian language must be ensured a translation into a language he understands.

The court also stated that all records of the hearing of aliens found in illegal stay, that is, illegal crossing of the state border in the area

49 See Staničić and Horvat, 2020, pp. 10–12.

50 The ECHR gives a wide margin of discretion to the States in relation to Art. 5 of European Convention on Human Rights. However, judicial review of the legality of the detention must be guaranteed as a safeguard against the arbitrariness of the measure, including the domestic law upon which it is based. See Đanić Čeko and Held, 2019. Judicial control of administrative acts and measures regarding unlawful residence of foreigners in Croatia in the European context. EU and Comparative Law Issues and Challenges Series (ECLIC), 3, p. 180.

51 Decision No. UsI-3702/18-2 from 18 October 2018; Decision No. Usl I-106/2023-2 of 26 January 2023. In the analyses of Đanić Čeko and Held of judicial control of the lawfulness of movement restrictions by placement in the RoC it is concluded that Administrative Courts have mostly confirmed the decision of the MoI. This is because in individual decisions, circumstances were justifiably determined, which indicated the presence of risk of avoiding the departure of EEA. Đanić Čeko and Held, 2019, pp. 189–190.

of the Stara Gradiška Border Police Station, contained exactly the same sentences, from the beginning to the end of the record, and only the dates are changed. For example, all records state that ‘The alien declares that he does not own real estate in the RoC, he has not registered his stay in the RoC, there is not enough money for accommodation, and neither is there anyone close by nor are there relatives in Croatia, and declares that for this reason, it would suit him to be in the reception centre, if MoI so determines, until the end of the procedure of return. He does not have a travel document or large sums of money as a guaranteed deposit. He does not suffer from infectious diseases and there is no ban on entering other countries. He will not return to Bosnia and Herzegovina, from which he came illegally. He intends to go to Germany’.

As it is unlikely that all aliens.... declare that they do not have enough money for accommodation and that for this reason, it would suit them to be in the reception centre for aliens until the end of the return procedure, the court took a stand that it could not base its decision on such a record.

Aliens caught for illegal stay or illegally crossing state borders must be heard by a translator in a language that aliens understand, and it is necessary to enter into the record the exact content of the statements made by the parties, and which content, according to the nature of things, cannot be identical for every alien encountered.

As a result of the above, and based on the state of the file, the court decided that the relevant decision on accommodation in the reception centre could not be confirmed, as the record was drawn up without a translator and contains identical statements as the previous records submitted by the same police station, which is why the court reasonably suspects that the submitted report contains the exact content of the statements made by the alien in question.⁵²

In 2022, the Administrative Court in Zagreb adopted 40 decisions in proceedings to restrict the freedom of movement. Of these, 27 cases were rejected (persons remain detained), 10 were adopted (persons were released from detention), 1 was adopted and referred back to the MoI procedure, while 2 were transferred to another court. The average duration of these procedures was 38 days.⁵³

⁵² Decision No. UsI-216572023-2 from 5 June 2023.

⁵³ CLC, 2023, p. 18.

■ 5.2. *Jurisprudence of the European Court for Human Rights*

The ECHR issued two important judgements against Croatia clarifying aspects of the right to life under Article 2 of the ECHR in relation to migrants.⁵⁴

In the first case, in 2017, the applicants, an Afghan family of fourteen, were walking along the train tracks near the Croatian–Serbian border when a train hit one of the children, a six-year-old *MAD.H.*, who died at the scene. The applicants allegedly expressed their wish to seek asylum in Croatia but were denied that possibility by the Croatian police, who ordered them to return to Serbia following the train tracks; subsequently, *MAD.H.* was hit by the train. In December 2017, the applicants' legal representative lodged a criminal complaint against unidentified Croatian border police officers. On 1 June 2018, the competent prosecuting authorities (Office for the Suppression of Corruption and Organised Crime) rejected the applicants' criminal complaint. The applicants took the prosecution before the investigating judge of the Osijek County Court who dismissed the applicants' request in August 2018. The applicants' appeal against this decision was dismissed in December 2018 by the Osijek County Court appeal panel. In December 2018 and March 2021, the Constitutional Court dismissed two separately lodged constitutional complaints regarding, inter alia, the efficiency of the investigation into the death of *MAD.H.* In March 2018, the Croatian police caught the applicants clandestinely crossing the Serbian–Croatian border and on the same day issued decisions in respect of the first to fourth applicants, restricting their freedom of movement and placing them and the applicants' children in the Tovarnik Centre for the purpose of verifying their identities. On the same day, the applicants expressed the intention to seek international protection in Croatia. The applicants challenged the decision restricting their freedom of movement before the Osijek Administrative Court. On 22 May 2018, the Osijek Administrative Court partly allowed the third applicant's administrative action, ordering that she and her two children (seventh and eighth applicants) be released from the Tovarnik Centre. Furthermore, on 24 and 25 May 2018, the same court dismissed the remaining applicants' administrative action as unfounded. In the period between October and December 2018, the High Administrative Court dismissed the applicants' appeals, thus upholding the decisions of the first-instance court. Subsequently, in July 2019, the Constitutional Court dismissed the applicants' constitutional complaint. In the meantime, on 28 March 2018, the MoI declared the applicants' requests for international protection inadmissible on the grounds that they should return to Serbia, which was considered a safe third country. The applicants lodged administrative actions against this decision with the Osijek Administrative Court. In June and July 2018, this court dismissed the applicants' administrative actions, and subsequently, the High Administrative Court dismissed their further appeals. Finally, on 4 March 2021, the Constitutional Court quashed the High

54 FRA, 2023.

Administrative Court and the Administrative Court's judgements and remitted the case. It held that the courts had failed to properly examine whether Serbia could be considered a safe third country. In the course of the abovementioned proceedings, the applicants, despite having been appointed a legal representative in December 2017 to represent them in all proceedings before the Croatian authorities, did not have any legal assistance between 21 March and 2 April 2018, and their chosen representative was first able to see them on 7 May 2018. On 4 June 2018, the applicants were transferred to an open-type centre in Kutina, and from there, they clandestinely left Croatia. The ECHR found the following violations of the ECHR: 1) violation of Article 2 in its procedural limb due to the failure of the domestic prosecuting authorities to conduct an effective investigation into the circumstances leading to *MAD.H.*'s death;⁵⁵ 2) violation of Article 4 of Protocol No. 4 because the Croatian police officers had returned the first applicant and her six children to Serbia without an examination of their individual situation, which amounted to collective expulsion;⁵⁶ 3) violation of Article 3 in its substantive limb in respect of the applicant children (fourth to fourteenth applicants) that stemmed from the failure of the domestic authorities to act with the required expedition to limit, as far as possible, the applicant children's detention in a reception centre with prison-type elements;⁵⁷ 4) violation of Article 5(1) due to the failure of the domestic authorities (notably, the MoI and Osijek Administrative Court) to show the necessary diligence in the verification of the applicants' identity and the examination of their applications for international protection. In addition, the applicants were not afforded relevant procedural safeguards, as they had not been apprised of the decisions placing them in the Tovarnik Centre in a language they could understand;⁵⁸ 5) violation of Article 34 due to the domestic authorities restricting the applicants' contact with their chosen lawyer.⁵⁹

The second case (*Daraibou v. Croatia*) concerned a Moroccan applicant, Daraibou, who was detained at a border police station together with three other migrants. In March 2015, the border police found the applicant and three other persons, in a truck with Croatian licence plates. It was established that the migrants had entered Croatia clandestinely, avoiding border control. They were taken to the nearest police station in Bajakovo. While waiting for readmission to Serbia, they were placed on the premises for the detention of irregular migrants in the border police station. One of them allegedly set fire to the facility, which caused the death of three migrants and serious injuries to the applicant. The ECHR found a violation of the material and procedural aspect of Article 2 of the ECHR not

55 ECtHR, *M.H. and Others v. Croatia* (Application Nos. 15670/18 and 43115/18), Judgment, 18 November 2021, paras. 153–163.

56 *Ibid.*, para. 304.

57 *Ibid.*, paras. 201–203.

58 *Ibid.*, paras. 255, 257 and 258.

59 *Ibid.*, para. 336.

only because the domestic authorities did not take sufficient measures to protect the life and limb of the applicant but also because of the failure to conduct a sufficiently detailed and effective investigation following the event, according to the conventional standards. The ECHR found that the police station and its personnel were ill-prepared to deal with the fire outbreak and that several questions had been left unanswered, despite a prompt start to the investigation. Furthermore, the authorities did not investigate the very serious allegations of the applicant regarding the adequateness of the premises and any fire precautions implemented. Moreover, no attempt had been made to establish whether there had been broader institutional shortcomings which could have prevented a similar tragedy from reoccurring in the future. The ECHR concluded that there had accordingly been a violation of Article 2 of the ECHR in its procedural aspect.

Furthermore, there are two pending adjudications against Croatia: *S.B. against Croatia*⁶⁰ and two other applications (summary return to Bosnia and Herzegovina in October 2018 and alleged inhuman treatment) as well as *Y.K. v. Croatia*⁶¹ (Turkish Kurd not allowed to seek asylum and allegedly convinced to go back to Serbia).

Between July 2021 and February 2023, the ECHR issued nine judgements finding fundamental rights violations at the EU's land or sea borders. In several of these scenarios, the ECHR concluded that there had been no remedy available to the applicants at the national level.⁶²

6. Conclusion

This paper analysed legislation and available practice of Croatian authorities in regard to border management and migration controls in Croatia. In 2022, the RoC experienced a significant increase in the number of persons who applied for international protection. In total, 12,872 persons expressed their intention to apply for international protection, while 21 were granted asylum. Numerous civil society organisations that monitor access to the asylum system continue to testify that pushback practices persist at Croatian borders despite the existence of the independent monitoring mechanism. However, in the RoC, violence seems to have partially calmed in 2022, with a greater ease of transit and a lower proportion of violent pushbacks recorded.⁶³

As a result of the *M.H.* case, amendments to the International and Temporary Protection Act were adopted in March of 2023. These precisely stipulate that

60 ECtHR, *S.B. v. Croatia* (Application No. 18810/19), 26 March 2020.

61 ECtHR, *Y.K. v. Croatia* (Application No. 38776/21), 2 December 2021.

62 FRA, 2023, p. 11.

63 Similarly, the PRAB project reported a reduction in the overall number of pushbacks and level of violence. MMC Research Report, 2023, p. 48.

administrative courts will be obliged to review, either *ex officio* or upon the asylum seeker's request, the MoI imposition of restrictions on freedom of movement.

These examinations will have to be conducted on a regular basis at reasonable intervals of time, especially in cases in which the detention lasts for more than a month and in cases in which significant new facts arise that bring into question the lawfulness of detention. If the competent administrative court determines that the restriction of freedom of movement is unlawful, the MoI will be under the obligation to release the asylum seeker immediately. In addition, amendments to the International and Temporary Protection Act for the first time strictly define that in the course of the proceedings for international protection, the authorities are under an obligation to ensure that every child has access not only to leisure activities (including play and recreational activities appropriate to their age within the premises of reception centres) but also to outdoor activities. These amendments will ensure the proper structuring of the children's time in cases where their stay in reception centres may not be avoided and are the RoC's response to the ECtHR's findings in the *M.H* case.

Croatia's legislation complies with the EU and the Schengen *acquis communautaire* and provides various protections for vulnerable migrants. Courts protect the legal order of the RoC, as established by the Constitution and acts of legislature, and provide for the uniform application of laws and equal protection before the law. However, in terms of practice, certain shortcomings have to be addressed. Despite many alleged rights violations, only a few cases were pending in Croatian national courts because of lack of evidence, limited interest on the part of victims in filing a case, difficulties in producing evidence of events occurring during the hours of darkness at the green border, and other factors.⁶⁴ It has to be considered that the RoC has had to adjust its administrations to EU requirements in a rather short period, and when deciding between additional safeguards for the protection of the individual or more restrictive border control measures toward ensuring increased national security, the latter would be the preferred choice for decision makers in the RoC.⁶⁵ Hence, ensuring effective judicial safeguards for migrants is essential to protect the rights of all individuals, irrespective of their nationality.

64 See similar practices in Greece and Spain, FRA, 2023, p. 11.

65 Novak and Giljević, 2022, p. 121.

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