

REPUBLIC OF CROATIA
OMBUDSMAN
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Croatian Parliament
Milorad Pupovac, Ph.D., prof.
President of the Committee on Human
and National Minority Rights
Trg svetog Marka 6, 10 000 Zagreb

Dear Mr. Pupovac,

as you know, the Ombudswoman Office has been fully engaged in the protection of human rights and freedoms of persons seeking international protection and of migrants in irregular situations ever since the so-called Balkan route in 2015. We informed the Croatian Parliament thereon more than once, not only through competent committees but also by joining discussions on annual reports. Discussing this topic is of utmost importance not only from the point of view of security, which has dominated the public discourse, but also from the point of view of human rights. It has often been neglected that these are not two contradictory but rather inseparable concepts, which implies that without the guarantee and protection of human rights there can be no security in a country. We would like therefore to present hereinbelow conclusions that we reached after having taken certain actions based on complaints made by migrants, civil society organisations, international organisations and media announcements as well as unannounced visits to police stations within the National Preventive Mechanism¹.

Results of inquiry procedures and visits reveal the violations of human rights of irregular migrants when it comes to their treatment by the police. This concerns in particular the practice of returning persons caught in the state territory (*push-back*) after their illegal crossing of the borders of neighbouring non-EU member states, including the lack of an efficient inquiry about allegations of police violence; furthermore, access to international protection or the possibility of seeking it and the administrative proceedings when taking decisions on the return of migrants, about which we informed the Croatian Parliament in detail earlier, especially in the 2017 Report. Besides that, in 2018, the Ministry of the Interior (MUP) denied the Ombudswoman immediate access to data on several occasions making it difficult for her to work according to her powers deriving from the Constitution, the Ombudsman Act and the Act on the National Preventive Mechanism.

As we already mentioned in the 2017 Ombudswoman Report, the signing of the agreement between the EU and Turkey and the reintroduction of the Common European Asylum System led to stricter border control in the countries of the so-called Balkan route. As a result, by the end of 2016, media reports and complaints to the Ombudswoman revealed that migrants were returned to Serbia without the legal proceedings being conducted beforehand that require, depending on the measure enabling the return, that the decision be taken, the proceedings conducted individually and translation services provided. Some of documented complaints made in 2016 contained also allegations about police officers hitting irregular migrants with

¹ Based on the Act on the National Preventive Mechanism to Prevent Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OG 18/2011, 33/2015) and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OG IT 2/05)

their batons during the return, forcing them to take off their shoes and to kneel or stand in the snow or forcing them to go through the police cordon as the policemen were hitting and insulting them. According to complaints, during such police treatment they were not allowed to talk and, according to some testimonies, they were even deprived of their valuable items such as money and cellular phones. Such actions may constitute the infringement of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which stipulates that no person shall be subject to torture or inhuman or degrading treatment or punishment, and call for an efficient investigation.

Although we repeatedly requested detailed information from the MUP and the State Attorney's Office of the Republic of Croatia (DORH) as to whether such investigations were carried out, we received no reply. On the other hand, the highest state officials also failed to condemn the violence against migrants clearly and unambiguously. In addition to that, as one of responses to complaints, besides missing data in the records and the need to protect the state border, the competent bodies regularly inform about the percentage of migrants who left the Republic of Croatia before the end of the procedure for international protection emphasising that this clearly indicates that such accusations are false and aimed at misusing this procedure. However, such arguments are neither appropriate nor convincing, especially with regard to the fact that the percentage has remained the same as in the years before the migrant crisis.

No wonder that we kept receiving similar reports and complaints in 2017 and 2018 as well. As the migration pressure on the border with Bosnia and Herzegovina grew stronger, they included that area too. All complaints (unfortunately, still relevant) that the Ombudswoman received or those made through civil society and international organisations are similar and usually start with statements about irregular crossing of the Croatian state border, being found in the Croatian territory by the police, seeking international protection and the police disregarding such statements, about being forcibly pushed in the van and even about beating, with batons as well, misappropriating money and all valuable items, destroying cell phones either by destroying the charging port with a screw driver or by pouring water and about sending migrants back across the green border while avoiding the legal procedure.

In its response to such allegations the MUP only stated that they are false and lack any content without providing requested data on the number and type of measures taken to check them. The reply given by the MUP that it is not possible to conduct investigations of events that complaints were made about as exact data on the date, time and place are lacking is not convincing because even after we delivered to them data relating to a particular complaint, it turned out that a part of the material recorded by thermo-vision cameras at the very moment a certain action took place, which could either prove or eliminate the allegations, was missing.

In case of the death of little Madina Hussiny in November 2017, the MUP also claimed that no thermo-vision camera recordings were saved. However, as everything that is going on is recorded in the Protocol on the system of thermo-vision and cameras, in case the recordings were not saved but deleted, the name of the person who deleted them (the so-called log) should be kept in the system, probably with an official note about persons who ordered that recordings be deleted. On the other hand, should recordings be missing due to a power cut (as the Ombudswoman was once told as the reason for missing recordings in one particular case), the MUP still gave no answer, in spite of the lapse of time, to questions whether and whom they informed about failures of spare power sources that were supposed to enable continuous recording, or whether they informed suppliers of the equipment, that was new and still within the warranty period, about failures due to which parts of the recorded material were missing. It

remains unclear why, in face of such serious allegations about the violation of human rights and a possible infringement of Article 3 of the ECHR, the MUP is not making use of its technical resources that might help resolve such complaints.

Furthermore, we sent all information that we gathered and conclusions that we reached in the course of our inquiry to the State Attorney General as part of the crime report filed by the Hussiny family in January. Although, according to the media, the decision on the dismissal of the crime report was taken, the State Attorney's Office did not deliver it to us in spite of our request. Therefore, we do not know whether, when taking this decision, they took into account recordings of all thermo-vision cameras for border surveillance, and not only of mobile ones, or reasons why they are missing, also whether they took into account data on the movements and locations of police officers from recorded signals of their cell phones and other communication devices.

In September, we also forwarded to the State Attorney General a complaint about the Ombudswoman not being able to conduct an inquiry as she was denied the direct examination of data, that we will discuss in more detail later, which prevented her from doing her work, but also because this gave rise to a suspicion as to the impartiality and efficiency of the investigation. The complaint in question, that we received from an international organisation, described, in the manner resembling some earlier cases, the police treatment of a pregnant woman and her family, stating precisely every disturbing detail of their journey, the dates and places when and where the police found them, allegations about policemen destroying their cell phones and ignoring their request for international protection, the use of physical force, even about being forced to cross the border between two mine fields accompanied by shooting in the air to intimidate them. However, we received no information from the State Attorney about his decisions on the substance.

In 2018 we also witnessed the use of firearms in the treatment of migrants. For example, when a van was stopped at Donji Srb, which as it turned out later carried 30 migrants, out of which nine children aged three to seventeen, firearms were used injuring two of the children. The MUP claimed in their statement that nothing suggested that irregular migrants were in the closed part of the van. This is not convincing because in that poorly populated area close to the state border police officers, that receive backup, focus their attention precisely to irregular migrants and traffickers. Following this event, the Ombudswoman received a complaint by the parents of wounded children as well as of two other migrants whose testimonies were very similar and include allegations about being forcibly taken out of the van right after it was stopped and the driver ran away, after which police officers started hitting them and threatened with firearms as they were on the ground. As they started protesting against such treatment, they were, as they claim, beaten with batons and legs for five to ten minutes until police officers realised that two wounded children were in that van. As they waited for paramedics, they were cold, but they were not allowed to take on the clothes they had in their bags. From the documents that the MUP provided based on these complaints it is obvious that no interviews with irregular migrants were taken and that the investigation about their allegations was based on the examination of official notes made by police officers and their reports only.

When it comes to the treatment indicating the infringement of Article 3 of the ECHR, the European Court of Human Rights stated in *Bojcenko versus Moldavia* (41088/04) that an investigation is imperative and that it can be efficient only if conducted by a body independent of state officials who are under suspicion of torture or other cruel, inhuman or degrading treatment. In its judgement in *Mader versus Croatia* (56185/07) case, which relates to Article

3 of the ECHR and Article 1 of the European Convention against Torture and Inhuman or Degrading Treatment or Punishment, the Court also states that an efficient official investigation leading to the detection and punishment of responsible persons is necessary. Otherwise, the general legal prohibition of torture and inhuman or degrading treatment and punishment would be inefficient in practice which would in some cases allow state representatives the abuse of rights of persons under their control without being punished for it (*Labita versus Italy and Muradova against Azerbaijan*).

Besides the treatment of irregular migrants by police officials which includes a possible infringement of Article 3 of the ECHR, we also recorded a number of cases of disturbing treatment related to measures to secure the return of migrants which indicate that seeking international protection might be prevented or made more difficult. According to the command by the Illegal Migration Service of the Police Directorate of 25 November 2016, whose existence the MUP still denies, and later according to the order by the Police Directorate of 15 February 2017, about which we informed competent bodies in detail, irregular migrants found deep in the Croatian territory are to be transported to police stations covering the area where they crossed the state border to establish the circumstances under which they crossed the border. Earlier, it was to police stations bordering with Serbia and then to those bordering with Bosnia and Hercegovina. For example, in two months, 594 persons were transported to Donji Lapac police station from nine police administrations and twenty-seven police stations.

Almost none of administrative procedure cases examined within the NPM contained a record on the time when irregular migrants were taken to the police station and released from it, on whether they sought international protection while there and whether they required medical care. In one of rare files, where the time when a person was released from the police station was entered indeed, a video recording was examined but it could not be seen on it whether the person left the station as recorded or immediately before or after that moment. As some persons were transported from remote parts of the Republic of Croatia, it was impossible to check due to missing official notes in the file whether their freedom of movement was limited for more than 24 hours, which is the maximum period of their detention when deciding on their return. Besides, cases contained no documents that would indicate that actions were taken in the course of the procedure to determine the manner and time of border crossing, and this is precisely what the MUP emphasised as being especially important and explained in this way the reasons for taking them to police stations in the area where they crossed the state border. As derives from the foregoing, migrants are transported hundreds of kilometres and police officials ask them nothing about the manner they crossed the border after that or just do the same interview as in the police station in the area they were found with no translator provided just as in the earlier interview. After that they are given a decision on return with a seven-day deadline to leave the European Economic Area. However, most of them are not able to do it within that deadline because they usually have no identity documents and cannot obtain them as there are no diplomatic or consular missions in Croatia. Such conduct of the administrative proceedings constitutes disregard for the provision of the General Administrative Procedure Act according to which ministries provide legality, efficiency and appropriateness of the administrative proceedings, or because decisions are taken that are impossible to implement in the manner provided by the law, such actions are contrary to the principles proclaimed in the Administrative Procedure Act. The consistent refusal by the MUP to re-examine the described treatment of irregular migrants found deep in the Croatian territory as well as the lack of intention to make use of all possibilities provided by the Foreigners Act is especially worrying.

The aforementioned points to a conclusion that the purpose of transporting migrants to remote and isolated police stations is their removal from the Republic of Croatia across the green border. Additionally, their treatment in such stations is not kept in the Records of Measures Taken against Foreigners so that the search for the number of persons and police stations from which they were brought would require manual work which makes it impossible to use data on the number of irregular crossings in a certain part of the state border and later travel routes (to which places migrants were found might point) when monitoring migration flows through the Republic of Croatia.

Finally, during 2018, for the first time it was made impossible for the Ombudswoman to do her work as she was denied immediate access to items and data on the treatment of irregular migrants in the MUP Information System which is at the same time the only source of such data. This happened during visits and inquiries pursuant to the Act on the National Preventive Mechanism and the Ombudsman Act in Glina, Gvozd, Cetingrad, Karlovac and Donji Lapac police stations.

The denial concerned exclusively cases where the manner of treating irregular migrants was determined such as when implementing measures to secure their return pursuant to the Foreigners Act, the manner of treating international protection seekers in the procedure of expressing the intention for international protection as well as the conditions of their stay on the premises where they were detained or kept. For example, in September this year, when visiting Donji Lapac police station within the NPM, the Ombudswoman personally was denied unannounced access to requested data whereby the assistant to the police station chief, the only official person she could talk to, said she was authorised to give one statement only: "During the ongoing migrant crisis we act pursuant to the Foreigners Act and the Act of the Protection of the State Border". Namely, it usually takes a longer time to wait for "the authorised person" (police administration official for illegal migration) so that the key element of the unannounced visit, its unexpectedness, is lost. It should be emphasised that no special authorisations to individual officers are needed for information access within the NPM. Instead, everybody should allow the Ombudswoman the access at her request pursuant to the Act.

Immediate data access is of utmost importance for conducting inquiries as well as for NPM visits, especially when keeping in mind that the MUP has already delivered to the Ombudswoman Office data for which it was found after an immediate examination of files that they were incomplete and/or incorrect, about which we reported earlier. Just to remind you, by examining an individual case during the inquiry proceedings in the police station a treatment was detected that was contrary to the answer the MUP already provided, while provided statistical data on the number of irregular migrant treatment showed a significant deviation from those determined by immediate examination.

Such actions constitute a direct pressure of the executive branch on an independent national institution for human rights as well as a serious infringement of Article 20 of the Data Secrecy Act pursuant to which the Ombudsman is entitled to access to all classified data as well as of Article 25 (in connection to Articles 4 and 24) of the Ombudsman Act pursuant to which competent bodies are under obligation to secure the Ombudsman the access to information and provide him with all data, acts and other documents relating to a lodged complaint and to provide to the Ombudsman all the help he needs on his request, and of Article 5 of the Act on the NPM pursuant to which persons performing NPM related tasks shall have free access to all data on the treatment of persons deprived of their liberty. Interesting enough, when visiting

police stations in relation to the treatment of other arrested or detained citizens, access to data runs as smoothly as ever.

Having ratified the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Republic of Croatia assumed the obligation to enable the National Preventive Mechanism, whose tasks the Ombudswoman performs, unannounced visits to all places where persons deprived of their liberty are or who might be deprived of their liberty as well as access to information referring to the treatment of such persons and about conditions they are in. The MUP was therefore warned that denying data during visits was contrary to the OPCAT and the Act on the NPM and that it represents a denial of the performance of NPM related tasks. We intend to notify the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the European Committee for the Prevention of Torture (CPT) and the UN Committee against Torture (CAT) thereof. According to the OPCAT the deprivation of liberty means any detainment or imprisonment or placement of persons to a place under public or private surveillance that such persons cannot leave of their own free will due to an order be it by court, or administrative or some other authorities.

To conclude with, the police treatment of irregular migrants and international protection seekers was discussed in the thematic session of the Domestic Policy and National Security Committee on 1 March 2018 and in the plenary session of the Croatian Parliament on 13 and 14 June 2018 during the discussion about the 2017 Ombudswoman Report. Unfortunately, since then, not only that none of the Ombudswoman recommendations and warnings has been implemented and no progress has been observed, which resulted in the continual violation of migrant human rights, but the Ombudswoman as the proxy of the Croatian Parliament has been prevented from working according to her powers.

Yours sincerely

Lora Vidović

OMBUDSWOMAN