

CROATIA

Submission to the Universal Periodic Review 36th session of the UPR Working Group, April/May 2020

Immigration detention

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

Centre for Peace Studies (CMS; CPS) is a Croatian non-governmental and non-profit organisation promoting non-violence and social change through education, public policy, research, and activism. CPS operates through three compatible programmes: Asylum, Integration and Human Security; Peace Education and Nonviolence Affirmation; and Combating Inequality. Within the work of the Asylum, Integration, and Human Security programme the CPS monitors immigration detention practices, offers legal aid to foreign nationals, observes the state of refugees' rights in Croatia, and documents the treatment of refugees by Croatian police.

This submission focuses on human rights concerns relating to Croatia's policies on detention of refugees, asylum seekers, and migrants.

During the 2nd cycle of the Universal Periodic Review of Croatia (22nd session, May 2015), the immigration detention policies and practices of Croatia do not appear to have been raised. However, as the GDP has documented in its reports on Croatia,¹ as early as the mid-2000s, international and regional human rights observers have documented serious concerns about the country's immigration detention practices, including:

- In 2003 and 2007, the European Committee for the Prevention of Torture (CPT) visited Croatia's dedicated immigration detention centre, the Ježevu Detention Centre (officially called Reception Centre for Foreigners, a euphemism that masks the real nature of the facility and has important negative implications on the rights of detainees). After both visits the CPT, reported important problems in the conditions of detention at the facility. After its 2007 visit, the CPT recommended improvements in the material conditions at the detention centre, reforms in the facility's internal operating regime and procedures, and better training of detention staff. More recently, after its 2017 visit to Croatia, the CPT received complaints from detained foreign nationals claiming to have been prevented from contacting their consular representatives.²
- In 2014, the UN Committee against Torture (CAT) recommended that Croatia place asylum seekers in detention only in exceptional cases and regularly monitor the facilities used as accommodation for asylum seekers through the national preventive mechanism or other monitoring mechanisms. The CAT also recommended that the country ensure the availability of free legal aid for asylum seekers and migrants in detention-related procedures.³

During the 2nd cycle of the Universal Periodic Review, the country accepted two recommendations that can have relevance to the treatment of people in immigration detention:

- *Improve the policies and measures according to the new situations of the protection of the rights of migrants (China) (para. 99.158)*
- *Ensure the protection of unaccompanied migrant children (Sweden) (para. 99.159)*

Migratory context

Croatia has long served as a transit country for refugees and migrants attempting to reach Western Europe. According to CPS, although the country has failed to develop adequate integration policies, it has nevertheless made border control a key focus of immigration policy. Starting in late 2015, after Hungary completed construction of a barbed wire fence on its border with Serbia, hundreds of thousands of refugees—mainly from Syria, Afghanistan, and Iraq—began crossing into Croatia. By March 2016, the country experienced more than 600,000 arrivals.⁴ The government responded with a mix of new security policies and ramped up humanitarian assistance, including escorting refugees from the Serbian border to transit reception camps as part of their onward journeys.⁵

In early 2016, Croatia joined Slovenia in imposing strict daily limits on the number of refugees allowed to enter. Croatia also adopted new legislation⁶ granting power to the armed forces to support the country's police in protecting borders.⁷ Public discourse in the country often reflects an ambiguous line between militarisation of borders and solidarity with refugees. For example, in July 2018 Croatia's Interior Ministry asserted, "Croatia will continue to protect its borders. We will not allow illegal migrations, while at the same time we show humanity and solidarity with those who really need help."⁸ According to many reports (some of which include medical documentation), Croatia systematically carries out pushbacks into Serbia and Bosnia and Herzegovina—in which force is frequently applied.⁹

According to CPS, there is a clear tendency for the state authorities to limit the access of lawyers, Ombudsperson, and civil society organisations to persons who require their assistance in detention centres. This lack of access to detention facilities limits the scope of rights protection for victims of violence.

Furthermore, there are serious concerns that state authorities do not employ the detention of vulnerable groups, including families with children, as a measure of last resort. These concerns were supported by the European Court of Human Rights, which in the case of one family issued an interim measure due to overly long and unjustified detention.¹⁰ Other reports confirm that "in the course of 2018, a total of 110 children were placed in detention; this number is not confined to asylum-seeking children. Of those, 32 were detained in Ježevo, 41 in Tovarnik and 37 in Trilj. Unaccompanied children were not detained in the course of 2018."¹¹

Key concerns

The GDP's 2019 report on Croatia (appended to this submission)¹² and CPS's reports¹³ identify several on-going concerns regarding the country's immigration detention practices and policies:

- As civil society groups have stepped up their criticism of Croatia's border policies, authorities have begun restricting their access to detention and reception centres.
- Legislation refers to detention as a "restriction on freedom of movement" or as "accommodation," while the detention centre is officially called a Reception Centre for Foreigners, which conceals the coercive nature of the facility.
- Migrants may be detained even before they have received a return decision.

- Grounds for detention in Croatian law appear to be at odds with the grounds permitted under the EU Returns Directive.
- In practice, the administrative court usually confirms detention decisions adopted by the police or the Interior Ministry.
- Non-citizens are obliged to pay for their own detention.
- The state fails to provide non-custodial “alternatives to detention.”
- There are no provisions protecting non-citizens who have been released from re-detention.
- Unaccompanied children above the age of 14 are frequently placed in juvenile public care institutions where they reportedly face hostility from other children.
- Besides dedicated detention centres, migrants can also be confined in police stations and in airport transit zones for short periods of time.
- There is a lack of institutional support for victims of violence in detention centre
- Persons in detention are often not familiar with possible legal avenues due to lack of oral information and clarification in the language they speak.

Suggested recommendations:

- To place non-citizens in detention solely based on clearly defined grounds.
- To cease detaining migrants solely based on irregular entry, as this may amount to systematic detention at variance with the principle of proportionality.
- To ensure adequate accommodation and care to unaccompanied children.
- To limit the time people remain in detention to the shortest time possible and ensure that people are never detained for periods that exceed established legal limits.
- To ensure that upon release non-citizens are not “re-detained” for the same reasons or procedures.
- To ensure effective review of detention by administrative courts.
- To ensure that detainees have effective access to legal aid to challenge detention.
- To ensure that lawyers who provide legal aid have access to detainees.
- To ensure that civil society organisations and independent institutions for human rights protection have access to places of detention and the right to monitor the situation in detention centres.
- To avoid detaining vulnerable groups.
- To ensure effective implementation of non-custodial measures - “alternatives to detention.”
- To ensure unimpeded access to detention facilities by civil society organisations.
- To cease obliging non-citizens to pay for their own detention.
- To ensure that material conditions of detention are in line with the standards of the European Committee on the Prevention of Torture (CPT).
- To keep the length of detention at the airport to the absolute minimum, not exceeding three day.
- To ensure training of detention staff regarding the rights of the detainees including education in providing support and in recognizing vulnerable persons, as well as victims of torture and inhuman treatment.
- To establish independent monitoring system together with independent support services for victims of violence in detention centres.

ENDNOTES

¹ See the website of the Global Detention Project, “Croatia,”

<https://www.globaldetentionproject.org/countries/europe/croatia>

² Reports from the 2003, 2007, and 2017 CPT visit to Croatia are available on the website of the European Committee for the Prevention of Torture, “Croatia,” <https://www.coe.int/en/web/cpt/Croatia>

³ UN Committee against Torture, “Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Croatia, CAT/C/HRV/CO/4-5,” 18 December 2014, <http://www.ohchr.org/EN/Countries/ENACARegion/Pages/HRIndex.aspx>

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- ⁴ European Network of Ombudsmen, "Network in Focus in 2016 – Responding to Europe's migration crisis. Promoting lobbying transparency as good administration. Challenges to the rule of law in the EU", 2016, <https://www.ombudsman.europa.eu/en/publication/en/72806>
- ⁵ D. Župarić-Ilić and M. Valenta, "Opportunistic Humanitarianism and Securitization Discomfort Along the Balkan Corridor: The Croatian Experience," *In* M. Feischmidt, L. Pries, and C. Cantat (eds.), *Refugee Protection and Civil Society in Europe*, Palgrave, 2019.
- ⁶ Croatia adopted the Act on Amendments to the State Border Protection Act, and the Act on Amendments to the Act on Defence.
- ⁷ Ombudsman of Croatia, "Report on the Performance of Activities of the National Preventive Mechanism for 2016," 2017, <http://ombudsman.hr/en/reports/send/66-ombudsman-s-reports/999-report-on-the-performance-of-activities-of-the-national-preventive-mechanism-for-2016>
- ⁸ HINA, "Croatia Will Not Allow Illegal Migrations," *Total Croatia News*, 13 July 2018, <https://www.total-croatia-news.com/politics/29729-croatia-will-not-allow-illegal-migrations>. See more broadly, D. Župarić-Ilić and M. Valenta, "Opportunistic Humanitarianism and Securitization Discomfort Along the Balkan Corridor: The Croatian Experience," *In* M. Feischmidt, L. Pries, and C. Cantat (eds.), *Refugee Protection and Civil Society in Europe*, Palgrave, 2019.
- ⁹ "Izveštaj O Nezakonitim I Nasilnim Protjerivanjima Izbjeglica Iz Republike Hrvatske," January 2017, <https://bit.ly/2kXQ3Vy>; "Drugi Izveštaj O Nezakonitim I Nasilnim Protjerivanjima Izbjeglica Iz Republike Hrvatske," March 2017, <https://bit.ly/2plhKMR>; CPS, "Policijsko nasilje nad izbjeglicama mora prestati!" May 2017, <https://www.cms.hr/hr/azil-i-integracijske-politike/policijsko-nasilje-nad-izbjeglicama-mora-prestati>; CPS, "[IZVJEŠTAJ O NASILNOM PROTJERIVANJU IZBJEGLICA IZ RH] Sustavno Nasilje Prema Izbjeglicama Mora Prestati!" February 2018, <https://bit.ly/2mZa5Ty>; CPS, "Tražimo sankcioniranje nasilja i kolektivnog protjerivanja izbjeglica!" April 2019, <https://www.cms.hr/hr/azil-i-integracijske-politike/trazimo-sankcioniranje-nasilja-i-kolektivnog-protjerivanja-izbjeglica>; Medecins sans Frontiers (MSF), "Games of Violence" 3 October 2017, <https://www.msf.org/sites/msf.org/files/serbia-games-of-violence-3.10.17.pdf>; Human Rights Watch (HRW), "Asylum Seekers Forced Back to Serbia," 2017, <https://www.hrw.org/news/2017/01/20/croatia-asylum-seekers-forced-back-serbia>
- ¹⁰ Centre for Peace Studies, "European Court of Human Rights: Immediately Change the Treatment Towards Madina's Family," 6 April 2018, <https://bit.ly/2pjVliP>
- ¹¹ Asylum Information Database (AIDA), "Country Report: Croatia," March 2019, <https://www.asylumineurope.org/reports/country/croatia>
- ¹² Global Detention Project, "Immigration Detention in Croatia: Shrinking Space for Independent Monitoring," April 2019, <https://www.globaldetentionproject.org/countries/europe/croatia>
- ¹³ Centre for Peace Studies, "Alternatives to Immigration Detention: Overview of EU Practice with Recommendations for Model Development in the Republic of Croatia," 2017, <https://www.cms.hr/system/publication/pdf/103/Alternative.pdf> (appended to this submission); Centre for Peace Studies, "Aim and Conditions of Detention in Croatia [Svrha i uvjeti detencije u Hrvatskoj]," 2016, https://www.cms.hr/system/publication/pdf/88/Svrha_i_uvjeti_detencije_u_Hrvatskoj_2016.pdf; Centre for Peace Studies, "Alternative Detenciji Za Smještaj Migranata Koji U RH Borave U Iregularnom Status," 2016, https://www.cms.hr/system/publication/pdf/78/POLICY_DOKUMENT_CENTRA_ZA_MIROVNE_STUDIJE_alternative_detenciji.pdf