

Zagreb, 3 October 2018

**SUBJECT: Letter by the Council of Europe Commissioner for Human Rights
- reply to be delivered**

Dear Ms Mijatović,

Following the letter of 20 September 2018 you sent to the Prime Minister of the Government of the Republic of Croatia, mr. sc. Andrej Plenković, the Ministry of the Interior of the Republic of Croatia would like to inform you as follows:

As a European Union Member State and a state with the intention to join the Schengen Area in the near future, the Republic of Croatia has the sovereign right to control the entry of aliens in its territory as it has the obligation to protect the state border from illegal crossings.

Since the middle of last year, human and technical capacities of the border police have been increased at the external border and deterrents have been implemented more intensively than before because of increased migratory movements on the so-called Eastern-Mediterranean, i.e. the Western Balkans migratory route. Deterrence, which is regulated by the Schengen Borders Code (paragraph 2, Article 13), involves measures and actions for preventing illegal entries between border crossing points at the external border.

On its border with Serbia and Bosnia and Herzegovina, which is most threatened by illegal migration, the Republic of Croatia has deployed a large number of police officers for the surveillance of the state border and it has installed modern technical devices for long-range optical and radar surveillance of the border line by day and night under all weather conditions.

Since 18 July 2018, the land border with Bosnia and Herzegovina as well as the sea border with Montenegro have been monitored by a Frontex airplane. The operational headquarters of the mentioned airplane is located at Zadar Airport. Croatian police officers also contribute to the air surveillance of the border by participating in air activities as well as by working at the Frontex Situation Centre in Warsaw. The flight schedule is drafted according to operational field information.

All reports filed by non-governmental and other organisations which we have received so far on the coercive means being allegedly applied to migrants by police officers have been examined according to our capacities given the fact that generally there is not enough concrete data for criminal investigation.

Up to this point, no cases of coercive means being applied to migrants by police officers have been confirmed. Likewise, the allegations that police officers have committed acts of theft against third-country nationals have not been confirmed either.

Since migrants were deterred from entering the Republic of Croatia by police officers or returned to the country from which they illegally entered the Republic of Croatia upon the application of another prescribed procedure, while keeping in mind that those countries are safe third countries or EU Member States in which they can exercise their right to international

protection, they accuse Croatian police officers of violence, hoping that such accusations will help them in their attempt to re-enter the Republic of Croatia and continue their journey towards their countries of final destination.

Regarding international protection, we would like to point out that in the Republic of Croatia 1887 applications for international protection were lodged in 2017 and 816 applications were made until 20 September 2018. In 2017 211 persons were granted protection, whereas until 28 September 2018 157 persons have been granted protection, which confirms that the Republic of Croatia ensures access to international protection to third-country nationals. However, according to our experience, illegal migrants who upon their entry into the Republic of Croatia make an application for international protection in 77% of cases leave the territory of the Republic of Croatia before they actually lodge their application or after the administrative procedure has been initiated in which the lodged application for international protection is examined.

The aforementioned refers to secondary movements of asylum seekers which have brought into question the sustainability of the European Asylum System and the Schengen *acquis*. This is also confirmed by the data on the Dublin transfers. More precisely, under the Dublin procedure a total of 1042 persons have been transferred to the Republic of Croatia in the period from 2016 till today (in 2016 637 persons, in 2017 311 persons, in 2018 94 persons). In 2016 and 2017 a total of 8 persons was transferred from the Republic of Croatia to other Member States, whereas in 2018 that number amounted to 6 persons.

The abovementioned shows that migrants use the Republic of Croatia as a country of transit on their way to the countries in Western and Northern Europe from which they are then returned to the Republic of Croatia. In the majority of cases, those persons are not refugees in need of international protection, but economic migrants. No one is content with such state of affairs in Europe.

Therefore, in the European Council conclusions of June this year the European Union Member States were invited to: *“take all necessary internal legislative and administrative measures to counter such movements and to closely cooperate amongst each other to that end.”* The Ministry of the Interior of the Republic of Croatia does implement the said measures. The European Council conclusions additionally stress that: *“More efforts are urgently needed to ensure swift returns and prevent the development of new sea or land routes. Cooperation with, and support for, partners in the Western Balkans region remain key to exchange information on migratory flows, prevent illegal migration, increase the capacities for border protection and improve return and readmission procedures.”* This provision was included in the European Council conclusions upon the proposal and the request of the Republic of Croatia. Finally, according to its conclusions the European Council *“welcomes the intention of the Commission to make legislative proposals for a more effective and coherent European return policy”*.

The Ministry of the Interior of the Republic of Croatia is familiar with the content of the UNHCR Report. We believe that including unconfirmed and alleged accusations into the official UNHCR Report places additional pressure on the Ministry of the Interior of the Republic of Croatia to yield when it comes to carrying out consistent surveillance of the European Union external border. The statement at issue is on page 18 of the UNHCR Report entitled *“Desperate Journeys”*.¹ We would like to use this opportunity to inform you that those

¹ *„UNHCR and partners in Serbia and Bosnia and Herzegovina²⁵ received reports of some 2,500 refugees and migrants allegedly pushed back from Croatia with over 1,500 of them reporting denial of access to asylum procedures (including over 100 children), and over 700 people reporting allegations of violence and theft.”*

statements are based on news articles, including an article by The Guardian, referring to unverifiable information from unknown migrants or quotes of non-governmental associations, as well as from those who at last year's Christmas used social networks to invite migrants in the Republic of Serbia to gather in a great number on the green border between the Republic of Croatia and the Republic of Serbia with the intention of "opening" the border of the Republic of Croatia in order to enable free passage of migrants to their countries of destination. The same non-governmental associations are now active and present in Bosnia and Herzegovina because of the change in the direction of migratory movements.

When it comes to actions taken by non-governmental associations, we believe that it is important to divert your attention to the fact that in its report the UNHCR refers to the statements made by a volunteer of a non-governmental association who was recently pronounced a non-final guilty verdict by the County Permanent Service of the Misdemeanour Court in Vukovar for helping migrants to illegally cross the state border. The Court imposed a fine on that volunteer for the said misdemeanour.

The Ministry of the Interior of the Republic of Croatia and the UNHCR have established good cooperation regarding the actions taken by Croatian police officers towards migrants and the mutual exchange of information. The UNHCR, in cooperation with the Croatian Law Centre as its partner, participates in the „*Border monitoring*“ project. Within the framework of the said project it has the possibility of getting insight into the actions taken by the Croatian border police. So far, we have not had concrete complaints against the actions of the Croatian police in the implementation of the said project.

Finally, we would like to point out that in 2017 the Ministry of the Interior of the Republic of Croatia received 19 letters by the Ombudswoman to which it replied in due time providing extensive explanations.

Lastly, we would like to emphasise that in times of increased migratory pressure on certain parts of the state border, the Ministry of the Interior of the Republic of Croatia will keep respecting the fundamental rights of refugees in real need of protection while also implementing the relevant regulations stemming from the national legislation, EU *acquis* and international conventions. It will also continue to consistently apply Croatian and European legislative procedures for the surveillance of the state border in relation to illegal border crossing attempts.

Yours sincerely,

MINISTER

dr. sc. Davor Božinović

²⁵ See also The Guardian, Refugees crossing from Bosnia 'beaten and robbed by Croatian police', 15 August 2018, <https://www.theguardian.com/world/2018/aug/15/refugees-crossingfrom-bosnia-beaten-and-robbed-by-croatian-police>.



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REPUBLIKA HRVATSKA
MINISTARSTVO UNUTARNJIH POSLOVA

KLASA: 212-01/18-01/39
URBROJ: 511-01-04-18-1
Zagreb, 3. listopada 2018.

**Povjerenica za ljudska prava Vijeća Europe
gospoda Dunja Mijatović
67075 Strasbourg**

Zagreb, 3. listopada 2018.

**PREDMET: Pismo povjerenice za ljudska prava Vijeća Europe
- očitovanje, dostavlja se**

Poštovana gospodo Mijatović,

nastavno na Vaše pismo od 20. rujna 2018. godine upućeno predsjedniku Vlade Republike Hrvatske mr. sc. Andreju Plenkoviću, Ministarstvo unutarnjih poslova Republike Hrvatske želi vas izvijestiti o sljedećem:

Republika Hrvatska kao članica Europske unije i kao zemlja koja u dogledno vrijeme namjerava postati članicom Schengenskoga prostora ima suvereno pravo kontrole ulaska stranih državljana na svoj teritorij kao i obvezu zaštititi državnu granicu od nezakonitih prelazaka.

Od sredine prošle godine povećani su ljudski i tehnički kapaciteti granične policije na vanjskoj granici, a mjere odvratanja primjenjuju se intenzivnije nego ranije zbog povećanih migracijskih kretanja na tzv. istočnom sredozemnom odnosno zapadno-balkanskom migracijskom pravcu. Odvratanje, koje je propisano Zakonikom o schengenskim granicama (članak 13. stavak 2.), podrazumijeva mjere i radnje za sprečavanje pokušaja nezakonitih ulazaka preko vanjske granice izvan graničnih prijelaza.

Republika Hrvatska je na granici sa Srbijom i Bosnom i Hercegovinom, koja je najugroženija od nezakonitih migracija, angažirala veliki broj policijskih službenika za zaštitu državne granice i postavila moderna tehnička sredstva dubokog optičkog i radarskog nadziranja granične crte danju i noću u svim vremenskim uvjetima.

Kopnena granica s Bosnom i Hercegovinom kao i morska granica prema Crnoj Gori od 18. srpnja 2018. godine iz zraka se nadzire Frontexovim zrakoplovom. Operativna baza toga zrakoplova je Zračna luka Zadar, a u provedbi nadzora granice iz zraka doprinose i hrvatski policijski službenici sudjelovanjem u zračnim aktivnostima kao i radom u Frontexovom centru za nadzor u Varšavi. Vremenski raspored letova sastavlja se prema operativnim informacijama s terena.

Sve prijave nevladinih udruga i drugih organizacija koje smo do sada zaprimili o navodnoj uporabi sredstava prisile prema migrantima od strane policijskih službenika, provjerene su u okviru mogućnosti, obzirom da u pravilu nema dovoljno konkretnih podataka potrebnih za kriminalističko istraživanje.

Do sada niti u jednom slučaju nije utvrđeno da su policijski službenici prema migrantima uporabili sredstva prisile. Isto tako nisu potvrđeni navodi da policijski službenici na štetu državljana trećih zemalja čine kaznena djela krađe.

Zbog toga što ih policijski službenici odvrćaju od ulaska u Republiku Hrvatsku ili prema njima provode druge propisane postupke kojima ih vraćaju u zemlju iz koje su nezakonito ušli u Republiku Hrvatsku, pri čemu napominjemo da se radi o sigurnim trećim zemljama ili državama članicama EU-a u kojima mogu ostvariti pravo na međunarodnu zaštitu, migranti optužuju hrvatske policijske službenike za nasilje, očekujući da će im takve optužbe pomoći u novom pokušaju ulaska u Republiku Hrvatsku i nastavku puta prema državama krajnjeg odredišta.

Kada je riječ o međunarodnoj zaštiti, ističemo kako je Republika Hrvatska tijekom 2017. godine zaprimila 1887 zahtjeva, a do 20. rujna 2018. godine izraženo je 816 namjera podnošenja zahtjeva za međunarodnom zaštitom. U 2017. godini odobrena je zaštita za 211 osoba, a u 2018. godini do 28. rujna 2018. odobreno je 157 zaštita, što potvrđuje da Republika Hrvatska državljanima trećih zemalja osigurava pristup međunarodnoj zaštiti. Međutim, naše je iskustvo da nezakoniti migranti koji po ulasku u Republiku Hrvatsku iskažu namjeru podnošenja zahtjeva za međunarodnu zaštitu u 77% slučajeva napuste područje Republike Hrvatske prije nego doista podnesu zahtjev ili nakon što se pokrene upravni postupak u kojemu se razmatra podneseni zahtjev za međunarodnu zaštitu.

Radi se o sekundarnim kretanjima tražitelja azila koja su dovela u pitanje opstojnost europskoga sustava azila i dosljednu primjenu schengenske pravne stečevine. To potvrđuju i podaci o dublinskim transferima. Naime, u razdoblju od 2016. godine do danas temeljem dublinskoga postupka u Republiku Hrvatsku transferirane su ukupno 1.042 osobe (2016. godine 637 osoba, 2017. godine 311 osoba, a 2018. godine 94 osobe). Iz Republike Hrvatske je tijekom 2016. i 2017. godine u druge države članice transferirano 8 osoba, a tijekom 2018. godine 6 osoba.

Iz navedenoga proizlazi da migranti Republiku Hrvatsku koriste kao zemlju tranzita na putu u države zapadne i sjeverne Europe koje ih potom vraćaju u Republiku Hrvatsku. U većini slučajeva se ne radi o izbjeglicama u potrebi za međunarodnom zaštitom već o ekonomskim migrantima. S takvom situacijom u Europi nitko nije zadovoljan.

Zbog toga su države članice Europske unije zaključcima Europskog vijeća iz lipnja o. g. pozvane: *„poduzeti sve potrebne unutarnje zakonodavne i administrativne mjere kako bi suzbile takva kretanja i kako bi u tu svrhu ostvarile bliskiju uzajamnu suradnju.“* Navedene mjere Ministarstvo unutarnjih poslova Republike Hrvatske i provodi. U zaključcima Europskog vijeća dodatno se ističe: *„Hitno je potrebno uložiti više napora kako bi se osigurala brza vraćanja i spriječila uspostava novih morskih ili kopnenih ruta. I dalje je ključno surađivati s partnerima u regiji zapadnog Balkana i podupirati ih u svrhu razmjene informacija o migracijskim tokovima, sprječavanja nezakonitih migracija, povećanja kapaciteta za zaštitu granica i poboljšanja postupaka vraćanja i ponovnog prihvata“.* Ta je odredba u zaključke Europskog vijeća uključena na prijedlog i zahtjev Republike Hrvatske. I konačno, zaključcima Europskoga vijeća se *„pozdravlja namjera Komisije da podnese zakonodavne prijedloge za učinkovitiju i dosljedniju europsku politiku vraćanja“.*

Ministarstvo unutarnjih poslova Republike Hrvatske upoznato je sa sadržajem Izvješća UNHCR-a. Smatramo da uključivanje neprovjerenih i navodnih optužbi u službeno Izvješće UNHCR-a stvara dodatni pritisak na Ministarstvo unutarnjih poslova Republike Hrvatske kako bi popustilo u dosljednoj provedbi zaštite vanjske granice Europske unije. Sporni navod nalazi se na 18. stranici Izvješća UNHCR-a „Putovi očajnika“.¹

Koristimo ovu priliku kako bismo Vas izvijestili da se spomenuti navodi oslanjaju na novinske članke, pa tako i članak *The Guardian*, koji se pozivaju na neprovjerljive informacije od nepoznatih migranata ili na navode nevladinih udruga, uključujući i onih koje su za Božić prošle godine pozvale migrante u Republici Srbiji preko društvenih mreža na okupljanje u većem broju na zelenoj granici između Republike Hrvatske i Republike Srbije s namjerom „otvaranja“ granice Republike Hrvatske kako bi migrantima omogućile nesmetan prolaz prema odredišnim državama. Te iste nevladine udruge zbog promjene pravca migracijskih kretanja sada djeluju i prisutne su u Bosni i Hercegovini.

Kada je riječ o postupanju nevladinih udruga držimo važnim skrenuti Vam pozornost na činjenicu da je upravo volonter jedne od nevladinih udruga, na čije se navode poziva UNHCR u svom Izvješću, na Prekršajnom sudu u Vukovaru, Stalna služba u Županji, nedavno nepravomoćno proglašen krivim za pomaganje migrantima u nezakonitom prelasku državne granice, za što mu je izrečena i novčana kazna.

Ministarstvo unutarnjih poslova Republike Hrvatske i UNHCR uspostavili su dobru suradnju po pitanju postupanja hrvatskih policijskih službenika prema migrantima i međusobnog izvješćivanja. UNHCR s Hrvatskim pravnim centrom kao partnerom sudjeluje u projektu „*Border monitoring*“ te ima mogućnost uvida u postupanje hrvatske granične policije. Dosad u provedbi toga projekta nismo imali konkretnih primjedbi na postupanje hrvatske policije.

Na kraju želimo napomenuti da je u 2017. godini Ministarstvo unutarnjih poslova Republike Hrvatske od Pučke pravobraniteljice zaprimilo na očitovanje 19 pismena, na koja je pravovremeno i s detaljnim obrazloženjem i odgovorilo.

Zaključno ističemo da će Ministarstvo unutarnjih poslova Republike Hrvatske u vrijeme pojačanog migracijskog pritiska na određene dijelove državne granice prema izbjeglicama u stvarnoj potrebi za zaštitom i dalje postupati poštujući njihova temeljna prava i primjenjujući relevantne propise koji proizlaze iz nacionalnog zakonodavstva, pravne stečevine EU-a i međunarodnih konvencija, ali će isto tako nastaviti dosljedno primjenjivati hrvatske i europske zakonske procedure u zaštiti državne granice u odnosu na pokušaje nezakonitih prelazaka.

S poštovanjem,

 **MINISTAR**

dr. sc. Davor Božinović

¹ „UNHCR and partners in Serbia and Bosnia and Herzegovina²⁵ received reports of some 2,500 refugees and migrants allegedly pushed back from Croatia with over 1,500 of them reporting denial of access to asylum procedures (including over 100 children), and over 700 people reporting allegations of violence and theft.“

²⁵ See also *The Guardian*, Refugees crossing from Bosnia ‘beaten and robbed by Croatian police’, 15 August 2018, <https://www.theguardian.com/world/2018/aug/15/refugees-crossing-from-bosnia-beaten-and-robbed-by-croatian-police>.

