

National Report on the situation of human rights of migrants at the borders



Serbia

Protector of Citizens of the
Republic of Serbia

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Executive Summary

The Protector of Citizens is the National Human Rights Institution (NHRI) in Serbia accredited with A-status as in full compliance with the Paris Principles. It also holds the mandate of National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture. Within its NPM mandate, the Protector of Citizens monitors the treatment of migrants and asylum seekers by public authorities by carrying out visits at regional border police centers, local police stations, asylum centres, reception centres, transit centres, Shelter for Foreigners, institutions for the enforcement of penal sanctions, transit zones at international airports, centers for social work, social welfare homes, as well as informal settlements. Since 2019, the NPM has monitored forced returns of migrants to neighboring countries by conducting interviews with returnees and overseeing the transport to border crossings and the hand over to the neighboring country's authorities.

The report presents the findings of the National Preventive Mechanism of the Republic of Serbia at the borders with North Macedonia, Bulgaria and Croatia, and at international airports, all conducted between the end of 2020 and the first half of 2021.

Returns and violence at the borders

In addition to allegations concerning actions by Serbian authorities, the NPM also received reports from violations that would have occurred in neighbouring countries. This demonstrates the cross-border nature of human rights violations related to migration, and points to difficulties for human rights defenders when monitoring and contributing to human rights accountability at borders. The Protector of Citizens and the NPM have previously cooperated with the Croatian NHRI and the Ombudsman on

Bulgaria on the treatment of migrants at borders. The Protector of Citizens believes that cross-border cooperation among NHRIs and NPMs is crucial and could be increased. Examples of good practices were also documented, with families with children being transported from the border to reception centers in Serbia and persons in need of medical care being adequately cared for.

The NPM monitored forced removals from the Shelter for Foreigners on the basis of readmission agreements with neighboring countries and identified significant problems during removal procedures, including lack of interpretation for migrants who do not understand English, insufficient access to free legal aid, insufficient access to medical care, and impossibility for migrants to report on the risks they would face upon refoulement. The NPM recommended to the Serbian Bar Association to form a list of lawyers with sufficient knowledge and experience to represent foreigners. Acting on the recommendations of the NPM, the Ministry of the Interior is negotiating with the Ministry of Health on the presence of a medical team in the Shelter on weekdays and has stated its plan to organize and hold seminars and trainings for police officers throughout the Republic of Serbia in cooperation with UNHCR, regarding the assessment of the fulfillment of conditions for deciding on return in each specific case.

Access to procedures at borders

The registration of migrants who have expressed intention to seek asylum is mostly performed at local police stations or regional border police centers. The UNHCR is regularly present in the centers for the reception and care of migrants and performs the needs assessment for each newly arrived migrant. The International Organization for Migration (IOM), which implements its Assisted Voluntary Return and Reintegration program, is present on the ground too. However, few of the migrants who enter Serbia lodge an application for asylum in the country as most of them attempt to continue their journey onto the EU.

Police officers have received numerous trainings on how to deal with migrants or particularly vulnerable groups of migrants. They communicate with them mainly in English, and if necessary, translators are hired.

Reception conditions and deprivation of liberty at the borders

The NPM observed deprivation of liberty related to border management at the Shelter for Foreigners for those who have been issued a return decision, and at international airports for those who have been denied entry. The NPM ascertained that very few migrants are detained due to their irregular entry or stay in the country.

The conditions of detention in the Shelter for Foreigners were found to be satisfactory, as it was recently renovated, and will undergo further renovation over the course of 2021 with the building of a new facility to expand the capacity of the Shelter. In addition, the construction of two new shelters on the border with Bulgaria and on the border with Romania is mostly complete.

During the visits at the international airports, the NPM inspected the rooms for accommodating foreigners who have been denied entry into the country and determined that its previous recommendations on the standards that should be met by facilities of this type in terms of material conditions and the regime of stay have been

acted upon at Constantine the Great Airport and a project for two new larger rooms has been presented by the airport operators at Nikola Tesla Airport.

Human rights accountability at the borders

The NPM has detected a certain reluctance of migrants in bringing in formal complaints, as they wish to leave the country as soon as possible. The Protector of Citizens along with the Commissariat for Refugees and Migration and NGOs have been raising awareness on the possibility of filing complaints to empower migrants to report cases of ill-treatment.

The Protector of Citizens has unhindered access to all places where migrants are located. There is also unrestricted access to all information on dealing with them, including the border procedures. The Protector of Citizens enjoys a high-level of cooperation with the competent authorities and regularly receive data on the stay of migrants in centres and other places. Representatives of associations representing migrants in asylum and other procedures also access the centers and other places where migrants are located, but with prior notice.

The NPM recommended to competent authorities to take measures to prevent any form of unauthorized expulsion of foreigners from the country in order to ensure that all irregular migrants entering the territory of the Republic of Serbia are individually identified, registered and subjected to legally prescribed actions and procedures.



Chapter 1

ENNHRI's Project on Migrants' Rights at Borders

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. One of ENNHRI's thematic priorities is our work on "[asylum and migration](#)", which is facilitated through our Asylum and Migration Working Group, which brings together over 30 European NHRIs.

In order to support NHRIs' work to promote and protect the rights of migrants at borders, ENNHRI has initiated a project in 2019, supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations. The main objective of the project is to achieve a better promotion and protection of the human rights of migrants at the borders through different capacity-building, advocacy, communication and reporting activities involving NHRIs in

Europe.

Under this project, ENNHRI also has published several resources, such as the:

- Background Paper on "Protecting human rights of migrants at borders: evidence and work of European NHRIs", available [here](#).
- Guidance on "Monitoring Human Rights at Borders: building on the mandate and functions of NHRIs", available [here](#).
- Statement on "Stronger human rights monitoring at Europe's borders – why NHRIs are part of the solution", available [here](#).
- Complementary Guidance on "Monitoring human rights of migrants at borders during the Covid-19 pandemic", available [here](#).
- Article on "Protecting the rights of migrants during the pandemic: How have NHRIs responded?", available [here](#).
- Recommendations on "Independent Human Rights Monitoring

Mechanisms at Borders under the EU Pact on Migration and Asylum”, available [here](#).

In addition, under this project, five NHRIs – from Croatia, France, Greece, Serbia, and Slovenia – have developed national monitoring reports with the result of their human rights monitoring at borders. A comparative regional report will be published in May 2021, building on these findings and reflecting regional developments.

NHRIs work to promote and protect migrants’ rights at borders

NHRIs are State-mandate bodies, independent of government, with a broad mandate to promote and protect all human rights, including of migrants. They are periodically assessed against their compliance with the [UN Paris Principles](#).

European NHRIs use their unique mandate and full range functions to address the human rights of migrants, at the borders and beyond. In doing so, they also contribute to safeguarding democratic space and upholding the rule of law at borders.

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify and use information to address the human rights situation of migrants at the borders. As highlighted in [ENNHRI’s Background Paper](#), NHRIs have contributed to a growing body of evidence indicating the existence of widespread violations of migrants’ human rights at the borders in Europe, in line with the concerns raised by civil society organisations, international and regional human rights bodies.

Among their many functions, NHRIs

conduct monitoring on the respect of migrants’ rights on the ground, make recommendations to governments for reform of laws, policies and practices, and raise awareness of the rights of migrants, refugees and people seeking asylum by cooperating with regional and international human rights bodies and with civil society organisations. Some NHRIs also regularly monitor and report on immigration detention facilities and reception centres, may receive and handle individual complaints from migrants, and may be able to challenge the legality of a provision before Constitutional and/or lower courts.

During the Covid-19 pandemic, NHRIs have continued to monitor human rights violations at Europe’s borders documenting, among others, police violence and systematic pushbacks amid border closures and restrictive measures.

With this series of national reports written by NHRIs across the region, ENNHRI hopes to bring further visibility to their findings and recommendations. Mirroring the main areas identified in ENNHRI’s [Guidance](#) on Monitoring Human Rights at Borders, NHRIs report on:

- Returns and violence at the borders.
- Access to relevant procedures at the borders.
- Reception conditions and deprivation of liberty at the borders.
- Human rights accountability at the borders.

National reports presented under ENNHRI’s project are authored by each specific NHRI, which are ultimately responsible for their content.

The Protector of Citizens of the Republic of Serbia

The Protector of Citizens is the National Human Rights Institution (NHRI) in Serbia. It is an independent and autonomous public body, responsible for the protection and promotion of rights and liberties. The Protector of Citizens controls, by checking the allegations of complaints or acting at own initiative, whether state administration bodies, the Republic’s Public Attorney, and any bodies or organizations exercising public authority, treat the citizens in accordance with law and other regulations of the Republic of Serbia, or in compliance with the principles of good administration.

The role of the institution of the Protector of Citizens, defined by the Constitution of the Republic of Serbia and the Law on the Protector of Citizens, is to promote the respect of human rights and freedoms by personal and institutional authority. Through its reasoned recommendations, the Protector of Citizens should indicate to the authorities that an error has been committed, and, if so, that it is necessary to rectify it and change how they operate.

The public administration bodies have a legal obligation to cooperate with the Protector of Citizens, enable access to all facilities and data, regardless of the degree of confidentiality, when it is of importance to the undertaken procedure. When needed, the Protector of Citizens is entitled to interview every employee of the administration body and the administration body officials are obliged to enable such process.

The figure of the Protector of Citizens is appointed and dismissed by the National Assembly to which he/she

reports.

Article 2a of the Law on Ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) defines that the Protector of Citizens shall perform the National Preventive Mechanism (NPM) duties and that in performing those duties, it shall cooperate with Ombudsmen of Autonomous Provinces and associations, the Statutes of which include the goal of improving human rights and freedoms in accordance with the law.

The Law on Ratification of the OPCAT prescribes that the NPM shall perform visits to institutions holding or that might hold persons deprived of their liberty, in order to deter the state authorities and public service officials from any form of torture, or any other form of ill-treatment, as well as for the purpose of directing state bodies towards the creation of accommodation and other living conditions in institutions where persons deprived of their liberty are accommodated, according to the valid regulations and standards.

The NPM has the authority to: use unobstructed, unannounced and everyday access to all institutions and all rooms accommodating or which might accommodate persons deprived of their liberty; to personally talk with those persons and with officials, who are obliged to cooperate on that ground, as well as with other persons who might have important information regarding persons deprived of their liberty; to access complete documentation pertaining to those persons; to present recommendations to the relevant authorities for improving the treatment of the persons deprived of their liberty and for enhancing the conditions in which they are kept or imprisoned. After

completing the visits, the NPM shall compile reports, and deliver them to the visited institutions. Then, the NPM shall maintain constant dialogue with the visited institution, as well as with the relevant authority where this institution belong to, in order to eliminate the identified shortcomings that may lead to torture, inhuman or degrading treatment.

Article 82 of the Law on Foreigners stipulates that the Protector of Citizens, in accordance with the competencies of the Law on the Protector of Citizens and the Law on Ratification of the OPCAT, supervise the forced removals of foreigners.

In the Office of the Protector of Citizens, a special organizational unit has been formed, the National Preventive Mechanism Department, performing professional operations of the NPM.

Within its mandate, the NPM has been monitoring the treatment of migrants and asylum seekers in the Republic of Serbia for years. In recent years, it has made a large number of visits to reception centers and asylum centers, in order to check their treatment and the conditions in which they reside. The transit zones of international airports were also frequently visited, in order to check the treatment of foreigners who were denied entry into the country, as well as the Shelter for Foreigners, where those foreigners who will be forcibly removed from the country reside.

In its work in monitoring the treatment of migrants and asylum seekers so far, in order to create a complete picture and collect all necessary data from the competent authorities, the NPM has also visited regional border police centers, local police stations, institutions for the enforcement of penal sanctions, centers for social work, social welfare

homes, as well as informal places where migrants gather and reside.

Since 2019, the NPM has also been supervising the procedure of forced removal of foreigners from the country, which in most cases is performed by road to the neighboring country. The NPM, in the organizational unit of the police that performs the forced removals (most often the Shelter for Foreigners in Padinska Skela), conducts interviews with foreigners regarding the manner in which the officials treat them during their deprivation of liberty, their stay in the institution, and regarding the respect for their rights, and it also takes an insight into records which are kept about them. The NPM then monitors the transport of foreigners to border crossings, as well as the handover of foreigners to foreign authorities.

Cooperation with other Human Rights Defenders

The Protector of Citizens and the Provincial Ombudsman of AP Vojvodina¹ signed the Memorandum of Association in Performing Operations of the NPM, envisaging that the Provincial Ombudsman shall actively participate in visits of the NPM's Monitoring Team to the institutions holding persons deprived of their liberty, located in the territory of Autonomous Province of Vojvodina.

Based on the completed Public Call,² the Protector of Citizens has selected the associations with which cooperation in performing the NPM duties shall be built, as follows: The Lawyers' Committee for Human Rights, Victimology Society of Serbia, A11 - Initiative for Economic and Social Rights, Center for Youth Integration, Helsinki Committee for Human Rights in Serbia and Human rights committee Valjevo.



During monitoring human rights of migrants at borders, representatives of Center for Youth Integration were members of NPM teams. In addition, they had an important contribution to making the reports with recommendations.

Impact of COVID-19 on the work of your NHRI

The usual NPM methodology was adjusted to the circumstances of the infectious disease outbreak and the "do no harm" principle, i.e. the NPM team conducted its visits in such a way to prevent exposure of persons deprived of their liberty and the staff to the risk of infection. During state of emergency, all visits were announced in advance; individual interviews were conducted through protective glass, where possible; protective equipment was used and the recommended physical distance was maintained in contact with the staff and individuals interviewed without protective glass. The NPM Team only exceptionally entered parts of the facilities where holding cells are located; they did not stay in the official premises longer than necessary and complied with all measures against the spread of infectious disease applied in the visited facility.

During the state of emergency, the NPM have opened a new telephone line working 7/7 (for persons in detention).

In this period the NPM has also visited institutions accommodating migrants, refugees and asylum seekers, in order to check the status and conditions there and measures that the Commissariat for Refugees and Migrations took in order to protect them during the pandemic.

Content of this report

In order to prepare this report, the NPM monitored the treatment of migrants at the three borders with neighboring countries, as well as at internal border crossings – international airports. The NPM sought to visit centers for the reception and care of migrants located near the borders, which are governed by the Commissariat for Refugees and Migration, local police stations, the local prisons and the border police headquarters. The NPM has chosen two borders with the countries from which the largest number of migrants enter Serbia (North Macedonia and Bulgaria) and one through which they try to continue their journey after leaving Serbia (Croatia).

Field visits		
Border	Place/Institution	Date
North Macedonia	Bujanovac Reception Center	February 2021
	Preševo Reception Center	
	Bujanovac Police Station	
	Preševo Police Station	
	Vranje District Prison	
	Border Police Regional Center North Macedonia	
Bulgaria	Pirot Reception Center	February 2021
	Divljana Reception Center	
	Pirot Police Station	
	Niš Penal-Correctional Institution	
Croatia	Border Police Regional Center Bulgaria	March 2021
	Principovac Reception Center	
	Šid Reception Center	
	Šid Police Station	
Internal border crossings	Border Police Regional Center Croatia	March 2021
	"Nikola Tesla" Airport Belgrade	
	"Konstantin the Great" Airport Niš	

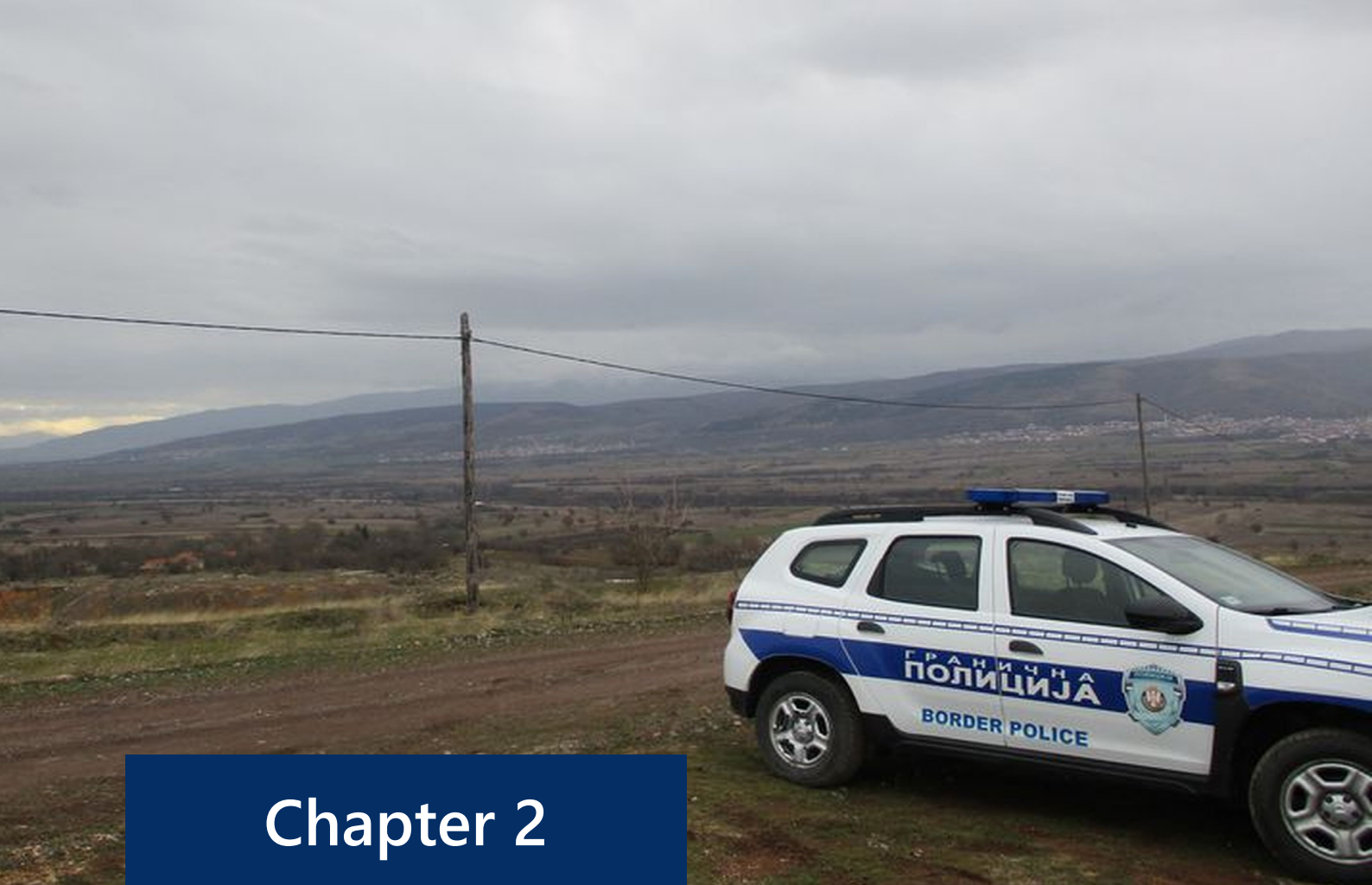
Team members
<ul style="list-style-type: none"> Marko Anojčić, Protector of Citizens/NPM Department Lazar Milošević, Center for Youth Integration Aleksandra Mičić, Center for Youth Integration Petar Janačković, interpreter provided with the support of UNHCR

Forced returns monitoring		
Year	No. of operations	No. of foreigners
2019	8	22
2020	18	40
2021 (January - April)	2	2

Since 2019, the NPM has been continuously monitoring the forced return of foreigners from the country. Forced returns from Serbia are performed by land to neighboring countries whose citizens are foreigners or to neighboring countries that will receive citizens of third countries.

In addition, the Report contains some findings from previous activities of the NPM, which are relevant to the subject of the Report, such as previous NPM annual reports and normative activities – such as opinions on relevant draft laws.

It is important to note that this report does not deal with the asylum procedure itself, but only with access to asylum. This is primarily due to the fact that the asylum procedure is not the basic mandate of the NPM, and also because of the fact that there are a small number of migrants in the visited centers and in the Republic of Serbia in general who are interested in seeking asylum, and there are even fewer of those who apply for asylum.



Chapter 2

Overview of state of human rights at borders in Serbia

The Republic of Serbia is a transit country, in which migrants generally do not intend to stay. This is supported by the fact that during 2020 between 4,000 and 9,000 migrants stayed in the country's official reception and care centers at any given time, but that only 143 asylum applications were submitted. Depending on the needs, there are between 18 and 20 open centers for the reception and accommodation of migrants and asylum seekers. Their names are different (reception centers, transit centers, asylum centers), but the organization, conditions and the work performed are similar or identical. Lately, the intention of the competent authorities has been for those who want international protection in Serbia

to be placed in asylum centers, and for unaccompanied minors to be placed in two dedicated asylum centers, regardless of whether they wish to seek asylum or not. In addition, a small number of unaccompanied minors are in social welfare homes, i.e. in three institutions under the jurisdiction of the Ministry of Labour, Employment, Veteran and Social Affairs, as well as in two similar houses run by NGOs.

The main flow of entry into the country is from North Macedonia. After that, migrants mostly try to continue their way to EU member states, which are their final destination. A few years ago, Hungary was the first next stop, but since the closure of the Balkan route, all the surrounding countries have come into consideration, so the routes primarily through Croatia, as well as Bosnia and Herzegovina and Romania, have gained more importance.

As already mentioned, the NPM has been monitoring the treatment of migrants since the intensification of migration flows through the country. Believing that permitting free movement on the country's territory, with no restriction or control, potentially results in an informal system that plays a significant role regarding the position of migrants/their transfer to the neighboring countries, and poses the corruptive risk regarding competent authorities, the NPM has criticized such a liberal stance by the state bodies. In its reports, the NPM recommended that the state authorities register all migrants who enter the territory of the Republic of Serbia, that migrants be under full control of the competent authorities until the final resolution of their status, i.e. their removal in accordance with applicable regulations, and that the decision-making process on an asylum application is conducted as an urgent matter, all with respect for all the fundamental rights of irregular migrants and asylum seekers, and in accordance with the rules of international law and applicable standards. In the following years, the NPM then called on the competent state authorities to draw up a Plan for the care of refugees/migrants that were caught or returned to Serbia, a Plan for the treatment of those not granted protection in Serbia, as well as a Plan for the integration of those granted asylum in Serbia.

The long-announced new Law on Foreigners was passed in 2018. The NPM issued its Opinion on the Draft Law pointing out, inter alia, that, apart from improving and specifying existing solutions, the Law failed to regulate the status of migrants despite the fact that the stay of a large number of foreigners from war-torn countries in Serbia is not regulated. Even after these suggestions were not implemented in the final text

of the Law, the NPM recommended to the Ministry of the Interior to carry out activities within its competence, bearing in mind the factual situation, in order to regulate the status of all migrants who find themselves in the territory of the Republic of Serbia.

1. Returns and violence at the borders

The NPM received several allegations of illegal expulsion of migrants from the country, both from Serbia and from other countries. This allegedly happens after migrants illegally cross the state border and are caught by police officers or other law enforcement officers near the border, and in some cases further away from the border, deeper into the territory of the country. This is sometimes accompanied by violence, and often by the destruction of personal property, such as mobile phones. After numerous interviews with migrants accommodated in reception centers and with officials, the overall impression is that many of those who illegally cross the borders of Serbia with Croatia, Hungary, Bosnia and Herzegovina and Romania witness illegal expulsion and physical and verbal violence by the police of neighboring countries, the police stealing their money, personal items, phones etc. For example, in 2021 alone, 705 cases of expulsion allegations were recorded in the PC Principovac, and 61 cases in the PC Šid, in both centers from the territories of Croatia, Hungary and Romania. In the case of Serbia, all allegations related to events in the south of the country and rarely involved physical violence.

When it comes to the actions of the officials of the Republic of Serbia, it was not possible to further verify these allegations: eyewitnesses did not know how to precisely explain the time or

place of the events, and they did not document the alleged injuries, nor were they visible at the moment of talking about them. On the other hand, the NPM of the Republic of Serbia does not have the ability or mandate to control the legality and regularity of the work of the foreign officials.

In previous years, the Serbian and Croatian NHRIs have undertaken joint activities at the Serb-Croatian border to check how migrants are treated by authorities.³ Also, the Serbian NPM addressed the Bulgarian NHRI (Ombudsman of Bulgaria) on individual occasions in order to check the treatment of foreigners who were forcibly returned from Serbia to Bulgaria, and who during interviews with the Serbian NPM expressed concerns of how they will be treated in Bulgaria. After that, we received the relevant information from the Bulgarian Ombudsman.

For example, four young men from Syria stated that they had been sent back across the border several times, first from Serbia to North Macedonia, and then from North Macedonia to Greece. They added that during the first attempt to enter the country, they came across a group of police officers and that on that occasion they took their SIM cards from their mobile phones and told them to go back to where they came from. They added that they kicked one of them. Approximately seven days before the interview, they entered the Republic of Serbia through the forest and registered themselves at the reception center.

A young man from Somalia states that after crossing the border and entering Serbia from North Macedonia, he was returned to North Macedonia together with a group of ten people he was with. He adds that he did not experience any form of violence on that occasion,

but that they were not given any information nor explained anything. The same group re-entered Serbia after 13 hours at the same spot.

A boy and a girl, who state that they are brother and sister, described that in January, after crossing the border and entering Serbia from North Macedonia, they came across the police and that they were all non-violently expelled to North Macedonia. When crossing the border again, he and his sister managed to separate from the group before the new contact with the police, in order to escape from them, and then cross the border.

A young man from Lebanon states that he and a small group of people came across uniformed persons, and that they pushed them into a car and returned them to North Macedonia. He adds that on that occasion, they also received punches to the back. A few days later, in January 2021, he entered Serbia on his own, without any problems.

A young man from Afghanistan states that during January and February 2021, he was returned to North Macedonia seven times by uniformed persons, that the reasons for his return were never explained to him, and that on one occasion the group he was traveling with suffered violence from police officers.

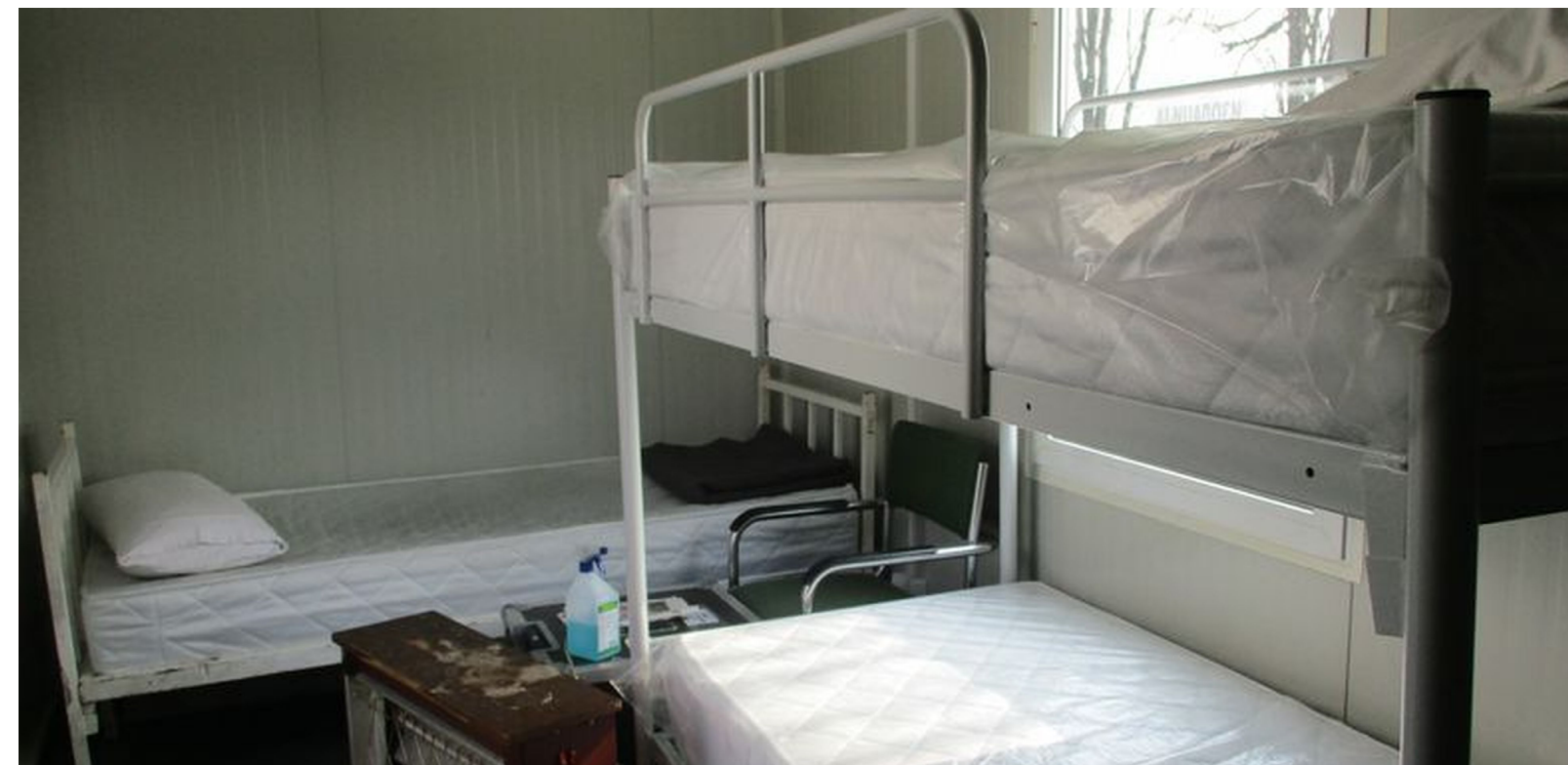
In addition to allegations concerning actions by Serbian authorities, the NPM also received reports from violations that would have occurred in neighbouring countries. This demonstrates the cross-border nature of human rights violations related to migration, and points to difficulties for human rights defenders when monitoring and contributing to human rights accountability at borders. The Protector of Citizens believes that cross-

border cooperation among NHRIs and NPMs is crucial and could be increased. While the NPM does not have the mandate to investigate allegations concerning foreign officials, migrants have brought the following testimonies to its attention:

- A young man from Afghanistan states that he has been in Serbia for six years and that during that period money was stolen from him twice and his mobile phone once, as well as that he once suffered violence. He further states that in the previous period he was returned to Serbia four times from Bosnia and Herzegovina, three times from Croatia, two times from Romania and once from Hungary.
- A man from Jordan claims that 2 months before arriving at a camp in Serbia, he was in camps in Bosnia and Herzegovina in Bihać and that he witnessed police brutality there, but that he did not experience any form of violence personally.
- Several people testified about police violence on the border with Romania. They claim that the

violence was perpetrated by both the Romanian and Serbian police. Several of them even claim that they experienced violence by the Romanian border police on the territory of Serbia, as well as that they experienced violence from persons who did not have any uniforms, but presented themselves as the Serbian police.

- A group of young men aged 19-27 from Afghanistan entered Serbia from Bulgaria. In Bulgaria, they were in the Busmantsi detention center for 25 days. After they managed to enter the territory of Serbia, they came to a camp along the border with Croatia on their own. They complained to the NPM about the actions of the police in Bulgaria and Turkey, saying that they experienced violence on the border between Turkey and Bulgaria by the border police of both countries. They have not yet tried to cross the border with Croatia, which they intend to do. No one intends to seek asylum in Serbia.
- A young man who has lived in a camp for over 9 months testifies to the illegal actions of the Croatian



police during illegal attempts to cross the border. He claims that he crossed the border with Croatia 5 times. Each time he was captured by the Croatian police and returned to the border with Serbia, from where he was forced to return. The police would take his money, phone and shoes every time.

- A young man from Iraq talks about his negative experiences with the police in Bulgaria, where he experienced physical violence, while a person from Sudan talks about violence on the border with Romania, which he tried to cross 3 times to continue his journey. He reported that Romanian police confiscated his phone and money, and he was beaten every time. When he would go to the border, it would take him 6 days to return to the camp since he would run out of money every time. He also claims that in December 2020, on the territory of Serbia near Banja Koviljača, he tried to cross the border with Bosnia and Herzegovina, and that he was hit by the Serbian police with a truncheon on the back, arms and legs, with the explanation that he is not allowed to move near the border. The injuries from the alleged blows were no longer visible, nor were they documented at the time by a medical examination.
- A young man from Afghanistan talks about how on several occasions he and his mother, whom he lives with in a camp, tried to illegally enter Croatia. The Croatian police took their phones, money, beat them, humiliated them and then returned them not far from the border with Serbia, from where they would continue back on foot, sometimes across a distance of over 20

kilometers.

- A mother of a 9-year-old boy from Syria tried to continue her journey several times, and she talks about the violence of the Hungarian police, which, as she testifies, even beat her nine-year-old son. Her brother was allegedly bitten by a border police dog on the territory of Croatia.
- A family from Iraq also testified about the attacks of Croatian police dogs and the police of Bosnia and Herzegovina. Namely, the mother claims that when they tried to cross the border and go to Bosnia and Herzegovina, the police sent dogs at them, scared them and insulted them. They took their mobile phones and money, and even put them in a boat on the river Drina, which they then shook in order to intimidate them. They were then left in the woods without food and water. They were scared, and they managed to find their way back after a while, following the tracks of tractor tires. On their return to Šid, they went to a doctor, and they reported their experience to a non-governmental organization. This family repeatedly tells the story about how the police leaves them 3-10 kilometers from the border from where they always have to walk back.
- One migrant claimed that in Croatia, deep in the territory, he was arrested and taken into custody to a place near Rijeka. He spent several days there in a room with several people in inadequate material conditions. On this occasion, according to him, the police used force and electric shocks. After 2 days they were released without explanation.

All those interviewed testified that during the summary return to

neighboring countries, despite loudly shouting that they want to seek asylum, the police did not pay attention to that and continued to act illegally. At the same time, information was obtained that there are also examples of good practices, when families with children are transported from the border to reception centers and when persons in need of medical care are adequately cared for.

When it comes to official forced returns from Serbia, they are carried out in accordance with readmission agreements. In the regular procedure, migrants stay in the Shelter for foreigners before leaving, during which time they wait for the formalities to be completed with the country that should receive them. Several significant problems related to the removal procedure from the Shelter were identified, which the NPM pointed out in its reports on the monitoring of the forced removal procedure, and it also made appropriate recommendations:

- **communication with foreigners who do not understand English:** the problem is the lack of financial resources;
- **access to a lawyer:** free legal aid requires changes in the law, and in its latest report on the monitoring of the forced removal procedure, the NPM recommended to the Serbian Bar Association to form a list of lawyers with sufficient knowledge and experience to represent foreigners, and to submit the list to the Shelter;
- **access to a doctor:** there is no permanently present medical staff in the Shelter, so medical examinations, including the first examination and examination at discharge, are performed only when necessary,

i.e. at the request of a foreigner or at the discretion of a police officer. According to the latest information, acting on the recommendation of the NPM, the Ministry of the Interior is negotiating with the Ministry of Health on the presence of a medical team in the Shelter on weekdays;

- **non-refoulement:** The NPM pointed out to the Ministry of the Interior that the inability of foreigners to report their situation to officials who decide on their return could potentially put them at risk of violating the non-refoulement rule and thus violating the prohibition of torture, and recommended to the Ministry of the Interior to ensure that during the proceedings the foreigner has the opportunity to indicate that he is threatened with persecution in a particular country, i.e. that there is a risk that he will be subjected to torture and other serious violations of his rights; that the competent authority assesses these allegations and determines whether there are grounds for non-refoulement; and that the allegations of the foreigner and the findings of the competent authority be stated in the explanation of the decision on return. In response to this recommendation, the Ministry stated that it plans to organize and hold seminars and trainings for police officers throughout the Republic of Serbia in cooperation with UNHCR, regarding the assessment of the fulfillment of conditions for making a decision on return in each specific case.

In cases when migrants are not assigned to stay in the Shelter, the removal is carried out by police officers from the regional border police centers (RBPC). During these visits, the NPM came to

the information that, for example, the RBPC Bulgaria forcibly removed 34 foreigners to the Republic of Bulgaria in an accelerated readmission procedure, 7 of whom were in an institution for the enforcement of penal sanctions and the other 27 in the Shelter for Foreigners or in centers for the reception and care of migrants. As the NPM did not supervise the forced removals of foreigners who were not accommodated in the Shelter, the Ministry of the Interior was asked to inform the NPM in the future about all cases of forced removals.

The NPM also wants to point out the difficult implementation of readmissions with North Macedonia. According to the data obtained during the visit, in 2020, 68 requests for readmission of same number of persons were submitted to North Macedonia and all requests were rejected, usually with the explanation that there was no evidence that a foreigner entered Serbia from North Macedonia, even though, according to officials' statements, that was more than obvious and all the necessary evidence was provided. In addition, 108 mixed patrols with officials from North

Macedonia were conducted during 2019, and 22 mixed patrols during 2020, until the COVID-19 pandemic, during which apparently illegal border crossings were observed. The NPM believes that in order to create all the conditions for legal migration management, including the treatment of irregular migrants, it would be necessary to encourage states to cooperate to the greatest extent. This certainly means investigating all allegations of human rights violations, but also cooperating to effectively combat illegal migration and establish a fast and effective procedure for the safe and orderly return of migrants who do not meet the conditions to reside in the country.

According to official data of the RBPCs, in 2020 14,390 people on the border with North Macedonia and 434 on the border with Bulgaria gave up trying to illegally enter the Republic of Serbia. According to police officers, these are foreigners who, after noticing the presence of border police patrols, gave up entering the country.

Although the largest number of migrants residing in the Republic of Serbia do not have a regulated stay, decisions ordering them to leave the country within a certain period of time are made mainly in the case when they commit criminal or misdemeanor acts. A certain part of them really leaves the country within the set deadline, most often by simply continuing their journey, but a significant number of them do not do that. The mechanism of forced removal applies only to a small number of them, mainly to those that can be returned to transit countries in accordance with readmission agreements. Due to this situation, the number of return decisions issued by local police stations has decreased over time. For example, in 2019, PS Šid passed 599 return decisions, and in 2020 only 127.

2. Access to procedures at the Borders

The registration of migrants who have expressed intention to seek asylum is mostly performed at local police stations or regional border police centers. For example, in 2020, the RBPC Bulgaria issued 1,063 registration certificates, and the PS Bujanovac, located near the border with North Macedonia, 118 certificates. In PS Šid, which is located near the border with Croatia, no registration certificates were issued during 2020.

Migrants express their intention to seek asylum on their own, by approaching police patrols or coming to police stations. They can also address the officials of the Commissariat for Refugees and Migration in the centers where they are located, from which they receive the necessary assistance and information. Also, the UNHCR is regularly present in the centers for

the reception and care of migrants and performs the needs assessment for each newly arrived migrant. UNHCR informs those who need international protection about their rights and possibilities, and refer them to an association that provides legal assistance during the asylum procedure. According to the officials in the centers and the representatives of the UNHCR, legal representatives regularly come to the centers, take their powers of attorney and take further actions in the procedure. After registration, migrants who have expressed their intention are transferred to one of the asylum centers.

However, as mentioned earlier, only a small number of migrants wishes to enter the asylum procedure in Serbia. During 2020, 2,830 foreigners expressed their intention to seek asylum. However, not all those registered as potential applicants submitted the asylum application itself. On the day of the visit, there were 25 migrants in PC Divljana who expressed their intention to seek asylum and they were waiting for feedback on further proceedings. On the other hand, in PC Pirot, PC Šid and PC Principovac, on the day of the visit, there were no migrants with registration certificates who stated that they expressed their intention to apply for asylum, and in PC Bujanovac there was one migrant who registered for asylum and then entered the voluntary return program. There were officially 4 registered migrants in PC Preševo, however, as they had not been present since the night before the NPM visit, the officials assumed that they had left the Center.

At the Shelter for Foreigners and at the Belgrade Airport, there is a possibility of registration of foreigners who have expressed their intention to seek asylum, and in the premises, following



the recommendations of the NPM sent to the competent authorities, there are notices about the association that provides legal assistance during the asylum procedure. Niš Airport did not have the equipment for registration, nor was the information on providers of legal aid posted in the room for accommodation of foreigners who have been denied entry to the country, in respect of which the NPM sent recommendations.

The Law on Asylum and Temporary Protection provides for the possibility of conducting the entire asylum procedure at the border crossing, with certain conditions – that the applicant is to be provided with adequate accommodation and food, and that the request may be rejected as unfounded. However, the practice of conducting the procedure at the border crossing has not been introduced due to insufficient capacities on the ground.

When it comes to other procedures, the identification of migrants is done using a form, which exists in several languages and which police patrols have with them. Interviews are conducted with all migrants who express their intention to seek asylum at the police station, in order to identify, among other things, those who are potential victims of smuggling or violence. As a rule, interviews are conducted with a group traveling together, and if necessary, individual interviews are conducted too.

Centers for social work are always involved when it comes to unaccompanied minors. They are assigned a guardian from the local center for social work. Two asylum centers have been designated for unaccompanied minor migrants, as well as five social welfare homes. They spend some time in the first reception center where they applied, only to be

transferred to an institution intended for them at the first opportunity. They also get another guardian there.

Police officers have received numerous trainings on how to deal with migrants or particularly vulnerable groups of migrants. They communicate with them mainly in English, and if necessary, translators are hired. There are female police officers in all visited organizational units of the police. For example, 21 women are employed in the RBPC North Macedonia, 41% of the employees in the headquarters of the RBPC Bulgaria are women and, including all organizational units, 20% of employees are women.

The International Organization for Migration, which implements its Assisted Voluntary Return and Reintegration program, is present on the ground, primarily in the centers for the reception and care of migrants. IOM posters with the necessary information and contacts were spotted in the centers. Several migrants in the centers visited by the NPM entered the program.

3. Reception conditions and deprivation of liberty at the borders

The NPM observed deprivation of liberty related to border management at the Shelter for Foreigners, where foreigners who need to be forcibly removed from the country are accommodated, as well as at international airports, where there are premises for the accommodation of foreigners who have been denied entry.

A special decision is made on accommodation in the Shelter, against which it is possible to seek judicial remedy in administrative proceedings. In its opinion on the Draft Law on Foreigners, the NPM pointed out that every foreigner who is assigned to stay

in the Shelter should be brought before a court within 48 hours, which would make a final decision on his further deprivation of liberty. Here, the NPM expressed dissatisfaction because trial immediacy was excluded i.e. a sole judge was expected to decide with no hearing held. The NPM pointed out that a foreigner should be allowed to plead directly before the court, which is a preventive measure aimed at preventing ill-treatment. These proposals were not included in the Law. As already mentioned, foreigners in the Shelter have difficulties accessing legal aid and the NPM recommended to the Serbian Bar Association to form a list of lawyers with sufficient knowledge and experience and submit it to the Shelter, so that it is available to foreigners who are there. The NPM also identified shortcomings in the access to health care, lack of psychological support and a lack of interpreters, and made appropriate recommendations to address these shortcomings.

The conditions in the Shelter are satisfactory, it was recently renovated, and it was announced that during 2021 the works on the annex, a completely new facility, will be completed, which will significantly expand the capacity of the Shelter. In addition, two new shelters are planned on the border with Bulgaria and on the border with Romania, and the construction of these facilities is mostly complete. During the visit to the border with Bulgaria, the NPM visited the new Shelter, which is located next to the RBPC Bulgaria. The facility has a capacity for about 70 people, and it is equipped with all the accompanying furniture, a sanitary block, a kitchen, a dining room and outdoor living space. According to officials' allegations, it will be put into operation after it receives the use permit, and a change in the systematization of job positions is also

expected, in order to hire a sufficient number of employees. The NPM has indicated in writing to the competent ministry the standards that should be met by facilities of this type in terms of material conditions and the regime of residence.

Foreigners who have been refused entry are issued a decision, on a bilingual form, stating the reasons for the refusal of entry. An appeal against the decision is possible to the Ministry of the Interior. In its opinion on the Draft Law, the NPM pointed out the problem that the Draft stipulates that there is an obligation to file complaints/lawsuits/legal remedies in Serbian language and suggested that foreigners be allowed to file legal remedies in their own language. This was not taken into account.

At the "Nikola Tesla" Airport in Belgrade in 2020, entry was denied to 1,603 foreigners, mostly from Turkey, Tunisia and India. At the "Constantine the Great" Airport in Niš, entry was denied to 19 foreigners. At the "Morava" Kraljevo Airport, no foreigners were denied entry into the country. It is an airport with extremely low traffic - only about 400 passengers during 2020.

The NPM has repeatedly pointed out the inadequate conditions in the room for the accommodation of foreigners at the Nikola Tesla Airport and recommended to the competent authorities to provide a room in accordance with the applicable standards and conditions for staying in fresh air. During this visit, the NPM learned that work had begun on a completely new facility. The NPM then addressed the Airport operator in writing, in order to indicate the standards that should be met by facilities of this type in terms of material conditions and the regime of stay. After that, a meeting was held with the

representatives of the Airport operators, who presented to the NPM the project of a new facility for the accommodation of foreigners. The project envisages two larger rooms for accommodation, with capacity for a total of 16 people, two rooms for seclusion, one room for families, toilets, a room for officials and a fenced area for walking.

At the Constantine the Great Airport, a room for accommodating foreigners who have been denied entry to the country has existed since October 2019. After the first visit to the Airport, the NPM made several recommendations for improving the living conditions, such as providing enough beds, appropriate air conditioning devices and conditions for staying in fresh air. During this visit, it was determined that these recommendations were acted upon.

The NPM ascertained that very few migrants are detained due to their irregular entry or stay in the country. For example, in the Vranje District Prison, which is located in the south of the country near the border with North Macedonia, there have been no migrants serving a prison sentence for offenses related to crossing the state border for a couple of years. In 2020, there were only 19 foreigners convicted in connection with their stay in the country or crossing the state border in the Penitentiary-Correctional Institution in Niš, which is located towards the border with Bulgaria, and a significant part of them are actually citizens of neighboring countries. At the Police Station in Šid, which is located towards the border with Croatia, we received information that more than 90% of misdemeanor proceedings were suspended due to procedural shortcomings, such as the unavailability of interpreters for certain languages. In the Pirot Police Station, one request

for initiating misdemeanor proceedings related to crossing the border was submitted in 2020.

During visits to the institutions for the enforcement of penal sanctions, the NPM noted that there are migrants who had been fined, convicted or detained in criminal proceedings for crimes or misdemeanors not related to their border crossing or stay in the country, but for possession of drugs or weapons, disturbing public order and peace, theft and other acts. A number of migrants have been deprived of their liberty on suspicion that they committed a crime related to human trafficking or were convicted of it.

Reception and care centers are open facilities. Leaving them is allowed every day, and migrants receive a written confirmation that they are accommodated in that center when going out. Although there is a general rule that they should return by a certain time, longer stays are tolerated. Also, everyone can permanently leave the center where they are situated, and some of them inform the employees who work in the center, and some do not. Their place is kept for a few days, but even if they appear after a longer time, they will get another place, considering that there are free capacities. During the visits to the centers, it was determined that the living conditions are generally satisfactory. The rooms are mostly multi-bed, the hygiene is at a satisfactory level, access to hot water and meals are provided. There were no complaints about accommodation or living conditions during the interviews with the migrants. The centers have dispensaries/ infirmaries and medical staff are present in each center. Medicines and other medical supplies are free.

4. Human Rights Accountability at the Borders

Only one of the migrants interviewed by the NPM during the visits indicated that he intends to file a complaint in the coming period, so that the case of illegal treatment by police officers towards him could be investigated. He had photos and medical record of injuries, which occurred several months ago, and which he claims are a consequence of police violence. The general impression is that migrants have no interest in bringing in formal complaints, as they want to leave the country as soon as possible. In rare cases, when they report for a medical examination due to injuries that they claim were caused by violence, the local police station is notified about it, according to the standard procedure. Police officers go to the scene of the event, take the information from the migrant and make a note about the event, which they submit for further processing. An official statement (a notice collected from the individual concerned) should be collected by police officers dealing with foreigner affairs, but migrants are often no longer available. If they are, their statements and documentation on injuries are submitted to the Border Police Administration according to the internal procedure. Only in rare cases migrants who allegedly suffered violence come to the police station to report the violence accompanied by civil society representatives and interpreters. The NPM requested from the Border Police Administration additional information on acting upon the information on illegal conduct of foreign police officers.

The Protector of Citizens and the NPM have unhindered access to all places where migrants are located. There is also unrestricted access to all information on dealing with them,

including the border procedures. During these visits, as was the case in previous years, cooperation with the competent authorities and their organizational units - the Ministry of the Interior, the Commissariat for Refugees and Migration, the Administration for the Enforcement of Penal Sanctions, the Ministry of Labour, Employment, Veteran and Social Affairs - was at a high level. The NPM was provided with all requested information, insight into and photocopying of relevant documentation and unsupervised interviews with migrants.

Also, the NPM receives from the competent authorities, on a monthly basis, statistical data on the stay of migrants in centers and other places.

Acting on the recommendation of the NPM, the Commissariat for Refugees and Migration displayed notices in all centers on the possibility of filing a complaint to the Protector of Citizens, together with contact information.

Civil society organizations also have activities in reception and care centers. These are various workshops, intended for empowerment, support or purposeful spending of time. Representatives of associations representing migrants in asylum and other procedures also access the centers and other places where migrants are located, with prior notice.

The Commissariat for Refugees and Migration, acting on the recommendation of the NPM to establish a complaint mechanism, opened an e-mail address to which migrants can file complaints about the conditions and treatment towards them in the centers. Notices on this were seen, prominently displayed in all centers visited by the NPM. Also, complaint boxes have been set up in

the centers. Official claims that migrants rarely use this opportunity.

Migrants should be empowered to report cases of ill-treatment towards them by police officers and other law enforcement officials in an appropriate procedure, so that their case can be investigated. Even though there are clear procedures for internal or external controls upon complaints, it was noted that, above all, migrants are not ready to present their case, because their main goal is to continue their journey without unnecessary delays.

Nevertheless, the NPM pointed to 'to allegations of misconduct which are listed above in order to ensure that such actions do not occur, and to ensure that in cases where the same happens, an effective investigation is conducted, individual responsibility is determined and responsible police officers are sanctioned. The NPM recommended to competent authorities to take measures to prevent any form of unauthorized expulsion of foreigners from the country. This includes a clear message and instructions to police officers that such conduct is impermissible and subject to appropriate sanctions. It is necessary to give clear instructions in order to ensure that all irregular migrants entering the territory of the Republic of Serbia are individually identified, registered and that legally prescribed actions are taken against them. They should also be informed that, if they believe that the police officers have violated their rights, they can file a complaint in order to have their case investigated, and that they must not suffer any consequences as a result.

Notes

¹The Provincial Protector of Citizens – Ombudsman is an independent and autonomous body of the Autonomous Province of Vojvodina that protect the rights of citizens and monitor the work of the provincial administrative authorities, public enterprises and institutions which have administrative and public competences and which were founded by the AP Vojvodina, as regards their actions in enacting the decisions and other legal acts of the AP Vojvodina. The Provincial Ombudsman is established by the Provincial Assembly Decision.

²The last Public Call was published on the website of the Protector of Citizens. The Public Call also included the conditions that should be met by associations, which are widely set: that the association is registered and that it is engaged in the promotion and protection of human rights and freedoms, as well as criteria for selection of associations: quality and quantity of activities, number of reports and publication and number of experts among the members of the association.

³"The ombudsmen visit the crossings and refugee centres on the Serb-Croatian border": <https://www.ombudsman.rs/index.php/2011-12-25-10-17-15/2011-12-26-10-05-05/4469-2015-12-09-09-07-54>



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Published: July 2021

This publication is part of a series of national reports authored by European NHRIs under ENNHRI's project on the human rights of migrants at borders.

Supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations

Co-funded by
the European Union

