

JEAN MONNET  
CENTRE OF EXCELLENCE

# EXTERNALISING HUMAN RIGHTS AT EU'S EXTERNAL BORDERS



Prof. Dr. Iris Goldner Lang  
Jean Monnet Professor of EU Law  
UNESCO Chair on Free Movement of People, Migration & Inter-Cultural Dialogue  
[igoldner@pravo.hr](mailto:igoldner@pravo.hr)

---

University of Zagreb – Faculty of Law

# OUTLINE

- Externalisation of human rights at EU external borders
  - New tech
  - ‘Legal pushbacks’
- National independent monitoring mechanisms
  - Screening Regulation
  - Croatian experience
  - Open issues

# NEW TECH IN EU BORDER MANAGEMENT

- Border surveillance at external EU borders
- Border checks

- Primary objective:

- Security → **'national security creep'**

- Expansion of national security-related use of tech in migration&asylum

(Algorithmic Fairness for Asylum Seekers and Refugees)



# (THE FUTURE OF) BORDER SURVEILLANCE

- Unmanned aerial systems (UAS) → full autonomy, object detection, processing of imagery and classification
- Heterogeneous robotic systems → interoperable aerial, water surface, underwater and ground vehicles
- Surveillance towers → automated object detection and surveillance of large areas
- Face-recognition technology
- ...

# BORDER CHECKS

- Automated Border Control (ABC) gates
  - Integrated e-gate hardware, document scanning and verification, facial recognition and other biometric verification
- Proposal COM(2021)891 for amendment of Schengen Borders Code
  - Definition of “Instrumentalisation” (Art. 2(27)) enabling Member States to:
    - Limit the number of border crossings and their opening hours (Art. 5(4))
    - Increase border surveillance, in particular the sources and **technical means** to prevent an unauthorised crossing of the border (Art. 13(5))

# CONSEQUENCES

- 'National security creep' in EU migration and asylum policies
- 'Automating suspicion' towards TCNs  
(Chris Jones, 'Automated suspicion: The EU's new travel surveillance initiatives', Statewatch, July 2020)

# ‘LEGAL PUSHBACKS’

- ECtHR: *N.D.&N.T.* ↔ *M.K.v Poland* ↔ *M.H.v Croatia* ↔ *A.A.v North Macedonia*
  - ‘Good’ ↔ ‘bad’ migrants: official border crossing point ↔ green border
  - ECtHR’s endorsement of the states’ deterrent activities when confronted with the possibility of a new migration influx at the EU’s external borders
- I. Goldner Lang, “Pushbacks against the Child’s Best Interests”, Vefassungsblog, 2022
- I. Goldner Lang & J. Ramji-Nogales, “The Incredible Shrinking Removal Process”, in *Oxford Handbook of Comparative Immigration Law* (eds. K. L. Cope, S. Burch Elias & J. Goldenziel, forthcoming in 2023)

# **‘LEGAL PUSHBACKS’**

- Pushbacks at the green border do not violate the Convention even if:
  - Individuals approach the border peacefully and in small numbers and
  - There is no use of force
- As long as:
  - The host state genuinely and effectively enables individuals to apply for asylum at its official border crossing points and
  - No cogent reasons for individuals not to make use of official entry procedures



# THE FUTURE

- Court of Justice?
- EU-level mechanisms
- National independent monitoring mechanisms

# IMM UNDER SCREENING REGULATION

- Proposal for a Regulation introducing a screening of TCNs at the external borders:
  - Art. 7(2): Each MS has to establish an independent monitoring mechanism to ensure that, **in relation to the screening**, fundamental rights are observed and any allegations of the breach of fundamental rights are properly investigated.
- IMM need to ensure:
  - 1) Compliance with EU and inter. law, including the Charter, *during screening*
  - 2) Compliance with national rules on detention
  - 3) That allegations of non-respect for fundamental rights *in relation to screening*, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay

# IMM UNDER SCREENING REGULATION

- FRA has to issue guidance on the setting up and ensuring independence of IMMs
- MSs may request FRA for support in developing IMMs, including safeguarding independence, monitoring methodology and training schemes
- MSs may invite national and international entities & NGOs to participate in monitoring
- IMMs should function in parallel with the monitoring conducted by Frontex

# CROATIAN IMM

- Initially established on 8 June 2021 for 1 year with the possibility of extension
  - New agreement signed on 4 Nov. 2022 for 24 months with the possibility of extension
- **Aim:** “contribute to the respect of fundamental rights by monitoring actions of Croatian police officers in the area of border surveillance, irregular migration and international protection, with particular emphasis on the respect of the principle of non-refoulement, prohibition of collective expulsion, prohibition of torture and other forms of ill-treatment.”
- **Location:**
  - Croatian external borders towards Bosnia and Herzegovina, Montenegro & Serbia, including green border, border crossing points, police stations & police administrations
  - Reception centres

# CROATIAN IMM

- **Coordinating Board:**
  - 1) Croatian Red Cross
  - 2) Centre for the Culture of Dialogue
  - 3) Croatian Academy of Legal Sciences
  - 4) Croatian Academy of Medical Sciences
  - 5) Iris Goldner Lang
- Each NGO appoints two ‘monitors’ who conduct at least 20 observations:
- **Monitors’ activities:**
  - 1) Announced & unannounced observations at all locations under agreement
  - 2) Access to files related to potential illegal treatment:
    - 1) Cases under observation
    - 2) Finally disposed cases on petitions on the alleged illegal treatment
    - 3) Reports of the General Police Directorate

# ADVISORY BOARD

- 1) FRA
- 2) European Commission
- 3) Frontex Fundamental Rights Officer
- 4) European Union Agency for Asylum
- 5) Ombudsperson of the Republic of Croatia
- 6) Ombudsperson for Children of the Republic of Croatia
- 7) UNHCR Croatia
- 8) IOM Croatia

- IMM's semi-annual and annual report
- AB's recommendations
- Action Plan

# MUST-HAVES

- Ensuring true independence in law and in practice
- Adequate financial and human resources
- Financial and operational autonomy
- Power to conduct unannounced visits also to the green border
- Access to all documents, places and individuals
- Recommendations and referrals directly to the national prosecution authorities

# SCREENING REGULATION – OPEN ISSUES

## 1) Scope: Why cover only screening procedures?

### ➤ FRA Guidance on Establishing IMM:

*The mechanism should have a broad thematic mandate: to monitor the actual implementation of fundamental rights safeguards ...during border checks and border surveillance within the meaning of the SBC and at initial registration of new arrivals at or in proximity to EU external borders.*

*The mechanism should have unimpeded access to observe all border operations at any time. It should be able to access remote border surveillance, monitor apprehensions and inspect all designated detention areas.*



# SCREENING REGULATION – OPEN ISSUES (CONT.)

- 2) Monitoring locations: Why only at external borders?
- 3) Rules on evidence gathering & processing and obligations in case of allegations
- 4) Follow-up procedures in case of irregularities
- 5) Are IMM's enough to protect human rights at EU'S external borders?



Jean Monnet Centre of Excellence  
**EU GLOBAL LEADERSHIP  
IN THE RULE OF LAW**

University of Zagreb – Faculty of Law

Copyright: Iris Goldner Lang

This presentation is protected by copyright  
and its origin should be acknowledged in  
any use made thereof.

