

In defence of defenders:

a practical guide
to legal means and advocacy tools
for criminalised Human Rights Defenders
in Europe



Foreword

What does it mean for a Human Rights Defender to be criminalised? Unfortunately, it is a question that has to be confronted all over the world, as those who take peaceful action to defend the rights of others find criminal law turned against them time and time again.

In the most extreme cases, Human Rights Defenders are sentenced to long terms in prison on the back of baseless charges trumped up by the authorities or private actors in direct response to their work. The goal is to put a direct end to their activities, sending defenders away to silence them and severing their ties with their allies.

In other situations, defenders are brought to trial after lengthy investigations and formal proceedings, only for the cases to be dismissed by the courts. In such cases, the goal often seems to be to undermine human rights work in the public eye, conflating it with criminal activity and those who carry it out as criminals. A generous interpretation of such cases would point to a complete lack of understanding within police and prosecution services about who Human Rights Defenders are and the work they do.

I have also seen cases where criminal investigations are opened against unnamed persons, with media reports based on leaks from investigators subsequently suggesting that defenders are those targeted. Such instances seem to point to an intention to put defenders “on warning” and restrict their activities.

All such instances amount to criminalisation, which as the present report outlines, can take several forms. In different variations, it is a practice that refuses to go away in Europe, with certain groups of Human Rights Defenders particularly vulnerable to such retaliation.

In my last report to the UN General Assembly, I focused on the situation of defenders of the rights of migrants, refugees and asylum seekers. Many of the cases included in the report came from Europe, and almost all of those documented from the region involved the criminalisation of defenders for acts of solidarity.

Since the publication of the report, I have received information on new acts of criminalisation within Europe, with Migrant Rights Defenders again those targeted. This pattern, rooted in the fortress Europe mentality and the criminalisation of migration itself, has to end.

2023 marks the 25th anniversary of the adoption of the Declaration on Human Rights Defenders at the UN General Assembly. In the years since its agreement in 1998, Human Rights Defenders have been at the forefront of advances towards the realisation of human rights in every region. European states, along with others, repeatedly affirm their support for defenders, yet they continue to face retaliation within the region — a tidal shift is needed.

I welcome the practical guidance presented in this report. I hope it will become a living document, updated and expanded. Europe is a region with well-established mechanisms for the protection of human rights, and steps to increase access to them for Human Rights Defenders facing criminalisation are of great merit. Initiatives to encourage collaboration among defenders within the region are equally important. Where information and knowledge are shared, networks can strengthen and flourish, people can work together, and the power of solidarity can grow.

Mary Lawlor
UN Special Rapporteur
on the situation of Human Rights Defenders



Preface

Heinrich Böll, the author and Noble laureate, and our foundation's namesake, once said that "meddling is the only way to stay relevant". This is a phrase that describes one of the main ideas of the foundation, and a core value, very well. Meddling, in the sense of actively engaging, as citizens or as a society, is indeed something we seek to always support, wherever we work. Meddling for change, for ideas and, sometimes, in defence of someone else is what we and our partners do around the world. Human Rights Defenders meddle. They defend basic human rights, which are increasingly coming under pressure, especially in the context of migration. Over the last few years, we have witnessed a growing and worrying trend of criminalisation in Europe, of both migration and acts of solidarity with people on the move.

One might think that the recent rapid and rather uncontroversial reception of refugees from Ukraine proves that the EU has the capacity to act in a united way, and to offer protection to even great numbers of people without any major problems. However, quite the opposite is true – the European Union remains divided over asylum and migration policies, and for some time now, the only common goal agreed upon has been the externalisation of migration and more border control. While legally it is clear that every person has a right to seek protection, irregular border crossings are increasingly being criminalised, regardless of a person's intention to claim asylum. And while globally more people than ever are being displaced and forced to leave their home country, the offered number of safe and regular pathways to protection does not even cover a mere fraction of the global need.

The lack of safe routes forces people to put their fate in the hands of smugglers and to endanger their lives, by, for example, crossing the Mediterranean in a rubber dinghy or crossing increasingly fortified, and often deadly, borders. Border "protection" measures at the EU's external borders barely deter people from trying, but make it increasingly dangerous to reach Europe. In the absence of a dignified and human response to those arriving in Europe in need for protection, the support provided by Human Rights Defenders along the so-called Balkan Route or at sea becomes essential. Brave individuals and organisations provide refugees and migrants with their fundamental needs. They defend the rights of

those who often cannot defend themselves, who are vulnerable or whose rights are being structurally violated – including by authorities at the EU's external borders. Instead of making their lives difficult, the European Union and its Member States should honour and thank those volunteers who step in and protect the EU's core values of humanity, particularly where authorities refuse to fulfil their own obligations.

Quite the contrary is true – protection and showing solidarity with people in flight is increasingly treated as a criminal act. While this worrying trend of criminalising people on the move and the solidarity with them is something that needs to be tackled at a political level, the consequences of criminalisation have to be dealt with at an individual level. In fact, criminalisation can come in various forms and with very different scopes, so it is therefore important that activists and organisations are aware of the existing options for action and defence.

This toolkit seeks to support affected Human Rights Defenders by showing them mechanisms and avenues for help and self-defence in cases of criminalisation at various levels. Not only do we believe this to be a useful and essential tool for individual practical use, but we also think that the process of compiling these tools has been valuable in itself: the researchers and authors' collective effort behind it, and the many discussions and exchanges along the way with legal experts, practitioners and activists from all over Europe (including an intensive 3-day workshop at our premises in Thessaloniki), has been an invaluable and important network exchanging and learning experience. The Heinrich Böll Foundation would like to thank the many actors involved in this process for their support and expertise, as well as their trust in working with us for the creation of this toolkit. While we hope that no one will have to use this toolkit, we also hope that in cases of future criminalisation, all those working to protect human rights will be able to make use of it.

Thessaloniki, January 2023

Neda Noraie-Kia
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Disclaimer

The information included in this toolkit is based on international and national law, as well as information provided by relevant institutions and experts (for methodology, see Introduction) and is accurate as of January 2023. The information presented is non-exhaustive, and Border Violence Monitoring Network (BVMN) and the Heinrich Böll Foundation do not take responsibility for the outcomes of pursuing the mechanisms detailed here. There is no direct relation to the work and actions of the institutions listed. Even though this toolkit focuses on Croatia and Greece, there are further countries relevant to look at, since criminalisation is not an issue limited solely to these countries. We have to underline that this toolkit has the purpose of being a living document to be nurtured, changed and enriched with the experience of other individuals and collectives that will have the “fuelling” energy to fight these injustices together. It does not constitute a guarantee of best practice, as contexts differ, and strategies have to be adapted and decided upon on an individual level. There is no “standard” procedure to tackle criminalisation. Every case is individual and therefore must be assessed as such. The toolkit is not intended as an authoritative legal source, as laws and other information might change. We are happy to receive corrections and additions with regard to relevant information and experience, and we invite you to reach out in order to collectively enrich this toolkit.

Acknowledgement

We would like to thank all members of the Network, our external partners and every institution and individual who contributed to this toolkit through their knowledge, expertise and experience. Special thanks to the Center for Peace Studies, the Greek Council of Refugees and all members of the Legal Advocacy and Advocacy Working Group of BVMN for reviewing the content of this toolkit.

We stand in solidarity with all victims of human rights violations, people on the move and political activists facing criminalisation for the act of defending human rights.

Reader's guide to the toolkit

This guide compiles an extensive list of what was identified as the most relevant legislation and mechanisms protecting Human Rights Defenders that face criminalisation due to their work as well as advocacy tools that were considered useful in such situations. The content of this publication is based on extensive research including several interviews with experts, Human Rights Defenders and different bodies and institutions working for their protection.

The introductory chapter does not only elaborate on the background and motivation of writing this toolkit, but also gives an overview on the context of criminalisation of people on the move and Human Rights Defenders, the methodology used for this research and contains a list of the abbreviations used. It is followed by a chapter of general recommendations, which were identified as relevant for Human Rights Defenders during our research which should be considered in all cases, before and during criminalisation processes.

The main body of this toolkit consists of elaborations on legislation, protection mechanisms and advocacy avenues, sorted according to geographical levels. Those are (in order of their appearance): on an international level the UN, other international levels and on a transnational level the European Union. On a national level, this toolkit focuses on Croatia and Greece. In this publication we decided to focus on those two countries as those were the two countries with the best documented cases of criminalisation of Human Rights Defenders within our Network. However, while writing this toolkit, we assured that all other chapters can be applied to other countries in Europe. In addition, it is important to mention that Human Rights Defenders in other European countries also face criminalisation and research in those countries is important to be conducted in the future. Each chapter starts with an overview on relevant legislation, either pro-

tecting or leading to the criminalisation of Human Rights Defenders, followed by elaborations on identified mechanisms and advocacy avenues. On the national level, there are additional subchapters elaborating on legislation, mechanisms and advocacy tools, concerning specific forms of informal criminalisation that were identified as relevant in the context of those countries, for instance relating to police misconduct and data protection.

As criminalisation can have several different forms and advocacy strategies can vary, not all mechanisms might necessarily be relevant to every Human Rights Defender. Therefore, a reader can also follow this index in order to be forwarded directly to the mechanisms of most interest to them.

As an **individual** being criminalised these mechanisms can be relevant:

- **2.2.1.1.** Complaint procedure before the Human Rights Council
- **2.2.2.1.** Individual Complaint to an UN treaty body
- **2.2.3.** UN Special Procedures (Special Rapporteur on Human Rights Defenders)
- **2.2.4.** Reprisals for Cooperation with UN in the Field of Human Rights
- **3.1.2.** OSCE Office for Democratic Institutions and Human Rights (ODIHR)
- **3.2.2.1.** ECtHR
- **3.2.2.2.** The Commissioner for Human Rights
- **3.2.2.3.** The Parliamentary Assembly of the Council of Europe (PACE) and its Committee on Legal Affairs and Human Rights
- **3.2.2.4.** The Conference of INGOs
- **3.3.** Bar Association (if a lawyer): National Bar Association, Council of Bars and Law Societies of Europe (CCBE), International Bar Association (IBA)
- **3.4.** Embassies
- **4.2.2.** European Ombudsperson
- **4.2.3.** EU protection for Human Rights Defenders outside the EU
- **4.2.4.** ProtectDefenders.eu
- **4.2.6.** European Parliament
- **5.2.1.** Croatian Ombudsperson
- **5.2.2.** File a court suit/appeal in front of relevant court (Croatia)
- **5.2.3.** Constitutional Complaint (Croatia)
- **5.2.4.** National CSO of support - CPS (Croatia)
- **5.3.1.2.** Police misconduct (Croatia)
- **5.3.2.2.** Council for Civilian Oversight of Security-Intelligence Agencies (Croatia)
- **5.3.2.3.** Right to Information (Croatia)
- **5.3.3.2.** Croatian Personal Data Protection Agency (Complaint)
- **6.2.1.** Greek Ombudsperson
- **6.2.2.** National Commission for Human Rights (GNCHR) (Greece)
- **6.2.3.** Racist Violence Recording Network (Greece)
- **6.2.4.** File a court suit/appeal in front of relevant court (Greece)
- **6.3.1.1.** The Hellenic Data Protection Authority and Data Protection and Personal Privacy Laws in Greece
- **6.3.2.2.** Police misconduct (Greece)

As an **organisation** being criminalised¹ these mechanisms can be relevant:

- **2.2.1.1.** Complaint procedure before the Human Rights Council
- **2.2.1.2.** Universal Periodic Review
- **2.2.2.2.** Treaty Body Reporting Process
- **2.2.3.** UN Special Procedures (Special Rapporteur on Human Rights Defenders)
- **2.2.4.** Reprisals for Cooperation with UN in the Field of Human Rights

¹ This can also apply in an incident targeting an individual that identifies themselves or directly works with an organisation and is therefore interpreted as an incident of criminalisation against the organisation itself, or in cases where organisations directly address incidents of individuals's criminalisation within their advocacy.

- 3.1.2. OSCE Office for Democratic Institutions and Human Rights (ODIHR)
- 3.2.2.2. CoE Commissioner for Human Rights
- 3.2.2.3. The Parliamentary Assembly of the Council of Europe (PACE) and its Committee on Legal Affairs and Human Rights
- 3.2.2.4. The Conference of INGOs
- 4.2.1. Fundamental Rights Agency of the European Union (FRA)
- 4.2.2. European Ombudsperson
- 4.2.3. EU protection for Human Rights Defenders outside the EU
- 4.2.5. EU Commission Rule of Law Reporting
- 4.2.6. European Parliament
- 5.2.1. Croatian Ombudsperson
- 5.2.2. File a court suit/appeal in front of relevant court (Croatia)
- 5.2.3. Constitutional Complaint (Croatia)
- 5.2.4. National CSO of support - CPS (Croatia)
- 5.3.1.2. Police misconduct (Croatia)
- 5.3.2.2. Council for Civilian Oversight of Security-Intelligence Agencies (Croatia)
- 5.3.2.3. Right to Information (Croatia)
- 6.2.1. Greek Ombudsperson
- 6.2.2. National Commission for Human Rights (GNCHR) (Greece)
- 6.2.4. File a court suit/appeal in front of relevant court (Greece)
- 6.3.2.2. Police misconduct (Greece)

For advocacy **on a short term level**, concerning specific incidents of criminalisation, these mechanisms can be relevant:

- 2.2.3. UN Special Procedures (Special Rapporteur on Human Rights Defenders)
- 2.2.4. Reprisals for Cooperation with UN in the Field of Human Rights
- 3.2.2.2. CoE Commissioner for Human Rights
- 3.2.2.3. The Parliamentary Assembly of the Council of Europe (PACE) and its Committee on Legal Affairs and Human Rights
- 3.2.2.4. The Conference of INGOs
- 3.3. Bar Association (if a lawyer): National Bar Association, Council of Bars and Law Societies of Europe (CCBE), International Bar Association (IBA)
- 3.4. Embassies
- 4.2.3. EU protection for Human Rights Defenders outside the EU
- 4.2.4. ProtectDefenders.eu
- 4.2.6. European Parliament
- 5.2.1. Croatian Ombudsperson
- 5.2.2. File a court suit/appeal in front of relevant court (Croatia)
- 5.2.3. Constitutional Complaint (Croatia)
- 5.2.4. National CSO of support - CPS (Croatia)
- 5.3.1.2. Police misconduct (Croatia)
- 5.3.3.2. Croatian Personal Data Protection Agency (Complaint)
- 6.2.1. Greek Ombudsperson
- 6.2.4. File a court suit/appeal in front of relevant court (Greece)
- 6.3.1.1. The Hellenic Data Protection Authority and Data Protection and Personal Privacy Laws in Greece
- 6.3.2.2. Police misconduct (Greece)

For advocacy on a **long term level**, also in order to build up evidence², these mechanisms can be relevant:

- **2.2.1.1.** Complaint procedure before the Human Rights Council
- **2.2.1.2.** Universal Periodic Review
- **2.2.2.1.** Individual Complaint to an UN treaty body
- **2.2.2.2.** Treaty Body Reporting Process
- **2.2.3.** UN Special Procedures (Special Rapporteur on Human Rights Defenders)
- **2.2.4.** Reprisals for Cooperation with UN in the Field of Human Rights
- **3.1.2.** OSCE Office for Democratic Institutions and Human Rights (ODIHR)
- **3.2.2.1.** ECtHR
- **3.2.2.2.** CoE Commissioner for Human Rights
- **3.2.2.3.** The Parliamentary Assembly of the Council of Europe (PACE) and its Committee on Legal Affairs and Human Rights
- **3.2.2.4.** The Conference of INGOs
- **3.3.** Bar Association (if a lawyer): National Bar Association, Council of Bars and Law Societies of Europe (CCBE), International Bar Association (IBA)
- **3.4.** Embassies
- **4.2.1.** Fundamental Rights Agency of the European Union (FRA)
- **4.2.2.** European Ombudsperson
- **4.2.3.** EU protection for Human Rights Defenders outside the EU
- **4.2.4.** ProtectDefenders.eu
- **4.2.5.** EU Commission Rule of Law Reporting
- **4.2.6.** European Parliament
- **5.2.1.** Croatian Ombudsperson
- **5.2.2.** File a court suit/appeal in front of relevant court (Croatia)
- **5.2.3.** Constitutional Complaint (Croatia)
- **5.2.4.** National CSO of support - CPS (Croatia)
- **5.3.1.2.** Police misconduct (Croatia)
- **5.3.2.2.** Council for Civilian Oversight of Security-Intelligence Agencies (Croatia)
- **5.3.3.2.** Croatian Personal Data Protection Agency (Complaint)
- **6.2.1.** Greek Ombudsperson
- **6.2.2.** National Commission for Human Rights (GNCHR) (Greece)
- **6.2.3.** Racist Violence Recording Network (Greece)
- **6.2.4.** File a court suit/appeal in front of relevant court (Greece)
- **6.3.1.1.** The Hellenic Data Protection Authority and Data Protection and Personal Privacy Laws in Greece
- **6.3.2.2.** Police misconduct (Greece)

² For more elaborations on the importance of this, see below chapter 1 General recommendations.

If a Human Rights Defender is targeted by criminalisation **outside the EU territory**, these mechanisms can be relevant:

- **2.2.1.1.** Complaint procedure before the Human Rights Council
- **2.2.1.2.** Universal Periodic Review
- **2.2.2.1.** Individual Complaint to an UN treaty body
- **2.2.2.2.** Treaty Body Reporting Process
- **2.2.3.** UN Special Procedures (Special Rapporteur on Human Rights Defenders)
- **2.2.4.** Reprisals for Cooperation with UN in the Field of Human Rights
- **3.1.2.** OSCE Office for Democratic Institutions and Human Rights (ODIHR)
(depending on State)
- **3.2.2.1.** ECtHR (if State of concern is a Member State of the Council of Europe)
- **3.2.2.2.** CoE Commissioner for Human Rights
(if State of concern is a Member State of the Council of Europe)
- **3.2.2.3.** The Parliamentary Assembly of the Council of Europe (PACE)
and its Committee on Legal Affairs and Human Rights
(if State of concern is a Member State of the Council of Europe)
- **3.2.2.4.** The Conference of INGOs
(if State of concern is a Member State of the Council of Europe)
- **3.3.** Bar Association (if a lawyer): National Bar Association,
International Bar Association (IBA)
- **3.4.** Embassies
- **4.2.3.** EU protection for Human Rights Defenders outside the EU
- **4.2.4.** ProtectDefenders.eu
- **4.2.6.** European Parliament

List of abbreviations

AYS	- Are You Syrious? (Croatian CSO)
BVMN	- Border Violence Monitoring Network
CAT	- Committee against Torture (UN treaty body)
CCPR	- Human Rights Committee (UN treaty body)
CCBE	- Council of Bars and Law Societies of Europe
CED	- Committee on Enforced Disappearances (UN treaty body)
CERD	- Committee on the Elimination of Racial Discrimination (UN treaty body)
CoE	- Council of Europe
COHOM	- Council Working Party on Human Rights
CPS, CMS	- Centre for Peace Studies (Croatian CSO)
CPT	- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CSO	- Civil Society Organisation
CTC	- complaint tracking code (Greek Ombudsperson)
DPO	- Data Protection Officer
ECHR	- European Convention on Human Rights
ECOSOC	- United Nations Economic and Social Council
ECtHR	- European Court of Human Rights
EDPB	- European Data Protection Board
EIDHR	- Eurxopean Instrument for Democracy and Human Rights
EU	- European Union
EUTRP	- European Union Temporary Relocation Platform
EYP	- National Intelligence Service of Greece
FRA	- Fundamental Rights Agency of the European Union
GANHRI	- Global Alliance of National Human Rights Institutions
GCC	- Greek Criminal Code
GDPR	- General Data Protection Regulation
GNCHR	- Greek National Commission for Human Rights
HDPa	- Hellenic Data Protection Authority
HoM	- Head of EU Mission

HRC	- Human Rights Council
IBA	- International Bar Association
IBAHRI	- IBA's Human Rights Institute
INGO	- International non-governmental organisation
MEP	- Member of the European Parliament
MS	- Member State
NHRI	- National Human Rights Institution
NGO	- non-governmental organisation
ODIHR	- Office for Democratic Institutions and Human Rights
OHCHR	- Office of the United Nations High Commissioner for Human Rights
OSCE	- Organisation for Security and Co-Operation in Europe
PACE	- Parliamentary Assembly of the Council of Europe
RVRN	- Racist Violence Recording Network (Greece)
SLAPP	- Strategic Lawsuits Against Public Participation
SOA	- Security-Intelligence Agency (Croatia)
SPD	- Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UN treaty body)
SuR	- State under Review
TEU	- Treaty on European Union
CFREU	- Charter of Fundamental Rights of the European Union
UDHR	- Universal Declaration of Human Rights
UN	- United Nations
UNODC	- United Nations Office on Drugs and Crime
UNHCR	- United Nations High Commissioner for Refugees
UNO	- United Nations Organisation
UPR	- Universal Periodic Review
VSOA	- Military Security-Intelligence Agency (Croatia)
ADAE	- Hellenic Authority for Communication Security and Privacy
CASE	- Coalition Against SLAPPS in Europe

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Introduction

Recent years have seen a rise in the erosion of the rule of law in Europe and a backlash against democracy, human rights and those working in defence of human rights. Human Rights Defenders are at high risk of facing repression and various forms of criminalisation while protecting, promoting and safeguarding fundamental freedoms and basic human rights.³

Following the definition given by the *UN Declaration on Human Rights Defenders*,⁴ a Human Rights Defender is a person who, individually or in association with others, promotes and strives for the protection and realisation of human rights and fundamental freedoms at national and international levels in a peaceful manner. The term is used broadly and can include activists from different backgrounds, scholars, and law practitioners, such as judges and lawyers. Therefore, the term also includes people on the move.

The consequences of criminalisation are immense – for Human Rights Defenders, as well as for the people they support. Often, either crucial support of victims of human rights violations is stopped completely or valuable resources have to instead be spent on countering acts of criminalisation and their effects. This toolkit outlines and

explores available mechanisms and institutions, protecting legislation, and advocacy avenues to approach when Human Rights Defenders experience criminalisation at the domestic, European or international level. At the domestic level, the focus of this toolkit is on Greece and Croatia, with hope for expansion.

The **Border Violence Monitoring Network (BVMN)** is an independent network of Civil Society Organisations (CSOs) and associations who monitor human rights violations at the borders of the European Union (EU) and advocate to end the violence exerted against people on the move. Several partners and member organisations of BVMN have experienced severe criminalisation themselves.⁵

In recent years, securitisation discourses have shifted the framing of migration as a human rights issue to an issue of criminal concern, leading to an increasing overlap between criminal law, migration management and the fortification of the EU's external borders. Thereof, the framing of migration as a security threat is severely shaping immigration law, policy and practice. Resulting developments, such as mounting hurdles of entry and the expansion of both detention and deportation capacities, have permitted the proliferation of criminal sanctions for "migration offences", thus enabling the criminalisation of migration.⁶ This criminalisation first and foremost targets

³ For further elaborations on the background of these developments, see: Border Violence Monitoring Network. 2022. *Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021*. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote, and Protect Universally Recognized Human Rights and Fundamental Freedoms, (1999) UN Doc. A/RES/53/144. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>

⁵ For further information on the work of the network, see: <https://www.borderviolence.eu/>; Border Violence Monitoring Network. 2022. *Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021*. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

⁶ Parkin, Joanna. 2013. *The Criminalisation of Migration in Europe: A State-of-The-Art of the Academic Literature and Research*. Liberty and Security in Europe Papers, No. 61. Available at: <https://ssrn.com/abstract=2350119>; for more elaborations on the political context, see also *ibid.*; Border Violence Monitoring Network. 2020. *Shrinking spaces: Report on criminalisation of solidarity in the Western Balkans. Greece*. Available at: <https://www.borderviolence.eu/wp-content/uploads/Report-on-Criminalisation-of-Solidarity.pdf>; and Border Violence Monitoring Network. 2022. *Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece*. Available at: <https://www.borderviolence.eu/20548-2/>

people on the move themselves.⁷ Across Europe, thousands of people who have been unjustly targeted are imprisoned without a fair trial, after crossing borders to seek safety and protection. For instance, in Greece, foreigners now make up approximately 60% of the prison population.⁸ The criminalisation of Human Rights Defenders, especially in the context of migration, is an extension of the violation of rights and criminalisation of those whose human rights are at risk. It is a secondary form of criminalisation and a form of governance with the purpose of deliberately targeting and deterring them from continuing their support work, while also discouraging others from engaging in similar activities.⁹

Migrant Rights Defenders are those Human Rights Defenders who specifically promote the rights of migrants and support people on the move.¹⁰ In the European context, especially in recent years, they are disproportionately targeted by criminalisation, in particular due to the misuse of legislation regulating migration-related matters.¹¹ For example, a recurring pattern of allegations made by states against Migrant Rights Defenders centres on the false claims of their alleged involvement in smuggling, espionage or the facilitation of entry into national territory. Additionally, the international

law of the sea is at risk of arbitrary interpretation to the disadvantage of Migrant Rights Defenders working in the area of civil search and rescue. These developments are additionally linked to the phenomenon of a “shrinking space” for civil society, which, in combination with the increasing implementation of restricting legislation for organisations working for the rights of people on the move, leads to an increasingly limited scope of action.¹² Current developments extend to additional groups, such as journalists reporting on related matters, as well as lawyers representing people on the move and activists.¹³

When mapping possible advocacy actions and protection avenues for Human Rights Defenders in cases of criminalisation, the extent, as well as various forms of possible repression and discrimination, have to be taken into account. Not everyone working in the field of human rights has the same privileges, prerequisites and access to resources, and therefore not everyone is affected to the same extent by similar measures. Intersectional forms of discrimination, such as racism, documentation status, classism, sexism and patriarchal structures, as well as homo- and transphobia, can constitute an additional burden to the affected Human Rights Defenders.

- 7 Border Violence Monitoring Network. 2022. Policy Brief: Criminalization of POM. Available at: <https://www.borderviolence.eu/policy-brief-criminalization-of-pom/>
- 8 World Prison Brief. 2022. Greece. Available at: <https://www.prisonstudies.org/country/greece>.
- 9 Border Violence Monitoring Network. 2022. Black Book of Pushbacks 2022. Available at: <https://left.eu/issues/publications/black-book-of-pushbacks-2022/>
- 10 This toolkit, however, is not limited to advocacy tools feasible for Migrant Rights Defenders, but addresses mechanisms which could be of use for all Human Rights Defenders.
- 11 Special Rapporteur on the situation of human rights defenders. 2022. A/77/178: Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers. United Nations General Assembly. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/428/94/PDF/N2242894.pdf?OpenElement>
- 12 For more elaborations on the political context, see also Border Violence Monitoring Network. 2022. Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>; and Border Violence Monitoring Network. 2020. Shrinking spaces: Report on criminalisation of solidarity in the Western Balkans. Greece. Available at: <https://www.borderviolence.eu/wp-content/uploads/Report-on-Criminalisation-of-Solidarity.pdf>
- 13 Border Violence Monitoring Network. 2022. Black Book of Pushbacks 2022. Available at: <https://left.eu/issues/publications/black-book-of-pushbacks-2022/>; see, for the Greek context: Border Violence Monitoring Network. 2022. Submission Rule of Law Report Greece: February 2022. Available at: <https://www.borderviolence.eu/submission-rule-of-law-report-greece-february-2022/>; and Border Violence Monitoring Network. 2022. Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece. Available at: <https://www.borderviolence.eu/20548-2/>

Differentiation of forms of criminalisation

Criminalisation occurs in various forms.¹⁴ For the purpose of this toolkit, we differentiate between formal and informal criminalisation but include both in the scope of possible counteractions.

Formal criminalisation refers to actions undertaken by governments and authorities that often result in detention, court trials and strategic lawsuits against public participation (SLAPPs); Human Rights Defenders are falsely accused of being involved in criminal actions. In the field of migration, charges usually include “facilitation of illegal entry” or “undocumented stay”, which are used to criminalise acts into which people on the move are coerced (such as piloting a boat) or acts of solidarity with them.¹⁵ Actions related to assisting with human rights and the monitoring of human rights violations are frequently criminalised; in the Greek context, this takes the form of allegedly spreading “fake news” through recently introduced legislation which criminalises any information “capable of causing concern or fear to the public or undermining public confidence in the national economy, the country’s defence capacity or public health”.¹⁶

Informal criminalisation can be much more subtle and is the form of criminalisation most observed targeting BVMN member organisations. Acts of informal criminalisation can be categorised as acts of repression, threats, intimidation, and the disturbance or destruction of services. Of increasing concern is the threat or use of physical violence. Informal criminalisation is no less destructive than formal criminalisation. Rather, the arbitrariness of actions threatens to erode rule of law and makes spaces for people on the move and humanitarian work insecure and unpredictable.¹⁷

¹⁴ For detailed information, see Border Violence Monitoring Network. 2022. Black Book of Pushbacks 2022. Available at: <https://left.eu/issues/publications/black-book-of-pushbacks-2022/>

¹⁵ Spaggiari, Ottavia. 2022. How European courts are wrongfully prosecuting asylum seekers as smugglers: ‘These people are victims of the system.’ The New Humanitarian. Available at: <https://www.thenewhumanitarian.org/investigation/2022/09/01/European-courts-prosecution-asylum-seekers>; Border Violence Monitoring Network. 2022. Policy Brief: Criminalization of POM. Available at: <https://www.borderviolence.eu/policy-brief-criminalization-of-pom/>; for prominent examples of people on the move facing such charges, see, for example, I Have Rights. n.d.. Free the Samos 2! The real crime is the border regime – Justice for N. & Hasan. Available at: <https://ihaverights.eu/free-the-samos-2/> and Free El Hiblu 3. n.d.. The El Hiblu 3. Available at: <https://elhiblu3.info/index>

¹⁶ Amendments to the Penal Code, the Code of Criminal Procedure and other urgent provisions. Law 4855/202. 2021. Available at: <https://www.hellenicparliament.gr/UserFiles/bcc26661-143b-4f2d-8916-0e0e66ba4c50/11779190.pdf>; see Border Violence Monitoring Network. 2022. Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021. p.12. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

¹⁷ Border Violence Monitoring Network. 2022. Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

While the mechanisms and possible actions listed in this toolkit tend to be more easily applicable in cases of formal criminalisation, evidence of all forms of criminalisation, formal and informal, should be compiled at all times (see Chapter 1(IV)). Often, informal repression occurs in repetitive and systemic patterns aimed at the discouragement and intimidation of those affected. Evidence should be compiled and can be useful for future proceedings.

Methodology

From September to December 2022, the Border Violence Monitoring Network conducted extensive research on possible legal, institutional and informal mechanisms to take or approach when a Human Rights Defender faces criminalisation. Furthermore, over 25 interviews with various actors and organisations, governmental as well as non-governmental, working in the field of either migration, the no-border movement, human rights protection and/or human rights defending were conducted. Several of the actors faced criminalisation themselves and reported on the actions they undertook, the institutions they approached and the lessons they learned during the process.

1. General recommendations

Insights and recommendations from consultations with Human Rights Defenders facing criminalisation

During the research phase, where interviews were conducted with activists, organisations and other individuals facing criminalisation, certain general points and recommendations were repeated across a variety of actors. Based on those, it was decided to include the following **non-exhaustive list of general recommendations** for Human Rights Defenders facing criminalisation,¹⁸ as the actors we spoke to emphasised the need to consider certain key aspects before and during engagement with the listed instruments and mechanisms.

1) Personal safety first!

Human Rights Defenders should ensure that their person and their organisation, along with its property (including mental property like information and digital data, as well as the physical space of the organisation), are safe. Only if this is guaranteed can further steps to tackle criminalisation by means of advocacy and further contribution to the defence of human rights be successfully and sustainably undertaken. Although this recommendation should generally be considered in calmer periods, when workload is less, and in situations when there is no active threat of repression, it should be especially considered when Human Rights Defenders find themselves facing informal, as well as formal, forms of criminalisation.

Place of safety

- ▶ Safe operational space/office.
 - ▶ Work towards an emergency plan/evacuation plan in case of exceptionally threatening circumstances (see below).
 - ▶ Safe living space.
- If possible: separate working and living space.

If necessary: move/change places.

If the situation on the ground becomes too dangerous or risky, it can be the best decision to move to another place, city or even country. Such decisions can be very hard and might not be possible for everyone due to their documentation status. Hence, considering such situations and relevant steps beforehand can be important.

Resilience and mental health

One of the most common forms of criminalisation is informal repression and, linked to that, strategies of mental demoralisation. Repression can induce feelings of powerlessness, fear, paranoia and depression. In combination with work in the field of human rights that is already mentally and emotionally straining, this can be a huge burden. Therefore, Human Rights Defenders should work towards a resilience strategy. This can also be profitable in times without incidents of criminalisation.

For our interviewees, a resilience strategy included, inter alia:

- ▶ Making the mental health of the team a priority.
- ▶ Considering: What do we need for our psychological and emotional well-being?
- ▶ Having access to suitable psychosocial support for themselves and their team at all times.
- ▶ Fixed working times and fixed off-times, e.g. free weekend policy.
- ▶ Separate private and work phones.
- ▶ Establishing a buddy system within the team to look after each other's mental health.
- ▶ Teambuilding and fun, relieving activities within the team.
- ▶ Exchanges with other people facing criminalisation.

Data security

- ▶ When speaking about safe spaces and personal safety, the security of (digital) data is one of the most prominent issues. Various respondents experienced forms of digital surveillance in the course of criminalisation.

¹⁸ See also "Disclaimer" on page 4.

► As any data collected by authorities can potentially be used against them, Human Rights Defenders should protect their personal and operational data from the beginning of their work-related operations. Any communication and devices should be encrypted, and data should always be stored at safe places.

II) Elaborate an emergency plan

Situations of criminalisation are very likely to be emotionally and psychologically burdening. As criminalisation usually occurs in parallel with, or in addition to, the daily operations of Human Rights Defenders, the available time resources to handle criminalisation are most likely limited. As a form of repression, criminalisation almost always has similar effects of leaving the affected feeling powerless and afraid, and can lead to division in groups. Therefore, many Human Rights Defenders we spoke to recommended pre-emptively elaborating on possible scenarios of criminalisation in calmer periods and building an emergency plan or emergency strategy for cases of criminalisation beforehand. When creating an emergency strategy, the first thing to consider should always be: *How can we, as individuals or an organisation, in a changing environment, guarantee for the safety of our own person, our colleagues and the people we support?*

The following non-exhaustive list outlines helpful points to include in an emergency plan and to keep in mind during ongoing operations:

Continuous reflection and revision of working and advocacy strategies

► Is the modus operandi sustainable?
 ► Human Rights Defenders should stay flexible in their way of working and be able to adapt to political and social changes in their local/national context.

Knowledge of (procedural) rights!

► Although our research showed these to be frequently disrespected by (local) authorities, fundamental and civil rights protect individuals, especially their right to privacy, freedom of expression and opinion. Knowing one's rights and being able to refer to them (and relevant national legislation) when in contact with local authorities like the police can be helpful to alleviate or prevent acts of repression.

e.g. raids of distribution sites for people on the move in Greece.

► Ensure access to legal consultation and/or networks of lawyers.

Access to legal consultation and a good lawyer, or lawyers, can help to evaluate possible situations of criminalisation from a legal perspective. A professional evaluation of the actual legal threat in case of an incident of criminalisation can help to understand the situation from a legal perspective and estimate what steps need to be taken in order to be safe. Often repression works through intimidation, impacting the mental and psychological well-being through the potentiality of a threat. Legal consultation can help to prevent panic and paranoia.

► For legal support in case of criminalisation of people on the move, see Captain Support: Facebook page: <https://www.facebook.com/CaptainSupportLegalAid>
 Email: captainsupport@proton.me
 For advocacy support in case of criminalisation of people on the move, see borderline-europe:

Website: <https://www.borderline-europe.de/projekte/kriminalisierung-von-migration-und-solidarit%C3%A4t?l=en>
 Email: mail@borderline-europe.de

Staying informed about criminalisation in the national context

► Being aware of recent trends and developments regarding criminalisation of Human Rights Defenders in the national/local context can help to circumvent being targeted by the authorities. Humanitarian aid and human rights defence are

increasingly targeted with attempts of criminalisation in several forms.

► Therefore, the following questions are relevant to reflect on:

- Which activities are frequently criminalised?
- Which accusations are frequently raised? What is the legal basis and what can be done to counter it?
- In the context of supporting human rights of people on the move, facilitation of illegal entry is an accusation frequently raised, for example.

Staying informed about funding opportunities

If active criminalisation occurs, counter actions, legal defence and public media campaigns can be necessary. This can be an expensive undertaking, and staying informed about funding opportunities, e.g. through legal help funds, fundraising, possible campaigns and so on, can be helpful.

Considering the public visibility of people involved in the organisation

► Working as a team or organisation can provide legal and public protection for the individuals involved. Nevertheless, some kind of legal accountability for an organisation is usually necessary. Human Rights Defenders should consider what organisational legal status they want to hold.

► Having a spokesperson who represents the organisation publicly is often necessary and helpful. Limiting the number of people who are publicly connected to the organisation to a minimum is recommended, in order to not unnecessarily involve more people in legal proceedings when it comes to formal criminalisation cases.

Considering evacuation scenarios

While establishing an emergency plan, Human

Rights Defenders should also consider scenarios in which evacuation “from the ground” becomes necessary. There can be situations which pose such an imminent threat to the (physical and mental) well-being of the people involved in the organisational structures that leaving the working location for the short- or long-term is the best or only option. These situations can include the threat of physical violence against Human Rights Defenders and their colleagues, or the threat of detention and criminal proceedings.

Therefore, Human Rights Defenders should consider, inter alia, the following points:

- At what point would we leave the site of operations?
- Where do we go?
- Who can easily leave, and who cannot?¹⁹
- What are the implications for people supported by the organisation?
- What are the implications for the organisation, its operations and its possessions?

Here, flat hierarchy and knowledge structures are helpful to ensure the continuation of operations if individuals need to leave the organisation. No individuals should be irreplaceable. This also contributes to mitigating mental pressure on individuals in charge.

III) No one gets left behind

In many cases Human Rights Defenders work in organisations or groups. Group processes can be especially sensitive and require processes of negotiation and consensus finding. It can be helpful to already have discussed a general approach towards repression and criminalisation before it occurs. Questions to consider include:

- What approach towards repression and criminalisation do we, as a group, choose?
- How do we want to make decisions? Who makes decisions?

¹⁹ Here, privileges and power hierarchies with regards to the freedom of movement of people need to be taken into account. Not everyone involved in the organisational structures might have the same privileges and resources to easily migrate to another safe country or region. The group should work towards a solidary solution.

- How can equal access to information and representation for all individuals affected (in case of criminalisation and/or taking steps towards public anti-repression campaigns) be ensured?
- How can we make sure that no one gets left behind in the process?
- How can we consider intersectionality and ensure that people affected by intersectional discrimination, e.g. people of colour, people without privileged passports or people not identifying as cis male, do not carry additional burdens in the course of discrimination?

IV) Build up evidence

Usually, formal (legal) criminalisation files follow incidents of informal²⁰ and ongoing criminalisation. To be able to intervene and react when it becomes necessary, collecting evidence of various forms of repression is important. This can be particularly useful to show that an incident did not occur in a vacuum, but is embedded in a systematic and ongoing practice. This can improve advocacy efforts.

Therefore, Human Rights Defenders should:

- Document all kinds of evidence.
 - This should be done not only through official means of documentation like the mechanisms described in the following chapters of this toolkit, but also through unofficial and internal means, such as:
 - Internal record of incidents, e.g. criminalisation and intimidation by the police.
 - Facebook posts, e.g. of unlawful raids of organisations' sites, intimidation of staff through (local) authorities.
 - Press releases.
 - Reports.
 - Consider that building up evidence might not lead to direct action/relief in the individual situation but is an important step to "fuel" the relevant mechanisms, raise awareness on the issue of criminalisation of Human Rights Defenders, contribute to a community of solidarity and prevent future criminalisation. Increasing the evidence base

helps to prove the systematic character of criminalisation and will be helpful in legal proceedings – for personal means, as well as for other individuals/organisations facing similar situations.

- Collecting evidence also contributes to collecting information on the intersectionality²¹ of criminalisation of Human Rights Defenders and related topics, such as criminalisation of migration, democracy, (shrinking) space for civil society and feminism. This is important to understand criminalisation as a political undertaking and for possible long-term advocacy.

V) Build a network

One of the key tools for effective individual and long-term advocacy is a strong network of solidarity and support. Building such a network can be a lengthy and arduous process, which should start before criminalisation is taking place. It is recommended to establish and broaden contacts with:

Politicians at the national, as well as the EU, level

- National politicians and those in the EU parliament can be important contacts to create visibility of an issue, to raise public awareness and to facilitate access to (political) funds.
 - They might not be able to directly support or change a situation, but can contribute to shifting the attention of their colleagues and therefore influence the political narrative.
 - Members of the European Parliament (MEPs) can take certain concrete steps which can be supportive in the political dialogue, such as submitting parliamentary questions at any EU institution or body, e.g. the Council of the EU and the European Commission.²²
 - Nevertheless, Human Rights Defenders approaching politicians should consider that their scope of action might be limited. It is advisable to evaluate beforehand what to expect from domestic, as well as EU, politicians and what to demand in order not to waste time and energy.

²⁰ For a definition of informal criminalisation, see Introduction.

²¹ For elaborations on intersectionality in the context of criminalisation of Human Rights Defenders, see Introduction.

²² For more information, see Chapter 4.2.6. on engagement with the European Parliament.

Journalists and media outlets

► Human Rights Defenders should at all times be aware of the power media holds to influence public opinion and narratives. Media outlets may counteract Human Rights Defenders' aims and be used as a tool of criminalisation through governmentally induced smear campaigns, but equally can be used as a support structure for the solidarity network. Therefore, media outlets are an important part of launching media campaigns to counter smear campaigns, launch anti-repression campaigns and to generally build a strong counter-narrative.

► Public attention on the issue (the case for defending human rights, as well as the criminalisation itself) can be important to generate backing in civil society and to acquire potential funds.

► Making (personal) contacts with journalists and building a continuous relationship of mutual trust is recommended. This can be done, for example, by reaching out to journalists and discussing recent developments with them.

► Contacts with local and national journalists can help with understanding the public narrative and to monitor national press, relevant articles and developments.

Individuals, e.g. scholars and researchers

Academics working in the field of researching the criminalisation of Human Rights Defenders will be interested in cooperating with criminalised Human Rights Defenders. These contacts can be mutually beneficial as they contribute to the creation of public awareness and can facilitate further networking.

Human rights awards

► There are a considerable number of human rights awards and prizes, given to individuals or groups who are outstandingly engaged in the protection and defence of human rights. They can be

an advocacy channel as public attention will be shifted to the concern of the awardees.

► Additional to potential award funds, an award title and the accompanying publicity can potentially contribute to the protection of Human Rights Defenders against criminalisation and smear campaigns.

► See, for example:

- Front Line Defenders Award²³
- Sakharov Prize of the European Parliament²⁴

Local and international non-governmental organisations, and legal initiatives

► Apart from making use of the mechanisms listed in this toolkit, networking and making contacts with international non-governmental organisations (INGO), as well as local ones, working in the field of human rights and Human Rights Defenders can be helpful when it comes to criminalisation. Having (personal) contacts within, and having had exchanges with, other organisational structures beforehand will make it more likely that an organisation is willing to support a Human Rights Defender's case. This might be helpful in cases of criminalisation due to the public and professional reach those organisations have.

► During the research for this toolkit, the following non-exhaustive list of INGOs were identified that state in their web presence a focus of their work on the criminalisation of Human Rights Defenders in Europe:

- Amnesty International
- Civil Right Defenders
- Front Line Defenders
- Human Rights Watch
- Human Rights House Foundation
- Sea Watch Legal Aid Fund
- International Commission of Jurists
- International Federation for Human Rights
- International Service for Human Rights

²³ For more information and current calls for nominations, see: Frontline Defenders. 2023. The Front Line Defenders Award. Available at: <https://www.frontlinedefenders.org/en/front-line-defenders-award>

²⁴ For more information and contact details: Sakharov Prize European Parliament. N.d. Home: Sakharov Prize. Available at: <https://www.europarl.europa.eu/sakharovprize/en/home/>

Other people facing criminalisation

► Connecting with other Human Rights Defenders, individuals as well as organisations, facing criminalisation can be useful. Knowing people facing similar situations can be helpful to exchange and learn from each other's experiences and support each other by building strong evidence sharing networks and shared expertise on an issue.

► If Human Rights Defenders are legally criminalised in a joint case with other organisations or individuals, trying to find a common ground on how to deal with and approach criminalisation was perceived to be helpful. There are several possible approaches, and while some organisations might consider criminal investigations as a merely legal issue, others will handle criminalisation as a political undertaking, putting it in a broader context that requires a political answer. There is no right or wrong approach, and finding common ground might not be possible, but being aware of potential dissents and finding ways to not let them obstruct each other's work is desirable.

VI) Consider political and societal context

Acts of repression and criminalisation, albeit partially having the form of legal instruments and proceedings, must always be understood in their political context. The BVMN adheres to the understanding that all undertakings of criminalisation of Human Rights Defenders are political, namely an indirect undertaking by authorities to silence unwanted criticism of their human rights violations, and therefore also require a political answer. Political contexts vary from case to case.

► Before Human Rights Defenders approach (official) governmental mechanisms to tackle criminalisation, they should consider the national and local political context. Governmental bodies might not necessarily be independent or might take decisions based on their broader political understanding.

► When cooperating with political or governmental bodies, Human Rights Defenders should be aware that shared information could get leaked and consider the trustworthiness of the mechanism.

► Testimonies in front of governmental authorities like the police can be used against Human Rights Defenders. Therefore, statements and information should be shared carefully and cooperation with governmental institutions should take place after cautious considerations. Cooperative behaviour is not a guarantee of being spared from criminalisation.

► The general trend of the erosion of the rule of law in Europe can make legal tools powerless. Both national and international law and legal instruments are at risk of being abused by political actors for their political means.

► When cooperating with national and local authorities, Human Rights Defenders should be aware of possible language barriers.

► Human Rights Defenders should conduct a risk assessment before taking any advocacy action:

- What are the potential benefits of the mechanism?
- What are the potential risks?
- For example: Is there a risk of pre-trial detention when testifying in a court case?

► Human Rights Defenders should also consider the societal context they operate in. When considering pursuing local advocacy, it should be considered how much public attention could be shifted to their personal situation. This depends on the social situation and on how tense the issue may potentially be. In a very politicised and tense situation, one might not want to be exposed to a lot of public attention due to several concerns, such as issues of security. It is important to consider which forms of advocacy to choose in order to achieve the optimal outcome without experiencing social backlashes.

VII) Consider power hierarchies

Everyone working in the field of human rights should be aware of, and sensitive to, the existing **power hierarchies in our societies, especially in the field of human rights defence**. Not all people share the same privileges, or have the same access to support/resources. Human Rights Defenders should reflect on their own privileges and consider that criminalisation of Human Rights De-

fenders is often a secondary form of criminalisation of movement that disproportionately targets people on the move themselves.

2. The United Nations

2.1. Relevant declarations and conventions

Within its mandate, the United Nations (UN) has developed an extensive framework of human rights law, including the establishment of rights in treaties and instruments, and associated mechanisms to support their protection and implementation.²⁵ The most well-known, and also first document developed, is the *Universal Declaration of Human Rights* (UDHR). The *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights* and the UDHR form the *International Bill of Human Rights*. In the years following the adoption of these international documents, further documents (also referred to as treaties and instruments) were established, and then signed and adopted by States, e.g. conventions enshrining the rights of specific groups, such as children.²⁶

It is important to point out that treaties and covenants are legally binding, hence enforceable and with established accountability, under the UN framework, and therefore international law, once a State becomes a party to the respective covenant or treaty.²⁷ Therefore, Member States (MS) are obliged to align their legislation with the respective treaty or covenant and put relevant protection mechanisms in place. In case the latter are not effectively protecting the rights enshrined in the covenant or treaty they are party to, different mechanisms are in place within the UN human rights framework that seek to ensure their implementation, and which are accessible at the regional level.²⁸

However, one should consider that States can reject certain provisions of a treaty, which is called a “reservation”. This follows specific rules, which are laid down in Art. 2(1)(d) of the *Vienna Convention on the Law of Treaties*.²⁹ In contrast to that, instruments are not legally binding. UN instruments can have the form of a declaration, principles or guidelines; they interpret international law concerning a specific topic and give guidance thereof.³⁰ Hence, they contribute to “the dynamic development of international legal norms and reflect the commitment of States to move in certain directions, abiding by certain principles.”³¹ For instance, the *Declaration on Human Rights Defenders*, as explained below, constitutes such an instrument. Within the

25 <https://www.un.org/en/global-issues/human-rights>

26 United Nations Human Rights Office of the High Commissioner. N.d. International Human Rights Law. Available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>

27 United Nations Human Rights Office of the High Commissioner. N.d. Status of Ratification: Dashboard. Available at: <https://indicators.ohchr.org/>

28 <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>

29 For more information, see: Dag Hammarskjöld Library. 2022. What are reservations to treaties and where can I find them? Available at: <https://ask.un.org/faq/139887>; for a list of reservation to treaties, see: United Nations Treaty Collections. N.d. Multilateral Treaties Deposited with the Secretary-General. Available at: https://treaties.un.org/Pages/ParticipationStatus.aspx?clang=_en; for the original legal text, see: Vienna Convention on the law of treaties. 1969. Volume 1155-I-18232. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>

30 United Nations Human Rights Office of the High Commissioner. N.d. International Human Rights Law. Available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>; Global Detention Project. 2016. Migration-Related Detention and International Law. Available at: <https://www.globaldetentionproject.org/international-law/un-declarations-principles-guidelines>;

31 United Nations Permanent Forum on Indigenous Issues. N.d. Frequently Asked Questions: Declaration on the Rights of Indigenous Peoples. Available at: <https://www.un.org/esa/socdev/unpfii/documents/FAQsindigenousdeclaration.pdf>

UN, the Office of the High Commissioner for Human Rights (OHCHR) has the mandate to promote and protect human rights as enshrined in the UN human rights legal framework.³²

The UN has established several declarations and conventions that protect the rights of Human Rights Defenders and associated mechanisms to ensure their implementation which will be introduced below.

2.1.1. The Declaration on Human Rights Defenders

The most relevant UN declaration for Human Rights Defenders is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*,³³ also known as the *Declaration on Human Rights Defenders*. As mentioned above, due to its format as a declaration, it is not a legally binding instrument. However, it reflects obligations set in other legally binding UN treaties and gives guidance on their implementation concerning Human Rights Defenders.³⁴ In order to ensure the application of the declaration, the UN established the position of the Special Rapporteur on Human Rights Defenders (Special Procedure), which is tasked with the promotion of its implementation (see Chapter 2.2.3.).

The following articles of the declaration are the most relevant:³⁵

- Art. 1: “Everyone has the right, individually and in association with others, **to promote and to strive for the protection and realisation of human rights** and fundamental freedoms at the national and international levels.”
- Art. 5: Right to **meet and peaceful assembly**; to found and be a member of groups, organisations, or non-governmental organisations (NGOs), and to communicate to government institutions in order to promote and protect human rights.
- Art. 6(a): Right “to know, seek, obtain, receive and hold **information about all human rights and fundamental freedoms**” and to information on **their implementation** on governmental and administrative level.
- Art. 6(b): Right “to **publish, impart or disseminate to others views, information and knowledge** on all human rights and fundamental freedoms.”
- Art. 6(c): “**To study, discuss, form and hold opinions** on the observance, both in law and in practice, of all human rights and fundamental freedoms and [...] **to draw public attention to those matters.**”
- Art. 7: Right to develop and to advocate for new human rights ideas.
- Art. 8: Right “to have **effective access, on a nondiscriminatory basis, to participation in**

³² United Nations Human Rights Office of the High Commissioner. N.d. Mandate of UN Human Rights. Available at: <https://www.ohchr.org/en/about-us/mandate-un-human-rights>

³³ Find the original legal text here: Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote , and Protect Universally Recognized Human Rights and Fundamental Freedoms, (1999) UN Doc. A/RES/53/144. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and->; for further legal elaborations by the UN Special Rapporteurs, as well as recommendations on the implementation of the declaration, see: UN Special Rapporteur on the situation of human rights defenders. 2011. Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/CommentarytoDeclarationondefendersJuly2011.pdf>

³⁴ United Nations Human Rights Office of the High Commissioner. N.d. Declaration on human rights defenders: Special Rapporteur on human rights defenders. Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/declaration-human-rights-defenders>

³⁵ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote , and Protect Universally Recognized Human Rights and Fundamental Freedoms, (1999) UN Doc. A/RES/53/144. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and->

the government of his or her country and in the **conduct of public affairs**", including the right to submit criticisms and proposals for improvement to governmental bodies.

- Art. 9(1): Right to **"an effective remedy and to be protected in the event of the violation of those rights"**, in particular while promoting and protecting Human Rights.
- Art. 9(2): Everyone that feels their human rights violated has the right **"to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay."**
- Art. 9(3)(a): Right to **"complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities [...], which should render their decision on the complaint without undue delay."**
- Art. 9(3)(b): **"To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments."**
- Art. 9(3)(c) **"To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms."**
- Art. 9(4): Right to **"unhindered access to and communication with international bodies."**
- Art. 9(5): **"The State shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental**

freedoms has occurred in any territory under its jurisdiction."

- Art. 10: Prohibition to participate in human rights violations.
- Art. 12(1): Right **"to participate in peaceful activities against violations of human rights."**
- Art. 12(2): **"The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration."**
- Art. 12(3): Entitlement to **effective protection** under national law when opposing peacefully acts by a government or other groups that result in human rights violations
- Art. 16: importance of **"contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research."**
- Art. 17: **limitations** to the exercise of those rights and freedoms, which can be implemented, among others, if they are in accordance with international law, are determined by legislation, serving the purpose to respect the rights of others.
- Art. 18: Obligation to contribute to a "community, in which alone the free and full development of his or her personality is possible", and in Art. 18(1), where all actors have a **"responsibility in safeguarding democracy, promoting human rights."**

2.1.2. International Covenant on Civil and Political Rights

In addition, the *International Covenant on Civil and Political Rights* guarantees certain rights that are also relevant for Human Right Defenders.³⁶ As explained above, in its form as a covenant, it is legally

36 For the original legal text, see here: International Covenant on Civil and Political Rights. 1966. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

binding for all the States that are so-called State Parties to it. All European Member States are State Parties to the Covenant. It was signed by Croatia and ratified in 1992 and by Greece in 1997.³⁷ Being a State Party to the covenant means that the state concerned agrees to be bound under this treaty to international law.³⁸ This not only means full respect of the rights laid down in the respective treaty, but in addition, the “States must refrain from interfering with or curtailing the enjoyment of human rights,”³⁹ and must also provide protection for individuals and groups against violations of the human rights enshrined in the ratified treaty. This includes the adoption of the treaty in national legislation.⁴⁰ Violations of the rights granted in covenants can be addressed by the respective UN treaty body. In the case of the International Covenant on Civil and Political Rights, this falls under the responsibility of the Human Rights Committee (see Chapter 2.2.2.).

The most relevant articles of the *International Covenant on Civil and Political Rights* for Human Rights Defenders are the following:⁴¹

- Art. 7: Prohibition of **torture or to cruel, inhuman or degrading treatment or punishment**.
- Art. 9(1): Right to **liberty and security of person**, prohibition of arbitrary arrest or detention.
- In addition, Art. 9 defines some procedural rights:
 - Right to “be **informed**, at the time of arrest, of the reasons for his arrest” (Art. 9(2)), as well as on the **charges** against them
 - When arrested for a criminal charge, the right to be brought “before a **judge** or other officer authorised by law to exercise judicial

power and shall be entitled to **trial** within a reasonable time or to release” (Art. 9(3))

- Entitlement to a **court trial** when deprived of one’s liberty (Art. 9(4)).
- Enforceable **right to compensation** when facing being unlawfully deprived of one’s liberty (Art. 9(5)).
- Art. 12: **Freedom of movement** and right to choose one’s residency, right to leave any country and enter one’s own country.
- Art. 13: The **expulsion of a foreigner** from the country is only allowed based on a lawful decision or for reasons of national security. In such cases the individual shall “be allowed to submit the reasons against his expulsion and to have his case - reviewed by, and be represented for the purpose before, the competent authority.”
- Art. 17: “No one shall be subjected to **arbitrary or unlawful interference with his privacy, family, home or correspondence**, nor to unlawful attacks on his honour and reputation”, and the right to protection against such incidents.
- Art. 19: **Freedom of opinion**, freedom of expression, right to access to information. The right to information can be limited – “(a) For respect of the rights or reputations of others [and] (b) For the protection of national security or of public order (ordre public), or of public health or morals.”
- Art. 22: **Freedom of Association**.
- Art. 26: **Prohibition of discrimination** (including on the basis of political or other opinion).

³⁷ United Nations Human Rights Office of the High Commissioner. N.d. Status of Ratification: Dashboard. Available at: <https://indicators.ohchr.org/>

³⁸ United Nations Human Rights Office of the High Commissioner. N.d. Status of Ratification: Dashboard. Available at: <https://indicators.ohchr.org/>

³⁹ United Nations Human Rights Office of the High Commissioner. N.d. International Human Rights Law. Available at: <https://www.ohchr.org/en/instruments-and-mechanisms/international-human-rights-law>

⁴⁰ Ibid.

⁴¹ International Covenant on Civil and Political Rights. 1966. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

2.1.3. Universal Declaration on Human Rights

The rights of Human Rights Defenders are furthermore enshrined in the *Universal Declaration on Human Rights*,⁴² which, as mentioned above, constitutes the basis of the UN human rights framework, although is not legally binding due to its form as a declaration. The Declaration is able to influence current legislation and public discourse, but as it is non-binding, there is no way to force the obligations onto Member States. Therefore, many actors have criticised it as a limited instrument for ensuring compliance with human rights guarantees.⁴³ However, for Human Rights Defenders it can play a relevant role, as it constitutes the basis for the complaints procedure before the Human Rights Council (as in Chapter 2.2.1.1).

In cases of criminalisation, the most relevant rights in the declaration are:⁴⁴

- Art. 3: Right to **life, liberty and the security** of a person.
- Art. 5: **Prohibition of torture or to cruel, inhuman or degrading treatment or punishment.**
- Art. 9: **Prohibition of arbitrary arrest, detention or exile.**
- Art. 10: Entitlement “in full equality to a **fair and public hearing** by an independent and impartial tribunal.”
- Art. 12: **Prohibition of “arbitrary interference** with [one’s] privacy, family, home or correspondence, [and] attacks upon [one’s] honour and reputation” and the right to protection of the law in case of the latter.

- Art. 19: **Freedom of opinion, freedom of expression**, right to information through any media.
- Art. 20: **Freedom of peaceful assembly and association.**

In very serious cases of criminalisation of Human Rights Defenders, the *International Convention for the Protection of All Persons from Enforced Disappearance*⁴⁵ and the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*⁴⁶ might also be of relevance.

2.1.4. UN Protocol Against the Smuggling of Migrants by Land, Sea and Air

As criminalisation of Migrant Rights Defenders is often linked to allegations of smuggling, in particular for charges at the national level (see Chapter 5 and Chapter 6), it is important to be aware of the *UN Protocol Against the Smuggling of Migrants by Land, Sea and Air*, which constitutes the international framework relevant in such cases.

The international legal definition of “smuggling” is contained in the *UN Protocol Against the Smuggling of Migrants by Land, Sea and Air*, which supplements the *UN Convention against Transnational Organized Crime*. Article 3(a) of the Protocol defines the “smuggling of migrants” as:

“[T]he procurement, **in order to obtain, directly or indirectly, a financial or other material benefit**, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”.

⁴² For the original legal text, see: Universal Declaration of Human Rights. 1948. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁴³ For current discourse on the Universal Declaration on Human Rights, see, for example: Hassan, Syed. 2020. The “Declaration” in UDHR. Available at: https://www.researchgate.net/publication/340236754_THE_'DECLARATION'_IN_UDHR

⁴⁴ Universal Declaration of Human Rights. 1948. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁴⁵ International Convention for the Protection of All Persons from Enforced Disappearance. 2006. UN Doc. A/HRC/RES/2006/1. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-all-persons-enforced>

⁴⁶ United Nations. 1984. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>

The requirement of intent to obtain financial or other material benefit in order to be considered a “smuggler” for the purpose of this Protocol **excludes Human Rights Defenders from being categorised as smugglers**, as they work on a voluntary basis and do not seek such benefits. Under this Protocol, therefore, Human Rights Defenders cannot be criminalised for smuggling migrants.

Article 5 further specifies that migrants will not incur criminal liability under this Protocol as they are considered the object of the smugglers’ criminal conduct. This protects people on the move from being criminalised for smuggling or illegal entry under this Protocol.

The United Nations Office on Drugs and Crime (UNODC) published *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* in 2004. These legislative guides explicitly confirm that the intention to acquire financial or other material benefits from the facilitation of illegal entry and transit of migrants was included in the Protocol for the purpose of excluding Human Rights Defenders from the definition of smugglers.⁴⁷ A paper published in 2017 by UNODC on the concept of “financial or other material benefit” refers to these legislative guides and accordingly encourages States “to include safeguards to ensure that faith-based organizations, civil society and individuals acting without any purpose to obtain a financial or other material benefit are excluded from the application of smuggling offences while ensuring that such exclusion cannot be used as a loophole

to escape justice.”⁴⁸ The UNODC has, through these documents and through the Protocol itself, made it very clear that the Protocol against the Smuggling of Migrants does not apply to Human Rights Defenders and that **people who do not intend to obtain financial or other material benefit should be excluded from criminalisation efforts** in the implementation of this Protocol.

The EU has acceded to this Protocol,⁴⁹ as well as all of its Member States except Ireland. However, despite the EU’s accession, its own legal framework does not include the safeguards to protect Human Rights Defenders required in the *Protocol against the Smuggling of Migrants*.

2.2. Mechanisms

Within the UN, there are several mechanisms in place in order to protect Human Rights Defenders and advocate for their rights, which are mainly in the mandate of the UN High Commissioner for Human Rights.⁵⁰ These mechanisms constitute the tools to implement the relevant UN treaties, covenants and instruments, and act upon violations of them (introduced above in Chapter 2.1.).

2.2.1. Human Rights Council

The Human Rights Council (HRC) is one of the most important bodies within the UN system. It is responsible for enhancing the promotion and protection of human rights, as well as for addressing situations regarding human rights

⁴⁷ United Nations. 2000. Protocol against the Smuggling of Migrants by Land, Sea, and Air. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-against-smuggling-migrants-land-sea-and-air>

⁴⁸ United Nations Office on Drugs and Crime. 2004. Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto UN Sales No. E.05.V.2. Available at: <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>

⁴⁹ Council Decision 2006/616/EC of 24 July 2006

⁵⁰ https://www.ohchr.org/en/ohchr_homepage

violations and providing recommendations with regards to this matter.⁵¹ As an important human rights body, the Human Rights Council can be a relevant actor in preventing the criminalisation of Human Rights Defenders, especially at a systemic level. The two main mechanisms within the Human Rights Council that can be useful with regards to the criminalisation of Human Rights Defenders are the complaint procedure before the Human Rights Council and the Universal Periodic Review.

2.2.1.1. Complaint procedure before the Human Rights Council

The complaint procedure before the Human Rights Council was established “**to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.**” It enables individuals and organisations to bring such violations to the attention of the Human Rights Council and is confidential, to ensure better cooperation with the State concerned.⁵²

Since the goal of the complaint procedure is to address consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms, it is important to note that **a single complaint (presenting evidence of just a single case) would most likely not suffice to activate this mechanism.**

Which complaints are addressed in the complaint procedure?

The complaints addressed in the complaint procedure can be submitted by:

- individuals
- groups
- NGOs

These actors must claim that their human rights have been violated or that they have direct knowledge and credible information with regards to such violations.⁵³ A complaint can be submitted against any Member State of the UN.⁵⁴

Admissibility criteria for the complaints

For the complaint to be considered, it must meet the following admissibility criteria:⁵⁵

► **The author** of the complaint is **any person or any group** that is acting in good faith and is not politically motivated. Furthermore, they have to have **direct and reliable knowledge with regards to the violations** of human rights, as well as clear evidence thereof. The complaint cannot be made anonymously, but it is possible to request confidentiality regarding certain information.

► **The language** in the complaint is **not abusive** and the complaint is **not based only on reports made by the media.**

► The complaint is **not connected to a “consistent pattern of violations”** that is already a **matter of consideration** by another UN or comparable regional complaints procedure in the field of human rights. This means that the relevant issue has not been addressed yet by another relevant body/institution.

► **Exhaustion of domestic remedies** – the complainant has raised the same complaints in the

⁵¹ United Nations Human Rights Council. N.d. Welcome to the Human Rights Council. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/about-council>

⁵² United Nations Human Rights Council. N.d. Human Rights Council Complaint Procedure. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index> and United Nations Human Rights Council. N.d. Welcome to the Human Rights Council. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/about-council>

⁵³ United Nations Human Rights Council. N.d. Human Rights Council Complaint Procedure. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>

⁵⁴ Office of the United Nations High Commissioner for Human Rights. 2014. Human Rights Council, Complaint Procedure. Page 11. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/ComplaintProcedure/ComplaintProcedurebooklet_E.pdf

⁵⁵ United Nations Human Rights Council. N.d. Complaint Procedure of the Human Rights Council. Page 4. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CP_information__leaflet.pdf

national courts, including the highest court. There are, however, two exceptions to this: if such remedies are ineffective or if they are unreasonably prolonged.

► The complaint is **not evidently politically motivated**, and its **object is in line** with the Universal Declaration of Human Rights and the UN Charter.

► The complaint contains **a description of the facts connected to the alleged violations**.

Furthermore, the complaint must be submitted in writing and has to be presented **in one of the official UN languages** (Arabic, English, French, Chinese, Spanish or Russian).⁵⁶

Stages of the complaint procedure⁵⁷

There are four stages in the complaint procedure before the Human Rights Council.

► **Initial screening of complaints** – the Chairperson of the Working Group on Communications, along with the Secretariat, does the initial screening of the complaints. The ones that meet the admissibility criteria are communicated to the States in question to get their views regarding the alleged violations.

► **Consideration by the Working Group on Communications** – the Working Group on Communications considers the complaint and either discontinues the consideration of the complaint; keeps the complaint under review and requests more information from the State in question and/or the complainant; or communicates the complaint to the Working Group on Situations.

► **Consideration by the Working Group on Situations** – the Working Group on Situations considers the complaint and either: discontinues the consideration of the complaint; keeps it under review and requests more information from the State in question and/or the complainant; or communicates the complaint to the Human Rights Council.

► **Consideration by the Human Rights Council** – if the complaint comes to this stage and is considered by the Human Rights Council, the Council either:

- Discontinues the consideration of the complaint (not taking any actions).
- Keeps it under review and requests more information.
- Keeps the complaint under review and **appoints an independent expert** (who is highly qualified) to monitor the situation and report on it.
- **Discontinues reviewing** the matter within the complaint procedure, which is confidential, to begin **public consideration** (making the case public).
- **Recommends** the Office of the United Nations High Commissioner for Human Rights to **provide relevant assistance** to the State in question.

How to lodge complaints?

Complaints may be addressed by post or via fax or email⁵⁸ (see contact information below).

The complaint does not have to be presented in a specific format. However, it is recommended to

⁵⁶ United Nations Human Rights Council. N.d. Frequently asked questions - What types of complaints are admissible under the complaint procedure of the HRC?

Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>

⁵⁷ United Nations Human Rights Council. N.d. Complaint Procedure of the Human Rights Council. Page 3.

Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CP_information_leaflet.pdf

⁵⁸ United Nations Human Rights Council. N.d. Human Rights Council Complaint Procedure - Where to send communications?

Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index> and United Nations Human Rights Council. N.d. Frequently asked questions - Where to send your complaint?

Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/faq>

use the complaint procedure form,⁵⁹ accessible on the following website: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>.

Contact information⁶⁰

Address:

Complaint Procedure Unit, Human Rights
Council Branch
Office of the United Nations High Commissioner
for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland

Fax: (41 22) 917 90 11

Email: ohchr-cp@un.org (or cp@ohchr.org)

– The complaint procedure has faced criticism for its supposed lack of effectiveness. The explanations given by the States concerned are many times considered sufficient, which results in the closing of the cases. Therefore, only a few complaints lead to action being taken by the Human Rights Council.⁶¹ Furthermore, it is important to note that the procedure before the Human Rights Council has many stages and can therefore take a considerable amount of time. –

2.2.1.2. Universal Periodic Review

The Universal Periodic Review (UPR) was also established by Resolution 5/1 and is a procedure aimed at a regular inspection of UN Mem-

ber States' commitment to human rights, independent of complaints, notification or specific occasion. The standards of review are the commitments the respective States have undertaken. As States are only bound to the treaties and conventions they have ratified, and the ratification of human rights conventions is non-compulsory, the commitments states have to abide by differ. The mechanism is complementary to the UN treaty body mechanisms (see Chapter 2.2.2. - Engaging with a UN treaty body).

The UPR is a State-driven process and "a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs."⁶² Unlike the HRC's complaint procedure, under the UPR **all Member States of the United Nations** (not only members of the HRC) scrutinise each other in a peer-review procedure. The process takes place under the auspices of the HRC and is aimed at providing the opportunity for States to declare what actions they have taken for the improvement of human rights within their territory and for the fulfilment of their human rights obligations.⁶³

Under the UPR, the human rights situation of all UN Member States is reviewed every 4.5 years (one UPR cycle). The UPR procedure consists of three stages, which are facilitated and driven by the Member States of the HRC. The outcome of the review is a **non-legally binding report** consisting of recommendations and conclusions after submissions by States and CSOs are received. The

⁵⁹ Office of the United Nations High Commissioner for Human Rights. 2014. Human Rights Council, Complaint Procedure. Page 15. Available at: https://www.ohchr.org/sites/default/files/Documents/HRBodies/ComplaintProcedure/ComplaintProcedurebooklet_E.pdf

⁶⁰ United Nations Human Rights Council. N.d. Human Rights Council Complaint Procedure - Where to send communications? Available at: <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>

⁶¹ Permanent Mission of Switzerland to the United Nations Office and to the other international organisations in Geneva. 2015. The Human Rights Council, A practical guide. Page 16. Available in English and French at: <https://www.fdfa.admin.ch/eda/fr/dfae/dfae/publikationen.filterResults.html?term=Human+Rights+Council+practical+guide&filterseries%253Aeda=S%C3%A9lection&filtertopic%253Aeda=S%C3%A9lection&fromYear=&toYear=>

⁶² A/RES/60/251 lit. 5 (e)

⁶³ United Nations Human Rights Council. N.d. Universal Periodic Review. Available at: <https://www.ohchr.org/en/hr-bodies/upr/upr-main>

implementation is largely at the discretion of the State concerned and legally not enforceable. The report of the next UPR cycle follows up on the former one's conclusions and recommendations.

Participation of CSOs and Human Rights Defenders⁶⁴

CSOs and Human Rights Defenders have several opportunities to influence the primarily State-driven procedure of the UPR by participating in the different stages of the UPR, e.g. by

► Submitting to the OHCHR

- Input and information on the human rights situation in the country can be provided in the form of submissions to the OHCHR.
- Reports by CSOs must be submitted six to eight months before the session dedicated to the relevant country and follow the OHCHR technical guidelines⁶⁵.
- To contribute a report to the UPR, CSOs do not have to have ECOSOC⁶⁶ status. Any civil society actor can contribute.

► Conducting advocacy and lobbying other States

- One of the key ways for CSOs to influence the UPR is to engage in advocacy with Recommending States in the procure. This can help to incorporate the CSO's concerns in UPR advanced questions and recommendations.⁶⁷

► Taking the floor during the adoption of the report at the HRC plenary session

- The State under Review (SuR) provides its final response to UPR recommendations approximately four months after the review. CSOs can engage during this time through advocacy, e.g. by further written submissions, making public statements and engaging with relevant stakeholders in order to influence the adoption of UPR recommendations.
- During the adoption of the report at the HRC, 20 minutes are allocated to ECOSOC accredited CSOs to make a statement. To engage in this, CSOs need to submit a request using an online form.⁶⁸

► Monitoring the implementation of UPR recommendations by the SuR⁶⁹

- CSOs can contribute to systematically following up the implementation of UPR recommendations by, among other things, submitting mid-term reports about the human rights situation by the State parties.⁷⁰

Useful information and practical guidelines for contribution to the UPR as a CSO or Human Rights Defender can be found at: <https://www.upr-info.org/en>

⁶⁴ UPR Info. 2022. The Role of Civil Society Organisations (CSO). Available at: <https://www.upr-info.org/en/get-involved/cso/role>

⁶⁵ United Nations Human Rights Council. N.d. Universal Periodic Review (Fourth Cycle): Information and guidelines for relevant stakeholders' written submissions. Available at: https://www.ohchr.org/sites/default/files/2022-03/StakeholdersTechnicalGuidelines4thCycle_EN.pdf

⁶⁶ The Economic and Social Council (ECOSOC) is a council within the UN. It coordinates the economic and social agenda of the United Nations. It has 54 Member States which are elected by the General Assembly of the UN.

⁶⁷ UPR Info. 2022. Civil Society Organisations (CSOs) - Take Action. Available at: <https://www.upr-info.org/en/get-involved/civil-society-organisations-csos/take-action>

⁶⁸ United Nations Human Rights Council. N.d. NGO Participation in the Human Rights Council. Available at: <https://www.ohchr.org/en/hr-bodies/hrc/ngo-participation>

⁶⁹ UPR Info. 2022. The Role of Civil Society Organisations (CSO). Available at: <https://www.upr-info.org/en/get-involved/cso/role>

⁷⁰ UPR Info. 2022. Civil Society Organisations (CSOs) - Take Action. Available at: <https://www.upr-info.org/en/get-involved/civil-society-organisations-csos/take-action>

Practice examples

In the past, BVMN has engaged with the UPR through several means. For example, it has organised meetings with different State delegations prior to the official UPR meeting to provide them with evidence that they could use to question the SuR. Also, BVMN together with its partner organisations, has submitted information to the UPR through reports to the OHCHR, e.g. relating to the human rights situation in Greece (2021).⁷¹

Extracts of the BVMN UPR submission to Greece in 2021⁷²

During the UPR Pre-Session to the HRC's UPR Greece in October 2021, organised by the NGO UPR-Info, BVMN contributed a video intervention with its key recommendations. Among 26 other stakeholders, BVMN substantially contributed to the UPR, and its recommendations and reports were considered in the HRC's Summary of Stakeholders' submission on Greece⁷³, resulting in, inter alia, the mentioning of increased criminalisation of human and migrants' rights defenders.⁷⁴

6.4. In September 2020, Greek police issued a press release about criminal investigations into 33 HRD from four international NGOs, which report on pushbacks from Greece, including two BVMN members, Josoor and Mare Liberum, "for an organized circuit to facilitate the illegal entry of aliens into Greek territory". Accusations included espionage, violating state secrets, creating and participating in criminal organisations and violating migration law. The Greek police leaked information to the media and government spokespersons convicted the organisations before an official charge.

6.6. There has also been increased hostility and violence, due to the rise of the far right, directed against humanitarian workers, human rights defenders and journalists. Mare Liberum was subjected to vigilante attacks and instances of police intimidation. In September 2020, their ship was illegally searched and their devices were confiscated by the HCG, without being informed of the search's legal grounds, nor their rights.

6.7. The clampdown on NGOs includes repression of aid sites. In June 2020, several instances have been recorded of aid distribution being specifically targeted in orchestrated raids by police in and around Thessaloniki, resulting in mass arrests and pushbacks to Turkey. This is part of the trend of creating a hostile environment for NGOs and migrants, hindering migrants from accessing essential services by the threat of arrest and removal to Turkey.

⁷¹ For the full submission, see: Border Violence Monitoring Network. 2021. Universal Periodic Review Submission on Greece. Available at: <https://www.borderviolence.eu/universal-periodic-review-submission-on-greece/>

⁷² The whole chapter referring to the criminalisation of Human Rights Defenders in Greece can be found in: Border Violence Monitoring Network. 2021. Submission to the 39th Session of the Universal Periodic Review: Greece. Stakeholder Briefing Report. p. 24f. Available at: https://www.borderviolence.eu/wp-content/uploads/UPR_Greece_Submission_BVMN.pdf

⁷³ Human Rights Council Working Group on the Universal Periodic Review Thirty-ninth session. 2021. Summary of Stakeholders' submissions on Greece*: Report of the Office of the United Nations High Commissioner for Human Rights. A/HRC/WG.6/39/GRC/3. Available at: <https://undocs.org/A/HRC/WG.6/39/GRC/3>

⁷⁴ Ibid., para. 36

2.2.2. Engaging with a UN treaty body

The UN treaty bodies are committees monitoring the implementation of human rights. Consisting of independent experts, they review the implementation of the obligations set in the UN human rights treaties. There are 10 different treaty bodies with thematic foci, aligning with the UN human rights treaties.⁷⁵ For instance, there is the Committee against Torture (CAT), the Committee on Enforced Disappearances (CED), Committee on the Elimination of Racial Discrimination (CERD) and Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The most relevant for Human Rights Defenders facing criminalisation might be **the Human Rights Committee (CCPR)**, as it is **responsible for monitoring the implementation of the International Covenant on Civil and Political Rights**, as elaborated upon above (see Chapter 2.1.2.).⁷⁶ Find here the website of the Human Rights Committee (CCPR):

<https://www.ohchr.org/en/treaty-bodies/ccpr>.

The monitoring work of the treaty bodies is facilitated through several procedures: There are **State Parties' Reports**, established to assess the implementation of the relevant treaty. CSOs can contribute to this assessment.⁷⁷ In addition, the treaty body may receive information on violations of the provisions in the body's mandate in three different forms: **State-to-State complaints**,⁷⁸ **inquiries** in a

certain State on their own initiative⁷⁹ and **individual communications**.

– *For Human Rights Defenders that are targeted by criminalisation, the most relevant mechanism to engage with might be the individual complaint to a treaty body.*–

2.2.2.1. Individual complaints to a UN treaty body⁸⁰

In case an individual believes its rights enshrined in a treaty their State is party to are being violated, they can file an individual complaint. As mentioned above, the *International Covenant on Civil and Political Rights* might be the most relevant treaty for Human Rights Defenders when being targeted by criminalisation. Hence, the most relevant treaty body might be the Human Rights Committee.

What are the requirements to file an individual complaint to an UN treaty body?

- **Anyone** can lodge an individual complaint against a State to the relevant treaty body.
- The State must be **party to the treaty** which the treaty body is monitoring (see Chapter 2.1.).
- The State must have **"accepted the Committee's competence"** to examine individual complaints, either through ratification or accession to an Optional Protocol [...] or by making a declara-

⁷⁵ United Nations Human Rights Office of the High Commissioner. N.d. Treaty Bodies: United Nations Human Rights Treaty Bodies: What are the treaty bodies? Available at: <https://www.ohchr.org/en/treaty-bodies>

⁷⁶ United Nations Human Rights Office of the High Commissioner. N.d. Treaty Bodies: United Nations Human Rights Treaty Bodies: What are the treaty bodies? Available at: <https://www.ohchr.org/en/treaty-bodies>

⁷⁷ United Nations Human Rights Office of the High Commissioner. N.d. What the treaty bodies do: Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do>

⁷⁸ For more information, see: United Nations Human Rights Office of the High Commissioner. N.d. Complaints about human rights violations: Treaty Bodies: Inter-state communications. Available at: <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations#interstate>

⁷⁹ For more information, see: United Nations Human Rights Office of the High Commissioner. N.d. Complaints about human rights violations: Treaty Bodies: Inquiries. Available at: <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations#inquiries>

⁸⁰ Please find a fact sheet with additional information in several languages here: United Nations Human Rights Office of the High Commissioner. 2013. Fact Sheet No. 07 (Rev. 2): Individual Complaints Procedures under the United Nations Human Rights Treaties. Available at: <https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-07-rev-2-individual-complaints-procedures-under-united>

tion to that effect under a specific article of the Convention.”⁸¹ In the case of the CCPR, it would be the ratification of the operational protocol.⁸² All states in Europe, apart from Switzerland and Great Britain, have signed the *Optional Protocol to the International Covenant on Civil and Political Rights*.⁸³ Therefore, Human Rights Defenders that feel their rights have been violated by those State parties, including Croatia and Greece, can file an individual complaint to the treaty body concerning the violations of their rights enshrined in the International Covenant on Civil and Political Rights.

► This can also be done **on behalf of an individual** by a third person; in these cases, written consent would be needed, unless the person is unable to do so, e.g. due to their enforced disappearance.

► The case **cannot be pending before any other international institution or body**, e.g. the European Court of Human Rights.

► **All domestic remedies**, that means pathways of jurisdiction at a national level, **have to be exhausted**. However, exceptions concerning this can be made, “when proceedings at the national level have been unreasonably prolonged, or the remedies are unavailable or would plainly be ineffective.”⁸⁴

How to file a complaint⁸⁵

► No special format needed; **the preferred format**, however, is the preestablished individual complaints form, which can be downloaded here: <https://www.ohchr.org/en/documents/tools-and-resources/form-and-guidance-submitting-individual-communication-treaty-bodies> (also, a detailed fact sheet on how to file an individual

complaint can be downloaded here in different languages).

► Has to be in **one of the UN languages** (Arabic, Chinese, English, French, Russian and Spanish).

► Must include the alleged victim’s **name, nationality, date of birth, mailing address and email**, as well as the **State** against which one wants to complain.

► Must include the **relevant facts** that because of which one wants to complain, as well as why this constitutes a violation of the relevant treaty (recommended to name the rights violated, as well as the remedies the complainant would like to receive).

► Include the **steps taken to exhaust national remedies**. This means legal means within the relevant State’s jurisdiction, e.g. local courts; in cases where those were not exhausted, the complainant should give a detailed explanation why an exception should be made.

► State whether the **case was also brought before another international body or instrument**.

► Include **all documents for the case** in copy; if not in one of the UN languages, a full or summary translation has to be provided.

► The complaint has to be sent in **written format and with a signature** by post, email or fax to the address below.

⁸¹ United Nations Human Rights Office of the High Commissioner. N.d. Complaints about human rights violations: Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations>

⁸² United Nations Human Rights Office of the High Commissioner. N.d. Complaints about human rights violations: Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/complaints-about-human-rights-violations>; For the full legal text, see: Optional Protocol to the International Covenant on Civil and Political Rights. 1966. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>

⁸³ United Nations Human Rights Office of the High Commissioner. N.d. Status of Ratification: Dashboard. Available at: <https://indicators.ohchr.org/>

⁸⁴ United Nations Human Rights Office of the High Commissioner. N.d. Individual Communications: Human Rights Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/individual-communications>

⁸⁵ Ibid.

What will happen after the treaty body receives a complaint?⁸⁶

Once the treaty body, often referred to as committee, receives a complaint, it **decides whether to register it formally** for the committee's consideration. Criteria for this decision are whether the above listed requirements are fulfilled and whether the accusation falls into the mandate of the respective committee. Afterwards, the case will be **communicated to the State party**, in order to give it the possibility to comment. Here it is important to keep in mind that this process is not confidential, and the complainant's details will be transmitted to the State party. After receiving comments, the committee will **make a decision on the complaint**; in cases where no comments are received, the committee will make a decision based on the information it is provided with. In cases of urgency or sensitivity, "[s]ome Committees may, at any stage before the case is considered, issue a request to the State party for **"interim measure"**⁸⁷ in order to prevent any irreparable harm to the author or alleged victim in the particular case."⁸⁸

In order to take a decision on the complaint, the committee considers the reasons for or against a violation of the victim's rights and then afterwards takes a decision in a closed session. Once a decision is taken, both the complainant and the State party are informed at the same time, and the decision is published on the treaty body's website. The decisions of the treaty bodies **cannot be appealed against and are thus final**. If a State party

is considered guilty, the committee will issue **recommendations** and will ask the State party to supply them with information on the implementation of the latter. Once the State reacts, its response is forwarded to the complainant, who can then comment. In cases where the state does not reply, the committee will not close the case but instead initiate **follow-up procedures**.⁸⁹

Contact information

Individual complaints to several treaty bodies, including the Human Rights Committee, can be sent in written format via the following ways:⁹⁰

Address:

Petitions and Inquiries Section
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland

Fax: + 41 22 917 90 22 (particularly for urgent matters)

Email: petitions@ohchr.org

Website: <https://www.ohchr.org/en/treaty-bodies>

– Even though this chapter mainly refers to the Human Rights Committee, as mentioned above, the Committee on Enforced Disappearances, the Committee against Torture and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment

⁸⁶ For more detailed information, see: United Nations Human Rights Office of the High Commissioner. N.d. Individual Communications: Human Rights Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/individual-communications>

⁸⁷ Interim measures are a legal measure of last resort that can be applied a.o. by international judicial bodies, e.g. the UN treaty bodies. It is a "measure[...] of protection in case of urgency in order to safeguard the rights and persons of victims of alleged violations of human rights." (Naldi, Gino J. 2004. Interim Measures in the UN Human Rights Committee. Available at: <https://www.jstor.org/stable/3663093>; also, Border Violence Monitoring Network. 2022. Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece. Available at: <https://www.borderviolence.eu/20548-2/>)

⁸⁸ United Nations Human Rights Office of the High Commissioner. N.d. Individual Communications: Human Rights Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/individual-communications>; see also there for more detailed information on procedure and conditions.

⁸⁹ Ibid.

⁹⁰ Please find here the treaty bodies which can be addressed through this contact: United Nations Human Rights Office of the High Commissioner. N.d. Individual Communications: Human Rights Treaty Bodies: How to direct complaints to the treaty bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/individual-communications#direct-complaint>

or Punishment might also apply to particularly severe cases of criminalisation of Human Rights Defenders. In these cases, the complaint would have to particularly address a violation of the related UN treaties or covenants. The overall procedures and requirements to file a complaint, as well as the contact details, however, remain the same. –

2.2.2.2. Treaty body reporting process

The main tool used by the treaty bodies to monitor the implementation of the legally binding treaties is the treaty body reporting process, also referred to as State Reports. Once a State becomes party to a treaty, they have to report on a regular basis to the treaty body, elaborating on the implementation of the provisions set in the respective treaty. Even though designed differently by the different treaty bodies, in any case, this monitoring mechanism is facilitated through a highly structured periodic process. Other stakeholders, such as CSOs and National Human Rights Institutions (NHRIs), e.g. a country's Ombudsperson, have the opportunity to use the periodic reporting process of UN Treaty bodies to help influence the Committee–State dialogue and the thematic focus of the review, and to help shape the outcome of the review period. The process ends with the publication of recommendations and concerns on the implementation of the treaty by the body. Although each of the treaty bodies has different formats of assessment and receiving information by civil society, the overall frame is a periodic reporting model.⁹¹ A CSO's report can contain, for example, present evidence of rights violations and indications of breaches of the convention, as well as highlight best practices, or areas for further improvement. Specific information on their reporting requirements can be found on each treaty body's subsection on the website of OHCHR. For the Human Rights Committee, guide-

lines can be found here: <https://www.ohchr.org/en/treaty-bodies/ccpr/reporting-procedure>.

– Contributing to a treaty body reporting process of a UN treaty body could constitute a potential way of doing long-term advocacy for Human Rights Defenders that face criminalisation. However, individuals we spoke to with experience in UN advocacy recommended that a submission to a treaty body reporting process might only have an impact on the final dialogue and report on the country, if one would submit evidence showing that a State is breaching the treaty by targeting Human Rights Defenders systematically. Therefore, one would need a body of evidence of which one can assert that this amounts to evidence of habitual, systematic or widespread violations of the rights granted under the treaty. Therefore, only presenting evidence of a single case might not have an impact. –

2.2.3. Special Procedures (Special Rapporteur on Human Rights Defenders)

The Special Procedures of the Human Rights Council (Special Procedures) are independent human rights experts appointed by the Human Rights Council and assigned to report and advise on the subject of human rights. There are individual Special Procedures – called “Special Rapporteurs” or “Independent Experts” – and collective Special Procedures, which are “Working Groups” made up of five members.⁹²

Their role, inter alia, is: doing country visits; taking action with regards to individual cases of alleged violations and problems of a structural nature by sending communications to relevant States; conducting thematic studies; and engaging in advocacy. Furthermore, they report annually to the Human

⁹¹ United Nations Human Rights Office of the High Commissioner. N.d. What the treaty bodies do: Treaty Bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/what-treaty-bodies-do>

⁹² United Nations Human Rights Office of the High Commissioner. N.d. Special Procedures of the Human Rights Council. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council/special-procedures-human-rights-council>

Rights Council, with the majority of them also reporting annually to the UN General Assembly.⁹³

Who can submit information/complaints to Special Procedures?

Information/complaints to Special Procedures can be submitted by any:

- ▶ individual
- ▶ group
- ▶ CSO
- ▶ inter-governmental entity
- ▶ national human rights body⁹⁴

How to submit information/complaints?

It is recommended to use the Special Procedure submission online form,⁹⁵ accessible at the bottom of the following website:

<https://spsubmission.ohchr.org/>.

Post submissions can be sent to the following address:

OHCHR-UNOG
8-14 Avenue de la Paix
1211 Geneve 10
Switzerland.⁹⁶

What do the Special Procedures do when they get the information/complaints?

Special Procedures send **communications** (specific letters) to governments and other relevant actors. In communications, they report on the received allegations regarding the past, ongoing or potential human rights violations and/or concerns

connected to legislation, policies or practices that are not in line with the international human rights law and international human rights standards. Special Procedures also **request clarifications** regarding the allegations of human rights violations and, when necessary, request that the relevant authorities take appropriate steps to prevent, stop or remedy the violation in question. **They cannot, however, enforce their recommendations and their views.**⁹⁷ Therefore, their communications are not legally binding.

The **purpose of communications** is to point out the alleged human rights violations to governments and other relevant actors, as well as to try to prevent human rights violations, or try to ensure that such violations are stopped, investigated or remedied. Communications are also relevant because the Special Procedures report on communications (and replies of the relevant authorities) to the Human Rights Council, which raises public awareness regarding the matter.⁹⁸

Special Rapporteur on Human Rights Defenders

The most important Special Procedure for Human Rights Defenders is the Special Rapporteur on Human Rights Defenders, who is elected for a three-year mandate.⁹⁹ Their role, among other things, is: promoting the implementation of the UN Declaration on Human Rights Defenders; analysing the state of the right to promote and protect human rights; and recommending effective ways to ensure better protection of Human Rights Defenders. The Special Rapporteur is also mandated to ob-

⁹³ Ibid.

⁹⁴ United Nations Human Rights Office of the High Commissioner. N.d. What are Communications. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council/what-are-communications>

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ United Nations Human Rights Office of the High Commissioner. N.d. About Special Procedures. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council>

tain, analyse and respond to information regarding the situation of Human Rights Defenders.¹⁰⁰

The Special Rapporteur, *inter alia*, acts on the received information regarding alleged violations of Human Rights Defenders' human rights. They send communications (explained above) and urgent appeals to the States in question and to other relevant actors, asking them for clarification and/or bringing information of such violations to their attention. To analyse the situation of Human Rights Defenders, the Special Rapporteur also undertakes country visits and meets with Human Rights Defenders and other relevant actors.¹⁰¹

For more information regarding the Special Rapporteur on Human Rights Defenders (including the current mandate holder), please visit the following website:

<https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders>.

The work of the Special Rapporteur regarding the criminalisation of Human Rights Defenders

► The Special Rapporteur has **sent communications** to the relevant state authorities, asking them for additional information or an explanation, in many cases after receiving information about the criminalisation of individual Human Rights

Defenders. In 2022, based on the received information regarding the detention and prosecution of Bilal Yıldız, an activist for displaced people, the Special Rapporteur on Human Rights Defenders (alongside two other Special Rapporteurs) sent communications to the Turkish authorities. They asked the authorities for additional information/clarification of the case, as well as urging for all necessary measures to be taken so that the human rights of Mr Yıldız were respected.¹⁰²

► In December 2021, the Special Rapporteur (along with certain other UN human rights experts) **urged Indian authorities to stop targeting Khurram Parvez, a Kashmiri Human Rights Defender** who was arrested and detained. As Mr Parvez had not been released, the experts (including the Special Rapporteur on Human Rights Defenders) repeated their call for his "immediate and unconditional release" in November 2022.¹⁰³

► In November 2022, The Special Rapporteur (alongside certain other UN experts) **urged Turkey to "stop using counter-terrorism legislation to intimidate Human Rights Defenders"** and to release Sebnem Korur Fincanci, a recognised anti-torture expert.¹⁰⁴

► The Special Rapporteur has also written many **country and thematic reports** in which the problem of criminalisation of Human Rights Defenders is pointed out. In a 2022 report, entitled ***Refusing to turn away: human rights defenders working on the rights of refugees, migrants and***

¹⁰⁰ United Nations Human Rights Office of the High Commissioner. N.d. Mandate: Special Rapporteur on Human Rights Defenders. Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders/mandate>

¹⁰¹ Ibid.

¹⁰² The relevant communication is available here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27443>. A list of all sent communications is available on the following website: <https://spcommreports.ohchr.org/TmSearch/Mandates?m=30>

¹⁰³ United Nations Human Rights Office of the High Commissioner. 2021. UN experts urge Indian authorities to stop targeting Kashmiri human rights defender Khurram Parvez and release him immediately. Available at: <https://www.ohchr.org/en/press-releases/2021/12/un-experts-urge-indian-authorities-stop-targeting-kashmiri-human-rights>; also, United Nations Human Rights Office of the High Commissioner. 2022. One year in detention: UN experts demand immediate release of Kashmiri activist Khurram Parvez. Available at: <https://www.ohchr.org/en/press-releases/2022/11/one-year-detention-un-experts-demand-immediate-release-kashmiri-activist>

¹⁰⁴ United Nations Human Rights Office of the High Commissioner. 2022. Türkiye: UN experts call for release and end of judicial harassment of anti-torture expert. Available at: <https://www.ohchr.org/en/press-releases/2022/11/turkiye-un-experts-call-release-and-end-judicial-harassment-anti-torture>

asylum-seekers,¹⁰⁵ the Rapporteur, inter alia, recommended States to take all necessary measures so that Human Rights Defenders (particularly Migrant Rights Defenders, since that was the focus of the report) are protected from different forms of pressure and arbitrary action, which they could face due to their work. Furthermore, the Special Rapporteur recommended them to provide a suitable environment for individuals and organisations whose work includes promoting and protecting the human rights of migrants, asylum-seekers and refugees, as well as to refrain from targeting them.¹⁰⁶

► In June 2022, the Special Rapporteur conducted a **country visit to Greece**. Human Rights Defenders working for BVMN member organisations met with them. Prior to this visit, the Special Rapporteur called for input from civil society concerning topics of relevance for Human Rights Defenders in the country. The aim of the meeting with the Special Rapporteur was to raise awareness of the situation, as well as to contribute to the report they were writing after the visit by supplying them with valuable information concerning the work on the ground. The **final report** elaborates on the increasingly challenging situation for Human Rights Defenders in the country and mentions explicitly the situation of CSOs working with migrants.¹⁰⁷ In July 2022, after their visit, when BVMN wrote a report on the erosion of law and the criminalisation of Human Rights Defenders, the Special Rapporteur contributed with a foreword to it.¹⁰⁸

Contact information¹⁰⁹

Address:

Special Rapporteur on the situation of Human Rights Defenders
8-14 Avenue de la Paix
1211 Geneve 10, Switzerland

Email: hrc-sr-defenders@un.org

– Since the primary focus of the Special Rapporteur is the subject of Human Rights Defenders, contacting them or submitting information or complaints regarding violations of rights might be a useful avenue for criminalised Human Rights Defenders. Furthermore, collaboration with this mechanism might be a good advocacy avenue to address the criminalisation of Human Rights Defenders in a broader way on the UN level. –

Other relevant Special Procedures:

Apart from the Special Rapporteur on Human Rights Defenders, there are also other potentially relevant Special Procedures. Based on their area of work, the most relevant ones for criminalised Human Rights Defenders might be the following:¹¹⁰

► Working Group on Arbitrary Detention

• Email: hrc-wg-ad@un.org

¹⁰⁵ For the full report, please see: Special Rapporteur on the situation of human rights defenders. 2022. Refusing to turn away: Human Rights Defenders working on the rights of refugees, migrants and asylum-seekers. Available in the UN official languages at: <https://www.ohchr.org/en/documents/thematic-reports/a77178-refusing-turn-away-human-rights-defenders-working-rights-refugees>

¹⁰⁶ Ibid. Pages 21–22

¹⁰⁷ UN Special Rapporteur on Human Rights Defenders. 2022. Statement on preliminary observations and recommendations following official visit to Greece [Ελληνικά / English]. Available at: <https://srdefenders.org/statement-on-preliminary-observations-and-recommendations-following-official-visit-to-greece/>

¹⁰⁸ Border Violence Monitoring Network. 2022. Islets, Interim Measures, and Illegal Pushbacks: Erosion of Rule of Law in Greece. Available at: <https://www.borderviolence.eu/20548-2/>

¹⁰⁹ United Nations Human Rights Office of the High Commissioner. N.d. Special Rapporteur on the situation of human rights defenders - About the mandate. Available at: <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders>

¹¹⁰ The list of all thematic Special Procedures and their emails is available here: <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM>. Other contact information (address etc.), as well as general information regarding specific Special Procedures, can be found on their official websites.

- **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**
 - Email: hrc-sr-freedex@un.org
- **Special Rapporteur on the rights to freedom of peaceful assembly and of association**
 - Email: hrc-sr-freeassembly@un.org
- **Special Rapporteur on the independence of judges and lawyers**
 - Email: hrc-sr-independencejl@un.org
- **Independent Expert on human rights and international solidarity**
 - Email: hrc-ie-solidarity@un.org
- **Special Rapporteur on the human rights of migrants**
 - Email: hrc-sr-migrant@un.org
- **Special Rapporteur on the right to privacy**
 - Email: hrc-sr-privacy@un.org
- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**
 - Email: hrc-sr-torture@un.org

2.2.4. Reprisals for cooperation with the UN in the field of human rights

Reprisals and acts of intimidation can take many forms, from smear campaigns, travel bans and restrictive legislation, on the one hand, to threats and harassment, arbitrary arrests and detention, ill-treatment, torture, and killings, on the other.¹¹¹

Taking into account the relevant resolutions by the Human Rights Council,¹¹² reprisals and acts of in-

timidation may be directed against those who:¹¹³

- Have cooperated or seek to cooperate with the UN in the field of human rights, or who have delivered testimony or information.
- Make or have made use of UN established procedures for the protection of human rights and fundamental freedoms, and those who have provided legal or other help to them with regards to these procedures.
- Have submitted or submit communications under relevant procedures, and those who have provided legal or other help to them with regards to the mentioned submissions.
- Are related to the victims of human rights violations or to those who have assisted the victims (e.g. by providing legal help).

Based on the above definition, Human Rights Defenders are also one of the potential targets of such acts. In order to address and prevent acts of intimidation and reprisal, it is important that targeted persons/entities, including Human Rights Defenders, report such acts to the relevant mechanisms.

Treaty bodies

Treaty bodies have raised their concerns about acts of intimidation and reprisal many times.¹¹⁴ Most of them have also endorsed the **San Jose Guidelines against Intimidation or Reprisals**,¹¹⁵ which are meant to provide “practical guidance to enhance the efficiency and effectiveness with which protection is provided by treaty bodies” to those at risk of or facing intimidation/

¹¹¹ United Nations Human Rights Office of the High Commissioner. N.d. About acts of intimidation and reprisal and human rights (overview). Available at: <https://www.ohchr.org/en/reprisals>

¹¹² Resolutions 12/2, 24/24 and 36/21

¹¹³ United Nations Human Rights Office of the High Commissioner. N.d. About acts of intimidation and reprisal and human rights (OHCHR and reprisals). Available at: <https://www.ohchr.org/en/reprisals/about-acts-intimidation-and-reprisals-and-human-rights>

¹¹⁴ United Nations Human Rights Office of the High Commissioner. N.d. Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/preventing-and-addressing-acts-intimidation-and-reprisal-cooperation-treaty-bodies>

¹¹⁵ The full text is available in multiple languages here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=HRI/MC/2015/6&Lang=en

reprisals for cooperating or seeking to cooperate with them.¹¹⁶ In addition to this, certain committees have guidelines/information regarding how to report reprisals available on their web pages.¹¹⁷

All treaty bodies have **focal points/rapporteurs** for reprisals. Those who believe that they are victims of reprisals can therefore submit allegations of intimidation and reprisals to the relevant treaty body through the mentioned focal point or rapporteur. This can be done by writing to the “committee specific email” accessible on the following website: <https://www.ohchr.org/en/treaty-bodies/preventing-and-addressing-acts-intimidation-and-reprisal-cooperation-treaty-bodies>.¹¹⁸

Treaty bodies respond differently to different situations connected to the allegations of intimidation and reprisals. They may take **confidential as well as public steps**, such as sending communications to the relevant States and raising the case with the relevant UN institutions, in press releases and reports, or within the scope of the interactive dialogue with States.¹¹⁹

Special Procedures

Special Procedures (mandate holders) address cases of intimidation or reprisals against those who interact with them based on the specifics of the relevant case. Their actions may include approaching the relevant authorities, sending communications, press releases, referring to the case

in their reports, informing the relevant UN institutions or trying to cooperate with other human rights mechanisms.¹²⁰

To arrange coordinated responses, mandate holders can inform the Coordination Committee focal point on reprisals. The Coordination Committee is a body consisting of six Special Procedures mandate holders. Its primary function is the coordination between mandate holders and being a connection point between them, the UN human rights framework and civil society.¹²¹ The said committee annually appoints a focal point on reprisals among its members and keeps a record of all cases of intimidation and reprisals faced by those who cooperate with Special Procedures. The Coordination Committee also raises the issue of reprisals systematically and may, under certain circumstances, take additional actions (e.g. issuing a press statement).¹²²

Other mechanisms

Apart from treaty bodies and Special Procedures, the Human Rights Council also addresses and responds to allegations of intimidation and reprisals. To communicate with the Human Rights Council regarding acts of intimidation or reprisal, write to the NGO Liaison team of the Human Rights Council Secretariat: ohchr-hrcngo@un.org. With regards to such acts connected to the UPR, write to the UPR Secretariat: ohchr-uprreprisals@un.org.¹²³

¹¹⁶ Art. 1 of the said Guidelines

¹¹⁷ United Nations Human Rights Office of the High Commissioner. N.d. Preventing and addressing acts of intimidation and reprisal for cooperation with the treaty bodies. Available at: <https://www.ohchr.org/en/treaty-bodies/preventing-and-addressing-acts-intimidation-and-reprisal-cooperation-treaty-bodies>

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ United Nations Human Rights Office of the High Commissioner. N.d. Acts of intimidation and reprisal for cooperation with the Special Procedures. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council/acts-intimidation-and-reprisal-cooperation-special-procedures>

¹²¹ United Nations Human Rights Office of the High Commissioner. N.d. Coordination Committee of Special Procedures Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council/coordination-committee-special-procedures>

¹²² United Nations Human Rights Office of the High Commissioner. N.d. Acts of intimidation and reprisal for cooperation with the Special Procedures. Available at: <https://www.ohchr.org/en/special-procedures-human-rights-council/acts-intimidation-and-reprisal-cooperation-special-procedures>

¹²³ United Nations Human Rights Office of the High Commissioner. N.d. How to share information about cases of intimidation and reprisals. Available at: <https://www.ohchr.org/en/reprisals/how-share-information-about-cases-intimidation-and-reprisals>

3. Other international organisations

3.1. OSCE

3.1.1. General introduction

The Organisation for Security and Co-Operation in Europe (OSCE) is an organisation of 57 States (including Greece and Croatia) throughout Europe, North America and Asia. The OSCE is a “regional security organisation”, which aims to achieve peace and stable democracy via political dialogue between its Member States and through practical work on the ground. The groundwork is mostly centred around security and involves arms control, “enhancing border management and security”, conflict resolution and prevention, counter-terrorism, policing, media freedom, environmental issues, human rights, and more. The most relevant of its mechanisms for Human Rights Defenders is the Office for Democratic Institutions and Human Rights (ODIHR).¹²⁴

3.1.2. OSCE Office for Democratic Institutions and Human Rights

The OSCE Office for Democratic Institutions and Human Rights is based in Warsaw and seeks to promote human rights, democracy, rule of law and non-discrimination by supporting states and civil society through its work. The ODIHR observes elections, reviews legislation and advises governments on developing and sustaining democratic institu-

tions.¹²⁵ The ODIHR makes regular publications on issues regarding the international situation of human rights.¹²⁶ While these publications are normally aimed at states and government institutions, many, such as the *Strengthening the Resilience of National Human Rights Institutions Guidance Tool*,¹²⁷ are valuable advocacy mechanisms that could affect change in institutions that are important to Human Rights Defenders and their safety. Human Rights Defenders can make contact with the ODIHR using the contact details listed at the end of this section and give them information about their individual situation so that the reports and publications made by the ODIHR are more accurate.

Another aspect of the human rights work of the ODIHR involves providing support to Human Rights Defenders and civil society members through its field operations. The ODIHR is currently undertaking missions related to human rights in Albania, Bosnia and Herzegovina, Kosovo, Montenegro, Serbia, Skopje, Moldova, Ashgabat, Nur-Sultan, Bishkek, Dushanbe and Uzbekistan.¹²⁸ In terms of support offered directly to Human Rights Defenders in its field operations, the ODIHR offers general support for the work of CSOs, as well as training for human rights advocacy groups.¹²⁹ The training offered is usually open to Human Rights Defenders from a number of specific countries in which the issue that is the focus of the training is prevalent. For example, a five-day training on “human rights at international borders” was held in Poland in September 2022, but only accepted applications from Human Rights Defenders operating in 13 countries.¹³⁰ Human Rights Defenders should monitor the “events” section of the OSCE website to ensure they do not miss opportunities to apply

¹²⁴ OSCE website. Available at: <https://www.osce.org/who-we-are>

¹²⁵ OSCE website. Available at: <https://www.osce.org/odihr/what-we-do>

¹²⁶ OSCE website. Available at: [https://www.osce.org/resources/publications?filters=im_taxonomy_vid_1:\(24\)](https://www.osce.org/resources/publications?filters=im_taxonomy_vid_1:(24))

¹²⁷ OSCE. 2022. *Strengthening the Resilience of National Human Rights Institutions Guidance Tool*. Available at: <https://www.osce.org/odihr/524340>

¹²⁸ OSCE Website. Page on Human Rights. Available at: <https://www.osce.org/human-rights>

¹²⁹ Ibid.

¹³⁰ OSCE Website. 2022. *Training on human rights at international borders: Human rights principles, monitoring, safety and security*. Available at: <https://www.osce.org/odihr/523955>

for and engage with training relevant to them when it arises and when they meet the criteria.¹³¹

While the ODIHR is mainly focused on improving the institutions in states where it conducts field operations, it does offer some direct support for Human Rights Defenders. This direct support takes the form of closely following the cases of criminalisation of Human Rights Defenders and continually bringing the cases to the attention of national authorities, making visits to detention centres if Human Rights Defenders are incarcerated, and engaging with CSOs through the training initiatives mentioned above. The ODIHR also engages with international partners on the behalf of Human Rights Defenders, including the Council of Europe, the EU and UN bodies. There is, however, no mechanism for emergency situations of criminalisation.¹³²

The contact details of the ODIHR are listed below.

Contact information

Address:

OSCE Office for Democratic Institutions and Human Rights
Ul. Miodowa 10
00-251 Warsaw
Poland

Office: +48 22 520 06 00

Fax: +48 22 520 06 05

Email: office@odihr.pl

3.2. Council of Europe

The Council of Europe (CoE) is an international

organisation that consists of 46 countries of Europe. It promotes democracy and human rights, as well as the rule of law.¹³³ As an organisation focusing on human rights, the Council of Europe is also relevant for Human Rights Defenders and can (with its institutions) be an important actor in preventing the criminalisation of Human Rights Defenders and improving their situation in Member States of the Council.

3.2.1. Declarations and Conventions

For Human Rights Defenders, the most relevant declarations and conventions adopted by/within the Council of Europe are the following:

3.2.1.1. Declaration on Human Rights Defenders

In 2008, the Committee of Ministers adopted the *Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities* (hereinafter: the Declaration on Human Rights Defenders).¹³⁴ Due to its form as a declaration, it is not legally binding, but rather expresses a statement of intent.¹³⁵ In the said declaration, the Committee of Ministers:

- **Condemned all violations of the rights** of Human Rights Defenders and attacks they face. (Art. 1)

- **Called on Member States** to, inter alia: **create an environment** that enables the work of Human Rights Defenders; **take effective measures** in order to protect Human Rights Defenders and prevent attacks on them or their harassment; ensure

¹³¹ OSCE website. Events calendar. Available at: <https://www.osce.org/events>

¹³² OSCE Website. Page on Human Rights. Available at: <https://www.osce.org/human-rights>

¹³³ Council of Europe. N.d. Do not get confused. Available at: <https://www.coe.int/en/web/about-us/do-not-get-confused>

¹³⁴ To access the full Declaration, please see: <https://www.ohchr.org/sites/default/files/Documents/Issues/Defenders/DeclarationHRDCoECommitteeMinisters.pdf>

¹³⁵ Medecins Sans Frontieres. N.d. Practical Guide to Humanitarian Law. Available at: <https://guide-humanitarian-law.org/content/article/3/soft-law/>

a proper investigation of such acts if/when they happen and hold those responsible accountable; ensure that their legislation is **in line with international human rights standards**; ensure that Human Rights Defenders have **effective access** to human rights protection mechanisms; and to **cooperate** with the human rights mechanisms of the Council of Europe. (Art. 2(i)(ii)(iv)(vi))

► **Called on all Council of Europe bodies and institutions** to be focused on the issues concerning Human Rights Defenders in the scope of their work. (Art. 3)

► **Invited the Commissioner for Human Rights** to strengthen their role and provide sufficient protection for Human Rights Defenders (Art. 4; more about this in Chapter 3.2.2.2.).

► Agreed to keep the question of whether the Council of Europe should take further action regarding this matter under review. (Art. 5)

3.2.1.2. European Convention on Human Rights

The main document regarding human rights that the Council of Europe has passed is the European Convention on Human Rights (ECHR).¹³⁶ The ECHR is a treaty that obliges **Member States of the Council of Europe that have signed and ratified it to secure the rights enshrined in it to everyone within their jurisdiction**.¹³⁷ The ECHR also has a number of Protocols - texts that add rights to the original ECHR or amend some of the provisions.¹³⁸

The ECHR is **binding** for the States that have signed and ratified it (the same goes for the Protocols thereto),¹³⁹ which means that such States have to comply with it. Both Croatia and Greece have signed and ratified the ECHR. Croatia signed it in 1996 and ratified it in 1997, while Greece signed it in 1950 and ratified it in 1974.¹⁴⁰ It is, however, important to note that the ECHR, in Art. 57, enabled States to “make reservations in respect of any particular provision to the extent that any law then in force in its territory is not in conformity with the provision” when signing or depositing the instrument of its ratification. Therefore, it is not only important to check whether a certain State has signed and ratified the ECHR and the relevant Protocol(s) thereof, but also whether it has made any reservations regarding particular provisions.¹⁴¹

For Human Rights Defenders, the most relevant rights guaranteed by the ECHR (and its Protocols) are the following:

► **The prohibition of torture** (Art. 3). In accordance with this provision “no one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

► **The right to liberty and freedom** (Art. 5). According to this right, no one is to be deprived of their liberty, except in cases established in the provision, and in accordance with a procedure prescribed by law. It also contains certain procedural guarantees of arrested and detained persons (e.g. that the arrested person must be promptly

¹³⁶ The full text of the ECHR can be found on the following website:

<https://www.echr.coe.int/Pages/home.aspx?p=basictexts&c>

¹³⁷ European Court of Human Rights. N.d. The Court in brief.

Available at: https://echr.coe.int/Documents/Court_in_brief_ENG.pdf

¹³⁸ European Court of Human Rights. 2021. The ECHR in 50 questions. Page 3.

Available at: https://www.echr.coe.int/documents/50questions_eng.pdf

¹³⁹ Ibid.

¹⁴⁰ Council of Europe, Treaty Office. N.d. Chart of signatures and ratifications of Treaty 005.

Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005>

¹⁴¹ To see which countries have signed and ratified the ECHR (as well as made reservations, declarations etc. regarding it), please visit the following website: Council of Europe, Treaty Office. N.d. Chart of signatures and ratifications of Treaty 005. Available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treatynum=005>. On the following website you can also search by Protocol to see which country has signed and ratified it, or has made any reservations, declarations, etc. to it: Council of Europe, Treaty Office. N.d. Search on Treaties.

Available at: <https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/chartSignature/3>

informed about the reasons for their arrest and charges against them, in a language that they understand).

► **The right to a fair trial** (Art. 6). In line with this right, a person in criminal or civil proceedings is entitled to a fair hearing that is public, happens within a reasonable time and is done by an independent and impartial tribunal, which was established by law. It also establishes the presumption of innocence (that when charged with a criminal offence, a person is to be presumed innocent until proven guilty in line with the law) and minimal rights of people charged with a criminal offence.

► **No punishment without law** (Art. 7). According to this right, a person cannot be found guilty of a criminal offence regarding an act or omission that was not a criminal offence according to national or international law when it was committed. Furthermore, a heavier penalty cannot be imposed than the one that was relevant at the time when the criminal offence was carried out.

► **The right to respect for private and family life** (Art. 8). This right enshrines respect for private and family life, including of home and correspondence. In line with this, a public authority cannot interfere with the exercise of this right, except under conditions established in the provision that enshrines this right.

► **Freedom of expression** (Art. 10). This right includes freedom to have opinions and to receive and communicate information and ideas “without interference by public authority and regardless of frontiers.” The provision also establishes in which cases the exercise of the freedoms contained in this right can be subjected to formalities, conditions, restrictions or penalties.

► **Freedom of assembly and association** (Art. 11). In line with this right, a person has the right to freedom of association with other people and the freedom of peaceful assembly. The provision that regulates this right also establishes the conditions when restrictions to this right are allowed.

► **Limitation on use of restrictions on rights** (Art. 18). According to this provision, the restric-

tions that are allowed under the ECHR to the rights and freedoms enshrined in it cannot be applied for purposes that are not the ones for which such restrictions have been prescribed.

► **Freedom of movement** (Art. 2, Protocol No. 4).¹⁴² This right enshrines that a person who is lawfully within the territory of a State has, within this area, the right to liberty of movement and the freedom to choose their residence. Furthermore, every person is free to leave any State, including their own. The provision regulating this right also establishes conditions when restrictions of these rights are allowed.

► **Procedural safeguards relating to expulsion of aliens** (Art. 1, Protocol No. 7).¹⁴³ In accordance with this provision, an alien who lawfully resides in the territory of a State cannot be expelled from there, unless this is done in pursuance of a decision that was reached in line with the law. Furthermore, certain procedural safeguards/rights that such an alien can make use of are enshrined in the said provision. The relevant provision also establishes exceptions when an alien can be expelled before exercising these rights.

In cases of violations of the rights enshrined in the ECHR, an application can be lodged to the European Court of Human Rights¹⁴⁴ (for more about this, and the conditions under which such an application is to be lodged, please see Chapter 3.2.2.1.).

3.2.2. Mechanisms

There are several mechanisms within the Council of Europe that Human Rights Defenders can make use of when criminalised, as well as mechanisms that could be useful as an advocacy avenue regarding the criminalisation of Human Rights Defenders and its prevention.

¹⁴² This right might be relevant for Human Rights Defenders who work in a country they are not citizens of.

¹⁴³ Ibid.

¹⁴⁴ European Court of Human Rights. N.d. The Court in brief. Available at: https://echr.coe.int/Documents/Court_in_brief_ENG.pdf

3.2.2.1. The European Court of Human Rights

The European Court of Human Rights (ECtHR) is an international court that rules on individual or State applications regarding alleged violations of the rights enshrined in the ECHR. It is based in Strasbourg and monitors the respect for human rights in the Council of Europe Member States that have ratified the ECHR. **The judgments reached by the ECtHR are binding** – the States concerned must comply with them.¹⁴⁵ Therefore, the ECtHR can represent a powerful and important mechanism for criminalised Human Rights Defenders whose rights guaranteed under the ECHR have been violated.

Who can lodge an individual application?

According to Art. 34 of the ECHR (individual applications), the ECtHR may receive applications from any:

- person
- NGO
- group of individuals

These subjects must claim to be the victim of a violation of the rights enshrined in the ECHR or the Protocols thereto by a State that is a contract party to the ECHR (and the relevant Protocol).

How to file an application?

When submitting an application, it is necessary to use **the latest official application form**.¹⁴⁶ Copies of relevant documents must be attached to the application.¹⁴⁷

The application form can be downloaded from the ECtHR's website at www.echr.coe.int/applicants.¹⁴⁸ To fill out the form correctly, it is advisable to follow the instructions from the **Notes for filling in the application form**.¹⁴⁹ To avoid common mistakes it is also advisable to go through the document **Common Mistakes in Filling in the Application Form and How to Avoid Them**.¹⁵⁰

ECtHR's official languages are **English and French**, but it is possible to write to the Registry (the body that provides legal and administrative assistance to the ECtHR with regards to its judicial functions)¹⁵¹ **in another official language of a State that has ratified the ECHR**. Further on in the proceedings, however, either English or French will be used.¹⁵²

Applications (together with copies of the relevant documents) **can only be sent by post**¹⁵³ (see contact information below).

¹⁴⁵ European Court of Human Rights. N.d. The Court in brief.

Available at: https://echr.coe.int/Documents/Court_in_brief_ENG.pdf

¹⁴⁶ European Court of Human Rights. 2022. Common Mistakes in Filling in the Application Form and How to Avoid Them. Page 1.

Available at: https://www.echr.coe.int/Documents/Applicant_common_mistakes_ENG.pdf

¹⁴⁷ International Justice Resource Center. N.d. European Court of Human Rights.

Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁴⁸ For more information regarding the application: European Court of Human Rights. N.d. Your Application to the ECHR: How to apply and how your application is processed. Available at: https://www.echr.coe.int/documents/your_application_eng.pdf

¹⁴⁹ Please find the document here: https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf

¹⁵⁰ Please find the document here: https://www.echr.coe.int/Documents/Applicant_common_mistakes_ENG.pdf

¹⁵¹ European Court of Human Rights. N.d. ECHR Registry. Page 1.

Available at: https://www.echr.coe.int/Documents/Registry_ENG.pdf

¹⁵² European Court of Human Rights. 2022. Notes for filling in the application form. Pages 2–3.

Available at: https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf

¹⁵³ European Court of Human Rights. N.d. Your application to the ECHR: How to apply and how your application is processed. Page 4. Available at: https://www.echr.coe.int/documents/your_application_eng.pdf

What are the admissibility requirements for applications before the ECtHR?¹⁵⁴

The ECtHR can only examine complaints from those who claim that their rights under the ECHR have been violated. More than 90% of the lodged applications are declared inadmissible, which is why it is very important to know the admissibility requirements. For the application to be found admissible, the following requirements must be met:

- ▶ The complaints refer **to infringements** (violations/breaches) **of rights enshrined in the ECHR and/or its Protocols**.
- ▶ The complaints are **brought against a State that has ratified the ECHR or the relevant Protocol**.
- ▶ The complaints refer to acts or events that happened **after the ratification** of the ECHR or the relevant Protocol by the State in question. As already mentioned, both Croatia and Greece have signed and ratified the ECHR (see Chapter 3.2.1.2.).
- ▶ The complaints concern matters connected to a **public authority** (e.g. legislature, administrative bodies, courts).
- ▶ The applicant has **“victim status”** (is personally and directly affected by the infringement of a right enshrined in the ECHR).
- ▶ **Exhaustion of domestic remedies** – the applicant, before applying to the ECtHR, must have raised the same complaints in the national courts (this includes the highest court). However, the applicant does not have to make use of remedies that are ineffective.
- ▶ The applicant has lodged their complete application **within four months** after the final domestic decision (the four-month period starts running

from the time when the decision of the highest national court/authority was given/served, while when there is no effective remedy available, the four-month period starts running from the date of the act/infringement complained of).

- ▶ The claims in the application **have to be substantiated** (based on solid evidence).
- ▶ The complaints **have not been examined yet** by the ECtHR or another international body.

More information about the admissibility is available in the ECtHR's *Practical Guide on Admissibility Criteria*.¹⁵⁵

Useful facts regarding the procedure

- ▶ Proceedings before the ECtHR are done **primarily in writing**.¹⁵⁶
- ▶ Lodging an application to the ECtHR **does not have a suspensive effect**, which means that the final decision of the national court is still to be complied with.¹⁵⁷
- ▶ In some cases, it is possible to request **interim measures** – urgent measures that apply when there is an “imminent risk of irreparable harm.” They are aimed at protecting the applicant from any additional harm while the ECtHR considers the case. Under Rule 39 of its Rules of Court, the ECtHR can designate interim measures to any State that is a party to the ECHR. The requests for interim measures **are only granted on an exceptional basis**. The most typical cases are the ones in which there is fear of a threat to life (Art. 2, ECHR) or ill-treatment (Art. 3, ECHR).¹⁵⁸
- ▶ **There is no cost regarding the lodging** of an application and the applicant has the possibility of

¹⁵⁴ European Court of Human Rights. 2022. Notes for filling in the application form. Pages 1–2. Available at: https://www.echr.coe.int/Documents/Application_Notes_ENG.pdf

¹⁵⁵ Please find the complete guide here: https://www.echr.coe.int/pages/home.aspx?p=caselaw/analysis/admi_guide

¹⁵⁶ International Justice Resource Center. N.d. European Court of Human Rights. Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁵⁷ European Court of Human Rights. N.d. Your application to the ECHR: How to apply and how your application is processed. Page 11. Available at: https://www.echr.coe.int/documents/your_application_eng.pdf

¹⁵⁸ European Court of Human Rights, Press Unit. 2012. Interim measures. Page 1–2. Available at: https://www.echr.coe.int/documents/fs_interim_measures_eng.pdf

applying for legal aid to cover costs incurred in the later phases of the proceedings.¹⁵⁹

► It is not necessary to have a lawyer at the start of the proceedings (to lodge an application), but **applicants do need a lawyer once the government concerned has been notified** by the ECtHR about the case.¹⁶⁰

► **It is not possible to indicate how long the proceedings before the ECtHR** might last, as that depends on various factors (including the urgency of the case). It can, however, take a considerable amount of time (months or years) before a judgement or decision is reached.¹⁶¹

► If the decision is made in favour of the applicant, the latter can be awarded **just satisfaction** (a sum of money for the suffered damages). The State may also be ordered to refund the expenses the applicant has had in presenting the case. If, however, the ECtHR finds no violation, the applicant does not have to pay for the State's legal costs.¹⁶²

Phases of the procedure

► **Admissibility and merits** are two phases through which the applications go through. If the application or one of the complaints is declared inadmissible, such a decision is final and it is not possible to challenge it.¹⁶³

► If the application is not removed from the list or found inadmissible early on, the relevant State is notified of the case and both parties are able to submit observations.¹⁶⁴

► Before it decides on the merits, the ECtHR tries to encourage the applicant and the State concerned to reach a **friendly settlement**. If there is no settlement, the ECtHR will consider the application **on the merits** (meaning it will decide if there has been a violation of the ECHR or not).¹⁶⁵

► In the three-month period after a Chamber issues a judgement on the merits, the decision is not final yet, and the parties (the applicant and the State concerned) **can request that the application is referred to the Grand Chamber**, a special chamber that, on an exceptional basis, *inter alia*, considers cases when they are referred to it.¹⁶⁶

Enforcement of the judgement

States concerned must comply with the decisions of the ECtHR and are obliged to execute them. The implementation of the judgements is supervised by the Committee of Ministers of the Council of Europe. If the Committee of Ministers concludes that the State decided not to implement the judgement or resolve the situation that led to the violation, it can start an **infringement procedure**, which means going back to the ECtHR for a definitive ruling regarding the situation.¹⁶⁷

¹⁵⁹ International Justice Resource Center. N.d. European Court of Human Rights.

Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁶⁰ European Court of Human Rights. 2021. The ECHR in 50 questions. Page 6.

Available at: https://www.echr.coe.int/documents/50questions_eng.pdf

¹⁶¹ Ibid. Page 9 and International Justice Resource Center. N.d. European Court of Human Rights.

Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁶² International Justice Resource Center. N.d. European Court of Human Rights.

Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid. and Question & Answers. Page 10. Available at: https://echr.coe.int/documents/questions_answers_eng.pdf

¹⁶⁶ European Court of Human Rights. 2021. The ECHR in 50 questions. Page 5. Available at: https://www.echr.coe.int/documents/50questions_eng.pdf; also, International Justice Resource Center. N.d. European Court of Human Rights. Available at: <https://ijrcenter.org/european-court-of-human-rights/>

¹⁶⁷ European Court of Human Rights (Press Unit). 2022. Q&A – the Infringement Procedure of the European Court of Human Rights. Page 1. Available at: https://www.echr.coe.int/Documents/Press_Q_A_Infringement_Procedure_ENG.pdf; also, International Justice Resource Center. N.d. European Court of Human Rights. Available at: <https://ijrcenter.org/european-court-of-human-rights/>

Case law

► In **Rasul Jafarov v Azerbaijan**,¹⁶⁸ a judgement from 2016, the ECtHR found that Azerbaijan had violated, inter alia, Arts. 5 and 18 of the ECHR regarding the arrest of Rasul Jafarov, a Human Rights Defender. On 23 April 2020, the Supreme Court of Azerbaijan fully acquitted Jafarov.¹⁶⁹

► In **Mammadov v Azerbaijan**,¹⁷⁰ a judgement from 2014, the ECtHR also found that Azerbaijan had violated Arts. 5, 6 and 18 regarding the arrest of Ilgar Mammadov, a Human Rights Defender. In the infringement procedure in 2019, the ECtHR held that the national authorities had not ensured the necessary redress. Subsequently, Mammadov's conviction was quashed. He also received compensation.¹⁷¹

► In **Kavala v Turkey**,¹⁷² a judgement from 2019, the ECtHR found violations of Arts. 5 and 18 in relation to the arrest of the Human Rights Defender Osman Kavala and urged Turkey to take necessary measures to end Kavala's detention and to ensure his immediate release. In the infringement procedure in 2022, the ECtHR found that Turkey did not comply with its obligation to execute the previous judgement and reaffirmed the final judgement ruling for Kavala to be released.¹⁷³

► In **M.H. and Others v Croatia**,¹⁷⁴ a judgement from 2021, the ECtHR, among other things, ruled that there has been a breach of Art. 34 of the ECHR because the restriction imposed on the contact

between the applicants and their lawyer, as well as the criminal investigation against and pressure on that lawyer, were done with the aim of preventing the applicants from pursuing their case before the ECtHR.¹⁷⁵

Contact information¹⁷⁶

Address (to which the applications must be sent):

The Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg Cedex, France

Telephone: +33 (0)3 88 41 20 18

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Electronic form: <https://app.echr.coe.int/Contact/EchrContactForm/English/22> (available online for questions about ECtHR).

3.2.2.2. The Commissioner for Human Rights

The Commissioner for Human Rights (hereinafter: the Commissioner) is a Council of Europe institution. Among other things, their role is to promote the effective respect of human rights and provide

¹⁶⁸ The full judgement is available here: <https://hudoc.echr.coe.int/ukr?i=001-161416>

¹⁶⁹ European Human Rights Advocacy Centre. N.d. Jafarov v Azerbaijan. Available at: https://ehrac.org.uk/en_gb/key-ehrac-cases/jafarov-v-azerbaijan/

¹⁷⁰ The full judgement is available here: <https://hudoc.echr.coe.int/eng?i=001-144124>

¹⁷¹ European Court of Human Rights (Press Unit). 2022. Q&A – the Infringement Procedure of the European Court of Human Rights. Page 2. Available at: https://www.echr.coe.int/Documents/Press_Q_A_Infringement_Procedure_ENG.pdf

¹⁷² The full judgement is available here: <https://hudoc.echr.coe.int/fre?i=001-199515>

¹⁷³ United Nations Human Rights Office of the High Commissioner. 2022. Türkiye's dismissal of European Court rulings sets dangerous precedent: UN expert. Available at: <https://www.ohchr.org/en/press-releases/2022/10/turkiyes-dismissal-european-court-rulings-sets-dangerous-precedent-un-expert#:~:text=On%2011%20July%202022%2C%20the,Kavala%20has%20not%20been%20released>

¹⁷⁴ The full judgement is available here: <https://hudoc.echr.coe.int/fre?i=001-213213>

¹⁷⁵ This case is mostly relevant for Human Rights Defenders who are legal representatives.

¹⁷⁶ European Court of Human Rights. N.d. Contact information. Available at: [https://www.echr.coe.int/Pages/home.aspx?p=contact&c=](https://www.echr.coe.int/Pages/home.aspx?p=contact&c=;); also, European Court of Human Rights. N.d. How to lodge an application. Available at: <https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&c>

support to Member States regarding the implementation of human rights standards set out by the Council of Europe. They are also mandated to recognize flaws in law and practise with regards to human rights and to issue advice and information connected to their protection.¹⁷⁷ The term of the mandate holder lasts six years.¹⁷⁸

The Commissioner's activities are focused on the following areas: doing country visits and engaging in dialogue with national authorities and civil society; issuing thematic reports and providing advice on the systematic implementation of human rights; and raising awareness. It is important to note that the Commissioner **cannot act on individual complaints**. They can, however, take broader initiatives based on reliable information connected to human rights violations that individuals are facing.¹⁷⁹

For more information regarding the Commissioner (including the current mandate holder), please visit the following website:

<https://www.coe.int/en/web/commissioner/the-commissioner>.

Mandate to support Human Rights Defenders

As stated on their homepage, supporting the work of Human Rights Defenders and their protection falls under the scope of the Commissioner's mandate and is an important part of it.¹⁸⁰ Their mandate on Human Rights Defenders has been further en-

hanced by the Committee of Ministers' Declaration on Human Rights Defenders. The said declaration invited the Commissioner to strengthen their role in this field by:¹⁸¹

- Continuing to take action based on information submitted to them by Human Rights Defenders and other relevant actors.
- Continuing to meet with various Human Rights Defenders when undertaking country visits and report publicly on their situation.¹⁸²
- Intervening with the relevant authorities and assisting them with finding solutions regarding the problems that Human Rights Defenders might be facing.
- Working closely and collaborating with other relevant intergovernmental actors.

Within the scope of their work regarding the support and protection of Human Rights Defenders, the Commissioner provides advice and recommendations (which are, as it follows from the terms themselves, not legally binding) to the Council of Europe Member States, with regards to their obligations in this field. Furthermore, the Commissioner raises issues related to the environment in which Human Rights Defenders work, as well as cases of Human Rights Defenders that are at risk. They have intervened as a third party before the ECtHR in several cases that concerned Human Rights Defenders (see below). The Commissioner and their Office also organise thematic consultations with Human Rights Defenders on an annual basis as well as cooperate with the UN and other

¹⁷⁷ Council of Europe, Commissioner for Human Rights. N.d. The Mandate. Available at: <https://www.coe.int/en/web/commissioner/mandate>

¹⁷⁸ International Justice Resource Center. N.d. Council of Europe Commissioner for Human Rights. Available at: <https://ijrcenter.org/council-of-europe-commissioner-for-human-rights/>

¹⁷⁹ Council of Europe, Commissioner for Human Rights. N.d. The Mandate. Available at: <https://www.coe.int/en/web/commissioner/mandate>

¹⁸⁰ Council of Europe, Commissioner for Human Rights. N.d. Human Rights Defenders. Available at: <https://www.coe.int/en/web/commissioner/human-rights-defenders>

¹⁸¹ Art. 4 of the said declaration

¹⁸² The Commissioner's country reports are available on the following website: <https://www.coe.int/en/web/commissioner/country-monitoring>

regional mechanisms in providing support to Human Rights Defenders.¹⁸³

Previous work regarding the support of criminalised Human Rights Defenders

► **Third party interventions:** The Commissioner intervened as a third party in many cases regarding criminalised Human Rights Defenders before the ECtHR (e.g. in *Kavala v Turkey*, *Huseynov v Azerbaijan* and *Mammadov v Azerbaijan*). In some of these cases (e.g. *Kavala v Turkey*) the Commissioner also wrote a submission to the Committee of Ministers in view of the Committee's supervision of the implementation of the judgement reached by the ECtHR and intervened in the infringement proceedings regarding the case.¹⁸⁴

► **Country reports and statements:** In the scope of their country work, the Commissioner has also addressed the attitude of certain Member States in their country reports and statements. In the 2019 Report on Hungary, the Commissioner pointed out that civil society organisations have been facing intimidation, as well as other forms of reprisals. They also urged the government to stop such actions in relation to Human Rights Defenders and NGOs, as well as to create a safe environment for their work.¹⁸⁵

► **Human rights comments/statements:** The Commissioner has also put forward many human

rights comments/statements regarding Human Rights Defenders. For example, in August 2022, the Commissioner published a statement in which they encouraged Member States to provide more support to Russian and Belarusian Human Rights Defenders and pointed out the minimum measures on which Member States should establish their efforts.¹⁸⁶

► **Round tables and reports:** The Commissioner and their Office have also organised a few round tables regarding the situation of Human Rights Defenders, about which they have written reports that sum up the round table and presented recommendations and conclusions regarding the topic. In 2019, for example, the Commissioner's Office organised a round table with Human Rights Defenders entitled *Human Rights Defenders in the Council of Europe area: current challenges and possible solutions*. At the round table, one of the topics was the safety and liberty of Human Rights Defenders, including reprisals against them. In the report following the round table, the Commissioner pointed out the main topics and points discussed at the round table and concluded the report with recommendations based on European and international human rights standards.¹⁸⁷ A mechanism like this can be very important for Human Rights Defenders with regards to long term advocacy and building up evidence regarding the criminalisation of Human Rights Defenders.

¹⁸³ Council of Europe, Commissioner for Human Rights. N.d. Human Rights Defenders.

Available at: <https://www.coe.int/en/web/commissioner/human-rights-defenders>

¹⁸⁴ Council of Europe, Commissioner for Human Rights. N.d. Human Rights Defenders. Available at: <https://www.coe.int/en/web/commissioner/human-rights-defenders> and Council of Europe, Commissioner for Human Rights. 2022. Commissioner Mijatović intervenes in the infringement proceedings before the European Court of Human Rights in the case of Osman Kavala v. Turkey. Available at: <https://www.coe.int/en/web/commissioner/-/commissioner-mijatovic-intervenes-in-the-infringement-proceedings-before-the-european-court-of-human-rights-in-the-case-of-osman-kavala-v-turkey>

¹⁸⁵ Council of Europe, Commissioner for Human Rights. 2019. Hungary should address interconnected human rights issues in refugee protection, civil society space, independence of the judiciary and gender equality. Available at: <https://www.coe.int/en/web/commissioner/-/hungary-should-address-interconnected-human-rights-issues-in-refugee-protection-civil-society-space-independence-of-the-judiciary-and-gender-equality>

¹⁸⁶ Council of Europe, Commissioner for Human Rights. 2022. Support Russian and Belarusian civil societies and human rights defenders. Available at: <https://www.coe.int/en/web/commissioner/-/support-russian-and-belarusian-civil-societies-and-human-rights-defenders>

¹⁸⁷ Commissioner for Human Rights. 2019. HUMAN RIGHTS DEFENDERS IN THE COUNCIL OF EUROPE AREA: Current Challenges and Possible Solutions. Page 5 and 16. Available at: <https://rm.coe.int/hr-defenders-in-the-coe-area-current-challenges-and-possible-solutions/168093aabf>

Contact information¹⁸⁸**Address:**

Council of Europe
Office of the Commissioner for Human Rights
67075 Strasbourg Cedex, France

Tel.: +33 (0)3 88 41 34 21

Fax: +33 (0)3 90 21 50 53

It is also possible to get in touch with the Commissioner and their Office via **an online form**, available on the following website: <https://www.coe.int/en/web/commissioner/contact>.

– Since the protection of Human Rights Defenders is one of the Commissioner's focus points, this mechanism might be a relevant avenue for criminalised Human Rights Defenders, especially with regards to long term advocacy on this subject. –

3.2.2.3. The Parliamentary Assembly of the Council of Europe and its Committee on Legal Affairs and Human Rights

The Parliamentary Assembly of the Council of Europe (PACE) is a body within the Council of Europe and typically meets four times per year in Strasbourg. It consists of 324 parliamentarians from

the national parliaments of the Member States.¹⁸⁹ One of the most important roles of the PACE is adopting relevant texts, specifically:¹⁹⁰

► **Recommendations** – which contain different proposals that are addressed to the Committee of Ministers, with the implementation of such proposals being within governments' competence.

► **Resolutions** – which represent decisions made by the PACE "on questions, which it is empowered to put into effect, or expressions of view for which it alone is responsible."

► **Opinions** – which are expressed regarding the questions that the Committee of Ministers refers to the PACE.

The PACE has nine general committees. They are assigned to prepare reports and observe the situation regarding human rights, democracy and rule of law, within the scope of their focus.¹⁹¹ The committees also prepare the majority of the reports that are debated in the plenary sessions of the PACE.¹⁹² The most relevant committee for Human Rights Defenders is the Committee on Legal Affairs and Human Rights.¹⁹³

What is the Committee on Legal Affairs and Human Rights?

The Committee on Legal Affairs and Human Rights (hereinafter: the Committee) is one of the general committees of the PACE, assigned to promote the

¹⁸⁸ Council of Europe, Commissioner for Human Rights. N.d. Contact us. Available at: <https://www.coe.int/en/web/commissioner/contact>

¹⁸⁹ Council of Europe. N.d. Parliamentary Assembly. Available at: <https://www.coe.int/en/web/no-hate-campaign/parliamentary-assembly1#:~:text=The%20Parliamentary%20Assembly%20of%20the,long%20plenary%20session%20in%20Strasbourg>

¹⁹⁰ Parliamentary Assembly. N.d. Assembly public documents. Available at: <https://pace.coe.int/en/pages/official-documents>

¹⁹¹ Council of Europe. N.d. Parliamentary Assembly. Available at: <https://www.coe.int/en/web/no-hate-campaign/parliamentary-assembly1#:~:text=The%20Parliamentary%20Assembly%20of%20the,long%20plenary%20session%20in%20Strasbourg>, <https://pace.coe.int/en/pages/committees>

¹⁹² Council of Europe, Parliamentary Assembly. N.d. The general committees of the Assembly. Available at: <https://pace.coe.int/en/pages/committees>

¹⁹³ Another relevant committee might be the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). For more information regarding the said committee, please see: <https://pace.coe.int/en/pages/committee-4/committee-on-the-honouring-of-obligations-and-commitments-by-member-states-of-the-council-of-europe-monitoring-committee->

rule of law, as well as to defend human rights. It also provides legal support to the PACE.¹⁹⁴

The Committee deals with a variety of legal and human rights topics and also has three sub-committees: the Sub-Committee on Human Rights, the Sub-Committee on Artificial Intelligence and Human Rights and the Sub-Committee on the implementation of judgments of the European Court of Human Rights. The Committee appoints parliamentary rapporteurs, who are assigned to make reports on the basis of research, hearings and dialogue with relevant experts. This work leads to **resolutions and recommendations** that the PACE addresses to Member States and other Council of Europe bodies.¹⁹⁵

One of the Committee's appointed rapporteurs is the **General Rapporteur on the situation of Human Rights Defenders** (hereinafter: the General Rapporteur). According to the Committee's "Work programme",¹⁹⁶ the General Rapporteur is mandated to step in regarding acts of intimidation and reprisal against Human Rights Defenders or serious obstacles to their work. Their responsibility is, among other things, to follow the activities and cooperate, when needed, with the institutions and bodies within the Council of Europe and the UN that focus on the situation of Human Rights Defenders, as well as with other international organisations that address this subject in their work. In specific cases, they may also issue statements and appeals on their behalf or suggest the Committee to act in this manner.¹⁹⁷

Work regarding criminalisation of Human Rights Defenders

The PACE has adopted quite a few resolutions regarding Human Rights Defenders. One of them is Resolution 2225 (2018) entitled **Protecting human rights defenders in Council of Europe Member States**.¹⁹⁸ In the said resolution, the PACE called on Member States to, inter alia:¹⁹⁹

- ▶ Respect the fundamental freedoms, as well as human rights, of Human Rights Defenders.
- ▶ Not use any form of acts of intimidation and reprisal against Human Rights Defenders.
- ▶ Refrain from arbitrarily surveilling Human Rights Defenders.
- ▶ Secure access to effective domestic remedies to Human Rights Defenders with regards to the violations of their rights.

Contact information²⁰⁰

Parliamentary Assembly

Address:

Parliamentary Assembly of the Council of Europe
Avenue de l'Europe,
F-67075 Strasbourg Cedex, France

Tel.: +33 (0)3 88 41 20 00

The Parliamentary assembly can also be contacted via a **contact form** accessible on the following website: <https://pace.coe.int/en/contact>.

¹⁹⁴ Council of Europe, Parliamentary Assembly. 2019. Committee on Legal Affairs and Human Rights (AS/Jur). Available at: <https://pace.coe.int/en/pages/committee-5-presentation/Jur-Presentation>

¹⁹⁵ Ibid.

¹⁹⁶ Committee on Legal Affairs and Human Rights. 2022. Work Programme. Available at: https://assembly.coe.int/Committee/JUR/Work_ProgrammeE.pdf

¹⁹⁷ Ibid. Pages 11–12

¹⁹⁸ The said Resolution is available here: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24932&lang=en>

¹⁹⁹ Art. 5 of the said Resolution

²⁰⁰ Council of Europe, Parliamentary Assembly. N.d. Contact. Available at: <https://pace.coe.int/en/contact>; also, Council of Europe, Parliamentary Assembly. N.d. Committee on Legal Affairs and Human Rights. Available at: <https://pace.coe.int/en/pages/committee-5/committee-on-legal-affairs-and-human-rights>

The Committee on Legal Affairs and Human Rights²⁰¹ (the Head of the Secretariat):

Email: guenter.schirmer@coe.int

3.2.2.4. The Conference of INGOs

The Conference of INGOs (hereinafter: the Conference) acts as a consultative body to the Council of Europe and brings together more than 400 NGOs that operate internationally. The Conference has two plenary sessions in Strasbourg per year. However, it stays in constant contact with the relevant bodies of the Council of Europe via the Conference's Standing Committee.²⁰²

Besides its Standing Committee, the Conference also has **committees** that are formed for a limited period. These committees make reports and draft declarations, recommendations and resolutions that are to be considered by the General Assembly of the Conference.²⁰³

The Conference, furthermore, has the **Expert Council on NGO Law**, which conducts different studies (both thematic and country) regarding the specific features of NGO legislation and its implementation that could potentially pose a problem with regards to its compliance with international standards.²⁰⁴ The Expert Council on NGO Law also gathers communications from NGOs and others (see contact

below).²⁰⁵

The INGO Conference's work regarding the criminalisation of Human Rights Defenders

► In 2016, the Conference President expressed their concern regarding the criminal proceedings that involved **Valentina Cherevatenko**, Chair of the Women of the Don NGO. Due to the criminal proceedings brought against Ms Cherevatenko by the Russian authorities and the possibility of her going to prison, there was an exchange of letters with the Ambassador of the Russian Federation in 2017. In July 2017, the criminal proceedings were dropped.²⁰⁶

► In 2017, the Conference President voiced their concern with regards to the detention of **Taner Kiliç**, Chair of **Amnesty International Turkey**. The Conference, furthermore, expressed its distress regarding the detention of a group of Human Rights Defenders that happened in Turkey. Following proceedings, the group was released from prison. The charges against them, however, were not dropped.²⁰⁷

► In 2019, the Human Rights Committee of the Conference **continued to support Mehman Huseynov**, an Azerbaijani blogger and Human Rights Defender who was in a very bad condition in a prison in Azerbaijan. The committee **organised "an urgent side event"** addressing the relevant Council of Europe institutions to immediately intervene in his case.²⁰⁸

²⁰¹ To find more contacts for The Committee on Legal Affairs, please see "Secretariat" on the following website: <https://pace.coe.int/en/pages/committee-5/committee-on-legal-affairs-and-human-rights>

²⁰² Europe's Human Rights Watchdog. N.d. INGO Conference. Available at: <https://www.europewatchdog.info/en/structure/ingo-conference/>

²⁰³ Council of Europe, Conference of INGOs. N.d. Conference of INGOs: Committees. Available at: <https://www.coe.int/en/web/ingo/committees>

²⁰⁴ Council of Europe, Conference of INGOs. N.d. Expert Council on NGO Law. Available at: <https://www.coe.int/en/web/ingo/expert-council>

²⁰⁵ Conference of INGOs of the Council of Europe, Expert Council on NGO Law. N.d. Expert Council on NGO Law (brochure). Page 5. Available at: <https://rm.coe.int/expert-council-on-ngo-law-brochure-en/1680973972>

²⁰⁶ Conference of INGOs of the Council of Europe. 2018. Activity Report 2017. Page 3–4. Available at: <https://rm.coe.int/conf-ple-2017-rapact-en/168077fb43>

²⁰⁷ Ibid. Page 4

²⁰⁸ Conference of INGOs of the Council of Europe. N.d. Activity Report 2019 DRAFT. Page 5. Available at: <https://rm.coe.int/conf-ple-2019-activity-report-2019-final-en/16809fd6f7>

► In 2016, the Conference adopted the **Recommendation on the protection of Human Rights Defenders in the Transnistrian Region of the Republic of Moldova**, in which it called on the “de facto authorities” of the said region to discontinue the persecution and the harassment of Human Rights Defenders and urged the international and intergovernmental bodies to set up an emergency mission to monitor the situation.²⁰⁹

► In 2012, the Conference adopted the **Recommendation on the protection of Human Rights Defenders in the Russian Federation**, in which it urged the Russian Federation to stop the criminal proceedings brought against a Human Rights Defender named Igor Kalyapin, to take all measures necessary to ensure the psychological and physical integrity of all Human Rights Defenders and to secure appropriate conditions for their work.²¹⁰

► In 2019, the Expert Council on NGO Law issued a thematic study entitled **Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe Member States**.²¹¹

► In 2020, The Expert Council on NGO Law issued **Guidelines on protecting NGO work in support of refugees and other migrants**.²¹²

► In 2022, the Expert Council on NGO Law issued a thematic study entitled **The execution of judgments involving freedom of association: the**

impact on human rights organisations and defenders, in which they included their recommendations for the relevant national and international actors regarding the topic.²¹³

Contact information²¹⁴

The Conference of INGOs can be contacted via a **contact form** accessible on the following website: <https://www.coe.int/en/web/ingo/contact>.

The president of the Conference can be contacted via a **contact form** accessible on the following website: <https://www.coe.int/en/web/ingo/contact-g-ermischer>.

E-mail (to contact The Expert Council): NGO-Unit@coe.int.

It can also be useful to look up the [INGOs Database](#), which contains information on INGOs that hold a participatory status with the Council of Europe. Among other things, the database contains contact information, including official representatives of these INGOs, who can be directly contacted.²¹⁵

²⁰⁹ Conference of INGOs of the Council of Europe. 2016. Recommendation CONF/PLE(2016)REC1, Protection of Human Rights Defenders in the Transnistrian region of the Republic of Moldova: the case of “Promo LEX” Association established in the Republic of Moldova. Page 3. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680684cac>

²¹⁰ Conference of INGOs of the Council of Europe. 2012. Recommendation CONF/PLE(2012)REC2, The Protection of Human Rights Defenders in the Russian Federation. Page 2. Available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016802f03ce>

²¹¹ Expert Council on NGO Law. 2019. Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States. Available at: <https://rm.coe.int/expert-council-conf-exp-2019-1-criminal-law-ngo-restrictions-migration/1680996969>

²¹² Expert Council on NGO Law. 2020. Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants. Available at: <https://rm.coe.int/expert-council-conf-exp-2020-3-guidelines-on-protecting-ngo-work-in-su/16809e4a81>

²¹³ Expert Council on NGO Law. 2022. The Execution of Judgments Involving Freedom of Association: the Impact on Human Rights Organisations and Defenders. Available at: <https://rm.coe.int/the-execution-of-judgments-involving-freedom-of-association-15-march-2/1680a5db86>

²¹⁴ Council of Europe, Conference of INGOs, N.d. Contact us. Available at: <https://www.coe.int/en/web/ingo/contact>; Council of Europe, Conference of INGOs, N.d. Contact Gerhard Ermischer. Available at: <https://www.coe.int/en/web/ingo/contact-g-ermischer>; also, Conference of INGOs of the Council of Europe, Expert Council on NGO Law. N.d. Expert Council on NGO Law (brochure). Page 5. Available at: <https://rm.coe.int/expert-council-on-ngo-law-brochure-en/1680973972>

²¹⁵ Council of Europe, Conference of INGOs. N.d. Ingos Database. Available at: <https://www.coe.int/en/web/ingo/database>

3.3. Bar associations

If Human Rights Defenders are practising lawyers and face criminalisation because of their actions in the framework of their legal profession, bar associations can possibly offer support and pursue advocacy avenues. In general, bar associations act in the best interest of lawyers,²¹⁶ which in many cases also includes the defence of the rule of law, the promotion of the protection of independence of the legal profession and the support of the practical implementation and defence of human rights.

National bar associations

Every country has a bar association, however differing in their forms. There is no universal framework on the organisation of national bar associations. Their structure, their membership requirements, their scope of work and their actions vary from country to country.

Council of Bars and Law Societies of Europe

At the EU level, the Council of Bars and Law Societies of Europe (CCBE) represents the bar associations of the 32 member countries and 12 observers. Membership in the CCBE is independent from EU membership. Several committees focus on different areas of law, inter alia on human rights and human rights practitioners.

Individual lawyers who are members of one of the national member organisations can reach out to the CCBE in search of support against their criminalisation.

“Defence of the Defenders” project

The CCBE’s human rights committee can, upon notice of the situation of endangered lawyers defending human rights, e.g. in case of suspension, arrest or judicial harassment through official authorities,

send letters to the heads of states and other relevant authorities to make them aware of the discriminatory situation and to raise public awareness of the individual situation. These letters are written upon notice via media outlets, national bar associations or direct requests by those affected by criminalisation. Every member of a bar association that is part of the CCBE can request for their concern to be addressed, given that the attacks are directly linked to their legal profession.

More information about the CCBE can be retrieved from their website at <https://www.ccbe.eu/>.

They can be contacted via:

Email: ccbe@ccbe.eu

Tel.: +32 (0)2 234 65 10

International Bar Association

The International Bar Association (IBA) is an organisation for international legal practitioners, bar associations and law societies. More than 80,000 individual international lawyers and law firms, as well as 190 national and regional bar associations and law firms from more than 170 countries, are members. The IBA aims to influence the development of international law reform, the administration of justice, the promotion of independence of the legal profession and the support of the practical implementation of human rights.²¹⁷

The **IBA’s Human Rights Institute (IBAHRI)** is an autonomous and financially independent entity from the IBA. It has the aim to promote, protect and enforce “human rights under a just rule of law” and the “independence of the judiciary and of the legal profession worldwide.” IBAHRI offers capacity building activities like human rights trainings and technical assistance for legal practitioners. They can, for example, get involved and support “lawyers and judges who are arbitrarily harassed, intimidated or arrested through advocacy and trial observations.”²¹⁸ So far there has been no explicit

²¹⁶ <https://www.britannica.com/topic/bar-association>

²¹⁷ International Bar Association. 2022. About the IBA. Available at: <https://www.ibanet.org/About-the-IBA>

²¹⁸ International Bar Association. 2022. About the IBAHRI. Available at: <https://www.ibanet.org/IBAHRI-About>

focus on the criminalisation of legal practitioners as Human Rights Defenders.

They can be contacted via

E-mail: iba@int-bar.org

Tel.: +44 (0) 20 7842 0090

3.4. Embassies

Embassies and consulates are a potential source of protection for Human Rights Defenders abroad. While the delineation of embassy (diplomatic) and consular protection is disputed (and an issue of interpretation of international law),²¹⁹ embassies and consulates in other countries can offer protection and support to their own nationals who suffer injury as a result of a breach of international law. The scope of action of embassies is regulated in the *Vienna Convention on Diplomatic Relations* (1961)²²⁰ and of consulates in the *Vienna Convention on Consular Relations* (1963).²²¹

Consular protection is of a preventive nature and should take place before national remedies are exhausted. Consuls work towards the representation of nationals of their home state if their rights are violated but do not represent the state per se. They can assist their nationals in distress through, for example, visiting nationals in detention or arrest, offering legal assistance, monitoring trials, representation in court and contact with local authorities.

Diplomatic protection is of a remedial nature; therefore, it can only be made use of after the exhaustion of local remedies. This means that embassies can only get active after a rights violation has taken place and the affected person has already undertaken all measures in the state in which rights have been violated, to obtain justice or reparation. Further, the prerequisites for diplomatic protection include continuous and undoubted nationality of the injured individual. The injury suffered must be a result of a breach of international law by another state, such as denial of justice or imprisonment without trial.²²²

If an EU citizen is in need of diplomatic or consular protection in a third country where his or her home country is not represented, “the protection of the diplomatic and consular authorities of another Member State on the same conditions as the nationals of that State” apply. This is based on the EU right to equal treatment as enshrined in Art. 20 (2)(c) and Art. 23 of the *Treaty on the Functioning of the European Union*²²³ and Art. 46 of the *Charter of Fundamental Rights of the European Union*²²⁴, as well as *Directive 2015/637/EU*.²²⁵

The level of engagement with Human Rights Defenders depends on the policy approach of the respective home state. This can be, for instance, trial monitoring or protection accompaniment, which can be used to feed into broader advocacy efforts of the state (for example, it can help to inform UPR work, see Chapter 2.2.1.2.). For all EU Member States, the common *European Union’s Guidelines on Human Rights Defenders* apply, which sets standards for their interaction with, and support

²¹⁹ See, for example, Künzli, A. (2006). Exercising Diplomatic Protection: The Fine Line Between Litigation, Demarches and Consular Assistance. *Heidelberg Journal of International Law* (2006), pp. 321–350.
Available at: https://www.zaoerv.de/66_2006/66_2006_2_a_321_350.pdf

²²⁰ Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf

²²¹ Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

²²² Schweizer Eidgenossenschaft. Federal Department of Foreign Affairs FDFA. 2022.
Available at: <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/international-law/respect-promotion/diplomatic-consular-protection/conditions-diplomatic-protection.html>

²²³ Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

²²⁴ Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf

²²⁵ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0637>

of, Human Rights Defenders in third countries (see Chapter 4.2.3.). Several states outside the EU²²⁶ have adopted specific guidelines for embassies on the protection of, and interaction with, Human Rights Defenders. Such recommendations include regular exchanges with Human Rights Defenders, trial observances and engagements with local authorities. In extreme cases of criminalisation and violations of the rights of a Human Rights Defender, as a matter of last instance, a state could withdraw its diplomats from the violating state. The EU has a variety of tools that it can use to protect Human Rights Defenders at risk, including trial observations or visits in detention, while using public and private diplomacy to raise individual cases of Human Rights Defenders at risk.

– In order to have resort to the avenues of protection by consulates and embassies, it can be recommended to build a network and exchange with the institutions on the situation of Human Rights Defenders and human rights in general before criminalisation occurs. –

4. European Union

4.1. Legislation

The EU has a wide sphere of influence, with 27 Member States as of 2022. Each of the Member States is bound by EU law, as EU law operates under the principle of **primacy**. This means that where there is a conflict between a provision of EU law and the law of a Member State, the piece of EU law in question will override the Member State law and apply in place of it.²²⁷ The legislative provisions discussed in this section, therefore, are legally binding on the Member States of the EU (including Greece and Croatia).

The EU can protect Human Rights Defenders through its legal texts, such as the Charter of Fundamental Rights of the EU (CFREU) or through its mechanism dedicated to urgent protection measures for Human Rights Defenders nationally, ProtectDefenders.eu. The EU also offers political support for Human Rights Defenders by awarding the Sakharov Prize annually and demonstrating public support for Human Rights Defenders in publications, election observations and more.²²⁸

However, the EU has two important pieces of legislation which work in tandem and are together called the Facilitators Package, and these pieces of legislation offer inadequate legal protection to Migrant Rights Defenders. This inadequate protection often results in the criminalisation of Migrant Rights Defenders in certain Member States such as Greece, for example (see Chapter 6.1.2). Furthermore, there are many more EU publications dedicated to Human Rights Defenders in third countries (such as the EU Guidelines on Human Rights Defenders) than there are dedicated to Human Rights Defenders facing criminalisation within the EU, meaning that it can be more difficult to find EU support if a Human Rights Defender is a citizen of, or residing in, the EU itself (see Chapter 4.2.3).

The available protection mechanisms for Human Rights Defenders, as well as explanations of the European legal framework surrounding the issue of criminalisation, are outlined in more detail throughout this chapter.

4.1.1. EU Charter of Fundamental Rights

All European Union citizens (i.e. citizens of an EU Member State) enjoy certain rights and freedoms stemming from the Charter of Fundamental Rights of the European Union, which has the **same legal status as EU Treaties**, meaning that it is one of the

²²⁶ For example: Canada, Norway, United States, United Kingdom and Switzerland.

²²⁷ Website of the European Union.

Available at: <https://eur-lex.europa.eu/EN/legal-content/glossary/primacy-of-eu-law-precedence-supremacy.html>

²²⁸ European Parliament website. Sakharov Prize. Available at: <https://www.europarl.europa.eu/sakharovprize/en/home>

most important legal texts in EU law and must be followed by all Member States.²²⁹ The basic rights and guarantees contained in the Charter inform all Union law, and are therefore extremely important to be aware of. These rights apply, and can be relied upon in a national court whenever a Member State breaches one of these rights **while implementing EU law**.²³⁰ This means that Member States must respect these rights when transposing EU law into national law and can be taken to court under the Charter if they do not. There are many fundamental rights outlined in the Charter which should be kept in mind by Human Rights Defenders if they face criminalisation, particularly because one of the main bases of criminalisation in countries like Greece is the Member States' implementation of provisions of EU law such as the Facilitators Package, meaning Charter Rights could be invoked in court against these kinds of criminalisation efforts (see Chapters 4.1.2 and 6.1.2). If one's Charter rights are infringed upon by a Member State when there is no implementation of EU law involved, however, one would have to seek remedies in national courts under the constitution or national laws of the state in question.²³¹

The rights that are most relevant in the context of criminalisation are listed below. It is important to keep in mind that, no matter where in the Union they are, anyone living, residing or moving through the EU (including undocumented people on the move) is entitled to these rights and more.

- ▶ **"Human dignity** is inviolable" and must be protected. (Art. 1)
- ▶ "Everyone has the **right to life**" and none will be executed or condemned to the death penalty. (Art. 2)
- ▶ "Everyone has the right to respect for [their]

physical and mental integrity." (Art. 3)

- ▶ **"Torture and inhuman or degrading treatment or punishment"** is prohibited. (Art. 4)

- ▶ "Everyone has the right to **liberty and security of the person.**" (Art. 6)

- ▶ "Everyone has **the right to respect for their private and family life**, home and communications." (Art. 7)

- ▶ "Everyone has the **right to the protection of personal data** concerning [them]," and this data must be processed fairly either with the consent of the person involved or for a legitimate reason laid out in law. Everyone has the right to access their data after it has been collected, and the right to rectify the data. (Art. 8)

- ▶ "Everyone has the **right to freedom of thought, conscience, and religion**," as well as the right to conscientious objection in accordance with national laws governing this right. (Art. 10)

- ▶ "Everyone has the **right to freedom of expression**," which includes the "freedom to hold opinions and to receive and impart information without interference by a public authority regardless of frontiers." The freedom and pluralism of the media must also be respected. (Art. 11)

- ▶ "Everyone has the **right to freedom of peaceful assembly, and freedom of association** at all levels." This includes, in particular, civic and political matters, as well as trade unions. (Art. 12)

- ▶ "Everyone has the right to own, use, dispose of, and bequeath [their] lawfully acquired **possessions**." No one can be deprived of their possessions, except when such deprivation is **legal** and in the **public interest**, and the owner will be compensated for their loss if deprived of their possessions. (Art. 17)

- ▶ Everyone has the **right to asylum** with due regard for the rules of the 1951 Geneva convention

²²⁹ European Union. 2009. Charter of Fundamental Rights of the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

²³⁰ European Commission. When does the Charter apply? Available at: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights/when-does-charter-apply_en#:~:text=For%20example%2C%20the%20Charter%20applies,apply%20an%20EU%20regulation%20directly

²³¹ European Commission. How to Report a breach of your rights. Available at: https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/how-report-breach-your-rights_en#:~:text=If%20you%20feel%20that%20your,a%20specialised%20human%20rights%20body

and the EU treaties. (Art. 18)

- ▶ **“Collective expulsions** are prohibited. No one may be removed, expelled, or extradited to a state where there is a serious risk that [they] would be subject to the death penalty, torture or other inhuman or degrading treatment or punishment.” (Art. 19)

- ▶ “Everyone is **equal before the law.**” (Art. 20)

- ▶ Everyone has the **right to good administration**, meaning everyone is entitled to have their “affairs handled impartially, fairly, and within a reasonable timeframe by the institutions, bodies, offices, and agencies of the Union.” (Art. 41)

- ▶ Every person (including legal persons) residing in or with an office registered in a Member State has the **right to access documents** of bodies of the Union regardless of their medium. (Art. 42)

- ▶ Every person has the right to **refer cases of maladministration** in activities of any EU body or institution (except the Court of Justice of the European Union) to the European Ombudsperson. (Art. 43)

- ▶ Every person (including legal persons) residing in or with an office registered in a Member State “has the **right to petition**” (by sending a request or complaint relating to an issue with EU law) the European Parliament. (Art. 44)

- ▶ Every person has “the **right to an effective remedy** and to a fair trial.” This includes the right to a fair and public hearing within a reasonable timeframe in front of an impartial and independent tribunal already established by law, as well as the guaranteed provision of legal aid if they do not have sufficient resources. (Art. 47)

- ▶ Every person who is charged with an offence has the **right to “be presumed innocent** until proved guilty according to the law,” as well as the right of defence, which is guaranteed to be respected under the Charter. (Art. 48)

- ▶ Every person has the **right not to be retroactively held guilty** for a criminal offence that was not an offence when they committed it, and if a lighter penalty was in place when the offence was committed, that penalty will apply. Every person who commits a criminal offence also has the right to suffer a **penalty proportionate to the offence committed.** (Art. 49)

- ▶ Every person has the right not to be **tried or**

punished again in criminal proceedings for an offence for which they have “already been acquitted or convicted within the Union in accordance with the law.” (Art. 50)

- ▶ **Limitations on the rights provided** for in the Charter must be legal and respect the essence of these rights and freedoms. Furthermore, such limitations must be **proportionate** and can only be made if they are “necessary and genuinely meet the objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.” (Art. 52)

- ▶ Nothing within the Charter restricts or adversely affects human rights and fundamental freedoms as recognised in other fields of application, including other international treaties. (Art. 53)

4.1.2. The Facilitators Package

“The Facilitators Package” is the name given to the two pieces of legislation which together establish the EU’s legal position on the smuggling of migrants. The Facilitators Package forms the minimum standards by which the EU Member States must legislate in this area, and these two documents are interpreted differently by them, leading to an increase in criminalisation of people and organisations providing humanitarian support to people on the move in several EU Member States. This increase in criminalisation comes as a result of the leniency given to Member States in the Facilitators Package – there are several key sections of the Facilitators Package which, due to their ambiguity, allow Member States to create harsh anti-smuggling legislation that does not ensure that humanitarian workers are protected from being criminalised as smugglers. Often, legislation that fails to protect Human Rights Defenders in this area can come about as a result of the political atmosphere in the given Member State – if those legislating are opposed to migration and Human Rights Defenders that work with people on the move, the Facilitators Package gives them the freedom to legislate without safeguards for Human Rights Defenders, resulting in their criminalisation. This creates an uncertain environment for Human Rights Defenders, civil society organisations, and other civil so-

ciety members in several EU countries as they fear being criminalised for performing their work. The Facilitators Package consists of:

► **Directive 2002/90/EC** of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence – this directive aims to define the offences of facilitation of unauthorised entry, transit and residence of people on the move.²³²

► **Framework Decision 2002/946/JHA** – this decision was adopted together with the above directive, and sets out the minimum sanctions for crimes under Directive 2002/90/EC.²³³

Article 1 of Directive 2002/90/EC outlines the offence of the smuggling of migrants. There are several key differences between this directive and the corresponding UN Protocol that result in a legal framework without adequate safeguards for Human Rights Defenders. Art. 1(1) of Directive 2002/90/EC requires Member States to enact appropriate sanctions on:

“(a) **any person** who intentionally assists a person who is not a national of a Member State to **enter, or transit across**, the territory of a Member State **in breach of the laws of the State** concerned on the entry or transit of aliens;

(b) any person who, for **financial gain**, intentionally assists a person who is not a national of a Member State to **reside** within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.”

Notably, intention to obtain financial gain is only a requirement for the offence of facilitating illegal residence in an EU Member State, while it is not a requirement for the offence of facilitating illegal

entry or transit. This means that a person providing humanitarian aid without seeking financial gain to people on the move entering Member State territory can be legally considered a “smuggler” under this Directive and be sanctioned as such. Article 1(2) provides an optional safeguard that a Member State may incorporate to protect Human Rights Defenders from being criminalised as smugglers under this legislation. Seven EU Member States have implemented the Facilitators Package with a humanitarian exception included – these are Belgium, Spain, Italy, Greece (but only in the case of search-and-rescue operations at sea), Finland, Malta and the United Kingdom (before leaving the EU).²³⁴ Article 1(2) states:

“Any Member State **may** decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases **where the aim of the behaviour is to provide humanitarian assistance to the person concerned.**”

This section seemingly acknowledges the weakness of the Art. 1(1) and allows Member States to make exceptions in order to protect Human Rights Defenders from criminalisation under this Directive, but does not **require** such an exception be made, unlike the UN Protocol Against the Smuggling of Migrants by Land, Sea and Air (see Chapter 2.1.4). In the definition of smuggling provided in this UN Protocol, one must have sought financial gain while facilitating the illegal entry of people on the move in order to be considered a smuggler. The United Nations Office on Drugs and Crime published Legislative Guidelines on this Protocol, which confirm that the intention behind the inclusion of intent to obtain financial gain in the definition of smuggler was to ensure that Human

²³² Council of the European Union. 2002. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Available at: <http://data.europa.eu/eli/dir/2002/90/oj>

²³³ Council of the European Union. 2002. 2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. Available at: <http://data.europa.eu/eli/dec/2002/946/oj>

²³⁴ European Commission. 2017. Refit Evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package. Page 15. Available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)117&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)117&lang=en)

Rights Defenders could not be punished under the Protocol for their voluntary work.²³⁵

As there is no legal requirement in the EU Directive for Member States to exempt Human Rights Defenders from criminalisation for facilitation of illegal transit and entry, it is up to each Member State to decide whether to legally protect Human Rights Defenders from criminalisation efforts when transposing this Directive into national law. Furthermore, EU Directives leave room for the Member State to enact more legislation in this area once the Directive is implemented into national law. This means that legislation in the area of migrant smuggling can vary significantly depending on the Member State, and in some Member States (such as Greece) the national legislation does not include an exemption such as that in Art. 1(2) of the Directive, leaving Human Rights Defenders vulnerable to being criminalised as smugglers, all while still being legally in line with the Facilitators Package.

Many Human Rights Defenders have advocated against the Facilitators Package for the reasons outlined above, and the European Commission has given some consideration to these criticisms. In 2017, the Commission carried out an evaluation of the Facilitators Package in which it acknowledged the dangerous flaws in the legislation, but ultimately concluded that a revision of the legislation was not required at the time.²³⁶ Instead of a change to the law itself, the EU began creating policy focused on helping Member States better implement the Facilitators Package into national law,

such as the Resolution on guidelines for Member States to prevent humanitarian assistance from being criminalised.²³⁷ However, a study of the Facilitators Package commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs was conducted in 2018, and found for the first time in a study endorsed by the EU that the Facilitators Package is "bad law" and requires revision.²³⁸ This study, which updated previous studies commissioned by the Parliament, demonstrates a change in EU opinion on the Facilitators Package, which was motivated by Human Rights Defenders and academics recording their stories and advocating on behalf of Human Rights Defenders. The findings of the 2018 study may indicate that legal revision is a possibility in the future, so Human Rights Defenders should continue to advocate for legal revision of the Facilitators Package by writing to EU officials, recording and (where possible) publishing their stories of criminalisation as a result of the Facilitators Package, and petitioning the EU to change this legislation.²³⁹

4.1.3. The proposed directive to protect Human Rights Defenders from SLAPP

As previously mentioned (see Introduction), SLAPP stands for Strategic Lawsuits Against Public Participation, and refers to lawsuits which are unsubstantiated in nature but are taken against public participators (namely people working in the interest of the public, particularly journalists and Human Rights Defenders), often based on untrue

²³⁵ United Nations Office on Drugs and Crime. 2020. Legislative Guide for the United Nations Convention against Transnational Organized Crime and the Protocols Thereto.

Available at: <https://www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html>

²³⁶ European Commission. 2017. Refit Evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence: the Facilitators Package.

Available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)117&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)117&lang=en)

²³⁷ European Commission. 2020. Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence 2020/C 323/01.

Available at: [https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020XC1001\(01\)](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52020XC1001(01))

²³⁸ European Parliament Policy Department for Citizens' Rights and Constitutional Affairs. 2018. Fit for Purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update.

Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU\(2018\)608838_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU(2018)608838_EN.pdf)

²³⁹ European Commission website. Petition the EU.

Available at: https://commission.europa.eu/about-european-commission/get-involved/petition-eu_en

claims and motivated by a political desire to hinder the work of public participators by incurring legal fees and other difficulties. SLAPP is a common form of criminalisation that Human Rights Defenders face within the EU, as bringing a case against a Human Rights Defender or an organisation of Human Rights Defenders is an effective way to hinder their work. This is because, regardless of whether the case is successful, preparing a solid legal defence takes time and money, meaning that Human Rights Defenders trying to defend themselves against SLAPPs will often be unable to work at their full capacity, or at all, while they do so. This inability to work at full capacity can lead to more long-term difficulties in engaging with human rights work also, and can result in Human Rights Defenders and organisations of Human Rights Defenders being unable to continue their work. Furthermore, the parties taking cases like this against Human Rights Defenders are often backed by state budgets, meaning that their resources and influence greatly outmatch those of the targeted Human Rights Defenders, leading to an imbalance of power throughout the legal proceedings.

While there is currently no EU legislation aimed specifically at protecting Human Rights Defenders from criminalisation in the EU, the JURI Committee of the European Commission (see Chapter 4.2.6) earlier this year proposed a directive of the EU aimed at protecting journalists and Human Rights Defenders from SLAPP. The proposed directive would introduce the following safeguards for Human Rights Defenders and journalists targeted by SLAPP:

- In cases of SLAPP that have no real legal basis, and which contain a **cross-border element** (i.e. someone from one MS being prosecuted in a

different MS), judges would have the power to dismiss such cases early if the Human Rights Defender applied for early dismissal.

- If the case was dismissed, the party that brought the charges would be required to pay for all the procedural costs (paying for lawyers, etc.) of the case and/or monetary compensation if awarded to the Human Rights Defender.

- The Human Rights Defender targeted by the case may then receive compensation.

- The court would also be able to impose fines or other penalties on the party that brought the Human Rights Defender to court in order to discourage future cases of SLAPPs.²⁴⁰

This proposed directive demonstrates that many MEPs are aware of and sympathetic to Human Rights Defenders suffering criminalisation in this way, and many of the members of the JURI Committee are quite vocal in their support of Human Rights Defenders facing SLAPP.²⁴¹ While this proposed directive would certainly be helpful to Human Rights Defenders and journalists who are victims of SLAPP, it has several major downsides. Most importantly, this proposed directive specifically only applies to cases where there is a **cross-border element**. This immediately excludes many cases of SLAPP from the parameters of this directive, as it does not account for cases in which Human Rights Defenders and journalists are targeted by SLAPPs in their country of residence/establishment – if the directive were to enter into force in its current form, Human Rights Defenders and journalists would be left without safeguards unless they were targeted by SLAPP in a different country. Furthermore this directive, if passed, will not come into force for years. The directive has so far only been proposed by the European Commission and reviewed by the European Parliament, and has yet to go through several more stages of

²⁴⁰ European Commission. 2022. Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings (“Strategic lawsuits against public participation”). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0177>

²⁴¹ European Parliament. 2021. MEPs want protection for media, NGOs and civil society from abusive lawsuits. Available at: <https://www.europarl.europa.eu/news/en/press-room/20211006IPR14311/meps-want-protection-for-media-ngos-and-civil-society-from-abusive-lawsuits>

the legislative process.²⁴² There is no guarantee that this directive will be passed by the EU and, if it is passed, it will take a few years to come into force, at which point the Member States must implement the directive into their national legislation, which will take longer still.

The proposed directive does not provide wide-reaching protection to all Human Rights Defenders and journalists in the EU in its current form, and it is not something that can be relied upon by Human Rights Defenders yet. However, any attempt by the EU to legislate to protect Human Rights Defenders is worth the attention of Human Rights Defenders, journalists and advocates. While the legislation is currently incomplete, Human Rights Defenders could influence its progression by advocating for adequate protection in future revised versions by contacting members of the JURI Committee and telling them their stories of criminalisation, outlining the legal protection they require.²⁴³ Other forms of advocacy on the international stage could help to highlight for MEPs the inadequacies in the current form of the legislation (for more information concerning advocacy work with MEPs or committees of the European Parliament, see Chapter 4.2.6).

One path for such advocacy is with the Coalition Against SLAPPS in Europe (CASE). CASE is a coalition of European NGOs dedicated to combatting SLAPPs with a three-fold approach.

This approach involves:

- Identifying and exposing those who use

SLAPPs.

- Providing resources to targets of SLAPPs by connecting them to lawyers, NGOs, advocacy organisations and, occasionally, emergency funding.
- Advocating for law reform in order to better protect targets of SLAPPs.²⁴⁴

CASE also offers victims of SLAPP the opportunity to identify and record their cases in order to build a stronger recorded collection of SLAPPs to use in advocacy campaigns. CASE is a useful resource for Human Rights Defenders who are victims of SLAPPs to engage with, as CASE is dedicated to amplifying the voices of victims of SLAPP and ensuring that those responsible are exposed for doing so, as well as putting public pressure on European lawmakers to create adequate safeguards for victims of SLAPPs. To contact and engage with CASE, one can visit their website at <https://www.the-case.eu/contact-us>.

4.1.4. EU data protection regulation

Some forms of criminalisation constitute violations of data protection legislation.²⁴⁵ Since the national provisions on data protection in EU Member States are bound by EU legislation, the most relevant rights for Human Rights Defenders in the area of data protection are enshrined in the EU data protection regulation and shall be introduced here.

The most relevant regulation for Human Rights Defenders is the **General Data Protection Regulation**. Its official title is *Regulation (EU) 2016/679 on the protection of natural persons with regard to the pro-*

²⁴² European Parliamentary Research Service. 2022. Strategic lawsuits against public participation (SLAPPs) [EU Legislation in Progress]. Available at: <https://epthinktank.eu/2022/10/03/strategic-lawsuits-against-public-participation-slapps-eu-legislation-in-progress/>

²⁴³ A list of the members of the JURI Committee and their contact details can be found here: <https://www.europarl.europa.eu/committees/en/juri/home/members>

²⁴⁴ Coalition Against SLAPPs in Europe website. n.d. Available at: <https://www.the-case.eu/>

²⁴⁵ This might be, for instance, the surveillance or screening of Human Rights Defenders' phones.

cessing of personal data and on the free movement of such data.²⁴⁶ It legislates any action taken with personal data of any person in the EU, undertaken by any individual, organisation or company.²⁴⁷ In its form as a regulation it is legally binding, hence enforceable and with established accountability, and applies in all EU Member States, as well as to all EU institutions.²⁴⁸

In the context of criminalisation of Human Rights Defenders, the most relevant part of the regulation is from Chapter III onwards, establishing the rights of the data subject (meaning in this context the individual whose data is collected and processed). The following articles in this chapter are the most relevant:²⁴⁹

- Art. 12(1): **Right to be informed** about collected and processed data, also on profiling “in a **concise, transparent**, intelligible and easily **accessible form**, using clear and plain language,” in a **written** format.
- Art. 13: **Right to information** in cases of personal data collection and processing.²⁵⁰
- Art. 15: **Right to access** processed personal data and information on it.
- Art. 16: **Right to rectification** of personal data, in case it is revealed that the information recorded is inaccurate or has changed, and the **right to completion** of incomplete data.
- Art. 17: **Right to erasure** (“**right to be forgotten**”).²⁵¹

- Art. 18: **Right to restriction of processing**.
- Art. 21: **Right to object** the processing of personal data.
- Art. 22: **Right not to be subject to a decision that is solely based on automated individual decision-making, including profiling**.
- Art. 23: Regulates the **restrictions of these rights**; however, only if “such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society.”

In addition, the following articles are of relevance:

- Art. 6(1)(a): Allows the processing of data only with **consent of the data subject**; a few exceptions are given, e.g. necessity for the performance of a contract (Art. 6(1)(b)), to protect “vital interests of the data subject or of another natural person” (Art. 6(1)(d)) or public interest (Art. 6(1)(e)).
- Art. 9: Strictly limits the **processing of special categories of personal data**; personal data of special category is “personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person’s sex life or sexual orientation.”
- Art. 10: “Processing of personal data **relating to criminal convictions and offences or related**

²⁴⁶ For the full legal text, see: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

²⁴⁷ European Commission. N.d. What does the General Data Protection Regulation (GDPR) govern? Available at: https://ec.europa.eu/info/law/law-topic/data-protection/reform/what-does-general-data-protection-regulation-gdpr-govern_en

²⁴⁸ European Union. N.d. Types of legislation. Available at: https://european-union.europa.eu/institutions-law-budget/law/types-legislation_en

²⁴⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

²⁵⁰ For details on which information has to be provided, see the original legal text.

²⁵¹ For details on the conditions of erasure, see original legal text.

security measures²⁵² [...] shall be carried out only **under the control of official authority** or when the processing is authorised by Union or Member State law providing for **appropriate safeguards for the rights and freedoms of data subjects**. Any comprehensive register of criminal convictions shall be kept only under the control of official authority.”

- **Transfer of data to a third country or an international organisation** is regulated from Art. 44.
- Art. 77: **Right to lodge a complaint with a supervisory authority**.
- Art. 79: **Right to an effective judicial remedy against a controller or processor** of personal data.

In the context of personal data protection, certain key terms are used on a regular basis to explain rights and legislation (see also, Chapter 5.3.3. and Chapter 6.3.1.). Therefore, the most relevant shall be explained here.²⁵³

Processing personal data means any form of action that is taken with personal data, including ‘collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.’ These include operations of automatic or non-automatic manner (Art. 4(2)).

A **data controller** is a person, or a governmental or non-governmental body, that decides on the processing of personal data (Art. 4(7)).

A **data processor** is the person, or a governmental or non-governmental body, that processes the personal data of the data controller (Art. 4(8)).

4.2. Mechanisms

Within the EU, there are several mechanisms in place in order to protect Human Rights Defenders and advocate for their rights, some of which can provide protection inside the territory of the EU, some outside of it.

4.2.1. Fundamental Rights Agency of the European Union

The Fundamental Rights Agency (FRA) of the European Union has the mission to ‘promote and protect’²⁵⁴ the fundamental rights enshrined in the *EU Charter of Fundamental Rights*. Within this, they have a special focus on anti-discrimination, data protection and access to justice. Their work is mainly on an advocacy level, collecting and analysing data in order to support decision and law-making processes, and monitoring their implementation at the local and international level.²⁵⁵ As well as connecting different actors working for fundamental rights, they also develop training, information material and reports on a regular basis.²⁵⁶

²⁵² Investigation and criminalisation of Human Rights Defenders is often related to allegations of criminal offences; for further information, see, for example, Chapter 3.1.4. and Chapter 7.1.2.

²⁵³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016R0679>

²⁵⁴ European Union Agency for Fundamental Rights (FRA). N.d. About FRA. Available at: <https://fra.europa.eu/en/about-fra>

²⁵⁵ European Union Agency for Fundamental Rights (FRA). N.d. About FRA. Available at: <https://fra.europa.eu/en/about-fra>; European Union Agency for Fundamental Rights (FRA). N.d. What we do. Available at: <https://fra.europa.eu/en/about-fra/what-we-do>

²⁵⁶ For an overview on their materials, see: European Union Agency for Fundamental Rights (FRA). N.d. FRA material and resources on the Charter. Available at: <https://fra.europa.eu/en/eu-charter/fra-charter-resources>

How can FRA support Human Rights Defenders?

Next to a thematic focus on human rights systems and defenders,²⁵⁷ they also have a focus on asylum, migration and borders.²⁵⁸ Here, they publish news, analysis and reports on a regular basis. They often ask civil society for input before publishing their reports, which can be a valuable advocacy effort due to how wide-reaching and well-regarded these reports are, including on a political level. FRA often presents the results of its reports to national governments or conferences, and conducts meetings and trainings based on their current research results, either with members of a parliament, EU institutions or other international bodies, such as the Council of Europe.²⁵⁹ Of particular interest might be their reports on the state of civil society, with a focus on different EU countries, including the shrinking space and legislative developments limiting or protecting the work of Human Rights Defenders,²⁶⁰ and the regular updates on search and rescue missions in the Mediterranean and their legal status.²⁶¹ They also work on the effectiveness of National Human Rights Institutions (NHRIs),

which can include, for example, reports of their work and challenges, as well as the accreditation status of national Ombudspersons.²⁶² For a full list of the agencies, publications and webinars of relevance to civil society, see: <https://fra.europa.eu/en/cooperation/civil-society/library>.

How to engage with the FRA?

Apart from following their internet presence in order to be aware about calls for input from civil society, FRA can be contacted through the contact form on their website.

In addition, they have a **Civil Society and the Fundamental Rights Platform**, which is, according to the FRA, the platform's channel to cooperate with civil society. This includes the exchange of information, through which actors from civil society can provide the agency with input for relevant topics and give strategic advice. Furthermore, the agency tries to support the member organisation of the platform with tools, materials and webinars, and by increasing their connections.²⁶³ While there are certain registration criteria in order to determine whether an organisation is eligible for the platform,²⁶⁴ the registration process can be initiated

²⁵⁷ For more information, see: European Union Agency for Fundamental Rights (FRA). N.d. Support for human rights systems and defenders.

Available at: <https://fra.europa.eu/en/themes/support-human-rights-systems-and-defenders>

²⁵⁸ For more information, see: European Union Agency for Fundamental Rights (FRA). N.d. Asylum, migration and borders. Available at: <https://fra.europa.eu/en/themes/asylum-migration-and-borders>

²⁵⁹ See, for instance: European Union Agency for Fundamental Rights (FRA). 2022. National Parliaments and the role of the EU Charter in national law making. Available at: <https://fra.europa.eu/en/news/2022/national-parliaments-and-role-eu-charter-national-law-making>; European Union Agency for Fundamental Rights (FRA). 2022. Roma survey findings presented in Czechia. Available at: <https://fra.europa.eu/en/news/2022/roma-survey-findings-presented-czechia>; European Union Agency for Fundamental Rights (FRA). 2022. FRA Director holds meetings with incoming Swedish Presidency. Available at: <https://fra.europa.eu/en/news/2022/fra-director-holds-meetings-incoming-swedish-presidency>; European Union Agency for Fundamental Rights (FRA). 2022. European Parliament discussion on protecting migrant children. Available at: <https://fra.europa.eu/en/news/2022/european-parliament-discussion-protecting-migrant-children>.

²⁶⁰ For 2022, see, for instance: European Union Agency for Fundamental Rights (FRA). 2022. Europe's civil society: still under pressure - 2022 update. Available at: <https://fra.europa.eu/en/publication/2022/civic-space-2022-update>

²⁶¹ For the last update in June 2022, see: European Union Agency for Fundamental Rights (FRA). 2022. June 2022 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights. Available at: <https://fra.europa.eu/en/publication/2022/june-2022-update-ngo-ships-sar-activities>

²⁶² For more information, see: European Union Agency for Fundamental Rights (FRA). N.d. National human rights systems and bodies. Available at: <https://fra.europa.eu/en/themes/national-human-rights-systems-and-bodies>

²⁶³ For more information, see: European Union Agency for Fundamental Rights (FRA). N.d. Civil society and the Fundamental Rights Platform. Available at: <https://fra.europa.eu/en/cooperation/civil-society>

²⁶⁴ For the full list of criteria, as well as further information on the registration, see: European Union Agency for Fundamental Rights (FRA). N.d. How to register. Available at: <https://fra.europa.eu/en/cooperation/civil-society/how-to-register>

easily through the survey to be found under the following link: <https://fra.europa.eu/surveys/index.php/546734/lang-en>.

Contact information

Website: <https://fra.europa.eu/en>

Contact form: <https://fra.europa.eu/en/contact>

4.2.2. European Ombudsperson

The European Ombudsperson is an independent body tasked with the oversight of EU institutions and bodies, including their administrative processes. Therefore, in their mandate, the Ombudsperson looks into issues of individuals, companies and organisations concerning maladministration by **EU institutions and bodies**.²⁶⁵ They consider an act as **maladministration** in cases where the respective body violates human rights, or breaches law or principles of good administration.²⁶⁶ Hence, their main focus is on EU bodies and institutions, including topics like transparency, ethics and administrative procedures, but also fundamental rights.²⁶⁷ The Ombudsperson mainly operates in two different ways: either by investigating the complaints they received or by examining systemic issues based on their own proactive initiative.²⁶⁸

The Ombudsperson does not have a mandate to issue legally binding decisions.²⁶⁹

On top of inquiries following complaints, including those at their own initiative, the Ombudsperson also publishes special reports and facilitates public consultations. Special reports can be published based on inquiries following an individual's or organisation's complaint or at the Ombudsperson's own initiative. In these reports, the process of the inquiry and its results are presented to the public. While documents reporting on the different steps of their inquiries are available on the Ombudsperson's website,²⁷⁰ the decision to add them together in a report to elaborate more comprehensively on a specific matter is up to the Ombudsperson's office.²⁷¹ Public consultations are initiated, so that the Ombudsperson is able to get a better understanding concerning an issue they are investigating. Public consultations are open to everybody. Therefore, participating in a public consultation can constitute an advocacy tool for Human Rights Defenders, in cases where the topic in focus relates to their criminalisation.²⁷² However, at the time of writing this toolkit, the Ombudsperson has never conducted a public consultation on Human Rights Defenders. Calls for publication and related documents are posted on a regular basis on the following website: <https://www.ombudsman.europa.eu/en/strategic-issues/public-consultations>. Here, one also finds instructions on how to participate in a consultation.

²⁶⁵ European Ombudsperson. N. d. Emily O'Reilly. Available at: <https://www.ombudsman.europa.eu/en/emily-oreilly>

²⁶⁶ European Ombudsperson. N. d. Make a complaint to the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/make-a-complaint>

²⁶⁷ European Ombudsperson. N. d. What we do. Available at: <https://www.ombudsman.europa.eu/en/home>

²⁶⁸ European Ombudsperson. N. d. Emily O'Reilly. Available at: <https://www.ombudsman.europa.eu/en/emily-oreilly>

²⁶⁹ European Ombudsperson. N. d. Make a complaint to the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/make-a-complaint>

²⁷⁰ Information on all steps of initiated inquiries to be found here: European Ombudsperson. N. d. All inquiries. Available at: <https://www.ombudsman.europa.eu/en/all-inquiries>

²⁷¹ European Ombudsperson. N. d. Special reports. Available at: <https://www.ombudsman.europa.eu/en/special-reports> and for special reports following strategic inquiries: European Ombudsperson. N. d. Special reports. Available at: <https://www.ombudsman.europa.eu/en/strategic-issues/strategic-inquiries/special-reports>

²⁷² European Ombudsperson. N. d. Public consultations. Available at: <https://www.ombudsman.europa.eu/en/strategic-issues/public-consultations>

How can the EU Ombudsperson support Human Rights Defenders?

The Ombudsperson can support Human Rights Defenders after they have filed an official complaint. This complaint has to be about an EU institution or include the mismanagement of EU funds. Concerning EU funds, the Ombudsperson can inquire about the award of grants, interaction with contractors and funding partners, and specific aspects of their implementation.²⁷³

– On the website of the Ombudsperson one cannot find publications or inquiries on Human Rights Defenders so far.²⁷⁴ This might, however, be linked to their relatively small mandate, which focuses on maladministration of EU institutions. –

How to file a complaint

Requirements:²⁷⁵

► **Any individual, business or organisation** can file a complaint to the European Ombudsperson.

► The complainant has to be **a citizen of the EU or a resident of a Member State** of the EU. However, non-EU citizens or non-EU residents can also submit information to the EU Ombudsperson. In these cases, the Ombudsperson cannot open an inquiry through the format of an individual complaint, but might decide to open an inquiry on their own initiative.

► The complaint **has to be about “maladministration by the institutions, bodies and agencies of the European Union.”**

• A full list of institutions a Human Rights Defender can complain about can be found here: https://european-union.europa.eu/index_en (bottom of the page)

• The Ombudsperson defines **maladministration** as an instance in which the respective body violates human rights, or breaches law or principles of good administration. This can be, among others, abuse of power, discrimination or unfairness within the administrative processes of EU bodies or institutions, or in the management of EU funds, as well as the impediment of access to information of public interest.

► The complaint **cannot be made later than two years** after the person affected became aware about the incident they want to complain about.

► Before filing a complaint, “[t]he complainant **must first have contacted and tried to resolve the matter with the institution in question.**” In practice, this means that the person complaining must have had contact with the institution of concern before filing the complaint and must have requested or suggested measures to resolve the issue to no avail. This contact can be made, for instance, by email.

Having fulfilled all the set criteria, a complaint can be filed after registration with the following online form:

<https://www.ombudsman.europa.eu/en/complainant-login>, or by post.

For filing a request via post, one has to fill in the printable complaint form (to be found here: <https://www.ombudsman.europa.eu/en/make-a-complaint>)²⁷⁶ and send it to the Ombudsperson’s post address.

If the Ombudsperson receives a complaint, providing that the above-listed requirements are fulfilled and enough information is given, they open an inquiry. Elements of this inquiry can be that the Ombudsperson asks the institution of concern for more information, instigates a meeting or con-

²⁷³ European Ombudsperson. N. d. Management of EU funds (grants, procurement and contracts) and the role of the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/areas-of-work/management-of-eu-funds>

²⁷⁴ European Ombudsperson. N. d. Available at: <https://www.ombudsman.europa.eu/en/home>

²⁷⁵ European Ombudsperson. N. d. Make a complaint to the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/make-a-complaint>

²⁷⁶ For more detailed information on how to file a complaint, see: European Ombudsperson. N. d. Make a complaint to the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/make-a-complaint>

ducts an inspection. During the process, the Ombudsperson stays in contact with the complainant and might ask for further information or comments regarding the way to move forward. The latter can be a proposal for action, including recommendations. In case the relevant body does not accept promptly, it has three months to give its opinion on the matter. At the end of the process, the Ombudsperson makes a closing decision, including a report on the way the inquired institution dealt with the issue and whether or not recommendations were implemented.²⁷⁷

Contact information

Address:

Médiateur européen
1 avenue du Président Robert Schuman
CS 30403
F-67001 Strasbourg Cedex

Website:

<https://www.ombudsman.europa.eu/en/home>

General contact form:

<https://www.ombudsman.europa.eu/en/contacts>

4.2.3. EU protection for Human Rights Defenders outside the EU

The EU Guidelines on Human Rights Defenders,²⁷⁸ as well as the Renewed Action Plan on Human Rights and Democracy,²⁷⁹ outline EU policy goals and protection mechanisms for Human Rights Defenders outside the EU only. These documents **are not legally binding**, and therefore do not establish a framework of legal protection for Human Rights Defenders in third countries, but both documents

outline EU policy goals in relation to protecting Human Rights Defenders outside the EU and establish useful contacts for Human Rights Defenders in third countries to approach in times of crisis. These documents, in combination with other initiatives of the EU dedicated to providing support to Human Rights Defenders in third countries, offer a stronger support system for Human Rights Defenders suffering criminalisation, albeit in third countries only.

EU Guidelines on Human Rights Defenders

The EU Guidelines on Human Rights Defenders²⁸⁰ are intended to serve the purpose of improving the EU's commitment to support Human Rights Defenders as part of its human rights external relations policy. The guidelines provide 'practical suggestions' to do this, as well as advice for EU Missions in their relations with Human Rights Defenders. EU Missions are operations undertaken by the EU in third countries in response to a situation of crisis, composed either of civilians or military personnel, with the goal of managing the crisis through peacekeeping, conflict prevention or building stability with regard to the third country in question.²⁸¹ The Guidelines on Human Rights Defenders guide the EU Missions on how best to support Human Rights Defenders in third countries when the Missions come in to contact with them. The contents of the guidelines are summarised below.

► The guidelines emphasise the importance of **monitoring, reporting and assessment** of the situation of Human Rights Defenders in third countries by the heads of EU Missions (HoM) in a given country.

²⁷⁷ European Ombudsperson. N. d. Make a complaint to the European Ombudsman. Available at: <https://www.ombudsman.europa.eu/en/make-a-complaint>

²⁷⁸ European Union External Action Service. 2016. EU Guidelines on Human Rights Defenders. Available at: https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders_en

²⁷⁹ Council of the European Union. 2020. EU Action Plan on Human Rights and Democracy 2020-2024. Available at: https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf

²⁸⁰ European Union External Action Service. 2016. EU Guidelines on Human Rights Defenders. Available at: https://www.eeas.europa.eu/eeas/eu-guidelines-human-rights-defenders_en

²⁸¹ European Union External Action Service. Missions and Operations. Available at: https://www.eeas.europa.eu/eeas/missions-and-operations_en

► The guidelines encourage EU Missions in third countries (as well as European Commission Delegations)²⁸² to **take an active policy** towards Human Rights Defenders, while keeping in mind that intervention by the EU could lead to further victimisation of Human Rights Defenders in some countries. The guidelines suggest that EU Missions **share information** with Human Rights Defenders, **maintain contact** with them, provide **public recognition** to Human Rights Defenders, and **attend and observe trials** of Human Rights Defenders where appropriate.

► The guidelines state that the EU will, “when deemed necessary,” **encourage third countries to comply with the relevant international standards** regarding Human Rights Defenders, especially the UN Declaration on Human Rights Defenders. The guidelines also state that the Presidency, High Representative for the Common Foreign and Security Policy and other EU officials will include **meetings with and about** Human Rights Defenders in their visits to third countries.

► The guidelines state that the **EU will demonstrate support for the Special Procedures of the UN Commission on Human Rights** (which include Special Rapporteurs, Special Representatives, Independent Experts, and Working Groups).

► The guidelines state that programmes of the European Community and Member States that are intended to **develop democratic processes and institutions**, as well as the promotion and protection of human rights in developing countries, are good practical support for Human Rights Defenders.

► The guidelines state that the European Council Working Party on Human Rights (COHOM) will undertake reviews of the implementation of the guidelines while cooperating with other relevant Council Working Parties.

Human Rights Defenders in third countries can approach the nearest EU Mission and expect the above guidelines will be followed. Specifically, each EU Mission should have a Human Rights Liaison Officer as a point of contact for Human Rights Defenders, who is dedicated to supporting third country Human Rights Defenders in crisis.²⁸³ If there is no EU Mission in the Human Rights Defender’s country, they should instead approach an EU Commission Delegation to their country.²⁸⁴ Commission Delegations are representatives of the EU based in a third country and dedicated to explaining and implementing EU policy (including human rights policy as part of the Common Foreign and Security Policy), monitoring the policies and developments of the host country, and negotiating with the host country government. In absence of an EU Mission, a Commission Delegation has a similar commitment to the policy goals outlined in the guidelines, and will also provide support in the ways mentioned above to Human Rights Defenders in third countries. BVMN published a series of proposed amendments to the EU Guidelines on Human Rights Defenders in 2022, stating that the protection for third country Human Rights Defenders outlined in the guidelines should also be granted to Human Rights Defenders within the EU, with particular emphasis on Migrant Rights Defenders.²⁸⁵

EU Action Plan on Human Rights and Democracy, 2020–2024

The EU Action Plan on Human Rights and Democracy 2020–2024 is the third Action Plan of its type, seeking to establish the EU’s commitment to upholding international human rights standards in its relations with third countries, so as to promote respect for human rights outside the EU.²⁸⁶ The Ac-

²⁸² European External Action Service. EU in the World. Available at: https://www.eeas.europa.eu/eeas/eu-world-0_en

²⁸³ Frontline Defenders. 2013. Protection Handbook for Human Rights Defenders. Available at: https://www.frontlinedefenders.org/sites/default/files/eu_action_handbook.pdf

²⁸⁴ European External Action Service. EU in the World. Available at: https://www.eeas.europa.eu/eeas/eu-world-0_en

²⁸⁵ Border Violence Monitoring Network. Proposed Amendments to the EU Guidelines on Human Rights Defenders. 2022. Available at: <https://www.borderviolence.eu/bvmn-proposed-amendments-to-the-eu-guidelines-on-human-rights-defenders/>

²⁸⁶ European Council. 2020. EU Action Plan on Human Rights and Democracy 2020-2024. Available at: https://www.eeas.europa.eu/sites/default/files/eu_action_plan_on_human_rights_and_democracy_2020-2024.pdf

tion Plan is not a legal document, but sets out the objectives and “lines of action” of EU institutions in five main areas, while allowing the organs of the EU to implement these lines of action throughout 2020–2024. The five main areas touched on in this document (as well as the subsections that relate to the struggles of Human Rights Defenders and what each of them states about these struggles) are outlined below.

1. The protection and empowering of individuals

1.1: The EU is committed to protecting Human Rights Defenders in third countries by ensuring that they can access assistance through the EU mechanism for protection (See Chapter 4.2.4), and positively and publicly acknowledging the important role that Human Rights Defenders play in society.

1.3: The EU commits to condemning and taking “appropriate actions” against laws unduly restricting the work of Human Rights Defenders, journalists and other civil society members. This section also states that the EU commits to condemning forms of harassment and intimidation against journalists and media workers in third countries, ensuring that the Human Rights Defender protection mechanism is open to them.

2. The building of resilient, inclusive and democratic societies

2.4: The EU should seek to build the capacities of grassroots CSOs and Human Rights Defenders so that they can regularly monitor human rights violations in their countries.

3. The promotion of a global system for human rights and democracy

3.4: The EU should “deepen engagement with and enhance support for” Human Rights Defenders, CSOs and more in order to defend their right to perform their work

without fear of harassment, discrimination or violence. This section also states that the EU should endeavour to “support and strengthen” long-term relationships with CSOs, Human Rights Defenders and more.

3.5: The EU should support advocacy work and work to create spaces for business engagement with Human Rights Defenders and CSOs in “decent job creation, sustainable development, and women’s entrepreneurship and economic empowerment along the supply chain.”

4. New technologies and the opportunities and challenges that accompany them

4.2: The EU should engage with new technologies and try to get the most out of them, while focusing especially on reducing risk for Human Rights Defenders and journalists.

5. Working together

5.2: This section lists “direct support for Human Rights Defenders” as one of the means by which the Action Plan should be implemented.²⁸⁷

To monitor the progress of the Action Plan, the EU publishes an Annual Report on Human Rights and Democracy, which outlines the steps taken and progress made each year since the publication of the Action Plan. Section 1.1 of the 2021 report contains a section about Human Rights Defenders.²⁸⁸ In this section of the report, the EU emphasises its work with, and direct support of, Human Rights Defenders outside the EU in 2021, which included:

- Speaking about Human Rights Defenders in EU dialogues about human rights.
- Making public statements in favour of Human Rights Defenders.
- Monitoring trials and visiting Human Rights Defenders in detention.
- Holding dialogues with Human Rights Defend-

²⁸⁷ Ibid

²⁸⁸ EU High Representative for Foreign Affairs and Security Policy. 2021. Annual Report on Human Rights and Democracy in the World. Available at: <https://www.eeas.europa.eu/sites/default/files/documents/2021%20Annual%20Report%20on%20Human%20Rights%20and%20Democracy%20in%20the%20World%20-%20Report%20by%20the%20European%20Union%20High%20Representative...pdf>

ers, particularly in the annual EU–NGO forum on Human Rights.

- Holding training for Human Rights Defenders in the context of the pandemic.
- Cooperating with the UN Special Rapporteur for Human Rights Defenders.
- Financially supporting Human Rights Defenders via the European Instrument for Democracy and Human Rights.

To avail of this support as a Human Rights Defender in a third country, one should engage with the Missions or Delegations of the EU in their country and inform them of the difficulties they are facing. The EU representatives should then act on the policy commitments made in both the Action Plan and the Guidelines on Human Rights Defenders, and offer an appropriate form of support. If a Human Rights Defender is specifically seeking financial support, however, they should engage with the European Instrument for Democracy and Human Rights, as outlined below.

European Instrument for Democracy and Human Rights

The European Instrument for Democracy and Human Rights (EIDHR) is the instrument that funds the EU Human Rights Defender protection mechanism, ProtectDefenders.eu. The EIDHR was established in 2014 by Regulation No. 234/2014, “establishing a financing instrument for democracy and human rights worldwide.”²⁸⁹ This regulation established the EIDHR in an effort to achieve EU foreign policy goals in the area of human rights and democracy, including commitments laid out in the documents

summarised in the above section. As indicated above, these goals are centred around promoting human rights and the principles of democracy in third countries, as well as building the capacities of Human Rights Defenders and CSOs in order to help them make meaningful political contributions in the area of human rights and civil society.

In order to achieve these goals, the EIDHR calls for and funds projects by CSOs, non-profit organisations and individuals in many different countries.²⁹⁰ The EIDHR has the power, as per Regulation No. 235/2014, to operate without the consent of a host country – i.e. the EIDHR can finance projects in a third country without seeking the approval of the country’s government. This allows for the EIDHR to discreetly aid Human Rights Defenders and CSOs in politically sensitive issues that could endanger them otherwise. The funding of the EIDHR only applies to Human Rights Defenders in third countries.²⁹¹ Perhaps the biggest contribution the EIDHR makes to the safety of Human Rights Defenders is the funding of ProtectDefenders.eu, the EU’s Human Rights Defender Protection Mechanism.

4.2.4. ProtectDefenders.eu

ProtectDefenders.eu is a consortium of 12 NGOs, which together form the EU Human Rights Defender protection mechanism.²⁹² It is an EU-funded organisation led by the 12 NGOs, providing urgent and practical support to Human Rights Defenders **outside of EU Member States** who fit within the scope of the definition of Human Rights Defenders provided in the UN Declaration on Human Rights

²⁸⁹ European Parliament. 2014. Regulation No. 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for human rights and democracy. Available at: <http://data.europa.eu/eli/reg/2014/235/oj>

²⁹⁰ European Commission. Call for Proposals and Tenders. Available at: <https://webgate.ec.europa.eu/europeaid/online-services/index.cfm?ADSSChck=1472724335314&do=publi.welcome&ccnt=7573876&aoet=36538&nbPubliList=15&debpub=&orderby=upd&finpub=&pgm=7573843&orderbyad=Desc&ZGEO=&searchtype=AS&userlanguage=en>

²⁹¹ European Parliament. 2014. Regulation No. 235/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for human rights and democracy. Available at: <http://data.europa.eu/eli/reg/2014/235/oj>

²⁹² ProtectDefenders website. Available at: <https://protectdefenders.eu/>

Defenders.²⁹³

How can they help Human Rights Defenders?

► **Emergency Support Programme – ProtectDefenders.eu** can provide grants to individual Human Rights Defenders who are at risk (and their families) to help ensure their safety. The amount provided and how it is used differs from case to case, but these grants can be used, for instance, for acquiring safe travel, personal security, legal aid, alarm systems, medical costs, family support and urgent relocation (generally to other regions in the same country and for a short period of time). This list is not exhaustive, however, and Human Rights Defenders are encouraged to recommend in their applications whatever kind of support would best fit their situation.

► **Temporary Relocation Programme** – This programme is focused on providing more structured and comprehensive relocation for Human Rights Defenders and family members at risk. This programme provides financial and technical support to facilitate relocation with an emphasis on the Human Rights Defender's personal needs and, where possible, allowing the Human Rights Defender to continue their work during the relocation period. This programme also places a lot of emphasis on ensuring that the Human Rights Defender's work is sustainable in the post-relocation period.

► **European Union Temporary Relocation Platform (EUTRP)** – ProtectDefenders.eu coordinates the European Union Temporary Relocation Platform, which is an initiative of the EU Commission facilitating cooperation between EU institutions and non-governmental actors dedicated to helping Human Rights Defenders. It currently consists of 69 entities, including 60 non-governmental actors, two EU institutions, four national governments, and three regional/local governments. The EUTRP is dedicated to providing a platform for these en-

tities involved in relocating Human Rights Defenders to communicate and coordinate with each other in order to share their knowledge and resources, coordinate joint relocation efforts and ensure efficiency in the relocation efforts of its members. The EUTRP can be contacted via email at contact@protectdefenders.eu, and more information is available at: <https://eutrp.eu/>.

► **Shelter Initiatives** – Protectdefenders.eu provides financial and material support to emerging shelter initiatives to help them more effectively accommodate Human Rights Defenders in need of temporary relocation.

► **Training** – ProtectDefenders.eu provides training, accompaniment and capacity-building to Human Rights Defenders and other local organisations.

► **Advocacy** – ProtectDefenders.eu monitors the situation of Human Rights Defenders internationally and in the field. They advocate for a protection agenda, locally, regionally and internationally.

Applying for the European Temporary Relocation Programme

If a person or entity fits the definition of a Human Rights Defender used by the UN (i.e. they are “a person who, individually or with others, acts peacefully to promote or protect human rights in accordance with the UN Declaration on Human Rights Defenders”),²⁹⁴ are facing risk because of their human rights work and need urgent support they cannot find elsewhere, they can apply for temporary relocation or other services provided by ProtectDefenders.eu on their website here: <https://protectdefenders.eu/protecting-defenders/>.

However, Human Rights Defenders looking to apply should be aware that the financial burden of temporary relocation may differ on a case-to-case basis, depending on where the country of destina-

²⁹³ United Nations. 1999. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

Available at: <https://www.ohchr.org/EN/Issues/SRHumanRightsDefenders/Pages/Translation.aspx>

²⁹⁴ United Nations Human Rights Special Procedures website. Who is a Human Rights Defender?

Available at: <https://srdefenders.org/who-is-an-hrd/who-is-a-human-rights-defender/#:~:text=Definition%3A%20a%20person%20who%2C%20individually,the%20human%20rights%20of%20others>

tion is.²⁹⁵ Furthermore, the budget available to ProtectDefenders.eu is often exceeded by the number of applications in this area, so the reliability of this mechanism depends on a number of factors, such as location, destination and the time at which a Human Rights Defender makes their application. If granted temporary relocation, priority will be given to relocating the Human Rights Defender in the same country or region in which they were working in an effort to help them continue their work more effectively. Also, a maximum of five Human Rights Defenders hosted together can be considered per application, and no EU-funded grant can exceed EUR 10,000. Organisations of Human Rights Defenders should consider joining EUTRP before applying, as members of EUTRP gain “privileged access” to these temporary relocation grants.²⁹⁶

The EU’s continued investment in ProtectDefenders.eu as a key aspect of its 2021 Global Europe Human Rights and Democracy programme²⁹⁷ makes it a reliable point of contact for Human Rights Defenders in emergency situations.

To contact ProtectDefenders.eu, one can fill out an online form for communication on their website.²⁹⁸ When submitting a contact form, it should be kept in mind that ProtectDefenders.eu prioritises submissions from Human Rights Defenders in crisis, and they may take longer to reply to submissions regarding subjects other than urgent requests for support. Furthermore, there is an alternative form at the same location of the website which allows for feedback or complaints on the work of ProtectDefenders.eu. Any feedback or complaint will be reviewed upon receipt, and a reply will be given

within 30 days, at which point ProtectDefenders.eu will work to solve any issues complained of in the initial feedback form.

4.2.5. EU Commission Rule of Law Reporting

The rule of law constitutes one of the core values of the EU. The term “rule of law” stands for the obligation of governments to be bound by law, including a prohibition of arbitrary decisions, access of individuals to independent courts and jurisdiction, efforts against corruption, media freedom and the provision of informing the public about the government’s work.²⁹⁹

In order to monitor the state of the rule of law in EU Member States and scrutinise their compliance with it, the rule of law mechanism, among other things, was established within the mandate of the EU Commission. The main component of this mechanism is an annual dialogue, including several EU bodies, such as the EU Commission, the European Council and the EU Parliament, as well as national governments and different civil society actors. The results of this process are published in an annual report that afterwards constitutes the basis for discussions at the EU and national level.³⁰⁰ In order to get input from civil society on the rule of law in their respective countries, the EU Commission annually calls for input from civil society actors, which is published on the website of the EU commission at the following link: <https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/>

²⁹⁵ ProtectDefenders.eu fund 95% of relocation costs if the destination country is in the global south, and 70% if it is not. See <https://protectdefenders.eu/about-us/#faqs3> for more information.

²⁹⁶ European Union Temporary Relocation Platform website. About Us. Available at: <https://eutrp.eu/about-us/>

²⁹⁷ European Commission. 2021. Strengthening human rights and democracy in the world: EU launches a EUR 1.5 billion plan to promote universal values. Available at: https://international-partnerships.ec.europa.eu/news-and-events/news/strengthening-human-rights-and-democracy-world-eu-launches-eu15-billion-plan-promote-universal-2021-12-09_en

²⁹⁸ ProtectDefenders.eu website. Contact us. Available at: <https://protectdefenders.eu/about-us/#contact>

²⁹⁹ News European Parliament. 2021. Rule of law: new mechanism aims to protect EU budget and values. Available at: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20201001STO88311/rule-of-law-new-mechanism-aims-to-protect-eu-budget-and-values>

³⁰⁰ European Commission. N.d. Rule of law mechanism. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

[rule-law/rule-law-mechanism_en](#) (bottom of the page, accessible when clicking on the link for the relevant year).

In cases where the EU Commission sees the rule of law, and therefore the values of the EU, breached, it can either start infringement proceedings³⁰¹ or, in the case of “a crisis, the Commission can trigger the rule of law framework to address systemic threats in EU countries.”³⁰² Hence, it cannot be triggered based on an individual incident, but only if there is a threat to the rule of law in the country in a systematic form and national jurisdiction is assessed to be incapable of dealing with the issue.³⁰³ This is another process under the rule of law mandate of the EU Commission, which consists of three elements: an assessment of the situation by the Commission, the issuing of recommendations and the monitoring of the implementation of the latter. Overall, this process shall take place in the form of a dialogue.³⁰⁴ In cases of non-compliance of a Member State with the EU fundamental values, including the rule of law, Art. 7 of the *Treaty on European Union (TEU)* might be triggered, leading to sanctions for the respective country.³⁰⁵ The assessment of a situation is based on available information, among others from the Council of Europe (see Chapter 3.2. - Council of Europe) and the Fun-

damental Rights Agency of the European Union (see Chapter 4.2.1. - Fundamental Rights Agency of the European Union).³⁰⁶ Therefore, a Human Rights Defender cannot directly engage with the mechanism, but indirectly through the provision of information to the relevant bodies.

How can the Rule of Law Report support Human Rights Defenders?

While the *Rule of Law Report* by the EU Commission does not lead to legally binding recommendations and cannot provide short-term support or facilitate change in an individual situation, it can be helpful for **long-term advocacy**. This is due to the fact that it can help to build up evidence on individual cases, as well as the overall situation of civil society in a specific country. In the report itself, tendencies and relevant legislation are discussed, as well as recommendations issued, that then constitute the basis for parliamentary and political discussions.³⁰⁷ At the same time, a shortcoming of the report might result from the fact that the EU Commission has the power to decide over the topics included. Therefore, as politics vary, topics can show the political inclination of the College of Commissioners in leadership at the period of

³⁰¹ Ibid.

³⁰² European Commission. N.d. Rule of law framework. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-framework_en

³⁰³ European Commission. 2014. Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN>

³⁰⁴ Ibid.; for further information on possible actions the EU can take in case one of its Member States breaches its values, see also: News European Parliament. 2022. Breaches of EU values: how the EU can act (infographic). Available at: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/breaches-of-eu-values-how-the-eu-can-act-infographic>

³⁰⁵ Ibid.; for further information on possible actions the EU can take in case one of its Member States breaches its values, see also: News European Parliament. 2022. Breaches of EU values: how the EU can act (infographic). Available at: <https://www.europarl.europa.eu/news/en/headlines/eu-affairs/20180222STO98434/breaches-of-eu-values-how-the-eu-can-act-infographic>

³⁰⁶ European Commission. 2014. Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0158&from=EN>

³⁰⁷ See, for instance, plenary debate of the EU Parliament and Commission on the Rule of Law in Poland and Hungary beginning of 2022: News European Parliament. 2022 Briefing: Rule of law in Hungary and Poland: plenary debate and resolution. Available at: <https://www.europarl.europa.eu/news/en/agenda/briefing/2022-05-02/6/rule-of-law-in-hungary-and-poland-plenary-debate-and-resolution>; for an example of the Rule of Law Report and issued recommendations, see 2022 version: European Commission. 2022. 2022 Rule of law report - Communication and country chapters. Available at: https://ec.europa.eu/info/publications/2022-rule-law-report-communication-and-country-chapters_en

time.³⁰⁸

Thematically, the topics addressed in the *Rule of Law Report* can be well-related to Human Rights Defenders and their overall situation in a country. The main topics are independence, quality and efficiency of a country's justice system, the state's measures to fight corruption, media pluralism, and issues related to a state's system of checks and balances. In particular, the last two can be of relevance for Human Rights Defenders as they also leave room to elaborate on a state's protection framework in case of incidents of criminalisation, a diminishing space for civil society and the existence, or lack of, enabling factors for them, such as financial support and pathways of participation.³⁰⁹

– In the interviews conducted for this toolkit, several people referred to the usefulness of the Rule of Law Report in order to build up long-term evidence of criminalisation of Human Rights Defenders. –

Case Study - BVMN submission to the *Rule of Law Report on Greece*

At the beginning of 2022, BVMN contributed to the *Rule of Law Report on Greece* by answering the relevant questions in the questionnaire that was asked to be submitted in the call for contributions.

The link to the full submission can be found here: <https://www.borderviolence.eu/submission-rule-of-law-report-greece-february-2022/>.

Next to the rule of law in relation to BVMN's main areas of work, namely pushbacks and access to asylum, there was also information given concerning relevant legislation limiting the monitoring of, awareness raising and advocacy with regard to human rights violations in Greece, as well as particular incidents of criminalisation targeting individuals or members of the network.

For instance, BVMN submitted the following information (Point III: Media Freedom and Pluralism) on the decreasing space of civil society and incidents of criminalisation targeting their member organisations and the people working for them.

³⁰⁸ For the current College of Commissioners, see: European Commission. N.d. The Commissioners: The European Commission's political leadership. Available at: https://ec.europa.eu/commission/commissioners/2019-2024_en

³⁰⁹ European Commission. N.d. Rule of law mechanism. Available at: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en, European Commission. N.d. 2023 Rule of law report: The 2023 Rule of law report monitors significant developments relating to the rule of law in all Member States. Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2023-rule-law-report_en

Not only journalists, but also NGOs are contributing in a large amount to the reporting on migration and connected Human Rights violations, which are also facing increasing challenges, repression and criminalisation attempts. “The narrowing space in Greece for groups working with migrants and asylum seekers”, as mentioned in the previous rule of law report, is continuously decreasing. “With Greece facing intense international criticism over pushbacks and wider human rights concerns related to migration and asylum, the government has moved to silence groups whose reporting is shining a spotlight on those abuses” (Human Rights Watch, <https://bit.ly/3fM4ebY>).

In the past year, NGOs that document and report on Human Rights violations of people-on-the-move were continuously framed as spreading “fake news” by governmental actors, including Migration Minister Notis Mitarakis (telesur, <https://bit.ly/3lhDuft>). This is particularly problematic, should their actions be considered in the light of the newly established criminal act on fake news, as mentioned above.

In September 2020, the Greek government accused 33 members of NGOs of forming a criminal organisation, espionage, facilitation of illegal entry and violation of state secrets (Ekathimerini, <https://bit.ly/3n-DlvqY>), among them volunteers of two BVMN member organisations, Mare Liberum and Josoor (Christides et al., <https://bit.ly/3tGgy5M>). The defendants were not informed about the accusation by governmental bodies, but by journalists to whom their names were leaked by members of the police (AlJazeera, <https://bit.ly/3KmL22y>) and neither a trial nor an indictment took place. Hence, this case can be seen as continuous harassment in form of legal action against the volunteers in question, while at the same time leading to negative media coverage and defamation (Gruber, <https://bit.ly/3lmxn9X>). In addition, the Greek Migration Minister, started to frame NGOs as “acting illegally” and collaborating with Turkey (AlJazeera, <https://bit.ly/3KmL22y>). BVMN partner Josoor has since been informed of a second criminal case in which the organisation is accused of paying money for fake testimonies of Human Rights violations at the hands of the Greek police and thus spreading fake news. Also here, in context of the new law on fake news, this accusation becomes highly problematic.

Another of BVMN's member organisations, Mare Liberum, repeatedly experiences harassment in form of excessive administrative controls or audits, surveillance by law enforcement, as well as serious threat by the Hellenic Coast Guard, e.g. through weapons being pointed at them during their mission. Recurring incidents resulted in a decrease of Mare Liberum's missions and thus a decrease of monitoring Human Rights violations.

This increase of repression poses challenges for NGOs reporting on Human Rights violations connected to people-on-the-move, especially as it is combined with a lack of protection from harassment and threats.

In the Greek chapter of the *Rule of Law Report 2022*, Human Rights Defenders were not named explicitly; however, the Commission stated: “the situation of journalists raises significant concerns due to the fact that they continue to face threats and attacks while their professional environment has further deteriorated.” In the report, they also included the surveillance of journalists and SLAPPs targeting them, as “CSOs specifically active in the area of asylum, migration and social inclusion.”³¹⁰

4.2.6. European Parliament

The European Parliament is the most democratic EU institution, being the only one which is directly elected by the people in the EU eligible to vote. Together with the European Council, it is a co-legislator, meaning that it votes and amends EU legislation. Its mandate also includes oversight of the EU's budget, as well as other EU bodies, and the promotion of human rights and democracy in the

³¹⁰ European Commission. 2022. 2022 Rule of law report - Communication and country chapters
Available at: https://ec.europa.eu/info/publications/2022-rule-law-report-communication-and-country-chapters_en

EU and globally.³¹¹ Currently, the European Parliament consists of 705 members, who are elected for a period of five years in the 27 Member States. The number of seats per country is defined by its population number. In the parliament, MEPs have their seats next to each other determined by their affiliation with a specific political direction, not the country they represent.³¹²

The European Parliament can be seen as a potential advocacy avenue for Human Rights Defenders that are targeted by criminalisation.

Formal engagement with MEPs

Every MEP has a group of assistants working for them, who can either work for them located at the main working locations of the parliament (Brussels, Luxembourg, Strasbourg) or in the country they have been elected from.³¹³ MEPs and their assistants can be contacted directly.

For a list of all MEPs, as well as their political affiliation, the country they represent, their activities and assistants, as well as their contact details, see: <https://www.europarl.europa.eu/meps/en/full-list/all>.

Human Rights Defenders can **write to them directly**, submit information, or request meetings online or in person. In order to have more success with a contact request, it might be good to inform oneself of the political foci and the political affiliations of an MEP. It might be more successful to reach out to an MEP focusing on the topic of concern or an MEP from one's own country. For instance, a German Human Rights Defender could reach out to a German MEP that has a focus on Human Rights Defenders.

– The experience of people interviewed for this research showed that contacting MEPs can be quite impactful, including in a matter of emergency. For instance, after a Human Rights Defender is arrested, the MEP or their legal representatives could send an email to the relevant authorities, which could lead to the application of political pressure. –

Engagement with the committees of the European Parliament³¹⁴

When new legislation in the EU is developed, a first proposal is prepared by the EU Commission, which is then forwarded to the European Parliament. There, the proposal is first processed by one of the committees of the European Parliament. As the committees have different thematic topics, the one under whose scope it falls will address it. Here, the proposal is examined and amended. The committees meet on a monthly basis to approve the edited legislation through a vote. The outcome is then submitted to the Parliament, which adopts the proposal in a plenary session.³¹⁵ Therefore, one can say that the work in the committees constitutes the core work on the content of new legislation or legislative changes.

Part of the monthly meetings of the committees is not only discussion on, and amendments of, legislation, but also of non-legislative reports. Therefore, the MEPs working in them have a high influence on the legislative agenda of the EU through inputting on the annual *Work Programme of the EU Commission*. Additionally, they hold an oversight function over the EU by monitoring the implementation of legislation. Further oversight activities focus on the different EU bodies, for instance by the

³¹¹ About Parliament: European Parliament. N.d. Welcome to the European Parliament. Available at: <https://www.europarl.europa.eu/about-parliament/en>

³¹² About Parliament: European Parliament. N.d. The Members of the European Parliament. Available at: <https://www.europarl.europa.eu/about-parliament/en/organisation-and-rules/organisation/members>

³¹³ MEPs European Parliament. N.d. About MEPs. Available at: <https://www.europarl.europa.eu/meps/en/about/meps>

³¹⁴ For further information, see also: Committees European Parliament. N.d. Available at: <https://www.europarl.europa.eu/committees/en/home>

³¹⁵ European Parliament. 2021. A quick look at Parliamentary Committees. Available at: <https://www.europarl.europa.eu/cmsdata/236967/About-committees-booklet-EN.pdf>

establishment of scrutiny working groups and the hearing of experts.³¹⁶

When looking at the mandate of the European Parliament, it becomes obvious that an engagement with the members of the committees might be helpful for long-term advocacy of Human Rights Defenders, particularly in terms of new legislation that might have an impact on their work, for instance by increasing or decreasing the space of civil society in a country, but also regarding the monitoring of the implementation of relevant legislation. Therefore, extending one's network to MEPs and lobbying for human rights, as well as trying to raise awareness regarding the issue of criminalisation of Human Rights Defenders, can be recommended (see Chapter 1).

The work of the committees relies highly on external experts' advice: "The committees receive independent advice and written expertise (studies, briefings, in-depth analyses and other texts) from Parliament's different research services [...]. Workshops and panels are organised with the aim of enabling MEPs to put questions to and exchange views with experts on subjects associated with parliamentary business or subjects of current interest."³¹⁷ CSOs are commissioned to elaborate studies, policy briefings and analyses of specific issues they have expertise in. This work can be used as the basis for further legislative processes by MEPs.

Relevant committees³¹⁸ for advocacy of Human Rights Defenders that face criminalisation might

be:

► **DROI: Subcommittee on Human Rights**

Works on human rights and the rule of law inside and outside the EU, particularly monitoring the EU's external actions and policies, and shedding light on specific situations of human rights breaches.³¹⁹

For information on their work, upcoming meetings and events, see: <https://www.europarl.europa.eu/committees/en/droi/home/highlights>.

► **JURI: Legal Affairs**

Supports the European Parliament in establishing sound legal positions and reports on the implementation of EU legislation.³²⁰

For information on their work, upcoming meetings and events see: <https://www.europarl.europa.eu/committees/en/juri/home/highlights>.

► **LIBE: Civil Liberties, Justice and Home Affairs**

Works on legislation and oversight relating to freedom, security and justice, with a focus on fundamental rights; the current focus of their work is, among others, rule of law, data protection, asylum and migration, and anti-discrimination. They emphasise their regular exchange with civil society.³²¹

In addition, the "Parliament may also set up committees of inquiry and special committees to deal with specific issues."³²² For instance, the Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware was set up to look into the use of the software in EU Member States,

³¹⁶ Ibid.

³¹⁷ Ibid.

³¹⁸ For a list of all current Committees of the European Parliament and their scope of work, see: Committees European Parliament. N.d. Available at: <https://www.europarl.europa.eu/committees/en/home>

³¹⁹ Committees European Parliament. DROI. N.d. About: Welcome Words. Available at: <https://www.europarl.europa.eu/committees/en/droi/about>

³²⁰ Committees European Parliament. JURI. N.d. About: Welcome Words. Available at: <https://www.europarl.europa.eu/committees/en/juri/about>

³²¹ Committees European Parliament. LIBE. N.d. About: Welcome Words. Available at: <https://www.europarl.europa.eu/committees/en/libe/about>

³²² European Parliament. 2021. A quick look at Parliamentary Committees. Available at: <https://www.europarl.europa.eu/cmsdata/236967/About-committees-booklet-EN.pdf>

which is impacting the work of Human Rights Defenders and journalists.³²³ The main working scope is privacy issues targeted at protecting politicians and journalists, as well as Human Rights Defenders. A possible reason to interact with the committee could be if someone thinks they are being monitored with Pegasus software and can prove it, in which case they could send information to the rapporteurs of that group.

As new sub-working groups and committees can be created, it can be important to reach out to MEPs (see above) to make them aware about relevant topics.

Parliamentary questions

Parliamentary questions are a political tool that can contribute to raising awareness, fact-finding and support with the establishment of knowledge on topics relating to the criminalisation of Human Rights Defenders in the European Parliament. MEPs can pose parliamentary questions to all EU institutions and bodies, e.g. the Commission, the Council and EU agencies like Frontex. Therefore, they also constitute a tool for scrutiny. Questions can be posed either orally during a plenary sitting, in the period of time that is specifically designated for that or in a written form.³²⁴ Previously, MEPs posed questions relating to the criminalisation of Human Rights Defenders in specific situations and the legislation protecting or limiting their work.³²⁵

Human Rights Defenders can address individual MEPs with questions and issues they would like

them to address. If the issue matches the MEPs epistemic interest and agenda, they can pose such parliamentary questions on the basis of the Human Rights Defenders initiative.

All questions, as well as the provided answers, are published on the following website: <https://www.europarl.europa.eu/plenary/en/parliamentary-questions.html?tabType=all#sidesForm>.

– Although interviewees did not regard these questions as a tool as powerful as they are in certain national parliaments, they can still be regarded as an accessible mechanism to shape the EU Parliament's agenda. In addition, most of the advocacy avenues within the European Parliament need the establishment of well-developed relations, which might take a considerable amount of time. –

323 Committees European Parliament. N.d. Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware. Available at: <https://www.europarl.europa.eu/committees/en/pega/home/highlights>; Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies. 2022. Pegasus and surveillance spyware. Available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/732268/IPOL_IDA\(2022\)732268_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/732268/IPOL_IDA(2022)732268_EN.pdf)

324 European Parliament Plenary. N.d. Questions and Union Acts. Available at: <https://www.europarl.europa.eu/plenary/en/parliamentary-questions.html>

325 See, for example: European Parliament. 2021. Parliamentary question - E-004519/2021: Implementation of the Facilitation Directive and humanitarian assistance. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2021-004519_EN.html; European Parliament. 2021. Question for written answer E-003513/2021 to the Commission: Criminalisation of migrants in Greece. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2021-003513_EN.pdf; European Parliament. 2021. Parliamentary question - E-003495/2021: Arrest of Dutch journalist Ingeborg Beugel in Greece. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2021-003495_EN.html; European Parliament. 2020. Question for written answer E-005517/2020 to the Commission: Prosecution of NGOs in Greece. Available at: https://www.europarl.europa.eu/doceo/document/E-9-2020-005517_EN.pdf

5. Croatia

5.1. Legislation

The following chapter gives an introduction to Croatian legislation relevant in the case of criminalisation of Human Rights Defenders.

5.1.1. Constitution

While there is no law explicitly defining the rights or protection of Human Rights Defenders in Croatia, their rights as individuals on Croatian territory are defined in the *Croatian Constitution*.³²⁶ Human rights and fundamental freedoms are enshrined in the constitution in Arts. 14–20. These include:

- ▶ **Equality before the law** and **anti-discrimination** (Art. 14).
- ▶ **Liability of those violating** the provisions concerning human rights (Art. 20).

In addition, the constitution lists personal and political liberties and rights enshrined in Arts. 21–47. Most relevant for Human Rights Defenders facing criminalisation are:

- ▶ Right to **human liberty** and personality (Art. 22).
- ▶ **Freedom of movement** (Art. 32).
- ▶ **Inviolacy of the home** (Art. 34).
- ▶ **Protection of private and family life**, dignity and reputation. (Art. 35).
- ▶ Freedom and **privacy of communication** and correspondence (Art. 36).
- ▶ Protection of **personal data** (Art. 37).
- ▶ **Freedom of thought**, expression, speech and public opinion, including for media and access to information (Art. 38).
- ▶ Right to **public assembly** and peaceful protest (Art. 42).
- ▶ **Freedom of association** (Art. 43).
- ▶ Right to file **petitions, complaints and proposals** (Art. 46).

In addition, several procedural rights are enshrined in the constitution, which might be of relevance in

case of formal or informal forms of criminalisation:

- ▶ **Proportionality of restriction of freedoms or rights** (Art. 16).
- ▶ **Right to appeal** against individual legal decisions (Art. 18).
- ▶ “Individual decisions of governmental agencies, the civil service and bodies vested with public authority shall be **grounded in law**” (Art. 19).
- ▶ Prohibition of arrest or detention without a **written court order**, which **has to be presented** at the moment of arrest (Art. 24).
- ▶ While an arrest without a warrant is allowed in cases of “reasonable suspicion that [a] person has perpetrated a grave criminal offence,” the person has to be “**informed, in understandable terms**, of the reasons for arrest and of his/her rights” (Art. 24).
- ▶ Arrested and detained persons have the **right to appeal** against their arrest (Art. 24).
- ▶ When arrested or in detention, one shall receive **humane treatment** and respect of one’s **dignity** (Art. 25).
- ▶ When detained for a criminal offence, one has “the right to be **brought before a court within the minimum time**” (Art. 25).
- ▶ Citizens of Croatia, as well as foreigners, enjoy **equality before the court** and governmental agencies and bodies (Art. 26).
- ▶ Everyone is entitled to **legal aid** (Art. 27).
- ▶ **Presumption of innocence**; obligation to prove guilt by judgement of a court (Art. 28).
- ▶ Everyone has the right to a **fair trial**; courts must be **independent and impartial**, and a trial has to take place in a **reasonable period of time** (Art. 29).
- ▶ The accused person has the right to **information in a language they understand** (Art. 29); to “**adequate time and opportunity to prepare his/her defence**” (Art. 29); to the **assistance of a defence council** and provision of a free council in a case of lacking financial resources (Art. 29); and to a free **interpreter** (Art. 29).
- ▶ The **search of a home** is only allowed after or-

³²⁶ For full legal text in English, see: Constitution of the Republic of Croatia (consolidated text). 2010. Available at: https://www.policinglaw.info/assets/downloads/2010_Constitution_of_Croatia.pdf

dered by a court, in combination with a **written warrant**. Exceptions can be made only if “this is essential to enforce an arrest warrant or apprehend an offender, or to prevent any grave threat to life or substantial property” (Art. 34); additionally, searching for evidence in a home might only be conducted in the **presence of a witness** (Art. 34).

5.1.2. Aliens Act - prohibition to assist a third-country national in illegal crossing, transit and stay (Art. 53)

Criminalisation of Migrant Rights Defenders is mainly based on the accusation of facilitation of illegal entry, illegal stay or illegal transfer of a third-country national. According to the Croatian Human Rights House, “[b]road interpretation of legislation seeks to criminalise the work of Human Rights Defenders dealing with the rights of refugees, whilst they are baselessly brought into connection with people smugglers and criminal activities.”³²⁷

These kinds of accusations are based on Art. 53 of *Croatia’s Aliens Act* (Official Gazette NN 133/20, 114/22, 151/22),³²⁸ regarding the “[p]rohibition to assist a third-country national in illegal crossing, transit and stay.”

Furthermore, it is stated that:

“(1) It is **prohibited to assist and attempt to assist a third-country national in illegal crossing** of the state border, in transiting across the state territory if a third-country national has entered the Republic of Croatia illegally, and **in his illegal stay**.

(2) Assistance within the meaning of paragraph 1 of this Act shall not include the following:

- assistance referred to in Articles 197 and 198 of this Act
- assistance in illegal crossing of the state border for the **purpose of saving a life, preventing injury, providing emergency medical assistance, and providing humanitarian aid** in line with the laws governing humanitarian aid and air traffic, regulation laying down the conditions and manner of conducting search and rescue of aircraft, and international conventions on search and rescue at sea and on international civil aviation
- assistance in illegal stay on **humanitarian grounds** without the intention of preventing or postponing measures which are to be taken for ensuring return.”³²⁹

Art. 197 addresses the situation of notifying a third-country national who has been staying and working illegally in case of a decision of expulsion or return.

Art. 198 addresses the provision of free legal aid. Emergency medical assistance is defined in Art. 8(2) of the *Law on Compulsory Health Insurance and Health Care of Foreigners in the Republic of Croatia*,³³⁰ defining such assistance as: “provision of diagnostic and therapeutic procedures that are necessary to eliminate imminent danger to life and health.”

A person can be given a punishment of up to **60 days in prison** or financial punishment of **EUR 3,050** for each person that they helped or tried to help in illegal crossing, transit and stay (Art. 249(8), Aliens Act).

³²⁷ Human Rights House Zagreb. 2018. Thematic Report: Human Rights Defenders in Croatia: Obstacles and Challenges. Available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2019/01/KLJP_HumanRightsDefendersInCroatia_edit1801.pdf

³²⁸ For the original legal text in Croatian, see: Zakon o strancima. 2022. NN 133/20, 114/22, 151/22. Available at: <https://www.zakon.hr/z/142/Zakon-o-strancima>. At the time of the publication of this toolkit, the amended act (entry into force 01/2023), was not officially translated into English. For an English version of the previous amendments (2020) of the Aliens Act, see: Aliens Act. 2020. Official Gazette 133/2020. Available at: [https://mup.gov.hr/UserDocsImages/zakoni/ALIENS%20ACT%20\(Official%20Gazette%20No%20133_2020\).pdf](https://mup.gov.hr/UserDocsImages/zakoni/ALIENS%20ACT%20(Official%20Gazette%20No%20133_2020).pdf)

³²⁹ Ibid.

³³⁰ For the original legal text in Croatian, see: Zakon o obveznom zdravstvenom osiguranju i zdravstvenoj zaštiti stranaca u Republici Hrvatskoj. 2022. NN 80/13, 15/18, 26/21, 46/22. Available at: <https://zakon.hr/z/634/Zakon-o-obveznom-zdravstvenom-osiguranju-i-zdravstvenoj-zastiti-stranaca-u-Republici-Hrvatskoj>

It is important to note that the aforementioned article forbids not only helping, but also the attempt to help, which opens doors for **various interpretations in its application**. Overall, it amounts to a severely repressive and unjustified measure. Through this, the proportionality that was previously established in the *Directive 2002/90/EZ* is removed. The directive aims “to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children.” Sanctioning attempts, however, would only be in regards to the formerly mentioned criminal acts, while the directive highlights the need to specifically define the breaches it refers to and situations that are exempt. However, the prohibition described in the *Aliens Act* to this day remains **very vague**, especially concerning the question of what the term “attempt” entails, and a definition of the humanitarian grounds it refers to. In practice, the authorities try to limit these definitions with the aim of decreasing the legal activities of organisations and activists, as well as to intimidate them. Furthermore, it remains unclear as to how the person who is helping the person on the move is **supposed to check** whether that person is staying illegally in the country’s territory or whether they crossed the border illegally, since they do not have authority to check their documents or information.

Even though it is important to emphasise the humanitarian exception that arises from the article, it is also important to keep in mind that it is **not clearly defined**. For years, civil society in Croatia has been calling for better regulation and a legal definition of the term “humanitarian grounds”. Specifically, the Centre for Peace Studies has been proposing to add to the article the following: “Help for humanitarian reasons is considered help that does not result in any material and financial benefit for the helper, but is guided by the moral and humanitarian principle in situations of necessary help to protect the life or integrity of a person who

illegally crosses the border or illegally resides on the territory of the Republic of Croatia.” However, the change has been rejected several times.

5.2. Mechanisms

Within the territory of Croatia, and with regard to the Croatian government, certain mechanisms and support structures have been established which can be relevant in the case of criminalisation of a Human Rights Defender. They will be introduced in the following sections.

5.2.1. Ombudsperson

The Ombudsperson of the Republic of Croatia is an independent and autonomous institution whose role is to promote and protect human rights and freedoms.³³¹ They are also mandated to act as the National Equality Body, which means that by promoting equality and taking care of the centralised data collection, they act preventively with regards to the protection against discrimination.³³² Furthermore, one of the Ombudsperson’s roles is acting as the National Preventive Mechanism for the protection of persons deprived of their liberty. In line with this, they, among other things, visit the places where people are, or might be, deprived of liberty and provide recommendations to the relevant actors regarding the treatment and the living conditions of people in such circumstances.³³³ In addition, the Ombudsperson is also assigned to do external reporting with regards to irregularities in line with the Croatian Whistleblowers’ Protection Act. The mandate holder is appointed by the Croatian Parliament with a mandate of eight years.³³⁴

³³¹ Pučka pravobraniteljica, Republika Hrvatska. N.d. About us. Available at: <https://www.ombudsman.hr/en/about-us/>

³³² EQUINET - European Network of Equality Bodies. N.d. Ombudswoman of the Republic of Croatia. Available at: <https://equineteurope.org/eb/cp-slug-172/>

³³³ Independent Police Complaints Authorities’ Network (IPCAN). N.d. Ombudsman of the Republic of Croatia. Available at: <https://ipcan.org/members/ombudsman-of-the-republic-of-croatia#:~:text=Lora%20Vidovi%C>

³³⁴ Pučka pravobraniteljica, Republika Hrvatska. N.d. About us. Available at: <https://www.ombudsman.hr/en/about-us/>

Among other things, the Ombudsperson's mission with regards to human rights is to:³³⁵

- ▶ Examine the complaints connected to unlawful practices and irregularities with regards to the work of public authorities (state bodies, bodies of local/regional self-government units and legal persons that have public authority).
- ▶ When required by a specific law, examine complaints connected to the conduct of legal as well as natural persons.
- ▶ Monitor the situation regarding human rights and highlight the need to protect them.

What are the requirements for the Ombudsperson's engagement?³³⁶

The Ombudsperson is free to decide whether, and to what extent, they will consider a complaint. It is possible that they decide **not to take action** in the following cases:

- ▶ When there are ongoing judicial proceedings. There is an exception to this when it comes to cases where it is evident that such proceedings are being unnecessarily delayed or that there is a manifested abuse of powers. In such cases, the Ombudsperson can call for an explanation from the president of the relevant court.
- ▶ If the complaint concerns issues that are being dealt with in ongoing proceedings (except when such proceedings are unjustifiably delayed or in cases when powers are manifestly abused).
- ▶ If the deadline to lodge an appeal has not passed yet or if there are legal remedies available under special laws.

▶ If a complainant did not appeal within the deadline or did not make use of legal remedies available under special laws.

▶ **If more than three years have passed** since the relevant decision was adopted or since the relevant irregularity happened. There is, however, an exception to this; if the Ombudsperson finds that the relevant issue is significantly important for the protection of freedoms and human rights.

How to file a complaint?

A complaint with the Ombudsperson can be lodged by any individual who thinks that illegal or irregular activities of a state body, a body of the local/regional self-government unit or a legal person that has public authority have led to the endangerment or violation of their rights and freedoms, guaranteed by the Constitution or the law,³³⁷ as well as by anyone who suspects that they have faced discrimination.³³⁸

A complaint must include:³³⁹

- ▶ The complainant's name, family name and address.
- ▶ The name of the body the complainant is complaining against.
- ▶ The reference number of the complainant's case³⁴⁰ that was assigned by the body they are complaining against.
- ▶ Copies of the documents connected to the proceedings and other documents that are relevant.
- ▶ A description of the situation – a specification regarding which rights have allegedly been violated and whether the complainant has made

³³⁵ Independent Police Complaints Authorities' Network (IPCAN). N.d. Ombudsman of the Republic of Croatia. Available at: <https://ipcan.org/members/ombudsman-of-the-republic-of-croatia#:~:text=Lora%20Vidovi%C>

³³⁶ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: When will the Ombudswoman not proceed upon a complaint? Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³³⁷ For rights and freedoms that were identified as relevant for Human Rights Defenders in Croatia, see Chapter 5.1.

³³⁸ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: Who can turn to the Ombudswoman and in which cases? Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³³⁹ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: What must a complaint contain? Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³⁴⁰ The case before the body they are complaining about.

use of any legal remedies (as well as, if applicable, when they were filed).

Complaints can be submitted by post or via email (see contact information below). **There is no fee** for lodging a complaint with the Ombudsperson.³⁴¹

What happens after a Human Rights Defender files a complaint?

In most cases, the Ombudsperson requests answers and additional information from the bodies and people in question within the investigation process. Therefore, the time of the Ombudsperson's reply depends on the delivery of such information. Despite this, it is possible to expect first information regarding the investigation of a complaint within 30 days.³⁴²

After considering a complaint, the Ombudsperson can make recommendations or provide proposals, opinions and warnings to the bodies complained against. These bodies must then inform the Ombudsperson regarding the measures they have taken in that regard.³⁴³

Contact information³⁴⁴

Address:

Pučki pravobranitelji
Savska cesta 41/3, 10 000 Zagreb

Fax: + 385 1 6431 628

Email: info@ombudsman.hr

5.2.2. Filing a court suit/appeal in front of the relevant court

One of the ways in which formal criminalisation can be addressed by Human Rights Defenders are via legal avenues of the Croatian state. With regards to this, filing an appeal can be a useful tool, once a criminalising judgement is made by the court.

– As court proceedings can be very complex, it is highly recommended to seek advice and help from an experienced lawyer when deciding whether to file a court suit/appeal or other legal remedy. –

Judicial system in Croatia

Judicial power in Croatia is exercised by regular courts, specialised courts and the Supreme Court. The regular courts are municipal and county courts. They cover matters regarding those which no specialised court has jurisdiction. Specialised courts are: Administrative courts, Commercial courts, the High Administrative Court, the High Commercial Court, the High Misdemeanour Court and the High Criminal Court. They cover all matters within their jurisdiction according to the law.³⁴⁵

Furthermore, the courts are split into courts of first and second instance. The courts of first instance are municipal, commercial, administrative and misdemeanour courts. Proceedings to settle legal matters are brought before them. The courts of second instance have jurisdiction to, inter alia,

³⁴¹ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: How to address the Ombudswoman? Is there any fee for lodging a complaint with the Ombudswoman?

Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³⁴² Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: What is the deadline for acting upon a complaint?

Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³⁴³ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: Ombudswoman's authorities while proceeding upon complaints? Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³⁴⁴ Pučka pravobraniteljica, Republika Hrvatska. N.d. Frequently asked questions: How can I submit a complaint in writing?

Available at: <https://www.ombudsman.hr/en/frequently-asked-questions/>

³⁴⁵ Supreme Court of the Republic of Croatia. N.d. About Judicial Power. Available at: <https://www.vsrh.hr/en/about-judicial-power.aspx> and European e-Justice Portal. N.d. Justice System in the Republic of Croatia. Available at: https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-hr-en.do?member=1

make decisions regarding the appeals against decisions of courts of first instance. The second instance courts are county courts (in relation to the municipal courts), the High Misdemeanour Court (in relation to misdemeanour courts), the High Commercial Court (in relation to commercial courts) and the High Administrative Court (in relation to administrative courts). The Supreme Court is the court of the last instance that, among other things, decides on extraordinary remedies regarding final judgements and ordinary legal remedies (appeals) when mandated by a relevant law.³⁴⁶

– As already mentioned, the criminalisation of Migrant Rights Defenders in Croatia is mainly connected to accusations of facilitation of illegal entry, illegal stay or illegal transfer of a third-country national, which are based on Art. 53 of Croatia's Aliens Act (see Chapter 5.1.2.). The aforementioned acts from Art. 53 of the Aliens Act constitute a misdemeanour,³⁴⁷ which means that such cases fall under the jurisdiction of the misdemeanour courts. Subsequently, one of the most relevant legal remedies for Migrant Rights Defenders in such cases, if the misdemeanour court does not decide in their favour, might be an appeal to the High Misdemeanour Court. –

Appeals in criminal proceedings

The right to appeal is guaranteed in the Constitution (Art. 18).³⁴⁸ Furthermore, according to Art. 464(1) of the Criminal Procedure Act of Croatia, **the accused has the right to appeal** against the judgement of the court of first instance. Authorised

persons may take an appeal from a judgement rendered at first instance **within a term of 15 days** from the day the copy of the judgement is served (Art. 463(1)). The reasons by which a judgement may be challenged are defined in Article 467(1).

In accordance with Art. 490, an appeal is also possible against a judgement of a court of second instance to a court of third instance (Supreme Court), but only for reasons defined in the said article.

More information about the right to appeal in criminal proceedings can be found in Arts. 463–496 of the Criminal Procedure Act.³⁴⁹ Since the Croatian system of appeal is complex and has short deadlines, it is highly recommended to seek advice from a lawyer if one wants to file an appeal.

5.2.3. Constitutional complaint

The constitutional complaint is an additional, as well as an exceptional, mechanism for the protection of human rights and fundamental freedoms that are guaranteed by the Constitution and is, therefore, not a regular or extraordinary³⁵⁰ legal remedy. It can be lodged with the Constitutional Court – a special body that holds a unique position outside of the judiciary with its own constitutional competences. One of its most important competences is the protection of human rights and fundamental freedoms guaranteed by the Constitution.³⁵¹

According to Art. 62(1) of The Constitutional Act on the Constitutional Court of the Republic of Croatia (hereinafter: The Act on the Constitutional

³⁴⁶ Ibid.

³⁴⁷ This follows from Art. 249(9); read in conjunction with Art. 249(8) of the Aliens Act.

³⁴⁸ For full legal text in English, see: Constitution of the Republic of Croatia (consolidated text). 2010. Available at: https://www.policinglaw.info/assets/downloads/2010_Constitution_of_Croatia.pdf

³⁴⁹ For original legal text, see (Croatian): Zakon o kaznenom postupku. 2022. NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22. Available at: <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>

³⁵⁰ Extraordinary legal remedies are legal remedies that are available after the judgement has become final.

³⁵¹ Jelušić M. The Constitutional Complaint in the Croatian Model. International Conference "Review and Way Forward for the Individual Application System, Seven Years On". 2019. Page 1 and 5. Available at: <https://rm.coe.int/mario-jelusic/168098e476>

Court)³⁵² anyone may lodge a constitutional complaint with the Constitutional Court if they believe that

- an **individual act**, with which it was decided regarding their rights and obligations, or about suspicion/accusation for a criminal act (and that was issued by a state body, a body of local/regional self-government, or a legal person vested with public authority),

- **has violated their constitutional right(s)** (meaning human rights or fundamental freedoms guaranteed by the Constitution, or their right to local and regional self-government).

The constitutional complaint can be submitted **within 30 days from the day the decision was received** (Art. 64 of The Act on the Constitutional Court). The Constitutional Court may, however, permit restitution to the previous state (allow the complaint to be considered by the Court, even if it was submitted after the deadline above) if the required conditions are met (Art. 66 of The Act on the Constitutional Court).

The prerequisite for lodging a complaint is **the exhaustion of legal remedies**. This means that if another legal remedy providing for the violation of constitutional rights is available, the constitutional complaint cannot be lodged before this remedy has been exhausted; it can only be lodged after that has been done (Art. 62(2) of The Act on the Constitutional Court). There are, however, **two exceptions** to this. The Constitutional Court can initiate proceedings even if all legal remedies have not been exhausted yet, if:

- The relevant court **did not decide within a reasonable time** on the rights and obligations, or the suspicion or accusation of a criminal offence.

- **The disputed individual act presents a gross violation of constitutional rights**, and it is evident

that the applicant may face **“grave and irreparable consequences”** if Constitutional Court proceedings do not start (Art. 63(1) of The Act on the Constitutional Court).³⁵³

If the Constitutional Court decides to **accept** a constitutional complaint (meaning it does not dismiss or refuse it), the Constitutional Court, in line with Art. 76 of The Act on the Constitutional Court:

- **Repeals the disputed act** that violated the relevant constitutional right.

- **Returns the matter** to the body that passed the act that was repealed for renewed proceedings, if the relevant body/legal person vested with public authority must pass a new act to replace the repealed act.

- **Passes a decision declaring the unconstitutionality of the relevant individual act**, and states which constitutional right(s) of the applicant had been violated, if the disputed act that violated the constitutional right(s) of the applicant no longer has legal effect.

To read more about the prerequisites and the procedure regarding the constitutional complaint, see the chapter Protection of human rights and fundamental freedoms (Arts. 62–80) of The Constitutional Act on the Constitutional Court of the Republic of Croatia.³⁵⁴

5.2.4. National CSO of support – CPS

In Croatia, the Centre for Peace Studies (CPS; abbreviation in Croatian: CMS), a CSO that works on the protection of Human Rights at the national level, also supports Human Rights Defenders in cases of criminalisation. In cases of such incidents, it might be useful to reach out to them as they have several years of experience working with Human Rights Defenders and have well-established networks and knowledge on different advocacy ave-

³⁵² For original legal text, see (Croatian): Ustavni zakon o Ustavnom sudu Republike Hrvatske. 2002. NN 99/99, 29/02, 49/02. Available at: <https://www.zakon.hr/z/137/Ustavni-zakon-o-Ustavnom-sudu-Republike-Hrvatske>

³⁵³ To learn more about the mentioned exceptions, please see Art. 63 of The Act on the Constitutional Court.

³⁵⁴ For original legal text, see (Croatian): Ustavni zakon o Ustavnom sudu Republike Hrvatske. 2002. NN 99/99, 29/02, 49/02). Available at: <https://www.zakon.hr/z/137/Ustavni-zakon-o-Ustavnom-sudu-Republike-Hrvatske>

nues, both at the international, as well as at the national, level.

CPS works in the field of asylum and migration, integration, peace building, discrimination, and inequality in Croatia. In addition to conducting research, monitoring and education programmes, CPS also cooperates with national and international state and non-state bodies, as well as various media outlets, and has long-term experience in advocacy for human rights and against discrimination and inequalities.³⁵⁵ Human Rights Defenders can turn to CPS for support in case they are intimidated or criminalised for their solidarity, protection of human rights and/or humanitarian activities, or if legal proceedings are brought against them due to their work on the protection of human rights.

Contact information

Tel.: +385 1 482 00 94

Mobil: +385 (0)91 3300181

Email: cms@cms.hr

Website: <https://www.cms.hr/en>

5.3. Protection related to specific forms of criminalisation

In Croatia, BVMN observes that Human Rights Defenders face different forms of informal criminalisation. These include intimidation by police officers. In the case of BVMN partner organisation Are You Syrious? (AYS), for instance, this led to the questioning of volunteers by the police and police officers being sent to an employee's parents' home after a press conference was announced in which members of the CSO were supposed to speak about police pressures on CSOs and lawyers supporting the Hussiny family.³⁵⁶ Besides, there were incidents in which the police entered the premises of AYS without identification during a staff meeting and asked for IDs of the attendees and one in which an employee of the CSO was asked inappropriate questions about her ethnicity.³⁵⁷ In one case, the partner of an employee "had his refugee status in Croatia revoked after he refused to become an informant of the Security and Intelligence Agency."³⁵⁸ In addition to this, "[o]ver the past years, the volunteers of AYS [and CPS] have been held in Croatian police stations for up to 10 hours when they would present themselves to monitor access to asylum procedures on behalf of their clients. During this informal detention, they were regularly threatened with criminal prosecution, yelled at, humiliated, and then released with no formal charges."³⁵⁹

³⁵⁵ Centre for Peace Studies (CPS). 2022. Centre for Peace Studies - CPS. Available at: <https://www.cms.hr/en/o-cms-u-tko-je-tko/cms>

³⁵⁶ AYS and CPS, both member organisations of BVMN, supported over years the family of Madina Hussiny that died during a push-back from Croatia to Serbia. In the context of the lawsuit they were supporting them with, as a result of which the Croatian police were found guilty of the death of the girl, the CSOs were facing several forms of informal criminalisation. For further information, see: Tondo, Lorenzo. 2021 Croatia violated rights of Afghan girl who was killed by train, court rules. Available at: <https://www.theguardian.com/global-development/2021/nov/19/croatia-violated-rights-of-afghan-girl-who-was-killed-by-train-court-rules>

³⁵⁷ Border Violence Monitoring Network. 2022. Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021. Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

³⁵⁸ Ibid.

³⁵⁹ Ibid.; see also here: Human Rights House Zagreb. 2018. Thematic Report: Human Rights Defenders in Croatia: Obstacles and Challenges. Available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2019/01/KLJP_HumanRightsDefendersInCroatia_edit1801.pdf

Therefore, the following chapter will elaborate on individual's rights and protection mechanisms in case of police or security intelligence agency misconduct, as well as violation of data protection rights.

5.3.1. Police and administrative misconduct

5.3.1.1. Procedural rights and legislation concerning the police

Police powers are not unlimited and certain rights must be respected when police powers are being exercised. It is important for Human Rights Defenders to be aware of their rights and limitations of police powers, in order to recognise police misconduct when interacting with the police.

Constitutional rights and interaction with the police

When interacting with the police, it is good to remember certain rights, guaranteed by the Constitution, the most important ones being the right to liberty (Art. 23), freedom of movement (Art. 32) and provisions connected to the right to privacy and data protection (Arts. 35–37). A very important provision is the proportionality requirement in case of restriction of freedoms and rights, enshrined also in Art. 16. Furthermore, the Constitution contains procedural guarantees which can be relevant when interacting with the police or other authorities (see Chapter 5.1.1.).

Regulation of police powers and police conduct

The powers and mandate of the police are mostly regulated in the **Act on Police Duties and Powers**,³⁶⁰ while the organisational structure is defined in the **Police Act**.³⁶¹

In line with Art. 30(1) of the **Police Act**, a police officer **must perform the tasks in accordance with the law and other regulations**. This article also states that a police officer must comply with the provisions of the Code of Police Ethics and with rules of the profession. Furthermore, Art. 14(2) of the Act on Police Duties and Powers, as well as Art. 31(1) of the Police Act, state that they have to **“respect the dignity, reputation and honour of every person, as well as other fundamental rights and freedoms of the individual.”**

The following provisions of the Act on Police Duties and Powers might be relevant for Human Rights Defenders when they find themselves interacting with the police:

- “A police officer will always use **the police power that least interferes with human freedoms and rights** and serves the purpose of police work” (Art. 5(2)).

- “A police officer must exercise police powers **in accordance with the Constitution and the law**” (Art. 14(1)).

- “A **plain-clothes** police officer **is obliged to present their badge and service card** before exercising police powers. A **uniformed** police officer **is obliged** to present their badge and service card **at the request** of the person regarding whom they will be exercising police powers” (Art. 17(1)(2)).³⁶²

- **Data** collection, evaluation, storage, processing and use is regulated in Arts. 23–29.

- “Unless the law says otherwise, a police officer **is obliged to inform the person of the reason for verifying their identity**” (Art. 30(2)).

- **Screening/inspection** of persons, objects and means of transport (when it is allowed etc.) is defined in Arts. 75–77.

- The use of coercive means is regulated in Arts. 81–98. According to Art. 81(3) **“means of coercion are to be used after a previous warning**, unless it is likely that a previous warning would undermine

³⁶⁰ For original legal text, see (Croatian): Zakon o policijskim poslovima i ovlastima. 2019. NN 76/09, 92/14, 70/19. Available at: <https://www.zakon.hr/z/173/Zakon-o-policijskim-poslovima-i-ovlastima>

³⁶¹ For original legal text, see (Croatian): Zakon o policiji. 2019. NN 34/11, 130/12, 89/14, 151/14, 33/15, 121/16, 66/19. Available at: <https://www.zakon.hr/z/282/Zakon-o-policiji>

³⁶² There are, however, exceptions to this rule; see Art. 17.

the achievement of the objective.” Furthermore, “a police officer **shall not use coercive means to a greater extent than is necessary** to achieve the purpose of the act” and “will always **use the least coercive means** of achieving the objective” (Art. 83(1)(2)).

The Code of Police Ethics³⁶³ further defines the conduct of police officers. According to Art. 2, the Code presents “moral and ethical standards of the police, expressing the will and desire of police officers to act lawfully, professionally, honestly, with integrity, dignity, fairness and humanity.” The following provisions of the Code might be especially relevant for Human Rights Defenders:

- ▶ “Police officers work to uphold and respect **human rights and fundamental freedoms**. They respect the dignity, good name and honour of every human being when restricting freedoms and rights by law” (Art. 2(1)).

- ▶ “The dignity, good name and honour of every human being shall be protected in such a way as to **prevent any violence, abuse, inhuman treatment and other degrading treatment of human beings**” (Art. 2(2)).

- ▶ “When carrying out their duties, police officers shall **ensure that everyone is guaranteed the same human rights and fundamental freedoms regardless** of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or other characteristics” (Art. 3).

- ▶ “Police officers **shall keep the data and information** of which they become aware in the performance of their duties or in the course of the performance of their duties and shall **not use or disclose them unnecessarily**” (Art. 8).

Procedural rights and relevant provisions in the Criminal Procedure Act

In cases of formal criminalisation, it is important

to be aware of the procedural rights, guaranteed by the Criminal Procedure Act. The most relevant rights and provisions for criminalised Human Rights Defenders are the following:

- ▶ **Presumption of innocence** - a person is innocent and cannot be held culpable of a criminal act until their culpability is established by a final judgement (Art. 3(1)).

- ▶ “Every detainee and accused person must be **treated humanely and with respect for their dignity**” (Art. 7(1)).

- ▶ According to Art. 7(2), the **arrested person** has to be **immediately informed in a manner which they understand**:³⁶⁴

- Of the grounds for the arrest.
- That they are not obliged to testify.
- That they have the right to the professional assistance of a defence counsel of their own choice.
- That the competent authority will, at their request, inform their family or any other person designated by him or her.
- On the other rights provided for in the Criminal Procedure Act.

- ▶ The right to have the charges against them decided **fairly and publicly, within a reasonable time and in accordance with the law** by an independent and impartial court, established by law (Art. 11(1)).

- ▶ **Basic rights of the accused/defendant** are laid down in Art. 64(1). In accordance with this Act and under the said Art., the accused has:

- **The right to be informed** as soon as possible, in a way that they understand, of the grounds regarding the suspicion of them committing a criminal offence and the grounds for the charge.
- **right to use their own language in the proceedings**, meaning the language the accused speaks and understands.
- **The right to defend themselves, with a defence lawyer** of their own choice or with a

³⁶³ For original legal text, see (Croatian): Ministarstvo Unutarnjih Poslova. Etički kodeks policijskih službenika. 2012. NN 62/12. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2012_06_62_1501.html

³⁶⁴ This implies that the said information must be presented in a language the arrested person understands (translated into such a language, if necessary) and that for a person who is deaf, illiterate or has other difficulties with understanding, the information must be adjusted so that they understand the content.

defence lawyer acting in an official capacity.

- **The right to a lawyer, funded from the budget**, if they are financially unable to cover the costs of the defence.
- **The right to communicate** freely, unhindered and in confidence **with their defence lawyer**.
- **The right to adequate time to prepare** for the defence.
- **The right to present, or not to present, their defence** and to refuse to answer a question or to defend themselves by silence.
- **The right to view the file**.
- **The right to present evidence and participate** in the taking of evidence and other procedural steps, as well as in the hearing.
- **The right to question co-defendants, witnesses and experts**.
- **The right to discuss** the penalties and certain other measures.
- **The right to file legal remedies**.

► **Arrest** is regulated in Arts. 106–111. In accordance with Art. 108, **the arrested person must be immediately informed in writing of their rights** under Art. 108a. This includes the following:

- Grounds for arrest and grounds for suspicion.
- The right that they are not obliged to testify.
- The right to a defence lawyer of their choice or one appointed from a list of lawyers on call.
- The right to interpretation and translation.
- The right to have, at their request, their family or another person designated by them informed of their arrest.
- The right of a foreign national to, at their request, immediately inform the competent consular authority or embassy of the arrest and to be able to get in contact with them without delay.
- The right to view the file in accordance with the provisions of this Act.
- The right to emergency medical assistance.
- The information that the maximum period of deprivation of liberty from the time of arrest until the time of bringing the person before the judge is 48 hours, or 36 hours

for criminal offences punishable up to one year's imprisonment.

If it is not possible to give such written instructions, the police need to immediately inform the arrested person of the rights referred to in Art. 7 (see above) in a manner that they understand, unless the arrested person is unable to understand the instructions or there is a risk to life or property. Furthermore, in accordance with Art. 109(1) (2), **the police must take the arrested person to a police detention unit**, designated by a specific law and hand him or her over to the detention supervisor **or release him or her, within 24 hours** (or 12 hours for criminal offences punishable by up to one year's imprisonment) **from the time of the arrest**.

► **Police detention** is regulated in Arts. 112–118, while **pre-trial detention** is regulated in Arts. 122–144.

► **House searches and personal searches** are regulated in Arts. 240–260. According to Art. 242(1), unless otherwise prescribed by this Act, the search has to be **ordered by an investigating judge in the form of a written reasoned search warrant**, at the request of the public prosecutor. Furthermore, unless otherwise prescribed by this Act, **before the beginning of the search, the search warrant has to be handed over** to the person who is to be searched, or whose premises are to be searched, or to the person that possesses the object that is to be searched.

► **The right to appeal** (see Chapter 5.2.2.).

5.3.1.2. How to address police misconduct

Police or administrative misconduct as a form of criminalisation of Human Rights Defenders can be addressed by the targeted person/entity in the following ways.

Contacting the Ombudsperson

Dealing with complaints of maladministration against the police, as well as complaints regarding

alleged discrimination, fall under the mandate of the national Ombudsperson.³⁶⁵

Therefore, violations of individuals' rights during police operations and police arrests can be addressed through a complaint to the Croatian Ombudsperson (as described above in Chapter 6.2.1.).

Complaint procedures before the Ministry and the Commission for Complaints

The Police Act defines the complaint procedure against the conduct of a police officer in Arts. 5–6. The said procedure does not preclude the use of other legal remedies for the protection of rights and freedoms (Art. 5(e) of the Police Act).

a) Who can lodge a complaint and in what time-frame?

A complaint with the Ministry of Interior can be lodged by **a natural or legal person who believes that their rights or freedoms have been violated** by an act (or failure to act) of a police officer in the exercise of police powers. The complaint can be lodged **within 30 days** from the date on which they became aware of the violation.³⁶⁶

b) What must the complaint contain?³⁶⁷

The complaint must be comprehensible and has to contain:

- ▶ The name, surname and address of the complainant.
- The place, time and description of actions/omissions that violated the rights or freedoms of the complainant or another person.
- The complainant's signature.

c) What happens with the complaint?

A complaint is examined by the head of the organisational unit of the Ministry to which the police officer complained against is assigned, or by a police officer under their authority. **They must inform the applicant of the findings of facts and the measures taken within 30 days** of receiving the complaint. A complainant who is not satisfied with the content of such a notification can **lodge a complaint with the Internal Control Service within 15 days** of receiving the notification. The said Service is obliged to reply within 30 days (starting from the date on which they received the complaint).³⁶⁸

If, **within 15 days** of receiving the reply from the Internal Control Service, the complainant **expresses dissatisfaction** with the verification procedure and the content of the reply, the file is communicated to **the Complaints Commission** (*Povjerenstvo za rad po pritužbama*). If the Commission finds that the complaint is justified, in whole or in part, **the Ministry must review its previous decision (and inform the complainant accordingly)** within 30 days of receiving the Commission's decision.³⁶⁹

d) How to lodge a complaint?³⁷⁰

A complaint can be lodged with the **competent police administration**, if it relates to a police officer of the police administration, or with the **organisational unit of the Ministry of the Interior** at its headquarters, if the complaint relates to a police officer of the Ministry at the headquarters.

A complaint may also be lodged with the **Internal Control Service** (see contact below), which will forward the complaint regarding the work of a police

³⁶⁵ Byrne J., Priestley W. Police Oversight Mechanisms in the Council of Europe Member States. Council of Europe Publishing. 2015 (updated 2017). Page 21. Available at: <https://rm.coe.int/police-oversight-mechanisms-in-the-coe-member-states/16807175dd>

³⁶⁶ Art. 5(1) of the Police Act

³⁶⁷ Art. 5(2) of the Police Act

³⁶⁸ Art. 5a of the Police Act

³⁶⁹ Art. 5b of the Police Act and Art. 5c(1)(6)(7) of the Police Act

³⁷⁰ e - Građani, Informacije i usluge. N.d. Kako se žaliti na rad policijskog službenika. Available at: <https://gov.hr/hr/kako-se-zaliti-na-rad-policijskog-sluzbenika/1238>

officer to the competent police administration/ other organisational unit of the Ministry.

Complaints can be lodged:

► **In person** — from 8 a.m. to 4 p.m., at the office of the competent police administration or at the competent organisational unit of the Ministry at its headquarters (Zagreb, Ilica 335 i Ulica grada Vukovara 33).

► **By phone** — 24 hours a day, if a person believes that their rights or the rights of another person have been violated, or that a police officer has broken the law:

- **Telephone 192** (Operational Communication Centre (OKC) of the Police Administration in whose area the incident occurred).
- **Ministry of the Interior's free telephone number** for complaints: 0800 - 0192.

► **Written complaints** can be lodged:

- To the competent police administration — in writing to their address, by fax or by email.
- To the address: Ravnateljstvo policije, Ured glavnog ravnatelja policije, sa sjedištem u Zagrebu, Ilica. 335; by fax to 01/3788-318; or by e-mail to policija@mup.hr.
- To the Internal Control Service — in writing to the address Služba za unutarnju kontrolu, sa sjedištem u Zagrebu, Ulica grada Vukovara 33; by fax to 01/6122-603; or by email to: unutarnja@mup.hr.

Illegal evidence in criminal proceedings

In cases when a Human Rights Defender finds themselves in criminal proceedings and the police has obtained evidence from them or from another person by violating their fundamental rights, a Human Rights Defender may claim that the evidence obtained in such a way is illegal and can therefore

not be the basis for the court's decision in criminal proceedings against them.

The basis for this is Art. 10 of the Criminal Procedure Act,³⁷¹ which regulates illegal evidence. In the first paragraph, it states that “the court's decisions in criminal proceedings **may not be founded on evidence obtained in an illegal way** (illegal evidence).”

Illegal evidence is defined in Art. 10(2) as:

► Evidence obtained in **violation of the prohibition of torture, inhuman or degrading treatment or punishment** guaranteed by the Constitution/law/ international law.

► Evidence obtained in **violation of the right of defence, the right to good name and honour, and the right to respect for private and family life** guaranteed by the Constitution/law/international law.³⁷²

► Evidence obtained in **violation of criminal procedure provisions** and expressly provided in the Criminal Procedure Act.

► Evidence **obtained on the basis of the aforementioned illegal evidence**.

Contacting the Domestic Policy and National Security Committee

A possible avenue for Human Rights Defenders who have faced, or are facing, police misconduct might also be contacting the Domestic Policy and National Security Committee. The said committee is one of the committees of the Croatian Parliament and has, among other things, rights and duties of a competent working body when it comes to matters that relate to control and oversight of the work of the police.³⁷³

The responsibility of the committee is to monitor security and intelligence bodies according to the

³⁷¹ For original legal text, see (Croatian): Zakon o kaznenom postupku. 2022. NN 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22.

Available at: <https://www.zakon.hr/z/174/Zakon-o-kaznenom-postupku>

³⁷² There is, however, an exception regarding the evidence obtained in this way. See Art. 10(3).

³⁷³ Croatian Parliament. N.d. Domestic Policy and National Security Committee.

Available at: <https://www.sabor.hr/en/committees/domestic-policy-and-national-security-committee-10-term>

law, especially with regards to the protection of human rights and fundamental freedoms guaranteed by the Croatian Constitution. It also provides opinions regarding the appointment of security agencies' directors in line with the Constitution.³⁷⁴

Contact information³⁷⁵

Tel.: +385 1 4569 459

Fax: +385 1 63 03 293

E-mail: odbupns@sabor.hr

– Since there is not much information available online regarding the committee's work with regards to the oversight and control of the work of the police, it is difficult to assess how effective this mechanism might be. –

5.3.2. Secret service misconduct

5.3.2.1. Legislation on security and intelligence

Security-Intelligence Agency

The security-intelligence system of Croatia consists of two agencies, the general Security-Intelligence Agency (SOA) and the Military Security-Intelligence Agency (VSOA). The legal basis for both

is the *Act on the Security-Intelligence System of the Republic of Croatia*.³⁷⁶ While the VSOA is subordinate to the Ministry of Defence, mainly supporting the military in questions of the country's sovereignty and defence,³⁷⁷ the SOA "collect[s] and analyze[s] information with the aim of detecting and preventing the activities of individuals or groups that are directed: against the independence, integrity and sovereignty of the Republic of Croatia or aimed at the violent overthrow of the constitutional order; threatening to violate human rights and basic freedoms or to endanger the fundamentals of the economic system of the Republic of Croatia."³⁷⁸ This can also include foreign countries or other individuals or stakeholders considered relevant to national security.³⁷⁹

Oversight of the authority is established by:

- ▶ the National Security Council and the Office of the National Security Council (professional oversight).
- ▶ National Security Committee of the Croatian Parliament and directly the Croatian Parliament (parliamentary oversight).
- ▶ Council for Civilian Oversight of Security-Intelligence Agencies (civilian oversight).
- ▶ Internal unit for oversight.³⁸⁰

Relevant legislation - the Act on the Security - Intelligence System of the Republic of Croatia

While fundamental or human rights are not explici-

³⁷⁴ Ibid.

³⁷⁵ Ibid.

³⁷⁶ Republic of Croatia Security and Intelligence Agency. 2022. Security-intelligence system of the Republic of Croatia. Available at: <https://www.soa.hr/en/about-us/security-intelligence-system-of-the-republic-of-croatia/>; for the original legal text, see: Act on the Security Intelligence System of the Republic of Croatia. 2006. Class: 011-01/06-01/26; Reg. No: 71-05-03/1-06-2. Available at: https://www.soa.hr/UserFiles/File/Security_and_Intelligence_System_Act.pdf; further relevant legal provisions can also be found here: Republic of Croatia Security and Intelligence Agency. 2022. Legislation. Available at: <https://www.soa.hr/en/documents/legislation/>

³⁷⁷ Hrvatski Generalni Zbor. 2018. Vojno sigurnosno-obavještajna agencija (VSOA). Available at: <https://hrvatskigeneralskizbor.hr/propisi-republike-hrvatske/nacionalna-sigurnost/vojno-sigurnosno-obavjestajna-agencija-vsoa/>

³⁷⁸ Republic of Croatia Security and Intelligence Agency. 2022. What is SOA. Available at: <https://www.soa.hr/en/about-us/what-is-soa/>

³⁷⁹ Ibid.

³⁸⁰ For detailed information, see: Republic of Croatia Security and Intelligence Agency. 2022. Oversight. Available at: <https://www.soa.hr/en/about-us/oversight/>

tly enshrined in the *Act on the Security-Intelligence System of the Republic of Croatia*, they are, however, referred to as relevant parts of the constitution at several places. In addition, the legal provisions are implemented so that the different oversight bodies of the Security-Intelligence Agencies can report and act on potential violations of the latter through the agencies (see, for example, Arts. 8, 105, 107, 111, 112). Art. 33 allows the implementation of methods that **restrict the fundamental rights** as enshrined in the constitution. However, these are only permitted “if the information can not be obtained in any other way or the collection thereof is linked with disproportionate difficulties. In cases where choice between several different measures of secret information collection is possible, the one less invasive to constitutionally protected human rights and basic freedoms shall be applied.”³⁸¹ According to Art. 87(1), “[t]he **Republic of Croatia is accountable for all damage** incurred to citizens or legal persons due to illegal, deliberate or extremely careless acts of the employees of security intelligence agencies,”³⁸² and according to Art. 29(1), “[f]orcing anyone to become a secret collaborator is not permitted.”³⁸³

5.3.2.2. Council for Civilian Oversight of Security - Intelligence Agencies

For civil society, and therefore Human Rights

Defenders, the most relevant oversight mechanism of the SOA might be the Council for Civilian Oversight of Security-Intelligence Agencies. The council consists of seven members, including one chairperson, who are Croatian citizens and do not hold a leading position in a political party. They are appointed by the Croatian government for a period of four years.³⁸⁴ The Council works under the parliamentary Committee of National Security and is an independent body.³⁸⁵ It monitors the legality of the agency’s work and its methods of operation, in particular the collection of information if these methods limit human rights and basic freedoms and sends its findings to the relevant bodies, including such with an oversight function.³⁸⁶ In case of an observed or experienced illegal or irregular action of the Security-Intelligence Agencies, the Council gives support to individuals and other parties regarding avenues for complaint, in particular in cases of human rights violations.³⁸⁷

Requests to the Council for Civilian Oversight of Security-Intelligence Agencies

Citizens, state bodies or legal entities can submit a request in cases where they observe or experience “illegal procedures or irregularities in the work of security-intelligence agencies, especially in cases of violations of human rights and fundamental freedoms guaranteed by the Constitution.”³⁸⁸

³⁸¹ Act on the Security Intelligence System of the Republic of Croatia. 2006. Class: 011-01/06-01/26; Reg. No: 71-05-03/1-06-2. Available at: https://www.soa.hr/UserFiles/File/Security_and_Intelligence_System_Act.pdf

³⁸² Ibid.

³⁸³ Ibid.

³⁸⁴ Hrvatski Sabor. N.d. Council for Civilian Oversight of Security and Intelligence Agencies - 7th term. Available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-7th-term>

³⁸⁵ Hrvatski Sabor. N.d. Council for Civilian Oversight of Security and Intelligence Agencies - 10th term. Available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-10th-term>

³⁸⁶ For detailed information, see: Republic of Croatia Security and Intelligence Agency. 2022. Oversight. Available at: <https://www.soa.hr/en/about-us/oversight/>

³⁸⁷ Hrvatski Sabor. N.d. Council for Civilian Oversight of Security and Intelligence Agencies - 7th term. Available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-7th-term>

³⁸⁸ Hrvatski Sabor. 2018. 10. saziv Hrvatskoga sabora (22.7.2020.): Vijeće za građanski nadzor sigurnosno-obavještajnih agencija. Available at: <https://www.sabor.hr/hr/radna-tijela/vijece-za-gradanski-nadzor-sigurnosno-obavjestajnih-agencija-10-saziv-hrvatskoga> (free translation from Croatian)

How to file a complaint³⁸⁹

► A request can only be submitted in written format, by handing it in directly to a member of the Council, via email or by post.

► “Requests from legal entities and state bodies must contain the name and registered office of the legal entity or state body, as well as the information of the person authorized to represent them and their signature. Exceptionally, citizens’ requests submitted via electronic mail do not have to contain the handwritten signature of the applicant.”

What happens after a Human Rights Defender files a complaint?

► The Council can only act on the comments mentioned in the complaint.

► It has to inform the complainant once the oversight is completed.

► If necessary to decide on a complaint, the council has access to reports and internal documents of the agency and can conduct interviews with the employee relevant to the examination.

► Results of investigations are reported to the country’s president, the speaker of the parliament, the prime minister and the chief public prosecutor.³⁹⁰

Contact information

Submitting a request:

Address:

Trg sv. Marka 6
10000 Zagreb

(indication “For the Council for Civil Oversight of Security and Intelligence Agencies”)

Email: vgnsoa@sabor.hr

5.3.2.3. Right to information

Right to access information

Under the Croatian Act on the Right of Access to Information,³⁹¹ natural and legal persons, also of foreign nationality (Art. 6), have the right to access the information of public authorities. This also applies to the Security and Intelligence Agency.

In the case of the Security and Intelligence Agencies, an individual that wants to access information has to file a request. This includes “information possessed by, disposed of and controlled by the SOA [Security and Intelligence Agency].”³⁹²

How to file a request to the Security and Intelligence Agency to get access to information?³⁹³

- The request has to be filed in a written form, which can be found at the following link: <https://www.soa.hr/Files/pdf/Obrazac-broj-2-Obrazac-zahtjeva-za-pristup-informaciji-jpp-eng.pdf>.
- The filled form can be sent via post, fax or email.

Contact information for Access of Information Requests

Address:

Security and Intelligence Agency
Savska cesta 39/1
10 000 Zagreb

Fax: 01/ 688-1951

Email: informiranje@soa.hr

³⁸⁹ Ibid.

³⁹⁰ Hrvatski Sabor. N.d. Council for Civilian Oversight of Security and Intelligence Agencies - 7th term. Available at: <https://www.sabor.hr/hr/council-civilian-oversight-security-and-intelligence-agencies-7th-term>

³⁹¹ For original legal text, see (Croatian): Zakona O Pravu Na Pristup Informacijama. 2013. Klasa: 011-01/13-01/27; Urbroj: 71-05-03/1-13-2. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_25_403.html

³⁹² Republic of Croatia Security and Intelligence Agency. 2022. Right to access information. Available at: <https://www.soa.hr/en/information/right-to-access-information/>

³⁹³ Ibid.

Right to know whether one is being monitored

According to Art. 40 of the Act on the Security-Intelligence System of the Republic of Croatia, “[s]ecurity intelligence agencies are obliged to inform the citizens, within 15 days upon their request, in writing, if measures of secret information collection have been applied against them, or files with their personal data are kept, and to allow them access to the collected data, at their request.”³⁹⁴

In order to find out whether one is under surveillance by the Security and Intelligence Agency, a Human Rights Defender can send the Council for Civilian Oversight of Security-Intelligence Agencies a written request. While the experience of the individuals we spoke to was that the Council cannot tell the Human Rights Defender whether they are monitored, the question of whether one is subject to unlawful surveillance is answered, which then allows the assumption of being monitored.

5.3.3. Criminalisation linked to breaches of personal data protection rights

5.3.3.1. Data protection regulation

The right to protection of personal data is enshrined in the *Croatian Constitution* (see above).

Here, Art. 37 states: “The safety and secrecy of personal data shall be guaranteed for everyone. Without consent from the person concerned, personal data may be collected, processed, and used only under the conditions specified by law.”³⁹⁵ The protection of individuals’ data was regulated, until 2018, by the *Croatian Act on Personal Data Protection*.³⁹⁶ Due to the country’s EU membership, this was aligned with *EU Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation (GDPR))*.³⁹⁷ Therefore, the previous *Act on Data Protection* was replaced in 2018 by the *Act on the Implementation of General Data Protection Regulation (Official Gazette 42/18)*.³⁹⁸ Hence, at the moment, the GDPR constitutes the basis for data protection of an individual in Croatia, while additional regulations are laid down in the Act on its implementation. Therefore, an individual holds all the data protection rights enshrined in the GDPR (see Chapter 4.1.4.).³⁹⁹

Of additional relevance is the *Act on the Protection of Natural Persons with Regard to the Processing and Exchange of Personal Data for the Purposes of the Prevention, Investigation, Detection or Prosecution of Criminal Offences or the Execution of Criminal Penalties (Official Gazette 68/18)*,⁴⁰⁰ which applies in cases of criminal offence. It assures, also

³⁹⁴ Act on the Security Intelligence System of the Republic of Croatia. 2006. Class: 011-01/06-01/26; Reg. No: 71-05-03/1-06-2 Available at: https://www.soa.hr/UserFiles/File/Security_and_Intelligence_System_Act.pdf

³⁹⁵ For full legal text in English, see: Constitution of the Republic of Croatia (consolidated text). 2010. Available at: https://www.policinglaw.info/assets/downloads/2010_Constitution_of_Croatia.pdf

³⁹⁶ For further legal analysis, see: Croatian Personal Data Protection Agency. N.d. Legal Framework. Available at: <https://azop.hr/legal-framework/>

³⁹⁷ For legal text, see: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679>

³⁹⁸ Original legal text to be found here: Zakon o provedbi Opće uredbe o zaštiti podataka. 2018. Klasa: 011-01/18-01/48; Urbroj: 71-06-01/1-18-2. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_05_42_805.html; for an English version, see: National legislation: Act on the Implementation of the General Data Protection Regulation. 2018. Class: 022-03/18-01/55. Available at: <https://azop.hr/national-legislation/>

³⁹⁹ Croatian Personal Data Protection Agency. N.d. Rights of individuals. Available at: <https://azop.hr/rights-of-individuals/>

⁴⁰⁰ Original legal text to be found here: Zakon o zaštiti fizičkih osoba u vezi s obradom i razmjenom osobnih podataka u svrhe sprječavanja, istraživanja, otkrivanja ili progona kaznenih djela ili izvršavanja kaznenih sankcija. 2018. Klasa: 011-01/18-01/97; Urbroj: 71-06-01/1-18-2. Available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_07_68_1391.html

in the context of criminal offences, that personal data is “processed fairly and legally”⁴⁰¹ (Art. 6(1)), and it can only be processed to the extent necessary (Art. 6(2) and (4)). This act also ensures the right to information (Arts. 13 and 14), the right to access (Art. 15; restricted under certain conditions as laid down in Art. 16) and the right to correction or deletion and restriction of processing (Art. 17).

5.3.3.2. Croatian Personal Data Protection Agency (complaint)

The Croatian Personal Data Protection Agency is the national authority overlooking the implementation of the data protection legislation in the country. As an agency, it can either act upon its own initiative or when requested upon by an individual to determine whether a data protection right was violated.⁴⁰² In case of “complaints lodged by a data subject, or by a body, organisation or association [it has to] investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary.”⁴⁰³ In addition, it creates awareness regarding the topic of data protection, monitors developments regarding the protection of personal data, gives trainings, provides consultations and issues recommendations.⁴⁰⁴

What are the requirements to request an investigation by the Croatian Personal Data Protection Agency?

► Anyone that considers that their rights, as enshrined in the *GDPR of the EU* or *The Act on Imple-*

mentation of General Data Protection Regulation, have been breached can submit a request to the Personal Data Protection Agency.

► A request has to be in an understandable form and contain all the information listed below.⁴⁰⁵

► Before sending a request to them, the Personal Data Protection Agency asks to contact the controller of the data⁴⁰⁶ about the issue. This can be, for instance, the responsible organisation, company or a state body.⁴⁰⁷

➡ a request form for exercising the rights of the data subject and a complaint form can be found here: <https://azop.hr/zahtjev-za-utvrdivanje-povrede-prava/> (only available in Croatian)

➡ companies, organisations and institutions who have a data processing manager the complaint can be addressed to

How to file a complaint to the Croatian Personal Data Protection Agency

- Personally.
- In written form to the agency’s address, their email or via fax.
- Via their online form: <https://azop.hr/zahtjev-za-utvrdivanje-povrede-prava/> (only available in Croatian).
- Data to be included in a request:
 - Name, surname and address.
 - What right was violated?
 - Upon request, documents related to the incident should be submitted.

⁴⁰¹ Free translation from Croatian

⁴⁰² Croatian Personal Data Protection Agency. N.d. Rights of individuals. Available at: <https://azop.hr/rights-of-individuals/>

⁴⁰³ Croatian Personal Data Protection Agency. N.d. About the agency. Available at: <https://azop.hr/about-the-agency/>

⁴⁰⁴ Ibid.

⁴⁰⁵ Croatian Personal Data Protection Agency. N.d. Rights of individuals. Available at: <https://azop.hr/rights-of-individuals/>

⁴⁰⁶ For an explanation of the term “data controller”, see Chapter 4.1.4.

⁴⁰⁷ Croatian Personal Data Protection Agency. N.d. Zahtjev za utvrdivanje povrede prava. Available at: <https://azop.hr/zahtjev-za-utvrdivanje-povrede-prava/>

What happens after a Human Rights Defender files a complaint?⁴⁰⁸

► The agency can start an **investigation** into a certain issue, while at the same time having the mandate to access data collected and processed, as well as the mandate to investigate relevant premises and the mandate to be provided with relevant information by the concerned parties.

► The agency will decide upon the request by a ruling in the form of a legally binding **administrative act**.

► While no appeal is allowed against the decision of the agency, “an **administrative dispute** may be instituted by lodging a complaint before a competent administrative court.”⁴⁰⁹

► When determining a breach of data protection violations, the agency can impose **administrative fines**. While these can address legal persons, they cannot be imposed on public authorities.

► When operations are planned that most likely violate personal data protection rights, the agency can **issue a warning**; in cases of already ongoing operations, it can issue a **reprimand or an order to comply** with the individual’s rights or **change existing operations and processes**, or **withdraw its certification**.

► In addition, in individual cases it can order the **erasure or rectification** of personal data.

Contact information

Address:

Personal Data Protection Agency
Selska cesta 136
10 000 Zagreb (Croatia)

Fax: +38514609099

Email: azop@azop.hr

Website: <https://azop.hr/naslovna-english/>

6. Greece

6.1. Legislation

The following chapter gives an introduction to Greek legislation relevant in the case of criminalisation of Human Rights Defenders.

6.1.1. Constitution

While there is no provision in Greek law designed specifically to protect Human Rights Defenders, all Greek citizens can benefit from the individual and social rights outlined in the Greek constitution. There is no dedicated constitutional court in Greece, but any court can declare a legal provision unconstitutional if it violates constitutional rights – the court can then choose not to apply the provision in a particular case, but cannot declare the provision null and void (only the Special Highest Court has the power to declare an unconstitutional piece of law “powerless”).⁴¹⁰

The constitutional rights relevant for Human Rights Defenders are summarised below.⁴¹¹

► **Equality before the law** of Greek citizens (Art. 4).

► Freedom of all Greek citizens to freely **develop their personality and participate in the social, economic, and political life** of the country (Art. 5).

► The **right to information** (Art. 5(a)).

► No person will be arrested or imprisoned without a reasoned **judicial warrant** that is presented to them when being arrested or awaiting trial, unless the person is caught in the act of committing a crime (Art. 6).

► An act or failure to act will not be considered a crime unless a law stating that it is a crime is in

⁴⁰⁸ Croatian Personal Data Protection Agency. N.d. About the agency. Available at: <https://azop.hr/about-the-agency/>

⁴⁰⁹ Croatian Personal Data Protection Agency. N.d. How to lodge a complaint. Available at: <https://azop.hr/how-to-lodge-a-complaint/>

⁴¹⁰ Hellenic Parliament. 2022. The Constitution of Greece. Article 100. Available at: https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/2019_SYDAGMA_EN_2022_WEB.pdf

⁴¹¹ See Ibid. for more detail on the rights outlined above.

force at the time that the act is committed. The general **confiscation of property is prohibited**, and the death penalty is prohibited except when the law provides for it in cases of felonies committed during war and related times (Art. 7).

- Every person's case **must be heard by the judge** prescribed to them by law, and no judicial committees or extraordinary courts will be constituted (Art. 8).

- The **private and family life** of the individual is inviolable, and no search of an individual's home will be conducted unless prescribed by law and conducted in accordance with the relevant law (Art. 9).

- Every person has the right to be protected from the collection, use and processing of their **personal data** as specified by law, especially by electronic means (Art. 9(a)).

- The right to **petition public authorities** in writing. An obligation then arises for the public authority to take action in accordance with the law and to provide the petitioner(s) with a reasoned written reply (Art. 10).

- The **right to peaceful and unarmed assembly** (Art. 11).

- Greeks have the **right to form non-profit associations and unions**. An association will not be dissolved for violating the law, except by court judgement (Art. 12).

- **Freedom of religious conscience** is inviolable, and all people shall be free to practise their religion under the protection of the law, provided these practices do not offend public order or good usages (Art. 13).

- Each person has the **freedom to express** their views in writing, orally and through a free press. Every person offended by an **inaccurate publication** has the **right to reply**, at which point the publisher has an **obligation to give full and immediate redress**. Every person offended by a **defamatory publication** has the same right to reply, which then imposes the **obligation on the publisher to publish or transmit the reply** (Art. 14).

- The provisions in Art. 14 do not apply to films, sound recordings, television and other mediums for the transmission of speech and images (Art. 15).

- **Property is under the protection** of the state. Nobody will be deprived of their property unless it is duly proven to be in the public interest to do so, the relevant statutes are followed and the property owner is compensated fully for the value of their property at the time of the court hearing (Art. 17).

- The **secrecy of free correspondence**, such as letters and other forms of communication, is inviolable (Art. 19).

- Every person is entitled to **legal protection** by the courts, and may plead before the courts their views on their rights or interests in accordance with the law (Art. 20).

- The rights of each person as an individual and as a member of society are guaranteed by the state, and agents of the state have an obligation to ensure the effective exercise of these rights. Abusive exercise of rights is prohibited (Art. 25).

6.1.2. Anti-smuggling laws

One of the main reasons Human Rights Defenders face criminalisation in Greece is because they are charged with the **facilitation of illegal entry** of people on the move. This is a felony offence in Greek law created for the stated purpose of preventing migrant smuggling at Greek borders, but due to the phrasing of the legislation, Human Rights Defenders can become targets of criminalisation efforts under this legislation for providing emergency aid or other urgent services to people on the move coming into Greece. Greek law 4251/2014, *Immigration and Social Integration Code and other provisions*, is the legislative basis for the Greek offence of facilitating illegal entry.⁴¹² The main purpose of Law 4251/2014 was to transpose EU Council Directive 2003/109/EC of 25 November 2003, concerning the status of third-country nationals who are long-term residents, into Greek law, despite this directive not containing rules on facilitation of

⁴¹² Parliament of the Hellenic Republic. 2014. Immigration and Social Integration Code and other provisions. Available at: https://issuu.com/anas32/docs/greek_law_4251-2014_en_residence-pe

illegal entry.⁴¹³ However, the provisions contained within Law 4251/2014, while making Human Rights Defenders extremely vulnerable to criminalisation efforts, are in line with the relevant EU provisions that make up the Facilitators Package (see Chapter 4.1.2).

As with the EU Facilitators Package, Law 4251/2014 does not define a “smuggler” as someone who facilitates illegal entry for financial gain, thus allowing Human Rights Defenders working with migrants to be charged with the offence of facilitation of illegal entry under this legislation.

Articles 29 and 30 of Law 4251 establish the offence of facilitation of illegal entry and lay out the penalties that this offence can incur upon conviction.⁴¹⁴ The relevant content of these articles can be summarised as follows:

► A person who **facilitates the entry or exit** from Greek territory of a **third-country national** who is **not in possession of a legitimate visa** can face up to 10 years in prison, as well as a minimum fine of EUR 20,000 if convicted.

- If such facilitation was performed with the intention of acquiring profit, or if the facilitation was carried out jointly with someone else or by profession or habit, the jail sentence becomes a minimum of 10 years and the fine increases to a minimum of EUR 50,000 upon conviction.

► A person who **facilitates the illegal residence** of a **third-country national** in Greek territory, or attempts to **hinder the efforts of police** to locate, detain and deport such a third-country national, can face a prison sentence of at least one year, as well as a minimum fine of EUR 5,000 if convicted.

- If such facilitation of illegal residence of a third-country national was performed with the intention to acquire profit, the jail sentence increases to a minimum of two years, and the fine increases to a minimum of EUR

10,000 upon conviction.

► A **driver of any form of transportation** who transfers **third-country nationals** who **do not have the right to enter** Greece into Greek territory (or anyone who does not have valid passports, visas or other necessary travel documents laid out in Article 5), **or collects** such third-country nationals from entry points at Greek borders and moves them inland or into the territory of another EU Member State or Third Country, **or facilitates their transport or provides them with accommodation for concealment** from the authorities, will be sentenced to imprisonment of up to 10 years and a fine ranging between EUR 10,000 and EUR 30,000 for each person transported.

- If the driver transported the third-country national with a view to making profit, by profession or habit, if they are a repeat offender, if they commit the offence while acting in the capacity of civil servant, tour, shipping or travel agent, or if two or more people committed the offence together, the minimum prison sentence becomes 10 years and the fine ranges from EUR 30,000–60,000 for each transported person, upon conviction.
- If the offending act could endanger human life, the minimum prison sentence becomes 15 years of imprisonment, as well as a minimum fine of EUR 200,000 for each transported person, upon conviction.
- If the offending act resulted in a loss of human life, the minimum prison sentence becomes life imprisonment, as well as a minimum fine of EUR 700,000 for each transported person.

► Article 30 states that these **penalties will not apply to those rescuing people at sea** or transporting people whose **protection is required by international law**.

► Property “derived” from these offences, as well as property acquired as a result of these offences in any manner, or property that has been

⁴¹³ Council of the European Union. 2003. Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. Available at: <http://data.europa.eu/eli/dir/2003/109/oj>

⁴¹⁴ Parliament of the Hellenic Republic. 2014. Immigration and Social Integration Code and other provisions. Art. 29 and Art. 30. Available at: https://issuu.com/anas32/docs/greek_law_4251-2014_en_residence-pe

used wholly or in part for these offences, will be seized. It will then be confiscated, unless there is a requirement under articles 310(2) and 373 of the Code of Criminal Procedure that it is returned to the owner.⁴¹⁵

► These offences of facilitation of illegal entry or residence in Greek territory of third-country nationals are felony offences, the highest level of offence in Greek law. The three-member court of appeals has jurisdiction over these offences.

► These punishments will also apply when the offences are committed abroad by a Greek national or alien, even if it is not illegal in the country in which it is being performed.

Crucially for Human Rights Defenders, Articles 29 and 30 of Law 4251/2014 do not exclude people conducting humanitarian work with migrants from the offence of facilitation of illegal entry, as the question of whether a person facilitated illegal entry for **financial gain** only affects the length of the sentence, not whether the person is liable under this legislation. This is at odds with the UN Protocol against the Smuggling of Migrants by Land, Air and Sea,⁴¹⁶ which states that one must be seeking financial gain to be classed as a smuggler, thus exempting Human Rights Defenders from liability under the Protocol.

However, Law 4251/2014 is in line with the EU legal framework in this area – the Facilitators Package.⁴¹⁷ As discussed in Section 6.1.2 of this toolkit, the Facilitators Package leaves it to the Member

States to decide whether they want to include an exemption for Human Rights Defenders in their legal definitions of smugglers. Several Member States have done this, but Greece has not, leaving humanitarian workers vulnerable to criminalisation under Greek law simply for doing their work. A table mapping the development of legislation in this area from the EU, the UN and Greece, as well as further analysis, is available on the BVMN website.⁴¹⁸

6.1.3. Changes to the Greek Criminal Code

In March 2022, Greece enacted a law that, when coupled with the anti-smuggling legislation of 2014, strips away another layer of legal protection for Human Rights Defenders. This law made important changes to sentencing that Greek Human Rights Defenders should be aware of, as these changes make the consequences of conviction for an offence such as the facilitation of illegal entry much harsher.

The law in question is Law 4908/2022, which amends Article 187 of the Greek Criminal Code (GCC). Article 187 of the GCC deals with the **formation of, and participation in, criminal organisations**. Under Greek law, a criminal organisation is a **group of two or more people** who gather together with the **intention of committing a crime**.⁴¹⁹ Under Greece's anti-smuggling legislation, this **can in-**

⁴¹⁵ Government of the Hellenic Republic. 2019. Law No. 4620, Code of Criminal Procedure. Available at: <https://www.et.gr/SearchNomoi>

⁴¹⁶ United Nations. 2004. Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. Available at: https://treaties.un.org/doc/Treaties/2000/11/20001115%2011-21%20AM/Ch_XVIII_12_bp.pdf

⁴¹⁷ Council of the European Union. 2002. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. Available at: <http://data.europa.eu/eli/dir/2002/90/oj>; Council of the European Union. 2002. Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. Available at: http://data.europa.eu/eli/dec_framw/2002/946/oj

⁴¹⁸ Border Violence Monitoring Network. 2022. Policy Brief: Criminalization of POM. Available at: <https://www.borderviolence.eu/policy-brief-criminalization-of-pom/>

⁴¹⁹ Government of the Hellenic Republic. 2022. Law No. 4908, Measures to Combat Fan Violence, Strengthening the Institutional Framework for the Operation of Supporters' Clubs, Sports Volunteering, Intellectual Sport, E-Sports, Professional Sport, Other Provisions for the Modernisation of Sports Legislation and Other Provisions. Available at: <https://www.et.gr/SearchNomoi>

clude organisations of Human Rights Defenders who assist people on the move, as facilitation of illegal entry or transit is considered a felony offence under Law 4251/2014.

Previously, Article 187 allowed for the suspension of some prison sentences while a case was awaiting appeal. Specifically, Article 187 of the GCC allowed judges to suspend sentences of up to five years at their own discretion, and shorter sentences could be suspended outright if the defendant could provide evidence that they were a Human Rights Defender, that they were unlikely to reoffend, that they would suffer in prison because of a mental condition and so on. This applied even to felony offences, such as the facilitation of illegal entry or transit of migrants.

Under the changes made by Law 4908/2022, however, **anyone convicted** of joining another person or people **to commit a felony offence** will face a **mandatory prison sentence** of at least **six months and up to three years**, which **cannot be suspended** owing to the circumstances of each individual case, either under the scope of the conviction itself or while waiting for the judgement on the appeal against the decision.⁴²⁰ While it is rare that the criminalisation efforts made by Greek authorities against Human Rights Defenders actually result in conviction, these amendments to the GCC remove the safety net that was previously available to Human Rights Defenders in the form of suspension of sentences. This makes conviction a much scarier prospect as it would carry mandatory jail time, further adding to the atmosphere of fear in Greece for Human Rights Defenders.

Another recent change to the Greek Criminal Code that Human Rights Defenders should be aware of is that made by Law 4855/2021 regarding the spread of “fake news”.⁴²¹ This provision amended the Criminal Code to make it a criminal offence to spread fake news that is ‘capable of causing concern or fear to the public or undermining public confidence in the national economy, the country defense capacity or public health,’ with a potential sentence of up to five years in prison upon conviction.⁴²² This law is very vague in its definition of “fake news,” which means that journalists and Human Rights Defenders (as well as any person in Greece) can face lawsuits and jail time for reporting on government policies if the government simply claims their reports are false. This has led to many instances of surveillance of Human Rights Defenders and journalists for speaking out against government policy.⁴²³ Government officials are also increasingly referring to reports from Human Rights Defenders regarding the situation of migrants in Greece as fake news,⁴²⁴ which puts undue restriction on the freedom of the media in Greece and puts Human Rights Defenders and journalists in danger of criminalisation under this law.

6.1.4. Data Protection Legislation

The right to the protection of personal data is enshrined in Article 9(a) of the Greek Constitution as well as in Law 4264/2019,⁴²⁵ which implemented the provisions of the GDPR in Greece. Article 5 of Law 4264/2019 lays out the legal basis for the processing of personal data by public bodies, specifying that the public bodies may process personal

⁴²⁰ Ibid. at Art. 187

⁴²¹ Government of the Hellenic Republic. 2021. Law no. 4855, Amendments to the Criminal Code, the Code of Criminal Procedure and Other Urgent Provisions. Available at: <https://www.et.gr/SearchNomoi>

⁴²² Ibid.

⁴²³ Efsyn. 2021. Citizens under surveillance by the EYP. Available at: <https://bit.ly/3Kpukzx>

⁴²⁴ Alarabiya News. 2021. Greece calls migrant pushback claims “fake news” by Turkey. Available at: <https://bit.ly/3fBv1aL>

⁴²⁵ Government of the Hellenic Republic. 2019. Law No. 4624, Hellenic Data Protection Authority (HDPa), measures for implementing Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data, and transposition of Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016, and other provisions. Available at: https://www.dpa.gr/sites/default/files/2020-08/LAW%204624_2019_EN_TRANSLATED%20BY%20THE%20HDPa.PDF

data where “it is **necessary** for the performance of a task carried out in the **public interest** or in the exercise of **official authority** conferred on the controller.”

However, since 2019, the Greek government has made several changes to its data protection and privacy laws, which strip away some important rights from the Greek people in the area of data privacy and technological surveillance, allowing public bodies to operate without scrutiny and thus making it very difficult to verify that Law 4246/2019 is being followed. These changes are as follows.

Law 4622/2019 made an important change to the structure of the National Intelligence Service of Greece (EYP). Previously, the EYP was an independent organisation that was run by an internal committee, but following the implementation of this law, the EYP now answers to, and is under the direct control of, the country’s Prime Minister.⁴²⁶ This makes it harder to hold the agency to account and to ensure that it is not motivated by the policy goals of the Prime Minister, which could be harmful to Human Rights Defenders depending on the political inclination of the Prime Minister at any given time. Furthermore, the Greek government changed the qualifications required to be appointed head of the EYP, which allowed Panayiotis Kontoleon, who has since resigned following the revelation that the EYP had attempted to tap the phone of MEP Nikos Androulakis, to take the position.⁴²⁷

Law 4790/2021 is mainly about measures related to the Covid-19 pandemic, but Article 87 of this Law amends paragraph 9 of Article 5 of Law 2225/1994. Previously, Law 2225/1994 ensured

that Greek citizens could, upon request to the Hellenic Authority for Communication Security and Privacy (ADAE),⁴²⁸ be informed if and why they had been under surveillance by the EYP, provided the goal of this surveillance would not be jeopardised by the disclosure of this information. The ADAE would then have the authority to conduct an investigation or audit of the EYP and disclose whether the citizen had been under surveillance. Following Law 4790/2021, however, it is now sufficient for the EYP to claim reasons of national security when asked about the surveillance of a citizen and then not divulge any information about such surveillance or whether it ever took place.⁴²⁹ This law applies retroactively, which means that the EYP can even refuse to divulge information about surveillance efforts which took place before the law was enacted.

The enactment of this law, specifically Article 87, which is not related to the other provisions contained in this piece of legislation, means that the EYP can monitor whoever they deem necessary without needing to be answerable to the ADAE or the public. Furthermore, the EYP now answers directly to the government, and thus there is no reliable way to ensure that the activities of the EYP are not based on political bias.

These changes to data protection legislation coincide with many scandals in Greece in recent years regarding revelations that the EYP has been covertly monitoring the electronic devices of citizens using the Predator spyware.⁴³⁰ In particular, it was revealed in an article from *Efsyn* that a journalist working with investigative news outlet Solomon had been under surveillance, due specifically to

⁴²⁶ Government of the Hellenic Republic. 2019. Law No. 4622: Organization, Operation and Transparency of Government, Government Bodies and Central Public Administration and other provisions. Available at: <https://www.et.gr/SearchNomoi>

⁴²⁷ Financial Times. 2022. Greek wiretap cases turn up the heat on prime minister. Available at: <https://www.ft.com/content/733a2316-74a4-4155-82a4-ce60b6b9bd34>

⁴²⁸ For more information on the ADAE (the Greek independent authority dedicated to ensuring the confidentiality of all forms of free communication or correspondence), see here: <http://www.adae.gr/en/adae/presentation/>

⁴²⁹ Government of the Hellenic Republic. 2021. Law No. 4790/2021, Emergency Arrangements to Protect Public Health from the Continuing Effects of the Coronavirus Covid-19 Pandemic, Development, Social Protection and Reoperation of the Courts and other matters. Available at: <https://www.et.gr/SearchNomoi>

⁴³⁰ Efsyn. 2021. Citizens under surveillance by the EYP. Available at: <https://bit.ly/3Kpukzx>

an article about a 12-year-old refugee living in administrative detention on the island of Kos, whose artwork had appeared in the French newspaper *Le Monde*.⁴³¹ A government spokesperson responded by claiming that the EYP was monitoring ‘risks to public safety from “internal or external threats”’.⁴³² This sentiment from the government that journalism focusing on people on the move is a threat to national security is untrue, and when considered alongside the recent changes to data protection laws that strip away journalists’ freedom and rights, creates a hostile environment for journalists and Migrant Rights Defenders in Greece, and ongoing concern about the freedom of the press and the intentions of the government.

6.2. Mechanisms

6.2.1. Greek Ombudsperson

The Greek Ombudsperson is an independent governmental authority, supporting Greek citizens in accessing their rights.⁴³³ Its mandate is enshrined in the *Greek Constitution*, as well as its working principles in *Law No. 3094/2003* and *Presidential Decree No. 273*.⁴³⁴ As well as a focus on children’s rights, a focus of the authority’s work is on vulner-

able societal groups, gender equality and anti-discriminatory treatment in the public sector. The Ombudsperson is in charge of monitoring several institutions regarding those fields, as well as their staff, including complaints about their behaviour during operations, as well as the abuse of their status. Of most relevance for Human Rights Defenders is regional and national ministries, municipalities, the police (including the Hellenic Coast Guard), prisons and hospitals.⁴³⁵ **The Ombudsperson does not have a mandate to issue legally binding decisions.** It can only establish recommendations or proposals.⁴³⁶ Apart from investigating individual cases after receiving a complaint,⁴³⁷ or cases of public interest upon their own initiative,⁴³⁸ the Ombudsperson can also create visibility for specific issues through its annual and special reports.⁴³⁹

What are the requirements for the Ombudsperson’s engagement?⁴⁴⁰

► Before the Ombudsperson starts engaging in a case, the individual has to contact the public authority they are in dispute with in written form.

► The Greek Ombudsperson can be contacted by Greek or foreign citizens residing in Greece, as well as legal entities or associations. Foreign nationals can submit complaints to the Greek Ombudsperson “regardless of the legal status of their

⁴³¹ DW. 2021. Fears of threat to media freedom in Greece. Available at: <https://bit.ly/3tGN4EW>

⁴³² BalkanInsight. 2021. Greek Intelligence Service Accused of ‘Alarming’ Surveillance Activity. Available at: <https://bit.ly/32dBUvX>

⁴³³ The Greek Ombudsman. 2016. Who and What is the Greek Ombudsman. Available at: https://old.synigoros.gr/resources/toolip/doc/2016/06/17/en_r.pdf

⁴³⁴ The Greek Ombudsman. 2022. Legislation. Available at: <https://www.synigoros.gr/en/category/syntagma-nomoi>

⁴³⁵ The Greek Ombudsman. 2016. Who and What is the Greek Ombudsman. Available at: https://old.synigoros.gr/resources/toolip/doc/2016/06/17/en_r.pdf; also, Independent Police Complaints Authorities’ Network. 2022. The Greek Ombudsman. Available at: <https://ipcan.org/members/the-greek-ombudsman>

⁴³⁶ The Greek Ombudsman. 2016. Who and What is the Greek Ombudsman. Available at: https://old.synigoros.gr/resources/toolip/doc/2016/06/17/en_r.pdf

⁴³⁷ The Greek Ombudsman. 2022. The Greek Ombudsman. Available at: <https://www.synigoros.gr/en/category/synhgoros-toy-polith>

⁴³⁸ The Greek Ombudsman. N.d. Processing Citizens’ complaints. Available at: <https://old.synigoros.gr/?i=stp.en.processing>

⁴³⁹ The Greek Ombudsman. 2022. The Greek Ombudsman. Available at: <https://www.synigoros.gr/en/category/synhgoros-toy-polith>

⁴⁴⁰ The Greek Ombudsman. 2016. Who and What is the Greek Ombudsman. Available at: https://old.synigoros.gr/resources/toolip/doc/2016/06/17/en_r.pdf

entry or residence in the country”; this also applies for “legal entity under private law (such as a union, institution, company) or an association of persons without a legal profile (such as a citizens’ initiative)”.⁴⁴¹

- An illegal action or a lack of action of the public administrative sector has led to the violation of an individual’s right in order to be addressed by the Ombudsperson.

- A maximum of six months did not pass since the individual learned about the action of misadministration.

- The incident is not pending in front of any court.

- The incident is not linked to national security.

How to file a complaint

- A complaint has to be in written form, including a signature, as well as directly requesting the Ombudsperson’s engagement.⁴⁴²

- A complaint on behalf of a third party can only be submitted in case of a written authorisation or specifically regulated representation. In exceptional cases, one can abstain from such an authorisation if “the complaint is being made on behalf of someone who, due to extraordinary circumstances, is in no position to sign it, or if the complaint is being made by an attorney on behalf of a client.”⁴⁴³

- Complaints cannot be submitted anonymously.

- Complaints can be submitted in person at their office; it is possible to visit the offices of the Authority at 17 Chalkokondyli, P.C. 104 32 Athens, Monday–Friday, 08.30–14:00, and every Wednesday until 16:30 (following a scheduled appointment).

- Complaints can be submitted via post to this address: Authority at 17 Chalkokondyli, P.C. 104 32 Athens.

- Complaints can be submitted online using this form: <https://www.synigoros.gr/en/anafora/ipovoli-anaforas>.

- Personal email is required, which then also enables monitoring of the complaint’s course online (a complaint tracking code (CTC) will be sent to you via email).

- The status of the case can be tracked here: <https://www.synigoros.gr/en/anafora/parakolouthisi-anaforas>. On their website, the Ombudsperson provides detailed instructions on how to make an online complaint, check on its current status and close the online complaint. However, they are only provided in Greek. A translation can be found in the Annex (Chapter 8.1.).

What happens after a Human Rights Defender files a complaint?

The Ombudsperson holds a mediator position between the individual and public administration. After a complaint is received, it is allocated to an employee, whose contact information the complainant will receive afterwards. After examination of whether the case falls under the mandate of the Ombudsperson, the respective employee will start an investigation into the case, including the relevant legislation, as well as requesting additional information from the public service of concern or the complainant. In certain cases, the employee might undertake interviews, the establishment of a commission of experts or on-the-spot investigations. After finishing the investigation, recommendations are made to the relevant authority, and the implementation of the latter is monitored. In cases where there is a lack of implementation of the recommendations, the Ombudsperson can file a report to the responsible minister, who would then decide on further actions. In cases involving a refusal of collaboration by the administrative body of concern, as well as in cases of the finding of

⁴⁴¹ The Greek Ombudsman. N.d. Submission of a complaint.

Available at: <https://old.synigoros.gr/?i=stp.en.submission-of-a-complaint>

⁴⁴² The Greek Ombudsman. N.d. Fields of Intervention. Available at: <https://old.synigoros.gr/?i=stp.en.faq#fi133585>

⁴⁴³ The Greek Ombudsman. N.d. Submission of a complaint.

Available at: <https://old.synigoros.gr/?i=stp.en.submission-of-a-complaint>

an illegal activity, the Ombudsperson can initiate criminal proceedings.⁴⁴⁴

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Website: <https://www.synigoros.gr/en>

While in the past the Ombudsperson was looking extensively into police misconduct,⁴⁴⁵ there was no report ever published in English on the situation of, or criminalisation of, Human Rights Defenders in Greece.⁴⁴⁶

6.2.2. National Commission for Human Rights

The Greek National Commission for Human Rights (GNCHR) is an independent national commission which works to advise the Greek state on matters related to the protection and promotion of human rights in Greece. The GNCHR was established by Law 2667/1998 in accordance with the UN Paris Principles of 1991.⁴⁴⁷ The Paris Principles establish minimum standards that National Human Rights Institutions must meet in order to be effective in their mandate and considered reliable.

All NHRIs are graded on their compliance with the Paris Principles by the Global Alliance of National

Human Rights Institutions (GANHRI) approximately every five years.⁴⁴⁸ The GNCHR, as of 2022, was accredited with 'A status', meaning that it complies fully with the Paris Principles. These principles, in summary, require that each NHRI must have:

- ▶ A broad mandate that allows it to monitor the implementation of all human rights.
- ▶ Broad functions, so that each NHRI can achieve its mandate through various means – for example, via monitoring and reporting, giving advice, receiving complaints, offering human rights education and more.
- ▶ Legally outlined (either in legislation or the constitution) independence from government.
- ▶ Pluralism, to ensure accurate representation of the civilians in a given country involved in human rights protection.
- ▶ Sufficient powers, to allow the NHRI to conduct investigations and inquiries to achieve its mandate.
- ▶ Sufficient resources, to ensure the NHRI can achieve its mandate.
- ▶ Willingness to collaborate with other NGOs, state organs and CSOs.
- ▶ International engagement, so that international and regional human rights bodies can be made aware of the NHRI's work.⁴⁴⁹

The functioning of GNCHR is governed by Law 4780/2021, which outlines the structure and legal status of the organisation.⁴⁵⁰

The GNCHR's members are appointed by 42 institutions that work to protect and promote human

⁴⁴⁴ The Greek Ombudsman. N.d. Processing Citizens' complaints. Available at: <https://old.synigoros.gr/?i=stp.en.processing>

⁴⁴⁵ Independent Police Complaints Authorities' Network (IPCAN). N.d. The Greek Ombudsman. Available at: <https://ipcan.org/members/the-greek-ombudsman>

⁴⁴⁶ The Greek Ombudsman. N.d. Reports. Available at: <https://www.synigoros.gr/en/category/ekdoseis-ek8eseis>

⁴⁴⁷ Government of the Hellenic Republic. 1998. Law No. 2667, Establishment of a National Commission on Human Rights and a National Bioethics Commission. Available at: <https://www.et.gr/SearchNomoi>

⁴⁴⁸ Global Alliance of National Human Rights Institutions website. Accreditation. Available at: <https://ganhri.org/accreditation/>

⁴⁴⁹ Global Alliance of National Human Rights Institutions website. Paris Principles. Available at: <https://ganhri.org/paris-principles/#:~:text=The%20Paris%20Principles%20>

⁴⁵⁰ Government of the Hellenic Republic. 2021. Law No. 4780, National Accessibility Authority, National Commission on Human Rights and National Commission on Bioethics and Technology Ethics. Available at: <https://www.et.gr/SearchNomoi>

rights, ranging from NGOs, trade unions, universities, political parties and more. The GNCHR monitors the general human rights situation in Greece, taking into account the most prevalent issues in their protection and promotion. The GNCHR then publishes their findings and advises the government on the situation and the changes that should be made.

What can the GNCHR do for Human Rights Defenders?

The GNCHR **does not have the authority to issue legally binding recommendations**, but it can help to bring public and government awareness to important issues in Greece's implementation of human rights. The GNCHR publishes yearly reports on the state of civil society space in Greece and the situation for Human Rights Defenders on the ground, as part of the European Commission's rule of law monitoring cycle (see Chapter 4.2.5.), and gives recommendations to the government using this information. The reports published by the GNCHR, such as that from 2022 offering input for the Special Rapporteur for Human Rights Defenders (see Chapter 2.2.3.) in response to her call for input on the Greek civil society space, address pertinent issues facing Human Rights Defenders in Greece, such as the difficulty involved in the new registration process, as well as the increasingly common criminalisation of Human Rights Defenders.⁴⁵¹

While the GNCHR cannot directly change the legal infrastructure for Human Rights Defenders, it can use its prominence and legal status to advocate on behalf of Human Rights Defenders in a number of contexts, using its research to push for the establishment of a system of legal protection for

Human Rights Defenders. Further examples of the work of the GNCHR include taking part in parliamentary sessions in an advisory capacity, assisting other national competent bodies in drafting their reports (to ensure compliance with international human rights standards), advocating for the ratification of international human rights treaties and co-operating with international organisations, such as the OSCE, the CoE, the UN, other NHRIs and NGOs, both nationally and internationally.

6.2.3. Racist Violence Recording Network

The Racist Violence Recording Network (RVRN) is a joint initiative of the United Nations High Commissioner for Refugees (UNHCR) and the GNCHR, created in 2011. The RVRN is comprised of (as of 2022) its coordinators (UNHCR and GNCHR), 52 NGOs and agencies that provide a variety of legal, medical and social services to victims of racist, or otherwise hate- or bias-motivated, violent attacks. The Greek Ombudsperson and the Migrant Integration Council of the Municipality of Athens also take part in the RVRN as observers only. The RVRN was established to satisfy both the need to connect the organisations that record incidents of racist violence when coming into contact with its victims, and the need to establish an official and reliable system for recording incidents of such violence.⁴⁵²

The RVRN interprets cases of "racist violence" as any violent and/or criminal act or behaviour targeted at someone because of colour, sexual orientation, religion, nationality or ethnicity, disabilities, gender identity, or sex characteristics.⁴⁵³ Every year, the RVRN compiles a report of cases of racist violence its member organisations record throughout the

⁴⁵¹ Greek National Commission for Human Rights. 2022. Reply to the call for inputs of the UN Special Rapporteur on the situation of human rights defenders in preparation of her Report on human rights defenders working on issues related to migration, refugees and asylum. Available at: https://www.nchr.gr/images/pdf/ektheseis_diethwn_eurwpaikwn_forewn/2022/Corrigendum_GNCHR_Reply_to_the_call_for_inputs_on_Human_Rights_Defender_on_migration.pdf

⁴⁵² Racist Violence Recording Network website. About RVRN. Available at: <https://rvrn.org/en/>

⁴⁵³ Greek National Commission for Human Rights. 2022. Reply to the call for inputs of the UN Special Rapporteur on the situation of human rights defenders in preparation of her Report on human rights defenders working on issues related to migration, refugees and asylum. Page 6. Available at: https://www.nchr.gr/images/pdf/ektheseis_diethwn_eurwpaikwn_forewn/2022/Corrigendum_GNCHR_Reply_to_the_call_for_inputs_on_Human_Rights_Defender_on_migration.pdf

year.⁴⁵⁴ These reports aim at presenting how many cases of racist violence the organisation records overall, as well as the motivations for each and differences between the cases in order to present the situation of racist violence in Greece as accurately and thoroughly as possible. The RVRN also records criminal and/or violent activities towards Human Rights Defenders when they are targeted because of their efforts to protect human rights, and has observed that Migrant Rights Defenders are the most often targeted with racist violence.

The RVRN records cases of racist violence by interviewing the victims its member organisations come into contact with throughout their work. However, one can also reach out to the RVRN to offer testimony or request services of one of its member organisations by filling out their online contact form.⁴⁵⁵ For Human Rights Defenders suffering criminalisation in Greece, the RVRN would provide a legitimate avenue through which their stories could be recorded (where there is an element of racism as defined by the RVRN above) and used for advocacy efforts, which is integral to advocating for a legal system of protection for Human Rights Defenders.

6.2.4. Filing a court suit/appeal in front of the relevant court

As the Greek system of jurisprudence, including the appeals process, is very complex, with short and varying deadlines depending on the date of

proven knowledge of the judgement, a high level of bureaucracy and cases of misconduct, CSOs recommend always having a lawyer when dealing with the Greek judiciary.⁴⁵⁶

In case of formal criminalisation, a relevant mechanism for Human Rights Defenders can be through the legal means of the Greek state. Here, filing an appeal can be a useful tool, once a judgement is made by the court. In addition, using legal pathways can be a tool to address informal criminalisation, such as police or administrative misconduct, as elaborated below (Chapter 6.3.2.2.).

The Greek juridical system consists of civil, criminal/penal and administrative courts.⁴⁵⁷ The system of criminal courts is divided into three different kinds of courts, depending on their field of jurisdiction, which are Petty Offences Courts, Misdemeanour Courts and Mixed Criminal Courts or Multi-member Courts of Appeal, which handle more serious crimes, such as homicide, rape or political misdemeanour.⁴⁵⁸

Civil cases are addressed at first instance either by District Courts or the courts of first instance, depending on “the estimated value of the matter disputed at law”.⁴⁵⁹ Administrative cases are addressed by administrative courts (of first instance and of appeal).⁴⁶⁰ In cases of appeal, the Council of State or of the Administrative Court of appeal are responsible.⁴⁶¹ Administrative Courts are of relevance, as they “exert[...] over “enforceable acts” of

⁴⁵⁴ Racist Violence Recording Network website. Annual reports. Available at: <https://rvrn.org/en/category/reports/>

⁴⁵⁵ Racist Violence Recording Network website. Contact Forms. Available at: <https://rvrn.org/en/contact-form/>

⁴⁵⁶ Fair Trials International. 2011. Criminal Proceedings and Defence Rights in Greece. Available at: <https://www.fairtrials.org/app/uploads/2022/01/Greece-advice-note.pdf>

⁴⁵⁷ Hellenic Republic Ministry of Justice. N.d. Organization Chart of Courts in Greece. Available at: https://ministryofjustice.gr/English/?page_id=758 and European justice. 2022. National justice systems Greece. Available at: https://e-justice.europa.eu/16/EN/national_justice_systems?GREECE&member=1

⁴⁵⁸ Anagnostopoulos, Ilias and Zapanti, Jerina. 2016. Procedure Before Criminal Courts. In: Papantonopoulou, Geena (Eds.). Greek Law Digest. p. 62-69.

⁴⁵⁹ European Commission for the Efficiency of Justice. 2017. Study on the functioning of judicial systems in the EU Member States. Available at: https://ec.europa.eu/newsroom/document.cfm?doc_id=44115

⁴⁶⁰ Ibid.

⁴⁶¹ Ibid.

administrative authorities regarding their constitutionality and legality”.⁴⁶²

In addition, there are second instance courts, so called Courts of Appeal, which are responsible for the hearing of appeals against lower jurisdiction.⁴⁶³ The Public Prosecutor of the first instance court is responsible for the initiation of criminal procedures, usually after they are informed of an incident by an individual filing a criminal complaint. However, they can also initiate the start of proceedings *ex officio*, for instance when informed by the press or public authorities.⁴⁶⁴

An accused person, also referred to as “defendant” in the *Greek Code of Criminal Procedure*, has the right to appeal.⁴⁶⁵ This applies to decisions of all courts. The conditions for this are set in Art. 486 (and following) of the Code of Criminal Procedure. The Supreme Court of Greece (*Areios Pagos*) cannot be appealed. This court can receive appeals in way of cassation, which means in its superior position after the exhaustion of lower legal remedies. Therefore, it can deal with appeals against decisions of first instance courts or decisions of the Appellate Court. However, *Areios Pagos* does not review the facts of the case on the merits that it has no third degree of jurisdiction. Only the legal correctness of decisions issued by the Hellenic courts of first and second instance is examined, on appeal to the Supreme Court.⁴⁶⁶ According to Art. 473 of the Code of Criminal Pro-

cedure, an appeal can be submitted within a **deadline of 10 days** after the registration of the decision in the courts registry.

6.3. Protection related to specific forms of criminalisation

In Greece, BVMN observes Human Rights Defenders facing different forms of informal criminalisation. These include intimidations by police officers, for instance, Mare Liberum, who “has repeatedly experienced harassment in the form of excessive administrative controls or audits, surveillance by law enforcement, as well as serious threats by the Hellenic Coast Guard in the form of threatening with firearms.”⁴⁶⁷ This also included the taking of pictures of volunteers’ passports. “Furthermore, one of BVMN’s anonymous member organisations in Greece reports about an increase in police presence throughout at their distribution site”⁴⁶⁸ on a nearly daily basis. This can take “the form of officers dressed in civilian clothes walking through, driving around in unmarked cars, and parking visibly in the vicinity of the distribution site, observing the activities from police vehicles. Actions have gone as far as halting distribution activities in order to check IDs and working permits.”⁴⁶⁹ This aligns with reports of increasing police violence over recent years in the country in general, combined with the introduction of legislation limiting

⁴⁶² European Commission. 2022. Commission Staff Working Document: 2022 Rule of Law Report Country Chapter on the rule of law situation in Greece.

Available at: https://commission.europa.eu/system/files/2022-07/21_1_194014_coun_chap_greece_en.pdf

⁴⁶³ Ibid.

⁴⁶⁴ Anagnostopoulos, Ilias and Zapanti, Jerina. 2016. Procedure Before Criminal Courts. In: Papantonopoulou, Geena (Eds.). Greek Law Digest. p. 62-69.

⁴⁶⁵ For elaborations on one’s rights when interacting with the police, as well as procedural rights, see Chapter 6.3.2.1. on procedural rights.

⁴⁶⁶ Ibid.

⁴⁶⁷ Border Violence Monitoring Network. 2022. Accused of Solidarity: A Report on Incidents of Criminalisation Targeting BVMN Member Organisations and their Team Members in 2021.

Available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

⁴⁶⁸ Ibid.

⁴⁶⁹ Ibid.

the civil space during Covid.⁴⁷⁰

Therefore, the following chapter will elaborate on individual's rights and protection mechanisms in case of police or administrative misconduct, as well as violation of data protection rights.

6.3.1. Violation of data protection rights

This section outlines the Greek laws relating to data protection and the Hellenic Data Protection Authority. For more information on the General Data Protection Regulation of the EU, which informs these laws, see Chapter 6.1.4.

6.3.1.1. The Hellenic Data Protection Authority and data protection and personal privacy laws in Greece

The Hellenic Data Protection Authority (HDPa) is an independent authority responsible for monitoring Greece's implementation of data protection laws, such as the GDPR, Law 4624/2019, Law 3471/2006 (governing e-privacy)⁴⁷¹ and more. It was established by Law 2472/1997, but this law has since been repealed, and the legal basis of the HDPa now exists in Articles 9–20 of Law 4624/2019, in which the HDPa is referred to as a “supervisory authority”. The HDPa works in cooperation with the European Data Protection Board (EDPB) to contribute to the correct implementa-

tion of the GDPR across the Member States of the EU, as well as the additional data protection laws at the national level.

The HDPa has a number of powers and responsibilities conferred on it by the GDPR and Law 4624/2019 to ensure it can effectively monitor and enforce the implementation of data protection laws. These include:

- Ordering data controllers and processors to **provide the information they require** for the performance of their tasks.⁴⁷²

- Carrying out **investigations** of controllers in the form of data protection audits, reviewing certifications and notifying the controller of breaches of the GDPR (see Chapter 6.1.4).

- **Obtaining access** from a controller to the **personal data and information necessary for the controller's tasks**, as well as obtaining access to the premises of the controller and processor (in accordance with the law), including access to equipment used to process personal data.

- **Issuing warnings** to controllers or processors that planned actions will **infringe the GDPR** or other data protection laws, and issuing **reprimands** where the processing operations of a controller or processor have **already infringed** the GDPR.

- **Ordering** the controller or processor to **comply with the requests of the data subject** to exercise their rights under the GDPR, as well as to comply with the provisions of the GDPR within a specific period and in a specific manner (determined by the HDPa).

⁴⁷⁰ Border Violence Monitoring Network. 2022. Internal Violence Report: Greece. Available at: <https://www.borderviolence.eu/wp-content/uploads/Internal-Violence-Greece-2022.pdf>; Efsyn. 2020. ΕΛ.ΑΣ. εκτός ελέγχου σε κρεσέντο καταστολής για το Πολυτεχνείο. Available at: https://www.efsyn.gr/ellada/koinonia/268944_elas-ektos-eleghoy-se-kresento-katastolis-gia-polyteh-neio; European Union Agency for Fundamental Rights (FRA). 2021. Legal environment and space of civil society organisations in supporting fundamental rights: Greece. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/franet_greece_civic_space_2021.pdf; Smith, Helena. 2019. Greek activists warn of surge in police brutality and rights violations. Available at: <https://www.theguardian.com/world/2019/dec/31/greek-activists-warn-of-surge-in-police-brutality-and-rights-violations>

⁴⁷¹ Government of the Hellenic Republic. 2006. Law No. 3471, Protection of personal data and privacy in the electronic communications sector and amendment of law 2472/1997. Available at: https://www.dpa.gr/sites/default/files/2019-10/law_3471_06en.pdf

⁴⁷² “Processing” is defined in Art. 4(2) of the GDPR, and means “any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means”. This includes operations like collection, recording, destruction, disclosure or alteration of one's personal data. “Controller” is defined in Art. 4(7) of the GDPR, and means the person (natural or legal), public authority, agency or other body “which determines the purposes and means of the processing of personal data”. The EU and its MSs can provide a controller or the nomination criteria for a controller where the purpose and means of processing personal data is determined by national or Union law.

- Ordering a controller to tell the data subject that a personal data breach has occurred.
- Imposing **restrictions or punishments** on data processors and controllers which breach the GDPR and other personal data laws.
- **Advising controllers** and **giving opinions** to the national **parliament**, the Greek government, other institutions and the public.
- **Authorising** the processing of personal data by **public bodies** in situations where it is **required for the public interest**.
- **Raising public awareness** for data protection issues and informing data controllers of their obligations, particularly when the data of children is involved.
- **Giving opinions** on new laws and regulatory acts relating to data protection.
- **Creating guidelines and recommendations** on issues related to data processing.
- Responding to requests from data subjects with **information on the exercise of their rights** in this area.
- Investigating or inspecting the **application of legislation** related to data protection.
- **Creating a list** in relation to the need for a data protection **impact assessment**.
- **Reviewing** data controllers' **codes of conduct** and encouraging the creation of more.
- **Encouraging** the establishment of **mechanisms to certify** when a controller adequately protects personal data, and **publishing accreditation requirements** for organisations monitoring codes of conduct, as well as certification bodies.
- **Cooperating with other supervisory authorities** to ensure consistent implementation of the GDPR.
- **Creating an annual report** on its activities and submitting it to the Greek parliament, the government and other authorities. These reports are also made available to the public, the European Commission and the EDPB.

► **Bringing infringements** of data protection laws to **judicial authorities** and commencing or **engaging in legal proceedings** to enforce the GDPR and other personal data protection laws.⁴⁷³

The powers conferred on the HDPa by the GDPR and Law 4624/2019, being investigative, authoritative, corrective and advisory in nature, could provide help to Human Rights Defenders whose personal data has been, digitally or otherwise, processed by controllers who seek to criminalise them. Apart from a request to know one's own data protection rights, the HDPa can also investigate complaints filed against controllers who are acting in violation of data protection laws. The process of filing a complaint, and requirements to do so, are outlined on the HDPa website and summarised as follows.⁴⁷⁴

Requirements to submit a complaint

► To submit a complaint, one must be **either a data subject** (especially if Greece is their place of residence and is the place where the alleged infringement took place)⁴⁷⁵ or a **subscriber or user of e-communication services**. Data subjects may assign non-profit bodies, organisations, unions or associations with statutory goals of general interest that operate legally and work to protect the rights and freedoms of data subjects in relation to data protection, to **submit a complaint to the HDPa on their behalf**.

► Subscribers/users of e-communication services (natural or legal persons) may file complaints **only** for issues relating to the violation of the specialised legislation for the processing of **personal data in electronic communications**.

► In order for one's complaint to be considered, it must come within the **competence** of the HDPa, meaning it must relate to:

⁴⁷³ European Union. 2016. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Article 58.

Available at: <http://data.europa.eu/eli/reg/2016/679/2016-05-04>

⁴⁷⁴ Hellenic Data Protection Authority website. Complaint to the Hellenic DPA.

Available at: <https://www.dpa.gr/en/individuals/complaint-to-the-hellenic-dpa>

⁴⁷⁵ GDPR Article 4(1) defines "data subject" as an identifiable natural person (i.e. one who can be identified by reference to a name, identification number, location data, etc.).

i) **A violation of the rights of the data subject** under articles 15–22 of the GDPR, provided that the data subject **has previously exercised their rights** to the controller, and either the data subject has **not received a reply or they have received an unsatisfactory one**.

ii) **Unlawful processing of one's personal data** in violation of the GDPR and Law 3471/2006 on the protection of personal data in electronic communications. The HDPa recommends that the controller is addressed and **one's rights are exercised before submitting** a complaint, in order to provide fuller documentation or resolve the issue quicker.

► Before submitting a complaint, one must **appeal to the controller** (exercising their GDPR rights, for example) in case the controller has appointed a **Data Protection Officer (DPO)**. The DPO can be contacted for issues regarding the processing of personal data and the exercise of one's rights. If the **DPO does not resolve the issue**, then a complaint may be submitted to the HDPa. It should be noted that **if one does not appeal to the controller** in this way before submitting a complaint, the **complaint may not be examined**.

► The HDPa may not examine one's complaint if it is **vague, unsubstantiated, submitted abusively** (especially if filed repetitively), **filed anonymously or does not contain the required information**. These inadequate complaints will be deemed inadmissible and archived without being examined.

How to submit a complaint

► A Human Rights Defender has must log in to the **HDPa's online portal** at this link: <http://request.dpa.gr/DEV/>.

► **Complainants who habitually reside or work in Greece**, or a body representing data subject(s) that is established in Greece, can log in to the online portal with taxisnet credentials.

► Fill in the relevant electronic form depending on the nature of the complaint.

If one cannot log in with taxisnet credentials due to not residing, working or being established in Greece, they can submit complaints **in English by email**.

► If submitting by email, one must choose the **relevant form** from the **HDPa website**,⁴⁷⁶ depending on the nature of the case.

► Once the relevant form has been thoroughly filled out, one must send an **email with the attached documents** to complaints@dpa.gr.

Limitations of complaints to the HDPa

► Article 57(1)(f) of the GDPR allows the HDPa to make its own judgement as to the extent in which it needs to examine each complaint, meaning there is **no guarantee** that the HDPa will consider each application equally.

► The HDPa can enact corrective measures, such as fines, against data controllers, but it does **not** have the authority to award **compensation** to data subjects making applications. If a data subject is seeking damages for a violation of their personal data rights, they should instead seek judicial recourse (if their rights have allegedly been violated due to personal data processing) or compensation before the competent courts (for the damage suffered at the hands of a controller or processor because of a GDPR violation).

6.3.2. Police and administrative misconduct

6.3.2.1. Procedural rights and relevant legislation

Rights when interacting with the police in daily situations or before an arrest

Concerning interaction with the police, in particular Art. 5; Art. 7 and Art. 9 of the constitution are of relevance (see above).

According to Art. 5(2), "all persons living within the Greek territory shall **enjoy full protection of their life, honour and liberty** irrespective of nationality, race or language and of religious or political be-

⁴⁷⁶ Hellenic Data Protection Authority website. Complaint to the Hellenic DPA.

Available at: <https://www.dpa.gr/en/individuals/complaint-to-the-hellenic-dpa>

liefs.” Besides, “**Torture, any bodily maltreatment, impairment of health or the use of psychological violence**, as well as any other offence against human dignity are prohibited and punished as provided by law” (Art. 7(2)). In addition, Art. 7(3) **forbids the confiscation of property** and Art. 9(1) regulates **home search and the protection of private and family life**.⁴⁷⁷

The mandate and the organisational structure of the Greek police is defined by *Law 2800/2000*, Art. 8 and following.⁴⁷⁸

In the *Code of Police Ethics* (presidential decree No 254/2004), one can find provisions for the behaviour of police personnel.⁴⁷⁹ A violation of the *Code of Police Ethics* can lead to internal disciplinary measures. If the same act constitutes an offence of the *Criminal Code*, it will be punished according to the criminal penalties provided.

Here, the following provisions might be of relevance for a Human Rights Defender:

► Art. 1(b): The Police personnel “Is obliged to **respect human dignity and protect human rights** of people both as individuals and as members of society.’

► Art 1(d). The Police personnel “[S]hall act, while carrying out its duties, guided by the principles of legitimacy, **proportionality**, leniency, good public governance, **nondiscrimination** and respect of people’s diversity.”

► Art. 2(b): “Police personnel are obliged during intervention to give **evidence of their police status and professional identity**.”

Art. 2(d): “Police does not inflict, instigate or **tolerate acts of torture and inhuman or degrading**

treatment or punishment and reports cases of violations of human rights.”

► Art. 2(e): Police personnel “[s]hall use **non-violent means** while maintaining and enforcing law. The use of force is permitted only when absolutely necessary and to the extent envisaged and required for law enforcement. The use of force shall always respect the principles of necessity, adequacy and proportionality. Police shall use the **most moderate means possible** by avoiding any unnecessary disturbance, cruelty or unjustifiable damage to property.”

► Art. 2(g): Police personnel “[s]hall confirm the violations of the law without any discrimination guided by **sound judgement, calmness and politeness**. Police shall **explain the violation** committed by the violator, as well as his / her rights as clearly as possible in order to clear up doubts by avoiding disputes and exaggerations.”

In addition, in the *Code of Criminal Procedure* it is enshrined that:

► When asked to **identify themselves** in front of the court or by an “investigating officer”, people are obliged to do so, including their address of residence. If the person concerned states not to have identity documents with them, the officer has to record the stated data and then verify the data afterwards (Art. 273); this does not include the obligation to accompany the officer to a police station in order to verify the documents.⁴⁸⁰

► In case of a **house search**, a “judicial official” must be present (Art. 256(2)); in practice this would be the public prosecutor. Also, the owner of the home or a neighbour must be invited to be a witness (Art. 256(4)) and a report of the investigation must be given to the person whose home is

⁴⁷⁷ For the original text in English: Hellenic Parliament. 2022. The Constitution of Greece.

Available at: https://www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/2019_SYDAGMA_EN_2022_WEB.pdf

⁴⁷⁸ OSCE polis. N.d. Country Profile: Greece: Available at: <https://polis.osce.org/country-profiles/greece>

⁴⁷⁹ Please find the original version in Greek here: Κώδικας Δεοντολογίας του Αστυνομικού. 2004. Presidential Decree 254/2004; Greek Government Gazette 238A’/3-12-2004. Available at: http://www.astynomia.gr/images/stories/Attachment14238_KOD_FEK_238A_031204.pdf; for a translation in English, see: Code of Police Ethics. 2004. Presidential Decree 254/2004; Greek Government Gazette 238A’/3-12-2004. Available at: <https://www.refworld.org/docid/4c90ec3a2.html>

⁴⁸⁰ Legal Centre Lesbos. 2021. Know your rights: Interacting with the police.

Available at: <http://legalcentreslesvos.org/wp-content/uploads/2021/11/English-Interacting-with-the-police.pdf>

searched (Art. 256(3)); in addition, a warrant needs to be presented.⁴⁸¹

► Provisions on **body searches** are laid down in Art. 257, according to which the body search of a defendant is allowed “when the person conducting the interrogation considers that, for important reasons, it is **useful for establishing the truth**. Third persons [non-defendants] shall be searched when there **is a serious and reasonable suspicion** that traces or other objects relating to the accused act or an absolute necessity will be found. A strip search **shall not cause harm to the health of the person** subjected to it, nor, as far as possible, to his or her **dignity**”⁴⁸² (Art. 257(1)). In addition, it ‘must be carried out in private and **separately for each person**. If a certain object or document is sought, the person conducting the search **shall first ask the owner of the object** or document to surrender it’⁴⁸³ (Art. 257(2)). Furthermore, the article legislates that the examination of a woman must be conducted by a woman. This is supported by Art. 199(1), which also establishes the right to dignity during body searches. In addition, the person that is searched has the right to be searched **in the presence of a person of their confidence** (Art. 199(2)).

*When experiencing incidents of police misconduct, CSOs working in the field highly recommend to always contact a lawyer or a CSO providing legal support.*⁴⁸⁴ For interaction with the police Legal Centre, Lesvos also published a toolkit that contains further elaborations and advice on interaction with the police. It can be accessed here: <http://legalcentre-lesvos.org/information/> (information as of 2021).

Procedural rights during and after arrest, during detention or during a court trial

When confronted with a criminal proceeding, it is highly recommended to always contact a lawyer or a CSO providing legal support. In addition, it is of high relevance to be aware of one’s rights and be able to communicate and insist on them while in detention.

The basis for the procedural rights in Greece is enshrined in the constitution. Article 6(1) prohibits arrest and imprisonment “without a reasoned judicial **warrant**”, while Art 6(3)–(4) elaborates on the maximum times of detention. Article 8 elaborates on the principle of a natural judge. This means that the judge has to be impartial, and hence cannot be biased or have an interest in the outcome of the process, for instance through financial gain. Besides, the judge has the obligation to hear both sides and give the individual that will be affected by the judgement the opportunity to speak and react to the other side.⁴⁸⁵

Detailed provisions and procedural rights are laid down in the country’s *Code of Criminal Procedure*, the revised versions of which came into force in July 2019.⁴⁸⁶ While the *Criminal Code* defines crimes and penalties, and sets provisions for the assessment of the latter, the *Code of Procedure* lays down the relevant procedural provisions.

In the following, certain provisions of the *Code of Criminal Procedure* are outlined which are of relevance Human Rights Defenders and are reported-

⁴⁸¹ Ibid.

⁴⁸² Free translation from Greek

⁴⁸³ Free translation from Greek

⁴⁸⁴ Legal Centre Lesvos. 2021. Know your rights: Interacting with the police. Available at: <http://legalcentreslesvos.org/wp-content/uploads/2021/11/English-Interacting-with-the-police.pdf>

⁴⁸⁵ Oxford Reference. 2023. natural justice. Available at: <https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100225319>

⁴⁸⁶ Lambadarios Law Firm. 2019. New Criminal Code and New Code of Criminal Proceedings to come into force as of 01.07.2019 in Greece. Available at: <https://www.lambadarioslaw.gr/2019/07/new-criminal-code-and-new-code-of-criminal-proceedings-to-come-into-force-as-of-01-07-2019-in-greece/>

ly⁴⁸⁷ likely to be violated when facing criminalisation⁴⁸⁸

► Art. 91: Right to **free legal aid**. This is bound to specific income criteria and a specified time of imprisonment, as laid down in Arts. 6 and 7.

► Art. 95: **Right to information**: “The suspect or accused person shall be informed without delay of at least the following rights: a) the right to be represented by counsel, b) the right to and the conditions for free legal advice, c) the right to be informed of the charge, d) the right to interpretation and translation, and e) the right to silence and not to incriminate oneself.”⁴⁸⁹

► Art. 97: **Right to inform a person** of the accused’s choice in the event of deprivation of liberty. Also, Art. 98: **Right to communicate with third persons** during deprivation of liberty.

► Art. 100: Right to be **informed about indictment, and access the material in the case file and receive a copy** of the latter.

► Art. 101: Right to **interpretation and translation**; see also Art. 237.

► Art. 104: Right to **silence and non-self-incrimination**

► Art. 105(2): **Right to a lawyer** in case of an investigation, in particular before speaking to the police. In case of the arrest of a citizen, this applies for suspects and accused persons.⁴⁹⁰

► Provisions for questioning of a suspect of investigation are laid down following Art. 246, on investigations following Art. 253, on confiscation following Art. 260, and on arrest and provisional detention following Art. 275.

► Art. 276(1) specifies that “[...] no one shall be arrested without a specifically and thoroughly reasoned **warrant** of the investigating magistrate or a decision of the judicial council, which must be served at the time of arrest.”⁴⁹¹

► However, a **warrant** can only be issued “when there are serious indications on the basis of specific facts [...] that the person arrested is planning to abscond or to commit other serious crimes” (Art. 276(2)). Further conditions that define the appropriateness of detention are laid down in Arts. 286 and 296.

► Art. 278(2) states that “the arresting officers must treat the arrested person with all possible **courtesy and respect his [or her] honour**. To this end, they **must not use force except when necessary** and may not tie him [or her] up unless the arrested person resists or is suspected of absconding.”

► If a person is not brought in front of a public prosecutor within **24 hours after their arrest**, they have to be released (Art. 279).

► Persons caught while actively committing a criminal offence can be arrested without a warrant (Art. 279).

► In cases of misdemeanours, the arrested person must be brought in front of the public prosecutor within **12 hours**, who shall decide upon their release of the custody (Art. 279).

► People can be **arrested while “pre-trial proceedings** [are] ongoing, if there are serious indications that the accused is guilty” (Art. 282(1)). “Restrictive measures shall be imposed **if they are strictly necessary** for the fulfilment of the purposes” (Art. 282(3)).

► Provisions on **appeal** can be found in Art. 486ff.. An appeal has to be filed within the time frame set in Art. 473 (see Chapter 6.2.4.).

The provisions laid down in the *Code of Criminal Procedure* are furthermore constituting the basis for the rights enshrined in the **Code of Police Ethics** (Presidential Decree No 254/2004).⁴⁹² There, the

⁴⁸⁷ Based on interviews with individuals facing criminalisation in Greece during the research for this toolkit.

⁴⁸⁸ Non-exclusive list, looking in particular at the rights before the start of a trial.

⁴⁸⁹ Free translation from Greek

⁴⁹⁰ Athens Bar Association. 2021. «Προσαγωγές, κράτηση και συλλήψεις πολιτών». Available at: <https://bit.ly/3QB0H1u>

⁴⁹¹ Free translation from Greek

⁴⁹² Please find the original version in Greek here: Κώδικας Δεοντολογίας του Αστυνομικού. 2004. Presidential Decree 254/2004; Greek Government Gazette 238A’/3-12-2004. Available at: http://www.astynomia.gr/images/stories/Attachment14238_KOD_FEK_238A_031204.pdf; for a translation in English, see: Code of Police Ethics. 2004. Presidential Decree 254/2004; Greek Government Gazette 238A’/3-12-2004. Available at: <https://www.refworld.org/docid/4c90ec3a2.html>

most relevant provisions for Human Rights Defenders in case of arrest⁴⁹³ might be:

► Art. 3(a): “The arrest shall be conducted in a cautious and consistent way, the police personnel must behave correctly and **omit any action that can insult the honour and pride of the arrested person and in general insult the dignity of a person.**”

► Art 3(b): Police personnel “[s]hall immediately **inform detainees of the reasons for their arrest and detention**, for any charge against them, their rights and for the procedure applicable to their case. Detainees, who do not understand the speaking language, **shall be informed in a language that they understand** by way of interpretation or by any other available means.”

► Police personnel shall support the **right to conduct a phone call** (Art. 3(c)), to legal assistance (Art. 3(d)), to communication with the detainee’s family and in case of the person not being a Greek national, the contact to consular authorities (Art. 3(e)).

► Art. 3(g): Police personnel “[s]hall secure detention **conditions that guarantee safety, health and protection of the personality of the detainee**” and take care of the **detainee’s** health, as well as ensure access to a doctor (Art. 3(h)).

► Art. 4(b): Police personnel “[s]hall respect the **presumption of innocence** of the person accused and is obliged to secure all his / her rights. Everyone accused has the right to **be informed promptly of the accusation** against him / her and to prepare his / her defence, in particular through legal assistance of his / her counsel. Those who do not understand the speaking language shall be informed in a language that

they understand by way of **interpretation** or by any other available means.”

► Art 4(c): Police personnel “[s]hall **behave appropriately** towards the arrested persons, suspects, witnesses and persons inflicted damage and **shall not use force or pressure of any form in order to obtain information.**”

Legislation on firearms carried by the police

Even though misuse of firearms is not frequently reported in Greece, in recent years there were a couple of incidents of people being shot dead by Greek police.⁴⁹⁴ The following section, therefore, elaborates on the use of firearms by Greek police personnel.

Carriage and use of firearms by the police is regulated in Greece by *Law 3169/2003*.

► According to Art. 3(1), “[t]he police officer is allowed during the performance of his duty to display the firearm, if there is a **risk of an armed attack against him** or a third party”;⁴⁹⁵ however, only if “[a]ll milder means of firing have been **exhausted**”⁴⁹⁶ (Art.3(2)(a)).

► Before firing a weapon, the police personnel have to **declare their intentions and give enough time** to respond (Art. 3(2)(b)). Besides, the action **has to be relation** to the threat received (Art. 3(2)(c)).

► **Intimidation shooting** and shooting at objects is **forbidden** (Art. 3(3)).

► The use of the firearm **with the intention to kill is forbidden** if a third person could be hurt, if it is used on an armed crowd and unarmed peo-

⁴⁹³ The term “arrest” does not only refer to being in police custody in an official prison but also refers to police custody inside police stations.

⁴⁹⁴ See, for instance, the case of Alexandros Grigoropoulos (2008): Leontopoulos, Nikolas and Bounias, Dimitris. 2014. The Murder of Alexandros Grigoropoulos. Available at: <https://thepressproject.gr/the-murder-of-alexandros-grigoropoulos/>; also, Freedom. 2019. Breaking: murderer of Alexis Grigoropoulos released from prison. Available at: <https://freedomnews.org.uk/2019/07/30/breaking-murderer-of-alexis-grigoropoulos-released-from-prison/>; also, Nikos Sabanis (2021): Prothero, Mitchell. 2021. Roma Man Killed by Greek Police Had ‘Hands Up’ When He Was Shot. Available at: <https://www.vice.com/en/article/93b5y3/roma-man-killed-by-greek-police-had-hands-up-when-he-was-shot>; also, Kostas Fragoulis (2022): dw. 2022. Greece: Roma teenager dies after police shooting. Available at: <https://www.dw.com/en/greece-roma-teenager-dies-after-police-shooting/a-64077212>

⁴⁹⁵ Free translation from Greek

⁴⁹⁶ Free translation from Greek

ple could be hurt, or if it is used against minors. The only exception is the prevention of death and if a person runs away after they were asked to be searched (Art. 3(7)).

6.3.2.2. Who can be addressed in case of misconduct?

As mentioned above (Chapter 1), the experience of the Human Rights Defenders we interviewed indicates that being aware of one's rights is important in situations of informal criminalisation in the form of police or administrative misconduct. Therefore, it is important for organisations to give relevant information and training to the Human Rights Defenders working for them.

After a Human Rights Defender becomes the target of criminalisation in the form of police or administrative misconduct, they can seek remedy in the following ways:

Ombudsperson

Misconduct of the police falls under the mandate of the Greek Ombudsperson.⁴⁹⁷ Therefore, violations of individuals' rights during police operations and police arrests can be addressed through a complaint to the Greek Ombudsperson (as described above in Chapter 6.2.1.).

This falls under the special mandate of the Greek Ombudsperson, namely the *National Mechanism for the investigation of arbitrary behaviour*, which is further defined in *Law 4443/2016*, part

D. According to the latter, the Ombudsperson is responsible for investigating and assessing complaints about different Greek police units, including the Hellenic Coast Guard or prison staff. These complaints can either address specific actions during their operations or an abuse of their status, which might include incidents of torture and the violation of human dignity, intentional violations of the right to life, physical integrity or personal freedom, use of firearms, or racist and discriminatory behaviour.⁴⁹⁸ Part of this mandate is the issuing of reports on recorded incidents on a regular basis.⁴⁹⁹

Legal pathways: complaint to the public prosecutor

As described above, the Greece state is a constitutional state. Therefore, procedural misconduct can also be addressed through the judiciary. Thus, one would file a criminal complaint.

In addition, in their mandate, the prosecutor not only facilitates preliminary investigations, gives proposals to courts and exercises remedies, but also has the task of "supervision and control of the police authorities regarding the prevention and prosecution of crimes".⁵⁰⁰

Therefore, a complaint on police misconduct can be filed to the prosecutor's office. Their responsibility is organised geographically.

When experiencing an event of police misconduct and planning to address this through legal pathways, CSOs working in the field highly recommend always contacting a lawyer or a CSO providing legal support.⁵⁰¹

⁴⁹⁷ The Greek Ombudsman. 2016. Who and What is the Greek Ombudsman.

Available at: https://old.synigoros.gr/resources/toolip/doc/2016/06/17/en_r.pdf

⁴⁹⁸ The Greek Ombudsman. N.d. What we can help with.

Available at: <https://old.synigoros.gr/?i=human-rights.en.hr-help-with>

⁴⁹⁹ See, for instance, their report on 2020: The Greek Ombudsman. 2021. National Mechanism for the Investigation of Arbitrary Incidents: Special Report 2020.

Available at: https://old.synigoros.gr/resources/docs/report-2020_en_web.pdf

⁵⁰⁰ Free translation from Greek; Υπουργείο Δικαιοσύνης. N.d. Η Εισαγγελία Πρωτοδικών Αθηνών - Σύντομη Παρουσίαση. Available at: https://www.solon.gov.gr/webcenter/portal/eis_prwt_ath?_adf.ctrl-state=osxpuljb7_37&_afrLoop=13572698214382996#%40%3F_afrLoop%3D13572698214382996%26_adf.ctrl-state%3D16e3iqho4m_4

⁵⁰¹ Legal Centre Lesbos. 2021. Know your rights: Interacting with the police.

Available at: <http://legalcentrelesvos.org/wp-content/uploads/2021/11/English-Interacting-with-the-police.pdf>

7. Conclusion

This toolkit was created as a result of conversations within the Border Violence Monitoring Network that identified a gap in existing publications on protection mechanisms and advocacy avenues for Human Rights Defenders facing criminalisation in Europe; specifically, a lack of accessible and coherent resources that guide a person through the potential actions they can take in such a situation. While several aspects were discovered and elaborated on that can be combined when faced with criminalisation, it is important to point to the fact that realities on the ground can be very complex and decisions on the right strategy can be challenging to pursue. In addition, during the scope of the research, we became aware that protection mechanisms for Human Rights Defenders facing criminalisation on European territory are still insufficient within the EU. Therefore, we advocate for an extension of the EU protection mechanism for Human Rights Defenders, to also apply to persons on the territory of the EU, especially as we observe an increase of criminalisation of Human Rights Defenders in Europe, in particular of Migrant Rights Defenders, in recent years.

Even though this toolkit has a country focus on Croatia and Greece, it is important to emphasise that criminalisation of Human Rights Defenders has increased across Europe; therefore, future research should look to other European countries. While this is a dynamic toolkit with which we hope to support Human Rights Defenders all over Europe, we are also aware of the changing environment and aim to update and develop this toolkit further in the future. In addition, we hope that this toolkit can support Human Rights Defenders to overcome injustices, build up evidence of the criminalisation they face and, in the long term, establish a safe civil society space that protects the people fighting for the implementation of their core fundamental and human rights.

We stand in solidarity with all victims of human rights violations, people on the move and political activists facing criminalisation for the act of defending human rights.

8. Annex

8.1. Instructions on complaints to the Greek Ombudsperson

Fields marked with * are mandatory and must be filled in before you can submit your report.

The e-mail you use should be your personal e-mail address, as this is the one that will be used to authenticate you to the system. This will send you your CRL code, which will allow you to monitor the progress of your report and through which you will be able to access ALL the reports you have submitted.

For the best operation of the application, we recommend that you use the latest browser versions.

Ηλεκτρονική υποβολή αναφοράς

Το πεδίο με * είναι υποχρεωτικό και θα πρέπει να συμπληρωθούν για να μπορείτε να υποβάλετε την αναφορά σας.

Το e-mail που θα χρησιμοποιήσετε θα πρέπει να είναι το προσωπικό σας, δεδομένου ότι μέσω αυτού θα πιστοποιηθείτε στο σύστημα. Σε αυτό θα σας αποσταλούν ηλεκτρονικά με τους οποίους θα μπορείτε να παρακολουθείτε την εξέλιξη της αναφοράς σας και μέσω αυτού θα μπορείτε να έχετε πρόσβαση σε ΟΛΕΣ τις αναφορές που έχετε υποβάλει.

Για την καλύτερη λειτουργία της εφαρμογής, προτείνουμε να χρησιμοποιείτε τις πιο πρόσφατες εκδόσεις browser.

Παρακολούθηση Ηλεκτρονικής Αναφοράς
Αναλυτικές Οδηγίες
 Δήλωση προστασίας δεδομένων προσωπικού χαρακτήρα

ΠΡΟΣΩΠΙΚΑ ΣΤΟΙΧΕΙΑ

Επώνυμο* Όνομα*

Πατρώνυμο* Αρ. Δελτίου Ταυτότητας / Αρ. Διαβ...

ΔΙΕΥΘΥΝΣΗ ΚΑΤΟΙΚΙΑΣ / ΕΠΙΚΟΙΝΩΝΙΑ

Διεύθυνση Τ.Κ.

Περιοχή Νομός

Τηλέφωνο Επικοινωνίας Κινητό Τηλέφωνο*

ΗΛΕΚΤΡΟΝΙΚΗ ΔΙΕΥΘΥΝΣΗ

Το e-mail που θα χρησιμοποιήσετε θα πρέπει να είναι το προσωπικό σας. Σε αυτό θα σας αποσταλεί μήνυμα με τον Κωδικό Παρακολούθησης της Αναφοράς σας και με αυτό θα μπορείτε να παρακολουθήσετε όλες τις υποβληθείσες αναφορές σας.

E-mail*

Επιβεβαιώνω e-mail*

Figure 3

In the form that opens, fill in the Subject and the Service to which your report relates.

Write a short description of the problem you are facing and request the mediation of the Ombudsman (up to 4,000 characters).

You can attach the files you wish, according to the allowed limits (up to 5MB per file) and the accepted file types. (bmp, .doc, .docx, .jpg, .odt, .ods, .odp, .pdf, .png, .ppt, .pptx, .txt, .xls, .xlsx)

Select the "Report Preview" to be able to view your report before you submit it (Figures 4 and 5).

Ηλεκτρονική υποβολή αναφοράς

Τα πεδία με * είναι υποχρεωτικά και θα πρέπει να συμπληρωθούν για να μπορείτε να υποβάλετε την αναφορά σας.

Το e-mail που θα χρησιμοποιήσετε θα πρέπει να είναι το προσωπικό σας, δεδομένου ότι μέσω αυτού θα πιστοποιηθείτε στο σύστημα. Σε αυτό θα σας αποσταλούν οι κωδικοί, με τους οποίους θα μπορείτε να παρακολουθείτε την εξέλιξη της αναφοράς σας και μέσω αυτού θα μπορείτε να έχετε πρόσβαση σε ΟΛΕΣ τις αναφορές που έχετε υποβάλει. Για την καλύτερη λειτουργία της εφαρμογής, προτείνουμε να χρησιμοποιείτε τις πιο πρόσφατες εκδόσεις browser.

Παρακολούθηση Ηλεκτρονικής Αναφοράς

Αναλυτικές Οδηγίες

Δέσφαση προστασίας δεδομένων προσωπικού χαρακτήρα

ΑΝΑΦΟΡΑ

Ε-Θέμα*

Υπηρεσία / Οργανισμός με την οποία / τον οποίο σχετίζεται η αναφορά*

Περιγραφή*

Σύντομη περιγραφή του προβλήματος (μέχρι 4.000 χαρακτήρες)

Επισύναψη Αρχείων σχετικών της αναφοράς

Επισύναψη Αρχείων

(αποδεκτοί τύποι: bmp, doc, docx, jpg, odt, ods, odp, pdf, png, ppt, pptx, txt, xls, xlsx) έως 5MB ανά αρχείο

Προσκόμιση αναφοράς

Figure 4

Επισκόπηση Αναφοράς & Αποστολή

ΠΡΟΣΩΠΙΚΑ ΣΤΟΙΧΕΙΑ

Επώνυμο	ΕΠΩΝΥΜΟ
Όνομα	ΟΝΟΜΑ
Πατρώνυμο	ΠΑΤΡΩΝΥΜΟ
Αρ. Δελτίου Ταυτότητας / Αρ. Διαβατηρίου	ΔΕΝ ΕΧΕΙ ΣΥΜΠΛΗΡΩΘΕΙ

ΔΙΕΥΘΥΝΣΗ ΚΑΤΟΙΚΙΑΣ/ΕΠΙΚΟΙΝΩΝΙΑ

Διεύθυνση	ΔΙΕΥΘΥΝΣΗ
T.K.	12345
Περιοχή	ΠΕΡΙΟΧΗ
Νομός	ΑΤΤΙΚΗΣ
Τηλέφωνο Επικοινωνίας	ΔΕΝ ΕΧΕΙ ΣΥΜΠΛΗΡΩΘΕΙ
Κινητό Επικοινωνίας	69123456789

ΗΛΕΚΤΡΟΝΙΚΗ ΔΙΕΥΘΥΝΣΗ

E-mail	MAIL@MAIL.GR
---------------	--------------

Figure 5



Figure 6

At this stage you can either choose to "Edit" it in case you want to change/correct something in it, or proceed to finalize it.

"Report Mission" (Figures 6 and 7).



Figure 7

After the above action and before completing the submission of your report, you will be required to confirm your email address for this purpose:

1. You will receive a message to the e-mail you entered with your confirmation code (figure 8).

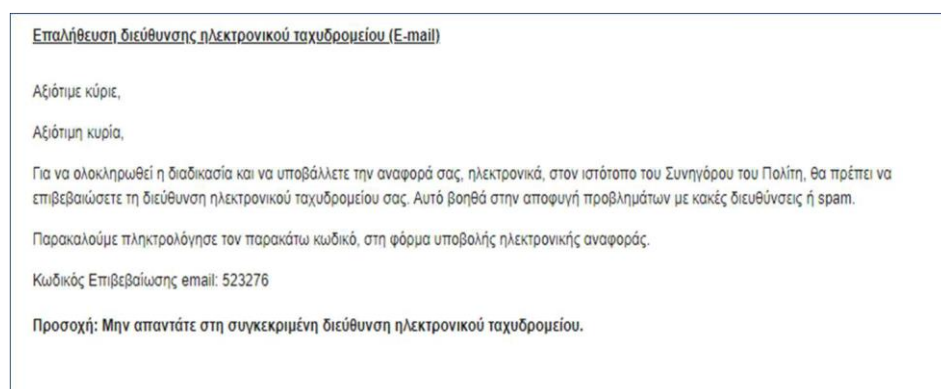


Figure 8

2. The following message will appear on your screen (figure 9):



Επιβεβαίωση email

Σας έχει αποσταλεί μήνυμα στο e-mail σας, για την επιβεβαίωση του. Σε περίπτωση που δεν το έχετε λάβει στο εισερχόμενο σας, ελέγξτε τον φάκελο ανεπιθύμητης αλληλογραφίας σας.
Συμπληρώστε παρακάτω τον κωδικό επιβεβαίωσης e-mail που λάβατε.

Κωδικός Επιβεβαίωσης Email *

□ □ □ □ □ □

Για οποιδήποτε τεχνικό πρόβλημα έχετε με την υποβολή ή την παρακολούθηση της αναφοράς σας, παρακαλούμε στείλτε μήνυμα στο support_web@synigoros.gr

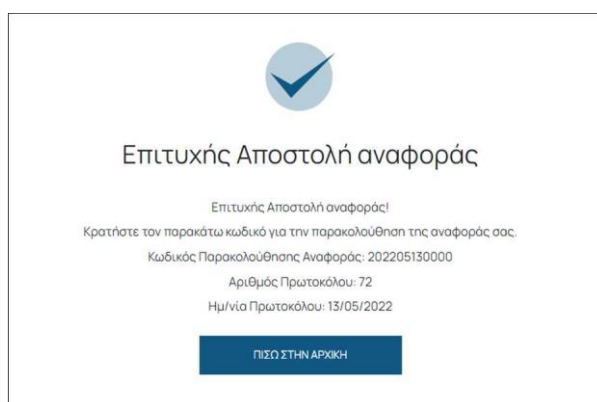
ΑΠΟΣΤΟΛΗ ΑΝΑΦΟΡΑΣ

Figure 9

In it you will have to enter the confirmation code, which has been sent to you in the e-mail you registered and finally select the final submission of your report.

Once your email address has been confirmed, your report has been submitted to the Ombudsman.

A confirmation message is displayed on your screen which includes the Report Tracking Code (RTC), the protocol number received and the date it was first received (figure 10).



Επιτυχής Αποστολή αναφοράς

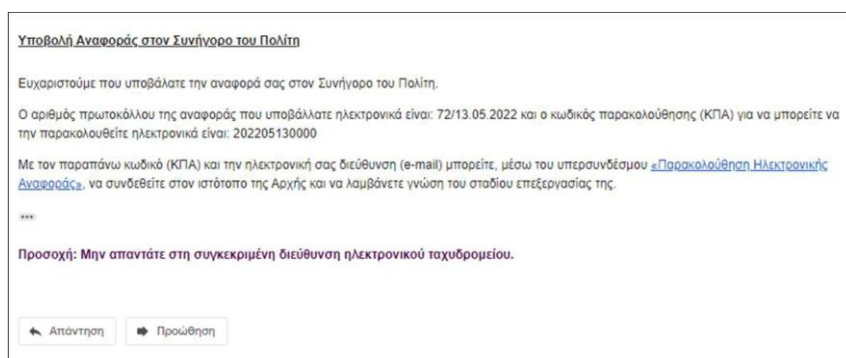
Επιτυχής Αποστολή αναφοράς!

Κρατήστε τον παρακάτω κωδικό για την παρακολούθηση της αναφοράς σας.
Κωδικός Παρακολούθησης Αναφοράς: 202205130000
Αριθμός Πρωτοκόλλου: 72
Ημ/νία Πρωτοκόλλου: 13/05/2022

ΠΙΣΩ ΣΤΗΝ ΑΡΧΙΚΗ

Figure 10

At the same time you will receive an information message in your e-mail (picture 11).



Υποβολή Αναφοράς στον Συνήγορο του Πολίτη

Ευχαριστούμε που υποβάλλατε την αναφορά σας στον Συνήγορο του Πολίτη.

Ο αριθμός πρωτοκόλλου της αναφοράς που υποβάλλατε ηλεκτρονικά είναι: 72/13.05.2022 και ο κωδικός παρακολούθησης (ΚΠΑ) για να μπορείτε να την παρακολουθείτε ηλεκτρονικά είναι: 202205130000

Με τον παραπάνω κωδικό (ΚΠΑ) και την ηλεκτρονική σας διεύθυνση (e-mail) μπορείτε, μέσω του υπερσυνδέσμου [«Παρακολούθηση Ηλεκτρονικής Αναφοράς»](#), να συνδεθείτε στον ιστότοπο της Αρχής και να λαμβάνετε γνώση του σταδίου επεξεργασίας της.

Προσοχή: Μην απαντάτε στη συγκεκριμένη διεύθυνση ηλεκτρονικού ταχυδρομείου.

📧 Απάντηση 📧 Πρωώθηση

Figure 11

2. Web Reference Monitoring

To monitor the online petition you have submitted to the Ombudsman, select "Monitor Petition" (image 12) from the Electronic Services on the home page of the Ombudsman's website.

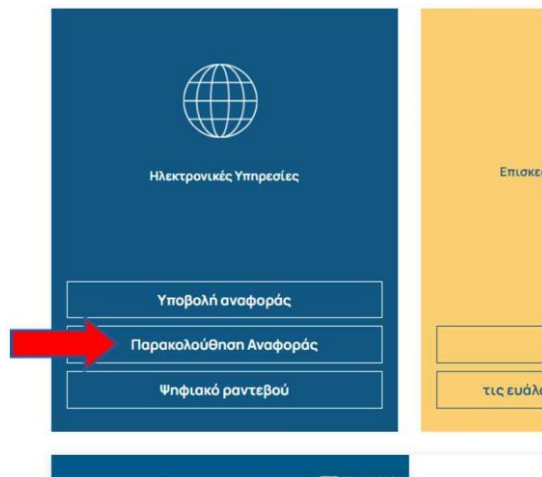


Figure 12

In order to log in and track your report electronically, you will need to fill in the email address you provided when you submitted it, as well as the Report Tracking Code (RTC) that has been sent to you and click on "Identify" (image 13).

 A screenshot of the 'Παρακολούθηση Αναφοράς' (Monitor Petition) login form. The form is on a dark blue background. It contains the following fields and buttons:

- A text box labeled 'Ηλεκτρονική Διεύθυνση' (Electronic Address) with 'E-mail' as a placeholder.
- A text box labeled 'Κωδικός Παρακολούθησης Αναφοράς' (Report Tracking Code) with 'ΚΠΑ' as a placeholder.
- A blue button labeled 'ΤΑΥΤΟΠΟΙΗΣΗ' (Identify).
- A text box labeled 'Εισάγετε τον Κωδικό Παρακολούθησης Αναφοράς:' (Enter the Report Tracking Code:).

 On the left side of the form, there is a block of text in Greek explaining the process and providing instructions on how to receive the code via email.

Figure 13

In case you do not remember your Report Tracking Code (RTC), after filling in your e-mail, you can select the "Forgot your Report Tracking Code" button and the code will be resent to you (image 14).

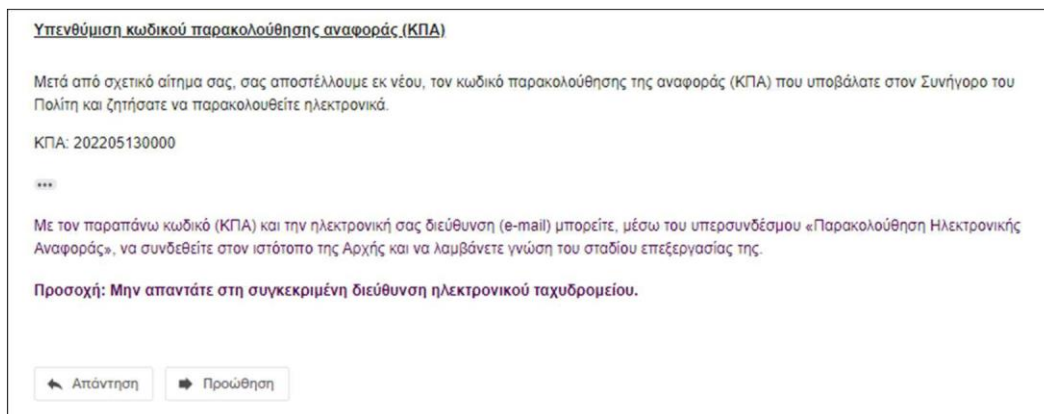


Figure 14

After you have successfully logged in to the system, you can view all the information of your report (Status, Date of Submission, Report Tracking Code, Report No. Protocol number) (figure 15), the history of all actions taken on it (figure 16), and the information about the Specialist operator assigned to examine your report (figure 17).

In the "Status" field when you monitor your report, the status of the report will be displayed:

- "Waiting for confirmation from the Ombudsman", until it is processed by the competent department receiving the petitions.
- "Confirmed by the Advocate",
- "To Accept", until it has been charged to the appropriate Circle of Competence
- "To be charged", until charged to a Special Scientist/operator
- "Charged", when the charge to Special Scientist/operator is completed
- "Archived" when the report is closed.

When the report is billed to a Specialist, the details of the operator of the report will appear below on the tracking page of your report.

Πληροφορίες Αναφοράς

Κατάσταση
● Αναμονή Επιβεβαίωσης Από Συνήγορο

Ημερομηνία Υποβολής
13/05/2022

Κωδικός Παρακολούθησης Αναφοράς
202205130000

Αριθμός Πρωτοκόλλου
72

Ηλεκτρονική υποβολή αναφοράς

Θέμα
Ε-THEMA - ΠΡΟΒΛΗΜΑ

Υπηρεσία / Οργανισμός με την οποία / τον οποίο σχετίζεται η αναφορά
ΥΠΗΡΕΣΙΑ

Περιγραφή
ΣΥΝΤΟΜΗ ΠΕΡΙΓΡΑΦΗ ΠΡΟΒΛΗΜΑΤΟΣ

Figure 15

Ιστορικό Αναφοράς			
Ημερομηνία	Θέμα Εγγράφου	Αριθμός Πρωτοκόλλου	Έγγραφο

Figure 16

Στοιχεία Εκπροσώπου

Α.Κ.

Συστήματος Διαχειριστής

Figure 17

At the bottom of the page, you can also access all the reports you have submitted from the same email address (figure 18).

Επιπλέον Αναφορές		
Ημερομηνία	Τίτλος Αναφοράς	Εξέλιξη
07/04/2022	ΤΕΣΤ ΑΝΑΦΟΡΑ 17/4/2022	● Αναμονή Επιβεβαίωσης Από Συνήγορο

Figure 18

3. Submit additional Web Reference files

You can submit additional files for your report or even a request for it, through its online follow-up. However, your Report Status must be "Billed".

First, you will need to log in to the Report Tracker, as described above (figure 13).

Select the report you are interested in if you have more than one report.

In the Submit New Related Documents (image 19), in the Description field, which is mandatory, you must describe your request and then attach the files you wish to submit. Please note that each file you submit should not exceed 5MB.

Figure 19

Select "Submit a Relevant Report" to submit your request.

On your screen, you will see the protocol number and the date of your request (figure 20).

Figure 20

At the same time, you will receive a message to your email address with these details (image 21).

Figure 21

Υποβολή Νέων Σχετικών Εγγράφων

Θέμα*

Υποβολή σχετικών αναφορών

Περιγραφή*

Περιγραφή

Σύντομη περιγραφή του προβλήματος (μέχρι 4.000 χαρακτήρες)

Επισύναψη νέων σχετικών αρχείων της αναφοράς.

Επισύναψη Αρχείων

(αποδεκτοί τύποι: bmp, doc, docx, jpg, odt, ods, odp, pdf, png, ppt, pptx, txt, xls, xlsx)
έως 5MB ανά αρχείο

Υποβολή σχετικού αναφοράς

Figure 19

Select "Submit a Relevant Report" to submit your request.

On your screen, you will see the protocol number and the date of your request (figure 20).

Υποβολή σχετικού αναφοράς

Τα πρόσθετα στοιχεία που υποβάλλατε για την αναφορά σας, έχουν υποβληθεί. Ο αριθμός πρωτοκόλλου της αίτησής σας είναι : 139/31.05.2022

Figure 20

At the same time, you will receive a message to your email address with these details (image 21).

Υποβολή Αναφοράς στον Συνήγορο του Πολίτη

Τα πρόσθετα στοιχεία που υποβάλλατε για την αναφορά σας, έχουν υποβληθεί.

Ο αριθμός πρωτοκόλλου της αίτησής σας είναι : 132/30.05.2022

Προσοχή: Μην απαντάτε στη συγκεκριμένη διεύθυνση ηλεκτρονικού ταχυδρομείου.

Figure 21

4. Request to close Web Report

Through the Monitoring of your Report, you can request the Ombudsman to close/archive it.

Select the report you are interested in, if you have more than one report.

Press the "Close Report" button (figure 22).



Figure 22

The following message will appear on your screen (figure 23).

You should indicate your request in the Short Description field. You can attach relevant files for this request if you wish. Finally, select "Close Report".

έξοδος X

Κλείσιμο Αναφοράς

Αγαπητέ Κύριε/α,

Ο Συνήγορος του Πολίτη θα δει το αίτημα σας σχετικά με την αναφορά σας που πρόκειται να απενεργοποιηθεί και να κλείσει οριστικά.

Κωδικός Παρακολούθησης Αναφοράς : 202205300005

Υποβολή αιτήματος για το κλείσιμο της αναφοράς

Σύντομη περιγραφή (μέχρι 4.000 χαρακτήρες)

Επισύναψη αρχείων για το κλείσιμο της αναφοράς

Επισύναψη Αρχείων

(αποδεκτοί τύποι: .bmp, .doc, .docx, .jpg, .odt, .ods, .odp, .pdf, .png, .ppt, .pptx, .txt, .xls, .xlsx)

έως 5MB ανά αρχείο

Κλείσιμο Αναφοράς

Figure 23

You will receive a protocol number for your request and a message will be sent to your email address (figure 24).

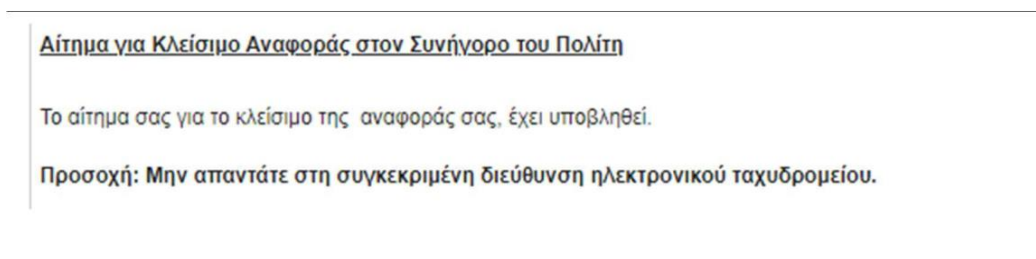


Figure 24

When your request is accepted by the Ombudsman, the status of your petition will show "Filed" (image 25).

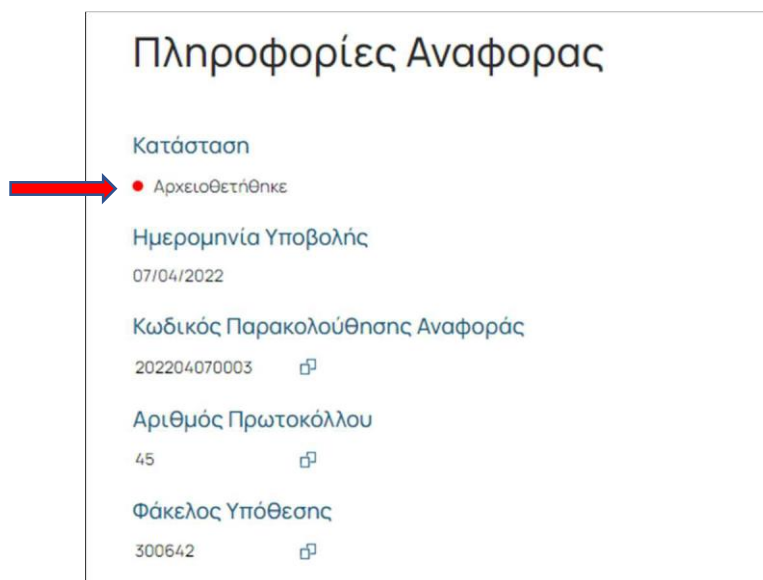


Figure 25

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