

HUMAN RIGHTS AND BORDER POLICIES: A COMPARISON OF SERBIA AND AUSTRIA (HURIBO)



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Abstract. *The project “Human Rights and Border Policies: A Comparison of Serbia and Austria” (HURIBO) explores the complex relationship between border control and human rights protection, focusing on the practices of an EU Member State, Austria, and EU candidate country, Serbia, situated along a major migration route. In the context of increasing migration pressures and evolving border enforcement strategies, the project critically analyzes how international human rights standards, particularly those relating to non-refoulement, collective expulsion, and access to asylum, are implemented at national borders. Through a comparative legal analysis, HURIBO investigates the compliance of Serbia and Austria with international and EU human rights obligations, particularly in light of the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the EU (CJEU). Key activities during the first project year included participation in the international scientific conference “Law and Social Conflicts” at the Faculty of Law in Niš, a study visit to Austrian Institute for Human Rights by the Serbian research team. The project has strengthened academic cooperation between the Faculty of Law, University of Niš, and the Austrian Institute for Human Rights, University of Salzburg, laying down the groundwork for joint publication and policy recommendations.*

Key words: *human rights, ECtHR, CJEU, migrants.*

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1. INTRODUCTION

The project “Human Rights and Border Policies: A Comparison of Serbia and Austria” (HURIBO) addresses one of the most pressing issues in contemporary Europe: the complex relationship between border management and human rights obligations. Every state has the right to control the entry of foreigners at its borders, but border policies have to comply with international human rights. Efforts to intercept migrants raise questions about compliance with international law and EU obligations. The European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) have established case law on human rights at borders, including the principle of non-refoulement and the prohibition of collective expulsion.

Borders serve as “semi-permeable filters” that keep unwanted migrants out while allowing others to enter the territory. This policy aims to secure effective border control but also to prevent migrants from entering the destination State’s territory and avoid the State’s responsibility for further fate of individuals concerned. Some States also make efforts to deny any responsibility for the individuals concerned, referring to the fact that they are not on their territory yet and, therefore, do not fall under their jurisdiction. Such a development can also be observed along the so-called western Balkan migration route. As soon as this route was used by an increasing number of people looking for international protection in Europe as well as by irregular migrants, the States along the route started to enhance border controls. These policies were not least motivated by the pressure exerted by the EU on countries that are candidates for accession, such as the Republic of Serbia.

This project analyses the border policies of Serbia and Austria in light of the international obligations, comparing the situation in Austria as an EU member state that attracts refugees with the situation in Serbia as a candidate country situated on one of the major migration routes. This comparison aims to identify the effectiveness of European border control policies and highlight areas of improvement.

2. PROJECT OBJECTIVES

The project is designed to achieve the following key objectives:

1. Legal Analysis of International Obligations
 - Examine the application of core international human rights standards at borders
 - Focus on prohibition of refoulement, collective expulsion, arbitrary deprivation of liberty, and discrimination
 - Identify procedural obligations to process applications for international protections at borders.
2. Comparative National Analysis
 - Assess Serbian and Austrian legal frameworks and border control practices
 - Evaluate how the two countries implement international and EU standards
 - Investigate the role of national authorities in pushbacks, rejections and returns-especially at the Serbian-Hungarian and Austrian-German borders.
3. Synthesis and Policy Recommendations
 - Identify good practices and legal shortcomings
 - Develop recommendations to improve legal compliance and human rights protections at national and regional levels.

3. ACITIVITIES AND KEY RESULTS

At the international scientific conference “Law and Social Conflicts”, held at the Faculty of Law, University of Niš, on 25 April 2025, the principal investigator Dr. Maja Nastić presented a paper prepared jointly with Dr. Philip Czech entitled “Human Rights at the Borders: Standards of the ECHR”. The presentation was structured in two parts. The first part addressed the scope of jurisdiction per Article 1 ECHR, noting that states can have extraterritorial jurisdiction when they exert “authority and control” over individuals, including those at the border or intercepted at the sea. The second part examined the ECHR’s substantive requirements for states controlling their borders. States must comply with Article 3 and Article 4 of Protocol No. 4 to the ECHR. The ECtHR clarifies that immigration challenges do not justify violations and mandates genuine access to asylum procedures, whereby states are prohibited from returning individuals to places where they risk torture. States are responsible for ensuring asylum processes and protecting vulnerable individuals from mistreatment. The contributions include the following points: clarification of the legal threshold for jurisdiction at borders in accordance with the ECtHR jurisprudence, emphasis on the two-tier test established by the Court for evaluating access to asylum procedures, stressing the necessity for individualized assessments and safeguards in all expulsion and return processes, and offering critical insights pertinent to both Serbia and Austria within the framework of migration and border control. This contribution support the broader goals of the HURIBO project by bridging academic research and policy discussion on migration, border practices, and human rights.

In the period from 12 to 16 May 2025, the Serbian research group, including Prof. dr. Maja Nastić, Prof. dr. Mihajlo Cvetković and Prof. dr. Anđelija Tasić, met the colleagues from the Austrian Human Rights Institute in Salzburg, Dr. Philip Czech, Prof. dr. Reinhard Klaushofer and Dr Rober Krammer. Project participants had an exceptional opportunity to visit the Aliens and Border Police. During this visit, the officer in charge of border control and detention conducted a presentation covering several key topics: the organization and competencies of the Aliens Police Directorate, Salzburg’s role as a migration hub, procedures related to asylum and border management, officer training with a focus on human rights, and document control and border procedures at the airport. In a series of working meetings held at the Austrian Human Rights Institute, project leaders Philip Czech and Maja Nastić presented state obligations at the border arising from Article 3 and Article 4 Protocol No. 4 to the ECHR. This input opened a discussion on current border management challenges, aimed at addressing the crucial questions related to the obligations of Serbia and Austria (respectively) under international human rights law: Under which conditions does an obligation arise to accept the entry of foreigners to the national territory? Are their obligations to deal with the substance of applications for international protection filed at the border?

During the workshop titled “Human Rights and Border Policies”, Anđelija Tasić emphasized the importance of the ECtHR case law in the context of border denials and expulsions, particularly regarding the application of interim measures. Mihajlo Cvetković presented the fundamental legal principles of the Asylum Act of the Republic of Serbia. Both project team members analyzed the challenges in implementing national laws and identified the shortcomings in the national legal provisions in light of international standards.

Project team members from both countries discussed the next steps to be taken in the upcoming period, including the planned visit of the Austrian research team to the Faculty of Law, University of Niš. The visit was successful and contributed significantly to the exchange

of knowledge and experiences in the field of human rights protection. Collaborating with a partner institution like the Austrian Institute for Human Rights further strengthens the position of the Faculty of Law, University of Niš, as a relevant and active participant in academic activities across Europe.

In the end, we should note that Dr Alfred Benny Auner from the Department of Public Law at the University of Salzburg delivered an engaging online lecture on 28th February 2025. The topic of the lecture was “A Comparison of the EU Charter of Fundamental Rights and the ECHR: Interpretation, Impact on Digital Rights and Access to Justice”.

4. CONCLUSION

The HURIBO project has successfully advanced its objectives during the first year of implementation, fostering a robust academic and institutional exchange between the Faculty of Law, University of Niš, and Austrian Human Rights Institute, Paris Lodron University of Salzburg. As the project enters its next phase, planned activities, including the follow-up visit of the Austrian research group to Niš and the preparation of a joint publication, will further deepen the institutional cooperation and contribute to the academic and policy discourse on migration, asylum, and human rights in Europe. The project not only contributes to the scientific community but also offers practical recommendations for aligning national practices with international legal obligations. This alignment is particularly crucial for Serbia in the context of the EU accession and for Austria in fulfilling its human rights obligations within the EU.

LJUDSKA PRAVA I POLITIKA UPRAVLJANJA GRANICAMA: POREĐENJE SRBIJE I AUSTRIJE

Projekat „Ljudska prava i politika upravljanja granica: poređenje Srbije i Austrije“ (HURIBO) istražuje složen odnos između kontrole granica i zaštite ljudskih prava, fokusirajući se na praksu Austrije, koja je država članica EU, i Srbije, zemlje kandidata za pristupanje EU, a koje se obe nalaze duž glavne migracione rute. U kontekstu rastućih migracionih pritisaka i evoluirajućih strategija za sprovođenje graničnih propisa, projekat kritički analizira kako se međunarodni standardi ljudskih prava, posebno oni koji se odnose na zabranu vraćanja, kolektivno proterivanje i pristup azilu, primenjuju u nacionalnim granicama. Kroz uporednu pravnu analizu, HURIBO istražuje usklađenost Srbije i Austrije sa međunarodnim obavezama EU u oblasti ljudskih prava, posebno u svetlu sudske prakse Evropskog suda za ljudska prava i Suda pravde EU. Ključne aktivnosti sprovedene tokom prve godine uključivale su učešće rukovodioca projekta na međunarodnoj konferenciji „Pravo i društveni konflikti“ održanoj na Pravnom fakultetu u Nišu, studijsku posetu srpskog istraživačkog tima Austrijskom institutu za ljudska prava. Projekat je ojačao akademsku saradnju između Pravnog fakulteta u Nišu i Austrijskog instituta za ljudska prava u Salzburgu, postavljajući temelje za nastavak zajedničkog rada..

Ključne reči: ljudska prava, Evropski sud za ljudska prava, Sud pravde EU, migranti.