



**COUNCIL OF EUROPE
DEPARTMENT FOR THE EXECUTION OF JUDGMENTS
OF THE EUROPEAN COURT OF HUMAN RIGHTS
STRASBOURG, FRANCE**

Zagreb, 22 September 2022

RULE 9.2. COMMUNICATION

by the Human Rights House Zagreb and the Centre for Peace Studies

In accordance with the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements in the

***Case of M.H. and Others v. Croatia
No. 15670/18 and 43115/18***

I. Introduction

1. This submission aims to provide and assist the Committee of Ministers on what is required for full and effective implementation of the judgement in question prior to the Action Plan being submitted by the Government. This submission contains substantive and procedural questions which need to be addressed, primarily regarding the transfer of this case to enhanced supervision due to the ongoing systemic practice of violent illegal pushbacks from Croatian territory and denying migrants access to the asylum system, which will be further elaborated in the text.
2. This submission is prepared by the *Human Rights House Zagreb* and the *Centre for Peace Studies*, both civil society organisations registered in Croatia.

3. *Human Rights House Zagreb*¹ (HRHZ) is a human rights watch-dog and advocacy organisation founded in 2008 as a network of civil society organisations with the goal to protect and promote human rights and fundamental freedoms through research, monitoring, public advocacy, and education. *Centre for Peace Studies*² (CPS) is a civil society organisation that protects human rights and aspires for social change based on the values of democracy, anti-fascism, non-violence, peacebuilding, solidarity and equality, using activism, education, research, advocacy and direct support. CPS has immense expertise in migration, asylum and integration - actively monitoring pushbacks and violence at Croatian borders with Serbia and Bosnia - Herzegovina, and holds related legal expertise.

II. Case Summary

4. The applicants are a family of 14 Afghan citizens. They are a man, his two wives, and their 11 children. The case concerned the death of a six-year-old Afghan child, MAD.H., who was on the night of 21 November 2017 hit by a train after allegedly having been denied the opportunity to seek asylum by the Croatian authorities and ordered to return to Serbia via the tracks. The ECtHR found a violation of Article 2 of the Convention under its procedural limb because the State authorities failed to conduct an effective investigation into the circumstances leading to MAD.H.'s death.
5. The case also concerns, in particular, the applicants' detention while seeking international protection. On 21 March 2018, the Croatian police caught the applicants as they were entering Croatia clandestinely from Serbia. The applicants applied for international protection however they did not have any identification documents with them. The Croatian police placed them in a transit immigration centre in Tovarnik and therefore restricted their freedom in order to verify their identities and kept them there for more than two months. ECtHR found that those child applicants were kept in an immigration centre with prison-type elements, which had amounted to ill-treatment and resulted in a violation of Article 3 of the Convention. Furthermore, the ECtHR found that the decisions regarding the applicants' detention had not been dealt with diligently and expeditiously in order to limit family detention as much as possible, which resulted in a violation of Article 5 § 1 of the Convention.
6. The case additionally concerns the denial of contact with the applicants' lawyer (even after lodging a Rule 39 request in that connection), initiation of the criminal investigation against their chosen lawyer regarding a power of attorney, and infringement of the communication between applicants and their lawyer. The Court concluded that the State had hindered the

¹ <http://www.kucaljudskihprava.hr/en/>

² <https://www.cms.hr/en>

effective exercise of the applicants' right of individual application and thus violated Article 34 of the Convention.

7. Finally, the Court found that a parent and five child applicants had been subjected to collective expulsions to Serbia on the night of 21 November 2017 without prior notification of Serbian authorities, which resulted in violating Article 4 of Protocol No. 4 to the Convention.
8. In the light of the systematic nature of the violations found in the individual case of M.H. and Others v. Croatia, HRHZ and CPS call on the Committee of Ministers to consider the following.

III. Individual Measures

A. *Conduct an effective criminal investigation*

9. According to the Court findings, "State authorities failed to conduct an effective investigation into the circumstances leading to MAD.H.'s death" (see §163 of the judgement).
10. Moreover, from the circumstances and violations established by the Court, it is to be concluded that there is a reasonable doubt that the applicants suffered other crimes under the Croatian Criminal Law³, which were never investigated *ex officio*. These crimes also include:
 - i) inhuman treatment found by the Court (see §204 of the judgement), as well as
 - ii) the collective expulsion of applicants (see §304 of the judgement) in regards to the prohibition of torture and other cruel, inhuman and degrading treatment under the Article 104 of the Croatian Criminal Act, as well as the abuse of power under the Article 291 of the Croatian Criminal Act. Collectively expelling the applicants from the territory of the Republic of Croatia, without carrying out the procedure prescribed by law - i.e. without taking into account the potential ban on return (non-refoulement), needs to be investigated. Moreover, the Court acknowledged "a large number of reports by civil-society organisations, national human rights structures and international organisations concerning summary returns of persons clandestinely entering Croatia to the borders with Serbia and Bosnia and Herzegovina, where they are forced to leave the country" (§270). This, together with the vast body of documented cases of collective expulsions from Croatian territory, points to an orchestrated, organised practice which needs to be investigated.

³ Croatian Criminal Act (Kazneni zakon), Official Gazette nr. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21

11. Considering the findings of the court, and taking into consideration that the committed crimes mentioned above did not yet reach the statute of limitations, it is, therefore, necessary to reopen the investigation into the death of MAD.H., and conduct effective investigations into torture, degrading treatment, abuse of power and collective expulsions from Croatian territory.

B. Pay the applicants' amounts set in the Court's judgement

12. The Croatian government should ensure that the amount set by the Court is paid.

IV. General Measures

A. Systemic violations regarding illegal pushbacks

13. The judgement *M.H. and others against Croatia* is disclosing **major structural and complex problems**, which is clearly implied in the wording of the judgement: "The impact of this case thus goes beyond the particular situation of the applicants" (§123). It is therefore necessary and in accordance with the Procedures and working methods of the Committee of Ministers to **classify this case under the enhanced supervision**. Moreover, the Court has found severe human rights violations (especially the Articles 2 and 3), where the facts of the case demonstrate the involvement of several state bodies whose task is guarding the rule of law - which failed. In addition to the said reasons for the enhanced procedure, the HRHZ and CPS in following paragraphs provide evidence which shows that these structural and complex problems amounting to systematic human rights violations have continued and are still ongoing in Croatia. Moreover, compared to previous years, illegal pushbacks have become more violent and frequent. Recorded pushbacks include pregnant women, children, infants, elderly and disabled persons, forced undressing of minors and a case of raping a man with a branch.⁴
14. Many reports from respective national and international civil society organisations in the field, domestic independent institutions for the protection of human rights, international institutions that deal with migration, immigration, and refugee issues, as well as media reports and testimonies of refugees and even of police officers, point out in the same direction - that **major systematic and deliberate collective expulsions (pushbacks) accompanied by violence and ill-treatment at the Croatian boards are tacitly approved by the Croatian authorities.**

⁴ Human Rights House Zagreb, Human Rights in Croatia: Overview of 2020, para 353, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2021/06/KLJP_GI2020_EN_PRIP_web.pdf

15. Numerous reports and testimonies demonstrate there is a serious lack of respect for the *non-refoulement* principle in Croatia for the past six years.⁵
16. The recent data from various human rights organisations active, using different methods, shows that such ill-treatment is still ongoing. From January to the end of November 2021, the Protecting Rights at Borders initiative recorded a total of 8,812⁶ cases of illegal pushbacks from Croatia to Bosnia and Herzegovina (BiH) and 230 illegal pushbacks to Serbia. The Danish Refugee Council recorded a total of 9,114⁷ cases of pushbacks in 2021, while the Border Violence Monitoring Network reports that 2,279 persons were pushed back from Croatia to BiH and 159 from Croatia to Serbia⁸.
17. Refugee rights organisations that collect testimonies on pushbacks directly from migrants, reported in 2021 that there were 256 minors in 104 pushed back groups, with the actual number probably being much higher considering that collective expulsions often make it impossible to determine the exact number of minors⁹.
18. The practice of illegal pushbacks continued in 2022 as well. In the first half of 2022, Danish Refugee Council (DRC) recorded a total of 1.837 persons reporting pushbacks from Croatia to BiH.¹⁰
19. In support of the above-mentioned violations, a journalistic team¹¹ in 2021 filmed a total of six illegal collective pushbacks on the border between Croatia and BiH, involving approximately 65 persons, around 20 of which were children. Footage included conversations with collectively expelled families - fathers, pregnant women, children, the elderly and the disabled, who all confirmed that they had been denied access to asylum and medical assistance. Moreover, the cameras of RTL's journalistic team recorded an

⁵ For example: Centre for Peace Studies (CMS), Are You Syrious (AYS), and the Welcome! Initiative, "5th report on the pushbacks and violence from the Republic of Croatia: Illegal practices and systematic human rights violations at EU borders, Zagreb, 3rd of April 2019, link available at:

https://www.cms.hr/system/article_document/doc/597/5_5TH_REPORT_ON_PUSHBACKS_AND_VIOLENCE_20052019.pdf and other yearly Pushback Reports from the same authors; Médecins Sans Frontières, Serbia: Games of Violence, 4 October 2017; Save the Children, Refugee and migrant children injured in border pushbacks, 24 January 2017; Border Violence Monitoring Network Reports, available at: borderviolence.eu/category/monthly-report/

⁶ Protecting Rights at Borders: April 2021, available at: [PRAB#1](#), July 2021, available at: [PRAB#2](#), December 2021, available at: [PRAB#3](#).

⁷ Danish Refugee Council, Border Monitoring Factsheet, December 2021, link available at: https://drc.ngo/media/gounjyvr/2021_12_drc_bih_border-monitoring-factsheet.pdf

⁸ Border violence Monitoring Network, Monthly Report Archives, link available at: <https://www.borderviolence.eu/category/monthly-report/>

⁹ Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, para 372, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf

¹⁰ Danish Refugee Council, Border Monitoring Factsheet, June 2022, link available at: https://drc.ngo/media/20ipmjnl/2022_06_border-monitoring-factsheet.pdf

¹¹ A team of journalists were ARD Wien/Südosteuropa, Lighthouse Reports, SRF Schweizer, Radio und Fernsehen, DER SPIEGEL and Novosti. The video is available at: https://www.spiegel.de/ausland/kroatien-videos-dokumentieren-systematische-pushbacks-a-4463a93d-0467-4960-814a-6d959e1df193?fbclid=IwAR2e9KsFirPtnTs4i_6A7B-xbwsfx3j-xiesUdhpXOH2kQ2FXj0Xlh-3Yrw

Iranian family requesting asylum after they were collectively expelled from the country 22 times regardless of their intent to seek asylum¹².

20. In October 2021, the aforementioned investigative team of journalists published another video¹³ confirming the involvement of special police units in carrying out violent and illegal pushbacks and thus proving the credibility of the testimonies of victims. After the footage was published, the Ministry of the Interior sanctioned three members of the special police with conditional notice of termination of employment, which all returned to work after a three-month suspension¹⁴.
21. In 2019, the Ombudswoman received an anonymous complaint from a group of border police officers, regarding the illegal police treatment of migrants ordered by their superiors. In the complaint, it is described “...that the superior police officials give orders to the policemen to push back all refugees and migrants to Bosnia and Herzegovina „without papers and processing“, thus leaving no trace, to take money, break mobiles and throw them in the river or keep for themselves. In such a way, 20 to 50 persons are being pushed back daily. It claims that among migrants, there are women and children, but „they all are equally treated“, hence, that persons being brought from other administrative units, come exhausted and sometimes beaten up but the policemen „during the night take them to Bosnia by force“, even using the weapons.”¹⁵
22. Based on the letter, it could be concluded that Croatian authorities were not only aware of the practice of the illegal pushbacks but also designed and carried out a policy of dealing with migrants that resulted in deliberate and widespread human rights violations amounting to, *inter alia*, torture and inhuman treatment.
23. In addition to physical abuse, particular concerns were expressed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) when CPT’s delegation in 2020 was informed that migrants had been subjected to other forms of severe ill-treatment by police officers when apprehended and subsequently pushed back across the border.¹⁶

¹² Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, para 365, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf

¹³ RTL.hr, VIDEO RTL’S Search in possession of exclusive footage: Humiliating and degrading treatment towards the migrants, beat them with sticks and take them out of the Croatia, 6 October 2021, link available at: <https://www.rtl.hr/vijesti/potruga/video-potruga-u-posjedu-ekskluzivnih-snimki-izivljavaju-se-na-migrantima-mlate-ih-palicama-i-tjeraju-iz-hrvatske-d278725a-b9f4-11ec-85d9-0242ac120064>

¹⁴ Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, para 366, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf

¹⁵ Ombudswoman, No institutional reaction to alleged illegal police treatment of migrants, 25 July 2019, link available at: <https://www.ombudsman.hr/en/no-institutional-reaction-to-alleged-illegal-police-treatment-of-migrants/>

¹⁶ Such treatment consisted of “police officers firing bullets close to their bodies while they lay on the ground, being thrown in the Korana river with their hands still zip-locked, being forced to march through the forest and being pushed back without shoes and wearing only their underwear and, in some cases, even fully naked”. See CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out

24. The systematic and deliberate pushback accompanied by violence and ill-treatment of migrants and denying them access to asylum have led to the fact that several national courts of the EU Member States have suspended Dublin transfers of asylum seekers to Croatia in the light of the risk of violation of Article 3 of the ECHR¹⁷.
25. In light of the information presented above, particularly having in mind the numerous reports and testimonies concerning the worrying practice of violent pushbacks of migrants by the Croatian authorities, public interest in the case and, foremost, the important issues in terms of immigration control by the Croatian authorities that are raised in the case (see § 128 of the judgement), HRHZ and CPS kindly request the Committee of Ministers to **transfer this case to enhanced supervision**.

B. Measures to ensure effective investigations of the collective expulsions and other human rights violations of refugees and other migrants

26. Even though Croatian authorities were fully aware of violent practices of collective expulsions as they were well documented, no effective investigation has been carried out at all. Croatia has not taken all the steps available to identify and punish the perpetrators of the thousands of cases of collective expulsions described above, which include the reasonable doubt on commitment of several crimes which need to be investigated *ex officio*. Although the Court assessed the investigation into the death of MAD.H., it is evident that the investigations into other crimes committed against her and her family in regards to the collective expulsion were never even initiated. For the further violations to be prevented and for the respect of human rights and the rule of law it is crucial to effectively investigate all the cases of the collective expulsions and other human rights violations of refugees and other migrants.
27. It is important to take into account the systematic nature of the practice of collective expulsions from the territory of Croatia and the allegations that this practice is sanctioned by the Croatian authorities. Therefore, any internal investigation within the MoI or bodies that are not hierarchically and practically independent do not meet the “effectiveness” threshold.¹⁸

by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 14, para 32, link available at: <https://rm.coe.int/1680a4c199>

¹⁷ CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 16, para 21, link available at: <https://rm.coe.int/1680a4c199>

¹⁸ Centre for Peace Studies, Third party intervention on behalf of the Centre for Peace Studies in M.H. and Others v. Croatia, Ap. no.:43115/18, 10 August 2020, link available at: https://www.cms.hr/system/article_document/doc/710/TPI_M.H._v._Croatia_CPS.pdf

28. Following the Ombudswoman letter to the competent institutions after receiving a complaint by an anonymous policeman (see para 21) requesting to conduct an appropriate, efficient and independent investigation of the alleged illegal police treatment of migrants, the Ministry of Interior (MoI) stated that such complaints are unsubstantiated and inaccurate. Moreover, MoI refused to undertake all reasonable and available steps to conduct an efficient investigation and to ensure evidence relevant to the disputed events.¹⁹
29. According to CPT's report in 2020, there is a well-established unlawful *modus operandi* for dealing with migrants crossing the border into Croatia from BiH. Having in mind that the Croatian MoI is in constant denial of any wrongdoing by police officers in this respect, combined with the lack of accountability mechanisms present on the ground, the CPT considers "...that no arrangements are currently in place to prevent police officers acting violently against migrants, safe in the knowledge that they will not be held to account"²⁰.
30. The Ombudswoman stressed that the gravity of the allegations made in the complaints and public reports on violence against migrants, as well as those in anonymous complaints by a police officer, indicates potentially systemic illegal conduct²¹.
31. In support of the above said and following the two criminal complaints brought by the Centre for Peace Studies against unidentified Croatian police officers for unlawful acts against refugees and migrants at Croatia's border (see § 103 of the judgement), the CPT has interviewed some of the alleged victims identified in the above mentioned criminal complaints and has revealed their independent findings i.e. CPT notes that all injuries observed were compatible with the allegations of ill-treatment.²² However, on 11 July 2022, the State Attorney's Office for Suppression of Corruption and Organized Crime rejected²³ a criminal complaint, more than two years after it was submitted, on the grounds that there is no reasonable doubt that the suspects would have committed the reported criminal acts. While regarding the other complaint, a decision on the criminal complaint is still pending.

¹⁹ Ombudswoman, No institutional reaction to alleged illegal police treatment of migrants, 25 July 2019, link available at: <https://www.ombudsman.hr/en/no-institutional-reaction-to-alleged-illegal-police-treatment-of-migrants/>

²⁰ CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 21, para 29, link available at: <https://rm.coe.int/1680a4c199>

²¹ National Preventive Mechanism, Report on the Performance of the Activities of the National Preventive Mechanism for 2019, page 28, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-national-preventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

²² CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 19-20, para 26-29, link available at: <https://rm.coe.int/1680a4c199>

²³ State Attorney, Office for Suppression of Corruption and Organized Crime, case number: KP-US-219/2022

32. Moreover, the Centre for Peace Studies analysed the investigations carried out regarding the criminal complaints the organisation filed in cases of collective expulsions, as well as the procedures into other carried out cases, and concluded “no actions necessary under international and national law to identify the perpetrators were taken, the proceedings were generally unreasonably long and they were not carried out with due diligence – hence the criteria for an effective investigation were not met”.²⁴ Similarly, the CPT delegation’s findings also showed “that there were no effective accountability mechanisms in place to identify the perpetrators of alleged acts of ill-treatment”.²⁵
33. It is to be concluded that Croatian authorities are unwilling to take effective steps to ensure that all investigations into allegations of police ill-treatment are carried out with due diligence. Moreover, in many of the proceedings, the very victims and witnesses (listed in the criminal complaints) of the case were never approached by the investigating body to collect their statements. Therefore, the ineffectiveness of the investigation in the case of the Hussiny family was not the exception, but rather a well-established practice.

C. Measures to ensure independent monitoring mechanisms

34. Due to numerous allegations of human rights violations on the Croatian (green) border, an Independent Border Monitoring Mechanism (IBMM) was established in June 2021 at the initiative of the European Commission to oversee the conduct of police officers in the field of illegal migration and international protection. However, the established mechanism does not meet the criteria of effectiveness and independence, while the process of its establishment was highly non-transparent²⁶.
35. Lack of independence arises from the fact that the IBMM members were chosen by the MoI without any public call or information about the selection criteria. This leads to the absurd situation in which the MoI is *de facto* monitoring itself via a mechanism that was appointed and controlled by them.²⁷
36. Additionally, the mechanism’s mandate for unannounced visits is limited to police stations around the border, border crossing points and detention centres. As the vast majority of documented unlawful practices occur outside Croatia’s official border crossings, any

²⁴ Centre for Peace Studies, Thousands of refugee testimonies but not a single effective investigation, 2.4.2021., link available at: <https://www.cms.hr/en/pravna-pomoc-azil-i-statusna-pitanja/tisuce-svjedocanstava-izbjeglica-a-niti-jedna-ucinkovita-istraga>

²⁵ CPT Annual Report for 2021, p. 16, para. 46, available at: <https://rm.coe.int/1680a63c72>

²⁶ This issue was raised by CSOs (as cited in: Human Rights House Zagreb, Human Rights in Croatia: Overview of 2021, para 368, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2022/07/KLJP_GI2021-EN_Online.pdf), in accordance with the CPT criteria on effectiveness and independence of a monitoring mechanism (Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30th General Report of the CPT (1 January-31 December 2020), link available at: <https://rm.coe.int/1680a25e6b>)

²⁷ Centre for Peace Studies, Report on Illegal Expulsions from Croatia in the Context of the COVID-19 Pandemic, published in March 2022, link available at: <https://www.cms.hr/hr/publikacije/report-on-illegal-expulsions-from-croatia-in-the-context-of-the-covid-19-pandemic>

geographic or procedural limitations on border monitoring creates blind spots and enables violations to continue²⁸.

37. Centre for Peace Studies and other human rights organisations expressed concerns regarding the scope of the mechanism by which the IBMM does not have the power to make unannounced visits to the green border areas, nor does it have access to the information system of the MoI. Moreover, the monitoring mechanism supervises the actions of police officers "...in the presence of authorised MoI officers in line with their instructions", as stated in the annual report of the Independent Mechanism for Monitoring²⁹.

38. Furthermore, the members of the monitoring mechanism lack political and financial independence from the MoI, and the mechanism's financial independence is undermined by the EU's 2021 Emergency Funding (EMAS) grant being processed through the MoI, instead of being directly granted to the mechanism, as suggested by human rights organisations³⁰ in order to avoid political and financial pressure from national authorities. Additionally, the EU Ombudsman stated that the European Commission has "the authority and an obligation to ensure that EU funds granted to a Member State are spent in compliance with fundamental rights and EU law, and to insist on safeguards to this end"³¹.

39. Finally, it can be concluded that a real, effective and independent monitoring mechanism into the actions of the police officers towards the refugees and other migrants does not exist, as it does not meet any criteria that would enable it to effectively monitor, identify nor prevent ill-treatment at the borders. Therefore, the mechanism which meets the minimum criteria set by the CPT and the human rights CSOs should be implemented.

D. Ensure the access of the Ombudsperson to detention places and data

40. According to the Act on the National Preventative Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (National Preventative Mechanism Act), the Ombudswoman is authorized to perform unannounced visits to bodies and institutions and inspect premises occupied by persons deprived of liberty,

²⁸ Amnesty International, Croatia/EU: Strengthen Border Monitoring System – Effective Mechanism Needed: Independent, Broad Mandate, Adequate Resources, 3 August 2021, link available at: <https://www.amnesty.org/en/documents/eur64/4546/2021/en/>

²⁹ Centre for Peace Studies, The Annual Report of the (Independent) Monitoring Mechanism, as per the instructions of the Ministry of the Interior, 4 July 2022, link available at: <https://www.cms.hr/en/azil-i-integracijske-politike/novo-godisnje-izvjesce-neovisnog-mehanizma-nadzora>

³⁰ Centre for Peace Studies, Call to the EU to protect human rights and rule of law by establishing an independent monitoring mechanism of the police operations, link available at: https://www.cms.hr/system/article_document/doc/809/Recommendations_Independent_Border_Monitoring_Mechanism.pdf

³¹ EU Ombudsman, Decision concerning how the European Commission monitors and ensures respect for fundamental rights by the Croatian authorities in the context of border management operations supported by EU funds (case 1598/2020/VS), para. 18, published on 22 February 2022, link available at: <https://www.ombudsman.europa.eu/en/decision/en/152811>

including free access to information on their treatment.³² This includes visits to the police stations, border police stations and any other premises where there are or may be persons deprived of liberty.³³ Moreover, under her authorities provided in the Ombudsperson Act³⁴, the Ombudswoman investigates human rights violations, when reported.

41. Within her mandates, the Ombudswoman is encountering serious obstacles in accessing crucial information on the treatment of irregular migrants in police stations, since the MoI has continuously prevented the Ombudswoman from performing her official duties since June 2019³⁵. Within those authorities, the Ombudswoman was denied access, not only to all the data on treatment towards the irregular migrants but also to the IT system and any individual case. Data has also been withheld during investigative proceedings, which hampered the mandate of the National Preventive Mechanism³⁶.
42. Therefore, to date, the Croatian authorities have not stopped meddling in the Ombudswoman mandates, which should give her unhindered access to documents, information, facilities, border areas and any places where victims of human rights violations may be found and therefore hamper her ability to investigate potential police misconduct effectively.
43. The minimum standards on independent monitoring mechanism established by CPT should also be applied to the Ombudsman's mandates, as her authorities proclaimed by the law should carry out such actions. Therefore, Croatia should enable Ombudsperson to carry out these mandates to the full extent, and particularly be enabled to: "conduct unannounced inspections of law enforcement establishments and have access to all files, registers and video recordings"; be effectively able to "inspect all relevant documentation (including shift handover logbooks, shift distribution charts and shift reports) of law enforcement patrols operating on the external borders of the EU, as well as access to all recordings of stationary and mobile video and motion-detecting devices covering the external borders".³⁷

E. Measures aimed at ensuring free legal aid for third-country nationals in the return procedure

44. The Court in its *M.H. and Others against Croatia* judgement clearly recognises "that there have apparently been other cases in which migrants in Croatia had not been informed of

³² Act on the National Preventative Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OG 18/11, 33/15, link available at: <https://www.zakon.hr/z/440/Zakon-o-nacionalnom-preventivnom-mehanizmu-za-sprečavanje-mučenja>

³³ National Preventive Mechanism, Report on the Performance of the Activities of the National Preventive Mechanism for 2019, page 30, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-national-preventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

³⁴ Ombudsperson Act (*Zakon o pučkom pravobranitelju*), Official Gazette nr. 76/12

³⁵ National Preventive Mechanism, Report on the Performance of the Activities of the National Preventive Mechanism for 2019, page 3, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-national-preventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

³⁶ Ibid., page 31

³⁷ CPT Annual Report for 2020, p. 15-16, link available at: <https://rm.coe.int/1680a25e6b>

the reasons for their detention because they had been given documents in Croatian which they could not understand, and had been unaware of their right to have a lawyer or to challenge the decision to detain them” (§258). This points out to one of the systematic issues with serious consequences which could be mitigated if the free legal aid would be available to the detained third-country nationals. Moreover, with available free legal aid, persons would have protection against the risk of arbitrary detention and deprivation of liberty that might amount to the ill treatment, as well as a possibility to reach legal remedies, including the application to the ECtHR - as these are all violations found in the relevant judgement.

45. According to the relevant provisions of the Aliens Act³⁸, a third-country national who has been staying illegally and has been subjected to the procedure for issuing a decision related to return or who has been issued with a decision related to return against which no appeal is admissible but administrative dispute may be instituted is entitled to free legal aid. However, third-country nationals are entitled to free legal aid only if they fulfil one of the following conditions: that they are born in Croatia; that they have been living in the country for more than one year; that they have family who resides in Croatia or are Croatian nationals; or be vulnerable persons³⁹.
46. The above-mentioned implementation derives from the very narrow interpretation of the Aliens Act. Even though free legal aid needs to be available to third-country nationals in the return procedures, in practice, the majority of persons in the return procedures, who are in most cases deprived of liberty, do not have access to any legal representation.
47. It is important to note that the third-country nationals deprived of liberty in most cases do not speak Croatian nor are familiar with the Croatian legal system - which makes it impossible for them to file a lawsuit or represent themselves. Making the right to free legal aid inaccessible to the foreigners necessarily means that they will be deprived of other crucial rights if they do not have access to legal representation, and no possibility to challenge the decision on deprivation of liberty nor the return/expulsion decision issued against them. Consequently, they do not have effective access to justice.
48. The relevant reports show that there are serious lacks in the information provided to detainees, while the reluctance to change the by-laws which would bring the needed guarantees, shows lack of the political will to ensure the implementation of these rights. Moreover, translation of key legal documents, as well as interpretation during consultations with the lawyer and during proceedings must be provided to the person in the language they understand. According to the Ombudsperson's Activity Report for 2021, there is a noticeable neglect of the right of foreign citizens in detention to be informed about their rights and obligations in relation to the possibility of contacting consular or diplomatic missions of the country of which they are citizens and to be informed about their rights in languages they understand.⁴⁰

³⁸ Aliens Act (Zakon o stranicima), OG 133/20, english version 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)

³⁹ Article 198 of the Aliens Act

⁴⁰ Ombudsperson's Activity Report for 2021, p. 181, link available at: <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/>

F. Measures aimed at ensuring unhindered contact between the lawyers, NGOs and persons in the return procedures

49. According to international standards, detained third-country nationals have the right to unimpeded access to a lawyer, without restrictions and censorship from the very outset of their deprivation of liberty and at all stages of the proceedings.⁴¹ However, the situation in Croatia is particularly worrying because free communication and visiting periods are limited and hampered due to administrative obstacles. Legal assistance and visits provided by lawyers, including NGOs for third-country nationals, are far more restricted than in the prison regime.
50. Specifically, any visitor, including lawyers and legal aid providers (who have not yet obtained a power of attorney), needs to officially and in writing announce their visit to the *Centre for Foreigners Ježevo* at least two days before the planned visit, while the visit can last a maximum of one hour, which can be prolonged only if the Chief of the Reception Centre allows.⁴² Such administrative and practical obstacles for lawyers to establish contact with their detained clients are unacceptable and violate Article 6 of the European Convention on Human Rights. Moreover, the Ombudswoman, in her amendments to the *Ordinance on the Stay in the Reception Centre for Foreigners and the Manner of Calculating the Costs of Forced Removal*, assessed that such limitations “...may amount to a violation and restriction of the autonomy and independence of the legal service guaranteed in Article 27 of the Constitution of the Republic of Croatia”⁴³.
51. Additionally, a lawyer who comes to the centre to obtain a power of attorney from a foreigner should not be considered a visitor, because due to deadlines in the return process, the requirement to wait for the meeting for two days might hamper a detainee’s access to justice. It is important to note that the deadlines in these procedures are short, sometimes even five or eight days, so this requirement cannot be deemed in any case reasonable or justified.
52. The National Preventive Mechanism stressed the difficulties for migrants to access legal representation for various reasons. Migrants are not adequately informed about their rights, including the right to file complaints. Also, it was found that existing complaint mechanisms are insufficiently effective, as they do not entail investigative procedures and the possibility of issuing sanctions while respecting the principle of independence, impartiality and confidentiality⁴⁴.
53. Further on, this administrative obstacle creates even more limitations in accessing legal aid in practice, because it opens the possibility for arbitrary actions of the authorities. The

⁴¹ See for example: United Nations, Standard Minimum Rules for the Treatment of Prisoners, Rules 41, 61, available at: https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf; CPT, Factsheet: Immigration detention, March 2017, available at: <https://rm.coe.int/16806fbf12>

⁴² Ordinance on the stay in the reception centre for foreigners and the manner of calculating the costs of forced removal, Official Gazette 145/2021, Art. 19 paras 3 and 6

⁴³ The Report on conducted consultation, op.cit., comment 24

⁴⁴ National Preventive Mechanism, Report on the Performance of the Activities of the National Preventive Mechanism for 2019, page 29, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-national-preventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

manner in which this administrative limitation is sometimes used to completely deny access to the reception centre was described in the FRA Report *Legal aid for returnees deprived of liberty*⁴⁵. FRA shared an experience of one lawyer in Croatia who reported that the third-country national they were supposed to visit was removed within this gap, namely between the day they announce their visit and the day when the meeting was scheduled. As summed up by FRA "...difficulties in scheduling, or the logistics of phone consultations or in-person appointments, resulted in some cases in removal before consultations took place".⁴⁶

G. Measures aimed at protecting and empowering human rights defenders

54. Threats, intimidation and criminal charges against human rights defenders that are active in Croatia in the field of protecting the rights of refugees and other migrants is particularly worrying and still ongoing.
55. In early April 2017, the Centre for Peace Studies started escorting refugees to Zagreb police stations after receiving information on numerous pushback incidents, to monitor and support refugees' right to seek asylum in the country. A week after CPS had started escorting refugees and monitoring the procedures, employees and volunteers testified to receiving threats from police officers that if they continued with it, legal procedures would be initiated against them and against the organisation.⁴⁷
56. The pressure against human rights defenders, particularly against the Centre for Peace studies and Are You Syrious (AYS) organisations, escalated after MAD.H.'s death. Extremely legally dubious and unreasonable actions of the police towards the work of the Centre for Peace Studies and attorneys (Law firm Jelavić & partners) in the case started to happen (see § 311, 312, 313 of the judgement).
57. In April 2018, after the CPS had announced a press conference about the pressure that the Croatian MoI puts on the attorney's office that protects refugees, as well as against the activists of organisations providing legal and humanitarian protection to refugees, the police summoned CPS and AYS activists to attend a police interview at the exact time of the press conference⁴⁸. It could be concluded that pressure and actions of the authorities were carried out in an attempt to sabotage, intimidate or impede their work and to limit the freedom of expression of human rights defenders.

⁴⁵ FRA, *Legal aid for returnees deprived of liberty*, link available at: <https://fra.europa.eu/en/publication/2021/legal-aid-returned-detainees>

⁴⁶ *ibid.*, p.37.

⁴⁷ Human Rights House Zagreb, *Thematic Report: Human Rights Defenders in Croatia: Obstacles and Challenges*, December 2018, page 25, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2019/01/KLJP_HumanRightsDefendersInCroatia_edit1801.pdf

⁴⁸ Centre for Peace Studies, *Police pressure on human rights activists and lawyers protecting the refugees in Croatia*, 18 April 2018, link available at: <https://www.cms.hr/en/azil-i-integracijske-politike/sabor-mora-oformiti-istravno-povjerenstvom-nad-mup-om>

58. Moreover, in order to delegitimize the work of human rights defenders, especially when they criticise authorities, the Minister of the Interior Mr. Božinović, publicly stated⁴⁹ that CPS and AYS have been handing out to migrants in Serbia telephone numbers, instructions, money and direction as to how to enter Croatia, thus publicly associating them with the illegal activities.
59. In October 2018, the Ministry of the Interior denied⁵⁰ CPS access to Reception Centres for asylum seekers, refusing to extend the cooperation agreement to an organisation that has provided support to refugees and asylum seekers for the past 15 years. Mol's explanation for such a decision is the alleged lack of physical space in which activities could be carried out, claiming that there are enough other engaged organisations in the Reception Centres.
60. The Mol sought to ban the work of AYS as part of initiated misdemeanour proceedings against their volunteer for allegedly assisting the Hussiny family in the illegal crossing of the border⁵¹, although the activist provided assistance following Article 43 of the Foreigners Act. Namely, in 2021, the Are You Syrious activist was fined HRK 60,000 and HRK 1,300 in court costs for helping the Hussiny family from Afghanistan 'illegally crossing the border' in 2018, even though he intended to facilitate access to asylum.
61. The criminalisation of human rights defenders continued in 2021. Intimidation and pressure were particularly directed toward the human rights defender Ms. T.T., the former AYS employee. Since 2018, she vocally and publicly demanded justice for M.H. and Hussiny family and publicly criticised the police conduct. For that, she was questioned by the police, police officers were sent to her parent's address at night, and officers who were regularly entering the premises of AYS without identification were asking her inappropriate questions about her ethnicity in front of her work colleagues and beneficiaries⁵².
62. On 12 January 2021, Mr. O.E.M., the partner of Ms. T.T., had his refugee status in Croatia revoked after he refused to become an informant for the Security and Intelligence Agency. This arbitrarily issued decision was also marked with a level of secrecy, which means that neither Omer nor his lawyer was able to access the file and challenge the decision. Furthermore, he was instructed to voluntarily leave the European Economic Area (EEA)

⁴⁹ Novilist.hr, SERIOUS ACCUSATIONS Minister Božinović claims that CMS and ASY in Serbia gave migrants money and instructions for illegal entry into Croatia, 20 April 2018, link available at: <https://www.novilist.hr/novosti/hrvatska/teske-optuzbe-ministar-bozinovic-tvrdi-da-su-cms-i-asy-u-srbiji-davali-migrantima-novac-i-upute-za-ilegalni-ulazak-u-hrvatsku/>

⁵⁰ The Centre for Peace Studies, Mol denies the access to Reception Centres for asylum seekers!, 12 September 2018, link available at: <https://www.cms.hr/en/azil-i-integracijske-politike/mup-izbacuje-cms-iz-prihvatilista-za-trazitelje-azila>

⁵¹ Border Violence Monitoring Network, Accused of Solidarity, A Report on Incidents of Criminalisation Targeting BWMN Member Organisations and their Team Members in 2021, page 19-22, link available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>; and Frontline Defenders, [PRESSURE ON FAMILY MEMBER OF MIGRANT RIGHTS DEFENDER TAJANA TADIĆ](#), 21 July 2021.

⁵² Border Violence Monitoring Network, Accused of Solidarity, A Report on Incidents of Criminalisation Targeting BWMN Member Organisations and their Team Members in 2021, page 19-22, link available at: <https://www.borderviolence.eu/wp-content/uploads/Criminalisation.pdf>

within 30 days or he will be forcibly removed. Fearing deportation to Iraq, Mr. O.E.M. had no choice but to leave Croatia.⁵³

63. According to the 2022 Liberties Rule of Law Report⁵⁴, criminalisation of the work of CSOs in Croatia is particularly experienced towards organisations and activists who are active in the field of protecting the rights of refugees and other migrants, but also citizens who offer humanitarian aid to irregular migrants in Croatia. This criminalisation involves formal criminalisation (with drastic fines) and informal criminalisation (using harassment and intimidation).

V. Conclusions and recommendations

64. Given the above-presented information, HRHZ and CPS would like to kindly ask the Committee of Ministers of the Council of Europe to take into account the described facts when assessing all the measures necessary to ensure full and effective implementation of the M.H. group of cases and to **transfer this group of cases to enhanced supervision** because of the ongoing systemic practice of violent illegal pushbacks and denying migrants the access to the asylum system.

65. We would furthermore like to invite the Committee of Ministers to urge the Croatian Government to take further steps to **stop violent illegal pushbacks from Croatian territory** and to propose measures so that effective investigations are carried out into police misconduct in compliance with national and international standards, particularly with the Convention requirements. To this end, the following recommendations should be issued to the authorities of the Republic of Croatia.

66. For **Individual measures**, it is necessary to:

- a. Reopen the investigation into the death of MAD.H. and conduct effective investigations into torture, degrading treatment, abuse of power and collective expulsions from Croatian territory relating to the violations found by the Court.
- b. Ensure that the amount set by the Court is fully paid to the applicants.

⁵³ Frontline Defenders, [PRESSURE ON FAMILY MEMBER OF MIGRANT RIGHTS DEFENDER TAJANA TADIĆ](#), 21 July 2021.

⁵⁴ Liberties Rule of Law Report 2022, pages 129-134, link available at:
<https://dq4n3btxm8c9.cloudfront.net/files/q3U2FR/LibertiesRuleOfLawReport2022.pdf>

67. For **General measures**, it is necessary:

- a. To unambiguously condemn and stop violence and ill-treatment against migrants and to promptly implement CPT's recommendation to take vigorous steps to stamp out ill-treatment of foreign nationals deprived of their liberty by the police and to ensure the effectiveness of any investigations into allegations of ill-treatment by police officers⁵⁵.
- b. To implement CPT' recommendation for the Croatian government to introduce robust accountability and oversight mechanisms for all police operations related to the interception and diversion of migrants. More specifically, it recommends that the Croatian Police Directorate introduce a mandatory instruction on the detailed recording of every "interception" and "diversion" operation involving migrants, which at a minimum should include the time, precise location and a brief description of each intervention, the officers involved, the means used to "intercept" or "divert" migrants⁵⁶, their identification in line with Article 7 of the Schengen Borders Code, whether any means of restraint or use of force was applied, and the outcome of the intervention.
- c. To ensure that the Independent Border Monitoring Mechanism is independent in law and in practice and to have sufficient resources and a robust mandate to monitor border-related operations anywhere on the territory of a state. It should be capable of ensuring that all documented human rights violations are promptly and thoroughly investigated and of effectively pursuing accountability for those responsible for violations and access to justice for anyone whose rights are violated.
- d. To ensure that the mechanism is credible and effective, it needs to be financed directly, exclude the Ministry of the Interior and, instead, involve independent institutions and organisations that have monitoring experience – such as civil society organisations, UN agencies, and national human rights institutions – that are not financially dependent on the government, through a public call.
- e. Furthermore, the mechanism needs to have unannounced access to the green borders and to the information system of the Ministry of the Interior in order to monitor possible human rights violations effectively.
- f. To ensure that the Ombudswoman under her mandates has at any time unhindered access to documents, information, facilities, border areas and any places where victims of human rights violations may be found in order to effectively identify and investigate potential police misconduct.

⁵⁵ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, published on 3 December 2021, paras. 19 and 25, link available at: <https://rm.coe.int/1680a4c199>

⁵⁶ Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), 30th General Report of the CPT (1 January-31 December 2020), pages 15-16, link available at: <https://rm.coe.int/1680a25e6b>

- g. In order to ensure effective access to justice, it is necessary to ensure access to free legal aid to the persons subjected to the procedure of issuing a decision related to the return or issued with a decision related to return against which no appeal is admissible but administrative dispute may be instituted, in practice and in law.
- h. In order to ensure access to procedural and material rights as well as access to justice, it is necessary to amend the *Ordinance on the stay in the reception centre for foreigners and the manner of calculating the costs of forced removal* as was proposed by the Centre for Peace Studies, Ombudswoman and the Croatian Law Centre during e-consultations. The amendments should include shortening the prescribed period of announcement of visitors to one day while removing this requirement for the legal aid providers. Moreover, the third-country nationals that are detained in the reception centres to have an unlimited number of free calls to their legal aid provider and that there is no time limit on the duration of consultations with their legal aid providers while visiting (given that it is within the working hours)⁵⁷.
- i. For the IBMM to set measurable targets and periodic reviews, increase transparency, increase and reinforce unannounced visits, ensure access to justice and accountability, assess training needs, and ensure complementarity with other mechanisms, in line with the recommendations delivered by the human rights organisations⁵⁸ to the monitoring mechanism's Advisory Committee in November 2021 and in May 2022 in regard to the functioning of the Independent Mechanism Board⁵⁹.
- j. To ensure access to NGOs to detention centres and other places where refugees and other migrants are detained.
- k. To ensure that human rights defenders, particularly those protecting migrants and refugees are not criminalised and stigmatised due to the nature of their work. Therefore, the Government should take an active role in implementing standards that ensure a safe environment for human rights defenders⁶⁰.
- l. To ensure that the Government does not interfere with the work of CSOs or use means to pressure them in a way that compromises their independence and autonomy⁶¹.

Sincerely,

⁵⁷ The Report on conducted consultation, op.cit., comments 22-29

⁵⁸ Amnesty International (AI), Are You Syrious (AYS), Border Violence Monitoring Network (BVMN), Centre for Peace Studies (CMS), Danish Refugee Council (DRC), Human Rights Watch (HRW), International Rescue Committee (IRC), Save the Children International (STC).

⁵⁹ Amnesty International, Croatia/EU: Strengthen Border Monitoring System – Effective Mechanism Needed: Independent, Broad Mandate, Adequate Resources, 3 August 2021, link available at: <https://www.amnesty.org/en/documents/eur64/4546/2021/en/>

⁶⁰ Human Rights House Foundation, Rights of Defenders, Principles and Standards Protecting and Empowering Human Rights Work, 2018, page 9, link available at: https://www.kucaljudskihprava.hr/wp-content/uploads/2018/12/RightsOfDefenders_PRIP.pdf

⁶¹ Ibid., page 13.



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