



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

Zagreb, 26 July 2024

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 responds to the Government's Action Plan of 31 May 2024. This submission aims to inform the Committee of Ministers that the proposed measures are insufficient for appropriately implementing the judgement. Namely, individual measures have been ineffective and inadequate, as further elaborated below. Regarding the general measures, in the following paragraphs, the Human Rights House Zagreb and the Centre for Peace Studies provide evidence which shows that structural and complex problems amounting to systematic human rights violations have continued and are still ongoing in Croatia. The general measures proposed by the Government do not bring any real and systemic changes necessary for fully implementing the European court's judgement, as we will demonstrate in our submission.
2. This submission is prepared by the *Human Rights House Zagreb* and the *Centre for Peace Studies*, both civil society organisations registered in Croatia. *Human Rights House*

*Zagreb*¹ (HRHZ) is a human rights watchdog and advocacy organisation founded in 2008 as a network of civil society organisations with the goal of protecting and promoting 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 and Herzegovina, and holds related legal expertise.

II. Case Summary

3. 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.
4. 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 but 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 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 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 to limit family detention as much as possible, which resulted in a violation of Article 5 § 1 of the Convention.
5. The case additionally concerns the denial of contact with the applicants' lawyer (even after lodging a Rule 39 request in that connection), the initiation of the criminal investigation against their chosen lawyer regarding a power of attorney, and the infringement of communication between applicants and their lawyer. The Court concluded that the State

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

² <https://www.cms.hr/en>

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

6. 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.
7. In 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. Bringing the violations to an end

8. The authorities haven't taken appropriate measures to bring the violations to an end and redress the applicants.

1. Effective investigation of other crimes committed

9. In response to the European Court's judgement, the State Attorney General's Office has, on 25 April 2022, ordered the re-examination of the case of the death of MAD.H., as the Court has found the previous investigation to be ineffective.
10. The **reopened investigation was again ineffective**, as the following paragraphs will demonstrate, and it was closed with the decision from 24 May 2024 - more than two years after the ECtHR's judgement, which again rejected the criminal complaint.
11. The European Court of Human Rights (ECtHR), in paragraphs 268-274 of its judgement, accepted the applicants' claims that Croatian police unlawfully returned the first applicant and her six children to Serbia on the night of November 21, 2017, without assessing their individual circumstances³. This confirmed the applicants' presence on Croatian territory, direct interaction with Croatian police, and unlawful expulsion. Consequently, the ECtHR found a violation of Article 4 of Protocol No. 4 to the Convention. The Croatian investigative bodies should have adequately addressed the same arguments.
12. Furthermore, from the circumstances and violations established by the Court, it is to be concluded that there is a reasonable doubt that the applicants suffered crimes punishable

³ The ECtHR noted, "The Government did not present any claim that could refute the above-mentioned prima facie evidence provided by the applicants."

under Croatian Criminal Law.⁴ Besides the complaint regarding the death of MAD.H., the following crimes were also listed in the criminal complaint: 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 judgment) regarding the prohibition of torture and other cruel, inhuman and degrading treatment under Article 104 of the Croatian Criminal Act, as well as the abuse of power under Article 291 of the Croatian Criminal Act.

13. Even after the ECtHR judgement, the Office for the Suppression of Corruption and Organised Crime (USKOK) failed to collect crucial evidence or take appropriate actions to clarify the incident and identify those responsible. Consequently, the repeated investigation lacked effectiveness per ECtHR standards in *Nicolae Virgiliu Tanase v. Romania*⁵. More importantly, USKOK's investigation did not follow (or completely ignored) the specific guidelines given in paragraphs 149-164 of the *M.H. and Others v. Croatia* judgement. In addition to the ECtHR judgement and the adopted Action Plan, the investigation guidelines also stem from the dissenting opinion of three Constitutional Court judges⁶ of the Republic of Croatia and the Ombudsperson's address to the Ministry of the Interior from January 2018.
14. Although the Law on Criminal Procedure⁷ (article 206(b)) clearly states that the state attorney is obliged to decide on a criminal report within six months from the date of entry of the report in the Register of Criminal Reports, it took the State Attorney General's Office **more than two years to decide on the complaint** which can hardly be considered as acting with due diligence and satisfying the criteria for the investigation to be considered efficient.
15. The only communication from USKOK to the applicants was a request for information about the first and second applicants as parents of the minor MAD.H. summons for their re-examination and a letter dated 31 October 2023. Moreover, USKOK did not involve the applicants in the conduct of other evidentiary actions (such as witness questioning) during which they could actively participate by asking questions.
16. Paragraph 17 of the Action Plan states that on 31 October 2023, the prosecutors informed the applicants' lawyer of all investigative steps taken together with the possibility of

⁴ Croatian Criminal Act (Kazneni zakon), Official Gazette nr. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22

⁵ According to the standards set by ECtHR in the *Nicolae Virgiliu Tanase v. Romania* case an efficient investigation in cases involving the loss of life must be (i) performed at the government's initiative, (ii) adequate, (iii) thural, (iv) performed in a reasonable deadline and (v) carried out within a reasonable time by formally and effectively independent bodies.

⁶ Constitutional Court of Croatia, judgment nr. U-III Bi-1385/2018, 18.12.2018, available here: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C125836800452D11>

⁷ Croatian Criminal Act (Kazneni zakon), Official Gazette nr. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22

accessing the case file and proposing additional investigative steps. However, the applicants' lawyer already did it with a submission filed on 12 June 2018. A list of investigative steps she proposed included: 1) questioning the 13th applicant, Rashid H., 2) conducting a polygraph examination of the suspects, 3) obtaining orders from the Ministry of the Interior to border police officers on how to handle asylum seekers, 4) conducting telecommunications and other expert analysis of thermal cameras to determine whether there were recordings on November 21, 2018, whether the thermal cameras could store recordings, and if and when specific recordings, especially those from November 21, 2018, were deleted, 5) questioning witnesses, Ministry of the Interior employees, about handling and storing thermal camera recordings, 6) obtaining GPS locations of police vehicles on the day of the child's death, and 7) evaluating reports from NGOs on violations of the readmission agreement, nor the ECtHR's findings related to the violation of the prohibition of collective expulsion of foreigners. USKOK never performed any of these investigative actions.

17. The ECtHR guidelines emphasised the need for concrete evidence to locate victims and police officers accurately. They highlighted that the police station's report on unrecorded thermographic camera data required further verification and expertise. USKOK was instructed to investigate the "loss" of these recordings through telecommunication and expert examinations and to question police officers involved. However, **USKOK uncritically accepted police reports claiming no recordings existed without independent verification**, despite ECtHR instructions. Similarly, as noted in paragraph 11 of the Action Plan, USKOK accepted police reports on the impossibility of obtaining location and movement data without independent expert verification. These actions raise serious concerns about the formal and effective independence of the investigation.
18. Despite similar insufficiencies in the previously performed investigation being disputed before the ECtHR, USKOK showed the same superficiality in handling personal evidence. For instance, USKOK highlighted "discrepancies" in the statements of Rashid H. and Muslima H., claiming these prevent establishing well-founded suspicion. Muslima stated that Rashid and another person communicated with Croatian police and immediately requested asylum, while Rashid did not mention speaking with the police or requesting asylum. This is problematic not only because these are not contradictions at all but also because USKOK never questioned Rashid, even though, as pointed out by the ECtHR, it has been undisputed that he was constantly present. If USKOK believed there were inconsistencies in key statements, according to the standards of effective investigation, it should have re-examined Rashid to clarify them. Instead, USKOK only reviewed a note from Serbian authorities and hastily concluded the applicants' lack of credibility.
19. Conversely, USKOK once again **disregarded significant contradictions in the statements of the accused police officers** and accepted their testimonies without critical evaluation. This occurred despite the ECtHR previously noting that the suspects had

altered their statements during the investigation, and several judges of the Croatian Constitutional Court deemed it highly unlikely that the migrants would return to Serbia without attempting to seek asylum.

20. As stated in paragraph 14 of the Action Plan, on 30 September 2022, authorities interviewed the translator from the 2018 hearing. She noted discrepancies in the applicant's statements without attributing them to translation issues. However, USKOK concluded from her testimony that the statements were “confusing and contradictory in content and to each other”, ignoring that these issues might indicate insufficient understanding on both sides. Furthermore, the translation was done in Farsi in 2018 but in Pashto in 2022 at the victims' request.
21. In dismissing the criminal complaint, USKOK explained the contradictions between the doctor's statement and the police officers' statements by arguing that individuals seen by the doctor were not necessarily part of M.H.'s group, as other migrants could have been present at Tovarnik Railway Station. However, **this claim lacks supporting evidence**, which could be easily verified by accessing Tovarnik police station's case files.⁸
22. Paragraph 15 of the Action Plan mentions that USKOK summoned the victims' lawyer to re-interview the first and second applicants; it fails to mention that on 9 November 2022, the applicants' lawyer arrived at the prosecutor's office and gave a statement to the record requesting for the 1st applicant – the child's mother, not be questioned unless truly necessary citing potential harm to her well-being since she has previously suffered from severe physical problems after police questioning. Despite this, the request was denied.
23. On the same occasion, the applicants' lawyers' request to receive a copy of that written statement was denied thus obstructing her work.
24. On 20 April 2023, the first and second applicants were re-examined with the same translator who they couldn't understand in 2018, causing further trauma. This **violated the Directive 2012/29/EU on minimum standards for victims of crime**.
25. Paragraph 16 of the Action Plan states that “the investigators turned to their Serbian counterparts in searching for information on them accusing the Croatian side of being in breach of the mutual agreement between two States. It states the Serbian authorities noted that no meeting or similar event was held in this respect, and they received no

⁸ The identity and the status of people on the move located in the police vehicle when the doctor arrived could have been established by: (i) requesting access to the official notes of the Tovarnik Police Station or (ii) the decisions issued by the police officers of the Tovarnik Police Station on that date. The Foreigners Act mandates that any person found in unlawful residence, after the completion of administrative proceedings, must be issued a decision on return or expulsion. The absence of such decisions would mean that individual proceedings against these persons in unlawful residence were not conducted, which would make their expulsion from the territory of the Republic of Croatia illegal, confirming systemic illegal practices of collective expulsion at Croatian borders.

information from the Serbian side. The ECtHR stated that investigators ignored Serbia's findings that Croatia forcibly returned the first applicant and her children, violating the readmission agreement. Three judges of the Constitutional Court of the Republic of Croatia pointed out that **this statement was in the case file from the previous investigation.**

26. In dismissing the criminal complaint, USKOK stated that the documentation from the Serbian Ministry of Justice lacked information on deterrence practices and readmission agreement.⁹ However, the absence of expected documentation (such as records of handing over persons to Serbian police) indicates a violation of the agreement.
27. **From all the above, it is clear that USKOK did not act in continuing the investigation, following the obligations that the Republic of Croatia assumed in implementing the ECtHR judgement in the applicants' case.**

B. The applicants' redress

28. The ECHR reiterates that when a loss of life occurs under circumstances potentially implicating state responsibility, Article 2 obligates the state to ensure an appropriate judicial and any other responses to enforce the legislative and administrative framework protecting the right to life and to address and punish any violations (Öneryıldız v. Turkey, application no. 48939/99, judgement of 30 November 2004).
29. The consequences of a violation for the applicant are only sometimes suitably redressed through the mere award of a sum of money by the Court or the finding of a violation. Depending on the circumstances, the fundamental obligation to ensure as far as possible *restitutio in integrum* may therefore call for additional measures.
30. For the state to ensure as far as possible *restitutio in integrum*, it is noted that on October 3, 2022, the applicants submitted a request to the Municipal Civil State Attorney's Office in Zagreb for an amicable settlement of the dispute according to Article 186(a) of the Civil Procedure Act, seeking the payment of fair monetary compensation for non-pecuniary damages in the amount of 6,000,000.00 kunas / 796,336.85 euros. However, by decision number XXXII N-DO-653/2022 of February 9, 2023, the mentioned body rejected such an unfounded request.

⁹ Agreement between the Government of the Republic of Serbia and the Government of the Republic of Croatia on Surrender and Admittance of Persons whose Entry or Stay is Illegal, with the Protocol (Official Gazette – International Treaties, No. 1/2010);

C. Effectiveness of individual measures

31. In deciding not to conduct a separate assessment of this part of the complaint, the ECtHR specifically emphasised that it did so considering the ongoing obligation of domestic authorities under Article 2 of the Convention to conduct an effective investigation into alleged violations of the material aspect of this article to ensure that crimes threatening life do not go unpunished. However, almost seven years after MAD.H. lost her life at the Croatian border crossing, there were no sanctions for her death whatsoever.
32. Therefore, not only the procedural aspect of Art 2 of the ECHR continues to be violated but also its material aspect because, even after the ECtHR judgement, this violation remains entirely unresolved.
33. Furthermore, despite the ECtHR stating that the applicants' effective exercise of their right to individual application was impeded by restricted contact with their chosen lawyer and the pressure exerted on the lawyer to discourage the pursuit of the case, constituting a breach of Article 34 of the ECHR, no official investigation was conducted into the matter. Consequently, no one was held responsible or sanctioned for these violations.
34. The culture of cover-up within the institutions of the Ministry of Interior, mutual protection of police officers, and destruction of evidence generate severe consequences for society because it leads to impunity for responsible persons, namely police officers. The atmosphere of exemption from responsibility for otherwise punishable acts has significant negative implications for society and indeed represents behaviour prohibited by the Convention.
35. Since this case is in many respects a unique and difficult case, the Committee should consider with particular care all relevant aspects of individual measures. Fair compensation was paid to the parties by the State with some unnecessary complications. With an especially unjustified delay, the state paid the attorney's cost. Repeating the procedure is doomed to failure due to the successful destruction of evidence and further non-transparent conduct of the investigative bodies. Given that the fundamental obligation is to ensure *restitutio in integrum* to the greatest extent possible, there are undeniable indications that it is justified to award the family the requested compensation and all this as a form of implementation of the judgement of the European Court.

IV. General Measures

A. Measures addressing the violation of Article 2 of the Convention in its procedural limb

36. We previously deemed that the measures proposed by the Government needed to be revised to ensure the investigations' efficiency. Following the conducted investigation and dismissal of the criminal complaint, we emphasise again that the proposed and conducted measures were not sufficient.
37. The measures proposed by the Government do not include any novelties or new measures that the State should implement.
38. As per the data presented in the doctoral thesis of the human rights lawyer and expert Lidija Horvat¹⁰ published in 2023, criminal prosecution against civil servants by criminal prosecution bodies is initiated very rarely, in a negligible number of cases, and criminal complaints of victims in such cases are rejected in more than 95% of cases. Additionally, the thesis includes a case study leading the author to conclude that **“one can rightly suspect that the State Attorney's Office, perhaps due to its functional connection with the police, has problems with the independent and efficient conduct of investigations against police officers, i.e. employees of the judicial police.”**
39. In the ten years from 2010 to 2020, neither the four county courts in Croatia nor the Municipal Criminal Court in Zagreb – were able to find a single case brought for the commission of the crime of torture, cruel and humiliating treatment or punishment¹¹ despite various reports submitted on the topic from respective national and international civil society organisations, 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 police officers.

1. *Effective domestic remedy ensuring the overall efficiency of investigations*

40. In paragraph 26 of the Action Plan, the Government notes that the European Court found constitutional complaints effective remedies for the allegations concerning ineffective investigations (in the case *Kušić and Others v. Croatia*).¹² However, several recent ECtHR judgements demonstrate that ineffective investigations persist as a problem within the Croatian justice system.

¹⁰ Horvat, L. (2023), Okrutno, nečovječno i ponižavajuće postupanje prema osobama lišenima slobode - hrvatsko iskustvo u kontekstu međunarodnih standarda zaštite ljudskih prava (Cruel, Inhuman and Degrading Treatment of Persons Deprived of their Liberty: Croatian Experience in the Context of International Human Rights Standards), Doctoral thesis, Zagreb: University of Zagreb, Faculty of Law, page 232 available at <https://repozitorij.pravo.unizg.hr/islandora/object/pravo:5601>

¹¹ Ibid. page 243

¹² *Kušić and Others v. Croatia*, App. No. 71667/17, inadmissibility decision of 10 December 2019

41. In 2022 the judgement was brought in [J.I. v. Croatia](#) case, the Court found that the authorities failed to effectively investigate a particularly vulnerable rape victim's allegation of a serious threat to her life (§§99-100).
42. In [Babić v. Croatia](#), the Court found that the authorities never opened an official criminal investigation to establish how the applicant's injuries had been sustained (§26). The judgement in the case [Daraibou v. Croatia](#) has again found a breach of Article 2 due to the ineffectiveness of investigation in a case involving the death of three foreign citizens detained in a police station and severe injuries to the fourth.
43. The most recent judgement was delivered in June 2024 in the [T.V. v. Croatia](#) case, where the Court established a violation of Article 2 - Right to life in a procedural aspect due to the ineffective investigation. Contrary to the ECtHR stance, on 12 July 2023, the Constitutional Court dismissed the applicant's complaint, finding that the investigation had been independent and thorough, one of the judgements cited in the Government's submission (U-IIIBi-5032/2021).
44. Furthermore, in April 2023, a group of refugees who had endured a particularly brutal illegal expulsion from Croatia to Bosnia and Herzegovina (BiH) filed a new lawsuit with the Constitutional Court of the Republic of Croatia. The lawsuit challenges the ineffective and inadequate investigation into a pushback case that included severe violence and sexual abuse in October 2020, for which a verdict has yet to be reached.
45. **Although a domestic remedy exists in the form of a Constitutional lawsuit, recent practices by the ECtHR raise serious questions about its effectiveness.** All of the above demonstrates that the issue of ineffective investigation requires further measures to achieve guarantees for rights protection prescribed by the Convention.

B. Measures addressing the violation of Article 3 of the Convention in its substantive limb

46. The European Court found that in 2018, the detention of the applicant children in a reception centre with prison-type elements over a period of two months and fourteen days subjected them to treatment that exceeded the threshold of severity required to engage Article 3 of the Convention.

1. Judicial review of detention orders

47. In 2023, the Croatian Parliament amended the International and Temporary Protection Act, mandating that administrative courts must examine, *ex officio* or at the request of the asylum-seeker, restrictions on freedom of movement imposed by the Ministry of the Interior at regular, "reasonable" intervals. To prevent legal uncertainty, the Ombudsperson

recommended in the 2022 Report that these reviews be regulated similarly to those for irregular migrants under the Law on Foreigners. However, this recommendation has yet to be implemented.

48. According to the AIDA Country Report for Croatia for 2023¹³ a concerning practice has been observed within MoI administrative bodies during the decision-making process regarding the restriction of freedom of movement of at least two identified cases of applicants for international protection, where the Foreigners Act was incorrectly applied, to maintain detention beyond the six months allowed under the Act on International and Temporary Protection¹⁴. In response, acting at the request of the asylum-seeker, the administrative court annulled these decisions.

2. Measures aimed at improving overall material conditions in reception and accommodation centres, especially regarding the accommodation of children

49. In 2023, the Ombudsperson paid visits to the reception centres for foreigners in Zagreb and Kutina, where she examined the conditions of accommodation, treatment and protection of their rights. As stated in their Annual Report for 2023¹⁵ during both visits to the Reception Centre in Zagreb, she found it **overcrowded**. On the day of the visit, there were over 892 individuals present, including 36 families with children, while the total accommodation capacity was up to 600 people. All accommodation rooms were full, so additional rooms were repurposed for accommodating seekers, and mattresses were laid on the floor in the corridors. Nearly 300 asylum seekers accommodated in auxiliary spaces or corridors had access to five toilets and two showers. Consequently, it was not possible to maintain an adequate level of cleanliness. Common areas were dirty, with bags of trash or food scattered throughout the facility and its surroundings.

50. Therefore, during this period, seekers stayed in difficult conditions and were exposed to hygiene, health, and other risks, particularly infectious diseases, due to frequent occurrences of scabies and bed bugs. As a result, seekers faced security risks and were placed contrary to Directive 2013/33/EU¹⁶ and the Law on Foreigners¹⁷.

51. The above raises additional concerns because civil society organisations are restricted from accessing reception centres for asylum seekers and detention centres for foreigners.

¹³ AIDA Croatia Country Report 2023, last updated on 10 July 2024, available at https://asylumineurope.org/wp-content/uploads/2024/07/AIDA-HR_2023-Update.pdf

¹⁴ Act on international and Temporary protection, Official Gazette No. 70/15, 127/17, 33/23

¹⁵ Ombudsperson's Annual Report for 2023, available at <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/>

¹⁶ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

¹⁷ Law on Foreigners, Official Gazette No. 133/20, 114/22, 151/22

52. The Croatian Red Cross (HCK) and Médecins du Monde (Mdm) were the only organisations in the reception centres in Zagreb and Kutina. However, the Ombudsperson's report states that their services were suspended from May to the end of August 2023 due to delays in tendering procedures. It was only in December 2023 that a new public tender for AMIF project funding was announced, allowing Mdm to resume its work fully.
53. The Ombudsperson's report highlights that to meet national and EU reception and procedural standards, the rise in asylum seekers must be matched by increased officers responsible for handling international protection requests and reception. More officers would enhance the identification of vulnerable asylum seekers. Additionally, to fully uphold the guarantees of Directive 2013/33/EU, the report **recommends allowing NGOs experienced in working with asylum seekers access to reception centres to provide psychosocial support and legal assistance.**
54. Finally, **inadequate accommodation of unaccompanied children continued to be an issue.** According to the Report of the Ombudsperson for Children for 2023¹⁸ most children who were 16 or older were placed in Reception Centres for Applicants for International Protection, together with adults, or in social welfare institutions intended for children with behavioural problems and/or in contact with the law, neither of which is in their best interests.

C. Measures aimed at addressing the violation of Article 5§1 of the Convention

1. Legislative measures and instructions

55. Here, we reiterate the concerns mentioned in Article 3 about the amendments to the International and Temporary Protection Act. To shorten the length of detention, the wording 'reasonable time' should be more precise. It **should be determined specifically** when the administrative court will *ex officio* consider the restriction of movement. For judicial review at the applicant's request, the period within which it is carried out should also be defined.

2. Measures aimed at informing asylum-seekers in a language they can understand

56. In the Annual Report for 2023¹⁹ the Ombudsperson reported **significant gaps in language support during procedural dealings** with asylum seekers and irregular

¹⁸ Ombudsperson for Children's Annual Report for 2023, available at <https://dijete.hr/hr/izvjesca/izvjesca-o-radu-pravobranitelja-za-djecu/>

¹⁹ Ombudsperson's Annual Report for 2023, available at <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/>

migrants in Croatia. Often, English is used, or Google Translate is relied upon, despite the insufficient English proficiency of some involved, hindering their ability to convey crucial information accurately. Additionally, the Administrative Court in Zagreb identified the failure of the border police to secure interpreters or provide telephone translation services as a violation of legal requirements. Specifically, the Act on Foreigners mandates that non-Croatian-speaking third-country nationals illegally residing in the country must receive translations in a language they understand, a requirement consistently overlooked in practice.

57. The Ombudsperson stressed the importance of translation at the very beginning of procedures in police stations because the lack of adequate translation has consequences for exercising people's rights. It has been suggested that translation be professionalised and that training for translators be introduced. If necessary, cultural mediation should be provided during translation to ensure a better understanding of the cultural context.
58. Furthermore, the Ombudsperson's Annual Report for 2023 highlighted **issues with adequate interpretation during asylum procedures**, as reported by both NGOs and lawyers working with asylum seekers.²⁰ Similar problems were also noted in the communication between unaccompanied children and their special guardians.
59. The AIDA Country Report for Croatia for 2023²¹ stated that persons placed in detention centres frequently cited challenges stemming from the **uncertainty surrounding the length of their detention and release date**, along with difficulties in maintaining communication with family members due to the prohibitive cost of international calls.
60. Therefore, it is crucial to **ensure clear and precise information about rights in a language detained persons can understand**, as well as who and how they can contact if they need protection and assistance, **including access to legal aid and complaint mechanisms**.

²⁰ In the Ombudsperson's [Annual Report for 2023](#), the Ombudsperson points out that the reports of the NGOs stated that "confirmations of expressed intent" were issued even to individuals who were unaware of this, thinking they had received a decision on voluntary return with a 7-day deadline to leave Croatia and the EEA. For instance, the organization Borders:none, as part of the project "Better System, Better Respect for Human Rights," conducted research on the observance of rights of persons in irregular stay or return procedures. In the survey, when asked if they had received a voluntary return decision, positive answers were given. However, when asked to show the document, the investigators found that it was actually a confirmation expressing intent to seek asylum. On the other hand, 92.6% of respondents stated they were not aware of their rights.

²¹ AIDA Croatia Country Report 2023, last updated on 10 July 2024, available at https://asylumineurope.org/wp-content/uploads/2024/07/AIDA-HR_2023-Update.pdf

D. Measures aimed at addressing the violation of Article 4 of Protocol No. 4 to the Convention

61. The judgement M.H. and others against Croatia **disclosed major structural and complex problems**, clearly implied in the wording of the judgement: “The impact of this case thus goes beyond the particular situation of the applicants” (§123). Moreover, the Court found severe human rights violations (significantly 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 previous Rule 9.2 submissions, the HRHZ and CPS provided evidence that these structural and complex problems, which amount to systematic human rights violations, have been a continuous issue in Croatia. The following paragraphs prove that these unlawful practices remain ongoing in Croatia.
62. According to the Frontex FRO Annual Report 2022²², **“several allegations of collective expulsions and claims of ill-treatment against migrants and/or asylum seekers** have been brought to the attention of the Fundamental Rights Office.” Amnesty International reported in their human rights overview for 2022²³ that pushbacks from Croatia have continued, and Human Rights Watch reported²⁴ in 2023 that Croatian “police regularly and often violently push back refugees, asylum seekers, and migrants to Bosnia and Herzegovina without assessing their asylum requests or protection needs”.
63. In 2023, reports from various humanitarian organisations documented **ongoing and severe human rights abuses during the pushbacks of migrants** from Croatia to Bosnia and Herzegovina. The Danish Refugee Council (DRC) recorded 3,323 cases of unlawful expulsions. These incidents involved abusive treatment, including physical assaults, theft, extortion, and destruction of property.²⁵ Afghan nationals were frequently targeted, with victims also reporting increased surveillance using drones and cameras upon entering Croatian territory.²⁶ Further reports from No Name Kitchen (NNK)²⁷ and the

²² Frontex, The Fundamental Rights Officer Annual Report 2022, https://www.frontex.europa.eu/assets/fundamental/FRO_annual_report_2022.pdf, page 14

²³ Amnesty International, Human Rights in Croatia 2022, published on 23 March 2023, available at <https://www.amnesty.org/en/location/europe-and-central-asia/croatia/report-croatia/>

²⁴ Human Rights Watch, “Like We Were Just Animals” Pushbacks of People Seeking Protection from Croatia to Bosnia and Herzegovina, published on 3 May 2023, available at <https://www.hrw.org/news/2023/05/03/croatia-ongoing-violent-border-pushbacks;> <https://www.hrw.org/report/2023/05/03/we-were-just-animals/pushbacks-people-seeking-protection-croatia-bosnia-and-herzegovina/>

²⁵ Danish Refugee Council, Border Monitoring Factsheet, available at <https://pro.drc.ngo/resources/documents/border-monitoring-factsheet/>

²⁶ PRAB Initiative, [PRAB Report VII: Suprisingly surprised](#), published on 28 September 2023

²⁷ No Name Kitchen, [TESTIMONIES OF BRUTAL VIOLENCE FROM CROATIAN POLICE](#), published on 4 October 2023

Border Violence Monitoring Network (BVMN)²⁸ detailed alarming cases of violence and dehumanising treatment by Croatian border police. This included severe beatings, forced undressing, and even being made to cross the Korana River half-naked. Instances of police firing shots and confiscating personal belongings such as mobile phones were also documented. Additionally, there were reports of sexual harassment and assaults, with one testimonial describing officers groping women and subjecting an unaccompanied child to severe physical abuse.²⁹ Despite these reports, specific actions taken by Croatian authorities to address these allegations remain unclear, highlighting ongoing concerns regarding the treatment of migrants and refugees entering Croatia.

64. In 2024, the Danish Refugee Council recorded 384 cases of pushbacks in January and February before ending their protection activities in the Una-Sana Canton.³⁰ According to the Border Violence Monitoring Network, despite a decrease in migrant transit in March due to Ramadan, violence at the Bosnia-Herzegovina and Croatia border continued, with frequent reports of **severe physical abuse by Croatian authorities**. Unaccompanied minors were often among the victims, showing injuries such as contusions, broken bones, and dog bites.³¹ No Name Kitchen reported increased transit post-Ramadan and continued support for those experiencing violent pushbacks. One incident involved a young Kurdish man and 15 others, who were abandoned by smugglers and later pushed back by Croatian police. Another report described a group of six being violently pushed back on 10 April 2024, involving theft, beatings, and intimidation by Croatian police, who used drones for surveillance. In May, No Name Kitchen recorded about 75 weekly pushbacks from Croatia to Bosnia, though not all of them could be documented due to limited contact opportunities.³²

65. The Ombudsperson reports that during 2023, there has been a significant decrease in the number of complaints regarding allegations of pushbacks or the practices of refusing entry and removing individuals who have irregularly crossed the border without providing individualised protection needs assessments. However, the report also notes that NGOs continue to document testimonies about pushbacks, indicating that such practices have increased again in the later months of 2023. Since returning people without individualised

²⁸ Border Violence Monitoring Network (BVMN), [Balkan Regional Report October 2023](#), published on 15 December 2023

²⁹ AFP, France 24, [Croatia cracks down on migrants as Europe beefs up border checks](#), published on 17 November 2023

³⁰ Danish Refugee Council, Border Monitoring Factsheet, available at <https://pro.drc.ngo/resources/documents/border-monitoring-factsheet/>

³¹ Border Violence Monitoring Network (BVMN), [Balkan Regional Report – March 2024](#), published on 24 April 2024

³² No Name Kitchen, [Ens Movem](#), published on 2 May 2024; [A HARROWING JOURNEY: THE REALITY OF BORDER CROSSINGS](#), 27 April 2024; No Name Kitchen, Instagram post, 30 May 2024, available at: https://www.instagram.com/no_name_kitchen/p/C7mf497NY4s/?img_index=1

assessments can lead to human rights violations guaranteed by European, international, and national regulations, the **Ombudsperson emphasises that all allegations of these violations must be effectively investigated.**

66. Furthermore, as indicated in the previous submission, since 2023, Croatian authorities have been carrying out readmissions of migrants and refugees to BiH in increasing numbers to expel people from Croatia.³³ According to the 2023 Police Work Report³⁴, a request for readmission was sent to Bosnia and Herzegovina for 14,049 individuals. Of these, 8,478 were accepted, and 3,110 were subsequently returned. Similarly, a request was sent to the Republic of Serbia for 941 individuals, with 645 accepted and 605 returned. Based on the publicly available information, it remains to be seen whether an individual procedure was conducted in each case, resulting in an expulsion or return decision, thereby ensuring the right to a legal remedy. Therefore, greater transparency in these procedures is required.
67. The testimonies of individuals expelled by readmission, as well as information from non-governmental organisations³⁵ working in BiH, raise **serious concerns that readmission procedures are being misused** and applied in a manner that is contrary to European law, primarily to deny individuals access to asylum.³⁶ In addition to the potential neglect and violation of procedural rights of persons, this information also points to potential violations of key principles of international law, such as the principle of *non-refoulement* (including persons from Afghanistan, Syria, Cuba, Pakistan, Morocco, etc.) and the principle of the best interests of the child. The fact that individuals from especially vulnerable groups, such as unaccompanied children and families with young children, are amongst those returned through the readmission procedure is especially concerning.
68. The systematic and deliberate pushbacks, accompanied by violence and ill-treatment of migrants, denying them access to asylum, have led to the fact that several national courts

³³ Novosti, Novi pristup: autobusom do granice pa... , published on 31 March 2023, available at <https://www.portalnovosti.com/novi-pristup-autobusom-do-granice-pa>; Jutarnji list, Veliki zaokret Hrvatske u borbi protiv ilegalnih migranata: Sve se promijenilo 30. ožujka...., published on 6 April 2023, available at <https://www.jutarnji.hr/vijesti/hrvatska/veliki-zaokret-hrvatske-u-borbi-protiv-ilegalnih-migranata-sve-se-promijenilo-30-ozujka-15323274>; DW, Vraćanje migranata iz Hrvatske u BiH: zakonski push-back, 13 April 2023, available at <https://www.dw.com/hr/vra%C4%87anje-migranata-iz-hrvatske-u-bih-zakonski-push-back/a-65298738>; BHRT, Iz Hrvatske ove godine vraćeno oko hiljadu migranata, published on 10 April 2023, available at <https://www.bhrt.ba/iz-hrvatske-ove-godine-vra%C4%87eno-okolo-hiljadu-migranata>

³⁴ Police Work Report for 2023 available at: <https://www.sabor.hr/hr/izvjesce-o-radu-policije-u-2023-godini-podnositeljica-vlada-republike-hrvatske>

³⁵ Border Violence Monitoring Network, Illegal Pushbacks and Border Violence Reports: Balkan Region, March 2023, available at <https://borderviolence.eu/app/uploads/Monthly-Report-March-2023.pdf>

³⁶ Protecting Rights at Borders (PRAB) VI: What we do in the shadows, published on 30 May 2023, available at <https://pro.drc.ngo/media/3h1d5s5r/vi-prab-report-what-we-do-in-the-shadows-jan-to-april-2023.pdf>

of the EU Member States had previously suspended Dublin transfers of asylum seekers to Croatia in the light of the risk of violation of Article 3 of the ECHR³⁷. Following the court decisions reported in the previous submission, on 22 February 2024, the **Munich Administrative Court ruled against a Dublin transfer to Croatia, arguing that asylum seekers who are to be returned to Croatia under the Dublin III Regulation and against whom a final and enforceable return decision has been issued face a severe risk of being deported to Bosnia-Herzegovina or Serbia as part of a chain deportation process.** Furthermore, the Court concluded that there are **no effective legal protection mechanisms** in Croatia for asylum seekers who have experienced degrading or inhuman treatment by the Croatian police.³⁸

1. Independent Monitoring Mechanism

69. As indicated in the previous Rule 9.2 submissions, the Independent Monitoring Mechanism (IMM) established in June 2021 does not meet the CPT criteria of effectiveness and independence, while the process of its establishment was highly non-transparent³⁹.

70. Following the concerns regarding the new Agreement from November 2022 raised in the previous submission, we highlight again that the existence of the mechanism is misleading, as **no effective monitoring is conducted.** The Croatian Independent Monitoring Mechanism, established in June 2021, with a new 18-month mandate established by the November 2022 Agreement, provided no public information about their work in 2023 and 2024. Although half-annual and annual reports were supposed to be published, as foreseen by the Agreement, **no report on their work has been published since their previous mandate in 2022.**

71. Furthermore, in paragraph 72 of the Action Plan, the Government claims that a public website was established on 25 April 2024. However, **no link is provided, and the website does not appear in a general Google search.** Therefore, the website is not

³⁷ 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>

³⁸ Munich Administrative Court, M 10 K 23.50597, 22 February 2024, decision in German attached to this submission as an annex.

³⁹ 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>)

available to the public, and its purpose of being open for inquiries, proposals, and complaints of the general public is not met.

72. The Government's latest Action Plan, paragraph 73, also mentions the implementation of 27 out of 29 recommendations following IMM's 2022 report but provides **no evidence** or explanation for this claim.

73. Finally, the minimum standards on independent monitoring mechanisms 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 mandates⁴⁰ to the full extent.⁴¹

2. *The new Pact on Migration and Asylum*

74. The consequences of the Pact will be most felt by countries on the external borders of the European Union, including Croatia. Pre-screening centres are planned in border areas, which inevitably leads to a deepening of the hotspot situation on the external borders and an increase in the number of people in detention at our borders. The flawed reform of the Dublin Regulation further increases the responsibility of countries of first entry for asylum seekers, which means we can expect a rise in the number of people returned to Croatia from other member states. Dugi Dol is the first of three reception centres announced by the Ministry of the Interior, considering that the existing capacities do not meet even the current needs, let alone the needs of the Pact, which envisages a total of 30,000 people to be in border procedures at the EU's external borders at any given time. Additionally, the public currently has no insight into procedures in Dugi Dol, raising concerns about the level of transparency we would have in such centres once the Pact is implemented. Given the longstanding systematic practice of pushbacks at Croatian borders, the focus on readmissions to neighbouring countries, and the expansion of the 'safe third country' concept is indeed troubling, as it could lead to the expulsion and return of individuals to countries where they may be subjected to torture and inhumane treatment.

75. Finally, the **Government should include experts from civil society organisations and academia in preparing the national implementation plan for the Pact that needs to be prepared and shared with the European Commission by December 2024** to ensure that the implementation plan foresees the necessary safeguards.

⁴⁰ Particularly 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.

⁴¹ CPT Annual Report for 2020, p. 15-16, link available at: <https://rm.coe.int/1680a25e6b>

E. Measures aimed at addressing the violation of Article 34 of the Convention

1. Legislative measures

76. In its review of the legality of movement restrictions, the Administrative Court's ruling Usl-2165/2023-2 overturned various decisions made by the Ministry of the Interior. The court observed that numerous decisions issued by the border police station (PGP) were identical, stating that **they could never find an interpreter for any language other than English or even provide telephone translation.**
77. This not only constitutes a violation of Article 196, Paragraph 1 of the Foreigners Act⁴² but also deprives a person of the right to a legal remedy due to the inability to understand the written content.
78. According to CSOs, since the beginning of the pandemic, not a single CSO that deals with providing free legal aid has been able to be present in the Porin Asylum Seekers Reception Center, although the seekers express the need for it and the Ombudsperson expressed the need for it in her report for 2022 and 2023.⁴³

V. Conclusions and recommendations

79. Finally, we would like to invite the Committee of Ministers once again to urge the Croatian Government to take further steps to **stop violent pushbacks from Croatian territory** and propose measures to ensure effective investigations into police misconduct are carried out 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.
80. For **Individual measures**, it is necessary to:
- Award **compensation for non-material damages** due to violation of personality rights according to Article 1100 of the Croatian Law on Obligatory Relationships;

⁴² The Law on Foreigners, Official Gazette No. 133/20, 114/22, 151/22

⁴³ Ombudsperson's Annual Report for 2022, available at <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravoraniteljice-za-2022-godinu/?wpdmdl=15489&refresh=6465f2bc2565a1684402876> and Ombudsperson's Annual Report for 2023, available at <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023>

- b. **Conduct effective investigations into crimes** of torture, degrading treatment, abuse of power and collective expulsions from Croatian territory relating to the violations found by the Court;
- c. **Conduct thorough and effective investigations into the undue pressure exerted on the attorney** to discourage the pursuit of the case and restrict the victim's contact with their chosen legal representative.
- d. **Ensure the effectiveness of individual measures.**

81. For **General measures**, it is necessary to:

- 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 officers⁴⁴;
- b. **Implement CPT's recommendation**⁴⁵ for the Croatian government to introduce robust accountability and oversight mechanisms for all police operations related to the interception and diversion of migrants;
- c. **Ensure that the Independent Monitoring Mechanism is independent in law and practice and has 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. Furthermore, ensure that the IMM's conduct is transparent and regularly reported to the public;
- d. Prepare a proposal for amendments to the Law on International and Temporary Protection, which would regulate the **judicial review of the legality of the decision on the restriction of freedom of movement of applicants for**

⁴⁴ 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>

⁴⁵ 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>

international protection, as it is currently regulated for irregular migrants by the Act on Foreigners;

- e. **Highlight and communicate information about rights** in an accessible, visible and clear way, **including translation and interpretation** for refugees and other migrants detained in (transit) reception centres for foreigners;
- f. Ensure that the **increase in the number of asylum seekers is accompanied by a corresponding increase in the number of officers responsible for handling international protection requests, reception, and translation**, along with ensuring their additional training and education;
- g. 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 pertaining to a return against which no appeal is admissible but administrative dispute may be instituted, in practice and law;
- h. **Ensure that readmission procedures are implemented transparently**, with each case handled individually and each person receiving a written decision in a language they understand and can communicate in, along with the right to legal remedy.
- i. Ensure **access to procedural and material rights as well as access to justice**, by amending the *Rules on accommodation in reception centres for foreigners and methods of calculation of costs of forced removal*. The amendments should reduce the required notice period for visitor announcements to one day and eliminate this requirement for legal aid providers in all cases, not just those deemed justified and urgent.
- j. Ensure **access to NGOs to reception and detention centres** and other places where refugees and other migrants are detained to provide psychosocial support and legal assistance.
- k. 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 defenders;
- l. 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 autonomy.



Sincerely,

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