



Recommendations of the Centre for Peace Studies and the Human Rights House Zagreb for the execution of the judgment of M.H. and others against Croatia

22 September 2022

On 22 September, the Centre for Peace Studies and the Human Rights House Zagreb filed a submission to the Committee of Ministers of the Council of Europe in accordance with Rule 9.2. of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements in the case, a proposal of measures for the execution of the judgment M.H. and Others v. Croatia no. 15670/18 and 43115/18.

Let us remind you that the European Court of Human Rights issued a judgment that established that Croatia [violated](#) a number of human rights of the refugee family guaranteed by the (European) Convention for the Protection of Human Rights and Fundamental Freedoms. The court established: unanimously, a violation of Article 2 (right to life) of the European Convention on Human Rights as concerned the investigation into the death of the Afghan family's daughter; by six votes to one, a violation of Article 3 (prohibition on inhuman and degrading treatment) in respect of the applicant children; unanimously, a violation of Article 5 § 1 (right to security and liberty) in respect of all the applicants; unanimously, a violation of Article 4 of Protocol No. 4 to the Convention (prohibition of collective expulsions of aliens) in respect of the applicant mother and her five children, and; unanimously, a violation of Article 34 (right of individual petition) in respect of all the applicants.

After the organizations have offered a proposal of causes of violations and described their manifestation through the last six years of monitoring, the organizations gave constructive proposals for adequate measures to execute the judgment and prevent further violations of the human rights of refugees and other migrants in the Republic of Croatia.

Below are the conclusions and recommendations proposed by the submission.

1. 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. case and to **transfer this case to enhanced supervision** because of the ongoing systemic practice of violent illegal pushbacks and denying migrants the access to the asylum system.
2. 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.

3. 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.

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

- a. The Government should 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 officers¹.
- 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" migrants², 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

¹ 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>

² 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>

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.
- 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 were 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 suggestions 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)³.
- 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 organisations⁴ to the monitoring mechanism's Advisory Committee in November 2021 and in May 2022 in regard to the functioning of the Independent Mechanism Board⁵.
- j. To ensure access to NGOs to detention centres and other places where refugees and other migrants are detained.

³ The Report on conducted consultation, op.cit., comments 22-29

⁴ 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).

⁵ 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/>



- 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 defenders⁶.
- 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 autonomy⁷.

⁶Human 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

⁷ Ibid., page13.