CENTRE FOR PEACE STUDIES

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EUROPEAN COURT OF HUMAN RIGHTS
Council of Europe
67075 Strasbourg
Cedex France
BY POST AND FAX

Zagreb, 19 April 2022

Application no. 38776/21
Y.K. v. Croatia

Third-party intervention on behalf of the Centre for Peace Studies

Pursuant to the Registrar's notification dated on 29 March 2022 that the President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights

For the Centre for Peace Studies:

Sara Lalić
Executive Board Member

A. Continuous denial of access to the system of international protection accompanied with non-assessment of the risk of refoulement

1. The non-refoulement principle is the cornerstone of refugee protection, it is part of customary international law and represents *jus cogens*. It ensures that nobody will be returned to a country where their life or freedom would be at risk. Under international law, such a risk must be considered by public authorities and the person has the right to have that risk assessed by independent bodies. These must be examined together with the applicant's individual circumstances, past experiences in the country of prospective removal, and particular vulnerabilities. It is the duty of authorities to seek all relevant, up-to-date and generally available information to that effect. Articles 3 and 13 require to **assess all the relevant evidence**,[1] including, where necessary: to obtain such evidence *proprio motu;* not to impose an unrealistic burden of proof on applicants or require them to bear the entire burden of proof,[2] and to apply the principle of the benefit of the doubt in the light of the specific vulnerabilities of the applicants.[3]

2. Still, this principle has been seriously undermined by practices and decisions of state officials and courts in Croatia, primarily through chain pushbacks and extraditions. **Numerous reports and testimonies demonstrate there is a serious lack of respect of the non-refoulement principle in Croatia for the past six years[4]**. The practice of collective expulsions monitored in Croatia for the past six years is in most cases carried out without any legal procedure implemented, or the legal procedure is abused and carried out with denial of access to the asylum system, while authorities deliberately do not provide any individual assessment of risk of refoulement.

3. The Croatian authorities in many cases do not even ascertain the identity of the expelled person, and in most of the cases they do not ask about one's personal circumstances nor do they conduct a prior assessment of the risk, if any, of persecution and/or irreparable harm in the country to which one was to be returned. The reports by the Ombudsperson and the CSOs show that the apprehended person finds themselves in the position of an object of an arbitrary procedure, without any possibility to influence the outcome or the conduct of the police, which acts with the competence of a state authority but outside any legal provisions. **Such practice is in direct contradiction to any notion of human dignity and therefore in direct opposition to the very essence of the Convention, which is *"respect for human dignity and human freedom"***.[5]

4. In a joint statement issued in June 2020, Felipe González Morales, the Special Rapporteur on the human rights of migrants, and Nils Melzer, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated: "**The violent pushback of migrants without going**

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[1] Jabari v. Turkey, no. 40035/98, (11 July 2000), paras 39-40; Singh and Others v. Belgium, no. 33210/11, (2 October 2012), para 104.

[2] M.S.S. v. Belgium and Greece, paras. 344-359; Hirsi Jamaa and Others v. Italy, paras. 122-158.

[3] M.A. v. Switzerland, no. 52589/13, (18 November 2014), para. 55.

[4] For example: Centre for Pace 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, 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; No Name Kitchen: Illegal Push-backs and Border Violence Reports, Balkan Region, October 2019, available at: http://www.nonamekitchen.org/wp-content/uploads/2020/02/October_Report_2019_.pdf ; No Name Kitchen, Violence Reports, on monthly basis available at: nonamekitchen.org/en/violence-reports/; Border Violence Monitoring Network Reports, available at: borderviolence.eu/category/monthly-report/

[5] Christine Goodwin v. the United Kingdom, no. 28957/95, 11 July 2002, § 90; Svinarenko and Slyadnev v. Russia [GC], nos. 32541/08 and 43441/08, 17.7.2014, § 118; Pretty v. the United Kingdom, no. 2346/02, 29.4.2002, § 65.

through any official procedure, individual assessment or other due process safeguards constitutes a violation of the prohibition of collective expulsions and the principle of non-refoulement. Such treatment appears specifically designed to subject migrants to torture and other cruel, inhuman or degrading treatment as prohibited under international law."[6]

5. According to the **EU Directive on Asylum Procedures (2005/85/EC)**, **every person has the right to seek asylum and to have access to the information about the asylum system.** The aim of the set legal provisions transposed also in national laws is to offer procedures that will **safeguard human rights of persons in the immediate control of police officers and prevent the arbitrary actions of the police.** According to Ombudsperson's Activity Report for 2020, most migrants do not possess identification and/or travel documents, and as it is obvious that they have been returned to the police stations/border police stations in the vicinity of which there is no organized public transport, it is questionable how they can (legally) fulfil the obligation to leave the EEA within just seven days. On the other hand, the pandemic has reduced the availability of flights and other modes of transport, and entry restriction measures introduced by third countries have affected the possibility of both voluntary returns and forced removals, so it is unclear how the MI provides and assists fulfilling obligations from issued decisions. All this points to the conclusion that the purpose of transportation to remote and often traffic-isolated police stations is to remove migrants from the Republic of Croatia across the green border.[7] Furthermore, in the Activity Report for 2019[8], the Croatian Ombudsperson confirmed the cases of ill-treatment of asylum seekers and pushbacks, where police ignored asylum requests, including from families and children, took money and cell phones, and ordered migrants at the border to go back to Bosnia, threatening them with firearms. That these issues are not of temporary but systematic nature, shows that this was also raised in the years before. Namely, the Ombudsperson in her Activity Report for 2018 has highlighted the **lack of legal procedure even regarding the cases where persons would be handed the return decisions**. Particularly, during her National Preventive Mechanism (NPM) visits the Ombudsperson found that in almost all administrative procedure cases there was no mention of the time in which a person was brought to or released from the given police station, if they have expressed their intent to seek asylum in the Republic of Croatia and whether they need medical assistance.[9]

6. **Fundamental Rights Agency (FRA) in its Quarterly Bulletin continuously reports on the breach of *non-refoulement* and police violence in Croatia**. For example, in one of the Quarterly Bulletin that reflects on 2018, it is mentioned that: "Asylum requests are being ignored and people, including children, continue to be pushed back from Croatia."[10] Further on, the Jesuit Refugee Service (JRS) also stressed to the FRA Report in 2021 that "their clients coming from Bosnia and Herzegovina who were apprehended by the police unsuccessfully sought asylum on Croatian

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[6] Croatia: Police brutality in migrant pushback operations must be investigated and sanctioned – UN Special Rapporteurs, published on 19 June 2020, available at: https://www.ohchr.org/en/news/2020/06/croatia-police-brutality-migrant-pushback-operations-must-be-investigated-and?LangID=E&NewsID=25976

[7] Ombudsperson's Activity Report for 2020, p. 184, available at: https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2020-godinu/?wpdmdl=10845&refresh=625ead85afc381650371973

[8] Republic of Croatia, Croatian Ombudsperson, Zagreb, March 2020, available in Croatian: https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvje%C5%A1%C4%87e-pu%C4%8Dke-pravobraniteljice-za-2019.pdf

[9] Ombudsperson's Activity Report for 2018, p. 295, available at: https://www.ombudsman.hr/en/download/annual-ombudsman-report-for-2018/?wpdmdl=6777&refresh=625eac2fadb681650371631

[10] FRA, *Migration: Key fundamental rights concern*, 1.11.2018- 31.12.2018, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-migration-bulletin-1_en.pdf

territory, some of them several times. Many of them, including children under the age of 15, were in a very poor psychophysical condition…"[11]

7. **Described systematic collective expulsions of third-country nationals from the territory of Croatia to Serbia and Bosnia and Herzegovina, without assessing each individual case, and especially while ignoring their need for international protection and usage of severe violence should be considered torture under the Article 3 of the ECHR.**

8. At the same time, in past years, the Ministry of the Interior as a body competent to carry out these procedures has shown a shocking ignorance or intentional disregard of the legal framework regarding migration and asylum. As the precondition for seeking international protection is being able to have access to the system of international protection, it is dangerous that the information on several occasions disclosed by the representatives of MI does not correspond to the existing laws. For example, the acting Minister of the Interior, Davor Božinović, has in the end of 2017 made public statements where he wrongfully said that persons who illegally enter Croatia do not have the right to seek asylum. To quote, the Minister said: "the first and fundamental condition for asylum is the legal entry in Croatia"[12]. Further on, in a public discussion in December 2018, the Chief of Border Management Zoran Ničeno has stated that a person cannot exercise a right to seek asylum neither at the border line[13].

9. Due to the constantly reported high numbers of pushbacks and human rights violations over the last six years, Croatian Government and the European Commission agreed on forming the Independent Monitoring Mechanism of the Conduct of Police Officers of the Ministry of the Interior in the Field of Illegal Migration and International Protection (the mechanism). However, the mechanism finally established in 2021 lacks independence, transparency and effectiveness. Firstly, the lack of transparency is evident from the way that it is established: there was no public call for the participating organisations and members nor information about the selection criteria. Secondly, there is a serious concern into effectiveness of the mechanism, since the Cooperation Agreement (published in December 2021) between the MI and the implementors of the mechanism foresees only **"announced visits to the green border"[14]** - the area where the majority of the collective expulsions take place. This means that in order for the implementing organisations to be granted access to the area of green border, **they need to announce the monitoring activity to the body that they are monitoring**, giving the possible perpetrators a '*heads-up'*. According to the Cooperation Agreement, the mandate of the mechanism seems to be severely limited to an administrative review of files and paper trails and an analysis of the legislative and judicial system, without access to victims of alleged human rights violations during the monitoring process. Finally, the members of the monitoring mechanism lack political and financial independence from the MI, and the mechanism's financial independence is undermined by the EU's 2021 Emergency Funding (EMAS) grant being processed through the MI, instead of being directly granted to the mechanism.

10. The concerns that stand at the core of the establishment of the mechanism have proven justified on 3 December 2021, when **the mechanism published its first semi-annual report** at the website of the Croatian Public Health Institute, which **disappeared just a day later**. The withdrawn working

[11] FRA, *Migration: Key fundamental rights concerns - January 2021- June 2021, p. 14,* available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-migration-bulletin-2_en.pdf

[12] The whole statement available at: https://www.jutarnji.hr/vijesti/hrvatska/bozinovic-svi-kojima-je-odobren-azil-u-hrvatskoj-su-boravili-zakonito-688938

[13] OTVORENO - Ugrožavaju li migranti sigurnost u Hrvatskoj? (18.12.2018), from min 19:50 to min 20:10, video available at: https://www.youtube.com/watch?v=ljmqP4rQAJ4

[14] Article 5 of the Cooperation Agreement for the implementation of the Independent Oversight Mechanism monitoring the actions of police officers of the Ministry of the Interior in the field of irregular migration and international protection of 8 June 2021, annexed to the first semi-annual report

version **stated that the mechanism has found "detected illegalities in police conduct", explaining that "the police carry out illegal deterrence (pushbacks) and do not record deterrence allowed under Article 13 of the Schengen Borders Code."**[15] A week later, on 10 December, a new version of the 1st semi-annual report of the mechanism was published. The only change made in the report was that the mechanism only found that "the police carry out permissible deterrence under Article 13 of the Schengen Borders Code, although they do not record them, and in mine suspected areas, in isolated cases, they also allow illicit deterrence."[16] As this was the only change made to the report compared to the working version, with only a week of time difference, it is clear that the mechanism's independence and transparency remain questionable.

B. Limitations in access to rights in detention centers for third country nationals in the Republic of Croatia

11. The Centre for Peace Studies is frequently contacted by persons detained at the detention centres in Croatia, predominantly those in Ježevo and in Tovarnik. Among other, they complain because they were **not informed of their rights**, and because they are not given information in the language they understand about the access to legal aid. Sometimes we also receive calls from the persons who want to seek asylum in the centres, but complain that their **intent to seek international protection has been disregarded.**
12. For example, in the period between January and March 2022, the Centre for Peace Studies has been contacted by five persons who were at the time detained in the Reception Centre for Foreigners Ježevo, saying that they have shared their intention to seek asylum, but that **they were not informed if their intent has been received and whether they are now in the procedure of seeking asylum or not**. They stressed that they are afraid of being returned to their country of origin, because their lives and rights would be endangered there, meaning that there is a serious risk of refoulement to their country of origin. They asked us to provide them support in accessing relevant information. Therefore, in all of the cases, we have sent an inquiry to the Reception Centre for Foreigners Ježevo to explain the refoulement risk and to stress the obligation on providing detainees access to the asylum system, as well as to ask whether their rights in given situations have been respected. Namely, our questions concerned whether the persons were given access to the asylum system; whether their rights have been explained to them in the language they understand and whether they have relevant information regarding legal aid, and if the contact with the lawyer was enabled. In one situation, we received a response regarding one question, and it was later confirmed with the detainee's family that he was granted access to the asylum system after we intervened. **In the remaining four situations, we received a very vague email summarizing some general legal norms, but none of which responded to any of our questions.** During the follow-up exchange, the police officers cited the Article 19 Paragraph 5 of the Law on International and Temporary Protection, which states that "personal and other data collected during the procedure for granting international protection, in particular the fact that the application was submitted, are officially unpublished data and may not be submitted to the country of origin of the applicant, asylum seeker or alien under subsidiary protection or other bodies not participating in the procedure." Evoking this Article, **the Ministry of the Interior refused to answer our questions, even though it was the person in question who had informed us of their intent to seek asylum and the risk of refoulement, and our questions to the Reception Centre were only about whether their rights in the procedure were respected.** Particularly, whether their intent

[15] The withdrawn first version of the Independent Monitoring Mechanism report, published on the 3 December 2021, p. 14., available in Croatian (original) and the English translation (translated by independent translators): https://www.cms.hr/en/azil-i-integracijske-politike/prvo-polugodisnje-izvjesce-nezavisnog-mehanizma-nadzora

[16] Centre for Cultural Dialogue, Prvo polugodišnje izvješće Nezavisnog mehanizma nadzora (lipanj - prosinac 2021.), published on 10 December 2021, p. 14., available at: https://ccd.hr/prvo-polugodisnje-izvjesce-nezavisnog-mehanizma-nadzora-lipanj-prosinac-2021/

to seek asylum was officially taken. The Ministry of the Interior concluded that we need to have an official power of attorney to be able to access such information. Given the fact that the detainees in the Centre cannot reach out to the organisations like Centre for Peace Studies in any other way but over the phone, and given the urgency of the situation - where a person does not have crucial information on their status and is detained, **it is not in the interest of justice to withhold information on whether one's rights have been respected or not. The risk of refoulement amounting to possible violations of the Articles 2 and 3 of the Convention, the urgency in these kinds of cases should overthrow the strict request to present the signed power of attorney**.

13. To conclude, **the calls from detainees clearly show the lack of crucial information in the Reception Centre, as well as obstacles in accessing the system of international protection and legal aid.** The Ministry of the Interior did not inform the Centre for Peace Studies whether these detainees' rights were respected or not after we raised their attention towards these concrete issues.

B.1. Reported limitations in receiving relevant information in the detention centres

14. Article 47 of the EU Charter of Fundamental Rights proclaims that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.
15. Further on, the EU Return Directive (2008/115/EC) contains specific procedural safeguards. According to Article 12, **return and entry ban decisions must be in writing in a language that the individual can understand or may reasonably be presumed to understand, including information on available legal remedies.**
16. However, the relevant reports show that there are serious lacks in 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.**[17]
17. The delegation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), as the anti-torture committee of the Council of Europe, has carried out a visit to Croatia from 10 to 14 August 2020, and published its report in December 2021. Among others, it has visited the Reception Centre for Foreigners Ježevo and given numerous recommendations. It has also stressed the issues of the lack of information, and especially lack of translation of key documents: "all detention orders (including their renewals) **were only drafted in the Croatian language and the persons with whom the delegation met were not aware of their content**, including the length and dates of the extension period as well as the possibility to make a complaint to the Administrative Court. Greater efforts need to be made to ensure that each immigration detainee fully understands the court decision, which should not be the task of the custodial officers but rather the Centre's lawyer using telephone interpretation services as required."[18]
18. The Croatian Ombudsperson has on numerous occasions stressed and reported that the persons **detained in the Reception Centre for Foreigners Ježevo were not provided with relevant**

[17] Ombudsperson's Activity Report for 2021, p. 181, available at: https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/

[18] 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. 36, available at: https://rm.coe.int/1680a4c199

information on accessing free legal aid at the centre. In her report for 2020, for example, she stated that her office has conducted an investigation related to the access to the free legal aid for foreigners in the Reception Center for Foreigners Ježevo. In the said investigation it was found "that they were not adequately aware of that right or to whom they could turn for legal advice and/or legal representation"[19]. She continued by noting that the persons deprived of their liberty need to be aware of their rights, and therefore her Office has recommended that "notices about free legal aid be printed in all frequent languages of foreigners in return procedures, that copies of the form be posted on the Centre's notice boards and delivered to each foreigner when making a decision regarding return"[20].

19. Similarly, a Report of the Fundamental Rights Agency (FRA) on the legal aid for returnees deprived of liberty found that: "Several clients of a lawyer in Croatia had not received a list of free legal aid providers together with their return decision as required. Some received the list of free legal aid providers for procedures on international protection instead of return."[21]
20. After all of the above mentioned reports and the recommendations, during the public consultation regarding the amendments of the *Ordinance on the stay in the reception center for foreigners and the manner of calculating the costs of forced removal* the Centre for Peace Studies, the Croatian Law Centre and the Croatian Ombudsman's Office made similar comments regarding the translation of the available information in the Centre. For instance, the Ordinance provides that its content will be translated to English, French, and, if needed, to other languages. The comments included a suggestion that it should officially provision that its content is necessarily translated to the other languages most often understood by the persons detained in the centres, according to the relevant statistics for previous years, and to make them available in the prescribed manner. It was also suggested for the Ordinance to provision the obligation for its translation in a situation where the third-country national does not understand any of the languages into which it has been translated. This is necessary in order to realize the right of persons to be aware of their rights and obligations. This comment was rejected based on the statement of the MI that this will be translated into other languages "which foreigners most often speak at the Center or which are reasonably assumed to understand them" and that in cases where a person does not understand any of those languages, the Ordinance will be translated by an interpreter.[22] **However, this remains non-binding as MI refused to make this an official obligation provisioned in the by-law which is supposed to arrange these rights in detail.**
21. Finally, the **right of detainees to lodge complaints** to the Director of the Reception Centre is regulated by Article 26 of the Rulebook on House Rules which provides that they can submit the complaint in a sealed envelope to the attention of the Director of the establishment through a member of the custodial staff. CPT noted that "foreign nationals appeared to be familiar with this procedure". However, CPT warned that "there was **no second instance procedure in place if the**

[19] Ombudsperson's Activity Report for 2020, op.cit., p. 186
[20] ibid.
[21] FRA, Legal aid for returnees deprived of liberty, 4 November 2021, p. 36, available at: https://fra.europa.eu/en/publication/2021/legal-aid-returned-detainees
[22] The Report on conducted consultation - Proposal of the Ordinance on the stay in the reception center for foreigners and the manner of calculating the costs of forced removal (Izvješće o provedenom savjetovanju - Prijedlog Pravilnika o boravku u prihvatnom centru za strance i načinu izračuna troškova prisilnog udaljenja), available at: https://esavjetovanja.gov.hr/ECon/EconReport?entityId=16801

foreign nationals were dissatisfied with the outcome of the complaint nor was a dedicated register of complaints in place at the establishment."[23]

B.2. Limited access and hampered consultations with the lawyers in the detention centres

22. All the foreigners detained at the detention centres must have access to a lawyer because that is a key precondition for their access to justice, while international standards also clarify that detainees should have access to facilities for confidential consultation with their lawyer at regular intervals.[24] Also, international standards guarantee detained third-country nationals 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. However, the limitations in access to the lawyer in the reception centres for foreigners, where foreigners are detained, have been reported on by national and international institutions, as well as the detainees. **In Croatia, the stricter regime for communication and visits by lawyers is applied in reception centers for third-country nationals than it is in the prison regime.** It should be noted that there is no reason why the third-country nationals, among which families, would have stricter rules on visiting than the persons convicted of crimes.
23. The rules for lawyers' and the legal aid providers (who have not yet obtained the power of attorney) visits are the same as for the other persons. Specifically, **any visitor (including lawyers) 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.**[25]
24. In the comments on the proposed amendments of the Ordinance, the Croatian Ombudsperson assessed that the above mentioned 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"[26].
25. **Such administrational and practical obstacles for lawyers to establish contact with their detained client is unacceptable and violates Article 6 of the European Convention on Human Rights. A lawyer who comes to the center 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.
26. These breaches in ensuring access to the lawyer was noted also by the CPT mission to Croatia: "Further, whenever a detained person did have a lawyer to represent him or her, the **lawyer was hampered in accessing the Centre due to the administrative obstacles for receiving visitors.** In light of the five-day statutory deadline to challenge a detention order, lawyers should have the right to visit a client without any delay."[27]
27. Further on, this was also noted in the FRA's Report *Legal aid for returnees deprived of liberty*: "Restrictions to accessing detention facilities have made it difficult to provide legal aid, particularly under time pressure. Legal aid providers referred to difficulties such as **generally restricted access for NGO providers** (Croatia, Hungary, for non-public free legal aid providers, Lithuania, Malta

[23] CPT report, op.cit., p. 37

[24] A. v. Australia, Human Rights Committee Communication No. 560/1993, Views of 30 April 1997, UN Doc. CCPR/C/59/D/560/1993 (1997), para. 9.3, 9.5

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

[26] The Report on conducted consultation - Proposal of the Ordinance on the stay in the reception center for foreigners and the manner of calculating the costs of forced removal, op.cit., comment 24

[27] CPT report, op.cit., p. 36

and North Macedonia) and **complex and time-consuming power of attorney requirements preventing or delaying access to clients** (Croatia, Hungary, for non-public free legal aid providers, and Romania)".[28]

28. The Centre for Peace Studies, the Croatian Ombudsman's Office and the Croatian Law Centre have all made comments to suggest amendments of this unjustifiable administrative obstacle. The suggestions included shortening the prescribed period of announcement of visitors to one day, while removing this requirement for the legal aid providers. Moreover, it was suggested that the third-country nationals detained in the reception centres have an unlimited number of free calls towards 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). The suggestions were explained in the light of the access to procedural and material rights as well as access to justice. However, the MI rejected the suggestions, so the rules regarding the two-days announcement of visits for lawyers, the same as other visitors, remained.[29]
29. 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 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*. FRA Report 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. Centre for Peace Studies has knowledge of the case where the lawyer in 2019 experienced this practice where a person who had an intent to seek asylum was concerned, where his intent was never registered and he was deported before the announced visit of the lawyer took place. Another experience shared in FRA Report involves a **lawyer being refused entry on grounds of not having a power of attorney although this was the reason for the lawyer's visit.**[30] As summed up by FRA: "For example, difficulties in scheduling, or the logistics of phone consultations or in-person appointments, resulted in some cases in **removal before consultations took place, according to legal aid providers in Croatia**".[31]
30. Regarding the access to legal aid, the CPT found that "in practice, many of the detained persons met at Ježevo Reception Centre **complained about difficulties in obtaining proper legal advice, given that it took place over the phone without any interpretation**"[32].

C. Analysis of the effectiveness of the available legal remedies against the forceful expulsion orders in the Croatian legal system in light of the case law developed by this Court

31. **Any form of forced return must ensure the effective legal remedy and due procedure** under the Article 13 of the EU Return Directive and the Article 106 of the Croatian Law on Foreigners. Also, a police officer to whom a person has communicated their intention to seek international protection is obliged to enable the person access to the asylum procedure.
32. The problematic aspects monitored by several bodies regarding the treatment of the third-country nationals detained in reception centres, analyzed in section B, should also be assessed in the light of the Court's case law. Namely, the jurisprudence has some of the obstacles explained under B may render the remedy against prohibited treatment under Article 3 ineffective, including

[28] FRA, Legal aid for returnees deprived of liberty, op.cit. p.33.
[29] The Report on conducted consultation, op.cit., comments 22-29
[30] FRA, Legal aid for returnees deprived of liberty, op.cit., p.33
[31] FRA, Legal aid for returnees deprived of liberty, op.cit., p.37.
[32] CPT, op.cit., p.36

particularly: removing the individual before he or she had the practical possibility of accessing the remedy[33], insufficient information on how to gain effective access to the relevant procedures and remedies[34], obstacles in physical access to and/or communication with the responsible authority[35]; lack of legal assistance and access to a lawyer[36]; and lack of interpretation[37]. These were all analysed in the above section, while there is one another criteria established by the Court's jurisprudence in light of the Article 13 of the Convention, which will be specifically analysed in the current section - the **lack of a remedy's automatic suspensive effect**[38].

33. Both the Law on Foreigners[39] and the Law on international and temporary protection[40] provide that there is no avenue for lodging an administrative complaint against a detention order in a reception centre but a legal challenge may be initiated in front of the competent Administrative Court. Even in the cases where one was forcefully removed from Croatia following the legal procedure prescribed in the Law on Foreigners, there is **no legal remedy that would have a suspensive effect available, and therefore one does not have an available remedy with the power to prevent refoulement.**
34. The Law on Foreigners provisions the available legal remedies in the processes of the return and expulsions. Against the decision on deportation (both with or without the deadline for voluntary return), decision for forceful return, and the return decision the appeal is not possible, but one can file a lawsuit in front of the administrative court. However, this legal remedy is not effective, since it is prescribed that **the lawsuit does not have a suspensive effect.** This is clear from the relevant forms prescribed by the *Ordinance on the treatment of third-country nationals*[41], namely the Form 7 (on the expulsion with the deadline for voluntary return), Form 8 (on the expulsion without the deadline for voluntary return) and the Form 11 (the return decision). All of these forms state: "The lawsuit does not delay the execution of the decision".
35. This means that there is **no legal pathway to suspend one's deportation until their arguments, which might include the very risk of refoulement, are assessed in the adequate process.** It is extremely important that the legal remedy by which someone wants to challenge the grounds for expulsion really has the legal force to prevent expulsion until a final decision on the legal remedy is reached, because only in this way the authorities can ensure the full respect of the principle of *non-refoulement.* **In practice, this would mean that in an administrative case against the expulsion order, the court would assess the merits when the person is already expelled, which could mean already being subjected to ill-treatment in the country of destination or be part of a collective expulsion.**
36. According to the case law of the European Court of Human Rights, an applicant's complaint alleging that their removal to a third country would be in breach of Article 3 of the Convention

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[33] Shamayev and Others v. Georgia and Russia, No. 36378/02 (12 April 2005), para 460; Labsi v. Slovakia, No. 33809/08 (15 May 2012), para 139.

[34] Hirsi Jamaa and Others v. Italy, para 204.

[35] Gebremedhin v. France, No. 25389/05 (26 April 2007), para 54; I.M. v. France, para 130; M.S.S. v. Belgium and Greece, paras 301 - 313.

[36] M.S.S. v. Belgium and Greece, [GC], para 319; mutatis mutandis, N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15 (3 October 2017), para 118.

[37] Hirsi Jamaa and Others v. Italy, op. cit., para 202.

[38] Baysakov and Others v. Ukraine, No. 54131/08 (18 February 2010), para 74; M.A. v. Cyprus, No. 41872/10 (23 July 2013), para 133.

[39] Law on Foreigners, Art. 135, para. 3

[40] Law on International and Temporary Protection, Art. 5, para. 12

[41] Ordinance on the treatment of third-country nationals, Official Gazette 136/2021, in force: 11.12.2021.

"must imperatively be subject to close scrutiny by a 'national authority.'[42] Accordingly, an effective remedy under Article 13 taken in conjunction with Article 3 requires independent and rigorous scrutiny of a claim that there are substantial grounds for fearing a real risk of treatment contrary to Article 3.

37. **Therefore, a legal remedy against the expulsion orders which does not have an automatic suspensive effect, means the risk of the breach of the Articles 2 and 3 of the Convention, and therefore does not meet the standard of effective legal remedy in accordance with Art. 13 of the Convention.** The said legal remedy against expulsion orders in Croatia are therefore contrary to the standards set by the Court's case-law in determining their effectiveness. Precisely in situations related to violations of the rights guaranteed by Art. 2 and 3 of the ECHR, in cases of the breach of the principle *non-refoulement*, and in cases of collective expulsion, **the Court has clearly established that an effective remedy must have a suspensive effect and that a person must have access to such a remedy in accordance with Art. 13 of the ECHR**[43]. Violations of Article 13 were found due to the lack of an automatic suspensive effect of the remedy in *Gebremedhin v. France* (para. 66), *Baysakov and Others v. Ukraine* (para. 74), *M.A. v. Cyprus* (para. 133), *D and Others v. Romania* (paras. 128-130).
38. Moreover, Article 13 (1) and (2) of the EU Return Directive (2008/115/EC) provides that third-country nationals subject to a return decision must have the right to an appeal or review of a return-related decision before a competent judicial or administrative authority or other competent independent body with the power to suspend removal temporarily while any such review is pending.
39. The Centre for Peace Studies has made comments in this regard during the public consultation on the where it suggested that the *Ordinance on the treatment of third-country nationals* should prescribe an automatic suspensive effect of the legal remedy against the expulsion and return orders. However, these comments were dismissed and the legal remedies continue to be without suspensive effect.[44]
40. The investigations into the criminal complaints and cases of pushbacks and collective expulsions from Croatia are continuously not effective, as they are not speedy, prompt, or dealt with due diligence. Therefore, in the six years of institutions, NGOs and journalists reporting on this practice, and at least 20 cases filed with the State Attorney - no indictments were brought and, accordingly, no perpetrators of reported crimes were identified, prosecuted, or sanctioned in any of the reported cases. The absence of effective investigations into the cases of collective expulsions is also to be considered in the light of Article 13, since it makes the remedies inaccessible and not guaranteed to the victims of the described crimes. However, in the context of collective expulsions, pushbacks and with it related torture inflicted, even if the criminal procedure would be available, that would not suffice the criteria of the effectiveness - as it also does not have a suspensive effect, and the criminal complaint is filed only after the crime has been done.
41. From the analysis in Chapter A, it is visible that one of the main elements of the analysed practice is the non-consideration of the non-refoulement principle and the complete absence of any due procedure – in violation of the very rule of law in Croatia, which makes legal remedies inaccessible in practice. Victims in such cases are pushed back to a third country without access to any suspensive remedies by which to lodge their complaints and to obtain an assessment of their request before the removal measure was enforced.

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[42] Shamayev and Others, para 448; Jabari v. Turkey, no. 40035/98, para 39, Gebremedhin v France, no. 25389/05, para 58.

[43] Čonka v. Belgium, paras. 81-83, Gebremedhin v. France, paras 66-67

[44] The Report on conducted consultation - Proposal of the Ordinance on the treatment of third-country nationals (Izvješće o provedenom savjetovanju - Prijedlog Pravilnika o postupanju prema državljanima trećih zemalja), comments 7-9, available at: https://esavjetovanja.gov.hr/ECon/EconReport?entityId=16503