



CENTRE FOR PEACE STUDIES

Selska cesta 112A, HR-10000 Zagreb, Tel./fax: +385 1 4820094, E-mail: cms@cms.hr, web: www.cms.hr

EUROPEAN COURT OF HUMAN RIGHTS

Council of Europe

67075 Strasbourg

Cedex France

BY POST AND FAX

Zagreb, 10th of August 2020

Application no. 43115/18

M.H. and Others v. Croatia (no. 2)

Third party intervention on behalf of the Centre for Peace Studies

Pursuant to the Registrar's notification dated 20 July 2020 that the Vice-President of the Section has granted leave, under Rule 44(3) of the Rules of the European Court of Human Rights

A. The persistence of illegal practices of Croatian authorities which include violent collective expulsions of refugees and other migrants

- 1. Reports and testimonies of the collective expulsions from Croatian territory have been well-documented¹** together with the widespread violence inflicted on refugees and other migrants for the past four years. These expulsions are carried out in absolute lack of identification and documentation, denial of access to the asylum system, and violations of the procedural rights for interpretation and legal assistance. As a consequence of the non-implementation of the legal procedures, there are no remedies available.
2. In 2016, first cases of expulsions without complying with any legal procedures from the territory of Croatia were reported.² From then, numerous sources including national and international NGOs have collected testimonies and have continuously been reporting on these unlawful actions. All of the reports throughout the whole period of four years are very consistent and complementary with each other, even though they use very different methodologies.
- 3. The complaints and reports are highlighted in all the Croatian Ombudsperson's Activity Reports within the period 2016-2020.** In her Activity Report for 2017³ she has stressed the numerous reports about expulsions to Serbia - without following procedures prescribed in the Croatian Law on Foreigners. As prescribed by relevant Law - depending on the necessary return measure - the authorities are obliged to issue a decision, while the procedures are to be implemented individually and with the presence of the translator. However, the Ombudsperson stated that the numerous migrants have testified that they were denied access to international protection and their intent to ask for asylum was ignored, while their expulsion took place without implementing any procedure prescribed by the Law on Foreigners. Moreover, documented complaints to the Ombudsperson contained allegations of police abuse where police officers have allegedly beaten them, forced them to take off their shoes, they were forbidden to speak and their possessions were taken. The Ombudsperson has warned about the high number of these complaints, as well as the details and proofs within them, including dates and places of the border crossing and medical documentation. Finally, she warned that **these behaviours might present the violation of the Article 3 of the ECHR - in both material and procedural aspects: the active torture and degrading treatment of persons, and the obligation of the State to carry out effective investigations that need to be adequate and detailed.**

¹ For example: Centre for Peace Studies (CMS), Are You Syrious (AYS), and the Welcome! Initiative, "5th report on the pushbacks and violence from the Republic of Croatia: Illegal practices and systematic human rights violations at EU borders", Zagreb, 3rd of April 2019, available at:

https://www.cms.hr/system/article_document/doc/597/5_5TH_REPORT_ON_PUSHBACKS_AND_VIOLENCE_2_0052019.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/

² See: Moving Europe, Report on Push-backs and Police violence at the Serbo-Croatian border, 2.2.2016., available at: <http://moving-europe.org/report-on-push-backs-and-police-violence-at-the-serbo-croatian-border-2/>

³ Republic of Croatia, Croatian Ombudsperson, Report for 2017, Zagreb, March 2018, available in Croatian: <https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2017-godinu/>

4. UNHCR Serbia has continuously monitored the illegal expulsions to Serbia⁴, where during 2017 numerous incidents were reported in their weekly reports, documenting the cases as frequent as 109 collective expulsions during the course of the week 10-16 April 2017.
5. Furthermore, Serbia Inter-agency operational updates done on monthly bases documented a total of 4180 persons stating “to have been denied access to asylum procedures in Croatia, but instead been collectively expelled back into Serbia, with many alleging maltreatment” during the period of February-December 2017.
6. Regarding the statistics, it is important to note the **worrying inconsistencies in data collected by the Ministry of the Interior**. For example, in 2018 the Ministry of the Interior reported 8 2076 illegal border crossings⁵, among which 2961 tries of “illegal exits from Croatia” to Slovenia and 8 to Hungary and 1829 tries of “illegal entries in Croatia“ from Serbia, 676 from Bosnia and Herzegovina, 19 from Montenegro, and 15 from different locations, while 2 699 people were caught in “an unknown part of the border - inside the Croatian territory“. From the above mentioned 8 207 people, 1 438 were sent back to third countries, 1 068 applied for asylum, 536 were placed in detention. **It follows that the Ministry of the Interior did not submit any information on the procedures applied in the remaining 5 165 cases of persons who were in their control once they were stopped in the attempt of the illegal crossings.** In the same period national and international humanitarian organisations have collected data on much larger number of persons testifying that they have been illegally expelled from the Republic of Croatia, then the number reported by the Ministry of the Interior (Save the Children: 6340 persons pushed back from Croatia to Serbia by the end of November 2018, No Name Kitchen: collected approximately 6 450 testimonies of pushbacks from Croatia to Serbia between May 2017 and May 2018, and UNHCR Serbia noted there were 10 432 people collectively expelled from Croatia to Serbia during 2018).
7. **The use of violence and expulsions without complying with any lawful procedures violate Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR) on the prohibition of the collective expulsions, as well as Article 3 of the ECHR.**
8. Through the ECtHR’s case law, the content of the prohibition of torture and inhuman or degrading treatment or punishment was developed to an **absolute non-refoulement norm**. During the above-described expulsions without any legal procedure implemented, authorities fail to provide any assessment of this kind and therefore breach this obligation – opening doors for breaching the very non-refoulement principle.
9. 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 their arbitrary actions**.

⁴ UNHCR Monthly Updates can be found at: <http://www.unhcr.rs/en/dokumenti/izvestaji/unhcr-serbia-updates.html>

⁵ Official Ministry of the Interior data available at: <https://mup.gov.hr/UserDocsImages/statistika/2018/Statisticki%20pregled%20temeljnih%20sigurnosnih%20pokazatelja%20i%20rezultata%20rada%20u%202018.%20godini.pdf>, p. 146

10. In the Activity Report for 2019⁶, the Croatian Ombudsperson **confirmed the cases of ill-treatment of asylum seekers and pushbacks**. Allegations include cases where the police ignored asylum requests, including from families and children, took people's money and cell phones, and ordered migrants at the border to go back to Bosnia, threatening them with firearms.

A.1. Exercise of power in the collective expulsions and its systematic nature

11. **Violent, illegal and forced expulsions, together with the denial of access to the asylum system, endanger persons' lives, dignity and safety while they are under exclusive control and within the power of the Croatian authorities**. The above-mentioned persistence of practice of illegal expulsions is carried out arbitrarily by the Croatian police officers, where they abuse their powers and file various orders to the civilians. Large majority of the reported cases involve civilians being ordered to cross the border to Serbia or Bosnia and Herzegovina. These orders include forcing persons to swim over rivers, go through mountains and unsafe territory. Therefore, for the purposes of establishing jurisdiction under the Convention, it is needed to take into account "the particular factual context and relevant rules of international law" (*Jaloud v. the Netherlands* [GC], § 141). The orders given by the state officials puts these persons in their exclusive power, and under their jurisdiction even right after they cross the border line - since the very crossing was ordered by the state's authority. **Consequently, the obligation of the State to protect human rights within the Article 1 of the ECHR applies even when persons outside of its territory are obeying the orders given to them by its State officials - extending the responsibility of the State if the execution of these orders lead to violations of human rights.**

12. **The systematic nature of collective expulsions** in Croatia was confirmed through two separate testimonies of Croatian police officers shared by journalists and through complaints of police officers to the Croatian Ombudsperson. **These testimonies are consistent with each other and with thousands of testimonies of refugees and other migrants collected between 2016 and 2020**, and describe practices that are contrary to any prescribed procedures in the Law on Foreigners⁷ or Law on International and Temporary Protection⁸. On 24th of July 2019, one Croatian police officer stated⁹: **"My fellow policemen and I have executed illegal returns of migrants from Zagreb to the border line between Croatia and Bosnia and Herzegovina or Serbia**. We would bring them to the 'green' borderline and ordered them to cross back to Bosnia and Herzegovina or Serbia. **We did not take any records of the identities. We received these orders from our superiors at the police station"**. He also explained in detail how the collective expulsions are being carried out: "I call my boss and say that we have a group of migrants. (...) Boss calls me on my private phone on which the conversations are not recorded, and says to take them to the border. **Migrants say: 'Asylum'**,

⁶ Republic of Croatia, Croatian Ombudsperson, Zagreb, March 2020, available in Croatian: <https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvjecje-C5%A1%C4%87e-pu%C4%8Dke-pravobraniteljice-za-2019.pdf>

⁷ Croatian Law on Foreigners/Zakon o strancima, Official Gazette NN 130/11, 74/13, 69/17, 46/18, 53/20

⁸ Law on International and Temporary Protection/Zakon o međunarodnoj i privremenoj zaštiti, Official Gazette NN 70/15, 127/17

⁹ The full testimony available in the interview: Barbara Matejčić, *Prvi intervju u kojem hrvatski policajac tvrdi: šefovi nam naređuju da ilegalno protjerujemo migrante* /First interview in which a police officer claims: our bosses order us to illegally expel migrants, Net.hr, 24. 07.2019., available at: <https://www.telegram.hr/price/prvi-intervju-u-kojem-hrvatski-policajac-tvr-di-sefovi-nam-nareduju-da-ilegalno-protjerujemo-migrante/>

we respond: ‘No asylum’, we put them in vans and turn off the connection that shares the GPS signal, so it is not possible to track us”. On 9th of December 2019 another police officer gave inside information on the organisation of these actions and on the unit called “Corridor” which allegedly carries out the collective expulsions: “Now they simply call themselves the Corridor. They have WhatsApp and Viber groups for exchanges of information and photographs of groups of migrants... Significantly, they operate throughout Croatian territory, therefore, they move like a real mobile unit. I think that it is already clear within the system that whenever they come to a certain area, soon there is information about police shootings, robbery, beating...”.

13. Further on, it is in breach of the **Ordinance on the Treatment of Third-country Nationals in Article 20¹⁰**, which states that a person is to be arrested in the event of unlawful entry, and the actual content of the certificate of arrest is clearly prescribed, **with the exception of arrest in case a third-country national has declared his intent to seek international protection.** Finally, in the mentioned **Ordinance, Article 64** stipulates that the police administration or police station will **keep a database of:** third-country nationals denied entry and denied entry to third-country nationals for whom a measure to secure return has been applied, temporarily retained foreign travel documents and taken fingerprints, biometric data, and photographs of a third-country national in respect to the measures that have been taken to ensure return. **From the reports of NGOs and Croatian Ombudsperson, as well as testimonies of migrants and police officers - all of these are non-existent. Therefore, described expulsions are in complete violation of any prescribed procedures and standards, while the authorities exercise their direct powers and issue orders to civilians, these practices persist for four years in a systematic manner often followed by torture, violence and degrading treatment.**

B. Collective expulsions of groups that include children and unaccompanied children

14. According to the data collected by the Border Violence Monitoring Network, there is a continuous and high frequency of violations against children during collective expulsions from Croatia to neighbouring state territories. Between 2017 and 2019, the number of cases involving an underage person was consistently between 30%-50%. In 19% of recorded cases, groups including children and unaccompanied children were beaten by Croatian police during their collective expulsions. Multiple testimonies in the BVMN database allude to cases of indiscriminate violence against children when they were part of a group of adults. Meanwhile, other testimonies describe the children as witnesses to the violence carried out against adults in their presence. Types of violence reported as used in collective expulsions from Croatia to Bosnia and Herzegovina and Serbia where minors were involved in the period 2017-2020 include: usage of firearms (3%), threatening with guns (3.5%), forcing to undress (4%), pushing persons on the ground (4.2%), exposure to air condition and extreme temperature in the car (5%), deliberately reckless driving (6%), insulting (8%), kicking (10%), destruction of personal belongings (12%), theft of personal belongings (16%), beating with batons/hands/other (19%). The two most prevalent crimes reported in the collective expulsions of children and unaccompanied children are physical assault and theft of possessions.¹¹

¹⁰ Croatian Ordinance on the Treatment of Third-country Nationals, Pravilnik o postupanju prema državljanima trećih zemalja, Official Gazette, NN 68/2018

¹¹ For more information see: CPS, Welcome Initiative!, BVMN, Society for Psychological Assistance, Pushback report on children and unaccompanied children in Croatia, 2020, available at:

15. **In the Activity Report for 2017, the Croatian Ombudsperson for Children** has warned about the discrepancy in data of the Croatian institutions and expressed that these raise grounded suspicions of the illegal actions of the Ministry of the Interior. Specifically, data of the Ministry of the Interior state that **846 children were recorded to have illegally crossed the border in 2017.** There were 261 children who required international protection in Croatia. Pursuant to the *Article 6 of the Protocol on the Treatment of Unaccompanied Children - Foreign Nationals*, a competent social welfare centre is to be immediately informed about every child - foreign national - found unaccompanied in the territory of Croatia, irrespective of their status or whether the child is seeking international protection or not. However, as the Ombudsperson highlighted, according to data presented by the Ministry of Demography, Family, Youth and Social Policy, **the social welfare system recorded 334 children, 30 of them younger than 14 years of age (with 2 children younger than 4 years of age).** **This discrepancy between Ministry of the Interior data and data presented by the Ministry of Demography, Family, Youth and Social Policy shows there is a gap of 512 for whom the procedure prescribed by the named Protocol, meaning that the relevant institutions have not been informed about the presence of children in the Croatian territory, which is a breach of rights of these children in itself.**¹²
16. The previously mentioned provisions of the Protocol are in line with the decision of the UN Committee on the Rights of the Child which in the case *D.D. v. Spain* (No. 4/2016) stressed the obligation of the State to respect the principle of non-*refoulement* in regards to children, and while doing this assessment pay particular attention to the assessment of the risk and irreparable harm that child might experience if transferred or returned. **The Committee emphasized that the child, no matter the documentation or lack of it, has to have access to the territory and “be referred to the authorities in charge of evaluating their needs in terms of protection of their rights, ensuring their procedural safeguards.”**
17. This principle has been implemented in the Croatian domestic law in **Art. 6 of the Law on International and Temporary Protection** and **Art. 126 of the Law on Foreigners.** Moreover, the later Article also stipulates an additional requirement to offer a higher level of protection for unaccompanied minors. It states an obligation to determine “whether a minor in the country of return will be handed over to a family member, designated guardian or appropriate reception institution.”
18. Moreover, the illegality of such practices towards children lays also in failing to take into account the best interest of the child, family life, and the state of health – requirements to meet the threshold of returns. They are stipulated in the **EU Directive on common standards and**

https://www.cms.hr/system/article_document/doc/647/Pushback_report_on_children_and_unaccompanied_children_in_Croatia.pdf

¹² Republic of Croatia, Ombudsperson for Children, Summary Report on the Work of the Ombudsperson for Children for 2017, Zagreb, March 2018, p.23, available at: <https://dijete.hr/en/reports-of-the-ombudsperson-for-children/>

procedures in the Member States for returning illegally staying third-country nationals¹³, as well as in the Croatian Law on Foreigners¹⁴.

19. Reports and complaints on systematic violations of rights of children have persisted. In the **Activity report for 2019 of the Croatian Ombudsperson for Children**, the Ombudsperson confirmed receiving 10 complaints about violations of migrant children's rights in 2019, mostly concerning unlawful expulsions of children at the borders with Bosnia and Herzegovina and Serbia. These complaints include verbal and physical violence, destruction of personal belongings and illegal expulsions without giving them the possibility to seek international protection.¹⁵
20. Described unlawful collective expulsions carried out by the state authorities would not only violate the right to seek international protection but also **breach of obligation to ensure that the best interest of the child has been assessed and taken as a primary consideration in decisions and actions taken by the state authorities and institutions.**¹⁶
21. The European Court of Human Rights (ECtHR) has stressed the States' positive obligation to protect and provide care for extremely vulnerable individuals, regardless of their status as irregular migrants, nationality or statelessness. **The ECtHR ruled that the extreme vulnerability of a child takes precedence over the person's status as a migrant in an irregular situation.**¹⁷
22. **When it comes to the children who are in a specific situation of vulnerability, like asylum seekers and refugees, the authorities are under the obligation to take into consideration their specific kind and degree of vulnerability.**¹⁸
23. Regardless of the way a child enters the territory, the competent authorities in Croatia not only need to protect their right to life and dignity, but also human rights from the violation that can be caused by third parties, such as in the case of smuggling or human trafficking. Unfortunately, the continuous reports on the practice of the human rights violation at the Croatian borders shows not only that the dignity of children is not protected, but that the police treats them extremely violently, resorting to torture, and in a humiliating manner.

C. Absence of effective investigations into allegations of illegal practices of the Croatian police against refugees and other migrants

24. In the Activity Report for 2017, the Croatian Ombudsperson explicitly reported on the numerous reports of the deliberate prevention of access to the asylum system. Regarding those,

¹³ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Art.5.

¹⁴ Croatia, Law on Foreigners (Zakon o strancima), Article 101. Official Gazette (Narodne novine) NN 53/20, available at: <https://www.zakon.hr/z/142/Zakon-o-strancima>

¹⁵ Republic of Croatia, Ombudsperson for Children, Summary Report on the Work of the Ombudsperson for Children for 2019, Zagreb, March 2020, p.23-24, available at: <https://dijete.hr/en/reports-of-the-ombudsperson-for-children/>

¹⁶ As stipulated in UN (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 14, p. 5.

¹⁷ See, for example, N.T.P. and Others v. France, no. 68862/13, § 44, 24 May 2018, and the judgments cited therein, and Khan v. France, No. 12267/16, §74

¹⁸ United Nations (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), para. 76, p.16.

the Ombudsperson has filed numerous warnings and recommendations to the Ministry of the Interior while specifically **highlighting their obligation to carry out urgent and effective investigations and implementation of CPT standard from 2015** - which stress that clear understanding of the fact that responsibility for the illegal acts includes not only the perpetrators, but also those which were aware of or were supposed to be aware of these acts, and did not prevent or stop them. In this context, the Ombudsperson stressed that the Ministry of the Interior is “persistently refusing” to investigate the reported illegal acts towards the migrants found in the depths of Croatian territory. Moreover, **she warned about the lack of communication regarding the procedures in investigating complaints on police behaviour filed by international organisations and Croatian NGOs - which included expulsions of migrants to Serbia, sometimes without any procedures, ignoring their intent to seek international protection in Croatia** – meaning that they were taken to the ‘green’ borderline and ordered to cross it, sometimes with the use of force. The Ombudsperson has dismissed the arguments of the Ministry of the Interior which repeatedly and continuously states that the statements of migrants about the police officers’ behaviour are false and motivated by the need of revenge on their way to the countries of destinations. Specifically, **she pronounced Ministry of the Interior arguments as unacceptable and stated that they do not meet the criteria of an effective investigation.**

25. Conducting effective investigation into allegations of the human rights violations are the procedural obligations of States under the European Convention of Human Rights, especially required under the Articles 2, 3 and potentially 4 of the Convention. Most of the testimonies, reports and complaints regarding collective expulsions from the Croatian territory allege precisely violations of Article 3, and some of Article 2. However, no effective investigations have been carried out in Croatia regarding any of the complaints.
26. **The European Court of Human Rights has developed three criteria, which the State must meet in order for the investigation to be considered “effective”.**
27. The first is that **the persons responsible for the investigation and those carrying out the inquiries are independent of those involved in the events, which presupposes “not only a lack of hierarchical or institutional connection but also a practical independence”¹⁹**. This independence requirement is especially important in cases of alleged violations by the police officers and where they need to be investigated²⁰ and, where the evidence is taken and witnesses are heard by police officers belonging to the same force in the same town as the officers being investigated.²¹ The requirement of an effective investigation is not fulfilled also in a situation where the investigation focuses on law enforcement agents and is placed in the hands of administrative boards under the authority of a prefect who is also responsible for the security forces, and where these investigations are carried out by police officers from units involved in the incident.²² **In the case of collective expulsions from the territory of Croatia, it is important to take into account the systematic nature of this practice and allegations that this practice is ordered from the very Ministry of the Interior. Therefore, any internal investigation within the Ministry or bodies who are not hierarchically and**

¹⁹ In particular, *Barbu Anghelescu v. Romania*, 5 October 2004; *Bursuc v. Romania*, 12 October 2004; *Nachova v. Bulgaria* [GC], 6 July 2005.

²⁰ *Barbu Anghelescu*, op.cit.

²¹ *Bursuc*, op.cit.

²² Of numerous judgments, see for example *Akkok v. Turkey*, 10 October 2004

practically independent do not suffice and therefore do not meet the “effectiveness” threshold.

28. The second condition is that the **investigation be prompt, speedy and thorough**. The allegations of the violations of human rights of refugees and other migrants by the Croatian authorities have been numerous and continuous for a period of four years, yet not one effective investigation has been carried out.
29. The last condition is that the investigation **must lead to the identification and punishment of the persons responsible**. As this “is not an obligation of result, but of means”, the State must prove that it has taken all the steps available to identify and punish the perpetrators. Croatian authorities have for four years simply dismissed complaints in this regard.

D. Limitations in access to legal aid in detention centres for third country nationals in the Republic of Croatia

30. There are no available data on detention of migrants and applicants for international protection in the course of 2019. In 2018, a total of 928 migrants were detained, of whom 535 in the Reception Centre for Foreigners in Ježevo, 109 in the Transit Reception Centre in Tovarnik and 284 Transit Reception Centre in Trilj.²³ At the moment, Croatia has three detention centres: the Reception Centre for Foreigners located in Ježevo, with a total capacity of 95 places; the Transit Reception Centre in Trilj with a total capacity of 62 places; and the Transit Reception Centre in Tovarnik with a total capacity of 62 places.²⁴ The use of a garage inside of a police station compound has been reported several times throughout 2019.²⁵
31. In 2017, an increase in detention has been reported, with a total of 134 asylum seekers detained. It was documented that also vulnerable persons, including unaccompanied children and victims of trafficking, have been placed in detention in 2017.²⁶ **The practice of detaining vulnerable asylum seekers was first documented in 2017**, when 68 children were detained in the Reception Centre for Foreigners, 5 of them unaccompanied. In the Transit Reception Centre in Tovarnik 27 children were detained and in Transit Reception Centre in Trilj 5 children were detained during 2017.²⁷
32. FRA reported in 2017 that “according to an interview with the Ombudsperson’s Office in Croatia, the **conditions for children and vulnerable persons in the Ježevo Detention Centre and the Tovarnik Transit Detention Centre were sub-standard**”²⁸.
33. The Ombudsperson’s staff conducted an **unannounced visit in 2019 to, amongst other, the Transit Reception Centre in Tovarnik**, and it was reported that detainees there **have difficult access to attorneys and that they are not adequately informed about their rights**.

²³ Information provided by the Ministry of the Interior, Border Directorate, 6 February 2019.

²⁴ Information provided by the Ministry of the Interior, Border Directorate, 6 February 2019

²⁵ Border Violence Monitoring Network, Illegal push-backs and border violence reports – Balkan region, April 2019, available at: <https://bit.ly/2wuXvQJ>; H-alter, ‘Migrant Torture Garage’, 15 May 2019, available in Croatian at: <https://bit.ly/3dxTqfc>; H-alter, ‘Migrante se kuje dok je vruće’, 24 September 2019, available in Croatian at: <https://bit.ly/3aqXY4U>; H-alter, ‘Torture garage for migrants’, 16 October 2019, available at: <https://bit.ly/39mjc2A>.

²⁶ Croatian Law Centre, 2017 Update AIDA, ECRE, p.14, available at:

<https://www.asylumineurope.org/reports/country/croatia>

²⁷ *ibid.*, 78.

²⁸ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-may-periodic-migration-report-highlights_en.pdf

Furthermore, identification of unaccompanied children and other vulnerable groups is not adequate.²⁹

34. **There were difficulties in effective access of NGOs to detention centres in 2017³⁰, while in 2019 the situation has worsened and some NGOs which provide legal support to refugees have been disabled in accessing detention centres.** The Centre for Peace Studies (CPS) has no access to the Reception Centre for Foreigners in Ježevo and the Transit Reception Centre for Foreigners in Tovarnik. The CPS tried to gain access to the Centres in Tovarnik and Trilj for the purposes of research on the rights of the victims in detention, however their access was denied. CPS was also denied access to the Centre in Ježevo on the argument that the Centre is overburdened with the organisation of numerous visits by NGOs and lawyers. CPS does not have access to the detention centre in Ježevo since 2018. Are you Syrious (AYS) emphasized, that in 2019 it became impossible to find out whether a particular person was detained, for example in situations where AYS was contacted by the family of the person who assumed that a person may be in detention and asked AYS to contact the centre to check accordingly.³¹
35. According to the Article 54 of the Croatian Law on International and Temporary Protection, **detention may be ordered for 4 reasons, and only if it is established by individual assessment that other measures would not achieve the purpose of restriction of freedom of movement:** 1) To establish the facts and circumstances of the application which cannot be determined without limitation on freedom of movement, in particular where there is a risk of absconding; 2) To establish and verify identity or nationality; 3) To protect national security or public order; 4) To prevent abuse of procedure where, on the basis of objective criteria, which include the possibility of access to the procedure of approval of international protection, there is a well-founded suspicion that the intention to apply for international protection expressed during the procedure of forced return was aimed at preventing the procedure of removal. **Maximum detention time limit of 3 months, which may be extended by another 3 months.**
36. However, in practice several attorneys at law and one legal representative from an NGO reported that decisions on the **restriction of freedom of movement do not always contain a reasoning behind the individual assessment.** Instead, they simply state that the individual assessment has determined that detention is necessary because other measures cannot achieve the purpose of restricting freedom of movement.³²
37. **Detention of children is internationally perceived as a measure of last resort, limited to the exceptional situations where the deprivation of liberty of the minor would be in the best interest of the minor** (Notably, Articles 3 and 8 ECHR;). At the level of the Council of Europe, both the Committee of Ministers and the PACE have produced soft law addressing the delicate issue of the detention of children and unaccompanied minors in migration. Regarding asylum seekers, the Committee of Ministers has established that “[c]hildren, including unaccompanied minors, should, as a rule, not be placed in detention”.
38. Further on, the ECtHR has enshrined the principle that the detention of children is limited to very exceptional circumstances where it would be justified by the best interest of the child. In

²⁹ Ombudsperson, Report for 2019, available in Croatian at: <https://bit.ly/2VaHJUt>, p.164.

³⁰ 2017 Update, p. 58

³¹ <http://www.asylumineurope.org/reports/country/croatia/access-detention-facilities>

³² <http://www.asylumineurope.org/reports/country/croatia/access-detention-facilities>

the light of the ECtHR's decision in *A.B. and Others v. France*³³, it is a State's duty to reduce to the minimum the situations where families with children are held in detention. Considering that it is crucial to preserve the family unit while avoiding to deprive minors of their liberty, the ECtHR articulated that the measure of detention is **disproportionate in the absence of reasons to suspect that the family would try to evade the authorities**. Therefore, this is the set criteria for these types of detention.

39. Regarding children in detention, additional criteria is required, as explained in *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*³⁴ which articulated the duty of States to ensure that children "receive proper counselling and educational assistance from qualified personnel specially mandated for that purpose". Noting the inevitable distress and serious psychological effects that such conditions would necessarily have on the child, the ECtHR concluded that the authorities have "demonstrated a lack of humanity to such a degree that it amounted to inhuman treatment".

³³ 12 July 2016

³⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03, 12 October 2006, para. 55; ECtHR, *Muskhadzhiyeva and Others v. Belgium*, No. 41442/07, 19 January 2010, para. 56.