



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

Zagreb, April 1, 2025

## **RULE 9.2. COMMUNICATION**

**by 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 Daraibou v. Croatia  
No. 84523/17***

### **I. Introduction**

1. This submission responds to the Government's 17 October 2023 Action Plan. This submission aims to update the Committee of Ministers that the proposed measures are insufficient for appropriately implementing the judgement. Individual measures have proven ineffective and inadequate, as detailed below. Regarding the general measures, the Centre for Peace Studies presents evidence that the structural and complex issues leading to systematic human rights violations persist in Croatia. The general measures proposed by the Government do not result in the fundamental, systemic changes needed to fully implement the European Court's judgment, as we will demonstrate in our submission.

### **II. Case Summary**

2. The case concerns the State's obligation to provide the applicant with adequate and reasonable protection of his life and physical integrity and to perform an effective investigation into its breaches. Abdeljalil Daraibou, a Moroccan citizen, was taken into custody in Croatia in 2015 after entering the country clandestinely. He and three others were detained in a short-term facility for irregular migrants in the basement of the Bajakovo police station, where a fire broke out. Three detainees died, while the applicant suffered severe, life-threatening injuries but survived.
3. An inspection found a burnt cigarette stub and an expert report concluded that police officers had failed to notice detainees preparing or starting the fire on video surveillance. Officers assigned to guard the room also neglected direct supervision. Disciplinary proceedings were initiated against two officers, one receiving a 10% salary reduction for three months, while the other was acquitted.



4. On 9 May 2018, the Vukovar Municipal State Attorney's Office opened an investigation into the applicant on suspicion of causing a fire. However, on 27 June 2019, the investigation was terminated because the applicant had left Croatia despite his legal representative stating she was informed about his whereabouts.
5. The ECtHR found a violation of Article 2 (right to life) under both substantive and procedural aspects. The Court ruled that the police failed to take basic safety precautions, including conducting thorough searches, properly monitoring detainees via video surveillance, and maintaining a building with proper fire safety measures. Additionally, the investigation was inadequate, focusing only on individual officers' liability rather than broader institutional failings that allowed the tragedy to occur.
6. The Court also found that the criminal inquiries that lasted about two and a half years resulted in disciplinary proceedings only, in which only a modest sanction was imposed on one of the police officers (§106). In the Court's opinion, the investigation lacked thoroughness since several questions were left unanswered, particularly those related to the search and the monitoring of the detainees and the adequacy of the premises at which they were detained (§107). Further on, the authorities limited themselves to the only narrow issue of the existence of possible criminal or disciplinary liability of individual police officers and did not deal with the more comprehensive question of whether there had been any broader institutional shortcomings or errors which allowed for the tragic accident to occur, nor did they take actions to remedy the potential deficiencies and prevent similar errors in the future (§109,110)

### III. Individual Measures

#### A. Bringing the violations to an end

7. According to the Court's findings, several key questions remain unanswered in this case, particularly concerning the searches and monitoring of detainees and the adequacy of the detention facilities (§ 107). The proceedings and criminal investigations conducted focused narrowly on the potential criminal or disciplinary liability of individual police officers without addressing broader institutional shortcomings or systemic failures that may have contributed to the tragic incident (§ 109).
8. The Court emphasised the procedural obligation to investigate the circumstances under which the fire broke out and the applicant sustained injuries. The official investigation was required to determine whether the authorities bore any responsibility for failing to prevent the incident (§ 105). **While the inquiry was initiated in a timely manner, it was neither thorough nor comprehensive, leaving critical issues unaddressed, including deficiencies in detainee searches, supervision, and the suitability of detention premises (§ 107 in conjunction with §§ 89-92).**
9. The European Court stressed that no further efforts were made to investigate the "unsuitability of premises and certain organisational shortcomings" referenced by the disciplinary court. Despite the authorities' duty to identify and rectify systemic deficiencies, no institutional inquiry was conducted to determine the root causes of the tragedy, address potential failings, and prevent similar occurrences in the future (§ 110). **Nonetheless, even after the ECtHR ruling, no additional proceedings were initiated.**
10. The applicant was expelled to Morocco on 30 May 2018 and banned from re-entering the European Economic Area until 4 March 2021. Long after his expulsion, the applicant's legal representative was contacted for the



first time to schedule an interview. The claim made in the Action Plan is inaccurate, as the lawyer responded to the summons by clarifying that the applicant was in Morocco and, therefore, unable to attend in person. While the criminal procedure law provides for remote victim testimony, the applicant was never treated as a victim but rather as a suspect, depriving him of numerous procedural rights such as the hearing via video link.

11. Based on the ECtHR's judgment, on 5 May 2023, the applicant's lawyer submitted a request to the Vukovar Municipal Court to reopen criminal proceedings. However, in a letter dated 11 October 2023, the Municipal State Attorney's Office informed her that it considered the request unfounded. On 19 October 2023, the applicant's lawyer formally requested a written decision outlining this conclusion, including the right to appeal, as such a remedy was not provided in the initial response. Judicial authorities failed to respond to this request, prompting the lawyer to file a complaint with the Senior State Attorney on 21 November 2024. Despite the explicit provision in the Criminal Procedure Act requiring a response within 15 days, the complaint was only rejected on 30 December 2024.
12. Following the ECtHR's judgment, the applicant's lawyer requested reopening criminal proceedings on 5 May 2023. The Municipal State Attorney's Office deemed the request unfounded on 11 October but did not issue a formal decision. On 19 October, the lawyer requested a formal decision with the right to appeal. With no response for months, she filed a complaint with the Senior State Attorney on 21 November, which, despite a 15-day deadline under the Criminal Procedure Act, was only rejected on 30 December 2024.
13. Finally, the investigation failed to address any deficiencies identified in the ECtHR's judgment, leaving critical issues unresolved. Even though, due to police negligence, the applicant and other fire victims were not adequately searched, and individuals were systematically detained in the basement of a building lacking an occupancy permit or a designated fire escape route, no one has been held accountable for committed crimes to this day.

## B. The applicants' redress

14. The applicant applied for asylum in Croatia, and his request was refused on 2 September 2015. Subsequently, he tried to regulate his stay and remain in Croatia by requesting a permanent stay for humanitarian reasons. However, after it was also refused on 30 May 2018, the applicant was expelled from Croatia to Morocco and had no alternative but to leave the country. He was prohibited from re-entering the European Economic Area until 4 March 2021.
15. The ECtHR emphasised that the state has a positive obligation when authorities know or should have known of an actual and imminent risk to a person's life and fail to take reasonable measures to prevent it. Even without such knowledge, it stated that the police and prison officers must take certain basic precautions to minimise the risk to detainees' health and well-being (§ 83-84). Therefore, **the verdict clearly established a connection between the applicant's severe injury and the state's failure to provide adequate detention conditions**, thereby providing a basis for seeking compensation from the state through civil proceedings for the compensation of damages.
16. Although in the Action plan, the Government stated that a civil lawsuit was the appropriate remedy the applicant should have pursued, his expulsion from the country effectively prevented him from doing so. While the Criminal Procedure Act contains an explicit provision allowing victims to testify via video link, no such provision exists in civil litigation. As a result, the decision to allow testimony via video link is left to the



discretionary judgment of the civil court. When the applicant was expelled from the Republic of Croatia, civil courts did not conduct hearings via video link; even today, they are scarce. Even if he had submitted a lawsuit for the compensation of damages against the Republic of Croatia, with the support of his authorised lawyer, it is inevitable that his inability to access the court to testify—due to the ban on his entry into the country—would have resulted in the dismissal of his case. Therefore, **the applicant was effectively prevented from seeking compensation from the state due to his expulsion from the Republic of Croatia in 2018.**

#### IV. General Measures

##### A. Measures addressing shortcomings in respect of police premises and conduct

###### 1. *No improvements to infrastructure - Measures to improve the conditions in detention*

17. In the 2023 report, the Ombudswoman highlighted that detention conditions at the Gruda, Tovarnik, and Cetingrad border police stations fail to meet Ministry of the Interior regulations and procedural standards for third-country nationals. Alternatively, these facilities are officially not in operation.<sup>1</sup>
18. The Ombudswoman found that the Cetingrad border police station, which handles most cases involving irregular migrants and asylum seekers, “lacks adequate material conditions for detaining individuals, and the facilities designated for this purpose have not been in use since 2017.”<sup>2</sup> On the contrary, in the yard of the said border police station, there are three containers measuring 6m x 2.4m x 2.6m, “two of which are used for the temporary accommodation of migrants during the procedure, regardless of whether it concerns an application for international protection or the implementation of return measures”<sup>3</sup>. The conditions of these containers where persons are being detained are inhumane: not furnished, while only one has a heating/cooling device, and there is no access to drinking water or sanitary facilities.<sup>4</sup> The Ombudswoman reported that a group, including minors (both accompanied and unaccompanied), was detained in containers, warning **that such conditions could violate Article 3 of the ECHR**, especially concerning children and vulnerable groups. She noted, also in connection to the barriers she experiences in implementing her monitoring activities, that “a review of the cases concerning the treatment of applicants and irregular migrants did not clarify when and for how long individuals are placed in these containers, nor when they are transferred to other police stations”.<sup>5</sup>
19. In line with the Ombudspersons’s findings, informal and inadequate places of detention are common practices of Croatian authorities regarding refugees and other migrants. For example, in 2022, the media reported on the garage used by the police station in Gvozd, located close to the border with Bosnia and Herzegovina, for which the Ministry of Interior confirmed that it is being used for such purpose. The media reported that they saw 11 pairs of shoes in the garage, including children’s. The explanation for placing refugees and other migrants in such inadequate conditions was that there are many persons and limited space, so they are forced to keep them in a garage until the procedure is completed.<sup>6</sup>

<sup>1</sup> The Ombudsperson's Report for 2023,, page 263 available at: <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/>

<sup>2</sup> op.cit.

<sup>3</sup> op.cit.

<sup>4</sup> ibid. pages 263-264

<sup>5</sup> ibid. page 264

<sup>6</sup> Zoran Pehar, N1, Garaže za migrante, accessed 12.2.2025, available at: <https://n1info.hr/vijesti/garaze-za-migrante/>



20. Between January and May 2023, 599 people, including 32 minors (7 of which were unaccompanied), were held at the Tovarnik Transit Reception Center.<sup>7</sup> This indicates a concerning practice of placing minors, particularly unaccompanied minors, in detention.
21. In its [report](#)<sup>8</sup>, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter CPT) emphasises that regardless of a person's classification—whether "detained," "brought in," "arrested," or simply held against their will, even in a police van—they are effectively deprived of liberty. As such, they must be granted fundamental safeguards against ill-treatment, including the right to notification on custody, access to a lawyer, and access to a doctor. These rights must be effectively available from the very outset of their deprivation of liberty—from the moment they are required to remain with the police. Contrary to this and the standards set in *Fanizyeva v. Russia*, a transit reception centre which functions as a de facto detention centre has been operating for over a year in Dugi Dol, Krnjak Municipality. Individuals there lack access to legal aid, humanitarian assistance, and medical care beyond emergency treatment. The site **lacks basic infrastructure, including running water, electricity, proper beds, adequate sanitation, and heating or cooling, rendering it unfit for human habitation**, particularly during extreme weather conditions.
22. This container-based facility, with a capacity of 500 people, is located on an abandoned military site in a remote, forested area, about a 10-minute drive from the nearest village. Under the EU Pact on Asylum and Migration, there are plans to expand it into a 1,500-person "screening centre."<sup>9</sup> According to media reports<sup>10</sup>, asylum seekers at this location are transferred to reception centres in Zagreb or Kutina. In contrast, those not seeking asylum are detained and deported to Bosnia under a readmission agreement. The facility, functioning as a de facto detention centre, is not officially registered and remains under the Karlovac Police Department's jurisdiction, operating without transparency. Due to its deficiencies, the centre cannot obtain an occupancy permit. Its remote location, accessible only by unpaved roads, poses significant fire safety and security risks, especially in emergencies.
23. Apart from the above, we point out a particularly troubling case of the state neglecting to take basic precautions to protect individuals deprived of their liberty that occurred on February 13 2019, in a Prison Hospital in Zagreb. According to media reports, a young man with mental health difficulties was subjected to abuse and rape by another inmate, a convicted rapist. The two were locked in a room together with several other convicted prisoners and left unattended for several hours.<sup>11</sup>

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<sup>7</sup> Semi - Annual report of the Independent Monitoring Mechanism on the conduct of police officers of the Ministry of the interior in the area of border protection, irregular migration, and international protection November 2022 – June 2023 – December 2023 – July 2024; published in August 2024; page 59, available at: <https://www.nmn.hr/reports/20>

<sup>8</sup> 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, Strasbourg, 3 December 2021, page 9, available at: <https://rm.coe.int/1680a4c199>

<sup>9</sup> Tanja Kuturovac, HRT, "Centar za migrante u Dugom Dolu širi kapacitete i uvodi nove funkcije" accessed 12.02.2025, available at: <https://vijesti.hrt.hr/hrvatska/centar-za-migrante-u-dugom-dolu-siri-kapacitete-i-uvodi-nove-funkcije-11873430>

<sup>10</sup> Mario Pušić, Jutarnji list, "Prvi put smo obišli prihvatni centar za migrante kraj Karlovca, evo kako izgleda", accessed 12.2.2025, available at: <https://www.jutarnji.hr/vijesti/hrvatska/prvi-put-smo-obišli-prihvatni-centar-za-migrante-kraj-karlovca-evo-kako-izgleda-15432704>

<sup>11</sup> "Mladića u Zatvorskoj bolnici drogirali, iznuđivali i silovali. Čuvari i liječnici mu nisu pomogli, sad će tužiti državu", accessed 12.02.2025; available at: <https://www.telegram.hr/politika-kriminal/mladica-u-zatvorskoj-bolnici-drogirali-iznuđivali-i-silovali-pocinitelj-dobio-4-i-pol-godine-zrtva-ce-tuziti-drzavu/>



24. Finally, in 2023, in the case of [Vukušić v. Croatia](#), the ECtHR found Croatia responsible for violating Article 3 in its material aspect due to degrading treatment and inadequate prison conditions.

## ***2. Ensure the access of the Croatian Ombudsperson to detention places and data***

25. The Ombudswoman is authorised to perform unannounced visits to bodies and institutions and inspect premises occupied by persons deprived of liberty, including free access to information on their treatment.<sup>12</sup> This includes visits to the police stations, border police stations and any other premises where there are or may be persons deprived of liberty.<sup>13</sup> Moreover, the Ombudswoman investigates human rights violations, when reported.<sup>14</sup> **Contrary to the CPT's recommendation** in its 2020 report, which called for future delegations and other independent monitoring bodies to be granted unrestricted access to such facilities and the relevant information, **access remains impeded**. Within her mandates, the Ombudswoman encounters serious obstacles in accessing crucial information on treating irregular migrants in police stations. The MoI has continuously prevented the Ombudswoman from performing her official duties since June 2019<sup>15</sup>. Within those authorities, the Ombudswoman was denied access not only to all the data on treatment towards the irregular migrants but also to the IT system and any individual case. Data has also been withheld during investigative proceedings, which hampered the mandate of the National Preventive Mechanism.<sup>16</sup>

In the Ombudswoman's last Report on the Performance of the Activities of the National Preventive Mechanism for 2023, it is clearly stated that her Office is **"not consistently provided with access to all data on the treatment of irregular migrants, including those contained in the Ministry of Interior's information system"**.<sup>17</sup> Therefore, to date, the Croatian authorities have not stopped meddling in the Ombudswoman mandates.

26. 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 mandates<sup>18</sup> to the full extent.<sup>19</sup>

## ***3. Legislative measures and instructions to the police***

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<sup>12</sup> Act on the National Preventative Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, OG 18/11, 33/15, link available at: <https://www.zakon.hr/z/440/Zakon-o-nacionalnom-preventivnom-mehanizmu-zasprečavanje-mučenja>

<sup>13</sup> National Preventive Mechanism, Report on report the Performance of the Activities of the National Preventive Mechanism for 2019, page 30, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-nationalpreventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

<sup>14</sup> Ombudsperson Act (Zakon o pučkom pravobranitelju), Official Gazette nr. 76/12

<sup>15</sup> National Preventive Mechanism, Report ...for 2019, page 3, link available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-nationalpreventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

<sup>16</sup> Ibid., page 31

<sup>17</sup> National Preventive Mechanism, Report on the Performance of the Activities of the National Preventive Mechanism for 2023, page 2, link available at: <https://www.ombudsman.hr/hr/download/izvje-e-o-radu-nacionalnog-preventivnog-mehanizma-za-2023-godinu/?wpdmdl=20137&refresh=67b24d0c837a51739738380>

<sup>18</sup> 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.

<sup>19</sup> CPT Annual Report for 2020, page 15-16, link available at: <https://rm.coe.int/1680a25e6b>



27. Paragraph 17 of the Action Plan states that on 26 March 2020, the Police Directorate instructed all stations, including border posts, to completely abandon keeping people in premises that do not meet the minimum CPT standards. However, during a visit on 12 August 2020, CPT's delegation inquired about the use of a garage at Korenica Police Station, where migrants reportedly slept on dirty mattresses in unsanitary conditions. Police officers claimed it was never used for detention, but the shift logbook showed an entry from 3 August 2020—coinciding with CPT's visit notification—ordering "no detention in the garage until further notice" and instructing immediate transfers to Donji Lapac.<sup>20</sup> This directive was repeated by all shift leaders until CPT's visit, strongly suggesting that **detention in substandard conditions was ongoing and that the policy change was merely superficial.**
28. The 2011 amendments to the Criminal Code **eliminated the offence of "negligent performance of official duties,"** a general public service-related crime. This provision stipulated that: "A public or responsible official who, by violating laws or other regulations, failing to exercise due oversight, or otherwise acting negligently in the performance of their duties, thereby causes a serious violation of another person's rights or significant financial damage, shall be punished by a fine or imprisonment of up to three years." The act of committing the offence encompassed any evident negligent conduct in executing official duties. This typically involved violations of laws or other regulations, among them the failure to exercise due oversight, which was precisely the issue in the present case. The removal of this criminal offence created a legal gap enabling cases like this one—where the failure to exercise due oversight led to the death of three individuals and inflicted severe, lasting harm on a fourth to remain unpunished. Criminal policy should focus on strengthening, not weakening, the accountability of public officials for breaches of official duty—particularly when those breaches affect individuals deprived of their liberty.<sup>21</sup>
29. Additionally, there have been **no changes in adequately monitoring detained persons.** In her last report,<sup>22</sup> the Ombudsperson noted that inspections revealed detention supervisors were not overseeing detainees as required by Article 52 of the Regulation, primarily when detainees were held in police station premises instead of detention units. However, the Police Directorate argued that, based on past monitoring, it is unjustified for supervisors to perform only those duties and stated they can effectively manage both detention and shift leadership roles.

#### ***4. Measures to ensure independent monitoring mechanisms***

30. 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-transparent and without a public call being issued<sup>23</sup>. Lack of independence arises from the fact that the MoI chose the IMM

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<sup>20</sup> CPT Report to the Croatian Government, page 27. available at: <https://rm.coe.int/1680a4c199>

<sup>21</sup> 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 61; available at <https://repozitorij.pravo.unizg.hr/islandora/object/pravo:5601>

<sup>22</sup> Ombudsperson's Activity Report for 2023, page 249, available at: <https://www.ombudsman.hr/hr/interaktivno-izvjesce-za-2023/>

<sup>23</sup> 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/wpcontent/uploads/2022/07/KLJP\\_GI2021-EN\\_Online.pdf](https://www.kucaljudskihprava.hr/wpcontent/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,



members without any public call or information about the selection criteria. Furthermore, the members of the monitoring mechanism lack political and financial independence since the mechanism's financial independence is undermined by the EU's 2021 Emergency Funding (EMAS) grant being processed through the Mol instead of being directly granted to the mechanism.<sup>24</sup> This leads to the absurd situation in which the Mol is de facto monitoring themselves via a mechanism they appointed and controlled.

31. Even after signing the new Agreement in November 2022,<sup>25</sup> which extended the IMM's mandate for another 18 months with the same stakeholders, **the mechanism remains misleading**. Despite IMM's claims of implementing most recommendations, this did not happen. The IMM's "unannounced" visits to police stations and border areas still require 24-hour prior notice, limiting their effectiveness in monitoring police operations. Similarly, access to police information systems remains conditional on a 24-hour prior request, limiting the IMM's capacity for spontaneous and independent oversight.
32. The IMM faced significant setbacks during its second mandate. **No monitoring activities were conducted from June 2022 to June 2023**, leaving an entire year without oversight of police actions at the borders. The IMM's activities only resumed between June and December 2023, following the resolution of "numerous inconsistencies in their contract with Mol as well as due to "prolonged delays in cost reimbursements and payments for completed activities" as described in the report mentioned above.
33. Although half-annual and annual reports were supposed to be published, as foreseen by the second agreement, **the IMM did not provide any public information about its work during 2023**, nor did it publish a semi-annual report, which was its contractual obligation. The only report published during the two-year contracting period was a Semi-Annual Report<sup>26</sup> released in August 2024—at the end of its mandate. It was temporarily removed from the website before being reposted.
34. The IMM launched its website in August 2024, only after its mandate expired, preventing timely public access and hindering its ability to receive inquiries, proposals, and complaints. The website<sup>27</sup> misrepresents its core function, stating it aims to foster "dialogue with the Ministry of the Interior to identify normative, institutional, systemic... factors of unlawful conduct" without mentioning reporting or sanctioning such actions.
35. This persistent pattern of delays, omissions, and inconsistencies has further deepened concerns about the IMM's transparency, effectiveness, and ability to fulfil its mandate. It underscores the urgent need for comprehensive reforms to address the IMM's structural and operational weaknesses.

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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/1>

<sup>24</sup> Centre for Peace Studies, Call to the EU to protect human rights and rule of law by establishing an independent monitoring mechanism of the police operations, link available at:

[https://www.cms.hr/system/article\\_document/doc/809/Recommendations\\_Independent\\_Border\\_Monitoring\\_Mechanism.pdf](https://www.cms.hr/system/article_document/doc/809/Recommendations_Independent_Border_Monitoring_Mechanism.pdf)

<sup>25</sup> Croatian Red Cross (*Hrvatski Crveni križ*), [COOPERATION AGREEMENT TO IMPLEMENT AN INDEPENDENT MONITORING MECHANISM ON THE PROTECTION OF FUNDAMENTAL RIGHTS IN ACTIONS OF POLICE OFFICERS OF THE MINISTRY OF THE INTERIOR IN THE AREA OF BORDER SURVEILLANCE, IRREGULAR MIGRATION AND INTERNATIONAL PROTECTION](#), 4 November 2022

<sup>26</sup> Semi - Annual report of the Independent Monitoring Mechanism; published in August 2024; available at:

<https://www.nmn.hr/reports/20>

<sup>27</sup> Independent Monitoring Mechanisms website is available at: <https://www.nmn.hr/>



## B. Measures addressing procedural shortcomings

### 1. *No effective domestic remedy ensures the overall efficiency of investigations*

36. In the Action Plan, the Government notes that the European Court found constitutional complaints are a remedy to be effective for the allegations concerning ineffective investigations (in the case *Kušić and Others v. Croatia*). In contrast, this particular case only talks about the effective remedy in the context of whether or not the applicants exhausted all the domestic remedies (meaning that they had not allowed the State to put matters right through its legal system) before bringing their application before the European Court for human rights.
37. Moreover, several recent ECtHR judgements clearly demonstrate that ineffective investigations persist as a problem within the Croatian justice system - which is not adequately tackled in the Government's Action plan. In 2021, in the case [M.H. v. Croatia](#), the Court found that the investigation into the child's death had been ineffective, leading to a violation of the procedural limb of Article 2. 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). 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). Another similar 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.
38. 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-III Bi-5032/2021). The most recent judgment highlighting ineffective investigations into police misconduct was delivered on 22 October 2024 in the case of [Ćosić v. Croatia](#). Contrary to the Constitutional Court's decision, which once again found no violation, the ECtHR held that Croatia failed to conduct an effective investigation into a sufficiently clear indication that ill-treatment may have occurred. Furthermore, the Court found that Croatia had breached Article 3 in its procedural aspect, as the domestic authorities had failed to make a genuine attempt to examine the matter thoroughly, establish the facts, and, if necessary, bring those responsible to account. (§42).
39. The measures proposed by the Government need to be revised to ensure the investigations' efficiency, as the Action Plan only concerns the role of the Constitutional Court. Moreover, the measures proposed by the government do not include any novelties or new measures that the State should implement.
40. As per the data presented in the doctoral thesis of the human rights lawyer and expert Lidija Horvat<sup>28</sup> (also Daraibou's lawyer in the present case), 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

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<sup>28</sup> Horvat, L., 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), page 232; available at <https://repozitorij.pravo.unizg.hr/islandora/object/pravo:5601>



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.**”

41. In the period of 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 punishment<sup>29</sup> 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.
42. 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 not yet been reached for almost two years.
43. It is crucial to highlight the recent investigation that was closed without identifying any perpetrators. The investigation, initiated in October 2021, followed the broadcast of a video<sup>30</sup> on public television depicting police officers dressed in balaclavas and wearing reversed uniforms, engaging in violent pushbacks at the Croatian border. The footage clearly showed members of special police units involved in these illegal actions. The evidence was so indisputable that even Minister of the Interior Božinović publicly acknowledged that the video depicted special police officers executing pushbacks. However, on 5 February 2025, **over three years later**, the State Attorney's Office announced that the **case had been closed without charges**, citing insufficient grounds for prosecution. This decision serves as a stark example of the recurring practice where collective expulsions and police violence go uninvestigated and, therefore, unpunished, highlighting the **systemic failure to investigate such incidents effectively**. The closure of this case without accountability for police actions further underscores the Croatian authorities' inability to investigate and hold accountable those responsible for human rights violations, particularly regarding refugees and other migrants. Notably, one of the three police officers involved had previously threatened<sup>31</sup> to release his recordings of border operations if the case were to be dismissed, implying that his evidence could further compromise the police system.
44. All of the above demonstrates that **the issue of ineffective investigation requires further measures to achieve guarantees for rights protection prescribed by the Convention** and that the “awareness raising measures for state attorneys” offered as the key activity in the Government's Action plan did not bring about any needed change. Therefore, these activities are insufficient to change the practice of persisting ineffectiveness of investigations.

## ***2. No effective publicity of the case: lack of public acknowledgement and dismissal of any political responsibility***

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<sup>29</sup> Ibid. page 243

<sup>30</sup> A video by the investigative team of journalists (consisting of ARD, Lighthouse Report, Novosti, RTL Hrvatska, Spiegel, SRF) published in various media in October 2021, accessed 15.02.2025. available at: <https://net.hr/danas/potruga/video-potruga-u-posjedu-ekskluzivnih-snimki-izivljavaju-se-na-migrantima-mlate-ih-palicama-i-tjeraju-iz-hrvatske-d278725a-b9f4-11ec-85d9-0242ac120064>

<sup>31</sup> Jutarnji list, *Policijci koji su tukli migrante vraćeni na posao, jedini grijeh im je bio krivo nošenje uniforme!?*, published on 17 January 2022



45. Although the Office of the Representative of the Republic of Croatia before the ECtHR made the judgement available in Croatian, the government did **not acknowledge the case publicly**. Not only has the Government not commented on the case in its press conferences after the publication of the judgement nor taken any form of political responsibility, but it has also ignored clear demands from Croatian civil society to make a statement in that regard.

Notably, the Centre for Peace Studies (CPS) expressed concern over the government's lack of response. Two weeks after the judgement, CPS, together with Daraibou's lawyer, Lidija Horvat, held a press conference to highlight the lack of any reaction from Prime Minister Andrej Plenković and Interior Minister Davor Božinović regarding the verdict. CPS emphasised the need for the government to take responsibility for the deaths and address systemic issues related to the treatment of refugees and other migrants.<sup>32</sup>

The only publicly available response to the journalists' inquiries did not inform on any circumstances of the case, but the Government only responded that it is still considering legal possibilities for reviewing that judgment, without addressing the possibility of investigating the case and whether there are individuals within the system who should be held accountable.<sup>33</sup> Moreover, the visibility of the judgement in the general public is due to the work of CPS, who informed through widely covered press release<sup>34</sup>, explained the conclusions of the Court through media coverage<sup>35</sup>, and called for the Government's reaction, which stayed absent even after the judgement was final.

46. More generally, in October 2024, **the Government publicly shared disinformation in their press release**<sup>36</sup>, disregarding the Court's significant judgment M.H. v Croatia, where it stated that "it is important to note that neither this nor any other judgment has established that the Croatian police conducted collective expulsions". Since this judgement clearly found the violation of Art. 4 of Protocol 4, it is offensive and shows the Government's attitude towards the ECtHR's judgements and that its practice of negating any wrongdoing (even when concluded by the Court) continues.

## V. Conclusions and recommendations

47. Finally, we would like to invite the Committee of Ministers once again to urge the Croatian Government to take further steps to **stop placing asylum seekers and other migrants in inadequate facilities** 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.

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<sup>32</sup> Centre for Peace Studies, Two weeks of silence from those responsible: The Government must urgently take responsibility for the deaths on our borders!, 31.1.2023., available at: <https://www.cms.hr/en/azil-i-integracijske-politike/dva-tjedna-sutnje-odgovornih-vlada-hitno-mora-preuzeti-odgovornost-za-smrti-na-nasim-granicama>

<sup>33</sup> Đurđica Klancir, EURACTIV, SLUČAJ IZ POSTAJE BAJAKOVO: Europski sud za ljudska prava presudio u korist migranta, ali MUP kaže: Presuda nije konačna, 09.02.2023., available at: <https://euractiv.hr/ljudska-prava/a513/Europski-sud-za-ljudska-prava-presudio-u-korist-migranta-ali-MUP-kaze-Presuda-nije-konacna.html>

<sup>34</sup> Centre for Peace Studies, European Court of Human Rights finds Croatia responsible for the deaths and injuries of persons it deprived of liberty!, 28.1.2023., available at: <https://www.cms.hr/en/azil-i-integracijske-politike/europski-sud-za-ljudska-prava-utvrdio-da-je-hrvatska-odgovorna-za-smrti-i-ozljede-osoba-koje-je-lisila-slobode>

<sup>35</sup> See for example: <https://www.portalnovosti.com/cms-vlada-je-odgovorna-za-stradale-migrante>;

<sup>36</sup> Ministry of the Interior, Reagiranje na optužbe iz članka portala The Guardian, 10.10.2024., available at: <https://mup.gov.hr/vijesti/reagiranje-na-optuzbe-iz-clanka-portala-the-guardian/294309>



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

- a. **Conduct effective investigations** into crimes committed by police officers relating to the violations found by the Court;
- b. Ensure the **effectiveness of individual measures**.

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

- a. **Ensure the effectiveness of any investigations into allegations of ill-treatment by police officers**<sup>37</sup>;
- b. **Implement CPT's recommendation**<sup>38</sup> for the Croatian government to introduce robust accountability and oversight mechanisms for all police operations related to the interception and diversion of migrants;
- c. **Establish a specialised department within the State Attorney's Office** to handle criminal complaints against police officers or to designate individuals specifically responsible for these matters to ensure effective investigations into police conduct in cases of serious human rights violations. Additionally, we recommend the development of dedicated protocols for such cases;
- d. 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 ensure prompt, thorough investigations of human rights violations, hold responsible parties accountable and guarantee access to justice for victims. Additionally, the IMM's actions should be transparent and regularly reported to the public;
- e. Ensure the Ombudswoman has **unhindered access** to documents, information, facilities, border areas and any places where victims of human rights violations may be found to investigate potential police misconduct effectively;
- f. Completely **abandon the practice of keeping people on premises which do not meet the minimum CPT standards** both in theory and practice;
- g. Amend the Law on Foreigners to explicitly **ensure that individuals who are de facto deprived of their liberty**—whether "detained," "brought in," "arrested," or simply held by the police, including in a police van—**are guaranteed fundamental safeguards against ill-treatment**;
- h. Ensure **access for medical aid providers and NGOs to reception and detention centres**, as well as other facilities where refugees and migrants are held, **including the registration camp in Dugi Dol**, to offer legal assistance, medical care, and psychosocial support;
- i. Ensure **effective access to justice**. It is necessary to ensure access to free legal representation to the persons subjected to the procedure of issuing a decision related to the return or issued with a decision

<sup>37</sup> CPT Report to the Croatian Government, paras. 19 and 25, link available at: <https://rm.coe.int/1680a4c199>

<sup>38</sup> Annual CPT Report, pages 15-16, link available at: <https://rm.coe.int/1680a25e6b>



pertaining to a return against which no appeal is admissible but administrative dispute may be instituted, in practice and law;

- j. Ensure **access to procedural and material rights and access to justice** by amending the Rules on accommodation in reception centres for foreigners and methods of calculation of forced removal costs. The amendments should eliminate the required notice period for legal aid providers in all cases, not just those deemed justified and urgent.

Sincerely,

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