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## **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

**CONTENTS**

<b>I.</b>	<b>INTRODUCTION .....</b>	<b>3</b>
<b>A.</b>	<b>The visit, the report and follow-up.....</b>	<b>3</b>
<b>B.</b>	<b>Context of the visit.....</b>	<b>4</b>
<b>C.</b>	<b>Consultations held by the delegation and cooperation encountered .....</b>	<b>5</b>
<b>II.</b>	<b>FACTS FOUND DURING THE VISIT AND ACTION PROPOSED.....</b>	<b>8</b>
<b>A.</b>	<b>The detention of foreign nationals .....</b>	<b>8</b>
1.	Preliminary remarks .....	8
a.	background .....	8
b.	legal framework.....	8
2.	Ill-treatment.....	10
3.	Effective investigations into allegations of ill-treatment .....	18
4.	Inspection and monitoring.....	22
5.	Safeguards against ill-treatment .....	23
6.	Conditions of detention .....	26
a.	police stations .....	26
b.	transportation .....	27
7.	Other issues .....	29
a.	training of police officers.....	29
b.	vulnerable groups.....	29
8.	Ježevo Reception Centre for Foreigners .....	30
a.	preliminary remarks.....	30
b.	ill-treatment.....	32
c.	conditions of detention .....	32
d.	regime .....	33
e.	health care.....	34
f.	safeguards during detention.....	35
g.	staffing issues.....	36
h.	contacts with the outside world .....	37
i.	complaints.....	37
<b>III.</b>	<b>CONCLUSION.....</b>	<b>38</b>

## I. INTRODUCTION

### A. The visit, the report and follow-up

1. In pursuance of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Croatia from 10 to 14 August 2020. The visit was considered by the Committee as a rapid response one “to be required in the circumstances” (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Mark Kelly, 1st Vice-President of the CPT and Head of Delegation
- Nico Hirsch
- Alexander Minchev
- Ömer Müslümanoğlu
- Chila Van Der Bas.

They were supported by Christian Loda of the CPT’s Secretariat, and assisted by three interpreters, Tanja Žakula, Amira Sadiković and Kristina Kruhak.

3. In the course of the visit the CPT’s delegation visited the following establishments under the authority of the Ministry of the Interior:

- Cetingrad Border Police Station
- Donji Lapac Border Police Station
- Karlovac County Police Administration
- Korenica Police Station
- Intervention Police Unit of the Karlovac County Police Administration (Mali Erjavec)
- Ježevo Reception Centre for Foreigners.

4. The report on the visit was adopted by the CPT at its 103<sup>rd</sup> meeting, held from 3 to 6 November 2020, and transmitted to the Croatian authorities on 13 November 2020. The various recommendations, comments and requests for information made by the CPT are set out in bold type in the present report. The CPT requests the Croatian authorities to provide within three months a response containing a full account of action taken by them to implement the Committee’s recommendations and replies to the comments and requests for information formulated in this report.

## **B. Context of the visit**

5. Since 2015, Croatia has served as a transit country for migrants on the so-called “Balkan route” due to its geographic location and the fact that it has the longest external land border of the European Union.

Officially, the number of migrants crossing the “green border”<sup>1</sup> into the country from Bosnia and Herzegovina (BiH) and from Serbia rose from 8,207 in 2018 to 20,278 in 2019<sup>2</sup> and to more than 16,000 in the first eight months of 2020.<sup>3</sup> Faced with these rising recorded numbers, Croatia has invested more resources to secure its borders, including the deployment of up to 6,500 police officers from various units and the use of specialised equipment such as stationary and mobile thermo-vision devices as well as drones. The Croatian authorities can also request aerial surveillance by an aircraft operated by FRONTEX.<sup>4</sup>

Croatia is in the process of applying to join the Schengen Zone, with its capacity to lawfully secure the EU external border a key criterion for acceptance. In October 2019 the European Commission informed the European Parliament and the Council that, in its view, Croatia had met the technical requirements for joining the Schengen Zone; however, it has yet to be formally admitted to the Zone.<sup>5</sup>

6. For some considerable time, the manner in which Croatian police officers are actually policing the country’s borders has been subject to increasing scrutiny and criticism, especially in the context of their so-called “diversion”<sup>6</sup> operations of migrants to Serbia and BiH. A number of reports from the Croatian Ombudsman and NPM,<sup>7</sup> Amnesty International<sup>8</sup> and other civil society organisations,<sup>9</sup> as well as various Council of Europe<sup>10</sup> and United Nations bodies,<sup>11</sup> have raised

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<sup>1</sup> The “green border” is the territory between official land border control points.

<sup>2</sup> See the 2019 “Annual Report on Migration and Asylum in Croatia” drafted by the national contact point of the European Migration Network (EMN), pages 61-62.

<sup>3</sup> [Statement](#) delivered by the Minister of the Interior on 15 September 2020.

<sup>4</sup> Such activities are generally referred to by the Croatian authorities as “Koridor” operation.

<sup>5</sup> See the EC document COM (2019) 497 final “Communication from the Commission to the European Parliament and the Council on the verification of the full application of the Schengen *acquis* by Croatia”.

<sup>6</sup> The Croatian authorities assert that these activities are carried out in line with the relevant provisions of Article 13 of the Schengen Borders Code which provides as follows: “That surveillance shall be carried out in such a way as to prevent and discourage persons from circumventing the checks at border crossing points. Surveillance between border crossing points shall be carried out by border guards whose numbers and methods shall be adapted to existing or foreseen risks and threats. It shall involve frequent and sudden changes to surveillance periods, so that unauthorised border crossings are always at risk of being detected. Surveillance shall be carried out by stationary or mobile units which perform their duties by patrolling or stationing themselves at places known or perceived to be sensitive, the aim of such surveillance being to apprehend individuals crossing the border illegally. Surveillance may also be carried out by technical means, including electronic means.

<sup>7</sup> See for example the [statement](#) issued by the Croatian Ombudswoman on 25 July 2019.

<sup>8</sup> See the [statement](#) issued by Amnesty International on 13 March 2019.

<sup>9</sup> See for example the [periodic reports and database of incidents](#) of the Border Violence Monitoring Network.

<sup>10</sup> See the [letter](#) addressed by the CoE Commissioner for Human Rights to the Croatian authorities on 20 September 2020.

<sup>11</sup> See the [joint statement](#) of the United Nations Special Rapporteurs on the Rights of Human Rights Migrants and on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment issued on 19 June 2020.

serious concerns about migrants being subjected to violence and other inhuman and degrading practices by police units and being pushed back across the borders without being given an opportunity to apply for asylum. To date, the Croatian authorities have vigorously denied all such allegations and have continued to claim that all complaints of alleged police misconduct are investigated and, to date, have been found to be baseless.<sup>12</sup>

7. In these circumstances, the Committee decided to carry out a rapid reaction visit to Croatia to examine for itself the treatment and safeguards afforded to migrants deprived of their liberty by the police and the procedures applied to them in the context of their removal as well as the effectiveness of investigations into allegations of ill-treatment of this nature. In this regard, the delegation paid a visit to five police establishments in the Karlovac and Lika-Senj Counties, and it conducted fact-finding work in the Una-Sana Canton of BiH where it interviewed many migrants who stated that they had recently been pushed back across the border by the Croatian police.

### **C. Consultations held by the delegation and cooperation encountered**

8. In the course of the visit, the delegation held consultations with Ms Terezija Gras, State Secretary of the Ministry of the Interior and Mr Zoran Ničeno, Head of the Border Police Directorate, as well as with other senior officials from the Ministry of the Interior. The delegation also met other interlocutors including the advisors on immigration detention of the Croatian National Preventive Mechanism (NPM) as well as representative of various NGOs.<sup>13</sup>

At the end of the visit, the CPT's delegation provided the Croatian authorities with its preliminary observations which were subsequently sent in writing. On 6 October 2020, the Croatian authorities communicated a response to these observations in the form of a letter from the Deputy Prime Minister and Minister of the Interior. The content of that letter has been taken into account, where appropriate, in the drafting of this report.

9. One of the cardinal principles upon which the Committee operates, as set out in Article 3 of the Convention governing the CPT, is that of co-operation. In the first place, such cooperation entails ensuring that CPT delegations are provided with all the relevant information about places of deprivation of liberty and that they are able to access such places and, more generally, examining all the information necessary for them to carry out their task.

It is therefore highly regrettable that, for the first time during a visit to Croatia, there were manifest cooperation difficulties. To begin with, the list of establishments provided to the CPT's delegation concerning the places where foreign nationals may be deprived of their liberty was incomplete. In particular, at least three police establishments in the border region where migrants may be deprived of their liberty (and which were visited by the delegation and found to have cells)

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<sup>12</sup> See for example, the [reply](#) of the Minister for the Interior of Croatia to the Council of Europe Commissioner for Human Rights, dated 3 October 2018 and more recently the [statement](#) of the Croatian Ministry of Interior issued on 13 May 2020 in reaction to some media articles on the matter.

<sup>13</sup> I.e. Danish Refugee Council Office in BiH, Centre for Peace Zagreb, Are You Syrious?, SOS Bihać and SOS Team Velika Kladaša.

were not included.<sup>14</sup>

Further, the police officers met in the police establishments visited by the CPT's delegation were poorly informed about the mandate of the Committee, especially as regards the CPT's right of access to all documentation containing information relevant to its mandate. The following examples provide an illustration of the difficulties faced by the delegation during its visit:

- At Cetingrad, Donji Lapac Border Police Stations and Korenica Police Station, the delegation was only provided with access to the personal files of persons arrested, rather than to documentation pertaining to all persons deprived of their liberty by the police and processed pursuant to Article 130 of the Law on Foreigners. In practice, this meant that, for 2020, access was granted to only a dozen individual files, whereas several thousand foreign nationals had in fact been officially processed at these three establishments;
- At Korenica Police Station, the delegation was provided with a shift handover logbook that recorded the significant numbers (i.e. 2,293) of migrants "intercepted" or "diverted" near the border by Croatian law enforcement officials within the previous eighteen days (see paragraph 36). This logbook also contained an entry dated shortly after the CPT's visit was notified, indicating that the garage at this establishment was no longer to be used to detain migrants "until further notice". This directly contradicted oral information previously provided by police officers at this station regarding border interception operations and their use of the garage for detention purposes (see paragraph 38). Moreover, having granted access to this logbook, once it became clear to them that it contained this compromising information, the same police officers attempted forcibly to remove the logbook from the delegation before it had completed its task. The Head of Korenica Police Station subsequently apologised for this unacceptable behaviour by the officers under his command.
- At the Border Police Regional Coordination Centre in Cetingrad, which the Secretary of State of the Ministry of the Interior had told the delegation<sup>15</sup> retained information enabling oversight of "diversion" and "interception"<sup>16</sup> operations for the counties of Karlovac, Lika-Senj and Zadar, the delegation was denied access to the premises. Access to the second floor of the Cetingrad Border Police Station (where the Regional Coordination Centre is located) might have permitted the CPT's delegation to examine the system of mobile and stationary thermo-visual cameras covering a portion of the "green border" with BiH in relation to which allegations of serious ill-treatment had been received and, consequently, to obtain an insight into whether this indeed constituted a potential means of verifying or disproving the many allegations of violent push-backs conducted during previous days in this area, which falls under the responsibility of the Cetingrad Border Police Station.

Moreover, the Border Police officer designated by the Croatian authorities as the delegation's liaison officer proved incapable of resolving the practical cooperation difficulties encountered by the delegation during the visit.

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<sup>14</sup> That is, Cetingrad and Donji Lapac Border Police Stations as well as Korenica Police Station.

<sup>15</sup> At its initial meeting with the Secretary of State, held at the Ministry of the Interior in Zagreb on 10 August 2020.

<sup>16</sup> "Interception" operations of migrants are conducted in respect of those persons having irregularly crossed the green border and who are identified by the police within the Croatian territory.

10. The CPT wishes to recall that, according to the Convention, its mandate consists of organising visits to State Parties to “examine the treatment of persons deprived of their liberty with a view to strengthening the protection, if necessary, of those persons from torture and inhuman and degrading treatment or punishment.”<sup>17</sup> It is not necessary for persons deprived of their liberty to be taken to an officially designated place of detention and/or for their detention to be formally recorded in order for their treatment to fall within the CPT’s mandate. Indeed, in a number of Council of Europe member States, including during this visit to Croatia, CPT delegations have gathered serious allegations of ill-treatment by police officers during unrecorded detentions in unofficial places of detention and/or during detention and transport in police vehicles. The Committee wishes to firmly emphasise that all of the matters examined by its delegation during this rapid response visit, as reflected in the findings set out in this report, fall squarely within its mandate.

11. The Committee trusts that the Croatian authorities will take the necessary steps to ensure that in future all law enforcement officials are made aware of the full scope of the CPT’s mandate and that, henceforth, its delegations will be provided with the information necessary for the Committee to carry out its task.

Having regard to Article 3 of the Convention, **the CPT invites the Croatian authorities to inform it of the concrete measures that they intend to take to ensure that this is the case.**

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<sup>17</sup> Quotation from Article 1 of the European Convention on the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. See also, Article 2 of the Convention, which reads as follows: “Each Party shall permit visits, in accordance with this Convention, to any place within its jurisdiction where persons are deprived of their liberty by a public authority.”

## II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

### A. The detention of foreign nationals

#### 1. Preliminary remarks

##### a. background

12. Information received by the CPT from multiple sources prior to the visit suggested that many of the migrants who had attempted to enter Croatia and had subsequently been apprehended by the Croatian police and pushed back to BiH were present on the territory of the Una-Sana Canton<sup>18</sup> in BiH. For this reason, the CPT's delegation decided to carry out its own independent fact-finding visit to this area, to gather objective information which might support or disprove allegations of violent push-backs by Croatian police officers. At the time of the visit there were between 7,000 and 8,000 migrants present in BiH, the great majority of whom were concentrated in the Una-Sana Canton, accommodated in six Temporary Reception Centres (TRCs) operated by the United Nations related International Organization for Migration (IOM) or camping in informal settlements.<sup>19</sup>

##### b. legal framework

13. According to Article 130 of the Law on Foreigners, the Croatian police may arrest and detain for up to 24 hours a migrant suspected of entering the country irregularly, in order to issue a return decision. This time period may be extended by an additional 48 hours if it is required for the processing of the case. Further, the thematic Rulebook on the Treatment of Third-Country Citizens regulates the necessary forms and procedures for the processing of foreign nationals in compliance with the 2008 EU Return Directive.<sup>20</sup> In theory, whenever a foreign national expresses a wish to apply for asylum, the relevant provisions of the Law of International and Temporary Protection become applicable and in principle the person is transferred to one of the existing reception facilities.<sup>21</sup>

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<sup>18</sup> The Una-Sana Canton juts into Croatia and is only some 70 km from the Slovenian border. Hence, it represents an ideal staging post for migrants trying to enter the European Union.

<sup>19</sup> See the official IOM [statistics](#) on its response in the BiH context.

<sup>20</sup> 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.

<sup>21</sup> In the course of 2019, the Croatian authorities have also adopted a set of Standard Operational Procedures for the processing of asylum applications.



14. Migrants attempting to enter Croatian territory are said by the Croatian authorities to be “diverted”<sup>22</sup> at the border by law enforcement officials in a manner that is consistent with Article 13 of the Regulation 2016/399 of the European Parliament and of the Council of 9 March 2016 (Schengen Borders Code). Hence, the Croatian authorities claim that the fundamental safeguards set out in the 2008 EU Return Directive are not applicable in this context.<sup>23</sup> However, in practice, it would appear that the Croatian authorities are applying alternative procedures / regulations which they have sought to tailor to the manner in which they are managing their borders. This *modus operandi* includes the following elements:

- migrants intercepted within Croatian territory (including those readmitted from Slovenia) are meant to be transported to the police station closest to where they have entered Croatia irregularly. The station is responsible for their identification and fingerprinting and the issuing of a return order or readmission decision. This practice is based upon an Instruction of the Police Directorate of 15 February 2017. It should be noted that migrants may spend up to several hours at the police station while being “processed” as persons “detained” or “brought in” in accordance with Article 130, paragraph 3 of the Law on Foreigners. However, the Ministry of the Interior and police do not consider these persons as formally deprived of their liberty despite the fact that clear objective elements such as those described in paragraph 16 in terms of migrant’s confinement in a particular limited space for a not negligible period of time, elements of coercion such as personal search, seizure of personal property, handcuffing and confinement and transportation for hours on end in a police van clearly correspond to deprivation of liberty under Article 5 of the ECHR,<sup>24</sup>
- migrants intercepted within the area of responsibility of a border police station (i.e. up to 30 km from the border with BiH) are often directly transported by police van to the “green border” and subject to a push-back without any identification or processing of their cases (including possible asylum requests) and regardless of the above-mentioned legal considerations;
- a small number of migrants are formally arrested by the Croatian police (see paragraph 33) generally for a misdemeanour offence for illegal border crossing, the justification for their deprivation of liberty being Article 130, paragraph 3 of the Law on Foreigners and they are accorded the formal status of “arrested persons” (i.e. “uhićeni”).

The CPT wishes to emphasise that, irrespective of whether persons are “detained” (“zadržavanje”), “brought in” (“dovodjenje”), “arrested” (“uhićenje”), or simply physically caught by the police and held against their will – including in a police van –, the reality of their situation is that they are deprived of their liberty and they must be accorded the fundamental safeguards against ill-treatment commensurate with that status (cf. further paragraphs 33 to 36). The CPT recommends that this be made unequivocally clear in the draft amendments to the Law on Foreigners which are currently under discussion in the Croatian Parliament.

<sup>22</sup> “Diversion” or “odvraćanje”, in the Croatian authorities’ own interpretation of Article 13 of the Schengen Border Code, consists of “dissuasion” exercised by Croatian law enforcement officers through various means such as e.g. flaring, flashing lights or the mere presence of police officers on the green border in order to discourage migrants from crossing.

<sup>23</sup> The Croatian authorities invoke in this context Article 2, paragraph 2a of the 2008 EU Return Directive which reads as follows: “Member States may decide not to apply this Directive to third-country nationals who: (a) are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State”.

<sup>24</sup> See in this respect paragraphs 10-16 of the “ECHR Guide on Article Five of the European Convention on Human Rights” available at <https://www.echr.coe.int/Pages/home.aspx?p=caselaw/analysis/guides>.

## 2. Ill-treatment

15. The CPT's delegation visited three temporary reception centres operated by the International Organization for Migration (IOM) and a variety of informal settlements in the territory of the Una-Sana Canton of BiH where it interviewed numerous persons who stated that they had been subject to removal operations from Croatia in the very recent past.

From these interviews, the CPT's delegation received numerous credible and concordant allegations of physical ill-treatment of foreign nationals by Croatian law enforcement officials consisting of slaps, kicks, blows with truncheons and other hard objects (e.g. barrels of automatic weapons or wooden sticks or tree branches) to various parts of their bodies. The alleged ill-treatment had been purportedly inflicted either at the time of their "interception" and *de facto* detention inside Croatian territory (i.e. ranging from several to fifty kilometres or more from the border) and/or at the moment of their "diversion" (i.e. push-back) across the border with BiH, which often included being held against their will and being transported in a police van to the border. The allegations mainly concerned members of the border police or intervention police officers from the respective county police administration and, to a lesser extent, members of the special police.

16. In a significant number of cases, persons interviewed displayed injuries on their bodies which were assessed by the delegation's two forensic medical doctors as compatible with their allegations of having been ill-treated by Croatian law enforcement officials. The cases below are for the purposes of illustration and cover only some of the allegations of serious physical ill-treatment allegedly inflicted during just the five weeks prior to the delegation's visit.<sup>25</sup>

- i. A Bangladeshi national met by the delegation at Lipa TRC stated that on 6 August 2020,



nine days after having crossed into Croatia, he was intercepted and apprehended along with other migrants by a patrol of the Croatian special police near the Slovenian border. He alleged that the police seized all their belongings (i.e. bags, phones, and money) and then transferred them to a police station in the Karlovac region, from where they were transferred to another police van and taken to the border in the region

of Izačić. After exiting the van, members of the intervention police allegedly struck him repeatedly on his left buttock with a large wooden stick. When examined by one of the delegation's forensic doctors on 11 August 2020, he displayed the following injuries: "a 6 x 8 cm in width and 10 x 12 cm in length horizontal purplish bruised area, in the mid line on the gluteus maximus on the left hip" which were assessed as compatible with the timing and dynamics of the allegation of ill-treatment.

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<sup>25</sup> It should be noted that the CPT's delegation consulted information pertaining to 56 situation reports (i.e. Sitreps) on violent push-backs of migrants in the period of April to August which included documentation of their injuries at Lipa TRC (one of the six TRCs in the Una-Sana Canton).

ii. An Afghani national met by the delegation at TRC Lipa stated that, on 9 August 2020, together with a group of four other migrants, stated that he had been intercepted 35 km inside Croatia by three armed members of the Croatian special police. He alleged that the police officers subjected them to blows with thin branches cut from a tree, in particular to his right breast as well as kicks to his left shoulder and the right side of the body. Subsequently, following their transfer in a van to the BiH border, he said that they were ordered to stand in line with their hands on the back of the neck and were again struck with baton blows to their upper back and shoulders. When he was examined by one of the delegation's forensic doctors, he displayed the following injuries: horizontal lesions measuring 1.5 cm and the largest one 5 cm long, varying in thickness, 4-5 red thin scratches, and some bruising under the right breast, which were assessed as being consistent with having been hit with a thin branch. Further, a 5 x 5 cm area on the lower outer part of the left scapula was sensitive to palpation. The injuries in question were assessed by one of the CPT delegation's forensic doctors as compatible with the alleged ill-treatment.

iii. A Pakistani national met by the delegation at TRC Miral stated that, after crossing the green border with a group of 10 other migrants in the region of Šturlic on 13 July 2020, they were intercepted by two police officers (one border police officer and one intervention police officer) with a dog in the vicinity of Rakovica at around 6 a.m. The group was ordered to sit on the ground. He alleged that when he was ordered to stand up and collect all bags and personal belongings from his companions, the dog was released and attacked him, and he was bitten on his right leg. Subsequently, after being transported closer to the border, a group



of six intervention police officers allegedly started inflicting baton blows on him and the other migrants to force them to start running towards the BiH border. On 11 August 2020, he was examined by one of the delegation's forensic doctors who assessed the injuries as compatible with the allegations of a dog bite: healed superficial wound 5 x 0.4 cm on the posterior surface of the right knee and healed wound 3 x 0.4 cm covered with a thick, partially collapsed crust on the outer surface of the right knee.<sup>26</sup>

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The injury in question had been treated with a triple antibiotic paste.

- iv. An Iranian national met by the delegation at TRC Borići stated that on 30 July 2020, after crossing the green border in the area of Glinica together with his own and two other families of the same nationality, they were intercepted by the three patrols of the border and intervention police. Several officers allegedly started punching and kicking him in the head, legs, arms and back as he had been perceived to be the leader of the group. Subsequently, he was ordered to collect all his family's belongings and was taken to an area between two police vehicles where he was repeatedly punched and received a kick to his crotch. He and his family were returned to the BiH border in the area of Glinica. On 12 August 2020, he was examined by one of the delegation's forensic doctors, who recorded the following: "shallow linear wound on the anterior surface of the left thigh with a length of 4 cm, vertically located". Further, the photographic documentation made at the time of his admission to TRC Borići on 1 August 2020 showed injuries that had been described by a doctor at the Centre as follows: "*a reddish bruise on the right side of the back; several transverse pale reddish linear abrasions and reddish bruise on the right arm; a vertically oriented linear abrasion on the left thigh.*" All of the injuries in question were assessed by one of the delegation's forensic doctors as being compatible with the alleged ill-treatment.



- v. An Afghani unaccompanied and separated minor (UASM) met by the delegation at Borići TRC alleged that on 21 July 2020, after being intercepted by a patrol of the border police together with a large group of migrants in a forest close to the Plitvice National Park, he was hit with a police torch on his forehead which made him fall to the ground. Subsequently, before walking towards a police van, his shoes and jacket were allegedly confiscated by the police. When interviewed and examined by the CPT's delegation on 12 August 2020, he still displayed two linear abrasions respectively on the left side of his forehead with a fallen crust and dimensions of 2.5 x 1 cm and a 2 cm linear abrasion on the left knee which were assessed by one of the delegation's forensic doctors as being compatible with the dynamics of the alleged ill-treatment.

- vi. A Pakistani national met by the delegation in an informal settlement in the vicinity of Bihać



alleged that, on 8 August 2020, in the area of the Plješivica mountain, five or six kilometres inside the Croatian territory, a group of ten intervention and border police officers intercepted him and the group of migrants with whom he was travelling. The migrants were ordered to hand over their belongings and clothes (i.e. t-shirts and trousers) and, subsequently, while standing in a line with his hands up, he alleged that he was struck several times with a truncheon and wooden stick on his back and legs. He was placed in a police van together with the rest of the group for two hours until a new shift of police officers took over when the group was driven to the border with BiH. When examined by one of the delegation's forensic doctors on 12 August, he displayed the following injuries: three purplish



tram-line bruises, purplish in colour, respectively in the right lumbar region on the back, in the middle (about 10 cm in length and about 1-2 cm in width); in the left lumbar region on the back, in the middle (about 10 cm in length and about 1-2 cm in width); in the mid-axillary line on the left side of the chest (approximately 7 cm in length and 1-2 cm in width). The injuries were assessed by one of the CPT delegation's forensic doctors as compatible with the allegations of ill-treatment.

vii. A 17-year-old Pakistani national and UASM met by the delegation in an informal settlement in the vicinity of Bihać, stated that, on 8 August 2020, he was intercepted as part of a group of 13 migrants by a patrol of border and intervention police officers about six kilometres inside Croatia. He alleged that the police officers first fired a number of bullets into the air before proceeding to hit the group with wooden branches and batons. He said that he received blows to his shoulders and arms and left elbow and that he had his clothes (i.e. t-shirt, trousers and underwear) removed. He was placed in a van and driven to the border with BiH in the vicinity of Velika Kladuša. When examined by the delegation's forensic doctor on 12 August 2020, he displayed the following injuries: a slightly painful 4 x 5 cm sized reddened area under the right scapula and a scabbed wound measuring 1.5 cm x 1.5 cm on the outer side of the left elbow. The injuries were assessed as compatible with his allegations of ill-treatment. It was also observed that, at the time of his examination by one of the CPT delegation's forensic doctors, the person concerned was still not wearing any underwear.

viii. A Moroccan national met by the delegation in an informal settlement in the vicinity of Velika Kladuša stated that when he had been apprehended together with other migrants on 7 August 2020, in the vicinity of Glina, he had been struck with a truncheon on his thigh and with the butt of a long-barrelled semi-automatic weapon on his chest. One of the CPT delegation's forensic doctors assessed that the injury he had sustained, which consisted of three purplish oval bruises on the chest, was compatible with the alleged blunt blow from a butt of a heavy weapon.

ix. Another Moroccan national alleged that, when he was intercepted in the region of Slunj on 1 August 2020 by a group of intervention police officers, one of the officers had struck him with a wooden branch on his left hip. He was subsequently transported to the border and pushed back into the area of Šturlic. When met by the delegation on 12 August 2020, he still had an infected abrasion measuring 6 x 2 cm on his right hip which one of the delegation's forensic doctors assessed as being compatible with his allegation of ill-treatment.



x. An Algerian national met by the delegation at Miral TRC alleged that after entering Croatia through the green border on 31 July 2020, he was "intercepted" on 3 August 2020 by two patrols of border police officers. He stated that the other three migrants with whom he had been travelling managed to escape, in reaction to which the police officers allegedly subjected him to blows with their batons and



with the branch of a tree, demanding that he reveal the location of his erstwhile companions. Further, one police officer allegedly fired three shots with his service weapon close to his head. Eight additional intervention police officers in black uniforms and wearing balaclavas subsequently arrived and allegedly proceeded to deliver punches, kicks and baton blows to him as he was lying on the ground raising his arms to protect his head. He stated that he was held for three hours in an abandoned derelict house before being transported in a police van with a group of other migrants to the Pašin Potok region. He said that, upon exiting the van, he was struck several times on his arms and legs by intervention police officers wielding batons and was subsequently pushed down a bank into the Korana river with his hands still tied in zip-locks in front of his body. Later that same day, he was examined at Velika Kladuša Health-Care Centre where his right elbow and left foot were immobilised “*due to several traumatic injuries to his tendons and joints and reduced mobility*” and was referred for an X-ray of his left foot and right elbow for suspected fractures.<sup>27</sup> Photographic documentation drawn up on 4 August 2020 upon his admission to Miral TRC showed an oval bruising of the right elbow located in the ulnar area which was assessed by one of the CPT delegation’s forensic doctors as compatible with a person having received several truncheon blows while his arms were raised in self defence.

- xi. A Moroccan national met by the delegation at Miral TRC alleged that, on 3 August 2020, after being returned from the Slovenian border following his readmission to Croatia in the area of Ozalj, a group of 12 intervention police officers wearing balaclavas subjected him to multiple blows to various parts of his body with wooden sticks and, in particular, on his arms while he was raising them in self defence. Subsequently, he was transported to the border and ordered to enter BiH in the area of Šturlić, at around 3 a.m. on 4 August 2020. He was examined at the Velika Kladuša Health-Care Centre on 5 August 2020 where a certificate was issued stating: “*post-traumatic elbow dislocation due to hits inflicted to him by Croatian police officers during a push-back (game)*”<sup>28</sup> operation. Swollen elbow with reduced mobility. It is necessary to immobilize the joint in question”.

17. A number of persons met by the CPT’s delegation complained that, in addition to physical abuse, they had been subjected to other forms of severe ill-treatment by police officers when apprehended and subsequently pushed back across the border. Such treatment consisted of police officers firing bullets close to their bodies while they lay on the ground, being thrown in the Korana river with their hands still zip-locked, being forced to march through the forest and being pushed back without shoes and wearing only their underwear and, in some cases, even fully naked. These and other actions by the Croatian police described in some of the cases above were perceived by migrants as being demeaning and intended to humiliate them.

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<sup>27</sup> The X-rays in question performed on 5 August 2020 at Bihać Cantonal Hospital showed that there was no clear fracture in terms of bone discontinuity of the right elbow and left foot.

<sup>28</sup> The “game” is the unofficial term used by migrants to describe their (often repeated) attempts to cross the green border with Croatia.

18. The manner and conditions of transportation of migrants (see also paragraph 39) from the place of apprehension (including from the Slovenian border which in some cases is more than 200 km away) to the border with BiH are also a source of concern for the Committee and may in some cases amount to ill-treatment. The delegation received numerous allegations of migrants being transported with their hands cuffed in zip-locks in front in cramped conditions (up to 25 in a van) with several of them forced to stand due to the lack of space. Further, the standard deportation vans were not equipped with security belts or hand grips. Numerous allegations were received of reckless driving by police officers causing injuries to migrants, as well as episodes of nausea and vomiting. Two Moroccan nationals met in an informal settlement in the vicinity of Velika Kladuša who displayed skin lesions on their legs which they attributed to being covered in the vomit of other detainees during their transportation in a police van. (see also paragraph 39).

**19. The CPT calls upon the Croatian authorities to take vigorous steps to stamp out ill-treatment of foreign nationals deprived of their liberty by the police. Police officers should be given the clear and firm message that detained foreign nationals must be treated with respect, processed in accordance with law and be unequivocally reminded that any form of ill-treatment of detained persons – including psychological ill-treatment, threats of ill-treatment, demeaning and humiliating actions – as well as any tolerance of such ill-treatment by senior officers, is unlawful and will be punished accordingly.**

20. The delegation also received a number of allegations that the Croatian police had denied requests from persons seeking asylum and that they had not provided emergency medical assistance to vulnerable individuals such as families with children and women. For example:

- i. a Pakistani national met by the delegation at TRC Borići stated that he had, together with his wife and seven-year-old child and a larger group of migrants, crossed into Croatia on 25 July 2020. Four days later when he was apprehended in the vicinity of Zagreb by the Croatian police he requested medical assistance for his child (he showed a medical certificate from Bihać Hospital attesting that the child suffered from a serious form of anaemia<sup>29</sup> and required specialist clinical care) and said that he told the police he wished to apply for asylum. Both requests were allegedly disregarded, and the family was transported in a police van for two hours until they reached the border to BiH. After their return to BiH, the child was urgently hospitalised at the Bihać Cantonal Hospital where he was still receiving treatment at the time of the delegation's visit for his serious medical condition.
- ii. an Afghan woman met by the delegation at TRC Borići alleged that she had crossed into Croatia on 29 July 2020 together with five family members but that shortly afterwards she had felt unwell due to a panic attack. Her family members flagged down a police patrol and an ambulance was called. After receiving the necessary treatment, she claimed that the family requested to file an asylum application but instead were transported to the border with BiH. She said that, given her fragile health, she fell to the ground saying that she could not walk the 200 metres across the border, whereupon two Croatian police officers allegedly took hold of her arms and dragged her along the ground to the border crossing with BiH. At the time of the CPT's delegation visit on 12 August 2020, the woman displayed healing abrasions on her back which were compatible with the allegation of having been dragged along the ground.

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<sup>29</sup> I.e. Thalassaemia, Anaemia gravis.

21. Recently, courts in several countries have started suspending Dublin transfers of asylum seekers to Croatia in the light of the risk of violation of Article 3 of the ECHR.<sup>30</sup> Moreover, in July 2020 the Administrative Court in Ljubljana ruled that the push-back of a Cameroonian asylum seeker to Croatia violated the EU Charter of Fundamental Rights.<sup>31</sup>

The Committee would like to recall that the multilateral legal instruments (such as Article 13 of the Schengen Borders Code) which the Croatian authorities assert could provide a normative basis for their push-back activities do not diminish, in any way, the State's non-derogable obligations under Article 3 of the ECHR. In particular, Article 3 of the Schengen Borders Code clearly recalls that border control operations respect the rights of person requesting international protection, in particular as regards non-refoulement. Further, Article 14 and Annex V to the Schengen Borders Code provide that all persons who are refused entry at the border shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents.<sup>32</sup>

The CPT wishes to recall that the prohibition of torture and inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (ECHR) entails the obligation not to send a person to a country where there are substantial grounds for believing that he/she would run a real risk of being subjected to torture or ill-treatment. Further, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3; effectiveness also requires that the person concerned should have access to a remedy with automatic suspensive effect.

Consequently, in view of the gravity of the interests at stake, **the CPT urges the Croatian authorities to ensure that all persons present on their territory who wish to request asylum are able to do so.**

22. The CPT is fully aware of the fact that there may be occasions when law enforcement officials abuse their powers and use disproportionate or unjustified force. It is for this reason that the CPT stresses the importance for every State to have in place mechanisms of oversight and accountability which are capable of holding to account any police officers found to be acting outside the law. Such accountability mechanisms, if robust, will support the effectiveness of any investigations into allegations of ill-treatment by police officers. Regrettably, the findings of the CPT's delegation led to the conclusion that there are currently no accountability mechanisms in place which would allow for the prompt identification and review of the behaviour of those police officers involved in diversion and interception operations of migrants. In particular, an analysis

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<sup>30</sup> Two recent court decisions have prohibited returns to Croatia under the Dublin Agreement. The IX Civil Section of the Court of Genua (Italy) on 19 March 2019 suspended a Dublin transfer to Croatia of a Tunisian national and her child in the light of "systemic flaws in the treatment and reception of asylum seekers in violation of Article 3 of the ECHR and Article 4 of the Charter of Fundamental Rights of the EU". Further, the Federal Administrative Court of Switzerland, on 12 July 2019, made a ruling to suspend the transfer of an asylum applicant of Syrian nationality to Croatia under Dublin terms, due to "the increasing number of reports concerning the denial of access to the asylum procedures by Croatian authorities and the return of large numbers of asylum seekers to the border with Bosnia-Herzegovina, where they are forced to leave the country."

<sup>31</sup> See also the following [media report](#).

<sup>32</sup> In particular Annex V to the Schengen Borders Code specifically provides that "a standard form refusing entry should be filled in by the competent border guard" and "every refusal of entry should be recorded on a register or a list stating the identity and the nationality of the third-country national to cross the border and the reason for, and the date of, refusal of entry".



conducted at Korenica Police Station of the different patrol group reports in respect of the previous two 12-hour shifts prior to the visit to this station indicated that no mention whatsoever had been made of the 184 migrants<sup>33</sup> recorded elsewhere as having been “diverted” during this time period. The official reports contained only generic information such as the specific routes and paths covered by the patrol. The Head of Korenica Police Station confirmed to the delegation that no specific guidelines on documenting these diversion and interception operations had ever been issued by the Police Directorate. Consequently, even the most basic information that could enable a degree of management oversight of such operations (such as information on the precise time of each intervention, the officers involved, the means used to “intercept” or “divert” migrants and the outcome of the intervention) did not exist.

**The Committee recommends that the Croatian authorities take the necessary steps to introduce robust accountability and oversight mechanisms for all police operations related to the interception and diversion of migrants. More specifically, it recommends that the Croatian Police Directorate introduce a mandatory instruction on the detailed recording of every “interception” and “diversion” operation involving migrants, which at a minimum should include the time, precise location and a brief description of each intervention, the officers involved, the means used to “intercept” or “divert” migrants, their identification in line with Article 7 of the Schengen Borders Code, whether any means of restraint or use of force was applied, and the outcome of the intervention.**

**The Committee also recommends that, in future, all “diversion” operations should be video recorded, and the video footage preserved to facilitate the investigation of allegations of ill-treatment by police officers.**

23. Several migrants met by the delegation stated that police officers, notably from the intervention police, had not worn identification tags or even insignia and that they had worn balaclavas to hide their faces (plainly, during the month of August, these were not needed to keep themselves warm). Further, in addition to the tonfa (rubber batons) which is standard equipment for the intervention police, many migrants claimed that police officers often carried non-standard wooden sticks.

**The CPT recommends that steps be taken to ensure that every Croatian police officer wears a clearly visible number on his/her uniform at all times while on duty. Further, the wearing of balaclavas by members of the intervention police may exceptionally be justified in the context of high-risk operations. However, the routine wearing of balaclavas during interception and diversion operations of migrants should be seriously reconsidered. Finally, non-standard issue objects capable of being used for inflicting ill-treatment (such as wooden sticks and “fighting gloves” see paragraphs 16 and 26) should never be in the possession of Croatian police officers in the course of the above-mentioned operations.**

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<sup>33</sup> As recorded in the aforementioned shift handover logbook consulted by the CPT’s delegation.

24. At the outset of the visit, the CPT's delegation was informed by the Secretary of State of the Ministry of the Interior that, in 2018, a regional co-ordination centre had been set up on the premises of the Cetingrad Border Police Station, consisting of a situation room overseeing the video coverage of stationary and mobile thermo-visual devices along the border with BiH in respect of the territory of three different Croatian counties (i.e. Karlovac, Lika-Senj and Zadar). However, when the CPT's delegation sought to visit the coordination centre in order to assess the oversight and accountability capacity of this technology, it was denied access by the Croatian authorities.

The Committee regrets that, on this occasion, its delegation was not granted access to the regional coordination centre at Cetingrad Border Police Station. This only serves to reinforce the CPT's view that there is currently no effective oversight of the "diversion" and "interception" operations conducted by Croatian law enforcement officials. The CPT recalls that Article 8 (2) (d) of the Convention obliges Parties to provide the Committee with all information available to them which is necessary for the Committee to carry out its task. By refusing access to the above-mentioned regional coordination centre and to any relevant CCTV recordings of stationary and mobile thermo-visual devices covering the border with BiH, the Croatian authorities failed to dispel doubts regarding the ill-treatment allegedly perpetrated by police officers in the context of "diversion" and "interception" operations. **The Committee trusts that in future its delegations as well as other independent monitoring bodies will be granted unimpeded access to this and any other such similar facilities holding information to which it is entitled to have access.**

### 3. Effective investigations into allegations of ill-treatment

25. The issue of effective investigations into police ill-treatment was another area of interest for the CPT's delegation. At the outset of the visit the delegation was informed that, since 2018, the Internal Control Service of the Ministry of the Interior (ICS) had processed a total of 41 complaints on alleged police misconduct vis-à-vis foreigners deprived of their liberty. The ICS had found 36 of these complaints unfounded, three unconfirmed and two were still under investigation.

Further, the ICS had also investigated 12 cases based upon letters received from the Ombudsman, requests from the prosecutorial authorities or following publication of allegations in the media. It had found grounds for initiating criminal and disciplinary proceedings in respect of two police officers. Together with the aforementioned letter dated 6 October 2020, the Croatian authorities provided the Committee with the 12 investigative files. In just two cases, there is evidence of an attempt to conduct a thorough investigation, with efforts invested in trying to clarify the allegations (e.g. by conducting prompt medical examinations of the alleged victims of ill-treatment and reviewing video-recording material).<sup>34</sup> Regrettably, the same cannot not be said for the remainder of the files, which fail to demonstrate any fact-finding investigative acts worthy of the name. Further, the "investigations" were carried out by a Police Directorate team composed of criminal investigators, border police officers and ICS officials. The composition of such a team undermines the notion that the ICS is independent when carrying out investigations of this nature. Further, the "Commission for the processing of complaints" (*Povjerenstvo za rad po pritužbama*) which should operate as a civilian oversight body over the work of the police has still not been established.<sup>35</sup>

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<sup>34</sup> The cases in question referred in particular to the alleged physical ill-treatment of an arrested female migrant in a police vehicle on 11 June 2020 in respect of which two police officers from Cetingrad Border Police Station were under criminal investigation as well as an incident which occurred on 6 March 2019 when an intercepted group of migrants were induced to sing chants in the Croatian language by police officers while they were video recording.

<sup>35</sup> See also paragraph 14 of the CPT's report on its 2017 periodic visit to Croatia CPT/Inf (2018)44.

In the CPT's view, an independent authority responsible for the investigation of complaints against the police can make a significant contribution to preventing ill-treatment, provided it is genuinely independent and adequately resourced in order to conduct effective investigations. For an investigation into possible ill-treatment to be effective, it is essential that the persons responsible for carrying it out are genuinely independent of those implicated in the events. It is important to ensure that the officials concerned are not from the same service as those who are the subject of the investigation. Ideally, those entrusted with the operational conduct of the investigation should be completely independent of the agency implicated. Further, an investigation into a complaint of ill-treatment must comply with the criterion of thoroughness. It must be capable of leading to a determination of whether force or other methods used were or were not justified under the circumstances, and to the identification and, if appropriate, the punishment of those concerned. This is not an obligation of result, but of means. It requires that all reasonable steps be taken to secure evidence concerning the incident, including, *inter alia*, to identify and interview the alleged victims, suspects, and eyewitnesses (e.g. police officers on duty, other detainees), to seize instruments which may have been used in ill-treatment, and to gather forensic evidence. Naturally, the capacity of any investigation to undertake such steps will be undermined from the very outset unless a full and accurate record is kept by the police of the nature of all of their interactions with persons deprived of their liberty (cf. paragraph 22).

**The CPT recommends that the Croatian authorities take effective steps to ensure that all investigations into allegations of police ill-treatment strictly comply with the above-mentioned criteria of independence and thoroughness.**

26. Prior to the visit, the CPT's delegation had been informed of several specific allegations of severe ill-treatment inflicted on groups of migrants apprehended in the territory of Croatia and forcibly returned to BiH in the course of May 2020. The NGO Centre for Peace filed two separate criminal complaints with the Zagreb Municipal Prosecutor on 5 June and 23 July 2020 in respect of these allegations. In the course of its fact-finding visit to BiH, the CPT's delegation interviewed some of the alleged victims identified in the above-mentioned criminal complaints. Further, the incidents in question had received extensive media coverage. This is an account of the detailed allegations in relation to both incidents, overlaid with the independent findings of the CPT's delegation:

- In one case, a group of sixteen Pakistani and Afghani migrants was intercepted on 26 May 2020 in the vicinity of the Plitvice Lakes by three intervention police officers wearing balaclavas who were quickly reinforced by five other police officers who were also wearing balaclavas. All the belongings of the migrants (i.e. backpacks, mobile phones and power banks) were confiscated, their hands were zip-locked in front of them, and they were forced to sit on the ground in a circle around a tree while a rope was tied around them to prevent their escape. Two of the alleged victims met by the delegation at TRC Miral claimed, in separate interviews, that police officers started firing bullets randomly on the ground to scare the detained migrants and that subsequently they subjected them to repeated blows with truncheons and rifle and pistol butts to various parts of their bodies (i.e. arms, legs, front, neck, and chest). They also alleged that they were subjected to electroshocks from a handheld device to their necks and shoulders. One police officer also allegedly inflicted superficial cuts on their arms and the palms of their hands with a knife. Later, after

- inspecting their belongings, the police officers allegedly covered the heads and faces of the migrants with sugar, mayonnaise and ketchup and started dancing and singing and acting as though intoxicated. One police officer reportedly filmed the entire scene with a mobile phone. The migrants were subsequently transported to the BiH border in the area of Šiljkovača.
- In respect of the first interviewee the medical certificate issued by the Cantonal Hospital of Bihac on 27 May stated the following: “*contusion on the head with laceration wound on the head in region parieto-occipitalis, multi-fragment fracture of the right ulna, fracture in the proximal (upper) end of the right tibia, fracture of VI left ribs with bleeding in the chest cavity (hemothorax-accumulation of blood within the pleural cavity), laceration wound on the left elbow.*” During the examination by one of the CPT delegation’s forensic doctors on 12 August 2020, SA still displayed: a vertical scar of 1 cm on the right part of the forehead from a healed wound measuring 1 cm; a pink-purple scar from a healed wound of 1 cm at the root of the nose; a 1 cm scar from a healed wound on the left, on the hairy part of the head, above the ear; a fibrous scar measuring 2 cm under the left eye. All injuries observed were compatible with the allegations of ill-treatment.
- In respect of the second interviewee who alleged to have received several blows with the butt of a semi-automatic weapon and a gun to his front and neck: a scar from a healed wound measuring 2/2 cm on the hairy part of the head in the left frontal-parietal area and a 2 cm scar in the occipital area were observed by one of the CPT delegation’s forensic doctors and assessed as compatible with the alleged ill-treatment.

27. A Pakistani national was intercepted, together with other migrants, by the special police on 7 May 2020 in the vicinity of Rijeka. They were handed over to the intervention police who transported the migrants in a van to the border with BiH. Upon exiting the vehicle, he alleged that a group of police officers confiscated his belongings (clothes, shoes, money, and mobile phones) and inflicted multiple blows to his body with standard “tonfa” batons and spray-painted an orange cross on his head while swearing profanities against his religion. Further, he said that for the final part of the journey after crossing the border with BiH in his underwear and barefoot, some locals had provided him with shoes and clothes. The CPT’s delegation observed photo documentation taken by at the time of the migrant’s admission to Miral TRC on 7 May 2020 which confirmed that he had arrived at the camp with a spray-painted orange cross on his head.

28. Given the concordant witness statements, the documented injuries, and other observations, these two cases cannot be lightly dismissed as fabrications, as the Croatian authorities have sought to do. The Committee understands that the medical documentation and situation reports, as well as the relevant media articles, have been provided to the prosecutorial authorities. Further, the examinations by the delegation’s forensic doctors of two of the alleged victims in the case referred to in paragraph 25 above suggest that the injuries sustained and still visible 45 days after the incident are compatible with the alleged ill-treatment. **The CPT wishes to be informed of the actions taken by the Zagreb Municipal Prosecutor’s Office to investigate the criminal complaint brought by the NGO Center for Peace in respect of these cases. Further, it would like to be informed of any actions taken by the Internal Control Department of the Police regarding these cases.**

29. The CPT also wishes to reiterate that the credibility of the prohibition of torture and other forms of ill-treatment is undermined each time officials responsible for such offences are not held to account for their actions. If the emergence of information indicative of ill-treatment is not followed by a prompt and effective response, those minded to ill-treat persons deprived of their liberty will quickly come to believe – and with very good reason – that they can do so with impunity.

In this respect, the numerous allegations of severe physical ill-treatment received by the CPT's delegation covering only a limited period of time (i.e. July and the beginning of August 2020) would appear to confirm that there is a well-established unlawful *modus operandi* for dealing with migrants crossing into Croatia from BiH. Moreover, given the persistent denials by the Croatian Ministry of the Interior of any wrongdoing by police officers, combined with the lack of accountability mechanisms present on the ground, the CPT considers that no arrangements are currently in place to prevent police officers acting violently against migrants, safe in the knowledge that they will not be held to account. The European Court of Human Rights, through its case law, has developed an established set of procedural steps that need to be taken whenever there is an allegation of ill-treatment by police officers to ensure that an effective investigation is carried out into the allegation. The Constitutional Court of Croatia has also adopted a clear decision on this matter.<sup>36</sup>

Further, as the European Court of Human Rights has emphasised in numerous judgments, where events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, strong presumptions of fact may arise as regards injuries allegedly sustained at the hands of law enforcement agents. In order to dispel any doubts as to the cause of those injuries, the onus is upon the State to offer a plausible explanation. Of course, the starting point is that any allegations of ill-treatment must be supported by appropriate evidence, including medical evidence. In this regard, the Court has been placing increasing reliance upon the findings in fact of the CPT.

Regrettably, in the view of the CPT, neither the dismissive reaction of the Croatian authorities to the findings presented to them by the CPT's delegation at the end of the visit, nor the observations that they subsequently communicated in writing, constitute a plausible explanation for the many serious injuries, compatible with police ill-treatment, displayed by numerous migrants who provided convincing accounts of their recent experiences at the hands of Croatian police officers.

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<sup>36</sup> See Constitutional Court decision no. U-III-6559/2010 originates from a complaint from Mr Hršum who alleged that he was apprehended at his house in 2008 by a group of unidentified police officers and subsequently physically ill-treated in a forest near Split and taken to a police station for interrogation. The Constitutional Court could not establish when Mr Hršum had actually been deprived of his liberty. However, it assessed that the level of seriousness of the inflicted injuries on Mr Hršum deserved a thorough and prompt investigation by the State authorities as to their origin which had not been carried out.

30. On 17 July 2019 the Croatian Ombudsman published on her website an anonymous letter<sup>37</sup> from a police officer assigned to the Cetingrad Border Police Station, in which he complained of the hardships faced by him and other colleagues in being compelled by senior border police officers to conduct illegal push-backs of migrants across the border with BiH, and how he had witnessed frequent incidents of physical ill-treatment of migrants by police officers, as well as the seizure and wanton destruction of their personal belongings. The letter implied that the senior management of the Croatian police had given instructions that migrants intercepted within the territory of Croatia were to be deported without being afforded their rights or otherwise being “processed” in accordance with law.

**The Committee would like to receive information from the Croatian authorities on the status of any investigation initiated in relation to the disclosures in the anonymous letter received by the Croatian Ombudsman in 2019.**

**The Committee also recommends that the Croatian authorities foster a culture of police officers reporting cases of violence committed by colleagues through appropriate channels. It would like to receive information about the reporting procedures and effective protection measures for whistle-blowers that are currently in place.**

#### **4. Inspection and monitoring**

31. At the time of the CPT’s visit, there was no independent monitoring of “diversion” and “interception” operations of migrants whether by civil society groups, the national preventive mechanism (NPM) or international organisations.<sup>38</sup> The CPT has long supported the operation of national independent monitoring bodies which are capable of examining the treatment of all persons deprived of their liberty, which includes the fundamental procedural safeguards applicable to migrants. In this respect, the Croatian NPM, which is a part of the Croatian Ombudsman’s Office, has a clear mandate to examine all issues related to the treatment of migrants deprived of their liberty. However, since 2020, NPM monitors have only been allowed to consult files of migrants who have been “arrested” and not those pertaining to other migrants deprived of their liberty (i.e. “intercepted”) which are stored on the electronic information system of the Ministry of the Interior. Further, in a response dated 24 September 2020 to the Ombudsman’s 2019 Annual Report, the Ministry of the Interior questioned whether the NPM had a mandate to conduct unannounced visits to police establishments if no-one is detained therein. It goes without saying that for a monitoring body to be effective it must have the power to make unannounced visits to any police stations whenever it deems it necessary and to consult all relevant documentation. Monitoring bodies are there to ensure that the police carry out their work professionally and in accordance with the law, and to work constructively to strengthen the protection of all persons deprived of their liberty.

**The CPT recommends that the Croatian authorities restore the capacity of the NPM to**

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<sup>37</sup> The Ombudsman had previously forwarded the letter to the competent prosecutorial authorities for investigation as well as to the President of the Croatian Parliament and various Parliamentary Committees. The authenticity of the letter and the identity of its author was subsequently tacitly acknowledged by the Croatian authorities who suggested that, in publishing it, the Ombudsman had compromised an “ongoing investigation”.

<sup>38</sup> A so-called “Border Monitoring Project” involving the UNHCR and the Croatian Legal Centre consisted only of the examination of relevant files in police stations in relation to the procedural aspects of the interception of migrants; it did not include any oversight of the actions of the Croatian police during push-backs. The Project, which began in 2018, has now come to an end and it has not been replaced.

**carry out unimpeded monitoring work in all police establishments, which should include the possibility of undertaking unannounced visits and having access to all relevant information in paper or electronic format.**

32. At the outset of the visit, the Croatian authorities informed the CPT's delegation of their desire to set up an independent border monitoring mechanism, a matter which is also addressed in the new Pact on Migration and Asylum recently proposed by the European Commission.<sup>39</sup> Although the contours of such a mechanism remain to be established, the Committee considers that, if it is to be **effective**, any such monitoring mechanism should have a mandate to:

- conduct unannounced inspections of police establishments and access to all files, registers and video recordings in respect of all categories of migrants “diverted” and “intercepted” by the police;
- inspect all relevant documentation (including police shift handover logbooks, shift distribution charts and shift reports) of police patrols operating on the external border of Croatia as well as access to all recordings of stationary and mobile video and motion-detecting devices covering the external border of Croatia;
- at its discretion, be present as an independent observer during “diversion” and “interception” operations at the border;
- liaise with the IOM and other organisations operating reception centres in BiH and Serbia in order to collect real-time information on possible cases of alleged malpractices.

In order to safeguard its **independence**, any such mechanism should also:

- be adequately staffed by appropriately qualified staff, including medical professionals, and provided with the necessary financial resources;
- be free from any institutional connection with the Ministry of the Interior;
- be empowered to produce periodic and ad hoc visit reports with clear recommendations to the competent authorities and to report on the implementation of those recommendations;
- be entitled to communicate directly with the competent prosecutorial authorities in the event that malpractice is uncovered in the course of its monitoring activities and to secure rapid access to forensic medical examinations for alleged victims of ill-treatment

## **5. Safeguards against ill-treatment**

33. The CPT wishes to recall that, in the same way as other categories of detained persons, migrants apprehended by the police should, from the very outset of their deprivation of liberty, enjoy certain basic rights that are fundamental safeguards against ill-treatment, namely the rights of information on rights, notification of custody, access to a lawyer and access to a doctor. In this respect, Article 130, paragraph 3, of the Law on Foreigners provides that after “arrest” (“uhićenje”)<sup>40</sup> a migrant should be immediately informed of his/her right to inform a third party, to have access to a legal counsel and to inform the competent consular authority if they so wish. Further, Article 33, paragraph 2, of the Law on International and Temporary Protection regulates the right of a foreign national to apply for asylum at the relevant police station and the obligation of

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<sup>39</sup> Cf. the EC document COM (2020) 609 final of 23.9.2020.

<sup>40</sup> I.e., the moment of his/her deprivation of liberty.

the police to process such a request which is thereafter to be examined by the Ministry of the Interior.<sup>41</sup> Further, the provision of emergency and necessary health-care assistance to migrants is regulated by the 2018 Rulebook on the Provision of Health Care Protection to Foreigners who Illegally Reside in Croatia (see paragraph 51).

34. As already mentioned, at the police establishments visited, the CPT's delegation was only granted access to the files of those migrants who had been formally arrested and processed in accordance with Article 130, paragraph 3 of the Law on Foreigners (e.g. 8 at Cetingrad and 10 at Donji Lapac Border Police Stations).<sup>42</sup> This represents a tiny proportion of the number of migrants who have actually been the object of "diversion" or "interception" operations by the Croatian Police.<sup>43</sup> For example, the shift handover logbook consulted by the CPT's delegation at Korenica Police Station (see paragraph 14) recorded that, in the time between 25 July to 12 August 2020, a total of 2,373 persons had been "diverted" by the Croatian Police only in respect of the area of responsibility of this police establishment, which covers just 33 km of the border with BiH. By contrast, during the same time interval, only 10 foreigners had been officially arrested at Korenica Police Station.

35. An examination of the very limited number of files and documentation which were provided to the delegation revealed that those migrants who had been officially arrested were being asked to sign an information sheet in their own language informing them of the return procedures and fundamental safeguards (including the rights to apply for international protection). That said, there was little evidence that foreign nationals were offered or could exercise in practice their statutory rights to inform a third party (including consular authorities) of their detention, access legal counsel<sup>44</sup> and benefit from medical assistance or interpretation. In particular:

- in the minutes on interviews with the arrested persons ("službena zabilješka"), mention was systematically made of the fact that the whole process had been conducted in English without resorting to interpretation. Further, all relevant administrative decisions on return or re-admission were only drafted in the Croatian language;

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<sup>41</sup> In the course of 2019, the Ministry of the Interior had adopted Standard Operational Procedures on the processing of asylum applications. During the same year 1,986 applications for international protection were registered in Croatia, of which 158 had been granted. In the course of the first nine months of 2020 1,355 applications of international protection were received by the Ministry of the Interior, of which 35 had been granted.

<sup>42</sup> In principle, the files of arrested migrants examined by the CPT's delegation showed that they were detained for less than 24 hours and were served with a decision on voluntary return or a deportation order (generally through a re-admission agreement with BiH).

<sup>43</sup> Suffice it to say that the following complements of police officers were assigned to Korenica Police Station (125 police officers); the figures for Cetingrad and Donji Lapac Border Police Stations were 130 and 115 respectively. In principle, patrolling staff were working in pairs on twelve-hour shifts and a consistent number of the staff operating at the three police establishments had been redeployed from other tasks and county administration in the light of the urgency of the "Koridor" operation.

<sup>44</sup> As mentioned in paragraph 34 the access to legal aid for migrants is regulated by the 2018 Rulebook on Free Legal Aid in Return Proceedings which distinguishes between free legal representation (i.e. for foreign nationals having at least one-year of residence status in Croatia) and free legal counselling. In practice, foreign nationals need to fill in a form at a police establishment and consequently receive a certified list of accredited legal aid providers.



- in all the cases examined, the report on arrest and detention (“izvješće o uhićenju i zadržavanju”) confirmed that arrested persons received, in the Croatian language, a certified list of legal aid providers who would provide legal advice over the telephone for the initiation of court proceedings in order to challenge their detention order. However, in each and every case, the relevant section on the practical exercise of this right was blank, suggesting that nobody had actually exercised this right;
- the minutes on interviews with the arrested persons clearly showed that the provision of medical assistance to arrested persons was left to the discretion and assessment of the police officer and his/her generic and standard conclusion that the “arrested person was feeling good”;
- documents and registers showed that the starting time of detention was recorded as the time of arrival at a police station, rather than the actual interception and apprehension on Croatian territory.

**The CPT calls upon the Croatian authorities to take the necessary steps to ensure that all migrants who are deprived of their liberty by the police are granted the rights of notification of custody, access to a lawyer and access to a doctor and are placed in a position to effectively exercise these rights as from the very outset of their deprivation of liberty (i.e. the time in which they are obliged to remain with the police).**

**The CPT once again reiterates its recommendation that detained foreign nationals should be systematically and fully informed of their rights, their legal situation (including the grounds for their detention) and the procedure applicable to them as from the very outset of their deprivation of liberty, if necessary, with the assistance of a qualified interpreter. Further, all detained persons should be systematically provided with a copy of the leaflet setting out this information in a language they can understand. Sufficient funding should be made available to ensure that interpretation services are available when required (such as the use of phone interpretation services).**

36. As regards persons not officially arrested but “detained” (“zadržani”) or “brought in” (“dovedeni”) to police stations for identification, whom the Croatian authorities do not consider as deprived of their liberty,<sup>45</sup> they should in principle be subject to the following procedure: a “model 6” form (in accordance with the “Rulebook on treatment of third-country nationals”) containing basic personal information should be filled out in respect of intercepted migrants who should then be photographed and fingerprinted and issued with a decision on return or readmission in compliance with the Law on Foreigners and the 2008 EU Return Directive.

Unfortunately, no official documentation was produced in any of the police establishments visited to evidence that these legal safeguards, including the right to request international protection, were operational in practice. Indeed, the testimonies of the numerous persons interviewed by the delegation in the course of its fact-finding activities in the territory of BiH indicated that only in very few instances were migrants intercepted within the territory of Croatia subject to such a procedure and issued with a “model 6” form and a formal decision on return. For example, a senior police official interviewed by the delegation at the Karlovac County Police Administration confirmed that, in the course of 2020, a total of 2,064 intercepted migrants had been

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<sup>45</sup> Despite the fact that the same provision of the Law on Foreigners applies to them as for “arrested persons” and that they could theoretically be detained for up to 72 hours.

“processed” at Cetingrad Border Police Station and, in theory, issued with a decision on return or deportation pursuant with Articles 103 and 109 of the Law on Foreigners.<sup>46</sup> In the eyes of the CPT’s delegation such a figure remains unrealistically low compared with the number of illegal border crossings documented at Korenica Police Station in just the 18 days prior to the delegation’s visit (i.e. 2,373).<sup>47</sup>

**The Committee recommends that in respect of all migrants “intercepted” on the territory of Croatia and processed at police stations, the operational safeguards provided for in Article 130 paragraph 3 of the Law on Foreigners be made applicable as from the very outset of their deprivation of liberty.**

## **6. Conditions of detention**

### **a. police stations**

37. As mentioned above, only a very small proportion of persons subject to push-back operations were actually officially “detained”, “brought-in” or “arrested” and consequently processed at a police station. It is therefore not surprising that the cells at the police establishments visited appeared to be in a rather pristine state.

The two cells of Donji Lapac Border Police Station were rather small, measuring respectively 5 and 6 m<sup>2</sup>, but had recently been renovated and were equipped with a concrete platform, mattress and bedding, toilet, and a call bell. The CCTV covering the cells pixelated the toilet area on the police supervisor’s monitor. They offered satisfactory conditions of detention for stays of up to 24 hours.

The three small cells at Korenica Police Station, each measuring approximately 5 m<sup>2</sup>, offered similarly adequate conditions of detention. However, the call button in cell no. 2 was missing, leaving bare wires exposed.

The two cells at Cetingrad Border Police Station, each measuring 5.5 m<sup>2</sup>, were not in use since the NPM had recommended in July 2018 that call buttons be installed and that the cells be provided with access to natural light by replacing the dark glass windows with transparent panes.

**The CPT would like to receive confirmation that the call bells have been installed and the set up changed in order to provide access to natural light at the two cells at Cetingrad Border Police Station. Further, the call-button in cell no. 2 at Korenica Police Station should be repaired.**

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<sup>46</sup> In such a case a model 11 form would be filled in pursuant to the Rulebook on Treatment of Third-Country Nationals.

<sup>47</sup> Further, Cetingrad Border Police Station covers a wider portion of border and is considered to be the establishment where most of the illegal border crossings take place.

38. It appeared that in practice, whenever a group of migrants were “detained”, or “brought in” for the purposes of identification and “processing”, they would be held in the offices at Cetingrad and Donji Lapac Border Police Stations. This was confirmed by both migrants and staff met by the delegation. At Korenica Police Station, several reports from the Croatian NPM and NGOs indicated that migrants were detained for many hours including overnight in a garage adjacent to the custody area, where they would have to sleep on the floor on dirty mattresses in unsanitary conditions. Consequently, the CPT’s delegation visited and enquired about the use of the garage but was informed by police officers that it was never used for holding migrants. However, the shift handover logbook subsequently consulted by the delegation at Korenica Police Station contained an entry on 3 August 2020 (the date of the notification by the CPT of its intention to visit Croatia) which said “*no detention in the garage until further notice: transfer immediately all persons to Donji Lapac*”. Such an entry was repeated in writing by all shift leaders until the day of the CPT’s visit on 12 August 2020.

At the end of the visit, during official talks on 14 August 2020 at the Ministry of the Interior in Zagreb, the Head of the Border Police Directorate confirmed that the garage at Korenica Police Station had indeed, until very recently, been “designated” as a place of detention. The delegation requested that the Croatian authorities immediately stop using the garage for the detention of persons. In their response dated 6 October 2020, the Croatian authorities referred to an Instruction of the General Police Directorate of 26 March 2020 to all police establishments on the need to avoid the detention of migrants in unsuitable conditions and their transfer after 24 hours to the closer police detention unit equipped for detention of up to 72 hours.

**The CPT recommends that the garage at Korenica Police Station no longer be used for the detention of intercepted migrants and it wishes to receive confirmation that this is indeed the case. Further, the Committee recommends that the Police Directorate issue an instruction regulating the conditions of detention for large groups of “intercepted” migrants who need to be processed at a police station and allocate the necessary funding for the provisions of suitable premises where the migrants may be held during this period.**

b. transportation

39. As mentioned above, the CPT’s delegation received numerous allegations of migrants being transported in police vans in extremely poor conditions. The vans concerned were inspected by the CPT delegation’s policing expert at Korenica Police Station and were found to contain a secure windowless metal-lined compartment behind the driver’s bench, with two metal benches running along each side with no safety belts, hand grips, cushions or head support for safety and security. The delegation heard that the number of detainees transported in these compartments was often as high as 18 to 20 and even as many as 26. Clearly cramming such numbers into an area designed for carrying a maximum of eight persons on journeys that may exceed several hours is unsafe and degrading. Further, migrants met stated that their hands were often zip-locked in the transport vans and that, due to their inability to control their movements, many persons suffered from motion sickness and often vomited on the floor, themselves, and other persons. Also, migrants were apparently not offered drinking water at any stage of the journey.



In their response dated 6 October 2020, the Croatian authorities informed the CPT that the standard police vehicles described by the migrants and inspected by the CPT's delegation are the same ones in use in other EU member States and are exactly the same as those in use for the transport of other categories of persons deprived of their liberty in Croatia.

The CPT wishes to stress that the configuration of such vehicles does not meet the basic standards in which detained persons should be transported. The Committee has not encountered transport vehicles in other EU countries lacking such basic safety and security measures without making recommendations to ensure that all detained persons are transported safely and securely.

**The CPT recommends that the Croatian authorities take the necessary steps to ensure that all police transportation vans are fitted with basic safety and security equipment, including safety belts, padded seating and head support, functioning artificial lighting and access to natural light (e.g. a glazed window). Further, they should not be used to transport more persons than their official capacity of eight persons and, for longer journeys, detained persons should be offered water. In addition, migrants as a principle should not have their hands cuffed in zip-locks during transportation unless an individual security assessment requires such a measure.**

## 7. Other issues

### a. training of police officers

40. In recent times, the Fundamental Rights Agency (FRA)<sup>48</sup> as well as UNHCR and the Croatian Legal Centre,<sup>49</sup> have provided various training modules on human rights, Schengen Borders Code and access to international protection to border police officers. The Ministry of the Interior reported that, in the course of 2019, 448 border police officers had received training on fundamental rights. Further, the CPT's delegation was also informed that those police officers who would be redeployed to a border police station from their original tasks would receive training from the illegal migration department of the respective county police administration. Clearly, in the light of the delegation's findings, such training activities have yet to bear fruit.

**The CPT would like to receive additional information about the curricula of the specific training provided by the FRA, UNHCR and Croatian Legal Centre.**

### b. vulnerable groups

41. In August 2018, the Croatian Government adopted a Protocol on the Treatment of Unaccompanied Minors which contains specific provisions for the identification and needs assessment of Unaccompanied and Separated Minors (UASM) at the time of their interception by police officers.<sup>50</sup> For those few persons who were officially arrested and detained by the police, there was some evidence that the protocol was being applied. UASM in particular were offered the possibility to apply for asylum and the social welfare authorities responsible for initiating guardianship proceeding were contacted. Further, records examined at Donji Lapac Border Police Station showed that, on occasion, emergency health care and food were provided to vulnerable persons.

That said, the CPT's delegation was only able to access documentation pertaining to a very few cases of actual deprivation of liberty (see paragraph 34 above). On the other hand, it received numerous allegations from children, pregnant women, and sick persons that they too had been pushed back from Croatia to BiH by the police and that their requests to apply for asylum or to be provided with emergency medical assistance were disregarded by Croatian police officers (see paragraph 20).

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<sup>48</sup> A training session was held at the Croatian Police Academy in Zagreb on 5 March 2020.

<sup>49</sup> Four one-day workshops were held in the course of 2019 for a total of 75 police officers from three different police county administrations.

<sup>50</sup> The Protocol provides a detailed overview of all procedures with regard to unaccompanied children: relevant authorities and state bodies, actions that precede accommodation, accommodation, procedures regarding special guardian and guardianship, health care, international protection, temporary stay for humanitarian reasons, inclusion in the educational system, integration, search for family members, age assessment, return procedure, conduct in the case of suspected human trafficking, keeping records. The protocol also establishes an Interdepartmental Commission for the protection of unaccompanied minors with the aim to improve inter-agency cooperation between state administration bodies and other stakeholders involved in the protection of unaccompanied children.

42. The Danish Refugee Council informed the CPT's delegation that from a figure of 17,827 migrants who reported having been pushed back across the border from Croatia to BiH between May 2019 and August 2020, 1,405 could be considered to be children with families or UASM. Further, according to the UNHCR, from September to December 2019, there were 16 cases involving 108 individuals of various nationalities (including several families with children) who had been forcibly returned to BiH despite having expressly informed the Croatian police that they wanted to apply for asylum.

43. The adoption of the 2018 Protocol on the Treatment of Unaccompanied Minors represented a positive step forward. However, its practical effect will be undermined if it is not systematically applied to all UASM who are picked up by the Croatian police. **The CPT recommends that the Croatian authorities act to ensure that the 2018 Protocol is fully applied in respect of all UASM. Further, the CPT would like to be informed of the specific measures put in place to provide support to vulnerable migrants intercepted by the Croatian police.**

## 8. Ježevo Reception Centre for Foreigners

### a. preliminary remarks

44. The CPT's delegation visited the Ježevo Reception Centre for Foreigners, the largest of the three pre-removal facilities for the administrative detention of foreigners in the country,<sup>51</sup> for the first time since 2007. The establishment consists of two residential units (one of which is for vulnerable groups). At the time of the visit, the reception centre was accommodating 12 adult male foreign nationals of whom four were asylum seekers (i.e. they had made applications for international protection) for an overall capacity of 95 places.<sup>52</sup> There was also one UASM who had been held in the centre for three months at the time of the visit.<sup>53</sup>

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<sup>51</sup> Two transit reception centres for foreigners located in Tovarnik and Trilj were constructed with the assistance of EU funds and inaugurated in the course of 2017 and 2018 for a capacity of 62 places. Each reception centre was, at the time of the visit, accommodating only one migrant (at Trilj) and three (at Tovarnik).

<sup>52</sup> 68 places for males, 12 for females and vulnerable groups, 15 places for families.

<sup>53</sup> The juvenile, who was accommodated in the ordinary detention unit with the other detained men, had been placed in the centre after having been accused of several crimes as the competent judge had decided that the Ježevo Reception Centre represented a less intrusive measure than pre-trial detention at Zagreb Prison. A guardian had been appointed in his case by a social welfare officer of the Porin Reception Centre for Asylum Seekers in Zagreb.

45. The deprivation of liberty of migrants issued with a return or deportation order is regulated by the relevant provisions of the Law on Foreigners (Articles 131-134), pursuant to which they may be detained in a reception centre for foreigners if there are clear indications that less intrusive measures<sup>54</sup> might not be applicable<sup>55</sup> and if a serious risk of absconding exists. The decision on administrative detention may be issued by the police administration or the competent police station for an initial period of up to six months and may be prolonged for an additional period of twelve months in the case of objective impediments to his/her deportation.<sup>56</sup>

Asylum seekers may also be detained in exceptional circumstances (such as a risk of absconding) in accordance with the relevant provisions of the Law on International and Temporary Protection (LITP). In particular, Article 54, paragraph 9, provides for the detention of an asylum seeker for an initial period of three months which can be prolonged by an additional three months. The decision on placement is taken by the Ministry of the Interior, the Police Directorate or the competent police station and must be reasoned.<sup>57</sup> In exceptional circumstances and pursuant to an individual assessment, an UASM may also be deprived of liberty for the minimum period of time necessary.<sup>58</sup>

Both the Law on Foreigners<sup>59</sup> and LITP<sup>60</sup> 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.

46. The average period of detention at the Ježevo Reception Centre for Foreigners for the period June 2018 to August 2020 amounted to 40 days.<sup>61</sup> The Director of the Centre informed the delegation that in case of serious impediments and/or lack of cooperation from the consular authorities of given countries, the Ministry of the Interior would in general propose the release of foreign nationals. An examination of the records showed that no person had been held in the Centre for a period longer than three months.

In 2018 a new Rulebook on the Accommodation in the Reception Centre for Foreigners (Rulebook on House Rules) was adopted which regulates all aspects of the internal life at the establishment.

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<sup>54</sup> According to the Law on Foreigners, alternative measures of limiting a foreign national's freedom pursuant to Article 132 of the Law on Foreigners are, for example: seizure of passport, mandatory residence at a given address and mandatory and periodic summons to a police establishment.

<sup>55</sup> For example, in the case of a pending criminal investigation or if the foreign nationals provide false information or a forged identity document.

<sup>56</sup> Pursuant to Article 134 of the Law on Foreigners.

<sup>57</sup> For example, the necessity to establish certain facts over the asylum application, reasons of public order or national security as well as the necessity to verify the identity of the applicant for international protection. Further, asylum seekers may also be detained for a period of up to six weeks in the case of a so-called Dublin transfer.

<sup>58</sup> Pursuant to Article 54, paragraph 8 of the LITP.

<sup>59</sup> I.e. Article 135, paragraph 3 of the Law on Foreigners.

<sup>60</sup> I.e. Article 5, paragraph 12 of the LITP.

<sup>61</sup> The longest period of detention in the course of 2020 amounted to three months in two cases.

b. ill-treatment

47. Almost all the persons met at Ježevo Reception Centre stated that they were treated correctly and respectfully by custodial staff. Staff were said to be polite and engaging in their interactions and communication was facilitated by the fact that staff could converse in the English language. That said, two persons alleged that on 31 July 2020, after an altercation with another detainee, they were verbally abused by a custodial officer. One of them said that he was pulled out of his upper bunk bed by this custodial officer as a result of which he injured his knee when he fell on the floor. This was confirmed by his roommate. A recording in his personal medical dated 6 August 2020, described the injury<sup>62</sup> but did not reference its possible cause.

Law enforcement officials should be reminded regularly and in an appropriate manner that any form of ill-treatment of detained persons including verbal abuse is not acceptable and will be sanctioned accordingly. Staff should be provided with regular training on cultural mediation and on techniques to de-escalate tense situations. **The CPT recommends that the Croatian authorities remind staff at Ježevo Reception Centre for Foreigners that any form of ill-treatment of detainees will be appropriately punished. Further, the Committee would like to receive information from the Croatian authorities on whether the custodial staff at Ježevo Reception Centre receives training on issues such as de-escalation techniques and cross-cultural communication skills.**

c. conditions of detention

48. With the support of the EU financial instrument “Asylum, Migration and Integration Fund” (AMIF) a new kitchen, laundry and heating system were installed in the course of 2019 as well as a football pitch. Further, the Director of the Centre informed the delegation of a future refurbishment plan for the ordinary detention unit.

The separate two-storey residential unit for vulnerable groups consisted of five three-bedded rooms (each measuring 10 m<sup>2</sup>) and four four-bedded family rooms (each measuring approximately 16 m<sup>2</sup>) all of which were had an adjoining sanitary annex equipped with a toilet, washbasin, and shower. The unit also possessed a spacious communal room, a kitchen for the preparation of food for children and a playground. The premises were in an adequate state of repair and hygiene and provided ample space and equipment for the accommodation of UASMs and families. That said, the horizontal bars on the windows, which the management of the centre considered (implausibly) as a necessary protection against possible acts of self-harm (e.g. jumping out of the window) gave the unit a carceral feel.

The ordinary detention unit consisted of eight multiple-occupancy rooms for adult male detainees (each measuring 30 m<sup>2</sup>), all of which were equipped with eight beds. There were also five three-bedded rooms for female detainees (each measuring approximately 14 m<sup>2</sup>) each of which had a separate sanitary annex equipped with a toilet, washbasin, and shower. The adult male detainees had in principle constant access to a common sanitary facility (consisting of six toilets and six showers) on the ground floor, which were also in an acceptable state of repair and hygiene conditions. That said, the rooms were austere and contained no additional furniture other than the metal beds and mattresses. Further, some of the artificial lighting was malfunctioning, there were no

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<sup>62</sup> “Swelling and reduced mobility of the left knee joint; diagnosis contusion of the left knee”.



call bells and no storage space for personal belongings and the horizontal bars on the windows not only emphasised the carceral environment but also represented potentially dangerous ligature points.

Upon admission, detained persons had their personal clothes washed, disinfected, and stored for the entire period of detention and were provided with two sets of standard clothes and shoes from the centre.<sup>63</sup> However, several detained persons complained that they could only change their clothes once a week, which was insufficient to maintain basic hygiene, especially during the summer months.

Further, personal hygiene kits were provided to all detainees on a weekly basis. In terms of food, several foreign nationals complained about the monotonous fare offered for dinner which always consisted of canned meat paste, a fact confirmed by the weekly menus.

With a view to reducing the carceral atmosphere at the Ježevo Reception Centre, **the CPT recommends that the Croatian authorities remove the metal bars from the windows.**

Further, **steps should be taken to provide each multiple-occupancy cell with a call bell system, a table and chairs and functioning artificial lighting and to offer a greater variety of food for dinner. Consideration should also be given to providing detainees with additional sets of clothing, especially underwear, and/or to increasing the frequency with which clothes can be laundered.**

d. regime

49. Persons in the ordinary detention unit enjoyed an open-door regime throughout the entire day (i.e. from 8 a.m. to 8 p.m.) during which they could access the common recreational room. The room was equipped with two television sets, exercise bikes, snooker, table-tennis, and board games, as well as tables and chairs. The director of the establishment also informed the delegation of the ongoing efforts to provide wireless internet access in the establishment. That said, access to the recently renovated outdoor facilities (i.e. football pitch and a basketball court) only took place on an irregular basis (once a week) and was not considered by staff as a routine daily statutory activity. Further, the outdoor facilities offered no shelter against inclement weather.

**The Committee recommends that access to the outdoor exercise facilities be offered every day both morning and afternoon and form part of the daily schedule of activities and that a shelter against inclement weather be installed.**

50. Article 22 of the 2018 Rulebook on House Rules limits the access of external organisations to those which have signed an agreement with the Ministry of the Interior, thus limiting considerably the range of activities on offer to detained persons. In concrete terms, the only organised activity on offer were the weekly visits of the Red Cross and the Jesuit Refugee Service, which provided some psycho-social assistance to detained migrants (group interviews on their status and personal well-being).<sup>64</sup> Further, a former dormitory had been transferred into a multi-faith prayer room. The Centre had no library.

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<sup>63</sup> Pursuant to Article 10 of the Rulebook on House Rules.

<sup>64</sup> These organisations also provided certain support such as donating telephone cards to the detained migrants.

The Committee considers that the longer the period for which persons are held in an immigration detention centre, the more developed should be the activities which are offered to them. Purposeful activities, in an immigration detention context, can include, *inter alia*, language classes, IT/computer classes, gardening, arts and crafts and cookery skills. Therefore, **the CPT recommends that the Croatian authorities put in place a purposeful programme of activities for detained persons at the Ježevo Reception Centre, taking into account the above remarks.**

e. health care

51. The provision of health care to foreign nationals accommodated at the Ježevo Reception Centre is regulated by the 2018 Rulebook on the Provision of Health Care Protection to Foreigners Who Illegally Reside in Croatia.

In practice, health care was provided by one GP and one nurse from the Dugo Selo Health-Care Centre,<sup>65</sup> who visited the establishment twice a week for a total of 2.5 hours each. As regards dental care, arrangements were in place for detained persons to be taken to the hospital for an emergency extraction. The infirmary was adequately equipped and possessed a portable ECG machine; sterilizer; defibrillator; forehead thermometer and a device for blood sugar testing.

Access to specialist care was available at Dugo Selo Health-Care Centre or at certain hospitals in Zagreb and was based on a referral by the GP.<sup>66</sup> However, there were still no arrangements for psychological assistance at the centre.

52. The medical examination of newly admitted persons took place within five days as provided for by the above-mentioned Rulebook. The Rulebook screening form consisted of the triage and epidemiologic history and anamnesis<sup>67</sup> and a basic physical examination (blood pressure, pulse). That said, the medical screening did not include a systematic recording of injuries and there was no dedicated injury register. The GP told the delegation that he would only examine and record any injuries in cases where there was a specific complaint.

Further, there was no screening for transmissible and infectious diseases nor for any mental health antecedents. There was also no medical examination of foreign nationals prior to deportation by air to draw up a fit-for-fly certificate.

53. The confidentiality of medical examinations of detained persons was respected (as was the secrecy of their personal medical files). The consultations took place in English and in the case of difficulties in communication, the GP would rely on the interpretation of a co-detainee acting as interpreter.

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<sup>65</sup> The staff in question belonged to the Ministry of Health and a contract was in place for the health-care provision with the Dugo Selo Health-Care Centre.

<sup>66</sup> A total of eight external specialist consultations had taken place in the course of 2020 on psychiatry, endocrinology, and physiotherapy.

<sup>67</sup> Reference has to be made to the transit countries, the history of previous diseases and the existence of a BGC scar.

In the light of the limited presence of health-care staff, medication prepared in advance by the nurse was distributed by custodial staff twice a week. At the time of the visit, this included insulin and anti-psychotic medication prescribed for two detained persons.

54. **The CPT recommends that the Croatian authorities reinforce the health-care service at Ježevo Reception Centre by ensuring that:**

- **a person with a recognised nursing qualification is present on a daily basis. Such a person could in particular perform the initial medical screening of foreign nationals, receive requests from foreign nationals to see a doctor, ensure the provision and distribution of prescribed medicine to detained persons. Further, the medical examination of newly admitted detainees should take place within 24 hours and the relevant provisions of the Rulebook be amended;**
- **medical screening upon admission and its relevant form includes aspects such as the recording of any signs of injury, together with any relevant statements of the detained person and the doctor's conclusions. Further, a dedicated register on injuries observed on detained persons during admission and detention should be put in place;**
- **all newly admitted foreign nationals are subject to screening for transmissible diseases (i.e. systematic TB screening and voluntary testing for HIV and hepatitis B and C) and the detection of any signs of mental and traumatic antecedents;**
- **adequate clinical psychological assistance is provided to detained persons;**
- **the confidentiality of medical examinations with detainees is fully respected and, in cases of detainees unable to converse in English, professional interpretation services be made available.**

f. safeguards during detention

55. The Committee attaches great importance in the context of immigration detention to the operation of fundamental safeguards as from the very outset of detention. In this context, all detained persons at Ježevo Reception Centre were receiving and countersigning an information sheet upon their admission.<sup>68</sup> Further, copies of the Rulebook on House Rules in English and French languages were displayed on the board in the communal room and detained persons appeared to be acquainted with its content.<sup>69</sup> A three-minute free telephone call was offered to all newly arrived detainees in order to inform their respective families or consular authorities.

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<sup>68</sup> Listing issues such as the reasons for their detention in terms of the qualification of principles such as the risk of absconding and the fact that administrative proceedings in front of the Administrative Court have to be initiated in order to challenge their placement.

<sup>69</sup> The director informed the delegation that efforts were ongoing in order to translate the Rulebook in the most common languages spoken by detainees (e.g. Arabic, Farsi, Urdu, etc.).

56. Personal files of migrants and asylum seekers were duly kept, and detention orders appeared to be adequately reasoned. Further, the periodic judicial review of the detention orders by the administrative court on the extension or suspension of the same appeared to be timely. That said, 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.

**The CPT recommends that more formal and reliable systems should be put in place to ensure that all detained persons fully understand the reasons for their detention and the possibilities to challenge such a decision as well as any decisions on extending the period of detention.**

57. Asylum seekers in detention are entitled to free legal aid<sup>70</sup> and, at the time of the visit, a legal representation project implemented by the Croatian Law Centre was in place to provide legal advice and representation to detainees. On the other hand, access to legal aid for migrants is regulated by the 2018 Rulebook on Free Legal Aid in Return Proceedings (see paragraph 34) which distinguishes between free legal representation (i.e. for foreign nationals who have at least one year of uninterrupted residence status in Croatia) and free legal advice. Detained migrants who request legal advice receive a certified list of accredited lawyers whom they may consult by telephone if they want to file court proceedings challenging their detention decision.

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. 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.

**The CPT recommends that the relevant legislation be amended so as to ensure that all persons held under aliens' legislation (i.e. under the Law on Foreigners and the LITP) have an effective right of access to a lawyer (including adequate interpretation) as from the very outset of their deprivation of liberty and at all stages of the proceedings.**

g. staffing issues

58. The Ježevo Reception Centre possessed an adequate complement of custodial staff (50 custodial officers)<sup>71</sup> who had received training in inter-personal skills and the English language.<sup>72</sup> Every detained person had a personal custodial officer assigned to him or her to assist them. Relations between staff and the detained persons at the time of the visit were generally cordial. Given this approach, the delegation was surprised to see that custodial staff were

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<sup>70</sup> See the 2012 Rulebook on Free Legal Aid in the Asylum Procedure.

<sup>71</sup> Out of 56 budgeted positions. Eight of them were dedicated to the task of escorting foreign nationals in removal proceedings.

<sup>72</sup> As well as on dealing with vulnerable groups.

systematically carrying truncheons in detention areas. The CPT has consistently pointed out over the years that staff in an immigration detention setting should not be equipped with batons as it is not conducive to developing positive relations with detained persons and is contrary to the ethos of an immigration setting.

**The CPT recommends that staff working in the Centre no longer carry truncheons in detention areas.**

h. contacts with the outside world

59. All detained persons had the right to two visits of one and a half hours per week in one of three dedicated rooms equipped with tables and chairs. Visitors have to inform the establishment at least two days in advance of their intention to visit in writing. Access to the telephone was in principle unlimited and the Red Cross was providing pre-charged cards on a weekly basis. Detained persons were not allowed to keep their mobile phones but could in principle consult them to retrieve contact information. However, two detained persons stated they had not been granted access to their mobile phones to retrieve contact information. **The CPT would like to receive the comments of the Croatian authorities on whether there are any circumstances in which detainees may be denied access to the contact information in their mobile phones.**

The Director informed the delegation that the establishment would soon be equipped with a wireless internet network. **The Committee recommends that the Croatian authorities allow foreign nationals detained at Ježevo Reception Centre to use the VoIP technologies on a free-of-charge basis to communicate with the outside world.**

i. complaints

60. 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. Foreign nationals appeared to be familiar with this procedure. That said, there was no second instance procedure in place if the foreign nationals were dissatisfied with the outcome of the complaint nor was a dedicated register of complaints in place at the establishment. Further, no dedicated complaints boxes had been installed, despite previous recommendations by the NPM to that effect.

**The CPT recommends that an effective complaint system be introduced at Ježevo Reception Centre. This should include the installation of dedicated complaints boxes as well as a central register of complaints where the date, subject matter, processing, and response should be recorded. Further, in order to strengthen the effectiveness of the system, detained persons who are dissatisfied with the response to their complaints should be able to appeal to a second instance body within the Ministry of the Interior.**

### III. CONCLUSION

61. The CPT wishes to emphasise that it acknowledges the significant challenges the Croatian authorities face in dealing with the large numbers of migrants, including potential asylum seekers, entering its country through the longest land border within the European Union. The Committee has also repeatedly stressed that responding to these challenges requires a concerted European approach, as well as the support of the European Union and other member States.

At the same time, it wishes to reiterate that setting up a complex police border operation with the support of sophisticated technical equipment does not absolve Croatia from meeting its human rights obligations and from treating those refugees, asylum seekers and other migrants who cross into the country across the green border in a humane and dignified manner.

62. The CPT has examined the treatment of migrants subject to push-back operations in several different European contexts. To this end, the Committee has developed a rigorous trans-frontier monitoring methodology which enables a thorough, scrupulous, and independent assessment of what is happening on the ground.

The allegations of severe physical ill-treatment and other abuses inflicted by police officers on intercepted migrants in the remit of the “Koridor” operation must be addressed immediately. The delegation’s forensic medical findings include, in many instances, injuries indisputably compatible with police ill-treatment, such as characteristic “tram-line” hematomas to the back of the body, which could only have been sustained as a result of the infliction of truncheon/stick blows. Further, other aspects of the treatment of migrants such as their transportation in cramped and unsafe conditions, ignoring their asylum requests and denying them access to the fundamental safeguards to which they are legally entitled, are practices that have no place in a State that respects its human rights commitments and abides by the rule of law.

63. To these concerns must be added the fact that, in the period since the visit, the CPT has continued to receive credible allegations of severe ill-treatment of exactly the same nature as that established by its delegation during the visit. By way of example, on 16 October 2020, the Committee received very detailed allegations, supported by new photographic material, concerning the recent ill-treatment by Croatian police officers of a number of migrants who credibly claim to have been subjected, *inter alia*, to multiple baton blows. They also stated that they had been subject to verbal abuse and degrading treatment such as being forced to walk across the border into BiH in only their underwear.<sup>73</sup> The delegation’s forensic medical experts have provided the CPT with their expert analysis of some of that new photographic material and have concluded that, just as had been found during the visit, the injuries shown are compatible with the police ill-treatment alleged. That such practices should persist several months after the CPT’s delegation shared its own findings with the Croatian authorities at the highest political levels is simply unconscionable.

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<sup>73</sup> Some, although not all, of the photographic material in question was also published by international media outlets on 21 October 2020. See for example: <https://www.theguardian.com/global-development/2020/oct/21/croatian-police-accused-of-sickening-assaults-on-migrants-on-balkans-trail-bosnia>.

64. The CPT's report also shows clearly that there are no effective accountability mechanisms in place to identify the perpetrators of alleged acts of ill-treatment. Further, there is still no independent police complaints body to undertake effective investigations into cases of alleged ill-treatment by law enforcement officials and tolerance of ill-treatment by senior officers. Further, the report highlights profound deficiencies in the thoroughness and independence of those investigations which have been carried out.

It is also evident that there is currently no effective monitoring mechanism capable of examining push-back operations, as the work of the NPM has been hindered and there is not, and never has been, any "independent border monitoring mechanism".

65. The CPT wishes to renew its constructive dialogue and meaningful cooperation with the Croatian authorities, in order to address the very real and serious concerns raised in this report. Such dialogue and cooperation must however be grounded in a mature acknowledgment, at the highest political levels, of the gravity and the apparently ingrained nature of the problem of ill-treatment of migrants by Croatian police officers.

The Committee acknowledges that this report makes for difficult reading and it fully recognises the complexities involved in policing the external borders of the European Union. It remains fully committed to working with the Croatian authorities, as well as with all other relevant actors to ensure that, in future, Croatia's borders will be policed in a manner that is consistent with its international human rights obligations, including the right of detained migrants not to be subjected to inhuman and degrading treatment.

The CPT trusts that the Croatian Government will address the concerns raised in this report as a matter of urgency and calls upon it immediately to engage in a renewed dialogue with the Committee. Such an approach could obviate the need for the Committee to have to resort to opening the procedure under Article 10, paragraph 2 of its Convention<sup>74</sup> and the possibility of a public statement.

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<sup>74</sup> Article 10, paragraph 2 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment reads as follows: "If the Party fails to co-operate or refuses to improve the situation in the light of the Committee's recommendations, the Committee may decide, after the Party has had an opportunity to make known its views, by a majority of two-thirds of its members to make a public statement on the matter".