

## SECRETARIAT / SECRÉTARIAT

SECRETARIAT OF THE COMMITTEE OF MINISTERS  
SECRÉTARIAT DU COMITÉ DES MINISTRES

COMMITTEE  
OF MINISTERS  
COMITÉ  
DES MINISTRES



Contact: Zoe Bryanston-Cross  
Tel: 03.90.21.59.62

Date: 11/05/2020

**DH-DD(2020)409**

Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1377<sup>th</sup> meeting (June 2020) (DH)

Item reference: Action Plan (07/05/2020)

Communication from Croatia concerning the group of cases KARADZIC v. Croatia (Application No. 35030/04)

\* \* \* \* \*

Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1377<sup>e</sup> réunion (juin 2020) (DH)

Référence du point : Plan d'action (07/05/2020)

Communication de la Croatie concernant le groupe d'affaires KARADZIC c. Croatie (requête n° 35030/04)  
**(anglais uniquement)**

---



**GOVERNMENT OF THE REPUBLIC OF CROATIA**  
**OFFICE OF THE REPRESENTATIVE OF**  
**THE REPUBLIC OF CROATIA BEFORE**  
**THE EUROPEAN COURT OF HUMAN RIGHTS**

DGI

07 MAI 2020

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Class: 004-02/16-05/04  
Reg. No.: 50447-03/03-20-36  
Zagreb, 07 May 2020

**ACTION PLAN**

***Karadžić group v. Croatia***

*Karadžić (35030/04), leading judgement of 15 December 2005, final on 15 March 2006*

*Adžić (22643/14), judgement of 12 March 2015, final on 12 June 2015*

*Adžić (No. 2) (19601/16), judgment of 2 May 2019, final on 2 August 2019*

## I. CASE DESCRIPTION

1. These cases concern violations of the applicants' right to respect for their family life on account of the authorities' failure to facilitate reunion between the applicants and their children under the Hague Convention on the Civil Aspects of International Child Abduction between 2000 and 2015 (violations of Article 8).
2. *Adžić (No. 2)* concerns a failure of the domestic authorities to include the applicant in the decision-making process in the proceedings for the return of his child between 2011 and 2015 (a violation of Article 6§1 and the procedural requirements implicit in Article 8).
3. In 2000 in *Karadžić* and in 2011 in *Adžić*, the applicants' children were taken and kept abroad by the other parent without the applicants' consent. Upon a request of a competent foreign authority under the Hague Convention on the Civil Aspects of International Child Abduction (hereinafter: the Hague Convention) the competent domestic Ministry instigated non-contentious proceedings for the return of the abducted children. In *Karadžić*, the domestic court's order for the child to be returned to the applicant was never enforced as the child's father refused to hand over the child and escaped the police on two occasions. The enforcement proceedings that started in 2003 were concluded in 2005 as the applicant's lawyer informed the domestic court that the child had been returned to the applicant. In *Adžić*, the domestic courts dismissed the applicant's request for the return of the child in 2014 without holding a single hearing. The applicant's constitutional complaint was dismissed in October 2015. The Constitutional Court examined only the complaint concerning the applicant's right to a fair procedure and not his allegations concerning the right to family life. In respect of the latter, the Constitutional Court held that, considering that in the meantime the judgment in *Adžić* had become final, the allegations regarding the right to family life had already been addressed by the European Court (*Adžić (No. 2)* §11). Meanwhile, in 2013 the applicant lodged a request for protection of the right to a hearing within a reasonable time which was dismissed by a final decision in 2014.
4. In 2011, the applicant's wife in *Adžić* sought a divorce against the applicant and custody of their son. The domestic courts decided to stay the proceedings until the final termination of the proceedings for the return of the applicant's son under The Hague Convention. The proceedings were pending when the European Court rendered its judgement.
5. The European Court found the following shortcomings:
  - (i) failure of the domestic authorities to promptly institute court's proceedings for the return of a child and the failure of the domestic courts to act expeditiously in the instituted proceedings for the return of a child (*Karadžić*, §59; *Adžić*, §97)
  - (ii) failure of the domestic courts to hold an oral hearing and to involve the applicant in the decision-making process (*Adžić (No.2)*, §§66, 94)
  - (iii) failure of the police to show necessary diligence in enforcing the domestic court's order (*Karadžić*, §60)
  - (iv) ineffective usage of sanctions against the party who is obstructing the enforcement proceedings and non-enforcement of the sanctions imposed (*Karadžić*, §61)

## II. INDIVIDUAL MEASURES

6. The authorities have taken measures aimed at bringing violation to an end and providing redress to the applicants.

## A. Bringing violations to an end

7. The Government recalls that the domestic authorities failed to facilitate the reunion between the applicant and the child (*Karadžić*, §63, *Adžić*, §99).

### 1. *Karadžić*

8. It is recalled that the European Court noted that on 2 February 2005 the competent domestic court established that the applicant's child had been returned to the applicant and, accordingly, it concluded the enforcement proceedings (*Karadžić*, §55). It furthermore observed that, according to the applicant, the lawyer representing the applicant at the hearing of 2 February 2005 falsely stated that the child had been returned to her. The applicant claimed never to have *de facto* been reunited with her son (*Karadžić*, §56). The European Court considered that the State could not be held responsible for the conduct of the applicant's lawyer of her choice or the consequences thereof and that the applicant could have appealed or instituted new proceedings, but never did (*Karadžić*, §57).
9. Following the European Court's judgment, the applicant and the child's father came to an agreement that the child would live with the father and the applicant would have regular contacts with the child. The applicant was exercising her parental right until her son attained the legal age in 2013. Thereafter, the visiting arrangements expired as, pursuant to the domestic legislation, such arrangements could not be in place in respect of an adult. It is therefore not possible at this juncture to enforce contact arrangements ordered by the domestic courts (see CM practice in similar cases of *V.A.M. and Krivošej v. Serbia* ([CM/ResDH\(2016\)152](#)), *Ribić v. Croatia*, ([CM/ResDH\(2018\)281](#)), *Övüş group v. Turkey*, ([CM/ResDH\(2019\)146](#)) and *Piazi group v. Italy* ([CM/ResDH\(2019\)121](#)). The Government furthermore clarifies that the applicant never complained to the authorities concerning the implementation of this agreement before the child reached the legal age.
10. In view of the above, the Government considers that the violation in this case has been brought to an end.

### 2. *Adžić* and *Adžić* (No. 2)

#### (a) Proceedings before the Zagreb Municipal Civil Court

11. It is recalled that when the European Court rendered its judgment in *Adžić*, the divorce and custody proceedings before the Zagreb Municipal Civil Court were pending (*Adžić*, §57).
12. In the course of the divorce and custody proceedings, the Zagreb Municipal Civil Court issued an interim decision entrusting the applicant's son to his mother with regular contacts to be maintained between him and the applicant until the termination of the said proceedings. This decision became final on 3 March 2015. By its decision of 15 October 2015, the same court dissolved the marriage between the applicant and his wife. The custody of the child was eventually entrusted to the mother. This decision was upheld by the Zagreb County Court on 27 January 2016 and thereby became final. By the same decision of 27 January 2016, the Zagreb County Court quashed the part of the decision on contacts between the applicant and the child and remitted the case.
13. On 30 May 2017 the Zagreb Municipal Civil Court adopted a new decision determining the contacts between the applicant and the child. This court considered that the applicant and the child should meet in the presence of the case supervisor at the social welfare centre and without the presence of the child's mother. Following the appeals of the applicant and the child's mother, on 20 December 2017 the Zagreb County Court upheld the part of the decision with regard to regular contacts between the applicant and the child. However, it decided that, bearing in mind the child's best interest, these contacts should be held in the presence of the child's mother. This decision is final.
14. The applicant lodged the constitutional complaint against the above decision of the Zagreb County Court alleging violation of his right to a fair trial. The Constitutional Court examined the applicant's complaint

dully and found that he was able to fully participate in the proceedings before the domestic courts. In particular, the Constitutional Court found that the applicant was represented by a lawyer who submitted observations in respect of all relevant documents and responded to all statements and observations of the child's mother. Furthermore, the applicant had a possibility to give his statement before the first-instance court. Therefore, by the decision No. U-III-636/2018 of 28 February 2018 the Constitutional Court dismissed the applicant's complaint.

#### **(b) Proceedings before the Constitutional Court**

15. It is recalled that in *Adžić* the domestic courts dismissed the applicant's request for the return of the child in 2014 without holding a single hearing. Following the domestic courts decisions, on 29 December 2014, the applicant lodged a constitutional complaint and the proceedings before the Constitutional Court were pending when the European Court rendered its judgment (*Adžić*, §46).
16. The Constitutional Court eventually dismissed the applicant's constitutional complaint by the decision of 28 October 2015. It found that the European Court had already addressed the applicant's complaint in respect of the right to family life in *Adžić*. On this basis the Constitutional Court considered the European Court's findings as *res judicata* and examined only his complaint in respect of his right to a fair procedure (*Adžić* (No. 2) §11).

#### **(c) Reopening of the impugned proceedings**

17. Following the European Court's judgment of 2 May 2019 (*Adžić* (No. 2)), on 8 August 2019 the applicant requested the reopening of the proceedings for the return of his son. The proceedings are pending before the Zagreb Municipal Civil Court.
18. The Government also notes that after the judgment in *Adžić* (No. 2), the applicant did not request the Central Authority to initiate or facilitate the institution of any other judicial or administrative proceedings in respect of his child.

### **B. The applicants' redress**

19. The applicants claimed non-pecuniary damage together with costs and expenses. None of the applicants claimed pecuniary damage.
20. In *Karadžić* the European Court awarded the applicant EUR 10,000 for non-pecuniary damage (*Karadžić*, §71). In *Adžić* the European Court awarded the applicant EUR 7,500 for non-pecuniary damage (*Adžić*, §103). In *Adžić* (No.2) the applicant was awarded EUR 9,000 for non-pecuniary damage (*Adžić* (No.2), §100).
21. In view of the above, the Government considers that the applicants have been redressed for the negative consequences of the violations sustained.

### **III. GENERAL MEASURES**

22. The Government took measures aimed at preventing similar violations, as set out below.

#### **A. Measures aimed at ensuring promptness of the domestic authorities**

23. It is recalled that the European Court found a failure of the domestic authorities to promptly institute court proceedings for the return of the child (*Karadžić*, §59) and a failure of the domestic courts to act expeditiously in those proceedings (*Adžić*, §97; *Karadžić*, §59). The domestic authorities therefore undertook measures ensuring the rectification of the shortcomings identified by the European Court notably regarding relevant legislations and capacity building measures.

### *1. Legislative measures*

24. In 2018 the Act on Implementation of the Hague Convention was adopted and entered into force in January 2019. The Government deemed that, even though the Hague Convention was ratified and therefore legally binding, the adoption of a specific law, formally stipulating competence, deadlines and procedures for handling cases in a clear and consistent manner would be conducive to enhancing the efficiency of both administrative and judicial authorities in the proceedings for the return of the child. Pursuant to its general provisions, the aim of the Act is to ensure prompt return of the illegally taken child as well as contacts with another parent, encouraging cooperation between parents while taking into account the well-being of the child.
25. The abovementioned Act on Implementation provided effective mechanisms for ensuring swift exchange of the relevant information between authorities, enhancing the transparency of the proceedings and preventing unnecessary delays in the administrative and courts proceedings. With a view to ensuring uniformed domestic practice, only one first-instance court (Zagreb Municipal Civil Court) and one second-instance court (Zagreb County Court) in the State are to conduct proceedings for the return of a child.
26. Upon receiving a request from the foreign authority, the Ministry shares the information on the case with the foreign authority and immediately contacts the competent social welfare centre and initiates the proceedings for the return of the child before the competent court. The first-instance court shall decide on the request for the return of a child within six weeks and render that decision within eight days from a final hearing. To speed up the proceedings and only if it is not necessary, a judge may decide not to hold the hearing. However, a judge shall not dismiss the request for the return of a child without hearing the party who lodged the request nor shall accept the request without previously hearing from the party against whom the request was made. If necessary, hearings can be scheduled by telephone or email. If a party fails to appear at a hearing or to meet a deadline for taking an action in the proceedings, restitution is not permitted.
27. Furthermore, parties to the proceedings have eight days to appeal against the first-instance decisions and the second-instance courts have 30 days to decide upon appeals, which decisions immediately become final.

### *2. Capacity building measures*

28. In 2015 an inter-departmental Commission was established with the aim to improve cooperation between authorities involved in the proceedings regarding the return of a child, thus, consequently, accelerating it. Various authorities are involved in the process, notably, the Ministry of Demography, Family, Youth and Social Policy, the Ministry of the Interior and the Ministry of Justice.
29. The Commission monitors the implementation of the Hague Convention and the domestic practice concerning the protection of the rights of a child. It provides support to the Ministry of Demography, Family, Youth and Social Policy in dealing with cases regarding the return of a child and issues recommendations on how to handle them effectively.
30. At their regular meetings, members of the Commission exchange and discuss relevant information and issue recommendations on how to improve the cooperation between authorities. These recommendations are forwarded to the heads of the competent authorities for their implementation.
31. The Commission submits the annual report on its work to the minister of demography, family, youth and social policy informing the minister of the shortcomings identified in the proceedings for the return of a child, based on which the minister proposes measures to rectify them.
32. The Government deems that the measures undertaken, namely the legislative and organisational changes, shall be conducive to preventing similar violations.

## **B. Measures aimed at including all the parties to the proceedings in the decision-making process**

33. It is recalled that the European Court found that the emotional relationship between the applicant and his child could not have been assessed because the applicant had not participated in the expert evaluation (*Adžić* (No. 2), §89). It, therefore, found that the applicant was not involved in the decision-making process to a degree sufficient to protect his interests and the best interests of his child (*Adžić* (No. 2), §94).

### *1. Aligning the domestic case-law with the Convention standards*

34. Following the facts of this case, the Constitutional Court has changed its practice and developed consistent case law highlighting in its decisions the importance of the concept of the child's best interests as an underlying principle of the Hague Convention. To this end, in a number of cases the Constitutional Court examined whether the proceedings were fair and conducted with the involvement of all parties and in the best interest of the child.
35. In particular, in its decisions of 28 September 2016 (No. [U-III-2956/2016](#)), 28 December 2017 (No. [U-III-4419/2017](#)) and 20 June 2018 (No. [U-III-534/2018](#)), the Constitutional Court found that the domestic courts need to conduct an in-depth examination of the entire family situation and a whole series of factors, notably of factual, emotional, psychological, material and medical nature. It furthermore emphasised that the courts should make a balanced and reasonable assessment of the respective interests of each person involved, with a constant concern for determining what the best solution would be for the abducted child.

### *2. Legislative measures*

36. Pursuant to Article 18 of the above-mentioned 2018 Act on Implementation of the Hague Convention a judge shall not dismiss a request for a return of a child without hearing the party who lodged a request neither shall accept a request without previously hearing from the party against whom that request was made (see § 23 above). It, therefore, ensures that the parents of the illegally taken child are sufficiently involved in the decision-making process.
37. The Government deems that the abovementioned legislative changes together with the new practice of the Constitutional Court provide for effective mechanisms capable of preventing similar violations.

## **C. Measures aimed at ensuring effective enforcement of the courts' decisions**

38. It is recalled that the European Court found a failure of the police to show necessary diligence in the enforcement proceedings, notably in locating the child's father who escaped from their custody twice (*Karadžić*, §60). It furthermore found a failure of the domestic authorities to effectively impose sanctions on the parent who had illegally taken the child. The only sanction against the child's father was the imposition of a fine and a subsequent detention order, neither of which appear to have been enforced (*Karadžić*, §61).

### *1. Legislative and regulatory measures*

39. The most recent Family Act that entered into force on 1 November 2015, introduced stricter penalties for parties hindering enforcement proceedings, notably, fines up to EUR 5,500 or imprisonment of up to six months. Should those measures prove to be ineffective, an involuntary seizure of a child as a measure of last resort can be imposed by a judge and carried out by the court bailiff with the assistance of police officers, against a person refusing to hand over a child or a person attempting to hinder enforcement proceedings.

40. In June 2016, the Ministry of Justice issued the Ordinance on cooperation of judges, experts of the social welfare centres and juvenile police officers in the proceedings for the enforcement of a court's decision on handing over a child. The aim was to ensure effective enforcement of the court's decisions by improving institutional cooperation. The institutional cooperation implies initial contacts and meetings of the competent authorities and a mutual plan outlining when and how a court decision shall be enforced. The competent authorities therefore exchange relevant information on how to enforce a court's decision most efficiently, bearing in mind the child's physical and psychological condition.
41. Furthermore, at least eight days before the enforcement action is taken, a judge notifies the head of the police and the social welfare centre of the date of the enforcement action. The police carry out a risk assessment and prepare an action plan for providing effective assistance to the judiciary in the enforcement proceedings. The judge conducting the enforcement proceedings is authorised to use coercive measures against the party to the proceedings hindering the enforcement.
42. Each of the competent authorities involved in the enforcement proceedings is authorised to notify the president of the competent court of any shortcomings detected and propose measures for rectifying them. In cases of recurrent errors, the president shall notify the Minister of Justice thereof, and the minister shall take further measures to rectify the identified shortcomings.
43. Pursuant to the 2018 Act on the Implementation of the Hague Convention, the Ministry of the Interior is furthermore authorised to take all necessary measures to discover the whereabouts of a child who has been illegally removed or retained. Once the child is located, the Ministry of the Interior shall inform the Ministry of Demography, Family, Youth and Social Policy (a central authority under the Hague Convention) of the child's location within the next 48 hours. Bearing in mind that pursuant to Article 16 of the Act on the Implementation the proceedings for the return of a child are urgent and the police is obliged to act expeditiously, these cases are considered priority cases by the Ministry of the Interior.

## 2. Capacity building measures

44. In response to the European Court's findings in *Karadžić*, the juvenile justice system has been reformed. In particular, the 2015 amendments to the Juvenile Courts Act introduced juvenile police officers. These officers are assigned to every police department and police station throughout the State. They are trained for dealing with cases involving children and minors, including assistance in proceedings for the return of a child under the Hague Convention.

## D. Awareness raising measures

45. Domestic authorities have invested significant efforts in training members of the judiciary, civil servants and other experts involved in the proceedings for the return of children under the Hague Convention.
46. In particular, recalling that the proceedings in this group of cases were instigated and conducted before the courts of first and second instance from 2000 to 2014, since 2014 the Ministry of Demography, Family, Youth and Social Policy has been organizing seminars and workshops for judicial and other legal experts who deal with cases under the Hague Convention. Notably, it carried out three seminars in 2014, one in 2015 and two in 2016. In February 2019 the Ministry held a two-day workshop for its employees (legal experts and social workers) dealing with the requests for the return of children under the Hague Convention. By the end of the 2019, the Ministry carried out two additional regional two-day workshops on the application of the Hague Convention and handling of the requests for the return of children.
47. In response to the European Court's findings regarding a failure of the police to act with due diligence in enforcing the court's decision on the return of a child (*Karadžić*, § 60), the Police Academy carried out focused trainings for police officers who were to be assigned to assist in the return of children under the Hague Convention. From 2015 to April 2019, the Police Academy organised four specialised courses for 92 police officers on the effective implementation of the Hague Convention. These trainings were carried out in cooperation with the Ministry of Justice, the General State's Attorney Office, the

Ministry of Demography, Family, Youth and Social Policy, the Ombudsperson and NGO's actively participating in protection of women, children and families.

48. Furthermore, in order to ensure full and proper understanding of the proceedings for the return of the child under the Hague Convention, in 2017 and 2018 the Police Academy organized additional seminars and training workshops for 80 police officers already assigned to assist in return of children under the Hague Convention.
49. Moreover, on 1 January 2019 an international project "*Protection of Abducting Mothers in Return Proceedings: Intersection between Domestic Violence and Parental Child Abduction*" (POAM) was launched and coordinated by the University of Aberdeen, United Kingdom (Scotland). The Vice President of the Supreme Court (judge Mr M. Mrčela) participates as a member of a research team that focuses on the prevention of domestic violence against children and gender-based violence in the context of proceedings for the return of children under the Hague Convention. In order to reach the widest area of participants interested in the intersection of domestic violence and international child abduction, within the project two workshops were held, notably in Zagreb on 4th June 2019 and in Osijek on 6th June 2019. These workshops were attended by the judges specialized for child abduction cases as well as other judges of municipal and county courts (civil, criminal, misdemeanour), representatives of the Central Authority, police, social workers, lawyers, NGO and academics.

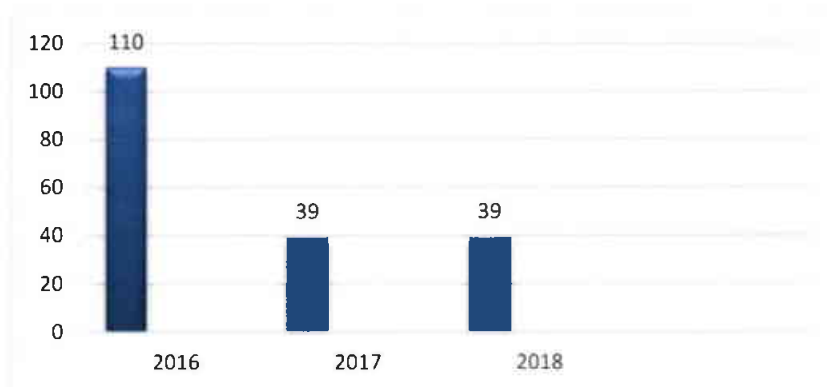
#### **E. Publication and dissemination measures**

50. The authorities also ensured publication measures with a view to raise awareness of domestic authorities on the European Court's findings in this group of cases. The judgments were translated into Croatian and published on the webpage of the Office of the Representative ([Karadžić](#), [Adžić](#), [Adžić \(2\)](#)) and the webpage of the Constitutional Court ([Karadžić](#), [Adžić](#), [Adžić \(2\)](#)).
51. With a view to facilitate the dissemination of the judgement, the Office of the Representative prepared an analysis of the European Court's findings in present judgments highlighting the Convention principles to be applied in similar cases. The Office disseminated the analysis and the translation of the judgment to all relevant domestic authorities involved in the proceedings and published the analysis of [Karadžić](#) and [Adžić \(2\)](#) on the webpage of the Office.
52. The Supreme Court ensured that the European Court's judgments were transmitted to its judges and to first- and second-instance courts. The competent courts were therefore made aware of the European Court's findings and of the need to ensure consistent adjudication in line with Convention standards.
53. Members of the Council of Experts for the Execution of the European Court's judgments have been made aware of the European Court's findings in *Karadžić*, through the Overview of pending execution cases against Croatia, prepared and distributed by the Office of the Representative.
54. The above-mentioned measures ensured that all domestic authorities are now aware of the European Court's findings and of the need to comply with the Convention requirements in similar cases.

#### **F. Assessment of the general measures taken**

55. It is recalled that the European Court found that, despite the fact that the relevant Family Act, applicable in *Adžić* in 2014, stipulated that in proceedings concerning family matters, any appeal against the first-instance decision had to be decided on within sixty days, the domestic authorities took more than four months to decide upon the applicant's appeal. Thus, the domestic courts did not use the most expeditious proceedings (*Adžić*, §98).

56. The Government notes that as a result of the measures undertaken, the length of the appellate proceedings was decreased significantly. Notably, in 2016 the average length of the appellate proceedings regarding a request for the return of a child was 110 days. In 2017 and 2018, this number decreased to only 39 days as shown below.



*Table: Average length of appellate proceedings concerning the return of children under the Hague Convention in days.*

57. To the best of the Government's knowledge there have been no other applications alleging similar violations involving the proceedings under the Hague Convention.
58. The Government considers that the general measures taken will be capable of preventing similar violations of preventing periods of inactivity of the domestic courts, which were found to be at the heart of the violations in these cases.

#### IV. JUST SATISFACTION

59. The Government ensured that the just satisfaction awarded was disbursed to the applicant in *Adžić* on 10 September 2015 and in *Karadžić* on 15 May 2006. In *Adžić (No. 2)* just satisfaction was disbursed to the applicant on 30 October 2019. The payments have therefore been made within the deadlines imparted by the European Court.

#### V. CONCLUSION

60. The Government considers that the applicants have been redressed. The Government shall keep the Committee of Ministers informed of the developments in *Adžić (No.2)*.
61. The Government furthermore considers that the general measures taken are capable of preventing similar violations.

Štefica Stažnik  
Representative