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Meeting: 1451st meeting (December 2022) (DH)

Item reference: Action Plan (03/10/2022)

Communication from Croatia concerning the case of M.H. and Others v. Croatia (Application No. 15670/18)

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Réunion : 1451<sup>e</sup> réunion (décembre 2022) (DH)

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Communication de la Croatie concernant l'affaire M.H. et autres c. Croatie (requête n° 15670/18) (**anglais uniquement**)

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

DGI

03 OCT. 2022

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH

Class: 004-02/22-01/08  
Reg. No.: 50447-03/04-22-55  
Zagreb, 03 October 2022

**Ms Clare Ovey**  
**Head of Department**  
**DEPARTMENT FOR THE EXECUTION OF THE**  
**JUDGMENTS OF THE EUROPEAN COURT OF**  
**HUMAN RIGHTS**  
**DIRECTORATE GENERAL OF HUMAN**  
**RIGHTS – DG I**  
**COUNCIL OF EUROPE**

**M.H. and Others v. Croatia**  
**Applications no. 15670/18 and 43115/18**

Dear Ms Ovey,

With reference to the above cases, please find enclosed the Action Plan containing information on the measures already taken and those envisaged in order to ensure effective execution of the said judgments.

Yours sincerely,

Štefica Stažnik  
Representative

*Enc.: M.H. and Others v. Croatia, Action Plan*

## ACTION PLAN

### *M.H. and Others v. Croatia*

*M.H. and Others* (app. nos. 15670/18 and 43115/18), judgment of 23 September 2021, final on 04 April 2022

#### I. CASE DESCRIPTION

1. This case concerns the ineffective investigation into the circumstances leading to the death of a six-year-old Afghan migrant child, who was hit by a train in November 2017 near the Croatian-Serbian border after allegedly being denied the opportunity to seek asylum by the Croatian police officers and ordered to return to Serbia by following the train tracks (violation Article 2 in its procedural limb).
2. The case furthermore concerns inappropriate conditions of detention of the Afghan asylum seeking children applicants in the transit immigration centre in Tovarnik (hereinafter: The Tovarnik Centre) with prison-type elements in 2018 over a period of two months and fourteen days (violation of Article 3).
3. The case also concerns a violation of the asylum-seeking applicants' right to liberty due to the omissions of the police and the Ministry of the Interior related to the verification of the applicants' identity and delays in the examination of the detention order and the applicants' asylum applications before the Osijek Administrative Court in 2018, which led to the authorities' failure to comply with the requirement of expedition and to take all the necessary steps to limit, as far as possible, the detention of the applicant family (violation of Article 5§1).
4. In addition, the case concerns the applicants' collective expulsion to Serbia in November 2017 (violation of Article 4 of Protocol No. 4). The Court noted that it was unable to establish whether at the material time the respondent State provided the applicants with genuine and effective access to procedures for legal entry into Croatia.
5. Lastly, the case concerns the hindrance of the effective exercise of the applicants' right of individual application between 2017-2018 due to a restriction of contact between the applicants and their lawyer, and the criminal investigation and pressure to which that lawyer had been subjected, which, according to the Court, were aimed at discouraging the applicants from pursuing the present case before the Court (violation of Article 34).

#### *1. Criminal investigation into the death of MAD.H. and the collective expulsion of the applicants*

6. The applicants are an Afghan family of fourteen who left their home country in 2016. On 21 November 2017, as the first applicant and her six children were walking along the train tracks near the Croatian-Serbian border, a train passed and hit one of the children, six-year-old MAD.H. who died at the scene. As to the events leading up to the accident, the European Court accepted the applicants' version of events that the Croatian police officers, having found the first applicant and her six children on Croatian territory, had denied them the possibility of seeking asylum and had ordered them to return to Serbia by following the train tracks, after which MAD.H. had been hit by a train and died. In December 2017 the applicants' legal representative lodged a criminal complaint against unidentified Croatian border police officers. In June 2018 the competent prosecuting authorities (Office for the Suppression of Corruption and Organised Crime) rejected the applicants' criminal complaint. The applicants took over the prosecution asking the investigating judge of the Osijek County Court to conduct an investigation,

but in August 2018 the judge dismissed the applicants' request on the grounds that the allegations against the three police officers had not been supported by evidence. The applicants' appeal against this decision was dismissed in December 2018 by the Osijek County Court appeal panel. In December 2018 and March 2021 the Constitutional Court dismissed two separately lodged constitutional complaints regarding, *inter alia*, the efficiency of the investigation into the death of MAD.H.

*2. The applicants' placement in the transit immigration centre in Tovarnik and the proceedings concerning their requests for international protection*

7. On 21 March 2018 the Croatian police caught the applicants clandestinely crossing the Serbian-Croatian border and on the same day issued decisions in respect of the first to fourth applicants, restricting their freedom of movement and placing them and the applicant children in the Tovarnik Centre. The applicants had not had any identification documents and their freedom had been restricted in order to verify their identities. On the same day, the applicants had expressed an intention to seek international protection in Croatia. The applicants challenged the decision restricting their freedom of movement before the Osijek Administrative Court. On 22 May 2018 the Osijek Administrative Court partly allowed the third applicant's administrative action ordering that she and her two children (seventh and eighth applicants) be released from the Tovarnik Centre. Furthermore, on 24 and 25 May 2018 the same court dismissed the remaining applicants' administrative action as unfounded. In the period between October and December 2018 the High Administrative Court dismissed the applicants' appeals thus upholding the decisions of the first-instance court. Subsequently, in July 2019, the Constitutional Court dismissed the applicants' constitutional complaint. In the meantime, on 28 March 2018 the Ministry of Interior declared the applicants' requests for international protection inadmissible on the grounds that they should be returned to Serbia, which was considered a safe third country. The applicants lodged administrative actions against this decision with the Osijek Administrative Court. In June and July 2018 this court dismissed the applicants' administrative actions and subsequently the High Administrative Court dismissed their further appeals. On 04 March 2021 the Constitutional Court quashed the judgments of the High Administrative Court and the Administrative Court and remitted the case. It held that the courts failed to properly examine whether Serbia could be considered a safe third country.
8. In the course of the abovementioned proceedings, the applicants, despite having appointed a legal representative in December 2017 to represent them in all proceedings before the Croatian authorities, were left without any legal assistance between 21 March and 2 April 2018 and without the assistance of their chosen representative until 7 May 2018.
9. On 4 June 2018 the applicants were transferred to an open-type centre in Kutina and from there clandestinely left Croatia.
10. The European Court found the following violations of the Convention:
  - (i) the violation of Article 2 in its procedural limb due to the failure of the domestic prosecuting authorities to conduct an effective investigation into the circumstances leading to MAD.H.'s death (*M.H. and Others*, §§153-163);
  - (ii) the violation of Article 4 of Protocol No. 4 because the Croatian police officers had returned the first applicant and her six children to Serbia without any examination of their individual situation, which amounted to collective expulsion (*M.H. and Others*, §304);
  - (iii) the violation of Article 3 in its substantive limb in respect of the applicant children (fourth to fourteenth applicants) that stemmed from the failure of the domestic authorities to act with the required expedition in order to limit, as far as possible, the applicant children's detention in a reception centre with prison-type elements (*M.H. and Others*, §§201-203);
  - (iv) the violation of Article 5§1 due to the failure of the domestic authorities (notably, the Ministry of Interior and the Osijek administrative court) to show the necessary diligence in verification of

applicants' identity and the examination of their applications for international protection. In addition, the applicants were not afforded relevant procedural safeguards as they had not been apprised of the decisions placing them in the Tovarnik Centre in a language they could understand (*M.H. and Others*, §§255, 257, 258).

- (v) a violation of Article 34 due to the fact that the domestic authorities restricted the applicants' contact with their chosen lawyer (*M.H. and Others*, §336).

## II. INDIVIDUAL MEASURES

11. The authorities have taken measures aimed at bringing the violations to an end and redressing the applicants.

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

12. In response to the European Court's judgment, the authorities have ensured reopening of the impugned criminal investigations aimed at bringing the violation of the procedural aspect of Article 2 to an end.
13. With a view to addressing the shortcomings identified by the European Court in respect of the investigation conducted before the domestic bodies, the competent prosecution authorities took note of the Court's findings and took extensive steps aimed at shedding light on the impugned events.
14. In particular, on 25 April 2022 the State Attorney General's Office informed the Office for the Suppression of Corruption and Organised Crime as the authority competent for the investigations involving police officers, on the finality of the European Court's judgment. It ordered the re-examination of the decision of 1 June 2018 by which the applicants' criminal complaint regarding the death of MAD.H. had been rejected. Furthermore, the State Attorney General Office ordered the Office for the Suppression of Corruption and Organised Crime to take all the necessary investigatory actions aimed at rectifying the deficiencies in the investigation identified by the European Court. On 17 May 2022 the State Attorney General, Head of the Office for the Suppression of Corruption and Organised Crime and their deputies held a meeting during which they analysed the judgment and agreed on specific investigatory steps to be taken during the fresh investigation.
15. Furthermore, the Head of police set up a working group tasked with conducting the criminal investigation into the death of MAD.H. The working group took over all the files from police stations which previously dealt with the applicants' case, in order to analyse the materials in cooperation with the Office for the Suppression of Corruption and Organised Crime. The working group's aim is to establish the sequence of events on the evening of 21 November 2017 and to obtain all available material evidence which could confirm beyond any doubt the applicants' and the Croatian police officers' exact whereabouts prior to MAD.H.'s tragic death.
16. In particular, in line with the European Court's findings, in the course of fresh investigation the working group shall, *inter alia*, collect all available data on thermographic cameras used for the surveillance of Croatian-Serbian border on the night of 21 November 2017. Furthermore, the authorities shall investigate all possible avenues capable of confirming or excluding contact between the applicants and the police officers, *inter alia*, by examining and comparing locations of the signals from the applicants' mobile telephones and the police car GPS.
17. In addition, with a view to interviewing the applicants once again in connection with the events on the night of 21 November 2017 and give them an effective opportunity to properly participate in the investigation, the authorities have contacted the applicants' legal representative in order to establish contacts with the applicants.
18. Furthermore, in respect of individual measures regarding other violations found by the European Court, the Government recalls that on 4 June 2018 the applicants were transferred to an open-type centre in

Kutina from which they clandestinely left Croatia. Following their departure, the proceedings for international protection were suspended.

19. The Government shall keep the Committee of Ministers informed on further progress in the criminal investigation.

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

20. In response to the European Court's findings, the authorities are taking measures to ensure that the applicants are redressed for the negative consequences sustained.
21. The Government recalls that the applicants claimed non-pecuniary damage in total amount of EUR 650,000. The European Court considered that in view of the violations found, the applicants undeniably suffered non-pecuniary damage which cannot be made good by the mere finding of a violation. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awarded them EUR 40,000 jointly. The applicants did not claim pecuniary damage.
22. In respect of the payment of just satisfaction awarded by the European Court, the Government would like to point to the following circumstances.
23. It is recalled that on 4 June 2018 the applicants were transferred from the Tovarnik Centre to an open-type centre in Kutina. Having tried to leave Croatia to Slovenia clandestinely on several occasions, they ultimately managed to do so (*M.H. and Others*, §47). Accordingly, at the time the Court rendered its judgment and the finality of the judgment, the Croatian authorities had no information on the applicants' whereabouts.
24. Namely, following the finality of the judgment, the Office of the Representative of the Republic of Croatia before the European Court of Human Rights contacted the applicants' legal representative on several occasions (notably on 25 April 2022, 27 May 2022 and 30 June 2022), with the view to obtaining information necessary for payment of just satisfaction (i.e. their bank account or the power of attorney in case of payment to their representative or third person). The Office could not contact the applicants in person as it had no knowledge of their whereabouts. However, the applicant's representative did not submit the necessary information within the three-month deadline for payment of just satisfaction. After the expiry of this deadline, on 2 September 2022, the applicants' representative submitted the first applicant's address and number of bank account and the copy of the power of attorney for payment of costs and expenses directly to their representative. On 21 September 2022 the Government has issued an order for the payment of non-pecuniary damage to the first applicant as the representative of the family. With regard to the payment of costs and expenses, the applicants' representative has submitted a scanned copy of a power of attorney authorising her to receive the payment of the sum awarded under this head. It is common practice of the Office of the Representative to issue payment orders immediately upon the receipt of the original power of attorney. Therefore, the payment of costs and expenses shall be made to the applicants' representative immediately upon the receipt of the original document. The funds necessary for payment are allocated in the State Budget.
25. The Government shall keep the Committee of Ministers informed on further developments in this respect.

### **III. GENERAL MEASURES**

26. At the outset, the Government would like to inform the Committee of Ministers that in an effort to ensure an adequate response to the violations found in the present judgment, on 4 and 5 October 2022 the domestic authorities will welcome the delegation from the Department for the Execution of Judgments of the European Court.
27. The purpose of this two-day mission is, *inter alia*, to ensure effective execution of the *M.H. and Others* judgment. The delegation of the Department for the execution of Judgments of the European Court will

meet with the representatives of all domestic authorities crucial for the execution of this judgment, notably, the Ministry of Interior and the State Attorney's Office, but also with the representatives of the Constitutional Court. The delegation will also hold a meeting with the Ombudswoman and the Children's Ombudswoman.

28. The participants of the abovementioned meetings will be able to discuss the issues regarding the area of illegal migration and international protection, especially in the context of violations found in the present case. Thus, the domestic authorities will be able to obtain the necessary expertise from the delegation of the Department for the Execution of Judgments of the European Court in order to adequately address the violations found by the European Court.
29. In view of the above, the Government will provide the Committee of Ministers with all necessary information on the general measures taken and envisaged after the abovementioned mission is concluded.
30. Notwithstanding the above, the Government has already ensured publication and dissemination of the judgment.
31. In particular, the Office of the Representative has ensured a translation of the judgment into Croatian and its publication on its [webpage](#). The translation of the judgment has also been published on the Constitutional Court's [webpage](#). The judgment has thus been made available to the general public.
32. The Office of the Representative has prepared a short overview of the Court's main findings in *M.H. and others* and has circulated this overview, along with the translation of the judgment, to all members of the Council of Experts for the Execution of Judgments and Decisions of the European Court of Human Rights, which includes representatives of the Ministry of Interior, State Attorney's Office, domestic administrative courts but also Constitutional Court and the Supreme Court. The relevant national authorities have therefore been informed of the judgment.

#### IV. JUST SATISFACTION

33. The Government reiterates that due to the abovementioned objective circumstances, the payment of just satisfaction has yet to be made (see §24 above).

#### V. CONCLUSION

34. As regards the individual measures, the Government shall inform the Committee of Ministers on further developments in the proceedings regarding the investigation into the death of MAD.H. as soon as new information become available.
35. As regards the general measures, the Government shall inform the Committee of Ministers on further general measures capable of preventing similar violations.