



Border Violence Monitoring Network

3 August 2022

**M. H. and Others v. Croatia**  
**Applications nos.**  
**15670/18 and 43115/18**

**Rule 9 Communication**  
**to the Council of Ministers**  
**Council of Europe**



# Border Violence Monitoring Network

Border Violence Monitoring Network (BVMN)

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03 August 2022

Submission by the Border Violence Monitoring Network (BVMN) pursuant to Rule 9.2 of the Committee of Ministers' Rules for the Supervision of the Execution of Judgments, on the implementation of *M. H. and Others v. Croatia (Applications nos. 15670/18 and 43115/18)*<sup>1</sup>

## I. Introduction

1. In line with Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, the Border Violence Monitoring Network ("BVMN") hereby presents a **communication with regard to the execution of the individual and general measures established by the European Court of Human Rights** ("the Court" or "ECtHR") in its judgment *M. H. and Others v. Croatia*.
2. BVMN is a network of non-governmental organizations situated along the Balkan and Greek migration route, whose purpose is to monitor and document human rights violations at European borders.<sup>2</sup> **BVMN works to denounce pushbacks and guarantee safe access to asylum. Since 2017, BVMN has collected more than 1,500 testimonies of pushbacks.** With such evidence BVMN produces comprehensive reports, analyzing trends in border violence.<sup>3</sup> As well as

<sup>1</sup> <https://hudoc.echr.coe.int/eng?i=001-213213> and <https://hudoc.echr.coe.int/eng?i=001-202128>

<sup>2</sup> BVMN is represented under the legal framework of Rigardu e.V.

<sup>3</sup> See for example: BVMN. 2021. Annual Torture Report 2020. Available at: <https://www.borderviolence.eu/annual-torture-report-2020/>; BVMN. 2020. *Violations at the Greek Borders. Sea and Land Report (February/March 2020)*. Available at <https://www.borderviolence.eu/new-report-on-violations-at-greek-borders/>; BVMN. 2020. *Special Report: COVID-19 and Border Violence along the Balkan Route*. Available at: <https://www.borderviolence.eu/special-report-covid-19-and-border-violence-along-the-balkan-route/>; Mobile

coordinating grassroots participation in legal processes at national, regional and international levels, BVMN routinely files submissions to judicial and international bodies outlining rights violations during pushbacks, including legal briefings to Special Rapporteurs on the use of torture during pushbacks.<sup>4</sup> BVMN has expertise in and wishes to provide **input on international legal standards linked to the prohibition of *refoulement*, the prohibition of torture, the right to life and the right freedom from arbitrary detention** and other specific obligations in relation to people's rights at borders.

## II. Executive Summary

3. The case of *M. H. and Others v. Croatia* concerns the death of a six year old Afghan child - Mad. H. - hit by a train on the border between Croatia and Serbia. After being denied the right to seek asylum, the Croatian police ordered the child, her six siblings aged one, two, six, nine and fourteen and their mother to return into Serbia by following a train track. Under these circumstances, while walking in the dark she was hit and killed by a passing train.
4. In its judgment, **the Court has found Croatia guilty for violating Articles 2, 3, 5 of the European Convention on Human Rights and Art. 4 of Protocol no. 4**. The above mentioned provisions relate to the right to life, ineffective investigation into the child's death, degrading treatment, unlawful detention and collective expulsion of aliens.
5. The judgment became final on 04/04/2022.
6. In the light of the **systematic nature of the violations found in the individual case of M. H. and Others v. Croatia**, BVMN calls on the Committee of Ministers to:

### Individual Measures

- A. Ensure **non-pecuniary damages** are granted;
- B. Ensure **effective investigation** into crimes committed towards the family in Croatia by requesting that the Croatian authorities reopen the investigation.

### General Measures

- C. Upgrade the case from standard to **Enhanced Supervision**<sup>5</sup>;
- D. Call on Croatia to **implement an independent border monitoring mechanism** with the participation of the Croatian Ombudswoman;
- E. Ensure the **access of the Croatian Ombudswoman to detention places and data on migrants**.

## III. Individual Measures

- A. *Ensure non-pecuniary damages are granted*

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Info Team (member of BVMN). 2019. *Illegal Pushbacks at the Border: Denying Refugees the Right to Claim Asylum*. Available at: <https://www.mobileinfoteam.org/pushbacks>.

<sup>4</sup> See for example: BVMN. 2021. Submission to the UN Committee on Economic, Social and Cultural Rights on Bosnia-Herzegovina. Available at: <https://www.borderviolence.eu/submission-to-cescr-on-bih/> and BVMN. 2021. Submission to the UN Rapporteur on Torture Regarding Greece. Available at: <https://www.borderviolence.eu/submission-to-the-un-special-rapporteur-on-torture-regarding-greece>

<sup>5</sup> Rule 4 of the Committee of Minister in accordance with Res. 2004 (3): [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805dd190](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805dd190)

1. Regarding the non-pecuniary damages costs and expenses, Croatia should ensure that the sum liquidated by the Court is **paid within 3 months** from the date the judgment has become final.

*B. Ensure effective investigation into crimes committed towards the family*

1. Under Article 2 of the Convention, Croatian authorities failed to conduct an effective investigation into the circumstances leading to the child's death.<sup>6</sup>
2. Taking into consideration that the applicants suffered loss of life - not capable of being remedied by just satisfaction because of the outcome of the domestic proceedings - we demand Croatia to **fully reopen the investigation and judicial proceeding at the domestic level**, following the judgment of the European Court of Human Rights<sup>7</sup>. In particular, we demand that the domestic investigation will cover - in addition to the violations expressly found by the Court - all crimes in connection with the mentioned violations. Primarily, abuse of power of the police officers, torture connected to the collective expulsion and ill-treatment.

#### **IV. General Measures**

*C. Enhanced Supervision*

1. Multiple aid and human rights groups have [documented](#)<sup>8</sup> hundreds of cases of people with a legal right to claim asylum being [forced back](#) over EU borders in Croatia, frequently with the use of violence. According to Doctors Without Borders (MSF), the death of 7 people, including 3 children, has been recorded at the Croatian - Serbian border, only in 2017, on the train line between Tovarnik and Sid, either by moving trains or electrocution<sup>9</sup>. While the real numbers might be higher, no official numbers are currently available from governmental sources.
2. BVMN has collected more than 1,540 testimonies of pushbacks (affecting around 25,000 people). **Since 2017, 624 cases of collective expulsions from Croatian territory** have been documented impacting 6,621 people. From 2021, 110 episodes of pushback have affected 1,656 people<sup>10</sup>. The above mentioned data show only a small fraction of reality. The real impact of pushbacks might be disproportionately higher than that.
3. A recent pushback testimony collected by BVMN, which took place in the early morning of July 7<sup>th</sup>, 2022 in the proximity of the Bosnian-Croatian border, concerned 3 women, one man and one six months old baby<sup>11</sup>. On that occasion, use of violence against the group was reported, including beating and theft of personal belongings. In a case documented in September 2020, the pushback

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<sup>6</sup> see Judgment section LAW, subparagraph III

<sup>7</sup> Committee of Ministers. (2000, January). *Recommendation No. R (2000) 2 of the Committee of Ministers to member states on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights*.

[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805e2f06](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e2f06)

<sup>8</sup> The Welcome! Initiative & Are You Syrious? (2017, March). *The second report on unlawful and forced push backs of refugees from the republic of croatia*. <http://welcome.cms.hr/wp-content/uploads/2017/08/the-second-report-on-unlawful-and-forced-push-backs-of-refugees-from-the-republic-of-croatia-.pdf>

<sup>9</sup> Ullah, A. (2017, December 6). The tragic death of a six-year-old refugee in Serbia. *Refugees News | Al Jazeera*. <https://www.aljazeera.com/news/2017/12/6/the-tragic-death-of-a-six-year-old-refugee-in-serbia>

<sup>10</sup> Border Violence Monitoring Network. See more here: <https://www.borderviolence.eu/>

<sup>11</sup> Border Violence Monitoring Network. (2022, July). *The woman was violently pushed down a hill by a police officer*. <https://www.borderviolence.eu/violence-reports/july-7-2022-0400-border-near-bugar/>

carried out against a group of Afghans with 3 babies and 2 children was described as follows: “The respondent described having two bags burnt – one with food, diapers and clothes for his baby daughter, and the other with clothes for him and his wife. The officers burnt these bags, and then told them to walk across the border. If they did not start walking, they would use the dog to scare people to walk. They had no GPS to tell them where they were or where they should go”<sup>12</sup>.

4. BVMN has **continuously documented collective pushbacks involving minors**<sup>13</sup> and has recorded testimonies that report the punitive forced undressing practice against children<sup>14</sup>.
5. The Ombudsperson for Children reported that **256 children** were pushed back in 2021 according to data provided by the Border Violence Monitoring Network’s. It also reported episodes of children subjected to physical and psychological violence<sup>15</sup>.
6. These practices, characterized by the use of tactics including beatings, pepper spray and dog attacks<sup>16</sup>, continue to be the standard approach adopted by Croatia preventing access to asylum. **It follows that this system is deliberately conceived and designed by Croatia to prevent asylum seekers from entering the territory and claiming asylum, as well as it is the established *modus operandi* symptomatic of a wider and regular national policy.**
7. These policies continue to put people in danger.
8. In light of the **broad and systematic nature of the violations**, and for all the reasons mentioned above, we demand the Committee of Ministers **upgrade to enhanced supervision** the execution of the judgment.

#### *D. Independent monitoring mechanisms*

1. Croatia first received funding through the EMAS grant to implement an internal independent monitoring mechanism in 2018. The Croatian state later drew heavy criticism as the mechanism was never established.
2. Later on, after complaints were brought up about the inexistence of the mechanism, on the 8th June 2021, the agreement on the establishment of the mechanism was signed between the Croatian authorities and Croatian stakeholders who are tasked with carrying out the monitoring.
3. The first issue with this mechanism is that the **implementers were chosen by the Ministry of Interior, without any open call** or similar transparent proceedings, which led to the absurd situation in which the monitored party is choosing those who would be monitoring them.

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<sup>12</sup> Border Violence Monitoring Network. (2020, September). *They searched her [the baby’s] whole body*. <https://www.borderviolence.eu/violence-reports/september-3-2020-0017-road-number-1-croatia/>

<sup>13</sup> Border Violence Monitoring Network. (2021, April). *Departing car have chili inside the car, all family cry*. <https://www.borderviolence.eu/violence-reports/april-3-2021-0200-2km-from-tovarnik-croatia/>;

Border Violence Monitoring Network. (2020, March). *We spent all the night in that room without sleeping, we couldn’t breathe*. <https://www.borderviolence.eu/violence-reports/march-3-2020-0000-harmica-croazia/>; Border Violence Monitoring Network. (2019, November). *Don’t come back to Croatia, motherfucker*. <https://www.borderviolence.eu/violence-reports/november-21-2019-0230-tovarnik-train-station/>

<sup>14</sup> Border Violence Monitoring Network. 2020. Annual Torture Report. Available at: [shorturl.at/gIE18](http://shorturl.at/gIE18)

<sup>15</sup> Croatian Law Centre. (2022, April). *Country Report: Access to the territory and push backs*. <https://asylumineurope.org/reports/country/croatia/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/>

<sup>16</sup> Graham-Harrison, E. (2017, December 8). “They treated her like a dog”: tragedy of the six-year-old killed at Croatian border. *The Guardian*. <https://www.theguardian.com/world/2017/dec/08/they-treated-her-like-a-dog-tragedy-of-the-six-year-old-killed-at-croatian-border>

On this note, we argue that **National Human Rights Institutions and National Preventive Mechanisms such as National Ombudspersons**, which are regularly assessed for their independence or are subject to international standards guaranteeing independence, as well as non-governmental organizations and international bodies, **should be tasked with managing or contributing** to the mechanism.

4. Another major issue is the scope of the mechanism: the monitors have the right to visit the **green border only if they have previously announced their visit**- which deeply hampers the effectiveness of the monitoring- since the majority of human rights violations, as we keep documenting everyday, occur there. Moreover, the **number of visits is limited to 20 per year**, which can lead to dissuade visits, and dissuade monitors in responding to requests for visits. Monitors should be **able to perform periodic and unannounced visits** to all facilities, including police stations, reception and detention facilities and parts of the MS territory. BVMN argues this must also include the so-called **green border**, where pushbacks have been reported. In addition **monitors should be permitted an unlimited amount of field visits**.
5. Regarding the independence of the body, **financial resources** should be made available under Integrated Border Management Fund and in other non-national sources and **provided directly to monitors**, which will help to protect the monitor from financial and or political pressure from national authorities.
6. In order to be effective, the independent border monitoring mechanisms must have frameworks in place to hold States and Institutions accountable for abiding by the agreed mechanism, while ensuring transparency and access to justice. The mechanism **must have the power to trigger investigations into misconduct at its own initiative, and have access to documentation**, places of detention and other relevant sites to conduct such investigation.
7. Eventually, it should be possible for victims of pushbacks to directly contact the mechanism, informing monitors about human rights violations that they suffered, in order for the actions and investigations of the mechanism to be effective and potentially prevent pushbacks.

*E. Ensure the access of the Ombudsperson of Croatia to detention places and data*

1. As a preliminary note, it is necessary to highlight that investigation is crucial to maintain the rule of law, where nobody, and especially the police, cannot be above the law.
2. In performing the mandate of the National Preventive Mechanism (NPM), the Ombudswoman is authorized under articles 4, 19 and 20 of OPCAT and Art. 3 and 5 of the ANPM to make unannounced visits to places where there are, or may be, persons deprived of their liberty, and to freely access any data on their treatment, that is, the treatment of anyone in any kind of detention, custody, or being held under surveillance and unable to leave of their own volition. This leaves no doubt that this also pertains to visits to police station/border police station, and access to data on the treatment of migrants held there<sup>17</sup>.
3. In the Report on the performance of the activities of the National Preventive Mechanism for 2019, the Ombudswoman revealed that since June 2018, the Ministry of the Interior has **prevented her office from accessing cases and information on the treatment of irregular migrants** in police

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<sup>17</sup> Ombudswoman of the Republic of Croatia. 2019. Report on the performance of activities of the National Protective Mechanism for 2019.

stations, “which has made it impossible to carry out national protective mechanism (NPM) tasks in this segment”.<sup>18</sup>

4. It is important to note that the Ombudsperson was denied for the first time the access to the data in 2018 and only in her visits regarding the rights of the migrants, following her continuous vocal demands to conduct the effective investigation into the case of Madina Hussiny. At that time, she repeatedly addressed all the relevant institutions and was publicly warning about the suspicious absence of the relevant footage of the thermal cameras. Such opinions were so explicit to be acknowledged by the Court several times in its judgment of Madina’s case. Therefore, the timing in which the limitation of her work has been implemented by the Minister of Interior suggests that they are to be intended as a measure, if not a sanction, in order to constrain and obstruct the Ombudswoman’s mandate for her ‘interferences’.
5. In the same report, the former Ombudswoman of the Republic of Croatia, Lora Vidović, denounced that by arbitrarily and unevenly interpreting the legal framework regulating the mandate of the Ombudswoman and the NPM, police officers overstep their authority and make it impossible to efficiently fulfill the functions of the NPM and examine the treatment of migrants.
6. The **Minister of Interior** should organize its data management system so as **to enable effective fulfillment of international and legal commitments** under the Optional Protocol to the Convention against Torture, the Act on National Preventive Mechanism against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Ombudsman Act<sup>19</sup>.
7. For all the above, we demand the Minister of Interior to act in accordance with the obligations accepted by the Republic of Croatia and fully **respect** the Ombudsman mandate to promote and protect human rights, within which she examines illegalities and irregularities in the work of state bodies.

## V. Conclusions and recommendations to the Committee of Ministers

BVMN calls on the Committee of Ministers to:

- Individual Measures

1. Ensure non-pecuniary damages are granted to the family;
2. Ensure effective investigation into crimes committed towards the family.

- General Measures

1. Upgrade the case from standard to **enhanced procedure** due to a recorded **systematic and widespread practice of pushbacks without individual assessments** at the Croatian - EU external border.
2. Call on Croatia to improve the effectiveness and independence of the **Independent Monitoring Mechanism, namely:**
  - a. Monitors should be **chosen in a transparent and accountable manner**, such as a public tender

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<sup>18</sup> Ombudswoman of the Republic of Croatia. 2019. Report on the performance of activities of the National Protective Mechanism for 2019. Available at: <https://www.ombudsman.hr/en/download/report-on-the-performance-of-the-activities-of-the-national-preventive-mechanism-for-2019/?wpdmdl=8876&refresh=62e54662b44ff1659192930>

<sup>19</sup> Ombudswoman of the Republic of Croatia. 2019. Report on the performance of activities of the National Protective Mechanism for 2019.

- b. The **national Ombudsperson** and bodies and organizations that are regularly assessed for their independence or are subject to international standards should be **part of the mechanism**, to ensure its independence.
  - c. Monitors should be permitted an **unlimited amount of unannounced visits**, including in police stations, reception and detention facilities and parts of the MS territory, in order to ensure the effectiveness of the mechanism. This should also include the so-called **green borders**, where pushbacks have been reported
  - d. Monitors should have access to documentation and power to trigger investigations into misconduct at its own initiative
  - e. The activities of independent monitoring mechanism should not be paid through the member state, but the grants should be **transferred directly from European institutions**, in order to ensure financial independence.
3. Ensure **Ombudsperson fully access to detention places, including unofficial ones, and access to data**