



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

Zagreb, September 7, 2020
Ref.No: KLJP-31-9/2020

**RULE 9.2.
COMMUNICATION**

concerning
V.D. group of cases v. Croatia
No. 15526/10

from
Human Rights House Zagreb

A. Background

1. These cases concern a lack of effective investigations, between 2006 and 2017, into the applicants' allegations of ill-treatment in hands of the police during their arrest (violations of Article 3 in its procedural limb). The cases of *V.D.* and *Mafalani* also concern the applicants' ill-treatment in the hands of the police (violations of Article 3 in its substantive limb).
2. The text which follows addresses the relevant sections of general measures of the Action Plan that indicate shortcomings at ensuring independent police investigations and prompt conduct of criminal investigations in police ill-treatment.
3. This submission responds to the Government's Action Plan of 3 July 2020¹ which proposes to close an examination of general measures in this group of cases arguing

¹ Government of the Republic of Croatia, Office of the Representative of the Republic of Croatia before European Court of Human Rights, Action Plan, 19 March 2020, Class: 004-02/17-05/08, Reg.: 50447-03/02-20-63

that the measures taken are sufficient to prevent similar violations. With regard to individual measures, the Government considers that the applicants have benefited from redress. The aim of this submission is to update the Committee of Ministers that full and effective implementation of general measures has not yet been achieved which is why ending the supervision of the implementation of general and individual measures would be premature.

4. This submission is prepared by *Human Rights House Zagreb*², a civil society organisation registered in Croatia. Human Rights House Zagreb is a human rights watch-dog and advocacy organization founded in 2008 as a network of civil society organizations with the goal to protect and promote human rights and fundamental freedoms through research, monitoring, public advocacy, and education.

B. GENERAL MEASURES (III)

Measures aimed at preventing police ill-treatment (III/A)

5. Even though the 2017 amendments to the Criminal Procedure Act have been introduced in order to strengthen the procedural position of suspects during the initial investigation stages i.e. during police questioning, those measures are not sufficient and effective to prevent police ill-treatment during the arrest.
6. Strengthening of the suspects' position is reflected by the introduction of mandatory audio-visual recording of the interrogation, and by notifying the suspect of all the rights they enjoy, notably the right to have a defense attorney. However, those amended provisions are applicable only during formal questioning of suspects which usually takes place in police stations. The grey zones of the possible police ill-treatment could occur when suspects get arrested and are brought to the police station, instances during which they are not under surveillance and thus are not adequately protected. Therefore, those measures are only partially effective.
7. For that reason, the Ombudswoman suggested introducing video surveillance in all premises within police stations where suspects and persons deprived of liberty are situated, as an additional measure of protection against police ill-treatment.³

² More information available at: <http://www.kucaljudskihprava.hr/en/>

³ Ombudswoman Annual Report 2019, page 168, link available at: <https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvješće-pučke-pravobraniteljice-za-2019.pdf>

8. A 2019 academic paper⁴ on the practice of the Croatian judicial authorities regarding police ill-treatment regarding Article 3 of the ECHR states that between December 15, 2013 and July 1, 2019, a total of 96 police/judicial officers were reported for ill-treatment. Out of the total number of reported persons an indictment was filed against 19 persons, a decision on the suspension of the investigation was issued against 1 person, while a decision on the rejection of the criminal report was issued for 73 persons. Out of 19 persons against whom the indictment was filed, only 5 were found guilty.⁵

Measures aimed at ensuring effective criminal investigations (III/B)

9. Although various legislative measures have been taken to ensure the independence of the criminal investigation, the independence of police investigation and the prosecutorial investigation is still not consistently ensured in the cases of criminal offenses committed by officers, members of the law enforcement bodies.
10. Notably, at the investigation phase, there is no binding normative framework to ensure the independence of the investigation as there is, at least partially, one during inquiries. Prior to the amendments to the State Attorney's Act in 2018, there was a provision⁶ which explicitly ensured the independence of the investigation in cases of a suspicion that a criminal offense was committed by a police officer, prescribing that the public prosecutor should conduct the investigation. However, with the amendments to the State Attorney's Act in 2018,⁷ the above-mentioned provision was omitted.
11. Regarding the inquiries, the Police Work and Powers Act stipulates that in a situation when a crime is committed by a police officer the investigation of that crime should be conducted by a police organization specially designated for that purpose by the Director-General of the Ministry of the Interior.⁸
12. The provision, however, does not foresee the involvement of the public prosecutor in the investigation of the police ill-treatment allegations. This legal setup does not

⁴ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 372

⁵ The research was conducted on a sample of 22 municipal state attorney's offices and 15 county state attorney's offices.

⁶ State Attorney's Act, 30 June 2009, OG 76/09, 153/09, 116/10, 145/10, 57/11, 130/11, 72/13, 148/13, 33/15 and 82/15; Article 67 para 3.

⁷ State Attorney's Act, 1 September 2018, OG 67/18

⁸ Article 11.e Law on Police Work and Powers, OG 76009, 92/14, 70/19

provide absolute guarantees of impartiality since all police units, including the aforementioned specially designated unit, belong to the same police hierarchical structure. Legal experts stress the need to ensure that inquiries are carried out by an investigator who will be institutionally independent of the entire hierarchical structure of the body in which the suspected police officer belongs.⁹

13. Even though in 2014 a new remedy has been introduced - a constitutional complaint as an effective domestic remedy for complaints concerning ineffective investigations under Articles 2 and 3 of the ECHR, legal experts highlight that the substance and scope of these rights should be interpreted carefully. Notably, legal experts stress that the constitutional complaint as such represents the *ultima ratio* for resolving the problem of ineffective investigation when a violation of a fundamental right occurred. Although the Constitutional Court will oblige the domestic law enforcement authority to conduct an effective investigation in accordance with Convention requirements it does not, in fact, eliminate the causes that actually led to the violation, but rather eliminates the damage after the violation has already occurred.¹⁰

14. Legal experts emphasize the need for more prevention that could be achieved through amendments of the national legal provisions and protocols in order to oblige state bodies to act in accordance with the ECHR, which would in effect bring to life ECHR's standards of effective investigation in the everyday practice of law enforcement bodies.¹¹

Measures aimed at ensuring prompt conduct of criminal investigations (III/C)

15. Even though a Municipal and County Courts Integrated Case Management System (ICMS), as well as State Attorney's Case Tracking System (CTS), were introduced with an aim of reducing the excessive length of criminal proceedings and ensuring that investigative actions are conducted in due course, in practice these instruments do not prove to be effective.

16. In its 2019 Annual Report, the Ombudswoman highlights that pre-trial proceedings and investigations take too long. After the indictment, hearings are often not

⁹ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 376

¹⁰ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 357-387

¹¹ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 370



scheduled for months, and it usually takes several months between two hearings while the overall court proceedings often last for years. The consequences of such practice are that the average case resolution time in 2018 was 626 days for the first instance municipal criminal cases and 343 days for the first instance county criminal cases, and respectively 111 days in the second instance. To highlight this problem, the Ombudswoman, in her 2019 Annual Report, highlights a criminal case that is pending before the Split Municipal Court ever since 2005.¹²

17. Regarding the unjustified delays or inactivity in processing criminal complaints before the prosecuting authorities, including the right to obtain information from the police and state attorney offices, the Ombudswoman stresses that procedural instruments for ensuring efficient criminal proceedings before the State Attorney's Office and the court are not effective remedies in practice.¹³ Notably, the right to file a complaint to a senior state attorney for delaying an investigation is completely ineffective in practice, and making an assessment on the merits of a criminal complaint often takes longer than anticipated.¹⁴
18. Moreover, only the prosecutors have an obligation for the prompt conduct of investigations since the deadlines for their conduct and actions are strictly proscribed by the law, while there are no such provisions for investigatory proceedings before the courts. Since the obligation to ensure the effective criminal investigation should also cover a trial phase of criminal proceedings, the present legal solution has a clear normative shortcoming. Having in mind that ensuring effective criminal investigations implies criminal proceedings as a whole, including the trial phase, it is clear that there still are normative shortcomings when it comes to ensuring prompt conduct of criminal proceedings¹⁵.
19. Regarding the disciplinary proceedings against prosecutors and judges for their inefficiency in conducting proceedings, it should be highlighted that State Attorney's Act prescribes disciplinary proceedings against prosecutors for breach of time-limits, whereas the Courts Act does not foresee the possibility of disciplinary proceedings

¹² Ombudswoman Annual Report 2019, page 15, link available at:

<https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvešće-pučke-pravobraniteljice-za-2019.pdf>

¹³ Ombudswoman Annual Report 2019, page 15, link available at:

<https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvešće-pučke-pravobraniteljice-za-2019.pdf>

¹⁴ Ombudswoman Annual Report 2018, page 21, link available at:

<https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2018-godinu/?wpdmdl=4747&refresh=5f3390415748d1597214785>

¹⁵ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 382

against judges for their procrastination and not conducting criminal proceedings within a reasonable time¹⁶.

20. Although judges may be sanctioned in disciplinary proceedings for their inefficiency in conducting pre-trial proceedings¹⁷, this legal remedy refers only to the pre-trial proceedings i.e. investigative judge and the panel. In practice, in some cases, problems arise with respect to the length of the disciplinary proceedings which take several years to be concluded. The length of proceedings exceeds all reasonable time limits which in turn gives the impression of the unwillingness of the judicial authorities to prosecute judges.¹⁸

Measures aimed at ensuring independent police investigations (D)

21. The Action Plan states that the Police Act was amended in 2015 with an aim of strengthening the disciplinary responsibility of police officers resulting from police negligence. It points out that there are three-tier procedures for examining complaints. Irrespective of the type of decision-making instance, the complainant receives only the information on the conduct instead of the administrative decision. The difference between information and the administrative decision is that, under the Police Act, the complainant does not have the right to file an appeal against the information on the conduct. The administrative decision, an act subjected to a legal remedy, is regulated by the General Administrative Procedure Act¹⁹. In cases where a complainant files a complaint based on Article 156 of the General Administrative Procedure Act, the police does not act on the basis of the General Administrative Procedure Act, but based on the Police Act, even though the Article 5e of the Police Act expressly stipulates that using the complaint remedy under the said Act does not preclude the complainant from using any other remedy available in the domestic legal system for the protection of one's rights.

22. For the above-mentioned reasons in her 2018 Annual Report, the Ombudswoman highlights the importance of independent and competent civilian oversight of

¹⁶ A.Novokmet, I.Kolesarić, D.Livaja: Ineffective investigation into allegations of ill-treatment by the police officers and prison staff: Execution of the judgements of the European Court of Human Rights and Croatian judicial practice; Croatian Annual of criminal science and practice (Zagreb), vol.26, No.2/2019, page 382, footnote 82

¹⁷ Article 347 of the Criminal Procedure Act

¹⁸ Report on judicial independence and impartiality in the Council of Europe member States (2019 edition), para 189, link available at:

<https://rm.coe.int/ccje-report-2019-situation-of-judges-en/16809e0d05>

¹⁹ General Administrative Procedure Act (OG 47/09)

complaints against the police since the complaints procedure established under Article 156 of General Administrative Procedure Act is ineffective.²⁰

23. During the four years Croatia did not have functioning civic oversight of law enforcement²¹, namely police, and until the beginning of 2020, the Parliament appointed members of the Civic Complaints Commission of the Ministry of Interior.²² However, the 2018 Annual Report on the Work of the Ministry of Interior, shows that the number of citizens' complaints against the information on the conduct increased by 12.57 percent compared to 2017. The Ministry later instructed citizens to file a complaint to the Civic Complaints Commission. Eleven citizens complained to the Commission even though this body was not functional since the members have not been appointed yet.²³ The Ministry of Interior still hasn't published the 2019 Annual Report, therefore there is no publicly available data on the number of complaints solved by the Civic Complaints Commission.

24. As stated in the Action Plan, when there are allegations against the police for unlawful and unprofessional behavior, internal control is also activated. Internal control should undoubtedly establish all the facts, interrogate all the parties and impartial witnesses and inform the complainant about the measures taken and about further legal steps possible²⁴. However, in practice, Internal control quite often does not verify all the allegations or interrogate all the parties/witnesses.

25. This insufficient practice of the Internal Control was criticized by the Ombudswoman in her 2019 Annual Report. The Report highlights a case where a citizen informed the Internal Control of excessive use of force by the police and their failure to undertake an initial investigation in order to verify her allegations i.e. the police did not include

²⁰ Ombudswoman Annual Report 2018, page 247, link available at:

<https://www.ombudsman.hr/hr/download/izvjesce-pucke-pravobraniteljice-za-2018-godinu/?wpdmdl=4747&refresh=5f3390415748d1597214785>

²¹ Human Rights House Zagreb, Human Rights in Croatia: Annual Overview 2019, Zagreb, March 2020, para 63, link available at:

https://www.kucaljudskihprava.hr/wp-content/uploads/2020/04/KLJP_godisnjelzvjesce2019_ENG_web.pdf

²² Decision on appointing the Civic Complaints Commission of the Ministry of Interior (OG 24/2020), link available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2020_03_24_568.html

²³ Ministry of Interior, Annual Report on the Work of the Ministry of Interior, 2018, page 9, link available at:

<https://mup.gov.hr/UserDocsImages/dokumenti/2019/STUDENI/Godisnje%20izvjesce%20o%20radu%20Ministarstva%20unutarnjih%20poslova.pdf>

²⁴ Ministry of Interior, How to complaint against police officials?, link available at:

<https://mup.gov.hr/gradjani-281562/pohvale-i-prituzbe/kako-se-zaliti-na-rad-sluzbenika/381>



the complainant's statement in the assessment and did not inform her about further legal steps she could take. Despite the response from the police that there was no need to take her statement because she filed a complaint, the Ombudswoman stressed out that it is necessary to thoroughly investigate and examine all parties involved and impartial witnesses and to notify them about the right to file a complaint.

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Assessment of the general measures (H)

26. Even though the Government deems that the measures taken are capable of preventing similar violations, notably the legislative measures in relation to the establishment of an effective remedy, we would like to stress the opposite.
27. In support of this, we would like to draw attention to the pending cases before ECtHR against Croatia in regards to the police ill-treatment. Notably, in the case of Tina Velenšek v. Croatia (App. no. 47909/19), the applicant, Tina Velenšek is the wife of a deceased applicant (V.D.) claiming in her application that her husband died as a result of excessive and disproportionate use of force by the police officers during an arrest in 2017. She further claims that the investigation was not effective and that she did not have at her disposal an effective domestic remedy for her complaints as required by Article 13 of the Convention.
28. In addition to the fact that the Croatian justice system still faces a number of shortcomings in preventing ill-treatment by the police, it should be noted that at the moment there are similar cases pending before the ECtHR, such as Jozo Tolj v. Croatia (App.no: 25530), Damir Perkov v. Croatia (App.no: 33754/16), Ivan Kobaš v. Croatia (App.no:4760/18); S.B. v. Croatia (App.no: 18110/19), Hrvoje Miljak v. Croatia (App.no.15681/18) etc.

C. Conclusions and recommendations

29. The Human Rights House Zagreb considers that the information provided above demonstrates that further work on general measures by the Croatian Government is needed to ensure full and effective implementation of the judgments in the V.D. group of cases and that the closure of general measures would be premature. Therefore,

²⁵ Ombudswoman Annual Report 2019, page 151, link available at: <https://www.ombudsman.hr/wp-content/uploads/2020/03/Izvješće-pučke-pravobraniteljice-za-2019.pdf>

we invite the Committee of Ministers not to close the supervision in this group of cases.

30. To this end, we respectfully invite the Committee of Ministers to consider making the following recommendations to the Croatian authorities in order to effectively implement all measures stated in the Government's Action Plan aimed at ensuring effective, prompt, and impartial criminal investigations into police ill-treatment:

a. To the Ministry of Interior:

- i. to prevent excessive usage of police force during arrest and bringing suspects to the police station;
- ii. to intensify their efforts to conduct an effective, prompt and impartial investigation of police ill-treatment;
- iii. and the Police Academy to sustain and intensify their efforts on continuously conducting training for police officers about lawful use of force;
- iv. to amend the Police Act in order to ensure that an administrative dispute can be initiated before Administrative Court against the final decision of the Civic Complaints Commission;
- v. to provide data on the number of complaints solved by the Civic Complaints Commission;
- vi. to align the practice of handling citizens' complaints with Article 156 of the Administrative Procedure Act, allowing the head of the administrative body to decide upon complaints by means of administrative decision;
- vii. to implement the 2019 Ombudswoman recommendation no. 112 - to intensify efforts to use force only when necessary and proportionate to the circumstances of the case;
- viii. to implement the 2019 Ombudswoman recommendation no. 114 - that in the procedure of examining citizen's complaints against police work, statements should be taken from all the parties involved and other witnesses in order to ensure effective investigation;
- ix. to implement the 2019 Ombudswoman recommendation no. 115 - to inform parties about the right to file a complaint to the Internal Control Service of the Ministry of Interior;

b. To the Ministry of Justice:

- i. to amend the State Attorney's Act in order to ensure that in all cases when police officers are suspected of committing a criminal offense inquiries and investigations are conducted by the State Attorney;



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- ii. to amend the Criminal Procedure Act in order to foresee the right to file a complaint against judges for their inefficiency in conducting proceedings within time limits at all stages of criminal proceedings and not only in the pre-trial phase.

Sincerely,

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