

Chief State Attorney of the Republic of Croatia, Mr. Dinko Cvitan

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Subject:

- 1) Hosseini Madina (Husseni Madina)
  - information
- 2) Police action against irregular migrants and applicants for international protection
  - notification

Dear Mr. Cvitan,

Acting on its own initiative pursuant to Article 20, Paras 2 and 3 of the Act on Ombudsman and subsequently on the basis of the complaint of Muslime Hosseini, the mother of the deceased child, Madina Husseini, delivered delivered by the Doctors Without Borders - Representative Office in Serbia, the Ombudsman conducted an inquiry on the basis of Articles 9 and 24 of the Ombudsman Act.

In this procedure, an insight was carried out into the Diary of Events from the Information System of the Ministry of Interior, for the Police Administration of Vukovar-Srijem, Police Station Tovarnik, for the days 17,

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By inspecting the Official Note of the police officer \*\*\*\*\* , the Official Note of \*\*\*\*\* and the Official Note of the police officer \*\*\*\*\* all from November 22, 2017 it was established that the data from the Official Notes confirm the described statements from the Event Log.

In the complaint sent to Ombudsman, via Doctors Without Borthers, mother stated factually different information and claims that, having found out that the Republic of Croatia provides asylum to families and those forced to leave their countries, has decided to seek asylum in Croatia. Therefore, along with her six children aged 15, 8, 6, 3 and 2 years , she had decided to enter the Republic of Croatia, while her husband and three other children remained in the Republic of Serbia and would join them later. She states that she passed the border on 21 November 2017, around 17:00 and continued to walk for another hour (to the alleged location of the GPS coordinates of the mobile device: 45.178997,19.162546), after which she saw the police officers and sought asylum. However, she was told to return to the Republic of Serbia and try returning to the Republic of Croatia the next month. After her insisting on international protection, police officers got angry and shouted at them to return to the Republic of Serbia. Afterwards, she asked them to stay in Croatia until the morning, because her children were exhausted with which the police officers did not comply but have forced them to walk. After a while, a police vehicle came and returned them near the state border and the railway. After leaving them there, the police officers told them to follow the track to get back to Serbia. Shortly thereafter, the train killed her child Madina. The mother claims that the police officers who helped after the accident were the ones who had previously dealt with them in

the depths of the Croatian state territory and followed them to the border line, ultimately ordering them to return to the Republic of Serbia, via the railway. We have provided a copy of the complaint in the attachment.

By comparing the allegations \*\*\*\*\* from the police officers, with those allegations stated in the mothers' complaint, regarding the circumstances surrounding the situation before the tragic event, namely the train hitting the child, there is a noticeable contradiction. According to the the police description of the event, there was no contact between police officers and family members in the state territory of the Republic of Croatia prior to the train incident. On the other hand, the mother of the child is claiming the opposite, that the contact existed, that it was in the depths of the Croatian state territory, that it lasted for a certain period of time and that certain actions were taken by the police (transport by police vehicle to the border with the Republic of Serbia and the command to cross the border before the train incident). There are no recorded images of thermovision cameras on these events. Also, in previously conducted procedures whenever the thermovision camera videos or other recordings with exact dates and times were requested, we were notified of existing technical difficulties for which they were not stored or available.

Therefore, in particular, taking into account allegations stated in the media, that the Police Directorate provided all the information and collected all documentation of the tragic event, for further proceedings to the State Attorney's Office, and that criminal charges were filed on 19 December 2017, by the Madine Hosseini family by lawyer Sanja Bezbradica Jelavić, we are of the opinion that any further proceedings by the Ombudsman in this case would exceeded the competencies prescribed by the Ombudsman Act and that further data, which would be collected for the purpose of establishing the exact factual situation (foe example, determination of movement and location of police officers via the signal record on their mobile devices or other communication devices, determining the movement of a police vehicle used by police officers listed in the Diary of Event via GPS, determining the movements and locations of Hosseini family members via their mobile devices ...) regarding the contact between the Hosseini family members and police officers, possibly before the train incident, can only be achieved through an effective criminal investigation.

At the same time, we emphasize that if the allegations made by Muslima Hosseini, that they have expressed their intent for seeking international protection in the Croatian state territory to the police officers and that they did not honor such a request, are found to be true, it was also contrary to the Croatian legal framework for providing international protection by being contrary to the provisions of Article 33 of the Law on International and Temporary Protection, but also contrary to the provisions of the Foreigners Act which prescribe procedures in case of irregular migrants being sighted at the border with a third country or immediately after an irregular entry.

Furthermore, we would like to share the results of our investigative procedures with you, which show why the allegations of Madina's mother regarding the conduct of police officers needs to be thoroughly investigated, and indicate that despite the numerous warnings and recommendations sent by the Ombudsman to the Ministry of the Interior, regarding police conduct towards irregular migrants, as well as abiding by the provision of return measures prescribed by the Forigners Act, towards claimants of internatiopnal protection, no adequate effective measures have been taken to protect the human rights of the aforementioned groups in accordance with the Refugee Status Convention, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). On the contrary, the Ministry of Interior has established the practice which regards protection of the state border and preventing

irregular entry into the Republic of Croatia as more important than prevention of tragic incidences, even those resulting in death.

The results of the inquiries conducted by the Ombudsman during the years 2016 and 2017 show that there are grounds for suspicion that the conduct of police officers at the border with the Republic of Serbia was not adequately investigated, i.e. that no effective investigation into allegations of violations of art. 3 of the European Convention on Human Rights and Fundamental Freedoms was done. Conventional standards of effective investigations require that it must be adequate, detailed, independent and impartial, reasonable and certainly include the victims testimony.

Namely, during the 2016 and 2017, we sent numerous letters to the Ministry of Interior, expressing our concern and making recommendations and warnings, including the complaints we received from the media, suggesting the return of irregular migrants to the Republic of Serbia without conducting the procedures envisaged by the Foreigners Act and the Law on International Protection and with police actions being conducted by unlawful use of their powers.

Also, in the Ombudsman's report for 2016 sent to the Croatian Parliament, we reported on complaints from migrants stating that Croatian police officers beat them with batons, forced them to take off their shoes, kneel or stay in the snow, they also shoved them through the cordon of police officers while they were beaten and insulted . During these proceedings, they were not allowed to speak, and there were testimonies that stated they were deprived of their valueables, money and mobile phones. In the above Report, we have warned the Ministry of Interior that such behavior of police officers could constitute a violation of Art. 3 of the European Convention on Human Rights, according to which no one should be subjected to torture or inhuman or degrading treatment or punishment. We have particularly stressed the need to conduct a rigorous and effective investigation of this, as well as referred to the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of 2015, which state that it is necessary to have a clear understanding that responsibility for the illicit treatment includes only perpetrators, but also those who knew or should have known about such treatment, but did not prevent or report it.

We have also warned that a large number of police officers engaged on the border with the Republic of Serbia in order to prevent illegal crossings of the state border and for conducting the so-deterrence should not prevent access to international protection and have stressed the need for an individual approach in the procedures that are conducted once they arrive at the Croatian border.

We consider the submissions of the Ministry of Interior completely inadmissible, according to which, all statements given by migrants regarding the behavior of police officers, including the use of physical coercion, the neglect of requests for international protection and the failure to execute proceedings under the Foreigners Act, are not likely to be true due to that fact that they have been stopped on their way to their destination countries and that investigation of their allegations is limited to insights from the records of the Ministry of Interior (records which are not at all filed for return procedures) or for example, from the records of health institutions in the area of Police Administration of Vukovar-Srijem, which can by no means be considered as an effectively conducted investigation.

Furthermore, by conducting an individual investigative procedure in which the complainant \*\*\*\*\* states that his access to international protection was prevented and that he was returned to the border with the Republic of Serbia in an unlawful procedure and then forced to return outside the regular border crossing, it has come to our attention that there has been a change in the treatment of irregular migrants found in the territory of the Republic of Croatia, in accordance

with the orders of the Department of Illegal Migration, the Police Directorate of 25 November 2016, which coincides with the proceedings we wrote about, in the Ombudsman's Report for 2016. Namely, \*\*\*\*\* came to the Asylum Seekers' Reception Center in Zagreb, wishing to express his intent to seek international protection. However, as the Act on International and Temporary Protection states that it is possible to express intent at the Reception Center only in exceptional circumstances, he was advised to do so in the \*\*\*\*\* Station, which conducts the registration and identification of the applicants for international protection. According to his allegations, he was detained in \*\*\*\*\* station, was not able to register for international protection and has then been transported to another police station or facility, ultimately being transported to the border with Serbia, where he was sent to return to Serbia, outside the regular border crossing. However, according to the report we received from the Ministry of the Interior, it was stated that he was detained due to being in irregular residency, together with another person at the police station, and after having conducted the proceedings in accordance with the Foreigners Act, he left the premises of the \*\*\*\*\* Station. The report included a notification that they did not receive information from the border, that he had indeed left the territory of the Republic of Croatia as ordered by the return decision.

Only by conducting a further investigative procedure in the \*\*\*\*\* Station and by inspecting the case file, we have learned that the Ministry of Interior's response to the Ombudsman was incomplete and insufficient and that they were trying to conceal the actual treatment. Namely, according to the orders of the Department of Illegal Migration, the Police Directorate of 25 November 2016, there has been a change in the treatment of irregular migrants found in the depths of Croatian territory. Although we have not received the aforementioned order, even after repeated requests, by insight into a series of internal letters between \*\*\*\*\* , as well as other documentation enclosed with the case files, and in particular, the Official Notes of the Head of \*\*\*\*\* , the following is obvious: according to the order, all irregular migrants, nationals of Afro-Asiatic countries, who entered the Republic of Croatia from the Republic of Serbia, and have made it to \*\*\*\*\* are to be sent back to Police \*\*\*\*\* and handed over to the Chief Police Officer there for further proceedings. According to additional instructions following this order, police stations are required to fill out Form No. 6 (Identity Statement for Foreigners Without Identification Documents) and Return Decision on Form No. 11 and notify the Detention and Escort Unit about the need to transfer the foreigner to \*\*\*\*\* . By inspecting the relevant documentation at \*\*\*\*\* , we have identified procedures that confirm this.

Further investigation into \*\*\*\*\* showed that in the \*\*\*\*\* there were no records of proceedings towards foreigners detained in \*\*\*\*\* done in accordance with the above mentioned order, i.e. during the period from 25 November 2016 to 15 February 2017, and that the Chief of \*\*\*\*\* and the Chief \*\*\*\*\* could not provide information on further treatment of these persons, nor did they indicate where the case files were, or the approximate number of persons towards whom the said procedure was conducted.

In this way, all the foreigners who were issued the decision to the return and who were given a deadline by which to leave the Republic of Croatia, in further police proceedings have been deprived of their liberty without a legal basis, and subsequently transported by police vehicles ("Marice", but even buses!) to the area of another police administration, which does not have the necessary documentation about detention of migrants and cannot provide any information, which is a violation

of international and national regulations governing the deprivation of liberty, and certainly challenges the motivation inherent in such conduct.

Moreover, during the investigative procedure in \*\*\*\*\* , it was also established that in cases concerning unaccompanied minors, proceedings are not conducted in accordance with the Protocol on the Treatment of Children Separated from Parents- Foreign Citizens, as well as the Foreigners Act; the competent expert from the Center for Social Services is not notified and therefore their presence is not ensured during police proceedings, the police officer does not initiate an expedient procedure for appointing a special guardian, the mandatory body inspection for determining possible injuries is not conducted, and ultimately the procedure which is most appropriate for determining the best form of child's protection is not conducted. At the end of the procedure, children are transferred to \*\*\*\*\* with all other irregular migrants in police vans.

It was also found that on 15 February 2017 the Police Directorate ordered another change in proceedings towards irregular migrants found in the depths of the Croatian territory. All police administrations were ordered to transfer all irregular migrants to the police administration at the state border ,with prior written notice, which is then responsible for determining the details and the circumstances of their entry and stay in Croatia. If a police administration who found irregular migrants in their jurisdiction considers that the transfer to the police station at the border would not be useful for strengthening the external border protection measures, the procedure can be conducted in accordance with the Foreigners Act, by that police administration.

Following the order of the Police Directorate, \*\*\*\*\* , from February 15 to November 24, 2017, conducted co-called expedited procedures for 1,116 persons. All case files, according to the instruction of the Chief \*\*\*\*\* , contained a printed Form no. 6 (identity statement), a photograph of a foreigner, a decision on return on the Form no. 11, a signed invoice and an official note. A sample copy of the official note was also submitted to the police officers \*\*\*\*\* and contained the following statement: "The foreigner has no visible injuries and has not complained about his health", "it is determined he speaks Arabic / Pashtu language and communicates in English, a translator for the specified language was contacted, but could not report to \*\*\*\*\* , so the conversation was conducted in English and with the help of google translator. The foreigner did not express intent for seeking international protection during the entire procedure. " After this procedure and with the issued decision, irregular migrants were given a seven-day deadline to leave the territory of the Republic of Croatia. In a large number of cases this cannot be done because of the lack of diplomatic or consular missions and the lack of financial resources, more so, the data of the Ministry of Interior itself indicate a small number of those who were registered at border crossings during the exit, i.e. only those with valid documents are recorded. They do not know where the others are.

Each reviewed case file of the expedited procedure had an official note that was identical to the stated template, which certainly leaves the doubt that the expedited procedure is a deliberate circumvention of the law, and the denial of the rights of the aforementioned persons to disclose in the individual proceedings and with the assistance of the translator, all the facts and circumstances relevant to the decision-making.

This is primarily relevant as an attempt to deny the right of an irregular migrant to seek international protection in such proceedings, as well as to avoid the principle of non *refoulement*, as one of the basic principles of international legal protection of refugees, but also to avoid the determination of circumstances indicating whether the person concerned has been issued a decision prohibiting their

return, in accordance with the Foreigners Act. Also, such proceedings were applied to unaccompanied minors in the same way as in the Zagreb Police Administration, i.e. without acting in accordance with the Protocol on the Treatment of Children Separated from Parents - Foreign Citizens, and such treatment was established even towards a child born in 2008!

According to the above, from February to November 2017, according to the data submitted by Police Administration Vukovar-Srijem, on the premises of Police Station Tovarnik, intended for the conducting proceedings towards irregular migrants and international protection applicants, which is, due to the construction of a new building, on a permanent border crossing for the international transport of passengers in road traffic, procedures were conducted towards 1,116 irregular migrants. They were all brought from other police administrations. However, by reviewing individual case files for November, October and September, we have reestablished a disproportion between the submitted data and the established facts. Namely, it was established that only 401 irregular migrants were brought from \*\*\*\*\* (hereinafter referred to as \*\*\*\*\* ) to \*\*\*\*\* , while according to the data of the Police Administration of \*\*\*\*\* , the entire Police Administration \*\*\*\*\* , in the period from February to November, conducted proceedings toward 303 people. Furthermore, it remains unclear why migrants from the Border Police have been brought to another police station, i.e. why it was assumed that they have crossed the border in the \*\*\*\*\* especially considering the police action and filed criminal charges for migrant smuggling across the Danube, in the area Police Administration Osijek-Baranja.

Also, by inspecting the individual case files on accelerated proceedings at \*\*\*\*\* , in relation to all the police administrations from which irregular migrants were brought, we found that none of the case files contained fingerprints and they were not taken at the police station in which they were firstly detained as well, furthermore, albums containing hundreds of taken photographs which have to be examined individually, there is no way to undoubtedly state the identity of persons who have been issued a return decision once they left \*\*\*\*\* Police Station. The case files do not contain a document that would show which actions were conducted in the process which would show the exact crossing point of the state border where the migrant has crossed, which, as an argument in their responses, the Ministry of Interior pointed out as particularly important. It follows that there is no system currently in the Republic of Croatia that would allow monitoring of movement and status of those persons (either crossing the state border or staying in the country), which certainly does not contribute to the protection of rights of such persons, nor does it contribute to national security, which the Ministry of Interior has constantly emphasized in their communication with the Ombudsman and has referred to, in relation to earlier warnings and recommendations.

Choosing randomly, at the Police Station \*\*\*\*\* , a video footage was taken to show that the persons who were brought in and towards whom the police conducted their proceedings did not enter the building of the station, but had been in the police vehicle all the time and were not afterwards released, but were driven away by the same police vehicle.

By introducing such practices, i.e. by bringing irregular migrants found in the depths of the Croatian territory to \*\*\*\*\* , with the justification that \*\*\*\*\* is competent to conduct proceedings against irregular migrants due to a possible crossing point of the state border, although there is no indication that the process of determining the place of the exact crossing of the state border is indeed implemented, even though \*\*\*\*\* is burdened with state border control work, has no proper spatial conditions and is currently operating on two locations because of the construction of a new station, as well as having police officers from the Police Administration of Osijek Baranja and Police Administration Slavonia Posavina working as assistance for supervising of

the state border, generally having insufficient officers working on illegal migration, because only two officers are forseen for all assignments, the question is whether irregular migrants, about whose whereabouts the \*\*\*\*\* has no notion (are they in Croatia, or not) were really transported to \*\*\*\*\* only to determine the exact border crossing location while entering the Republic of Croatia.

We are particularly concerned about the persistent refusal of the Ministry of the Interior to review the previously described procedures concerning irregular migrants found in the depths of Croatian territory. Namely, changes of conduct are consistent with information on a large number of cases that civil society organizations and the media have warned about, which contain indications that police officers do not conduct legally prescribed procedures, but that the migrants are moved by vehicles to the border and are ordered, even using forms of physical violence according to the claims, to enter the Republic of Serbia. Statements made by the mother of the deceased girl do not differ from a number of previously submitted complaints, but due to the tragic outcome, we consider it necessary to warn of the existence of a practice which, on the one hand, has led to a series of statements about the actions of police officers who seriously violate human rights, and on the other, an inadequate response and denial of complaints by the Ministry of the Interior.

In conclusion, we believe that it is necessary to take all appropriate and available actions to ascertain the actual state of facts and clarify all the circumstances of the case regarding the possible contact of the Hosseini family members with the Croatian police officers before Madina was killed and the mother's allegation that they requested international protection while being on Croatian state territory. Determining the possible contact of Hosseini family members with Croatian police officers, before the tragic event, is also important for the assessment, if the contact really occurred and whether the police officers acted in accordance with Art 33 of the Law on International and Temporary Protection. Likewise, given the established treatment of irregular migrants by the police based on them suspending the prescribed legal framework, we consider it necessary to ascertain whether such actions and orders requesting such conduct, comprise elements of the criminal offense.

Pursuant to Articles 4 and 15 of the Law on Ombudsman, we provide you with the above mentioned information that we have collected in the conducted investigative procedures, for the purpose of taking action from your jurisdiction. We also submit a complaint of the mother in the attachment, and we kindly ask you for to notify us about taken action.

Respectfully,

Lora Vidović

Ombudswoman