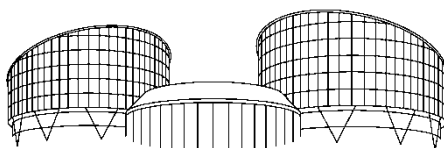


**La CEDU sulla violazione degli artt. 3 e 13 della Convenzione.
(CEDU, sez. I, sent. 17 luglio 2025, ric. n. 38776/21)**

Nel caso di specie, la Corte EDU è chiamata a pronunciarsi sulla presunta violazione degli articoli 3 e 13 della Convenzione, in relazione al trattamento riservato al ricorrente da parte delle autorità croate e all'impossibilità per l'interessato di proporre ricorso contro il provvedimento di espulsione. Il ricorrente, cittadino turco di etnia curda, era entrato irregolarmente in Croazia, dove era stato arrestato e successivamente condotto in un centro per immigrati. In quella sede aveva riferito di essere stato perseguitato in Turchia per il proprio attivismo politico, manifestando timore per la propria incolumità in caso di rimpatrio e dichiarando l'intenzione di presentare domanda di protezione internazionale. Tale richiesta, tuttavia, non è mai stata presa in considerazione e il ricorrente è stato espulso verso la Macedonia del Nord. La Corte, dal canto suo, ha rilevato che l'espulsione era avvenuta senza che fosse stato consentito l'accesso alla procedura di protezione internazionale, né erano state verificate l'effettiva sicurezza della destinazione, l'esistenza di un sistema d'asilo adeguato o il rischio di respingimento a catena e di trattamenti vietati dall'articolo 3. Tali omissioni configurano, pertanto, una violazione del profilo procedurale della disposizione richiamata. In secondo luogo, posto che il ricorrente sosteneva di non aver potuto impugnare il provvedimento, poiché questo non era stato notificato al suo legale e, in ogni caso, non esisteva un ricorso interno dotato di effetto sospensivo automatico, la Corte ha accolto le doglianze relative alla violazione dell'articolo 13, letto in combinato disposto con l'articolo 3 della Convenzione.



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. CROATIA

(Application no. 38776/21)

JUDGMENT
STRASBOURG
17 July 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić, *President*,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs,
Anna Adamska-Gallant, *judges*,
and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 38776/21) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Turkish national, Mr XXX (“the applicant”), on 24 July 2021;

the decision to give notice to the Croatian Government (“the Government”) of the complaints under Articles 3, 13 and 34 of the Convention concerning the Croatian authorities’ alleged repeated refusals to allow the applicant access to the international protection procedure, the applicant’s allegedly not having an effective domestic remedy to challenge his removal from Croatia and the authorities’ allegedly denying the applicant access to his lawyer, and to declare the remainder of the application inadmissible;

the decision not to give notice of the present application to the Republic of Türkiye having regard to the Court’s considerations in the case of *I v. Sweden* (no. 61204/09, §§ 40-46, 5 September 2013);

the decision not to have the applicant’s name disclosed (Rule 47 § 4 of the Rules of Court);

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the Centre for Peace Studies, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 24 June 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a complaint under Article 3 of the Convention about the Croatian authorities' alleged repeated refusals to allow the applicant, a Turkish national of Kurdish ethnicity, access to the international protection procedure. It also concerns a complaint regarding the applicant's allegedly not having an effective domestic remedy to challenge his removal from Croatia (Article 13 read in conjunction with Article 3), and the Croatian authorities' allegedly denying the applicant access to his lawyer (Article 34 of the Convention).

THE FACTS

2. The applicant was born in "Omissis". He was initially represented before the Court by Ms S. Bezbradica Jelavić, and then by Mr I. Jelavić, a lawyer practising in Zagreb.

3. The applicant's current place of residence is unknown, but he maintains contact with his lawyer for the purpose of pursuing the present case before the Court. The last letter confirming contact between the applicant and his lawyer and the applicant's wish to pursue the case was received by the Court on 14 February 2025.

4. The Government were represented by their Agent, Ms Š. Stažnik.

5. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

6. The applicant is a Turkish national of Kurdish ethnicity. He submitted that he had been tortured and prosecuted numerous times in Türkiye owing to his political activism, and that in 2019 he had fled that country.

II. The applicant's entry TO croatia and his placement in an immigration centre

7. On 16 February 2021 the applicant and four other Turkish nationals clandestinely entered Croatia from Serbia. They took a taxi from the border to Zagreb, where they spent the night in an abandoned house.

8. On 17 February 2021 the applicant was arrested at the Zagreb Bus Station and brought to a police station. According to the report on his arrest, the applicant, in the presence of an interpreter, waived his right to a lawyer and said that he did not want his family or the Turkish Embassy in Croatia to be informed of his arrest. The police informed the Turkish Embassy of the applicant's arrest and notified the applicant thereof.

9. On 17 February 2021 the Illegal Migration Service of the Zagreb Police (*Ministarstvo unutarnjih poslova Republike Hrvatske, Policijska uprava zagrebačka, Sektor za granicu, Služba za nezakonite migracije*) issued a decision ordering that the applicant be expelled from Croatia (*rješenje o protjerivanju*) and banning him from re-entering the European Economic Area for a period of one year.

The decision noted that the applicant had already been prohibited from re-entering the European Economic Area by the Greek authorities, that he had entered Croatia illegally and that he had intended to continue his journey to Germany. It specified that the applicant would

be forcefully returned to Türkiye, to a country from which he had entered Croatia or, with his approval, to another third country.

Pursuant to section 193(1) of the Croatian Aliens Act (*Zakon o strancima*, Official Gazette no. 133/2020, as in force at the material time), and section 26(1) of the Croatian Administrative Disputes Act (*Zakon o upravnim sporovima*, Official Gazette nos. 20/2010, 143/2012, 152/2014, 94/2016 and 29/2017, as in force at the material time) no appeal lay against that decision and an action for judicial review, which could have been lodged within 30 days from its receipt, had no automatic suspensive effect.

10. On the same day, 17 February 2021, the applicant was placed in an immigration reception centre in Ježevo (hereinafter “the Ježevo Immigration Centre”) for a period of up to one month on the ground that his removal from Croatia could not be ensured by a less restrictive measure, given that he had no travel document, financial means or place to stay in Croatia, and that he had stated that he would not voluntarily leave the European Economic Area.

III. EVENTS DURING THE APPLICANT’S STAY IN THE JEŽEVO IMMIGRATION CENTRE

11. On 19 February 2021 Police Officer T.P. interviewed the applicant in the Ježevo Immigration Centre with the assistance, via telephone, of an interpreter. According to a written record of that interview, the applicant had been informed of the procedure for seeking international protection in Croatia but had stated that he had no intention of seeking it and that he wished to go to Germany. He had asked the authorities to facilitate his return to Bosnia and Herzegovina or to Serbia and filled in a form in Turkish for the issuing of a travel document.

12. On 2 March 2021 the Turkish Embassy in Croatia issued the applicant a temporary passport valid until 1 April 2021.

13. On 3 March 2021 a lawyer, J.L., who had been hired by the applicant’s family, contacted the Ježevo Immigration Centre and requested permission to visit the applicant. His visit was approved for 5 March 2021 at 2 p.m.

14. On 4 March 2021 the applicant was visited by two advisers to the Croatian Ombudswoman (*Pučka pravobraniteljica Republike Hrvatske*). In the presence of them and the Head of the Ježevo Immigration Centre, and with the assistance of an interpreter via telephone, the applicant expressed an intention to apply for international protection (see the Ombudswoman’s letters, paragraphs 33-40 below).

15. On 5 March 2021 the lawyer J.L. visited the applicant in the Ježevo Immigration Centre. The visit lasted from 2.05 to 2.40 p.m. During the meeting the applicant signed a power of attorney to him. As soon as J.L. left, at 3 p.m. Police Officer T.P. interviewed the applicant (see paragraph 17 below).

16. After his visit to the applicant, at 4.27 p.m. J.L. sent an email to the Ježevo Immigration Centre and to the Ministry of the Interior’s Asylum Department, with the Office of the Ombudswoman in copy. The lawyer reported that the possibility of being removed from

Croatia and returned to Türkiye was causing the applicant great stress and fear for his life, since in Türkiye he had been persecuted on account of his political activities. He further stated that the applicant had informed him that he had been expressing an intention to apply for international protection ever since he had been placed in the Ježevo Immigration Centre but that he had not been allowed to submit an application. The lawyer explained that the applicant's family, and the applicant himself during the visit, had authorised him to seek international protection on the applicant's behalf. He invited the authorities to allow the applicant to submit an application to that effect in the presence of an interpreter for Turkish or Kurdish. He attached a scan of the signed power of attorney to the email. He received no reply.

17. As stated in paragraph 15 above, meanwhile, at 3 p.m. on the same day, Police Officer T.P. interviewed the applicant. According to the Government, the applicant did not ask for his lawyer to be present on that occasion. The applicant, in the presence of an interpreter, stated as follows:

"After being informed about the asylum procedure in Croatia and after learning about the responsibility of Greece to process my asylum request; [and after learning that], if I seek asylum in Croatia, there is a possibility that I [would] be kept in the centre, I consider that it is better for me to accept the offer to voluntarily return to a third country, which I accept and confirm in writing."

The applicant then gave a handwritten statement in Turkish:

"... I want to go to Athens, Greece, peacefully and without pressure, with my personal safety ensured, and that is my request. I want to go to Athens, Greece overland with a bus ticket and that is what I'm asking for ... It is important to me that Türkiye does not touch me. I just want to reach Athens."

18. Still on the same day, at 5:34 p.m., the applicant tested positive for COVID-19. The Government stated that his placement in the Ježevo Immigration Centre had been extended for another month owing to the need for the applicant to self-isolate.

19. On 8 March 2021 J.L. sent an email to Police Officer T.P. stating that the applicant, while contacting his family, had again confirmed that he wished to seek international protection in Croatia. The lawyer asked that the applicant be allowed to submit an application to that effect in the presence of J.L. and an interpreter. He also asked to be given a copy of the expulsion decision issued in respect of his client, stating that he had only been served with the decision on his client's placement in the Ježevo Immigration Centre. He re-attached a copy of the signed power of attorney.

20. On 9 March 2021 Police Officer T.P. replied to J.L. stating that, pursuant to the relevant domestic provisions, every foreigner placed in an immigration centre had the possibility to personally express an intention to seek international protection. He further stated that, for epidemiological reasons, it was not possible to contact persons who were isolating in an immigration centre, and that there was therefore no possibility of interviewing the applicant and verifying the statements in J.L.'s email.

21. On 15 March 2021 J.L. sent another email to Police Officer T.P., stating that the applicant's family had been contacting him daily and conveying the applicant's wish to be allowed to seek international protection in Croatia. The lawyer explained that the applicant had on multiple occasions already expressed an intention to seek protection, including in the presence of the advisers to the Ombudswoman and in his own presence. However, that expressed intention had still not been duly registered. J.L. again emphasised that the applicant had authorised him to seek international protection on his behalf and insisted that the intention be duly registered. He reiterated his request that the applicant be allowed to submit an application for international protection in his presence and the presence of an interpreter. He further repeated his request to be given a copy of the expulsion decision issued against his client and asked to be allowed to visit his client as soon as possible. He received no reply.

22. On 17 March 2021 the applicant signed two documents: the first one, in Croatian, contained information about his right to seek free legal assistance in the return procedure (it was signed by an interpreter), and the second one, in Croatian and Turkish, contained information about seeking international protection.

23. On the same day Officer T.P. took a statement from the applicant in the presence of an interpreter. According to the written record, the applicant waived the right to a lawyer, the right to have his family or another person informed of his situation, the right to contact the Turkish Embassy, the right to free legal aid, and the right to translation, on the basis "that he understood spoken and written Croatian". The applicant then stated that he was aware of the circumstances owing to which his placement in the Ježevo Immigration Centre had been extended and that he had no objections in that regard, and further stated that he did not wish to go back to Türkiye but to a third country if possible. He then gave a handwritten statement in Turkish:

"... I ask the Croatian authorities not to send me to Türkiye under any circumstances... Given that I gave my fingerprints in Greece, I wish to go to Greece via Serbia. Given the possible aggravating circumstances should I institute asylum proceedings in Croatia, I consider that my departure to a third country within the next month is a more favourable solution for me."

24. On 19 March 2021 the applicant's lawyer, J.L., asked Officer T.P. to reply to his email of 15 March 2021 (see paragraph 21 above).

25. On the same day Officer T.P. replied to J.L. that section 33(2) of the Croatian Act on International and Temporary Protection (cited in *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 78, 18 November 2021) clearly stipulated who could seek international protection when and where in Croatia. He added that special epidemiological measures were still in place at the Ježevo Immigration Centre, and that J.L. would be informed when that would no longer be the case.

26. On 23 March 2021 J.L. sent an email to Police Officer T.P., requesting permission to visit his client and stating that the epidemiological measures imposed in the Zagreb area had ended.

27. On 24 March 2021 J.L. sent another email to Officer T.P., stating that the epidemiologist in charge of the Zagreb area had confirmed to him that it would be possible to visit the applicant with adherence to the epidemiological measures, and announced that the epidemiologist would send a letter to the immigration centre on 25 March 2021 to confirm that information. He asked for permission to visit his client on 25 March 2021.

28. On 25 March 2021 at 10.37 a.m. Officer T.P. informed J.L. that the applicant had asked to leave Croatia, that he had been served with a return decision and that earlier that day he had been released from the Ježevo Immigration Centre.

IV. THE applicant's departure from croatia

29. On 24 March 2021 the police served the applicant with a return decision (*rješenje o povratku*), pursuant to which the applicant was obliged to voluntarily leave the European Economic Area within seven days, failing which he would be forcefully removed. That decision was not served on the applicant's lawyer. Pursuant to section 187(1) of the Croatian Aliens Act and section 26(1) of the Croatian Administrative Disputes Act, no appeal lay against that decision and an action for judicial review had no automatic suspensive effect.

30. On 25 March 2021 the applicant was released from the Ježevo Immigration Centre. He was given a bus ticket and fifty euros to cover the transit costs and boarded a bus to Skopje (North Macedonia). The applicant disembarked in Serbia.

31. According to the Government, the applicant left Croatia voluntarily and without a police escort.

32. The applicant submitted that the police officers had told him that were he to seek international protection in Croatia he would spend a year in prison, thereby retraumatizing him after he had already been tortured and prosecuted in Türkiye, and that they had effectively forced him to leave Croatia by issuing a return decision and asking him to sign it in the absence of his lawyer and the Croatian Ombudswoman. The applicant also submitted that a police officer wearing civilian clothes had escorted him the entire time from when he had left the Ježevo Immigration Centre until the moment the bus from Zagreb had reached the border with Serbia.

V. croatian Ombudswoman's letters

A. Letter of 8 July 2021

33. In a letter of 8 July 2021 sent to Ms S. Bezbradica Jelavić, the lawyer who initially represented the applicant before the Court, the Croatian Ombudswoman gave her account of the events concerning the applicant.

34. She submitted that on 4 March 2021 her advisers had interviewed the applicant in the Centre with the assistance, via telephone, of an interpreter (see paragraph 14 above). During the interview, the applicant had stated that he "would rather kill himself than return to Türkiye" where, as a political activist, he would be killed. He had stated that he wished to apply for

asylum in Croatia, a wish which he had repeated in the presence of the Head of the Centre, who had replied that he would organise the official registration of the applicant's expressed intention in the presence of an interpreter.

35. On the same day the Ombudswoman had enquired with the Ježevó Immigration Centre whether the applicant's intention to seek protection had been registered. The Centre had replied that the applicant had been informed of the procedure but had not expressed an intention to seek protection.

36. On 15 March 2021 the Ombudswoman had invited the Ministry of the Interior to inform her within two days about the measures taken with a view to allowing the applicant to contact his lawyer and to serving the lawyer with the documents he had requested.

37. On 16 March 2021 the Ministry of the Interior had replied that the applicant had not expressed an intention to seek international protection but rather a wish to return to Greece and that, upon his recovery from COVID-19, the applicant would be able to express himself again on the possibility of seeking protection in Croatia, of which his lawyer would be notified. The Ministry also stated that, owing to epidemiological measures, the Ježevó Immigration Centre had been closed for all visits and that it was impossible to facilitate access to video-conferencing equipment for the applicant in conditions of strict isolation.

38. On 31 March 2021 the Ombudswoman had written another letter to the Ministry of the Interior, reiterating that the applicant had expressly stated that he wished to seek asylum in Croatia and that the police officers had been required to immediately institute the relevant procedures.

39. On 7 April 2021 the Ministry of the Interior had replied that the applicant had on two occasions confirmed in writing, in the presence of an interpreter, that he did not wish to seek asylum and that he wished to return to Greece. Registering an intention to seek protection against the will of a person would have violated national and international law. Had the applicant really wished to seek international protection, he could have done so upon being released from the Ježevó Immigration Centre, either personally or through his lawyer.

B. Letter of 22 July 2022

40. In a letter of 22 July 2022 sent to Ms S. Bezbradica Jelavić, the Croatian Ombudswoman gave a more detailed account of her advisers' visit to the applicant on 4 March 2021. She explained that, during the interview with her two advisers, the applicant had stated that "he would rather kill himself than return to Türkiye" because there he would be killed as a political activist, and he had stated that he wished to seek asylum in Croatia. The advisers had then invited the Head of the Ježevó Immigration Centre to join the meeting so that he could confirm that statement and to ensure the registration of the applicant's intention to seek international protection. Upon the arrival of the Head of the Centre, the applicant had again expressed an intention to seek international protection and had stated that he would be murdered as a political activist if returned to Türkiye. Upon the advisers' query to the Head of the Centre as to

when the relevant procedure would follow, the Head of the Centre had replied that he would attend to the matter without delay.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. domestic law and PRACTICE

41. The relevant provisions of the Constitutional Court Act (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette nos. 99/1999 and 29/2002), read as follows:

Section 62

“(1) Anyone may lodge a constitutional complaint with the Constitutional Court if he or she considers that a decision of a State authority, local or regional government, or a legal person invested with public authority, on his or her rights or obligations, or as regards a suspicion or accusation concerning a criminal offence, has violated his or her human rights or fundamental freedoms ... guaranteed by the Constitution (‘constitutional right[s]’) ...

(2) If another legal remedy is available for the violation of the constitutional right(s) [complained of], a constitutional complaint may be lodged only after that remedy has been used.

(3) In matters in which an administrative dispute ... is permitted, the legal remedy is exhausted after a decision has been made on those legal remedies.”

Section 63

“(1) The Constitutional Court shall examine a constitutional complaint even before all legal remedies have been exhausted if the relevant court has failed to decide within a reasonable time on the rights or obligations of a party [to the proceedings], or as regards a suspicion or accusation of a criminal offence, or if the contested decision grossly violates constitutional rights and it is completely clear that the complainant will face serious and irreparable consequences if Constitutional Court proceedings are not instituted.

....”

Section 67

“(1) A constitutional complaint normally does not prevent the enforcement of the contested act.

(2) At the proposal of the complainant, the Constitutional Court may postpone enforcement [of the contested act] until it decides on the constitutional complaint, if enforcement would cause the complainant damage which could hardly be repaired, and the postponement is not contrary to the public interest and would not cause greater damage to anyone else.”

42. The relevant provisions of the Croatian International and Temporary Protection Act (*Zakon o međunarodnoj i privremenoj zaštiti*, Official Gazette nos. 70/2015 and 127/2017, as in force at the material time) are cited in *M.H. and Others v. Croatia* (cited above, § 78).

43. The Government relied on the following decisions of the Constitutional Court in support of their argument that an application to the Constitutional Court for an interim measure staying the enforcement of an expulsion decision was an effective domestic remedy for the applicant's complaint under Article 3 of the Convention (see paragraph 68 below):

Constitutional Court decision no. U-IIIB-5954/2021 of 28 April 2022, in which that court had granted a complainant's request of 29 October 2021 and stayed the enforcement of a removal decision issued against the complainant, pending the duration of the proceedings before the Constitutional Court; and

Constitutional Court decision no. U-III-5963/2020 of 1 April 2021, in which that court had granted a complainant's request of 14 December 2020 and stayed the enforcement of a decision rejecting the complainant's international protection application and ordering him to leave the European Economic Area, pending the duration of the proceedings before the Constitutional Court.

The Government also referred to Constitutional Court decision no. U-IIIB-5751/2020 of 21 January 2021, in which that court had dismissed a complainant's constitutional complaint lodged under section 63 of the Constitutional Court Act against an expulsion decision in respect of which an administrative action lodged by the complainant had still been pending at the time (see paragraph 41 above). In particular, the Constitutional Court had found that it had not been established that a gross violation of the complainant's rights had occurred or that he would face serious and irreparable consequences if the constitutional court proceedings were not instituted.

44. In support of their argument that an (ordinary) constitutional complaint was an effective domestic remedy for the applicant's complaint under Article 3 of the Convention (see paragraph 70 below), the Government relied on Constitutional Court decisions nos. U-III-557/2019 of 11 September 2019; U-III-6958/2014 of 27 February 2018; U-III-4865/2018, U-III-837/2019 and U-III-926/2019 of 4 March 2021, and U-III-1397/2022 of 20 April 2022, in which the Constitutional Court had examined on the merits constitutional complaints lodged against administrative-court judgments upholding decisions by the Ministry of the Interior to reject the complainants' applications for asylum or international protection and/or ordering their expulsion from Croatia.

II. CPT REPORT on its ad hoc visit to Croatia from 10 to 14 August 2020

45. During its ad hoc visit to Croatia from 10 to 14 August 2020, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") looked into, *inter alia*, the procedures applied to migrants in the context of their removal from Croatia as well as the effectiveness of oversight and accountability mechanisms in cases of alleged police misconduct during such operations. A visit to the Ježevo Immigration Centre was also carried out. The relevant parts of the report read as follows (footnotes omitted):

"8. Ježevo Reception Centre for Foreigners

...

55. The Committee attaches great importance in the context of immigration detention to the operation of fundamental safeguards as from the very outset of detention. In this context, all detained persons at Ježevo Reception Centre were receiving and countersigning an information sheet upon their admission. Further, copies of the Rulebook on House Rules in English and French languages were displayed on the board in the communal room and detained persons appeared to be acquainted with its content. A three-minute free telephone call was offered to all newly arrived detainees in order to inform their respective families or consular authorities.

56. Personal files of migrants and asylum seekers were duly kept, and detention orders appeared to be adequately reasoned. Further, the periodic judicial review of the detention orders by the administrative court on the extension or suspension of the same appeared to be timely. That said, all detention orders (including their renewals) were only drafted in the Croatian language and the persons with whom the delegation met were not aware of their content, including the length and dates of the extension period as well as the possibility to make a complaint to the Administrative Court. Greater efforts need to be made to ensure that each immigration detainee fully understands the court decision, which should not be the task of the custodial officers but rather the Centre's lawyer using telephone interpretation services as required.

The CPT recommends that more formal and reliable systems should be put in place to ensure that all detained persons fully understand the reasons for their detention and the possibilities to challenge such a decision as well as any decisions on extending the period of detention.

57. Asylum seekers in detention are entitled to free legal aid and, at the time of the visit, a legal representation project implemented by the Croatian Law Centre was in place to provide legal advice and representation to detainees. On the other hand, access to legal aid for migrants is regulated by the 2018 Rulebook on Free Legal Aid in Return Proceedings (see paragraph 34) which distinguishes between free legal representation (i.e. for foreign nationals who have at least one year of uninterrupted residence status in Croatia) and free legal advice. Detained migrants who request legal advice receive a certified list of accredited lawyers whom they may consult by telephone if they want to file court proceedings challenging their detention decision.

In practice, many of the detained persons met at Ježevo Reception Centre complained about difficulties in obtaining proper legal advice, given that it took place over the phone without any interpretation. Further, whenever a detained person did have a lawyer to represent him or her, the lawyer was hampered in accessing the Centre due to the administrative obstacles for receiving visitors. In light of the five-day statutory deadline to challenge a detention order, lawyers should have the right to visit a client without any delay.

The CPT recommends that the relevant legislation be amended so as to ensure that all persons held under aliens' legislation ... have an effective right of access to a lawyer (including adequate interpretation) as from the very outset of their deprivation of liberty and at all stages of the proceedings."

III. Material describing asylum process in North Macedonia

46. In support of their argument that North Macedonia was a safe third country for the applicant (see paragraph 58 below), the Government relied on the United States Department of State's Report on Human Rights Practices in North Macedonia in 2021, the relevant parts of which read:

"Access to Asylum:

...

[The Office of the United Nations High Commissioner for Refugees (the UNHCR)] assessed asylum processes continued to improve, and previous concerns regarding a practice of arbitrarily denying access to asylum seekers had been addressed. [The] UNHCR reported, however, that the mechanism for adjudicating refugee status failed to provide basic procedural guarantees and proper determinations as prescribed in the law.

As of June 30, a total of 30 persons had applied for asylum. No one was granted international protection during the year, and no one has been granted refugee status since 2016. All asylum requests registered in the country were processed through the Reception Center for Foreigners.

...

There were several disputes concerning the application of some safeguards, including at the judicial level. For instance, although legally permissible, in practice the court refused all hearing requests made by asylum seekers. Likewise, the administrative courts continued to avoid ruling on the merits of asylum applications, despite having the requisite authority. Instead, they routinely returned cases to the Ministry of Interior for further review, which resulted in the ministry endorsing its initial decisions.

The practice of returning migrants apprehended in North Macedonia to the country from which they entered North Macedonia continued. Authorities resumed proper screening and registration of all migrants as of end of January after the process had been put on hold in March 2020 due to COVID measures.

[The] UNHCR and partner organizations had limited access to migrants accommodated in the two temporary transit centers close to the border. Protection information was not always made available to individuals in the centers.

...

Safe Country of Origin/Transit: The country adopted a list of safe countries of origin, comprising all EU member states, neighboring countries, and several other countries, including Bosnia and Herzegovina, Montenegro, [Türkiye], Russia, Egypt, Ethiopia, the United Arab Emirates, and Nepal. The concept has yet to be applied.

Abuse of Migrants and Refugees:

...

According to the ombudsman, the government placing migrants at the Vinojug Transit Center without issuing individual written detention decisions was a problem in that it limited the freedom of movement of those persons without adequately documenting each case. The ombudsman maintained that most migrants placed in the transit center were simply kept there to ensure their testimonies in the trials against their smugglers, based on requests and oral orders from case prosecutors.

...

Freedom of Movement: According to [the] UNHCR, authorities continued to detain individuals intercepted while traveling through the country without documentation. The grounds for detention decisions were arbitrary. As a rule individuals are supposed to be detained only until their identity can be established. They were routinely detained after identification, however, to prevent them from departing the country prior to providing legal testimony against their smugglers.

...

Temporary Protection: The government could provide subsidiary protection to individuals who may not qualify as refugees. As of September 30, one person was granted subsidiary protection during the year.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

47. The applicant complained that the Croatian authorities’ repeated refusals to allow him access to the international protection procedure had been in breach of their procedural obligation under Article 3 of the Convention, and further complained that his treatment by the Croatian authorities had amounted to degrading treatment.

48. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

49. The Court observes that the applicant’s arguments focus on two different aspects of the alleged violation of Article 3 of the Convention: firstly, the risk that he would suffer torture if sent back to Türkiye and the fact that, despite that risk, the Croatian authorities sent him to North Macedonia without verifying whether North Macedonia could be considered a safe third country; and, secondly, his treatment by the Croatian authorities. With respect to the latter aspect of this complaint, the applicant argued that the whole situation – the fact that his requests for international protection had been bluntly disregarded and the fact that the authorities had prevented contact between him and his lawyer – had caused him feelings of anxiety and insecurity regarding his legal situation and constituted degrading treatment (compare *M.K. and Others v. Poland*, nos. 40503/17 and 2 others, §§ 150-51, 23 July 2020, and *D.A. and Others v. Poland*, no. 51246/17, §§ 43-44, 8 July 2021).

A. Alleged violation of Article 3 of the Convention on account of the applicant being denied access to the international protection procedure

1. *Admissibility*

(a) The parties' submissions

(i) *The Government*

(α) Applicability of Article 3 of the Convention

50. The Government argued that Article 3 of the Convention was not applicable in the case because: (i) the applicant had never explained to the Croatian authorities why he was afraid of returning to his country of origin; (ii) he had not indicated to the Croatian authorities any risk of *refoulement* in North Macedonia, and (iii) he had voluntarily left Croatia for North Macedonia.

51. The Government contended that States did not have an absolute obligation to provide asylum to “everyone within their jurisdiction”. Instead, that obligation arose only where substantial grounds had been shown for believing that the person concerned faced a real risk of being subjected to torture or to inhuman or degrading treatment or punishment in a receiving country.

52. In the present case, after arriving at the Ježevo Immigration Centre, the applicant had been informed about the rights and obligations of international protection seekers under section 52 of the Croatian Act on International and Temporary Protection (cited in *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, § 78, 18 November 2021). More specifically, the applicant had been informed that his fingerprints would be taken for the European Dactyloscopy database, EURODAC, where they would be stored for ten years, and that he would be returned to Croatia if he were to leave that country before the end of the international protection procedure. The applicant had clearly interpreted the latter as an “aggravating circumstance in the asylum procedure”. Therefore, he had never officially, either independently or through a lawyer, lodged an application for international protection.

53. The applicant had obviously never intended to apply for international protection in Croatia, but in some other European Union member State. He had expressed his “intention” to apply for international protection to the employees of the Croatian Ombudswoman’s Office not to actually institute the proceedings, but merely to prevent his possible forcible removal from Croatia. That was also evident from his statements given in the presence of an interpreter, in which he had never asked to have his application for international protection recorded.

54. The Government further submitted that the applicant had never explained why he was afraid of returning to his country of origin, nor given any specifics of his fears in that regard. The fact that the applicant was a member of the Kurdish ethnic minority was not in itself sufficient to trigger the State’s procedural obligation under Article 3 of the Convention to assess the risks he would face if removed to another country.

55. Furthermore, the applicant had twice asked to leave Croatia for Greece or North Macedonia and had at no time expressed any fears about being returned to one of those countries.

56. Accordingly, given the fact that the applicant had not clarified his fears to the Croatian authorities in any way, the obligation to carry out an assessment in accordance with Article 3 of the Convention had not been triggered in the applicant's case.

57. In any event, the Croatian authorities had established that the applicant had been issued with a re-entry ban in Greece, meaning that the applicant could have been at risk of *refoulement* if allowed to go to that country. The Croatian authorities had thus assessed that, out of the two countries listed by the applicant as his preferred destinations, North Macedonia was a safe country for him. Therefore, the Croatian authorities, respecting the applicant's wishes as to his destination country, had adequately and sufficiently examined the existence of a risk of the applicant being subjected to *refoulement*.

58. The Government submitted that North Macedonia was a safe third country for the applicant. The US State Department had confirmed that in 2021 the situation in North Macedonia regarding the availability of the asylum procedure had significantly improved (see paragraph 46 above). Having also regard to the fact that the applicant had voluntarily left Croatia for North Macedonia and that he had had a valid travel document, the applicant could have legally entered North Macedonia and applied for international protection there. The possibility of seeking and being granted international protection at official border crossing points of North Macedonia had already been confirmed by the Court in *A.A. and Others v. North Macedonia* (nos. 55798/16 and 4 others, 5 April 2022).

(β) Victim status

59. Should the Court deem that Article 3 of the Convention was applicable in the case, the Government contended that the applicant could not claim to be a victim of the alleged violation of the Convention having regard to the facts that: (i) the expulsion decision against him had not been enforced; (ii) the applicant had himself decided to leave Croatia and go to North Macedonia; and (iii) he had voluntarily left the territory of Croatia.

60. In particular, the Government submitted that, under the Court's case-law, applicants could not claim to be victims of a violation with respect to a deportation or expulsion measure which had not been enforced, either because it had been revoked or had otherwise ceased to have effect, or because national law provided them remedies guaranteeing judicial control of the measure (they referred to *I. v. the Netherlands* (dec.), no. 24147/11, § 42, 10 July 2012).

61. In that regard, the Government submitted that the applicant's departure from Croatia had been entirely voluntary. The applicant had expressed his wish to leave Croatia "by land", which had been granted. The applicant had thus been issued with a return decision on 24 March 2021. The return decision had revoked the expulsion decision issued against him on 17 February 2021. There had been no need to proceed to the applicant's forceful removal because the applicant had left Croatia voluntarily on 25 March 2021. He had taken an ordinary bus from Zagreb to

Skopje together with other passengers. There had been no need for him to be escorted to the border by the police.

62. Contrary to the applicant's arguments, he had not been forced by the Croatian authorities to go to the Turkish embassy and obtain a travel document; he had filled in the necessary form in Turkish by himself (see paragraphs 11-12 above). Moreover, it had been in his interest to obtain a travel document so that he could legally travel from one country to another through official border crossings.

63. Further to this, it was completely illusory to claim that the applicant had not voluntarily signed "the papers which had been served on him by the police officers". During his stay in Croatia, the applicant had on several occasions personally written and signed statements in Turkish confirming that he wished to go to Greece.

64. The Government also submitted that the applicant had at no time been prevented from contacting his lawyer, other than during the period when he had been ill with COVID-19. In accordance with the epidemiological measures in force in Croatia at the time, visits to the immigration centre had not been allowed for the duration of his illness.

65. Furthermore, the allegations that the applicant was unable to institute domestic proceedings were entirely untrue. After the applicant had personally met his lawyer, J.L., on 5 March 2021 and had signed the power of attorney, neither the applicant nor his lawyer (using the power of attorney) had instituted any proceedings or made use of the remedies available against the decisions issued up to that point. The consequences of such conduct could not be attributed to the respondent State.

(γ) Exhaustion of domestic remedies

66. The Government lastly objected that the applicant had failed to use the available and effective domestic remedies.

67. Firstly, the applicant could have lodged an administrative action against the expulsion decision with the competent administrative court.

68. It was true that bringing an administrative action would not have had a suspensive effect. However, the applicant could have submitted a request for an interim measure to the Constitutional Court and asked that court to stay the enforcement of the expulsion decision, which would have *de facto* created a suspensive effect. The effectiveness of the latter remedy was attested by the well-established case-law of the Constitutional Court, which examined in detail the specific circumstances of each case and, where appropriate, granted requests for interim measures and stayed the enforcement of expulsion decisions (see paragraph 43 above).

69. The Government submitted that, during his stay in Croatia, the applicant had been represented by a qualified lawyer of his own choosing, with whom he had been in contact and with whom he had also met in person. The applicant could have given his chosen lawyer the expulsion decision when meeting him in person on 5 March 2021 so that the lawyer could institute an administrative dispute and/or request a stay of the enforcement of the expulsion

decision before the Constitutional Court. The lawyer's failure to protect the applicant's rights could not be attributed to the respondent State.

70. Lastly, the Government contended that an (ordinary) constitutional complaint was also an effective domestic remedy, as proved by that court's case-law cited in paragraph 44 above.

(ii) The applicant

(α) Applicability of Article 3 of the Convention

71. In response to the arguments advanced by the Government, the applicant submitted that: (i) he had repeatedly and clearly expressed to the Croatian authorities his intention to seek international protection, specifying the grounds for doing so; (ii) the Croatian authorities had been responsible for his removal from Croatia because his departure from that country had not been voluntary; and (iii) prior to his removal, the Croatian authorities had not carried out any risk assessment.

72. The applicant submitted that he had on several occasions expressed his intention to seek international protection directly to officials of the Ježevo Immigration Centre. On one occasion he had also expressed it in the presence of the Croatian Ombudswoman's representatives and the Head of the Ježevo Immigration Centre, and on several occasions he had expressed it through his lawyer, J.L.

73. Specifically, the applicant had repeatedly told the Croatian authorities that he had been persecuted on political grounds in his country of origin, subjected to severe physical and psychological violence and a series of politically motivated arrests and court proceedings. Also, he had explicitly stated that he would be killed if he were to be returned to his country of origin.

74. The applicant's claims about the reasons for which he had sought international protection had been easily verifiable for the authorities – the position of Kurds in Türkiye was well known, recordings of the applicant's political speeches were available on the Internet, and the applicant's lawyer had been in possession of the relevant documentation, which he could have presented in international protection proceedings.

75. However, the authorities had denied the applicant access to the relevant procedure and had removed him to North Macedonia, without conducting any assessment as to whether the applicant would have access to a functioning asylum system in that country.

(β) Victim status

76. The applicant contended that the authorities had forced him to leave Croatia in a such way that they could subsequently falsely state that he had done so voluntarily. The applicant had never stated that he wished to go to North Macedonia, Serbia or Greece. Even if he had expressed such a wish, it had been because of the lies, manipulation and intimidation he had been subjected to, and owing to his having been isolated from his lawyer.

77. On the latter point, the applicant submitted that his lawyer had visited him on 5 March 2021 and had given him all the relevant information about the international protection procedure. However, as soon as his lawyer had left, the authorities had taken the applicant for interrogation, during which he had accepted a voluntary return to a third country because the police officers had intimidated him with lies that he would be kept in prison for a year and had told him that he would not have access to his lawyer. Such lies and psychological pressure had re-traumatised the applicant in view of the persecution he had experienced in Türkiye and had broken his resistance.

78. The applicant further submitted that he had been placed in COVID-19 isolation after being visited by his lawyer on 5 March 2021 and had been kept in isolation thereafter until 25 March 2021, when he had been expelled from Croatia. The authorities had ignored his lawyer's repeated requests to be allowed to meet him: they had not responded to his emails or had responded by giving very generic, vague or arbitrary interpretations of the relevant provisions and epidemiological measures, despite the warnings of the Croatian Ombudswoman in that connection, which the authorities had likewise disregarded.

79. Furthermore, the authorities had never notified the lawyer that they had interrogated the applicant as to his wish to seek international protection. When the authorities had learnt that the competent epidemiologist would officially inform them that a visit to the applicant was possible, the authorities had speedily removed the applicant from Croatia before that could happen. The entire situation showed that the applicant's departure from Croatia, without his lawyer or the Ombudswoman being informed, had been effected via coercion.

80. The applicant additionally submitted that he had not voluntarily gone to the Turkish embassy to obtain a travel document but had been forcibly brought there by police officers (see paragraphs 11-12 above).

81. He further submitted that he had not voluntarily boarded the bus to Skopje, either. Specifically, on 24 March 2021 a binding decision had been issued ordering the applicant to leave Croatian territory. The police had forced him to board the bus to Skopje by means of lies, intimidation and manipulation. The applicant had felt threatened and had thought he risked long-term detention, so he had given in to the pressure and had left, being escorted in the bus to the State border by a plainclothes police officer.

(γ) Exhaustion of domestic remedies

82. The applicant contended that he had not been able to make use of any legal remedy to challenge the decision to remove him from the country.

83. In particular, the applicant's lawyer had never been given the decision on the applicant's expulsion, nor the return decision issued in respect of the applicant. Moreover, at the time when the return decision was being enforced, the lawyer had been denied any contact with the applicant for nineteen days, and the removal had been carried out without the lawyer being present or there having been any prior notification. Hence, the mere fact that none of the decisions had been served on the applicant's lawyer had made it impossible to pursue a legal

remedy. In any event, no legal remedy with an automatic suspensive effect had been available to challenge the applicant's removal.

84. The applicant further explained that during his initial conversation with the lawyer, the denial of access to the international protection procedure had seemed to be the most obvious and important issue to be addressed, so the lawyer had drafted a power of attorney authorising him to act for the applicant in the international protection proceedings. Trusting that the police officers would allow further contact with his client, the lawyer had intended to collect the power of attorney – which had concerned any administrative proceedings and applications to the Constitutional Court or to the Court – at a second meeting with his client, which he had ultimately never been allowed to have.

(b) The third-party intervener

85. The President of the Section granted leave to two non-governmental organisations to submit their comments in the case: the Centre for Peace Studies, and the Border Violence Monitoring Network.

86. The Border Violence Monitoring Network did not submit any comments.

87. The Centre for Peace Studies submitted that migrants detained in immigration centres frequently reported not being informed of their rights or of how to access legal aid, a situation that was further compounded by language barriers. In many cases, the intention of individuals to seek asylum was being overlooked, leading to fears of their being forcibly returned to countries where their lives were endangered. For instance, in 2022, the Centre for Peace Studies had received complaints from five detainees in the Ježevc Immigration Centre who had expressed their intention to seek asylum but had been uncertain about the status of their applications.

(c) The Court's assessment

88. Having regard to the interrelated arguments submitted by the Government in support of their objections that the complaint under Article 3 of the Convention was inadmissible (see paragraphs 50-70 above), the Court finds it appropriate to examine them as follows.

(i) Whether Croatia's duties under Article 3 of the Convention were triggered

89. The Court must first decide whether the applicant brought his concerns as to the risk of his direct or indirect return to Türkiye to the attention of the Croatian authorities and thus triggered Croatia's duty under Article 3 not to remove an asylum seeker if such action would expose him or her, directly or indirectly, to treatment contrary to that provision (compare *O.M. and D.S. v. Ukraine*, no. 18603/12, § 85, 15 September 2022).

90. In that connection the Court notes that there is undisputed material demonstrating that the Croatian authorities, including the officials of the Ježevc Immigration Centre where the applicant was being detained, were aware of the applicant's wish to seek international protection in Croatia.

91. In particular, the Court notes that the applicant expressed his intention to seek international protection in the presence of the Croatian Ombudswoman's representatives and the Head of the Ježevo Immigration Centre (see paragraph 14 above). On several occasions the applicant also expressed it through his lawyer, J.L., who sent multiple emails to that effect to the Ježevo Immigration Centre and to the Ministry of the Interior's Asylum Department (see paragraphs 16, 19, 21 and 24 above).

92. Furthermore, the Court notes that the applicant, both personally and through his lawyer, told the Croatian authorities that he had been politically persecuted in his country of origin and that, if he were to be returned there, he would be killed (see paragraphs 16, 33 and 40 above).

93. In the light of the foregoing, the Court finds that the claims that the applicant risked ill-treatment in Türkiye were presented to the Croatian authorities to the extent necessary to trigger Croatia's duties in that connection under Article 3 of the Convention.

94. As to the Government's argument that the applicant had not actually wished to seek international protection in Croatia but in another European Union member State, for which reason he had only "expressed an intention" to apply for international protection without ever having asked the officials to register such a request (see paragraph 53 above), the Court reiterates that neither the domestic legal provisions (see paragraph 42 above) nor this Court's case-law provide for a particular form in which the wish to apply for asylum should be expressed (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 180, 13 February 2020).

(ii) Whether the applicant's departure from Croatia was voluntary and whether he waived his rights

95. The Court considers that the Government's arguments concerning the weight to be given to the applicant's alleged wish to go to Greece and his consenting to leave Croatia for North Macedonia do not take into account the facts that he was deprived of his liberty, denied access to his lawyer and that the Croatian authorities apparently actively dissuaded or at least discouraged him from seeking international protection in Croatia (compare *M.S. v. Belgium*, no. 50012/08, § 124, 31 January 2012).

96. In particular, the Court notes that, after the lawyer's first and the only visit to the applicant in the immigration centre on 5 March 2021, the authorities denied the lawyer any contact with the applicant until after his departure from Croatia on 25 March 2021. In the Court's view, the following facts speak in favour of a conclusion that the denial of contact was aimed at preventing the lawyer from assisting the applicant with his legal situation in Croatia:

(i) the lawyer was not allowed to contact the applicant on the basis of epidemiological measures (the applicant was in COVID-19 isolation from 5 March in the afternoon until his departure from Croatia on 25 March 2021, see paragraph 18 above), even by means of remote communication (see paragraphs 36 and 37 above), whereas at the same time he was being personally interviewed by Police Officer T.P. and an interpreter (see paragraphs 22 and 23 above);

(ii) the authorities conducted interviews with the applicant regarding his allegedly voluntary departure from Croatia without his lawyer being notified thereof (see paragraphs 17 and 23 above);

(iii) the authorities ignored the lawyer's pleadings to allow his client access to the relevant procedure and to serve the lawyer with the expulsion decision so that he could challenge it (see paragraphs 16, 19, 21, 24 and 26 above), despite warnings from the Croatian Ombudswoman, and

(iv) the authorities subjected the applicant to a return decision requiring him to voluntarily leave the European Economic Area within seven days, failing which he would be forcefully removed (see paragraph 29 above), without his lawyer being present or having at least been informed in advance of the applicant's planned departure from Croatia (paragraphs 28 and 32 above).

97. The Court also notes that the authorities warned the applicant of being "kept in the [immigration] centre" and of "the possible aggravating circumstances" should he institute asylum proceedings in Croatia (see paragraphs 17 and 23 above).

98. Hence, although the documents which the applicant signed stated that it was his wish to leave Croatia and go to Greece by land, the Court concludes from the facts of the case that the authorities took advantage of the applicant's vulnerable situation resulting from his deprivation of liberty, lack of ability to contact his lawyer and the fact that he had fled his country to induce him to consent to a so-called voluntary return.

99. In the light of those circumstances, the Court sees no reason to doubt that the applicant's departure was not voluntary.

100. Accordingly, even assuming that the rights guaranteed by Article 3 of the Convention could be waived, the Court is of the opinion that the conditions under which consent could be freely given (see, in respect of Article 6 of the Convention, *Murtazaliyeva v. Russia* [GC], no. 36658/05, § 117, 18 December 2018), were not present in the circumstances of the instant case (compare *M.S. v. Belgium*, cited above, § 123, and *M.A. v. Belgium*, no. 19656/18, § 61, 27 October 2020).

101. Since the applicant's removal from Croatia was not voluntary and he cannot be considered to have validly renounced the protection guaranteed by Article 3 of the Convention, the applicant's removal from Croatia must be considered as a forced removal engaging the responsibility of the respondent State (compare *M.S. v. Belgium*, cited above, §§ 124-25).

(iii) Whether the applicant had an effective domestic remedy at his disposal

102. The Court firstly notes that, having regard to the fact that the applicant is a Turkish national of Kurdish ethnicity with apparently no knowledge of the Croatian language or legal system (on each occasion he was heard with the assistance of an interpreter, and only the written record of his statement of 17 March 2021 to Officer T.P., which was likewise given in the presence of an interpreter, stated that the applicant had waived the right to translation on the

basis “that he understood spoken and written Croatian”, see paragraph 23 above), it is hard to imagine how he could have pursued any legal remedy against his removal from Croatia without the assistance of a lawyer (compare, *mutatis mutandis*, *M.H. and Others v. Croatia*, cited above, § 162).

103. The Court next notes that the applicant’s lawyer had neither been given the removal decisions (the expulsion decision of 17 February 2021 and the return decision of 24 March 2021) nor – with the exception of one visit on 5 March 2021 - allowed contact with the applicant, and had been informed about the applicant’s departure from the country only after it had already occurred (see paragraphs 16-28 above). The Court thus has serious doubts that the lawyer in such circumstances could have effectively submitted any legal challenge against the decision on the applicant’s removal.

104. In any event, the Court notes that none of the remedies against the applicant’s removal referred to by the Government (see paragraphs 67-70 above) had an automatic suspensive effect. In particular, the Court has held in numerous previous cases that where an applicant seeks to prevent his or her removal from a Contracting State, alleging that such a removal would place him or her at risk of treatment contrary to Article 3 of the Convention, a remedy will only be effective if it has automatic suspensive effect (see *De Souza Ribeiro v. France* [GC], no. 22689/07, § 82, ECHR 2012, and *D.A. and Others v. Poland*, cited above, § 38, and the references cited therein).

105. In the present case the applicant had a theoretical possibility of bringing an action for judicial review against each of the decisions concerning his removal from the country. However, there is no dispute that under Croatian law such actions would not have had a suspensive effect on the removal process (see paragraphs 9, 29, 68 and 83 above). Nor would a request for an interim measure to the Constitutional Court to stay the enforcement of his removal from the country or an ordinary constitutional complaint against the removal decisions (even were the latter to have been allowed given that an action for judicial review had not first been exhausted) have had an automatic suspensive effect (see paragraph 41 above). Specifically, the Court notes that the Constitutional Court decisions referred to by the Government granting stays of enforcement of removal decisions issued against the complainants in those cases were given several months after the requests for stays of enforcement had been lodged by those complainants (see paragraph 43 above).

106. Accordingly, the Court dismisses the Government’s objection concerning the non-exhaustion of domestic remedies.

(iv) Conclusion on admissibility

107. The Court notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

2. *Merits*

(a) The parties' arguments

(i) The applicant

108. The applicant submitted that, in circumstances where he had expressed his intention to seek international protection in Croatia but the authorities had denied him access to the procedure and had instead decided to remove him to North Macedonia, the Croatian authorities had been obliged to thoroughly examine whether there was a functioning asylum system in North Macedonia which would have protected him from being subjected to *refoulement* to Türkiye. That obligation on the respondent State had not depended on the applicant expressing arguments against his being returned to North Macedonia. However, the Croatian authorities had entirely failed to carry out any risk assessment before deciding to remove him to North Macedonia.

109. The applicant pointed out that the Government, in their submissions before the Court, had firstly argued that there was no obligation on the respondent State to carry out a risk assessment and had then argued that this obligation had been properly met by the authorities concluding that Greece could expel the applicant and that therefore North Macedonia was a "safe" country for him (see paragraphs 56-57 above).

110. However, the Government had not presented any facts to show that the decision-making process leading to the qualification of North Macedonia as a safe country for the applicant had included an assessment of the accessibility and effectiveness of the asylum procedure there.

111. As to the Government's attempt to justify the respondent State's actions by citing the US State Department report for North Macedonia, which they submitted concluded that that country was a safe country for asylum seekers in 2021 (see paragraphs 46 and 58 above), the applicant contended that the report in question had actually shown that he would almost certainly be exposed to *refoulement* there.

(ii) The Government

112. The Government made no separate arguments as to the merits of the applicant's complaint. The Court will have regard to their arguments concerning the admissibility of the complaint (see paragraphs 50-70 above).

(b) The Court's assessment

(i) General principles

113. The general principles concerning the removal of asylum-seekers to a third country without an examination of their asylum claims on their merits have been summarised in, among other authorities, *Ilias and Ahmed v. Hungary* ([GC], no. 47287/15, §§ 124-41, 21 November 2019).

114. The Court has, in particular, acknowledged the importance of the principle of *non-refoulement* (see, for example, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 286, ECHR 2011, and *M.A. v. Cyprus*, no. 41872/10, § 133, ECHR 2013 (extracts)). It has reiterated that the

expulsion of an alien by a Contracting State may give rise to an issue under Article 3, and hence engage the responsibility of that State under the Convention, where substantial grounds have been shown for believing that the person in question, if deported, would face a real risk of being subjected to treatment breaching Article 3 in the destination country.

115. The Court has noted that the exact content of the expelling State's duties under the Convention may differ depending on whether it removes applicants to their country of origin or to a third country (see *Ilias and Ahmed*, cited above, § 128). In cases where the authorities choose to remove asylum-seekers to a third country, the Court has stated that this leaves the responsibility of the Contracting State intact with regard to its duty not to deport them if substantial grounds have been shown for believing that such action would expose them, directly (that is to say in that third country) or indirectly (for example, in the country of origin or another country), to treatment contrary to, in particular, Article 3 (see *M.S.S. v. Belgium and Greece*, cited above, §§ 342-43 and 362-68).

116. Consequently, the Court has indicated that where a Contracting State seeks to remove an asylum-seeker to a third country without examining the asylum request on the merits, the main issue before the expelling authorities is whether or not the individual will have access to an adequate asylum procedure in the receiving third country. This is because the removing country acts on the basis that it would be for the receiving third country to examine the asylum request on the merits, if such a request were made to the relevant authorities of that country (see *Ilias and Ahmed*, cited above, § 131).

117. The Court has further clarified that in all cases of removal of an asylum-seeker from a Contracting State to a third intermediary country without examination of the asylum request on the merits, regardless of whether or not the receiving third country is a State Party to the Convention, it is the duty of the removing State to examine thoroughly the question of whether or not there is a real risk of the asylum-seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum-seeker should not be removed to the third country concerned (see *Ilias and Ahmed*, cited above, § 134).

118. In particular, while it is for the persons seeking asylum to rely on and to substantiate their individual circumstances that the national authorities cannot be aware of, those authorities must carry out of their own motion an up-to-date assessment, notably, of the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice. The assessment must be conducted primarily with reference to the facts which were known to the national authorities at the time of expulsion, but it is the duty of those authorities to seek all relevant generally available information to that effect. General deficiencies well documented in authoritative reports, in particular of the UNHCR, Council of Europe and EU bodies, are in principle considered to have been known. The expelling State cannot merely assume that the asylum seeker will be treated in the receiving third country in conformity with the Convention

standards but, on the contrary, must first verify how the authorities of that country apply their legislation on asylum in practice (ibid., § 141).

(ii) *Application of the above principles to the present case*

119. The Court has already established that the Croatian authorities removed the applicant from Croatia without allowing him access to the international protection procedure and that his departure from Croatia via Serbia to North Macedonia was not voluntary (see paragraphs 89-101 above).

120. In that connection the Court notes that nothing has been put forward to show that the applicant's removal was underpinned by any – let alone any proper – assessment of access to asylum procedure in North Macedonia or the adequacy of that procedure (see *Ilias and Ahmed*, cited above, §§ 137-138, 148 and 152).

121. The fact that North Macedonia is a Contracting Party to the Convention did not exempt the Croatian authorities from conducting a thorough examination of the applicant's situation (see *Sherov and Others v. Poland*, nos. 54029/17 and 3 others, §§ 47-48, 4 April 2024). Such an assessment had to be conducted by the Croatian authorities of their own motion, and on the basis of all relevant and up-to-date information (see *O.M. and D.S. v. Ukraine*, cited above, § 96).

122. In view of the above, the fact that the applicant was sent to North Macedonia without an examination of whether it was safe for him and whether he would have access to effective and adequate asylum procedures there, or whether he would be exposed to a risk of chain *refoulement* and treatment prohibited by Article 3 of the Convention, constituted a violation of the procedural aspect of that Article (compare *O.M. and D.S. v. Ukraine*, cited above, §§ 97-98; *S.S. and Others v. Hungary*, nos. 56417/19 and 44245/20, § 69, 12 October 2023, and *Sherov and Others*, cited above, § 50).

123. There has accordingly been a violation of the procedural aspect of Article 3 of the Convention.

B. Alleged violation of Article 3 of the Convention on account of the applicant's treatment by the Croatian authorities

124. The applicant also argued that there had been a violation of the prohibition of degrading treatment on account of the manner in which he had been treated during his placement in the Ježevo Immigration Centre (see paragraph 49 above). In particular, he submitted that the authorities had bluntly disregarded his repeated requests to seek international protection and had prevent any contact between him and his lawyer.

125. The Court notes that those arguments are closely related to the issue of the applicant's lack of access to the international protection procedure. Consequently, having regard to the finding of a violation of Article 3 on account of the lack of access to the international protection procedure (see paragraph 123 above) and also to the finding of a violation of Article 13 of the Convention read in conjunction with Article 3 (see paragraph 132 below), where the Court also took into account the prevention of contact between the applicant and his lawyer (see

paragraphs 96 above and 131 below), the Court considers that it is not necessary to examine whether there has been a violation of Article 3 with respect to the way in which the applicant was treated during his stay in the Ježevó Immigration Centre (compare *M.K. and Others v. Poland*, cited above, § 187, and *D.A. and Others v. Poland*, cited above, §§ 71-72).

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION in conjunction with article 3

126. The applicant complained that he was unable to challenge his removal from Croatia, in that his lawyer had been unable to obtain the removal orders or contact the applicant, and that in any event an administrative action or any other domestic remedy did not have an automatic suspensive effect. He relied on Article 13 of the Convention in conjunction with Article 3 of the Convention, the former of which reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

127. Given the Court’s finding of a violation of the applicant’s right under Article 3 of the Convention (see paragraph 123 above), it is without question that the applicant’s complaint under that provision was “arguable” and it follows that Article 13 of the Convention is applicable to the present case (compare *M.A. and Z.R. v. Cyprus*, no. 39090/20, § 121, 8 October 2024).

128. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

129. The applicant maintained that he had not had at his disposal an effective domestic remedy with automatic suspensive effect in respect of his complaint under Article 3 of the Convention.

130. The Government submitted that the applicant had not claimed international protection in Croatia and that he had not applied to the domestic courts.

131. The Court has already found that the applicant did express his wish to apply for international protection in Croatia, which the Croatian authorities disregarded, and that the remedies suggested by the Government to challenge the applicant’s removal from Croatia would not have been effective as they could not have had automatic suspensive effect (see paragraphs 104-105 above). It has also found that the applicant could not have effectively pursued any legal remedy regarding his removal given his lack of access to his lawyer (see paragraphs 102-103 above).

132. It follows that there has also been a violation of Article 13 of the Convention read in conjunction with Article 3 of the Convention (compare *M.A. and Z.R. v. Cyprus*, cited above, § 125).

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

133. Lastly the applicant complained that there had been a breach of Article 34 of the Convention on account of the Croatian authorities' having prevented contact between him and his lawyer. In particular, he submitted that, because he had not been allowed access to his lawyer during his stay in Croatia, he had been unable to institute any domestic proceedings regarding his situation or ask for an interim measure from the Court.

134. Article 34 of the Convention provides:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

135. The Court notes that the matter complained of is closely related to the issue of the applicant's lack of access to the international protection procedure in Croatia. Consequently, having regard to the finding of a violation of Article 3 on account of the lack of access to the international protection procedure (see paragraph 123 above), and also to the finding of a violation of Article 13 read in conjunction with Article 3 (see paragraph 132 above), where the Court likewise took into account the prevention of contact between the applicant and his lawyer (see paragraphs 96 and 131 above), the Court considers that it has examined the main legal questions raised in respect of the prevention of contact between the applicant and his lawyer and that it does not need to give a separate ruling on the complaint under Article 34 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014 and compare *M.H. and Others v. Croatia*, cited above, §§ 308-09).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

136. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

137. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage for violations of Articles 2, 3, 6, 13, 14 and 34 of the Convention, and of Article 1 of Protocol No. 7 and Article 4 of Protocol No. 4 thereto.

138. The Government contested the applicant's claim as unrelated to the scope of the case as notified to the parties, excessive and unsubstantiated.

139. In view of the violations found of the procedural aspect of Article 3 of the Convention and of Article 13 read in conjunction with Article 3, and ruling on an equitable basis, the Court awards the applicant EUR 8,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

140. The applicant also claimed EUR 3,674.98 for the costs and expenses incurred before the Court.

141. The Government submitted that the claim was excessive and unsubstantiated.

142. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,300 for the proceedings before the Court, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints under the procedural aspect of Article 3 of the Convention and under Article 13 of the Convention read in conjunction with Article 3 admissible;
2. *Holds* that there has been a violation of the procedural aspect of Article 3 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention concerning the applicant's treatment by the Croatian authorities;
4. *Holds* that there has been a violation of Article 13 read in conjunction with Article 3 of the Convention;
5. *Holds* that there is no need to examine the complaint under Article 34 of the Convention;
6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 8,500 (eight thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 3,300 (three thousand three hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 17 July 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar

Ivana Jelić President