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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Report submitted by Croatia under article 29 (1) of the Convention, due in 2024*

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Contents

I. Introduction

1. The Republic of Croatia ratified the International Convention for the Protection of All Persons from Enforced Disappearance (hereinafter: the Convention).[1] The Convention entered into force for the Republic of Croatia on 2 March 2022. By acceding to the Convention, the Republic of Croatia undertook to implement the Convention and take appropriate measures for the prevention and punishment of enforced disappearances.

2. The Republic of Croatia has been searching for missing persons and killed persons whose burial place is unknown for more than three decades since the Homeland War. This is the longest-lasting consequence of the Homeland War and the most complex humanitarian, political and ethical issue pertaining to wartime legacy. In addition to the aspects of personal suffering and the right of families to know what happened to their loved ones, solving the issue of missing persons is also important for the fight against impunity, preserving the memory of victims, as well as establishing historical facts about the Homeland War. Locating missing persons is a prerequisite for the recovery from war trauma, as well as the establishment of stability and long-term peace.

3. The armed aggression against the Republic of Croatia from 1991 to 1995 led to the exile and forced displacement of Croatian and other non-Serb population, captivity, destruction and looting of residential buildings, destruction of economic infrastructure and Croatian cultural and historical heritage, as well as religious edifices and cemeteries. Mass murders and enforced disappearances, torture and other cruel treatment that caused severe and permanent physical and psychological injuries were exceptionally grave events.

4. In 1991/1992, more than 18,000 persons in the Republic of Croatia were recorded as held captive, gone missing or as persons about whom their families had no information due to forced separation.[2] In order to locate them, bodies responsible for solving this issue[3] were established already in 1991. In addition to the Constitution of the Republic of Croatia, which defines the protection of human rights as the highest value, the Geneva Conventions of 1949 for the protection of war victims and the Additional Protocols from 1977[4] form the basis for the actions of the Republic of Croatia in the search for persons gone missing as a result of the Homeland War. The national legal framework followed the application of the provisions of international humanitarian law, and on those foundations actions of competent authorities were regulated by decrees and decisions of the Government of the Republic of Croatia. The Republic of Croatia further emphasized its commitment to solving the issue of persons gone missing and killed in the Homeland War with the Act on Persons Gone Missing in the Homeland War,[5] which was adopted by the Croatian Parliament in 2019.

5. Although the competent authorities changed their organizational forms and names in the meantime, following the organization and development of the state administration, they maintained the basic principles and continuity of work. The content and procedures in the search process were adapted to the situation and circumstances. Thus, the initial focus was on locating and releasing captives from enemy camps in the former FRY, Bosnia and Herzegovina and previously occupied areas of the Republic of Croatia (from which 7,815 prisoners of war and civilians held captive[6] were exchanged) and on handing over the mortal remains of killed persons. Over time, especially after the military and police operations "*Bljesak*" <*Flash*> and "*Oluja*" <*Storm*> that were carried out in 1995 and the peaceful

[1] Official Gazette *Narodne novine*, Treaties 9/21.

[2] According to the official records of the Croatian Red Cross.

[3] Croatian Commission for the Search for Persons Gone Missing in Warfare (*Narodne novine*, No. 72/91) and the Commission for the Treatment of Persons Detained in Armed Conflict (*Narodne novine*, No. 50/91).

[4] As of 8 October 1991, the Republic of Croatia is a party to the Geneva Conventions for the protection of war victims (1949) and Additional Protocols (1977), according to the Decision on the Publication of Multilateral Treaties to which the Republic of Croatia is a Party on the Basis of Succession Notifications (*Narodne novine*, Treaties No. 1/92).

[5] *Narodne novine*, No. 70/19.

[6] According to the Records on Persons Detained in Enemy Camps During the Homeland War, Ministry of Croatian Veteran's Affairs.

reintegration of the Croatian Danube region in 1998, by which the entire occupied territory was returned to the constitutional and legal order of the Republic of Croatia, it became certain that the majority of persons who were presumed missing had been killed. Instead of exchanges of captives, investigations of hidden graves followed. The most serious crimes committed during the armed aggression against the Republic of Croatia were discovered when mass and individual graves in all the previously occupied territories were found. Mortal remains of 5,235 people were exhumed from mass, individual and sanitation graves.

6. Elucidating the fate of missing persons is the responsibility of the Commission of the Croatian Government for Persons Gone Missing in the Homeland War, as an advisory and expert interdepartmental body of the Government of the Republic of Croatia, and the Ministry of Croatian Veterans' Affairs as the implementing body. As solving this issue requires a comprehensive approach, other competent authorities, international organizations and associations of families of persons gone missing in the Homeland War are also participating in the search process. Furthermore, cooperation with the competent authorities of other countries is necessary since the issue of persons gone missing in the Homeland War extends beyond the borders of the Republic of Croatia due to the origin and nature of the aggression.

7. Provisions of the Act on Persons Gone Missing in the Homeland War[7] regulate all segments of the process of searching for persons gone missing and killed. Thus, in the process of searching for persons gone missing and persons killed in the Homeland War whose burial place is unknown, the Ministry of Croatian Veterans' Affairs cooperates with other competent state authorities in the Republic of Croatia, organizations and institutions.

8. The competent authorities of the Republic of Croatia also cooperate with numerous international organizations and mechanisms, from the International Committee of the Red Cross, the International Commission on Missing Persons, mechanisms established by the United Nations such as the Human Rights Council, the International Residual Mechanism for Criminal Tribunals, the Global Alliance for the Missing, to numerous other international, humanitarian and non-governmental organizations.

9. As a coordinating body, the Ministry of Croatian Veterans' Affairs:

- Collects and processes information about missing persons and hidden mass and individual graves;
- Organizes and conducts field activities, inquests, research and exhumations in cooperation with other parties involved in the process of searching for persons who disappeared in the Homeland War and those killed whose burial place is unknown;
- Organizes the processing and identification of mortal remains exhumed in the territory of the Republic of Croatia and of mortal remains taken over from the territory of other countries, while cooperating with scientific and medical institutions in the Republic of Croatia and the International Commission on Missing Persons;
- Performs funeral care activities for identified persons and temporary dignified storing of unidentified mortal remains;
- Carries out activities in accordance with international legal instruments on cooperation in the search for persons gone missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown.

10. For the purpose of collecting data on persons gone missing in the Homeland War and locating them, the Ministry of Croatian Veterans' Affairs maintains and updates the official records of persons gone missing in the Homeland War and the records of persons killed in the Homeland War whose burial place is unknown, as well as the official records of exhumed, identified and unidentified mortal remains from individual, mass, and sanitation graves.

11. Most of the cases of persons held captive and gone missing during the Homeland War were solved through the activities of the competent authorities of the Republic of Croatia.

[7] *Narodne novine*, No. 70/19.

However, the Republic of Croatia is still searching for 1,797 persons who went missing or were killed and their burial place is unknown.[8]

12. In addition to Croatian authorities, the International Committee of the Red Cross (ICRC) also operated in the territory of the Republic of Croatia until 2006. Evaluating positively the humanitarian principles and standards of the approach of the Republic of Croatia in the process of searching for missing persons, the ICRC closed its mission in the Republic of Croatia at the end of 2006, and handed over the requests for search for persons gone missing during the armed conflict in the Republic of Croatia from 1991 to 1995, submitted to the International Committee of the Red Cross and national Red Cross societies, to the Croatian Red Cross for further management.

13. From 2006 to 2015, as one of the tools in the search process, four editions of the "Book of Persons Gone Missing on the Territory of the Republic of Croatia" were published according to the criteria and in line with the procedures of the ICRC, following the territoriality principle. The latest, fourth edition of the "Book of Persons Gone Missing on the Territory of the Republic of Croatia" was published in May 2015, as a unique list of missing persons with consolidated data of all entities involved in the search process, in cooperation with the Directorate for Captives and Missing Persons of the Ministry of Croatian Veterans' Affairs and the Croatian Red Cross. with the verification and consent of the Red Cross of Serbia, the Commission on Missing Persons of the Government of the Republic of Serbia, and in consultation with the International Committee of the Red Cross.

II. General legal framework

14. The Republic of Croatia is a member of the United Nations based on the resolution adopted by the General Assembly on 22 May 1992, a member of the Council of Europe since 1996, and a member of the European Union since 2013. In the context of international legal protection of human rights, the Republic of Croatia is a party to numerous international legal instruments for the protection of human rights, such as the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and other instruments for the protection of human rights adopted by the United Nations. The Republic of Croatia is also a party to the Rome Statute of the International Criminal Court.

15. Furthermore, the Republic of Croatia ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols No. 1, 4, 6, 7, and 11, and subsequently also Protocols No. 12, 13, 14 and 15. In addition to the Convention for the Protection of Human Rights and Fundamental Freedoms, the Republic of Croatia is a party to other legal instruments of the Council of Europe in the area of human rights protection, such as the European Social Charter, the Framework Convention for the Protection of National Minorities, the European Charter for Regional or Minority Languages, the Convention on Action against Trafficking in Human Beings, the Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse and the Convention on Preventing and Combating of Violence Against Women and Domestic Violence. The Republic of Croatia is a party to the European Court of Human Rights as the supervisory body for the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. The Constitution of the Republic of Croatia is a unique general legal act with the highest legal authority in the Republic of Croatia, as a guarantee of respect and protection of human rights and fundamental freedoms. Human freedom and personality are inviolable, and no person may be deprived of or restricted their liberty, except in cases stipulated by law, and upon decision of the courts.

[8] According to the Records on Persons Gone Missing in the Homeland War and the Records of Persons Killed in the Homeland War Whose Burial Place is Unknown, Ministry of Croatian Veterans' Affairs, Zagreb, March 2024.

III. Implementation of the relevant provisions of the Convention

Article 1
Prohibition of enforced disappearance

17. Article 16 of the Constitution of the Republic of Croatia[9] stipulates that freedoms and rights can only be restricted by law in order to protect the freedoms and rights of other persons and the legal order, public morals and health. Any restriction of freedoms or rights shall be proportionate to the nature of the need for such restriction in each individual case.

18. Article 17 of the Constitution stipulates that during a state of war or any clear and present danger to the independence and unity of the state, as well as major natural disasters, certain freedoms and rights guaranteed by the Constitution may be restricted, which is decided upon by the Croatian Parliament by a two-thirds majority of all representatives, and if the Croatian Parliament cannot meet, at the proposal of the Government and with the co-signature of the Prime Minister, by the President of the Republic. The extent of the restriction must be appropriate to the nature of the danger, and cannot result in inequality of persons with regard to race, skin color, sex, language, religion, national or social origin. Even in the case of a clear and present danger to the existence of the state, the application of the provisions of the Constitution on the right to life, the prohibition of torture, cruel or degrading treatment or punishment, on the legal determination of punishable acts and punishment, and on freedom of thought, conscience and religion cannot be restricted. The criminalization of crimes against humanity, unlawful deprivation of liberty and abduction will continue to be in force even in the event of and during the above-mentioned extraordinary circumstances. Article 20 of the Constitution stipulates that whoever violates the provisions of the Constitution concerning human rights and fundamental freedoms is personally liable and cannot invoke the defense of superior orders.

Article 2
Definition of enforced disappearance

19. In the criminal legislation of the Republic of Croatia, enforced disappearance is not criminalized as an independent offense, in the sense of Article 2 of the Convention. However, the existing national criminal law framework, through the provisions of Articles 90, 136, and 137 of the Criminal Code[10] and the prescribed crimes against humanity and crimes of unlawful deprivation of liberty and abduction, enables the sanctioning of actions of arrest, detention, abduction or any other form of unlawful deprivation of liberty, by which the legal features of enforced disappearance can be realized. The aforementioned criminal offenses are general offenses (*delicta communia*) that can be committed by any person.

20. The basic form of a crime against humanity, in the context of enforced disappearance, is committed by a person who, in violation of the rules of international law, as part of a widespread or systematic attack directed against the civilian population, with knowledge of that attack, among other things, arrests, detains or abducts persons in the name of or with the authorization, support or acquiescence of a state or political organization, followed by refusing to acknowledge such deprivation of liberty or concealing information about the fate or whereabouts of the persons concerned, with the aim of denying them legal protection for an extended period of time. The criminal offense of unlawful deprivation of liberty will be committed by a person who unlawfully imprisons, detains or otherwise deprives a person of the freedom of movement or restricts it. The criminal offense of abduction is committed by a person who unlawfully deprives a person of their liberty with the aim of compelling a third party to act, to refrain from acting or to suffer.

[9] *Narodne novine*, No. 85/10, 5/14 – Decision of the Constitutional Court of the Republic of Croatia.

[10] *Narodne novine*, No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, 36/24.

Article 3
Investigation

21. Criminal offenses within the meaning of Article 2 of the Convention are prosecuted *ex officio*. Pursuant to Article 2 of the Criminal Procedure Act,[11] it is stated that the prosecution of those offenses is the fundamental right and duty of the state attorney, who is bound by the principle of legality in the performance of this function. The investigation is conducted by the state attorney who can issue an order entrusting the execution of evidentiary actions to an investigator, unless otherwise prescribed by the Criminal Procedure Act.

22. The injured party may submit proposals to the state attorney to supplement the investigation and other proposals in order to exercise the rights prescribed by law, and may participate in actions in the investigation when this is prescribed by this law. If the state attorney has rejected the criminal complaint or discontinued the investigation, the victim can take over the criminal prosecution within the legally prescribed time limit and can file a motion to the investigating judge to conduct the investigation. The investigating judge decides on the motion of the injured party as the plaintiff by issuing a decision. The decision ordering investigation will state the evidentiary actions deemed purposeful by the investigating judge. If the investigating judge does not accept the motion to conduct the investigation, they will issue a decision rejecting the motion of the injured party as the plaintiff. If the motion of the injured party to conduct the investigation is accepted, the investigator will conduct the investigation as per order of the investigating judge. The injured party, as the plaintiff, can be present during the investigation and may propose to the investigating judge to order the investigator to carry out certain actions.

23. Under the provisions of the Police Affairs and Powers Act,[12] when there is a basis for suspicion that a criminal offense prosecuted *ex officio* or a misdemeanor has been committed, the police conducts a criminal investigation. Under certain conditions prescribed by law, police officers are authorized to enter and inspect the facilities and premises of state authorities and legal entities as well as other premises, and search persons, inspect objects and means of transport. During the criminal investigation, the police can also take covert police actions if it is evident that other actions will not achieve the goal of the investigation. Police officers may perform police work together with police officers of a foreign state as a joint investigation, when this is prescribed by law or a treaty.

Article 4
Criminalization of enforced disappearance in national legislation

24. Enforced disappearance is not criminalized as an independent criminal offense in the criminal legislation of the Republic of Croatia within the meaning of Article 2 of the Convention. However, the existing national criminal law framework, through the provisions of Articles 90, 136, and 137 of the Criminal Code and the prescribed crimes against humanity and the criminal offenses of unlawful deprivation of liberty and abduction, enables the sanctioning of the acts of arrest, detention, abduction or any other form of unlawful deprivation of liberty, by which the legal features of enforced disappearance can be realized.

Article 5
Codification of enforced disappearance as a crime against humanity

25. Article 90 of the Criminal Code defines a crime against humanity, in the context of enforced disappearance, as a criminal offense committed by a party who, in violation of the rules of international law, as part of a widespread or systematic attack directed against the civilian population, with knowledge of that attack, among other things, arrests, detains or abducts persons in the name of or with the authorization, support or acquiescence of a state

[11] *Narodne novine*, No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19, 130/20, 80/22, 36/24.

[12] *Narodne novine*, No. 76/09, 92/14, 70/19.

or political organization, and then refuses to acknowledge such deprivation of liberty or witholds information about the fate or whereabouts of those persons, with the aim of denying them legal protection for an extended period of time (paragraph 1, item 9). The perpetrator in this case will be punished by a prison sentence of at least five years or by long-term imprisonment. The same sentence will be imposed on the person who orders that the criminal offense be committed.

Article 6
Criminal liability

26. The principles of criminal liability are prescribed by the general provisions of the Criminal Code, according to which the perpetrator is a person who commits a criminal offense by themselves or through another person. Perpetration is defined in Article 36 of the aforementioned Act, which stipulates that if several persons commit a criminal offense on the basis of a joint decision, so that each of them participates in committing the offense or otherwise significantly contributes to the perpetration of the offense (co-perpetrators), each of them will be punished as the perpetrator.

27. Instigation to commit a criminal offense is prescribed by Article 37 of the Criminal Code, according to which whoever intentionally instigates another person to commit an offense shall be punished as if they had committed it themselves. Whoever intentionally instigates another person to commit an offense for which an attempt is punishable, and the offense is not even attempted, will be punished as they had attempted to commit that offense.

28. Aiding and abetting in a criminal offense is prescribed by the provisions of Article 38 of the Criminal Code, according to which anyone who intentionally aids and abets another person in committing an offense shall be punished as if they had committed it themselves, but may also be punished less severely. The provision of Article 39 of the Criminal Code stipulates that each co-perpetrator and accomplice (instigator and aider an abettor) will be punished in accordance with their guilt. Special personal circumstances for which the law prescribes exemption from punishment, a mitigated punishment or a more moderate or more severe form of the offense will be taken into account only for the co-perpetrator or accomplice to whom those circumstances apply.

29. According to Article 20 of the Criminal Code, a criminal offense can be committed by an act or the omission to act. Whoever fails to prevent the occurrence of the consequences of an offense described by law shall be liable for the omission to act if they are legally obliged to prevent the occurrence of such consequences and if the omission is equal in effect and meaning to the commission of that offense by an act. The punishment for the perpetrator who committed an offense by an omission to act may be mitigated, unless the offense in question can only be committed by an omission to act.

30. Articles 301-303 of the Criminal Code also provide for punishment for the failure to report the preparations for a criminal offense and failure to report the committed offense, as well as for assisting the perpetrator after the commission of the offense.

31. As regards to the chain-of-command liability in relation to crimes against humanity, it implies the responsibility of the immediate perpetrator, but also the responsibility of the person issuing the order, who is deemed equal to the perpetrator of the offense. According to the provisions of Article 90, paragraph 2 of the Criminal Code, whoever commands one of the offenses referred to in Article 90, paragraph 1 of the Criminal Code (including offenses in the context of enforced disappearance) will be punished by the same sentence (at least five years or long-term imprisonment) for the commission of the basic crime against humanity, regardless of whether such command resulted in the commission of the offense.

32. The provision of Article 96, paragraph 1 of the Criminal Code prescribes the liability of the commander in the sense of a military commander or a superior civilian, or a person who acts *de facto* as a military commander or a superior civilian, who does not prevent a person *de facto* under their command and supervision or authority and supervision, from committing a criminal offense referred to in Articles 88 to 91, including a crime against humanity, for which they will be punished as if they had committed the offense themselves.

In that case, the provision of Article 20, paragraph 3 of the Criminal Code, which stipulates that the punishment for the perpetrator who committed an offense by the omission to act may be mitigated, will not be applied, unless the offense in question can only be committed by the omission to act.

33. According to paragraph 2 of the aforementioned Article, a military commander or a person who acts *de facto* as a military commander who failed to exercise due supervision over the forces *de facto* under their command and control or their authority and control, if they had to know that their forces were committing or were about to commit a criminal offense referred to in Articles 88 to Article 91, including a crime against humanity, and did not take all the necessary and reasonable measures in their power to prevent them from doing so, shall be punished by a prison sentence of three to fifteen years.

34. According to paragraph 3 of the aforementioned Article, the same sentence shall be imposed on a superior in all other relations of superiority and subordination, except for those referred to in paragraph 2 of the aforementioned Article, who has failed to supervise the subordinates who are *de facto* under their authority and supervision if they consciously ignored notices that they were committing or were about to commit an offense referred to in Articles 88 to Article 91, including a crime against humanity, and if those acts were within the scope of their *de facto* powers and supervision, and they did not take all the necessary and reasonable measures in their power to prevent them from doing so. According to paragraph 4 of the aforementioned Article, if due supervision referred to in paragraphs 2 and 3 of this Article was omitted due to negligence, the perpetrator will be punished by a prison sentence of one to ten years. According to paragraph 5 of the aforementioned Article, the persons specified in paragraphs 1, 2 and 3 of this Article who do not communicate information about offenses referred to in Articles 88 to 91, including a crime against humanity, to the competent authorities for the purpose of investigation and criminal prosecution of the immediate perpetrators who are subordinate to them, will be punished by a prison sentence of six months to five years.

35. The provision of Article 327 of the Criminal Code criminalizes the conspiracy to commit a criminal offense, so that any person conspiring with another person to commit an offense punishable by a prison sentence of more than three years shall be punished by a prison sentence of up to three years.

Article 7
Sentences

36. Crimes against humanity and of unlawful deprivation of liberty and abduction are punishable in the criminal legislation of the Republic of Croatia by a prescribed prison sentence or long-term imprisonment as the main sentences. For crimes against humanity, a prison sentence of at least five years or long-term imprisonment is prescribed, while for the offense of unlawful deprivation of liberty sentences depend on the prescribed form of the offense.

37. Article 136, paragraphs 1 to 4 of the Criminal Code prescribe a prison sentence of up to three years for the basic form of the offense (whoever illegally detains another person or keeps them detained, or otherwise deprives or restricts their freedom of movement), while for the more serious form of illegal deprivation of liberty, where person deprived of liberty is compelled to act, refrain from acting or to suffer, the prescribed prison sentence is six months to five years. A prison sentence of one to ten years is prescribed for the qualified form of the offense (when it is committed against a child, a person with a severe disability, a close person, or when the unlawful deprivation of liberty lasted longer than fifteen days, or was committed in a cruel manner, or when severe physical injury was caused to the person who was unlawfully deprived of liberty, or when it was committed by an official in the performance of their duties or a responsible person in the exercise of public powers). If the offense causes the death of the person unlawfully deprived of their liberty, a prison sentence of three to fifteen years is prescribed.

38. For the basic form of the offense of abduction, Article 137, paragraphs 1 to 3 of the Criminal Code prescribe that whoever unlawfully deprives a person of their liberty with the

aim of compelling a third party to act, refrain from acting or to suffer, a prison sentence of six months to five years is prescribed, while in relation to the qualified forms, prison sentences of one to ten years are prescribed (if the offense was committed with a threat that the abducted person would be killed, or if it was committed in a cruel manner, or if severe physical injury was caused to the abducted person, or if the offense was committed against a child, a person with a severe disability or a close person), that is, a prison sentence of three to fifteen years (if the offense caused the death of the abducted person).

39. The purpose of punishment, in accordance with Article 41 of the Criminal Code, is to express social condemnation of the committed act, to strengthen citizens' confidence in the legal order based on the rule of law, to influence the perpetrator and all others not to commit criminal offenses by strengthening the awareness of dangers in the commission of criminal offenses and of the justice of punishment, and to enable the perpetrator to be reintegrated into society.

Article 8
Statute of limitations

40. The general part of the Criminal Code, in Articles 81 to 84, prescribes the statute of limitations for criminal prosecution, the course of the statute of limitations for criminal prosecution, the statute of limitations for the enforcement of a sentence, and the course of the statute of limitations for the enforcement.

41. Article 81 of the Criminal Code prescribes the limitation period depending on the gravity of the offense. Thus, the limitation period is 40 years for offenses for which long-term imprisonment and a prison sentence of more than 15 years can be imposed, 25 years for offenses for which a prison sentence of more than 10 years can be imposed, 20 years for offenses for which a prison sentence of more than 5 years can be imposed, and 15 years for offenses for which a prison sentence of more than 3 years can be imposed. The provision of Article 81, paragraph 2 of the aforementioned Act prescribes the cases in which criminal prosecution is not subject to the statute of limitations, regardless of the period of time elapsed, and crimes against humanity, *inter alia*, are not subject to the statute of limitations.

42. The statute of limitations on criminal prosecution for the offense of unlawful deprivation of liberty expires is ten years, while for the qualified forms of the offense it is determined according to Article 81 of the Criminal Code.

43. The statute of limitations on criminal prosecution for the offense of abduction is fifteen years, while for the qualified forms of the offense it is determined according to Article 81 of the Criminal Code.

44. Article 82 of the Criminal Code prescribes the course of the statute of limitations on criminal prosecution, and paragraph 1 and 2 of the aforementioned Article prescribe that limitation period for criminal prosecution begins to run on the day the offense was committed, and if the consequence arising from the offense occurs later, the limitation period begins to run from that moment. The limitation period for criminal prosecution does not run during the time during which, according to the law, criminal prosecution cannot be initiated or cannot be continued.

45. The statute of limitations on the enforcement of a sentence is prescribed by Article 83 of the Criminal Code, which stipulates that the imposed sentence cannot be enforced due to the statute of limitations when the following periods of time from the final judgement have passed: 40 years from the imposed sentence of long-term imprisonment, 25 years from the imposed prison sentence of over ten years, 20 years from the imposed prison sentence of over five years, 15 years from the imposed prison sentence of over three years, 10 years from imposed prison sentences of over one year, 6 years from the imposed prison sentence of up to one year or a fine as the main or secondary punishment. Paragraph 2 of the aforementioned Article prescribes that the enforcement of a sentence imposed for a crime against humanity is not subject to the statute of limitations.

46. Pursuant to Article 84 of the Criminal Code, the limitation period for the enforcement of a sentence begins on the day of finality of the sentencing judgment. In case of a revoked

suspended sentence, the limitation period begins on the day the judgment on revocation becomes final. The limitation period does not run in the period of time during which, according to the law, the enforcement of a sentence cannot be commenced or continued. The limitation period for the enforcement of a sentence does not run while the sentence is being served.

47. A person who suffered damage due to a criminal offense has the right to seek compensation from the person who caused the damage to them by committing the offense. In this case, the Criminal Procedure Act prescribes the instrument of the claim for damages, and the provisions of the aforementioned Act regarding claims for damages, authorized persons, court decisions and temporary security measures are provided in Title XI. According to Articles 153 and 154 of the aforementioned Act, a claim for damages arising from the commission of an offense will be heard at the motion of the injured party in the criminal proceedings, if this would not significantly delay the proceedings. A claim for damages in criminal proceedings can be submitted by the injured party.

48. The Criminal Procedure Act, in Article 158, prescribes the decisions that the court makes when deciding on a claim for damages, so in paragraph 2 the Act stipulates that in the judgment declaring the defendant guilty the court may award the injured party the amount of the claim for damages in full or in part, and for the remaining part refer them to civil proceedings and, if the information of the criminal proceedings do not provide a reliable basis for either a full or partial award, the court will invite the injured party to bring a claim for damages in civil proceedings. Paragraph 3 of the aforementioned Article stipulates that when the court renders a judgement acquitting the defendant or dismissing the charges, or renders a decision discontinuing the criminal proceedings, it will invite the injured party to bring a claim for damages in civil proceedings. When the court finds it has no jurisdiction, it will instruct the injured party to bring a claim for damages in criminal proceedings that will be initiated or continued by the court with jurisdiction.

49. Finally, with regard to the deadline for bringing a claim for damages, Article 155 of the Criminal Procedure Act stipulates that it can be submitted no later than the end of the evidentiary proceedings before the court of first instance, and it is submitted to the body to which the criminal complaint is submitted or to the court conducting the proceedings.

50. As part of the definition of a crime against humanity, Article 90, paragraph 1, item 4 of the Criminal Code stipulates that for whoever violates the rules of international law as part of a widespread or systematic attack directed against the civilian population, with knowledge of that attack, and: expels or forcibly displaces other persons through expulsion or other coercive measures from the area where they legally reside, without grounds foreseen by international law, and for which, in accordance with Article 81, paragraph 2 of the Criminal Code, criminal prosecution is not subject to the statute of limitations, neither is a claim for damages brought in criminal proceedings for an offense of enforced disappearance.

Article 9
Jurisdiction

51. The Criminal Code, in Articles 10 and 11, stipulates that the criminal legislation of the Republic of Croatia applies to any person who commits an offense on its territory, as well as to any person who commits an offense on a domestic ship or aircraft, regardless of where the ship or aircraft is located at the time the crime is committed. Article 16 of the aforementioned Act ensures the application of criminal legislation to crimes against values protected by international law committed outside the territory of the Republic of Croatia in such a way that the criminal legislation of the Republic of Croatia is applied to anyone who commits an offense outside its territory: genocide, war crime, terrorism, torture and other cruel, inhuman or degrading treatment or punishment, slavery and human trafficking including the crime against humanity.

52. In the described situations, according to the provisions of Article 18, paragraph 7 of the Criminal Code, it is possible to initiate criminal proceedings only if the perpetrator is located on the territory of the Republic of Croatia.

Article 10
Treatment of alleged offenders

53. Article 22 of the Constitution prescribes the prohibition of deprivation and restriction of liberty, except when this is determined by law, which is decided by a court. Based on Article 24 of the Constitution, no one can be arrested or detained without a legally founded written judicial order. Such an order must be read and served to the arrested person during the deprivation of liberty. Without a court order, the police can arrest a person when there is a reasonable suspicion they have committed a serious crime defined by law, with the obligation to immediately hand them over to the court. The arrested person must be informed immediately in a manner understandable to them about the reasons for the arrest, and about their rights as established by law. Every person who is arrested or detained has the right to appeal to the court, which will decide without delay on the legality of the deprivation of liberty. In addition, every arrested person and defendant must be treated humanely and their dignity must be respected. Anyone who is detained and charged with an offense has the right to be brought before a court in the shortest possible time, determined by law, and acquitted or convicted within the legal time limit. A detainee can be released on bail. Anyone who has been illegally deprived of liberty or convicted has, in accordance with the law, the right to compensation and a public apology, as stated in Article 25 of the Constitution.

54. The aforementioned constitutional guarantees are also contained in the provisions of the Criminal Procedure Act. Specifically, according to Article 7 of the Act, every arrested person and defendant must be treated humanely and their dignity must be respected. The arrested person must immediately: 1) be informed about the reasons for the arrest in a manner understandable to them, 2) instructed that they are not obliged to give a statement, 3) instructed that they have the right to the professional assistance of a defense attorney whom they can choose themselves, 4) instructed that the competent authority, at their request, will inform their family or another person designated by them of the arrest, 5) acquainted with other rights prescribed by this Act.

55. According to Article 107 of the Criminal Procedure Act, the police is authorized to arrest: 1) a person against whom a warrant for arrest and a decision on custody or pre-trial detention is being executed, 2) a person reasonably suspected of having committed an offense prosecuted *ex officio*, when there is a ground for ordering pre-trial detention referred to in Article 123 of this Act, 3) a person detected committing an offense prosecuted *ex officio*, 4) an accused person for whom there are grounds for suspecting that he acted contrary to a certain precautionary measure ordered against him.

56. According to the provisions of Article 112 of the Criminal Procedure Act, the state attorney orders detention against the arrested person by a written and reasoned decision if they find reasonable cause that the arrested person has committed an offense for which criminal proceedings are initiated *ex officio*, and there are certain grounds for pre-trial detention from Article 123, paragraph 1, items 1 to 4 of the Act, and detention is required for the purpose of establishing identity, verifying the alibi, and collecting information on evidence.

57. Custody can last no longer than forty-eight hours from the moment of arrest, except for offenses for which a prison sentence of up to one year is prescribed, when custody can last no longer than thirty-six hours from the moment of arrest. At the proposal of the state attorney, the investigating judge can extend custody for another thirty-six hours by a reasoned decision if it is necessary to collect evidence about an offense for which a prison sentence of five years or more is prescribed. The person held in custody can lodge an appeal against the decision of the investigating judge on the extension of custody within six hours. A judicial panel decides on the appeal within twelve hours. The appeal does not delay the execution of the decision. The person held in custody can state the appeal for the record. Custody will be immediately terminated if the reasons for which it was ordered no longer apply.

58. According to Article 116 of the Criminal Procedure Act, consular and diplomatic representatives can visit their citizens who are arrested or held in custody, converse with them and assist them in choosing a defense attorney. According to Article 198 of the aforementioned Act, when criminal proceedings are initiated against a foreign national, the

court and other state authorities act according to the provisions of the corresponding consular convention in force in the Republic of Croatia.

59. In addition to arrest, the Criminal Procedure Act, Title IX (Measures to ensure the presence of the defendant and other precautionary measures) prescribes measures to ensure the presence of the defendant and other precautionary measures. When deciding on measures to ensure the presence of the defendant and other precautionary measures, the court and other state authorities must make sure *ex officio* that a more severe measure is not applied if the same purpose can be achieved with a less severe measure. The court and other state authorities will, *ex officio*, lift the measures or replace them with less severe measures if the legal conditions for their application have ceased to apply, or if conditions have arisen for achieving the same purpose with a less severe measure.

60. According to Article 123 of the Criminal Procedure Act, if there is a reasonable suspicion that a certain person has committed an offense, pre-trial detention can be ordered if: 1) they are on the run or special circumstances point to a flight risk (they are in hiding, their identity cannot be established, etc.), 2) specific circumstances point to a risk that they will destroy, hide, alter or falsify evidence or traces important for the criminal proceedings or obstruct the criminal proceedings by influencing witnesses, experts, accomplices or concealers, 3) specific circumstances point to a risk that they will repeat the offense or complete the attempted offense, or that they will commit a more serious offense for which a prison sentence of five years or a more severe sentence may be lawfully imposed, which they have threatened to commit, 4) pre-trial detention is necessary for the unhindered course of the proceedings for an offense for which a long-term imprisonment is prescribed and in which the circumstances of the commission of the offense are particularly serious, 5) the defendant who has been duly summoned avoids appearing at the hearing.

61. According to Article 124 of the Criminal Procedure Act, pre-trial detention is ordered and extended by a written decision of the competent court, while according to Article 130 of the Act, pre-trial detention ordered by a decision of an investigating judge or a panel can last no longer than one month from the day of being taken into custody. For justified reasons, the investigating judge, at the proposal of the state attorney, can extend pre-trial detention for a maximum of two more months, and after that, for offenses under the jurisdiction of a county court or when so prescribed by a special law, for a maximum of three more months.

62. According to Article 207 of the Criminal Procedure Act, if there are grounds for suspecting that an offense has been committed for which criminal proceedings are initiated *ex officio*, the police have the right and duty to take the necessary measures: 1) to find the perpetrator of the offense, so that the perpetrator or their accomplice would not hide or flee; 2) to discover and secure traces of the offense and items that can be used to establish the facts; and 3) to collect all the information that could be useful for the successful conduct of criminal proceedings. The police will promptly inform the state attorney about the investigation into the offense. If the state attorney informs the police that they intend to participate in specific investigative actions or measures, the police will perform them in a way that allows the state attorney to do so.

Article 11
Jurisdiction of state bodies in criminal proceedings and the right to a fair trial of a person against whom criminal proceedings are brought

63. Article 26 of the Constitution stipulates that all citizens of the Republic of Croatia and foreigners are equal before the courts and other state authorities that have public powers. Under Article 29, everyone is entitled to have their rights and obligations, or a suspicion or an accusation of an offense, decided upon fairly and within a reasonable time by an independent and impartial court established by law. A suspect, accused person or a defendant may not be coerced to confess their guilt. Evidence obtained illegally cannot be used in court proceedings. Criminal proceedings can only be initiated before a court at the motion of an authorized prosecutor. Judicial power, according to Article 115 of the Constitution, is exercised by the courts. The judicial branch of government is autonomous and independent.

Courts adjudicate on the basis of the Constitution, laws, treaties and other valid sources of law.

64. According to Article 3 of the Criminal Procedure Act, each person is innocent and no one can be considered guilty of an offense until a final court judgement establishes their guilt. The burden of proof in the process of establishing the guilt of a suspect, accused person or defendant is borne by the prosecutor, unless otherwise prescribed by law. Any doubts about the existence of facts that form the characteristics of an offense or on which the application of the criminal law depends are resolved by a court judgement in a manner that is more favorable to the accused person.

65. According to Article 4 of the Criminal Procedure Act, any action or measure of restriction of liberty or rights based on this Act must be proportionate to the nature of the need for restriction in each individual case. When deciding on actions and measures of restriction of liberty or rights, the court and other state authorities must make sure *ex officio* that a more severe measure is not applied if the same purpose can be achieved by a less severe measure. Their duration must be limited to the shortest time necessary.

66. According to Article 9 of the Criminal Procedure Act, the court and the state authorities participating in criminal proceedings examine and determine the facts that incriminate the accused person and that benefit them with equal attention. The State Attorney's Office, the investigator and the police must clarify any suspected offense prosecuted *ex officio* independently and impartially. These authorities are obliged to collect data on the guilt and innocence of the accused person with equal care. The right of the court and state bodies participating in criminal proceedings to assess the existence or non-existence of facts is not bound or limited by special formal evidentiary rules. The court and other state authorities are obliged to clearly state the reasons for the decisions they adopt.

67. According to Article 10 of the Criminal Procedure Act, court decisions cannot be based on evidence obtained illegally (illegal evidence). Illegal evidence includes: 1) evidence obtained by violating the prohibition of torture, inhumane or degrading treatment prescribed by the Constitution, law or international law, 2) evidence obtained by violating the rights of defense, the right to reputation and honor, and the right to inviolability of personal and family life guaranteed by the Constitution, law or international law, except in the case referred to in paragraph 3 of this Article, 3) evidence obtained in violation of provisions on criminal procedure and express provisions of this Act, 4) evidence found on the basis of other illegal evidence.

68. According to Article 11 of the Criminal Procedure Act, the accused person has the right to have an independent and impartial court established by law decide on the accusation in accordance with the law in a fair manner that is open to the public, and within a reasonable period of time. The proceedings must be carried out without delay, and in proceedings in which the accused person is temporarily deprived of their liberty, the court and state authorities will act particularly quickly. The court and other state authorities are obliged to prevent any abuse of the rights belonging to the participants in the proceedings.

69. According to Article 38 of the Criminal Procedure Act, the basic power and main duty of the state attorney is the prosecution of perpetrators of criminal offenses for which criminal proceedings are initiated *ex officio*. In cases of offenses for which criminal proceedings are initiated *ex officio*, the state attorney has the power and duty to: 1) undertake the necessary actions to detect offenses and find the perpetrators, 2) undertake investigative actions into offenses, order and supervise the implementation of individual investigative actions in order to collect data important for the initiation of an investigation, 3) decide on the rejection of a criminal complaint, postponement and withdrawal from of criminal prosecution, 4) initiate and conduct an investigation, 5) conduct and supervise the conduct of evidentiary actions, 6) file and present the indictment, and file a motion to the competent court to issue a penalty order, 7) negotiate with the accused person about the admission of guilt and punishment, and other measures referred to in Article 360, paragraph 4, item 3 of this Act, 8) propose and present evidence at the hearing, 9) give statements that they will not initiate criminal prosecution in the case referred to in Article 286, paragraph 2 of this Act, 10) submit appeals against non-final court decisions and extraordinary review procedures against final court decisions, 11) undertake necessary actions, and order and supervise investigations in order to

identify and trace criminal proceeds, propose measures to secure and confiscate the proceeds, 12) participate in proceedings regarding a request for judicial protection against the decision or action of the administrative authority in charge of the enforcement of a sentence or deprivation of liberty imposed by a final judgment in criminal proceedings, 13) make decisions and undertake other measures provided for by law.

70. According to Article 41 of the Criminal Procedure Act, the state attorney undertakes all actions in the proceedings to which they are authorized by law, either themselves or through persons who are authorized under a special law to represent them in criminal proceedings. State bodies, by order of the state attorney, undertake actions in accordance with the Act.

Article 12
Obligation to conduct investigation and further proceedings in case of enforced disappearance

71. According to Article 2 of the Criminal Procedure Act, criminal proceedings are conducted at the request of the authorized prosecutor. For offenses for which criminal proceedings are initiated *ex officio*, the authorized prosecutor is the state attorney, and for offenses for which criminal proceedings are initiated by a private action, the authorized prosecutor is a private prosecutor. For the offenses stipulated by law the state attorney initiates criminal proceedings only at the proposal of the victim. If the law does not prescribe otherwise, the state attorney is obliged to initiate criminal proceedings if there is a reasonable suspicion that a certain person has committed an offense for which criminal proceedings are initiated *ex officio*, and there are no legal obstacles to prosecuting that person. According to Article 6 of the Criminal Procedure Act, it is forbidden to subject the accused person, a witness or other person to medical procedures or to give them such substances that would influence their will when giving a statement, or use force, threat or other similar means. A statement obtained in violation of the aforementioned provision cannot be used as evidence in the proceedings.

72. If the state attorney finds that there are no grounds for initiating or conducting criminal prosecution, their role as prosecutor can be assumed by the victim as the injured party. Pursuant to the provisions of Article 55 of the Criminal Procedure Act, except in cases provided for by law, when the state attorney finds that there are no grounds for prosecution for an offense for which criminal proceedings are initiated *ex officio* or when they find that there are no grounds for prosecution against a reported person, they are obliged to inform the victim about this within eight days and instruct them that they can undertake the prosecution themselves. The same will be done by the court where it decides to discontinue the proceedings due to the state attorney's withdrawal from prosecution on other grounds.

73. The provision of Article 204 of the Criminal Procedure Act stipulates that everyone is obliged to report an offense for which proceedings are initiated *ex officio*, which was reported to them or which they learned about. When submitting the complaint, state authorities and legal entities should state the evidence known to them and take all measures to preserve the traces of the offense, the objects on which or with which the offense was committed, and other evidence.

74. The provision of Article 205 of the Criminal Procedure Act stipulates that the complaint must be submitted to the competent state attorney in writing, orally or by other means. If the complaint is submitted orally, the reporting person will be warned of the consequences of false reporting. A record will be made of the oral complaint, and if the complaint was communicated by telephone or other telecommunications device, an electronic record of it will be made, when possible, and an official note will be drawn up.

75. If the complaint is submitted to the court, the police or a non-competent state attorney, they will receive the complaint and immediately deliver it to the competent state attorney.

76. If the state attorney has only heard that an offense has been committed or received a report from the victim, the state attorney will draw up an official note thereon, which will be entered in the register of various criminal cases, i.e. if the state attorney cannot assess from

the complaint whether the allegations from the complaint are credible or if the information in the complaint does not provide sufficient grounds for them to decide whether to conduct an investigation or take evidentiary actions, the state attorney will conduct the investigation themselves or order the police to do so.

77. According to Article 207 of the Criminal Procedure Act, if there is a reasonable suspicion that an offense has been committed for which criminal proceedings are initiated *ex officio*, the police have the right and duty to take the necessary measures: 1) to find the perpetrator of the offense, so that the perpetrator or their accomplice would not hide or flee; 2) to discover and secure traces of the offense and items that can be used to establish the facts; and 3) to collect all the information that could be useful for the successful conduct of criminal proceedings.

78. The police will promptly inform the state attorney about the investigation into the offense. If the state attorney informs the police that they intend to participate in specific investigative actions or measures, the police will perform them in a way that allows the state attorney to do so.

79. If the witness has refused to answer certain questions because that would expose them or their close relative to criminal prosecution, the state attorney can declare that they will not initiate criminal prosecution if the answer to the question and the testimony of the witness is important for proving that a criminal offense was committed by another person, including the offenses of unlawful deprivation of liberty (Article 136, paragraph 4 of the Criminal Code) and abduction (Article 137, paragraph 3 of the Criminal Code).

80. According to Article 294 of the Criminal Procedure Act, when there is a probability that a witness would expose themselves or another person close to them to a serious risk to life, health, bodily integrity, liberty or property of considerable value by giving a statement or answering a particular question (endangered witness), they can withhold certain personal data referred to in Article 288, paragraph 2 of the Criminal Procedure Act, refuse to give answers to individual questions or to give testimony entirely until witness protection is ensured. Witness protection consists in a special way of questioning and participation in the proceedings and measures to protect witnesses and persons close to them outside the proceedings. The authority participating in the procedure is obliged to act with special consideration regarding the protection of witnesses (Articles 295 and 296 of the Criminal Procedure Act).

81. If the special method of questioning and participation of an endangered witness in the proceedings also includes concealing the appearance of the witness, the questioning will be carried out by means of an audio-video device. The witness's appearance and voice will be changed during the questioning. During the questioning, the witness will be in a room that is spatially separated from the room where the investigating judge and other persons present at the questioning are located. The investigating judge can order that the questioning of an endangered witness be recorded with an audio-video or audio recording device.

82. The provisions of the Criminal Procedure Act also prescribe questioning in relation to particularly vulnerable categories of persons. Unless otherwise prescribed by a special law, the questioning of a child under the age of fourteen as a witness is conducted by an investigating judge. The questioning will be conducted without the presence of the judge and the parties in the room with the child, through an audio-video device operated by a professional assistant. The questioning is carried out with the assistance of a psychologist, pedagogue or other professional person, and unless it is against the interests of the procedure or the child, a parent or a guardian is present for the questioning. The parties may ask questions to the child witness through a professional, with the approval of the investigating judge. The questioning will be recorded by an audio-video recording device, and the recording will be sealed and attached to the record. The child can only be re-examined exceptionally, and in the same way. Unless otherwise prescribed by a special law, the questioning of a child aged fourteen to eighteen as a witness is conducted by the investigating judge. When questioning a child, especially if they have been injured by the offense, care will be taken to ensure that the questioning does not adversely affect the child's mental state.

83. The director of a penitentiary or prison enables authorized persons from competent state bodies (State Attorney's Office, the Police, court) to carry out investigative actions and

collect data necessary for conducting criminal proceedings, preventing the commission of a criminal offense and discovering the perpetrator. A special law that, as *lex specialis*, contains provisions for young perpetrators (minors and young adults) is the Juvenile Courts Act.[13]

84. Witnesses who cannot respond to the summons due to their old age, health condition or disability may be questioned in their apartment or other place of residence. Those witnesses can be examined through an audio-video device operated by an expert. If the condition of the witness requires it, the questioning will be conducted so that the parties can ask them questions without being present in the room with the witness. If necessary, the questioning will be recorded by an audio-video recording device, and the recording will be sealed and attached to the record.

85. Competent bodies take care of the secrecy, i.e. non-publicity of the procedure *ex officio*. Thus, a person who is allowed to inspect the file during investigative actions, examination, inquiry and hearing, which are designated secret, will be warned that they must keep the information they have learned a secret, including information about a child participating in the procedure and information designated as such by a special law, and that revealing a secret is an offense. This will be noted in the file inspected, with the signature of the person who was warned. Moreover, the procedure during the investigative actions is secret. The body that undertakes an action will warn the persons participating in it that revealing a secret is an offense. The warning will be recorded in writing, and the warned person will confirm it by their signature.

86. The investigation is not public. The authority conducting the investigation may issue a decision designating all or part of the investigation secret for the reasons stated in Article 388 of the Criminal Procedure Act, if the public disclosure of information from the investigation would harm the progress of the proceedings. The authority taking an investigative action will warn the persons participating in it that it is an offense to disclose the secret. All persons who learn the content of a procedural action carried out during such an investigation are obliged to keep the facts or information that they have learned on that occasion a secret.

87. The chair of the judicial panel will warn the persons attending a hearing from which the public is excluded that they are obliged to keep everything they learn at the hearing a secret and that revealing a secret is an offense.

Article 13
Extradition

88. Pursuant to Article 9 of the Constitution, a citizen of the Republic of Croatia may not be forcibly expelled from the Republic of Croatia, nor may they be extradited to another state, except when a decision on extradition or surrender made in accordance with a treaty or the acquis of the European Union must be carried out. The Republic of Croatia, as a member state of the European Union, has transposed Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures Between Member States[14] into the national legislation, specifically by the Act on Judicial Cooperation in Criminal Matters with Member States of the European Union.[15]

Article 14
Mutual legal assistance

89. International legal assistance and judicial cooperation in criminal matters in the Republic of Croatia take place on the basis of the legislative framework consisting of the Act on International Legal Assistance in Criminal Matters,[16] the Act on Judicial Cooperation in Criminal Matters with Member States, as well as treaties to which the Republic of Croatia is

[13] *Narodne novine*, No. 84/11, 143/12, 148/13, 56/15, 126/19.
[14] Official Journal of the European Union OJ L 190, 18.7.2002.
[15] *Narodne novine*, No. 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20, 18/24.
[16] *Narodne novine*, No. 178/04.

a signatory. The system of international mutual legal assistance in criminal matters and judicial cooperation enables the collection of evidence and information that may be essential in the process of determining substantive and procedural facts essential for taking measures in order to fulfill the obligations from the Convention.

Article 15
Cooperation of the States Parties

90. The procedure of searching for persons gone missing and those killed in the Homeland War whose place of burial is unknown is regulated by the Act on Persons Gone Missing in the Homeland War. In addition to the basic principles, implementing activities and competent authorities in the search process, this Act also regulates cooperation with other countries and international organizations.

91. In this regard, on the basis of concluded international legal instruments in the field of search for missing persons or by agreement with countries with which the Republic of Croatia does not have signed international legal instruments, and in accordance with international legal instruments in the field of human rights and international humanitarian law, the competent authorities cooperate with the competent authorities of other countries, especially in: searching for persons gone missing in the Homeland War and persons killed in the Homeland War whose place of burial is unknown, and missing foreign citizens; gathering information about individual and mass graves; implementation of field investigations and research; exhumation of mortal remains and their identification; handover of remains and funeral care of identified persons.

92. Due to the need to regulate the resolution of the issue of persons who went missing during the Homeland War, the following bilateral agreements and protocols were concluded with competent authorities of other countries and international organizations:

- Agreement on Cooperation in the Search for Missing Persons Signed between the Socialist Federal Republic of Yugoslavia and the Republic of Croatia (1995);
- Protocol on Cooperation between the Commission on Captives and Missing Persons of the Government of the Republic of Croatia and the Commission for Humanitarian Issues and Missing Persons of the Government of the Socialist Federal Republic of Yugoslavia (1996);
- Protocol on Cooperation between the Government of the Republic of Croatia and the Council of Ministers of Bosnia and Herzegovina in the Search for Missing Persons (2017);
- Protocol on Cooperation between the Commission on Captives and Missing Persons of the Government of the Republic of Croatia and the Commission on Missing Persons of the Government of Montenegro (2017);
- Agreement between the Government of the Republic of Croatia and the International Commission on Missing Persons on the Status of the Office of the International Commission for Missing Persons in the Republic of Croatia (2002);
- Joint Project on DNA-Led Identifications Concluded between the Ministry of Family, Croatian Veterans' Affairs and Intergenerational Solidarity of the Republic of Croatia and the International Commission on Missing Persons (2004);
- Memorandum of Understanding between the Government of the Republic of Croatia and the International Committee of the Red Cross on Determining the Roles and Responsibilities of the Government of the Republic of Croatia and the International Committee of the Red Cross Regarding the Transfer of Competence for Managing Data on Persons Gone Missing in Armed Conflicts on the Territory of the Republic of Croatia (2006);
- Agreement between the Ministry of Croatian Veterans' Affairs, the Directorate for Captives and Missing Persons of the Republic of Croatia and the International Commission on Missing Persons on the Establishment and Maintenance of the

"Database of Active Missing Persons Cases from Conflicts on the Territory of Former Yugoslavia" (2017);

- Framework Plan to Address the Issue of Missing Persons From Conflicts on the Territory of Former Yugoslavia (2018)
- Memorandum of Understanding between the Ministry of Croatian Veterans' Affairs of the Republic of Croatia and the International Committee of the Red Cross on the Transfer and Use of Information and Documents on Persons Gone Missing in the Homeland War in the Republic of Croatia (1991–1995), Obtained from International Archives (2019).

Article 16
Prohibition of expulsion, return, surrender or extradition of a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance

93. Pursuant to Article 9 of the Constitution, a citizen of the Republic of Croatia cannot be extradited to another state, except when a decision on extradition or surrender made in accordance with a treaty or the acquis of the European Union must be carried out. Article 33 of the Constitution stipulates that foreign nationals and stateless persons may receive asylum in the Republic of Croatia, unless they are persecuted for non-political crimes and activities contrary to the fundamental principles of international law, and a foreigner who is legally present on the territory of the Republic of Croatia cannot be expelled or extradited to another state, except when a decision made in accordance with an international agreement and law must be executed.

94. Furthermore, Article 204 of the Aliens Act[17] prescribes the protection of fundamental human rights in the refoulement procedure, in which the Ministry of the Interior ensures the observation of refoulement in accordance with the common standards and procedures of the Member States of the European Union in connection with the return of third-country nationals whose residence is illegal, on which it can enter into agreements with other state authorities, international organizations and civil society organizations.

95. Refoulement is the return of a third-country national from the Republic of Croatia under police escort, regardless of the consent of the third-country national, if they have failed to leave the European Economic Area i.e. the Republic of Croatia within the time limit set by a decision. A third-country national may be forcibly returned to their home country, the country from which they came to the Republic of Croatia or, with their consent, to another third country.

96. Article 207 of the Aliens Act prohibits refoulement of a third-country national to a country where their life or liberty is threatened on the grounds of their racial, religious or national affiliation, affiliation with a particular social group or their political opinion, or where they could be subjected to torture or inhuman and degrading treatment or punishment, or the death penalty could be imposed on them, and to a country where they are at risk of being forcibly removed to such a country. Article 6 of the Act on International and Temporary Protection[18] prescribes the prohibition of enforced removal or return ("non-refoulement"), which prohibits the enforced removal or in any way the return of a third-country national or a stateless person to the country where their life or liberty would be at risk due to their racial, religious or national affiliation, affiliation with a certain social group or their political opinion, or in which they could be subjected to torture, inhuman or degrading treatment, or which could extradite them to another country in which this principle would be violated.

[17] *Narodne novine*, No. 33/20, 114/22, 151/22.
[18] *Narodne novine*, No. 70/15, 127/17, 33/23.

Article 17
Prevention of illegal arrest or deprivation of liberty

97. According to Article 22 of the Constitution, human liberty and personality are inviolable, and no one's freedom may be taken away or restricted, except when so determined by law. Furthermore, Article 24 of the Constitution stipulates that no one can be arrested or detained without a written court order based on the law, which must be read and delivered to the person during the arrest. The arrested person, in a manner understandable to them, must be immediately informed of the reasons for the arrest as well as their rights. Article 25 of the Constitution stipulates that every arrested and convicted person must be treated humanely and their dignity must be respected, and that anyone who has been illegally arrested or convicted has the right to compensation and a public apology.

98. The Criminal Procedure Act, in Article 95, states that when deciding on measures to ensure the presence of the defendant and other precautionary measures, the court and other state authorities will ensure *ex officio* that a more severe measure is not applied if the same purpose can be achieved by a less severe measure. The court and other state authorities shall, *ex officio*, abolish the measures or replace them with less severe measures if the legal conditions for their application have ceased to exist, or if conditions have arisen which make the achievement of the same purpose with a less severe measure possible. According to Article 107 of the Criminal Procedure Act, the police is authorized to arrest: 1) a person against whom a warrant for arrest and a decision on custody or pre-trial detention is being executed, 2) a person reasonably suspected of having committed an offense prosecuted *ex officio*, when there is a ground for ordering pre-trial detention referred to in Article 123 of this Act, 3) a person detected committing an offense prosecuted *ex officio*, 4) an accused person for whom there are grounds for suspecting that he acted contrary to a certain precautionary measure ordered against him. During the arrest, the arrested person must immediately be given a written instruction on their rights from Article 108a, paragraph 1 of the Act. If a written instruction could not be given, the police must immediately inform the arrested person of their rights.

99. Upon arrest, the police will immediately inform: 1) the state attorney, 2) persons from Article 108a, paragraph 1, items 3, 5 and 6 at the request of the arrested person, 3) the competent social welfare authority if it is necessary to take measures to care for the children and other family members of the arrested person who are under their care, 4) a guardian if the arrested person is deprived of legal capacity, 5) a parent or a guardian if the arrested person is a child.

100. According to the provisions of Article 112 of the Criminal Procedure Act, the state attorney orders detention against the arrested person by a written and reasoned decision if they determine that there are grounds for suspecting that the arrested person has committed an offense for which criminal proceedings are initiated *ex officio*, and there are certain grounds for pre-trial detention from Article 123, paragraph 1, items 1 to 4 of the Act, and detention is required for the purpose of establishing identity, verifying alibi, and gathering information on evidence.

101. Detention can last no longer than forty-eight hours from the moment of arrest, except for offenses for which a prison sentence of up to one year is prescribed, when detention can last no longer than thirty-six hours from the moment of arrest. At the proposal of the state attorney, the investigating judge can extend custody for another thirty-six hours by a reasoned decision if it is necessary to collect evidence about an offense for which a prison sentence of five years or more is prescribed. The person held in custody can lodge an appeal against the decision of the investigating judge on the extension of custody within six hours. A judicial panel decides on the appeal within twelve hours. The appeal does not delay the execution of the decision. Custody will be immediately terminated if the reasons for which it was ordered no longer apply.

102. Upon the order of the state attorney, the police will bring a person held in custody for whom there are grounds for pre-trial detention before the investigating judge before the expiration of the custody period from Article 112, paragraph 5 of the Criminal Procedure Act, or within the deadline from Article 112, paragraph 7 of the Act, to schedule a detention

hearing or to release them. Based on an order of the investigating judge, the person will remain in custody until the detention hearing, but no longer than twelve hours from the moment they were brought before the investigating judge.

103. Article 20 of the Enforcement of the Prison Sentence Act[19] stipulates that supervision over respect for the human rights and fundamental freedoms of prisoners is carried out by the Ombudsperson and special ombudspersons in accordance with special regulations and international bodies based on treaties to which the Republic of Croatia is a party. Article 128 of the Prison Sentence Act stipulates that the penitentiary or prison will allow visits by the representatives or authorized persons of the state or other body that supervise the work of penitentiaries or prisons, in accordance with the provisions of this Act and other regulations, and international legal acts regulating the protection of human rights and fundamental freedoms. Likewise, based on Article 131 of the Enforcement of the Prison Sentence Act, a prisoner has the right to correspond with the lawyer, state authorities and international organizations for the protection of human rights of which the Republic of Croatia is a member, without restriction or supervision of the content of the correspondence.

104. The Ministry of Justice and Public Administration i.e. its Directorate for the Prison System and Probation has developed a comprehensive information system (ZPIS) for prison and probation administration, which has been in use since 2019 and is continuously developed and improved. ZPIS is an information system in which the data of correctional facilities and probation offices are processed, stored or transmitted in electronic form through functional modules so that they are available to authorized users. The information system contains prescribed data, personal files of inmates, registers of inmates and records on all categories of inmates in the prison system, in accordance with Articles 76, 77 and 78 of the Enforcement of the Prison Sentence Act and the Ordinance on Registers of Inmates, Personal Files of Inmates and Other Records Kept in the Prison System.[20]

105. The Ordinance on Service in the Armed Forces[21] stipulates that a member of the Armed Forces of the Republic of Croatia is not obliged to carry out the orders of superiors if the orders are aimed at treason and other offenses against the Republic of Croatia and the Armed Forces, and if they are against the customs of war and the law of armed conflict. In such a case, a member of the Armed Forces of the Republic of Croatia is obliged to immediately inform the superior of the person who issued the illegal order, or another competent person.

106. The military police, through the daily exercise of military police powers related to detaining and apprehending persons, temporary restriction of the freedom of movement and holding persons in custody, respects the provisions of the Act on Service in the Croatian Armed Forces[22] and the Ordinance on Military and Police Affairs and the Exercise of Powers of Authorized Military Police Officials.[23]

Article 18
The right to information about a person deprived of liberty

107. During arrest, the arrested person must immediately be given a written instruction on the rights from Article 108a, paragraph 1 of the Criminal Procedure Act. The written instruction on rights contains, among other things, a notice of the right of the arrested person to have, at their request, their family or another person designated by them notified of the arrest, and a notice of a foreign national's right to have, at their request, the competent consular body or embassy immediately notified of the arrest and to contact them without delay.

108. According to Article 183 of the Criminal Procedure Act, the right to inspect the case file includes the right to view, transcribe, copy and record the case file in accordance with

[19] *Narodne novine*, No. 14/21, 155/23.
[20] *Narodne novine*, No. 133/22.
[21] *Narodne novine*, No. 91/09.
[22] *Narodne novine*, No. 73/13, 75/15, 50/16, 30/18, 125/19, 158/23, 14/24.
[23] *Narodne novine*, No. 44/14.

this Act and the state attorney's file in accordance with a special law. The right to inspect the case file also includes viewing the items that serve to establish facts in the proceedings. Anyone who has a legitimate interest in inspecting the case file may be allowed to do so in accordance with the law.

109. Immediately upon admission of a person to serve a prison sentence, the penitentiary/prison allows the person to inform their family members about this. In addition, within three working days, the penitentiary informs the enforcement judge responsible for the referral, the enforcement judge responsible for the penitentiary/prison, as well as the court that rendered the judgement in the first instance, about the admission of the person. Upon admission to the penitentiary/prison, the person deprived of liberty gives a written statement as to whether, in the event of a serious illness, they wish a family member or a person designated by them to be informed about it, if they are not able to do so themselves. At their request, the Central Office for the Prison System in Directorate for Prison System and Probation submits to a court or other state authority the data on a person serving a prison sentence that is necessary for the conduct of proceedings before those authorities. The Central Office provides information on the penitentiary/prison where the person is serving a prison sentence to legal or natural persons who prove a legitimate interest.

110. In the event of death of a person serving a prison sentence in a penitentiary/prison, the family members of that person have the right to receive their medical documentation on the diagnostic process and treatment, unless the deceased prohibited it in a written statement during their lifetime. The penitentiary/prison will without delay notify the death of a person serving a prison sentence to their family, the referring court, the court that passed the judgement in the first instance, the enforcement judge and the registrar on whose territory the penitentiary/prison is located as well as the Central Office. The mortal remains of the deceased are handed over to the family for burial. Burial costs are borne by the family or the personal care provider. If the family or the personal care provider refuse to take over the mortal remains or the deceased has no family or personal care provider, the deceased will be buried at the local cemetery at the expense of the local self-government unit according to their place of residence, and if they do not have residence in the Republic of Croatia, the cost will be borne by the local self-government unit according to seat of the penitentiary/prison. The local self-government unit can recover the burial costs from the estate of the deceased or the personal care provider.

Article 19
Protection of personal data

111. The Constitution guarantees everyone the security and confidentiality of personal data. Without the consent of the data subject, personal data can be collected, processed and used only under the conditions prescribed by law, and the use of personal data contrary to the established purpose of their collection is prohibited. Protection of personal data in the Republic of Croatia is ensured to every natural person regardless of their nationality and place of residence, race, gender, language, religion, political or other belief, national or social origin, property, birth, education, social position or some other characteristics. The Act on the Implementation of the General Data Protection Regulation[24] in the Republic of Croatia ensures its implementation and regulates the purpose of data use, the legal basis for data processing, the duration of data storage, etc.

112. The provisions of Articles 186 to 188 of the Criminal Procedure Act prescribe the collection, use and protection of personal data for the purposes of criminal proceedings. Among other things, they stipulate that personal data can be collected by the competent authorities only for the purpose specified by law within the scope of their work. The processing of personal data can only be carried out when it is determined by law or other regulation and must be limited to the purpose for which the data was collected. Further data processing is permitted if it does not contradict the purpose for which the data was collected

[24] *Narodne novine*, No. 42/18.

and if the competent authorities are authorized to process such data for another purpose prescribed by law, and the processing is necessary and proportionate to that other purpose.

113. The processing of personal data related to health or sexual life is permitted only exceptionally if the detection and proving of an offense punishable by a prison sentence of five years or more could not be carried out in any other way or would be accompanied by disproportionate difficulties. Processing of personal data related to racial or ethnic origin, political beliefs, religious or philosophical beliefs or trade union membership is not permitted.

114. Personal data collected for the purposes of criminal proceedings can be submitted to state administration bodies in accordance with a special law, and to other legal entities only if the State Attorney's Office or the court finds that those bodies require the data in accordance with the purpose prescribed by law. Upon delivery, these legal entities will be warned that they are obliged to apply measures to protect the data of the data subject. The State Attorney's Office or the court will provide the data subject, upon their request, with a notification on whether their personal data were the subject of collection, storage and processing for the purposes of criminal proceedings.

115. Personal data collected for the purposes of criminal proceedings may, in accordance with the provisions of the Criminal Procedure Act and special regulations governing the protection of personal data, be submitted or made available to the competent authorities of the Member States of the European Union. Under certain conditions prescribed by law and in accordance with special regulations governing the protection of personal data, personal data may be submitted or made available to other countries and international bodies.

116. Competent authorities are obliged to take measures to ensure that personal data that are not accurate, complete or up-to-date are not transferred or made available to Member States. For this purpose, before transferring or making personal data available, to the extent possible, they will check the quality of that data. If it is subsequently determined that the personal data transferred or made available to the Member States are incorrect or that they were transferred contrary to the provisions of the law or special regulations, the competent authority will notify the recipient without delay, and such data will be corrected or deleted. When transferring personal data, the competent authority may specify deadlines for storing the transferred data, after which the recipient must delete them or disable access to the data, or check whether there is still a need to use them.

117. Competent authorities may process personal data received or made available from the competent authorities of the Member States of the European Union only when this is defined by this Act or special regulations governing the protection of personal data and only for the purpose for which the data were collected.

118. Further processing of personal data is permitted only if it is necessary for the prevention, detection or prosecution of offenses or the execution of criminal sanctions; for court and other proceedings that are directly related to the prevention, detection or prosecution of offenses or the execution of criminal sanctions; for the purpose of preventing an immediate and serious threat to public security, or for any other purpose, but only with the prior authorization of the Member State that transfers them or with the consent of the data subject.

119. Personal data transferred or made available by the competent authorities of another Member State may be transferred to countries that are not members of the European Union or international bodies only if this is necessary for the prevention, detection or prosecution of offenses or the execution of criminal sanctions; if the body that is the recipient of personal data in a third country or the international body that is the recipient of personal data is responsible for the prevention, detection or prosecution of offenses or the execution of criminal sanctions; if the Member State from which the data was obtained has given permission for the transfer of personal data in accordance with its national law, and if a country that is not a member of the European Union or an international body ensures an adequate level of protection for the intended data processing.

120. Based on Article 327a, paragraph 6 of the Criminal Procedure Act, the Minister of Justice, in cooperation with the ministers of health, internal affairs and defense, issues an Ordinance on the Method of Taking Samples of Biological Material and Conducting

Molecular Genetic Testing,[25] which regulates the method of taking samples of biological material for the purposes of analysis, storage conditions and preservation of samples of biological material, storage conditions, processing and preservation of data collected through molecular genetic testing, and supervision of the storage, processing and preservation of collected data.

121. According to Article 7 of the aforementioned Ordinance, the data collected through molecular and genetic analysis are stored and preserved in the database of the Forensic Science Center "Ivan Vučetić" of the Ministry of the Interior of the Republic of Croatia. The above data are stored for the period prescribed by Article 327a of the Criminal Procedure Act, and upon expiry of the storage period, the Center is obliged to delete them.

122. Pursuant to the aforementioned Ordinance, the supervision of the storage, processing and preservation of data collected through molecular genetic testing is performed by a five-member Commission for the Supervision of Storage, Processing and Preservation of Data Collected by Molecular Genetic Testing, appointed by the Minister of Internal Affairs in cooperation with the Minister of Health. In addition, Article 8 of the Ordinance stipulates that samples of biological material and DNA profiles can be submitted to authorized institutions in the Republic of Croatia and abroad in accordance with special regulations.

123. The rules for the protection of natural persons in connection with the processing and exchange of personal data by competent authorities are prescribed by the Act on the Protection of Natural Persons with Regard to the Processing and Exchange of Personal Data for the Purposes of Prevention, Investigation, Detection or Prosecution of Criminal Offenses or the Enforcement of Criminal Sanctions.[26] Article 11 of the aforementioned Act prohibits the processing of personal data related to racial or ethnic origin, political views, religious or philosophical beliefs or trade union membership, as well as the processing of genetic data and biometric data for the purpose of unique identification of data subjects or data related to health, sexual life or sexual orientation of the data subject.

124. The Act on Biometric Data Processing[27] regulates the processing of biometric data for the purpose of effective identification and protection of natural persons from the misuse of their personal data. Competent bodies authorized to collect and process biometric data and organize appropriate collections are the ministries responsible for internal affairs, foreign affairs, judicial affairs and the ministry responsible for defense affairs related to of military police work. Biometric data are considered personal data obtained through special technical processing in connection with the physical or physiological characteristics of an individual that enable or confirm the unique identification of that individual, such as fingerprints of the papillary lines of fingers, palms and feet, photographs, facial images, DNA profile and the iris of the eye.

125. On the basis of the aforementioned Act, the Ordinance on Biometric Data Processing[28] was adopted, which prescribes the automated processing and management of biometric data results (ABIS) for the purpose of effective identification and protection of natural persons from misuse of their personal data. ABIS is an integral part of the Information System of the Ministry of the Interior of the Republic of Croatia, which is securely connected to other information systems of the Republic of Croatia that contain appropriate collections of biometric data.

126. Article 12 of the Ordinance on Biometric Data Processing prescribes the procedure for processing biometric data collected from missing persons who are being searched for, regardless of their nationality, while Article 14 of the said Ordinance prescribes the procedure for processing biometric data collected from unidentified mortal remains. Exclusive authorization for the process of automated comparison of biometric data from unidentified mortal remains with biometric data in other collections and systems was given to the Forensic Science Center "Ivan Vučetić" of the Ministry of the Interior of the Republic of Croatia.

[25] *Narodne novine*, No. 120/14.
[26] *Narodne novine*, No. 68/18.
[27] *Narodne novine*, No. 127/19.
[28] *Narodne novine*, No. 122/20.

127. Pursuant to Article 22 of the aforementioned Ordinance, authorized users of the system (ABIS) are divided into user groups, whereby the principle of minimum authorization sufficient to perform work tasks is applied, so that the user cannot have a level of authorization for the work higher than the level of the organizational unit to which they belong, that is, they cannot have a level of authorization higher than the needs arising from their job description.

Article 20
Restriction of the Right to Access Information

128. Article 38 of the Constitution guarantees the right of access to information held by public authorities. Restrictions on the right to access information must be proportionate to the nature of the need for restriction in each individual case and necessary in a free and democratic society, and are prescribed by law. Restrictions on the right to access information are prescribed by Articles 15 and 16 of the Act on the Right of Access to Information.[29] The aforementioned provisions stipulate that public authorities will restrict access to information related to all procedures conducted by competent authorities in pre-trial and criminal proceedings for the duration of those proceedings. Public authorities may restrict access to information if the information is classified as secret, in accordance with the law regulating data secrecy; if the information is a trade, professional or tax secret; if the information is protected by regulations governing the field of personal data protection; if the information is protected by regulations governing intellectual property rights, except in the case of the right holder's consent, and if access to the information is restricted in accordance with treaties or if the information in question was created in the process of concluding or acceding to treaties or in the process of negotiations with other countries or international organizations, or if the information in question was created as part of the maintenance of diplomatic relations.

129. Moreover, public authorities may restrict access to information if there are grounds for suspicion that its disclosure would impede the efficient, independent and impartial conduct of judicial, administrative or other proceedings, the execution of court decisions or punishments, and if the disclosure of information would impede the work of bodies that perform supervision.

130. Furthermore, public authorities may restrict access to information if the information is in the process of being created within one or more public authorities, and its disclosure could disrupt the process of its creation; if the information was created in the process of harmonization during the adoption of regulations and other acts, and its disclosure could lead to a misinterpretation of the content of the information, endanger the process of adopting regulations and acts or the freedom of expression of opinions and attitudes.

131. Information to which the right of access is restricted becomes available to the public at a time determined by the person to whom the disclosure of the information could cause damage, but not later than 20 years from the day the information was created.

132. The public authority responsible for processing a request for access to information conducts a test of proportionality and public interest before making a decision. When conducting the test of proportionality and public interest, the public authority is obliged to determine whether access to information can be restricted in order to protect one of the interests prescribed by the Act on the Right of Access to Information. If the public interest outweighs the harm to protected interests, the information will be made available.

133. Furthermore, Article 107 of the Criminal Procedure Act stipulates that the police are authorized to arrest: a person against whom they are executing a warrant for compulsory appearance and a decision on custody or pre-trial detention, a person reasonably suspected of having committed an offense prosecuted *ex officio*, when there is a reason for ordering pre-trial detention, a person caught in an offense prosecuted *ex officio*. The rights of the arrested person are prescribed by Article 7, paragraph 2 of the same Article of the Criminal Procedure Act, which stipulates, among other things, that the arrested person will be instructed of their right to the professional assistance of a defense attorney of their choice

[29] *Narodne novine*, No. 25/13, 85/15, 69/22.

and that, at their request, the competent authority will inform their family or another person designated by them about the arrest.

134. Article 108, paragraph 1 of the Criminal Procedure Act stipulates that, during arrest, the person being arrested must be provided with an instruction on rights, which, according to Article 108, paragraph 1 of the Criminal Procedure Act, contains, among other things, a notice of the right to a defense attorney of their own choice or to a defense attorney appointed from the list of duty lawyers, and the right to have their family or other person designated by them informed of the arrest. In connection with the above, Article 108, paragraph 5 of the Criminal Procedure Act prescribes the obligation of the police, at the arrested person's request, to immediately notify the defense attorney of the arrested person's choice or the one appointed from the list of duty lawyers and the family or another person designated by the arrested person about the arrest.

135. Article 108b of the Criminal Procedure Act stipulates a restriction in relation to the above-mentioned rights of the arrested person, i.e. if there is an urgent need to remove serious and grave consequences for the life, liberty or physical integrity of a person or to remove the risk that evidence will be hidden or destroyed, a state attorney can order the police to delay notifying the defense attorney of the arrested person's choice or the defense attorney appointed from the list of duty lawyers and the family or another person designated by the arrested person only for as long as there are reasons for doing so, and not longer than 12 hours from the moment of arrest.

136. Article 123, paragraph 1 of the Criminal Procedure Act defines the grounds for pre-trial detention, stating that pre-trial detention can be ordered if there is reasonable suspicion that a certain person has committed an offense and if: 1) they are on the run or special circumstances point to a flight risk (they are in hiding, their identity cannot be established, etc.), 2) specific circumstances point to a risk that they will destroy, hide, alter or falsify evidence or traces important for the criminal proceedings or obstruct the criminal proceedings by influencing witnesses, experts, accomplices or concealers, 3) specific circumstances point to a risk that they will repeat the offense or complete the attempted offense, or that they will commit a more serious offense for which a prison sentence of five years or a more severe sentence may be lawfully imposed, which they have threatened to commit, 4) pre-trial detention is necessary for the unhindered course of the proceedings for an offense for which a long-term imprisonment is prescribed and in which the circumstances of the commission of the offense are particularly serious, 5) the defendant who has been duly summoned avoids appearing at the hearing. Paragraph 2 of the same Article stipulates the obligation to impose pre-trial detention, that is, to order or extend pre-trial detention during the pronouncement of the judgement g where the defendant is sentenced to a prison sentence of five or more years.

137. According to Article 124 of the Criminal Procedure Act, pre-trial detention is ordered and extended by a written decision of the competent court. In relation to the above, Article 127, paragraph 1 of the aforementioned Act stipulates that pre-trial detention pending the filing of an indictment is ordered by the investigating judge at the proposal of a state attorney, and lifted at the proposal of the defendant, the state attorney or *ex officio*, while paragraph 4 of the same Article stipulates that after the filing of the indictment, pre-trial detention until indictment confirmation is ordered, extended and lifted by the indictment panel. After confirmation of the indictment, until the judgement becomes final, pre-trial detention is ordered, extended and lifted by the trial court in session, and by the trial panel outside the session. Article 134, paragraph 1 of the Criminal Procedure Act stipulates the right to appeal, that is, that the defendant, their defense attorney or the state attorney can file an appeal against the decision ordering, extending or lifting pre-trial detention within three days.

138. Finally, Article 239a of the Criminal Procedure Act prescribes the protection of the procedural rights of the defense, i.e., upon service of the decision to conduct an investigation, the defendant who believes that a specific right of theirs has been denied to them or violated contrary to the law, can submit a written complaint to the state attorney. The complaint cannot be submitted for the reasons for which an appeal can be filed against the decision to conduct an investigation, and paragraph 4 of the same Article stipulates that the state attorney will make a decision promptly, no later than eight days from receiving the complaint. If the state attorney does not accept the complaint within that period, they will submit it to the

investigating judge, who will decide on the complaint promptly, no later than eight days from its receipt.

Article 21
Release

139. Pursuant to the Enforcement of the Prison Sentence Act,[30] upon release from the prison system, the released person is given a release certificate, all personal belongings and deposited items, money and valuables. If the person being released does not have funds on deposit, they are given funds sufficient to cover the cost of a travel ticket to their place of residence, and for a foreign national to the state border of the Republic of Croatia. A released person who does not have their own clothes, shoes or financial resources is given appropriate clothes, shoes or assistance amounting to one per diem established for civil servants and state employees. For a released person who is unable to travel due to illness, the penitentiary/prison organizes transportation to the place of residence, and if further treatment is required, to the nearest appropriate public health facility in the place where the person is released. The form for release from the penitentiary/prison, which is kept in electronic form, shows the date and time of the person's release, the Personal Identification Number (PIN), the name and surname of the officer and their PIN, and the name of the penitentiary/prison from which the person is released.

Article 22
Measures for Preventing and Punishing Persons who are Responsible for Recording Data on an Arrested Person, that is, who Refuse to Provide Information about the Deprivation of Liberty of a Certain Person

140. Pursuant to Articles 30 and 31 of the Police Act,[31] police officers are obliged to perform their duties in accordance with the laws, regulations and rules of the profession and to respect the provisions of the Code of Ethics for Police Officers[32] ("as well as to respect the dignity, reputation and honor of every person as well as other fundamental human rights and freedoms").

141. In case of a breach of official duty, Article 93 of the Police Act stipulates that a police officer is liable if they do not perform entrusted duties and tasks conscientiously, professionally and within the stipulated deadlines, if they do not comply with the Constitution, laws, other regulations and rules on conduct on duty or off duty when it harms the reputation of the service. A police officer is liable for a breach of official duty if they committed the breach intentionally or due to gross negligence. Criminal or misdemeanor liability does not exclude liability for a breach of official duty if the act that is the subject of criminal or misdemeanor proceedings also constitutes a breach of official duty.

142. Failure to perform official duties, reckless, untimely or negligent performance of official duties, unlawful conduct or failure to take measures and actions for which the officer is authorized to prevent illegality, as well as the abuse of position on or off duty or overstepping of authority on duty constitute a grave breach of official duty. Article 110 of the Police Act envisages sanctions for grave breaches of official duty in the form of a fine of up to 20% of the last salary for a period of 1 to 6 months, suspension of promotion in rank or position for 2 to 4 years, transfer to another workplace of the same or lower complexity for a period of 2 to 4 years, a suspended sentence of termination of civil service and, as the most severe sanction, termination of civil service.

143. Pursuant to Article 5c of the Police Act, civilian oversight of the police is carried out through the Complaints Commission, which deals with complaints about illegal or improper conduct of a police officer or other employee of the Ministry of the Interior of the Republic

[30] *Narodne novine*, No. 14/21, 155/23.
[31] *Narodne novine*, No. 34/11, 130/12, 89/14, 151/14, 33/15, 121/16, 66/19, 155/23.
[32] *Narodne novine*, No. 145/23.

of Croatia, which violated someone's rights or the law. The Commission consists of nine members, who are appointed and dismissed by the Croatian Parliament at the proposal of the Committee on Human and National Minority Rights of the Croatian Parliament. The Committee submits a report on its work to the Croatian Parliament once a year.

144. Article 5 of the Code of Ethics for Police Officers, adopted by the Minister of the Interior on the basis of the Police Act, stipulates that police officers are obliged to ensure the preservation of and respect for human rights and fundamental freedoms, and in case of lawful restrictions of freedoms and rights, to respect the dignity, reputation and honor of every person. Furthermore, in accordance with Article 14 of the Code of Ethics, police officers are obliged to protect, respect and promote human rights and freedoms, and to respect the dignity and integrity of all citizens without discrimination or favoritism.

145. Under Article 111, paragraph 5 and Article 113, paragraph 3 of the Criminal Procedure Act, the Minister of the Interior issues the Ordinance on the Admission and Treatment of Arrested Persons and Detainees and on the Record of Detainees in the Police Detention Unit.[33] This Ordinance prescribers the treatment of the arrested person prior to the admission to the detention unit, admission of the arrested person to the detention unit, handling of the detainee, a record of arrested persons and detainees, performance of security duties of the detention unit, technical and sanitary standards and supervision of the work of the detention unit.

146. Data on all arrested persons are entered into the information system of the Ministry of the Interior of the Republic of Croatia, specifically, into the data collection on arrested persons and detainees. It contains information on: the identity of the arrested person; the place and time of arrest; the offense; the organizational unit of the police that carried out the arrest; the use of coercive means and physical injuries of the arrested person; the provided professional assistance of defense attorneys; the notification of diplomatic or consular representation; the time of the release of the arrested person or the bringing of the arrested person to the organizational unit of the police that requested the arrest; the time of bringing the detainee to the detention supervisor; the time and manner of reporting to the competent state attorney, the juvenile judge, the juvenile's parents or guardians and the social welfare center, and on the content of the state attorney's order; the time of release of the arrested person or detention according to the decision of the state attorney, the juvenile judge or the investigating judge; the time of bringing the detainee before the investigating judge or the juvenile judge; the extension of detention according to the decision of the investigating judge; the decision of the investigating judge on detention until the pre-trial detention hearing; the time of release of the detainee due to the expiry of the deadline for ordering detention; the expiry of the deadline for questioning by the state attorney or the juvenile judge; decision on release from detention; the expiry of detention period set by a decision; the treatment of the detainee in the police detention unit (data on the provision of health care, consultations with the defense attorney, consultations with consular and diplomatic representatives, provision of replacement clothing and footwear, provision of food, rest time, escorts of detainees, possible emergency situations, etc.).

147. According to Article 52 of the Ordinance on the Admission and Treatment of Arrested Persons and Detainees and on the Record of Detainees in the Police Detention Unit, the supervision of the work of the police detention unit is carried out by the competent officers of the Police Operations and Communications Center of the Ministry of the Interior of the Republic of Croatia, on which they report in writing to the Director General of Police and the Head of Operations and Communications Center.

148. The supervision of the treatment of detainees is carried out by the competent head of police department, the competent head of detention unit and the detention supervisor, and in the case of an arrested person who is a minor, the police officer in charge of minors as well. In the case of established irregularities, the aforementioned persons order the necessary measures to be taken to eliminate the irregularities, on which they are obliged to submit a written report and promptly report to the chief of police department.

[33] *Narodne novine*, No. 88/09, 78/14, 123/16, 50/19.

Article 23
Education of persons who may be involved in the supervision or treatment of persons deprived of liberty

149. The provisions of the International Convention for the Protection of All Persons from Enforced Disappearance are incorporated into the education and training program of the Armed Forces of the Republic of Croatia through training activities conducted by the International Military Operations Center "Josip Briški".

150. The aforementioned issue is addressed within the topic International Humanitarian Law and Rules of Engagement (ROE) as part of all pre-deployment trainings for members of the Armed Forces of the Republic of Croatia who are sent to peace support operations, and in the delivery of courses for NATO, EU and UN international activities. The International Military Operations Center "Josip Briški" also conducts a certified UN course on comprehensive protection of civilians, with an emphasis on topics related to the protection of civilians in accordance with international conventions. Tthe Croatian Military Academy "Dr. Franjo Tuđman" also conducts education and training on the topics of international humanitarian law.

151. The officers of the Prison System of the Ministry of Justice and Public Administration are provided with education on the International Convention for the Protection of All Persons from Enforced Disappearance as part of the subject "International Regulations for the Treatment of Prisoners", within the obligatory Basic Training Course for Judicial Police Officers in Penitentiaries/Prisons. Other officers of the prison system must take an introductory course of a similar content as the previously mentioned Basic Training but tailored to their tasks, within the obligatory training program entitled "Specifics of Work in the Prison and Probation System and Improvement of Cooperation. In addition, Article 44 of the Enforcement of the Prison Sentence Act prescribes for all officers of the prison system that preventing the realization of the guaranteed rights of prisoners and failure to report offenses related to the service that are prosecuted *ex officio* is a grave breach of official duty. All prison officers are informed and educated about this in the abovementioned obligatory training programs.

152. Finally, in the Ministry of the Interior, the Service for Lifelong Learning of the Police Academy "Prvi Hrvatski Redarstvenik" <*First Croatian Police Officer*> conducts training for police officers through the seminar "Theoretical and Practical Aspects in the Implementation of Criminal Investigations of War Crimes, as part of a specialist training program, in accordance with the annual Police Education Plan.

Article 24
Definition and rights of victims of enforced disappearance

153. According to the provisions of Article 202, paragraph 2, item 11 of the Criminal Procedure Act, a crime victim is a natural person who has suffered physical and mental consequences, property damage, or a significant violation of fundamental rights and freedoms that are a direct consequence of the criminal offense. A spouse, common-law partner, registered or informal life partner, as well as a descendant, and if there are none, an ancestor, brother and sister of the person whose death was directly caused by an offense, and the person whom he or she was obliged to support under the law are also considered to be the crime victims.

154. Article 16 of the Criminal Procedure Act stipulates that the police, the investigator, the State Attorney's Office and the court act with special consideration towards the crime victim. These bodies are obliged to inform the victim and the injured party of their rights in the proceedings in accordance with the aforementioned Act and, when taking actions, take care of their rights in an appropriate manner.

155. The provisions of Articles 43 to 50 of the Criminal Procedure Act prescribe a catalog of victims' rights and an individual assessment of the victim. According to the Criminal Procedure Act, a victim of an offense has: 1) the right to an easily accessible, confidential

and free access to crime victim support services, immediately after the crime has been committed and for as long as necessary, 2) the right to effective psychological and other professional help and support from a crime victim support body, organization or institution which assist crime victims in accordance with the law, 3) the right to protection from intimidation and retaliation, 4) the right to protection of dignity during the questioning of the victim as a witness, 5) the right to be heard without undue delay after the filing of a criminal complaint and that further hearings are conducted only to the extent necessary for the purposes of criminal proceedings, 6) the right to be accompanied by a person of trust when undertaking all actions in which they participate, (Article 202, paragraph 2, point 38 of the Criminal Procedure Act), from the victim's report to the final conclusion of criminal proceedings, 7) the right to undergo minimal medical procedures and only if they are absolutely necessary for the purposes of criminal proceedings, 8) the right to file a motion for prosecution and a private lawsuit in accordance with the provisions of the Criminal Code, the right to participate in criminal proceedings as an injured party, the right to be informed of the state attorney's dismissal of the criminal complaint (Article 206, paragraph 3 of the Criminal Procedure Act) or withdrawal from criminal prosecution, and the right to take over criminal prosecution instead of the state attorney, 9) the right to be informed by the state attorney of the actions taken in connection with their complaint (Article 206a of the Criminal Procedure Act) and to file a complaint with a superior state attorney (Article 206b of the Criminal Procedure Act), 10) the right to confidentiality of information, the disclosure of which could jeopardise their safety or safety of the victim's close persons, 11) the right to be informed – without undue delay, of the release of the arrested person, of the termination of custody or pre-trial detention, the defendant's escape and the convict's release from prison as well as any victim protection measures undertaken, except in the case of the victim's waiver of the afomentioned right 12) the right to be informed – of any final decision terminating the criminal proceedings, except in the case of the victim's waiver of the afomentioned right 13) the right to propose that they be questioned via an audio-video device, 14) other rights prescribed by law.

156. A victim of a crime for which a prison sentence of more than five years has been prescribed, if they are suffering from serious consequences of the offense, has the right to professional assistance from an advisor when submitting a property law claim at the expense of the state budget. The victim of a violent crime committed with intent has the right to compensation from the state budget in accordance with a special law. If the victim has previously been compensated through a claim for damages, its amount will be taken into account when determining the monetary compensation, and the court will act in the same way when awarding damages if the victim has previously obtained monetary compensation from the state budget.

157. The court, the State Attorney's Office, the investigator and the police are obliged to inform the victim in a manner understandable to them already when taking the first action in which the victim participates: 1) on the rights from paragraphs 1, 2 and 3 of Article 43 and Article 44 of this Act and 2) on the rights they have as an injured party.

158. The authorities will treat the victim with consideration and make sure that the victim has understood the given notice of rights. The authorities will explain to the victim in manner understandable to them what it means to participate in the proceedings in the capacity of an injured party. The given notice and the victim's statement as to whether they wish to participate in the proceedings as an injured party will be entered into the record.

159. The rights from paragraph 1, items 8, 9 and 11 of Article 43 also belong to a legal entity against which a criminal offense was committed. The provisions of this Act which govern the exercise of the aforementioned rights by a crime victim also apply accordingly to a legal entity against which a criminal offense was committed.

160. Before questioning the victim, the body conducting the questioning shall, in cooperation with bodies, organizations or institutions for crime victim support and assistance, carry out an individual assessment of the victim. The individual assessment of the victim includes determining whether there is a need to apply special protective measures in relation to the victim and, if so, what special protective measures should be applied (measures for protection of the victim's safety, a special manner of examining the victim, the use of communication technologies to avoid visual contact with the perpetrator, and other measures

prescribed by law). When the crime victim is a child, it will be assumed that there is a need for the application of special protective measures and it will be determined what special protective measures should be applied. When undertaking an individual victim assessment, special account is taken of the personal characteristics of the victim, the type or nature of the crime and the circumstances of its commission. Furthermore, special attention is paid to victims who have suffered significant damage due to the severity of the crime, victims of a crime committed because of some personal characteristic of the victim, and victims whose relationship with the perpetrator makes them particularly vulnerable. The individual assessment of the victim is carried out with the participation of the victim and taking into account their wishes, including the wish not to use special protective measures prescribed by law.

161. The body conducting the procedure will minimize the number of questionings of the victim for whom a special need for protection has been determined. The state attorney may propose that such a witness be questioned at an evidentiary hearing.

162. In addition to the rights that belong to the victim in accordance with Article 44 and other provisions of the Criminal Procedure Act, a child as a crime victim also has the right to: 1) a legal representative at the expense of the state budget, 2) secrecy of personal data, 3) exclusion of the public. The court, the State Attorney's Office, the investigator and the police are obliged to treat the child who is a crime victim with special consideration, bearing in mind their age, personality and other circumstances in order to avoid harmful consequences for the upbringing and development of the child. When dealing with a child victim, the competent authorities will primarily be guided by the best interests of the child. If the age of the victim is unknown, it will be assumed that it is a child if there is a probability that the victim has not reached the age of eighteen.

163. In addition to the rights that belong to the victim under Article 43 of the Act, a victim granted special protective measures in accordance with Article 43a of the Criminal Procedure Act also has the right: 1) to speak with an advisor before the questioning, at the expense of the state budget, 2) to be questioned by a person of the same gender at the police station and the State Attorney's Office and, if possible, to be questioned by the same person in the case of re-questioning, 3) to withhold answers to questions which are not related to the crime and strictly relate to personal life of the victim, 4) be questioned via an audio-video device (Article 292, paragraph 6 of the Criminal Procedure Act), unless the victim requests to be present in the courtroom while giving evidence, 5) to the secrecy of personal data, 6) to demand exclusion of the public from the hearing.

164. A victim has the right to register as an injured party with the police or the State Attorney's Office until the indictment, and with the court until the end of the hearing. If the victim or the legal entity against which a criminal offense was committed has filed a criminal complaint or the injured party has filed a claim for damages in criminal proceedings, it is also deemed as a motion for prosecution. A child who has reached the age of sixteen can submit a motion for prosecution by themselves.

165. If a victim dies during the deadline for submitting a motion for prosecution, i.e. if the injured party dies during the proceedings, their spouse or common-law partner, registered or informal life partner and descendant, and if there are none, an ancestor, brother, sister and the person whom the victim i.e. the injured party was legally obliged to support by law, can, within three months after their death, file a motion for prosecution or a lawsuit, or give a statement that they are continuing the proceedings.

166. If more than one person has been harmed by an offense, prosecution will be undertaken or continued at the motion of any of the victims. If this right has not been waived, the court shall immediately inform the victim, through the police, of the lifting of pre-trial detention against the defendant, unless this would put the defendant at risk. The court will immediately inform the victim of the lifting of pre-trial detention through the police even when the accused will not be released because he or she has been ordered to pre-trial detention in another court case or is serving a prison sentence based on a final court decision. In such a case, for the purpose of informing the victim, the court which issued the decision to revoke the pre-trial detention shall notify the prison or penitentiary of the need to inform the court before the defendant's or convict's first release. The victim will also be informed

of the measures taken to protect him or her, if such measures have been imposed (Article 125a of the Criminal Procedure Act).

167. The victim, the injured party and their respective legal representative have the right to inspect the case file. If an earlier inspection of the case file would affect the testimony of the victim and the injured party, they acquire the right to inspect the case file after they have been questioned (Article 184 of the Criminal Procedure Act).

168. The victim and the injured party have the right, after the expiration of two months from submitting a criminal complaint or reporting a crime, to request from the state attorney a notification of the actions taken in connection with the criminal complaint or report. The state attorney will notify them about the actions taken within an appropriate period, and no later than thirty days from the receipt of the request, except when doing so would jeopardize the effectiveness of the procedure. They are obliged to inform the victim and the injured party who requested the notification about the denial of the notification. If the state attorney has failed to inform the victim or the injured party or they are not satisfied with the information given or the actions taken, they have the right to file o complaint with a superior state attorney. The superior state attorney will check the allegations in the complaint, and if they find that the complaint is well-founded, they will order the lower-level state attorney to provide the complainant with the requested notification of the actions taken, i.e. to take the actions that should have been taken within a reasonable period of time. If the superior state attorney finds that the actions of the lower-level state attorney have resulted in a violation of the complainant's rights, they will notify them of this with an exact indication of the rights that have been violated. The victim and the injured party may again request the notification of the actions taken from paragraph 1 of this Article six months after the previously requested notification of the actions taken, unless they have appealed to the superior state attorney by a complaint from Article 206b of the Act (Article 206a of the Criminal Procedure Act).

169. The state attorney is obliged to make a decision on a criminal complaint within six months from the date of the entry of the complaint in the register of criminal complaints and to inform the complainant, stating briefly the reasons for the decision. At the end of that period or at the end of six months after the state attorney has acted according to Article 205 paragraph 6 of the Act, the complainant, the injured party and the victim can file a complaint with the superior state attorney due to the failure of the state attorney to take actions, which have lead to a delay in the proceedings (Article 206b of the Criminal Procedure Act).

170. In relation to the right to reparation and prompt, fair and adequate compensation from Article 24 of the Convention, we point out that this can be achieved by a victim of enforced disappearance only if the conditions and assumptions from the Crime Victims Compensation Act [34] have been met.

171. Furthermore, we point out that victims who are questioned before the courts in the Republic of Croatia will receive timely help and support when they appear in court as victims/injured parties/witnesses, and also, if they so request from the Service for Victim and Witness Support, they will receive information about the release of the perpetrator from prison.

172. A decision on an adequate provider of accommodation for a child, if there is a need for it, is made based on an assessment of the child's needs, while taking into account the child's safety, their opinion, personal and family circumstances.

173. The Act on Persons Gone Missing in the Homeland War [35] defines persons gone missing in the Homeland War, persons killed in the Homeland War whose burial place is unknown and, in the sense of "victims", also family members who suffered damage as a direct result of enforced disappearance.

174. The Ministry of Croatian Veterans' Affairs, as the central state body, coordinates actions aimed at searching for the missing and the mortal remains of persons whose burial place is unknown, and whose disappearance and deaths are linked to the Homeland War. In the process of searching for victims of the Homeland War, a systematic approach is applied

[34] *Narodne novine*, No. 80/08, 27/11.
[35] *Narodne novine*, No.70/19.

through the interdepartmental cooperation of all competent authorities, institutions and organizations, and competent authorities cooperate in the search with the associations of the families of missing persons and international organizations.

175. In the process of searching for the missing and the mortal remains of persons whose burial place is unknown, the main activities are: gathering information about these persons, keeping appropriate records, conducting field activities – research, trial excavations and exhumations, processing and identification of mortal remains, and organization of funeral care according to wishes of the families. All activities are prescribed by the Act on Persons Gone Missing in the Homeland War, which is being enforced in its entirety.

176. In terms of investigations, it should be noted that in the process of searching for the missing and the mortal remains of persons whose burial place is unknown, the exhumations of mortal remains are carried out based on and in accordance with the Criminal Procedure Act. Upon exhumation, processing and identification of mortal remains, the findings are submitted to the competent investigative bodies (Ministry of the Interior, State Attorney's Office of the Republic of Croatia) to carryout tasks within their respective scope of competence.

177. Furthermore, the Act on Persons Gone Missing in the Homeland War regulates the protection of the fundamental intangible rights of missing persons and their families, which also contributes to the preservation of the dignity of persons gone missing in the Homeland War, their family members, and all the victims of the Homeland War. The law incorporates the principles of the most important international legal instruments dealing with missing persons, the experiences of international organizations and other countries that have encountered the issue of missing persons.

178. The aforementioned mechanism has been functioning successfully in the Republic of Croatia since the very beginning of the process of exhumation of mass and individual graves in the previously occupied territory of the Republic of Croatia. Upon exhumation, standard procedure is to notify the person's family after preliminary identification and invite them, through the established network, to the final identification of the mortal remains. The identification process is considered completed when the family, with their signature, accept the identification findings, after which a death certificate is issued. Consequently, in accordance with the wishes of the family, funeral care is organized for all identified persons, and funeral expenses are covered from the state budget of the Republic of Croatia. The aforementioned procedures are also regulated by the Act on Persons Gone Missing in the Homeland War and implementing regulations.[36] In cases where families do not accept the findings of the identification of mortal remains, the person is not deleted from the records, to respect the wishes of the family regarding the status of a family member.

179. Furthermore, the Ministry of Croatian Veterans' Affairs, in cooperation with other competent bodies, institutions and organizations, has been systematically collecting ante-mortem data on missing persons in the Republic of Croatia since 1994, using a standardized form. In this sense, due to human casualties of the aggression against it, the Republic of Croatia was a pioneer in the collection of ante-mortem data and the formation of a database of ante-mortem data. Following the experiences and practices of the Republic of Croatia, in the late 1990s, international organizations began to apply the methodology for collecting data on missing persons in the neighboring countries. As an integral part of the missing persons questionnaire, information about family members was included, which was of particular importance in the procedures for collecting reference samples for the purposes of identification using the DNA analysis method that followed. Systematic collection of reference samples began in 1996, and is still carried out today.

180. Organized and coordinated by the Ministry of Croatian Veterans' Affairs, reference samples are collected and processed by DNA laboratories at scientific and health institutions that participate in the process of identifying mortal remains of the victims of the Homeland War. In addition, with the aim of collecting reference samples from family members of

[36] Ordinance on Exercising the Right to Burial Costs with Military Honors and a Grave Site and Its Maintenance, *Narodne novine*, No. 51/18 and Ordinance on Exercising the Right to the Burial Costs of Civilians Missing in the Homeland War, Narodne novine, No. 41/22.

missing persons who resided/reside outside the Republic of Croatia, a Joint Project on DNA-Led Identifications (2004) was signed with the International Commission on Missing Persons, which includes the exchange of reference sample findings. The findings of the processing of reference samples, received during the implementation of that Project, were also entered into the database of reference samples for the purposes of identification of missing persons and those killed in the Homeland War whose burial place is unknown.

181. Activities related to the processing and identification of mortal remains are carried out by scientific and health institutions, and organized and coordinated by the Ministry of Croatian Veterans' Affairs as the central body. Collected and processed samples are stored in the mentioned institutions in accordance with the prescribed requirements of each institution where such samples are processed and stored. In the processing procedure, the latest methodology is applied; due to the need to improve the methodology in the field of processing and identification of mortal remains, by putting capital equipment into use (funded under a 2019 Decision of the Government of the Republic of Croatia), the possibility of processing mortal remains was increased in cases where this had previously not been possible due to the condition of the mortal remains. Furthermore, the probability of establishing identity was increased in cases where there are not enough blood relatives and/or there are no close blood relatives of the victim.

182. The procedure for exercising material rights for family members of persons gone missing in the Homeland War is prescribed by the Act on Croatian Veterans from the Homeland War[37] and Members of Their Families and the Act on Civilian Victims of the Homeland War.[38] By-laws arising from the aforementioned laws prescribe in detail the manner of exercising each individual material right (or group of rights). In the first instance, the procedure is carried out by the administrative bodies in the counties and the City of Zagreb responsible for the issues of veterans and civilian victims of the Homeland War, and by the Ministry of Croatian Veterans' Affairs and in the second instance.

183. The provisions of the Act on Persons Gone Missing in the Homeland War stipulate the fundamental right of the family members of a person gone missing in the Homeland War or of a person killed in the Homeland War whose burial place is unknown to find out about the place of permanent or temporary residence of the missing family member or to have their mortal remains found for the purpose of their permanent disposition, and to be informed as much as possible about the circumstances of the person's disappearance or death. Competent state authorities are obliged to provide family members with available information on the progress and results of the search for their family members who went missing or were killed in the Homeland War and whose burial place is unknown, and to ensure that no one can be subjected to violence, threats or any form of intimidation due to their search for information about their missing family members.

184. Furthermore, it is prescribed that persons gone missing in the Homeland War and persons killed in the Homeland War whose burial place is unknown and their family members have equal rights regardless of whether they were members of the armed forces or civilians, regardless of their race, gender, language, religion, political opinion, national or social origin, financial situation or any other personal status.

185. The fundamental material right of family members of the persons gone missing in the Homeland War is a monetary compensation equal to the family disability allowance or a monetary compensation amounting to an increased family disability allowance sum, and subject to the fulfillment of other requirements from the aforementioned laws, the aforementioned right can be exercised by members of the immediate and extended family of a missing Croatian veteran of the Homeland War and by family members of civilians who disappeared in the Homeland War. The aforementioned rights under both laws are exercised regardless of whether the missing person has been declared dead and regardless of whether the family member is retired, employed or self-employed. The rights of family members of persons gone missing in the Homeland War are equal to those of persons killed in the Homeland War.

[37] *Narodne novine*, No. 121/17, 98/19, 84/21, 156/23.
[38] *Narodne novine*, No. 84/21.

186. In addition to the above-mentioned basic rights, under the Act on Croatian Homeland War Veterans and Members of Their Families, family members of missing Croatian Homeland veterans can also exercise the following rights, provided that requirements prescribed by the law have been fulfilled: right to housing care, right to priority candidate status when seeking employment, fiscal relief for employment, compensation for unemployed Croatian veterans of the Homeland War and members of their families, an attendance allowance, a one-off financial aid, right to education aid, right to free textbooks, priority candidate status in placement in school or student dormitories, priority candidate status in placement in social welfare institutions, right to psychosocial assistance, right to primary legal aid, right to shares in the Croatian Homeland War Veterans and their Family Members' Fund, right to the assignment of shares, priority candidate status when renting business premises, use of the services of veterans' centers, coverage of burial costs after exhumation and identification, etc. In addition, family members of missing Croatian Homeland War veterans can exercise certain rights relating to health and pension insurance under more favorable conditions compared to the general regulation.

187. Under the Act on Civilian Victims of the Homeland War and under the conditions prescribed by the law, family members of civilians gone missing in the Homeland War have the right to: a monetary compensation for civilian victims of the Homeland War, a one-off financial aid, an attendance allowance, free textbooks, a scholarship, priority candidate status in placement in school or student dormitories, priority candidate status in employment, priority candidate status in placement in social welfare institutions, right to use the services of veterans' centers, right to psychosocial assistance, primary legal aid, a special pension scheme, coverage of the costs of transportation and burial of the mortal remains of exhumed and identified civilians gone missing in the Homeland War on the territory of the Republic of Croatia, etc.

188. Family members of missing persons who were members accomplices or collaborators of enemy military and paramilitary units participating in the armed aggression against the Republic of Croatia and who assisted the enemy in any other manner cannot exercise the benefits on the grounds of disappearance during the Homeland War.

189. In accordance with Article 52 of the Act on Persons Gone Missing in the Homeland War, there are several associations in the Republic of Croatia of the families of persons gone missing and those killed in the Homeland War whose burial place is unknown, as well as other associations that deal with the protection of the rights of persons gone missing in the Homeland War and members of their families.

190. The Act on Persons Gone Missing in the Homeland War regulates the cooperation of competent state bodies for the search for missing persons with the aforementioned associations with the aim of protecting, improving and promoting the rights of persons gone missing in the Homeland War and persons killed whose place of burial is unknown as well as their family members. The Ministry of Croatian Veterans' Affairs provides comprehensive information to the associations of the families of missing persons about conducted and planned activities in the search for persons gone missing in the Homeland War. In all cases and to the extent possible, families of missing persons and their associations actively participate in the search process. The Ministry of Croatian Veterans' Affairs also participates in the programs of the missing persons' families' associations, reporting assemblies, anniversaries and public forums, etc., and, in accordance with positive regulations, financially supports projects that promote contribution to the search process and the protection of the interests and care of Croatian Homeland War veterans and casualties of the Croatian Homeland War.

Article 25
Wrongful removal of children who are subjected to enforced disappearance

191. The Constitution guarantees families special protection and special care for minors without parents and those without parental care, due to which their future in the biological family is not possible, and the state is obliged to provide them with protection through its

institutions, including through the institute of placement and adoption, as well as other forms of support for families and children, through both social welfare and family law protection systems.

192. Crimes against personal liberty, specifically unlawful deprivation of liberty, committed in its basic form by a person who unlawfully imprisons another, keeps them imprisoned or otherwise deprives them of or restricts their freedom of movement, will be punished by a prison sentence of up to three years. The qualified form of this crime will be committed by a person who commits the offense against a child and will be punished by a prison sentence of one to ten years. If the offense caused the death of a person who was wrongfully deprived of their liberty, the perpetrator will be punished by a prison sentence of three to fifteen years.

193. The basic form of the criminal offense of abduction will be committed by anyone who wrongfully deprives another of their freedom with the aim of forcing a third party to act, not to act or to suffer, and will be punished by a prison sentence of six months to five years. If the offense is committed against a child, the perpetrator will punished by a prison sentence of one to ten years. If the offense caused the death of the abducted person, the perpetrator will be punished by a prison sentence of three to fifteen years.

194. Forgery, concealment or destruction of documents that confirm the true identity of children constitutes the offense of forgery of a document from Article 278 of the Criminal Code, which stipulates that the aforementioned offense will be committed by anyone who creates a false document or alters it with the aim of using such a document as the original or whoever acquires such a document for use or uses it as the original, or otherwise makes it available to another for use, and will be punished by a prison sentence of up to three years. The same sentence will be imposed on anyone who misleads another about the content of a document and the latter puts their signature on that document, claiming that they are signing a different document or different content. Whoever commits an offense regarding a public document, will, promissory note, cheque, payment card or other non-cash payment instrument or a public or official book that must be kept pursuant to the law, will be punished by a prison sentence of six months to five years. A person will also be punished for the attempted offense.

195. The offense of forgery of an official or business document (Article 279 of the Criminal Code) will be committed by an official or responsible person who enters false information into an official or business document, book or file, or fails to enter any important information, or certifies such a document, book or file containing false information with their signature or an official seal, or who facilitates the creation of a document, book or file containing false information with an official seal, and will be punished by a prison sentence of six months to five years. The same punishment will be imposed on anyone who uses a false official or business document, book or file in service or business as if it were the original.

196. The Social Welfare Act[39] defines social welfare as an organized activity of public interest whose goal is to provide assistance to socially disadvantaged persons. In accordance with the prescribed requirements, beneficiaries of allowances and support in the social welfare system include children and families who need professional help and support due to unfavorable circumstances, as well as families and children of missing persons, especially a child without parents or without adequate parental care, a child victim of human trafficking, an unaccompanied child found outside their place of residence without the supervision of a parent or other adult who is responsible for their care, and a child who is a foreign national found on the territory of the Republic of Croatia without the supervision of a parent or another adult who is responsible for their care, as well as an adult victim of human trafficking. Allowances and services in the social welfare system are realized in accordance with individual needs and with the active participation of beneficiaries. Allowances in the social welfare system are: guaranteed minimum allowance, allowance for housing costs, allowance for a vulnerable energy buyer, allowance for personal needs, one-off allowance, allowance for funeral expenses, allowance for regular studies, payment of accommodation costs in a student dormitory, personal disability allowance, assistance and care supplement, status of a

[39] *Narodne novine*, No. 18/22, 46/22, 119/22, 71/23, 156/23.

parent-caretaker and the status of a caretaker, supplement for transport costs for education purposes. In the social welfare system, the following services can be provided: initial social service, comprehensive assessment and counselling service, counselling service, professional assessment, psychosocial counselling, social mentoring, family mediation, psychosocial treatment for the prevention of violent behavior, psychosocial support, early development support, assistance with inclusion in early learning and regular education programs, assistance at home, part-time stay at an institution, organized housing and accommodation.

197. According to the Protocol on Treatment of Unaccompanied Children, treatment of unaccompanied children includes state administration bodies, local and regional self-government units, public authorities, public institutions, diplomatic missions/consular offices, international organizations and civil society organizations, including cooperation with religious organizations and organizers of humanitarian actions. The Protocol seeks to establish a solid and efficient national system in procedures for unaccompanied children in regular situations. In extraordinary and unpredictable situations, such as a mass influx of unaccompanied children, it is necessary to provide additional human and accommodation capacities in order to meet all the needs of unaccompanied children. Such extraordinary situations also require certain deviations from the prescribed procedures, but with full respect for the well-being, i.e. the best interests of unaccompanied children. Therefore, the goal of the Protocol is to unify existing procedures, which are standardized by valid laws and by-laws, to define duty bearers, methods and deadlines for dealing with unaccompanied children, with the aim of timely and effective protection of their rights and interests. As an addition to the Protocol, appendices have been prepared as practical tools intended for end users in dealing with unaccompanied children.

198. Children without adequate parental care enjoy special protection through guardianship, placement and adoption institutes. In the Republic of Croatia, there are institutional forms of accommodation in such a manner that children are provided with accommodation in social welfare homes or with other providers of social accommodation services, but the above is carried out depending on the family situation, and institutional care is ordered exceptionally, in crisis situations, and priority is given to non-institutional forms of care (foster care). The decision on the form of placement and choice of institution/foster family for placement is made by the regional office of the Croatian Institute for Social Work in accordance with the best interests of the child, their needs, abilities, reasons for placement and the urgency of the procedure.

199. In the Republic of Croatia, through national legislation and the implementation of international treaties and documents in the national legal system, a legal framework has been created for the purpose of ensuring legal adoption and ensuring conditions necessary to eliminate risks and dangers related to it.

200. In order to ensure the protection of the best interests of the child in intercountry adoption procedures, the Republic of Croatia acceded to the 1993 Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption, which has been in force since 1 April 2014.

201. The Ministry of Labor, Pension System, Family and Social Policy is designated as the central body of the Republic of Croatia for the implementation of the mentioned Convention and performs all tasks prescribed by the Convention. With the Croatian Institute for Social Work as the competent authority for adoption procedures, the Ministry of Labor, Pension System, Family and Social Policy handles individual requests for intercountry adoption in accordance with the Convention (receives requests, gives consent for continuation of the adoption procedure in accordance with Art. 17c of the Convention and issues the certificate in accordance with Art. 23 of the Convention, confirming that the adoption was carried out in accordance with the Convention) and monitors the legality of proceedings in intercountry adoption procedures in accordance with the Convention.

202. Croatian nationals who wish to adopt a child from a country that is not a signatory to the Convention on Protection of Children and Co-operation in Respect to Intercountry Adoption, after undergoing the procedure before the competent body that determines the prerequisites and suitability for adoption of potential adopters in the Republic of Croatia, independently apply for adoption to the competent authorities of the country from which they

want to adopt a child. After the end of the international adoption procedure in a country that is not a signatory to the Convention, the adoptive parents must request recognition of the court decision on adoption before the competent court of the Republic of Croatia. In addition to the amendments to the Private International Law Act[40] in 2023, the verification of international adoption was strengthened. A foreign court decision on the adoption of a child from a country that is not a party to a treaty governing the issue of international adoption will be recognized after a court verifies the authenticity of that decision through diplomatic channels and if the applicant, along with the appropriate prescribed evidence, has also submitted proof of the legalization of that decision in accordance with the law governing the legalization of documents in international transactions. In the aforementioned procedure, the court of the Republic of Croatia will request from the ministry responsible for social welfare affairs information that the adopter is registered in the Register of Prospective Adopters in the Republic of Croatia, if the adopter was obliged to register in the Register of Prospective Adopters in the Republic of Croatia at the time of the adoption. The court of the Republic of Croatia is obliged to submit a final court decision on the recognition of a foreign court decision from paragraph 1 of this Article to the ministry responsible for social welfare affairs as well as to the social welfare institution (Croatian Institute for Social Work) for the purposes of registration in the Register of Adoptions and Monitoring of the Child's Adjustment to the Adoptive Family in accordance with the law governing family relations. Due to the fact that in international adoptions there is a greater risk of violating the best interests of the child, especially when it comes to some extraordinary circumstances when children are forcibly separated from their parents, Article 71 of the Private International Law Act and Article 24 of the Convention empowers the court to refuse recognition of adoption if it would clearly be in conflict with its public order, taking into account the child's interests.

203. The Republic of Croatia has been a party to the United Nations' Convention on the Rights of the Child (hereinafter: the Convention) since 1991 and has implemented it in its legal system. In accordance with the provisions of the Convention, the Republic of Croatia is obliged to guarantee the right to preserve identity, including ethnicity, name and family relationships recognized by law. If a child is illegally deprived of some or all components of their identity, there is an obligation to provide adequate assistance and protection in order to confirm it as quickly as possible.

204. Moreover, the Convention on the Rights of the Child stipulates the obligation of the States Parties to the Convention to ensure that a child who is able to form their own opinion has the right to freely express their views on all matters relating to them, and respect them in accordance with the child's age and maturity. For this purpose, the Convention stipulates that the child must be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

205. Courts and public legal bodies that conduct procedures in which decisions on the rights of the child are made directly or indirectly must first and foremost protect the rights of the child and the child's well-being. The aforementioned is ensured through the institute of special guardianship for children. The duties of a special guardian are performed by a lawyer who has passed the bar exam. The role of the special guardian is to protect individual personal and property rights and interests of the child in court proceedings. The duty of the special guardian is to represent the child in the procedure for which they were appointed, to inform the child about the subject of the dispute, its course and outcome in a manner appropriate to the child's age and, if necessary, to contact the parent or other persons close to the child. When obtaining the child's opinion, informing the child about the subject of the dispute, the course and outcome of the dispute, and familiarizing the child with the content of the decision and the right to file an appeal, the special guardian uses the assistance of a social worker, psychologist or social pedagogue, unless they themselves have the professional knowledge and skills necessary to communicate with the child and obtain the child's opinion.

[40] *Narodne novine*, No. 101/17, 67/23.

206. Furthermore, it should be pointed out that based on the Family Act,[41] the Ordinance on the Manner of Obtaining the Child's Opinion[42] was adopted, which prescribes the manner of obtaining the child's opinion in such a way to protect the child's well-being and the right to express their views and opinions without pressure from third parties to the greatest extent possible. In this regard, Article 4 of the Ordinance stipulates that the child should always express their opinion without the presence of parents or guardians, or other persons who care for the child, in order to avoid possible negative emotional manipulation and blackmailing of the child by parents or third parties.

207. The Ministry of Labor, Pension System, Family and Social Policy supports the work of civil society organizations such as the Center for Missing and Exploited Children, a leading organization operating in the field of child protection for over fifteen years. It takes care of children who are in unfavorable living conditions and strives to raise the quality of their lives on a daily basis. In cooperation with the community, experts and competent institutions, it works on the prevention of disappearance of children and provides support to families in crisis situations. Experts from the Center for Missing and Exploited Children provide support and useful information in such situations through a free phone line 116 000, available 24/7, in order to find the child and bring them to safety. They organize activities to prevent the disappearance of children in the Republic of Croatia, and inform citizens and educate experts about this issue.

208. The child's right to express an opinion, in addition to the narrower meaning in the context of procedural law, also has a broader meaning, i.e. the right to express an opinion is a right that the child enjoys in all areas of their life. When working with children within the framework of family law protection, especially when communicating with the child to obtain their feedback, all parties involved in the procedure are obliged to ensure that the child expresses their authentic opinion without fear and does not feel that their opinion will influence the final decision.

[41] *Narodne novine*, No. 103/15, 98/19, 47/20, 49/23, 156/23.

[42] *Narodne novine*, No. 123/15.