

CERTIFIED TRANSLATION FROM THE CROATIAN LANGUAGE
(Municipal Court in Split_Decision_Case No. Kovm-47/2024-31)





REPUBLIC OF CROATIA
MUNICIPAL COURT IN SPLIT
Gundulićeva 27
S P L I T

Kovm-47/2024-31

REPUBLIC OF CROATIA
COURT DECISION

Municipal Court in Split, in the juvenile panel composed of the judges of this court, Boni Gamulin Frleta Juvenile Judge, President of the Panel, and Daniel Ban and Stipe Roso as Panel Members, with the participation of court reporter Jelena Teklić, in the criminal proceedings against the defendant Harish Rajagopal, for the criminal offense under Article 163, paragraph 2 in conjunction with paragraph 1 of the Criminal Code ("Official Gazette" /Narodne novine/ No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, and 84/21 – hereinafter: KZ/11), examining the indictment in a closed session of the indictment panel, without summoning the parties, on September 1, 2026,

h a s d e c i d e d a s f o l l o w s

Pursuant to Article 354, paragraph 1 of the Criminal Procedure Act ("Official Gazette" No. 152/08, 76/09, 80/11, 121/11, 91/12 – Decision and Ruling of the Constitutional Court of the Republic of Croatia, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 80/22, 36/24, 72/25, and 13/26 – hereinafter: ZKP/08), the indictment of the Municipal State Attorney's Office in Split, No. KOz-DO-34/2024 of April 29, 2024, against the defendant Harish Rajagopal, for the criminal offense against sexual abuse and exploitation of children – exploitation of children for pornography – an offense described and punishable under Article 163, paragraph 2 in conjunction with paragraph 1 of the Criminal Code ("Official Gazette" No. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19, and 84/21 – hereinafter: KZ/11), is hereby confirmed as well-founded.

Statement of Reasons

1. The Municipal State Attorney's Office in Split submitted to this court the indictment Case No. KOz-DO-34/2024 of April 29, 2024, against the defendant Harish Rajagopal, for the criminal offense against sexual abuse and exploitation of children – exploitation of children for pornography – an offense described and punishable under Article 163, paragraph 2 in conjunction with paragraph 1 of the KZ/11.
2. The indictment was served on the defendant and the defense counsel, together with a notice of the right to submit a response, to which the defendant responded through his defense counsel.
3. In the response to the indictment, he stated that the indictment is not founded on law. In this new, corrected indictment, the defendant continues to be charged with unauthorized recording of child pornography, the content of which is defined under Article 163, paragraph 6 of the KZ, as child pornography depicting materials showing children's sexual organs for sexual purposes. A contrario, a recording of a child that

does not depict their sexual organs does not constitute pornographic material; consequently, by recording a child while showering naked in a shower cabin, in the absence of a recording of the child's sexual organs, the elements of the offense with which the defendant is charged have not been satisfied. In the factual part of the indictment, it is stated that the defendant, with the intent of recording a naked child and the child's genitals, recorded the child while the child was naked and showering in a shower cabin. Thus, it is not stated that he also recorded the child's genitals, as a result of which the defendant's conduct does not constitute a criminal offence. A search of the defendant's seized mobile phone did not reveal any content relating to the specific criminal offence with which the defendant is charged in the indictment. Instead, one (1) recording was found which, according to the allegations in the indictment, constitutes child pornography, as it depicts sexual intercourse between an adult male, i.e. not the defendant, and an unidentified male child. However, that recording is not the subject matter of the indictment. Furthermore, the indictment states that, after making the disputed recording of the child and until the time of his arrest and the seizure of the mobile device with which the video recording was made, the defendant had sufficient time to delete the recording, which he would certainly have known how to do, given that he is a computer programmer by profession. However, this is a construct and an arbitrary and wholly unsubstantiated allegation on the part of the Municipal State Attorney's Office, particularly in view of the decisive fact that the search of the mobile device did not reveal the video recording in question, nor was it established that any previously existing video recording had been deleted. Consequently, the conclusion of the Municipal State Attorney's Office regarding the defendant's conduct is merely an assumption which is not, and cannot be, supported by any relevant evidence, for the simple reason that no such recording or video footage ever existed. Contrary to the position of the Municipal State Attorney's Office, the alleged search of the mobile device in fact established the decisive fact that no video recording of the child containing pornographic content existed. It is therefore only logical to conclude that the defendant did not commit the criminal offence with which he is charged in the indictment. The indictment is, in fact, based on personal evidence, namely the child's testimony and his description of the events in question, which, in itself, is insufficient to warrant a conviction. Furthermore, the corrected indictment remains unclear and insufficiently reasoned to be acted upon regarding the section listing the evidence that the Municipal State Attorney's Office in Split intends to present at the main hearing, specifically the evidence obtained by examining witnesses Mateo Popović and Matija Pavlović, as it is not clear from the reasoning on which circumstances they will be proposed as witnesses, given that they are not even mentioned in the reasoning of the indictment. On the other hand, persons mentioned in the reasoning of the indictment, Rino Krstić and Nina Weis, from whom various items connected to the criminal offense listed in the indictment were temporarily seized, were not proposed as witnesses. As the defendant in his defense denies committing the offense, and the list of prosecution evidence, i.e., the proposed evidence, is insufficient to establish the existence of reasonable suspicion—or to establish beyond doubt the defendant's responsibility for committing the offense—rendering a conviction is impossible. Therefore, it is proposed to the Indictment Panel of the Municipal Court in Split to terminate the criminal proceedings against the defendant Harish Rajagopal pursuant to Article 355, paragraph 1, points 1 and 4 of the ZKP, because the act subject to charge does not constitute a criminal offense, or because there is insufficient evidence that the defendant is reasonably suspected of the act subject to charge.

4. The session of the indictment panel was held within the meaning of Article 348, paragraph 2 of the CPA/08 without summoning the parties.

5. Upon inspecting the files and evidence attached to the indictment by the State Attorney, the indictment panel established that the State Attorney's request for confirmation of the indictment is well-founded, as from the evidence attached to the indictment—namely, the certificate of temporary seizure of items of the Hvar Police Station No. 01372270 dated July 25, 2023 (file folio 29), the certificate of temporary seizure of items of the Hvar Police Station No. 00090783 dated July 25, 2023 (file folio 30), the certificate of temporary seizure of items of the Hvar Police Station No. 00090784 dated July 25, 2023 (file folio 31), the certificate of temporary seizure of items of the Hvar Police Station No. 00090786 dated July 25, 2023 (file folio 32), the official note of police officer Boris of the Hvar Police Station regarding the review of CCTV cameras dated July 25, 2023 (file folios 51–52), the DVD containing recordings from CCTV cameras (file folio 53), the record of the examination of the child victim Anatole Pierre Leopold Garrigoux together with the DVD recording dated July 26, 2023 and the accompanying transcript (file folios 121–123), the official note of the female police officer of the Split-Dalmatia Police Directorate, Crime Police Sector, General Crime Service, dated March 20, 2024 (file folio 193), the record of the search of movable property and bank safe deposit box of the Split-Dalmatia Police Directorate, Crime Police Sector, General Crime Service Split, Class: 214-02/23-12/2553, Ref. No.: 511-1209-23-6 dated March 19, 2024 (file folios 194–196), the report on the search of the mobile device of the Crime Police Sector, Crime Intelligence Service, Class: 214-17/24-04/2, No.: 511-12-20-24-40 dated March 19, 2024 (file folio 197), and the DVD labeled Harish Rajagopal, containing a video recording of sexual intercourse between an adult male and a male child (file folio 199) there arises a relevant degree of probability giving rise to reasonable suspicion that the defendant committed the criminal offense with which he is charged under the indictment at the time and in the manner described therein.

6. However, in any event, the true factual situation, and consequently the decision as to whether the defendant committed the criminal offense in question with which he is charged or not, shall be determined by the trial judge at the main hearing through the presentation of the proposed evidence and, if necessary, other evidence and, based on the factual situation thus established, following a careful analysis of the evidence presented, a decision shall be rendered regarding the potential guilt of the defendant.

7. As the indictment panel found none of the grounds for termination of the proceedings or dismissal of the indictment within the meaning of Article 355 of the ZKP/08, nor are there deficiencies provided for in Article 356 of the ZKP/08 for returning the indictment to the State Attorney, the indictment panel established that the indictment is well-founded, and therefore, pursuant to Article 354, paragraph 1 of the ZKP/08, decided as set forth in the operative part of this decision.

8. In view of the foregoing, it has been decided as set forth in the operative part.

President of the Juvenile Indictment Panel
 Boni Gamulin Frleta

NOTICE ON RIGHT OF APPEAL:

Pursuant to Article 491, paragraph 2 of the CPA/08, no appeal is permitted against this decision.

TO BE SERVED UPON:

- the defendant
- defense counsel
- attorney-in-fact for the injured party
- Municipal State Attorney's Office in Split
- to the case file

BONI GAMULIN FRLETA

Electronically signed: 01.09.2026T09:44:11 (UTC:2026-09-01T07:44:11Z)
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Municipal Court in Split



Record number: **9-3088c-5f1d2**

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I, Dragana Mihanović, certified court interpreter for the German and English language, as appointed by the Decree of the Minister in charge of justice affairs in the Republic of Croatia, Class: UP/I-710-02/23-01/575, Reg. No.: 514-03-03-03/01-24-15 of 27th February 2024 do hereby certify that the above translation fully corresponds to the original document written in the Croatian language.

Certification number: 444/2026

Date: 09.09.2026

A blue ink handwritten signature is written over a circular official stamp. The stamp contains the text 'DRAGANA MIHANOVIC', 'CERTIFIED COURT INTERPRETER', and 'SPLIT'.



REPUBLIKA HRVATSKA
OPĆINSKI SUD U SPLITU
Gundulićeva 27
S P L I T

Kovm-47/2024-31

REPUBLIKA HRVATSKA RJEŠENJE

Općinski sud u Splitu, u vijeću za mladež sastavljenom od sudaca ovog suda, Boni Gamulin Frleta sutkinje za mladež predsjednice vijeća, te Daniela Bana i Stipe Roso kao članova vijeća, uz sudjelovanje zapisničarke Jelene Teklić, u kaznenom postupku protiv okrivljenika Harisha Rajagopala, zbog kaznenog djela iz članka 163. stavka 2. u svezi stavka 1. Kaznenog zakona ("Narodne novine" br. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 i 84/21.– dalje u tekstu: KZ/11), ispitujući optužnicu na nejavnoj sjednici optužnog vijeća, bez pozivanja stranaka, 1. rujna 2026.,

riješio je

Na temelju članak 354. stavak 1. Zakona o kaznenom postupku ("Narodne novine", broj 152/08., 76/09., 80/11,121/11, 91/12 - Odluka i Rješenje USRH, 143/12., 56/13., 145/13., 152/14., 70/17., 126/19., 80/22., 36/24., 72/25. i 13/26. dalje: ZKP/08), potvrđuje se kao osnovana optužnica Općinskog državnog odvjetništva u Splitu broj KOz-DO-34/2024 od 29. travnja 2024. protiv okrivljenika Harisha Rajagopala, zbog kaznenog djela protiv spolnog zlostavljanja i iskorištavanja djece - iskorištavanjem djece za pornografiju - djela opisanog i kažnjivog po članku 163. stavka 2. u svezi stavka 1. Kaznenog zakona ("Narodne novine" br. 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 i 84/21.– dalje u tekstu: KZ/11).

Obrazloženje

1. Općinsko državno odvjetništvo u Splitu podiglo je pred ovim sudom optužnicu poslovni broj KOz-DO-34/2024 od 29. travnja 2024. protiv okrivljenika Harisha Rajagopala, zbog kaznenog djela protiv spolnog zlostavljanja i iskorištavanja djece - iskorištavanjem djece za pornografiju - djela opisanog i kažnjivog po članku 163. stavka 2. u svezi stavka 1. KZ/11.
2. Okrivljeniku i branitelju okrivljenika uručena je optužnica zajedno s poukom o pravu na odgovor, a na koju je okrivljenik odgovorio putem branitelja.
3. U odgovoru na optužnicu naveo je da optužnica nije na zakonu osnovana. U ovoj novoj ispravljenoj optužnici okrivljenika da se i nadalje tereti da je neovlašteno snimao dječju pornografiju sadržaj koje je utvrđen čl.163.st.6.KZ, tako da je dječja pornografija materijal.....koji prikazuje spolne ograne djece u spolne svrhe. A contrario, snimak djeteta koji ne prikazuje njegov spolni organ nije pornografski

materijal, slijedom čega snimanjem djeteta dok se golo tušira u kabini, u izostanku snimke spolnog organa djeteta, nisu ostvareni elementi bića ovog kaznenog djela koje se okrivljeniku stavlja na teret. U činjeničnom dijelu optužnice da se navodi da je okrivljenik u nakani snimanja golog djeteta i njegovog spolnog organa...snimao dijete dok se golo tuširalo u kabini..., dakle nije navedeno da je snimao i djetetov spolni organ, slijedom čega postupanje okrivljenika niti ne predstavlja kazneno djelo. Pretragom oduzetog okrivljenikovog mobitela da nije pronađen sadržaj koji bi se odnosio na konkretno kazneno djelo koje se okrivljeniku optužnicom stavlja na teret, nego da je pronađen 1 (jedan) uradak koji po navodima iz optužnice predstavlja dječju pornografiju jer prikazuje spolni odnos odrasle muške osobe, dakle ne okrivljenika, i nepoznatog muškog djeteta, koji uradak međutim nije predmet optužnice. Nadalje da se u optužnici navodi da je okrivljenik nakon što je sačinio spornu snimku djeteta do trenutka kada je uhićen i kada je od njega oduzet mobilni uređaj kojim je videozapis snimljen, okrivljenik imao dovoljno vremena da snimku ukloni, a što da je zasigurno znao napraviti, obzirom da je po zanimanju programer. Kako se radi se konstrukciji, proizvoljnoj i ničim dokazanoj tvrdnji ODO-a, upravo obzirom na odlučnu činjenicu da pretragom mobilnog uređaja nije pronađen predmetni videozapis niti je utvrđena činjenica eventualnog brisanja prethodno postojećeg videozapisa, slijedom čega da je takav zaključak ODO-a o postupanju okrivljenika puka pretpostavka koja nije niti može biti potkrijepljena bilo kakvim relevantnim dokazima, a sve iz jednostavnog razloga jer takve snimke odnosno videozapisa nije niti bilo. Suprotno stavu ODO-a, upravo navodnom pretragom mobilnog uređaja utvrđena je odlučna činjenica nepostojanja video snimke djeteta sa pornografskim sadržajem, pa je jedino logično zaključiti kako okrivljenik nije počinio kazneno djelo koje mu se optužnicom stavlja na teret. Optužnica da se zapravo temelji na personalnom dokazu odnosno iskazu djeteta i njegovom opisu predmetnog događaja, koji sam po sebi nije dostatan za donošenje osuđujuće presude. Kako je ispravljena optužnica je i nadalje nejasna i nije obrazložena u dovoljnoj mjeri da bi se po njoj moglo postupati u dijelu u kojem se navode dokazi koje ODO Split namjerava izvesti na glavnoj raspravi i baš dokaz ispitivanjem svjedoka Matea Popovića i Matije Pavlovića, jer iz obrazloženja nije jasno na koje okolnosti će isti biti predloženi kao svjedoci iz razloga jer se u obrazloženju optužnice niti ne navode. S druge strane da kao svjedoci nisu predložene osobe navedene u obrazloženju optužnice Rino Krstić i Nina Weis od kojih su privremeno oduzeti različiti predmeti povezani s kaznenim djelom navedenim u optužnici. Kako okrivljenik u svojoj obrani negira počinjenje djela, a popis dokaza optužbe odnosno predloženi dokazi nisu dostatni za utvrđenje postojanja osnovane sumnje, odnosno da bi protiv okrivljenika na nesumnjiv način bila utvrđena njegova odgovornost za počinjenje djela, to je donošenje osuđujuće presude nemoguće. Stoga da se Optužnom vijeću Općinskog suda u Splitu predlaže kazneni postupak protiv okrivljenika Harisha Rajagopala obustaviti sukladno članku 355.st.1.t.1. i t.4.ZKP jer djelo koje je predmet optužbe nije kazneno djelo odnosno jer nema dovoljno dokaza da je okrivljenik osnovano sumnjiv za djelo koje je predmet optužbe.

4. Sjednica optužnog vijeća održana u smislu članka 348. stavka 2. ZKP/08 bez pozivanja stranaka.

5. Nakon izvršenog uvida u podatke i dokaze koje je državni odvjetnik priložio uz optužnicu, optužno vijeće utvrdilo je da je zahtjev državnog odvjetnika za potvrđivanjem optužnice osnovan, jer iz dokaza priloženih uz optužnicu, i to potvrde

o privremenom oduzimanju predmeta Policijske postaje Hvar broj: 01372270 od 25. srpnja 2023. (list spisa 29), potvrde o privremenom oduzimanju predmeta Policijske postaje Hvar broj: 00090783 od 25. srpnja 2023. (list spisa 30), potvrde o privremenom oduzimanju predmeta Policijske postaje Hvar broj: 00090784 od 25. srpnja 2023. (list spisa 31), potvrde o privremenom oduzimanju predmeta Policijske postaje Hvar broj: 00090786 od 25. srpnja 2023. (list spisa 32), službene zabilješke policijskog službenika Policijske postaje Hvar Borisa Carića o pregledu videonadzornih kamera od 25. srpnja 2023. (list spisa 51-52), DVD sa sadržajem snimki s videonadzornih kamera (list spisa 53), zapisnika o ispitivanju djeteta-žrtve Anatolea Pierrea Leopolda Garrigouxa zajedno s DVD snimkom od 26. srpnja 2023. uz transkript (list spisa 121-123), službene bilješke policijske službenice Policijske uprave splitsko-dalmatinske, Sektora kriminalističke policije, Službe općeg kriminaliteta, od 20. ožujka 2024. (list spisa 193), zapisnika o pretrazi pokretne stvari i bankovnog sefa Policijske uprave splitsko-dalmatinske, Sektora kriminalističke policije, Službe općeg kriminaliteta Split, Klasa: 214-02/23-12/2553, Ur.broj: 511-12-09-23-6 od 19. ožujka 2024. (list spisa 194-196), izvješća o pretrazi mobilnog uređaja Sektora kriminalističke policije, Kriminalističko-obavještajne službe, Klasa: 214-17/24-04/2, Broj: 511-12-20-24-40 od 19. ožujka 2024. (list spisa 197), DVD s natpisom Harish Rajagopal, s video snimkom spolnog odnosa odrasle muške osobe i muškog djeteta, (list spisa 199), iz čega proizlazi relevantan stupanj vjerojatnosti iz kojeg proizlazi osnovana sumnja da bi okrivljenik u vrijeme i na način kako je to opisano u optužnicom počinio kazneno djelo koje mu se stavlja optužnicom na teret.

6. Međutim, u svakom slučaju, pravo će činjenično stanje, a time i odluku je li okrivljenik počinio predmetno kazneno djelo koje mu se stavlja na teret ili ne, tek raspravni sudac utvrditi na raspravi, izvođenjem predloženih dokaza, a po potrebi i drugih dokaza, te na osnovu tako utvrđenog činjeničnog stanja pomnom analizom izvedenih dokaza donijeti odluku o eventualnoj krivnji okrivljenika.

7. Kako optužno vijeće nije našlo ni jedan od razloga za obustavu postupka i odbacivanje optužnice u smislu članka 355. ZKP/08, a nema niti nedostataka predviđenih u članka 356. ZKP/08 za vraćanje optužnice državnom odvjetniku, optužno vijeće je ustanovilo da je optužnica osnovana, pa je na temelju članka 354. stavka 1. ZKP/08 odlučilo kao u izreci ovog rješenja.

8. Slijedom navedenog, odlučeno je kao u izreci.

Split, 1. rujna 2026.

Predsjednica optužnog vijeća za mladež
Boni Gamulin Frleta

POUKA O PRAVU NA ŽALBU:

Protiv ovog rješenja na temelju članka 491. stavak 2. ZKP/08 žalba nije dopuštena.

DNA:

- okrivljeniku
- branitelju
- opunomoćeniku oštećenika
- ODO-u Split
- u spis

BONI GAMULIN FRLETA



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Općinski sud u Splitu



Broj zapisa: **9-3088c-5f1d2**

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