



# Balkan route reversed

The return of asylum seekers to Croatia under the Dublin system



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Asylum Information  
Database

## ACKNOWLEDGMENTS

This report was written by Minos Mouzourakis and Kris Pollet of the European Council for Refugees and Exiles (ECRE), with contributions from Lana Tučkorić of the Croatian Law Centre (HPC).

The visit to Croatia was conducted as part of the Asylum Information Database ([AIDA](#)) managed by ECRE, which provides up-to-date information and analysis of the legal framework and practice with regard to asylum procedures, reception conditions and detention in 20 European countries. This report complements and should be read together with the [AIDA Country Report on Croatia](#).

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Cover picture: Main entrance, Hotel Porin, Reception Centre for Asylum Seekers, Zagreb.

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## GLOSSARY

<b>Acquis</b>	Accumulated legislation and jurisprudence constituting the body of European Union law.
<b>Asylum seeker(s) or applicant(s)</b>	Person(s) seeking international protection, whether recognition as a refugee or beneficiary of subsidiary protection.
<b>Dublin system</b>	System establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application, under <a href="#">Regulation (EU) No 604/2013</a> .
<b>Reception Centre for Asylum Seekers</b>	Open reception centre for applicants for international protection. There are two such centres, located in Zagreb <b>Porin</b> and <b>Kutina</b> .
<b>Reception Centre for Foreigners</b>	Pre-removal detention centre for persons undergoing return proceedings. There is one such centre, located in <b>Ježevo</b> , while two centres are soon expected to be operational in <b>Tovarnik</b> and <b>Trilj</b> .
<b>Recognition rate</b>	Rate of positive asylum decisions, including refugee status, subsidiary protection status or humanitarian protection status.
<b>Rule 39 request</b>	Request under Rule 39 of the Rules of the European Court of Human Rights for interim measures before a case is decided. <a href="#">Rule 39 requests</a> are often used in deportation cases.
<b>Take back request</b>	Request under <a href="#">Regulation (EU) No 604/2013</a> for a country to receive a person who applied for asylum on its territory and whose application is pending, has been withdrawn or has been rejected.
<b>Take charge request</b>	Request under <a href="#">Regulation (EU) No 604/2013</a> for a country to receive a person who has not applied for asylum on its territory.

## LIST OF ABBREVIATIONS

<b>ACESO</b>	Access to early protection and rehabilitation services right on arrival in the EU
<b>AIDA</b>	Asylum Information Database
<b>AMIF</b>	Asylum, Migration and Integration Fund
<b>CEAS</b>	Common European Asylum System
<b>CJEU</b>	Court of Justice of the European Union
<b>CMS</b>	Centre for Peace Studies   Centar za mirovne studije
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECRE</b>	European Council on Refugees and Exiles
<b>ELENA</b>	European Legal Network on Asylum
<b>EU</b>	European Union
<b>Eurostat</b>	European Commission Directorate-General for Statistics
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>FYROM</b>	Former Yugoslav Republic of Macedonia
<b>HPC</b>	Croatian Law Centre   Hrvatski pravni centar
<b>IOM</b>	International Organisation for Migration
<b>LGBTI</b>	Lesbian, gay, bisexual, transsexual and intersex
<b>LITP</b>	Law on International and Temporary Protection   Zakon o međunarodnoj i privremenoj zaštiti
<b>NGO(s)</b>	Non-governmental organisation(s)
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>SOA</b>	Security Intelligence Agency   Sigurnosno Obavještajna Agencija
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations Children Fund
<b>UNVFVT</b>	United Nations Voluntary Fund for Victims of Torture

## THE ASYLUM INFORMATION DATABASE (AIDA)

The **Asylum Information Database** is a database containing information on asylum procedures, reception conditions and detention across 20 European countries. This includes 17 European Union (EU) Member States (Austria, Belgium, Bulgaria, Cyprus, Germany, Spain, France, Greece, Croatia, Hungary, Ireland, Italy, Malta, Netherlands, Poland, Sweden, United Kingdom) and 3 non-EU countries (Switzerland, Serbia, Turkey).

AIDA started as a project of the European Council on Refugees and Exiles (ECRE), running from September 2012 to December 2015 in partnership with Forum Réfugiés-Cosi, the Hungarian Helsinki Committee and the Irish Refugee Council, and is now developing into a core research and documentation activity of ECRE. The overall goal of the database is to contribute to the improvement of asylum policies and practices in Europe and the situation of asylum seekers by providing all relevant actors with appropriate tools and information to support their advocacy and litigation efforts, both at the national and European level. These objectives are carried out by AIDA through the following activities:

❖ **Country reports**

AIDA contains **national reports** documenting asylum procedures, reception conditions and detention in 20 countries.

❖ **Comparative reports**

Comparative reports provide a thorough comparative analysis of practice relating to the implementation of asylum standards across the countries covered by the database, in addition to an overview of statistical asylum trends and a discussion of key developments in asylum and migration policies in Europe. Beyond the annual reports **2012/2013**, **2013/2014** and **2014/2015**, and thematic reports on **reception** and **asylum procedures** were published in March and September 2016 respectively.

❖ **Fact-finding visits**

AIDA includes the development of fact-finding visits to further investigate important protection gaps established through the country reports, and a methodological framework for such missions. Fact-finding visits have been conducted in **Greece**, **Hungary** and **Austria** so far.

❖ **Legal briefings**

Legal briefings aim to bridge AIDA research with evidence-based legal reasoning and advocacy. Eight **briefings** have been published so far, covering: the legality of detention of asylum seekers under the Dublin Regulation; key problems in the collection and provision of asylum statistics in the EU, the concept of "safe country of origin"; the way the examination of asylum claims in detention impacts on procedural rights and their effectiveness; age assessment of unaccompanied children; duration and review of international protection status; length of asylum procedures; and travel documents for beneficiaries of protection.

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## INTRODUCTION

The aftermath of the large-scale influx of refugees into Europe in 2015, coined by many as a “refugee crisis” or “migration crisis”, is still unfolding across the European Union (EU). At the time, governments in the region made unprecedented political arrangements to allow for orderly and facilitated transit from Greece to Germany along the so-called Western Balkan route.<sup>1</sup> ECRE paid particular attention to the systems and conditions facing refugees in two of the countries affected, Hungary and Austria, in two fact-finding visits conducted last year.<sup>2</sup> However, the arrangements for access and transit throughout the Western Balkan route were gradually restricted and eventually declared ceased on 7 March 2016 by EU leaders.<sup>3</sup> The successive closure of international borders along the route has marked a shift in several countries’ approach to the management of refugees, from facilitation of transit to responsibility for longer-term reception and protection.

For countries such as Croatia, the closure of the route has led to a dramatic relative increase in the number of people seeking asylum, which has proved challenging for an asylum system receiving no more than a hundred applications in previous years. Alongside the challenge of restricted access to the territory for those in need of protection, renewed political impetus for reaffirming EU rules on the responsibility of Member States for asylum seekers under the Dublin Regulation<sup>4</sup> has led to an

<sup>1</sup> See European Commission, ‘Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action’, IP/15/5904, 25 October 2015, para 1.

<sup>2</sup> See ECRE, *Crossing boundaries: The new asylum procedure at the border and restrictions on access to protection in Hungary*, October 2015; *Navigating the maze: Structural barriers to accessing protection in Austria*, December 2015.

<sup>3</sup> Council of the European Union, *Meeting of the EU Heads of State or Government (Brussels, 7 March 2016) Statement*, available at: <http://bit.ly/1RxLZ46>, para 2.

<sup>4</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast) (hereafter “Dublin III Regulation”), OJ 2013 L180/31.

emerging trend of returns to Croatia from other European countries. In what appears to be a reversal of movement of people along the Western Balkan route, an increasing number of returning asylum seekers have been faced with the challenging context underlying the Croatian asylum system, with visible impact on their procedural treatment and reception conditions.

Against this backdrop, ECRE's focused research on Croatia as part of the Asylum Information Database (AIDA) aimed at examining the current state of refugee status determination procedures and reception conditions available to asylum seekers, including those returned under the Dublin system, as well as obtaining a balanced and comprehensive understanding of the challenges underlying the work of the Croatian authorities, civil society organisations and volunteer groups protecting and assisting refugees on the ground.

This report presents the findings of a fact-finding visit to Croatia conducted between 28 November and 1 December 2016 by ECRE. During this visit, the ECRE delegation visited:

- ❖ **Zagreb**, where it met with the United Nations High Commissioner for Refugees (UNHCR) Representation in Croatia, the Croatian Law Centre (HPC), the Centre for Peace Studies (CMS), the Croatian Red Cross, Are You Syrious, and the University of Zagreb Faculty of Law, as well as attending one of the Asylum Coordination Meetings (*Koordinacija za azil*) organised on a termly basis by HPC;
- ❖ The border-crossing point of **Bajakovo** on the Croatian-Serbian border, where it met with officials of the competent border police station, the police administration and the Border Police Directorate of the Ministry of Interior;
- ❖ The Reception Centre for Asylum Seekers in **Hotel Porin**, Zagreb, where it met representatives of the reception centre and the Asylum Department of the Ministry of Interior, as well as the Jesuit Refugee Service (JRS) South East Europe;
- ❖ The Reception Centre for Foreigners in **Ježevo**, where persons subject to return proceedings and asylum seekers are detained. There it met with representatives of the detention centre under the Border Police Directorate of the Ministry of Interior.

Primary data gathered from interviews and observation of the sites visited (Porin, Bajakovo and Ježevo) is complemented by desk research on the situation of asylum seekers in Croatia, with emphasis on the AIDA Country Report on Croatia.<sup>5</sup> To that end, the report also makes reference to authoritative sources of information on the Croatian asylum and reception system, as well as news items documenting recent developments relating to the country.

The report is structured into three chapters:

- **Chapter I** documents the evolving situation of access to the territory of Croatia and readmission following the closure of the route, and potential protection risks related thereto;
- **Chapter II** provides an update on the situation of asylum seekers in Croatia, focusing on selected elements of the asylum procedure and the reception conditions in the Porin Reception Centre for Asylum Seekers;
- **Chapter III** discusses the application of the Dublin Regulation vis-à-vis Croatia, in particular the relevance of the responsibility criteria in the peculiar context of the Western Balkan route, the compliance of transfers with fundamental rights and the role of individual guarantees in the process.

A final section outlines conclusions and **recommendations** to the Croatian authorities and other European countries as relevant.

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<sup>5</sup> AIDA Country Report Croatia: Second Update, December 2015, available at: <https://goo.gl/iuj9zW>.

## CHAPTER I: ACCESSING THE PROCEDURE THROUGH CLOSING BORDERS

### 1. Transit through a developing asylum system

Croatia has been far from exposed to high numbers of asylum seekers compared to other European countries in recent years. The number of applicants registered over the past years was 1,089 in 2013, 453 in 2014 and as few as 211 in 2015.<sup>6</sup> According to Eurostat, its respective share of applicants across the EU28 thereby ranged from 0.2% in 2013, to 0.07% in 2014, to a striking 0.01% in 2015.<sup>7</sup> Accordingly, the Croatian asylum procedure and reception system have not been designed with a view to responding to sizeable asylum seeker populations.

The legal framework of the Croatian asylum system was reformed on 2 July 2015 through the Law on International and Temporary Protection (LITP),<sup>8</sup> which repealed the Law on Asylum<sup>9</sup> as part of the transposition of EU legislation. This included the recast Asylum Procedures Directive and recast Reception Conditions Directive,<sup>10</sup> as well as related legislative acts.<sup>11</sup>

Since then, two developments marked a turning point in Croatia's engagement with refugees in September 2015. On the one hand, the formalisation of the Western Balkan route as a corridor for people entering the EU through Greece facilitated transit through a number of countries *en route* to Western and Central Europe. On the other hand, physical and legal barriers to accessing protection erected by Hungary rapidly diverted the Balkan route through Croatia,<sup>12</sup> until then unaffected by large-scale arrivals. By the time the Balkan route was declared closed in March 2016,<sup>13</sup> as many as 658,000 persons had entered Croatia.<sup>14</sup> High-level political discussions on the need to enhance reception capacity for entrants by creating 50,000 places along the Western Balkan route led to a commitment on the part of Croatia for the creation of 5,000 additional reception places.<sup>15</sup> This target was not met, however: while no new centre was opened, the transit centre set up in Slavonski Brod for short-term shelter of persons in transit was closed later in the year,<sup>16</sup> and enhancing reception

<sup>6</sup> AIDA Country Report Croatia, October 2014, 6; Country Report Croatia: First Update, March 2015, 6; *Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, available at: <https://goo.gl/8IFO2O>, 14.

<sup>7</sup> Eurostat, *Asylum and first time asylum applicants – Annual aggregated data*, [migr\\_asyappctza](http://migr_asyappctza). Note that the Eurostat figures differ from those provided by the Ministry of Interior, cited above.

<sup>8</sup> Law on International and Temporary Protection, Official Gazette 70/15, available in Croatian at: <https://goo.gl/RYVVKF>.

<sup>9</sup> Law on Asylum, Official Gazette 79/07, available at: <https://goo.gl/oK0dKa>.

<sup>10</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ 2013 L180/96.

<sup>11</sup> For an overview of reforms, see AIDA Country Report Croatia: Second Update, December 2015, 12-13.

<sup>12</sup> For more details on the Hungarian practice of shutting off access to asylum at that time, see ECRE, *Crossing boundaries: The new asylum procedure at the border and restrictions to accessing protection in Hungary*, October 2015, available at: <https://goo.gl/tqgVml>; AIDA Country Report Hungary: Fourth Update, November 2015.

<sup>13</sup> European Council, *Meeting of the EU Heads of State or Government (Brussels, 7 March 2016) Statement*, available at: <http://bit.ly/1RxLZ46>, para 2.

<sup>14</sup> See Ministry of Interior, *Reception and accommodation of migrants*, available at: <https://goo.gl/CnOXzW>; UNHCR, *Call for expression of interest: Protection of asylum seekers and beneficiaries of international protection in Croatia*, available at: <https://goo.gl/l7cMuA>.

<sup>15</sup> For a discussion, see AIDA, *Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, 24.

<sup>16</sup> See e.g. Balkan Insight, 'Croatia closes last refugee camp', 13 April 2016, available at: <https://goo.gl/P6ROpx>. See also Council of Europe Commissioner for Human Rights, *Report following visit to Croatia from 25 to 29 April 2016*, CommDH(2016)31, 5 October 2016, available at: <https://goo.gl/4K3c7s>, para 90.

capacity was no longer seen as necessary.<sup>17</sup> Despite the experiences with large numbers transiting through Croatia, no preparations have been made to expand reception capacity in Croatia either as part of contingency planning or in order to address structural reception capacity limitations.<sup>18</sup>

Contrary to the situation in other European countries, the stark rise in arrivals of refugees and migrants over the past year has not translated into a disproportionate increase in Croatia's asylum caseload in absolute terms. The increase in claims, from 211 applicants in 2015 to 2,046 between January and November 2016,<sup>19</sup> remains very limited compared to the number of people entering the country during that time. Nevertheless, in relative terms, the Croatian asylum system has witnessed a nearly tenfold increase in asylum applications in the last year. As discussed in **Chapter III**, additional pressure on the Croatian asylum system resulted from the increase in the number of asylum seekers returned under the Dublin Regulation from other Member States in the past months. As of 30 November 2016, a total 540 asylum seekers had been returned to Croatia, in many cases persons with specific vulnerabilities and illnesses, the majority from Austria. Afghanistan, Syria and Iraq constituted the top three nationalities applying for international protection in Croatia this year.

## 2. Access to the territory following route closure

Beyond returns to the country, the application of the Dublin system has also had an impact on Croatia's policy on access to its territory for those seeking protection. Bearing in mind the consequences of entry into the country vis-à-vis the Dublin system, the new Croatian Government has committed to limiting migration through stricter control of its land border, as "the only sustainable solution" to avoid higher numbers of Dublin returns.<sup>20</sup> This was reaffirmed by the Croatian Ministry of Interior in a conference held on 21 November 2016 with the Visegrad countries, Austria, Belgium, Slovenia and Bulgaria.<sup>21</sup> International human rights institutions such as the Parliamentary Assembly of the Council of Europe (PACE) have been critical of such an approach, urging Croatia and other countries in the region to refrain from denying access to protection and to respect the principle of *non-refoulement*.<sup>22</sup>

An example of restrictions on access to the territory was seen on 14 November 2016, when a number of people were blocked from entering from Serbia near the border-crossing point of Sid / Tovarnik.<sup>23</sup> In an attempt to escape the conditions in Serbia, a group of migrants and asylum seekers organised a protest march, demanding access to the Croatian territory. Whereas it is unclear whether the group concerned had the intention to apply for international protection in Croatia or was aiming to transit the country in order to reach other destinations in the EU, the incident is illustrative of how cooperation between the Croatian and Serbian authorities can be effective in preventing persons from even reaching the Croatian border.

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<sup>17</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.

<sup>18</sup> For further discussion, see **Chapter II**.

<sup>19</sup> Information provided by the Asylum Department, 5 December 2016. See also AIDA, *Admissibility, responsibility and safety in European asylum procedures*, September 2016, available at: <https://goo.gl/Dq2iVj>, 36.

<sup>20</sup> See e.g. Der Standard, 'Flüchtlinge: Neue kroatische Regierung will Migration begrenzen', 23 October 2016, available in German at: <https://goo.gl/qFMPCP>.

<sup>21</sup> Ministry of Interior, 'Ministar Orepić na Ministarskoj konferenciji zemalja V4 i V4+', 21 November 2016, available in Croatian at: <https://goo.gl/nnQl8a>.

<sup>22</sup> PACE, Resolution 2108 (2016) "Human Rights of refugees and migrants – the situation in the Western Balkans", 20 April 2016.

<sup>23</sup> UNHCR, *Serbia Update 10-13 November 2016*; Are You Syrious, *Daily Digest 13/11*, available at: <https://goo.gl/Hj1vsf>.

## 2.1. Allegations of push-backs at the Croatian-Serbian border

Allegations of push-back practices at the Croatian-Serbian border have been received by the UNHCR Office in Serbia, which shares information reports with UNCHR Croatia. UNHCR updates on the situation in Serbia refer to considerable numbers of persons claiming to have crossed the green border irregularly, and to have been apprehended by Croatian border officials and sent back to Serbia before having had an opportunity to apply for international protection.<sup>24</sup> While UNHCR has shared this information with the Croatian authorities, so far none of the allegations have been subject to thorough investigation. Still according to UNHCR this is because the allegations lack precision as to the exact date and location of the incidents reported. The land border between Serbia and Croatia is under intensified surveillance by the Croatian regional border police administrations. In most cases, migrants claim to have been apprehended by the Croatian border police officials in the woods and forests near the Serbian border. This may explain why it is often impossible for migrants to provide details on the exact location where they were apprehended, making it therefore very difficult for the Croatian authorities to verify such allegations.<sup>25</sup>

Due to the partial cancellation of the Memorandum of Understanding between UNHCR and Croatian authorities on border monitoring in 2015, UNHCR was only able to carry out 3 border monitoring activities in 2016.<sup>26</sup> No unlawful practices have been identified by UNHCR through these activities but, according to the representatives of UNHCR meeting with the ECRE delegation, it was considered likely that persons have been sent back from Croatia without having had the chance of applying for international protection. However, without further investigations and additional information on the individual cases, no final conclusions could be drawn as to whether these allegations could be corroborated or not by evidence, or as to the scale of such practices. Therefore, it is considered of the utmost importance to resume systematic border monitoring activities in 2017 so as to ensure that *non-refoulement* obligations are fully complied with.

ECRE urges the Croatian authorities to thoroughly investigate allegations of push-back practices at Croatia's external borders and to allow UNHCR and expert human rights organisations to undertake systematic border monitoring activities.

## 3. Readmission procedures and the risk of (onward) *refoulement*

Within the Ministry of Interior, the Border Police Directorate is structured around 20 regional administrations which are all responsible for preventing and detecting irregular migration. Border police stations are located at the actual land border as well as inland and each police administration is organised around three main duties: protection, control and irregular migration. Every station has an official responsible for irregular migration, with a total of about 350 in the 20 regional administrations.<sup>27</sup> Two types of situations can be distinguished in encounters with migrants seeking to cross or having crossed the Croatian external land border irregularly.

1. The LITP provides explicitly for the possibility to express the intention to apply for international protection during a border control or at the border-crossing points.<sup>28</sup> In such case, the border police official concerned is obliged to stop any procedure initiated to effect the removal of the person and

<sup>24</sup> Updates on the situation in Serbia mention that UNHCR and partners have encountered respectively 20, 25 and 120 persons who reported to have been pushed-back/ unlawfully expelled back into Serbia: UNHCR, *Serbia Update, 14-16 November, 17-20 November, 21-23 November 2016* and *Weekly Report*, 14 December 2016, available at: [data.unhcr.org](http://data.unhcr.org). According to the cited UNHCR Weekly Report, many alleged disproportionate use of force by Croatian police and some needed medical treatment in Serbia for injuries sustained.

<sup>25</sup> Information provided by UNHCR, Zagreb, 30 November 2016.

<sup>26</sup> *Ibid.*

<sup>27</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016.

<sup>28</sup> Article 33(1) LITP.

record the person's intention to apply for international protection. The person is also provided with a document certifying the fact that such intention has been expressed.

Where it concerns a vulnerable person, the border police station concerned organises transport to the Reception Centre for Asylum Seekers in Porin or Kutina, where the person's asylum application must be registered and the first interview conducted.

In all other cases, the person who has expressed the intention to apply for international protection is instructed to present themselves within a specified time period at the Reception Centre in Porin. According to the representative of the border police station of Bajakovo, the length of the time limit can vary depending on the individual circumstances of the person concerned and is established in consultation with him or her, as there is not fixed time limit provided in the law. Usually, persons who have expressed the intention to apply for international protection are given between 2 to 5 days to present themselves at the reception centre in order for their application to be registered.<sup>29</sup>

2. In case a person is apprehended at the border or inside the territory in an irregular situation and does not express the intention to apply for international protection, the administrative procedure to remove the person from the territory is immediately initiated, on the basis of the bilateral readmission agreement between Croatia and Serbia.<sup>30</sup> The bilateral readmission agreement allows for two types of readmission procedures:

- An accelerated readmission procedure, which is entirely carried out at between the respective regional border authorities of both countries; and
- The normal readmission procedure, which necessarily implies the involvement of the Serbian Ministry of the Interior.

The accelerated procedure is carried out within very short time limits. The regional Serbian Border Police Department must reply within 24 to 48 hours of receiving the readmission request.<sup>31</sup> No further individual assessment of the person's risk of being subjected to direct or indirect *refoulement* is carried out in the framework of the accelerated readmission procedure.<sup>32</sup> The representatives of the Border Police Directorate explained that Serbia is considered as safe and therefore, even if the individual concerned would raise concerns regarding the conditions in Serbia, no further action could be taken in the absence of an expression of the intention to seek international protection.<sup>33</sup>

Even so, the authorities would not proactively inform the person of the possibility to express the intention to apply for international protection. Third-country nationals can seek asylum in the police stations but they would not be "offered" such an opportunity, according to the Border Police Directorate.<sup>34</sup> No such information would be provided even in the case where a person carries a Serbian document certifying his or her status as an asylum seeker in Serbia or having expressed the intention to seek asylum there.<sup>35</sup> However, according to the Border Police Directorate, police officials have received training on how to recognise indications that third-country nationals want to apply for international protection,<sup>36</sup> although it is unclear how this is applied in practice.

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<sup>29</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016.

<sup>30</sup> The Croatia-Serbia Readmission Agreement is available at: <https://goo.gl/wH4WmM>.

<sup>31</sup> Information provided by the Head of the Department of Illegal Migration, Ježevo, 30 November 2016.

<sup>32</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016, Ježevo, 30 November 2016.

<sup>33</sup> *Ibid.*

<sup>34</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016.

<sup>35</sup> For more information on documents issued to persons expressing the intention to apply for asylum in Serbia, see AIDA Country Report Serbia, March 2016, 13-15.

<sup>36</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016.

As regards interpretation, representatives of the Border Police Station of Bajakovo informed us that there was one interpreter available for Arabic but that the lack of interpreters for Afghan and Pakistani nationals apprehended at the border is causing serious problems. However, the police administration now uses Google Translate and this is considered sufficient for the type of activities carried out at the police stations, in particular for those expressing the intention for asylum as officials are only required to record such intention.<sup>37</sup> Moreover, interpretation is also available throughout the asylum procedure at the Reception Centre for Asylum Seekers.

Such practice contravenes Croatia's obligations under EU and international human rights law. Under Article 8(2) of the recast Asylum Procedures Directive,<sup>38</sup> border authorities have an obligation to provide information on the possibility to apply for asylum where there are indications that third-country nationals or stateless persons held in detention facilities or present at border-crossing points may wish to do so, and to make arrangements for interpretation necessary to facilitate access to the asylum procedure. The obligation on states to assess whether return could result in the person being subjected to inhuman or degrading treatment, regardless of whether he or she has explicitly requested asylum, has been established in the jurisprudence of the European Court of Human Rights (ECtHR). In the cases of *Hirsi Jamaa v. Italy*<sup>39</sup> and *Sharifi v. Italy and Greece*,<sup>40</sup> the Court held that it is for the state carrying out the return to assure that the receiving state offers sufficient guarantees that an individual will not be removed without an assessment of the risks faced in the country of origin.

In light of persisting deficiencies in Serbia's asylum system, including the lack of effective access to adequate reception conditions and procedural safeguards, such a risk is not illusory in case of readmission to Serbia.<sup>41</sup> A recent report by the Belgrade Centre for Human Rights extensively documents deteriorating reception conditions for asylum seekers and migrants and increasing homelessness.<sup>42</sup> Moreover, both the Serbian Asylum Office at first instance and the Asylum Commission on appeal make automatic application of the "safe third country" concept and "safe country of origin" concept without properly assessing the applicant's well-founded fear for persecution or risk of serious harm or onward *refoulement*.<sup>43</sup> In this regard, it should be noted that Serbia has adopted a list of safe third countries and safe countries of origin, which both include Turkey as well as neighbouring countries Former Yugoslav Republic of Macedonia (FYROM) and Bulgaria as well as Greece. This carries a risk for persons readmitted to Serbia to be subjected to chain *refoulement* which must be rigorously scrutinised on a case-by-case basis by the Croatian authorities. Moreover, since 2012, UNHCR has maintained the position that Serbia cannot be considered as a "safe third country".<sup>44</sup>

Until recently, the acceptance rate of readmission requests from Croatia by the Serbian authorities was very high and persons apprehended were effectively readmitted to Serbia within the aforementioned time limits.<sup>45</sup> However, Serbia has recently been less forthcoming in accepting

<sup>37</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016.

<sup>38</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ 2013 L180/60.

<sup>39</sup> ECtHR, *Hirsi Jamaa and Others v. Italy*, Application No 27765/09, Judgment of 23 February 2012, paras 147 and 157.

<sup>40</sup> ECtHR, *Sharifi and Others v. Italy and Greece*, Application No 16643/09, Judgment of 21 October 2014, para 232.

<sup>41</sup> See e.g. AIDA Country Report Serbia, March 2016.

<sup>42</sup> Belgrade Centre for Human Rights, *Right to asylum in the Republic of Serbia: July-September 2016*, available at: <https://goo.gl/lrwVZh>.

<sup>43</sup> *Ibid.*

<sup>44</sup> UNHCR, *Serbia as a country of asylum*, August 2012, available at: <https://goo.gl/iivJ51>. Recently, UNHCR reported it is seeking clarification from the Serbian authorities on reports of the collective expulsion of a group of six refugees and migrants from the Preševo reception centre to FYROM in December: UNHCR, *Weekly Report*, 14 December 2016, available at: [data.unhcr.org](http://data.unhcr.org), 3.

<sup>45</sup> Information provided by the Border Police Directorate, Bajakovo, 28 November 2016, Jezevo, 30 November 2016.

readmission requests from Croatia as it is systematically handling requests under the regular readmission procedure, notwithstanding the fact that the same type of evidence is submitted by Croatia. As of the end of October 2016, the ratio of accepted / rejected readmission requests has reversed compared to 2015, as illustrated in the table below on the readmission requests from the Police Administration of Vukovarsko-Srijemska:

Readmission requests from Croatia to Serbia in Vukovarsko-Srijemska: 2015-2016		
	1 January – 31 December 2015	1 January – 30 October 2016
Persons accepted	114	28
Persons rejected	11	75
Total requested	125	103

Source: Border Police Directorate, Bajakovo, 28 November 2016.

At the national level, so far in 2016, 153 readmission requests have been accepted by Serbia, and 191 refused.<sup>46</sup>

ECRE recommends the Croatian authorities to proactively inform third country-nationals apprehended at the border of the possibility to apply for international protection before any steps are undertaken with a view to readmitting them to neighbouring countries in line with its obligations under Article 8 of the recast Asylum Procedures Directive. Adequate interpretation services and access to free legal advice and counselling must be made available at the police stations where third-country nationals are kept pending the procedure. Regardless of an explicit expression of the intention to apply for international protection, an individual assessment of a person's risk of being subjected to *refoulement* must precede a readmission request to a neighbouring country.

### 3.1. Pre-removal detention

As it may take Serbia up to two weeks to reply under the regular readmission procedure, the person is not kept at the border police station but detained in the Reception Centre for Foreigners in Ježevo pending the final answer from Serbia. However, in the vast majority of cases the rejection of the readmission request by the regional Serbian counterpart in the accelerated procedure is confirmed by the central Serbian authorities under the regular procedure for any cases other than nationals of Serbia and Kosovo.<sup>47</sup> In this regard, the practice of systematically detaining certain nationals, pending the outcome of a readmission procedure, which is highly likely not to result in return to Serbia, is problematic from an EU law perspective. According to Article 15 of the Return Directive,<sup>48</sup> detention is only allowed for the shortest possible period, as long as removal arrangements are in progress and executed with due diligence. When there is no longer a reasonable prospect for of removal for legal or other considerations, detention is no longer justified and the immediate release of the person is required.<sup>49</sup> The current approach of the Croatian authorities seems at least at odds with such obligation where it is clear from the outset that the likelihood of the readmission request being accepted is almost non-existent.

<sup>46</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

<sup>47</sup> *Ibid.* So far in 2016, Serbia has accepted 61 readmission requests for Serbian and Kosovar nationals, as well as 33 requests for Pakistani nationals where sufficient proof was provided.

<sup>48</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L348/98.

<sup>49</sup> Article 15(4) Return Directive.

### 3.2. Cost of removal

According to the Law on Foreigners, persons subjected to forced return are required to pay the cost of their removal and accommodation in the Reception Centre for Foreigners.<sup>50</sup> Migrants are charged 250 HRK (32.50€) per day of accommodation in Ježevo, while the costs of removal are determined in a bylaw which is updated every year and must cover every single aspect of the removal process, including the cost of fuel and issuance of travel documents, visa etc.<sup>51</sup> In case the person lacks the financial resources, the costs are borne by the Ministry of Interior and are reimbursed from the Asylum, Migration and Integration Fund (AMIF). However, failure to pay the costs also impedes the individual's future access to Croatia as the person can be denied entry to the territory up to a period of five years after the date of removal, until they have covered these costs.<sup>52</sup> In some cases, people have paid the amount due at the border in order to enter the territory. ECRE was informed that these provisions are strictly applied by the Border Police Directorate.<sup>53</sup>

In the absence of a clear provision exempting persons applying for international protection in Croatia from the obligation to settle the outstanding invoice, such practice may effectively impede access to the territory and the asylum procedure in Croatia to those who are unable to pay the costs of their removal for the duration of the entry ban. This would be incompatible with Croatia's obligation under Article 31 of the 1951 Refugee Convention to refrain from imposing penalties on refugees or asylum seekers, coming directly from a territory where their life or freedom was threatened, on account of their irregular entry.

## 4. Places of immigration and asylum detention

### 4.1. Living conditions and daily activities

The Reception Centre for Foreigners located in Ježevo, 30 km from Zagreb, has a total capacity of 84 persons.<sup>54</sup> Both migrants awaiting their forced removal as well as asylum seekers may be detained in the Centre. The Centre is run by the Border Police Directorate with a total of 63 staff responsible for the logistics of the centre and the surveillance of the detainees, in addition to a number of service providers responsible for outsourced activities such as catering and health care.

A new building with a capacity of 28 places was finalised by the end of 2015 on the premises of the Centre for the accommodation of women, families, and in the near future unaccompanied children.<sup>55</sup> At the time of our visit on 30 November 2016, 17 persons were detained in the centre, of whom 5 were asylum seekers. All persons were single male adults and were accommodated in the old part of the centre, whereas the new building was empty. Standard rooms in the old part of the centre have 8 beds, while 6 toilets and 6 showers are available for a total 56 persons that can be accommodated there. The new building, built with EU funding, has rooms with 3 beds for unaccompanied children and specific rooms for families, with 1 shower and 1 toilet per two units.

Under supervision of a police officer, detainees have access to a spacious courtyard 2 hours a day, although the time limitation is not strictly adhered to. However, during ECRE's visit, detainees complained that they had not been allowed to enter the courtyard for a number of days. According to the representative of the Reception Centre for Foreigners, this was because of bad weather conditions.

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<sup>50</sup> Article 109 Law on Foreigners.

<sup>51</sup> See [Annex II](#) for a template of the invoice given to persons subject to deportation proceedings.

<sup>52</sup> Article 34(4) Law on Foreigners.

<sup>53</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

<sup>54</sup> Information provided by the Border Police Directorate, 6 December 2016.

<sup>55</sup> *Ibid.*



Women and children living unit  
Jezevo Reception Centre for Foreigners

While the number of detainees at the time of ECRE's visit was low, the occupancy rate of the wing reserved for single men fluctuates and has reached high levels earlier this year. In his visit to Croatia in late April 2016, the Council of Europe Commissioner for Human Rights urged the authorities to make use of the – then also empty – new facility to accommodate people whenever necessary to address situations of overcrowding in the dormitories for single men.<sup>56</sup> ECRE shares the view that it would be unacceptable to subject detainees to situations of overcrowding in the presence of unused and high standard facilities on the premises of Jezevo.

However, the construction of a new facility for vulnerable groups on the premises of the Reception Centre for Foreigners with EU funding, while obviously improving living conditions for those groups while in detention, seems another stark illustration of EU priorities resulting in incentivising Member States to adopt harmful policies. Vulnerable migrants and asylum seekers, in particular unaccompanied children, should not be detained, as detention can never be in their best interests. Instead of investing EU funds in the construction of detention facilities for those who should not be detained, such funds could and should have been used to improve the conditions in open Reception Centres for Asylum Seekers and create additional capacity for accommodating asylum seekers in dignified conditions in Croatia.

#### *4.2. Applying for asylum in detention*

According to the Law on Foreigners, migrants can be detained in order to ensure their removal after irregular entry, if they present a threat to national security, in case of a criminal conviction for crimes prosecuted *ex officio*, where a migrant fails to leave Croatia within the prescribed period for voluntary departure or in order to establish his or her identity.<sup>57</sup> In accordance with Article 15 of the Return Directive, immigration detention is only to be used as a measure of last resort for a maximum of six months, extendable with another twelve months.<sup>58</sup> Under Croatian law, detention orders for pre-removal detention are issued by the regional police administrations across the country. According to the Border Police Directorate, in practice migrants are in most cases detained on the basis of their

<sup>56</sup> Council of Europe Commissioner for Human Rights, *Report following visit to Croatia from 25 to 29 April 2016*, CommDH(2016)31, 5 October 2016, para 107.

<sup>57</sup> Article 100 Law on Foreigners.

<sup>58</sup> Council of Europe Commissioner for Human Rights, *Report following visit to Croatia from 25 to 29 April 2016*, CommDH(2016)31, 5 October 2016, 22.

irregular entry or to establish their identity, while detention in the context of Dublin procedures, including to enforce transfer to another Member State, has not occurred until now.

Article 54 of the LITP allows the detention of asylum seekers where it is deemed to be necessary for the purpose of (1) establishing the facts of the asylum application, in particular where there is a risk of absconding; (2) establishing and verifying identity and nationality; (3) protection of the national security or public order and (4) preventing abuse of the procedure where an intention to apply for international protection has been expressed merely to prevent the execution of an expulsion order.

Where a person expresses the intention to apply for international protection from the detention centre, after having been detained on the basis of one of the immigration detention grounds, the Centre for Foreigners, he or she must either be released and transferred to an open centre (Porin or Kutina) or must be served with a new restriction of freedom of movement order on one of the grounds for asylum detention. According to the Border Police Directorate, as soon as the expression of intention to apply for international protection is received, the Asylum Department is notified, if possible on the same day. Depending on its workload, the Asylum Department usually carries out the initial interview with the applicant in the Reception Centre for Foreigners within one week of notification. Release or restriction of movement on the basis of one of the asylum grounds is decided by the Asylum Department after the application is lodged.

This raises questions as to the legality of detention during the period between the expression of the intention to apply for international protection and the initial interview carried out by the Asylum Department. According to the LTIP, a person who has expressed the intention to apply for international protection is considered an applicant for international protection and is therefore entitled to all the rights under the EU asylum *acquis*.<sup>59</sup> This includes the right to remain on the territory until a final decision on his or her application has been taken. In the case of *Suso Musa v. Malta*, the ECtHR has acknowledged that the asylum applicant's right to remain on the territory under EU law<sup>60</sup> raises an issue as to the lawfulness of his or her detention under the first limb of Article 5(1)(f) of the European Convention on Human Rights (ECHR) as such detention cannot be said to serve the purpose of preventing "unauthorised entry".<sup>61</sup> In any case, for the duration of the period between the expression of the intention to apply for international protection and the issuing of an order to further liberty deprivation on the basis of one of the asylum detention grounds, the person's detention in the Centre for Foreigners seems to lack a clear legal basis in national law. In such case, the person could no longer be detained on the basis of his or her irregular entry on the territory or the establishment of his or her identity for the purpose of removal while no individual decision stating the necessity and proportionality of the person's detention on the basis of one of the asylum detention grounds has been issued yet by the Asylum Department. This would render the deprivation of liberty arbitrary under Article 5 ECHR and Article 6 EU Charter of Fundamental Rights.

To comply with the safeguards against the arbitrary detention of asylum seekers in the EU Charter and the ECHR, ECRE recommends the Ministry of Interior and the Asylum Department to ensure that any decision to detain a person expressing the intention to apply for international protection from a detention centre takes into account that person's changed status as an asylum seeker under the LITP. For such decision to be lawful, it must be based on one of the grounds for asylum detention in the LITP, preceded by an immediate and individualised assessment of its necessity and proportionality, and should only be taken where no other less coercive measure can be applied.

<sup>59</sup> Article 4(5) LITP.

<sup>60</sup> See Article 9(1) recast Asylum Procedures Directive establishing the right of an applicant for international protection to remain in the Member State for the sole purpose of the procedure.

<sup>61</sup> See ECtHR, *Suso Musa v. Malta*, Application No 42337/12, Judgment of 23 July 2013, para 97; *O.M. v. Hungary*, Application No 9912/15, para 47, Judgment of 5 July 2

### 4.3. Access to health care services

Whereas conditions in the Reception Centre for Foreigners during our visit on 30 November 2016 were acceptable overall, access to and availability of health care was a reason for concern. Health care is provided by a medical team of the Ministry of Health, consisting of a general practitioner and a nurse, in the centre only twice a week, whereas a doctor used to be present five days a week in the centre.<sup>62</sup> Mental health issues cannot be addressed in the centre but in urgent cases, people can be transported to a hospital where they would receive the necessary care. The infirmary has basic medication available for detainees, which is provided by the staff of the centre in absence of the medical team of the Ministry of Health. While the Border Police Directorate considered the current arrangements for the provision of health care to be sufficient to cover the present needs in the centre,<sup>63</sup> this is not sustainable in the long term as it is expected that the number of detainees may increase. Moreover, the Jesuit Refugee Service (JRS) South East Europe, which provides social support to detainees in the centre on a regular basis, expressed concern over the lack of preventive measures to address potential risks of self-harm due to psychological problems of detainees.<sup>64</sup> While the length of detention in the Reception Centre of Foreigners varies in practice and may seldom reach the maximum time limit of 6 months for asylum seekers and 18 months for irregular migrants, according to the representative of the Border Police Directorate detainees may spend on average 30 to 45 days in detention before being released.<sup>65</sup>

In light of the devastating impact of detention on mental and physical health of migrants and asylum seekers, ECRE recommends that the presence of the medical team is ensured seven days a week and that staff members employed in the centre receive training in and are sensitised to the identification of specific vulnerabilities.

### 4.4. Expanding detention capacity?

With funding made available by the Schengen Facility between its accession and the end of 2014,<sup>66</sup> Croatia has constructed two additional pre-removal detention centres, one in Tovarnik on the Serbian border, and one in Trilj at the border with Bosnia-Herzegovina. Each centre has a capacity of 62 persons with a separate wing for vulnerable groups.<sup>67</sup> According to the Border Police Directorate, the purpose of both centres was to save time and money by avoiding the time-consuming process of transporting third-country nationals apprehended at the border to the Reception Centre for Foreigners in Ježevo in case of readmission.<sup>68</sup> Therefore the same procedures will be carried out in both centres as are currently conducted in Ježevo. Although during the construction both centres were referred to as transit centres,<sup>69</sup> they are not to be considered as transit zones. Tovarnik and Trilj will be Reception Centres for Foreigners and will allow for detention up to 18 months. Persons expressing the intention to apply for international protection in those centres will be processed in both centres if the grounds for detention of asylum seekers are applicable.<sup>70</sup> Similar issues as with regard to the legality of detention as identified in Ježevo may arise in the context of the detention of asylum seekers in both centres.

Similar to the construction of a new building in Ježevo, the increased capacity for detention in the two new centres increases the risk of more systematic detention of asylum seekers pending the

<sup>62</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

<sup>63</sup> *Ibid.*

<sup>64</sup> Information provided by JRS South East Europe, Zagreb, 29 November 2016.

<sup>65</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

<sup>66</sup> Article 31 Treaty concerning the accession of the Republic of Croatia to the European Union, OJ 2012 L112/10.

<sup>67</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

<sup>68</sup> *Ibid.*

<sup>69</sup> See e.g. AIDA Country Report Croatia: Second Update, December 2015, 31, 48, 62.

<sup>70</sup> Information provided by the Border Police Directorate, Ježevo, 30 November 2016.

examination of their application for international protection. As regards the use of both centres for the purpose of readmission, similar risks of *refoulement* highlighted above could exist in the case of return of third-country nationals to neighbouring countries before they have had an effective opportunity to apply for international protection.

ECRE urges the Croatian authorities to refrain from detention of asylum seekers and vulnerable persons, and to prioritise administrative and financial resources in the improvement of living conditions in open Reception Centres for Asylum Seekers.

## CHAPTER II: LARGE-SCALE CHALLENGE FOR SMALL-SCALE SYSTEMS

This chapter focuses on specific elements of the Croatian asylum procedure and reception conditions identified during discussions with the authorities, UNHCR and civil society organisations, as well as a visit to the Porin Reception Centre for Asylum Seekers on 29 November 2016.

### 1. Asylum procedure

The substantial increase in the number of asylum applications registered in 2016 has resulted in higher workload for the Asylum Department, the authority responsible for examining applications under the Ministry of Interior. The Department currently employs 22 staff members,<sup>71</sup> only slightly increasing its capacity compared to 20 officials at the end of 2015.<sup>72</sup> The decisions taken at first instance so far in 2016 are as follows:

First instance decisions on asylum applications: 1 January – 30 November 2016	
<b>Positive decisions</b>	73
<b>Negative decisions</b>	187
Inadmissible on Dublin grounds	31
Inadmissible subsequent applications	40
Rejected on the merits	116
<b>Withdrawn applications</b>	1,090
<b>Total decisions</b>	1,350

Source: Asylum Department, 5 December 2016.

With a total 73 positive and 116 negative in-merit decisions so far in 2016, Croatia's overall recognition rate has reached 38.6%. Protection rates for specific nationalities include 59.3% for Iraq, 50% for Iran and 31.2% for Afghanistan.<sup>73</sup> More detailed figures on decisions on applications by main nationalities during the first 11 months of the year can be found below:

Nationality breakdown of first instance decisions: 1 January – 30 November 2016			
Positive decisions		Negative decisions	
Syria	27	Algeria	29
Iraq	19	Morocco	20
Iran	6	Iraq	13
Somalia	5	Afghanistan	11
Afghanistan	5	Iran	6

Source: Asylum Department, 5 December 2016. Note that Algeria and Morocco are included in the Croatian list of "safe countries of origin" adopted on 2 May 2016: <https://goo.gl/RVYBUx>.

<sup>71</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>72</sup> AIDA Country Report Croatia: Second Update, December 2015, 15.

<sup>73</sup> Information provided by the Asylum Department, 5 December 2016.

Selected issues of concern regarding the examination of asylum applications in Croatia include the application of exclusion clauses, as well as the provision of legal assistance.

### 1.1. Exclusion: unlocking a trend

The provisions of the LITP relating to exclusion from international protection reflect Articles 12 and 17 of the recast Qualification Directive<sup>74</sup> and are examined by the Asylum Department in individual cases. However, the Security Intelligence Agency (SOA) also systematically performs security checks,<sup>75</sup> in accordance with Article 4 of the Law on Foreigners and Article 41 of the Law on Security Checks. In most cases, the Agency assesses security risks on the basis of information at its disposal, without having access to the asylum case file, but may also order a security interview with the applicant.<sup>76</sup>

The SOA issues an unmotivated opinion on the applicant's security situation, which is binding upon the Ministry of Interior. If the opinion finds the person to pose a threat to national security, the Asylum Department is obliged to reject the application for international protection even if the claim is well-founded, without having access to the reasoning of the SOA.<sup>77</sup>

During 2016, the SOA has become more actively involved in the assessment of asylum claims, leading to a number of applications rejected by the Asylum Department on security grounds.<sup>78</sup> In its negative decisions, the Asylum Department informs the applicant that a negative SOA opinion has been issued, without providing further information as to the content of that opinion, as illustrated in an excerpt of a decision provided in [Annex III](#). Applications by nationals of Iraq and Afghanistan who have been involved in the army have been rejected on that basis,<sup>79</sup> while cases of such rejections applied to Syrians have also been seen by attorneys providing legal assistance.<sup>80</sup> Access to the content of the SOA opinion on a security check is only available to judges of the Administrative Court, if the rejection of the asylum application is appealed by the individual.<sup>81</sup> Neither the applicant nor his or her legal representative have access to that file, however.<sup>82</sup>

The opacity of such rejections of asylum applications raises potential risks that protection is denied to persons who need it, particularly given that the Asylum Department has found the inclusion criteria for international protection to be met in these cases.<sup>83</sup>

As explained by UNHCR, the SOA previously issued similar opinions binding the Ministry of Interior to detain asylum seekers on the basis of security risks. These decisions, however, were successfully appealed before the Administrative Court, which found no basis for imposing detention in the cases concerned.<sup>84</sup> The European Court of Human Rights (ECtHR) has also held in *A. v. United Kingdom* that the right to judicial redress to contest deprivation of liberty under Article 5(4) ECHR may be

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<sup>74</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on criteria for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees and beneficiaries of subsidiary protection, and on the content of protection granted, *OJ* 2011 L337/9.

<sup>75</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016; UNHCR Croatia, Zagreb, 30 November 2016.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.* See also Article 41 Law on Security Checks.

<sup>78</sup> UNHCR is aware of 9 such cases: Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

<sup>79</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016; UNHCR Croatia, Zagreb, 30 November 2016; HPC, Zagreb, 28 November 2016; JRS South East Europe, Zagreb, 29 November 2016.

<sup>80</sup> Information provided at the Asylum Coordination Meeting, Zagreb, 1 December 2016.

<sup>81</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

infringed upon when an individual is detained without having full access to the reasons for his or her detention.<sup>85</sup>

It is therefore likely that more clarity could be obtained on the use of exclusion on the basis of SOA opinions if applicants are able to appeal negative decisions before the Administrative Court, with appropriate assistance from legal representatives. Yet in Poland, where similar requests to access files concerning a return order have been denied for security reasons, the Supreme Administrative Court has found no violation of the appellant's right to an effective remedy pursuant to Article 47 of the Charter of Fundamental Rights, as well as refusing to request a preliminary ruling from the Court of Justice of the European Union (CJEU) on that question.<sup>86</sup>

To comply with the right to an effective remedy under the EU Charter, ECRE recommends the SOA to state in its negative security opinions the reasons for finding a person to pose security risks, with a view to such reasons being available to the applicant in the decision issued by the Ministry of Interior where the applicant is excluded from international protection on those grounds.

## 1.2. Legal assistance

The entry into force of the LITP in 2015 introduced a right to state-funded provision of legal and procedural information for asylum seekers at first instance.<sup>87</sup> At the moment, this is not yet implemented in practice, but a forthcoming call for tenders is expected to fund legal assistance but also representation at first instance.<sup>88</sup> Currently, HPC as UNHCR implementing partner has three lawyers providing legal assistance in first instance asylum procedures, although it provides representation only to vulnerable cases.<sup>89</sup> In addition, CMS and JRS have one lawyer respectively, and students from the Law Clinic of the University of Zagreb Faculty of Law provide some limited form of assistance. Therefore capacity to offer legal assistance at this stage of the process remains restricted.<sup>90</sup>

For appeals before the Administrative Court, the LITP provides that legal aid may be provided by attorneys at law or NGOs registered for providing legal assistance.<sup>91</sup> The latter option has been implemented through HPC following a call issued in April 2016. Therefore, legal aid for appeals at the moment is organised through a list of 30 attorneys, as well as 3 lawyers of HPC.<sup>92</sup>

In 2015, difficulties persisted with regard to the remuneration of attorneys for legal assistance offered to asylum seekers, as the level of costs reimbursed is determined by the Administrative Court.<sup>93</sup> In several cases, the Court followed a strict policy and refused to reimburse attorneys for related expenses such as travel or meetings with clients.<sup>94</sup> Currently, remuneration for legal aid seems to have improved in this regard,<sup>95</sup> although the overall funding available for legal aid remains low.

As regards the quality of decisions in the appeal system, UNHCR has not conducted quality control for decisions issued in 2015 given the low number of asylum applications lodged in Croatia, though it

<sup>85</sup> ECtHR, *A. v. United Kingdom*, Application No 3455/05, Judgment of 19 February 2009, paras 202-224.

<sup>86</sup> Polish Supreme Administrative Court, Judgment No II OSK 2586/14, 29 June 2016. See EDAL summary at: <https://goo.gl/ccOlaR>.

<sup>87</sup> Article 59(3)-(5) LITP.

<sup>88</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>89</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

<sup>90</sup> Information provided by HPC, Zagreb, 28 November 2016.

<sup>91</sup> Article 60(4) LITP.

<sup>92</sup> Information provided by HPC, 14 December 2016.

<sup>93</sup> Article 60(3) LITP.

<sup>94</sup> AIDA Country Report Croatia: Second Update, December 2015, 24.

<sup>95</sup> Information provided by UNHCR, Zagreb, 30 November 2016; HPC, Zagreb, 28 November 2016.

is likely to become more active in the review of 2016 decisions.<sup>96</sup> Nevertheless, the quality of second-instance decisions seems to have improved compared to previous years. In its review of judgments issued by the Administrative Court in 2013 and 2014, CMS mainly found boilerplate decisions applying the same reasoning in different cases, which was not the case in a sample of 2015 decisions reviewed.<sup>97</sup>

## 2. Reception conditions

Croatia has two Reception Centres for Asylum Seekers: Hotel Porin, located in Zagreb, and Kutina, located 80km away from the city.<sup>98</sup> Kutina, which was not visited by the ECRE delegation, is a smaller reception centre dedicated to the accommodation of families, children and persons with special needs.

### 2.1. Capacity and living conditions

Porin is the largest reception centre in Croatia, with a maximum capacity of 600 places.<sup>99</sup> Given the fluctuating rate of exits from and entries into the centre, namely by Dublin returnees, the authorities explained that it is difficult to have exact figures of the occupancy of the centre at any given date.<sup>100</sup> On 29 November 2016, an approximate 550 people were staying in Porin.<sup>101</sup> On the other hand, it was made clear at the time of our visit that the Kutina centre had reached its maximum capacity of 82 persons.<sup>102</sup>

The degree of fluctuation in residents has had understandable impact on the living conditions prevailing in Porin throughout the year. By way of example, during his visit at the end of April 2016, when Porin hosted a total 242 persons,<sup>103</sup> the Council of Europe Commissioner for Human Rights noted that:

“[T]he living conditions in the Porin reception centre were good overall. He could, however, sense the feeling of frustration among the residents, in particular young men. Staff members informed the Commissioner that psychosocial assistance is provided at the centre, while specialised psychiatric care is available in a local psychiatric hospital. The Commissioner was informed that a number of social activities and language courses were provided to the residents by many dedicated staff members and representatives of non-governmental organisations. However, several residents stressed the need to increase the number of Croatian language lessons which currently stand at two hours a week. The Commissioner has also noted that there were 20 children of school age at the centre who had not been registered in schools.”<sup>104</sup>

Efforts to improve living conditions in Porin continued over the summer of 2016.<sup>105</sup> However, by the end of September 2016, both Porin and Kutina had reached close to their maximum reception

<sup>96</sup> Information provided by UNHCR, Zagreb, 30 November 2016.

<sup>97</sup> Information provided by CMS, Zagreb, 29 November 2016.

<sup>98</sup> AIDA Country Report Croatia: Second Update, December 2015, 48.

<sup>99</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> Council of Europe Commissioner for Human Rights, *Report following visit to Croatia from 25 to 29 April 2016*, CommDH(2016)31, 5 October 2016, para 101.

<sup>104</sup> *Ibid.*, para 102.

<sup>105</sup> See e.g. Borderline Europe, *Refugee crisis in Croatia – Report*, June 2016, available at: <https://goo.gl/x5yrez>.

capacity.<sup>106</sup> A recent report by Austrian civil society organisation Border Crossing Spielfeld, drawing upon findings of visits conducted on 24 September, 15 October and 1 November 2016, noted that the Porin centre faced severe overcrowding, leading to deteriorating living conditions.<sup>107</sup> As explained in the report, all new arrivals, including vulnerable cases, are hosted in Porin given that the Kutina reception centre has reached its maximum capacity.<sup>108</sup> According to a report by Der Standard on 18 November 2016, the Porin centre had only 5 washing machines for 600 people, electricity was not available after 21:30, and sanitary conditions in the hotel were unacceptable.<sup>109</sup> These reports were dispelled by the Ministry of Interior.<sup>110</sup>

During our visit to Porin on 29 November 2016, the sanitary and living conditions in the centre were not problematic overall. As explained by the Reception Centre, people are required to clean their own room, which in most cases accommodates four persons. The provision of food and availability of baby food also did not seem to raise particular concerns.

A number of organisations have established a presence and offer different services in the reception centre, especially after the closure of the Western Balkan route. These include the Croatian Red Cross, Doctors of the World, JRS, UNICEF, Save the Children, the Centre for Peace Studies (CMS), Are You Syrious, as well as the International Organisation for Migration (IOM) among others. UNHCR and HPC also visit the centre regularly for protection and legal assistance services.

One aspect raised reports and confirmed by UNHCR and most organisations active in Porin relates to the physical security of asylum seekers in the centre.<sup>111</sup> Problems of alcoholism and substance abuse among a group of residents create tensions and feelings of insecurity,<sup>112</sup> particularly for families with children staying in the same facility. People suffering from substance abuse also tend to be some of the more fluctuating groups of residents in Porin.<sup>113</sup>

For organisations such as the Croatian Red Cross, there is a need for stronger ownership of the centre and its rules by the residents, to ensure that asylum seekers can feel at home and safe. Weekly coordination meetings involving the administration of the Reception Centre for Asylum Seekers with representatives of different groups of residents have helped to address challenges of coordination and living conditions, and should be developed further as a means of fostering a greater sense of community and belonging.<sup>114</sup> However, more regular presence of staff of the Reception Centre for Asylum Seekers is also required, as they are currently present only from 08:00 to 16:00 every day.<sup>115</sup>

On the other hand, evident challenges affecting the quality of life are inherently connected to the increasing occupancy rates in Porin. The fluctuating and often unpredictable rate of arrivals, mainly

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<sup>106</sup> See e.g. International Federation of the Red Cross, *Emergency Appeal Operations Update Croatia: Population Movement*, 28 October 2016, available at: <https://goo.gl/pyxpVz>. Are You Syrious claimed that reception capacity had been reached: 'Croatia: Increase of returns from Austria according to Dublin, no one mentions new accommodation facilities', 30 September 2016, available at: <https://goo.gl/D2Llkl>.

<sup>107</sup> Border Crossing Spielfeld, *Asylsuchende in Kroatien*, November 2016, available in German at: <https://goo.gl/JJQ8Wx>, 3.

<sup>108</sup> *Ibid.*

<sup>109</sup> Der Standard, 'Erschreckende Zustände in Zagreber Asylquartier', 18 November 2016, available in German at: <https://goo.gl/5vLc1h>.

<sup>110</sup> Der Standard, 'Zagreb: Innenministerium weist Vorwürfe gegen Asylquartier zurück', 20 November 2016, available in German at: <https://goo.gl/4Pjb9F>.

<sup>111</sup> See Border Crossing Spielfeld, *Asylsuchende in Kroatien*, November 2016, 14.

<sup>112</sup> Information provided by UNHCR, Zagreb, 30 November 2016; HPC, Zagreb, 28 November 2016; JRS South East Europe, Zagreb, 29 November 2016; CMS, Zagreb, 29 November 2016; Croatian Red Cross, 30 November 2016; Are You Syrious, Zagreb, 30 November 2016.

<sup>113</sup> Information provided by Are You Syrious, Zagreb, 30 November 2016.

<sup>114</sup> Information provided by the Croatian Red Cross, Zagreb, 30 November 2016.

<sup>115</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

under the Dublin Regulation, may lead to situations where the maximum capacity of the centre will be reached or exceeded again in the future. To that end, an appropriate reception strategy and contingency planning are urgently needed to ensure that additional reception capacity can be created in Croatia, with a view to easing the living conditions in Porin in a sustainable manner. Regrettably, no such planning is currently taking place at the Ministry of Interior, despite a commitment by Croatia to create 5,000 reception places following the Western Balkan Summit of 25 October 2015.<sup>116</sup> Without additional reception capacity, conditions in Porin are liable to further deteriorate and place asylum seekers at greater precariousness and risks of ill-treatment if arrivals continue to increase.

UNHCR and the Croatian Red Cross have called upon the Ministry to draw up contingency plans and identify additional reception places, for instance through smaller, community-based centres.<sup>117</sup> This is a recommendation shared by organisations such as CMS, and echoed by ECRE.

ECRE recommends the Ministry of Interior to urgently create additional reception capacity by identifying smaller, community-based facilities, with a view to sustainable provision of appropriate living conditions for the increasing number of asylum seekers present in Croatia.

## 2.2. Identification of special needs and adequacy of care

Article 15 LITP has introduced special procedural and reception guarantees for applicants with vulnerabilities, notably on account of their age, gender, sexual orientation, gender identity, disability, serious illness, mental health, or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence.<sup>118</sup> Both in law and practice, the identification of special needs is seen as a continuous process throughout the procedure, rather than a specific procedure dedicated to the assessment of vulnerability.<sup>119</sup> The Reception Centre for Asylum Seekers relies on the daily assistance of non-governmental organisations present in the premises of Porin, which are able to identify and refer cases requiring special care.<sup>120</sup>

More particularly, the Croatian Red Cross comes into first contact with asylum seekers upon arrival in Porin and conducts an initial needs assessment.<sup>121</sup> In many cases, this allows for the identification of special needs, which seem to be frequent particularly among those returned to Croatia under the Dublin system, as discussed in [Chapter III](#). On the other hand, certain vulnerabilities remain difficult to track given the rate of turnover in the centre. Groups such as LGBTI persons, victims of trauma or victims of trafficking are likely not to come forward by themselves and be identified.<sup>122</sup> At the moment, the only proactive provision of support for such categories of people are information sheets on human trafficking, child marriages and gender-based violence in the common areas of the centre, while a sheet on sexual orientation and gender identity is to be included there soon.<sup>123</sup>

<sup>116</sup> See further AIDA, *Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, 24.

<sup>117</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016; Croatian Red Cross, Zagreb, 30 November 2016.

<sup>118</sup> Article 4(1)(14) LITP.

<sup>119</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.

<sup>120</sup> *Ibid.*

<sup>121</sup> Information provided by the Croatian Red Cross, Zagreb, 30 November 2016.

<sup>122</sup> *Ibid.*

<sup>123</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.



Questions on the adequacy of support for persons with special needs in Croatia revolve first and foremost around the area of health care. Access to health care in Croatia, including for refugees and migrants, was also the main focus of a visit by the United Nations Special Rapporteur on the right to health between 28 November and 6 December 2016.<sup>124</sup> The report of this visit will be published in June 2017.

The transposition of the recast Reception Conditions Directive into the LITP has codified the minimum EU standard of health care for asylum seekers, covering “emergency medical assistance, and necessary treatment of illnesses and serious mental disorders.”<sup>125</sup> However, the LITP also incorporates the specific standards set by the Directive relating to persons requiring special reception guarantees, who should be provided with “the appropriate health care related to their specific condition”.<sup>126</sup> The Ministry of Health is responsible for the provision and costs of such care.<sup>127</sup>

The implementation of the standards provided in the LITP seems to leave a number of asylum seekers fall through the cracks of health care. Until earlier in 2016, a doctor was provided by the Ministry of Health only for two days per week in Porin.<sup>128</sup> At the moment, the availability of general medical care has improved, although residents do not have access to a doctor during evenings. General practitioners are present in Porin for six hours per day: a doctor is made available by the Ministry of Health for 2.5 hours, and Doctors of the World also provide a doctor for 3 hours through their own funding.<sup>129</sup> The involvement of Doctors of the World has been welcomed as a valuable contribution to fill health care gaps in Porin, yet it is likely that their activities will not be continued after the end of 2016.<sup>130</sup> The potential phasing out of the organisation’s support in the centre raises an urgent need for more regular presence of Ministry of Health professionals, failing which the availability health care in Porin will clearly be insufficient to meet the needs of the 550 persons residing there.

<sup>124</sup> See OHCHR, ‘Right to health in Croatia: UN expert to make first visit’, 25 November 2016, available at: <https://goo.gl/6KMyUd>.

<sup>125</sup> Article 57(1) LITP.

<sup>126</sup> Article 57(2) LITP.

<sup>127</sup> Article 57(3)-(4) LITP.

<sup>128</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.

<sup>129</sup> Information provided by JRS South East Europe, Zagreb, 29 November 2016.

<sup>130</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016; UNHCR Croatia, Zagreb, 30 November 2016.

Access to health care for people with acute medical needs is particularly restricted due to the limited interpretation of the right to health care under the LITP. By way of example, no coverage is provided by the Ministry of Health for regular checks for pregnant women, specialised treatment for specific medical conditions, dental care, or psychological support.<sup>131</sup> Mental health care is also an area where non-governmental organisations have undertaken an important gap-filling role. Psychological and psychiatric support is generally provided by two organisations, the Rehabilitation Centre for Stress and Trauma and the Society for Psychological Assistance. With regard to victims of torture more specifically, HPC provides psychological support as part of two projects: Protection of Victims of Torture among Vulnerable Groups of Migrants, funded by the United Nations Voluntary Fund for Victims of Torture (UNVFVT), and the ACESO project, run until March 2017 in partnership with the Hungarian Helsinki Committee, the Cordelia Foundation, the Greek Council for Refugees, the Foundation for Access to Rights and the Assistance Centre for Torture Survivors.<sup>132</sup> Other actors such as the Croatian Red Cross provide psychosocial support, which in many cases caters for people's tension and overall frustration in the centre.<sup>133</sup>

At the moment, service-providing organisations have adopted different, often overlapping roles in the absence of structured mechanisms of coordination vis-à-vis the identification and care of vulnerable groups. During the period of facilitated transit along the Western Balkan route, a coordinating role was entrusted to the Croatian Red Cross, which allowed for a clear division of roles among service providers in the Opatovac and later the Slavonski Brod transit centres.<sup>134</sup>

The current approach of informal referral by the Croatian Red Cross to the Ministry of Interior and provision of health care by other NGOs seems to be functioning to some extent, against the backdrop of encouragingly cooperative working relationships between authorities and civil society in all areas of the asylum process in Croatia. Yet the unavoidable limitations on the financial and human resources of NGOs are liable to pose obstacles to sustainable and continuous support to the asylum seekers who most need it.

Setting up an appropriate state identification mechanism does not require additional channels or procedures. Incorporating the existing informal processes into a structured, state-funded system formally involving the relevant organisations in the identification and support of vulnerable asylum seekers would be an effective way to overcome the fluctuating and often unpredictable situation prevailing at the moment. Standard Operating Procedures developed by UNHCR could provide a valuable opportunity to set up structures and coordinate different roles. A state-provided structure would also ensure more systematic identification and specialised care, and thereby faithful adherence to Croatia's obligations vis-à-vis persons with special procedural and reception needs in accordance with the precepts of the LITP.

ECRE urges the Ministry of Interior to set up a state-funded mechanism to incorporate the existing informal processes of identification and provision of general and specialised health care by NGOs in reception centres into a structured state system. Coordination and division of roles could be clarified in Standard Operating Procedures, developed together with UNHCR and key service-providing organisations.

<sup>131</sup> Information provided by CMS, Zagreb, 29 November 2016; JRS South East Europe, Zagreb, 29 November 2016.

<sup>132</sup> Access to early protection and rehabilitation services right on arrival in the EU (ACESO), HOME/2014/PAVT/AG/4000006541.

<sup>133</sup> Information provided by the Croatian Red Cross, Zagreb, 30 November 2016.

<sup>134</sup> *Ibid.*

## CHAPTER III: THE CHALLENGE OF DUBLIN RETURNS

Even before the declared closure of the Western Balkan route, the focus of European countries' asylum authorities started to shift from facilitating the travel of asylum seekers through their territory to enforcing EU rules on allocation of responsibility in order to return them to countries of transit. The Dublin Regulation, denounced over the past year for its ineffectiveness and dysfunction,<sup>135</sup> has regrettably been reaffirmed by the European Commission as the “cornerstone” of the Common European Asylum System,<sup>136</sup> while several Member States have continued initiating procedures to return asylum seekers to countries of first entry.<sup>137</sup>

The influx of refugees into Croatia over the past year may not have resulted in an increase in long-term settlement from the outset, but has triggered a sizeable number of returns thereto under the Dublin system. Compared to a total 943 incoming Dublin requests and no more than 24 transfers in 2015,<sup>138</sup> From 1 January to 30 November 2016, Croatia received 3,793 incoming requests, originating mainly from Austria, Switzerland and Germany:

Incoming Dublin requests and transfers to Croatia: 1 January – 27 November 2016	
“Take charge” requests	3,480
“Take back” requests	313
Total incoming requests	3,793
Tacitly accepted requests	1,925
Rejected incoming requests	586
Total incoming transfers	540

Source: Asylum Department, 5 December 2016.

Administrative efforts needed for the processing of 3,793 incoming requests are particularly demanding, against the backdrop of limited human resources and capacity at the Croatian Asylum Department. The Asylum Department had 3 officials working within its Dublin Unit in 2015,<sup>139</sup> while at the time of writing 5 officials processed Dublin cases.<sup>140</sup> Shortages in capacity have often resulted in Croatia not replying to incoming requests within the required time limits,<sup>141</sup> and thereby becoming responsible by tacit acceptance.<sup>142</sup> As many as 1,925 requests were tacitly accepted as of November 2016.

In addition to persons returning under the Dublin Regulation, Croatia is required to relocate 1,617 asylum seekers from Greece and Italy until September 2017 to honour its commitments under the

<sup>135</sup> See e.g. European Commission, *European Agenda on Migration*, COM(2015) 140, 13 May 2015, 13.

<sup>136</sup> See e.g. European Commission, *Proposal for a [Dublin IV Regulation]*, COM(2016) 270, 4 May 2016, 4, 8.

<sup>137</sup> For recent statistics, see AIDA, *Admissibility, responsibility and safety in European asylum procedures*, September 2016, 13-14 and 37.

<sup>138</sup> Eurostat, *Incoming ‘Dublin’ requests*, migr\_dubri; *Incoming ‘Dublin transfers’*, migr\_dubti. Note that the majority of requests were filed at the end of the year, as only 134 requests had been issued by 15 October 2015: AIDA Country Report Croatia: Second Update, December 2015, 25.

<sup>139</sup> AIDA Country Report Croatia: Second Update, December 2015, 26.

<sup>140</sup> Out of the 7 officials working in the Dublin Unit, 2 were expected to leave at the end of November 2016: Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>141</sup> Information provided by CMS, Zagreb, 29 November 2016. The deadlines for replying are two months for “take charge” requests and one month for “take back” requests: Articles 22(1) and 25(1) Dublin III Regulation.

<sup>142</sup> Articles 22(7) and 25(2) Dublin III Regulation.

Relocation Decisions.<sup>143</sup> Croatia has so far requested funding under AMIF only for 550 pledges under its relocation and resettlement commitments.<sup>144</sup> At the time of our visit, a total 19 people had been relocated, including 10 Syrians from Greece and 9 Eritreans from Italy, and had received a positive decision within one month under a prioritised procedure.<sup>145</sup>

The increasing trend of Dublin returns to Croatia in 2016 has been spearheaded by Austria, which has returned 335 persons so far this year.<sup>146</sup> At the domestic level, this has sparked criticism particularly from Austrian policymakers and civil society,<sup>147</sup> as well as litigation with a view to preventing individual transfers. Legal considerations questioning the appropriateness of such transfers concern both the relevance of the Dublin responsibility criteria to Croatia, as well as risks of *refoulement* facing people subject to transfers thereto. The following section discusses these issues in that order.

## 1. Regular or irregular entry? Unpacking the responsibility of Croatia

### 1.1. The applicability of the Dublin criteria vis-à-vis Croatia

The emergence of incoming Dublin requests vis-à-vis Croatia, with numbers already rising in the end of 2015 and remaining high in the first months of 2016,<sup>148</sup> confirms that different European countries triggered the Dublin procedure to return people who transited through Croatia while the “wave through” approach still prevailed along the Western Balkan route. As also mentioned by the EU Fundamental Rights Agency (FRA), for instance, transfers of asylum seekers to Croatia from Austria include people “who have lived, and integrated, in Austria for more than one year.”<sup>149</sup>

Accordingly, Croatia is receiving Dublin requests concerning persons who entered its territory while transit through the Western Balkan route was still facilitated by governments in the region.<sup>150</sup> As the European Commission put it at the Western Balkan Summit of 25 October 2015 – attended by leaders of Germany, Austria, Hungary, Slovenia, Croatia, Serbia, FYROM and Greece among others – countries in the region worked closely “to achieve the gradual, controlled and orderly movement of persons along the Western Balkans route.”<sup>151</sup> Such a form of entry into a country fits uneasily with the categories of entry envisaged by the responsibility criteria of the Dublin III Regulation. The legal and factual situation on the ground meant that entrants in Croatia, who did not hold residence documents or visas,<sup>152</sup> and cannot be deemed to make a “visa-waived entry”,<sup>153</sup> were *stricto sensu* not entering the territory irregularly.<sup>154</sup> On the other hand, it should be noted that persons entering Croatia during

<sup>143</sup> Council Decisions (EU) 2015/1523 of 14 September 2015 and 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ 2015 L239/146 and L248/80.

<sup>144</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

<sup>145</sup> *Ibid.*

<sup>146</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>147</sup> See e.g. OTS, ‘Korun: Anfrage an Innenminister zu Krätze und mangelhaften Bedingungen in Kroatiens Asyllagern’, 18 November 2016, available in German at: <https://goo.gl/a7no7u>; Der Standard, ‘Protest gegen Rückführung von Migranten nach Kroatien’, 20 October 2016, available in German at: <https://goo.gl/y34iRm>; Centre for Peace Studies, ‘Refugees sold out yet again: The return of people with unusual desire to live dignified life’, 20 July 2016, available at: <https://goo.gl/bfDf4d>.

<sup>148</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>149</sup> FRA, *Monthly data collection on the migration situation in the EU: November 2016 Highlights*, 4.

<sup>150</sup> Similar policies on access and transit were simultaneously applied by FYROM, Serbia and Croatia. See Amnesty International, ‘Refugee crisis: Balkan border blocks leave thousands stranded’, 20 November 2015, available at: <https://goo.gl/BDKZ15>.

<sup>151</sup> European Commission, ‘Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action’, IP/15/5904, 25 October 2015, para 1.

<sup>152</sup> Article 12 Dublin III Regulation.

<sup>153</sup> Article 14 Dublin III Regulation.

<sup>154</sup> Article 13 Dublin III Regulation.

that period were nevertheless issued with return decisions before transiting to other countries, thereby indicating that the country deemed their stay to be irregular.<sup>155</sup>

Though the overwhelming majority of incoming requests to Croatia are based on the irregular entry criterion of Article 13 of the Regulation,<sup>156</sup> the criterion of irregular entry may not necessarily be a pertinent ground for returning people to Croatia, given that refugees travelled through European countries with support from affected states.<sup>157</sup> Nevertheless, the Croatian Asylum Department has not contested the applicability of the criterion on that ground so far and has proceeded with accepting Dublin requests from other countries.<sup>158</sup>

This question has been referred by the Slovenian Supreme Court to the CJEU for a preliminary ruling.<sup>159</sup> In anticipation of the Court's ruling to provide more clarity on the applicability of the Regulation given the peculiar legal status of the Western Balkan route, the Austrian Administrative High Court ordered a temporary suspension of Dublin transfers to Croatia on 16 November 2016.<sup>160</sup> Despite the ruling, however, the Austrian Ministry of Interior has announced its intention to continue carrying out transfers and referred to as many as 2,000 pending Dublin procedures for return to Croatia.<sup>161</sup>

## *1.2. The political dimension of the Western Balkan route*

Beyond its contested legality under the criteria of the Dublin Regulation, the conduct of Dublin procedures vis-à-vis Member States which facilitated the transit of people through the Western Balkan route poses critical policy concerns for Europe. The Western Balkan Summit of 25 October 2015 reflected a regional commitment by affected states and the European Commission to “work together not against each other”, as they stressed that “only a collective, cross-border approach based on cooperation can succeed.”<sup>162</sup> Yet, among the main countries initiating Dublin procedures for Croatia are countries which endorsed this very approach; and in Austria's case, facilitated onward transit through their own territory. Triggering the Dublin Regulation to shift responsibility to countries which followed the agreed Balkan route policy seems to repudiate those commitments. Whether or not the criteria of the Regulation would be applicable to transit before the closure of the Western Balkan route in March 2016, good faith should in any case prevent European countries from ordering transfers relating to persons who benefitted from facilitated transit back to Croatia.

European countries should refrain from conducting Dublin procedures in respect of persons who entered Croatia before the closure of the Western Balkan route as their entry into the country does not straightforwardly fall within any of the criteria provided by the Dublin III Regulation. European countries should also honour in good faith their agreed commitments to facilitate orderly transit until the closure of the route.

<sup>155</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016.

<sup>156</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>157</sup> See Diakonie Österreich, ‘Dublin Abschiebungen Kroatien - Menschenrechtsgerichtshof setzt Abschiebung aus’, 24 October 2016, available in German at: <https://goo.gl/p4qRTR>.

<sup>158</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>159</sup> CJEU, Case C-490/16 A.S., Reference of 14 September 2016. See European Database of Asylum Law (EDAL) summary at: <https://goo.gl/Wyi7x4>.

<sup>160</sup> Austrian Administrative High Court, Judgment Ra 2016/18/0172 to 0177, 16 November 2016. See Diakonie Österreich, ‘Dublin Abschiebungen nach Kroatien rechtswidrig!’, 29 November 2016, available in German at: <https://goo.gl/wWEr7o>.

<sup>161</sup> Die Presse, ‘Innenministerium will Abschiebungen nach Kroatien fortsetzen’, 30 November 2016, available in German at: <https://goo.gl/HdBZgN>.

<sup>162</sup> European Commission, ‘Meeting on the Western Balkans Migration Route: Leaders Agree on 17-point plan of action’, IP/15/5904, 25 October 2015.

## 2. Safety of Dublin transfers and risks of *refoulement*

Another crucial question in relation to Dublin transfers of asylum seekers to Croatia relates to their compliance with fundamental rights, which could warrant a suspension of the Dublin Regulation to prevent *refoulement*.<sup>163</sup> As has been the case for other receiving countries, the legality of transfers to Croatia has already been litigated before several jurisdictions in Europe, including Austria,<sup>164</sup> Germany,<sup>165</sup> Belgium,<sup>166</sup> Switzerland<sup>167</sup> and the Netherlands.<sup>168</sup>

The Croatian asylum context raises a number of issues relevant to the human rights scrutiny of Dublin transfers, covering aspects of both procedure and reception conditions.

### 2.1. Access to the asylum procedure for Dublin returnees

Access to the Croatian asylum procedure for Dublin returnees varies depending on the type of transfer procedure carried out under the Dublin Regulation. As discussed above, the majority of incoming requests so far have been “take charge” requests to transfer persons who have transited through the country without engaging with its asylum process. On the other hand, the 313 “take back” requests received by Croatia relate to persons who have applied for asylum there and whose applications are pending, withdrawn or rejected. For the latter two categories, the Dublin III Regulation clarifies that:<sup>169</sup>

- ❖ Persons whose application was withdrawn must be allowed to continue their procedure or lodge another claim, which will be treated as a first application;
- ❖ Persons whose application was rejected at first instance must benefit from or be given the opportunity to appeal the rejection decision.

Asylum seekers who are returned to Croatia are able to apply again for international protection. However, as explained by the Asylum Department and Reception Centre for Asylum Seekers, where the person had explicitly withdrawn his or her application or received a rejection decision prior to leaving Croatia, he or she would be treated as a subsequent applicant upon return.<sup>170</sup> The number of explicit withdrawals of asylum applications remains limited so far, with only 40 cases out of a total 1,090 withdrawals between January and November 2016.<sup>171</sup> Nevertheless, the domestic rules and practice governing access to the procedure for returnees amount to an infringement of Article 18(2) of the Dublin Regulation.

The incorrect application of the Regulation can have significant procedural consequences for the individual applicant. Subsequent applications are examined by the Asylum Department, which must decide within 15 days whether the application is admissible or inadmissible.<sup>172</sup> The applicant is only

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<sup>163</sup> Article 3(2) Dublin III Regulation; CJEU, Joined Cases C-411/10 *N.S.* and C-493/10 *M.E.*, Judgment of 21 November 2011. See also ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014.

<sup>164</sup> Austrian Federal Administrative Court, Judgment W212 2120738-1, 11 February 2016; W125 2122299-1, 17 March 2016; W175 2124050-1, 8 April 2016; W144 2135976-7, 10 October 2016; W243 2134119-1, 24 November 2016; Austrian Administrative High Court, Judgment Ra 2016/20/0069, 23 June 2016.

<sup>165</sup> Administrative Court of Munich, Judgment M 18 S 16.50812, 31 October 2016.

<sup>166</sup> Belgian Council of Alien Law Litigation, Judgment No 171 732, 12 July 2016; No 172 921, 8 August 2016.

<sup>167</sup> Swiss Federal Administrative Court, Judgment D-1611/2016, 22 March 2016; D-1951/2016, 1 April 2016; E-2615/2016, 4 May 2016; D-3867/2016, 29 June 2016; D-7156/2016, 23 November 2016.

<sup>168</sup> District Court of The Hague, Judgment NL16.1383, 5 July 2016.

<sup>169</sup> Article 18(2) Dublin III Regulation.

<sup>170</sup> Information provided by the Reception Centre for Asylum Seekers and the Asylum Department, Zagreb, 29 November 2016.

<sup>171</sup> Information provided by the Asylum Department, 5 December 2016.

<sup>172</sup> Article 47 LITP.

entitled to an interview if the application is deemed admissible.<sup>173</sup> Moreover, the appeal against a decision dismissing the subsequent application as inadmissible does not have automatic suspensive effect over return proceedings.<sup>174</sup> In that respect, Dublin returnees wrongly channelled into the procedure for subsequent applications run the risk of being deprived of crucial guarantees protecting asylum seekers from *refoulement*. On that point, one ruling of the Belgian Council of Alien Law Litigation of 8 August 2016 found that an Afghan national was at risk of being returned from Croatia to his home country without adequate examination of his claim, given that Dublin returnees have to re-apply for asylum in the country and may thus be considered subsequent applicants, subject to reduced procedural guarantees.<sup>175</sup>

ECRE recommends Croatia to align its domestic rules and practice with Article 18(2) of the Dublin III Regulation by ensuring that asylum seekers whose claims have been withdrawn, whether explicitly or implicitly, are never considered as subsequent applicants upon return from other countries.

Risks of onward *refoulement* from Croatia to other countries do not seem to be present as far as the asylum procedure is concerned. Although the LITP allows the Asylum Department to declare a claim inadmissible if the applicant comes from a “safe third country”, a “European safe third country” or has been recognised there as a refugee,<sup>176</sup> these concepts have not been applied in practice to date.<sup>177</sup> However, if an asylum application is rejected, the prospect of readmission to Serbia could pose risks of *refoulement* insofar as the implications on fundamental rights vis-à-vis conditions facing the person upon removal are not verified, as discussed in [Chapter I](#).

## 2.2. Individual guarantees on reception conditions: a different post-Tarakhel story

*“It is therefore incumbent on the [...] authorities to obtain assurances from their [...] counterparts that on their arrival [...] the applicants will be received in facilities and in conditions adapted to the age of the children, and that the family will be kept together.”*<sup>178</sup>

Two years following the ruling of the ECtHR on 4 November 2016, the aftermath of *Tarakhel v. Switzerland* has been a fragmentation of judicial interpretation of Dublin procedures across Europe, as the obligation to obtain individual guarantees on the treatment of asylum seekers in the receiving Member State prior to conducting a Dublin transfer has been construed widely differently by national courts.<sup>179</sup> In the context of transfers to Italy, for instance, following a Circular issued by the Italian Dublin Unit on 8 June 2015 and revised on 15 February 2016, a number of countries deem that sufficient guarantees on the safety of transfers of families have been obtained.<sup>180</sup> Nevertheless, jurisprudence from Germany and the Netherlands has clarified that guarantees on the treatment of asylum seekers cannot be generic.<sup>181</sup> The sending country must obtain sufficient and valid assurances,<sup>182</sup> namely on the specific reception centre where the person will be accommodated.<sup>183</sup>

<sup>173</sup> Information provided by the Reception Centre for Asylum Seekers and the Asylum Department, Zagreb, 29 November 2016.

<sup>174</sup> Article 51(1)(3) LITP.

<sup>175</sup> Belgian Council of Alien Law Litigation, Judgment No 172 921, 8 August 2016.

<sup>176</sup> Article 43(1) LITP.

<sup>177</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>178</sup> ECtHR, *Tarakhel v. Switzerland*, Application No 29217/12, Judgment of 4 November 2014, para 120.

<sup>179</sup> For a comprehensive analysis, see ECRE/ELENA, *Information Note on Dublin transfers post-Tarakhel: Update on European case law and practice*, October 2015, available at: <https://goo.gl/YQ3gfC>.

<sup>180</sup> For a discussion, see AIDA, *Wrong counts and closing doors: The reception of refugees and asylum seekers in Europe*, March 2016, 38-39.

<sup>181</sup> Dutch Council of State, Judgment 201404508/1/V3, 24 August 2015, available in Dutch at: <https://goo.gl/yHLBO3>.

<sup>182</sup> German Constitutional Court, Judgment 2 BvR 746/15, 30 April 2015, available in German at: <https://goo.gl/UUfsZf>.

<sup>183</sup> German Administrative Court of Schwerin, Judgment 3 B 1023/14 As, 24 February 2015, available in German at: <https://goo.gl/bwMJ7m>.

Individual guarantees in accordance to the precepts of *Tarakhel v. Switzerland* should be a central component of Dublin transfers in the present context, given the peculiar typology of persons returned to Croatia by other European countries. As indicated by civil society organisations and UNHCR, Dublin transfers to Croatia concern by and large vulnerable groups.<sup>184</sup> This trend sharply contrasts with cautious approaches taken at EU level with regard to returning vulnerable groups under the Regulation, for example in Commission recommendations for a reinstatement of transfers to Greece.<sup>185</sup>

Illustrative examples of the profiles of persons returned to Croatia under the Dublin Regulation which were mentioned during our visit include:

- ❖ Separated families;<sup>186</sup>
- ❖ Pregnant women: One woman on her eighth month of pregnancy was transferred from Austria by plane, despite warnings from her doctor on the risks of travelling by plane;<sup>187</sup>
- ❖ Families with young children;<sup>188</sup>
- ❖ Persons with serious illness: One man was transferred back to Croatia two days before undergoing spinal surgery in Austria.<sup>189</sup> In a different case, a person who had undergone several medical examinations in Austria to identify a possible genetic disorder was returned before his final examination, due to which his condition has not been diagnosed;<sup>190</sup>
- ❖ Elderly: Switzerland transferred an asylum seeker's elderly parents while their son, who is working in Switzerland, remained there;<sup>191</sup>
- ❖ Persons with drug addiction.<sup>192</sup>

The application of the Dublin Regulation vis-à-vis Croatia by Austria, Switzerland and other countries therefore seems to primarily target persons requiring special support on account of their specific vulnerability. While the current state of reception conditions in Croatia as discussed in **Chapter II** may not be such as to warrant a straightforward suspension of Dublin transfers for all persons, given the specific needs of the asylum seekers concerned, European countries should be satisfied that these individuals would have access to appropriate and adapted reception conditions upon return to be faithful to their obligations under Article 3 ECHR and the corresponding Article 4 of the EU Charter of Fundamental Rights.

Yet asylum authorities in sending Member States are unlikely to hold sufficient information on the particular conditions available to individual returnees, given the hasty pace with which Dublin transfers

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<sup>184</sup> This information was corroborated by CMS, Zagreb, 29 November 2016; JRS South East Europe, Zagreb, 29 November 2016; Croatian Red Cross, 30 November 2016; UNHCR Croatia, 30 November 2016.

<sup>185</sup> See European Commission, *Commission Recommendation of 08.12.2016 addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013*, C(2016) 8525, 8 December 2016, para 9; *Commission Recommendation of 28.9.2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No. 604/2013*, C(2016) 311, 28 September 2016, in particular Recitals 32 and 35.

<sup>186</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016; CMS, Zagreb, 29 November 2016, JRS South East Europe, Zagreb, 29 November 2016.

<sup>187</sup> Information provided by CMS, Zagreb, 29 November 2016.

<sup>188</sup> Information provided by Are You Syrious, Zagreb, 30 November 2016.

<sup>189</sup> Information provided by JRS South East Europe, Zagreb, 29 November 2016.

<sup>190</sup> Information provided by CMS, Zagreb, 29 November 2016.

<sup>191</sup> *Ibid.*

<sup>192</sup> *Ibid.*

are announced both to the Croatian Dublin Unit and to asylum seekers themselves. The Reception Centre in Porin explained that in some cases they are given notice of an impending transfer no more than one week before the transfer date,<sup>193</sup> severely hampering their ability to make appropriate preparations for the person concerned. For their part, asylum seekers in sending countries have reportedly been apprehended by police authorities without prior notice, sometimes during the night, and transferred to Croatia.<sup>194</sup> Due to such haste, people often do not have enough time to collect their personal belongings, including official documents and medical records.<sup>195</sup> Even if these are brought to Croatia, the fact that medical certificates and health records take time to be translated also hinders effective access to appropriate care upon arrival.<sup>196</sup>

Requests for individual guarantees prior to Dublin transfers to Croatia have taken place only in specific cases so far, concerning the respect of family unity and specialised health care.<sup>197</sup> On that point, it should be stressed that the Strasbourg Court's jurisprudence has developed substantially since the *N. v. United Kingdom* ruling, which had set a particularly high threshold for expulsion of severely ill persons, to be contrary to Article 3 ECHR only in "very exceptional circumstances".<sup>198</sup> In the recent case of *Paposhvili v. Belgium*, the ECtHR found that such "exceptional circumstances" include situations where an individual does not run fatal risks upon return but, in the absence of adequate treatment in the receiving country, would suffer rapid and irreversible deterioration of his or her health, leading to intense suffering or significantly reduced life expectancy.<sup>199</sup> In order to guarantee that appropriate health care will be available to the person upon return, the sending country may be required to obtain individual guarantees thereof prior to carrying out a transfer.<sup>200</sup>

More particularly, guarantees from the Croatian Dublin Unit have been sought in response to Rule 39 requests before the Strasbourg Court for the suspension of transfers from Austria to Croatia. On 19 October 2016, Rule 39 interim measures were obtained from the ECtHR in *Bayat v. Austria*,<sup>201</sup> to halt the transfer of a family of four to Croatia until 7 November 2016, in order for the court to be satisfied that the Austrian authorities had obtained guarantees from Croatia that the persons will have access to suitable reception conditions, in line with its ruling in *Tarakhel v. Switzerland*. The interim measures were ceased on 8 November 2016 following a letter by the Croatian Dublin Unit, providing information on the arrangements for health care in the Croatian reception centres, as well as stating that asylum seekers are subject to the LITP.<sup>202</sup> The ECtHR has granted Rule 39 interim measures in three other cases to request individual assurances from the Croatian authorities regarding the reception of vulnerable groups of asylum seekers:

<sup>193</sup> Information provided by the Reception Centre for Asylum Seekers, Zagreb, 29 November 2016.

<sup>194</sup> Information provided by UNHCR Croatia, Zagreb, 30 November 2016; Are You Syrious, Zagreb, 30 November 2016; JRS South East Europe, Zagreb, 29 November 2016.

<sup>195</sup> *Ibid.*

<sup>196</sup> Border Crossing Spielfeld, *Asylsuchende in Kroatien*, November 2016, 5-6.

<sup>197</sup> Information provided by the Asylum Department, Zagreb, 29 November 2016.

<sup>198</sup> See e.g. ECtHR, *A.S. v. Switzerland*, Application No 39350/13, Judgment of 30 June 2015; *N. v. United Kingdom*, Application No 26565/05, Judgment of 27 May 2008.

<sup>199</sup> ECtHR, *Paposhvili v. Belgium*, Application No 39350/13, Judgment of 13 December 2016, para 183: "... cas d'éloignement d'une personne gravement malade dans lesquels il y a des motifs sérieux de croire que cette personne, bien que ne courant pas de risque imminent de mourir, ferait face, en raison de l'absence de traitements adéquats dans le pays de destination ou du défaut d'accès à ceux-ci, à un risque réel d'être exposée à un déclin grave, rapide et irréversible de son état de santé entraînant des souffrances intenses ou à une réduction significative de son espérance de vie. La Cour précise que ces cas correspondent à un seuil élevé pour l'application de l'article 3 de la Convention dans les affaires relatives à l'éloignement des étrangers gravement malades."

<sup>200</sup> *Ibid.*, para 191.

<sup>201</sup> ECtHR, *Bayat v. Austria*, Application No 60014/16 of 19 October 2016. The argument on the inapplicability of the irregular entry criterion was also raised before the Austrian Federal Administrative Court and Constitutional Court, but not examined. See further Diakonie Österreich, 'Dublin Abschiebungen Kroatien - Menschenrechtsgerichtshof setzt Abschiebung aus', 24 October 2016, available in German at: <https://goo.gl/p4qRTR>.

<sup>202</sup> Croatian Dublin Unit, *Letter to the Austrian Dublin Unit*, 26 October 2016, available in Annex IV.

- ❖ *H and A v. Austria*, concerning a family with traumatised children, whose mother receives psychiatric and psychosocial treatment;<sup>203</sup>
- ❖ *Qaumi v. Austria*, concerning a patient suffering from severe kidney failure and undergoing dialysis;<sup>204</sup> and
- ❖ *Nadiri v. Austria*, relating to a mother suffering from breast cancer.<sup>205</sup> In this case, similar assurances to those given in *Bayat v. Austria* were provided by the Croatian authorities, equally leading to a decision by the Court not to prolong interim measures.<sup>206</sup>

The Asylum Department explained that the guarantees it has provided are individual and give information on the conditions available to the particular applicant. An example of guarantees provided by the Dublin Unit can be found in [Annex IV](#), outlining what seems to be a general statement on the provisions of the LITP and the framework arrangements made by the Ministry of Interior and Ministry of Health for the provision of health care in the Reception Centres for Asylum Seekers. In light of this, ECRE is concerned that the information in question is not sufficiently personalised or precise to effectively constitute individual guarantees for the purpose of ensuring that a Dublin transfer is in line with fundamental rights. The obligation of sending countries under Article 3 ECHR, as detailed in *Tarakhel*, is therefore not discharged through the receipt of such a guarantee from Croatian authorities, and in ECRE's view should not have been deemed as fulfilled by the ECtHR regarding the aforementioned Rule 39 requests.

European countries should refrain from transferring persons, including vulnerable groups, to Croatia without having obtained individual guarantees on their access to appropriate and adapted reception conditions upon return. European countries should also give sufficient notice of transfers both to the Croatian Dublin Unit and to individual applicants, to allow timely and sufficient exchange of information and preparation from both sides.

ECRE urges Croatia to conduct a thorough, individualised examination of the reception needs of persons subject to incoming Dublin procedures and to provide concrete, personalised guarantees on their treatment after transfer. In accordance with the interpretation of the European Convention on Human Rights in *Tarakhel v. Switzerland* and *Paposhvili v. Belgium*, these guarantees should specify the Reception Centre for Asylum Seekers or other facility where the person would be accommodated, as well as the particular medical treatment to be provided to him or her, where relevant.

<sup>203</sup> ECtHR, *H and A v. Austria*, Application No 61204/16 of 25 October 2016.

<sup>204</sup> ECtHR, *Qaumi v. Austria*, Application No 61164/16 of 28 October 2016.

<sup>205</sup> ECtHR, *Nadiri v. Austria*, Application No 63109/16 of 4 November 2016.

<sup>206</sup> Information provided by Diakonie Österreich, 23 November 2016.

## CONCLUSIONS & RECOMMENDATIONS

The sharp increase in arrivals over the past year has brought about understandable challenges for the Croatian asylum system. In the face of such challenges, ECRE welcomes the close and effective cooperation between national authorities, civil society organisations and volunteers assisting and protecting refugees in the country. Several measures relating to remedying gaps vis-à-vis access to the procedure, the examination of applications and the reception strategy are summarised below. At the same time, ECRE urges European countries to take decisive steps towards a fair and rights-compliant application of the Dublin Regulation, contrary to the current trend of Dublin transfers carried out towards Croatia.

### *Access to the territory and to the procedure*

1. ECRE urges the Croatian authorities to thoroughly investigate allegations of push-back practices at Croatia's external borders and to allow UNHCR and expert human rights organisations to conduct systematic border monitoring activities.
2. ECRE recommends the Ministry of Interior to proactively inform third-country nationals apprehended at the border of the possibility to apply for international protection before any steps are undertaken with a view to readmitting them to neighbouring countries in line with its obligations under Article 8 of the recast Asylum Procedures Directive. Adequate interpretation services and access to free legal advice and counselling must be made available at the police stations where third-country nationals are kept pending the procedure. Regardless of an explicit expression of the intention to apply for international protection, an individual assessment of a person's risk of being subjected to *refoulement* must precede a readmission request to a neighbouring country.
3. To comply with the safeguards against the arbitrary detention of asylum seekers in the EU Charter and the ECHR, ECRE recommends the Ministry of Interior and the Asylum Department to ensure that any decision to detain a person expressing the intention to apply for international protection from a detention centre takes into account that person's changed status as an asylum seeker under the LITP. For such decision to be lawful, it must be based on one of the grounds for asylum detention in the LITP, preceded by an immediate and individualised assessment of its necessity and proportionality, and should only be taken where no other less coercive measure can be applied
4. In light of the devastating impact of detention on mental and physical health of migrants and asylum seekers, ECRE recommends that the presence of the medical team is ensured seven days a week and that staff members employed in the centre receive training in and are sensitised to the identification of specific vulnerabilities.
5. ECRE urges the Croatian authorities to refrain from detention of asylum seekers and vulnerable persons, and to prioritise administrative and financial resources in the improvement of living conditions in open Reception Centres for Asylum Seekers

### *Asylum procedure*

6. To comply with the right to an effective remedy under the EU Charter, ECRE recommends the SOA to state in its negative security opinions the reasons for finding a person to pose security risks, with a view to such reasons being available to the applicant in the decision issued by the Ministry of Interior where the applicant is excluded from international protection on those grounds

### *Reception conditions*

7. ECRE recommends the Ministry of Interior to urgently create additional reception capacity beyond the Reception Centres for Asylum Seekers in Porin and Kutina by identifying smaller, community-based facilities, with a view to sustainable provision of appropriate living conditions for the increasing number of asylum seekers present in Croatia.
8. ECRE urges the Ministry of Interior to set up a state-funded mechanism to incorporate the existing informal processes of identification and provision of general and specialised health care by NGOs in reception centres into a structured state system. Health care should include specialised treatment for persons identified as vulnerable. Coordination and division of roles could be clarified in Standard Operating Procedures, developed together with UNHCR and key service-providing organisations.

### *Dublin Regulation*

9. European countries should refrain from conducting Dublin procedures in respect of persons who entered Croatia before the closure of the Western Balkan route as their entry does not straightforwardly fall within any of the criteria provided by the Dublin III Regulation. European countries should also honour in good faith their agreed commitments to facilitate orderly transit until the closure of the route.
10. European countries should refrain from transferring persons, including vulnerable groups, to Croatia without having obtained individual guarantees on their access to appropriate and adapted reception conditions upon return. European countries should also give sufficient notice of transfers both to the Croatian Dublin Unit and to individual applicants, to allow timely and sufficient exchange of information and preparation from both sides.
11. ECRE urges Croatia to conduct a thorough, individualised examination of the reception needs of persons subject to incoming Dublin procedures and to provide concrete, personalised guarantees on their treatment after transfer. These guarantees should specify the Reception Centre for Asylum Seekers or other facility where the person would be accommodated, as well as the particular medical treatment to be provided to him or her, if relevant.

## ANNEX I - LIST OF INTERLOCUTORS

Name and Organisation	Date	Location
<i>Ministry of Interior, Directorate for Administrative and Inspection Affairs</i>		
Anita Mandić, Head of Asylum Department	29 Nov 2016	Zagreb
Anita Dakić, Head of Reception Centre for Asylum Seekers	29 Nov 2016	Zagreb
<i>Ministry of Interior, Border Police Directorate</i>		
Josip Biljan, Head of Reception Centre for Foreigners	30 Nov 2016	Ježevo
Miroslav Horvat, Deputy Head of Reception Centre for Foreigners	30 Nov 2016	Ježevo
Zvonimir Vrbljanin, Head of Department for Illegal Migration	30 Nov 2016	Ježevo
Dragan Babović, Head of Department for Neighbouring Countries	28 Nov 2016	Bajakovo
Miro Bradić, Head of Police Administration Vukovarsko-Srijemska	28 Nov 2016	Bajakovo
Krešimir Vidović, Assistant Chief of Border Police Station Bajakovo	28 Nov 2016	Bajakovo
<i>United Nations High Commissioner for Refugees (UNHCR) Croatia</i>		
Mirjana Vergaš, Protection Associate	30 Nov 2016	Zagreb
Mandana Amiri, Protection Officer	30 Nov 2016	Zagreb
Irja Šipuš, Protection Assistant	30 Nov 2016	Zagreb
<i>Civil society organisations and practitioners</i>		
Lana Tučkorić and Tatjana Holjevac, Croatian Law Centre	28 Nov 2016	Zagreb
Vanja Bakalović, Centre for Peace Studies	29 Nov 2016	Zagreb
Sanja Pupačić, Croatian Red Cross	30 Nov 2016	Zagreb
Tvrtko Barun, Dražen Klarić and Jelena Firić, JRS South East Europe	29 Nov 2016	Zagreb
Martina Grgec, Odvjetnički Ured	01 Dec 2016	Zagreb
Tajana Tadić, Are You Syrious	30 Nov 2016	Zagreb
<i>Academia</i>		
Iris Goldner-Lang, Faculty of Law, University of Zagreb	01 Dec 2016	Zagreb

## ANNEX II - CERTIFICATE OF COLLECTION OF COSTS OF FORCED REMOVAL



**REPUBLIKA HRVATSKA  
REPUBLIC OF CROATIA  
MINISTARSTVO UNUTARNJIH POSLOVA  
MINISTRY OF THE INTERIOR**

Serijski broj potvrde/Certificate serial number

№ 17072

Ustr. jedinica/Organizational unit: \_\_\_\_\_

Broj/Number: \_\_\_\_\_

Mjesto/Place: \_\_\_\_\_ Datum/Date: \_\_\_\_\_

### POTVRDA / CERTIFICATE O NAPLATI TROŠKOVA PRISILNOG UDALJENJA / OF THE COLLECTION OF COSTS OF FORCED REMOVAL

Na temelju članka 109. Zakona o strancima (»Narodne novine« 79/07), izdaje se potvrda o naplati troškova prisilnog udaljenja:  
Pursuant to Article 109. of the Aliens Act (Croatian Official Gazette 79/07), we are hereby issuing the following certificate of the collection of costs of forced removal:

\_\_\_\_\_ sin/kći/son/daughter of \_\_\_\_\_  
(ime i prezime / first name and surname) (nepotrebno precrtati / cross out as applicable) (ime oca ili majke / father's or mother's name)

\_\_\_\_\_ (datum, mjesto i država rođenja / date, place and country of birth) \_\_\_\_\_ (državljanstvo / nationality)

PRIKAZ TROŠKOVA / LIST OF COSTS:	NOVČANI IZNOS / AMOUNT:
1. Troškovi dovođenja do / Costs of bringing the person to:	kn
a) gorivo - prijevoz / fuel - transport	kn
b) pratnja / escort	kn
2. Putna karta / Ticket	kn
3. Troškovi izrade putne isprave, vize i dr. / Costs of issuing a travel document, visa, etc.	kn
4. Troškovi tranzita / Costs of transit	kn
5. Troškovi boravka u Centru / Costs of accommodation at the Centre	kn
6. Ostali troškovi / Other costs	kn
UKUPNI TROŠKOVI / TOTAL COSTS	kn
NAPLAĆENI TROŠKOVI STRANCU / COSTS COLLECTED FROM FOREIGN NATIONAL	kn

Sukladno članku 109. Zakona o strancima (Narodne novine 79/07) i Rješenja o načinu izračuna troškova prisilnog udaljenja nenaplaćeni iznos novčanih sredstava dužni ste uplatiti na žiro račun: 1001005-1863000160, poziv 63 7005 \_\_\_\_\_ -22926.  
(upisati RKDP)

Pursuant to Article 109 of the Aliens Act (Croatian Official Gazette 79/07) and the Decision on methods of collecting costs of forced removal, the uncollected amount is to be paid to account to our direct transfer account, number 1001005-1863000160, reference number 63 7005 \_\_\_\_\_ -22926.  
(enter RKDP number)

OBRACUN TROŠKOVA IZRADIO:  
COST ACCOUNTING DONE BY:

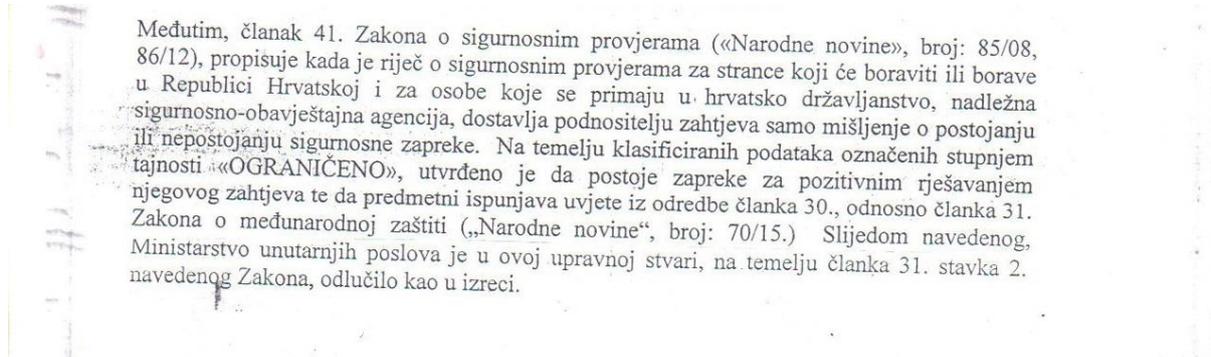
SLUŽBENA OSOBA:  
AUTHORIZED PERSON:

M.P.  
L.S.

PREUZEO STRANAC:  
DELIVERED TO FOREIGN NATIONAL:

## ANNEX III - REJECTION OF ASYLUM APPLICATION ON EXCLUSION GROUNDS

The excerpt below is taken from a negative first instance decision of the Asylum Department:



### Unofficial translation

“However, according to Article 41 of the Law on Security Checks (Off. Gaz. No. 85/08, 86/12) , when it comes to security checks / vetting for foreigners who reside or will reside in the Republic of Croatia and for the citizens who apply for Croatian citizenship, the Security Intelligence agency gives only their opinion regarding the existence or non-existence of the security vet. Based on the classified information marked as ‘RESTRICTED’, it is concluded that there are obstacles to a positive decision in this case and that the applicant meets the criteria of Article 30 or 31 Law on International and Temporary Protection (Off. Gaz. No. 70/15). Consequently, the Ministry of Interior in this administrative matter decided based on Article 31 par. 1, subpar. 2 of the mentioned Act.”

## ANNEX IV - INDIVIDUAL GUARANTEES PROVIDED BY THE CROATIAN DUBLIN UNIT



Republic of Croatia  
Ministry of the Interior  
Department for Asylum  
Dublin Unit  
Sarajevska 41, 10 020 Zagreb CROATIA  
Croatian Reference No:  
Date: 26/10/2016

**DUBLIN UNIT AUSTRIA**

Your ref:

**DUBLIN Regulation No 604/2013**

Dear colleagues,

We would like to inform you that Croatia will provide an adequate medical care, accommodation, supply of necessary goods for the above mentioned person. Ministry of Health of the Republic of Croatia and Health Center Kutina and Health Center Zagreb have made a Contract on the basis of Decision about financing health care for the seekers of the international protection and aliens with illegal residing in the Republic of Croatia which provide mutual rights and obligations for the providing services of the emergency medical care.

Furthermore, Ministry of Health and Neuropsychiatric hospital "Ivan Barbot" in Popovača have made a Contract on the basis of Decision about financing health care for the seekers of the international protection and aliens with illegal residing in the Republic of Croatia which provide mutual rights and obligations for the providing services of the emergency medical care which includes special psychosocial support for the seekers of the international protection.

Republic of Croatia is obligated provide an adequate conditions and care for the seekers of the international protection. Article 57. Paragraph 1. Law on International and temporary protection prescribe that health care of applicants includes emergency medical help and treatment of disease and serious mental disorders.

Asylum procedure in Croatia is based on Law on International and Temporary Protection which declared Croatian Parliament on 12 June, 2015 which provide principles, conditions and procedure of approval of international protection and temporary protection, status, rights and obligations seekers of international protection, asylum seekers, aliens under subsidiary protection, aliens under temporary protection and conditions and procedure of cancellation and cessation of asylum, subsidiary and temporary protection.

If you have any further questions or require additional information, please do not hesitate to contact us.

Digitally signed by HR DUBLIN  
DN: c=HR, o=MINISTRY OF INTERIOR, ou=Only for EC  
Regulation 343/2003, l=ZAGREB, cn=HR DUBLIN,  
email=dublinhr@nap01.dac.hr.eu-admin.net  
Date: 2016.10.26 08:47:09 Z



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