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## **Asylum in the Republic of Croatia one year after accession to the European Union**

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# Asylum in the Republic of Croatia one year after accession to the European Union

Jasna Barberić\*

## 1. Introduction

On 1 July 2014 a year had passed since the accession of the Republic of Croatia (RC) to the European Union<sup>1</sup> and ten years since the coming into force of the first Asylum Act (AA).<sup>2</sup> Therefore, this is a good time to look at some of the more significant changes that have come about with regard to the international protection of refugees, at a legal and practical level, as well as at the shortcomings still present, and to propose possible *de lege ferenda* solutions. The objective of this paper is to summarise and take stock of the current state of play of asylum in Croatia, thus opening the way for some new and fundamental analyses of particular legal issues in theory and practice.

## 2. Statistical overview of asylum development

Although in previous years asylum was discussed exclusively in the context of the accession of the RC to the EU and of the commitments arising from that process, it is important to stress that the obligation of developing an asylum system and granting international protection to refugees was derived from the commitments of the RC as party to the Convention relating to the Status of Refugees (1951 Convention)<sup>3</sup> and accompanying Protocol<sup>4</sup> relating to the Status of Refugees (1967 Protocol). The Convention is the most significant international agreement<sup>5</sup> dealing with the protection of refugees, which defines the term refugee, and determines the rights and obligations of refugees and the obligations of the signatory states.

On 29 October 2001, the RC signed the Stabilisation and Association Agreement (SAA),<sup>6</sup> which, in Title VII Justice and Home Affairs, Article 76 paragraph 3, provides that cooperation in matters of asylum between the RC and EU Member States shall particularly focus in the area of asylum on the development and implementation of national legislation to meet the standards of the 1951 Convention and the 1967 Protocol, thereby ensuring that the principle of non-refoulement is respected. In view of implementing the SAA, in 2003 the Government of the RC adopted the National Programme for the Accession of the RC to the European Union,<sup>7</sup> which in Chapter VI, Alignment of the Legislation, states that one of the priorities of the Ministry of the Interior in 2002 is to develop a draft proposal of the Asylum Act. The more intensive engagement of the Government in developing the asylum system resulted in the adoption of the first Asylum Act in June 2003.

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<sup>1</sup> [http://europa.eu/about-eu/countries/member-countries/index\\_en.htm](http://europa.eu/about-eu/countries/member-countries/index_en.htm)

<sup>2</sup> Asylum Act, OG 103/03.

<sup>3</sup> [http://www.unhcr.hr/images/stories/pdf/Azil\\_Temeljni\\_propisi\\_UNHCR-a\\_u\\_postupku\\_azila.pdf](http://www.unhcr.hr/images/stories/pdf/Azil_Temeljni_propisi_UNHCR-a_u_postupku_azila.pdf), Annex II, s. 76.

<sup>4</sup> [http://www.unhcr.hr/images/stories/pdf/Azil\\_Temeljni\\_propisi\\_UNHCR-a\\_u\\_postupku\\_azila.pdf](http://www.unhcr.hr/images/stories/pdf/Azil_Temeljni_propisi_UNHCR-a_u_postupku_azila.pdf), Annex III, s 106.

<sup>5</sup> Both agreements were developed under the auspices of the United Nations.

<sup>6</sup> The Agreement came into force on 1 February 2005.

<sup>7</sup> National Programme for the Accession of the Republic of Croatia to the European Union – 2003, OG 30/2003.

The first AA came into force on 1 July 2004, immediately after the RC, on 18 June 2004, had been granted the status of official candidate for full membership in the European Union.

The coming into force of this act repealed the provisions of the Act on the Movement and Stay of Aliens,<sup>8</sup> which related to the status of refugees. However, although there was a legal and institutional framework in place, and in spite of the fact that 362 asylum applications had been lodged from 1997 to 30 June 2004,<sup>9</sup> none of those applications had been resolved positively.<sup>10</sup>

In the last ten years, from 2004 to 30 April 2014, the Ministry of the Interior (hereinafter: MI) registered 4,478 applications by asylum seekers, of whom 117 were granted international protection. Annually, the MI registered on average up to 200 asylum seekers, until 2012 and 2013 when their number grew to over one thousand. Thus, 1,193 asylum seekers were registered in 2012, and 1,089 in 2013. At that time, the largest number of asylum applications was lodged by persons who had fled from Afghanistan and Somalia.

Nevertheless, each year most asylum seekers, over 80%, leave Croatia before their application is resolved. This trend of voluntarily leaving for other EU countries has continued, even following Croatia's joining the European Union. Moreover, since the RC became an EU Member State, there have been fewer and fewer persons seeking asylum in Croatia. Thus, in the first half of 2013, a total of 721 foreigners sought asylum, and after the accession of the RC to the European Union, in the second half of 2013, their number dropped to 327, which represents a 30% fall in the number of asylum seekers.<sup>11</sup>

If we compare the number of asylum seekers in the first 6 months of 2013 (721) with that in the first 6 months of 2014 (229), then this trend is even more obvious.

An additional reason for the reduced number of asylum seekers is the application of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national,<sup>12</sup> also known as the Dublin II Regulation, and 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 a stateless person, also known as the Dublin III Regulation.<sup>13</sup> Since 1 July 2013, it has been obligatory in Croatia to take the fingerprints of asylum seekers, which are then forwarded to the central database system (Eurodac),<sup>14</sup> which contains the fingerprints of each person seeking asylum in an EU Member State. Eurodac<sup>15</sup> is a common database of biometric data

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<sup>8</sup> Act on the Movement and Stay of Aliens, OG 53/91, 22/92, 26/93; Act on Amendments to the Act Prescribing Fines for Economic Offences and Misdemeanours, 29/94; Act on Supplements to the Act on Amendments to the Act Prescribing Fines for Economic Offences and Misdemeanours, 22/99; Decision of the Constitutional Court of the RC, 103/03; Asylum Act and 109/03 - Aliens Act.

<sup>9</sup> Migration Policy of the Republic of Croatia for 2007/2008, OG 83/07, II.3 Asylum, the number of asylum seekers per year from 1997 to 2006.

<sup>10</sup> The applications were rejected in 175 cases, and in 187 cases the applications were dismissed on procedural grounds.

<sup>11</sup> [http://www.unhcr.hr/media/com\\_form2content/documents/c2/a53/f9/2013asmthdata\\_hr.xls](http://www.unhcr.hr/media/com_form2content/documents/c2/a53/f9/2013asmthdata_hr.xls).

<sup>12</sup> <http://ccvista.taix.be/show.asp?link=/Fulcrum/CCVista/HR/32003R0343-HR.doc>.

<sup>13</sup> [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/libe/dv/5\\_1180\\_31\\_/5\\_1180\\_31\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/5_1180_31_/5_1180_31_en.pdf), The Regulation has not been translated into Croatian; in effect since 1 January 2014.

<sup>14</sup> <http://ccvista.taix.be/show.asp?link=/Fulcrum/CCVista/HR/32000R2725-HR.doc>, Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention. Note: The Dublin Convention establishing the Member State responsible for examining an asylum application lodged in one of the Member States of the EU was signed in Dublin on 15 June 1990, and came into effect on 1 September 1997. In September 2003 the Convention was replaced by the Dublin Regulation.

<sup>15</sup> <http://ccvista.taix.be/show.asp?link=/Fulcrum/CCVista/HR/32000R2725-HR.doc>, Council Regulation (EC) No.

which provides for the efficient keeping of a common European system for asylum seekers, refugees and foreigners detected while illegally crossing the external borders,<sup>16</sup> as well as foreigners who are illegally staying in a Member State.

On the basis of Eurodac data, and by applying the Dublin Regulation, the Member State responsible for examining an asylum application is established and a decision is made on the transfer of the asylum seeker to that state according to the hierarchy of criteria laid down in Chapter III Hierarchy of Criteria of the Dublin II Regulation, or the Dublin III Regulation. The state responsible is generally determined on the basis of the given situation when the asylum seeker first lodged his application with a Member State.<sup>17</sup>

Most asylum seekers in Croatia lodge an asylum application after they have been detected illegally crossing the border, either entering or leaving Croatia, or illegally staying, which is further evidence that Croatia is only a transit country rather than a destination for asylum seekers and refugees. Most have earlier already lodged an asylum application in other Member States, which is also confirmed by the information of the MI on the application of the Dublin Regulation. Namely, after the first six months of the implementation of the Dublin II Regulation in 2013 and of forwarding fingerprints to Eurodac, the data of the MI showed that the largest number of asylum seekers had previously lodged asylum applications in Hungary, Bulgaria, Greece and Switzerland.<sup>18</sup> Asylum seekers often want to avoid being returned to these countries because their aim is to reach countries that are part of the Schengen Area<sup>19</sup> where there is no internal border control, so these countries' nationals can freely enter the territory of other Member States without any checks.<sup>20</sup> Therefore, even asylum seekers from states within the Schengen Area can, without facing major problems, travel to one of their desired destinations where their family members already live and where their numerous ethnic communities reside, which significantly facilitates their integration into society.

The number of asylum seekers in Croatia in 2013 fell by 9% compared with 2012,<sup>21</sup> while the number of asylum seekers in Europe in 2013 grew by 32% in comparison with 2012. According to a report<sup>22</sup> published by UNHCR on 20 June 2014,<sup>23</sup> in 2013 in Europe there were 484,600 asylum applications recorded, which is a 32% increase in relation to 2012 when there were 368,400 recorded applications. Of all European countries, Germany recorded the largest number of asylum applications – 109,600, followed by France with 60,100 and Sweden with 54,000.

Turkey<sup>24</sup> today offers shelter to the largest number of refugees in Europe due to the Syrian crisis

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2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention.

<sup>16</sup> <http://www.mup.hr/main.aspx?id=47#1>; External borders are the borders of the EU Member States with so-called third countries; these are all the states *which are not part of the European Economic Area* (the European Union, the Principality of Liechtenstein, the Kingdom of Norway, the Republic of Iceland) and the Swiss Confederation.

<sup>17</sup> Article 5 (2) Dublin II Regulation, and Article 7(2) Dublin III Regulation.

<sup>18</sup> MI data on the implementation of the Dublin Regulation within the period 1 July to 31 December 2013 presented at a meeting between MI and UNHCR representatives on 10 February 2014 in the Porin reception centre for asylum seekers in Zagreb.

<sup>19</sup> [http://socialpolicy.ucc.ie/Schengen-agreement\\_io.pdf](http://socialpolicy.ucc.ie/Schengen-agreement_io.pdf), 14 June 1985 Belgium, Germany, France, Luxembourg and the Netherlands signed a treaty foreseeing the gradual abolition of border checks for the movement of persons at the common border crossings. In parallel with the Schengen Agreement, a Schengen Information System was also developed.

<sup>20</sup> Checks are performed only at the external borders.

<sup>21</sup> [http://www.unhcr.hr/media/com\\_form2content/documents/c2/a54/f9/Asylum%20Total.xl](http://www.unhcr.hr/media/com_form2content/documents/c2/a54/f9/Asylum%20Total.xl), The MI in 2013 recorded 1,089 asylum seekers, and in 2012 a total of 1,193.

<sup>22</sup> [http://unhcr.hr/2012-12-20-09-46-40/statistics/165-unhcr/news-and-views/news/225-global-forced-displacement-tops-50-million-for-first-time-since-world-war-ii#\\_cro](http://unhcr.hr/2012-12-20-09-46-40/statistics/165-unhcr/news-and-views/news/225-global-forced-displacement-tops-50-million-for-first-time-since-world-war-ii#_cro). More information available at <http://www.unhcr.org/5329b15a9.html> (UNHCR Asylum Trends 2013).

<sup>23</sup> [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/55/76](http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/76). Resolution, point 8; the UN General Assembly decided that starting from 2001, 20 June would be observed each year as World Refugee Day.

<sup>24</sup> <http://www.unhcr.hr/component/content/article/191-unhcr/news-and-views/press-releases/208-industrialized->

(information of 18 March 2014 – 640,889 recorded Syrian refugees). At the same time, Turkey in 2013 also received 44,800 asylum applications from Iraqi and Afghan nationals. Italy recorded 27,800 applications, and Greece 8,200.

Only in 2006, two years after the first AA came into force, was the first right to asylum granted in Croatia to a female asylum seeker from Africa<sup>25</sup> on grounds of religion and belonging to a particular social group.<sup>26</sup> Another two years had almost to go by for another asylum seeker from Somalia to be granted asylum in November 2008.<sup>27</sup> According to data provided by the MI (see Table), from July 2004 to the end of May 2014,<sup>28</sup> a total of 117 persons were granted international protection in the RC: 61 persons were granted refugee status, and 56 persons were granted the status of foreigner with subsidiary protection.

#### Persons granted refugee status in RC

County of origin	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Afghanistan					1	1		8	2			12
Armenia						1						1
Congo, DR											1	1
Congo							3					3
Eritrea									1			1
Iraq									2	2		4
Kazakhstan										4		4
Moldova							2					2
Nigeria									1		1	2
Russian Federation						5			5			10
Somalia					1							1
Sudan			1								1	2
Syrian Arab Republic									1			1
Turkey					1				5			6
Uganda											1	1
Ukraine						1			4			5
Uzbekistan						3						3
Unknown Citizenship										1		1
Zimbabwe								1				1
<b>Total no of refugees</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>11</b>	<b>5</b>	<b>9</b>	<b>21</b>	<b>7</b>	<b>4</b>	<b>61</b>

#### Persons with subsidiary protection in RC

County of origin	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Afghanistan						1	2	3	1	1		8
Eritrea										1		1
Georgia							4					4
Iraq							1					1
Kosovo						1						1
Pakistan					3							3
Somalia										7	6	13
Sudan							1					1
Syrian Arab Republic									11	11		22
Ukraine								1				1
Unknown Citizenship								1				1
<b>Total subsidiary protection</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>8</b>	<b>5</b>	<b>12</b>	<b>20</b>	<b>6</b>	<b>56</b>

Total refugees and subs. protect. 0 0 1 0 6 13 13 14 33 27 10 117

Source:  
Ministry of the Interior of the RC

[countries-see-28-per-cent-jump-in-asylum-applications-unhcr-report#\\_cro](#), UNHCR reports on the 28% growth in asylum applications in developed countries.

<sup>25</sup> <http://www.setimes.com/cocoon/setimes/xhtml/hr/features/setimes/features/2006/11/21/feature-02>.

<sup>26</sup> Due to large media attention, the asylum seeker was avoiding contact with UNHCR and NGOs; five years after, she was granted Croatian citizenship (the decision on asylum and other data were delivered to UNHCR by the MI RC)

<sup>27</sup> According to the information provided by the Croatian Red Cross, he left Croatia soon after being granted refugee status.

<sup>28</sup> Until 30 June 2014, there was a total of 118 persons under international protection, since another foreigner was granted subsidiary protection.

Two facilities in Croatia were converted for the accommodation of asylum seekers: in June 2006, a reception centre for asylum seekers was opened in the Traffic Police building in Kutina as a temporary accommodation facility for up to 100 asylum seekers.<sup>29</sup> The increase in the number of asylum seekers required additional accommodation capacities, so in 2011 the MI opened another reception centre for asylum seekers in Zagreb by leasing part of Hotel Porin, which used to be owned by the Croatian Railways Company. Only one part of the hotel, sufficient for the accommodation of 250 persons, was leased. In 2013, Hotel Porin was converted and adapted so that in 2014 the Porin using its full capacity can accommodate 600 persons.<sup>30</sup> The Porin is both a reception centre and a registration centre where asylum applications are lodged, asylum seekers provide their fingerprints, the initial medical examination is performed and the asylum seeker's identity card is issued.

In 2012, the reception centre in Kutina became devastated because the number of persons placed there had been three times higher than the accommodation capacities allowed, so the MI closed it down in 2013 and reconstructed and redecorated the premises.<sup>31</sup> From July 2014, Kutina will provide accommodation for vulnerable groups: families, unaccompanied minors, and other categories of vulnerable persons.<sup>32</sup> It is now possible to accommodate 700 asylum seekers in both reception centres, which is in line with the current trend of arrival and stay of asylum seekers.<sup>33</sup> This takes into account to the largest possible extent their right to privacy, the separation of families and unaccompanied children, but also provides a space for various educational, sporting and entertainment activities.

### 3. Legal and institutional framework

The asylum system in Croatia is based on the Constitution of the Republic of Croatia,<sup>34</sup> the UN Convention relating to the Status of Refugees of 1951, the UN Protocol relating to the Status of Refugees of 1967, the EU *acquis* in the field of asylum, and the Asylum Act and accompanying subordinate legislation.

The SFRY was party to the 1951 Convention and the 1967 New York Protocol, hence the RC through a notification on succession retroactively became party to both agreements on 8 October 1991, which is Independence Day in the RC.<sup>35</sup> Although the Government of the RC in Article III of the Decision on the publication of multilateral international agreements to which the Republic of Croatia is a party on the basis of the notification on succession<sup>36</sup> committed itself to publishing the official texts of international agreements within two years of the coming into force of the Decision, or by 15 October 1995, the 1951 Convention and the 1967 Protocol have not been translated and published in the Official Gazette, even after 19 years. Besides the fact that the

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<sup>29</sup> The media often incorrectly refer to it as "reception centre for refugees", instead of "reception centre for asylum seekers", because these persons remain asylum seekers until a decision is made related to their asylum application.

<sup>30</sup> Since 2013, the Porin has no longer been used as a hotel, although it is still advertised as such on tourist and other websites.

<sup>31</sup> The reception centre was reopened on 18 June 2014, on the eve of World Refugee Day; UNHCR donated funds for the construction of the children's playground and helped with equipping the rooms.

<sup>32</sup> Article 2 subparagraph 15 AA (note 2): Vulnerable groups means adults without legal competence, minors, elderly and infirm persons, seriously ill persons, disabled persons, pregnant women, single parents with minor children, persons suffering from mental disorders and victims of trafficking in human beings, as well as victims of torture, rape or other forms of psychological, physical and sexual violence.

<sup>33</sup> In 2014, an average of 200 to 300 asylum seekers stayed in the Porin at a particular time.

<sup>34</sup> The Constitution of the Republic of Croatia, OG 59/90, 135/97, 8/98 – consolidated text, 113/00, 124/00 – consolidated text, 28/01, 41/01 – consolidated. text, 55/01 – corrigendum 76/10, 85/10 – consolidated. text, and 5/14 – Decision of the CCRC

<sup>35</sup> <http://www.sabor.hr/Default.aspx?art=15019>. Decision of the Parliament of the Republic of Croatia on the dissolution of the state and legal relation with other republics and provinces of the SFRY of 8 October 1991.

<sup>36</sup> Decision on the publication of multilateral agreements to which the Republic of Croatia is a party based on the notification on succession, OG - IA 12/93; Article 1 item 35 and item 37.

language and the Croatian legal terminology slightly differ from the text published in the Official Journal of the FPRY in 1960, there are also some mistakes in the translation. Therefore, it is necessary to publish an official translation.

It is important to mention that the 1951 Convention and the 1967 Protocol form the foundations of the EU *acquis* in the field of asylum. Namely, the Treaty on the Functioning of the European Union<sup>37</sup> states that a common system of asylum, subsidiary protection and temporary protection must comply with the 1951 Convention, the Geneva Convention and the 1967 Protocol relating to the Status of Refugees, and other relevant international agreements. All relevant directives in the field of asylum also refer to the 1951 Convention.

The Asylum Act<sup>38</sup> that is currently in force in Croatia was adopted in July 2007 (AA 2007), came into force in January 2008, and was amended in 2010 and 2013 in order for it to be aligned with the EU *acquis*. In addition to the AA, a number of pieces of subordinate legislation were adopted in 2007. The AA 2007 provides the following definition of asylum: "Asylum means the protection by which the constitutional provision on giving refuge to a refugee in the Republic of Croatia, on the basis of the competent authority decision on fulfilment of the conditions laid down in Article 4 of this Act, has been realized".<sup>39</sup>

The Department for Asylum, which is an organisational unit of the Directorate for Administrative and Inspection Affairs at the Ministry of the Interior, is the body competent to decide on asylum applications in the first instance. An administrative dispute may be initiated before the administrative court against a decision of the MI, and the action suspends the execution of the decision, except when it deals with a restriction of movement of an asylum seeker or a foreigner who is undergoing a transfer procedure in conformity with the Dublin Regulation. This rule of the AA is in conformity with the Administrative Disputes Act (AD)<sup>40</sup> pursuant to which an action has no suspensive effect except in cases prescribed by law, which, in this case, is prescribed by the Asylum Act. AA is a *lex specialis* with regard to the provisions of the ADA, as well as with regard to the provisions of the General Administrative Procedure Act.<sup>41</sup>

Since 1 January 2012,<sup>42</sup> the administrative courts in Zagreb, Rijeka, Osijek and Split decide on actions brought against the decisions of the MI on asylum applications. The Administrative Court of RC has continued operating as the second-instance High Administrative Court of RC with its seat in Zagreb. Since the territorial jurisdiction of a court is determined according to the claimant's, or the asylum seeker's, residence, and since both reception centres for asylum seekers (the Porin in Zagreb and the centre in Kutina) are situated in the territory of the Administrative Court in Zagreb, this court receives the largest number of asylum cases. Thus, for instance, in 2013, it received over 95% of all actions<sup>43</sup> brought against the decisions of the MI as the first-instance authority.

The Croatian asylum legislation uses the term "*asylee*" ("*azilant*") in place of the term "*refugee*"

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<sup>37</sup> <http://www.mvep.hr/custompages/static/hrv/files/pregovori/111221-lisabonski-prociscena.pdf>, Article 78 paragraph 1.

<sup>38</sup> Asylum Act, OG 79/07, 88/10 and 143/13.

<sup>39</sup> Article 2 paragraph 1 subparagraph 7 AA (note 2).

<sup>40</sup> OG 20/10 and 143/12.

<sup>41</sup> General Administrative Procedure Act, OG 47/09.

<sup>42</sup> Until 31 March 2012, the appellate procedure for asylum cases initiated prior to 1 January 2012 was under the competence of the Government Commission for resolving the appeals of asylum seekers and asylees.

<sup>43</sup> In 2013, the Administrative Court in Zagreb received 102 actions, and 6 actions were carried over from 2012. The Court decided in 97 actions: 91 actions were rejected, in 5 cases the proceedings were suspended, and only one action was upheld and the case was returned to the MI (these are unofficial data that the MI presented at a meeting with UNHCR – the US official statistics in Zagreb are not available on the internet).



("izbjeglica"), but what is important is that the terms refugee and asylee carry the same meaning because an asylee is a refugee who meets the conditions to be granted asylum.<sup>44</sup> The term "asylee" was introduced to make a distinction between persons who have been granted refugee status and protection according to the 1951 convention (according to AA 2007), as opposed to refugees from Bosnia and Herzegovina and Kosovo, who were granted temporary protection in Croatia on a group basis, or *prima facie*, based on the Regulation on the status of displaced persons and refugees,<sup>45</sup> which later became the Act on the Status of Displaced Persons and Refugees.<sup>46</sup> Due to the sudden arrival of a large number of refugees, it was not possible to conduct the procedure for an individual determination of refugee status, which is the general rule. For this reason, the Government of the RC applied a group determination of refugee status, whereby each member of the group was deemed a refugee *prima facie* when there was no proof to the contrary. From 1992, the Government Office for Displaced Persons, Returnees and Refugees would decide on their status, and now this is within the competence of the Government Office for Reconstruction and Housing Care.<sup>47</sup>

Foreigners who do not meet the conditions to be granted asylum, but who would face a real threat of suffering serious injustice if they were returned to their country of origin, such as, among other things, the death penalty or torture, will be granted subsidiary protection. Subsidiary protection was only introduced by the AA 2007 on the basis of the 2011 EU Qualification Directive.<sup>48</sup>

#### **4. Integration of refugees and persons under subsidiary protection**

In order to ensure the integration of refugees and persons under subsidiary protection, they are guaranteed the right to accommodation, work, health protection, education, legal aid, social welfare, family reunification and preservation of family unity, freedom of religion and religious education for children, and assistance in integrating into society. In addition to the AA 2007, the subordinate legal acts of the competent ministries elaborate the rights of persons under international protection. The purpose of guaranteed rights is to integrate refugees into society as quickly and easily as possible, in order for them to find jobs and be able to care for themselves and/or their families. The unsatisfactory economic situation and high unemployment rate in Croatia is an additional hindrance to the integration of refugees.

Besides the competent authorities referred to in the AA 2007, various and specific forms of assistance to refugees and asylum seekers are offered by NGOs – the Croatian Red Cross,<sup>49</sup> the Centre for Peace Studies<sup>50</sup> and the Croatian Law Centre,<sup>51</sup> which have also for many years been the implementing partners to UNHCR, and which UNHCR has been partially or fully financing. The activities of these NGOs complement, but also often completely replace, the activities and assistance that should be provided by the competent state authorities. Why is this extremely important?

Refugees are foreigners, persons who speak neither the language nor know the culture of the country where they were granted asylum, and who used to be persecuted or who suffered serious injustice due to which they had to leave their country, and they are frequently alone and lonely

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<sup>44</sup> Article 2 paragraph 1 subparagraph 4 AA (note 2).

<sup>45</sup> Regulation on the status of displaced persons and refugees, OG 64/91.

<sup>46</sup> Act on the Status of Displaced Persons and Refugees, OG 96/93, 39/95, 29/99, 128/99 and 51A/13.

<sup>47</sup> <http://www.duosz.hr>.

<sup>48</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337/9 of 20 December 2011.

<sup>49</sup> <http://www.hck.hr/hr/kategorija/kategorije-azil-i-migracije-65>.

<sup>50</sup> <http://www.cms.hr/azil>.

<sup>51</sup> <http://www.hpc.hr/page.aspx?PageID=41>.

without family and friends. Therefore, I consider that the additional assistance provided by NGOs and their volunteers is extremely precious, starting with providing information for coping with everyday life, legal aid, assistance to children and adults in learning, psychosocial assistance, assistance in exercising certain other rights and in frequenting institutions, to organising informal social events and excursions, visits to cultural events, etc. All this is part of our everyday life that we take for granted, but for refugees who usually arrive without documents and means of sustenance, this is not trivia, but an important part of integration into society, and into the life of the community in which they find themselves. In addition to the mentioned NGOs, other NGOs, such as the Jesuit Refugee Service aiding refugees and forcibly displaced persons in Southeast Europe,<sup>52</sup> and local NGOs active in the area of Kutina and Zagreb, also provide assistance to asylum seekers and refugees.

In 2010, UNHCR analysed the alignment of the rights exercised by refugees on the basis of the 1951 Convention with the legislation of the Republic of Croatia then in force. The analysis showed that the legislation then in force was not fully aligned with the Convention or with the Asylum Act. A large number of consultations were held with the competent ministries and the laws and subordinate legislation were amended.

However, some important issues, which are crucial for the successful integration of refugees, have not yet been solved: a Croatian language course has not been organised; the procedure of recognising former qualifications has not yet been conducted or has been rendered more difficult to conduct; the acquisition of real estate has not been resolved; marriage is not possible due to the lack of documents; due to the lack of knowledge of Croatian language, there is no possibility for employment, and without employment, it is impossible to pay the costs of housing after the 2 years where these costs are covered from the state budget and which begin to run from the day when the decision on granting asylum or subsidiary protection is adopted. All this makes it very difficult, or impossible, for refugees to integrate into Croatian society. It must also be kept in mind that integration measures do not require many financial resources, and that this concerns the rights of 70 to 80 people on average, including children, since the others have left Croatia.<sup>53</sup> Very few among them have found a job or secured a minimum source of income for themselves or in partnership with a Croatian national.

Refugees/asylees cannot marry a Croatian national because they cannot prove that they are not already married,<sup>54</sup> although the new Family Act<sup>55</sup> has now resolved this problem. As of 1 September 2014, a statement given to a public notary replaces the document from the country of origin or the country of citizenship of the refugee, which they have not been able to obtain.

Although a refugee is entitled to accommodation at the expense of the state for up to two years, which is generally a satisfactory deadline for most refugees, for many of them this has proved to be insufficient because in the meantime they have neither learned the language nor found a job, and the social assistance is not sufficient to fully cover the cost of housing.

Some refugees wait in the reception centres for asylum seekers for suitable accommodation to be found in state flats, even after being granted status, and this shortens the period of two years and

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<sup>52</sup> <http://www.jrs.hr/projekti.html>.

<sup>53</sup> Unofficial data of the Croatian Red Cross (CRC) on refugees and persons who have been granted subsidiary protection: a total of 113 persons on the list, out of whom 31 persons left the RC or did not register their current residence. The list contains only persons who used to be or are still in contact with the CRC (information supplied to UNHCR on 2 July 2014).

<sup>54</sup> Consequently, this also represents an obstacle to the validity of cohabitation. In the last ten years, several refugees have intended to marry, and one family also has children in common.

<sup>55</sup> Article 14 paragraphs 2 and 3 Family Act OG 75/14.

makes integration more difficult. Since the Ministry of Social Policy and Youth assumed the commitment of providing housing units for refugees, these unfavourable situations have been decreasing. However, there are still cases where refugees stay for several months in the reception centre and wait to move into a flat; the flat is frequently not suitable for living without some adaptation, and sometimes the refugees have to wait for the flat to be equipped with a minimum of appliances or furniture. The competent ministry must establish better cooperation with the Central State Office for State Property Management,<sup>56</sup> which, among other things, cedes for use real estate to state administration bodies or other budget beneficiaries upon their reasoned request.<sup>57</sup>

Croatian courses used to be organised in Zagreb at the Faculty of Humanities and Social Sciences, as part of the *Croaticum* – Centre for Croatian as a second and foreign language,<sup>58</sup> where foreigners learn Croatian. However, for over two and a half years the competent ministry has not been financing courses of Croatian for refugees. This is the greatest problem for integration, because language is also the first step in the inclusion of any foreigner into society in any situation. This is a problem that has been pointed out by the mentioned NGOs and by UNHCR, but this has not been resolved so far.

Although refugees, in conformity with the legislation in force, have equal access to the labour market as Croatian nationals, this is not the case in practice. An obstacle to employment, in addition to the lack of or insufficient knowledge of Croatian, is also the procedure of recognising previous qualifications. The greatest number of refugees do not possess any proof of previous qualifications, or the acquired qualifications are not compatible with those in Croatia (for example, secondary school education in some countries lasts three years, while in RC it lasts four years, and the organisation of vocational education is also completely different from that in Croatia). Therefore, no level of education, not even primary education, is recorded in their workbooks, which makes it impossible for them to re-train or acquire additional training through the programmes available at the Croatian Employment Service (in addition to the insufficient knowledge of the language which would make it difficult for them to follow such programmes and to successfully complete them). Even though the amendments to the Asylum Act of 2013 in Article 45 paragraphs 4 and 5 provide for an evaluation of previously acquired competences, and prescribe that such an evaluation may not be based solely on official documents, this has not yet been implemented in practice.

Refugees are entitled to acquire real estate in Croatia, in principle, under the same conditions as third-country nationals. Since the state ceases to pay accommodation for refugees after two years, it may be expected that some of them, if they find a job in the meantime, will decide to purchase a small flat or house. To date, only one refugee has requested (and was granted) a housing loan for a flat (he is employed and registered). However, the competent bodies refused the registration of the title/mortgage into the land registry,<sup>59</sup> requesting that the principle of reciprocity with his country of origin be applied. Such conduct contravenes the 1951 Convention. Reciprocity that is required for third-country nationals is not required when the rights of refugees are concerned, since Article 7 paragraph 2 of the 1951 Convention states that after a period of three years' residence, all refugees must enjoy exemption from legislative reciprocity in the territory of the Contracting State. This exemption from reciprocity should also be applied in the case of acquiring real estate, and thus also in the case of registration of a title into the land registry.<sup>60</sup>

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<sup>56</sup> <http://www.duudi.hr/o-drzavnom-uredu-za-upravljanje-drzavnom-imovinom/djelokrug/>.

<sup>57</sup> Article 59 paragraph 1 Act on the Management and Disposing of Property Owned by the Republic of Croatia, OG 94/13

<sup>58</sup> [http://croaticum.ffzg.unizg.hr/?page\\_id=849](http://croaticum.ffzg.unizg.hr/?page_id=849).

<sup>59</sup> The decision in this case is not yet final (situation in the land registry on 1 July 2014).

<sup>60</sup> Unfortunately, the refugee from Afghanistan was not allowed to be registered as the owner of the flat (56.13 m<sup>2</sup> for

In my view, the International Protection Act, which will replace the provisions of the AA currently in force, and whose adoption is scheduled for 2015, should include a provision on the principle of reciprocity and exemption therefrom<sup>61</sup> for refugees referred to in the 1951 Convention. This would ensure that all competent authorities of the state administration and the judiciary efficiently and promptly resolve different requests that foreigners with refugee status lodge with them.

## 5. Conclusion

On 20 June 2014, World Refugee Day, UNHCR published information that the number of refugees, asylum seekers and internally displaced persons in the world had, for the first time after World War II, exceeded the figure of 50 million people.<sup>62</sup> In such circumstances, when more and more people require international protection, and states require mutual solidarity in providing assistance to refugees,<sup>63</sup> Croatia is also making its contribution.

By monitoring the activities of the Government of the RC during the last ten years or more, great changes and progress have been observed. An asylum system has been put in place, which has continuously been aligned with the EU *acquis*. The capacities of the Department for Asylum of the MI have been significantly strengthened, as have those of the Police Directorate, and staff have been continuously trained. The Ministry of Social Policy and Youth and other competent ministries have begun to adapt their programmes and operations to asylum seekers and refugees, although this is not yet completely satisfactory.

As far back as 1993, UNHCR organised the first seminar on the protection of refugees,<sup>64</sup> at a time when only the Ministry of the Interior, some of the already mentioned NGOs, and UNHCR were "dealing" with asylum seekers and refugees. However, in the last ten years there has been visible growing interest in resolving the problems of asylum seekers and refugees.<sup>65</sup> Based on the above, I consider that the RC today has in place an efficient asylum system, which is fully in line with the 1951 Convention and has been aligned to a great extent with the Common European Asylum System.<sup>66</sup>

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6 family members) because the competent authorities failed to apply the 1951 Convention, although the owner of the flat, the refugee, supplied a certificate from the Police Directorate in Zagreb proving that he had been a legal resident in the territory of the RC for three years (and even longer), and disregarded the provision of Article 141 of the Constitution of the RC on international treaties which are a component of the domestic legal order of the Republic of Croatia, and have primacy over domestic law.

<sup>61</sup> 1951 Convention, Article 7 subparagraph 2.

<sup>62</sup> [http://unhcr.hr/2012-12-20-09-46-40/statistics/165-unhcr/news-and-views/news/225-global-forced-displacement-tops-50-million-for-first-time-since-world-war-ii#\\_cro](http://unhcr.hr/2012-12-20-09-46-40/statistics/165-unhcr/news-and-views/news/225-global-forced-displacement-tops-50-million-for-first-time-since-world-war-ii#_cro). ore information in English at <http://www.unhcr.org/5329b15a9.html>.

<sup>63</sup> I consider the expression *burden sharing* to be inappropriate in the context of human rights, and therefore I use the expression "mutual solidarity in providing assistance".

<sup>64</sup> The seminar was held in Zagreb on 20 April 1993, and at that time UNHCR for the first time translated the 1951 Convention and the Handbook on Procedures and Criteria for Determining Refugee Status ( Geneva, 1988).

<sup>65</sup> In addition to the competent state authorities, the Office of the People's Ombudsman, the Children's Ombudsman, the Gender Equality Ombudsman and the Ombudsman for Persons with Disabilities are showing interest in the protection of asylum seekers and refugees. An important contribution has also been made by the academic community, primarily the Faculty of Law, including the Legal Clinic of the Faculty of Law in Zagreb, and the Faculty of Political Sciences in Zagreb. In addition, the Institute for Migrations and Ethnic Studies, the Institute for Development and International Relations, the Croatian Employment Service, the City of Zagreb and other state administration bodies, including bodies of units of local and regional self-government, are becoming engaged in resolving the problems of refugees. A particularly significant contribution is made by civil society organisations.

<sup>66</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas\\_factsheet\\_hr.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/ceas-fact-sheets/ceas_factsheet_hr.pdf).

Having said that, although Croatia continues to be a transit country for most refugees for the reasons stated above, statistical data on the (small) number of persons who have been granted international protection in the RC in the period of 10 years suggest that inadequate integration measures also affect the trend of these persons voluntarily leaving the RC.

In January 2014, the Government of the RC published a Report<sup>67</sup> on the work of the Standing Committee for the implementation of the integration of foreigners into Croatian society for 2013, where, among other things, on page 2 it states the following: "One of the greatest challenges identified in the migration system is the integration of foreigners into Croatian society".<sup>68</sup> The Report also states that the integration of foreigners focuses in particular on "vulnerable groups of foreigners such as asylum seekers, refugees and foreigners under subsidiary protection". These are, therefore, the starting points in the document and in these terms there are no disparities among the Government of the RC, NGOs and UNHCR.

Unfortunately, the integration measures taken so far do not fully reflect the importance which is given to this problem in the documents of the Government of the RC. The problems that arise in practice make the integration of foreigners in society difficult or sometimes even impossible. The greatest problem related to the integration of refugees lies in the difficulties they encounter in learning Croatian. The language barrier is, primarily, an obstacle to dignified life, and instead of economic independence and self-reliance, refugees will continue to be social welfare beneficiaries.<sup>69</sup> Therefore, it is necessary to immediately, at the beginning of the new academic year, organise courses of Croatian in Zagreb and other large towns where refugees live.

In the first year of membership in the EU, the accommodation capacities of reception centres for asylum seekers have been increased, so that they can now receive 700 persons. In the opinion of UNHCR, this is satisfactory for the reception and accommodation of asylum seekers according to the situation/trend of arrival to, and departure from, the RC in 2013 and 2014. However, in the case of a sudden inflow of a large number of asylum seekers and refugees, additional capacities would have to be provided. As far as I know, such accommodation has not been secured.<sup>70</sup>

Although refugee status is of a temporary nature, history has shown that refugee crises last a long time and that many cannot return to their countries of origin. For this reason, the Government of the RC, by amending the Croatian Citizenship Act,<sup>71</sup> should facilitate the granting of Croatian citizenship to refugees under beneficial conditions after 5 years of uninterrupted stay in the territory of RC, which is recommended for countries in Article 34 of the 1951 Convention. Since 1 January 2012, the conditions for acquiring Croatian citizenship by naturalisation have been tightened, so that now a foreigner must have lived in the RC with registered residence for 8 years<sup>72</sup> uninterruptedly before lodging an application, and must have had the approved status of a foreigner with permanent residence.

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<sup>67</sup> <http://www.uljppnm.vlada.hr/images/izvjesce%20o%20radu%20stalnog%20povjerenstva%20-%202013.pdf>.

<sup>68</sup> S. 2 paragraph 4.

<sup>69</sup> [http://narodne-novine.nn.hr/clanci/sluzbeni/2013\\_12\\_157\\_3289.html](http://narodne-novine.nn.hr/clanci/sluzbeni/2013_12_157_3289.html). Article 21 of the Social Welfare Act, OG 157/13.

<sup>70</sup> In 2011 and 2012, the MI temporarily placed asylum seekers in Valbandon near Pula, which is a centre for the training and holiday accommodation of MI officers. Such accommodation, isolated from other settlements, without accompanying services, is not, in my opinion, adequate for the accommodation of persons who seek protection, flee from persecution and grave violations of human rights, and who most frequently belong to vulnerable groups of the population.

<sup>71</sup> OG 53/91, 70/91, 28/92, 4/94 and 130/11.

<sup>72</sup> Before January 2012, one of the requirements was 5 years of uninterrupted stay.

With the further alignment of legislation (as well as practice) with the EU acquis and the achievement of a common asylum system, it is important to continuously train all the stakeholders involved in the reception of asylum seekers in methods of deciding on asylum applications and integrating refugees and foreigners under subsidiary protection. The training, information and awareness raising of stakeholders, the media and the general public will facilitate the realisation of the rights of refugees and speed up their integration. All these activities additionally contribute to the suppression and prevention of discrimination.

The contribution of civil society organisations to the development of the asylum system and to the protection of refugees is only known to a narrow circle of stakeholders and the public. Based on my long years of direct experience in working with civil society organisations, I consider that the competent ministries should transfer part of the activities from their remit to NGOs and should fund these activities. As an example of best practice, I would like to point out the MI which is funding several Croatian Red Cross staff members working in the reception centres in Zagreb and Kutina. Such practice has proved to be a good solution for the MI, for the CRC, and primarily for the beneficiaries of this assistance, asylum seekers and refugees.

In addition to further necessary amendments to the legislation<sup>73</sup> and a more flexible application of international agreements, it is also necessary to more efficiently implement this legislation in practice. This would ensure the full inclusion of refugees in society as our fellow citizens with equal rights to the citizens of the Republic of Croatia.

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<sup>73</sup> The obligation of aligning national legislation with the EU acquis continues even after the accession of the Republic of Croatia to the European Union, so the Government is planning to adopt an International Protection Act in 2015, which will replace the AA and comprehensively regulate the rights and obligations of all persons who are entitled to international protection pursuant to the 1951 Convention and the EU acquis in the area of asylum.