

# The Asylum System in the Republic of Croatia – Some Aspects of the Position of Asylum Seekers and Asylees under the Legislation and in Practice

Despite its low number of asylum applications, Croatia must improve the implementation of the recently adopted EU legislation. In particular, the issue of refugees' integration needs to be addressed.

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## Introduction

The asylum system in the Republic of Croatia (RoC) started to develop more intensively from 2003. Today, after significant effort, Croatia's asylum legislation generally complies with international standards and the European Union *acquis* on asylum. The asylum system is now in place in Croatia, even though Croatia is still not a destination country for asylum seekers. The number of asylum applications each year, as well as the number of asylees<sup>2</sup> and persons under subsidiary protection<sup>3</sup>, is still low. Although the asylum system is rather new and the new Law on Asylum (LoA) has only been in place since 2008, several shortcomings have come to light. In the future development of the asylum system in Croatia, emphasis should be placed on the integration of asylees into Croatian society and on Croatia's policy in relation to asylees.

## The development of the asylum system

The first LoA in the Republic of Croatia was adopted in 2003 and entered into force on 1 July 2004. Prior to that, the legal basis for 'refugee' status was provided by a few provisions in the Act on Movement and Stay of Aliens. Following the EU accession process, a

new LoA entered into the force on 1 January 2008, which is generally aligned with the EU *acquis* on asylum. The main authority responsible for asylum and migration issues in the RoC is the Ministry of Interior (Mol)<sup>4</sup>.

According to Mol statistics, since 2003, there have been 864 asylum applications in the RoC; only 4–7 of these were granted asylee status (for 13 persons) and, since the new LoA entered into force, another 4 persons were granted subsidiary protection in 2008/09. In the past, there were no exact figures on how many persons who expressed their intention to apply for asylum were rejected at Croatia's borders and returned to their countries of origin, and there was no information on whether or not all who express their intention to apply for asylum had the opportunity to actually lodge an asylum application. Hence, it was considered necessary<sup>5</sup> to closely monitor actual practices in the RoC with regard to illegal migrants and asylum seekers.

There have been some important achievements in the development of the asylum system in the RoC. The EU integration process was the driving force for Croatia to conform with the EU *acquis* on asylum and border management. However, legislation adopted for EU accession must be implemented properly and balanced with other international obligations in relation to refugees. While the new LoA is a step forward, a number of issues need to be addressed before Croatia's asylum legislation is in line with EU and international standards; in particular, (i) the penalisation and detention of asylum seekers, (ii) the violation of the rights of asylum seekers and asylees and (iii) issues with the rights of asylees and their

integration<sup>6</sup>. Each of these will be discussed in turn in the following sections.

## Penalisation and detention of asylum seekers

Since the first LoA came into force in July 2004, until the implementation of the border monitoring project in March 2009, a misdemeanour procedure was conducted against almost all foreigners found to have illegally crossed the border or who were illegally residing within Croatian territory, which usually included asylum seekers as well, although the LoA<sup>7</sup> prescribes that asylum seekers shall not be punished for illegal entry<sup>8</sup>.

There was no unique practice in regard to the accommodation of those asylum seekers who were caught crossing the border illegally. Under the LoA, asylum seekers should be accommodated in the Reception Centre for Asylum Seekers in Kutina, which is an open camp in which asylum seekers have freedom of movement. However, contrary to the provisions of the LoA, which precisely prescribes in which cases and under which circumstances asylum seekers can be detained and their freedom of movement restricted, the majority of asylum seekers caught illegally crossing the border or who were illegally residing within Croatian territory were detained along with other illegal migrants in the Aliens Reception Centre in Jeevo based on the Law on Foreigners (LoF). According to the LoF, they can be held in this Centre for up to 180 days, which can be prolonged for another 180 days, although the LoA stipulates that the movement of asylum seekers can be restricted for a period of up to 3 months, and,

6 These issues were identified based on data collected through cooperation with the Mol and the direct work of the CLC with asylum seekers and asylees in the RoC via the provision of free legal assistance to those categories of persons.

7 Article 21 of the LoA prescribes that an alien who illegally enters the Republic of Croatia, coming directly from a territory where his/her life or freedom has been threatened shall not be punished for illegal entry or stay if he/she submits an asylum application without delay and if he/she presents valid reasons for his/her illegal entry or stay.

8 According to the new Law on Foreigners (LoF), in cases of illegal residence and illegal border crossing, the Mol is the competent authority to decide on deportation, without conducting a misdemeanour procedure.

1 The Croatian Law Centre (CLC) is a non-governmental organisation founded in 1994 with the main goal to establish and promote rule of law in Croatia. Since 2003, the CLC has been, through various projects, actively involved in the development of the asylum system.

2 Under the Law on Asylum (LoA), an 'asylum seeker' is an alien who has applied for asylum regarding which a final decision has not yet been made and an 'asylee' is an alien who has been granted asylum under the LoA. 'Asylee' was used in the LoA to distinguish between 'refugees', which is a term used to describe refugees from the war in ex Yugoslavia in the 1990s.

3 Under the LoA, 'subsidiary protection' is the protection granted to an alien who does not fulfil conditions for asylum, but for whom there exists a justified belief that he/she would be, if returning to his/her country of origin, exposed to the risk of suffering serious harm, and who is not able, or due to this risk is unwilling, to avail himself/herself of the protection of that country.

4 The Mol is the competent authority for deciding upon asylum applications. An appeal against the Ministry's decision can be lodged with the Commission for Asylum, and a lawsuit against the Commission's decision can be initiated before the Administrative Court of the RoC.

5 In order to monitor access to the asylum procedure, the CLC obtained funding under the Matra Programme of the Netherlands Ministry of Foreign Affairs, in cooperation with the Dutch Refugee Council, and supported by United Nations High Commission for Refugees (UNHCR). The project is carried out in cooperation with the Mol. The monitoring of border police interviews with intercepted irregular migrants began on 1 March 2009.

for justified reasons, may be extended for another month. This detention is a clear violation of their right to freedom of movement.

### Asylum seekers' rights

According to the LoA, asylum seekers are entitled to residence in the RoC, provision of basic living and accommodation facilities, health care, elementary and secondary education, financial support, free legal aid, humanitarian aid, the right to work, and freedom of religion and religious upbringing of their children. However, issues have arisen in relation to access to education. Although the LoA prescribes that asylum seekers are entitled to elementary and secondary education under the same conditions as Croatian nationals and that this right should be made available within three months from the day of submission of the asylum application (or within one year in the case where the asylum seeker is not familiar with the Croatian language), there have been some problems in practice. Due to the lack of a programme for learning the Croatian language, different approaches and standards are applied to a minor asylum seeker of school age: those who are from neighbouring countries and speak a language similar to Croatian are sent to school, but this is not the case where the asylum seeker speaks an entirely different language. The problem has arisen because the ministry responsible for education failed to pass the programme for learning the Croatian language, history and culture for asylum seekers and asylees within 120 days from the day that the LoA entered into force. In practice, the MoI is dealing with this problem on a case-by-case basis, but other competent ministries, such as the Ministry of Education, are not fulfilling their obligations prescribed by law.

### Rights of asylees and persons under subsidiary protection and their integration

According to the LoA, asylees and persons under subsidiary protection are entitled to residence in the RoC, accommodation, work, health care, education, freedom of religion and religious upbringing of children, free legal aid, social welfare and family reunification. In addition, asylees are entitled to assistance in inclusion into Croatian social life, i.e., to integration. Issues have arisen in relation to both accommodation and integration. The Ordinance on the accommodation of asylum seekers, asylees, aliens under subsidiary protection and aliens under temporary protection provides that asylees who are unable to find accommodation shall be provided with accommodation in the accommodation facilities which the RoC has at its disposal for that purpose within thirty days from when the granting of asylum becomes final. Such accommodation includes residence in an appropriate accommodation unit where basic hygienic needs can be met and that allows for the independent preparation of food. However, in practice, once a person is granted the status of asylee, he/she can be accommodated in the

Reception Centre for Asylum Seekers for months.

There are currently only thirteen asylees in Croatia. But even with such a small number, the system is not functioning due to insufficient budget funds. Furthermore, asylees and persons under subsidiary protection who are accommodated in the Reception Centre for Asylum Seekers are not entitled to financial support.

Integration is also lacking support from the authorities that are supposed to be involved in the process. According to the LoA, the competent ministries shall ensure conditions for the inclusion of asylees into the cultural, economic and social life in Croatia. In that process, special attention shall be paid to the organisation of Croatian language courses; other courses, seminars and education and professional training; and the provision of information about Croatian history, culture and state organisation. However, to date, language courses have not been provided to asylees on time. This inhibits them from integrating into society. Lack of language skills can also prevent them from finding employment and financially supporting themselves. Furthermore, persons under subsidiary protection are not entitled to language courses and other benefits of the integration process.

### Conclusion and recommendations

Although the issues outlined above can be attributed to the asylum system being relatively new and untested, there is certainly a need for a review of the current system to:

- Change the practices regarding the detention of asylum seekers
- Implement hearings before the Administrative Court with the aim to determine the facts
- Further strengthen the legislation and institutions in terms of the integration of asylees
- Improve cooperation among competent ministries with regard to asylum seekers' and asylees' rights

Croatia has not yet fully adopted policies and procedures to cope with the transition from being a transit country to a refugee receiving country. In this regard, any legislative or practical shortcoming that prevents people in need of protection from applying for asylum will continue to force their movement toward the EU.

On accession to the EU, Croatian borders will become the external borders of the EU; it is expected that Croatia will change from a transit country to a destination country for asylum seekers and that the number of asylum seekers, as well as the persons granted protection will increase.

In an effort to further develop asylum policies and strengthen the refugee capacities and institutions in the RoC, the following recommendations are made:

1. The asylum procedures should follow the national

legislation and should be in full accordance with international refugee and human rights frameworks.

2. In practice, asylum procedures should be improved through education and awareness raising about asylum issues for state authorities, international organisations and NGOs.
3. Constructive cooperation between all the relevant actors, including state authorities, ombudsmen, international organisations and NGOs, should be strengthened to facilitate increased transparency and the quality of procedures in general. ■