UNIVERZA V LJUBLJANI

FAKULTETA ZA DRUŽBENE VEDE

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Evropeizacija azilskega sistema in zaščite beguncev: hrvaška azilska in migracijska politika

Europeanization of Asylum System and Refugee Protection: Croatian Asylum and Migration Policies

Doktorska disertacija

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Evropeizacija azilskega sistema in zaščite beguncev: hrvaške azilske in migracijske politike

Povzetek

Na Hrvaškem so bile begunske zadeve do preteklega desetletja omejene predvsem na okvir vojne v bivši Jugoslaviji, pri čimer je država izključno nudila začasno zaščito za množične prihode beguncev iz sosednjih držav. Trenutni azilski sistem, ki obravnava primere individualnih prošenj za azil, se je razvil po letu 2000. Takšen razvoj lahko povežemo s širšo strategijo za koordinacijo azilskih (in migracijskih) politik EU na ozemlju Unije in njenih širših območjih. Čeprav začetki delovanja EU na področjih migracij in azila segajo na sredino 1980-ih let, so bili odločnejši koraki na področju azilskih zadev (in njihovega usklajevanja) storjeni po sprejetju Amsterdamske pogodbe leta 1997. EU je med leti 2001 in 2005 razvila več ključnih instrumentov, na katerih temelji evropski azilski sistem: Direktivo o sprejemu prosilcev za azil (Council of the European Union 2003a), Direktivo o združevanju družin (Council of the European Union 2003b), Direktivo o kvalifikaciji (Council of the European Union 2004) in Direktivo o postopkih za dodelitev azila (Council of the European Union 2005). Te skupne norme so skupaj z drugimi odločilnimi dokumenti (npr. Schengenski sporazum in Dublinska konvencija) postale del *acquis communaitaire* in s tem zavezujoče za vse države članice in kandidatke (glej: Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities 1990; Schengen Agreement 1985). V teh pogojih je Hrvaška privolila v sprejetje norm, oblikovanje novega azilskega sistema in politik za nadzor migracij (24. poglavje *acquis communaitaire*). Proces reform se je začel s podpisom Stabilizacijsko-pridružitvenega sporazuma leta 2001 (in dodelitvijo uradnega statusa kandidatke za članstvo v EU leta 2004), s katerim se je Hrvaška zavezala, da bo do članstva v Uniji v celoti sprejela omenjene politike v domači pravni red. Hrvaška je leta 2003 sprejela prvi Zakon o azilu, katerega je leta 2007 zamenjal novi Zakon o azilu, ki je bil dopolnjen leta 2010. Pogajanja za 24. poglavje pravnega reda EU so bila uradno odprta leta 2008 in uspešno zaprta leta 2010. Pristopna pogajanja z EU so bila zaključena leta 2011, pri čimer je bil predviden datum za članstvo Hrvaške v Uniji julij 2013.

Kljub zaključitvi pristopnih pogajanj z EU, je malo znano o dejanskem delovanju hrvaškega azilskega in migracijskega sistema. Kot kaže literatura, je harmonizacija v primeru drugih (bivših in sedanjih) držav kandidatk prinesla mešane rezultate, ki so bili pogosto problematični za zaščito beguncev (glej: Bouteillet-Paquet 2003; Costello 2006; Garlick 2006; Gil-Bazo 2006; Gilbert 2004; Guild 2003; Hansen 2009a; Lavenex 2001; 2009; McAdam 2007; Moreno Lax 2008; Noll 2004; Spijkerboer 2007). Najprej *acquis* zavezujejo države k uvedbi minimalnih standardov in so bili pogosto sprejeti v nacionalne politike v takšnem minimalnem obsegu, predvsem v državah kandidatkah. Države so pogosto sprejele norme predvsem s ciljem zaščite države pred pritiski, ki izhajajo iz migracijskih in begunskih zadev (npr. nadaljnja krepitev nadzora in preprečevanja imigracije). Obstaja prepričanje, da je imela EU, predvsem Svet EU, negativno vlogo v tem pogledu (npr. motiviranje držav, da postanejo ali ostanejo restriktivne). Nazadnje v številnih primerih (predvsem v državah s problematičnimi političnimi institucijami, šibkimi gospodarstvi, pomanjkanjem tradicije imigracije in zaščite beguncev itd.) prenos *acquis* v nacionalno zakonodajo ni nujno pomenil njihovega doslednega izvajanja v praksi. Zgoraj navedeni avtorji so na osnovi teh spoznanj sklenili, da je evropska harmonizacija na področjih azila in migracij prinesla negativne vplive za pravice beguncev, ki so zagotovljene v mednarodni zakonodaji o beguncih in človekovih pravicah. V zadnjih letih

je ta ustaljen pogled začelo izzivati naraščajoče število avtorjev, ki trdijo, da EU povečuje svoje napore za zaščito beguncev (Battjes 2006; Hailbronner 1996; 2008; Kaunert 2009; Kaunert in Leonard 2011; Storey 2008; Thielemann in El Enanny 2008; 2011).

Pričujoča disertacija preučuje navedene predpostavke na primeru Hrvaške. V ta namen smo preučevali hrvaško sprejetje *acquis* EU na področju azila, kako je le-to vplivalo na pravice beguncev ter kateri nacionalni in zunanji (EU) dejavniki in stališča so vplivali na ta proces (npr. zakaj je bila sprejeta določena vrsta politike). V disertaciji smo za raziskovanje teh vprašanj uporabili koncept evropeizacije, ki osredotoča na preučevanje vplivov EU in njenih politik na nacionalne sisteme (glej: Featherstone 2003; Grabbe 2002; Radaelli 2003; Schimmelfennig 2005; Schimmelfennig in Sedelmeier 2005; Sedelmier 2006). Pri raziskovanju izhajamo predvsem iz predpostavk institucionalizma racionalne izbire (Dimitrova 2002; Grabbe 2002; Hértier 2001; Hughes et al. 2005; Kirişci 2007; Schimmelfennig 2005; Schimmelfennig in Sedelmeier 2005; Sedelmier 2006; Sissenich 2005; Steunenberg in Dimitrova 2007) in družbenega konstruktivizma (Börzel 2011; Börzel in Risse 2000; 2003; Checkel 2000; 2001; Jacoby 2004; Rose 1991; Risse in Wiener 1999). Omenjena pristopa skušata pojasniti vzorce strateškega obnašanja nacionalnih in mednarodnih akterjev in družbene vidike sodelovanja ter sta tako koristna za naš primer.

V disertaciji skušamo odgovoriti na sledeča vprašanja: (1.) Kako so bila EU *acquis* o azilu (in pomembnih migracijskih politikah) sprejeta v nacionalni zakonodaji in praksi? Kateri model zaščite (restriktivni ali liberalni) je Hrvaška ponudila beguncem? (2.) S katerimi dejavniki lahko pojasnimo določen model (zakonodajo in izvrševanje) zaščite beguncev na Hrvaškem? Kako so nacionalni in evropski okvir, potrebe in strategije vplivale na dosežene rezultate na področjih hrvaških azilskih zadev in zaščite beguncev? (3.) Kako so domače azilske politike in njihovi produkti vplivali na človekove pravice in potrebe beguncev? Kaj nam lahko hrvaški primer pove o (regionalni in globalni) vlogi EU pri zaščiti beguncev?

Izhajajoč iz teoretičnih predpostavk in obstoječega empiričnega znanja o prilagajanju nacionalnih azilskih sistemov na evropski okvir ter na osnovi razumevanja posebnosti hrvaškega primera pričakujemo v disertaciji sledeče rezultate in sklepe: (1.) Z namenom zadovoljitve evropskih oblasti in pridobitve materialnih in nematerialnih nagrad (članstvo in ugled), na eni strani, ter hkrati sledenja lastnih interesov, na drugi strani, lahko pričakujemo, da bo sistem sprejel le nujno potrebne politike EU. Slednje lahko vodi v sprejetje minimalnih standardov in restriktivno nacionalno zakonodajo in prakse. (2.) Nacionalni institucionalni okvir (institucionalna dediščina, ekonomske razmere, administrativni in finančni viri ipd.) lahko obravnavamo kot dodatni dejavnik, ki vpliva na uspešno sprejemanje norm in politik za zaščito beguncev. Glede na dejstvo, da je prišla glavna motivacija za sprejemanje azilskih politik in politik za zaščito beguncev od zunaj in ni bila notranje motivirana, lahko pričakujemo, da bodo nacionalni akterji izvajali reforme do mere, ki bo zadovoljila zahteve EU. (3.) Glede na šibek položaj pri zaščiti beguncev bo EU le stežka akter, ki bi lahko vplival na nacionalne sisteme pri preseganju negativnih predpogojev (mešanica nacionalnih interesov in institucionalnih in drugih težav). Namesto tega je pričakovano, da bo evropska *shizofrenija* na področju azila vplivala tudi na hrvaški sistem. (4.) V takšnem nacionalnem in evropskem kontekstu je pričakovan razvoj zelo restriktivnih tendenc, ki bodo usmerjene na preprečevanje in nadzor begunskih gibanj ter bodo imele neustrezne ali slabe rezultate za zaščito beguncev. Poleg tega bodo na gibanja beguncev na Hrvaškem in v regiji močno vplivale politike za upravljanje migracij, predvsem zaradi strogih politik EU za nadzor migracij in porazdelitev bremena. (5.) V takšni geografsko narekovani shemi za zaščito beguncev je pričakovano, da bo prenos

evropskih politik v hrvaško zakonodajo in prakso vodil v slabitev temeljnih pravic beguncev.

Prvi niz vprašanj (4. poglavje) je namenjen preučevanju prilagajanja hrvaške zakonodaje in prakse na EU *acquis* o azilu od sprejetja prvega Zakona o azilu (2003/2004) do konca študije (december 2012). Pri tem smo analizirali štiri področja, ki jih upravlja EU: (a) politike, ki določajo dostop do postopkov za dodelitev zaščite; (b) politike, ki urejajo postopke in kriterije za dodelitev zaščite; (c) ukrepe in prakse za sprejem prosilcev za azil; in (d) obseg in kakovost zaščite za osebe, ki jim je priznana pravica do zavetišča in zaščite. Drugi niz vprašanj (5. poglavje) zahteva analizo medsebojnega delovanja domačih in zunanjih dejavnikov, ki lahko prispevajo k razlagi rezultatov hrvaškega azilskega sistema. Natančneje se je študija osredotočila na raziskovanje domačih in zunanjih dejavnikov, ki so vplivali na odločanje in sprejetje azilskih politik. Tretji cilj analize (6. poglavje) se osredotoča na preučevanje nacionalnega sistema z vidika njegove sposobnosti za zaščito določenih pravic beguncev (mednarodno begunsko pravo) in njihovih temeljnih človekovih pravic (pravo človekovih pravic). Za razumevanje teh je potrebno pogledati kako hrvaški azilski sistem varuje navedene pravice: možnosti dostopa do zaščite, možnosti za dodelitev zaščite in pravice oseb, ki jim je bila priznana zaščita. Slednje predstavimo s pomočjo ključnih mednarodnih instrumentov za zaščito beguncev in človekovih pravic ter pojasnimo v odnosu do njihovega osnovnega namena, to je sposobnosti zaščite temeljnih človekovih pravic – človekovega življenja, varnosti, svobode in dostojanstva. V disertaciji smo za odgovor na omenjena vprašanja in testiranje hipotez uporabili kvalitativne metode raziskovanja, medtem ko smo kvantitativne podatke povzeli iz sekundarnih virov. Podatke smo črpali iz različnih virov (pravnih dokumentov, poročil, okroglih miz, konferenc in odprtih srečanj, medijev ipd.) in jih dopolnili z izsledki iz (a) raziskovanja z udeležbo in (b) niza neformalnih pogovorov s ključnimi udeleženci ter intervjuji z glavnimi domačimi in evropskimi akterji (23). Zbrane podatke smo interpretirali z uporabo metode kvalitativne analize podatkov.

V disertaciji smo večino zastavljenih hipotez potrdili. Hrvaška zakonodaja je v veliki meri sprejela zahteve EU, čeprav v minimalnem obsegu in v praksi pogosto nedosledno. Nekatere politike (za sprejem in priznavanje statusa) kažejo pomemben razvoj od zgodnje faze reform, medtem ko so druge politike ostale le delno sprejete (dostop do postopkov za azil) ali slabo razvite (pravice oseb pod zaščito). Razlogi za takšne rezultate izvirajo iz medsebojnega delovanja domačih in zunanjih dejavnikov. Na nacionalni ravni velja med dejavniki, ki so najbolj vplivali na reforme, izpostaviti negativna stališča odločevalcev ter slab institucionalni in administrativni okvir. EU je imela pomemben vpliv na razvoj reform, vendar je proces ostal nedokončan. Vzroki za slednje se nanašajo na šibke strategije EU (pritisk in pogojevanje članstva, socializacijo in prepričevanje) in stališče, ki ga ima zaščita beguncev v agendi EU (konflikt med nadzorom imigracije in državne varnosti ter zaščito beguncev in človekove varnosti). Evropeizacija nacionalnega azilskega sistema je imela škodljive posledice za mednarodno priznane pravice beguncev. Sistem ponuja velike možnosti za preprečevanje gibanja prosilcev za azil (na ozemlje Hrvaške in območju EU), omejene (čeprav naraščajoče) možnosti za dodelitev zaščite in slabo kakovost zaščite za osebe, katerim je priznan status. Medtem ko na nekaterih področjih azilski sistem kaže napredek, je v celoti prilagajanje hrvaških migracijskih in azilskih politik na evropski okvir omogočilo erozijo temeljnih pravic beguncev.

Prvo poglavje ponuja pregled evropskih migracijskih in azilskih politik ter oblikovanja skupnih norm EU na področjih azila in migracij. To poglavje povzame tudi ključna stališča strokovnih razprav o vplivih evropske integracije na države članice in kandidatke (študije evropeizacije) ter študij, ki preučujejo zaščito beguncev v toku evropeizacije. Drugo poglavje predstavi teoretične, konceptualne in metodološke temelje disertacije ter izpostavi

ključna raziskovalna vprašanja in hipoteze. Tretje poglavje analizira širši nacionalni okvir in dejavnike, ki so pomembno vplivali na razvoj azilskega sistema. Četrto poglavje je namenjeno analizi sprejemanja *acquis* v nacionalno zakonodajo in prakso ter razlagi sprejetega modela azila. V petem poglavju skušamo pojasniti zakaj je nacionalni sistem odgovoril na zahteve EU na določen način in kako je EU delovala za dosego željenih rezultatov. V šestem poglavju skušamo prikazati kako so reforme in njihovi rezultati vplivali na pravice beguncev v hrvaškem primeru in kaj nam slednje pove o vlogi EU pri zaščiti pravic beguncev.

Disertacija predstavlja doprinos k tekočim razpravam o evropeizaciji in v migracijskih študijah. Medtem ko so študije o evropeizaciji prisotne v obsežni literaturi, ostajajo raziskave o evropskih vplivih na države nečlanice EU omejene. Raziskovanje prikazuje velike razlike med političnimi področji in državami, pri čimer ostajajo nacionalni in zunanji dejavniki, ki vplivajo na prilagajanje in njegove rezultate, manj znani. Podrobno preučevanje tematike nam je omogočilo poglobljeno razumevanje procesa evropeizacije v državah nečlanicah v splošnem smislu, ki se nanaša na vrsto političnih področij. Disertacija na enak način prispeva znanje na področju evropeizacije azilskih in migracijskih politik v državah nečlanicah EU, ki je v veliki meri zapostavljeno v migracijskih študijah. Poleg tega disertacija ponuja pomembne sklepe o prilagajanju hrvaškega sistema nove *acquis* o azilu (post-Amsterdamske *acquis*), pri čimer se raziskovanje osredotoča na novosti teh norm. Nazadnje disertacija prispeva temeljno znanje in razumevanje hrvaškega azilskega sistema, ki je doslej zelo omejeno. Slednje dokazuje malo obstoječih študij, ki so preučevale hrvaški primer (Feijen 2007; 2008; Lalić 2010; Peshkopia 2005a; 2005b; Sopf 2002; Šprajc 2004), ali so se osredotale le na določena področja hrvaškega azilskega sistema ali pa so zastarele.

Ključne besede: *evropeizacija*, *pogojenost*, *socializacija*, *zaščita beguncev*, *nadzor migracij*, *sekuritizacija*, *pravice beguncev*, *človekove pravice*

Europeanization of Asylum System and Refugee Protection: Croatian Asylum and Migration Policies

Abstract

Until the past decade, refugee issues in Croatia were mostly limited to the context of the war in the former Yugoslavia, where the state offered solely temporary protection for mass arrivals of refugees from the neighbouring states. Current asylum system, which covers cases of individual asylum seeking, was developed after 2000. Such course may be related to the wider strategy of coordination of asylum (and migration) policies of the European Union in its own territory and in its broader environs. Where the EU interference in migration and asylum commenced in the mid 1980s, it only after the Treaty of Amsterdam (1997) that more determinate steps have been done in the issues of asylum (and its harmonization). Between 2001 and 2005, the Union developed several critical instruments, considered as the cornerstone of the European asylum: Directive on Reception of Asylum Seekers (Council of the European Union 2003a), Directive on Family Reunification (Council of the European Union 2003b), Directive on Qualification (Council of the European Union 2004) and Directive on Procedure for Granting Asylum (Council of the European Union 2005). Along with other decisive regulations (such as the Schengen Agreement and the Dublin Convention), these common norms were made part of the *acquis communaitaire* and were thus mandatory for all members and candidate states. Under the given terms, Croatia accepted to implement the norms and create new asylum system and migration control policies (Chapter 24 of the *acquis communaitaire*). The process commenced with the signing of the Stabilization and Association Agreement in 2001 (and official status of candidacy in 2004), which obliged Croatia to introduce outlined policies into domestic order in full by the time of gaining membership. In 2003, Croatia adopted its first Law on Asylum (exchanged for the new Asylum Act in 2007, amended again in 2010). In 2008, negotiations in the Chapter 24 were official opened. Having satisfied demands of the EU; in 2010 the Chapter was successfully closed. Negotiations with the Union were finalized in 2011 and it is expected that Croatia will become a Member State in July 2013.

Where the negotiations are now completed, little is known on the actual functioning of present Croatian asylum and migration system. The literature demonstrated that in case of other (former or present) candidate states and member states, harmonization brought mixed results, often problematic for the protection of refugees (see: Bouteillet-Paquet 2003; Costello 2006; Garlick 2006; Gil-Bazo 2006; Gilbert 2004; Guild 2003; Hansen 2009a; Lavenex 2001; 2009; McAdam 2007; Moreno Lax 2008; Noll 2004; Spijkerboer 2007; etc.). Firstly, the *acquis* obliged states only on the minimal standards and has often been incorporated in the states' policies in such minimalist version (particularly in the candidates). Secondly, the countries often implemented the norms dominantly aiming to preserve state from the pressures arising from immigration and refugee issues (i.e. further boosting their ability to control and prevent immigration). It is held that the EU (especially the Council of the European Union) had particularly negative role in this regard (i.e. motivating states to become or remain restrictive). Finally, in many cases (and especially in the states with problematic political institutions, weak economies, lack of tradition of immigration and refugee protection, etc.), legal transposition of the *acquis* did not necessarily mean consistent application of its demands in practice. Based on these finding, the outlined authors concluded that the European harmonization in asylum and migration brought detrimental effects for the rights of refugees – those set under the international refugee and human rights law. Where for a long time there was a consensus on these

issues, in past several years there is a growing number of authors that challenge such views and insist that the EU is increasingly growing in its powers to protect refugees (see: Battjes 2006; Hailbronner 1996; 2008; Kaunert 2009; Kaunert and Leonard 2011a; 2011b; Storey 2008; Thielemann and El Enanny 2008; 2011).

Our research is interested to investigate the given assumptions in the case of Croatia. In order to do so, we need to study how has Croatia adapted to the EU asylum *acquis*, how has this affected the rights of refugees and which domestic and external (EU) factors and positions explain it (i.e. why it has implemented particular modality of policies). To investigate the outlined questions, dissertation uses the concept of Europeanization which focuses on studying of effects that the Union and its policies have on national systems (see: Featherstone 2003; Grabbe 2002; Radaelli 2003; Schimmelfennig 2005; Schimmelfennig and Sedelmeier 2005; Sedelmier 2006). In particular, the research utilizes the propositions offered under the strands of rational institutionalism (see: Dimitrova 2002; Grabbe 2002; Hértier 2001; Hughes et al. 2005; Kirişci 2007; Schimmelfennig 2005; Schimmelfennig and Sedelmeier 2005; Sedelmier 2006; Sissenich 2005; Steunenberg and Dimitrova 2007). and social constructivism (Börzel 2011; Börzel and Risse 2000; 2003; Checkel 2000; 2001; Jacoby 2004; Rose 1991; Risse and Wiener 1999). These approaches search for explanations in the patterns of strategic behaviour of national and international actors and social aspects of cooperation and are useful for our case.

The dissertation studied the following questions: (1.) How was the European *acquis* on asylum policies (and relevant migration policies) implemented in the national legislation and practice? Which model of protection (restrictive/liberal) has Croatia offered to the refugees? (2) What explains particular model (legislation and enforcement) of the refugee protection introduced in Croatia? How domestic and European context, needs and strategies interfered to create results that we see in the Croatian asylum and refugee protection issues? (3.) How have domestic asylum policies and products impacted human rights and the needs of the refugees? What the case tells us about the (regional and global) role of the European Union in protecting refugees?

Departing from the theoretical assumptions and existing empirical knowledge on the adaptation of asylum systems to the European framework, as well as from the understanding of the particularities of the Croatian case, the study expects to find the following realities: (1.) Aiming to satisfy the European authorities and obtain material and non-material rewards (membership and reputation), while at the same time pursing its own interest; the system may be expected to implement those policies that are strictly necessitated from the EU. This may be anticipated to fix the standards to minimum and lead to restrictive national law and practices. (2.) Domestic institutional context (institutional legacies, economic conditions, administrative and financial resources, etc.) may be considered as another factor that would tend to relegate successful implementation of the refugee protection norms and policies. Given that key motivation for building asylum policies and refugee protection policies came from the outside and was not intrinsically motivated, we may expect that domestic actors will seek to push on the reforms only in an extent that is demanded by Europe. (3.) With its ambiguous positioning on the protection of refugees, the EU can hardly be an actor that could make national system overcome (most of) rather negative preconditions (mix of national interests and institutional and other difficulties). Instead, it is expected that European schizophrenia in asylum will affect Croatian system too. (4.) In such context, the point of balance between domestic and European position is expected to boost heavily restrictive tendencies aimed at prevention and control of refugee movements, with inadequate or poor results for refugee protection dimension. At the same time, due to strict policies of migration control and redistribution demanded by the EU, the refugee movements in Croatia and its

neighbourhood are expected to be greatly impacted by the its policies of migration management. (5.) In the context of geographically dictated refugee protection scheme, export of the European policies to Croatia is expected to result in erosion of basic refugee human rights.

The first set of questions (Chapter 4) presupposed studying of adaptation of the Croatian laws and practices to the European asylum *acquis* since the implementation of the first Asylum Act (2003/2004) until today (December 2012). In doing so, we needed to analyse four key areas that the EU has regulated: (a) policies determining access to procedures for granting protection; (b) policies regulating procedures and criteria for granting protection; (c) measures and practices of reception for asylum seekers; and (d) content and quality of protection for persons recognized shelter. The second set of questions (Chapter 5) necessitated us to analyse interaction of domestic and external factors which could be considered to explain results obtained in our asylum system. In precise, the study searched to identify which domestic and external factors impacted decision making and implementation of asylum policies. The third goal of the analysis (Chapter 6) assumed studying of domestic system in the light of its ability to protect particular rights of refugees (international refugee law) and their general human rights (human rights law). To understand these, we needed to see how the Croatian asylum system protects the outlined rights: chances to claim protection, chances to be granted protection and rights of persons recognized protection. These were read from the crucial international instruments of refugee and human rights protection and interpreted in relation to their underlining purpose: i.e. their ability to protect the most central human rights, such as human life and safety, freedom and dignity. To answer the given questions and test the propositions, the research used qualitative research methods. Quantitative data has been obtained from the secondary sources. Information was collected from a variety of sources (legal documents, reports, round tables, conferences and open meetings, media content and other) and complemented with information obtained from (a) participating observation as well as (b) informal conversations and interviews with the major stakeholders and the beneficiaries (23). Data was interpreted using the method of qualitative data analysis.

Preliminary assumptions have been confirmed. In the greatest part, domestic laws have been adapted to the EU demands – yet, in minimal version – and the practices were most often inconsistent. Some of the policies (reception and recognition) demonstrated important progress since the early phase of the reforms, while others stayed only partially adapted (access to procedures) or weakly developed (rights of persons recognized protection). Explanation for such products can be found in the interaction of domestic and external factors. On domestic side, features that most dominantly structured given reforms are (a) negatively positioned interests of decision makers and (b) deprived institutional and administrative settings. The EU had great leverage in the evolution of the reforms; but it left the process unfinished. The reasons pertain both to (a) weaknesses in its strategies (pressure and conditioning with membership, and strategies of socialization and persuasion) and (b) particular position that refugee protection has in the EU agenda (i.e. conflict of immigration control and state security versus refugee protection and human security). Europeanization of domestic asylum system had harmful consequences for the internationally recognized rights of refugees. The system offered great capacity of preventing the movement of asylum seekers (to Croatian and the EU territory), limited (though increasing) abilities to grant protection and poor quality of protection for persons recognized shelter. While in some issues the asylum system showed progressed; on the whole, import of the European framework on migration and asylum to Croatia enabled erosion of the basic rights of refugees.

Chapter 1 reviews the policies of migration and asylum in Europe and creation of the common EU norms on migration and asylum. This chapter also summarizes crucial notions in the scholarly discussion debating the effects of the European integration in the member and candidate states (Europeanization studies) in general and the studies debating refugee protection in the course of Europeanization in particular. Second part presents theoretical, conceptual and methodological foundations of our study, pointing to the research questions and key preliminary theses of the study. Chapter 3 discusses broader domestic contextual factors which may be considered significant for development of asylum system. As stated above, the fourth chapter analyses how domestic laws and practices adopted the *acquis* and which model of asylum they implemented. Chapter 5 searches to explain why national system responded to demands in a particular way and how the EU further acted to obtain preferred results. Chapter 6 aims to answer how the reforms and their results impacted rights of refugees in the Croatian case and what this tells us about the role of the EU in protecting the rights of refugees.

Study adds to the ongoing debates in both Europeanization and migration studies. While Europeanization studies record the growing body of literature, investigation of the Union effects in the non-Member states are still rather neglected. Research demonstrates great divergence across policy areas and countries, but national and external factors that allow it and their outcomes are still less known. Close examination of the context that was conducted in this study enabled us to gain deeper understanding of the process of Europeanization in the non-member states – in general terms (pertaining to a wider array of policy areas). In the same manner, the study contributes to knowledge in the area of Europeanization of asylum and migration policies in the non-Member states in particular – a field which has been so far largely neglected in migration studies. Particularly important, the dissertation offers results on the adaptation of the Croatian system to the new body of asylum *acquis* (post-Amsterdam *acquis*) where the research is especially limited given the novelty of these rules. Finally, the research offers creation of the basic knowledge and understanding of Croatian asylum system, which so far has been rather poor. Limited number of studies that dealt with this case (Feijen 2007; 2008; Lalić 2010; Peshkopia 2005a; 2005b; Sopf 2002; Šprajc 2004), did it mainly by investigating some specific areas of the Croatian asylum system or these studies are by now outdated.

Key words: *Europeanization*, *conditionality*, *socialization*, *refugee protection*, *migration control*, *securitization*, *refugee rights*, *human rights*

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Abbreviations

CAT	Convention Against Torture
CEAS	Common European Asylum System
CEECs	Central and Eastern European states
CfP	Center for Peace Studies
CLC	Croatian Legal Center
EC	European Community
ECHR	European Convention on Human Rights
EU	European Union
IDP	Internally Displaced Person
JHA	Justice and Home Affairs
LoA	Law on Asylum
MoI	Ministry of Interior
SAA	Stabilization and Association Agreement
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Introduction

Refugee protection and asylum issues have always been a complex phenomenon, particularly due to the fact that they are situated between the core questions of human rights and the most crucial issues of state sovereignty. As a subject of human rights, refugee protection regimes determine the most sacred of human values. On an abstract level, no liberal democracy questions whether human beings – of any race, nation or locality – deserve to be provided with life or safety and freedom or dignity. Liberal values and their link to universal human rights have often been perceived as a ground to moral superiority of the liberal democratic states over a number of regimes in the globe, and often this image was particularly nurtured in the Eastern Europe. Aiming to join such community, in the end of 1980s and the beginning of the 1990s, a variety of formerly socialist states abolished the socialist rule and engaged in a heavy process of transition to democracy, at the same time working to unite with the Western European states in the EC/EU.

After the Second World War and during the Cold War, Western European (and other industrialized countries; most prominently the U.S.) had a particular role in refugee issues of the former socialist states, providing shelter from political persecution and violence occurring in a variety of the socialist countries during the Cold War. Developing slowly from the end of the First World War, but responding more determinately to detrimental consequences of the Second World War, the regime of refugee protection was for the first time regulated at the international level with the signing of the Convention Relating to the Status of Refugees and Stateless Persons in Geneva in 1951 (hereinafter: Refugee Convention). Acknowledging that fortification of the most central human values must become a matter of international norms, 26 states signed the Convention that sought to oblige them to give safeguard to the persons who cannot obtain it form their own regimes.[1] Stressing that in the world of modern nation states each person necessitates protection of the state, whereby its absence leads to the loss of rights that are most central for human lives, participatory states agreed to set common (minimal) guarantees for protection of stateless persons and refugees. The 1951 Refugee Convention still entailed particular geographical limitation: it was designed for refugees from Europe solely (and those affected by political events occurring prior to 1951). Initial unwillingness of the states to

1 Initially, the Convention had 26 participatory states (including countries of Western Europe, the former Yugoslavia, U.S., Australia, Canada, some states of Latin America, Middle East, Egypt, etc.).

extend protection to other nations and new refugees – which would have presumed duties on a much wider scale – demonstrated other dimensions of the asylum issues. As undisputed as the values were; states were not in ease with the idea that they had to resign to their control and accept (potentially great) numbers of the populations in need. Crucially affecting central issues of states' traditional functions – control of territory, population and membership – the governments were reluctant to give up their powers to the international domain. However, development of the international refugee regime in the following years succeeded to soften initial defensive rules. While still determinate to carefully formulate demands, with the 1967 New York Protocol to the Convention, the states agreed to give universal character to the 1951 Refugee Convention, particularly demanding it cannot be used in discrimination to any locality, nation, religion or race.

During the Cold War, the greatest number of refugees continued to arrive from non-Western European states (i.e. the socialist states). Numbers of these were quite limited and the refugees were relatively easily accommodated to the host states. Most of the persons were endowed with quite generous rights. Economic boom after the Second World War facilitated such course as well. Need for foreign labour made for quite liberal policies of immigration (in general) and attracted various immigrants to Western Europe and other industrialized states, especially from less developed states. However, the governments had not expected immigrants to stay. A friendly attitudes of the Western European governments – expecting migrants workers would leave once economic needs were fulfilled – changed when countries encountered economic crisis and realised the immigrants were here to stay. In the late 1970s and the 1980s, Western Europe slowly started to close for immigrants. The parallel rise in immigration following the end of the Cold War and the collapse of socialism will assist the growth of particularly defensive agenda towards immigration in Europe. As we shall see, this will have further effects for refugees as well. Led by the idea of protecting their own national (material and non-material) resources, states installed great restrictions to immigration of all kinds, including for refugees.

Where restrictive measures (i.e. visas, readmission agreements, strict control of migration movements, etc.) were initially designed for regular migration, having not been particularly planned for immigrants that arrived to seek protection; they have soon commenced to be applied to all migratory movements. As the number of asylum seekers increased, further measures have been made to target movements of this group in particular. States introduced solutions for preventing arrival or for easily returning asylum

seekers to their own states or third countries' territories, tightened their asylum procedures and lifted demands in granting protection. By the end of 1980s and in the beginning of the 1990s, most of Western Europe introduced (more or less) stringent rules aimed at controlling the movements and stay of asylum seekers and immigrants. Whilst a variety of scholars and human rights organizations protested against these policies; governments claimed their right to defend from uncontrolled arrival of aliens to their states. In the 1980s and particularly the 1990s, the Member States of the European Union (then: European Community) realised the only way to make control and prevention policies more effective was to have it planned in cooperation. Especially in the prospect of the common internal market without internal frontiers; they found it crucial to make sure that the Union secures its external frontiers. Besides this goal, the states saw that they needed to find the accord on the question of redistribution of immigration (including asylum seeking and refugee movements) within such a borderless zone. Recommendations given under the Refugee Convention – i.e. creation of the regime that would presume joint efforts to work on solving of refugee issues in the spirit of solidarity – could not compete with states' eagerness to defend themselves from immigration. A lack of ability of the Member States to find an answer leading to the solidarily planned approach to refugee questions created space for other sorts of solutions.

While the states which had large numbers of asylum seekers, refugees and immigrants in general would not give up on the need to find a method for controlling and rearranging these movements across the EU (e.g. Germany or France); countries that wanted to preserve their powers (e.g. the UK) decidedly rejected options which proposed establishing common bodies for granting asylum and redistributing these rates across all of the Member States. Instead of searching for the joint answers for a solidary approach to the rise in asylum rates, the states agreed to other methods. These worked on the strengthening of external borders, prevention of refugee movements, externalization of immigration and geographical allocation of the asylum rates. Since the early 1990s, states increasingly started to engage in activities that sought to prevent the movements of immigrants (including those of asylum seekers) and shift the problem to the third states. Cooperation in the intergovernmental channels of the EU – in this field led dominantly by the ministries of interior end services of national security – made for the European agenda that characterized the entire decade. Investments into mechanisms for preventing entry (visas and border controls) and the spread of control points in the states preceding the European borders (agreements on migration control and asylum with the non-member states)

represented an answer to what the governments saw as one of the greatest threats to contemporary states. Besides these, the members needed to find solutions for the internal management and control. Within the Union, the states agreed to follow "first entry rule": i.e. responsibility for immigrants and asylum seekers would rest on the Member State where the persons had first set foot.

With such underlining logic, European policies on migration and asylum have been exported to its neighbourhood. Those of closer environs and particularly candidate states obliged themselves to participate in migration control and refugee protection – as a way of contributing to the share of responsibility for immigration and refugee issues of the EU. European leverage – offering states membership in return – made states wiling to accept such deals. During the 1990s, it was the block of the new democracies in Central and Eastern Europe that became involved in the European framework. A number of other countries in wider environs also settled to participate in the control of (irregular) migration – yet, as we shall see, with vast consequences on the entire migration flows, including the movements of asylum seekers and refugees. A great array of scholars and organizations were terrified with the dynamics occurring in and outside EU borders. Stressing that the EU most eagerly invests vast efforts and resources in building a shield around its terrain, these commentators warned that the refugees are to loose even their basic rights.

During the 1990s, the European Commission and Parliament sought to participate in the processes of cooperation in migration in the EU; but there was not much space for their claim. States found the issue too central to let it be handled by agents other than the governments (and the Council of Ministers) themselves. Nevertheless, under the impact of several ongoing parallel processes, such dynamics changed. In particular, the fact that the seekers were continuing to arrive – now using irregular migration routes; there was still a tendency that some states attracted much greater rates of asylum seekers and refugees. These were usually the states that offered better standards of refugee protection and were otherwise more attractive to various immigrants (i.e. for factors such as the economy or the presence of culturally close immigrants groups in the state). With such dynamics, the governments have come to understand that an answer cannot be searched only in the methods of prevention and redistribution; but that the Union needed a way to make all of its own states (and external zones) relatively more attractive to asylum seekers and refugees and, as such, demotivate secondary movements between states. Secondly, the fact that the EU – which built its legitimacy promoting and supporting human rights – detached the refugee issues from the component of human rights and dealt with it exclusively as an

issue of state defence was increasingly criticized across the EU. Insisting on these arguments, the Commission and the Parliament managed to impose themselves as actors relevant for decision making in the immigration and asylum of the EU.

Based on the human rights sensitive agenda led by the European Commission, the EU responded with the creation of the new asylum framework that was to become common to all of the states of the EU and those zones which accepted its asylum *acquis*. Prescribed by the Amsterdam Treaty (1997), the EU obliged itself to create common principles of protection that would offer sufficient standards to refugees. By 2005, the EU yielded crucial instruments for setting national asylum policies and refugee protection, regulating the most critical issues such as admission policies, reception, qualification and procedural safeguards, as well as common set of rights offered to persons under protection. However, the new framework still had numerous flaws. Firstly, it set only minimal standards and not preconditions for something that could develop in the common policies for protecting refugees. Governments could not agree on a variety of issues and have thus decided to implement standards under which they were not allowed to go. Secondly, the *acquis* contained a number of loopholes which allowed for great discretion on the part of participating states. Eager to keep control, the states introduced a number of "may-can" clauses that still gave them possibility to withdraw from policies they did not prefer. Thirdly, the system affirmed a geographical scheme of sharing for the immigration and refugee movements planned before the Amsterdam goals, simply forcing immigrants, asylum seekers and refugees to remain in the countries they firstly arrived to. Fourthly, the Union did not end with policies of prevention and externalization of migration and refugee movements; instead, it has simply incorporated them into the new *acquis*.

Such framework was imposed to all of participating states (in the EU and outside), regardless of their preconditions, traditions, resources or institutions. Outside of Europe it was candidate states (former and present) and states related to the Union with other sorts of arrangements that accepted this new frame. Where the novel *acquis* did introduce a greater array of refugee rights; it did not end with the disputed policies aimed at prevention of refugee movements, rather than protection of refugees. As considered in the greatest part of the studies, such framework was to have the most detrimental effects in states which were already short in preconditions important for efficient refugee protection (such as tradition, knowledge, resources or institutional capacities for successful reforms and etc.). Motivating states to deflect on the refugee protection and inducing them to search for the same logic of functioning (i.e. preventing consequences for their systems); less developed

states and particularly edging zones were expected to deny the offer of proper standards for refugee protection. Indeed, this represented a rather interesting question: could still under-defined European policies of refugee protection, mixed with defensive states' logic and restrictive approach, bring any acceptable level of development to the asylum system in states which might have lacked even the most basic preconditions for quality asylum frame? Could such ambiguous European approach – divided between human rights and state defence, but often dominated by the first – offer refugees any adequate amount of rights? Particularly interesting cases here are the candidate states, as countries with specific obligations towards the EU. As demonstrated by various researchers, due to their particular contractual rapport with the Union, candidate states have a diverse position from the one of European members. Given they could not negotiate much or introduce their preferences to the *acquis*; export of the European policies in their case was expected to have the greatest effects – though not necessarily with optimal results. Many scholars expected the Union would have quite a great leverage to push these candidates to act as it preferred. While some believed than post-Amsterdam Europe represented a new chance for refugees; most authors, as shall be discussed, remained sceptical towards abilities of both the *acquis* and the European institutional scheme to provide refugees with decent set of rights.

In the dissertation, we will seek to find answers to these questions in the Croatian case, which was included in the European agenda after the Amsterdam order was in place. Unlike the former socialist states, which commenced the process of negotiation for integration to the EU already in the 1990s, Croatia started the process rather late – after the end of authoritarian (and nationalist) regime of the Croatian Democratic Union led by Franjo Tuđman. Once the new (leftist) government took over (2000), membership in the Union became priority of Croatian internal and external politics. This has not changed until today.[2] In 2001, the state signed the Stabilization and Association Agreement and commenced working on the adaptation to the body of law of the European Union – the *acquis communaitaire*. In 2003, Croatia commenced its application for membership. In June 2004, the state was given the status of candidate country. In October 2006, negotiations were officially opened. During the process of pre-accession, it was demanded to fulfil requirements in 35 chapters of the *acquis*. In 2011, the European Commission

2 In 2003, the (reformed) Croatian Democratic Union took over the government. However, the leverage of the EU integration has not been undermined.

announced Croatia has fulfilled vital criteria for membership and negotiations have been successfully closed. It is expected that Croatia will enter the EU in July 2013.

Accepting the terms given under the Stabilization and Association Agreement, Croatia agreed to adopt European asylum and migration *acquis*, later defined under the Chapter 24 (Justice and Home Affairs). This presumed the adoption of a full range of rules in asylum and migration until the end of the negotiations, with no transitional period. Given that Croatia has been primarily an emigration and transit state (for immigrants and refugees passing to the EU); prior to the European interference, it did not have elaborated migration and asylum policies.[3] The framework claimed by the EU presumed development of rather complex and demanding policies aimed at control of migration movements and building of an entirely new asylum system. In 2003, Croatia adopted its first Asylum Act. Due to the need of adapting to the European *acquis*, this Law was exchanged for a novel version in 2007 and again amended for the same purpose in 2010. Intensive reforms of asylum (and migration) policies were assisted by the European funding and sharing of expertise. Officially opened in 2008, Chapter 24 was successfully closed in 2010 (December). Until today, the state has developed a variety of demanded measures and policies – yet, as we shall see, in uneven and rather restrictive fashion.

In the dissertation, we will analyse how Croatian asylum system adapted to European demands on refugee protection (and related migration control policies), how given results can be explained and in which way this has affected the rights of refugees. The outlined matters reflect on the core questions raised in the ongoing debates on the Europeanization of the asylum systems. Analysing, among other issues, the processes of change in domestic institutions and policies under the impact of the European integration, the Europeanization studies have become particularly prominent in the studying of the adaptation of candidate states to the European order. In this area, there are two particularly interesting strands of research which search to gauge how domestic and EU factors interact to create precise outcomes: i.e. rational institutionalism and social constructivism. Rational institutionalism searches for the reasoning in the logic of strategic conduct of national and international actors who aim to fulfil their interests and goals. The second strand, social constructivism, seeks for the rationale in social features existing in national and external environment (values, identities and beliefs) and those social factors that arise from the interactions of

3 Refugee crisis producing from the wars in the ex-Yugoslav states in the 1990s has been settled on provisional and temporary basis.

the main actors and institutions in the negotiation process (i.e. socialization). Whilst some tend to regard the two approaches as mutually exclusive; it is getting quite common to consider them as complementary. This is the course that our research will also take.

The study is centred around three sets of questions. The first (Chapter 4) engages with the results of adaptation of domestic systems to the European norms and researches the following issues: How have domestic laws and practices responded to the European demands and how consistently they reflect the norms given under the asylum *acquis*? Which kind of the system was developed in the process of integration to the EU: does our case reflect only minimalist (restrictive) standards or we can speak of a more generous (liberal) model of refugee policies in Croatia? How did the goals of state protection (reflected in the area of migration control) affect interpretation of the refugee protective norms? To provide answers to the outlined questions, we needed to study how the system developed, progressed and functioned in the four areas: (a) access to procedures for granting protection (i.e. ability of a person to claim protection in Croatia); (b) criteria and procedures for granting protection (determining chances to be provided with the status of protection); (c) conditions of material reception for asylum seekers (i.e. rights available until the procedure is finalized); and (d) rights of persons under protection and the content of protection. In each of these, the study provided close inspection of the legal framework and its application in practice since the beginning of the reforms (2003/2004) until the present day (December 2012).

The second interest of the study (Chapter 5) is to understand why the policies have been introduced and interpreted in such a particular way and seeks to explore the following: How can we explain the results obtained from the domestic system? Why has the system adopted legal principles in the given manner and what explains the particular model of their interpretation and application in practice? Which domestic and external (particularly, the EU-related) factors explicate products obtained in our case? Assisted with the theoretical and empirical knowledge in refugee (migration) and Europeanization studies, we have identified several areas which were assumed to importantly impact the process and results of the reform. These were: (a) values and interests of the domestic and the European actors (and institutions); (b) leverage of asylum policy in the structure of accession (in the EU and Croatia); (c) particularities of the Croatian negotiation with the EU (feasibility of membership, time frame, etc.); and (d) national resources and surroundings (economy, rule of law, institutional and administrative capacities, political culture, civil society, etc.). These were expected to be impacted by the unhinged

equilibrium between refugee protection and state protection concerns as well as the haziness arising from their tensions (in Croatia and the EU). To understand their relation and interactions, the study seized the knowledge offered by the broader Europeanization studies (and most notably, the institutional rationalism and social constructivism) and those framed under the refugee and migration studies (particularly the branch in refugee and migration studies dealing with the Europeanization of asylum policies).

The third area under investigation (Chapter 6) relates to the effects of the European integration and refugee rights in the Croatian case. In particular, the dissertation researches subsequent matters: How have European norms and their interpretation in the Croatian case affected the rights of refugees? How the given products affect the rights specified under the international (and regional) refugee and human rights law? What does our case say about the role of the European Union in the protection of refugees in regional and global terms? In approaching the outlined questions, the dissertation necessitated to study the subsequent matters. Firstly, how the domestic system addressed the key rights of refugees given under the international (and regional) instruments of refugee protection and most crucial human rights (representing foundation and purpose of refugee specific rights). These were investigated in the Croatian context; yet, the study also needed to question how Croatian application of the European demands reflected on broader (regional and global) movements of refugees. Having established conclusions on these issues, the dissertation applied the results on the core questions raised in the refugee studies which discuss the role of the European Union in protection of refugees.

Based on the understanding of the domestic context and based on the close reading of the literature offered within the refugee studies and Europeanization studies, the study expected to find several tendencies. Due to pressures and (material and non-material) costs arising from the refugee protection policies, the study assumed that the domestic system will adopt those norms that are deemed necessary to gain membership in the Union, neglecting to address refugee protection in a more generous manner. Lack of institutional capacities (prior to all, rule of law and administrative setbacks), insufficient experience and tradition in asylum and migration issues, troubled economy and weak social policies, along with other factors, were anticipated to negatively affect the process of reforms. Where the European membership was estimated to represent sufficient motive to overcome a number of (potential) obstacles; it is believed that the Union could hardly work to motivate the candidate to provide results necessary for sufficient refugee protection. This is believed to stem from: (a) restrictions in the European transformative power (and viability of *shallow*

reforms often found in the case of candidate states); (b) ambiguity of the EU in asylum and migration policies (i.e. clash of the state protection and refugee protection aims). As a consequence, it was expected that the Europeanization of the Croatian asylum system will produce an erosion of the rights of refugees, prior to all, adding to the prevention of their movement towards the system where protection is available (and effective) and offering inadequate quality of protection.

Preliminary assumptions were confirmed. In the course of reforms, the state accepted the greatest extent of demanded rules within domestic laws. In the largest part, these reflected only minimal standards and were restrictive in refugee protection. Once the law necessitated to be applied, a number of problems arose, often producing in the lack of consistency of domestic practices with the given EU standards (and even more, with the international standards of refugee protection). Where some areas are by today (more or less) improved (those relating to abilities of the system to provide protection status, and rights of asylum seekers to reception services); other remain unsecured (issues of access to procedures for granting protection) or are only poorly developed (rights of persons granted protection and their integration). As regards to national factors, among others, it was the particular (cost-reducing) interests of decision makers and disadvantaged institutional and administrative settings that decided the lack of proper results for refugee protection. Where the Union had important influence on the evolution of the asylum system; its intervention led only to partial results (in terms of refugee rights). The rationale pertain both to faults in its strategies (pressure and conditioning with membership, and strategies of socialization and persuasion), as well as its position on the refugee protection issues (i.e. conflict between state protection and refugee protection concerns). As a consequence, the adaptation of the Croatian system to the European demands led to attrition of the rights of refugees. Where a great number of persons are prevented from reaching domestic and European territory; a limited number of those that manage to obtain the status of protection in Croatia are provided with inadequate protection and are deemed to live in isolation and poverty. The fact that the European *acquis* presumes that arrival to Croatian territory ties an asylum seeker (and a refugee) to the Croatian system; persons who are forced to use Croatian territory in their movement to safety are increasingly loosing ability to find protection elsewhere.

Chapter 1 offers review of the European policies of migration and asylum after the Second World War and its tendencies for convergence, producing with harmonization in the late 1980s and 1990s. The opening chapter then briefly carries on reviewing key

scholarly debates examining European impact on the member and candidate states in general (Europeanization studies) and the academic literature debating refugee protection in the course of Europeanization. The second chapter provides the reader with insight to theoretical, conceptual and methodological foundations relevant for the study, outlining crucial research questions and preliminary assumptions from which the study departed. Chapter 3 offers understanding of domestic context relevant for studied reforms. It discusses migration and refugee realities present in Croatia prior to the European interference, overviews the context of negotiations with the EU and points to general conditions relevant for asylum policies existing at the time when the reform commenced. As stated, the fourth chapter provides analysis of domestic adaptation to the European asylum. Without entering debates on its effects on human rights of refugees; it studies how Croatian law and practices adjusted to the *acquis* and which model of asylum they implemented. As outlined above, Chapter 5 seeks to understand why the domestic system responded to demands in a specific way and how the European Union further worked to get preferred results. To remind, the final chapter (Chapter 6) then regards implementation of the European asylum policies in the light of broader human rights of refugees and seeks to explore how the policies impacted the rights of refugees in the Croatian case. The chapter enters wider discussions about the effects of the European harmonization on the rights of refugees and proposes its views on the key questions of these lively debates.

1 Concepts and Research: Europeanization and Refugee Protection

1.1 Europeanization: Definition, Concept and Theoretical Approaches

1.1.1 Studying Europeanization: Uncertainties of Definition and Meaning of Europeanization

In the past decades, and particularly since the mid 1980s, the EU has created remarkable sets of norms and policies aimed at regulating the various policy areas which were once in the exclusive competence of the nation states. While different areas contain dissimilar levels of obligations stemming from the commonly designed rules, there are hardly any policy areas that are by now left untouched by the EU (Nugent 2003, 50–53). Proliferation of the common norms and diversity of responses in the national systems induced great interest amongst scholars of social sciences, aiming to explain background, processes and results of the European integration. Until the 1990s, the literature mostly dealt with the issue of European integration and its impact on European structures (Börzel and Risse 2003, 1). As the EU was progressing with the creation of policies which were becoming compulsory for the member States, attention has switched to exploring the processes that shape decision making and then impact domestic policies. Since the past decade, there is a great proliferation in studies which aim to understand how the EU institutions, norms and policies affect domestic politics and policies: i.e. the processes of Europeanization.

While growing in the theoretical body of knowledge, the concept of Europeanization proves problematic for empirical research for several reasons. Firstly, the literature demonstrates that there is a whole variety of approaches to the phenomena. The research in the 1990s sought to understand the processes of integration and harmonization of policies in terms of the effects these had for the convergence of the national systems (Liefferink and Jordan 2002). However, such research did not yield many results as the studies have demonstrated that the process may lead to more divergence than similarity in the Member States. While a great part of the norms have not even yet been implemented in the Member States; those policies that have been accepted were still dominantly shaped by the pre-existing national traditions and styles (Börzel 2011; Genç 2010; Hughes et al. 2002; Mendelski 2008).

Clearly, Europeanization could not be described as a result since the concept would then be meaningless in empirical realities. It has by now become widely accepted that – if one wants to use the concept and explore the way that EU policies act on the national level – Europeanization must rather be defined as a process and not an end. However, another problem occurs here: the lack of comparable definitions. As authors have pointed (Börzel and Risse 2000, 11–12; Olsen 2002), there is such a diversity of definitions of Europeanization that they often depend on the particular "article or book chapter" (Olsen 2002).[4] For this reason, some authors considered that Europeanization cannot be used as an "organizing concept" (Kassim in Olsen 2002). Nevertheless, the research on Europeanization has not lost its prominence, although some scholars point to the need of conceptual clarity (see: Radaelli 2000). In the past several years, the comprehensive definition of Simon J. Bulner and Claudio M. Radaelli has gained more prominence. They defined Europeanization as processes of: "a) construction, b) diffusion and c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in EU policy process and then incorporated in the logic of domestic (national and sub-national) discourse, political structures and public policies" (Bulmer and Radaelli 2004, 4).

While this definition is getting ever more popular, it is not as useful when one seeks to study the process of Europeanization in non-member states. Because these countries cannot voice their preferences or their understanding and values (to such an important degree, at least), their adaptation occurs in quite different settings. Rather than uploading policies, the states outside the Union mostly download them. Such dynamics occur as a result of different negotiation conditions. In the candidate states, it is most commonly the prospect

4 For instance, James Caporaso, Maria Green-Cowles and Thomas Risse (in Radaelli 2000, 3) define Europeanization „as the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem-solving that formalize interactions among the actors, and of policy networks specializing in the creation of authoritative rules". Thomas Lawton (in Radaelli 2000, 4), states "that Europeanization is the de jure transfer of sovereignty to the EU level, and distinguishes this concept from 'Europeification', that is, the de facto sharing of power between national governments and the EU. Thus, Europeanization and 'Europeification' are identified with the emergence of EU competencies and the pooling of power". Tanja Börzel (in Radaelli 2000, 3) defines Europeanization as a "process by which domestic policy areas become increasingly subject to European policy-making", while Robert Ladrech states it is "incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making" (in Radaelli 2000, 3).

of membership that induces states to implement European policies. In the states that are not linked to the EU as prospective members, such imports are induced with other incentives (such as prospect for membership, economic agreements, visa arrangements, financial agreements, etc.). In some cases, however, the process does not necessarily need such a form of the *carrot and stick* approach; it can also be encouraged by the attractiveness of the European policies. This occurs especially when the EU and the Member States have solutions perceived as a meaningful answer to particular domestic problems, and when the policy and its source (i.e. the European community) have legitimacy in domestic surroundings (Checkel 2001, 562–563; Rose 1991, 14).

At any rate, today the EU has a strong impact on the states outside Europe and especially on the candidate states – often even more determinant than in the Union itself (Genç 2010) and is thus becoming increasingly explored in the context of Europeanization studies (for illustration, see: Adanova 2005; Dimitrova 2005; Epstein 2005; Grabbe 1999; 2006; Post 2005; Schwellnus 2005; Sissenich 2005; Spendzharova 2003; Topidi 2003). In this case, there is less divergence in the way scholars use the concept of Europeanization. While some may still disagree (see: Radaelli 2000), there is a growing consensus that Europeanization can be studied if one seeks to study how European policies affect the national systems in the non-member states. Most commonly, scholars tend to use the definition given by Simon Hix and Klaus Goetz (Trauner 2011, 5), where Europeanization is treated as a process where domestic institutions and policy practices change and such change may be ascribed to the European integration (Hix and Goetz 2000, 1–23).[5] In the following section we will review the issues of Europeanization in the non-member states and discuss prominent concepts used to study and explain its dynamics and outcomes.

1.1.2 Studying Europeanization in Candidate States: Rational Institutionalism and Social Constructivism

The process of Europeanization in candidate states is characterized with several particular features that differentiate their case from the Member States. Firstly, as stated, candidate states hardly have the ability to voice their preferences to the European level.

5 Another prominent definition arrives from Frank Schimmelfennig and Ulrich Sedelmeier (2005, 7) and presumes "a process in which states adopt EU rules". While the notion rule refers both to formal and informal rules; the definition is still limited since it hardly accommodates the share of values or ideational frames among the external and domestic actors and these may prove equally important for the implementation of particular policy. This shall be discussed in greater details in the next chapter.

Instead of contributing to the process of policy making, their governments are regularly placed in an "asymmetric relationship" (Grabbe 1999, 18), where the EU provides them with demands and guidelines and expects states to implement them. The prospect of membership – as a strong incentive for candidate states – acts as a motor of change which does not exist (in such a manner) in the Member States. Such a *carrot and stick* approach was frequently used by the EU in the last rounds of enlargement and is applied to the Western Balkans (Peshkopia 2005a; 2005b; Schimmelfennig 2005; Schimmelfennig and Sedelmeier 2005; Trauner 2011). In contrast to the Member States, this gives the EU quite a powerful mechanism in demanding change.

The outlined strategy led scholars to focus on studying the models of change in the national system through the lenses of conditionality theory. Conditionality theory, developed in international relations studies and the school of rational institutionalism, sought to explain how external actors induce compliance and change in domestic policies (Pollack 2006, 33–34). According to the theory, governments act like rational actors and accept solutions that will bring them the most benefit. In terms of policy adaptation, the governments will implement those options that may carry more benefits than harm. Translated to economic language that the rational institutionalism uses, decision makers as rational actors opt for policies which may bring more (material and non-material) benefits than costs (Dimitrova 2002; Grabbe 2002; Hértier 2001; Schimmelfennig 2005; Schimmelfennig and Sedelmeier 2005; Steunenberg and Dimitrova 2007). The role of the European conditionality is to change initial perception of balance of the costs and benefits. Relating rewards (or its lack of) to compliance (or its absence); gives added value to the benefits (or costs) of the policies it seeks to export. When successful implementation of certain policy may lead to membership reward, then the states regard its cost in a diverse manner: the prospect of membership may exceed the costs of policy implementation – if states highly evaluate such a reward.

While these propositions are rather useful in explaining why candidate states accept implementation of a great number of solutions they have initially might not even considered – and even those to which they were initially averse; it became clear that the candidate states agreed to implement the *acquis*, but they have implemented them unevenly. Even under (more or less) comparable motivation for membership, some states have performed better than others or some areas have been practiced more consistently than others. With the growing empirical evidences, theory has been elaborated and has refined a set of additional variables accounting for the success of reforms. Studies

demonstrated it is not sufficient that the Union promises membership and sets conditions. Instead, several other features will importantly impact its leverage to induce transformation in the candidates. Before anything, as authors warned (Kirişci 2007; Schimmelfennig and Sedelmeier 2005, 14) the prospect of membership needs to be credible. If the state perceives that its efforts will not be necessarily rewarded as stated; it will be motivated to deflect.[6] However, this also has not demonstrated a sufficient condition. Research also found that states can tend to turn aside on those policies that are not a part of their own (intrinsic) interest if they perceive that conditions could be bypassed (i.e. for instance, only formally accepted). As the authors put it, not only reward, but also conditions must be credible: governments need to know that failure to fulfil required criteria will lead to withdrawal of reward. If decision makers are aware that some other (political) reasons would determine membership – and not the results of the reform itself – they will be less inclined to implement the *acquis*, particularly in the areas where they do not see their interests (benefits) in the policy itself. Lack of clarity of conditions as well as ambiguous attitudes of the Union or the Member States in regards to specific policies can also negatively affect credibility of conditions. If governments realised that there is internal conflict in the norms (with Member States having diverse positions on the issue and its relevance) or if various Member States sent inconsistent messages about policy demands and conditions; the states could have manipulated the reform (Sissenich 2005).

Besides this, the research found another factor that is of great importance for success of the reforms: position and strength of veto players[7] and veto points. The existence of numerous veto points in institutional settings of the state may give power to those actors who have various interests in avoiding costs arising from the demanded reforms in particular policy field (Börzel and Risse 2003, 8–9; Hértier 2001, 5). This can greatly restrain domestic abilities for adaptation and hold down the effects of the reform. "The more power that is dispersed across the political system and the more actors have a say in political decision-making", the harder it is to encourage consensus on a national level or create "the 'winning coalition' necessary to introduce changes in the response to Europeanization pressures" (Börzel and Risse 2003, 8–9). If the European Union cannot

6 For instance, in Turkish case, the lack of commitment to reforms is often seen to be the consequence of lacking credibility of reward (Kirişci 2007).

7 Actors whose conformity is required for the alteration in the *status quo*.

(or does not) overrule these circumstances; its abilities to impact candidates can be narrowed.

Where these propositions enriched conditionality approach, the model still has very serious faults which can not be overcome if one remains limited exclusively to the rationalist perspective. This is so because rationalist accounts, narrowed at economic calculations, act as if decision makers and implementers work in a vacuum, where societal mechanisms and other factors (unrelated to calculations of benefits and costs) play no significant role. However, the actors do not only function as rational beings pursuing specific benefits; but they also have and adopt some values, ideas and a way to think about the issues – i.e. the way of understanding demands, their implications and context. Whereas research shows that decision makers are indeed impacted by the incentive of membership, which changes the balance of costs and benefits related to particular policy; their understanding of policy issues and solutions is in the first place dependant on a certain value frame, which gives the context to phenomena and policy that tackles it (see: Schimmelfennig and Sedelmeier 2005, 18–25). Besides this, a rich body of literature also shows that institutions and institutional actors develop logic of their own, one which is different from mere calculation of costs and benefits. This logic cannot be reduced to a simple equation of rationalist account, but pertains to factors that arise in the institutional interactions. Being exposed to specific understanding and a way of reasoning developed in particular institutional structures, actors tend to internalize these patters and comprehend policies through these lenses. While rational institutionalism ignored such logic, another important account developed in Europeanization studies – i.e. social constructivism, which tended to account for such societal factors that impact decision making and domestic change (Börzel 2011; Börzel and Risse 2000; 2003; Checkel 2000; 2001; Jacoby 2004; Rose 1991; Risse and Wiener 1999). Most of these scholars did not assume that the rational model is futile; instead, they saw that it could better be complemented with other features.

Unlike the rationalists, the constructivists departed from the position that domestic actors function in particular societal and institutional surroundings, have specific understanding of certain issues, concrete legacy and political culture, capacities and resources for reform (Börzel and Risse 2000). All these factors inevitably impacted the reform and enabled for a diverse set of circumstances in the implementation of various European policies. Where the conditionality theory measured for compliance or its lack of; this account found that states may implement policies – but once they did – different levels

of adjustments may occur. States may adopt policies only formally, with little or no impact on their actual behaviour; they can implement norms and only partially have the institutions change or they can have the practices actually transformed.[8] Modality of adaptation and its effects may be much affected not only by coercive mechanism, but also in the way that norms are communicated and interpreted – in the interaction of the national and external agents. More profound changes are expected when actors are convinced not only about reward, but also about the value and appropriateness of the policy in question. The *logic of appropriateness* (Checkel 2001, 557), where implementers believe in prestige of certain norms and practices, has been found to assist in the *logic of reward*. More precisely, domestic actors have generally been found more dedicated to the reform when they perceived that policies also represent appropriate solutions in accord with domestic needs and values (Checkel 2000; 2001; Haas 1998; Rose 1991).

The Union had options to affect such perceptions, and, as research shows, it most often did – using *soft mechanism* of impact: socialization and *persuasion*. In reality, where the government or actors have not been initially friendly to particular changes, the EU authorities have not only offered *carrots* or *sticks*, but have also often used diverse strategies to persuade the candidates about the necessity for reform. When policies have been well linked to the set of accepted values, actors have been expected to be more responsive to the changes it would bring. As literature shows (see Schimelfennig and Sedelmeier 2005, 18–25); the Union usually had various mechanisms at its disposal: it sought to impact domestic actors on its own (European institutions; most notably, the Commission) and at the same time, it aimed to provide domestic agents with networks of cooperation and communication with various experts from the Member States. Socialization in diverse channels supplied actors with shared knowledge, understanding and ideas over practical implementation of European demands. Whereas focused on how the external actors persuade and educate domestic decision makers and how domestic actors internalize the norms; social constructivism also found additional mechanisms that assisted the states to stay committed to the reform – concerns for reputation of the government and the states in front of external institutions and governments. Indeed, playing on the cost for reputation, the EU also tended to turn to strategy of "shamming and blaming" when candidates did not perform well (Meyer 2003, 11).

8 Scholars usually speak about diverse forms of adaptation: *absorption*, *accommodation* and *transformation* (see: Börzel and Risse 2003, 14–16)

Literature found that the effects of these could also be constrained by several important circumstances. Prior to all, the Union needed to have consistent set of values and norms related to the policies (rules and values) it sought to export (see: Checkel 2001; Rose 1991). If the policies, norms and solutions that it was demanding were unclear, inconsistent or lacked legitimacy in the Union and among Member States, this could have negatively impacted the process of adjustment in the candidate states. More precisely, if the actors were to implement norms as their own, it necessitated that these norms were legitimized and uncontested by the European institutions (and other important international actors) and within the Member States themselves. Yet, again, for EU policy to be legitimate at domestic level, it took that the candidate (decision makers and society) identifies both with the values that the particular reform presumed, as well as with the EU community in total. If domestic actors saw certain policy as unfitting to domestic norms (shared set of ideals) or if society did not share the general set of values with the Union itself, the process of adaptation could be undermined. However, having these circumstances positioned in a favourable way, the authors expected European Union could have done a great deal of impact using the soft incentives to change.

Some authors also pointed that if the named circumstances were in place, domestic policy makers could also search by themselves for solutions that existed elsewhere – even without being demanded to perform particular action. Such model of learning (the model of *lesson drawing*) presumed that dissatisfaction with domestic policy (or its segments) could motivate actors to search for lessons outside of the domestic frame. As the authors pointed out, while the EU intervention might lead the state to implement the rules, its rules could have been loose and allow candidates to choose among diverse options that various Members States have installed. In that sense, a range of policy and expert networks that the Union enabled (Rose 1991) offered a great stock of knowledge, experience and ideas that could be seen useful by domestic actors. These networks were expected to have an important impact on the candidates, particularly in areas where the states lacked previous experience and expertise.

Where social mechanisms have been found of great relevance for dynamics of reforms, some authors found that social incentives and disincentives have not been very effective without parallel strategy of offering concrete rewards (such as membership or other) (see: Schimmelfennig et al. 2006). Indeed, reluctance to transform particular policy areas – especially those where decision makers have not been particularly pleased about conditions – necessitated strong pressures (conditioning) from the EU. On the other hand, the effects

were to be often superficial and shallow unless complemented with the soft strategies (Börzel 2011; Jacoby 2004; Maniokas 2009). For these reasons, a great part of the scholars today (Börzel and Risse 2000; Checkel 2000; 2001; Fearon and Wendt 2002; Haas 1998; Jacoby 2004; Mendelski 2006; Schimmelfennig and Sedelmeier 2005) agree that the best model to study Europeanization is through embedded model, accounting for both rational and social factors of functioning and impact.

Most of the outlined propositions will demonstrate great relevance for our case. As we shall see, since many of the features emphasized here will be missing in the European approach to asylum, these policies will reveal a particularly complex area. The European Union will demand implementation of loosely framed refugee protection policies; yet, its institutions and members will not have clear and consistent understanding of the norms ingrained in the *acquis*. More precisely, whilst demanding states to implement the asylum and migration norms framed at the European level, the European institutions will be drifting back and forth between conflicting values, understanding and interpretations ascribed to the norms of refugee protection and states' protection. Preoccupation with the state defence (against migration) will dominate the European integration agenda until the late 1990s. A more determinant shift towards protecting refugees will occur after the adoption of the Amsterdam Treaty (1997). Still, policies, values and practices will remain quite schizophrenic and as such will be exported to other non-member states. In the following sections we will discuss the development of asylum policies in Europe and the development of migration control mechanisms that strongly impacted them.

1.2 Development of Asylum and Immigration Policies in Europe

1.2.1 Development of Refugee Protection in Europe and at the International Level

While creation of the international regime of refugee protection dates back to the 20th century, the right to shelter from threats to life and safety (asylum) dates back to pre-modern times of history. The term *asylum* originated from Greece (*asylos*) and presumed a place that provided individuals with safety from persecution or general threats (Grahl-Madsen in Lalić 2010, 13). In ancient and medieval times, asylum was mostly dealt within and by the churches and temples and not by the rulers themselves (Lalić 2010, 13). In the period between the 15th and 18th century, these types of migrations were considered as adding to the domestic labour markets and were generally welcomed by the mercantilist

societies; while in the 19th century it was revolutionary events in Europe that dominantly induced the movements of refugees (Lalić 2010, 14).

Organized state response and the response of the international community to refugee issues (and particularly large scale movements) date back to the beginning of the 20th century. Following the end of the World War I, collapse of great empires (Austrian-Hungarian and Ottoman), and the Bolshevik Revolution created for great displacements and movements of vast numbers of refugees across Europe (Lalić 2010, 15). As it is estimated, the establishment of the Soviet Union induced the movement of about 1.5 million Russian refugees, who fleeing to the states of Western Europe were reluctant to return to their own former state (Mesić 1994, 114). Being the citizens of states that no longer existed, they found themselves in the position of statelessness. The newly founded League of Nations (1920), decided to deal with refugee issues and enabled the establishment of the office of High Commissioner for Refugees. The Commissioner (Fridtjof Nansen) provided the Russian population with the so called *Nansen passport*, serving as an identity document and the first international protection guarantee. The same solution was later extended to the Armenian refugees who previously (in 1915) fled from the Ottoman genocide. The League of Nations defined the Russian *refugee* as "any individual of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired other nationality" (Nathwani 2003, 13).

Following such course, the League of Nations sought to institutionalize a wider international regime of refugee protection. The 1933 Convention on Legal Status of Refugees offered to protect persons that were (a) in position of statelessness or (b) unable to enjoy protection from their own state (Mesić 1994, 114). The Convention was promising as it banned states to reject refugees arriving at their borders or expulsing them from their territory (Jaeger 2001, 730). Nevertheless, it did not yield great success. It has been signed solely from nine states with the powerful ones (such as the UK or France) maintaining restrictions to some of its clauses (Jaeger 2001, 729).[9] Besides this, it was not applied to all groups of refugees. Soon there was a need to protect new refugees from Germany, Austria and Czechoslovakia – each of these separately tackled (Mesić 1994, 114). Based on the

9 Convention stated that states may limit to offer entry or practice expulsion of refugees only for reasons such as national security or public order. The Convention also demanded that in such cases, the country provides refugees with necessary authorizations and visas enabling them to move to another country (at their own request or the request of organization dealing with the refugee protection). UK was not accorded to accept this clause.

new grounds for protection, related to the safeguard of persons fleeing fascist governments, the definition of *refugee* in these cases included individuals that needed to flee "due to their political opinions, religious beliefs or racial origin" (Jaeger 2001, 731).

The Second World War (with over 30 millions of displaced persons in Europe) became the turning point for development of the international refugee law (Lalić 2010, 16–17). Having been unsuccessful in its key tasks (i.e. maintaining peace among the nations), the League of Nations was revoked. The term refugee was not readily used by all states. The U.S. and the UK in particular preferred to name the movements as *displacement*, pointing to the temporary character of the status, expecting persons would return to their states once conditions were secured. By 1947, over 7 million individuals had been assisted in returning to their states. Having over a million of refugees still present in Europe, the governments formed the International Refugee Organization of the UN (1948). The Organization was set on a temporary basis and aimed to regularise the status of Second World War refugees. Instead of offering a particular definition of refugee, it provided assistance to various sorts of victims: sufferers of war or fascist and Nazi regimes, Spanish republicans and other individuals who could not or would return to their states and diverse types of pre-war and post-war refugees (Marrus in Lalić 2010, 17). Reasons that would become especially important for the later development of the refugee law – persecution or fear of persecution based on race, religion, ethnicity or political opinion[10] – were also included in these forms of protection (Barnett in Lalić 2010, 17). The new arrangement recognized also the individual status of refugees (Lalić 2010, 18), crucial for developments of international asylum law.

With still over a million of refugees in Europe and with new reasons for flight inside Europe (such as political emigration from socialist Europe) and outside (i.e. Israel and Palestine, countries of the Middle East and African continent), it became clear that refugee issues are not of temporary character (Lalić 2010, 18; Mesić 1994, 115). In the late 1940s and 1950s, the international community under the United Nations (hereinafter: UN) finally decided to commence negotiating the future of the international refugee protection (Mesić 1994, 115). The states such as the U.S. and other non-European states were more ready to accept solutions which would limit their responsibilities on the international ground, whilst the countries of Western Europe advocated for a more active role in the issues of refugee protection (Marrus in Lalić 2010, 18). The compromise gave birth to the establishment of

10 As well as "objections, of a political nature judged by the organization to be valid" (Goodwin-Gill 1996, 4).

the United Nations High Commissioner for Refugees – UNHCR (1949), which was given mandate to protect refugees on the international level and find long term solutions for their settlement (based on the Convention for Refugees that was soon to be adopted). In 1948, the UN adopted the Universal Declaration of Human Rights (hereinafter: Human Rights Declaration), which stipulated the right of each person to seek protection from political persecution and enjoy asylum in the third state.[11] In 1951, the UN ultimately succeeded in having the states negotiate and adopt the Convention on the Status of Refugees and Stateless Persons. Even if until the adoption of the New York Protocol (1967) the Convention was limited to the refugees coming from the European continent; it was nonetheless an important move for the international community and refugee protection regime. Yet, despite the efforts of the UN and in spite of the fact that the Convention had called for further (additional arrangements); after the Protocol in New York there was no such international accord that would replace or supplement the content of the 1951 Refugee Convention. In 2001, state parties to the Convention reaffirmed their commitment to the Convention and established it was still the most central instrument for refugee protection (Lalić 2010, 22). The Convention established several areas regulated under international refugee law: definition of a refugee; grounds and scope of protection; rights of persons claiming protection and the rights of persons given asylum.

Besides the Refugee Convention, other international conventions and declarations are considered relevant for the refugee law. These are mostly the instruments of general human rights law; yet, in their general clauses or those particularly applicable to refugee issues, they contain important principles for refugee rights. Besides defending general human rights (protecting human life, safety, freedom or dignity and other human rights); some conventions and declarations stipulate specific rights of persons to be protected against political violence such as torture, arbitrary imprisonment or arrest (the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – CAT, Art. 3; the 1966 UN International Covenant on Civil and Political Rights, Art. 9); right to leave any country of residence or country of origin (the 1966 UN International Covenant on Civil and Political Rights, Art. 12); or the right not to be rejected entry on the frontier of the states (the 1967 UN Declaration on Territorial Asylum, Art. 3), etc. Besides these, after the Refugee Convention, other (regional) conventions

11 The Declaration as such is not a binding document; yet, scholars consider it as an important source of international customary law and as such becomes a legally binding instrument (Andrassy et al. 1995, 22).

relating to refugee and general human rights were adopted, such as those in African and Asian countries. The UNHCR had initially dealt with refugee issues in these countries based solely on the 1951 Convention; yet, in time, it has also added these regional initiatives under its competence.

The European continent developed its own (additional) regional refugee protection law, mostly through the work of the Council of Europe. After the Second World War, the Council yielded a number of resolutions and recommendations, seeking to purport the application of the Refugee Convention. In 1977, the Council established the Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons, which served as a unique European forum for exchange of information on international and national practices of refugee law and yields recommendations for the European states (Lalić 2010, 31). Although the recommendations of the Council are often disregarded by the states participating in its work,[12] the 1950 European Convention on Human Rights (hereinafter: the ECHR) of the Council of Europe became competent for several important issues related with the status of refugees. Stipulating that all persons have the right to life (Art. 2), liberty and security of person (Art. 5) and freedom from torture, inhuman or degrading treatment or punishment (Art. 3); the ECHR extended situations where individuals could be granted protection in European states. Where the status of protection involved diverse forms of protection (somewhere full asylum, elsewhere alternative protection); most of the Western European states offered additional protection to persons who could not qualify for status defined under the Refugee Convention. Besides obliging executives and judiciaries at the national level, the ECHR also allowed the European Court of Human Rights to build a large body of case law for the states participating in the Convention. In the past several years, the Court is gaining an increasing competence over the issues of refugee protection (for details, see: Mole 2007).

1.2.2 Immigration and Asylum in Western Europe after the Second World War

The end of the Second World War and the post-war economic boom occurring in the countries of Western Europe necessitated an economically profitable foreign labour force and proactive liberal immigration policies. During the first decades following the economic

12 Sensitive approach presented in the Council of Europe is often overridden by the security-oriented and restrictive approach debated in the JHA committees in the Council of Ministers (Post 2005).

rise, many of the Western European countries invested a great deal of effort in the import of the new labour force, coming from less developed countries and ready to work for reticent wages. At that time, most of countries (and even more the EC) lacked a more elaborated migration management strategy and plan. Immigration was used in dependence to the market needs and was not intended (nor contemplated) as a long-term policy. The immigrants were expected to leave once the need for their services no longer existed (Mesić 2003, 343–344). Protection of asylum seekers and refugees at the time did not create large problems for the countries of Western Europe, at least not in the extent that is perceived today. In the Second World War, Western Europe received the largest part of the refugees. However, favourable (post-war) economic conditions and the encouraging political-ideological frame of liberal democratic values allowed for their fast absorption (Moreno Lax 2008).[13] The number of Cold War asylum seekers did not pose greater troubles for the European states: the majority of seekers during the Cold War were political émigrés from the socialist countries (see: Hansen 2003, 35). The countries of destination usually enriched the immigrants with rights similar to those of the nationals; although they had not planned it to become permanent.

Such dynamics started to change with several incoming developments, which radically transformed the future of Western European migration policies: (a) the new economic crisis arriving in the 1970s; (b) the end of the Cold War at the end of 1980s, adding to (c) the increase in (real and expected) rates of overall migration movements towards Europe since the end of the 1980s onwards. Faced with the radical increase in immigration after the end of Cold War[14] and at the time of economic hardship (Castles 2000, 274; Hansen 2003, 35; Hatton 2005, 108), the national system gradually shifted towards increasingly defensive policies aimed at protection of the domestic labour and the welfare state. Instead of liberal policies of immigration, the states of Europe commenced to introduce (a) policies of deflection in the socio-economic and other rights of the immigrants already residing in their territories; and (b) severe restrictions on entry to new immigrants.

Perception of immigration as temporary and constructive for national needs at this stage commenced to change. Besides transformations in economic factors, inducing

13 Protection of refugees and asylum seekers was considered a demonstration of moral superiority of the West over the authoritarian East, short of political liberties and human rights protection.

14 The end of the Cold War had dual effect on migrations: (a) it removed the barriers for migration movements and (b) it meant the end of a dominantly non-violent character in the international order, determined in fixing bipolarities and the reluctance in usage of physical force.

governments to judge newcomers as a danger for the labour market and thus further contributing to the pressures of the social security system, the states (and their media and public) started questioning what new members bring for wider social values, national identity and culture. Still without concrete plans for integration policies, national systems started realizing that a loose approach towards immigration produced various social changes – with often isolated, unassimilated and culturally different immigrant groups now residing in their territories. With only increasing immigration rates at the end of 1980s and changed national needs, the European states shifted to deeply defensive discourse and policies, contemplating how to stop further increase in immigration to their states.

Since the mid 1970s and especially in the 1980s, most of the states of the European Community slowly established new political approaches to migration issues. The states commenced building mechanisms to prevent migration and in doing so, they used the greatest variety of mechanisms: (a) measures controlling and preventing the immigrants' arrival (visa regimes and carrier sanctions); (b) measures directing and thwarting the entry of aliens (border management rules); (c) provisions managing the stay of foreigners (residence and work permits, study and tourist residence); (d) return measures and policies (rules on expulsion of third country nationals and readmission agreements) (Boswell 2005; Mesić 2003, 347–348). In parallel, the countries had commenced cutting down the benefits for the immigrants (including refugees) residing in their territory: social welfare, health care, education rights, etc. (Schuster 2000). Deflection and restrictions in the overall immigration policies reflected on the refugee protection system in several manners. Firstly, policies related to entry were applied to asylum seekers in a similar fashion as to other immigrants; reserving several protective mechanisms for refugees (as shall be discussed later). Secondly, given that in practice, the only legal way of entry left for most of immigrants (who lacked work and residence permits) was on the basis of family reunification mechanisms and the quest for asylum, rates of bogus applications were considered to have risen once the European states introduced heavy entry controls. In turn, this provoked further reactions on the part of Member States aiming to prevent asylum seeking as a method of gaining (unfounded) entry to European territory. Finally, the states with more liberal and more generous policies of refugee protection came to see such measures as a cause for further growth in their asylum rates. Seeking not to be attractive to asylum seekers (at least not more than their neighbouring states); countries started to converge towards restrictions in social, economic and other rights (Lavenex 1998; 1999; Neumayer 2005; Schuster 2000; Withol De Wenden 1994).

By the end of 1980s, most of the states of Western Europe defined their asylum policies in light of the three following aspirations: (a) preventing large numbers of asylum seekers and refugees to their national territory; (b) averting immigrants form using the system of asylum as a method of gaining entry and residence to the territory; (c) avoiding to become (or remain) an attractive country of destination. At the beginning of the 1990s, most of the European states with high immigration rates already had rather similar patterns in their immigration control measures and deflection instruments.[15] Such modelled set of measures – born through national convergence – will become the corner stone of building common European immigration policies.

1.2.3 The Single Market and Harmonization of Immigration Policies in Europe

The critical moment for harmonization of the European asylum and migration policies occurred in the midst of the 1980s and was associated with the needs of creation of the European common market and the abolishment of internal borders. Planning to create a common European trade area without internal borders led states to contemplate how to deal with the immigration policies once the movements of people become (even more) complicated to control. Finding it crucial to manage (increasing) migration towards the European Community (hereinafter: EC), Member States set key objectives for the future cooperation in migration strategy. Abolition of internal checks and free arrangements within the EC was seen viable only with severe control of migration at its borders: control thus needed to be specifically strengthened on the exterior borders of the Community. However, given the fact that large parts of migration could not be effectively controlled unless it was planned in the cooperation (due to the usage of irregular means of migrating), the states saw it necessary to introduce severe common controls of overall immigration (Lavenex 1999; 2001; 2009).

Such dynamics gave particular powers to bodies that did not deal with issues of human rights. Whereas previously the asylum policies were under (greater or lesser) scrutiny of national parliaments and national courts that served as a balance to narrow (often security

15 At that time, the countries with highest asylum migration rates were the states in the centre of Europe (like France, Germany or the UK) while southern states (Greece or Italy) had been mostly the states of transit (Lavenex 2009, 1–2).

led) concerns of the executive and security organs of the state; European cooperation undermined such state of affairs (Joppke 1999). Struggling to maintain prerogatives over the area of migration in the process of European integration, the bodies of interior and security sought to seize intergovernmental channels of cooperation and create mechanisms of strong immigration control (Bigo 2000). Vast increase in immigration to Europe and prospects of a borderless zone in the EU purported reservations of these bodies over the security of the nation states. The idea that states needed strong migration control and common policies in this field made these bodies a motor for European integration in migration – yet, with (almost) exclusive preference for the safety of the state and hardly any evident concern for the safety of human rights (Lavenex 1999; Post 2005). Since the end of 1980s and the greater part of the 1990s, common steps in the area of migration have been intensively negotiated and planned by those actors who regarded migration as threat to security, disconnected from human rights. Led by the idea that issues of migration are questions of traditional sovereignty of the nation states, the European Commission and the Parliament were not let to share powers with the states and the Council of Ministers until rather late in the stage – i.e. after the Amsterdam Treaty (1997/1999). However, by that time, overall immigration and asylum had already been placed in the *securitized* frame: i.e. conceptualized as a matter of threat to the state and decreasingly seen as a question of human rights.

Positioning asylum in this particular frame occurred as a consequence of several parallel trends. Planned in security organs, a large number of the abovementioned mechanisms aimed at migration control was simply applied to refugees as to any other group of immigrants, with minimal or no mechanisms devised to protect this group (Collinson 1996; Costello 2006; Lavenex 1999; Moreno Lax 2008; Post 2005). Moreover, as the abuse of the asylum system came to be seen as a crucial method of entry for irregular immigrants; asylum issues increasingly came to be debated as a problem that needed to be contested, instead of the issue that necessitated state protection. Conceptualizing the overall irregular migration as one of the greatest security challenges (right next to global crime or terrorism); combat against asylum abuse became legitimized as one of the top duties of the Member States' and European asylum. Such tendencies further supported interests of national governments that focused on preserving other functions of the state (economy, social systems, identity, etc.) from large influxes of asylum seekers. As scholars claim, strong securitization of asylum went hand in hand with the interests of the states – and

enabled them to seize common rules to create a shield around the common borders, excluding vast numbers of refugees.

European immigration and asylum policies were therefore originally uniformed with principally a straightforward goal: enabling effective immigration management. Harmonization was guided by the uncomplicated national interests of state bureaucracies aiming to keep their traditional powers: preserving control over the state territory and the persons entering, staying or residing within the national borders. Widespread economic hardship, lack of immigrant integration and the (risk) of the increase in immigration rates (taken as a danger for economic, political and social stability) allowed the common European immigration strategy to boil down to the defence of Member States and Community against the arrival of immigrants. Other polices (such as those related to economic migration, labour policies, integration strategies and other) were kept in the hands of national administrations.

The key step towards the common immigration policies was the adoption of the Schengen Agreement in 1985 (Germany, France and the Benelux countries) which outlined that creation of the internal market needs to be followed with development of the common migration (control) policy. Determinant to ease the movement of good and persons between themselves, these five states agreed to facilitate internal border controls for the nationals of their states (and nationals of the states of the EC). This however presumed concentrated efforts in controlling for the movement of other countries nationals and their external borders. The states thus agreed to grant special attention to cooperation in, above all, the traffic in drugs and arms, the unauthorized entry and residence of persons and customs, tax fraud and smuggling (Art. 9). As the long-term goal of the Agreement was to abolish controls at the internal borders and relocate them to external borders, the signatory parties agreed they shall work to harmonize their legislation and policies of migration control and particularly those policies aimed at combating irregular immigration of the nationals of the states that are not members of the EC (Art. 17).

In 1990, the Agreement was supplemented with the Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders (hereinafter: Schengen Convention), which regulated the areas underlined in the Agreement and enabled harmonization in the policies of migration management. The Convention provided for the elimination of checks on persons at the internal borders of the contracting parties (Art. 2);

common criteria for management of migrations at their external borders (Art. 3–8); harmonisation in the policies of entry (including visa policies) (Art. 7–27); mechanisms of police cooperation (including cross-border surveillance) (Art. 39–49); and cooperation in judicial matters necessary for the common management of migration control (and security issues) (Art. 59–69). The Convention (Art. 92–119) also established the Schengen Information System (INFOSYS) which enables national authorities (in particular, to police, border services and judiciary) to share detailed data on persons (or goods) which have entered (or otherwise stayed) within the border of the contracting parties. The Schengen Convention was progressively adopted by the other Member States, thus enlarging the Schengen area to the most of the Member States.[16] Today, the Schengen Convention is incorporated into the EU framework (see: Council of the European Union 1999).

On the basis of the Schengen Covention, during the 1990s, the EU has embraced and further developed a massive array of migration control instruments that were initially designed at the national level: further scrutinized visa regimes (supplemented with carrier sanctions); stringent border management rules; return measures and policies, etc. Visa lists were gradually becoming ever more extensive and have included foremost the countries with disadvantaged economic and political conditions. To purport the effects of these policies, the EC (based on previous national practices) linked visa measures to the rules defining the duties of the carriers (transport and tourist companies), setting great sanctions for those enabling the transport of a person lacking necessitated documentation (passports and visas) and his/her arrival to the *Schengen area* (Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders1990, Art. 26) Introducing these measures, the EC (and later the EU) effectively prevented legal (regular) methods of entry for a great variety of foreigners, most dominantly – those from underdeveloped countries in less advantaged economic, financial, educational or social conditions (see: Doomernik and Jandl 2008, 203–210; Collinson 1996; Lavenex 2001; 2009; Moreno Lax 2008).

16 Today, all of the Member States except from Bulgaria, Cyprus, Ireland, Romania and the UK are parties to the Convention. Bulgaria, Cyprus and Romania are not permitted to join the *Schengen zone* until the Council of Ministers verifies that the criteria for abolishing internal border controls have been met (European Union 2009). Denmark (although a party to the Convention), Ireland and UK participate only in isolated measures of the Convention (see: European Union 2009).

Effectively transferring the largest rates of immigration to irregularity, the Member States and later the EU took a new course in migrations. The key goals of the common policies became the combat of irregular migration flows and, within that – prevention of the suspected abuse of the asylum system (i.e. using the asylum system only to gain entry or residence into the Union).[17] For this purpose, vast efforts were made to secure control at the entry points of the Member States (and especially the external borders of the EU/EC). Intense border controls were facilitated with the recruitment of great numbers of border officials and proliferation of the methods and technology for tracking border crossing movements. During the 1990s, large sums of the state (and the EC/EU) budgets were invested in the border management strategies, including development of large and sophisticated information systems and technologies aimed at tracking the overall (regular and irregular) border crossings, migrants' identity and possession of appropriate documentation (Balzacq and Carrea 2005; Collinson 1996; Lavenex 2009).

At the same time, common space without internal borders necessitated the states to find a way for determining how responsibility for the allotment of asylum rates will be shared once they reach the internal EU zone. In theory, with open internal borders any seeker that managed to enter the EC through the territory of one of the states (now under greater scrutiny of the frontier states and with other Member States loosing control over it) could demand protection in any other state within the common zone. Loosing power over their territories, it was particularly the Member States with the greatest application and recognition rates that feared to continue attracting asylum seekers to their territories. Without internal borders it would have been impossible for the states to control such events – unless some system of responsibility construed. Given that the countries had not been ready for solutions that would include (more or less) a fair share of the rates of asylum applications; the solution has been found in the so called *Dublin system*. The 1990 Convention Determining the State Responsible for Examining Applications for Asylum

17 Whereas the Member States and the EU had free hands in developing migration control mechanism, the key principles of international refugee protection instruments (and most notably, the Refugee Convention) still enabled some of the protective mechanisms against the states' expulsion of the refugees. Prior to all, according to the Convention, no state had the right to return (*refouler*) a person to the territory of the state where they feared to be in risk of persecution based on their ethnicity, race, religion, belonging to a social group political opinion. Following on directly from this rule, the right of each person to seek protection in the state at whose border they arrived represented one of the basic principles of the international law. It commended the states to allow for entrance for immigrants seeking asylum, regardless whether they qualified for regular entry rules.

Lodged in One of the Member States of the European Communities (hereinafter: the Dublin Convention)[18] provided that an asylum application must be received and processed by the country to which the asylum seeker first arrived; unless that state could demonstrate that a seeker has transited, stayed or submitted an application in another Member State.[19] Since such legislation dictated that an asylum seeker can apply for asylum in only one country or may be returned to the state of the first application (Art. 3–12); this was supposed to provide some sort of balance in asylum migration rates;[20] or, at the least, allow management of the asylum migrations in the Union without internal borders.[21] The provisions of the Dublin Convention were reaffirmed in the Schengen Convention (Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders 1990, Art. 28–36).

In the early phase of coordination (1992), the Member States agreed that the common policies must find a way to control for the arrival of irregular migrants – including those

18 In 2003, the first Dublin Convention was replaced by the Dublin II Regulation (see: Council of the European Union 2003c).

19 Unless the person possessed valid residency permit from another Member State (Art. 5) or had family members who were recognized as refugees (Art. 4).

20 The term *asylum migrations* is used here to cover all persons who may be considered to need or seek protection, wait for decision or having been granted asylum: i.e. asylum seekers, persons under asylum or subsidiary protection. The term *asylum seeker* applies to a person who has applied for state protection. *Person under protection* presumes an individual that has been granted asylum or subsidiary protection. Full *asylum status* can be obtained by those persons who qualify for protection under the Refugee Convention. Under the Convention (United Nations 1951, Art. 1), a *refugee* is a person who "is outside the country of his nationality, and is due to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is unable or, owing to such fear, does not want to be put under the protection of that country". *Subsidiary protection* is applied to a number of other categories of migrants who were in risk of their personal security and human rights, for the reasons such as armed conflicts, persecution because of race or sexual orientation, the threat of the death penalty, etc. The term refugee is used in its substantive meaning: i.e. denoting to a person who has fled their country for reasons related to diverse forms of persecution, violence and other political harms. The term is not used to diversify between full asylum status and persons under subsidiary protection, as it is often the case in legal language. However, the notion refugee may be used here also to denote to those persons who have obtained protection in Croatia. Nevertheless, where it is needed to distinguish between persons who have fled country but have not yet obtained protection and those who have, the difference will be visible from the context.

21 In case that a seeker has applied for protection in more than one state, the state of first application is to be responsible for the application.

that were considered to use asylum application as a method for entry. Building on the solutions introduced previously in the Member States, the 1992 Council Resolution on a Harmonized Approach to Questions Concerning Host Third Countries (hereinafter: London Resolution) legitimized and spread the usage of the *safe country* concept to the case of asylum immigration (Council of the European Union 1992, Art. 2). Namely, the safe country concepts contained two sorts of mechanisms: (a) it defined particular countries as *safe*, implying their citizens could not have been in need for international protection (*safe country of origin*); and (b) it established that some of the third countries (where the seekers have previously resided or transited) may be considered *safe,* implying that the seekers may be returned there to seek protection in their territories (*safe third countries*). To implement these solutions, the countries were using the readmission agreements – agreements between two (or more) states allowing the return of immigrants without special procedures. Readmission agreements have also had two models. Most of the agreements included clauses on the return of irregular immigration in a quite an automatic way.[22] The second type were the readmission agreements used for the return of asylum seekers to countries that were defined *safe*. In the years that followed, the Member States and the EU created a wide range of agreements with the countries which have not been defined as safe; yet, they were considered appropriate for the control of irregular migrations.

Besides these measures, until the end of the 1990s, the EU has not developed much of the common policies in the area of asylum. However, two issues motivated change. As the Member States had strikingly diverse policies of asylum, the seekers and refugees still used to gravitate to those areas that offered better protection.[23] Besides this, and as previously shortly mentioned, the asylum migrations (along with family migrations) still remained considered as those types of resettlements that could not be treated on the same basis as the rest of the movements. It has demonstrated indeed illegitimate to treat refugees and asylum seekers as if all of the states offered the same protection. Systems with conditions strikingly under the minimum, unwilling or unable to cover even the most basic material

22 If a country could discern an irregular immigrant has passed through the territory of another state with which it had signed the Agreement, the immigrant was to be returned to that state.

23 The Dublin Convention (Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities 1990) entered in force only in 1997. However, even afterwards, it has not always been easy to return the seekers to the other states given that states were not always ready to readmit them.

needs (such as shelter, nutrition or other services) to the greatest variety of seekers and refugees (as in Greece for instance) could not be treated equally as those offering better quality of services (like Germany, Sweden or France). Having this in mind, the EU institutions (most notably, the Commission) pushed for harmonization of asylum policies in the Member States (Kaunert 2009). During the 1990s, the Commission started to gain a more prominent role in the area of migration and asylum policies. While the first step in such direction was enabled by the Maastricht Treaty (Treaty on European Union 1992), which authorized the European Commission to participate in the initiative of the rules regulating migration issues, the crucial step for European asylum issues was the 1997 Amsterdam Treaty.

1.2.4 Amsterdam Treaty and the Creation of European Asylum Framework

Establishing the European Union, the Treaty on European Union signed in 1992 in Maastricht provided that migration and asylum issues come under the structures of the EU. However, this has still not presumed harmonized policies. Instead, the Treaty located the area of Justice and Home Affairs under the third pillar of the European Union (Title VI, Art. K1). Such development was a compromise between the Member States and still reflected their reluctance to withdraw from powers in the area. Despite the fact that the Treaty obliged the States to act in accordance with the Refugee Convention and other international instruments of refugee protection and human rights (Title VI, Art. K2), the Treaty still described asylum (and immigration) as a matter of the "common interest", instead of an area for the "common policies" (Geddes 2005, 21). The given structure presumed that decisions were brought in the intergovernmental channels of decision-making, with the greatest role of the Member States governments (in the Council of Ministers). The European Commission had only limited role: it could propose the Council to adopt joint positions; but Member States could do so even without its initiative (see: Title VI, Art. K3). Such state of affairs meant that asylum and migration policies could not provide for the binding set of legal provisions (thus inducing harmonization in asylum), but rather a number of "decisions", "recommendations" or "conclusions" with unclear legal position and difficulties in the implementation. As we have seen, in the greatest degree, these mostly boiled down to measures aimed at migration prevention and migration control rather than harmonization of the refugee protection policies (Geddes 2005, 221).

It was the 1997 Amsterdam Treaty (Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts) that changed the logics of decision making and set basis for harmonization in asylum policies. Having established that the common policies of asylum were a necessity due to rules determining the responsibility of all of the states of the EU to participate in refugee protection (with still important secondary movements between the states), the Treaty (Art. 73k) obliged the Council to adopt norms on asylum according to the Refugee Convention and other relevant treaties, and in particular: (a) minimum reception standards for asylum seekers; (b) minimum standards for the qualification of refugee status; (c) minimum standards on procedures for granting or withdrawing refugee status and (d) promote balanced efforts between Member States in receiving and "bearing the consequences" of accepting refugees and displaced persons.[24] The Treaty demanded these measures be adopted within five years after enforcement of the Treaty of Amsterdam (1999). These instruments were meant as a basis for the Common European Asylum System (CEAS) – a system that would harmonize (to a certain extent) diverse segments of the policies for asylum into the Member States, provide seekers and persons under protection with comparable conditions in different countries and demotivate secondary movements of asylum seekers and refugees between the Member States. The CEAS was planned to be established until 2012.[25]

Since the end of 1990s and until 2005, European institutions intensively worked on creating new norms of asylum that were to become mandatory for the entire EU (and broader areas). The Commission (acting as a motor of reform) and the Parliament have demonstrated the greatest sensitivity for human rights norms, while the Council of Ministers – led by state protective positions (i.e. low immigration rates) – showed reluctance in applying more comprehensive set of norms that would risk state control over refugee protection. This has greatly limited the working of the Commission. Constrained by state powers sitting in the Council, the Commission needed to reformulate quite an extensive number of originally proposed measures (see: Ackers 2005; Costello 2006; Rogers 2002). The states demonstrated great disinclination to resign on their traditional

24 Besides this, the Council was obliged to adopt minimum standards for giving temporary protection to displaced persons and persons in the need of international protection.

25 Movements of persons towards a system where they expected better conditions of protection, such as reception, chances for protection, diverse socioeconomic and other rights, etc.

policies and practices and transfer their powers at the supranational level. As a core area of sovereignty greatly affecting states' control over the territory and population, asylum policies were hard to negotiate between Member States. Whereas some policies have been settled with greater ease (such as common reception conditions; see: Rogers 2002), others, and particularly those that would inflict the utmost change to national powers in controlling migration, have been particularly difficult to arrange (for instance, procedures for granting asylum; Ackers, 2005). To create common framework, the Commission led difficult and long lasting negotiations with the states and their bodies of security and interior affairs in particular, as well as diverse stakeholders (including human rights organizations). The product has been the creation of several key asylum directives which have fixed minimal standards that no state was allowed to infringe; yet, the common set of comparable policies were impossible to introduce. Instead of harmonizing their policies of asylum, states have so far remained obliged to adopt only minimally defined common standards, while further elaboration and potentially more generous interpretation was left to the discretion of each of the states.

While the adoption of measures demanded by the Amsterdam Treaty was procrastinated due to heavy processes of negotiations, in the period between 1997 and 2005, the EU managed to prepare and adopt four core legislative pieces setting the minimal standards for the EU asylum policies: the 2003 Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers Directive on Reception of Asylum Seekers (hereinafter: Reception Directive); the 2003 Council Directive on the Right to Family Reunification (hereinafter: Directive on Family Reunification); the 2004 Council Directive on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted (hereinafter: Qualification Directive);[26] and the 2005 Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (hereinafter: Procedures Directive). These acts regulated key areas established under the Treaty. Directive on Reception of Asylum Seekers (Council of

26 In 2011, the EU adopted new directive on qualification for international protection (Directive of the European Parliament and of the Council 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; hereinafter: new Qualification Directive). States are obliged to implement its provisions in 2013. As we shall see in the following chapters, Croatia already introduced an important number of changes envisaged by the new Directive.

the European Union 2003a) prescribed minimal conditions that each state needed to provide to asylum seekers while waiting for a decision (i.e. rights related to the procedures of granting asylum and socioeconomic rights such as accommodation, health care, education, etc.). Directive on Family Reunification (Council of the European Union 2003b) regulated the status of family members of asylum seekers and persons under protection (right to residence, working rights, social and economic rights, etc.). Directive on Qualification (Council of the European Union 2004) regulated set of conditions and circumstances qualifying for protection and the content of protection for persons recognized protection (i.e. rights of persons recognized protection). Directive on Procedure for Granting Asylum (Council of the European Union 2005) prescribed minimal guarantees for the procedural steps in the assessment of claims for protection.[27] Supervision of the implementation and application of these measures in national systems belonged to the European Commission as the guardian of the European treaties. The European Court of Justice was provided with the competency of interpretation of the norms set in the *acquis* as well as the ability to determine sanctions for Member States that do not comply with European commitments. To assist Member States in harmonizing asylum and protection, the Union established the European Refugee Fund and the European Asylum Support Office.[28] The Common European Asylum System – as a goal fixed in Amsterdam Treaty – was to be obtained in the next phase. However, as we shall see later, it has not succeeded (at least thus far). Instead, the common minimum standards were applied in great diversity in the national systems.

1.2.5 Externalization of the European Asylum and Migration Policies

Focused on decreasing migration pressures in the Union, in parallel to internal developments, the Member States and the EU came to conclude that solutions should be searched not only within the Union's territory and borders, but also outside of the Union – in the states that produced migration or served as a point of their transit. The external

27 Besides this, in 2008, the states adopted the directive on the return of irregular immigrants which regulated guarantees and procedures that states need to satisfy when returning asylum seekers whose claim has been rejected (see: Council of the European Union and European Parliament 2008).

28 The European Refugee Fund was established in 2000 and European Asylum Support Office in 2010. European Asylum Support Office commenced working in July 2011 (Greece and Malta). Besides assistance, with help and support from the Commission and together with the UNHCR, this body also deploys in monitoring of the implementation of EU asylum systems in Member States (Europa Press 2011).

policy, formulated during the 1990s and first formalized at Tampere European Council in 1999 (Haddad 2008, 191) emphasized the need to solve the problem by involving EU environs in common action – and prevent migrations before they reached the Union. As such, the external dimension of EU immigration and asylum policy contained two main goals: 1.) migration control and the development of a standardized asylum system in the given regimes; and 2.) prevention of migration influxes in regions that generated them or served as a point of transit (Boswell 2003). The first aspect mainly focused on the EU's closer neighbours, while the second facet included also the states that are not in close vicinity to the Union (for overview of territories included see: Lavenex and Ucarer 2004).

Most of the states in the close neighbourhood of Europe (Central and Eastern European states, countries of the Balkans, the states of the former Soviet Union, etc.) had no objective to build migration and asylum systems without external incentive. Concerning migration issues, their greatest problem was the emigration, while the immigration caused little concern for their governments. However, after the fall of communism and the following opening up of borders, this region became one of the important transit routes for immigrants on their way to the EU (both from these states as well as from father Eastern territories). In this context, as well as with the prospect of enlarging the Union, the heads of Member States and the institutions of the European Union became interested in migration and asylum policies in its own neighbourhood (Byrne et al. 2004; Lavenex 1998; 1999; Lavenex and Ucarer 2004; Peshkopia 2005a; 2005b). Convinced by the prospect of membership or other incentives (mostly economic agreements and other privileges such as the liberalization of visa arrangements), the states – at least formally – accepted to build two demanded aspects of migration policies: (a) migration control policies; and (b) refugee protection policies. More specifically, these states were obliged to control migrant movements on their territories and provide solutions for their efficient settlement. This included several policies: (a) ensuring arrangements for preventing irregular migrants; (b) diversifying between irregular migrants and refugees; and (c) offering protection to the refugees by establishing a well functioning asylum system. Following this development, common European asylum and migration policies have become part of the EU *acquis communautaire* and were being transported to their Eastern neighbours. In the past two decades, most (if not all) of the EU candidate and applicant states (and some of them, actual Member States by now) have made their steps to establish their asylum and migration policies in accordance with European guidance and requirements (Lavenex and Uçarer 2004).

In more distant regions (including African and Asian states, such as Morocco, Tunis, Libya until the fall of the regime of Moammar Gaddaffi, Afghanistan and Pakistan, etc.), the EU developed a variety of arrangements which aimed at prevention of migration movements to Europe and their return to those regions. Using readmission agreements, the (irregular) immigrants arriving from or through these countries could be easily returned to the areas with which the EU had agreement. In parallel, the EU motivated these states to strengthen their systems of migration control and prevent the movement of those migrants towards Europe. Their effect on asylum migrants could have been equally relevant as in the first case, given that protection of asylum seekers implied ability and willingness of the state authorities to recognize persons who could have been in need of protection. Moreover, with the spreading of asylum systems and migration control eastwards, these states became particularly important in the migration scheme. Firstly, depending on the intensity and methods of their migration control, they had potential to impact the routes of migrations (including of refugees). Secondly, they could have directly impacted the destiny of the refugees (if not recognized by authorities), given that the readmission agreements allowed for the return (and chain return)[29] of irregular migrants to these states.

1.3 Refugee Protection between State Interests and Human Rights of Refugees: Theoretical Debates and Empirical Research on the Present European Asylum

1.3.1 Contemporary Debates on the New European Asylum *Acquis* and Principles Determining Refugee Protection

The increasing activity of the EU to promote itself as an actor that encourages and assists respect for democracy and human rights in the broader region in past three decades gave incentive to lively debates amongst scholars seeking to analyze normative background of the EU agenda and its power to transform national regimes and induce democracy and human rights. Understood by some as an agent of liberal-democratic values and human rights (see: Diez 2005, Flockhart 2008), the Union is self-defined and sometimes perceived as a global power brining respect for human rights across a variety of national systems inside and outside the borders of the EU. While scholars have not agreed

29 Return from one country to another based on readmission agreements, leading to further return of an immigrant to some other third state – if the second host state had readmission agreement with it.

how successful the Union was in the diffusion of human rights; various authors have generally agreed that its impact was generally positive – or, at least, not directly negative (see: Lucarelli 2006; Manners 2002; Smith 2001; Von Bogdany 2000).

In the area of migration and asylum, no such consensus exists. Quite the opposite, most authors maintain that the EU policies and activities through the past three decades had an overall negative impact on refugee rights and protection. When the EU produced the key legislative pieces of asylum *acquis*, most scholars and organizations demonstrated great disappointment with the product and stayed critical over the content and scope of the EU protection mechanisms, considering they pose no less of a threat to international refugee rights than those devised by the states and the Union prior to the 1990s. The authors maintained that post-Amsterdam Europe did offer a more extensive array of rights to asylum seekers and refugees than what the EU had previously done (i.e. in the 1990s); yet, they considered that these were still scanty and overly loose. Scholars and organizations have been pleased with the fact that the EU regulation (Qualification Directive; Council of the European Union 2004) included the circumstances outlined in the Refugee Convention as a basis for granting protection, at the same time extending the circumstances qualifying for protection to other types of harms that the Convention did not envisage (labelled as other acts of *serious harm*).[30] In doing so, the Qualification Directive (Council of the European Union 2004) represented the first instrument devised at the transnational level, acknowledging alternative types of circumstances as a reason for protection; although some stressed that these have been already developed at the national level before and in that sense did not represent an upgrade (Costello 2006; Mc Adam 2007). Also, the observers (Costello 2006; Garlick 2006) were generally content with the fact that the EU has implemented important procedural guarantees for seekers awaiting a decision for the recognition of asylum claim (detailed rules on the conduct of interviews, detailed list of conditions for approval or refutation of the claim, specified set of circumstances and their evaluation, etc.), but considered that the *acquis* still left a great deal of discretion for the states in implementing these. As they stated, a variety of the most vital practices (legal assistance, translation, suspensive effect of appeal and others) were recommended as

30 Qualification Directive provided that protection may be given to persons fleeing (a) persecution based on one's race, religion, ethnicity, belonging to a particular social group or political opinion; and (b) other *serious harm*, such as arbitrary arrest and imprisonment, torture, indiscriminate violence in the circumstances of conflicts, etc. Given that the Refugee Convention did not include reasons considered as the other *serious harms*, the Directive had a more extensive definition than the one found under the Convention. More detailed overview will be given in Chapter 6.

appropriate measures, rather than being demanded as a *condition sine qua* non of the asylum procedure. Given that these measures affected how the seekers were to present the case (and how authorities were to understand it and evaluate), letting states incorporate solutions that could have been inappropriate was considered unacceptable – especially due to the fact that refugee movements were now restrained within the *Dublin system*.

Norms regulating reception of seekers and the rights of persons recognized protection have not received great attention from scholars and organizations; yet, some debates have been opened. All of the observers welcomed the fact that the Union has set basic parameters in the area of reception, especially due to the fact that many states had rather diverse solutions for the placement and general reception of the seekers (Garlick 2006; Rogers 2002). In specific, the authors and organizations greeted the norms demanding that all seekers be provided with basic physical needs (accommodation, nutrition, clothing, etc.), establishing considerably high standards of the reception centres. However, commentators believed that in this area too, the states confirmed their reluctance to be constrained by common norms, thus risking to leave unanswered the most basic needs of these vulnerable groups of migrants (e.g. limitations to social security, health care, working rights or right to freely move). Whereas the area of integration and the content of protection (socioeconomic and other rights provided for the refugees and persons under subsidiary protection) remained understudied; a part of the studies was to a great extent critical over the rights pertaining to the group of persons as recognized alternative protection status. Emphasizing that no legitimate reason could be found to make persons under subsidiary protection deprived from the same array of rights as the refugees had; they stressed that the EU *acquis* threatened to endanger their dignity and quality of life in the host state (Garlick 2006; Gil-Bazo 2006; McAdam 2007; Noll 2004). While the commentators did not focus much on the rights of persons recognized as full asylum status, they criticized the fact that the *acquis* did not provide solutions for permanent settlement and enduring integration, but instead aimed at purporting the chances for the states to practice their facilitated return.

The fact that the EU did not give up on mechanisms of (asylum) migration control introduced in the 1990s provoked the greatest disappointment and anxiety amongst the scholars and stakeholders concerned for human rights (Bouteillet-Paquet 2003; Gilbert 2004; Guild 2003; Hansen 2009a; Moreno Lax 2008; Lavenex 2001; 2009; Spijkerboer 2007) . As the authors argued, instead of breaking with practices of immense exclusion, the EU has embraced and legitimized all of the dreadful mechanisms aimed at preventing

asylum seekers to reach the territory of Europe and banned them from being afforded a chance to claim asylum. Extensive visa lists (combined with heavy carrier sanctions) were criticized for forcing the immigrants (including refugees) to use costly and dangerous irregular channels of migration, consequently excluding a vast part of the world's population from chances to be granted protection. Heavy controls of the Union's frontiers, the authors further argued, created additional risk for refugees – now turned to irregular migrants. Further deterioration of the persons' right to be granted access to protection and chances to be protected was found in the institutionalization of the states' policies on *safe countries* and the extension of the readmission agreements under the auspices of the EU. Besides the fact that no state of origin could be considered *apriori* fully safe for all of the individuals or groups, there was also no guarantee that the states would have an appropriate method (or political will) to determine how much safe the third countries were.[31] Extension of the readmission agreements for the return of irregular immigrants (not the seekers alone) across the greatest variety of systems in the European continent or outside was seen as equally dangerous for the seekers too.

Rather similar criticism was addressed at the system of relocation of the asylum migration among the Member States. Bonding asylum seekers and refugees to the confines of one of the Member States (and most likely, frontier states) was expected to motivate (these) states to aim at preventing entry and deflecting the standards they would (potentially) otherwise give. Seeking to become ever less attractive for the prospective arrival of refugees, the *Dublin system* was expected to induce the final erosion of protection for the future European refugees.[32] As such, as the authors stressed, the new *acquis* has legitimized prevention measures aimed at decreasing asylum migration pressures at their systems and offered a scanty set of rights to asylum immigrants, letting refugee protection at the disposal of the participating states. As a consequence, the European asylum policies are held to produce two key deteriorating effects: (a) preventing

31 Clauses on *safe country of origin* presume that the state is generally safe from violations of human rights (those which would qualify for international protection) and allows the state to return the seeker to the state of origin without regarding his or her claim. The provisions on *safe third country* presume that the state through which a seeker has previously passed is considered safe for the seeker (and that he or she may apply and obtain protection in that state) and enables the state to return the seeker to its territory, again without regarding his or her claim.

32 Special concerns were expressed in regards to the consequences of such policies for the frontier zones of the EU – and the seekers and refugees in them, where one could expect the greatest pressures to occur due to geographical division of responsibility.

refugees from arriving to territory of the (Western) European states; and (b) tying them to the areas where they cannot receive proper protection. This is especially considered to be the fact in the states which lack previous traditions in refugee protection and/or suffer from poor institutions and economy (such as is the case of new member or candidate states or the states of the south of EU).

While most scholars were rather critical of the European asylum (and migration) policies; in the past several years, some authors commenced developing quite a different attitude over the same legislation. Whereas still thin, in the most recent debates, a growing number of authors challenge criticism raised over the new European asylum policies (see: Battjes 2006; Hailbronner 2008; Kaunert 2009; Kaunert and Leonard 2011a; 2011b; Thielemann and El-Enany 2008; 2011). The arguments have been twofold. Firstly, most of these authors claimed that – contrary to the views of the opponents – the new European *acquis* did not stand against the background of the international standards and refugee protection conventions. However, the representation of the principles given in the conventions, as believed, was to depend on the way that the state interpreted the EU norms (and the conventions themselves) (Battjes 2006; Hailbronner 2008; Thielemann and El-Enany 2008; 2011). Secondly, some authors were stressing that those principles that were to be found problematic for broader protection of the refugee rights should not be blamed on the EU, but rather on the national practices occurring before the EU had set the common agenda; or the Refugee Convention (and its loopholes) itself (Thielemann and El-Enany 2008; 2011).

Examining the link between the *acquis* and international refugee law, these authors stressed that the post-Amsterdam set of rules may be held to affirm international standards of refugee protection (see: Battjes 2006; Hailbronner 2008; Storey 2008; Thielemann and El-Enany 2011). This does not only stand for the newly adopted mechanisms aimed particularly at refugee protection, but also the disputed mechanisms, such as visas and carrier sanctions, readmission agreements and *safe third countries* or the *Dublin system*. According to the authors, where the norms may limit the movement of the seekers towards the Union or within it; the Convention itself provided the states with ability to control their territory and manage the movements of refugees. Reflecting on these positions, critics warned that the European (and other) standards cannot be regarded only through the body of given legal norms; but must be studied in relation to principles and values that they at the same time promote (Lavenex 2001; Moreno Lax 2008). Inevitably, as scholars warned, the EU rules must lead to the abolishment of international norms: not only through the

body of law, but also due to specific (restrictive and securitized) principles, understanding and interpretation they presume – and especially with given underlining meanings and practices developed in the Member States. Mechanisms of migration control may not directly speak against the standards of refugee protection, but they lead to their invalidity as they push migration to locations where these standards are not in place.

Many scholars emphasized that international refugee law has been faulty by itself (see: Battjes 2006; Edwards 2005; Millbank 2000). Negotiated by the same subjects – i.e. national governments – the Refugee Convention as the most elaborated (and accepted) instrument of all made sure the governments maintain wide level of control. As they stated, in the first place, the Convention proclaimed the right to seek asylum (Battjes 2006, 111–114); yet, not the right to be granted one. Where the right to seek asylum may be fixed, as the authors stressed, this occurs only at the territory, and it is not possible to claim it beforehand. Lack of extraterritorial asylum and preservation of state power in the area of entry (visas, border controls, procedures, etc.) made it clear that the states' support for refugee rights did not presume that they were ready to give up their sovereign right to migration control. Rights of refugees, the authors warned, have been carefully planned to allow for the discretion of the national elites. Such state of affairs led some to argue (Hailbronner 2008; Storey 2008; Thielemann and El-Enany 2008; 2011) that the European asylum system and migration laws have not done less than to protect standards expressed under the international refugee law. The *acquis*, authors argued, extended the scope of protection to contemporary forms of refugees; offered procedural guidelines that international law did not have; regulated reception of asylum seekers undefined in the international instruments and extended rights of refugees. Where migration control mechanisms may inflict on chances for protection, the fact is that states (in the international law and practices) allowed it themselves (Thielemann and El Enany 2008; 2011).

According to them, the conventions, and in particular the Refugee Convention, had also prescribed only the most minimal standards and allowed the states to decide which kind of protection they were to grant to refugees. In comparison to the Convention, the European directives often provided more elaborated and sometimes higher range of rights. Advocates generally concluded that the European framework satisfied the minimal guarantees demanded in the international refugee law, leaving it to the state's decision whether it will implement it properly or not. Some of the authors have pointed out that the problematic solutions (such as *safe third countries* or the extensive usage of the readmission

agreements) have been devised on the national level and should not be assigned to the European Union. As they contended, viability for restrictive options in the European framework did not arrive from the improper application of the Convention by the EU, but from the very fact that the Convention itself was a product of the (self interested) states and thus contained the same deficiencies in refugee protection standards and rights.

Opponents of the European asylum agenda found the new framework especially troublesome as they expected that it would motivate the states (as self-interested actors) to develop the most deflected policies from the *acquis*, merely satisfying the minimum standards of the European demands. As they maintained – in the securitized frame of migration, where the states saw (asylum) migrations as a source of all ills, there was no motive for the Member States to act progressively on the aspects of human rights – especially if doing so would help attract asylum migrants to the territory of their state. Thus, as the authors believed, as long as diverse standards in the states continued to motivate secondary movements, the states were motivated to introduce, maintain or strengthen restrictions on the rights of refugees, thus purporting erosion of refugee protection that commenced since the 1990s (and before).

Quite the opposite, the advocates of the European framework have come to understand changes in the Union's asylum policies as a great chance for refugees' human rights. The supporters of the new EU asylum rules rejected the arguments that the framework could motivate states to restrict their rights given to refugees, thus producing harmful effects for the rights of refugees. Instead, as they believed, the new policies demonstrated that the Union has – if nothing else – halted competition in restrictions that has been present in the Member States before the supranational mechanisms have stepped in. Preventing the states from continuing deflection, the EU has at the least stabilized asylum policies and prohibited states to go further bellow the standards (Kaunert 2009; Kaunert and Leonard 2011a; 2011b; Thielemann and El-Enany 2008; 2011). In doing so, it has invited the states to implement the minimal standards; yet – also to go above. Framing on the present experiences from the Member States, the authors maintained that the states have introduced various levels of refugee rights, some of which surpassing what the Union defined as the minimum of necessary steps (see: Thielemann and El-Enany 2008).

The first strand of authors concluded that the common European policies remained shamefully meagre in the (international standards of) refugee rights and would thus lead to the overall erosion of human rights of refugees – in Europe and outside. According to them, the EU could not be regarded as a neutral subject that had simply offered some basic

guarantees, not affecting the overall destiny of asylum migrants and asylum migrations in total – in the EU or outside of its borders. On the contrary, introducing policies which had power to allocate asylum migrations within specific territory of the Union and redirect refugee movements towards states outside its borders – the EU had power to tie refugees to specific location and prevent them from choosing other locations. Whereby locking human beings to specific destinations they have not chosen what was unacceptable on its own; the authors found it of utmost importance that the EU (at least) provide sufficient standards of refugee protection in all of the participating states. Measures adopted through the European frame, as they explained, could not be expected to fulfil this task. Not many authors among the advocates of the post-Amsterdam *acquis* reflected on this particular issue. However, some of them considered that the fact that the EU was still unable to prevent migrations demonstrated that the states could not neutralize protection norms. Instead, the obligations for states to provide entry to asylum seekers pointed that the EU is still a permeable location for the asylum of migrants. Once they reached the territory of Europe, as the authors argued, the *acquis* and thus international standards did apply at their quests (see: Thielemann and El-Enany 2008).

There are not many studies which could tell us whether the states went further beyond the rules in order to protect refugee rights. Generally, the studies showed that most (if not all) of the states have introduced rather restrictive policies of asylum – if we compare them to the ones existing during the Cold War. Whereas optimists specifically reflected on the isolated measures (where the states opted for more sensitive solutions); this does not tell us how the system has been developed in general – whether we may find it generally sensitive to refugees' rights or not. As we shall see from results offered bellow, studies do show that states have opted for diverse forms of measures (some minimal, others more generous); yet, again, it is hard to judge how significant the deviations from the minimum have been and how generous the systems generally were. Nevertheless, especially because of EU intervention in prevention and redistribution of migrations (including asylum migrations), results will show exclusivist tendencies in all of the states of the EU.

1.3.2 Implementation of European Asylum and Migration Policies: Member States and External Zones

When the difficult processes of negotiation of European asylum ended; the greatest troubles for the prospect of harmonization only commenced. Firstly, results demonstrated that the *acquis* brought great divergence in the legal standards of refugee protection across

the Member States. The minimalist approach indeed provided the States with wide space for interpretation and discretion, allowing them to adapt to requirements in line with (previous) national understanding of asylum policies and national interests. Where the Qualification Directive (Council of the European Union 2004) offered common definition of criteria and grounds qualifying for international protection, these were interpreted with great disparity in the national systems,[33] with recognition rates ranging from less than 15 per cent in some states (e.g. France or Ireland) to over 30 per cent in others (e.g. Germany or Italy). Insufficiently elaborated provisions on asylum procedures allowed that procedures again depend on the discretion of each system. In this case, 27 Member States provided often incomparable measures for the assessment of claims, offering rather diverse rights determining success of one's claim (translation and interpretation, legal assistance, appeal procedure, etc.),[34] adding to disparity of persons' chances to be granted protection. Family members of asylum seekers and persons under protection enjoyed rather different rights in the Member States. Given that states themselves defined what family was to mean under the asylum laws, in some states the right to protection was offered to only a narrow circle of family members (such as spouses and children from wedlock), while in others it was extended to members who did not belong to the narrowed understanding (such as

33 For instance, great disparity occurred in the application of norms defining what qualifies for subsidiary protection in cases when person fled "indiscriminate violence" in the circumstances of armed conflicts (Qualification Directive; Council of the European Union 2004, Art. 15), which constituted one of the most common reasons for seekers to search protection in the EU. The *acquis* demanded that the person demonstrate that they have been subject to "serious and direct risk" of such violence. Some states (such as Britain or France) interpreted this requirement in quite a strict way, demanding seekers to prove the existence of a serious threat to their life (and person); while in others (such as Germany or Sweden), the existence of a serious risk to the general population or group in a certain area was a sufficient reason for the acquisition of protection (International Association of Refugee Law Judges 2009, 8–10).

34 For example, the Procedure Directive demanded that the seekers be informed about legal and factual reasons for rejection of asylum claims (Procedures Directive; Council of the European Union 2005, Article 9); yet, this allowed rather dissimilar practices in the Member States. Where some explained their reasons for negative decision in detail (for example, France, Ireland and Bulgaria); others (e.g. Greece and Poland) did it in a modest form (often accompanied with poor quality translations) (FRA 2010, 13–16). Similarly, time to lodge an appeal was radically different from case to case: in some countries (such as Estonia, Romania and the UK), the seekers had only ten days to prepare for appeal, while in others this was stretched to 28 or 30 days (as in the Netherlands, Belgium and Slovakia) or even 60 days (Greece, Spain) (FRA 2010, 21). In some states, seekers enjoyed right to free legal aid in all instances (such as Belgium, Finland or Germany), while in others (such as Austria, the Czech Republic or France) they could use it only in the second instance (ECRE 2010, 32–33).

unmarried partners and their children).[35] Rights of persons granted protection – and especially persons under subsidiary protection – varied from state to state and in some cases included only basic rights, while in others they presumed a wide array of privileges, comparable to persons enjoying asylum status.[36] Examples like these can be found in all policy areas. In principle, each of the directives produced dissimilar interpretation of refugee protection policies across national systems, resulting in unequal conditions and criteria of protection.

Even greater lack of correspondence occurred when the laws were to be enforced. A number of the countries showed good level of preparedness and ability to absorb the common norms and adapt their legislation and practice (for example, Germany or Sweden; see: Prümm and Alscher 2007; Spång 2007). Other members made great setbacks, with significant dose of discrepancy between national laws (and practices) and the European *acquis* (e.g. Italy; see: Gos et al. 2010). In some states, the European frame was decisively incorporated into national law, but with difficulties in its enforcement (new Member States; see: FRA 2010; Toktaş et al. 2006; UNHCR 2007; Vermeersch 2005). Some have not yet implemented all or most of the requirements (Greece; see: Mavrodi 2007). Almost all states demonstrated some tendency to stray from the minimum protection criteria; but size and nature of deviations differed greatly from system to system. In this way, the European asylum system covered states with developed and relatively satisfactory protection systems; and countries with only rudimentary asylum policies in place. Besides different chances for protection in various states, the states had utterly diverse systems of reception and – even more relevant – content of protection (i.e. right for persons to recognized asylum or subsidiary status). For instance, a seeker staying in Greece was most often not able to even file an asylum claim, had no accommodation and basic needs

35 Some states (such as Austria) defined family in terms of marriage relationship and gave rights only to minor children. Other counties (for example, Belgium, the Netherlands and Slovenia) considered that rights should be given also to unmarried partners and adult children – if they were considered dependent on the family member who was granted protection. Yet other systems included non-marital partners, but only if they had (at least one) child (Romania). Some other cases (Hungary or Italy) extended rights to family reunification to family members with special difficulties, etc. (Gyeney 2010; Heijerman 2010, 39; International Association of Refugee Law Judges 2009).

36 In some of the cases, persons under subsidiary protection had only basic (and impoverished) systems of social security, health care and limited employment opportunities (e.g. Austria and Italy), while in others (like the UK or Romania) they enjoyed equal treatment as persons granted asylum (Gos et al. 2010, International Association of Refugee Law Judges 2009, 22–36). Under the new Qualification Directive (Council of the European Union and European Parliament 2011), the states are bound to equalize the two statuses (in the greatest part of rights).

covered during the procedure, had 2 per cent chances to be granted protection and could hope for rather poor rights in the case of being granted protection (poor social assistance; integration, basic social rights, etc.) (Amnesty International 2012; EUROSTAT News Release 2012a; 2012b; Kasimis 2012; Mavrodi 2007; Wiessler 2012). In contrast, an individual in Germany had over 30 per cent chances to be granted protection, was covered all of the basic needs during the process of waiting for decision (accommodation, nutrition, generous social assistance, etc.) and was offered comparatively generous range of socioeconomic and other rights upon being granted protection (private accommodation, generous social assistance, integration abilities, etc.) (see: EUROSTAT News Release 2010; 2012a; 2012b; Hailbronner 2008; Heijerman 2010; UNHCR 2007).[37]

Given that the new member states were conditioned to adapt their asylum and migration laws to the EU *acquis*, European policies had the greatest effects in these states. In their cases, the common norms can be considered of crucial importance for the reform basically in all of the segments of asylum policies and the policies of migration control. It appears that the new policies brought significant pressures to their asylum systems, but diverse national systems demonstrated a dissimilar ability to absorb them, again providing unequal protection levels for asylum immigrants. For example, the Slovak and Polish asylum system received relatively higher numbers of asylum seekers after adoption of the European norms, but most of the asylum seekers in these systems have withdrawn their requests (Poland) or left the country before the end of the procedure (Slovakia) – thus reducing the pressure on these states (Byrne 2007, 20; Sidorenko 2007, 168–169). Also, while Poland and Slovakia (as well as most of the Central European countries) have a lower total number of asylum seekers (in relation to their population); Malta and Cyprus, for example, with their high rates of applications resemble more to the rest of the southern European states (see: UNHCR 2012a, 13). In 2012, Malta and Poland had one of the highest recognition rates in the EU (over 50 per cent) while states like Romania or Lithuania were among the lowest (under 10 per cent) (EUROSTAT News Release 2012a; 2012b). Most of these systems have (lesser or greater) problems with enforcement of the EU norms: some with reception and welfare given to the seekers and persons under protection, others with recognition, integration and rights of persons under protection, etc. (see: Byrne et al. 2002; 2004; Gil 2003; Hailbronner 2008; Sidorenko 2007). Poor

37 However, persons under subsidiary protection in Germany had a much lower scale of protection. Again, in some other countries, persons under subsidiary protection were granted all rights (for instance, in the Netherlands).

protection for persons with recognized status and lack of chances for integration, aside from other issues, in these states often motivated secondary movements to the other countries in the EU.

As it is evident, European asylum framework impacted national systems in quite a different way. Despite common minimal standards, implementation remained largely dependant on preconditions characteristic for each of the national system. In specific, the literature found that several features most clearly affected national asylum systems: previous traditions in the refugee polices, strength of judiciary, powers of the executive over asylum and general economic, institutional and administrative capacities (Genç 2010; Gos i dr. 2010). As we may observe, this has demonstrated troublesome in the new states of immigration and new democracies. Yet, even more problematic practices can be found in the policies of migration control and externalization of asylum and migration policies.

As expected by authors, the research demonstrated that migration control and externalization of European policies brought about great erosion for refugee rights. Along with strict measures of prevention of migration movements to Europe – such as visa policies and extensively defined *safe countries of origin* – externalization of asylum policies meant containment of the asylum seekers and various groups of migrants in the areas which hardly guaranteed their basic human rights. Despite the fact that some foreign countries (such as Morocco, Afghanistan and Libya until recently) should have primarily prevented the movements of migrants who did not possess lawful conditions of entry or residence in Europe, control of migration did not stop here. With lack of oversight, control of irregular migration turned to prevention of any migratory movements – including the movement of refugees and other sensitive groups. Claiming to employ efficient migration control, these states have been returning masses of refugees to the zones of persecution, social instabilities or even ongoing wars.[38] Because such trends were going hand in hand with the interests of the Member States, the European institutions (including the Commission) have not been able to stop them; on the contrary, they participated in the extensions of such agreements (see: Hansen 2009a, 29–33).

Candidate countries, potential candidates and the other countries in diverse forms of aforementioned special relations with the EU were expected to adopt both the rules on

38 For illustration, Morocco has been reported to return refugees to Sudan and Somalia. Libya (during the regime of Moammar Gaddaffi) openly proclaimed that its goal was to eliminate immigration from its territory and engaged in the same activities. Persons that were intercepted by the regimes were often simply returned to their states (see: Human Rights Watch 2006).

migration control as well as asylum *acquis* and apply them in their own territories. As in the former, the states often lacked even the basic commitment to human rights – and implemented European *acquis* without protecting refugees. While fortifying migration control, the countries often lacked even the most rudimentary standards of refugee protection. Violations of the *acquis* (and international standards) ranged from improper evaluation procedures (neglecting necessary standards such as translation, legal aid, right to appeal; such as Ukraine; see: Düvell 2008) and sometimes including examples of physical violence over asylum seekers and their return to the areas of conflict and persecution (as in Turkey; for example, see: Schemm 2012; Seibert 2010; Vela 2011).

At present, the goal of creating a common European asylum system, as an area of harmonized policies is not even close to being fulfilled. Whereas some of the European institutions (European Commission and the Parliament) – with help of the international organizations such as the Council of Europe and the UNHCR – search to provide conditions that would enable harmonization of policies in the Member States, for now, such developments do not seem probable. The EU has made several important steps. It has created bodies assisting development of asylum systems (such the European Refugee Fund and European Asylum Support Office), it included the UNHCR in the planning of policies and enabled it to assist implementation process. It still searches to improve the *acquis* and its implementation. In 2011, the EU adopted a new refined Qualification Directive and it is presently working on the *Dublin rules*. However, both of these have been criticized for not correcting the most urgent issues: i.e. unfair and dangerous mechanisms of prevention and redistribution of the asylum migrations and insufficiency of the standards of protection.[39] Furthermore, following political uproars and instabilities in the Northern African states and the great increase in migration and refugee movements to the EU in past years, the states have come to reintroduce their internal borders (see: Kreickenbaum 2012). While this solution is set as temporary, we cannot know when (and if) the states will give up these tendencies. This points to undiluted will of the Member States to control for (and prevent) the refugee movements towards their states.

As we shall discuss later in greater detail, where the European Commission and the Parliament work on providing more adequate levels of refugee protection in the Union;

39 New Qualification Directive (Council of the European Union and European Parliament 2011) improved the status of persons under subsidiary protection but has not renounced restrictive conditions for qualification or turning protection to a set of temporary solutions. New Dublin Regulation sought to improve guarantees for children and family, but kept the system unchanged (see: Peers 2012).

they need to make difficult compromises with the Member States that do not show intention to ease up on restrictions. In doing so, the Commission and the Parliament themselves engage in quite disputable solutions. In such constellation, European asylum remains divided between the state interests and (less protected) human rights of refugees and rolls in endless ambiguities and paradoxes. Where, on the one hand, the EU seeks to find mechanisms to purport the rights of refugees; it appears that at the same time it does all it can to make them hard to practice. In the chapters that follow, we will see how such a system was implemented in the Croatian case and how it affected refugee rights in our case. The dissertation will discuss the key questions overviewed in this chapter.

2 Theoretical Foundations, Operationalization and Methodology

2.1 Theoretical Foundation for the Study, Research Questions and Preliminary Assumptions

As we have seen in the previous chapter, during the greater part of the 1990s, the EU asylum policies were dominantly directed towards controlling, preventing and reallocating asylum movements to and within the Union. Measures protecting refugees were rather scarce, leaving this area largely to the Member States. The states have cooperated through intergovernmental channels and tended to regard capacities offered by the Union as a chance to boost their control potentials, while preserving their powers over sensitive areas of sovereignty. Such agenda was replaced in 1997 with the new Amsterdam obligations that demanded states to give powers on asylum to the European Union, cooperate in all areas of asylum and incorporate common measures to their domestic systems. With its entry to force, the power to co-decide on these issues has been given to the European Commission and the Parliament, both which sought to push more determinately on the human rights agenda. Whereas progress occurred, the area is still dominated by the *securitarian* concerns. States are no longer free; yet, they seek to assert their will as much as possible. The Commission and the Parliament need to take their interest into great consideration. Conflicting interests among Member States and conflict between state safety and human safety dimensions create great tensions and ambiguities in the European framework. Due to general consensus among Member States that the first goals (state safety) represents priority, the rights of refugees were merely clutched into framework that was primarily based on security.

Whereas during the 1990s, there was general consensus among scholars that the policies created in European cooperation represent the erosion of human rights of refugees, in more recent period, some scholars have started to challenge such views. According to one branch of scholars, the new framework may be judged in the same terms as in the 1990s. According to another strand, the new policies represent the chance for refugees' human rights; yet, their success will depend on national interpretation of the European framework. According to the first school of thought, the EU continues to spin in its problems, being unable to make nation states solve the issue of refugee protection (which are sometimes not even in accordance with the most minimal standards given in the *acquis*). According to

others, the EU powers are growing and thus represent a possibility for the systems of asylum to commence developing more appropriate capacities for protecting refugees.

Studies demonstrated that the (new European) policies were implemented rather unevenly across the national systems. Some have been more consistent on implementing the *acquis*, others represent the laggards. Some have enforced rules properly; others remained on the mere legislative adaptation. In general, the states have interpreted the rules with a great diversity. The older Member States (and the states with traditional asylum policies) have generally needed to adapt less to the EU framework, while the newer members and states with lack of asylum systems in past were affected much greater. Generally, the states with traditional systems of asylum still offered many of the rights they had before (although this has been deflected in the course of the 1980s and 1990s). New states of immigration and asylum (which are more similar to our case) demonstrated again diverse results. The countries in the South of Europe – and frontier zones in particular – have been reported to struggle with great numbers of applications and often avoided taking responsibility for them. However, due to the fact that these states already participated in the membership of the Union, in their case, the EU has had limited options when the state would not abide to the rules. Former candidate states (such as Central and Eastern European states; hereinafter: CEECs) have been studied less; yet, the research yielded some interesting conclusions. In comparison to the Southern states, the CEECs had much less (although not insignificant rates of applications). Whereas in their case the EU had great leverage (due to context of pre-accession), the scholars have reported that they have still developed quite uneven and impoverished systems of protection. Unlike the older Member States (such as Greece or Italy) most of the CEECs legally implemented the *acquis* in quite consistent manner; however, in the minimalist version, often merely reproducing minimal standards of protection to their legislation.

According to studies, success of the asylum system was generally observed to be affected by several factors: pre-existing national traditions in refugee protection; political culture and institutions (and role and strength of judiciary in particular); administrative capacities; capacity of civil society, etc. Having this in mind, we must wonder what may be expected in the states that are short of these conditions, such as post-socialist states in Europe. While not much empirical research has been done here, scholars have not been very optimistic in regards to the chances for refugee protection in these states. According to various scholars, in the previous pre-accession process the EU boosted migration control capacities, while it left other segments largely untouched. With its still restrictive asylum

acquis, great investments in migration control and restrictive interpretation of its own norms, the EU could not induce proper systems of refugee protection in the candidate states – even with the new *acquis*. Other authors (still limited in number) held that the EU is not progressing solely in the human rights oriented asylum *acquis*, but it is also growing in the capacities to purport the reforms that could offer better protection of human rights. As seen by these, the EU had important mechanisms in place for enhancement of refugee rights – in particular, the programmes of assistance and support and the ability to offer (or withdraw) its membership as a reward.

The arguments raised in this branch of scholars of refugee studies largely overlap with rationalists' and constructivists' debates in Europeanization literature. This will allow us to combine their insights and seek to understand dynamics occurring in our case. The rationalist model presumes that success of reforms will be linked to the perception of the cost and benefits of the policy in question and poses that calculus will depend on the way that the European Union formulates its demands. To purport the reform, the EU needs to provide clear and firm requirements, with unambiguous norms and offer proper credibility of threat (i.e. reward following only once conditions are met). Constructivists hold that the reform will also depend on less rationally-driven factors; such as state of values, culture and institutions and the ability of the Union to impact them in the processes of socialization and persuasion. Again, besides offering sufficient networks of socialization and communication, the EU should be able to offer decided and undisputed set of values attached to its rules.

As we have seen, some believed that the harmonization of asylum policies had overall negative effect on the human rights of refugees; while others maintained its impact was generally positive – especially in comparison to tendencies occurring in the 1980s and 1990s. According to the later, the EU brought the mechanism of human rights that many states have previously lacked, and thus forced them to introduce standards that they would otherwise hardly have accepted. Critics refuted such arguments and held that proliferation of norms on migration control and redistribution neutralized those positive features of the Union's asylum *acquis*. According to these, pushing refugees out of Europe and/or tying them to areas lacking basic protection standards, the EU has denied the key values of refugee human rights. Unfortunately, there is a great lack of research in the member states or candidates in regards to this question in particular. Many studies dealt with the older system of asylum, but we are short in results on the national systems of refugee protection

occurring with the post-Amsterdam *acquis* and the stronger engagement of the EU on the issue.

Having this in mind, we may conclude that studying the impact of the European Union on the national systems is of great relevance for us to understand what happens to refugee protection in the course of European harmonization on asylum (and its externalization). In particular, it is important to understand how the European policies may be implemented in the states that had no (systematic) asylum policies prior to the European impact, and whether the EU today offers satisfying level of refugee rights. To understand how the Union acts and impacts transformation, the most favourable cases for research are the states where it has the largest impact – due to the context of prospective membership. In that sense, Croatia – that was in the status of candidacy until 2011[40] – represents a rather interesting case of study for several reasons. Firstly, Croatia highly evaluated its membership in the Union and found the EU as an important authority, making it a formidable case for reform under the sponsorship of the European authorities. On the other hand, despite refugee issues in the 1990s, it did not have experience with such complex asylum norms and migration policies as defined in the *acquis*. Like in many other states where the EU framework has been applied, it is questionable whether Croatian economical and financial resources alone could ensure for demanded standards to be set in place. Equally relevant, as a state with a socialist past, Croatia represents a young democracy that has only recently passed through democratic transition. Hence, its political and social system greatly differs from the one existing in the old democracies. Like other states in region, Croatia is facing serious challenges in adjusting its political and social institutions to reach the standards of its Western European neighbours. The lack of rule of law, ineffective administration, corruption, etc., of which all are still present, were found posing serious threats for effective transposition of the Union's policies. Like with other above mentioned features; this makes a relevant case for studying conditions and results of implementation of the European norms outside its political and cultural surroundings.

Little is known about the functioning of the present Croatian asylum and migration issues. While already a small number of scholars studied refugee questions during the 1990s and in the context of Yugoslav wars; even less is known about the system developed

40 As we shall see in the following chapter, adaptation to the European framework commenced already after the signing of the Stabilization and Association Agreement – SAA in 2001 (see: Stabilization and Association Agreement between the European Commission and their Member States, of the One Part, and the Republic of Croatia, of the Other Part 2005). Croatia gained official candidacy status in 2006. Accession negotiations were officially closed in 2011.

under the auspices of the European Union (since 2003/2004). In broader studies on asylum systems in the Western Balkans, some authors (Feijen 2007; 2008; Peshkopia 2005a; 2005b) provided little information on Croatian asylum. Both authors warned that the states greatly differed in dynamics of the reform and should thus not be studied as one case.[41] Nevertheless, they found some common features that appear quite interesting. Ridvan Peshkopia analyzed the reforms in the context of Europeanization (and particularly the conditionality approach) and concluded that migration and asylum systems built in the states were unstable and ineffective. Considering policies too expensive (both in terms of financial means and expected consequences), the governments have not been very keen to work on reforms. As the author argued, the European investments have not been sufficient to overcome problems in the region. Liv Feijen reported that most of the states (including Croatia) demonstrated important progress in comparison to their initial positions. However, he found serious challenges that all of the systems were facing: problems in reception conditions (capacities of reception centres) or procedures for granting protection (i.e. lack of legal assistance and adequate translation, etc.). Author identified several sources of difficulties: insufficient resources, frequent changes in the European *acquis* and the presence of discourse conceptualizing migration and asylum thorough the images of criminality and security.

Ivan Šprajc (2004) analyzed provisions regulating qualification and procedure for granting asylum in the first Croatian Law on Asylum (2003) and sought to offer assessment of named legal solutions. As he demonstrated, the first Act suffered from great difficulties. Prior to all it prescribed a variety of guarantees to the government, while omitting to elaborate on the guarantees pertaining to asylum seekers. The most basic procedural steps have not been covered by the law (collecting and assessing information) or have been dealt in an unacceptable way (appeals controlled by the government). The Law was severely restrictive and offered poor safeguards to persons seeking protection. As the author concluded, the Law made the impression that its mission was to allow the government to yield negative decisions, rather than serve to protect people.

Goranka Lalić (2010) studied Croatian policies relating to entry and made some general conclusions on the process of Europeanization in Croatian asylum. The author found that

41 Feijen (2008, 418) noted that Albania, Bosnia and Herzegovina, Croatia and FYROM at the time had "fully fledged asylum systems", while Serbia, Montenegro and Kosovo were in the preliminary stage of adopting legislation and building institutions.

Croatia introduced a large part of the European standards in the provisions on entry; but has in some aspects offered lesser standards than demanded. Generally, legal provisions in this area were narrowed only to minimal guarantees. Emphasizing that the changes in the Law in 2007 brought greater consistency with the *acquis*; she found it crucial that Croatia moves from the mere legal adjustments and applies its legal commitments. As regards the policies of entry, Lalić concluded that there were no reported violations of the legal standards; yet, she stressed that due to the lack of control over the actions of the MoI, it cannot be confirmed that all persons were actually granted access.

Florian Trauner (2011) analysed Croatian adaptation to the European framework in migration policies from the aspect of conditionality theory. The author found that Croatia has adapted quite well in the policies of migration control. Asylum issues have not been studied in greater details, but the author offered some interesting results. He found that the country severely lacked commitment in the issue – in particular in the first years of the reform. Somewhat greater efforts, the author stated, were visible in the later stages (after 2006/2007). Important leverage pertained to the external incentive; yet, mechanisms of persuasion were also significant.

While existing research offered some interesting insights; it does not allow us to understand how asylum and migration policies – framed in the European *acquis* and interpreted by the European institutions and the Member States – were implemented in the Croatian case, under which conditions and with which results for refugee protection. These are the issue that are of key interest in this dissertation. In particular, this dissertation aims at providing answers to several vital questions:

1. How was the European *acquis* on asylum policies (and relevant migration policies) implemented in the national legislation and practice? Which model of protection (restrictive/liberal) has Croatia offered to refugees? How has the Union contributed to such interpretation? Which norms have been demanded or recommended from the EU? How have these been implemented, interpreted and enforced by the national actors?

2. What explains the particular model (legislation and enforcement) of refugee protection introduced in Croatia? Why have the national authorities implemented this particular model? How has the feedback from the European Union (communication, demands, recommendations, etc.) impacted it? Which factors at the domestic level explain the products? Which aspects at the European level impacted it? How domestic and European context, needs and strategies interfered to create results that we see in the Croatian asylum and refugee protection issues?

3. What has the model that was implemented brought to persons seeking asylum and persons under protection in Croatia? How have domestic asylum policies and products impacted human rights and the needs of refugees? What can the case tell us about the (regional and global) role of the European Union in protecting refugees?

Based on the theoretical and empirical studies that have been overviewed above, the research has departed from several assumptions:

1. In Croatia, the EU membership is evaluated as one of the highest objectives of domestic and foreign policy. Perceived benefits of membership in the EU can be expected to exceed perceived costs of policy implementation. However, the domestic system is also assumed to be inclined to adopt European demands in measures that suit domestic interests and values. Aiming to satisfy the European authorities and obtain material and non-material rewards (membership and reputation), while at the same time pursing its own interest; the system may be expected to implement those policies that are strictly necessitated from the EU. This may be anticipated to fix standards to a minimal and may lead to restrictive national law and practices.

2. Domestic institutional context (institutional legacies, economic conditions, administrative and financial resources, etc.) may be considered another factor that would tend to relegate successful implementation of the refugee protection norms and policies. Given that the key motivation for building asylum policies and refugee protection policies came from outside and was not intrinsically motivated, we may expect that domestic actors will seek to push on the reforms only in an extent that is demanded by Europe.

3. However, the EU asylum policies are characterized with great ambiguities and conflicting goals. Refugee protection policies are created in parallel to heavy tendencies of securitization and restrictions, which enjoy great support from the Members States. With such weak positioning on the protection of refugees, the EU can hardly be an actor that could make the national system overcome rather negative preconditions (a mixture of national interests and institutional and other difficulties). Instead, it is expected that European schizophrenia in asylum will affect Croatian system too.

4. In such context, the point of balance between domestic and European position is expected to boost heavily securitized and restrictive tendencies aimed at the prevention and control of refugee movements, with inadequate or poor results for the refugee protection dimension. At the same time, due to strict policies of migration control and redistribution demanded by the EU, the refugee movements in Croatia and its neighbourhood are

expected to be greatly impacted by its policies of migration management. In the context of such a geographically dictated refugee protection scheme, export of the European policies to Croatia is expected to result in the attrition of basic refugee rights.

A more precise overview of the research theses developed through the course of the study will be given in the following section.

2.2. Conceptual Framework and Operationalization: Research Design, Structure of the Dissertation and Major Findings

The research operated within two broader conceptual frameworks: one developed in the general literature on Europeanization (in particular, social constructivism and rationalist institutionalism); and the other arriving from refugee and migration studies which deals with the European integration in asylum and migration issues. To be able to analyse the system in its link to European integration, the research employed the concept of Europeanization extended to the investigation of effects of the Union's policies in non-member states. In doing so, the research did not treat Europeanization as an expected product or goal, leading (or lacking to lead) to the creation of some pre-established pattern of policies or to the convergence in policies with the Member States. The research departed from the view that Europeanization may lead to the most diverse products in the national systems. Also, the study did not assume that there would be a model of asylum policies considered *European*, where Europeanization should then lead to the establishment of such a type in Croatia. Instead, Europeanization here was treated as an open-ended process which presumes that the European Union brought important changes to national institutions, policies and the politics of asylum.

Conceptualized in such a way, we can track how the European policies of asylum (and migration) were understood, interpreted and implemented in the domestic case and how the national context and (again) European feedback impacted them. Europeanization here is regarded as a process of transformation in domestic, institutional and policy practices that can be attributed to European integration (Hix and Goetz 2000, 20–23). While such definition may be considered by some as great conceptual stretching (see: Radaelli 2000); it is still considered useful for the purpose of this research for several reasons. Firstly, given that it focuses on the process of policy download, it allows us to study how policy implementation occurs outside the Union's borders. Secondly, this conceptualization enables us to regard the process of adaptation not only through the lenses of shared rules, but also the ideas, values and understanding that may be attached to them – by the

European institutions or other agents which impact domestic decision makers and implementers. While the definition offered by Schimmelfenig and Sedelmeier was quite precise, on the other hand, it excluded to account for these factors.[42] At the same time, understanding the Europeanization of asylum policies as a process where the EU imposes common rules and values on the candidate states would be equally troublesome, as there is hardly anything like European values in the policies of asylum – there are only minimal legal standards. As regards to values, as we have seen, the EU has produced an incredible space for schizophrenia in the interpretation of its norms, and in this schizophrenia, the institutions, governments and actors constantly define and re-define the meaning of the common rules set in the *acquis*. For the said reasons, definition offered by Hix and Goetz appears the most favourable in our case.

As the literature warned, the EU cannot be considered the only actor impacting changes. On the contrary, other organizations may have important impact too: e.g. the Council of Europe, the UN, the OECD, etc. In our case, as it will be visible, there were several important actors which do not pertain to the EU structure: (a) the UNHCR and (b) domestic NGOs and non-state organizations in particular. Nevertheless, these may not be regarded as fully separated from EU structures in asylum policies in particular as the EU chose the UNHCR (and some of the non-state organizations) as its partners and cooperated with them in the process of adaptation. Besides this, it appears that the experts of the former candidate states also impacted national leaders during their time of pre-accession (although we cannot track it in detail; it becomes visible through discourse of actors at times). However, again, given that these were already included in the European pre-accession process, we cannot consider them as clear-cut external actors.

Prior to departing to specification of concepts, design and findings, it must be noted that the contextual frame characterized by (perceived or real) conflict between state interests (state safety) and human rights (human safety) placed asylum issues in a particular position. As sufficiently discussed in the Chapter 1, overall domestic and European policies and their creation and implementation must be understood from this angle. Describing these tendencies, the literature recognized two general approaches to migration and refugee issues prevailing in contemporary politics, debates and literature. These are the *particularistic* approach (often also termed as *realist*) and *universalist* position (often

42 As stated in the previous chapter, Schimmelfennig and Sedelmeier defined Europeanization as "a process in which states adopt EU rules" (2005, 7).

denoted as *idealist*). The first of these understands migration and asylum as a (potential) threat to state interests (resources, identity, security, etc.) and emphasizes priority of state protection. This approach assumes that human rights – as important as they may be – cannot be practiced on the account of state functions; those aimed at controlling its territory, population and interest (and safeguarding those who are its members). Universalist perspective acknowledges the right of the state to maintain its functions; yet it presumes that they cannot be practiced on the account of human rights and particularly not in the domain such as asylum, where human life, liberty or safety are in question (for greater details, see: Boswell 2000; Gibney 2004, 194–228). Each study that deals with the issue of refugee protection (and migration in general) will inevitably take position on some of these two goals. Depending on this, one will also use particular interpretative framework for the analysis and tend to explain the products in quite a distinctive way. This study departs from the universalist perspective, reasoning that the policies of migration and asylum should be judged in the light of their capacity to safeguard the human rights of persons seeking international protection or holding it – as the founding purpose of the entire refugee protection regime.[43]

Secondly, because the entire system and the participating actors will take position on these issues (preferring one of the goals) and will base their actions and strategies accordingly; any analyst that seeks to understand how (and why) certain policies were implemented in a specific way must take them in careful consideration. These two broad policy aims are generally reflected in two sets of measures (explained in the Chapter 1): refugee protection measures and migration management rules. These policies are implemented together and bring conflicting goals and often conflicting measures and results: (a) management of migration and asylum movements, with rules, norms and policies aimed at controlling (and preventing) the movements of persons; and (b) refugee protection provisions, aiming at providing the asylum immigrants with specific rights and

43 The idea that one may stay neutral on this issue seems quite unrealistic. One may judge policies only on the basis of some established criteria. In the case of migration and particularly asylum policies, the idea of conflict between state and human rights, imposed as a dominant light since the change in migration and asylum policies in the 1970s and 1980s, frames how a researcher (or a stakeholder) understands the concept. While one may have certain understanding for both of the goals, the way that they are positioned (i.e. in constant tension) does not allow space for much compromise. The fact is that in many occasions, solutions providing refugees' safety (and dignity) are understood as a danger for state interests and vice versa. In that sense, quite a lot of authors (including this study), do not even aim to be neutral on these issues. In reality, most often, the states and governments stand closer to the particularistic position, while organizations for human rights and academics tend to nurture more clearly the universalist views.

measures for protection. While the key interest of the study is the issue of refugee protection, this could not have been analysed without looking how the issue was related to the question of state safety (understood widely). In particular, the problem of refugee protection in Croatia needed to be studied in the context of its position between these two goals. Particular understanding and interpretation of these is derived from the rich universalist literature of the refugee and migration studies.

The first aim of the study was to establish how the European policies of asylum (and relevant migration control policies) were implemented and balanced in Croatian law and practice (addressed in the Chapter 4). In doing so, two key questions were central: (a) how the legislation addressed the issues of refugee protection and how it balanced the aims of state protection versus human protection; and (b) how these have been implemented and enforced on the practical level. In doing so, the policies that affected protection of refugees (asylum and migration policies) were divided into four key areas and were studied in their progress since 2004 until today. The areas are the following: (a) access to procedures for granting protection; (b) access to protection; (c) reception of asylum seekers; and (d) content of international protection (rights of persons recognized protection).[44]

Access to procedures for granting protection comprise of measures that regulate the persons' ability to claim protection (as a key right of each person recognized under international and European refugee law). This right is affected by a variety of measures regulating entry and stay of aliens in the country. Access to protection for a refugee depends on a diversity of provisions defining how the procedures for granting asylum will be conducted, which conditions and circumstances qualify for protection and who may be granted protection in a specific state.[45] The question of material reception of asylum seekers is regulated with the measures specifying which socioeconomic rights and other benefits (accommodation, financial assistance, health care, cultural and civil rights, etc.) the persons waiting for a decision on asylum claim may have. Finally, the content of

44 The domestic law (Asylum Act) introduced provisions on temporary protection already in 2003. However, due to the fact that these rules involve diverse sort of status (group status of protection), decided on the EU level, they are not considered here.

45 The dissertation does not study the area of temporary protection as a group status for the mass arrival of asylum seekers in the cases of great refugee crisis in particular areas. Temporary protection is a diverse form of solution which offers temporary protection and is coordinated at the level of the European Union. While Croatia has implemented Directive on Temporary Protection (Council of the European Union 2001a) within Asylum Act (Art. 87–97), it was not yet enforced.

international protection presumes general rights granted to persons endowed with asylum status or subsidiary protection. They include the rules specifying socioeconomic, civic and other rights that persons under protection will enjoy in the state once the protection is granted (residence, working rights, social welfare, health care, education, chances for naturalization, etc.). These could have been properly analysed only in the most recent period, as recognition grew only after 2008 (from 1 case until 2008 to 80 recognitions in 2012). The combination of diverse measures and their interpretation (and enforcement) creates for an asylum system which determines the level (and quality) of refugee protection. All of these will be reviewed and explained in detail in Chapter 4.

The study decided to analyse how the policies were developed since July 1, 2004 until December 31, 2012. The opening date was chosen due to the fact that the asylum system has commenced to function since the date of enforcement of the first Asylum Act (July 1, 2004).[46] The chosen closing date was selected because the system is still going through rather important changes. Also, in the recent period, events that are rather illustrative for our theses occurred. Therefore, the study sought to follow the progress until the latest possible date. The reason to study the policies in this period was twofold. Firstly, this enabled us to look at the progress occurring in the area of refugee protection since the beginning of the implementation of the European framework: i.e. changes taking place with the institutional and legislative alterations until today. This has been especially important for our conclusions on the effects of domestic and European factors that induced diverse forms of changes (or lack to do so). Secondly, given that the key parameters (and especially normative positions and interests) were established at the very beginning, it would be rather hard to understand the system if we would not study it in such complexity.

To analyse how the system interpreted the European *acquis* and implemented it in the Croatian legislation, the research has compared the norms demanded by the set of European legislative pieces on asylum (and relevant migration policies) and compared it with Croatian legislation (asylum and aliens acts). At this level, the study sought to understand (a) how consistently the European norms of refugee protection (and migration management) were introduced in domestic laws; and (b) in which modality they have been

46 Where important events occurred before this date (that assist in explaining the processes happening), they were included in the study. Such was the case with, for instance, important political debates over the system and the first Asylum Act (occurring in 2002). However, the implementation of policies and their results can be regarded only since the given date. Prior to this date, the asylum issues have not been systematically solved. The overview of such conditions (preceding to the introduction of the Asylum Act) will be given in the Chapter 3 and 4.

introduced: have the norms been interpreted restrictively (confined to the minimal demands) or have they provided more generous solutions.[47] As the latter was emphasized as rather important for the functioning of the systems in former candidate states, the study believes it will also be important in Croatian case.

Next, after reviewing the findings on implementation and enforcement of European asylum (and migration) rules in the Croatian case, the dissertation sought to explain the particular pattern of implementation occurring in Croatia (Chapter 5). Here we were interested to understand which national and external factors contributed to the way that the system (legislation and practice) dealt with issues of refugee protection. More precisely, we were interested to see which national and external factors and strategies led to a more or less consistent application of the norms and a more or less generous approach to refugee protection. In doing so, the study seized rich theoretical knowledge offered by rational institutionalism and social constructivism. The research did not depart from the assumption that one of the models could better explain reality and it did not seek to purport one of these positions. Instead, it considered implications given under both of the accounts as worthy theoretical propositions that might assist explaining processes occurring in the Croatian case. More precisely, the study sought to determine how the EU context (norms, interests and values) and strategies (conditionality, persuasion and socialization) have intermingled and related with domestic factors and strategies (interests, values, choices, institutions, etc.) to create the product for particular implementation and development of asylum system as well as a system of refugee protection.

Based on the theoretical implications of the two models, the research (Chapter 5) identified a list of factors that one could consider vital for the development of a particular pattern of asylum system at the national level. Namely, combining the implications of the models we could identify several factors crucial for the implementation of the policies: (a) European values and interests in migration and asylum policies (and its externalization to candidate states); (b) positions of the asylum policy in the broader framework of accession; (c) position on Croatian membership in the EU (viability, time frame, etc.) (d) domestic position on the viability (and attractiveness) of the membership; (e) domestic values and interest affecting the area of asylum and migrations; and (f) domestic resources and

47 Chapter 4 also offers a brief link to international and regional instruments of refugee protection that the EU *acquis* defined as crucial for interpretation and incorporated into its norms: i.e. the Refugee Convention and the ECHR. Here the study does not enter (in greater details) into their interpretation; yet, it does warn on consistency of domestic legislation (or practice) with their legal wording.

conditions (economic, financial, social, etc.) and national institutional and social settings (economy, rule of law, institutional and administrative capacities, political culture, civil society, etc.). These were expected to importantly affect policy preferences and strategies of the actors involved (including the usage of conditionality and persuasion strategies) – and their space for action (offering limitations and viabilities for the preferred action).[48] In the particular case of asylum and immigration policies, these needed to be regarded in their link with the broader context, goals and normative positions pertaining to the area. More precisely, to understand positioning of the outlined factors, the author sought to understand how they were shaped by the (unstable and uneasy) balance between refugee protection and state protection aims on top of the ambiguities arising from their tensions on the domestic and the European level.

As we shall see, the European Union used both the mechanisms of external incentive (conditionality), as well as the instruments of socialization and persuasion; both assisted with various programs for building the of institutions and capacities. The conditionality approach was already instituted within the Stabilization and Association Agreement and was further backed by the yearly monitoring process, continuous feed-back within additional recommendations and demands (provided in the yearly progress reports) and the institutionalization of benchmarks for the area (led by the Council of Ministers and European Commission). Softer mechanisms, presuming socialization and persuasion, were installed through the more or less dense parallel communication of domestic actors with their counterpart services or other organizations in the EU or the external actors. Parts of these was not arranged by EU institutions themselves, but directly by the Member States, where national services competent for the area (mostly, the services of internal affairs and

48 The main national stakeholders in the Croatian asylum system were the following: Ministry of Interior (drafting and implementing laws related to migration and asylum; migration management; asylum procedures, reception of asylum seekers and integration of persons under protection); Commission for Asylum (second instance appeals until March 31, 2012) and Administrative Court (third instance appeal until March 31, 2012; second instance appeals after March 31, 2012). Croatian NGOs included in asylum system development are the Croatian Legal Centre – CLC (legal assistance for asylum seekers and refugees); and Centre for Peace Studies – CfP (language training; integration). On the international side, main actors involved in aiding Croatian asylum and migration policies development were the European Commission (norm transposition; monitoring), Member States' Country Teams (Germany, Austria, Slovenia, Hungary, Netherlands: financial and technical aid, training and monitoring), the Croatian Office of the UNHCR (application procedures; issues of return; legal framework; integration) and the Croatian Red Cross (reception and integration assistance). Implementation of social programs pertained to the Ministry of Health and Social Affairs (welfare for asylum seekers and persons under protection) and Ministry of Science, Education and Sport (education programs).

security) cooperated and shared experience, knowledge and understanding (interpretation) of norms dictated from the European level. Impact of these actors on domestic structures will be demonstrated as rather important in the area of asylum and migration, in particular, due to the fact that domestic actors lacked expertise in such complex issues and needed to compensate for it through the process of learning.

Secondly, important impact has been attained (in some areas) from other actors: i.e. other domestic and international organizations that do not pertain to the EU structures. Most dominantly, that was the UNHCR and domestic NGOs (such as CLC or CfP) or non-state organizations (such as the Red Cross). Yet, as stated, the effects of these actors and mechanism (and in particular, the UNHCR and the CLC) were inseparable from the EU context in the sense that they (a) were often chosen as partners or supported otherwise from the European Commission (the UNHCR prior to all); (b) informed the European institutions about the domestic system of asylum and yielded recommendations; and (c) often presupposed that candidate states (including Croatia) needed to consider them of great relevance for (formal and symbolic) membership in the circle of the European states. Moreover, given that the area of refugee protection and asylum is a matter of human rights, a great number of the non-state organizations (most notable, the UNHCR) have an important impact on the understanding of the issue in the EU: most clearly, in the case of the Commission and the Parliament; though much less in the Council of Ministers. Nevertheless, the values and understanding that the Commission and Parliament adopted in past decades were greatly affected by these actors. This has especially been so due to the fact that the EU took the Refugee Convention as its interpretative frame. Where the norms have not been strongly shaped by Member States and the Council of Ministers' understanding and interests (for instance, reception or integration areas), other organizations had greater chances for impact. In that sense, while they are external to EU, they were at the same time included in the network of EU coordinated efforts and given the powers to interpret its norms. Finally, the actors such as the Council of Europe had an important effect on the understanding of the framework in the EU itself: its recommendations and guidelines have become one of the guiding sources for the European institutions (most notably, again, the Commission and the Parliament). Besides its indirect impact through the *acquis*, in Croatia, there is some (though very modest) legal adoption of the recommendations given by the Council of Europe. However, these recommendations did not play a very significant role, especially when domestic understanding (mostly

adopted in the communication with the authorities of the Member States) conflicted with them.

Finally, within the last set of the research questions (Chapter 6), relating to the effects of the implemented policies on the internationally recognized rights of refugees, the research approached the issues from a new angle. Unlike in the first part, where the domestic system was judged against the backdrop of the European *acquis*, here domestic laws and practices were studied from the perspective of their ability to purport crucial standards of protection of refugees and their general human rights.[49] The chapter seeks to establish how the European framework (law and practice) interfered in the relation between Croatian law and practices and the international refugee protection and general human rights. In doing so, the study aimed to answer two key questions. Firstly, it sought to analyse whether the Croatian model of implementation of asylum policies may be judged as supporting or eroding the rights offered by the international norms of refugee protection and human rights (established in the Refugee Convention, the CAT; the ECHR; the Human Rights Declaration, etc.). These were not read in their narrow legal wording. This chapter was not interested to provide a comprehensive analysis of consistency of the Croatian system with the body of international refugee law. Instead, it aimed to see which basic principles and values are demanded by these conventions and declarations as well as to see how the asylum policies affected them in the case of beneficiaries in Croatia. That presumed reading of the norms in their wider meaning – and most notably from the perspective of the undisputable underlining values that the conventions and declarations seek to protect: i.e. human safety, freedom, dignity, etc. The legal wording of these was referred to only in so far as it was important to demonstrate the link between the law (or practices) and products. To be able to engage in the analysis as stated, research used a well informed body of literature debating the effects of asylum policies (European and national) on the human rights of refugees and legal studies discussing the issue in question.

The second matter of our interest here was to understand what role has the EU had in the regional (or even global) protection of refugee rights: how does the Union, with its policies (and actual implementation in the national system) impact refugees; or: can we describe it as an agent that protects or erodes human rights of refugees. To do this, we

49 The research looks both at specific rights pertaining to refugees and asylum seekers, as given by the international refugee law (i.e. rights to access and fairness of procedures; material and other rights of refugees; etc.) and general human rights belonging to all people at the universal level (life, dignity, freedom, safety, etc.).

needed to regard how the implemented policies reflected on broader (regional and global) chances of refugees to obtain protection – and quality protection with all necessary human rights secured. More precisely, we needed to see how Croatian policies of migration and asylum participated in the regional mechanism of management and distribution of asylum migrations; and how its own policies impacted refugees' chance for proper protection on a wider scale. This presumed it was necessary to comprehend what the localization of refugees' rights meant for refugees whose chances to choose a destination was narrowed by the European rules. Analysis was divided in three crucial areas, in a great extent corresponding to those named under Chapter 4: (a) safety and access to effective procedures for determining protection; (b) qualification and the right to life in safety; and (c) the content of protection (and integration) and the right to safety and dignity. Due to the fact that reception standards affect persons only on the temporary basis (especially in the Croatian case); they have not been specifically discussed here. Yet, their importance has been demonstrated within the Chapter 4.

The preliminary theses have been largely confirmed. As we shall see, the study found that Croatian laws have by today been greatly adjusted to the European *acquis*; though adaptation was gradual (i.e. through changes in legislation in 2003/2007/2010). Nevertheless, the norms were interpreted rather restrictively: in the greatest part of the laws (Asylum Act and Aliens Act) they introduced minimal guarantees provided by the European framework; having rarely offered more. In practice, the norms were implemented unevenly. During the early phase of reform, a large part of the norms were quite inconsistently implemented in practice. In time, progress occurred. Some of the policies (reception and recognition) showed significant improvements. Other areas remained unsecured (access to procedures) or poorly developed (rights of persons under protection).

As the study found, reasons for such adaptation rests both on domestic and external factors. On the national side, factors that most greatly impacted (insufficient) development have been negatively positioned interests of decision makers and poor institutional and administrative settings. Decision makers have been averse to the idea of turning the state into a country of destination for refugees and asylum seekers and lacked interest for offering protection to persons who gained access and recognition. They have found the policy too expensive – prior to all, in terms of long-term effects on the economic and social policies. Institutions and administration lacked interest, activity and sensitivity for the issues. Most of the ministries and offices considered the issue not of their domain; but

sought to transfer all responsibility to the key competent body (Ministry of Interior). Not motivated by the government, they remained uninformed and inert.

The European Union had an important impact in the progress of the reforms. Its demands and pressure provoked (certain) response from the government; however, proper results followed when pressure was combined with parallel continual work on socialization and persuasion. These mechanisms were used only partially and often not on behalf on the refugee rights. Firstly, security-oriented framework and insufficiently elaborated agenda of purporting refugee rights presumed that diverse actors have gained diverse leverage. Most dominant was the impact of the securitized agents of socialization which allowed for the prevalence of (already) restrictive interpretation of the refugee protection and migration control norms. Secondly, it presumed that some of domestic actors have remained excluded from effects of socialization and thus limitedly or minimally changed in the process. Due to the lack of legitimacy of the European (ambiguous) agenda, conditionality had only limited effects in the case of decision makers. Persuasion strategies have not been used much in the approach to the decision makers. With the lack of political will, the system of refugee protection developed mostly from the operational levels and obtained only partial success.

Results of adaptation had overall negative effects on the internationally recognized rights of asylum seekers and refugees. While the country with time commenced offering (some) limited capacities for protection (recognition); once it has offered the status, it did not offer the standards of safety or dignity to persons under protection. Instead, it let them live in poverty, isolation and lack of perspective. At the same time, the state prevented a great number of persons from reaching the places where greater chances for protection (recognition) and better quality of protection (i.e. rights and integration) could have occurred: i.e. well established regimes of refugee protection in numerous European states. Despite the fact that the greatest number of seekers and many persons under protection continued to leave the state heading (most probably) to the EU; such reality brought unburdening to the Croatian system but presumed insecurity in the future for these persons (i.e. transfer to irregularity or chance the to be returned to Croatia). Despite the fact that in some areas reform of asylum system showed progressed; overall, the system of protection remained poor. Forcing refugees to rely on underdeveloped system of protection, it has at the same time disabled them to enjoy adequate standards of protection elsewhere. In the context of fixed rules on geographical share of asylum migrations (i.e. the *Dublin system*)

and stringent migration control, such incomplete development of asylum system presumes universal validity of international refugee rights and thus its utter erosion.

2.3 Methodology

The study was performed using primarily qualitative research methods, while quantitative data have been collected only from secondary sources.[50] Research was limited by several methodological constraints. Being comprehended as a matter of state security, asylum and migration policies are normally decided and implemented with minimal public insight. In Croatia this was particularly the case as the question has also not yet gained greater media attention (especially not until recently). Prevailing "obscurity and lack of transparency in public debate" (Grabbe 2000, 503) created great obstacles for our research too.[51] This has especially been the case in some of the areas under investigation. Particular lack of information existed in the areas pertaining to (a) the access of immigrants and seekers to the territory and procedures for granting asylum; and (b) qualification for protection and recognition procedures. In these domains, there was generally less available information and general lack of insight of actors (such as NGOs and international organizations) that could control the actions of the government (i.e. bodies of internal affairs and security). Also, this has been especially the case in the first years of the functioning of the system, while in past years there were some opening reported. Therefore, data on the same issues are unequally represented in the study. The two areas remained still rather scarce on information; however, somewhat better conditions occurred (in the area of recognition) after the institutional changes in 2007.[52]

50 Application of qualitative methods was necessary concerning the nature of research questions and the aims of the study. The research required establishing conclusions over qualitative aspects of policy process that could hardly be analyzed performing quantitative data analysis. Time and financial constraints related to such data collection and analysis also limited the research to select one case only – the case of Croatian asylum policy (focused on the component of refugee protection). When using timely and financially costly qualitative methods, researches often have to be limited to the exploration of one case only (Heck 2004).

51 The obscurity may also be linked with the fact that general elites, media and other actors considered the issue as an expert field in the domain of the Ministry of Interior and the institutions of the European Union. Whereas most of the political actors in Croatia were minimally interested and minimally informed on the issue, the authorities dealing with it (in particular, the Ministry of Interior and state security organs) were recognized as generally quite reluctant to provide information on issues which are considered particularly sensitive (such as access or recognition).

52 Due to the lack of surveillance, the state of enforcement in the area of rules determining access to the territory and procedures (affecting the deployment of readmission provisions too) were especially hard to assess. This has especially

Next, information was difficult to collect due to several other factors. The research aimed at demonstrating progress from the very beginning of 2004. It therefore needed to draw conclusions on the practices that have been changed in the meantime (to greater or lesser degrees). However, due to the vast lack of information in the early years of the system's functioning (and minimal or no interest from the media), it was rather challenging to collect information about it. The study needed to gather information on the progress occurring from the limited number of actors who are still active and who could recollect their memories. Also, the size of the system (a very limited number of stakeholders and beneficiaries) left informants sometimes feeling uncomfortable to provide information for public purposes. The study thus needed to leave some issues unanswered. Finally, because policies under investigation are directly linked to the safety of human beings (refugees and asylum seekers), much relevant data was unavailable due to the necessity of protecting personal identities.

To compensate for these shortcomings, the research collected information from the widest possible array of sources: (a) legal documents (laws, regulations, ordinances, recommendations, etc.); (b) various reports undertaken by national bodies and organizations, as well as the EU bodies and international organizations; (c) round tables, conferences and open meetings; (d) media content (articles, TV and radio shows, documentaries and reportage, etc.) providing information on the implementation of measures and reflecting discourse of the actors. Collected data was further supplemented with inquires based on (a) participating observation; (b) a set of informal conversations with the key stakeholders and beneficiaries; and (c) interviews with the main domestic and European stakeholders and the beneficiaries (23).

Participating observation commenced in January 2012 (ongoing), through the project of volunteering (CfP) in activities relating to assistance in integration of asylum seekers and

applied to procedures at the border; yet, was not limited to them. Because the act of demonstrating the intention to apply for protection (ideally shifting one's status to regularity) relies on the contact between immigrants and police officers exclusively, without systematic monitoring of the non-state bodies; the assessment relies on the competence (and willingness) of state authorities to competently and consistently apply the norms. Since the enforcement of the first Law on Asylum until 2008, no more significant form of surveillance (of any kind) was applied, making it hard to judge the form and frequency of (non)compliance with refugee protection norms. For this reason, the information can only be collected based on the data that NGOs collected through communication with asylum seekers – and mostly those seekers that have established entrance after being previously returned. This made our information rather limited. However, as we shall see in the chapters that follow, we have still managed to collect some important data on the issue, allowing us to make some (conditional) generalizations.

persons of recognized protection. The activities included assisting beneficiaries in their managing through institutions and society; and assistance in learning of the language. Informal conversations and interviews have been conducted between May 2011 and January 2013 and comprised key stakeholders (state, non-state and NGO) and beneficiaries (asylum seekers, persons under subsidiary protection and persons with asylum status).[53] Data from these sources was collected in the area of the city of Zagreb – where the decisions makers and the key NGOs are based. Also, Zagreb is the place of reception for a great part of seekers and the usual place of living for most persons in recognized protection. Interviews were semi-structured: they contained a pre-established set of questions; yet, when it demonstrated more useful and interesting; it was replaced by a more open approach. In this context, preliminary questions served as a framework for the topics raised; yet, conversation was led by the important topics arising from the conversation. All of the mentioned sources were used at all levels of inquiry: in drawing on the results of implementation, in explaining results and in framing the consequences for human rights. Due to sensitivity of some of the data and the (reported) sense of comfort of some of the informants, the study sought to cover identity wherever this was deemed correct, ethical or purposeful. In particular, beneficiaries are cited in such a way as to disable ability for one to understand their status (and some stakeholders too; or all of them in a particular context). This is relevant as the informants have not always felt comfortable discussing particular questions.

The first questions – i.e. adaptation of the domestic legislation with the European framework presumed analysis of key European asylum (and migration) legislation and domestic asylum and aliens laws. To be able to compare the domestic system with that of the European Union, check its consistency and extent of refugee protection mechanisms, the study used rich theoretical and empirical research which assisted the researcher to identify crucial mechanisms that needed to be analysed. The study also profited from several domestic sources of analysis obtained from legal experts or organizations. To judge how the law was enforced, the dissertation used all available reports and complemented them with the information obtained from discussions (informal conversations or

53 Ministry of Interior (hereinafter: MoI) (1); Commission for Appeal (1); the European Delegation in Croatia (1); UNHCR (2); Croatian Legal Centre (hereinafter: CLC) (2); Centre for Peace Studies (hereinafter: CfP) (3); Red Cross (2); volunteer CfP (1); beneficiaries (10). Number in brackets point to numbers of persons interviewed within the given body, organization or a group of beneficiaries. Where it was needed to clarify certain issues, follow-up meetings were held.

interviews) with key stakeholders and beneficiaries. Stakeholders have been asked to judge the system in the four established areas.[54] Besides general evaluations, each of the interviews contained a set of topics and questions modelled specifically for each of the respondents based on the role he or she had in the system. This way, research sought to obtain detailed information on particular areas under investigation. Each of the stakeholders was asked to explain and judge how (key) legal norms were implemented in practice. In doing so, the author pinpointed to particular issues and asked informants to further identify areas that they judged relevant. Furthermore, stakeholders were asked to comment on the reports that the author had collected or on the information the researcher obtained from other informants. During the interviews, particular attention was given to stakeholders' judgements of the progress occurring through the diverse phases of the reform (2004 – 2012). Besides this, as a volunteer in the area, the author had a variety of informal meetings with various stakeholders and participated in discussion about the challenges and progress of the system. Also, by the same line, the author met a number of beneficiaries and discussed the system with them informally. In various occasions, experiences pinpointed by the beneficiaries were observed also by the author (in the activities related to volunteering). While the beneficiaries were asked about these issues during the interviews, data obtained from the formal interviews in these questions was much more limited than the one obtained in the informal discussions.

The answers to the second set of questions, seeking to explain why the system responded in particular ways, were searched from several sources: narratives and discourses of decision makers and implementers; available reports and discussions (and interviews) with stakeholders. Discourse of decision makers was obtained from transcripts and recordings of several sets of parliamentary debates which are almost the exclusive occasions when decision makers (political elites) commented on the issue of asylum system. Discourse of the implementers and their views on the reasons for particular developments in the system was traced through: (a) reports and transcripts of discussions, round tables and open debates covering earlier periods of the reform; (b) their public speeches, reported by the media; and (c) participation in round tables, conferences and

54 Some stakeholders restrained themselves from judgement. This would occur when (a) they believed they cannot provide an informed answer; or when (b) they did not feel comfortable discussing the issue due to their position in the system.

debates.[55] Besides this, an important part of information in this area was collected in interviews. In the interviews, stakeholders were asked to offer their view on the reasons pertaining to particular ways of implementation of specific policies. In a majority of cases, perceptions of the respondents overlapped. Where this was not the case, the researcher sought to additionally explore the issue and discuss it with the greatest possible number of stakeholders. In most of the cases, such a process would yield rather interesting findings, often pointing to the issues that were initially not considered in the research.

Finally, as we have stated, in the last set of questions, the study sought to approach the issue of Croatian asylum and migration policies from the angle of their impact on human rights for refugees. In doing so, it needed to frame not only the issues occurring within the borders of Croatia, but also its effects on the refugees who were struck by domestic policies – yet, have not obtained entry or stay (and protection) in Croatia. To answer these questions, the researcher collected a wide variety of reports that referred to refugee movements and protection inside Croatia as well as in the surrounding area, and sought to gain understanding how the regimes in the region mutually impacted each other. Data was discussed with the stakeholders who were asked to comment (and judge) the reports and their implications, back them up with further information and (as far as they could) provide the researcher with information of a similar kind. While many stakeholders could not refer much to the issue, some of them had rather valuable information on the matter. Furthermore, during the interviews, stakeholders were asked to think how policies affected particular human rights of refugees.[56] This has been especially useful in the areas where policies necessitated particular expert knowledge (such as legal expertise). While a good number of answers in this area have been collected from the stakeholders and experts in the field, where it was possible, the research gained the understanding directly from the beneficiaries – their perceptions, experiences, narratives and conclusions. Whereas the

55 Particularly useful were the meetings of the Coordination for Asylum – i.e. informal meetings of key stakeholders, where they discussed progress and challenges and sought possible solutions to the problems. Coordination was initiated by the UNHCR in 2003 and is organized and coordinated by the CLC (as the implementing partner of the UNHCR). Coordination includes representatives of the state bodies and institutions in charge (Ministry of Internal Affairs, Ministry of Health and Social Welfare, the Ministry of Justice, the Office of the Ombudsman, the Office of the Ombudsman for Children, Office of Civil Rights, the Administrative Court of the Republic of Croatian, etc.), NGOs and the Croatian Red Cross (see: UNHCR 2010).

56 To keep the interview focused, in this area, the research targeted particular issues that have been recognized relevant in the literature.

beneficiaries were many times reluctant to discuss openly on the system and the application of legal norms in their cases, they were more prone to share their experiences and reflections on their lives since the moment they started to seek protection or have obtained it. Departing from the belief that it is recipients themselves who can best inform us how the system affected their key rights, this part of research gave great attention to information collected through direct communication with asylum seekers and persons under protection. Here the research used non-structured interview forms and let the informant narrate their own experiences. Where they did not feel comfortable to provide answers in the form of an interview, the analysis sought to include it among the findings in the form of narrative.

Data was interpreted using the method of qualitative data analysis. Qualitative content analysis presumes focusing on "characteristic usage" of discourse and "contextual meaning" of the textual data (Hsieh and Shanon 2005, 1278). Analysis of data obtained through the research presumed close reading of the context, meaning and implications of the actors' choices, strategies and policy outcomes. Information obtained from the rich theoretical body of literature (refugee studies) enabled contextualization of the discourses and narratives surrounding the issue, as well as the implications and products of the policy in question. As scholars explained, such methods are used when a research seeks to get a close understanding of the phenomena under investigation and are often utilized in (single) case studies. The literature has identified several subcategories of qualitative content analysis. One of these is *conventional content analysis*, where research commences without pre-existing assumptions and hypotheses and develops them through the research. Such an approach is useful when existing research is rather limited. Instead of using pre-established categories and codes, the examiner allows that these be set up through the research. Through using this method to obtain knowledge and understating of the phenomena, investigators "immerse themselves in the data to allow new insights to emerge" (Kondracki and Wellman in Hsieh and Shannon 2005, 1279). Such study typically uses open-ended questions and labelling occurs as the research progresses. Besides this, there is another common method of qualitative content analysis identified by the scholars: *direct content analysis*. This type of research is used when the phenomena under study has already been investigated (to a certain extent), which allows the researcher to formulate preliminary assumptions. This method allows for the scholar to validate and extend already existing theoretical knowledge. Existing theory assists the researcher in focusing research questions and make presumptions about the behaviour of the variables and their links.

Study typically commences with pre-established concepts and labels which it uses to categorize results. Interviews usually include open-ended questions where the researcher then supplements them with further targeted questions about pre-determined categories.

This research operated between these two described methods. The dissertation departed from several preliminary framed questions and assumptions which assisted the study to focus on particular areas of the policy in question, determine how to judge and evaluate them and how to understand their products. Pre-modeled theses also assisted the researcher to keep focusing on particularly important issues during the process of investigation and data analysis. Data obtained mostly confirmed broadly framed assumptions sketched at the beginning of the research process. However, when the field investigation commenced, the researcher commenced obtaining information that was initially not included in the research design and that was not envisaged. This especially refers to the second set of research questions, where the dissertation sought to explain what happens with the policies when they are supposed to be implemented or how actors respond to demands, challenges and constraints. In this part, each new fact served as a further guide for opening new questions, topics and new (more specified) theses. Important novel findings were then included as another area of investigation and were incorporated and tested in further steps of the investigation. While dissertation validated the general preliminary assumptions imported from the theoretical literature, it also obtained a variety of refined and detailed findings as well as the understanding of the processes occurring in the domestic context – which may or may not apply to other cases.

2.4 Contribution of the Research

The study is expected to add to the ongoing debates in the general Europeanization literature, as well as to the scholarly debates in refugee and migration studies which deal with European integration and its effects. Whereas Europeanization studies record a growing body of literature; as we have established, investigation of the Union effects in the non-Member states are still rather neglected. Research demonstrates great divergence across policy areas and countries, but as it was emphasized, national and external factors that allow it and their outcomes are still less known. Close examination of the context that was conducted in this study (and that is necessary when inferring on the outcomes of universal rules applied to specific context), enabled us to gain deeper understanding of conditions contributing to the occurrence of the observed effects. Certainly, one case analysis hardly enables generalizations, but it does, however, provide an understanding of

phenomena in their natural environment (Heck 2004; Hsieh and Shannon 2005). This also implies that conclusions from a single case can be valuable for other cases which perform under more or less similar conditions.

In the same manner, the study contributes to the knowledge in the area of Europeanization of asylum and migration policies in the non-Member states – a field which, as we see, has been so far largely neglected in migration studies. In relation to specific interests of migration studies, the research investigated the relevance of prominent debates over normative issues of the EU in the Croatian case and sought to relate it to assumptions of Europeanization discourse. This is of great importance for the present course in migrations field, focused on analyzing broader (regional and global) effects of the Western European normative structure.

Also, the research is believed to contribute to the process of building knowledge on policy transfer in the specific context of Southern-Eastern Europe; once more an area poor in empirical findings. As it is often questioned whether the effects of Western-Eastern divide can be more decisive than the division between Member and non-Member states, evidence gained from this study can be fruitful also in this respect.

Finally, as it was noted, knowledge on the Croatian asylum system in particular is rather limited, since the small number of studies that did deal with this case, did it mainly by investigating the broader Western Balkan system or they were applied only to specific areas or were outdated. Therefore, overall functioning and the products of the system are so far rather unfamiliar both to the public, as well as to the researchers (and often even to decision makers themselves). This research contributed to gathering of the basic knowledge and understanding of the Croatian asylum system.

3 Context of Adaptation to the European *Acquis Communaitaire*: Negotiations with the European Union and Introduction of European Immigration Policies

3.1 Migration and Refugee Issues in Croatia until the End of the 1990s

Until recently, immigration and asylum issues have received barely any attention from the public or academic circles. The topic has been seen as unimportant in the Croatian context. Media articles, scholarly work and general public debates were limited to the issues of emigration and Croatian relations with Croats abroad. It is only in the last several years that some scholars demonstrated interest for the issue (still only a few, as we have seen) and a year or two since the media commenced following what occurs in the domain. The reasons for such a state of affairs is that – indeed – up until the EU demanded Croatia to develop measures for management of migration; the domestic context has not been to a large extent affected by migration trends occurring in (Western) Europe.

Traditionally, Croatia was primarily a country of emigration. Scholars estimate that since the 19th century until 1980s, over a million inhabitants of Croatia emigrated to the European or other industrialized states (Mrđen and Friganović 1998, 43). During the period of socialist rule (1945–1990) and Croatian membership in socialist Yugoslavia, the state was experiencing parallel emigration of nationals heading towards Western Europe or other industrialized states (Canada, US or Australia), as well as immigration from other states of Yugoslav federation. The largest portion of emigration movements pertained to economic migration and the greatest part of citizens left towards Western Europe (Germany in particular; i.e. *Gasterbeiters*). The second reason for emigration was of a political kind and included movements of nationals who fled the risk of political persecution; most regularly based on their political opinion and activity against the socialist regime (Čizmić 1998, 129).[57] At the same time, considerable numbers of citizens from the less advantaged republics (mostly from Bosnia and Herzegovina) moved to Croatia searching for better conditions of living in the comparatively (relatively) developed Croatian state (Mrđen and Friganović 1998, 43).

57 It is estimated that about 300,000 persons left Croatia since the end Second World War until the 1990s (including all categories of emigrants) (Čizmić 1998, 129).

These stable and regular migration trends were ended by the disintegration of the Yugoslav Federation in the early 1990s and subsequent war conflicts. Breakdown of the Federation and the conflicts that followed brought new realities in migration patterns in Croatia. Several migration trends quickly developed in the first-half of the 1990s: emigration of non-Croats from Croatia to other parts of the former-Yugoslavia; immigration of ethnic Croats living in other parts of the former-Yugoslavia (particularly Bosnia and Herzegovina) to Croatia; movements of refugees who were nationals of other Yugoslav states to Croatia (mostly the citizens of Bosnia and Herzegovina); refugee movements of the Croatian population to Western Europe and other industrialized states. Numerically, breakup of the socialist Yugoslavia led to the highest refugee crisis in Europe since the end of World War II. In 1991 the number of internally displaced persons (hereinafter: IDPs)[58] in Croatia reached 550.000 and declined to 260.705 in 1992 and to 100.688 in 1997 (UNHCR 2011). Between 1992 and 1995, the total number of refugees from Bosnia and Herzegovina amounted to 1.2 million. Croatia received about 400.000 of these refugees (UNHCR 2009a). However, due to their ethnic Croatian origin, a large number of them had the option to obtain Croatian citizenship and have since integrated to the host society (Sopf 2002, 5). Approximately 30.000 Bosnian Muslims have been resettled through special programs to different third countries (UNHCR 2009a). Due to the crisis in Kosovo at the end of the 1990s, Croatia received 6.618 refugees from Kosovo.

Despite the fact that Croatia was a signatory party of the Refugee Convention since the time of socialist Yugoslavia (Sopf 2002, 5); the state did not have a developed asylum system. Nationals from the other states were given temporary protection. Status of this group was regulated by directives, internal instructions and regulations and was not based on any specific law, save Article 33 of the Constitution (Sopf 2002, 5). Under Article 33, the Constitution stated the general right to asylum for persons fleeing persecution.[59] However, although officially termed as refugees (Croatian: *izbjeglica*), their status has not resembled to refugee status (i.e. full asylum). Instead, it was planned as a temporary solution. Refugees were to be returned to their state after the need for protection ceased. No status of asylum (in terms of individual status; with the option of long term stay) was

58 Nationals of Croatia who were displaced due to war within the country.

59 "Foreign citizens and stateless persons may obtain shelter in the Republic of Croatia, unless they are prosecuted for non-political crimes and activities contrary to the basic principles of international law... No alien lawfully within the territory of the Republic of Croatia shall be expelled or extradited to another state, except in pursuance of a decision made in accordance with a treaty and law" (Ustav Republike Hrvatske 1990, Art. 33).

offered under Croatian laws. The Law on Aliens (Zakon o kretanju i boravku stranaca 1991, Art. 31–37) recognized the right to provide refugees with protection; yet, it again was planned as a short term solution (until resettlement, return or other solution). By 2002 (Sopf 2002, 5), there was still about 8.500 refugees from Bosnia and Herzegovina and 683 from Federal Republic of Yugoslavia (i.e. Kosovo). While the Draft of the first Asylum Act (2002)[60] envisaged offering asylum status to these recipients, parliamentarians determinately rejected such an option. Instead, they preferred to have refugees returned to their states (Croatian Parliament 2002).[61] As we shall see (Chapter 5), the key motives to such a decision were of economic nature. Until today, a large portion of these refugees have already returned to their homes. In 2011, there were still 513 refugees from Bosnia and Herzegovina and 226 refugees from Kosovo (UNHCR 2011). In December 2012, the UNHCR officially closed its program for refugees and displaced persons.

Internal displacement is by today largely solved. In 2011, there were still 2.059 persons internally displaced. 107.668 refugees that fled Croatia in the early nineties returned by 2011: 93.012 from Serbia and 14.656 persons from Bosnia and Herzegovina. Return and repatriation programs have been under great pressure from the EU and international community and have been fuelled with great loads of problems. During the nineties; the government did not demonstrate a willingness to invest in the programs. The situation has been somewhat improved after the end of the nationalist regime in 2000 (Croatian Democratic Union under the president Franjo Tuđman). Nevertheless, even afterwards, the Serbian population in particular found great problems in practicing the rights established under the programs (regaining property; reconstructing their properties, etc.). Great deals of issues have been solved with external funds (see: Koska 2011).

Internal displacement and the arrival of refugees from the other states have exerted great pressure on the Croatian state and society. Besides other investments into reconstruction and social care necessitated during and after the war, the government reported to have

60 Designed by the Ministry of Interior (hereinafter: the MoI) with the help of the Member States country teams and the UNHCR.

61 This will also make a difference in the terminology of the Croatian case. Where regularly, persons under asylum status are denoted to as *refugees*; in the Croatian case, they were termed as *asylees*. Distinction was made to those persons who have been previously residing in the state and had temporary protection (which were called refugees in the Croatian context). Due to its widespread utilization in the literature and administrations outside the Croatian context, the dissertation uses the term refugee instead of the expression asylee.

spent a vast amount of the budget to provide for large numbers of IDPs and refugees.[62] According to scholars (Bežovan 2009, 4; Perković and Puljiz 2001; Puljiz 2001, 168), the issues of internal displacement and refugee issues exhausted the already unstable domestic social system (social assistance, housing, medical care, etc.). As we shall see later (Chapter 5), when Croatia will be demanded to build asylum policies; decision makers will be greatly averse to such solutions – yet; they will accept it due to the prospect of gaining European membership. The path to membership will however be fuelled with a great number of problems. Besides the domestic setback, the problem will occur in Europe too: at the time of Croatian accession negotiations, the EU was already worn-out of the enlargement efforts. The process will end at last in 2011 with successful closure of accession of negotiations.

3.2 Negotiations with the European Union: Difficulties of Integration Process

Croatian course to membership was quite diverse from the (former) candidate states of Central and Eastern Europe. While these states were included in the agenda of enlargement already during the 1990s; Croatia has lagged behind, not due least to the war conflict ongoing until 1995. The greatest obstacle to greater cooperation between the state and the Union pertained to the lack of democratic reforms under the authoritative regime of the Croatian Democratic Union in the 1990s. With its ambiguous policy towards European integration and particularly the lack of democratic legitimacy and respect for human rights, Croatia did not represent the formidable candidate for EU membership. Instead, by the end of the 1990s it became isolated from the international community and was severely criticized by the EU and other international organizations (Trauner 2011, 67).

The end of the authoritarian era opened the door for Croatia's negotiation with the EU. After having signed the Stabilization and Association Agreement (hereinafter: SAA) in October 2001; Croatia submitted the application for membership in February 2003. In June 2004 the Council gave Croatia the status of candidate country. Negotiations were to begin in March 2005; yet, they were postponed to October 2005 due to the lack of Croatian fulfilment of the key condition: cooperation with the International Criminal Court for the

62 As Perković and Puljić (2001) note, 5.497.249.821,90 of DEM (old German valuate) have been spent for programs in the assistance to refugees and IDPs (or over 2.5 billion Euros).

Former Yugoslavia.[63] In October 2006, negotiations were officially opened. However, in 2008, they were temporarily suspended due to dispute with Slovenia.[64] The dispute was solved in September 2009 and accession negotiations continued (Trauner 2011, 69). However, the accession was made uneasy due to further reasons. Firstly, having learnt that formal acceptance of the *acquis* does not preclude its proper implementation;[65] the EU stated Croatia will not be allowed to enter the Union until preconditions were implemented both in its laws and practice. According to stakeholders, reforms were under heavy scrutiny of the Commission (see interviews with Croatian politicians, in Trauner 2011, 103). Secondly, the process was characterized with a great dose of uncertainty about the actual viability of membership until the late phase of negotiations. As reported by the stakeholders, the link that was established between European adoption of the Constitutional Treaty[66] and the prospect for new enlargement made for great diffidence in Croatia (see: Trauner 2011, 101–103). It has been ten years since the signing of the SAA that negotiations were at last officially closed (December 2011).[67] Croatia is expected to enter the Union in July 2013. Until accession, the state is under further monitoring (Frieh Chevalier 2012).

Despite difficulties, the process demonstrated that the authorities worked on the prospects of gaining membership with great eagerness. Determinacy with which the state has solved some of the symbolically and politically most sensitive issues demonstrated that there could hardly be any alterative that could satisfy state leaders.[68] Indeed, since the

63 The crucial condition was that Croatia extradites general Ante Gotovina, suspected for planning and implementing a number of war crimes. Whereas this has not occurred until the start of negotiations, the observers consider that the need to start negotiation with Turkey pushed the process also in case of Croatia (Trauner 2011, 69).

64 The two countries disputed the maritime border and Slovenia used veto on the opening of the new chapters of *acquis*.

65 I.e. in the case of former candidate states, and particularly Bulgaria and Romania.

66 By the Treaty of Nice Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts in 2001 (hereinafter: Treaty of Nice). Issue was solved with the ratification of the Lisbon Treaty in 2009 (see: Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community 2007).

67 In December 2011, EU and Croatia signed accession treaty. Referendum on membership was held in January. 66 per cent of citizens voted in favour (European Commission 2012b).

68 Including extradition of general Ante Gotovina, cooperation with the ICTY and compromise on maritime dispute with Slovenia.

change in government in 2000, there has been strong political consensus on the part of all major political forces (excluding some weaker parliamentary parties) over European membership as the key goal of internal and external policy. As authors have emphasized, European membership was not only regarded as a practical, rational strategy for Croatia to maximize its economic, political or social benefits. Equally important was the eagerness to finally reaffirm its belonging in Western European *civilized* states and in this way "distance itself from the 'Balkans' which is a cultural, historic and geographical term that Croatians have perceived as problematic" (Mošaić-Lisjak in Trauner 2011, 106). Such dynamics have made it also clear that there is hardly any policy in the European menu that would not be considered unacceptable for the state. Besides some smaller political parties, protesting against servile attitude towards Europe and the West, all major political parties made it clear that Croatia is ready to fully accept the EU *acquis* and broader political, economic and social principles. In this context, Croatia accepted far-reaching asylum and migration policies that the European demanded under its Justice and Home Affairs *acquis* (heienafter: JHA).

3.3 Justice and Home Affairs: Accepting European Agenda on Asylum and Migration

After the war ended, Croatia became an important transit country. Being positioned on the frequented Western Balkan route, it had a great numbers of immigrants using its territory to pass into Western Europe (Gluščić, 18). Between 1996 and 2001, 75.617 immigrants were detained for illegal entry.[69] The numbers of those that have not been apprehended has been estimated to be rather large. Between 1995 and 2000, Slovenia reported a 543 per cent increase in the rates of irregular migrants apprehended after arriving from Croatia (Božić 2007, 29). The increase in irregular transit migration was facilitated in particular by the liberal visa regimes in surrounding countries (Bosnia and Herzegovina and Serbia) and also the length of its borders.[70] As reported by the Deputy Director of EUROPOL (Bruggeman 2002, 2), the liberal visa regime enabled immigrants to easily arrive at neighbouring countries (often directly at the airport). Long borders and

69 Most often, this included citizens of Romania, the Federal Republic of Yugoslavia (mainly Albanians from Kosovo), Macedonia, Turkey, Bosnia and Herzegovina, Iraq, Iran, as well as several African and Asian countries.

70 As Florian Trauner stressed (2011, 86–87), the Croatian external border is only 500 km shorter than, for instance, the German external border, while the country is seven times smaller than Germany.

the inability of Croatia to control documents and movements of people allowed immigrants to continue (undisturbed) their journey through Slovenia and further on to the EU (Bruggeman 2002, 2). Distressed by immigration arriving from the Western Balkans and Croatia, the neighbouring European states (in particular: Italy and Austria) set to curb down transit migration in the region (Trauner 2011, 71–72; 88–89). In the end of the 1990s, Croatia (along with the rest of the Western Balkan states) was included in regional initiatives aimed at building mechanisms for control of migration in the Balkans. Once irregular migration in Croatia greatly increased (a reported 40 per cent increase in 2000), the EU became specifically interested to participate in such developments (Trauner 2011, 87). At the same time, changed political factors in Croatia (i.e. the end of the authoritarian and nationalist regime in 2000) placed back the topic of Croatian membership onto the Union's and domestic agenda.

In 2000, the EU and Croatia negotiated the content of the Stabilization and Association Agreement. The Agreement (Art. 76–77) stated that Croatia and the Union will closely cooperate on migration issues, and in particular, in the prevention of irregular migration.[71] This presumed that Croatia could no longer be unbothered by transit states; instead, irregular immigrants that were to pass through its territory and arrive at any of the Member States could have been returned to Croatian territory in a facilitated manner (Art. 77).[72] The second important component of cooperation between the Union and Croatia in the area of migration pertained to asylum issues. Regarding the questions of irregular immigration and asylum as inseparable,[73] the Agreement stated that Croatia needs to develop and implement national legislation which will meet the standards of the 1951 Refugee Convention and the 1967 New York Protocol. The negotiation process with the Union that started in 2003 obliged the state to adopt the Union's legal norms in full by the time of

71 Due to the fact that immigration could not have been controlled without the concentrated effort of all countries in the neighbourhood, particular importance has been given to regional cooperation in the control of migration. See: Integrated Border Management strategies and other components of regionally coordinated migration management strategies (in Trauner 2011, 71–92).

72 The Agreement allowed the same right to Croatia. However, due to the direction of contemporary migrations (i.e. East-West); these provisions were not so useful to Croatia.

73 As previously stated, asylum seekers most often arrived to the EU in the status of irregular immigrants. One's status of irregular immigrant and asylum seeker was changeable. At the moment that persons successfully filed asylum claims, they were no more named as irregular immigrants. However, the lack of ability to apply for asylum or the rejection of a claim led again to the status of irregularity. This will be more clearly explained in the following chapters.

gaining membership, including the Chapter 24: i.e. the EU *acquis* on Justice and Home Affairs containing the rules on migration and asylum (Feijen 2007, 502).

In regards to migration, Croatia accepted to align its legislation and practices with a set of norms prescribed under the Schengen Agreement, implement European *acquis* on visas and readmission agreements and other mechanisms of migration management. The task was rather demanding. In the short term, the policies presumed that Croatia needed to build a vast array of mechanisms for efficient implementation of visa arrangements and for controlling its porous borders: reform its administrative capacities; acquire equipment for identification and detection of immigrants; employ and train new staff for the administration of visas and border controls; etc. (Government of the Republic of Croatia 2003a; 2004a). In the long term, the duties were even more complicated as they presumed Croatia will be responsible for safeguarding the European external border and be in charge for the immigrants that it has not prevented passing through its territory. As we shall see later (in Chapter 5), the authorities will be motivated to implement the norms in a stringent way to avoid becoming the *tampon zone* for immigrants prevented from entering or returned from Europe. In the asylum system, however, it was not sufficient that the state manages the movements of the seekers and refugees; instead, the *acquis* presumed that Croatia ought to become a new country of destination for the asylum seekers and refugees. This aim precluded development of a fully new system of asylum – one that had not existed in Croatia prior to the European intervention.

3.4 Context and Preconditions to Development of Croatian Asylum System

At the time that Croatia started negotiations, the present EU *acquis* had not yet been developed. In 2003, when the Law had been adopted, the EU had only the Reception Directive (Council of the European Union 2003a) and the Directive of Family Reunification finalized (Council of the European Union 2003b); while the key directives (i.e. Qualification and Procedure Directive; Council of the European Union 2004; 2005) were still in the phase of negotiation. The first Law on Asylum (hereinafter: LoA) was thus only partially adapted to the *acquis*. Further adjustments (second Asylum Act in 2007 and its amendments in 2010) corrected the legal inconsistencies with EU norms. By 2010, the Croatian legislative frame was to the greatest extent adapted for European requirements. Incorporation of the asylum system demanded a complex set of changes. In the relatively short term, the state needed to provide basic material conditions for asylum seekers; create

preconditions for efficient and fair asylum procedures; and build institutional surroundings for the integration of persons under protection.

Such framework presumed a number of efforts and costs. To implement proper reception conditions, the state needed to build reception centres for accommodation of asylum seekers, organize programmes of assistance (such as health care, social assistance and education), invest in daily care for the recipients (accommodation, nutrition and other basic needs), etc. Fair and efficient asylum procedures demanded by the European Commission assumed: (a) institutional adaptations (formation of bodies in charge for decision making); (b) investments into administrative infrastructure (increasing personnel; organizing training and education; acquiring a network of interpreters, etc.); and (c) the creation of technical infrastructure (such as databases with information on the circumstances and conditions in the variety of countries of origin and other relevant information). To offer the proper level of rights for persons granted protection – i.e. covering their basic needs and allowing their successful integration – the state needed to work on adaptation of the institutional capacities (bodies in charge for the delivery of social and other services) and invest into social programmes and particularly the planning of the integration process. The system presumed a variety of short-term and long-term costs. Besides the costs for administration and infrastructure; an efficient asylum system necessarily presupposed that the state needs to count on potential long-term changes in the population – and possibly, important changes for its social and economic system (market, labour policies and welfare) and probably ethnic composition too. As we shall see, the European programmes of assistance tackled an important part of the short-term requirements and costs (i.e. needs of infrastructure, training, administrative preparation, etc.). However, such difficult tasks demanded several important features to be in place at the domestic level. Prior to all, challenging reform – which presumed building the entire system from scratch – called for significant political will on all of the decision makers, adequate institutional and administrative capacities, strong civil society and well-disposed public opinion. In the Croatian case, political, institutional and social preconditions have not been rather favourable for the implementation of asylum policies.

General political climate was hardly well-disposed to immigration (in general). The nationalist political agenda installed during the 1990s – particularly backed by the context of struggles for statehood and the ongoing war – contributed to conceptualization of the national community based in exclusivist ethnic notions (Bakić-Hayden and Hayden 1992; Hayden 1992; 1996). During the 1990s, the regime invested great efforts in the

stabilization of such an image of community – not only on the symbolic level. In 1991, the new Citizenship Act provided that Croatian citizenship may be given only to those who (a) have had the citizenship of the Socialist Republic of Croatia, excluding a vast number of non-ethnic long-term residents; and (b) were of ethnic Croatian origin, regardless of their legal status (Štiks 2010). Such policies continued through the entire decade. Nationality was given generously to ethnic Croats (returnees or residents of other states); while most persons of non-Croat origin were excluded. Due to the heavy criticism of the EU and international community; after the change of political regime, such practices have to some extent been corrected (see Imeri 2006, 123; Štiks and Ragazzi 2009, 347). Nevertheless, conception of community has not been changed. While the nationalist ideology has been removed and policies relaxed, Croatia today is made up of a stable democracy based in ethnic belonging with over 90 per cent of ethnic Croats living in Croatia (Koska 2011). Understanding membership in terms of ethnic belonging, the state nurtures relations with its body of ethnic members abroad and conceives immigration as a question of a return to the Croatian population to its *homeland* (Ragazzi 2009). In 2011 and 2012, such a conception was confirmed with the adoption of the Law giving special privileges to Croats without citizenship (Zakon o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske 2011; 2012) and the Government's Strategy on Relations of the Republic of Croatia with Croats outside the Republic of Croatia (Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske 2011).

Socioeconomic conditions have also not been very favourable for the implementation of asylum policies. Given that it has never accepted the planned economy style present to a large degree in the former socialist block; it was quite well prepared for transition to market economy (Trauner 2011, 64–65). During socialist Yugoslavia, the country has (along with Slovenia) pertained to be one of the most developed states in the Federation. Its GDP was double that of, for example, other states in the Western Balkans and higher than some of the CEECs, but equally lesser than that of developed states in the EU (see: World Bank 2012). In addition, in the Croatian case, particular problems were high rates of unemployment which created severe pressures on the social system, weakened during the 1990s. Whereas the rate of unemployment has decreased during the process of recovery in the past decade, it has again increased under the impact of economic crisis.[74] Besides that,

74 15.8 per cent in 2001, falling to 8.4 per cent in 2008 (Trauner 2011, 65) and rising again to 17.5 per cent in 2012 (Remiković 2012).

the social system has not been fully rebuilt after war. Instead, it has become unable to protect its citizens in times of crises, having an increasing number of citizens falling under the level of poverty once they lose employment or get retired (see: Puljiz 2001).

Legacies of the socialist rule, mixed with the postponed political transition, created for unfavourable institutional and administrative environment (which is important for the success of any reform, including asylum policies). In the Opinion on Membership (European Commission 2004, 8), the European Commission established that Croatia will particularly need to work on its administrative capacities and judiciary – as preconditions for the successful implementation of the *acquis communaitaire*. The Commission (2004, 16–19) established that after the 1990s, Croatian judiciary instituted independence, but that it suffered of "widespread inefficiency", great time lagging, and improper enforcement of judgments, as well as weaknesses in selection and training of judges. In particular, courts and administration often disregarded decisions of the (higher) courts which placed the rights of citizens in an unsafe position. Furthermore, as the reports demonstrated (European Commission 2005; SIGMA 2003, 31–32), Croatia lacked professional, efficient, accountable, transparent and independent public administration, thus threatening success of the reforms and implementation of the *acquis*. Until the present day, judiciary and administration continue to represent weak spots in Croatian reforms (European Commission 2012a).

Whereas the end of authoritarian regime in 1990s enabled the development of civil society and its growing ability to participate in solving particular social, economic and political problems and advancing the public good (Bežovan 2003, 17), its effects have been limited by several factors. Firstly, despite the fact that it was (to a considerable extent) included in the legislative process (SIGMA 2003), it lacked true impact on the final products (Bežovan 2003). Besides this, the greatest risk for its proper functioning was insufficient and irregular funding, which continued until the present day (CIVICUS 2011). Studies found that the lack of civic participation (and volunteers) undermined capacitates of these organizations. Also, the organizations have still been unable to cooperate with media, inform public an audience and gain its support. Although limited in scope, reports and studies (Benčić et al. 2005, 47–50; Petrović in Župarić-Iljić 2011; Šram 2010) indicated that there was significant levels of xenophobia in society; especially directed to the culturally diverse populations in Croatia. The authors found that immigrants (including asylum seekers and refugees) are usually perceived as a threat to national identity and belonging, the economy, and general state security. Since Croatia's independence, such

negative portrayals of immigrants have been augmented by the media. Media attention on the topic of immigration has generally been especially limited in the past years; however, the media reports which have been published or aired, often reflected negative images of immigration. A large number of media reports depicted immigrants in the same manner as the broader public – as a danger to national security, identity, and the economy (Benčić et al. 2005, 43–45; Center for Peace Studies 2011). Since the 1990s, the national immigration policy was focused solely on stimulating the return of Croat émigrés and the issue of xenophobia has not been tackled at all.

As we have stated, to induce changes, the Union used various mechanisms of impact: i.e. the external incentive and soft instruments of socialization, learning and persuasion. To pursue the first, it established a set of demands through the Stabilization and Association Agreement, purported these demands within more elaborated demands in Chapter 24 of the *acquis*, set the key benchmarks for the area and yielded yearly progress reports and demands. Soft mechanisms have been active in several channels of cooperation of the national authorities with diverse agents of socialization. Apart from communicating demands, the European Commission (via the European Delegation representatives) used soft mechanisms (persuasion) in its meetings with the national actors. Moreover, country experts and counter services in the Member States have intensively communicated and advised national stakeholders in the wide network of bilateral or multilateral meetings organized thorough CARDS and other community programs, in the Council of Ministers or established links of cooperation between particular states (such as, for instance, the neighbouring states).

Furthermore, using its authority and funds, the EU included non-state organizations in the process of cooperation with national authorities. Like in other candidate states (Feijen 2007; 2008; Peshkopia 2005a; 2005b), the EU chose the UNHCR as a key partner in implementing the refugee protection policies. The UNHCR was found to have cooperated and funded local NGOs (CLC and CfP) in providing assistance, training and monitoring. Besides this, the EU also directly funded and supported some of the local NGOs in particular projects (such as AENEAS and TAIEX, etc). Cooperation with international organizations and NGOs was also a matter demanded by the *acquis* and was installed in the domestic Asylum Act.[75]

75 The LoA (2003, Art. 10) provided that seekers must be informed about and allowed to get the assistance from the organizations dealing with the protection of refugees´ rights.

Still, as we shall see, while all of the named factors will have a great impact on the system of asylum; they will not induce consistent reforms in Croatian asylum. While the pressure and soft incentives will push progress within the system; it will remain limited in rather important concerns. Lack of political will and an improper institutional and administrative atmosphere will create poor results in areas where the institutions will need to cooperate. Economic conditions will create great concerns for decision makers; yet, it shall not make them motivated to plan for rational policies that would relieve the system from expenses. Civil society will be of a great assistance in the social services; yet, it will lack the function of control over the system and its behaviour. As we shall see, the EU will only partially address the issues and will lose the opportunity to seize factors that could have worked to the benefit of the reforms. In the following chapters, we are about to discuss how European requirements have been implemented in the case of Croatia and what products these have brought for the refugees.

4 Croatian Asylum Policies: Implementation of the European Asylum *Acquis* in Croatian Laws and Practice

As we have seen in the first chapter, European institutions such as the Commission and Parliament had ambitions to create for the common asylum system, which would presume similar or harmonized laws and practices in Member States. To pursue this aim, the Commission initiated negotiations in several crucial areas: (a) policies of access for asylum seekers (determining rules regulating the entry of asylum seekers in the Union); (b) procedures for granting protection (including criteria determining the chances for protection); (c) material reception conditions, shaping the rights and conditions that the seekers would have upon their application being accepted; and finally; (d) status and rights for persons under protection. Since 1997 and the Amsterdam Treaty, the EU has adopted an impressive array of legislation that has regulated this area; most crucial being several directives: i.e. directives regulating qualification and content of protection, procedures for granting protection, material reception conditions for asylum seekers and family reunification of asylum seekers and persons under protection. However, despite the efforts of these institutions to induce states in finding common language in this area, the asylum *acquis* remained constrained: it has defined only minimal standards that the states should apply and left them freedom to find modality of implementation. Directives stressed the states were allowed to go beyond the *acquis* and offer more to their recipients (as long as this would not contradict the norms of the *acquis*); yet, it depended on their choice. At the same time, the Union demanded that the rules on migration management and distribution (Schengen rules, Dublin system, etc.) be implemented with vigour in order to protect the Union from uncontrolled immigration, irregular immigration and to establish a functioning system of redistribution of the asylum migration which would prevent secondary movements of asylum seekers and refugees.

When the post-Amsterdam *acquis* was launched, a large number of scholars demonstrated disappointment with the new rules. As they emphasized, the 1980s and 1990s brought a vast amount of restrictions on the refugee protection regimes in the Member States that endangered refugee rights and safety. Instead of ending with such dynamics, the EU legitimized them within the new *acquis*. Procedural guarantees with a variety of setbacks and limitations (discretion in the key rights, such as legal aid, conditions for appeal, rights to interpretation and translation, etc.); reception conditions with limitations of basic rights (working rights, freedom of movement and minimal social

assistance), impoverished rights of persons under subsidiary protection and the large legal possibilities for the removal of persons under protection, etc. – were all reasons for dissatisfaction with the European policies. As the authors held, in the atmosphere of heavy securitization and restrictions, where the governments were motivated to cut down the pressures at their national systems, the *acquis* allowed them to seize the norms to their benefit and against the refugee rights. Observing the way that the states of Europe approached asylum during the 1990s, the studies expected that the *acquis* will enable governments to keep protection at the minimum of demanded standards – which, as stated by these authors – could not effectively protect the key human rights of seekers and persons under protection.

In recent years, some authors (Hailbronner 2008; Kaunert 2009; Kaunert and Leonard 2011a; 2011b; Storey 2008; Thielemann and El-Enany 2008; 2011) commenced challenging these arguments. Despite the shortcoming observed in European asylum legislation, these scholars did not assume they would motivate states to further deflect their policies. Referring to the debates among national political elites which demonstrated that governments and legislators tend to think both in terms of national interests; yet also the ethics of international human rights; this strand of literature considered states would adopt policies that they see best fitting to their national traditions and preferences – not necessarily minimalized. In this context, the authors argued that the *acquis* defined the minimum under which no state may go – and in some cases, this meant improvement of previous national solutions. Some of the authors studied already existing effects in the Member States and argued that the states implemented a diverse extent of protection, some of which went beyond what the *acquis* has demanded (Thielemann and El-Enany 2008; Storey 2008). According to the authors, preferred solutions were not only framed by the aim to cut their costs or pressures on the national systems, but also largely related to the previous national traditions or the decision makers' beliefs on optimal solutions for refugee protection.

In that sense, an array of scholars who dealt with externalization of asylum policies (Bryman 2004; Byrne 2007; Byrne et al. 2002; 2004; Collinson 1996; Düvell 2008; Grabbe 2000; 2006; Haddad 2008; Lavenex 1998; 2002; Lavenex and Uçarer 2004) were particularly concerned for the results of the European intervention on human rights of refugees in the states which did not have previous experience and traditions with (such a complex) system of migration control and refugee protection planned now at the EU level – such as in (former and present) candidate states. Observing dynamics of implementation

of the EU migration and asylum *acquis* during the 1990s, the scholars concluded that the EU involvement led to the straightforward erosion of refugee protection. As they argued, when implementing the norms, all of the states (much like the Member States themselves) focused on the aspects of heavy migration control. Such tendencies have been induced both from the Union, as well as from the inside – where the states sought to protect themselves from becoming the tampon zones for EU migration. Motivated to save the costs that these policies would bring for their (scarce) national resources, the governments tended to implement heavy restrictions on protection policies. Unlike in the states with a more developed rule of law and well functioning institutions, these states often failed in the execution of complex European policies. Having seen the restrictive and vague character of the new European asylum *acquis*, the scholars did not have much hope that these would bring a great deal of different results.

Limitation in the research on the implementation of the new rules so far does not allow more concrete conclusions. Existing studies demonstrate the *acquis* allowed great diversity in national legislation and practices (see Chapter 1). In regards to debates on the level of protection offered by the *acquis*, states have indeed implemented diverse solutions across areas: and in some areas, the systems implemented allowed minimalist options, in others they have opted for more generous norms (see: Gos et. al. 2010; Gyeney 2010; Heijerman 2010; Lambert 2006; Mavrodi 2007; Prümm and Alscher 2007). Overall, however, the systems of protection were largely deflected. Studies (Düvell 2008; Gil 2003; Szczepanikova 2011; Toktaş et. al. 2006; Zavratnik 2006) also demonstrated that a great number of problems indeed occurred particularly in new member states and non-member states. As expected, most of them have indeed not implemented restrictive policies and have thus introduced mostly minimalist solutions demanded from the *acquis*. At the same time, great efforts have been performed in migration control mechanisms while the enforcement of the refugee protection dimension was indeed troublesome. Besides the political interests in keeping low immigration and asylum rates, systems suffered from the lack of tradition in democracy and human rights, lacking rule of law, institutional legacies or poor limited resources, etc.

In this chapter we aim to analyze Croatian adaptation to the European framework: i.e. legal adjustments and practical enforcement of the European norms. More precisely, we will review how Croatia implemented the EU asylum *acquis* and those migration rules that affect asylum migrants. In doing so, we wish to understand what level of protection the system has introduced and how it implemented the norms. Here we are interested to

answer the following questions: 1.) How did Croatian legislation respond to the European legal demands? How consistently did it implement the norms and which interpretation (restrictive/liberal) did it give to the norms? How the norms have been implemented in practice? Can we speak about the consistent implementation of the EU norms in both the legal and practical sense? As we shall see, the answer to the first question will be positive. Croatian legislation will by 2007/2010 implement all demanded aspects of the European asylum *acquis* (and related migration control norms). Nevertheless, in most cases, these will be limited in the scope of protection. More precisely, the Croatian law will to the greatest extent introduce minimized and limited guarantees for asylum seekers and persons under protection, satisfying (merely) the most minimal EU requirements. In practice, however, they will be implemented unevenly. Adaptation will prove rather difficult and slow; most often due to restrictive interpretations advanced by the actors and/or limited state support and often institutional dysfunctions. With the course of time, some areas (such as qualification for protection and recognition as well as reception) will demonstrate considerable progress; while some will remain rather problematic (access to territory and procedures for granting protection and integration of persons under protection). The reasons for such interpretation and their effects for refugees will not be discussed here in great detail. Instead these issues will be tackled in Chapter 5. Also, in this chapter we will not in great detail discuss the issue of human rights of refugees – and how European integration has affected them in our case. This will be done in Chapter 6. However, at this section, we aim to demonstrate the functioning of Croatian asylum and how it consistently protects the rights of refugees given under EU laws.

The analysis shall proceed as follows. Section one (4.1.1) provide analysis of legal solutions regulating the right of access to procedures for granting asylum and their implementation in practical terms. As we have stated, to have the ability to effectively claim asylum, the first precondition is that the seekers are allowed access to the territory and procedures. The second section (4.1.2) reviews how the state implemented (legally and practically) European demands prescribing how the authorities are to proceed with the asylum claim – which procedural steps it had to secure; how it assessed the claims and their grounds and how it judged the claims. The third section (4.1.3) occupies with the rights of asylum seekers to material reception and analyses which conditions are offered to asylum seekers while their claim is being assessed. Lastly the fourth part (4.1.4) examines legal and practical implementation of the content of protection: i.e. various rights of persons granted protection and their integration. Each section demonstrates the state of

practice in given fields prior to the introduction of European rules; then it proceeds to analyze the legislative adaptation in the chosen area; and, finally, looks at the practice in whole or how the norms have as a result been enforced. In the conclusion of the chapter (4.2) we will carry on with the results of the given analysis, demonstrate consistency with the European demands and discuss which kind of policies (liberal-restrictive) have been implemented in the case of the Croatian asylum system.

4.1 Implementation of the European Asylum Acquis in Croatia since 2004 until 2012

4.1.1 Access to Procedures for Granting Asylum

As previously established, during the 1990s and especially after the end of the war, the Croatian territory became one of the important transit routes for immigrants (including refugees) heading to industrialized European states (Kolakovic et al. 2002; Sopf 2002; Vidak 1998). The state did not do much to prevent these movements: porous borders between countries in the Western Balkan route let high rates of immigrants to enter the territory; yet, they would (mostly unhindered) continue towards the borders of the Western neighbours. An untailored approach to transit migrations thorough the state territory changed at the end of the 1990s, when an increase in migration patterns induced great interest from Member States and the European Union (in particular the ministers of interior grouped in the Council of Ministers) for the immigration policies in Western Balkans, including Croatia (Trauner 2011, 87–91). As we have stated in Chapter 3, by the time the SAA has been signed (2000), the neighbouring Member States had already embarked on creating preconditions for new migration management in the region. These activities commenced under the Budapest Process and Stability Pact Working Table III, where international experts engaged in the assessment of Croatian border control capacities and assisted the state to develop a planned approach to the issue (Trauner 2011, 71–72). In 2002, the state commenced building the immigration schedule (focused on migration control) under the European auspices (Trauner 2011, 72). By the time the first Asylum Act was enforced, Croatia already had some of the preliminary instruments of immigration (control) policies installed (visa arrangements, readmission agreements, etc.) and had started to participate (more or less successfully) in the scheme of migration management as a share of responsibility within Europe and the region.

The old Aliens Act (1991; amended last time in 1997) did not offer any particular guarantee related to the (facilitated) entry for the persons in need for protection. While it stipulated the right of persons fleeing persecution to be granted temporary protection (Art. 31–37); it was silent on the rules of entry for persons claiming asylum and their stay in the territory. Treatment of asylum seekers has not been addressed. Not much data is available in regards to enforcement and functioning of entry rules from that period. Still, the studies generally show that the authorities often implemented the rules inconsistently, seeking to prevent and return the greatest possible number of migrants (Kolakovic et. al 2002, 133). The greatest amounts of immigrants were classified as irregular migrants and were quickly returned to their neighbouring states; not always with appropriate checks (Kolakovic et al. 2002, 137). Authors were rather sceptical (Kolakovic et al., 2002; Sopf 2002) about the ability (or willingness) of officials to recognize and properly deal with asylum seekers. The number of seekers (arriving or registered since 1997) was rather modest: since 1997 until 2004, there were 309 persons seeking protection in Croatia (Lalić 2010, 65). At the same time, the number of persons categorized as irregular migrants was vast.[76] All applications were rejected. Some of these persons have been offered protection through the UNHCR resettlement program. As noted by authors (Sopf 2002, 5), the seekers would, however, be usually given the decision on expulsion and would leave the country. It appears most of the seekers easily continued their journey to Europe, until Slovenia has not strengthened its migration control policies (to be discussed later).

Measures on migration and asylum that Croatia had at the time of signing the Stabilization and Association Agreement were not nearly sufficient from the aspect of European demands. Having accepted the terms under the SAA, Croatia was obliged to introduce the rules aimed at effective protection of the European external frontier and the Schengen area and introduce also the rules demanded by the instruments of refugee protection (prior to all, the Refugee Convention) (Gluščić, 24–25). These rules were incorporated within the new Law on Aliens (2003) and the first Law on Asylum (2003). In the following sections we are about to see which changes in migration management have been installed under European auspices. Considering that these policies determinate the right of asylum seekers to access the territory – and thus – access the procedures for granting asylum, they constitute a rather vital segment of asylum policies too.

76 Since 1997 until 2001, Croatia registered over 70 thousands of irregular immigrants (see: Sopf 2002, 16).

4.1.1.1 Adapting to the European Demands: Croatian Law and Right to Access for Asylum Seekers

The 2003 Aliens Act (Art. 3), enforced in April 2004, prescribed that an alien could enter and stay in the territory of Croatia if he or she possessed a valid travel document and a visa or residence permit. An alien without a travel document could be allowed entry only when this followed from the international agreements Croatia had in force. Government's Regulation on Visa Arrangements (Government of the Republic of Croatia 2004b) followed closely the prerogatives of the Council's regulation establishing common visa policies for the Schengen area (see: Council of the European Union 2001c). Adopting the Regulation, Croatia fully aligned the legislation with the positive visa list of the EU and brought it close to the Union's negative visa list: the two visa regimes differed solely in provisions relating to the treatment of Croatian neighbouring countries, Turkey, Ukraine and Russian Federation. In order to enforce the functioning of visa policies, during 2003 and 2004, necessary by-laws were adopted (Government of the Republic of Croatia 2003a).[77] In addition to the provisions establishing visa policies, the 2003 Aliens Act (Art. 25) allowed the carriers to bring an alien to the border crossing only in case of possession of all necessary travel documents, prescribing financial sanctions for those carriers, tour operators or organizers of business trips who did not follow these rules.[78] The provisions were in accordance with the EU regulation and practices: i.e. the Schengen Convention (see: Convention Implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders 1990) and the Council Directive Supplementing the Provisions of Article 26 of the Convention implementing the Schengen Agreement 2001 (see: Council of the European Union 2001b, Art. 2a).

As a part of negotiations with the European Union, Croatia has also accepted to introduce arrangements of efficient migration management with the countries of the Union

77 I.e. the Rulebook on the Status of Aliens in the Republic of Croatia, the Rulebook on Travel documents for Aliens, Visas, Border Passes and Treatment of Aliens and the Rulebook on the Issuance of Laissez-Passer, Visas and Special Identity Cards to Aliens (in MARRI 2006).

78 The Law on Aliens 2003 (Art. 25) defined that a carrier may bring foreigners to Croatian border crossing only if they met the conditions on entry to Croatian territory (i.e. travel documentation and residence permits). By law, a carrier was bound to return a foreigner who has been forbidden entry into the Republic of Croatia – without delay and at its own expense.

and non-members states in its own neighbouring countries. This included the introduction of the readmission agreements which allowed for the facilitated return of immigrants between states included in the agreements. Under SAA obligations, Croatia agreed to sign readmission agreements with the European Community and the Member States of the Union aimed at the return of their own nationals as well as third country nationals (i.e. irregular migrants) who have passed or resided in its territory (Stabilization and Association Agreement between the European Commission and their Member States, of the One Part, and the Republic of Croatia, of the Other Part 2005, Art. 77). Whereas it never signed the agreement with the EC/EU, it has done so with the Member States. Due to a great number of transit migrants and Croatian nationals residing in the territory of Member States, a large number of bilateral readmission agreements with these states have already been signed during the 1990s. Obliged to control migration movements towards Europe, the state has been particularly interested to introduce such agreements with its eastern neighbours, Serbia in particular (Trauner 2011, 91).[79] Between 2000 and 2002, Croatia signed agreements with all of the neighbouring states. All were in force by 2004 (entry to force of the aliens and asylum acts). By 2004, Croatia had signed 24 readmission agreements and enforced 19 of them.[80]

All other norms on immigration and policies on entry – when applied to asylum migrants – were necessitated to be read and applied with "full inclusion" of the Refugee Convention and relevant refugee protection principles established under the international conventions and treaties (Stabilization and Association Agreement between the European Commission and their Member States, of the One Part, and the Republic of Croatia, of the Other Part 2005, Art. 77). While the instruments of international refugee protection did not directly speak on the right to access the procedures for determining the need to protection, such rights was deduced from clauses stating everyone have the right to seek protection

79 The largest part of transit migration in Croatia used the route Serbia-Croatia-Slovenia.

80 Austria (1997/1998), Bosnia and Herzegovina (2000/2001), Bulgaria (2002/2003), Czech Republic (1999/2004), Estonia (2000/2001), France (1995/1995), Latvia (1998/1998), Lithuania (1998/2001), Germany (1994/1994), Greece (1995/1996), Hungary (2001/2003), Italy (1997/1998), Macedonia (2001/2003), Poland (1994/1995), Romania (2000/2002), Slovakia (1994/1996), Serbia and Montenegro (2002/2004), Sweden (2001/2003) and Switzerland (1997/1997) (Government of the Republic of Croatia 2004a, 404–405). The other three Agreements entered into force by 2006: Albania (2003/2005), Belgium, Luxemburg and Netherlands (1999/2005); and a new agreement with Slovenia (2005/2006). Croatia and Slovenia had a readmission agreement since the beginning of the 1990s (Pentavec 2008; Government of the Republic of Croatia 2003a).

(Human Rights Declaration; in United Nations 1948, Art. 14) and clauses forbidding persons to be returned, expelled or extradited to the area where they could be subject to persecution or other violations of basic human rights (Refugee Convention; in United Nations 1951, Art. 33; CAT; in United Nations 1984, Art. 3). The idea that every person may claim protection presumed that they may have their claim effectively evaluated. This right represents the mere basis of the international (and EU) refugee protection regime.

However, the general rules on entry bans, expulsions, return and readmission of immigrants would conflict with the key principle of the conventions if asylum seekers could be denied entry like regular aliens. Following the European and international obligations, the first national Asylum Law and the newly drafted Aliens Act thus limited the application of these norms in the case of asylum seekers. Adopting the core international principle of refugee protection – the *non-refoulment* clause (United Nations 1951, Art. 33) – the first national Asylum Law (2003, Art. 3) and the 2003 Law on Aliens (Art. 57) prohibited the state authorities to "forcibly remove or in any way return a refugee to a country where his or her life or freedom would be threatened, because of racial, religious or national affiliation; because of affiliation with a specific social group or political views or to a country where he/she could be submitted to torture, inhuman or humiliating treatment or punishment." The *non-refoulment* principle presumed that all persons who expressed the need to obtain protection needed to be allowed entry to the state in order to pursue the application of asylum. Asylum Act (Art. 8) thus acknowledged the act of expressing the intention to apply for asylum at the border crossing as a basis for gaining legal entry.[81] Expressing intention to file an application for asylum was defined as "any seeking of protection against persecution in the sense of the Article 4" of the Law.[82] In accordance to the fundamental standards of the Refugee Convention (United Nations 1951, Art. 31), the person was not to be sanctioned for illegal entry, provided that she has

81 While asylum application could have been submitted in the Accommodation Centre for Asylum Seekers (hereinafter – the Accommodation Centre), the intention for submitting an application was approved to be expressed at the border crossing or in any police department and station, upon which the person was to be transported to the body competent for dealing with an asylum claim – the Accommodation Centre.

82 "Republic of Croatia shall grant asylum to an alien not in the country of his/her origin and who, due to a justified fear of persecution by reason of his or her race, religion, nationality or affiliation with a social group or political views, cannot or due to that fear does not want to avail himself or herself of the protection of that state or to the person without citizenship outside the country of former residence who cannot or due to fear does not want to return to that state" (LoA 2003, Art. 4).

filed an application for asylum without a setback and offered valid reasons for practicing illegal entrance to the territory (Art. 9).[83] The commencement of the procedure for granting asylum guaranteed to the seeker the right of residence in Croatian territory – valid until the procedure is done (Council of the European Union 2003a, Art. 6; LoA 2003, Art. 12).[84] The benefit of the legal right to stay was extended to family members of an asylum seeker (LoA 2003, Art. 12).

Alterations in the Law on Aliens have not made much change in these arrangements. In the following years, domestic visa arrangements and readmission agreements have been further adapted to the European Union's lists and regulations. By 2010, visa lists were to a large extent adapted to the ones adopted by the EU (European Commission 2011, 54).[85] The EU demanded the state to clarify how the *safe third countries* concept was to be used (European Commission 2004, 107).[86] The 2003 LoA (Art. 43) introduced the concept of *safe third country* to the national law, stating a person's claim for asylum may be dismissed if the seeker has arrived from the *safe third state*. The Law however did not specify what this was supposed to mean in practice. Under the European *acquis* (London Resolution; Council of the European Union 1992, Art. 2; Procedure Directive; Council of the European Union 2005, Art. 27) a country could be considered *safe* for return of an asylum seeker if: (a) return to third state would not put in danger the persons' life and liberty by discrimination; if (b) the principle of *non-refoulement* would be respected in the third state; if (c) removal would not result in torture or cruel, inhuman or degrading punishment; and provided that (d) there would be an opportunity for a seeker to apply for and obtain refugee status in this state.

83 This norm acknowledged the fact that refugees often necessitated to use irregular channels of travel or entry (see: Introductory note by the Office of the United Nations High Commissioner for Refugees).

84 In line with the Reception Directive (Council of the European Union 2003a , Art. 6), the LoA (Art. 50) obliged the MoI to issue a document certifying identity of an asylum seeker and serving at the same time as a residence permit in the territory of Croatia during the time of procedure.

85 Croatia still offered temporary visa free regime for Russian Federation, Ukraine and Kazakhstan (transit only). Liberalization of visa regime between the EU and Croatian neighbouring countries (Bosnia and Herzegovina, Kosovo, Monte Negro and Serbia) made the positive list consistent.

86 To remind, the provisions on *safe third country* presume that the state through which a seeker has previously passed is *safe* for the seeker (and that he or she may apply and obtain protection in that state) and enables the state to return the seeker to its territory, again without regarding his or her claim.

The second Asylum Act clarified the meaning of the term under national laws. According to LoA 2007 (Art. 2), the *safe third country* was defined as a state in which an alien resided before arriving to the Republic of Croatia – if the state was (a) safe from circumstances of persecution and serious harm; and (b) if the person was able to obtain asylum in that state.[87] To disclaim whether conditions could be considered fulfilled, the Law stipulated authorities will take into consideration the existence of the efficient asylum system of that state. The second Asylum Act introduced the concept of *safe country of origin* which did not exist under the first LoA.[88] Under the 2007 Asylum Act (Art. 2), the state was to be considered *safe* as a country of origin if its nationals or residents (including stateless persons with habitual residence in a certain state) were (a) safe from persecution and *serious harm*, and if it was (b) characterized by respect of human rights, democracy, legal security and political stability.[89] The second Asylum Act (Art. 2) stipulated that the government will produce a list of *safe countries*; yet, so far, no list has been made. The authorities stated Croatia still does not treat any country as *safe*. Instead, all of the claims were to be regarded on the individual basis (United Nations Committee Against Torture 2004; United States Department of State – Office for Human Rights, Democracy and Labour 2012b).

87 Recommendation of the Council of Europe on the Application of the Safe Third Country Concept (Council of Europe 1997a) stated that the concept of the safe third country in national law and practices should take into account whether the third state respects international human rights standards relevant to asylum (provided under universal and regional instruments). Such definition was yet wider than the one in the *acquis* as it presumed that all relevant human rights are in place. Despite the fact that Croatia stated it introduced the Recommendation in the national asylum legislation (Government of the Republic of Croatia 2003b), the guideline has not been incorporated in the national law and, as we shall see bellow, not even in practice.

88 To repeat, clauses on *safe country of origin* presume that the state is generally safe from violations of human rights (those which would qualify for international protection) and allow the state to return the seeker to the state of origin without regarding his or her claim.

89 Assessment was to be based on the reports provided by the UNHCR, the Council of Europe, EU countries and relevant international organizations. Besides this, the authorities needed to take into account: (a) relevant laws and regulations of the country of origin and their application; (b) country's respect for the rights and freedoms based in the ECHR, the CAT and the International Covenant on Civil and Political Rights; (c) its compliance with the *non-refoulment* principle as set in the Refugee Convention; as well as (d) existence of an effective system of remedies against violations of those rights and freedoms (LoA 2007, Art. 2).

4.1.1.2 Implementation of the Rules Relating to Entry and Stay of Asylum Seekers in Croatia

The government's regulation establishing visa regime entered into force at the time of enforcement of the Asylum Law (Gluščić, 30), soon becoming rather thorough, covering virtually all unsafe areas of the world. A large number of countries were the key states with originating refugee flows as well as being highly unsafe areas, including Afghanistan, Iraq, Iran, Syria, Somalia, Sudan, etc. At the beginning, the European Commission (2005, 92) detected rather significant inconsistencies in the area of adjustment to visa policies in Croatia: prior to all, lacking identification methods and imperfect ability of the state to detect forged and falsified documents. Also, the Union reported authorities have been too liberal in some respects and needed to correct the practices in accordance to the European standards.[90] Due to large national and European ventures and training,[91] during the next years, these practices were greatly improved. In the following years, the Commission stated Croatia is adapting fairly well to the European visa policies (for details, see: European Commission 2006a, 54–55; 2007, 54; 2008, 57; 2009, 56–57; 2010, 55; 2011, 54).

Evolution of readmission practices with eastern neighbours was firstly complicated by various reasons (technical, administrative and political). After solving political issues (related to unclear competencies of the federal and central level in the questions of migration), the readmission agreement with Bosnia and Herzegovina was initially considered inefficient as it allowed for great rates of repeated entry, facilitated due to the lack of border control strategies (Trauner 2011, 92). Particular problems existed in the application of readmission agreement with Serbia in the time when Serbia and Montenegro were formed in federation: none of the states considered themselves obliged to accept immigrants, in particular the ethnic Albanians arriving from Kosovo. As a result, Croatia started readmitting these migrants directly to Kosovo. These problems have gradually been resolved and the authorities have expressed satisfaction with the way that practices of

90 Authorities were considered to provide too easily short term visas on the border crossings.

91 In the following years, the authorities introduced more effective IT system, linking all diplomatic missions and consular offices to IKOS (Information System of the Ministry of Foreign Affairs and European Integration) and to the national visa register (shared with the Ministry of Interior), improved security solutions (e.g. new visa stickers with higher security character and biometrics in passports and travel documents), etc. (European Commission 2005, 92; Trauner 2011, 85).

readmissions were developing (see: Trauner 2011, 92). On the western side, the key readmission agreement was with Slovenia (where the greatest part of immigrants from the Croatian territory entered the EU). According to authorities, readmission between Croatian and Slovenia was well-functioning and allowed for a great number of returns (Strategija migracijske politike Republike Hrvatske za 2007./2008. godinu, 20).[92] Initially, Slovenia defined Croatia as a *safe third country* and commenced readmitting asylum seekers too (United States Committee for Refugees and Immigrants 2001). In 2002, the Slovenian Supreme Court ruled that Croatia cannot be considered *safe* and banned the return of asylum seekers to Croatia (Nicholson 2006, 509). Nevertheless, the seekers later reported they have been forcibly returned from Slovenia. This was confirmed by the reports issued from Slovenian and domestic organizations (Brkulj 2008; Cvitić 2006; Škerl Kramberger 2011).

Development of border management services proved quite challenging. In general, border management capacities and strategies were judged by the European side as scarce and inefficient. Since the signing of the SAA to today, the Union has provided vast number of projects aimed at strengthening Croatian border controls: over 39 million Euros were invested in projects (ACBF, CARDS, IPA and PHARE) directly related to strengthening state borders (Ministry of Interior 2010).[93] Despite these gigantic investments, the European Commission still detected a number of problems in national border management (great lack of staff, severe needs for training and insufficiencies in technical equipment, etc.; see: European Commission 2006a, 54; 2007, 54; 2008, 57; 2009, 57; 2010, 55; 2011, 54). Nevertheless, measures of border control (combined with readmission agreements) proved great effects for the management of the movements of the immigrants through Croatia. Since 1997 until 1999, 31.119 irregular border crossings were detected.[94] In 2000 and 2001, the rate mounted to 41.218 (Sopf 2002, 16). Yet, after 2002, the rates have been in permanent decline: since 2004, from one to three thousands immigrants per year were apprehended after irregular border crossing. It is not clear in which extent different rates pertained to the potential spontaneous change in migration patters and how much they

92 The largest rates of readmission to Croatia are those from Slovenia and vary between a thousand and two thousand immigrants per year (Strategija migracijske politike Republike Hrvatske za 2007./2008. godinu, 20; Pentavec 2008, 25).

93 Out of total of 44 projects (ACBF, CARDS, IPA and PHARE) invested in the JHA (Chapter 24), 19 of these were directed to border management (see Chapter 5, section 5.2.3).

94 8.302 (1997), 10.056 (1998) and 12.314 (1999).

reflected on the effects of migration control. Nevertheless, statistically, the effects of migration management policies appear quite significant. In a past decade, Croatia has apprehended, returned or readmitted over a 100.000 of immigrants; great number of these towards the eastern states (see: Unit for Strategic Planning, Analysis and Development of the Ministry of Interior 2007; 2008; 2009; 2010; 2011).[95]

How were the policies applied in the case of asylum seekers? As we have seen in Chapter 1 (section 1.2), due to the fact that asylum migrants mostly came to Europe in mixed flows with irregular migrants (especially under contemporary visa arrangements), migration control policies had great impact on the movements of asylum seekers too – and, as we have said, their ability to apply for asylum. In relation to visa policies, in Croatia, there were two large groups of asylum seekers: (a) the asylum seekers arriving from the countries of the direct neighbourhood (ex-Yugoslavia) and close neighbourhood (such as some ex-soviet states or Turkey) who did not need visas to enter the territory of Croatia; and (b) the immigrants from more distant zones (mostly Asian and African) who needed visas to obtain entry.

As defined by the Law, border and police services were obliged to accept the quest from all of the seekers, regardless of their origin. Given that none of the countries were on Croatia's list of *safe countries of origin*, all of the seekers were necessitated to be allowed entry to begin the asylum procedure. As it has been emphasized, prior to the implementation of the first LoA, there was a CARDS project (Reform Asylum I), which offered, among other things, expert assistance to police and border officers and training to gain ability to deal with asylum claims. Besides this, the MoI has been in dense communication with and trained by the UNHCR and the CLC (Lalić 2013). As stated by the Representative of the European Union Delegation in Croatia, Caroline Frieh Chevalier (2012), the authorities were further advised to implement training across the border services and police stations and were invited to seek for financial assistance from the Union for particular tasks. Whereas the projects were judged as particularly useful (Frieh Chevalier 2012), reports demonstrated there was still a great lack of training among the staff, and especially among the officers in the field (European Commission 2005, 92).

According to the reports, the rules on entry were applied rather inconsistently with regards the EU demands and international obligations. This has in particularly been

95 For instance, only between 2003 and 2007, the authorities prevented from entry 94.115 immigrants (Lalić 2010, 69).

emphasized by domestic stakeholders and the European Commission during the first several years after the adoption of the first Asylum Act. After the first Asylum Act and the 2003 Aliens Act have been introduced (in combination with trainings offered by the CARDS project, Reform of Asylum I), the officers were noticed to frequently apply the rules on entry in the cases of asylum seekers, treating them as irregular immigrants, thus disabling their entry or providing for their return to neighbouring states (now assisted with the adoption of the readmission agreements). This seemed to be motivated by different reasons, including lack of knowledge, incorrect understanding of the domestic and international principles of refugee protection and (intentional or unintentional) breach of procedures. While the state established that entry rules have been correctly applied and that the state prevented, returned or expulsed only irregular immigrants of an economic nature (Pentavec 2008), the NGOs, the EC and international organizations have learned about their diverse practices.

The data pointed to a variety of problems: the officers – by the law obliged to seek and identify the persons seeking protection – have (a) not always enabled the persons seeking protection to access procedures for granting asylum (Lalić); (b) embarked on judging by themselves which seekers are appropriate for accessing procedures, thus excluding those seekers whose reasons they found inappropriate for gaining protection (police officer, interview with CfP, see: Sertić and Center for Peace Studies, 2007); or (c) the seekers have "just disappear[ed] during … transfer process"[96] (European Commission 2006a, 55). In such cases, the purpose of legal provisions stipulating the right of any person to seek protection has been abandoned. While it is impossible to gauge to what degree such practices have been occurring,[97] the NGOs dealing with the issue and the European Commission demonstrated distrust towards domestic practices. Legal expert Goranka Lalić (2010, 69) stated that in the "period between 2004 and 2007, there are no reports on the violations of the principle of *non-refoulment*… [but] … At the same time, the entry has been prevented for great numbers of persons…". In another section, the same author stated that "certain number" of aliens complained to the CLC on the inability to access asylum procedures, "based on which it is possible to conclude that there are certain problems in

96 Transfer from the border to Aliens Centre (for registration) or from the Aliens Centre to Reception Centre for Asylum Seekers.

97 As noted in the Chapter 2, given that the contact between seekers and police is mostly uncontrolled, the stakeholders can collect information mostly based on individual cases.

accessing asylum procedures in general" (Lalić). The author concluded that "according to the UNHCR, there are no reports on the violation of the *non-refoulment*"; yet "the data of persons rejected on the border are not available" and "the NGO representatives are not present at the state borders to check the data" (Lalić).

> 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 to closely monitor actual practices in the RoC [Republic of Croatia] with regard to illegal migrants and asylum seekers (Lana Tučkorić, CLC member and former member of the Asylum Unit of the MoI, in Tučkorić 2009, 50).

In the Screening Report from 2006, the European Commission (2006b, 15) demanded Croatia to secure that the procedure "at the borders guarantee access to the asylum procedure to all third country nationals wishing to apply for international protection". In 2009, this will be defined as a benchmark for Croatian accession negotiations (European Delegation). As we have stated, at the time of adoption of the second Asylum Act (2007), another CARDS project (Reform of Asylum II, 2007–2009) was launched to address, among other issues, training of the officers in units and in the field. The Representative of the European Delegation judged that this project has been very important for the training of border officers in the dealing with asylum seekers.

> Every six month we have what we call a peer review mission on borders so it is experts from the Member States coming to Croatia and they are going with the Ministry of Interior and the European Commission, we go with them… and then they are checking many things on the level of preparation of border of Croatia, how border guards are working.. or officers on illegal migration work with equipment that they have, procedures… all these things and every six months then we talk with the European Commission and this is very good tool to assess the level of preparedness.. and now we have the same experts coming from the Member States, and here from the Croatian side, they know them well.. they are like border guards, really counterparts on the really similar technical level and so they understood that it's not a control mission, but that they can take it as giving them clear guidelines, clear idea on how they should work on that to meet the requirement. So this also for them is useful. And then we have close contacts with the ministries so we get information from them and civil society and of course the

> UNHCR is very good informant for us, but also civil society. And when we had twinning projects of course it was the reviews that allowed us to have experts from Member States working in the administration and get information from them… (Frieh Chevalier 2012).

In parallel, since 2008, the CLC did two year training within the AENEAS project, providing training seminars to all of the stakeholders, including border officers (Lalić 2013).[98] Within the project, the CLC held also the project of parallel monitoring and training: the staff in the field controlled how capable the officers were in recognizing asylum claims. Goranka Lalić (CLC, participant) judged that the scheme was rather plausible due to the fact that it offered intensive monitoring and assistance for two and a half years, where the legal experts of the CLC participated in and supervised the conduction of each interview with intercepted irregular migrants (0–24 hours). However, it had several flaws. Firstly, it has been installed only in three police departments. Secondly, the staff of the CLC would be invited by the officers themselves, after the migrant was apprehended by police. However, Lalić stressed that the CLC compared statistics of interception provided by the MoI and their own and these matched. Lalić estimated that officials took that project rather seriously. On the other hand, she supposed, the presence of a supervisor has most likely impacted behaviour of officials. Not less relevant, the project (and evaluations) were important for the closing of Chapter 24 (and assisted in the Chapter to be closed).

Besides this, based on the project MATRA, financed by the Netherlands, the CLC conducted another program of training and monitoring commencing in 2010 and lasting until 2011.[99] The CLC staff supervised the procedure occurring when an irregular migrant was intercepted based on the MoI files (containing data about the immigrants' identity and the key points of the interview held). The program was closed in 2011 (Lalić 2013; Tučkorić 2009, 50). Similar methods were conducted by the UNHCR in 2011 and 2012. Besides monitoring, these programs presumed training, which a stakeholder described as

98 AENEAS project (EU funded) provided training activities for all stakeholders in the MoI, journalists and students of journalism and law. Other ministries have not participated as they did not respond to the invitations. Within the project, a segment concentrated on courses for those stakeholders and officers who were partaking in issues of migration management.

99 The project was funded under the MATRA Programme of the Netherlands Ministry of Foreign Affairs and supported by the Dutch Refugee Council and the UNHCR. Conducted in cooperation with the MoI, the program included monitoring of border police interrogation of intercepted irregular migrants (Tučkorić 2009, 50).

an instruction for the "development of *protection sensitive border management*" where officers were trained "on different issues of asylum, how to recognize an asylum seeker at the border, practical tools for interviews, a lot of different things…" (confidential interview 2012). Stakeholders assessed that projects have been rather important (Stakeholder B 2012; Lalić 2013); but severe needs for training still existed. As they stated, the training of the staff included in the procedures on entry has been greatly uneven. Some officers and heads of police stations were found to be well trained, while others have merely had basic knowledge. Since 2013, the organizations announced that they shall commence with diverse types of monitoring, such as unannounced *ad hoc* visits and will continue with education activities.

In the past few years (since 2007 and 2008), we do not track much criticism from the European Commission. The Representative of the European Delegation (Frieh Chevalier 2012) stated that today the issue is considered solved. The stakeholders stated the belief in certain improvement; but stressed they cannot guarantee that the practices are in line with the Law (Stakeholder A 2012; Stakeholder B 2012; Lalić 2013). Recently, two events that were publicly well followed demonstrated that there are still ongoing difficulties occurring in the area. In May 2012, a Turkish citizen with long-term residence in Germany, Başak Şahin Duman, came to Croatia for tourist reasons. Arriving to the Croatian airport, the police recognized that she was charged for terrorist activities and demanded for her extradition to Turkey. Duman had been a part of a group of students who in 2004 protested against Turkish law on antiterrorist measures (which were a cover to arbitrary arrest and suppression of political freedoms). Based on the same Law, Duman and another 46 persons have been arrested and sentenced to prosecution for terrorist activities. Having fled before the trial commenced, Duman has moved to Germany where she got long-term residency. Given the fact that in her absence, she (as well as the other students) has been sentenced to six years prison in Turkey; when the Croatian authorities arrested her for extradition, she requested asylum in Croatia. The police officers at the airport informed her that in Croatia it is not possible to claim asylum.[100] Due to the fact that Croatia has previously engaged in quite problematic circumstances of extradition, the NGOs kept the issue under great public pressure all until the person was given asylum. This and other similar cases will be analysed in the next section, in the context of the interpretation of international law in the

100 NGOs gathered this information under the initiative *Freedom for Başak* (see: Zbivanja, 2012); confirmed by Tea Vidović, CfP (Vidović 2012).

Croatian judiciary system. Although a smaller rate of seekers arriving to Croatia use this method of journey; the case is even more problematic as of 2004, the Committee of the UN Committee against Torture (2004) demanded Croatian authorities to make clear what occurs with seekers who arrive at Croatian airports and claim asylum. As claimed by the Committee, the state had a practice to reject these claims. Further bellow we shall see that this had a quite simple strategic (financial) logic.

The second event relates to a publicly well tracked arrival of a large group of immigrants to the Croatian cost. Namely, in July 2012, a boat with a group of 66 immigrants was found floating in Croatian territorial waters and was brought to the shore (Dubrovnik) by the port authorities. After the first interviews, the authorities reported the boat arrived from Greece. Due to the inability of returning immigrants to Greece (where Greece refuted this option; Stakeholder A 2012), the immigrants have been placed in detention. As the authorities stated, none of the persons sought asylum – until the CfP representatives arrived with an interpreter and explained to the immigrants their rights. Most of the immigrants were arriving from unsafe zones: Afghanistan, Somalia, Sudan, etc. After their visit, more than 50 people claimed asylum in Croatia (Bužinkić 2012). As the respondent noted (Bužinkić 2012), the Head of the Centre stated that the staff had explained to the immigrants all of their rights; yet, the problem had evidently been in communication – the staff and the immigrants could not understand each other. Whether this interpretation is correct or not; at least it demonstrates that asylum claims can easily go unreported unless proper conditions (including interpreter, proper information and legal advice) are given. The same can easily occur at the border, where police officers are not trained in diverse language situations and where there is no access to interpreters' services. Unless the person speaks English, it is rather hard for them to state intention (need) for asylum, especially in the circumstances of speedy return or rejection procedures which regularly occur.

These cases are particularly important as they are one of the rare occasions where the public or involved non-state bodies may learn about what occurs in these procedures. It remains a question how many other potential seekers have been denied access in other cases. Other than the few projects described above, up to the present day, no forms of systematic surveillance have been introduced at the borders or in detention centres. Statistical data demonstrate puzzling results. For a start, the number of asylum application might be telling us that progress has indeed occurred. Whereas until 2009 there was up to

300 asylum claims;[101] since 2010 the numbers have started to increase, with 807 asylum seekers in 2010; 873 in 2011 and over 1133[102] in 2012 (UNHCR 2012d). Such great increase in the past two years is surely affected by the overall rise in refugee movements in the area, occurring due to the political crises in North African and the Middle East countries (including Libya, Somalia, Sudan, Syria, etc.). However, the fact that over a thousand seekers have been able to file for asylum may point to the fact that officers have also become more capable to recognize asylum seekers. However, at the same time, the number of the persons refused entry at the border is still high. Even odder is the fact that many of these pertain to immigrants coming from the unsafe countries. For an illustration, in 2012 (until October 8), local police prevented 1.212 persons entry, out of which 498 persons were from Afghanistan, 137 from Syria, 111 from Somalia and 109 from Algeria (Novi list 2012). Some of the respondents declared that it is dubious that none of these persons have demonstrated the need and the wish to seek protection (Bužinkić 2012; Stakeholder B 2012).

Indeed, at the round table *Asylum in Croatia After July 1, 2004*, where stakeholders discussed the introduction of the first Asylum Act and thus the asylum system after the introduction of the new Act (see: UNHCR et al. 2004), the MoI's representative was asked about the ability and willingness of the Croatian (airport) officers to recognize quests for protection. Emphasizing it is not his particular domain, the Head of the Department for Administrative Affairs and Inspection of the MoI stated:

> We had consultations and here you have a question of all the questions [which is] always about money. You have a situation where someone will land from the plane and say: "asylum". If you had not accepted [the claim] you could have boarded him [to the airplane] at the expense of the company and send him back. And if you accept his request, he enters this *stated intent* (accentuated by the author), you actually introduce him to the normal procedure and you will find, in a month or two, that it is about a simple fraudster who rambles around the world. Clearly, the state will later have the problem with deportation, with payment of an airplane to

101 107 (2004); 184 (2005); 103 (2006); 198 (2007); 154 (2008); 290 (2009). Besides the increase, there is an evident change in the structure of the application. Whereas an important part of the applications in the first years has been made from nationals from the states of the former Yugoslavia, and mostly from Serbia (including many ethnic Albanians from Serbia and Kosovo; Bužinkić 2012), in past years, there is a great rise in the numbers of seekers arriving from farther regions (Africa, Asia and Middle East). See: UNHCR 2012d.

102 On December 19, 2012. Oral information by Anita Mandić, Asylum Unit, MoI; in Coordination for Asylum 2012.

China, etc. These are things that we need to resolve, respecting the standards and the experience of other countries (Damjanović in UNHCR et al. 2004).

Such attitude did not only publicly demonstrate the lack of understanding of the key international and European obligations that Croatia has directly implemented in the Asylum Act (i.e. right to *non-refoulment* and right to access of each person to asylum procedures), but also the fact that the Head (at least at that time) did not understand such discourse is unacceptable from the viewpoint of the undertaken norms. Whereas the representative specifically emphasized the area is not under his domain; he stated information was provided within the consultations, and thus (we may presume) they reflect more broad attitudes present in the services dealing with the control of immigration – and as emphasized – also in the contact with the external partners. When two years later a border official publicly stated that the officers themselves judge whether asylum seekers may be allowed to file an asylum application; the same Head gave an opposing statement, explaining that the officer cannot have "a clue about the decision…" and is only competent to take "…his declaration of intent to seek asylum…" (Damjanović in Sertić and Center for Peace Studies 2007).

In general, in public discourse, the authorities did not repeat such statements anymore (at least nothing that the author is familiar with). Instead, later on, discourse emphasized the key principles of the European and international instruments of refugee protection. In particular, when the issue involved the questions of return, readmission or refusal to entry; they have always linked it to irregular migration solely. It is not clear whether we may conclude on the mere discursive shift or on actual transformation among the staff (perhaps under the effects of learning and socialization) – or both. Some stakeholders (Stakeholder A 2012; Stakeholder B 2012) emphasized the lack of knowledge (primarily among officials) as a key reason for unlawful practices. Others also assumed that somewhere in the system there might be (unofficial) instructions to maintain (at the least) a restrictive approach over the system (Bužinkić 2012; Lalić 2013) – even though, as assessed, some of the persons in important positions have by time demonstrated (genuine) professionalism and correctness.[103] At any rate, while it is not always clear whether the person was truly

103 Particularly emphasized: the Head of Department for Irregular Migration of the Border Administration, Josip Paradžik.

unrecognized or the officials ignored his or her pled for protection, the practices in the area remained inconsistent until the present day.

> Well, what we've found is that on the eastern borders, on the border with Serbia, there's a lot of returns and under readmission agreements… The number of persons readmitted to Serbia is huge and a lot of these people are *former*[104] asylum seekers in Serbia. So they search for asylum in Serbia, then they try to go to Croatia and apparently they don't seek asylum on the border and then they're readmitted. But, what we saw from the files and from talking to the police guards is that if a person says I want to seek asylum or I am a refugee, then the intention is more than likely to be recognized, because they said the word asylum, refugee, etc… What is more difficult is… and we saw this from the files of persons being readmitted… and you can see it from the minutes of interview held with the intercepted person… they can talk a lot about the economic situation of their country, which goes hand in hand a lot of times unfortunately with people from refugee producing countries, they have bad economic situation… but there might be more elements to the story, that the border guard, because of time, because of perhaps lack of training, lack of sensitivity they don't necessarily recognize. So, it's very, very difficult to say. Officially, we haven't had any instances of *refoulment* in 2011 or 2012 (Stakeholder B 2012).

> We don't have any real hint what really happens there. I think things are better, but I don't know how good they are. I've spoken with seekers telling me that in Serbia there are many people returned from Croatia after the authorities established where they came from. One seeker told me that border officers accepted his access and informed him he will be allowed to apply for protection. After he has been taken to the station in the nearby city, he ended up being returned to Serbia. As he said – the 'boss' of those officers told him 'oh no no, you came from Serbia, go to ask asylum there'. The second time he entered illegally and reached the Reception Centre where he got a proper treatment (Volunteer 2012).

> The Report of the United States Department of State confirmed that Croatia returns asylum seekers; though it stated they have not explicitly claimed asylum and were thus treated as irregular immigrants.

According to the UNHCR Office in Croatia, a number of third-country nationals tried to enter Croatia illegally, many of whom are former asylum seekers in Serbia. If these illegal

104 Note that the term former in this context assumes that a person has claimed asylum in Serbia and has left the country afterwards, passing to Croatia.

migrants do not explicitly claim asylum in Croatia, Croatia returns the majority to Serbia based on a bilateral agreement on readmission. According to a statement of the UNHCR, the system for asylum in Serbia works poorly because it has difficulty in accommodating numerous applicants and they continue to be a link for the migration flows from Greece and Turkey (United States Department of State – Office for Human Rights, Democracy and Labour 2012b).

One must note that most of the seekers in Serbia have been noted to leave Serbia soon after their application. They have been reported to go either to Hungary or Croatia; with Croatia being a rather popular route (Asylum Protection Center 2012). For illustration, since January 2011 until January 2012, over 4.000 persons have been reported to have demonstrated intention to seek asylum in Serbia and in 2012, 3.100 have filed official asylum application (ECRE 2012). In Croatia, during the same period, there were only 807 seekers (2011) and 1133 (on December 19, 2012). Limited rates of application may point to restrictive policies of entry. The increase in past two years is also presumably related to the great overall rise in asylum movements in the area, induced by proliferation of political turmoil in Africa and the Middle East (Frontex 2012). Hopefully, they also point to some improvements in the procedures. Nevertheless, the vast numbers of persons from unsafe areas being rejected or readmitted to the neighbouring states causes great concerns. This shall be further discussed in Chapter 6.

4.1.2 Qualification and Procedures for Granting Protection

Prior to adoption of the first Asylum Act, norms relating to procedure and qualification for international protection were given in the general constitutional stipulation on the right to shelter and in a short section of the 1991 Law on Aliens (Art. 31–35). The Aliens Act (Art. 31) shortly stipulated that the status of refugee protection may be given to an alien that left the state of citizenship or permanent residency to flee persecution based on political opinion or his or her ethnic, racial or religious belonging.[105] However, the status was planned only as temporary; assuming the person may also be resettled to the other

105 This would not apply in case that a person was reasonably suspected to have committed a terrorist activity, serious criminal activity or acts contrary to the principles of the Organization of United Nations. Besides these, the right could have been denied in case that it was deemed necessary for reasons of national security or public safety (Art. 33). Short procedural stipulations defined the duty of an alien to submit an asylum claim immediately after entering the territory of Croatia (Art. 32) and the competency of the Ministry of Internal Affairs and the Ministry of Labour and Social Welfare to decide on the quest (Art. 35).

states (Art. 36). The Law lacked the most vital principles underlined in the Refugee Convention and other documents (such as the right to *non-refoulment*).

In practice, provisions have been used for persons enjoying temporary protection status during the war in the 1990s (i.e. war refugees from Bosnia and Herzegovina and the Federal Republic of Yugoslavia). For the seekers arriving after the Yugoslav conflicts (since 1997), provisions determining qualification for protection have demonstrated futile. Since 1997 and until 2004, 309 asylum seekers claimed asylum but none of them were recognized protection (Lalić 2010, 65). The authorities were described as conducting evaluation procedures demanding one to prove – or convince the investigator – not in the existence of his or her fear of persecution, but in the existence of the very risk of persecution, thus giving large space for one's claim to be found inadmissible (Hans Lunshoff, Deputy Representative of the UNHCR Representation in Croatia 2002–2005; in UNHCR et al. 2004). Considering that in practice such proofs generally rarely existed, this provided all of the seekers with virtually inexistent chances to be given protection. The MoI (in practice, a single decision making body) was judged as heavily unbending, basing denial on the presence of doubt versus foundation of the claim. This was purported by the MoI's conviction (real or rhetorical) that none of the cases of seekers in the Croatian system have so far needed protection, given they represented mere economically motivated immigration (Damjanović in UNHCR et al. 2004).

The Croatian approach to asylum at the time was thus judged as unacceptable from the perspective of the Union's and international standards of refugee protection (Josip Vresk, Deputy Minister of the MoI, in Croatian Parliament 2002, 42). When the European pre-accession requirements were set, they demanded quite an important number of changes in the legislation and institutional settings: establishment of the bodies responsible for the evaluation of the asylum claims (first and second instance); development of procedural guarantees for the processing and assessment of asylum claims; setting of the new grounds for recognition of international protection; establishment of conditions and circumstances under which the claims could have been recognized or rejected, etc. As we shall see, the first Asylum Act introduced a variety of EU prerequisites adopted formally within the Union by the time of its adoption. On the other hand, it has remained short for several important provisions, most of which were a part of the directives that were being composed or adopted at the time when the Asylum Act was in preparation. As stated, the Reception Directive (Council of the European Union 2003a) establishing the seekers' rights and duties was incorporated in the first Act. However, the Qualification Directive

(Council of the European Union 2004) and the Procedure Directive (Council of the European Union 2005), crucial for determining circumstances and conditions for recognition, as well as procedural aspects of the evaluation of claims, were adopted only in 2004 and 2005. For this reason, soon after its adoption, the first Asylum Act became outdated in comparison to the trends occurring in the *acquis*. This will be corrected within the second Asylum Act (2007).

4.1.2.1 Legislative Adjustment to the European *Acquis*: Institutional and Procedural Guarantees in the Procedures for Granting Protection

As set by the first Asylum Act (Art. 6), the competency to bring about decisions pertained to: (a) the Ministry of Interior (first instance); (b) the Government Commission of the Republic of Croatia (second instance; appeals) (hereinafter: the first Appeal Commission or the Government's Commission for Appeal); and (c) the Administrative Court of the Republic of Croatia (hereinafter: the Administrative Court) (third instance; authorized to decide in the case of an appeal against the decision of the Commission). The second Asylum Act (Art. 13) did not interfere in such a defined tripartite structure; yet, it has replaced the former Government's Commission for Appeal with the new Commission for Asylum (hereinafter: second Appeal Commission), changing its composition (Art. 14), methods of nomination, appointment and dismissal (Art. 15–17) and its technical and administrative facilities (Art. 18). In particular, the new Law has exchanged the old composition chosen and controlled exclusively from the government, and replaced it with the Commission where two of five members were selected from non-governmental organizations and among university staff.[106] Also, legislative changes allowed for physical separation between the Commission and the MoI, and gradually the Commission and the Government.[107] Such a structure remained valid until 2012. The LoA 2010 (Art. 12 and 18)

106 Instead of the eight members (including the Chairman) nominated by the Minister of Interior and appointed by the Government of Croatia (among public servants) in the first appeal Commission (LoA 2003, Art. 7), the newly formed body had five members (including the Chairman) selected and nominated by state and non-state actors and appointed by the Government. Three of the five members in the second Commission were selected among public officers and nominated by the state authorities, while two other members were selected and nominated by the non-state actors: the non-governmental organization and university staff. All of the nominees were appointed by the Government; yet, the Government was suspended from the impact in the selection and nomination process.

107 While the LoA 2003 (Art. 7) charged the MoI to secure the Government's Commission with the administrative and technical facilities; the 2007 LoA (Art. 13) altered this solution, making the Governmental Office for Human Rights (hereinafter: Human Rights Office) responsible for securing these amenities for Asylum Commission's.

envisaged revocation of the Commission for Asylum in 2012. Since January 2012 the Administrative Court became the only appeal body. By the time of the Administrative Court's takeover, the Commission was in charged to continue deciding on the second instance appeals.[108]

The first Asylum Act defined that asylum status was to be granted to (a) a person who is not in their country of origin and who, due to a justified fear of persecution based on race, religion, nationality, affiliation with a social group or political views, cannot or (due to fear) is not willing to avail themselves to the protection of that state; or to (b) a stateless person who is outside of their country of former residence and who cannot or (for reason of fear) is unwilling to return to that state (Art. 4). Definition of a refugee was in harmony with the pre-Amsterdam European *acquis*[109] as well as the Refugee Convention as a core document for defining international refugee status. The first Act did not speak on other grounds for protection or other forms of protection. The only status that an individual seeker could have obtained was the full status of asylum. While this has not been in non-conformity with the pre-Amsterdam *acquis*; it was not accorded with the (forthcoming) 2004 Qualification Directive (Council of the European Union 2004). Such state of affairs were changed within the second Asylum Act which offered subsidiary forms of protection to persons in risk of other *serious harms* (Art. 7): (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Qualification Directive; Council of the European Union 2004, Art. 15). The extension was introduced in the Qualification Directive (Council of the European Union 2004) and thus the domestic laws were based on the European Convention on Human Rights (Art. 1–7) which recognized that that reasons stated under the Refugee Convention did not cover an entire variety of circumstances that may be considered to deserve state protection (McAdam 2007, 18–21).

108 The Commission continued to accept appeals until January 1, 2012 (LoA 2010, Art. 12) and decide on them until March 31, 2012 (Pudić 2011). For this period, the same amendments (Art. 16) added one additional (non-state) member, nominated and selected among the judges from a judicial body, and enabled the autonomous administrative and technical settings of the Commission, financed directly from the State Budget.

109 I.e. the 1996 Joint Position Defined by the Council on the Basis of Article K.3 of the Treaty on European Union on the Harmonized Application of the Definition of the Term "Refugee" in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees (hereinafter: 1996 Joint Position of the Council on the Harmonized Application of the Definition of the Term *Refugee*).

The first Asylum Act did not elaborate in great detail how the decision was to be enacted. Instead, it offered only the above outlined general stipulations defining the status of a refugee and the conditions for granting asylum status; but without stating the acts defined as persecution – useful for determining how to apply the definition of a refugee and the conditions for granting asylum. The Convention (and other international instruments) did not provide procedural guidelines for the assessment of claims. This aspect was left to the domestic administrations (Battjes 2006, 292–293). In that sense, the Law did not breach the Convention; yet, it was supposed to enable fair and efficient judgement which would enable persons with *well-founded* fear of persecution to obtain protection. While a part of the procedural guidelines have already been given under the European *acquis* (i.e. 1996 Joint Position of the Council on the Harmonized Application of the Definition of the Term *Refugee*, Art. 3–11) and the draft of the 2004 Qualification Directive; procedural provisions framed in the 2003 Asylum Act remained rather modest (see: Šprajc 2004). This was entirely changed in the new Asylum Act 2007. Strictly following the prerequisites of the Qualification Directive (Council of the European Union 2004), the new legislative piece introduced a rather elaborated scheme of provisions aimed at standardizing decision-making and defining for the first time what may be considered to represent the acts of persecution and (newly addressed) acts of *serious harm*. In the provisions prescribing procedures for assessment of facts and circumstances relevant for evaluating applications for international protection, the 2007 LoA (Art. 55) further elaborated in detail relevant facts and materials that the authorities needed to take into consideration when assessing an application.[110]

Outlining the circumstances of persecution, the 2007 LoA (Art. 5; corresponding to the the Qualification Directive; Council of the European Union 2004, Art. 9) defined several viable acts of persecution. Besides others, these included: (a) acts of physical or mental violence (including sexual violence); (b) acts of a gender-specific or child-specific character; (c) legal, administrative, police, and/or judicial actions which are in themselves discriminatory or are implemented in a biased way; (d) prosecution or sanctions which are disproportionate or discriminatory; (e) defiance of judicial redress producing in a disproportionate or discriminatory punishment; (f) prosecution or punishment for rejection

110 These are: (a) all relevant facts concerning the country of origin; (b) all relevant statements and documents offered by the claimant (including information on actual or potential persecution or *serious harm* occurring for a candidate); and (c) the position and circumstances of the applicant (including family, gender and age) that may have exposed the person to acts of persecution or *serious harm*.

of carrying out military service in a conflict when this would include executing crimes against peace or humanity, war crimes and other crimes, acts of cruelty or acts contrary to the purposes and principles of the Preamble and Articles 1 and 2 of the Charter of the United Nations. For the assessment of the qualification of one's application for the newly established subsidiary protection status, the 2007 LoA (Art. 2; matching the Qualification Directive; Council of the European Union 2004, Art. 15) stated several possible acts of *serious harm*. Among others, these include: (a) death penalty or execution; (b) torture, inhuman or degrading conduct or punishment; and (c) severe and individual life threat due to indiscriminate violence in the circumstances of international or internal armed conflict.[111]

To protect the applicants' rights in the procedure, the Reception Directive (Council of the European Union 2003a, Art. 5) and domestic law (LoA 2003, Art. 10 and 13) empowered the seekers with the right to assistance from the state authorities (including information and adequate translation) and an ability to contact the UNCHR and other organizations providing legal (and other) assistance to the seekers. In regards to the language in the procedure, the LoA 2003 (Art. 13) stated that a seeker shall obtain translation in the language he or she understands, while the 2007 LoA (Art. 24) used more careful stipulation (identical to the Reception Directive formulation) stating that it is the right of a person to obtain translation in the language he or she may reasonably be expected to understand. As allowed by the older 1995 Council Resolution on Minimum Guarantees for Asylum Procedures (Council of the European Union 1995, Art. 13) but contrary to the 2005 Procedure Directive (Council of the European Union 2005, Art. 15), the first LoA did not envisage any form of free legal assistance for asylum seekers in the first or second instance procedures.[112] Instead, it merely stipulated the duty of the authorities to inform the seekers about their right to contact the organizations offering free legal assistance (Art.

111 The Asylum Act (2007, Art. 9) established that a well-founded fear of persecution or of *serious harm* can be based on events that have occurred after a seeker has left the country of origin or activities that he/she has undertaken after leaving the state, especially if they represent expression or continuity of attitudes and orientations that he/she had while being in the country of origin, thus implementing the principle of protection arising *sur place* (Qualification Directive; Council of the European Union 2004, Art. 5) omitted in the previous Asylum Law. However, the assessment of one's application should have also taken into consideration whether the person could reasonably be expected to seek protection in another state where she could assert citizenship and, as already mentioned, whether she could be assumed to seek protection in another part of the state, thus adding the *internal flight option* (Qualification Directive; Council of the European Union 2004, Art. 4 and 8; LoA, Article 55).

112 As we stated, the Procedure Directive was adopted a year after the first LoA.

10). This was altered by the new Asylum Act in 2007 (Art. 34), which stipulated the duty of the state to provide free legal assistance in the second instance procedures – for the seekers deprived of the financial means. However, as allowed by the Procedure Directive (Council of the European Union 2005), the first instance procedures remained uncovered and were left to the voluntary engagement of NGOs.

Also, the first Asylum Act envisaged that the seekers rejected in the first instance procedure shall have the right to appeal to the Appeal Commission and the Administrative Court. However, European representatives (Prijedlog Zakona o azilu 2007, 3) advised the authorities to implement an appeal with suspensive effect for decisions on expulsion in order to allow the appeal process have a full practical meaning (discussed in Chapter 6).[113] The LoA 2007 allowed it in the case of an appeal in front of the Appeal Commission; yet, it was not valid for an appeal in front of the Court. Such a solution was allowed by the Directive on Procedure (Council of the European Union 2005, Art. 39). Also, the right was denied to the seekers who have been detained due to violation of their legal duties (such as for instance, prohibition to leave Croatia during the procedure; LoA 2007, Art. 74). The LoA 2010, which abolished the Appeal Commission, allowed suspensive effect for the appeal in front of the Administrative Court (Art. 70), but it kept the limitation for seekers who have violated the law and have been detained (Art. 74).

4.1.2.2 Enforcement of Legal Norms Regulating Asylum Procedures and Qualification for Protection Status

Under the first LoA (in force since July 1, 2004 until January 1, 2008), the state has received 637 claims, out of which it has recognized only one case (asylum status; in 2006). The authorities emphasized that the great number of seekers tended to leave the territory (towards Europe) during the procedure; yet, according to statistics, such a trend has commenced only later and, in this period, it did not make the rate of rejection much lower. For example, in 2006, 94 persons claimed protection. Out of these, 80 claims have been rejected and 11 dismissed. 70 persons complained to the Appeal Commission.[114] Only one

113 Such recommendation already existed in the Recommendation on the Protection and Reinforcement of the Human Rights of Refugees and Asylum-Seekers in Europe (Council of Europe 1997b). The Croatian Government (2003b) stated it has implemented it through national legislation. In practice, this recommendation has been partially already fulfilled as the appeal to the first Appeal Commission (like in the case of the second one) had a suspensive effect.

114 The Croatian Legal Center (2007, 8) clarifies that 79 claims have actually been rejected, while one application has been suspended and 10 dismissed. CLC also notes 68 complaints (to the Appeal Commission), out of which 61 have

application has been suspended (pointing to possibility that the seeker left the state prior to the finalization of procedure). One person has received protection[115] (see: Croatian Legal Center 2007). In 2007, 195 persons claimed protection; out of these, 66 have been rejected and 80 have been dismissed (presumably renewed applications which were rejected). 44 persons have appealed. No one received protection.[116] As we shall see, the rates of persons leaving the country during the procedure will start to increase through the following years.

Whereas the MoI established that most of the procedures were being conducted correctly and successfully, making the Croatian asylum system adjusted to the European and wider international standards, practically zero recognition rates during first four years provoked large suspicion of non-governmental actors. As it has been reported, during the first four years, three key features characterized the area of qualification for protection: a) inadequacy in procedural aspects; b) particularly restrictive interpretation of the key norms regulating recognition of the application for international protection in the first instance; and c) hesitant nature of an appeal process, devoid of its function to serve as a remedy for the first instance decision making.

Soon after the introduction of the first Asylum Act, the MoI developed rather elaborate interview samples (44 questions), aimed at collecting a broad range of information on the identity, background and experiences of the seekers leading to their decision to live in exile (Damjanović in UNHCR et al. 2004). The Asylum Unit staff were generally described as cooperative and commended for conducting the interviews thoroughly and

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been rejected, 5 suspended, 1 dismissed and 1 annulled. Rejection occurred when the authorities estimated the claim was not well founded (LoA 2003, Art. 42). Besides rejection, the LoA (Art. 41) enabled the authorities to dismiss an asylum claim if an applicant (a) came from the *safe third country*; or (b) his/her application has already been rejected, dismissed or suspended in Croatia (provided that he or she has not offered proof that the circumstances listed in the previous application have significantly changed in the meantime). Finally, the procedure for asylum was due to be suspended (regardless of its phase) in case a person (a) withdrew the application; (b) left the territory of the state during the procedure; or (c) did not fulfil some of defined obligations in the procedure. Precisely, the LoA established the ability of officials to suspend an application in case a seeker: (a) has not showed up at the interview as notified by the MoI (without justified motives); (b) devoid of proper reason, neglected to notify the MoI in timely manner about the change of his or her address (or in some other manner averted the service of the notice); (c) has not cooperated in the authentication of his/her identity; or (d) evaded to offer information or available evidence on the facts and circumstances important for assessing the legitimacy of the claim.

115 For illustration, in 2006, the largest number of the seekers arrived from Palestine (27), Serbia (12), Pakistan (8), Russian Federation (7) and Kosovo (7). There were also seekers from countries such as Iraq (5), Lebanon (1), Libya (2), etc. (Croatian Legal Center 2007, 8).

116 Similar statistics occur through the entire period since 1997 until 2006 (see: Croatian Parliament 2007, 20).

comprehensively (Catherine Bertrand, UNHCR; Goranka Lalić, CLC; in UNHCR et al. 2004).[117] The MoI stated it experienced important problems in providing translation for all those in need, leaving some of the seekers without a proper interpreter during the representation of their case. The lack of translators sometimes led to quite redundant results: after having the record translated, the seekers would sometimes establish that their argumentation was incorrectly interpreted, leaving out crucial parts or reporting them in an erroneous way (Bužinkić 2012). Besides that, the seekers have not received first instance decisions translated to the language that they could understand (often given in Croatian language). Having great relevance for the appeal, these would then be interpreted (yet only in the English language) by the voluntary engagement of the NGOs (when the case would reach them) (Bužinkić 2012). The lack of free legal assistance from the state was compensated by the assistance offered from the CLC in a project organized and financed in cooperation with the UNHCR (Lunshoff in UNHCR et al. 2004).

However, this solution has not been always secured in the detention centre (Aliens Centre). A majority of the seekers were charged for misdemeanour and placed in a detention centre. This represented rigid interpretation of the European legal provisions; which demanded that detention remain only an exceptional measure (European Commission 2008, 56). Also, contrary to domestic, European and international laws on the protection of refugees, seekers were regularly sanctioned for irregular entry, facing the misdemeanour procedure and detention. In the detention centre, seekers often complained on the lack of information about the procedure and the lack of services (such as interpreters'); leaving applicants often to collect the most vital information from other applicants rather than the authorities themselves (Bužinkić 2012).

The main stakeholders were rather sceptical about the fairness of procedures in the first years of the reform. Despite the structure of seekers, the government and the MoI firmly held that none (save one) of the cases in the Croatian case were actually genuine asylum seekers, but merely economic immigrants. This has been particularly odd given that the

117 On the other hand, the decisions were provided in quite an expedite manner – regularly, within three weeks (Miroslav Horvat, Head of Reception Center, MoI; in Cvitić 2006). Considering a wide array of activities necessary to obtain fair judgement – besides preliminary administrative activities, the authorities needed to gather a wide range of data on the country and circumstances from which the seeker was coming, conduct interviews (repeatedly if necessary), process and evaluate the claim – such short term has put in question the quality of procedures in the first instance during the first phase.

structure of the seekers in the EU immigration states has been rather similar.[118] In the already mentioned debate about the first Asylum Act and the asylum system in Croatia after the new Law was adopted (Azil u Hrvatskoj nakon 1. srpnja 2004.; see: UNHCR et al. 2004), the Deputy Representative of the UNHCR Hans Lunshoff expressed concerns that the system will not resign the old practices to interpret the provisions on refugee status restrictively and unsympathetically. While the old law was rather deficient, as the Representative stressed, it still enabled the state to give protection – had it been for political will. Stressing the importance of changing the political climate for the new Law to be properly enforced, the commentator held it was necessary to understand and apply the principle of *benefit of doubt* in asylum procedures. This presumed that suspicion over the application – if it existed – should not be the reason for the claim to be dismissed. This is the way that "is promoted by the UNHCR and the way it is generally applied in well developed national legislations", the speaker stressed.

It appears the estimate was correct. The MoI maintained that none of the seekers "have *proven* their claim" (Žarko Katić, assistant of the Minister of Interior; in Ministry of Interior 2006a), demonstrating a clear breach of legal obligations toward the Refugee Convention that was supposed to serve as an interpretative frame for the *acquis*. As the experts argued (Legomsky in Battjes 2006, 292–293), despite the fact that the international law has not directly prescribed how the state was to judge claims, "unfair refugee status determination procedure is itself a violation of Article 33 [*non-refoulment*]". In spite of the lack of clarity over procedural steps, one could maintain that the procedure is faulty if it "is so unfair and unreliable, [that] the act of establishing it assures that an unacceptably high number of refugees will be returned erroneously to their persecutors".[119] The same position has been adopted by various national courts and the European Court of Human Rights which stressed that the "treaties must be interpreted in good faith in the light of the object and purpose […] and also in accordance with the principle of effectiveness" (in Battjes 2006, 292).

118 The only important difference might have been the practical difficulty of immigrants to go unnoticed and remain in the state irregularly. Due to the lack of any form of protection for irregular immigrants and the inability to regularize (see Chapter 6, section 6.1.2), this might have motivated a number of the immigrants to file an application for asylum as the only way not to be demanded to leave the country (Stakeholder B 2012).

119 Legal experts generally agree with this evaluation (McAdam 2007, Battjes 2006, 292–293, Goodwin-Gill 2001, 119).

A variety of actors held that the decisions were not made based on the legal criteria, but were rather led by political factors: i.e. reluctance to recognize protection and overtake implications stemming from it. Goranka Lalić from the CLC stressed that during the first years of asylum reform, there "were indications that some decisions have been modified" at some other instance than the ones that dealt with decisions (Lalić 2013). Commenting on the adoption of the new LoA in 2007, Lana Tučkorić, presently a member of the CLC and formerly a member of the MoI's body for decision making on asylum claims, expressed "hope" that the new LoA "will not become a 'dead letter' and that the meaning of its provisions will not be interpreted in a way that suits state authority" emphasizing that "ultimately the Law is here to protect those whose rights it is speaking about and not to represent the fulfilment of one formal requirement" (Tučkorić 2007, 8). Emina Bužikić (CfP) stated she has "always maintained it was a pure political decision not to grant asylum" (Bužinkić 2012).[120] In a great number of the cases, the applicants appealed to the Government's Commission for Appeal,[121] but the Commission – judged by stakeholders as dependant on the Government (Tučkorić 2007, 7; informal information, stakeholders, March 2011) – never overturned the decision of the MoI. The Commission was not obliged to interview the claimants; yet, it could have done so (Tučkorić 2007, 7). Nevertheless, it has not engaged in such activity. None of the applicants further complained to the Administrative Court (Tučkorić 2007, 7).

In its reports, the European Commission did not directly criticize the work of the MoI. Instead, it noted the recognition rate was low and stated that the officials in the MoI and Appeal Commission needed to be trained to conduct procedures in a proper manner. However, the European Commission openly stressed the appeal process needed a review to enhance transparency and independence of the administrative appeal (European Commission 2005, 92). In the reports launched in 2007 and 2008, the Commission noted

120 As mentioned in Chapter 2, because asylum applications are protected by confidentiality of sensitive data and their judgement pertains only to the competent bodies, it is never possible to have greater insight into the quality and content of the decisions of the bodies involved in the procedure. In cases where the decision is strongly controlled by the executive branch (such as the case with first and second instance procedures under the first LoA), insight into the process of evaluation is even harder. This left NGOs, experts and researchers to make judgements based on other factors, such as recognition rates, general context, discursive practices and limited reported information obtained from the insiders.

121 For further illustration, in 2006, 70 applicants (out of 80 rejected and 11 dismissed) complained on the decision of the MoI; and in 2007, 44 (out of 80 rejected and 60 dismissed) have done so (United States Department of State – Office for Human Rights, Democracy and Labour 2007).

that the introduction of the new Appeal Commission was an improvement; yet, it stressed Croatia needed to provide its full impartiality. Besides this, the European Commission demanded introduction of other procedural guarantees in the new legislative text (the new LoA 2007). The alterations, as demanded by the EU, have been introduced in the second Act on Asylum.

The reform of the system, commencing with the adoption and enforcement of the second LoA brought a certain transformation to the asylum system in the area related to qualification and recognition of international protection: 6 protections were given in 2008, 13 in 2009, 13 in 2010 and 14 in 2011. In 2012, the number rose to 33 cases (UNHCR 2012d). Whereas the number of given protections is still negligible, since 2008 until 2012, the state has recognized 80 protections. One has to note that the rate is strikingly low in comparison to application rates. However, in the past years we may observe considerable trend of secondary movements: between 80 and 85 per cent of asylum seekers leave the territory of the state before the procedure ends. Counting on the number of applications that have not been suspended due to the seekers leaving the procedure, the recognition rose from 0.6 per cent to between 5 and 10 per cent. Such a rate is still restrictive. At the same time, the EU average is between 20 and 30 per cent. In past years, states like Germany and Italy granted between 20 and 30 per cent recognition (EUROSTAT News Release 2010; 2012a; 2012b); while countries like Ireland, France or Spain were much more restrictive: granting between 4 to 15 per cent of applications. Some of the new immigration (and new member states) have high recognition rates (e.g. Malta and Slovakia over 50 per cent), while other remain low (such as Greece or Cyprus with less than 3 per cent, or Poland and Slovenia under 15 per cent). The EUROSTAT (News Release 2010) notes that, for instance, in 2009, the lowest immigration rates were recorded in Ireland (4 per cent), Spain (8 per cent), France (14 per cent) and Slovenia (15 per cent). Evidently, Croatian recognition rate is still among the lower ones.

As stemming from our analysis, the key factors contributing to changes pertain to the following: (a) (further) development of procedural guarantees for asylum seekers at all stages of the procedure (first and second instance); (b) changes in the decision making in the first instance (changed nature of interpretation of the principles relating to qualification and recognition); (c) institutional change in the appeal process; and (d) the widened scope of protection including the circumstances of political persecution and those qualified under the other *serious harms*.

Important progress has been reported in the area of procedures. According to the stakeholders (Frieh Chevalier 2012; Stakeholder A 2012), the CARDS project Reform of Asylum System II offered significant further technical assistance and training for the procedures (especially for a much more elaborated scheme of decision making set by the new LoA). Some seekers have still reported troubles in communication with authorities, especially those for whose language the MoI did not manage to provide proper translation service (Bužinkić et al. 2010, 30). As reported, translation was often supplied in similar (but not the original) language; which has not always worked well. As the recipients have later discovered, this provided their claims with incorrect or impoverished information in the statements (Bužinkić 2012 and Bužinkić et al. 2012, 72). The practice of affording the seekers with decision written in Croatian language but without translation continued (Beneficiary E 2012; Beneficiary J 2012). Seekers have also complained they needed to sign interview records they did not always understand (Bužinkić 2012; beneficiary in Fade in and Sikavica 2009) or that they needed to confirm those records with which they have not been satisfied due to mistakes found (Bužinkić et. al. 2010, 72). However, in general, the ability of the seeker to explain their case to the authorities with the help of interpreter has been described as "significantly improved" (Bužinkić 2012).[122] Besides this, officers dealing with asylum claims in the Asylum Unit have been described as having adopted significant levels of knowledge of the complex procedural rules and generally sought to act in a procedurally correct manner (Bužinkić 2012; Kranjec 2012; Lalić 2013; Stakeholder A 2012; Stakeholder B 2012).

Procedural guarantees again, however, do not seem to constitute the only (or the most important) source of change, although, undoubtedly they have upgraded the abilities of the seekers to present their case and the authorities to deal with claims. Another reason that was emphasized as impacting the increase in recognition was the increase in the rates of applications and the structure of the seekers. During the first several years, a significant number of the applications were filed from immigrants coming from the countries in the Croatian neighbourhood. In past years, this has changed.[123] Most of the seekers now arrive from more distant regions. In that sense, it is stated that a greater number of asylum seekers

122 The MoI reported it now uses also the capacities of networks established with partners in the Member States (Krešimir Katić, Asylum Unit, MoI; in Mautner 2008).

123 Assumingly related to (certain) political and economic stabilization in the countries of origin, liberalization of visa regimes in the EU and potentially related to low recognition rates of these applications in Croatia.

(from diverse and unsafe regions) are now reaching the territory and seeking protection in Croatia.[124]

Nevertheless, two great reservations must be made in this regard. Firstly, the fact that the seekers arrived from the "region" did not preclude that they have not qualified for protection, as the Government (Josip Vresk, Deputy Minister, MoI; in Croatian Parliament 2002, 46) has claimed. Since 2004 until 2008, out of the total number of nationals from neighbouring states (or states in the near neighbourhood) claiming asylum in Croatia, the largest part was those arriving from Serbia (thus, including ethnic Albanians from Kosovo and, as reported, Roma population from Serbia).[125] While the state claimed immigrants had only economic reasons; stakeholders rejected such judgements (Miletić in Sertić and Center for Peace Studies 2007; Bužinkić 2012). Emphasizing political turmoil in Serbia (and the status of ethnic Albanians in Kosovo at the time), the actors emphasized the state has been rejecting persons who might have needed protection. As the UNHCR noted (2008), the greatest concern represented the fact that the majority of applications continued to be rejected as *manifestly unfounded*, "despite the fact that among them are applicants with a similar profile as those recognized in other asylum countries" (for instance, Iraq, Turkey, Kosovo, Iran, the Russian Federation and others). Indeed, to qualify an application as *manifestly unfounded* presumed discretionary judgement that was often found to damage the asylum seekers (UNHCR 2008).[126] Mostly, the reasons stated were that the applications were not credible or that the seekers arrived for obvious economic reasons. According to

124 In past years, this includes Afghans (over 50 per cent in 2011; over 30 per cent in 2012); Pakistanis (between 5 and 10 per cent in 2011 and 2012) , Somalis (over 27 per cent in 2012), etc.

125 Since 2004 and 2005, applications from Serbia made 14 per cent (2004 and 2005), rising to 19 per cent (2006) and over 40 per cent (2007 and 2008). In 2009 it has decreased to 21 per cent and became negligible (under 1 per cent in 2011 and 2012). This was most likely caused by the mix of political factors in the region (related to the circumstances in Kosovo and Serbia, as well as reported ethnic tensions, often versus Roma population or between ethnic groups), mixed with economic hardship and presumably stimulated with a liberal visa regime.

126 According to the LoA (2003, Art. 43), an application was considered manifestly unfounded when the authorities found: (a) it clearly lacked integrity (when the statement of an asylum-seeker was contradictory and inconsistent); (b) it was short of content (when the seeker gave no indications that he/she would be subject to fear of persecution); (c) the seeker arrived to the Republic of Croatia for economic reasons solely; (d) the seeker might have been given competent protection in another part of his/her own country, (e) that due to overall political conditions, legal circumstances or implementation of laws in the country of origin, it may be in general trusted that there may not be a founded fear of persecution, (f) his or her application was previously rejected in another country that implemented the Refugee Convention; (g) it is based on intentional fraud or misuse of the asylum procedure.

some of the stakeholders (Bužinkić 2012), the state was particularly averse to provide protection to seekers from neighbouring states (such as Serbia and Kosovo). In some of these cases, the UNHCR provided protection to these seekers and launched the program of their resettlement to other states.[127] Besides these, there were other applicants from unsafe zones,[128] but almost all (save one) have been denied protection. As described by the stakeholder (Goran Miletić, CfP; in Sertić and Center for Peace Studies 2007), "…there were situations where people were coming from Iraq, from Sierra Leone, therefore, from war zones, where… surely... their basic human rights were violated… their basic right to life was threatened… and they [authorities] interpreted it as 'no, this is not a person who seeks our protection…'".

While both procedural safeguards and change in migration patterns may be held important, the key transformation is not of a technical character but rather substantial: it appears that the institutional changes installed in the legislation – and firstly, the creation of a new Appeal Commission that gradually gained greater independence – opened space for liberalization in the approach to asylum. In 2008, the Commission for the first time overturned the MoI's decisions (two). Yet, the organizations were still unconvinced towards its capacities for refugee protection. The Commission was commended for overturning MoI's decisions, but, as emphasized, in the first years, it reflected only on a subsidiary form of protection, leaving refugee protection uncovered (UNHCR 2008). Gradually, the Commission became quite active in overturning first instance decisions: between 2008 and 2011, it granted over 50 per cent of protection statuses.[129] As explained by the Head of the Commission and a former MoI staff Vanja Pudić (2011), and in sharp distinction to the established view of the MoI (especially during the first years), the Commission developed the view that the evaluation of each application ought to be regarded in the view of a potential foundation in the claim and the probable consequences of its denial. Led by the presumption that a person should not be denied protection simply because they cannot prove the merits of the quest and that suspect should not represent

127 For instance, in 2006, after six years of waiting, four members of a family from Kosovo were resettled to Canada with the assistance from the UNHCR (see: Sertić and Centre for Peace Studies 2007).

128 E.g. between 2004 and 2007 there were also applicants from Iraq (20 persons); Iran (17); Palestina (33); Russian Federation (26), Turkey (43), etc.

129 Since 2008 until July 2011, the Appeal Commission granted 23 protections and MoI 19 (statistics obtained from the MoI, July 2011).

sufficient grounds for refusal, the Commission instituted a new approach to international and European standards accepted to Croatian law and acknowledged the valuable principle of the *benefit of doubt*.

However, changes have not only occurred within the Commission (its institutional arrangement and actual effects on the protection), but gradually also within the MoI. In the past years, the previous discourse emphasizing total prevalence of economic migration and bogus refugees in the Croatian case slowly moved towards less exclusive conceptualization of migration realities. Still restrictive and prevalently focused on security concerns (including the need to primarily detect false claims), the new system admits that Croatian asylum institutions deal with both economic and non-economic migrations, and receive claims which fit the definition of the need for protection. The MoI's offices also gradually increased its recognition rate: since 2008 until 2011 (2011 included), it recognized 19 protections (statistics obtained from the MoI, 2011).[130] The number of recognized protections in the MoI rose especially in the last year, where MoI recognized protection for 33 persons.

This change appears particularly interesting. Whereas enhancements in procedures probably enabled improvements, some of the stakeholders maintain the change must have been allowed by politics firstly (informal information, stakeholders, July 2012). Indeed, we may assume that EU criticism and presumably also the alterations installed by the new Appeal Commission have impacted gradual aperture within the MoI as well. Rejecting the rigid approach formerly established in the government, the new Appeal Commission not only enabled actual cases of international protection in Croatia, but also sent an important symbolic and practical message about the domestic system: that the population of asylum seekers in Croatia cannot indeed be held so different from the one that the well established systems (of the Member States) receive and to whom they offer protection in much larger extent. Such an approach was welcomed by relevant international organizations (such as the UNHCR) and, in particular, the EU. Besides this, it may also be that the experience in first several years demonstrated there is no reason for fearing that Croatia will be "flooded" with refugees, as the government feared in the beginning. This will be discussed in the following chapter. However, it remains a question whether the change is of a stable nature (i.e. what we can expect in the future). Due to the sensitivity of its function and potential amenability to the needs of the government (which is, in turn, acquiescent to political

130 And two temporary residences for the purpose of family reunification with a person under asylum status.

interests), it remains a question of how many decisions may be autonomous and how much may they change depending on the political needs. Some assumed that the state will still be inclined to restrictive recognition process, due to state interest to keep rates low.

> Of course they are going to be more restrictive [than us]. Protection is expensive for the state. That costs! (Pudić 2011).

> I do not believe that Croatia is yet ready for great number of immigrants, including asylees[131]… (Bužinkić 2012).

While practices have been altered, several issues still remain rather concerning. Firstly, the lack of crucial procedural guarantees in the Aliens Centre still violates domestic legal norms (and the minimal guarantees demanded by the EU *acquis*). As in previous periods, reports noted that information in detention centres was still provided in the Croatian language. In 2009, Human Rights Watch noted that seekers still complained of the lack of interpreters' services and the tightened access to legal advice during misdemeanour proceedings which could "lead to them being given expulsion decisions and deported before there is any consideration of the asylum claim".[132] In 2010, the Commissioner for Human Rights of the Council of Europe Thomas Hammarberg (Hammarberg 2010) reported that seekers' received information about their claim and deportation in Croatian language and were thus uninformed about their legal status and legal options at hand.[133] Also, the Commissioner reported that some detainees experienced problems in "obtaining legal aid to challenge their detention in a timely manner, even though the detention centre is in principle open to NGOs and lawyers". The research conducted by the CfP (Bužinkić et al. 2010, 30) notes that seekers in the Centre obtained information from the legal

131 In colloquial speech, the term *asylee* (Croatian: *azilant*) is often used for persons with status of asylum or subsidiary protection.

132 Indeed, to remind, after the arrival of a boat with 66 immigrants from African and Asian countries in July 2012, all persons were soon placed in the Aliens Centre, with authorities in the Centre not registering any claim for asylum among these individuals. After a visit from a NGO with an interpreter, over 50 persons applied for asylum. The country wanted to return the persons to Greece, but Greece did not accept them.

133 Report was made following the visit of the Commissioner to Croatia from 6 to 9 April 2010.

representatives (the CLC and other competent lawyers), but they expected "more intensive legal assistance and more frequent communication with legal representatives".[134]

Secondly, as stated, while 80 (85) per cent of asylum seekers leave the procedure, the rate of recognition in relative terms still remains between 10 and 15 per cent (estimate of Goranka Lalić and our estimate). Some actors restrained from judging whether decision making is now liberal or restrictive (due to the limited number of cases that actually finalize procedure); while others (Lalić 2013) believe it is "relatively appropriate", given the rate of cases that are judged. However, Lalić also stressed it is common that the ministries of the interior are naturally (more or less) restrictive bodies. Indeed, as shall be discussed in greater detail in the following chapters, usually, these bodies tend to be securitized and focus on the question of prevention of immigration, regarded as a matter of safeguarding the state from pressures from the outside. As it will be debated, in the atmosphere of severe securitization in the EU and Member States, this dimension is yet more emphasized. With the key goal to discern what they consider as false asylum claims, the bodies of interior tend to be rigid in protection issues. As we have already concluded, in our case, the rate is below the EU average of the first instance decision which amounts to 25 per cent (EUROSTAT News Release 2012a; 2012b). This makes it particularly important that the judiciary and the appeal process function well. In the Croatian case today this is again not guaranteed.

As we have seen, after the second Appeal Commission gained greater independence, the stakeholders expressed satisfaction with the dynamics occurring in the system. Indeed, while the number of asylum quests recognized by the MoI and the Commission in time levelled, the rate of recognition in the Commission was much higher in comparison to the MoI's: one must take into account that only a minority of seekers filed complaints (under 30 per cent).[135] It is generally held that the judiciary is the safeguard of a proper asylum

134 The CLC (Lalić 2013) stated that the CLC had (and still does) open access to detention centres and could not discern what the complaints referred to. It may be the fact that – in the lack of ability to understand their position and seek legal help – the seekers had the right to assistance, but had difficulty to practice it. Also, as Goranka Lalić noted, the CLC experienced difficulties in providing legal assistance since the rates of applications have risen.

135 According to the MoI's statistics (Unit for Strategic Planning, Analysis and Development 2009; 2010; 2011), in 2008, the MoI positively evaluated 1 case and rejected 55 claims; while the Appeal Commission accepted 2 claims and rejected 9. In 2009, the MoI accepted 3 claims and rejected 60; the Appeal Commission recognized 3 applications and rejected 9. In 2010, the MoI's decision was positive in 6 and negative in 58 cases; while Commission recognized 6 applications and denied 43. In the case of applications decided during 2011, the MoI accepted 3 and denied 48 claims and the Commission brought positive decisions in 4 cases and denied 15. The rest of the applications were mostly suspended

system given it does not regard state interests (or security issues), but decides on the claims based on the understanding of the laws (domestic, regional and international) and their purpose. In the Croatian case, it appears this process commenced to develop with the installation of the reforms in the Appeal Commission. Nevertheless, based on demands from the EU, the Commission's work necessitated to be replaced by the competence of the Administrative Court. The problem lies in the fact that the judges of the Administrative Court never dealt with the issue. Before they commenced practicing their duty, they had only minimal education – one seminar lasting several days (Stakeholder A 2012). While we may not yet speak about the practices of the Court, the fact is that so far it has not overturned any of the MoI's decisions (out of over 60).

> We have to take into consideration that they just started working on these cases, these were judges who were appointed only in December 2011, that they did not meet asylum [cases] by that time. But after a year it had been running... we should be able to see… In 2013 we would have had to be able to see which kind of position they will take; will they engage in mere acclamation of the first instance MoI's decision, as was the case with the Administrative Court… when it was a third instance body…[136] So, the question is whether they will use the opportunity to induce higher standards. It is hard to say. I cannot even estimate. If we judge by 2012, they will not. But we have to give them the credit ... that they might not have still been able to judge differently... And they need training, they must enter into the subject; it is a topic that is not being studied at the Faculty of Law, it is an issue that they could not have been familiar with until they have begun to rule on cases (Lalić 2013).

In the quite recent period, rather worrisome events have occurred; yet, in other court instances. In September 2011, a Chechen refugee with asylum in Austria arrived in Croatia, where he was apprehended by domestic authorities based on the fact that the Russian Federation demanded his extradition (for activities of terrorisms). Having considered that the accusation pertained to political persecution, the Austrian court granted him asylum and rejected to extradite the person to the Federation. Despite this fact, the County Court in Zagreb and the Croatian Supreme Court decided the person needed to be

due to seekers' leaving the territory of the state. Note that the number of applications is usually lower than the number of asylum seekers as the parents' application comprises also the application of a child.

136 At the time, the Administrative Court (which is now the transformed Higher Administrative Court) decided on cases without a hearing. The Administrative Court that is now a second instance body consists of newly appointed judges and conducts hearings.

extradited to the Russian authorities. Under great pressure of organizations and the media, the Minister of Judiciary, capable to withdraw such decisions, decided to negate it and allowed the refugee to return to Austria (T-portal 2012b). Furthermore, in July 2012, Vicdan Özerdem, another Turkish citizen (this time, a citizen with asylum in Germany) arrived in Croatia for holidays. Like in the abovementioned case of Başak Duman, Turkey demanded her extradition based on the accusation for terrorism for her journalist activities and participation in protests. As in Duman's case, the domestic authorities wanted to pursue her extradition. The case came to the County Court in Dubrovnik, which concluded that all criteria for extradition are fulfilled (Metroportal 2012; T-portal 2012a). Like in the case of a Chechen refugee, the decision occurred despite the fact that the person received asylum status in Germany – and in spite of the fact that Özerdem has been held to have been persecuted, imprisoned and tortured by Turkish authorities. With another great public campaign running in the background, the ruling has been overruled by the decision of the Supreme Court, which decided that due to formal reasons (statute of limitations), the extradition cannot be fulfilled. When these and other similar events opened public debates on the competency of the Croatian judiciary to deal with refugee issues, legal experts explained the problem lies in the fact that the national judiciary has so far been quite inexperienced with the interpretation of the international and regional law (including the Refugee Convention, the CAT, the ECHR and others). According to them, due to the fact that they lacked knowledge and understanding of the regional (European) and international legal standards, the judges were most often reluctant to interpret these.[137]

> What we find problematic already for some time is that the courts, for some reason, still reject to directly [apply], or by interpreting our laws, apply the European Convention of Human Rights[138] and some other conventions and agreements on human rights which are in force (Sandra Benčić, legal expert, CfP; in HTV1 2012).

> I would agree with this. I would absolutely agree. Not only in this segment, but also in all other segments, the courts still interpret the European Convention on Human Rights and all

137 Siniša Rodin, expert in European Law, the Faculty of Law, University of Zagreb; in Free Faculty of Humanities and Social Sciences et al. 2012. See also separate text (Rodin 2012) where author demonstrates a variety of judgements on extradition with similar character.

138 Due to the fact that the case included arbitrary arrest, imprisonment and torture, in this context, the European Convention on Human Rights had particular importance.

other European Convention in a very shy manner or very uneasy (Đuro Sessa, judge of the Superior Court and a president of the Association of Croatian judges; in HTV1 2012).

As our respondents warned (Lalić 2013; Stakeholder A 2012), we should not compare the outlined cases (and outlined instances) with (regular) asylum procedures and the Administrative Court. Due to the fact that in the case of extradition the courts applied the European Convention on Extradition (Council of Europe 1957), it is a dissimilar matter (i.e. the two conventions were in conflict). Also, as Lalić stressed, the Administrative Court is a different body. The former Administrative Court (now: Higher Administrative Court) was rather bureaucratized; yet, it has been deciding without hearings. The present Administrative Court is a newly formed body with newly appointed judges who may develop their own model of interpreting cases. As such, the Court now holds hearings which are crucial in asylum cases. However, some experts stressed that the main problem lies in the fact that courts in general demonstrate a lack of understanding for the crucial conventions – regional and international; including the Refugee Convention and the European Convention of Human Rights.

I think that the judges must enter the real merits of the case, they must have knowledge of the standards, they must be able to apply the standards… of the European Court of Human Rights and the European Convention standards expressed by the case law… And international standards, from their documents, their interpretation of them, or thought opinions of the UNHCR. So, it seems to me that depending on what kind of role and what kind of an attitude the Administrative Court will take in deciding, this will… this could have a significant impact on the further development of the asylum system in Croatia (Lalić 2013).

As informed, the lack of this pertained to the fact that the judges were appointed too late to organize their training (Stakeholder A 2012). The staff of the former Commission for Appeal offered to assist as much as possible to the Court (Kranjec 2012). At this point, we may not judge what the future will be. Nevertheless, it will not be easy to compensate for the lack of experience in the issue, especially given that the judges of the Court are still under-trained, having had only one training seminar. On the other hand, we may hope that in the future (if the issue will be properly tackled) there will be improvements. As for now, we have again a dangerous situation where the system might still have improper appeal procedures in place.

4.1.3 Material Reception Conditions and Rights of the Asylum Seekers

When the preparation of the first Asylum Act commenced, the system lacked basic facilities for the reception and accommodation of asylum seekers.[139] Once the first asylum seekers started to arrive (1997), they were being placed in shelters provided by the Caritas offices in Rakitje (financed by the OUN) (Horvat 2002). The accommodation had a capacity for 50 persons and lacked the necessary equipment, personnel and facilities. With the adoption of the Asylum Act in 2003, the MoI has established an agreement with the UNHCR and the Croatian Red Cross which allowed it to use the facilities of the former refugee camp in Šašna Greda (near the city of Sisak), established by these two organizations and planned as a temporary solution until the building of the new reception centre. The former refugee camp was equipped with basic living conditions; however, it was short in space and facilities.

Prior to the adoption of the Asylum Act, Croatian legislation did not specify what the authorities ought to provide for the seekers awaiting decision. Instead, it only spoke about the status of a refugee. In comparison to Croatian legislation and practices, the reception standards elaborated in the already adopted 2003 Reception Directive (Council of the European Union 2003a) were thus quite demanding. The first LoA introduced a good part of prerequisites from the Reception Directive (Council of the European Union 2003a). Yet, as we shall see, the reception standards demonstrated to be quite demanding task for the system during the first years, mostly due to the fact that the MoI had great difficulty in finding the appropriate location for the centre to be constructed. Nevertheless, once this was settled, the area of reception became one of the most successful of all of the fields pertaining to the policies of asylum. In the following sections, we will review how the system adapted to the legal demands and enforced them until the present day.

4.1.3.1 Material Reception Conditions and Asylum Seekers' Rights in the Croatian Legal Framework

The Refugee Convention (or other instruments of international law) did not particularly deal with the issue of material reception conditions for asylum seekers. Yet, as scholars warned, these conditions did affect how the Convention would be applied. Due to the fact that they directly impacted the ability of the seekers to practice their rights provided in the

139 Facilities used during the refugee crisis in the 1990s were no longer available (Kadoić 2012).

Convention, it was of great importance that everyone was offered proper and dignifying conditions while they wait for their decision (Garlick 2006, 49). The European Directive on Reception (Council of the European Union 2003a) offered some crucial guarantees for these to be put in place and provided for their implementation in the Croatian law.

As prescribed in the Reception Directive (Council of the European Union 2003a, Art. 6), the 2003 LoA (Art. 30) guaranteed the right of residence in Croatian territory from the date of application until the procedure was complete. During that time, a seeker could not leave the territory of the state (Art. 37).[140] Although the Directive (Council of the European Union 2003a, Art. 7) prescribed the right to free movement within state territory, it enabled states to limit this benefit to a particular area or region. Croatian Law did not directly speak of freedom of movement within the territory; yet it allowed asylum seekers to stay at any address in the Republic of Croatia, with consent of the MoI (Art. 38). As allowed by the Directive, the LoA (Council of the European Union 2003a, Art. 40) stipulated that freedom of movement could be limited to a particular address (including accommodation centres) or to a specific area during the process of an identity check of a person, in the event that they are suspected to be abusing the asylum procedure or if they have violated the rules set in the domestic law, as well as for reasons of public health and safety. The new Asylum Act (2007) and its amendments (2010) did not change these provisions.

In line with the Reception Directive (Council of the European Union 2003a, Art. 13), the 2003 LoA (Art. 22) stipulated that an asylum seeker shall be provided with the adequate material conditions for living and his or her subsistence, including accommodation in the accommodation centres, nutrition, basic hygienic supplies and financial assistance, depending on the financial status.[141] In addition, the Act (Art. 23) followed the minimal criterion of the Reception Directive (Council of the European Union

140 In line with the Directive (Council of the European Union 2003a, Art. 6), within three days after application has been lodged, the Ministry of Interior was obliged to issue a document certifying identity of an asylum seeker and serving at the same time as a residence permit in the territory of Croatia during the time of procedure (Art. 76–78).

141 As allowed by the Reception Directive (Art. 12), the first Asylum Act (Art. 22 and 39) proscribed that persons who posses sufficient financial means will lose the right to financial assistance and the right to financed accommodation. The Second Asylum Act (Art. 38) altered this norm, stating that those seekers may opt to stay in the facility; however, they ought to cover the costs of accommodation in the Centre.

2003a, Art. 13) providing asylum seekers with the service of urgent medical assistance.[142] Besides children of the seekers (entitled to full medical assistance, as available for nationals), the LoA 2003 has not provided vulnerable persons and seekers with special needs with the right to specific medical treatment. This represented a breach of the European *acquis* (i.e. Reception Directive; Council of the European Union 2003a, Art. 17) and was corrected in the second Asylum Act (Art. 31) and the 2008 Ordinance on the Accommodation of Asylum Seekers, Asylees and Aliens under Temporary Protection (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008). Victims of torture, rape and other forms of violence were under the new Law entitled to the appropriate medical response, and other asylum seekers who have special needs were to be provided with the medical treatment adequate for addressing the particular circumstances that they have been subject to and the consequences caused by them (LoA 2007, Art. 31). Benefits were made available for applicants since the date of their application until the finalization of the asylum procedure (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008, Art. 5). The Ordinance further specified that the accommodation centres must offer adequate standards of living and an access to medical and educational services, as well as the contact of the seekers with their legal advisers or (non-governmental) organizations (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008, Art. 2–14).

Unlike the Reception Directive (Council of the European Union 2003a, Art. 19), the first Asylum Act (Art. 15) did not address how to accommodate unaccompanied minors. It merely stated that the minor will be provided with a legal guardian and that his or her application will be assessed in the shortest possible period. Provisions regulating reception of minors were introduced only in 2007. According to the 2007 LoA (Art. 26) and 2008 Ordinance on the Accommodation of Asylum Seekers, Asylees and Aliens under Temporary Protection (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008, Art. 11), unaccompanied minors needed to be provided with legal representative (unless married)

142 The LoA 2003 prescribed medical assistance for asylum seekers as equal to those pertaining to foreigners in Croatia – i.e. urgent medical treatment. Medical costs were to be demanded from the beneficiary, unless he or she is not in the possession of financial means.

and accommodated with their siblings (if present) in the area appropriate for minors.[143] As tolerated by the Directive (Council of the European Union 2003a, Art. 19), minors aged 16 or more could be housed with adult asylum seekers in the accommodation centre. While the Directive stipulates that an unaccompanied minors shall be placed with an adult relative, in accommodation centres with special provisions or other housing appropriate for minors or a foster family, Croatian regulation adopted only the first three options (thus omitting the viability of providing a minor with housing in a foster family) and added the opportunity of accommodating a minor in the accommodation centre with an acquaintance.[144]

Moreover, in certain cases, the asylum acts (LoA 2003, Art. 40; LoA 2007, Art. 74) enabled authorities to accommodate an asylum seeker in other facilities, such as detention centres or a prison. Even though this was in line with EU regulation, the Reception Directive (Council of the European Union 2003a, Preamble, 10) stipulated "reception of applicants who are in detention should be specifically designed to meet their needs in that situation." No provisions were made in Croatian law in regards to this demand.

The 2003 LoA (Art. 22) provided seekers only with primary education, thus going bellow the standards of the Reception Directive (Council of the European Union 2003a, Art. 10), which stipulated that minors needed to be entitled to education under similar conditions as citizens (which would include higher education of minors). While the Directive fixed the aptitude to exercise this right (no later than three month), the 2003 LoA neglected to define the time frame. This was corrected in the second Asylum Act (LoA 2007, Art. 32), which extended the right to education for minor asylum seekers or minor family members of the asylum seeker (including high school programs) and complied to provide the benefit within three months since the date that application has been filed. In case it has been established that the minor did not possess the knowledge of Croatian language necessary to participate in regular school programs, the due date could be prolonged to one year.

The right to work for asylum seekers, as demanded by the EU laws was introduced only in the 2007. In the case of employment, the Reception Directive (Council of the European

143 As stated by the Directive (Council of the European Union 2003a, Art. 19), the LoA 2007 (Art. 26) introduced provisions stating that the MoI will do all steps necessary to trace the parents of a child.

144 As in the case of other asylum seekers, the Law lacked provisions regulating the training of personnel working with unaccompanied minors (Reception Directive; Council of the European Union 2003a, Art. 19).

Union 2003a, Art. 11) instructed the right of the state to determine when an asylum seeker shall have access to the labour market; yet prohibition to work could not exceed the period of one year. Further elaboration of conditions was left to the state's choice. In doing so, the state could privilege its own nationals and European citizens. The 2007 LoA (Art. 36) specified that an asylum seeker shall have a right to work after one year (form the date of application) and as prescribed in the laws regulating employment of foreigners. Whereas the Directive (Council of the European Union 2003a, Art. 12) stated that the state may provide asylum seekers with vocational training (regardless of whether they have obtained the right to access the labour market), Croatian laws did not mention such a possibility.[145] In accordance with the Directive's premises (Council of the European Union 2003a, Art. 8), the law guaranteed the right to family unity**,** establishing that family members who came to Croatian territory with an asylum seeker will have the right to residence and accommodation with their family members (LoA 2003, Art. 30). As added in the Ordinance on the Accommodation of Asylum Seekers, Asylees and Aliens under Temporary Protection (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008, Art. 9), asylum seekers housed in accommodation centres were to be placed with their family members, as far as the capacities of the centre allowed so. In doing so, it was necessary to secure the safeguard of privacy, dignity and personal safety of each of the persons.

4.1.3.2 Material Reception Conditions and Rights of Asylum Seekers in Practice

Because of the modest capacities in the former refugee camp (Šašna Greda) used as a temporary facility for the post-war asylum seekers, the National Program of the Republic of Croatia for Integration into the European Union (Government of the Republic of Croatia 2003a) envisaged the establishment of a new reception centre, demanded specifically by the EU. However, the building of the reception centre demonstrated a great issue. The MoI has embarked on searching for allocation rather early (prior to the adoption of the first LoA), yet the Centre was opened only in 2006 (Ministry of Interior 2006b). During these years, the Ministry had found three locations, but the plans on construction were being

145 Where state has declared that national legislation was (partially) adapted to the 2002 Recommendation of the Council of Europe on vocational training of asylum seekers (Government of the Republic of Croatia 2003b), it is not clear where in the laws such provisions were to be found. Until 2010, the state has not granted this right not even to persons under subsidiary protection.

blocked due to the severe antagonism of the local population.[146] It is only in 2006 that the MoI has succeeded in cooperation with the local community – in the city of Kutina (70 km from the capital) – and managed to proceed with the plans on the building of the new reception centre. Until the finalization of the new reception facility in Kutina, material reception conditions were quite restrained. The seekers had all basic material conditions in place; however, they were constrained to live in quite modest accommodation lacking in space.[147] The beneficiaries were reported to be satisfied with the treatment and services provided within the Centre (Bužinkić 2012; Kadoić 2012). The new accommodation centre in Kutina, in function since 2006 (Ministry of Interior 2006b), offered a much greater array of facilities (sporting grounds, garden, lounge room, etc.) and was judged as one of the most advanced in the region and more sophisticated than what many Member States had (Stakeholder A 2012). Stakeholders judged the centre had all that it needed and beneficiaries stated satisfaction with the reception centre.[148]

Troubles in the Kutina Reception Centre were mainly in the shortage of capacity, at moments leading to over crowdedness (thus seriously diminishing the minimally required standards).[149] Such conditions were recognized to pertain primarily to the powerlessness of

146 The local population (of Rugvica, Ličko Petrovo selo and Stubička Slatina) engaged in protests, petitions and even a local referendum (see: Cvitić 2006; Lasić 2005). Observers reported that the movements have been often particularly induced by local governments. According to an informant (informal information, citizen, May 2011), besides house visits, the organized groups were using schools as a place for the platform against the construction of the centre. The informant noted the class has been thought that the asylum seekers are dangerous transmitters of diseases, criminals and terrorists. According to the media (Lasić 2005), the government has not done anything to becalm the local authorities and local population (despite the fact that the same political party ruled these particular locations – i.e. the Croatian Democratic Union).

147 The refugee camp had 20 wooden cottages (less than 20 m2) for 50 persons at the most. These were best suited for family accommodation. Besides the living area, the camp was equipped with a common kitchen, common lounge and a gym. According to the Head of the Centre Miroslav Horvat (in Cvitić 2006) at times of its greatest occupancy, about 30 seekers have been accommodated in the camp.

148 As Julija Kranjec (in Celig Celić 2012) stressed, in Kutina, the seekers have all their needs covered: quadruple rooms, three meals per day (and additional for children), gyms and sports, playroom, lounge, kitchen, etc. Daily care is provided from the social workers (2), supervisors from the MoI (4), professors of geography (2), lawyers (2) and Red Cross workers (5) for psychosocial care.

149 Recently, this started to led to rather poor conditions, with the playrooms and gyms transformed to sleeping places; the centre running out of necessary materials (bed covers, etc.); the seekers needing to be accommodated in the hallways, etc. Seekers stated (Beneficiary K 2012; Beneficiary L 2012) that it was rather hard to wait for decision in such

the MoI to deal with the absent involvement of the state. Support from the decision makers was necessary to obtain results, as the issue included further two levels outside of its own competency (the state level and local governments) which needed to solve property issues (informal information, stakeholder, 2011). Up until the solution found in Kutina (enabled by cooperation between the MoI and the local government), the MoI was unable to find compromises with local government to build the centre. In Kutina, this was solved using the MoI's facility (Cvitić 2006). After having lost the funds from the CARDS project Reform of Asylum I (due to procrastination), the state needed to compensate from its own budget and finance construction of the reception centre. The question was under heavy pressure from the European Commission and could not be left unsolved.[150] The state thus invested the lost funds (about a million Euros) into equipping the reception in Kutina.

As the facility in Kutina became insufficient, the MoI (induced also by the European Commission; see European Commission 2009, 56), sought to find a location that would replace the accommodation centre in Kutina. Led by the idea that such a solution would be best suited in the capital (Zagreb), where the seekers could integrate with greater ease (and where the MoI could expect less local opposition); in past several years, the Unit has been searching for various locations within the City. However, the plan of building a permanent reception centre in Zagreb has not yet been fulfilled. As informed by the MoI's officials (in Coordination for Asylum 2011), such a task demanded cooperation of the city government and the state; yet, this has until the present date not been established.[151] Instead, the MoI has found a provisional solution. Necessitating a new reception facility (due to the increase in asylum seeking rates), the MoI rented part of a hotel (Porin) in Zagreb and accommodated seekers in the facility. With the new increase in asylum applications, in 2012, the MoI extended the facility, renting the entire hotel (i.e. financing for the rent; while state remains inactive). These provisional solutions enabled the issue to be temporary improved; yet, the capacities are judged to run dangerously insufficient and are expected to be even more inadequate if the rates of application (as expected) continue to

conditions (especially those who reported they felt already traumatized by their previous experiences in their state of origin or during their journey).

150 The European Commission (2004; 2005; 2006a) warned on the need to build a proper reception centre in all of the reports. In 2005 (European Commission 2005, 92), stated that solving the problem of a permanent reception centre was a matter of priority for the domestic asylum system.

151 The state declared it cannot provide a solution given that the properties are in the hands of the city. The city, on the other hand, has declared that it is ready to provide a location, but the issue must be solved with the state.

rise. Under these conditions, as the MoI notes (in Coordination for Asylum 2012), there is a severe lack of officials too, making it hard to provide services.[152] Despite the increase in rates of asylum seeking, the number of staff has been decreased. As estimated by the respondents; the state still does not seem interested to assist.

On the other hand, and as regards to the services offered, the issues of reception (for the seekers staying in the Asylum Seekers Reception Centre and excluding those in the Aliens Centre) were judged rather progressive. The authorities (i.e. the MoI, and more precisely, its operational levels)[153] were described as aiming to develop a professionalized approach towards the norms needed to be implemented and towards the beneficiaries themselves. Organizations' members generally agreed that state officials (along with non-state actors involved) in the area tended to take legally defined standards not as mere procedural rules needed to be implemented for the sake of procedure; but rather as a meaningful guidance for the quality of service and proper solutions, searching to answer the needs of the beneficiaries. In many occasions, the personnel have been described as sensitive to the needs of asylum seekers. Asylum seekers have also been rather satisfied with the officials working in the Asylum Seekers' Reception Centres.

> I think if we look at the operational level of the MoI and reception centres, I think that they really professionalized their approach, that they respect the legal basics, and not just because these are laws but that they somehow see that they should work this way... Problem might be in… the lack of innovation ... in terms of ... not accepting help from those who would be able to help you to upgrade some procedures (Bužinkić 2012).

> It is very nice in Kutina. People in Centre are very good. When I saw Kutina, I think Croatia is very nice (Beneficiary A 2012).

> It is good in Porin, people who work, police, very good (Beneficiary H 2012).

As far as it is familiar to NGOs, the prescribed minimal rights of seekers (social assistance, education and health) have been practiced in a correct manner. Seekers were

152 This refers also to the decision makers in the Asylum Unit, competent to bring decisions on applications. In turn, this prolongs the period of waiting for decision.

153 Department for Administrative Affairs; Asylum Unit, and particularly, its Integration Unit; as well as the officials of the Reception Centre for Asylum Seekers.

reported to regularly receive financial assistance from the state (though rather modest).[154] Troubles have however been reported in the schooling system, where the state has not provided for the effective practicing of the stipulated benefits. The system lacked planning of the programs and methods of education and assistance for children unable to use Croatian (or akin) languages. The issue has been left to schools – without providing them with strategies or obliging them to assist the newcomers. At times, this resulted in the lack of proper assistance to the children. Shortage of state planned language training for asylum seekers gave a hand to such developments (Bužinkić 2012). As reported, the MoI has been active in seeking to provide this right to the seekers; yet, the state has failed again.

Viability offered by the law – allowing authorities to limit the movement of persons within the territory – has not been employed. However, the system has seized (if not abused) the opportunity to detain great numbers of the asylum seekers offered by the Reception Directive (Council of the European Union 2003a, Art. 2, 6, 13 and 14). Despite the fact that the Law prescribed that sanctions will not be used if the seekers stated founded reasons for illegal entry and if they applied for protection in a timely manner; most of the seekers were still charged for the given act (all until recently, i.e. until 2010/2011).[155] During the initial period, conditions in the detention centre have been judged as poorly developed. As noted by the MoI itself, the centre was short of the basic conditions and needed to be reconstructed (Gluščić, 21–22). With the assistance of the EU CARDS Project (Government of the Republic of Croatia 2006, 552), this was accomplished by 2007. Stakeholders have judged the reception capacities in the detention centre to be upgraded to a high-quality level (UNHCR 2009b).

However, aside from general reception conditions, the beneficiaries were often reported to demonstrate great dissatisfaction with treatment in the Centre. Besides the lack of necessary services (information, translation, legal assistance, etc.), the older reports noted that applicants have been subject to physical violence: especially those who sought to attempt escape in order to reach Europe (Amnesty International 2004). Quite the opposite from the Asylum Seekers' Reception Centre, the heads of the Aliens Centre were described as enforcing the norms related to the safety of the asylum seekers without proper care. As

154 Monthly assistance available for seekers presently amounts to 100 kunas (matching about 13,5 Euros) and in the first years it was about 80 kunas (equivalent to 10,5 Euros) (Bužinkić 2012).

155 At the same time, as Goranka Lalić (2010, 72) notes, the authorities accepted applications even when they have been lodged after a longer time of presence in the state.

reported from the stakeholders today (informal information, NGO members, June 2012), the officials (particularly the Head) could not be described as inert or insolent to procedures; but their understanding of their role in the system (and appropriate approach to procedures) was in difficult relation with the concept of human rights. Indeed, as evident from the discourse, the authorities in the Aliens Reception Centre accentuated procedural rigidity related to the concern of state security, omitting to incorporate the concept and standards of human rights in the complexity of migration management. Moreover, the reproduction of the image of irregular entry (or stay) in the state's territory as an act of heavy crime against the state; needing strong response (reported frequently across the EU), has in this case been lifted to a particularly high level.

> While he is accommodated here, he is not accommodated as any regular citizen, because if he had acted normally and civilized, he would not have ended up here…. They are aware they are doing an offence. They are aware of that…. You can treat him as a human being, but… you cannot let this person out because he has a [punitive] measure… We want to remove this person from our territory so he does not do another crime – a heavy one. So in this regard, now think what we said – as a 'human being' (Josip Biljan, Head of Aliens Centre; in Sertić and Center for Peace Studies 2007).

In the past several years, we cannot see reports stating physical violence. A stakeholder (Stakeholder A 2012) stated this does not occur in the centre. Some stakeholders have stated that the detention centre is not the optimal solution for asylum seekers, but did not see it as a great issue if it was of short term (Stakeholder A 2012). On the other hand, some commentators saw the issue of prolonged stay (up to six or seven months) as particularly problematic (Hammarberg 2010, 10). Others emphasized that the Centre met general reception conditions (accommodation, nutrition adapted to religious needs, etc.), but the problems rests in the lack of psychological and social programmes which are especially needed in detention centres (Julija Kranjec, CfP; in Celig Celić 2012). Others stressed the problem lies in the attitude of staff (i.e. the Head).

> I think he seeks to be professional. But, I mean, the way he speaks about them, that they jump over the fence like monkeys… (confidential part of the interview, stakeholder, 2012).

> People and food at the Centre are fine, but there were even 5 days in a row that they would not let us out (asylum seeker; in Bužinkić et al. 2010, 34).

> I thought here you can make a good life, you can live good… But this is not same. That is just a dream… And some people are here about four month. Why? They are not murders. They don't do something that is criminality, they don't kill nobody. Why four months stay in here? It will be too late for their lives, there is no hope. Just look at these child, 14, 15 years old. They can't stay here, they can't! Where is the European humanity? (Asylum seeker in detention centre; in Marina 2012).

Due to the fact that the Law (and the *acquis*) allows it, detention of asylum seekers still occurs; yet, today in a less frequent manner. While the European Commission (2008, 56) presumes that detention should occur as an exception, not a rule; the Croatian system has applied it in the greatest part of the cases – all until the European Commission placed a more determinant pressure on the authorities in the past several years. According to the European Commission (2010, 54), the practices of charging the seekers for irregular entry decreased for over 90 per cent, thus leading to diminishing numbers of seekers staying in detention centre during the procedure. However, external pressure has not solved the question of the treatment of those seekers that are still kept in the Centre. Leaving it within the issue of irregular migrations management (discussed, perceived and treated as a critical danger for the state's safety), the problem has basically been left to the exclusive competency of MoI's Department for Irregular Migration and has not gained attention farther than the circles of the NGOs.

Besides material standards, other rights of the asylum seekers, and in particular, those relating to vulnerable groups, have been implemented unevenly. The seekers have been found to suffer from diverse types of traumas; however the system has not provided for the proper medical care. Stakeholders agreed that general counselling was insufficient for the type of needs that the beneficiaries had. As stated by the respondent (informal information, stakeholder, June 2012), the persons in the centres did their best, but they lacked training to professionally deal with specific types of traumas such as torture, violence based on gender or other. As reported, the problems were usually started to be solved on a more serious level (i.e. hospitalization) only after major incidents would occur.

Particular problems exist in the area of rights of the unaccompanied minors, as one of the most sensitive groups. The system lacks strategy for reception, accommodation and integration of this group of minors, as well as a general scheme of support for them (Hammarberg 2010, 11). As a consequence, the minors are accommodated in unsuitable

accommodation and often receive poor assistance from the state during their period of waiting for decision. Some minors are placed in the facilities of the Centre for Minors with Behavioural Disorders, which was (naturally) found as a strikingly inappropriate solution for such a sensitive group of the seekers (see: Konjikušić 2011). Others were allowed to stay in the Reception facility with adult asylum seekers – which in the given conditions is a better option (Beneficiary E 2012). While these solutions did not breach the body of rules (*acquis*), they produced the effects which had no link with the meaning of protective mechanisms that were demanded – i.e. implementation of the Reception Directive, having "the best interests of the child…" as "a primary consideration for Member States" (Council of the European Union 2003a, Art. 18). Despite the urges from domestic NGOs (CfP and Croatian Red Cross most dominantly), as well as the EU and international organizations (European Commission, Council of Europe and the UNHCR), the problems of vulnerable groups, including unaccompanied minors, have lacked interest from the state and have remained unsolved until the present day. Like in other areas; the state has failed to act. The minors are thus left to the handling of their own and to the assistance from the non-state organizations. It remains to be seen whether the new strategy on migration (presently in legislative process) will properly address the issue and induce its solving in practice.

4.1.4 Persons Recognized Protection: Content of International Protection and Integration

Unlike in the other areas of asylum policy (i.e. reception, procedure, qualification, etc.), the Croatian legislation from the 1990s already had some provisions regulating the content of protection for those persons who were granted refugee status. The 1991 Law on Aliens stipulated refugees will be given the right to basic health care, accommodation (up to six months), social assistance and other basic rights (Zakon o kretanju i boravku stranaca 1991, Art. 36–38). However, as previously mentioned, the status was planned only as a temporary solution, until the persons under protection would be resettled to other states, returned home or integrated to society on their own (see: Zakon o kretanju i boravku stranaca 1991, Art. 36). As we have stated in Chapter 3, besides the refugees from the other states (and mostly from Bosnia and Herzegovina), Croatia also had several hundred IDPs. The greatest part of IDPs and refugees (80 per cent) were settled with families and the state assisted their sustenance (Puljiz 2001, 168). Due to cultural proximity and great level of proficiency in language (as well as great naturalization rate), most of these refugees were well integrated. As we have seen, by today, these issues have largely been

solved. The greatest number of refugees has by now returned (to Bosnia and Herzegovina) and most of the IDPs have managed to return to their homes.

When Croatia accepted to introduce the asylum *acquis*, the EU did not yet had regulated this area. While the Qualification Directive (Council of the European Union 2004) specified the rights of refugees and persons under subsidiary protection, the first Asylum Act did not draw on this. Instead, seizing on the minimal standards defined under the Convention they prescribed the rather minimalized set of rules for protection of persons under protection. Given that the 2004 Qualification Directive (Council of the European Union 2004) entered in force by 2006, the state was demanded to implement a new set of rules. The second Asylum Act implemented the norms demanded under the Directive, expanding the rights of persons under protection. In 2010, these were further extended with the new legislative changes. These last amendments drew on the new courses set in the then upcoming Directive on Qualification (Council of the European Union and European Parliament 2011). In practice, their application was barely inexistent until 2008, when the state acknowledged a more significant number of protections. As we shall see, the area will represent a great debacle of the asylum system and will become one of the most urgent issues to be solved. While the *acquis* allowed for legal improvements in this segment of protection (although not sufficient; to be discussed in the Chapter 6), the institutions so far failed to provide the most basic rights for persons under protection.

4.1.4.1 Content of Protection and Integration of Persons under Protection in the Asylum Act

The rights of persons under protection have been the most intricate area of the Refugee Convention. Besides general human rights conventions, presupposing the right to safety of life and dignity of all human beings, the Refugee Convention (United Nations 1951) sets a list of rights that ought to be granted to the recognized refugees. The Convention envisaged two sorts of rights as mandatory: (a) those that prescribe a duty of the state to equalize the status of refugees with (at least) that of legally present aliens who enjoy more favourable treatment; and (b) those that demanded refugees to be provided with the same rights as nationals. The first group of rules relates to the rights such as property (Art. 14), wage-earning employment (Art. 17), self-employment (Art. 18) association (Art. 15); housing (Art. 21) and others. The second referred to rights such as public education (Art. 22), public relief (Art. 23), labour legislation and social security (Art. 34), access to courts (Art. 16), etc.

Drawing on the legal wording of the Convention (yet, as we shall see, hardly the underlining logic), the first Asylum Law offered some basic rights to persons enjoying asylum status. The asylum status was provided for five years, with the possibility of extension in the case of need (LoA 2003, Art. 54). During that time, the beneficiaries were designed to be offered basic social provisions stipulated in the Refugee Convention (United Nations 1951, Art. 17–24); yet, in Croatian Law, these were limited to those of the regular alien (working rights and the right to health care) or have been of a quite restricted length (e.g. housing). Persons granted asylum status were planned to be offered housing at the expense of the state – however, only (a) under the condition that the state was able to provide this kind of assistance at the given moment; and at best, (b) for the first six month after the status has been gained. The right to health care, as in the case of asylum seekers (and the regular aliens), included the right to basic health assistance, while other health care services needed to be financially covered solely by the person. The beneficiaries without financial autonomy were to be offered state financial assistance (Art. 34).[156] Working rights of the refugees were intended to be equalized with those of the aliens; however the refugees did not need a work permit (Law on Aliens 2003, Art. 95)

Drawing on the European Directive on Family Reunification (Council of the European Union 2003b), the LoA (Art. 32) also envisaged a person obtaining asylum status to have the right to family reunification, presupposing that refugees may establish unity with their family members in Croatia once the status is obtained. However, under the first Law, this was limited to (a) spouses (under the condition that the marriage occurred prior to refugee's arrival in Croatia.), (b) children without their own family and (c) parent or legal guardians of refugee minors. Also, unlike the children, the spouses and parents (or legal guardians) were not envisaged to obtain the same legal status (i.e. refugee), but were to be treated as aliens.

The first Asylum Act (Art. 30) granted refugees with the right to primary, secondary and higher education on the equal basis as nationals. As envisaged (Art. 24 and 36), all persons under the asylum status were also entitled to assistance in the integration to social life of the community. In this regard, the Act pledged that the state will provide recipients with: (a) Croatian language training; (b) other courses, seminars and other forms of education and vocational training; and (c) information on Croatian history, culture and the

156 This excluded persons enjoying the right to be supported by a legal guardian (obliged to provide allowances) and those in possession of some kind of private property.

political system. Besides this, refugees were meant to enjoy some general benefits, such as freedom of movement (Art. 53), freedom of religion and the religious upbringing of their children (Art. 31) and the right of access to courts and legal assistance (Art. 33).

The Law neglected to include stipulation on integration and naturalization which were offered under the Refugee Convention (United Nations 1951, Art. 34). Whereas the Convention has enabled states to practice return in the cases when reasons for protection ceased (Art. 1 C), it at the same time emphasized that the states shall "facilitate assimilation and naturalization" of refugees, enabling accelerated procedures and lower charges in the case of refugees (Art. 34). These were omitted in national laws. Instead, the Asylum Act stipulated solely conditions of when the state is allowed to withdraw status. No specific provisions were made for naturalization of persons under protection. Instead, they were equal as those for regular aliens (since 2011, lifted to 8 years).

In 2007, Croatia decided to adopt the European Directive on Qualification (Council of the European Union 2004). The directive established a more elaborated array of duties for the state and extended various rights of refugees given under the Convention. Under the first Qualification Directive (2004), the full array of rights were envisaged only for the persons under asylum status, while the recipients of subsidiary protection could have been limited in practicing these. Also the directive omitted to speak about integration and long term solutions (i.e. citizenship.) The New Asylum Act (2007) kept unchanged several areas: right to education (Art. 45), social care (At. 49), right to freedom of religion and religious upbringing of children (Art. 46), the right to assistance in social integration (including the outlined language courses and other trainings as well as other models of education and training; Art. 50). The alternation in these occurred in the scope of protection, namely, the fact that they were now extended to a new group of beneficiaries – persons under subsidiary protection; but the other conditions remained the same.

The greatest changes occurred in the provisions regulating accommodation, health care and the family unity. However, until 2010, these were in many cases restricted in the case of persons benefiting from subsidiary protection status. Under the second Asylum Act (Art. 80), subsidiary protection was envisaged for one year, with the ability for extension. Furthermore, the new Law extended the right to family reunification for persons under asylum protection – including the right to family unity with an unmarried partner, if the

partnership existed prior to the arrival to Croatia (LoA 2007, Art. 48).[157] In case of persons under subsidiary protection, family unity was guaranteed if a person has arrived to Croatia with the beneficiary.[158]

While the Qualification Directive (Council of the European Union 2004, Art. 31) provided solely that states needed to secure recipients' access to accommodation on the same basis as third country nationals, the new Asylum Act (Art. 42) extended these rights beyond these demands. Removing the provision stating accommodation rights may depend on state ability at one given moment; it expanded the right of state financed accommodation to the period of one year. The entitlement was made equal for refugees and persons under subsidiary protection and persons who were dependant on the financial abilities of the recipients. Like what was demanded from the 2004 Directive (Council of the European Union 2004, Art. 29), the second Asylum Law (Art. 44) also extended the scope of health care for refugees and persons under subsidiary protection pertaining to vulnerable groups and equalized it with the recipients of mandatory health insurance.[159] Under the 2007 LoA, however, the persons under subsidiary protection (those not falling under the category of vulnerable groups) and family members of the refugee (excluding children) were still provided only with urgent medical assistance. Such a solution was tolerated under the Directive which stipulated rights of this group may be limited to the "core benefits". Core benefits were to be comprehended "in the sense that this notion covers at least minimum income support, assistance in case of illness, pregnancy and parental assistance" – however, if the same rights are granted to the nationals of the given state (Council of the European Union 2004, Preamble, 34).

157 Qualification Directive (Council of the European Union 2004, Art. 2) defined family members as (a) the spouses of the receivers of asylum or subsidiary protection; or (b) their unmarried partners "in a stable relationship", if the legislation or practice of country treats unmarried couples in a way analogous to married couples; and (c) the "minor children" of the couple or of the beneficiaries, if they are unmarried and reliant to the beneficiaries, regardless whether they were born in wedlock or adopted as defined under the national law.

158 The law (LoA 2007, Art. 48) granted that the family members will be granted temporary residence for the reasons of family reunification to the family member who has arrived to Croatia with the recipient – if her or she has not file an application for asylum or the quest has not been recognized. The quest for asylum and subsidiary protection in Croatia are unified – i.e. if the person does not obtain asylum status, authorities automatically review whether there are grounds for subsidiary protection.

159 Under the Law on Mandatory Health Insurance (Zakon o obveznom zdravstvenom osiguranju 2008, Art. 15), this covered primary health care, specialized health care, hospitalization, medications (basic and supplementary lists), parts of dental services, orthopaedic and other aids. For greater details, see the outlined legislation.

Under the second Asylum Act, persons with subsidiary protection have not been granted the right to integration like individuals under asylum status (language and other training prescribed under the Law). Also, the second Act (LoA 2007, Art. 45) stipulated that persons under asylum status shall have the right to vocational training and specialization like nationals, but excluded recipients under subsidiary protection from the same. Such a solution was allowed by the *acquis*. The Qualification Directive (Council of the European Union 2004, Art. 33) obliged the state to "make provision for integration programmes" for the integration of persons under the asylum status. The states were left freedom to decide which programmes would be appropriate. The 2004 Directive noted that the state needed to create pre-conditions for these beneficiaries to access such programmes. At the same time, it allowed the states to exclude persons under subsidiary protection from such programmes. It stated a country may decide to grant the right to this group too, where it considers appropriate. The same solution was adopted in the Directive in the case of programs of education for adults (Council of the European Union 2004, Art. 26).

Important changes to this area took place in 2010 when the second Asylum Act was again amended. Firstly, in the Law on Asylum from 2010, the position of persons under subsidiary protection was equalized to those of persons under full asylum status in the area of (a) health care (Art. 44); (b) integration, including the right to language training and other courses specified under the first LoA (Art. 50); and (c) right to education for adults (Art. 32).[160] Besides these, the amendments extended state financed accommodation to the period of two years for both of the groups (Art. 42). Since 2010, family members of persons with subsidiary protection have the same rights as the recipients of full asylum status (LoA 2010, Art. 51). With the alternations in 2010, the duration of subsidiary protection was extended to three years, with ability for further extension in case of need (LoA 2010, Art. 80). Nonetheless, recipients of subsidiary protection were not given the right to leave the territory of Croatia; unless for "serious humanitarian reasons" demanding their presence in another state (LoA 2010, Art 80).[161]

160 Instead of defining the right to vocational training and specialization, the amendments specified persons under protection have the right to the same forms of education for adults as Croatian nationals.

161 Whereas the alternations followed in a great extent solutions which were adopted in 2011 under the new Qualification Directive, the domestic law has not yet implemented provisions allowing persons with subsidiary protection to obtain travel documents and the right to movement like beneficiaries with asylum protection. Croatia will soon have to amend these stipulations.

4.1.4.2 Content of Protection and Integration of Persons under Protection: State of Practice[162]

While the legislative changes in 2007 and 2010 brought important upgrades to the primarily drafted level of protection for the recognized refugees (and now persons under subsidiary protection), it is prior to all the model of implementation and enforcement of the laws that it has aborted to produce a decent level of quality of life for the beneficiaries in the Croatian case. Unlike in other areas, where the Ministry of Interior has been the key responsible actor in the implementation of policies; to provide services for the persons under protection and enable their integration, several ministries needed to cooperate. These are, prior to all, the Ministry of Interior, the Ministry of Science, Education and Sport (hereinafter: Ministry of Education) and the Ministry of Health and Social Affairs. Such share of responsibilities proved to be the greatest obstacle for the recipients to obtain their rights. As counterintuitive as it may be, the Ministry of Interior demonstrated to be the most active and propulsive in this area; while other ministries remained disinterested and inert. Services provided by the MoI were offered in a relatively timely manner and were in consistency with the duties given by the law – and often went beyond these. Besides non-state organizations, the MoI has been the crucial motor of the system and sought to induce institutions and the state to act. Other institutions often demonstrated a lack of interest, professionalism and often acted inert.

State financed accommodation, along with other costly social rights, provoked heated debates in the Parliament as a great number of decision makers considered Croatia cannot afford such costs (Croatian Parliament 2002). This is why under the first Asylum Act, the right was guaranteed only for six months (and made dependant on the existing conditions of the state budget). As we have seen, in 2007, decision makers approved that persons under protection be granted the right to one year of accommodation. Accommodation was financed from the Ministry of Health and Social Affairs and organized by the MoI (Integration Unit in the Unit for Asylum). As the officials reported, the solution that has been implemented (i.e. private apartments lease) demonstrated a great administrative and financial cost – especially as the number of recognitions grew. Given that the state and local governments have not provided apartments in public ownership, the accommodation

162 As it was mentioned, given that only one protection has been granted protection while the first Asylum Act was in force, it is impossible to judge how given provisions would have been functioning in practice during that period. Therefore, in this area, we can only judge practices occurring after 2008.

was rented under market price, with no special provisions that would enable saving. As reported, the search for apartments proved a great time cost for the integration officers in the MoI.[163] While all persons under protection were successfully provided the rights, often they needed to wait for longer periods than for those provided under the law – i.e. more than one month (Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom 2008, Art. 21).[164]

However, accommodation granted for one year did not prove sufficient because the persons did not manage to integrate to the domestic market during that period. In 2009, after the period of one year, one person under protection lost the right to accommodation and the institutions faced a new problem – what were the solutions to provide in such a case. Answers were found in an *ad hoc* response: the NGOs (Human Right House) offered accommodation and the MoI financed for the refurbishment. The MoI's Unit for Asylum advocated for the improved legal solution (Vučinić 2011). In 2010, the Law prolonged this period to two years. While this alteration assisted, it did not solve the problem. As we shall discuss bellow, the beneficiaries could again not integrate during this time since the system did not offer proper integration services. After the expiration of this period, beneficiaries needed to finance their accommodation (and costs of living), while the state assisted only with subsidies (Kadoić 2012). As stated by Maja Kadoić from the Croatian Red Cross (Kadoić 2012), such a solution created great problems and placed recipients in a state of even greater poverty. Without employment and with insufficient financial assistance from the state; it has been rather difficult for them to make ends meet. The MoI urged the state to find a long term solution. It reported to have contacted the representatives of the (former) government to provide state owned apartments but this action failed to produce effects (MoI's officials; in Coordination for Asylum 2011). State authorities explained they could not provide state owned accommodation due to unresolved property issues with the local level (the City of Zagreb). The Representatives of the City declared that the City is willing to provide accommodation; yet, its property is rather modest (in Coordination for Asylum 2011). After a public conference discussing the issues of integration in March

163 Due to the great expansion of the black market, the majority of tenants rejected to accommodate persons under protection. Besides this, the MoI reported that in occasions it had problems with xenophobia of citizens. As the official explained, to get to check one apartment, the integration officer needed to contact over 30 tenants. Many times, accommodation was not adequate. Processes often necessitated a month of intensive search for each recipient or a family (Vučinić 2011).

164 During that time, recipients continued living in the Reception Centre for Asylum Seekers.

2012 (see: Konferencija 'Integracijske politike i prakse u sustavu azila u Republici Hrvatskoj: Uključivanje azilanata i stranaca pod supsidijarnom zaštitom u hrvatsko društvo' – transkritpt rasprave), the MoI published commentary (Ministry of Interior 2012) proposing that the Ministry of Social Policy and Youth[165] engages in the search for long-term solutions – one that would be cost-efficient and enable a longer period of accommodation (until the person becomes self-sufficient). For now, the issue is not resolved. [166]

Social care has demonstrated to function unevenly. According to the MoI (in Coordination for Asylum 2011), health care for persons under asylum status and subsidiary protection functions relatively well. Until the change in the Law in 2010, the greatest problem was the scope of health care for persons under subsidiary protection: i.e. only urgent medical care was available which was not sufficient for other medical issues. They needed to be covered by the recipient. Today, all persons under protection have the right to medical assistance under mandatory insurance. This does not cover all problems. When such problems arise, organizations (such as Croatian Red Cross; Kadoić 2012) assist beneficiaries that cannot cover it themselves. The problem of such a solution lies in the fact that it can further impoverish the persons in the condition of their inability for self-maintenance. Furthermore, problems still occur in the case of family members of the beneficiaries. Despite the fact that the last Asylum Act amendments (Zakon o izmjenama i dopunama Zakona o azilu 2010) provided them with the same right to health care as the beneficiaries; the Ministry of Health has not implemented these changes in the Law on Health Insurance (where they are still treated as aliens and can only have urgent health care). For this reason, the MoI (Ministry of Interior 2012) financed medical expenses for (one) person who could not do it on its own and urged the Ministry of Health to adjust the law and provide necessary documentation.

While financial assistance was regular for all persons; it remained rather modest (as we stated, about 80 Euros). The key setback is the fact that, aside other things, needs for nutrition are only partially solved through the system. For a significant period of time, the recipients were given the possibility to use the services of meal centres once per day. Such

165 After the change in government (2011), Ministry of Health and Social Affairs restructured in two bodies: Ministry of Health and Ministry of Social Policy and Youth.

166 According to the CfP (informal information, December 2012), the state is presently considering to secure certain number of state owned apartments in Zagreb. However, even if this proves successful, it is not known whether it will offer longer term placement to refugees or only first two years, as it is now the case.

solutions was problematic for two reasons Firstly, it was insufficient for any beneficiary because monthly financial allowances could not cover additional needs for sustenance – not to mention other needs that a person had, besides accommodation and nutrition. The second problem was the fact that such centres offered only pork meals, making this option useless for the great part of beneficiaries (i.e. Muslims). All until rather recently, the system however did not respond to the problem. As informed (informal information, stakeholder, June 2012), the Ministry did not seek to address the issue, it simply remained inactive. For a certain period of time, the problem was being solved using provisional ways out. The system allowed families to take monthly packages of food instead of the services of meal centres (informal information, state official, June 2012). While singles could not use the option, the staff in one social centre (informal information, state official, May 2012) enabled the solution be used also by individuals (thus having to go against the law). Whereas such a solution often created great problems in organizing monthly nutrition for beneficiaries, it did help those that used this option.

> You needed to go to one social centre and take this paper that the person will use meal centre… with meals once per day, and only pork… But there you could not discuss the issue. Formally, this was the only allowed option. Then you needed to go to another social centre where this paper was used to claim that the person has right to monthly nourishment. In this grey zone, the staff gave us coupons for monthly package. Practically, it was the good will of the staff to assist in the situation… (Volunteer 2012).

This example is illustrative because it points to a pattern that became a norm in this area: *ad hoc* answers, often transgressing the norms, were often a necessary response to inert and incapable state institutions and to the lack of interest from the state. In the second half of 2012, the solution has legally been made available to all persons under protection. While this is a great improvement in comparison to previous practices, it still demonstrates insufficiencies. As reported, the package can cover "perhaps two weeks" and one must keep in mind these are only "basic supplies" which cannot offer an adequate or healthy menu for a person (Beneficiary G 2012). As explained, persons under protection use all their financial allowances for subsistence (which remains modest) and are left with no other source of income.

As we have seen, until 2010 (LoA 2007, Art. 43), for persons under protection, the right to work was provided on the same basis as that of aliens. The Aliens Act (Art. 140) stated

persons under asylum did not need a work or business permit. In practice this meant that beneficiaries are not subject to limitations prescribed for aliens (yearly quotas). Persons under subsidiary protection however did not fall under this category. In 2010, the Law on Asylum (Art. 43) granted the right to work without work or business permits to all persons under protection (including subsidiary protection). However, until the present day, only several beneficiaries have been employed (Kadoić 2012). Getting employed for persons under protection has proved to be extremely hard due to several reasons: language barriers, lack of qualifications (or inability to translate them) and often reluctance of the local population to provide an immigrant (of a rather diverse language and culture) with employment. While all of these obstacles could be expected (and are not limited to the Croatian case), the system has not done much to address them. On the contrary, it has failed to provide legally provided measures or it has implemented them in an incomplete way.

A number of problems occurred in the area of language training. In the capital, classes were organized in cooperation with the University of Zagreb (Faculty of Philosophy in Zagreb).[167] Usually, the language course was taken by foreign students and the Croatian Diaspora (second or third generation Croatian emigrants re-establishing their link with the state). While the program has been evaluated as high-quality, there were several problems. Firstly, the classes were given rather late – according to the Law, only after a person has obtained protection status. While non-state actors offer voluntary programmes of language training already in the Reception Centre, these are held only once per week (due to decision of the Head of the Centre, Miroslav Horvat) and by persons who are not qualified for the task.[168] Secondly, state subsidies in this regard have demonstrated insufficient. In the case of refugees, the state financed only the first of six offered levels. Such training could provide persons under international protection with only the most basic knowledge in the language, insufficient for regular communication (save for those proficient in similar languages, such as persons from the region or former Soviet republics). The language level accessible during one semester has demonstrated insufficient even for the communication skills that employers usually search in the low-paid jobs (Volunteer 2012). Outside of the

167 Croaticum program which offers six levels of language training for foreigners.

168 Volunteers are usually students or young employed persons specialized in other fields and have limited time available for volunteering. Also, provision of the service is specifically complicated due to high rates of secondary movements. As the volunteers of the CfP noted (informal information, June 2012), due to fluctuation of asylum seekers, at times, one must commence training from the start every few weeks.

capital, classes were not available at all. The Ministry of Education needed to provide a program for language training for adults (in 2008) in order to make classes available for all persons. However, the program has been made only in 2012. Nevertheless, it has not yet started. Instead, at the present moment, even in Zagreb, classes for persons under protection are aborted. The system was supposed to provide language training under the new program, but it has not yet done so (Ministry of Interior 2012). Stakeholders were informed that agencies presently involved in the issue do not have sufficient financial means to cover the classes (Coordination for Asylum 2012). Some recipients are thus waiting for more than a year to commence with classes. At the moment, nobody in the system knows when the classes should start.

The second major problem for employability of the refugees and persons under subsidiary protection represent a lack of qualification, lack of documents demonstrating that qualification has been obtained or the possession of qualifications that do not meet Croatian standards. While the LoA 2007 and 2010 provided legal basis for persons under protection to obtain vocational training, in practice this has not yet occurred. After the program has commenced, it has demonstrated useless in practice. As beneficiaries have been informed, due to the lack of language proficiency, they were ineligible for the courses. As stated by the Employment Bureau (informal information, staff, July 2012), because of their language level, they were believed not to be employable for the due date that courses required. Other than that, the state has not provided any program of specialization and other forms of education as envisaged in the legal text.

> It was hilarious. We were going to the Employment Bureau once or even more in one month and we really eagerly searched for all possible programs that the asylees could go to. The staff was really great, they got very engaged about this. I was assisting communication with two asylees; both were eager to take any course – literally any – that would provide them with greater ability to work. So they chose those occupations that were most deficient in qualified workforce, these were mainly physical works that were quite unattractive, like welding and similar. First problem appeared because of language. Then we discussed we could try to organize some sort of interpretation. After few months of this, one of the officials came and told us that 'sadly', she was informed she cannot give them any class. These were instructions from 'above'. Because they were not proficient in language, it would be hard that they would be employable in short term, something like six months… So the Bureau or someone else decided it is not a good idea. The fact that the right was prescribed by the Law was irrelevant, it became

simply impracticable. You start lacking idea what to do from this point on because it is the state to solve it and it does not care about it (Volunteer 2012).

The system of education also demonstrated particular weaknesses. At the level of elementary education (most functional of all the levels) children have experienced severe difficulties, mostly related to the fact that the state has not supplied the education system with any particular scheme that would guide and oblige schools to grant for the specific needs of a child coming from a diverse cultural background, with different language, religion, customs and needs. The MoI (2012) reported that schools often did not provide additional training in language which by law they were compelled to do. Given the insufficiency in the state financed language trainings, the children's ability for success in school was thus quite damaged. The lack of a state planned program dealing with the issue left the question to be addressed by schools, dependant on their initiative, abilities, will and resources (Bužinkić 2012). This made the chances for successful education of refugee children dependant on rather subjective factors. While some schools were more open to planning and finding solutions on their own; some others did not show initiative. The schools sometimes demonstrated to be insensitive to the child's needs, such as particularities in religious beliefs and different cultural customs, demanding children to adapt to the domestic surrounding or find their own solutions. Such lack of sensitivity occurred again in the case of the Muslim children and their specific nutritional needs (i.e. a supply of diet that would substitute pork meals). Whereas the NGOs (CfP) contacted the Ministry of Education about the issue; they were reported to remain inactive (Vidović 2012).

At the secondary and university level, education setbacks occurred when persons under protection attempted to access the given programs without having the documentation demonstrating their previous education (thus making them ineligible for the program) or having documentation which the Croatian education system did not recognize as appropriate (which was often). Given that there was no solution made to facilitate their access to programs, in these cases, persons stayed excluded from education. Another problem occurred even when this situation could be solved. Given that faculties demanded matriculation exams; persons from other education systems could not pass such tests. According to an informant, there was an option to enrol the recipient under the program for aliens; yet, the state needed to affirm this solution and finance it. However, the system got clogged. In rare cases the situation was resolved; yet, thanks to accidental factors (such as

assistance done by some participators in the system) or assistance from non-state organizations. In some cases, persons have been enrolled in programs under the status of an alien and financed from the organizations, such as the UNHCR (informal information, stakeholder, 2012). In one case, the beneficiary was persistent in demanding the ability to access university education. The person was already enrolled in the university education program in another state (from which the beneficiary fled). As reported, after many attempts to make the Ministry of Education solve the problem, the recipient contacted the agency in the Ministry which dealt with international programmes of education. Having had one official interested in the issue, the person managed to get enrolled in a faculty (although not the preferred one). The official engaged directly with the faculty and arranged for enrolment based on the provisional solution. This event pushed the system to start considering cases in the future. The Ministry promised to introduce special category of *asylees* in the system of university education (Ministry of Interior 2012). For now, this has not been done.

In 2007, the Migration Strategy (Strategija migracijske politike Republike Hrvatske za 2007./2008. godinu, 21), stated that aliens need to be enabled to "reach their full potentials as members of society" and "to contribute to the community". The Strategy further emphasized the state must act as to provide preconditions for this aim: i.e. create legal frame and motivating environments, prevent discrimination and xenophobia and induce a comprehensive approach of all state institutions, NGOs and local government. None of these have occurred. Instead of long-term solutions and integration strategy designed at the state level, some of the institutions offered some services, others remained inert, and yet others provided rights that in practice lost meaning and purpose. Such partial and disorganized approach in the area failed to enable integration of the persons under protection and caused for their isolation and dependency on the state and non-state actors. This will have detrimental consequences for recipients (as we shall see in Chapter 6).

At present, the entire system of integration rests on the activity of one person (in the MoI), or as stakeholder stressed – this one persons "is the system of integration" (Coordination for Asylum 2011). Given that other ministries lacked to appropriate officials who would be in charge for asylum issues and given they have remained inactive – often breaching their legal duties (Bužinkić and Kranjec 2012, 10); it is one sole official in the entire system that deals with accommodation, coordination of all services, searches for provisional solutions when the system lacks to provide proper solution, etc. The stakeholders warned that such a situation is unsustainable because one person simply

cannot run all the activities needed (Coordination for Asylum 2011). Presently, with such a limited number of persons under protection, the system was described to be exceeding the maximum of its capacities. Stakeholders urged the state to commence considering the issue and start solving a variety of difficult problems in the area of integration: i.e. lack of planned approach, inertia of institutions, lack of coordination between state institutions (national and local level), lack of professionalism and expertise of staff in its institutions and bodies dealing with the issue, etc. (see: Bužinkić and Kranjec 2012; Ministry of Interior 2012). Non-state organizations emphasized that a great part of the issues in integration could be improved or solved with (presently unavailable) partnership between state and non-state organizations (which posses understanding and expertise over the issues but lack funding and infrastructure). It remains to be seen whether the strategy for integration (conditioned in the monitoring phase) will be sufficient to solve the problem.

4. 2 Conclusion: Croatian Adaptation to the European Asylum *Acquis* and to the Minimal Standards of Protection

As expected by the studies, domestic legislation introduced a somewhat securitized legal regulation on the rights to entry for immigrants and the access of asylum seekers to the procedures for granting asylum. Much of this has not been a subject of choice for the domestic elites. Nonetheless, where the state could have opted for less stringent solutions; it has not done so. Visa arrangements and carrier sanctions, strict entry conditions for immigrants and readmission agreements with the Member States could not be negotiated; they created a part of the European migration *acquis*. Readmission agreements with eastern members have not represented fixed requirements; yet, they were recommended as a solution to effectively fight migration flows towards the state (Collinson 1996). Recommended but not demanded, these solutions were normally attractive for the states as they allowed them to minimalize immigration pressures that the negotiations were expected to bring. The same applied to Croatia. Introducing the first Asylum Act, the Deputy Minister of the MoI Josip Vresk stressed that the authorities waited on the establishment of the asylum system until readmission agreements with eastern neighbours were signed (Croatian Parliament 2002, 44). The same may be said for the concepts of *safe countries*. Treating countries as *safe*, the states had a chance to prevent a good part of the seekers from coming to their territories (Collinson 1996; Lavenex 1999). The Croatian government never made a list of *safe countries* – presumably, due to the fact that none of its eastern members could have been considered a *safe* state under the conditions

demanded by the EU *acquis*. However, this still allowed the state to use the concept in practice; although without official proclamation of the *safe* zones. Indeed, on the level of enforcement, the system has acted even more rigidly than what has been given by the laws. Applying the norms to the asylum seekers without consistency with the minimally defined standards, the state has left this group without guarantee for access to protection and thus safety that was supposed to be offered. Instead of meaningful interpretation of the right to entry of the asylum migrants; the authorities seized the mechanisms of migration control to place the least possible pressure on the national system. Such application seems to have damaged the rights of the widest array of immigrants; including those arriving from the least *safe* zones. As we shall see in Chapter 6, this will have detrimental effects on their most basic human rights.

In regards to procedures for granting protection and the grounds for protection, the first Asylum Act built on the old (pre-Amsterdam) *acquis*. In comparison to the new frame, it offered a more limited set of guarantees for asylum seekers. This difference was clearly reflected in the Croatian laws. The first Asylum Act, as commentators argued (Šprajc 2004), was indeed quite modest. Firstly, defining the grounds for protection, it reflected only on the acts of political persecution (as in the Refugee Convention); while other reasons have been disregarded. It was only when the Qualification Directive was implemented that Croatian legislation offered protection for other forms of political violence and harms which today constituted a much greater part of the asylum migrations. Next, the Law, as we have seen, remained scarce when it needed to elaborate how the authorities were to apply these provisions. While this was (in a limited degree) afforded under the modest pre-Amsterdam *acquis*; Croatian law has not included these provisions. On the other hand, the Act indeed offered a great number of provisions explaining how the authorities may deny protection. Furthermore, legally defined institutional competences allowed for full control of the government over the appeal process (in the second instance), thus neutralizing the institute of an appeal.

Demanded by the European Commission, in 2007 Croatia introduced the newly adopted Qualification and Procedure Directives which significantly extended the scope of protection and improved procedural guarantees for asylum seekers. Undoubtedly, requirement to adapt to the European legislation and the efforts from the Union's authorities to make the state apply them in practice improved the ability of the system to protect persons in need of protection. The New Asylum Act allowed independence from an appeal process, broadened procedural guarantees and offered a wider scope of protection.

In some aspects, the law went beyond minimalist requirements. For instance, induced by the European Commission (Prijedlog Zakona o azilu 2007), the law introduced suspensive effects for the second instance appeal – which indeed made appeal practicable. Still, on the other hand, domestic legislation applied only a minimalist approach in the widest array of aspects – and among these, some of equally vital issues (such as interpretation of the scope of grounds for protection or minimal procedural guarantees, i.e. legal aid in the first instance, rights to translation of decision, etc.). As we shall see, these were often motivated by economic savings; yet, they had important effects on the chances for refugees to be granted protection.

Besides this, Croatia legally adopted stringent rules aimed at the sanctioning of seekers that violated domestic law – including the bans to leave the territory (which was the most common misdemeanour). The seekers who engaged in such activities could lose vital rights, such as translation, legal aid, the right to reception conditions, etc. In practice, however, the authorities have not applied these sanctions. Seekers that, for instance, rehearsed to leave the territory (or did but were returned) have generally not been denied these rights. Despite the ability to limit these rights, in practice, the state (the MoI) has not done so (Lalić 2013). Furthermore, in reality, practices in procedures have been greatly upgraded during the years and moved from meaningless actions to actual effective recognition. However, restrictive interpretation of the grounds for protection continued. Limitations ingrained in the European framework were implemented and seized in the domestic case.

Reception conditions, we have seen, were regulated early in the *acquis* and were as such implemented already in the first Croatian Law on Asylum. As noted, in several aspects, the first Law still violated the minimal requirements of the Reception Directive (such as the right to education or rights of vulnerable groups). European demands to further adapt domestic legislation with the *acquis* solved this issue. The Law in 2007 (and 2010) consistently reflected standards of the Directive. However, it did not implement any standards that the Directive did not specifically require. Given that some decision makers wanted to reduce even these rights (accommodation or social assistance; to be further discussed in Chapter 5, section 5.2.1), minimal guarantees have been better options than what domestic preferences might have given room for. Furthermore, the Law also allowed for the state to withdraw reception conditions in the case that the seeker has violated domestic legal order (including the norms demanding a person to stay within the state territory until the end of procedure). However, again, this viability has not been seized. A

minimal approach to the issue here was corrected in the practical application of the norms. However, until recently, the right of the state to detain seekers has been extensively used – and often – led to the breach of the *acquis* (i.e. sanctions for irregular entry). Intervention of the European Commission corrected such practices (although it did not secure the rights of the seekers in detention). Rights of vulnerable persons are now protected by the law (again the minimalist versions), but do not function properly in practice. While the system is relatively progressive in terms of offering adequate standards of reception to regular groups of seekers, it remains below the necessary guarantees in the case of seekers in detention and vulnerable groups.

In the area of integration and content of protection, the legislator particularly took care to adopt as minimal responsibilities as possible (to be further discussed in Chapter 5). The first Law on Asylum was specifically meagre in this respect. Depriving persons established protection from the most basic needs (limited rights to accommodation; limitations in health care; limitations to working rights and family reunion, etc.), the first legislative piece offered a rather poor quality of protection to refugees. Progress in the European *acquis* impacted this area significantly. Changes to the Law in 2007 greatly extended the rights of persons granted asylum status. However, seizing opportunities given under the *acquis*, it severely restricted the same rights for persons under subsidiary protection. When the system at last recognized first protections, it has been demonstrated that many of the rights are not sufficient. The right on accommodation has been particularly problematic given the lack of integration strategies. Language training and social assistance also proved insufficient. Persons under subsidiary protection have been especially damaged by the cost saving logic of the legislator. As allowed by the European frame, they have been denied the most vital rights (language training, appropriate level of health care, right to family reunification, freedom of movement, etc.). Improvements came about under the new changes to the Law in 2010. Progress occurring in the *acquis* (new Qualification Directive from 2011) reflected in Croatian case too. Whereas still decisively left at the minimal requirements; the law in Croatia in this area by now demonstrated important progress. The key problem that characterized European norms and reflected in the domestic case has been the lack of a permanent solution. European reluctance to reflect on integration has allowed the domestic system to stay void of integration strategy. In our case, this has become a particular problem. As we have seen, the requirement to implement minimal guarantees given under the European norms and the lack of a planned domestic system of integration prevents refugees from having the most basic needs satisfied. Detrimental

effects of this and aforementioned issues will be discussed in Chapter 6. At this stage we proceed to analyse how we can explain the model of asylum developed so far in Croatia.

5 Refugee Protection between the State and the European Union: Positions, Actors and Strategies in Croatian Asylum Policies

As we have seen in the last chapter, the Croatian case has confirmed the assumptions of the critical strands of authors, expecting a minimalist system of refugee protection and limited reform capacities in the candidate states. In all areas, the system most frequently opted for the minimalist approach, implementing the European *acquis* in quite a simplistic fashion: mandatory norms were gradually incorporated in the legislation; while recommendations to provide greater standards have not been followed. The *acquis* was in the greatest degree copied to the legislation – with each legislative change comprising greater consistency with the EU laws. However, this meant that refugee protection was narrowed down to the list of minimal demands given by the European regulations. Concerns over the implementation of the complex European rules in the systems that lacked tradition in democratic institutions and policies of refugee protection (i.e. the former socialist states in CEECs) have demonstrated applicable to the Croatian case too. With the course of reform, all of the areas demonstrated progress; however, this has been rather uneven. The system has implemented minimalist solutions with considerable consistency in some domains and neglected them in others. Inconsistent application had two forms: (a) the lack of enforcement of legally defined principles; (b) partial fulfilment of the norms with quite distorted results and an unclear link with the intention of the norms.

The question is how can we explain the progress that we have witnessed so far? Why has the system implemented such minimalist and restrictive interpretations of the EU *acquis*? Why has the legislator not responded to suggestions inviting national systems to introduce more generous standards which, as we shall see in the next chapter, may be considered necessary for proper protection of human rights of refugees? Why has the system enforced rules in such an uneven mode, leading to surprisingly diverse products across the areas? As we are about to see in the following sections, the answer will lie in the combination of domestic and external (European and regional) factors: normative positions and interests of the key actors, available (material and non-material) resources for action and the strategies seized during the reform. Before entering the analysis of the outlined questions, the following section briefly reminds the reader of the ongoing debates and research present in the Europeanization literature (which offers insights valuable for our case).

5.1 Reform of Asylum and Refugee Protection Policies in the EU and Candidate States: Theory and Research

As reviewed in Chapter 1, aiming to explain why the European policies have been shaped and implemented in a particular way, the scholars have provided us with several interesting assumptions. Firstly, the majority of authors contended that in contemporary Europe – hampered with economic crisis and increases in immigration movements – the governments had interest to apply stern measures as a way to fortify their redefined national interests (i.e. relegate asylum migration movements and cut down expenses). Studies emphasized that deflection in the standards in most of the states of the EU in the past several decades has been a product of the interest based orientation aiming to cut down immigration and refugee movements. In the case of candidate states, the situation was different. Due to the fact that states had no issue with immigration, the governments had no interests of their own to implement the rules on refugee protection, normally leading to far-reaching and costly policies. The external push (of the EU) was needed to motivate the reform.

In the Member States, the EU had rather limited options to force the states to abide to the rules. In more recent times, the EU has commenced seizing some of the instruments in a more determinant way: i.e. monitoring, assisting and even sanctioning the Member States.[169] However, although the EU is strengthening the network of mechanisms to assist in the progress of the asylum *acquis*, the powers (and numbers) of the Member States and the wide space for interpretation of asylum norms did not create much room for externally dictated reforms. Also, given that these instruments may be used only once the problem is reported (and in reality; hardly even then), there are still great disparities and the states still apply overly restrictive policies and often disregard the *acquis*. However, the EU position *vis-à-vis* the candidate states may be considered quite diverse from the one it had (and has) in its members. Unlike in the Member States, the ability of the Union to provide incentives for proper implementation of refugee policies and to sanction failure gave the Union rather large leverage towards the candidates. Following the 1993 European Council summit in

169 With the assistance of the UNHCR and the European Asylum Support Office, the Commission established a considerable degree of surveillance over the States' practices in asylum. Assisted by these bodies and organizations, as well as with the help of the European Refugee Fund, the EU seeks to assist the Members that have difficulties in implementing the *acquis*. The ability to sanction improper implementation has increased as the European Court of Human Rights and the European Court of Justice extended their competencies over the field of asylum and started to actively participate in the building of the body of case law in European asylum.

Copenhagen and the 1995 Madrid European Council, the EU established that the prospects for membership of the candidate states must be conditioned upon their ability and commitment to implement and practice full European *acquis communaitaire* (UNHCR, 142). Such advance, known as the conditionality approach presumed that the EU would set demands, provide instructions, monitor success and evaluate the states progressing in their implementation of the European norms.

As we have seen (Chapter 1), in the school of rational institutionalism, a variety of authors presumed that the Union could impact perception of the costs and benefits related to the implementation of its policies, making a particular policy understood to be less costly if it was linked to the EU offered benefits – i.e. the prospect of membership. As believed by these authors, if the prospect of membership was attractive enough for the states; the EU could induce the states to implement even the costly and complicated policies. Whereas the national government was expected to be averse to many of the European norms and while the states might have had difficulties in some areas (due to their resources, interests, etc.); leverage of the external incentive (i.e. motivation for reward) was assumed to be able to overcome them. As we have also seen, the other school of thought – social constructivism – stressed that the EU could inspire reforms with additional mechanisms – i.e. persuasion and socialization. According to these scholars, these subtle instruments were to play a rather important role in the implementation of the European norms and were to significantly shape the products of implementation. Unlike the conditionality approach, which was deemed to force the government to obey, this approach was often considered to create for more profound and long-term effects – and especially success in the areas where institutional and other factors appeared unfavourable. Even the lack of political will, as stated by scholars, could be reversed if the governments would be persuaded about the validity of the norms and their goals.

Whereby these conditions were expected to provide the EU institutions with powerful tools for impacting reforms in candidate states; on the other hand, in these countries, the EU was expected to meet environment that could have undermined its power to transform the systems – i.e. poor institutional, administrative or economic resources. Research demonstrated that national asylum systems (and refugee protection) depended largely on a variety of contextual factors: previous traditions in migration policy; more or less functioning political institutions; strength and maturity of the judiciary as well as the rule of law; the development of civil society, etc. The weakness of political institutions and judiciary, as well as the underdevelopment of civil society, are generally considered rather

unfavourable for the progress of refugee protection regimes. Prior to all, they provide the government (especially its security organs) with great impact on the implementation of asylum policies, and thus often allow it to focus on state interests (neglecting refugee protection). Given that these factors are of great relevance for any asylum system, they may also be considered relevant for the implementation of European policies and the products at domestic levels. Indeed, as emphasized by studies (Byrne et al. 2004; Gil 2003; Lavenex 1999) this represents an especially important issue in the candidate states and all of those states that the EU has comprised in its external asylum and migration policies (potential candidates, aspirants for membership or states linked by special contracts). Mostly devoid of a number of resources necessary for proper implementation of asylum policies – economic, financial, administrative and institutional resources, as well as the rule of law – the new democracies could not be considered quite a promising surrounding for the implementation of (minimalist and loose) European rules.

What does the existing research tell us about the ability and success of the EU to impact transformation in the field of asylum and migration? How do domestic factors impact the ability for reform (implementation of EU policies) and how do they affect the products? Which actions can the EU take to impact the domestic level? As expected, seeking to implement its asylum and migration policies in the (former) candidate states, the EU used various mechanisms. The key strategy it relied on has been the conditionality approach: in order to motivate the states to properly implement the norms under the JHA, the EU linked reward (i.e. membership) with their progress in Chapter 24. The issues under JHA were demanded to be implemented in full, without transitional period (Lavenex 1999). In doing so, the states were demanded to introduce a range of migration and asylum policies, including international conventions that regulated them (such as the Refugee Convention). Implementation of the rules has been supported not only by the share of demands and feed-back offered by the European institutions (the Commission and Council) but also by (b) particularly designed EU assistance projects (CARDS, PHARE, etc.) and (b) the assistance offered by the counterpart services of the Member States. These have been recognized as important as they aided creation of the institutions, administrative capacities, technological equipment and facilities necessary for the implementation of asylum and immigration policies. Particularly emphasized were the trainings offered by the networks of experts from Member States and international partners (such the UNHCR but also local non-governmental organizations) which assisted national authorities in coping with

understanding and applying complex rules that states have undertaken from the EU (see: Peshkopia 2005b).

However, most scholars considered these strategies to have brought poor results in the former candidate states. As they stressed, introduction of migration and refugee policies in these states was undoubtedly motivated by the *carrot and stick* approach that the Union has seized (Byrne et al. 2004; Collinson 1996; Lavenex 1999). Despite dissatisfaction with the perceived consequences (especially in regards to the states on the borderline of Europe), the candidates have readily accepted these policies. However, such an approach had only partial success. All of the candidates implemented the demanded steps, but they have done so quite unevenly – just like some of the Member States. Several reasons explained this dynamics. Firstly, the European rules on the redistribution of asylum and irregular migration motivated all of the states to seek to prevent asylum seekers coming to their territories. This has also been found to be true in the Member States, but the zones on the edge of Europe (including candidate states) have been particularly sensitive to these issues. Due to their geographical position, they were (expecting) to receive the entire EU migrations. Perceiving that they would become the "gatekeeper" (Noll 2002, 29) for the European Union – or a "backyard" (Byrne et al. 2004, 1) for Europe's unwanted refugees – they were particularly eager to prevent immigration. In this way, scholars stressed, success in migration control policies (as one of the key conditions of the migration *acquis*) came to be seen as an interest of their own, while refugee protection policies were soon perceived as a danger for this goal.

As scholars maintained, the European Union has not corrected these effects. Instead, its approach towards the (former) candidates demonstrated that it had particularly favoured migration control components, while neglecting the dimension of refugee protection. While the EU indeed invested in a great array of mechanisms to assist reforms (financial assistance, training, technological improvements, etc.); studies contended, most of the funds and assistance were directed towards the effective implementation of migration control rules, while the refugee protection dimension was purported with quite modest instruments and finance (Nauditt 2001; Lavenex 2009; Phuong 2003). The EU's conflict between the refugee protection nexus and migration control goal, with clear preference over the latter, reflected on its demands, positions and strategies and enabled that the refugee protection regime in these states become rather weak. Accepting the security-driven approach developed at national (and then also intergovernmental) levels, the EU exported such agenda to the candidate states too. On the normative level, the EU provided

ideational framework that clearly preferred the state safety over human safety, leading to the stabilization of such values in the candidate states. Focus on prevention of asylum abuse – which made the key goal of the asylum system become state protection (instead of refugee protection) – was quickly accepted by the candidates' governments.

Secondly, as we have seen, the EU further backed up securitization by situating asylum in the security framework of the Justice and Home Affairs agenda, which precluded the institutional settings to support securitized orientations: i.e. the key role in asylum and migration issues was transferred to the dominant competence of the intergovernmental channels led by the ministries of interior and the security services. As held, this has firstly occurred at the national level, but was then backed by the Council which overtook these issues and dealt with them in a rather silent and non-transparent way. With great lack of participation or surveillance from the legislative bodies and other actors, these security-oriented bodies created what will become the agenda of asylum and migration in the EU and Member States. The efforts of the Commission to build on human rights could only stay limited given that the Commission sought to support them in such a defined frame – and especially due to compromises it needed to do with Member States (Hansen 2009a, 31–33). Such an approach enabled transfer of security-driven concerns, orientation and values shared amongst these services to their counterparts in the candidate states. Institutionally and normatively positioned in a similar way through security chapters of the *acquis* and in the competence of the ministries of the interior and security organs, the states readily accepted severely securitized images of overall immigration, including asylum.[170] Instituting securitized asylum and migration policies in the systems that have previously lacked a tradition of refugee protection were more detrimental than in the Members States. The states have been found to implement stern migration control and offer only minimal standards of protection (recognition and rights).

Are these propositions useful to explain developments occurring in our case? How do they reflect in our case? Does our case confirm the outlined assumptions? The question is interesting for two reasons in particular. Firstly, the studies on asylum systems have

170 In the candidate states the JHA matters were introduced as a part of the Justice, Freedom and Security Chapter (Chapter 24) which was in substance a security oriented chapter, consisting of several common areas, all oriented on security – migration, visa policy, external borders and Schengen, judicial cooperation in criminal and civil matters, police cooperation and the fight against organised crime, the fight against terrorism, drugs, customs cooperation and counterfeiting of the euro. Asylum policy – with its dimension of control rules and human rights rules – was simply packed in these (see: European Delegation).

offered a great deal of theoretical knowledge; yet these assumptions have been studied in quite a limited degree. Secondly, there is considerable time distance between the moment of implementation of the EU *acquis* in previous candidate states and Croatia. As we have seen in Chapters 1 and 2, in the meanwhile, the EU has been progressing on asylum *acquis* – both in terms of norms as well as the mechanisms used for their implementation. This made some scholars argue that the EU today (or at least part of its institutions) is more determinate to have the proper system of refugee protection installed across the EU. As we have seen, in the Croatian case, the EU approached with particular scrutiny, stressing it will not repeat mistakes occurring in the previous enlargements. The question is thus: what has provided partial progress? What induced and limited transformative power of Europe? What has created for such partial progress on the domestic level and did the EU seize all available options? As we shall see, the reform will be limited both from the inside and the outside. More precisely, negatively positioned national interest and the poverty of institutions will have a harmful effect on the success of the reforms. However, the EU limited power to transform the way of functioning of the domestic system shall be more limited in the area of (disputed) asylum issues.

5.2 Asylum System and Refugee Protection in Croatia: Dynamics of Domestic and European Positions, Institutions and Strategies

As we have seen in the previous chapter, when the EU launched the SAA for Croatia, the EU itself still had only partially developed the asylum *acquis*, largely reproducing the old agenda focused on migration control. Most of the present *acquis* developed when Croatia had already commenced its reforms. Once the European framework was settled, the European Commission had more stable grounds to demand larger steps from Croatia in refugee protection issues. At the same time, as we have seen, when the EU first stepped in, requiring Croatia to build asylum policies, Croatia barely had minimal prerequisites in place. The system lacked all of the institutional parameters: the legal basis for an asylum system, institutional settings and reception facilities. The institutions involved (prior to all, the MoI) lacked administrative capacities, knowledge and experience to deal with the issue. The asylum system demanded quite great reforms. In a fairly short time, the state was demanded to provide legislation, institutional setting and facilities, as well as increase and train personnel to carry out complex reforms.

As we shall see, domestic factors demonstrated rather unfavourable for the successful implementation of (probably any) complex and costly policy – and in particular, human rights sensitive policy. National interests have been fixed in preserving previous conditions, thus saving the economic (and other) resources for the state. Prevailing values have not been amenable for developing policies that would involve inclusion of new members in society (i.e. immigrants, including refugees). Economic resources – and in particular the domestic perception of these (and political will for their allocation towards refugee protective policies) – prevented the implementation of (any) more generous policies in the area of asylum. Institutional and administrative realities (incomplete rule of law, lacking administrative capacities and staff) negatively affected implementation.

On the other hand, results also demonstrate that the EU had two great trumps. Firstly, due to the great relevance that the decision makers attached to European membership, the conditionality approach could have brought important effects. Secondly, the fact that the stakeholders demonstrated large susceptibility to socialization and persuasion, soft mechanisms were also to bring positive results. As we shall see, both of these had important effects; yet, in disputed refugee protection policies, they could have been (and have been) only partially seized. As we shall see, where the EU insisted on reforms, eventually they have occurred. However, on the other hand, their success depended on the state institutions which often demonstrated resistant to change or merely acted inert. In particular, at the initial stage of reform, we have generally had two types of attitudes among decision makers which depended on types of issues in question: (a) reluctance to implement changes (when these were estimated by the government to bring high material and non-material costs) and (b) mere lack of interest for reforms (when policies have not been necessarily perceived as expensive, but did necessitate activity of the state and were not believed to bring great benefits). In simple words, once the EU set its demands, the government and wider political elites were primarily interested in keeping low immigration rates and low costs for the state. Other aspects of asylum policy (human safety, dignity and similar) were hardly considered from the broader political elites.

To obtain declared aims in refugee protection policies, the European institutions thus necessitated to work in parallel with two issues: counteract resistance of the opposing actors (veto players) and push the state to act on behalf of refugee protection. As established, to do so, the EU had several tools at its disposal – namely, mechanism of conditionality, socialization and persuasion. As we are about to see, the Union seized all of these instruments; yet, in an ambiguous way and with only limited results. Instead of

diminishing the role of veto players; it has at the same time strengthened and weakened their position, thus obtaining mixed results in the refugee protection. Inertia of state institutions (particularly the ministries other than the MoI) has been poorly tackled. Communicating and cooperating primarily with the MoI, the EU lost an opportunity to affect more decisively other state institutions. Government (as total) poorly reacted on the EU demands. As we shall see, perceiving the issue of refugee protection as secondary, it maintained its starting position. However, the operative levels of the institutions directly involved in the policy and subject to dense socialization (i.e. the MoI) developed their own patterns of functioning. Where in a part of policies this still presumed securitization (i.e. entry and recognition); in others (i.e. reception and content of protection) it allowed for development of more sensitized approach to refugee issues. Other state institutions (left out of channels of socialization until most recently) remained passive and inert.

In this context, several tendencies developed through the following years. Firstly, security oriented bodies (and government as a whole) managed to install rather restrictive and securitized model of asylum system, aimed at preserving the state from large rates of asylum seeking and high recognition rates. Where this position in the first years of reform has been heavily restrictive (with system basically fully preserved from the immigration of refugees); with the pressure from Europe, in the following years, it has been liberalized – yet only to a certain extent (remaining stabilized at moderate rates of applications and recognition). Secondly, the lack of interest of decision makers (and the government) for areas which did not affect immigration rates (i.e. reception and quality of protection) created for modest investments of the state in these policies; but allowed actors in the field to develop their own mode of functioning and created the unexpected results. In precise, having the government and overall decision makers uninterested in the issue; the operative levels of the MoI became the motor for changes in these policies – often aiming at more effective and sensitive policies. However, still restrained with the lack of investments and passivity of other state institutions, these policies suffer also from great deficiencies.

As we shall see, these results will point to several conclusions in regards to the role of the European Union in transformation of domestic asylum policy. Firstly, as it will be shown, whereas the EU sized all of its mechanism; it has done so only in a limited degree and with effects being restrained by the factors pertaining to the domestic context as well as the European surroundings. The strategy of conditionality has been only partially seized due to the lack of credibility of threat (sanction). Perceiving refugee protection as secondary for the EU leaders and institutions, domestic elites have not estimated that

shortcoming in domestic asylum policies will damage state goals (i.e. result in absence of membership). As we shall see, to a large degree, this will demonstrate as an accurate perception. Socialization and persuasion used in limited surroundings (i.e. only within the MoI's bodies), made other institutions preserve their initial positions. Besides the lack of interest for investment from the government; omitting to impact all of the included state ministries enabled poor institutional and administrative capacities to work against the quality of reform and obtain "shallow" changes in a variety of cases. Finally, making security bodies of the Member States as key actors in socialization of the MoI strengthened securitization in these services and stabilized restrictive positions in the body (observable in policies related to entry and recognition). As a result of these processes, our asylum system now functions in a way we have observed (Chapter 4). In this chapter, we will seek to demonstrate the outlined features of domestic and external functioning.

Chapter is divided in three central parts. The following section (5.2.1) outlines key political debates reflecting on the issues of asylum and migration in Croatia. Within this part, we seek to outline positions of general political elites and the way they tended to understand implications arising from demands set by the EU in refugee and migration domains; thus setting the overall framework in which asylum system was to operate. Second section (5.2.2) investigates functioning of the institutions involved in asylum and immigration policies in particular, and the way these have been impacted by domestic and external actors, preferences and actions. In precise, this part seeks to understand how (a) domestic interests, values or context, and (b) European institutions, actors and strategies impacted the behaviour of central institutions of asylum in Croatia. Having analysed the outlined features, the third section (5.2.3) applies given results to explain developments and products occurring in each of our four chosen areas of interest: i.e. access to procedures for granting protection; qualification for protection; reception issues and content of protection. Researching the outlined questions, the chapter aims to provide conclusions relevant for the studies of Europeanization and the two selected approaches in specific (i.e. rational institutionalism and social constructivism).

5.2.1 Politics of Asylum: Interests and Values Determining the Framework for Domestic Policies of Refugee Protection

When the MoI for the first time presented the draft of the Asylum Act to the Parliament (2002/2003),[171] no serious political force questioned the need to introduce the new asylum system. Apart from demonstrating dissatisfaction with the Croatian obligation to accept EU immigration "burden", no political party exerted political pressure against the introduction of the asylum policies. However, an open debate demonstrated the context in which the European requests on asylum will be introduced. In a quite simplistic manner, the issue mostly boiled down to the question of the economic expense of these policies for Croatia. In contrast to the scholars and non-state organizations who found the first LoA too restrictive and overly securitized, the greatest part of decision makers found it too liberal.[172]

The Parliamentary Committee for the Constitution, Rules of Procedure and Political System supported the adoption of the Asylum Act and found it encouraging that Croatia was to protect persons fleeing persecution. However, the Committee considered that the drafter (i.e. primarily the MoI) should be aware of the difficulties arising from the policies it proposed: security issues and financial implications. As it held, the role of the state in asylum policies was to enable freedom of movement; yet, still preventing entry to those who could pose terrorist threats. Furthermore, establishing that the present world has an ever increasing number of refugees and asylum seekers, it found it vital that Croatia accept the model it can (economically) afford (Croatian Parliament 2002, 43–44).[173] The Committee for Internal Affairs and National Security emphasized the need to protect domestic territory and institutions of asylum from the perils of terrorism and warned that state must find a way to avoid expenses relating to the procedures and conditions

171 The first reading of the Draft was held in October 2002 and the second in May 2003. The Law was adopted in July 2003.

172 See the speeches of Filip Damjanović (MoI), Matijaž Dovžan (EU CARDS expert), Stipe Ivanda (High Police School), Hans Lunshof (UNHCR), Dejan Palić (CLC), Žarko Puhovski (Croatian Helsinki Commitee), Agata Račan (Counstitutional Court, judge) and Šprajc Ivan (legal expert); in UNHCR et al. 2004.

173 In that sense, it supported a realistic program of financing the system, independent from the insecure CARDS resources, but opted for solutions that would grant the least financial constraints: setting only basic rights for the beneficiaries, providing for the return of the refugees from Bosnia and Herzegovina (and Kosovo) and opting for a program of cooperation with humanitarian organizations, able to take part in the assistance.

(reception) of the asylum system.[174] The Committee also demonstrated dissatisfaction with the introduction of asylum policies considering domestic "emigration realities"; but it has (at least formally) acknowledged clarification from the MoI's representative Josip Vresk (Deputy Minister) who explained that it was a matter of international obligation that Croatia accepted (Croatian Parliament 2002, 44). The Committee for Legislation debated mostly the technical aspects of the Draft; yet, in doing so, it has demonstrated somewhat greater sensitivity for the aspect of refugee protection (Croatian Parliament 2002, 44).[175] Attitudes of the Committee for Human Rights and the Rights of National Minorities differed from the rest of the parliamentary bodies and parliamentarians and held markedly liberal views. The Committee did not focus only on human rights of the refugees, but has also questioned protection of persons that fled for non-political reasons (such as famine) (Croatian Parliament 2002, 44). Nevertheless, this question has not been debated much further.

The club of representatives of the then leading leftist Social Democratic Party[176] was satisfied with the fact that Croatia was introducing the asylum system, but it believed that refugees granted protection during the 1990s should not be allowed to participate it. The Party further stressed that the rights of the new refugees that were to be protected within the new asylum system should not exceed the rights of the citizens (Croatian Parliament 2002, 45). The member of Social Democrats Nenad Stazić added that the state needs to take care of the security aspects and make sure that the asylum system does not get seized by terrorists (Croatian Parliament 2002, 48). Another member, Josip Leko, highlighted the need to introduce the system of asylum not only to satisfy Europe but also from substantive reasons – to offer protection to persons who needed it. However, he asserted, their social rights needed to be framed in line with the economic possibilities of the state (Croatian Parliament 2002, 48).

174 Prior to all, making sure that rejected asylum seekers are not provided with the ability to remain in the system by renewing their claim

175 For instance, it held that the Draft should be modified as to allow all seekers the right to an interpreter, clarifications of the rules determining the position of vulnerable persons, right to integration, etc.

176 The left-wing coalition was in power since 2000 until the end of 2003. It consisted of six parties: Social Democratic Party (SDP), Croatian Social Liberal Party (HSLS), Croatian People's Party (HNS), Croatian Peasant Party (HSS), Istrian Democratic Party (IDS) and Liberal Party (LS). Three of these (SDP, HNS, IDS) will again form the governing coalition in the end of 2011.

Centrally positioned Social Liberal Party welcomed introduction of the asylum system but stressed that Croatia should not rush to accept it just to satisfy Europe. As the representative Dorica Nikolić maintained, the Party supported the introduction of the Asylum Act, especially because most of the transition countries and "even neighbouring" states had such laws (Croatian Parliament 2002, 46–47). However, she stated that the Draft was prepared in a flippant way, merely to satisfy external demands, promising an unrealistic set of rights that Croatia would not be able to fulfil. The party also considered that Croatia should be careful not become the European "transit centre" for asylum seekers. Not to be "flooded" with "people from asylum", the Party believed Croatia should not adopt the Asylum Act without simultaneously preparing laws on the safety of internal borders (Croatian Parliament 2003, 37).

Among relevant parliamentary parties (and parties participating in the governing coalition), only two smaller parties did not maintain these prevailing views. The club of the representatives of the smaller centrist Peasant Party accentuated civilising aspects of the asylum system and held that it should not be regarded as a danger for domestic economic resources – especially given that only a limited numbers of persons actually aimed to stay in Croatia (Croatian Parliament 2002, 47). The club of the smaller leftist People's Party believed that the Asylum Act was an important "civilizing step" for Croatia and warned that it is a moral duty for Croatia to protect refugees – especially since its citizens have been given shelter when they needed it. The party emphasized persons fleeing persecution needed to be provided protection;[177] however, it held that protection should not be offered to persons fleeing for non-political reasons (Croatian Parliament 2002, 47).

The right wing party that formed the government soon after the debate was held (in 2003) and remained in power until 2011 – the Croatian Democratic Union (HDZ) – maintained one of the most restrictive positions. Like most of the other commentators, the representative Vladimir Šeks stressed that remaining refugees (i.e. citizens of Bosnia and Herzegovina and Albanians from Serbia) needed to be excluded from the status and motivated to return to their states. As regards to the new refugees, the Party demanded that the Government needed to provide the report on present and future risks of refugee crisis for Croatia prior to the adoption of the Law. The representative stressed that the drafter should reconsider the rules forbidding sanctions for asylum seekers who would enter

177 As we have established, the first Asylum Act has not envisaged other reasons (such as *serious harm*) as a ground for protection.

Croatia illegally. Otherwise, the speaker warned, there would be a danger that Croatia becomes "flooded" with human smugglers and those migrating for non-political reasons, needing to accommodate them at its own expense (Croatian Parliament 2002, 45–46). Jadranka Kosor, a member of the Party (who will later become the premier – 2009) stressed that the state should be proud of the care that it provided to about a million refugees in the 1990s, but it held that Croatia did not have sufficient financial means for such policies at the moment. She rejected the possibility to offer these refugees automatic asylum status and maintained that the rights planned for the new asylum seekers and refugees are too expensive, considering that Croatia has still not managed to provide for all Croat IDPs from the former war. She also stressed it is necessary to obtain the report on the safety of the borders prior to the adoption of the Law (Croatian Parliament 2002, 47–48). The representative of the right centre Party of Democratic Centre, Vesna Škare Ožbolt,[178] maintained that the legal rules offered simple abuse of the asylum system and held that the asylum issues should be separated from irregular immigration. Stressing that in past two years over 40 thousands irregular migrants entered Croatia, the representative demanded a stringent approach towards the seekers entering Croatia as irregular migrants (such as sanctioning irregular entry, etc.). According to the view of this party, Croatia should not have offered the seekers accommodation while awaiting decision if no time frame has been set for a decision to take place (Croatian Parliament 2002, 46).

If we look closely at the arguments raised in the discussion, we may see several important implications. While all the parliamentary committees, party clubs and representatives declared their commitment to satisfy the international standards of the refugee protection, the deliberation demonstrated two major lines: (a) one that considered asylum policies as a necessary step for Croatia – due to the European demand, but also due to moral implications of the refugee protection issues; and (b) the other that understood the issue as a matter of obligation for membership, but did not consider Croatia should otherwise introduce it at that moment of economic setback. Nevertheless, most of the parliamentarians from both sides demonstrated great fears that the new asylum system will bring Croatia *influxes* of asylum seekers *burdening* the domestic budget and causing further economic turmoil. At the same time and despite these fears, none of the parties challenged the need to accept the Law.

178 In 2006, this small party was abolished and the president Vesna Škare Ožbolt took the position of a minster of the judiciary in the Government of the Croatian Democratic Union (Prime Minister Ivo Sanader).

Opinions differed in regards to how liberal or restrictive the Law should be and in which version it should be adopted, but all parties understood it as an obligation for Croatia if it wanted to join the EU – institutionally and symbolically. Some emphasized that Croatia needed to accept the costs of democracy and civilization it aims to; others held that – in the "eager wish to be modern and in pace with Europe" – the state promised what it could not maintain (Dorica Nikolić, Croatian Social Liberal Party, in Croatian Parliament 2002, 46). Some also considered the legislation process should not have been rushed: exactly because it was a law with the "code E" and therefore relevant for "our legitimacy towards Europe" (Luka Trconić, Croatian Peasant Party, in Croatian Parliament 2003, 38). After the Government did some cut downs of the first Draft, in the second reading (May 16, 2003), some of the parliamentarians (of the relevant parties) demonstrated a somewhat greater satisfaction but have still not been assured about the content and have demanded a third reading. The final version of the Law contained technical changes (necessary for the effective functioning of the norms) and solutions enabling cuts demanded from the parliamentarians – as far as this was possible in respect to the requirements of the EU *acquis*.[179] The drafter and the elites accepted those norms which were deemed necessary and avoided to introduce those that would go beyond the minimum.

Does this logic pertain to the judgment proposed by rational institutionalism or to social constructivism? As we may well see, the conditionality approach proves rather useful in this case. Decision makers evidently perceived the asylum system as a great cost for national resources – and most dominantly, economic assets and, to some extent, for security. Security reasons have been debated by various discussants. Still, in a more important manner, they have been a concern for the security-oriented parliamentary body (Committee for Internal Affairs and National Security) and more pronouncedly in the right-wing parties (and especially the Croatian Democratic Union). The government perceived the implementation of asylum policies as a necessity due to its goal of gaining membership in the Union. Elucidating the rules in the Draft, the Deputy Minister of the MoI stressed Croatia must adopt the Law on Asylum to adjust to the EU *acquis* (Croatian Parliament 2003, 36). Those that were averse to the Law – mostly the security organs (represented in the National Committee for Internal Affairs and National Security) have

179 For instance, to save financial means, the final version rejected the suspensive effect of appeal to the Administrative Court and the extension of asylum status to persons granted temporary protection in the 1990s both of which the initial Draft had proposed.

not been satisfied with the adoption itself; yet, they have accepted that it is needed due to international obligations (i.e. European integration). In that sense, the anticipated costs of policies in general raised great uncertainties for decision makers, but did not seem to exceed benefits of expected reward – the prospect of membership. There were no formal veto players that aimed at preventing the adoption of the Law. However, as we may see, most of the decision makers perceived the policies as a source of great costs for the domestic system. Therefore, almost all of the parties and representatives searched for a way to decrease these costs and maintain the system at the minimum (sufficient to satisfy Europe). Along with the services of security and interior (see below), basically, the entire system was filled with veto points and powerful agents that wanted to somehow override perceived costs.

Such attitudes have been fixed in two dominant positions. On the issues understood as assisting the state to maintain the goal of low (asylum) migration rates (and then the overall costs), decision makers were especially apt for restrictive and securitized measures of preventing migration (i.e. areas of access to procedures and access to protection). On the issues perceived to enable the state to save for the costs of expensive socio-economic policies, they tended to opt for deflections and the minimal rights approach (i.e. the socioeconomic rights of beneficiaries). In terms of the Europeanization literature, perception of misfit was evidently great. The former equilibrium – where the state had been slowly solving the remaining issues of the refugee crisis in the 1990s[180] and where the European migration dynamics have not significantly affected Croatia – demonstrated to be quite appealing to the elites and the government. Reflecting on asylum policies, decision makers sought to find available solutions within the EU demands to keep the state of matter as closest as possible to such an attractive *status quo*.

Whereas rational motives (related to economic conditions and familiarity with the costs experienced in the refugee crisis of the 1990s) dominated debates, these interest-based positions cannot be disentangled from the less rational component: the dominant ethics in the society and political community. As advised by the constructivists, perceptions of costs and benefits are always affected by the key values existing in the context where the decisions occur (Börzel and Risse 2003). Indeed, each actor (be it state actors or individuals) needs to link some meaning to the issues (policies, their costs and benefits) it evaluates. Meanings will not pertain only to rational factors, but also to the way the actors

180 According to the 2001 Census (Croatian Bureau of Statistics), at the time there were 8.814 remaining refugees.

construct perceptions of reality. This is especially so in the case of policies which touch (more or less) deeply ingrained values. Doubtlessly, asylum and migration policies do so. Demanding the states to re-consider their images of nationhood and statehood, asylum and migration are linked with the core questions of national community, state sovereignty and identity (see: Favell 2006; Hansen 2009b; Joppke 1999).

In general, immigration policies which would presume the arrival of new members that did not have Croatian origin challenged the dominant conception of the community in Croatia, stabilized (after the war) in great ethnic homogeneity (almost 90 per cent of Croats). As noted, such a conception of community has been established since the early 1990s and has not been challenged until today. Since the 1990s, immigration was conceptualized in terms of the return of the Croatian emigration. However, interestingly, these debates never questioned how the Croatian labour market could absorb the returning Croats. Whereas the general atmosphere has been relaxed after 2000, the idea of the political community as a unity of the ethnic nation has not been abandoned. When it has become clear that the return of Croats would not occur, the state has not started considering other sorts of immigration policies which would include non-ethnic migration – despite the evident demographic needs for such reconsiderations.[181] As we have seen, in the context of economic relegation in the 1990s and after, the state has also had great troubles with continuing emigration. Despite this, the state continued to prefer the immigration of ethnic Croat members, which in recent time (2011) produced the new law privileging Croats without citizenship.[182] Whereas the political left has not nurtured such images, it has not challenged them. Save in debates on the voting of the Diaspora (which also damaged the left parties), the parties have not sought to re-interpret the community concept (i.e. ethnic membership).

The right wing (especially the Croatian Democratic Union) established a straightforward link between the image of community and asylum. Pointing to the

181 As concluded by various studies, presently the state faces continuous depopulation, backed by the unbroken emigration of young people, and the increase of the proportion of the elderly population in Croatia (Mišetić 2008; Nestić 2008). Population projections foresee that additional negative demographic tendencies will occur. In such conditions, the state is in need of positive migration balance, and particularly, immigration of young(er) population (Mišetić 2008).

182 It is also worthy to note that the new Law on Relations of the Republic of Croatia with Croats Abroad (its amendments in 2012) enabled the establishment of the special body that is in charge for this sole issue (Government Office for Croats outside of the Republic of Croatia). At the same time, the plea of stakeholders (the MoI and organizations) to establish a coordination body in the issues of asylum left the Government numb.

generosity of the state in the 1990s, representatives emphasized that war related problems still experienced by Croats should be the priority for Croatia. Such insertions had clear ethnic reasoning. The Party maintained that non-Croat refugees should return to their former homes, and emphasized that the Croats from Herzegovina that still have not manage to solve their status in Croatia should be addressed prior to new asylum migrants (Jadranka Kosor; in Croatian Parliament 2003, 39). In the years that followed, such attitudes were particularly emphasized in the right-wing dominated parliamentary Committee for Immigration.[183] The Immigration Committee has been specifically averse to European immigration and asylum policies. As it considered, Croatian immigration policies were to safeguard the body of Croatian citizens abroad (as a self-understood domestic value) and not allow for ethnic changes in Croatia (see: Committee for Immigration of the Croatian Parliament 2006). The left wing warned that in the case of refugees such issues should not be relevant, but did not challenge such a concept of community (assuming that there is popular support for it).

Next, the perception of values and their link with pragmatic interests does not stem only from the domestic construction of reality, but also from the way that other actors (states and the EU in this case) do. This is so because states do not act as isolated entities (especially in the contemporary world), but as subjects whose decision makers and implementers are creating their views in the common channels of communication – be it directly (meetings and other direct communication) or indirectly (such as observing how other states act and deal with issues and solutions) (Checkel 2000). This occurs even easier when phenomena and their consequences are complex and unfamiliar to decision makers. In the case of the European asylum and migration policies, decision makers demonstrated great insecurity about their consequences. Elites have also shown they have already been informed about the (real or perceived) tendencies of the Member States and the EU to push migration (including asylum) issues to the front yard of their Eastern and Southern neighbours. Emphasizing that the system must be introduced due to EU demands, some actors made it clear that Croatia needs to make sure it does not become a courtyard for the EU immigration flows.

183 During the mandate of the leftist Coalition, the Committee has been left out of powers. As reported by Barbić (2008, 8), the Committee was denied participation in the preparation of legislation on asylum and aliens in the 2002/2003. After the change of government in 2003, the Committee has again become active. However, in 2008, this Committee has been replaced by the new Committee on Croats outside the Republic of Croatia.

One should not forget that Croatia has a specific geopolitical position and that there is a strong tendency of countries of the EU to keep on the borders of the Schengen the smuggling of people and the refugee fluxes that come from the East, the Balkans, from Asian countries or the countries of the former USSR (Vladimir Šeks, the Croatian Democratic Union; in Croatian Parliament 2002, 45).

You cannot offer to asylum seekers and refugees more than then what citizens of Croatia can obtain in the given moment and if you do, you will make the same mistake that half of Europe did, and that is that it has given rise to rage [of the citizens] over the asylum seekers and refugees because in one moment they came to recession and their citizens feel threatened and believe they finance them while they are threatened themselves. This is why the immigration policy in the EU is diverse, so Great Britain demands that refugees be allocated on the frontiers of the EU so they would not enter in Great Britain or while they wait to enter Great Britain.[184] In such a manner two types of countries are being made, one(s) which will say 'stop', and the other(s) at which it will be said 'here you go, you take them and we will finance you perhaps'... Croatia will accept such immigration policies ... and what kind of a policy is this that we lean too... On the one side we rush and do everything to enter Europe and on the other side we will actually accept refugees... all those to whom Great Britain and the other countries will say stop (Dorica Nikolić, the Croatian Social Liberal Party; in Croatian Parliament 2003, 36).

If one regards the scenario that has occurred in southern countries, such as Greece, Italy or Spain, fears of decision makers have been partly justified. Namely, as we have stated in Chapter 1, these states have not been specifically attractive to immigrants up until the 1980s and have had quite low (asylum) migration rates. They have mostly represented as a route for transit (Lavenex 2009, 2). In fact, up until the beginning of the 1990s, they had not even thought about building their asylum policies. However, the new European rules led to a great increase in immigration rates in these states (Lavenex 2009, 17). As demonstrated by Sarah Collinson (1996, 84–85), Croatian perception of European policies

184 The stated refers to the alleged British idea proposing that the states in the region (including Croatia) become transit states for asylum seekers who wait for decision on asylum in the EU states. According to the Head of the Committee for National Security (Ivan Jarnjak), the MoI confirmed that such plans in the UK really did exist (Croatian Parliament 2003, 38). As media reported, such plans were rejected by the EU. UK has afterwards withdrew the proposal (VOA News 2003).

has already been burdened with the experience from the 1990s,[185] when some of the states (e.g. Sweden) have returned refugees from Bosnia and Herzegovina to Croatia – despite the fact that the Government pleaded that it cannot provide protection for all of the persons.[186] On the other hand, the reports demonstrated that states of Central and Eastern Europe or the Western Balkans did not have to fear of anything like the Greek or Italian scenario. In comparison to the Mediterranean route, the countries on the land routes received comparatively much lower rates of irregular immigrants (and asylum seekers).[187] Still, one may hold that – without migration controls – transit routes would have easily changed. In that sense, most of these countries were reported to act defensive in advance: preventing to become areas that would receive great rates of asylum seekers and thus taking responsibility for them under the new EU framework. The same, as we can see, occurred in the Croatian case.

Among general political elites, migration and refugee issues were reduced to the question of state welfare and were mostly debated as a peril to the economy and national identity. The MoI, as a key drafter, sought to calm down the parliamentarians. In the parliamentary debate, the Deputy Minister of the MoI explained that the government had introduced the Act to the parliamentary procedure only after the state introduced measures to control the arrival (and return) of irregular migrants and secure the system against potential abuses (Croatian Parliament 2002, 44–46). Perceiving the policies as a heavy burden for Croatia as an economically disadvantaged state; the drafters expressed that the authorities have sought to implement all of the necessary standards, yet, not exceeding what the EU has offered.

Within the security services, this was even more accentuated since concerns for the economic welfare mixed with the idea of (asylum) migration as a national security threat.

185 As reported, in 1994, Croatia's population of refugees and displaced persons reached 12.5 per cent of the total population (Collinson 1996, 82).

186 Croatia returned many of these back to Bosnia and Herzegovina, claiming it only does so when an area was liberated or there were no conflicts taking place. Despite the warning of various international organizations on such returns to Bosnia and Herzegovina, Sweden has not stopped sending these persons back. The reports note there were about 4.000 persons returned from Sweden. As Collinson notes (1996, 85), domestic immigration authorities stated that "however much it would like to, [Croatia] cannot take care of all the Bosnian refugees".

187 While the Western Balkan route (excluding Albania) today reports between three and five thousands irregular border crossings each year; the Eastern Mediterranean route reports between 40.000 and 60.000 immigrants yearly (see: Frontex 2012, 14). However, this difference can also pertain to the ability of authorities to intercept movements.

Established in the contacts with the services of security and interior of the EU Member States, the organs of the interior and national security easily accepted the image of asylum migration as a risk for domestic stability and welfare. Despite the fact that Croatia at the time was merely a transit country with less than a hundred asylum seekers – or at least less than a hundred recognized seekers[188] – the discourse raised in these services was odd and strikingly resembled perceptions existing within the EU. Emphasizing that the greatest number of the seekers were in fact economic migrants merely seeking entry to the state (and the EU), this often presupposed the lack of differentiation between general migration and asylum migration. This has not differed much from the position of the Council of Ministers and the Member States' security and interior services.[189] Indeed, the actors often emphasized socialization occurring in contacts with their counterparts in the Member States, pointing that such attitudes have been overtaken in these contacts. Debating rejection of asylum request received at the airport (see Chapter 4, Section 4.2.1.2), the Head of the Department for Administrative Affairs and Inspection (MoI) stated "there is no such standard that is adopted in Europe… that Croatia should not adopt" but added that "we will not adopt grater standards because we are not in position, than those existing in the other states" (Damjanović in UNHCR et al. 2004). Some relevant actors demonstrated they have been included in the communication long before asylum was even debated.

> … Yet in 1993 the ministers of internal affairs in Budapest took clear position that one country alone cannot fight against irregular immigration; and refugees create the greatest part of such irregular migration… all countries of Europe must equally approach whether they want to stop this irregular immigration, and especially the economic, in heading towards developed countries. In this manner [one should read] also the writing of the Daily Telegraph… about… the need to open transit centres most probably in Albania, Croatia, Romania and some other

188 As we have debated, the fact that in 2000 and 2001 about 41.000 irregular immigrants were apprehended by the Croatian police, the number of asylum seekers appears odd. Given that the studies indicated that the state was often treating asylum seekers as irregular migrants, it may be the fact that many of these immigrants claimed asylum but it has gone unrecognized (deliberately or unintentionally).

189 The European Commission also maintained it is crucial to diversify between bogus and genuine asylum seekers in order to protect the territory of the EU from increasing immigration (see: Hansen 2009a, 30).

countries (Ivan Jarnjak, Croatian Democratic Union, President of the Committee for National Security of the Croatian Parliament; in Croatian Parliament 2003, 37).[190]

Whereas quite indifferent towards the problems of immigration and security concerns before, with the introduction of the EU *acquis*, decision makers started to perceive heavy migration control as a goal of their own. In this way, the overall domestic interests of most of the actors flawlessly blended with what the services of security and interior sought to do: place heavy migration controls to prevent all possible migration, including asylum migration perceived often as bogus or – even if not – understood as a threat to domestic interests. This – and presumably the general lack of the understanding and care for international standards of refugee protection – may also explain why the Parliament accepted the Refugee Convention and international refugee law as its internal legal order, and at the same times passed the Strategy for National Security where refugee issues (and not *irregular migrations*) were defined as threat for national security.[191]

In the battle against security risks such as terrorism and organised crime, it is necessary to undertake a series of specific measures neutralising the abovementioned dangers. These measures encompass the establishment of an effective system of border control in the Republic of Croatia, the expansion of police and intelligence cooperation with neighbouring states in the matters of surveillance and prevention of terrorist group and organised crime, strict legal regulation of the status of immigrants and asylum seekers, harmonisation of procedures pertaining to the extradition of persons suspected of the aforementioned activities... (Strategy for the Republic of Croatia's National Security 2002, Art. 92).

The phenomenon of globalization entails new security challenges which were unknown under the bipolar world order. The expansion (proliferation) of weapons of mass destruction (nuclear, chemical or bacterial-biological), international organized crime, refugee crises and

190 Ivan Jarnjak was also a Minister of Interior and a Head of Office for National Security in the 1990s. As a Secretary of the Party he had a rather important role in the government of Prime Minister Ivo Sanader (2003–2009). Since 2007, he was also a Vice President of the Croatian Parliament.

191 Where in practice prevention of refugee movements is often treated with little difference from irregular immigration; decision makers are usually careful to denote (publicly) that they want to combat irregular movements, but not those of refugees. In doing so, decision makers also often emphasize that these policies are not only used to protect citizens but also the real refugees (see: Hansen 2009a, 30).

ethnic conflict are some of the most significant (Strategy for the Republic of Croatia's National Security 2002, Art. 11).

For the bodies of national security,[192] security-oriented approach – including the perception of asylum seekers as bogus refugees threatening the state – represented more than a mere rationalist interest position. Security here may better be understood both as an interest, but also an overall value from which the actors measured and judged policies, their implications and products. In some services of national security, the idea of refugee movements was defined in a specifically radical manner and related to the greatest risks of the contemporary (global) order (i.e. crime, terrorism or even health risks). Quite widespread in the other Member States' services (Post 2005), this has presumably been *borrowed* from these partners and then mixed with other concerns: i.e. those related to identity and economy.[193]

I recognize the Catholic spirit here ingrained in us to help to everyone, but sometimes it must be said in Machiavellian terms: 'politics is not ethics'. And this is why it is necessary [to make] clauses that – via citizenship or in general via the asylum process – people cannot be admitted in the years when Croatia has negative balance of payments and the years that the number of newborns is far lesser from the number of deceased, because in this way [we] would change ethnic composition of Croatia.... Do not rush with legislative solutions that will soon have to be harmonized with European norms. Unfortunately, Israel had this practice... that the suicide bombers would purposefully get infected by the HIV... to create biological terror... And us...

192 The impact of these services on the system is not transparent. As informed, the services partake in the system due to the fact that the MoI cooperates with them when it has a reason to assume that the immigrant or a seeker might represent a threat to national security. Once the MoI suspects on this (discretionary judgement), the person is handed an inquiry to the Security Information Service. According to the informant (Stakeholder A 2012), this service had at occasions implemented the Law on Aliens to the cases of asylum seekers without providing their rights under the LoA (e.g. ignoring asylum quests; ignoring the right to freedom of asylum seekers; etc.). Besides this, due to the link of immigration and asylum, these services have important interest in the legislation on asylum and, as we have seen, demonstrated great interest to keep the system heavily securitized. However, it is not clear which impact they may have on the (broad) interpretation of the norms, via cooperation with the MoI and the government. We may suppose this depends on the governmental composition – i.e. the importance that security aspects and key figures have in the given government.

193 This seems particularly viable considering that migrations were hardly an issue until the EU demanded changes and until the authorities and officials commenced participating in the named networks of communication with Member States and the EU institutions (particularly the Council).

> [we] firstly must take care of the national security and interest of the Republic of Croatia and only then of human rights... (Zoran Grgić, the member of the Council for the Surveillance of Secret Services; in Sertić and Center for Peace Studies 2007).

What is specifically interesting is that the general elite took the proposal of the Asylum Act as given and have regarded it as an issue of MoI's expertise and the expertise of security services, not aiming to question much of its proposals in the first place – in any other sense than cutting down the perceived risks and costs. After the basic preconditions for the functioning of the system have been created (institutional arrangements, legislation, basic budgetary distributions and similar), the issue has not been appearing on the agenda of the broader political elites or the government anymore. Instead, once the general position of the issues and key (flanking) measures were designed, the area has been assigned to the MoI and further understood as a question of its responsibility. The elites, the government and other institutions, including those that were obliged to deal with issues (other than the MoI and the security organs), demonstrated unreservedly limited interest to the area. Once the first Law was adopted, decision makers remained oblivious for the needs and problems of the asylum system and refugee protection. In general, stakeholders reported that the government, other institutions as well as the general decision makers treated the issues as the "MoI's problem" which does not concern them. According to the Representative of the European Delegation, this has not been varying in different governmental arrangements (Frieh Chevalier 2012).

> It would be more important… to create a climate, a positive atmosphere for all those who participate in the preparation of the implementation, to put maximum efforts… In the Ministry of Health and Ministry of Education they have improved a little bit lately. Otherwise, the impression is that asylum is the problem of the Ministry of Interior. That cannot be accepted. That's the problem, that it is the top issue for the state and I think it should be profiled in such a way through media too… sensitize the public so that Croatia can… and has to secure standards like the countries in our neighbourhood do, for example Slovenia… So this is the climate that needs to be created, at the same time taking into account its real possibilities… (Damjanović in UNHCR et al. 2004).

Five years later, when the new Law on Asylum was being adopted, only a handful of parliamentary representatives participated in the discussion. This time, issues were discussed mostly in their technical nature and did not enter much in debates about their

substance. At the time, left parties challenged some of the solutions provided by the drafter, considering that these were too restrictive (i.e. legal aid, accelerated procedures, definition of safe third countries, etc.) (Croatian Parliament 2007). A representative of the Social Democratic Party and a former Minister of the Interior, Šime Lučin, considered that the Law "departed from the premise that all asylum seekers… actually seek to abuse the system" (Croatian Parliament 2007). The mentioned Committee for Immigration (right wing) considered it the other way around, fearing it could enable great levels of immigration (Croatian Parliament 2007). However, a rather limited number of parliamentarians participated and it appears the issue lost salience. As we have observed before, a similar problem occurred when the system needed support for its functioning. When the Ministry of Interior necessitated assistance from the other institutions and the government, these actors remained inert. The Representative of the European Delegation reported that the Delegation had good cooperation with the MoI, but it was not able to move the government (Frieh Chevalier 2012). As an informed respondent asserted, asylum and migration were merely the "last concern" for the elites (informal information, state official, November 2011). In almost eight years, the government has not managed to get interested in the issues. The Representative stated she believes that "… the interest of the government for these issues… was very low. Outside of the Ministry of Interior, there was almost no understanding about asylum at all (Frieh Chevalier 2012).[194]

How to explain such an attitude? There are several reasons that could explain such a position of the decision makers. The lack of intrinsic interest to solve the issues of migrations and asylum migrations may be considered to stem from the fact that the state did not perceive it as an issue – until the EU demanded the state to introduce the *acquis*. The lack of consequences from migration movements in the Croatian context during the past decades made the question irrelevant in domestic politics. The prospect of becoming an immigration country (and a country where refugees would arrive and ask protection) induced great interest from the leaders, evident in the parliamentary discussions over the first Asylum Act. However, such interest was quite clearly framed in terms of maintaining

194 Besides modest symbolical (rhetorical) differences discussed above, the research has not found important differences in the acting of political parties belonging to diverse ideological positions. Whereas the political left demonstrated somewhat more sensitive approach to refugee issues in the parliamentary debates, in practice no greater variations occurred with the changes of goverments. Still, one has to keep in mind that the greatest part of the reform was led by conservative parties of the right wing (2003–2011), while leftist parties have not had much occasion to deal with asylum issues.

the desirable *status quo*. Next, placing asylum issues in the Chapter 24 without representation in political criteria (i.e. human rights) and thus treating it as a primarily security question – and often, an issue of technical adaptation – seems to have importantly affected positioning of the asylum issues in the segments of politics. As it appears, the issue was extracted from the segment of general politics and transferred to the MoI and state security services. Indeed, the MoI was the key body included since the start, while other subjects of the state have been largely excluded. During the time of drafting of the first LoA, the MoI has intensively been cooperating with the UNHCR and the experts from Member States. Its staff was being trained within a large CARDS Project (Asylum Reform I). The lack of knowledge of the EU *acquis* and inexperience with such a complex system among other political leaders created for the lack of understanding of the issues, system and solutions. They have remained limited basically to the fears that refugee policies will bring unwanted costs. In such context, the representatives seized the first parliamentary debate to communicate their fears and propose solutions to avoid the anticipated pressures. In doing so, the MoI was understood (and has been) the key body to inform elites over what Croatia could and could not do *vis-à-vis* the European demands.

Once the general framework set as a minimum was determined, interest of the elites has fallen. In the following years, decision makers have had a chance to notice that their fears were exaggerated and that the domestic system was effectively safeguarded within the policies of prevention of overall immigration. The Croatian system has largely remained preserved from higher pressures and has avoided the anticipated heavy consequences. The numbers of seekers were basically statistically insignificant and the state had no difficulty to deal with such limited numbers of beneficiaries. As regards to the goals of the pre-accession, these were expected to be dealt with by the MoI as the EU partner in Chapter 24. As an informed respondent asserted (informal information, state official, November 2011), the decision makers claimed Croatia simply does not have a problem with the issue, given the number of beneficiaries it had. On the other hand, this is not something that many systems with much larger migration and asylum rates have not done too. As shown in the literature, governments often reject to admit that they need to deal with asylum and migration policies and continue claiming they are not the states for immigration. Paradoxically, this occurs even in the states with hundreds of thousands of seekers or refugees present in the state (see: Kolb 2008). As the Representative of the European Delegation in Croatia interestingly noticed (Frieh Chevalier 2012) in the case of the

Croatian decision makers, "they always tend to push the problems away until forced to deal with them."

Unfortunately, these attitudes of the elites have not been successfully altered in the course of reformation. Communicating closely with the MoI, the European Delegation met with other decision makers (the governmental representatives) from time to time, but this has not been very efficient. As the representative stated, they would declare commitment and then would just continue to ignore it (Frieh Chevalier 2012). Besides this, the EU has not sought to impact the domestic governments' position in any other ways. During the last eight years, the asylum system has barely appeared in the public domain; and when it has, it was not debated by the EU or the elites (but only by the MoI and the NGOs). During the process of negotiations and pre-accession, in public channels, the EU insisted on several key questions: market reforms, the reform of judiciary, administration, etc. On the level of human rights, the key concerns for the EU were issues like Croatian cooperation with the International Criminal Tribunal for Yugoslavia (ICTY), the issue of the return of (mostly Serbian) refugees to Croatia and the status of national minorities (Trauner 2011, 97–98). It appears that the ambiguous (and securitized) position of the EU has made its own position quite delicate. Asylum was discussed with stakeholders, but never in the public sphere. Except under the yearly reports (Chapter 24), the issue has never been examined in public. With the numbers of beneficiaries remaining so small, until recently,[195] the problem of asylum was virtually inexistent in the public too, thus making an issue irrelevant for the state itself. Outlined tendencies may be held to have affected not only the content of the law, but also the dynamics occurring in the phase of implementation, when the institutions needed to put in practice the measures they overtook. Positioning of the issue in such institutional surroundings – without its consideration on broader political levels – decided the institutional activities, policy preferences, value orientations and strategies of the key actors.

5.2.2 Domestic Institutions and the External Actors: Communication, Cooperation and Socialization

In the years that followed the adoption of the first Asylum Act, the institutions have commenced developing their own logic of functioning and implement given asylum norms.

195 Somewhat greater interest of the media is observable through the last 2 years (presumably due to increase in the application and recognition rates).

In the case of the MoI, departments and units dealing with the issue demonstrated to be quite active soon after the adaptation started. At the time of enforcement of the first Law, the MoI had already produced a good amount of work: it has had arranged for the opening of the reception facility, actively sought locations for a new facility, prepared documentation, arranged the equipment and materials for the process of recognition of asylum claims, etc. (greater details, see the speech of Filip Damjanović; in UNHCR et al. 2004). Once the Law was enforced, procedural steps were still burdened with problems (overviewed in Chapter 4); yet, the staff have been judged as seeking to improve and learn (Kranjec 2012; Kadoić 2012; Stakeholder A 2012; Stakeholder B 2012). In case of other ministries, the opposite occurred. The agencies that needed to prepare bylaws and programs necessary for the system to function have remained inert. Despite the MoI's and NGOs' plea to the ministries, they have remained uninterested for any (more proper) participation in reform. As a consequence, the administration commenced applying the rules without necessary intermediary links (i.e. bylaws and programmes needed for the adaption of the system to the needs of asylum policies) and has often exerted meaningless results or has not produced results at all. Quite similar practices continued in the later stages.

What created the difference? Seeking to induce a national response, the EU communicated demands and recommendations and supported it with significant pressure. As stated by the EU Delegation Representative (Frieh Chevalier 2012), pressure was needed in all of the areas. As we have seen in the examples stated under Chapter 4, recommendations seem to have positively affected the operative levels; yet, for decision makers they did not have the determinant effect – unless combined with pressure. However, the pressure of the EU to provide more concrete and especially more complex results has been recognized as quite inefficient when communicated to the government solely. In general, in obtaining more concrete results, the pressure from the EU (via reports and communication with domestic actors) has demonstrated more useful when it was combined with the direct approach towards the institutions (the case of the MoI), and less efficient when it was used as a single method, without a direct approach to the institutions (the other ministries).

Indeed, as later understood by the Delegation Representative and as visible in our results as well, early inclusion, close and direct communication and dense cooperation of the EU bodies with the institution responsible had a positive impact on the domestic response and activity in the area of question – most notably, the MoI. This has been a

consequence of the logics dictated by the placement of the asylum system in chapter 24, where the EU cooperated directly only with the MoI as the first institution responsible. By the same token, the lack of a direct approach to other institutions involved – i.e. the lack of communication regarding demands, needs of the system and the aims – left institutions uninformed and uninterested.

> The Ministry of the Interior, they were the ones at whom the burden was put to deal with this issue. So they had to deal with it… And what was very useful was that we had these two big twinning projects with the Netherlands… and these twinning projects enabled that the asylum system was developed in Croatia… They were really long projects… from which they got great support from experts and from which they had to deal with it… Other ministries, no, they were not interested to deal with asylum. And they had less pressure from the EU somehow because they were not the main ministries responsible. So because they were less pressurized from the EU they were not committed to it (Frieh Chevalier 2012).

Direct communication with the offices of the MoI, clarification of demands and recommendation, accompanied with continuous training and socialization with their counterpart services from the Member States may be all held to have assisted the authorities and staff of the MoI to understand what they were expected to do. The other ministries have been left destitute of such cooperation and channels of information and did not perceive the issue as significant. As explained by the Representative, when a direct approach was introduced, these ministries demonstrated they were not even aware of what their job was in the area of asylum.

> I think for negotiations in general, Croatia was not so willing to work on certain topics, asylum included. There was in any case people in the Ministry of Interior, people in charge of negotiating the accession that understood that, in any case, if there was a benchmark on asylum, it had to be met and they had to produce results… Until we established a direct contact with them [other ministries], for them it was just something they just didn't have to deal with… For instance… strangely enough, until very recently… the new minister of Social Affairs did not understand that this was an issue that she had to deal with. And this is very surprising that this is the reality (Frieh Chevalier 2012).

In terms of a rationalist perspective, proper communication of conditions (clarity and credibility) enables the actors to understand what they ought to do and how the product

will be evaluated (and thus rewarded or not). In this sense, it may be assumed that detailed communication of demands has contributed to the overall performance of the conditionality approach (Schimmlfennig and Sedelmier 2005, 12). Besides the understanding of what the institution is expected to do, it may be held that close communication – with frequent feedback and important pressure from the EU – made the MoI perceive that domestic progress in asylum and migration issues would be considered an important issue for the Croatian prospect of membership (i.e. holding conditions set in the *acquis* more or less credible). Having been held as the key responsible body for the entire Chapter 24, failure to provide results and risk of reward would be rather expensive for the institution. Also, as emphasized by the stakeholders, the attitude of other ministries has also had quite a rational component: their financial interests. As reported by an informed stakeholders (Coordination for Asylum 2011), the ministries – and especially the Ministry of Education and the Ministry of Social Policy and Youth – often sought to avoid overtaking financial responsibility that was demanded from them. This has not necessarily precluded rational governance, given that inertia led often to greater costs than savings – i.e. dependence of beneficiaries on social welfare instead of self-reliance facilitated by active integration policies. However, just like at the level of legislative planning that we have observed, the state and it ministries simply opted for the simplest solution – ignoring the problem and avoiding proper planning as well as a serious approach to the issues. According to the Representative of the European Delegation, the government (the ministers) assumed they would not be sanctioned for such behaviour and thus found it a simple solution.

However, the logic here cannot be reduced to mere rationalist assumptions and the logic of reward. While material and rational interests may be particularly visible on the level of Croatian elites (as we shall discuss below, also related with the lack of persuasion directed towards the elite), this is not the sole or key reason on the level of implementers – and especially not as we move further below towards operative levels included in the implementation. As the theory advises (see: Börzel and Risse 2003; Checkel 2001; Rose 1991), close communication, training and the sharing of values enable actors to get persuaded about the appropriateness of the norms which may have more profound and long-term effects than the mere logic of consequences (reward or sanction). Having accepted the norms as their own, the actors tend to have an internal motivation to provide for their proper implementation and the success of the reform. Indeed, in our case, when

reflecting on the system and the measures, the operative levels – the MoI[196] – have been noticed to take the norms as their own and seek to provide space for their proper implementation. As we have seen in the previous chapter, when other bodies would fail to provide products, these actors would often seek to find a leeway to push for the norms to work.

Indeed, whereas in many cases (as reported) this has been limited only to the procedural correctness of the MoI;[197] where socialization and/or circumstances allowed it, the officials were found to seek for answers on how to implement solutions as to provide for better quality of refugee protection. In many cases, a rather important push for proper implementation (or even modification of the existing legislative solutions) came from the operative levels which sought to impact the system above. As the staff has informed us, in many occasions, they have proposed solutions that they saw necessary or solutions they came to understood as better fitting to the needs of the system and beneficiaries – often in communication with partners from the other states. Among others, the staff emphasized the need to find a solution for accommodation after the period of state funded accommodation was over; the possibility to accommodate seekers and persons under protection in the capital for easier integration and access to services; the possibility to build integration houses to avoid isolation; the need to provide longer language training, etc. (Coordination for Asylum 2011; Ministry of Interior 2012; Vučinić 2011).

In 2011, the problems occurring in the system have been communicated (by the staff) to the new Minister of Interior (Ranko Ostojić, Social Democratic Party), who then publicly presented these to the other stakeholders and the high deputies of the EU and the UNHCR. In his speech at the conference on the integration and inclusion of persons under protection in Croatia, the Minister presented a number of issues that the stakeholders have been struggling with for years and warned on the need for solutions (see: Konferencija 'Integracijske politike i prakse u sustavu azila u Republici Hrvatskoj: Uključivanje azilanata i stranaca pod supsidijarnom zaštitom u hrvatsko društvo' – transkritpt rasprave). Stating he decided to discuss the issues openly to enable the problems to be solved, he invited participants to get included in the common efforts to enable change (read: push for

196 Some individuals in other ministries have also come to be interested in the issue and cooperated with the MoI and NGO. This, however, probably relates more to individual (accidental) circumstances than other mechanisms. As reported by some of the stakeholders (Bužinkić 2012) such occurrences presumed that some individuals are simply interested in assisting the beneficiaries due to their personal motivation.

197 Consistent application of the given norm without consideration of its content.

the change in the inert system). This can be interpreted as a method of the MoI (and the operative level dealing with the system) to seek for last resort solutions to give drive to the system (institutions) to work. Indeed, strategies used by these have been various. During several years, the MoI sought to plead with the ministries to work; yet, this has not given results. Having the strategy void, the MoI and NGO partners aimed to impact them from the top – seeking support in the top governmental level (from Slobodan Uzelac, Independent Democratic Serbian Party Vice Premier in the Government of Premier Ivo Sanader) which then communicated duties to the ministries. Yet, this has not worked too (stakeholders; in Coordination for Asylum 2011). Among other strategies, the MoI also asked the UNHCR to seek to impact other ministries – also pointing to the importance of the external authority, as social mechanisms of persuasion (Jasna Barberić, Deputy Representative of the UNHCR in Croatia; Center for Peace Studies 2012). When none of this worked – and unlike in previous years – the MoI finally decided for open public deliberation (in front of external partners, including the EU representatives). This has probably been enabled by the fact that the government was still new and thus did not have costs for its reputation (i.e. the responsibility pertained to the former government of the Croatian Democratic Union).

However, and equally important, the actual product depended also on the position of the particular issue in the system (and state's interests) and the values of the actors in question. One should not forget that in the important issues the MoI has remained securitized, thus not necessarily sensitive for refugee protection issues – especially if they conflicted with vital state interests. Indeed, as we have seen in Chapter 4, making the MoI the key responsible body for the overall system of asylum enabled the occurrence of another interesting tendency: differential functioning of the MoI across diverse areas. Whereas in the issues of entry and recognition, the institution nurtured state protective policies; in the domains of reception and especially integration, the MoI became the key body to secure functioning of the refugee protection norms. Positions of the main actors reveal quite interesting features.

When the authorities of the MoI – at all levels – were involved in the questions of access and the issues which determined the status of an immigrant (entry, stay and recognition); their key concern was how to preserve the state from great immigration rates. Unlike the radical strand in the security organs, the MoI's services did not view (asylum) migration in terms of a terrorist threat or a menace for public health – or at least they did not discuss it publicly. In several occasions, the MoI has emphasized the need to discern

between terrorism and migration.[198] Nevertheless, whenever the officials would discuss the issues of entry and recognition, their first concern was how to preserve domestic resources from what was defined (or perceived) as a great asylum abuse. Even with time, when the official position of the MoI changed from the exclusivist position (that was reducing the entire refugee issues in Croatia to economically motivated settlement) to a somewhat more relaxed position, the concerns of the stakeholders and implementers remained the same. While the approach was somewhat relaxed and recognition grew, when dealing with the issues determining the status of immigrants, the officials were still troubled with the concern that a large part of asylum immigration is nevertheless false.[199] The crucial role of the institution, as seen by them, was still centred on the question of combating irregular migration amongst asylum seekers and preserving the state from the costs arising from it.[200]

On the other hand, when the actors of the Ministry were ought to provide services related to reception and integration, they did not seem to be hampered with such concerns. Instead, the staff – often from the same unit or the same individuals[201] – has been emphasizing the need to provide the beneficiaries with a proper level of rights. The concern for state interest and securitization here was much less pronounced and the issues

198 "Local communities were not adequately informed and notified about what the opening of such a centre in their local community would mean. What citizens usually think about people who apply for asylum or who will become asylees is that these are criminals or carriers of various infectious diseases, or people that could somehow endanger their local community… Obviously there is a fear of the unknown. In two years since the entry into force of the Asylum Act, we did not have a single minor charge against asylum seekers, nor did we have anyone who is infected with an infectious disease. However, there are always stories that circulate among the people" (Miroslav Horvat, Head of the Reception Centre until 2011, in Bačun 2006).

199 This represents quite a common spread view amongst the services of interior and security across the Member States. As warned, the trouble arises from the fact that there are the seekers that claim protection while they could hardly qualify for (narrowly defined) grounds for protection; yet also from the fact that the procedures today are so strict that persons who could legitimately be granted protection might not necessarily be considered admissible. Besides this, having reversed the way that the Refugee Convention should be applied, the national bodies seek to find firm proofs for the persons' reasons for protection. In the atmosphere of great suspicion and lack of full understanding of the complexity of the issue, seekers' reasons may be interpreted false while in reality there might be serious grounds for protection. This will be tackled more in Chapter 6.

200 The officials (in Coordination for Asylum 2011) described the task as rather complicated, due to the fact that persons who actually need protection and the individuals that ask for asylum merely to gain entry or stay in the country often come in the mixed flows and often hide their identities and the real facts.

201 Save for the staff in the Aliens Centre, which, as we have seen, held radically securitarian position.

of human security become more represented. In this domain, the actors from the MoI critically reflected on the lack of prerequisites from the state and the functioning of the other institutions. Unlike in the questions of entry, where the authorities were concerned about how to protect the state and asylum system from real or perceived abuses, here the dominant preoccupation seemed to be the question of how to protect the system of refugee protection from the poor conditions offered by the state.

How may we explain such an interesting difference? As it appears, the reasons can be searched in two aspects: socialization (and empowerment of different agents of socialization) and the space for action available to the state officials. In the areas mostly linked to more broad policies of controlling migrations, which were under dominant impact of domestic and external state actors (and with the limited participation of the human rights organizations), security concerns dominated quite clearly over the policy area and positions of the actors involved. Outside of the specific asylum framework, the officials and the authorities of the MoI (and security organs) were regularly linked with their counterparts in the Member States and some non-Member States – where the policy area demanded cooperation, as set in the goals of the EU external policy of migration (see: Trauner 2011, 64–106). Besides these, an important channel of communication and cooperation was developed through the Council of Ministers and regional cooperation initiatives. These actors, institutions and meetings, as we have seen, were generally reported to focus on the issues of state security and combat against asylum system abuses, with the main concern being prevention of the abuse of asylum system as a method of entry and how to control the movements of immigrants. Whereas some projects involved communication, training and cooperation of the officers and authorities with some of the human rights organizations (most notably, the UNHCR and in last years, the CLC); these were limited to specific (timely constrained) projects and cannot be compared to the dense network of cooperation and communication with the counterparts from services of interior and security of the Member States (and the Council of Ministers).[202] On the other hand, in

202 According to Goranka Lalić (2013), during the seminars held by the CLC, these officials and officers demonstrated interest for topics, but it is questionable how much can be done in seminars (several days) in terms of knowledge and socialization. Where socialization from NGOs and international organizations (UNHCR) cannot be boiled down only to trainings, but also a variety of occasions where communication has been occurring (in meetings, projects of assistance and monitoring, advice, etc.); comparatively, officers from the Member States' of the EU had a much greater density of contacts (including officers from other countries, such as the Netherlands, permanently present for assistance

the areas of integration and reception, the stakeholders were more or less free from state intervention and have cooperated with the wider networks of both their counterparts in the other states, as well as human rights organizations. As discussed above, here the actors demonstrated a greater level of refugee sensitive concerns.

Regardless of the area, the actors have importantly reflected on the inputs in communication with their partners. Key concerns and solutions they puzzled were quite often reflected in relation to experiences and solutions proposed from their socializing agents. In their reconsideration of the domestic context, they tended to demonstrate an expectation that migration and refugee realities (migration and refugee flows, their patterns and causes or potential problems, etc.) will reflect those that they have learned about from their partners.[203] In consideration of the implementation of policies and solution, they tended to consider domestic needs based on the shared advices and solutions applied in other cases (ways to deal with the cases, interpretation of the obligations in *acquis*, potential solutions to the problems, etc.). The typical phrases used in these debates would consist of "our partners warned us" or "our partner explained" or "our partners applied" and similar.[204] On the level of units and departments, the greatest number of the actors has, as a consequence, started to perceive particular interpretations and the meaning of the norms as their own. Indeed, as advised by the constructivist literature, the effects of socialization agents are expected to be the greatest in the areas where the rules and interpretations are complex, and especially where the implementers lack knowledge and experience. This was certainly the case with the entirely novel system of asylum in Croatia and our results corroborate this assumption.

On the other hand, the lack of communication with other institutions and their complete exclusion from the system – by the EU and then continuous further self-exclusion – has left them uninformed, uninterested and inert. As we have seen, the competent authorities (agencies and units in the ministries) have been described to often lack basic understanding of the asylum issues, the needs of the system and beneficiaries and their duties. Procedural

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for a long period of time in the offices of the MoI). Lalić also estimates that restrictive attitudes might be formed particularly in these channels of cooperation.

203 The Slovenian experiences in particular have often been cited by domestic officials. Besides the cooperation needs due to the common border and the proximity of the experience, this is probably also pronounced due to the fact that Slovenian partners have been important informants for Croatia within the CARDS project.

204 Observed during the interview (Vučinić 2011) and meetings with the stakeholders (Coordination for Asylum 2011; 2012).

levels that started to deal with cases of refugees arriving at their desks have started to learn what they need to do (especially under continuous efforts of the NGOs to educate them and provide them with information), while the higher authorities who needing to issue regulations, directions and programs have often been reported to lack understanding and interest for understanding their role and have ignored their obligations.

How have these institutional and social factors interplayed with the state interests (and actions) and with the strategies of the EU to produce concrete results in our four fields? In particular, how does their interplay explain the progress in diverse areas? As we have seen, in the years that followed the adoption of the first Asylum Act, two distinct state responses occurred. In the areas where success of policies demanded retraction of governmental control over some of the traditionally most defended areas of state sovereignty, the government (or its factions) demonstrated reluctance to retract (i.e. recognition policies and potentially also migration control policies related to access to procedures). On the other hand, in the areas where the success of policy depended on the government that needed to provide positive (additional) input to allow for its proper implementation; the government (or its factions) remained inert (questions related to reception and integration). However, in the latter, the state and the institutions have (at least until recently) remained unchanged, while in the former (certain) progress occurred. How can this be explained? As we shall see, this may be the product of the constellation of several dominant factors: (a) state interests and strategies and (b) strategies of the European Union, which affected the government in diverse ways across different issues, and created space for the (c) operational level to function in dissimilar manner across different fields.

5.2.3 European Demands, State Response and Institutional Adaptation

As stated by the European Delegation Representative and as evident from the reports, the EU needed to pressurize the government in all of our four areas of the asylum *acquis*. Nevertheless and despite this, differential results occurred under each of these, both in terms of the institutional responses and the overall products. As we are about to see, the explanation seems to lie in the particular combination of the state interests, various strategies of the EU (backed up by diverse levels of surveillance and pressure) and the variety of (interest and normative) positions of domestic actors, all of which created for a range of responses across the areas.

In the case of qualification and procedures for granting asylum, for a long time we have seen, the system has not yielded any more significant product. Instead, with rigorous interpretation of the key international and European framework, it managed to maintain the stable (previous) equilibrium and preferred state of affairs – i.e. basically zero recognition rate. Where the EU (Commission) did not directly reflect on domestic criteria for granting protection (i.e. the recognition rates); as we have seen, it was determined to demand improvements in the procedures for granting asylum: improvements in the first instance procedures and independence of an appeal body. As we have seen, it took quite a lot of insistence from the European Commission to have the Appeal Commission's independence increased. Secondly, the European Commission insisted on the socialization and training of decision makers and the continued investing into twinning projects. The government demonstrated quite reluctant to lose its prerogatives here. As judged by the Head of the second Appeal Commission Vanja Pudić, whereas the government has not been satisfied with the loss of control; it could not do much about it. A crucial prerequisite for the working of the Commission, as estimated by its Head, was the support of powerful authorities – the UNHCR and the EU[205]: "…the MoI is mad at us. But they can do nothing; we have support from the EU and UNHCR" (Pudić 2011).

As it arises from the reports collected among various stakeholders, despite political pressure on the outcome of decision, the operative levels (Asylum Unit, MoI) were still gradually getting professionalized since the system was first installed. Once that pressure was diminished (as stakeholders believe), these levels could start producing actual products – i.e. provide refugees with protection. As already stated, we can most probably expect that the new practices installed within the Appeal Commission have also impacted on the processes in the MoI, where we have witnessed a gradual increase in recognition rates followed with the change of dialogue (forsaking the discourse on the economic character of the entire population of seekers in Croatia). While it may be argued that progress was induced also by developments in the procedural aspects; it appears that without political change there would hardly be greater effects. It may be expected that the authorities would have had quite a difficulty to explain inexistent recognition rate in the first instance after the new Appeal Commission ended such practices. In that sense, the Commission's new role was not only practical but also symbolical – clearly demonstrating the suspicious

205 The Head also pointed to the importance of the learning process enabled with assistance of the UNHCR and partners from the Member States' appeal bodies.

nature of the previous system of protection in Croatia. Building partial institutional guarantees (without one of the key elements of the asylum system – i.e. an effective appeal system) and exchanging the purpose for the mean, the system managed to function for a certain amount of time and obtained some positive evaluations during the initial course of adaptation (i.e. for the efforts demonstrated in the building of the asylum institutions and development of procedural segments). However, such products have not been acceptable for the key international actors in the long run. The UNHCR (2008) emphasized distrust over the recognition rate and EU authorities supported the new practices of the Appeal Commission. Commenting on the change in recognition rates in the MoI, a stakeholder expressed the belief that the top decision-making levels "pushed as far as they could with such policies" (Bužinkić 2012).

Besides this, one may assume that two additional aspects assisted (political) change. Firstly, the initial fears of the stakeholders, assuming that the system will be "flooded" with the seekers, have not come true. Instead, it has become evident that the numbers of seekers are still quite limited (and controllable too). It may be posed that it might have been more expensive (for the reputation and expected prospects for reward) if the state continued with evidently unexplainable zero recognition policies than if it had allowed for recognition of a limited number of claims. Indeed, with the rise in recognized protections – even with such a small number of protections given – and with the demonstrated commitment in (some of) other areas (such as reception), the state gained more positive evaluations from external actors (and prior to all, the EU). Also, other actors (such as involved non-state organizations) have been tranquillized to a certain degree too. Whereas some of these stakeholders still find the rates restrictive; as we have seen, the MoI explains this is primarily a product of high secondary movements. At present, their attention has moved to other matters (most notably, to issues of integration).

In addition, change may also be linked to perception of the credibility of reward from the European Union – increasing trust of the authorities that the overtaken responsibilities will be followed by actual membership. At the moment when the system was being introduced, domestic elites were not yet assured about the products of the pre-accession for Croatia. As regards to the asylum system and migration, the President of the Committee for National Security (Ivan Jarnjak, Croatian Democratic Union), for instance, expressed scepticism over the "real" goals of the EU and the Member States in introducing these policies to Croatia. Referring to the above mentioned (Great Britain's) proposal on the introduction of transit centres in Croatia and the neighbourhood, the parliamentarian

suspected the aim of the EU might be to make Croatia become the transit centre for asylum seekers and refugees, while making sure the country stays "for a long time outside the EU" and the frontier zone with "the Schengen borderline practically becoming the iron curtain" (Croatian Parliament 2003, 37). The parliamentarian thus demanded strong control of the border and rather careful implementation of the EU asylum *acquis*. Whereas such attitudes have not been publicly discussed afterwards, it may be held that the insecurity over membership – assisted with the complicated process of the pre-accession – negatively affected commitment in this area (evidently considered highly expensive). The (assumed) alleviation of the pressure from the highest political authorities in the past years could be thus also explained in terms of the rising credibility of reward following the later stages of the pre-accession process.

In the area of reception, there was no specific resistance from the government. Instead, it was characterized by the high activity of the MoI and the apathy of the government, resulting with the lack of a reception facility and great expenses for the solutions installed. For reminder, the local antagonisms posed great troubles for the MoI in finding permanent reception centres, making the MoI consider using reception centres in the capital. However, due to the lack of its own facilities in Zagreb, the MoI used its facilities in Kutina and started searching for a location in Zagreb. The key problem appeared to be the unsolved property issues between the state and city. The government was asked to assist; yet, it did not respond. Whereas in general the key concerns for the elites in asylum have been of the economic nature; financial issues did not represent the key problem here. Quite the opposite, the inertia of the government meant non-rational management of the states' resources: i.e. delay with the initial project causing loss of CARDS funds of almost a million Euros; and, more recently, the MoI being forced to resort to an expensive solution (renting the hotel in the capital).

As judged by an informed stakeholder, the government's behaviour was a product of lacking interest for asylum issues. As the informant illustrated, had locations in the capital been accessible, they would "surely be used for something else, a shopping centre or something, surely not for the reception centre…" (informal information, state official, October 2011). The government did only the most necessary: when it became obvious that the EU would not give up on its demand to provide for a proper reception facility, it was forced to supply financial assistance for the project (i.e. about a million Euros lost from CARDS). Besides this, it has not done much in the area. Once the reception facility was built, the responsibility was again consigned to the MoI which was performing quite well

in the area (as judged by the stakeholders). Until present, however, the government has not demonstrated interest for a long-term solution. Nevertheless, the EU did not demand greater steps and the issue is still left to the MoI to deal with alone (and within its own budget).

Quite a different situation has been observed in the case of the seekers staying in the Aliens Centre. As we have seen, even in recent times, the asylum seekers (and other beneficiaries) still reported to be treated without sensitivity towards their rights. The authorities in the Centre have been perceived as professionalized yet severely insensitive towards the idea of human rights. The Union's authorities demanded that the MoI stops sanctioning irregular entry of asylum seekers, but did not refer to the conditions found in the detention centre.[206] Besides in the case of unaccompanied minors, it has not commented on the issues of treatment of immigrants and the asylum seekers. After the persistent and long term insistence of the CLC demanding that the authorities end the sanctioning of asylum seekers entering irregularly and under significant pressure of the EU, as we have seen, the situation improved. The persistence of the NGO thus enabled the informing of the European Commission and induced it to place significant pressure on the authorities. Yet, the overall treatment (approach to human rights) has not been tackled.[207] The explanation may be reached in two directions. First is the fact that the Centre was generally observed to lack surveillance of the non-state actors and the fact that (besides the dissatisfaction of the beneficiaries), no one knew what occurred in the Centre on a daily level (Amnesty International 2004). Some (other) non-state stakeholders held that the detention centre is not an ideal place for asylum seekers, and that there are much more urgent issues in the Croatian asylum system. Also, they described the domestic detention centre as quite advanced in comparison to many other states in the region or in the Members States themselves. As stated by a non-state actor, having seen that there is no serious breach of human rights (such as, for example, violence reported in some other states), there are "worst things than spending one month in Ježevo" (Stakeholder A 2012). Quite a similar attitude was observed in the case of the Representative of the EU

206 During the interview, the Representative stated she was not familiar with the dehumanizing discourse that the Head demonstrated.

207 As a legal representative, the CLC had good occasion to be informed over the practices of sanctioning the asylum seekers (and its frequency).

Delegation who also emphasized that in comparison to some other states, Croatia has quite decent conditions in the Aliens Centre (Frieh Chevalier 2012).

Furthermore, unlike in the fields of reception and qualification procedures, where the Union's authorities demonstrated quite a significant amount of pressure, in questions relating to the entry of asylum seekers to the territory (i.e. access to procedures) the EU undertook considerably less intervention. The pressure was exerted in the initial period (when the EU warned on the wrongdoings and demanded Croatia to secure access to all asylum seekers); yet, it was not practiced afterwards (at least publicly). The European Commission's reports demanded further training but have not reflected on general practices. As we have stated, the Representative of the Delegation announced the reports it has obtained from the non-state actors were "not negative". As reported by stakeholders, they assumed there was progress, but the lack of their ability to control the field work left them unsecure over the products. We may assume that the lack of insight in the daily practices from an impartial body made the non-state actors uninformed about the treatment of refugee rights in the given case, and as a result, also the Union's officials who based their evaluations on these information. Without proper control, recommendations and pressure had only limited results here, as the key bodies estimating success were those that needed to implement the requirements in the first place (i.e. the executive). Despite the assumed progress, we must be aware that the government demonstrated quite clear motivation for severe control of the arrival of seekers. Such attitudes overlapped with those of the greatest part of parliamentary elites (and especially of the former governing party, and security-oriented decision makers). Much like in other states, this motivation had a clear rational component visible in the discourse of the elites (i.e. low rates of immigration of refugees and other migrants). It may be believed that the ability of the state to obtain preferred results (reward) without causing itself extra pressures (in rates of applications) has negatively affected the right of the seekers to obtain access.

On the other hand, one cannot disregard the differential treatment that the EU has demonstrated *vis-à-vis* migration control aspects and the refugee protection issues (which conflict this goal). Whereas the Union has generally claimed that its policies seek to provide control of irregular migration while making sure all refugees get access to the procedures and protection, its actions have not demonstrated this. As we have seen, during the past two decades, it has invested vast efforts to create a (global) network of migration controls which have rather evidently endangered the ability of refugees to access protection. In doing so, it has opted for the most controversial arrangements: as we have

seen, control points included regimes like Libya, Morocco or the Russian Federation. Some of its Member States have demonstrated to engage in the most various activities to prevent asylum seekers reaching the territory. The Frontex (European External Border Practitioners Common Unit) openly defines refugee movements as a risk that must be efficiently tackled (i.e. prevented; see Frontex 2012, 11–13). With this in mind, one may hardly expect that the EU has the authority (and strength or will) to make sure that the candidate states (including Croatia) act diversely in this field. Having invested enormous funds in the maintenance of borders and having national authorities (and officers) often socialized in severely securitized practices; for the refugee rights to be properly protected, the EU should in parallel secure control over the daily functioning of the thousands of officers at the borders and in the territory. Clearly, such policies would not have support in the Union. The lack of control over the area and the competence given to Frontex sends a clear message about present European policies and the goals in the field. Despite the fact that some of the institutions (i.e. the Commission) do not show satisfaction with such developments, it appears they are too weak to reverse such dynamics. When the North African refugee crisis in 2011 and 2012 resulted in the strengthening of border controls and the prevention of entry for a great number of persons fleeing Africa, the European Commissioner for Interior Affairs Cecilia Malmström showed great dissatisfaction with the policies of immigration and asylum in Europe:

> In our immediate vicinity, various peoples felled dictators and demanded human rights. This was a major event. So what did we say to these people who were inspired by our values? That we were in a crisis and that we were afraid of 'biblical waves' of immigrants… Note that only 4 per cent of those who fled Libya came to Europe! Our attitude brought about a deterioration of our relations with these counties and created a suspicion that is only just beginning to be surmounted (Malmström in GaliaWatch 2012).

While the Commissioner stated that the EU needs immigration and strongly criticized the policy of deterioration of human right in the EU (in GaliaWatch 2012), the EU continues to build a shield around Europe, investing large sums of its budget and efforts into options that prevent immigration movements (including refugee movements), rather than finding proper solutions to tackle this problem (Lavenex 2009). In our case, between 2001 and 2011, the EU has provided Chapter 24 with 44 projects offering technical, administrative and technological assistance and training (Ministry of Interior 2010). Out of

these, two have been directly related to asylum, one has been dealing with asylum issues and irregular migration together, while the greatest part of the other projects were invested in security components – immigration control and police cooperation (prevention of crime, corruption, drugs smuggling, etc.). 21 projects have been directly aimed at the strengthening of borders, visa regimes and management of irregular movements.[208] In terms of funds, over 39 million Euros have been allocated to these areas and less than 2.5 million (directly) to asylum.[209] Explaining such allocation, the Representative of the Delegation in Croatia (Frieh Chevalier 2012) stressed the diverse nature of the projects and emphasized that not all were related to twinning. Indeed, it is fact that one may hardly compare diverse components of the projects or the needs of these two fields. However, the vast financial needs of the control component arise from the position it received in the EU in the first place. Obstinate and expensive mechanisms of migration control – designate

208 CARDS 2001 Integrated Border Management – Inter-agency Cooperation; (1.800.000,00 €); CARDS 2001 Integrated Border Management (500.000,00 €); CARDS 2002 National Border Management Information System – Phase I (2.500.000,00 €); CARDS 2003 National Border Management Information System – Phase II (1.900.000,00 €); CARDS 2003 Continued Support and Capacity Building for the Border Police Directorate (500.000,00 €); CARDS 2003 Capacity Building in the Area of Illegal Migration (1.150.000,00 €); CARDS 2004 Modernisation of the State Border Surveillance (8.000.000,00 €); ACBF 2004 Assistance and Monitoring of CARDS 2003 "National Border Management Information System (NBMIS) – Phase II (200.000,00 €); PHARE 2005 Preparation for the Implementation of the Schengen *acquis* (4.070.000,00 €; PHARE funds: 3.300.000,00 €); PHARE 2006 Blue Border Surveillance (1.021.668,51 €); IPA 2007 National Border Management Information System – Phase III (5.430.275,37 €; IPA funds: 4.118.246,03 €); IPA 2008 Blue Border Surveillance (4.600.000,00 €; IPA funds: 3.450.000,00 €); IPA 2009 Modernization of State Border Control (1.483.000,00 €; IPA funds: 1.112.250,00 €); IPA 2010 Integrated Border Management (7.645.000,00 €; IPA funds: 5.833.750,00 €); PPF 2006 Developing the readiness to implement SIS II (520.000 €); PPF 2006 Preparation for the Establishment of the "S.I.R.E.N.E. office" (130.000 €); PPF 2006 Developing the readiness to maintain NBMIS application in operational condition (85.500 €); PPF 2006 Support to the establishment and development of the Croatian Visa Information System and preparations for integration into the EU VIS (160.000 €); IPA 2010 FFRAC Support for adaptation of the Croatian IBM concept with the EU IBM concept (100.000,00 €); Regional CARDS 2003 Support to and Coordination of Integrated Border Management Strategies (2.000.000 €); Regional IPA 2007 Regional support to the update, implementation and monitoring of the Integrated Border Management strategies and related Action Plans and development of regional and cross border initiatives (1.500.000 €).

209 CARDS 2001 Reform of Asylum (1.149.500,00 €); CARDS 2004 Reform of Asylum II (1.127.640,00 €); Regional CARDS 2002 Establishment of EU Compatible Legal, Regulatory and Institutional Frameworks in the Fields of Asylum, Migration and Visa Matters (3.000.000 €). Two projects also aimed at the protection of victims of trafficking and unaccompanied minors: IPA 2009 Capacity Building in the Field of Fight against Sexual Exploitation and Sexual Abuse of Children, and on Police Assistance to Vulnerable Crime Victims (1.613.000,00 €; IPA funds: 1.369.000,00 €); IPA 2011 Improving Capacities for Minors and Other Vulnerable Groups in the Aliens Centre (2.527.323,00 € IPA funds 2.148.225,00 €).

that this area has quite an evident priority in Member States and the EU (despite the fact that refugee protection issues have increasingly gained importance). Indeed, having in mind that the cooperation with Croatia (and the Western Balkans) commenced due to the EU's and Member States' aim to control irregular migration, it may be understood why such funds needed to be placed in these issues.[210]

Whereas the three observed areas are now considered by the Union to be solved (Frieh Chevalier 2012), the area of integration is considered unfinished. Here quite different dynamics take place. In general, the government and decision makers allowed for the most rudimentary steps (legislation, basic institutional setting, budgetary allocation, etc.). More demanding tasks were simply ignored by the leaders. Support was lacking in basically all of the questions where the state needed to provide additional actions. However, whereas in other areas, the MoI managed to provide for the functioning of the system; here – where it needed to function in the interdependence of other institutions – the actions failed. Dysfunctional institutions, without (proper) pressure from above, remained inert. Having the duty to implement the laws – yet, often lacking the proper intermediary links (bylaws and programmes), staff and training for the tasks, etc. – the administration carried out partial results. The operative level has showed the lack of information, interest, competence or commitment for the issues. As we have stated above, dynamics occurring at the operative level may be considered a consequence of their exclusion from the system since the beginning. Unlike the MoI, here the officials have been expected to implement the law and produce results; yet, they have not been communicated and educated about their tasks. This was supposed to be done by the state; however, the state has failed to do so. The state has actually acted quite similar as in many other areas where it did not have direct interest (reception, etc.); yet, here that made the system non-functional since the area demanded cooperation of various state services. Despite efforts of stakeholders to get the authorities interested in the issue and regardless of the fact that the area has been evaluated as poor by the external actors, such development has not occurred. Once it has become clear this would not occur (after 2010), the EU decided to approach directly the ministries involved (other than the MoI). As we shall see later, some change is reported to have occurred.

210 Such a case was found also in the other (former) candidate states. Commenting on the reallocation, the UNHCR (UNHCR, 145) stated that the asylum issues in ten former candidates have received rather modest funding while "the bulk of funds has been allocated to border control, customs, and the fight against organised crime."

> Normally it should have been up to us, an external body to establish direct contact with the one ministry and tell them 'you have to deal with this population'. It should have been the message that the government should have given to other ministries. But it did not come or they did not do it. So we did what we thought we should be doing to get the message through. But it's not something that in principle we should have done. It should have come from Croatia themselves, not from us (Frieh Chevalier 2012).

What explains the behaviour of the government? As we have seen, decision makers demonstrated that their positions and actions were motivated by the expectation of reward. When discussing how to formulate the interests of the state, they have always referred to EU membership: the task was to find a domestic position without putting at risk the prospect of reward. At the same time, the fact that the elite sought approval in the EU presumes that the reputation costs that could have arisen from the failure of reforms should have also been an important motivation for the actors. Why have these failed when the EU demanded action? As we have seen, the rationalists advised us that the effects of demands (conditions) may be linked not only to the costs and benefits of policies and measures, but also the clarity and perception of the credibility of demands. This presumes that the actors need to be well informed over what is needed to be done and need to believe that reward (or sanction) will be given based determinately on the performance of the system (and not some unrelated political ploy or other reasons). As reported by the Delegation Representative, the government was well informed on the need to apply the asylum *acquis* properly in order to obtain results. As apparent from the analysis, decision makers tended to react only when it has become quite transparent that the EU would not give up. In many occasions this meant continuous efforts as well as insistence from the side of the EU. Led by the same perception, the Representative explained the conundrum stating that the government has remained inert when extra activity necessitated to be done because it has estimated that the EU would not insist on the issue.

> I think the pressure was very clear on what they had to do if they wanted to meet the benchmarks of asylum especially; if they wanted their system to comply with asylum *acquis* and that is the best practices within the EU. So it was very clear what they had to do. But for some reasons, the government didn't put enough pressure on their ministries to react… It was part of all the minutes of meeting that we had within the CARDS project. To say that Ministry of Education, Ministry of Social Affairs should commit as well to what they were supposed to do

> on the integration of refugees. And they didn't do it. So it was also clear in our negotiations in the headquarters and between the Croatian government… I think they thought we would drop it… I think there is also a part with the agenda issues like that one that they expect will go out of the agenda after a while…. Like human rights… So, the European Commission insists on it and they just expect that we deal with the most important things, according to them. But somehow we didn't drop it from the agenda (Frieh Chevalier 2012).

Translated to the language of rational institutionalism, the fact that the government did not assume that rewards will be dependent on its actions presumes it has not perceived the condition as credible. This may also be affected with the timing of the reform and negotiation phase. Whereas research demonstrated that proximity of membership motivates candidates to perform better – i.e. the greatest efforts on hard reforms are often done in the later stages when the candidate is safe about gaining reward (Schimmelfennig and Sedelmeier 2005, 13) – too short time for the reform can hardly work on behalf of the issue. More precisely, while it appears that greater efforts did indeed occur in the later stages of negotiations;[211] at the same time, insecurity about the date of accession could have assisted in keeping domestic actors motivated for reforms. As Bernard Steunenberg and Antoaneta Dimitrova (2007) found, in the case of former candidates, a pre-established date of accession negatively impacted the credibility of conditionality, as it sent the message that the system's performance will not be the key criterion for gaining membership. We may agree that growing security over accession, unconditioned by success in our area, and presumably occurring in the last phases of negotiations, could hardly work on the behalf of (already lacking) interest of the government for the issues of asylum and integration of persons under protection. The fact that communications of the EU were already quite affirmative at this stage might have made decision makers perceive that the mission was already fulfilled just enough to satisfy Europe in this segment. With fairly positive evaluations on the other issues in Chapter 24, decision makers had even less motive to be bothered about reforms in the integration issues. However, besides this, the shortage of time that the EU (or the Commission) felt in this area also affected its ability to persuade the actors dealing with the issue to perform properly. Indeed, as visible from the previous results, the insistence over time assisted progress. Unbroken doggedness and pressure on the government in the reports given by the Commission (continuously

211 This occurred especially after 2006/2007 and may presumably be linked to the rising credibility of reward induced by the official opening of negotiations.

underlining the same crucial demands) and parallel intensive work with implementers – appears to have been effective. In contrast to other areas; this did not occur in issues of integration and the rights of persons under protection. As asserted by the Representative, there was too little time for this area to yield greater results (Frieh Chevalier 2012). Indeed, with more determinant recognition rates only in the past three years, the effects have become visible quite late. Having the reform in this area basically overlapping with the time of the closing of Chapter 24, there was indeed not much time for the EU to act. The first report demanding actions within integration issues was delivered in 2009 (European Commission 2009, 56), while in 2010 the Chapter was closed.

However, important conclusions about conditionality arise from this finding. The fact that Chapter 24 was closed only several months after the last legislative changes were introduced – and particularly before having secured that important demands (from the *acquis*) were satisfied – demonstrates that the government had rightly perceived diminished credibility of the European threat. In Common Positions on Chapter 24 (European Union Common Position 2010, 5), the EU noted that the advancement made by Croatia has so far met the criteria set in the first closing benchmarks which enable Chapter 24 to be closed.[212] The EU (European Union Common Position 2010, 5) still invited Croatia to carry on with its preparations to be able to "fully implement and enforce the asylum *acquis*…" making sure that "sufficient administrative and institutional capacity for the correct treatment of asylum seekers…" are in place However, the lack of complete implementation that was initially stated as a condition did not affect the prospect of membership. Discussing whether failure to provide results in the asylum system (and refugee protection) could produce crisis for Croatian membership in the Union, the Representative of the European Delegation stated that "these little things" (i.e. asylum issues) cannot be regarded as a matter that would cause the crisis. As she saw it, "… there are other issues that have broader impact than asylum ... like corruption for instance…" which are "…bigger issue[s], or judiciary system in Croatia…" (Frieh Chevalier 2012).

Indeed, the government acted in such a way. After the Chapter has been closed and accession successfully finished (2011), it again declared it will work on the issue; yet – it has not done much. At this stage, the only officially concrete demand for accession from the EU was that Croatia needed to finalize and adopt a new migration strategy, with clear

212 The key benchmark for the area of asylum presumed ensuring "access to fully functioning asylum procedures for all third country applicants wishing to apply for international protection" (European Delegation 2009).

measures for integration of the most vulnerable groups of immigrants (Jutarnji list 2012).[213] As informed (Stakeholder A 2012), the Government is presently working on the migration strategy. Organizations stated that there are quality solutions, but remain restrained about the assessment over its future implementation. As reported, some of the competences in provisions of the social services that should have been transferred from the MoI to the other ministries have remained under MoI's competence. The Strategy should be enforced in 2013.

Mechanisms of persuasion (with effects for reputation) towards the government could again not be used properly. The first debates did demonstrate that the elites had quite a clear vision that refugee issues pertained to the most basic democratic and liberal principles, linked with the values of *civilization* and democratic progress. Nevertheless, with EU policies positioned in such a heavy relation to human rights (and hardly termed as an model of *civilization*) as well as the (presumably) consequential inability of the EU to push the issue on the level of core democratic and liberal principles and keep it on the agenda (as it did with some other issues of human rights in Croatia), left the valued positions of the elites untouched. Persuasion mechanisms used in private communication clearly remained void of effects. The government has simply remained unmoved and it has suffered no costs to reputation for it – prior to closing the chapter or after it.

As perceived by the Representative, direct communication with the ministries moved the system at last. As she stated, the "sensation about integration is now more positive" (Frieh Chevalier 2012).

> What is good is that now we managed to continue the pressure outside the Ministry of Interior so that not only the Ministry of Interior takes its responsibilities in asylum but also other ministries, especially those linked with integration, and especially the Ministry of Social Affairs… Until we established a direct contact with them, for them it was just something they just didn't have to deal with… After the meeting we have seen that things have started to change… And since when they understood that we will not be giving up on that, things are moving. They have to show results by the accession (Frieh Chevalier 2012).

213 As stated by the EU Delegation Representative (Frieh Chevalier 2012), in the communication now established between the Delegation and ministries, there are demands which are more practical (i.e. solving wider integration problems).

Organizations confirm that the first steps have been taken (bylaws or a strategy for migration), but consider that in practice we are far from proper results. Generally, the stakeholders reported that institutions have indeed moved from "dead position" and that there exists a wider variety of activities in the institutions. However, poor coordination and the persistent aspiration in the institutions and bodies to transfer responsibilities on other bodies continue, still leading to uneven results (Coordination for Asylum 2012). An example may be witnessed in the area of language training, where the Ministry finally brought the program it was obliged to yield already in 2008; but then, when its application has been transferred to the competency of agencies, progress is again clogged.[214] Some institutions (Ministry of Health and Social Affairs) brought new programs for education and training and new programs for employment of refugees. Yet, now we need to see whether this will again imply only a formal right, which will meet obstacles once it needs to be applied (such as we have seen in cases of vocational training, for instance). The ability of institutions to produce empty forms for action is remarkable. The European institutions, as stated by the European Representative, cannot work on each detail and "at every step" (Frieh Chevalier 2012). And in that sense, it is rather important for the Union to be able to demand results, and not only the process (actions). Presently a limited time frame until accession, with hardly any existing credibility of threat, works against the issue. Had the Union decided for this strategy before, when the actors could not secure how the "stick" would be used, and when there was more time for communication and education, perhaps we could have hoped for better results. After accession is done, the Delegation will withdraw and there will hardly be sufficient compensation for such bodies and such intensity of participation in domestic polity and policies. At any rate, where the effects remain to be seen, it will be rather hard to compensate for years of inactivity in this area. Occasional meetings, demands and encouragement (even if directly communicated) in such short time can hardly get the same results as in the long term with intense cooperation and constant communication between the MoI and various partners.

214 To remind, with four years of tardiness, the Ministry of Education adopted the necessary program for language training of asylum seekers and refugees but then the responsibility to implement it (and finance it) was transferred to the agencies that rejected such responsibility. The last information that the stakeholders received was that the Ministry declared there are not sufficient means for financing the program (Coordination for Asylum 2012). Some stakeholders assume that the issue was simply left out of the budget for the year (Stakeholder, Coordination for Asylum 2012). In the meanwhile, as we have stated, there are persons who wait for language training for over a year and it is unknown when they will the service.

5.3 Conclusion

Having revised the dynamics of the reform, we may state that the European demands, pressure and communication brought rather important developments to the system which initially lacked the important parts of requirement necessary for changes to take place. European and domestic partners (i.e. the MoI) made considerable efforts, especially if one regards the terms under which the system worked: i.e. the fact that political leaders held severely defensive lines against its consequence and cost; and the fact that the key body to implement the largest parts of policies turned out to be the body primarily competent for security and not for human rights. On the other hand, it is exactly this feature that demonstrates that the EU (or those institutions that aim to reach improvements in refugee protection) has not seized capacitates is might have had in Croatia: i.e. the ability to impact the system more determinately than what has already been done.

If we try to distinguish conditions under which the EU needs to function, we shall find a great complexity of factors that impact its viabilities and limitations in transforming national systems: on the general level and in asylum policies in particular. On a more general level, literature warned us that the EU transformative power will be constrained by conditions located in the domestic systems, pertaining to deeply rooted domestic structures: political culture, institutional functioning, administrative capacities, etc. Enlargement of Europe and the export of its *acquis* presumes that policies designed in the Union should "fit" all of the systems to which they are being exported. Such presumptions have already demonstrated troublesome and the European authorities have recognized it themselves. Despite all of the efforts of the EU institutions; different states demonstrate diverse logics of functioning. Proper institutional functioning, functioning of the legal systems and the rule of law, as well as rich administrative capacities, may pertain to a variety of European states; yet, they are not necessarily a reality in the Southern European states, or states of Eastern and Central Europe or South East Europe. Having realised that adaptation to demands has brought only partial effects in the previous rounds of enlargement (and particularly in Bulgaria and Romania); the Union has decided to make sure that Croatia will not follow such a path. The reforms were to be pushed until Croatia adapted to the Union's demands.

As we have seen, in 2012, the European Commission presented its monitoring report, identifying areas where Croatia still needed progress: the judiciary, public administration, border management, asylum, etc. The report was followed with a feeling of alarm in the

domestic media, induced by "blaming and shaming" (Meyer 2003, 11) over the progress of a decade of reforms (Poslovni Dnevnik 2012).[215] However, the EU confirmed Croatia does not need to be afraid of the worst scenario (i.e. withdrawal of membership); though it does need to take European recommendations seriously. It was already before the report that the Head of the Delegation of the EU in Croatia Paul Vandoren stated Croatia will enter the Union even if it does not fulfil all criteria. He stated that membership was now unconditional; yet, Croatia still needed to consider EU advice to avoid losing the "positive image" it has so far created. He added that even after accession, the Commission can still use coercive mechanisms if Croatia will not fulfil requirements (Dnevnik 2011). It appears that even after the closure of negotiations, the authorities (in the EU) sought to seize the last occasions to menace domestic authorities and induce their commitment in chosen areas. Or, equally likely, the EU needed to send a message to other candidates (and potential candidates) that it will not approve failure to fulfil its requirements. Despite this, the prospect of membership was not in question.

At any rate, the monitoring report (European Commission 2012a) demonstrated that Croatia has not finalized reforms in all of the areas. The most crucial issues, which determined the success of reforms in other areas too – such as administration and the judiciary – have remained incomplete. Despite steps being made to boost change; these have continued to produce improper results. There is still a great need to improve the professionalism of public services and (continue) the building of "modern, reliable, transparent and citizen-oriented public administration" (European Commission 2012a, 6). The judiciary is still demanded to strengthen its independence, accountability, impartiality, professionalism and the efficiency of its decisions – i.e. solving backlogs and the lack of administrative enforcement of its decisions (European Commission 2012a, 32–34).

These findings are relevant for our case too. Firstly, it shows that what we have found in our policy (i.e. the partial fulfilment of requirements) also characterizes some of the other areas. Unfortunately, we do not have many studies to rely on here. Some have studied the domestic adaptation to the European *acquis* (diverse areas); but the studies mostly lacked thorough analysis of adaptation and have sought to demonstrate how the EU used its mechanisms to induce change (for instance, see: Aspridis and Petrelli 2012; Trauner 2011; Smorković and Ilijašić-Veršić 2010). While this scholarly work reported efforts (or its lack) from domestic partners; it did not tell us how consistently the authorities

215 German authorities have been the most critical commentators.

implemented and applied the *acquis*. In this regard, a rather interesting study has been made by Georgoiuos Chatzigiagkou (2010). Chatzigiagkou studied the effects of Europeanization in civil services, administration and the judiciary in Croatia and came to the conclusion that adaptation to the EU has brought "tremendous formal change" (2010, 242), where the state accepted a vast array of legal changes and changes in the institutional setting; however, often not leading to actual alterations (i.e. deeper transformation in domestic policies). Instead, the reforms (like in our policy field) were uneven across diverse issues; somewhere leading to real reformation in former practices; in other domains maintaining old policy patterns or lacking to enforce undertaken rules. In a great part of the cases; the system was characterized by "shallow Europeanization" (Goetz in Chatzigiagkou 2010, 244), where the institutions accepted rules as formality, but lacked to fulfil them with meaningful content (Chatzigiagkou 2010, 224–247).

Our policy often demonstrated quite a similar pattern. More often than not, the system produced solutions which in practice lost meaning – procedures for recognition without actual recognition (until 2008/2009); rights to education, training and specialization without the ability of recipients to practice them; right to sustenance (e.g. such as nutrition) useless for the majority of beneficiaries, etc. However, as we have seen, motives for such actions were diverse. In some cases (such as recognition) the key reason for failure to produce results pertained to the resistance of the decision makers. Once this has changed, it has been demonstrated that the operative level could push for changes towards the (greater or lesser) transformation of the former patterns. In the case of integration and the rights of persons under protection, it was lack of political will and the deficiency of institutional functioning that created for shallow changes. This leads us to another important conclusion: reform in one area is related to the reforms done in other areas. Asylum policies or other policies that necessitate functioning of various state institutions will hardly succeed if transformation does not occur across diverse policy fields – and in particular, those that impact the ability to implement any reform in the first place (such as administration and judiciary). In that sense, the improper functioning of state institutions and administration negatively affected our policies too. With easy going attitudes over the legal order that the state has adopted (i.e. the lack of rule of law) or flippant attitudes towards the norms (where institutions implement rules for the matter of formality or demands; yet are uninterested how it answers real needs); Croatia has managed to implement a great part of the *acquis* without actual consequences to its own norms (in many cases).

The way that Croatia has dealt with the obligations in many issues under investigation also points to the fact that the EU can hardly hope for comprehensive change. Tendency to partially solve issues or produce some results, without tackling others; and the propensity to produce laws, bylaws and strategies without their consistent implementation, makes it hard for the external actors to induce profound transformations. Such offhand attitudes would demand fully consistent conditionality and much greater work on socialization and persuasion. In the first case, reward would really have to arrive only after full adaptation has been done – and without exception. Only in this way would political elites be motivated to engage in reforms which presume an enormous amount of effort and work to change the pattern of functioning in the institutional order. Only like this would the decision makers accept to work on policies where they do not see their direct interest (such as refugee protection policies, for instance).

Furthermore, as evident from our case, when the institutional and other parameters are unfavourable (any policy area), the EU can opt to invest more funds and activity into strategies of socialization and persuasion. While these demonstrate to be important, they demand dense networks of cooperation, close work with officials and continuous feedback – with all institutions. Instead of such an approach, the EU usually sets demands, benchmarks, monitoring and some assistance (with an exact amount depending on the policy priorities), and seeks that the candidate does the best job during the negotiation phase. Because membership necessarily has not only technical but also political criteria; the EU cannot insist that membership really occur only once the conditions are met. The fact that a great number of the Member States ignores various aspects of the *acquis* or partially implement it, and the fact that the former candidates entered the EU without having all complex (and expensive) criteria met, makes the EU conditionality mechanisms weaker – not only in asylum, but also elsewhere. What the EU may do in such a constellation is to insist more firmly on the criteria it finds crucial and seek to put additional efforts in the chosen areas. Indeed, research demonstrated that not all demands had equal leverage for the Union. Whereas candidates were allowed greater flexibility in necessary requirements in some areas (such as social policy or, paradoxically, civil service reform); they have been warned that great vigour and consistency is expected in others (e.g. the Schnegen area) (see: Dimitrova 2005; Grabbe 2005; Sissenich 2005).

This leads us to the particularity of our case. Whereas all areas of reform will be more or less affected with domestic conditions; as we have seen, the impact of the EU demands will also depend on its own position and strategy in the chosen policy field. If we get back

to the assumptions given by scholars of rationalism and constructivism, we may find several particularly interesting features. Interestingly, many of the prerequisites for the success of conditionality and socialization approach have been fulfilled in our case. The state highly evaluated membership and there was no alternative path considered by political elites. European approval had a great importance for the elites that eagerly wanted to be part of the Western European block. Time frame (i.e. prolonged negotiations) has not always necessarily worked on behalf of the credibility of conditionality (i.e. insecure membership and its date); but it appears that it has facilitated more profound results of change – i.e. transformations in the structures dealing with reform (as a consequence of training, learning and experience). The EU has offered a great amount of networks for the sharing of knowledge and experience as well as continuous training for the actors included in the implementation of policies. Domestic society and community identified with the European values and community, making European demands in the policy reforms (mostly) well perceived.[216] In the case of refugee policies this was particularly true as they were understood as a basic indicator of the level of civilization and democracy that the country leaned to. However, perception of their effects could challenge prevailing notions of community, stable and fixed in the homogenous ethnic corpus of nation. Still, time has demonstrated that Croatia is hardly turning into an immigration country and the fears of decision makers have slowly ceased. General credibility of conditions was at the same time boosted with the strict attitude of the Union (demanding harsh changes) and jeopardized with difficulties occurring within the Union (i.e. crisis of constitutional reforms and enlargement fatigue). In our case, however, this was complemented with several other issues that have been particularly negative for refugee protection.

In the matters of asylum it appears that Europe lacked legitimacy (refugee protection nexus) and thus the credibility of threat or the ability to produce reputation costs for Croatia. In addition, its approach to refugee protection severely lacked consistency. Despite the efforts of the Commission to push on Croatian approximation to the refugee protection norms; as we have seen, decision makers were well aware that the Member

216 As it was evident, the greatest pat of the elites strongly identified with what they supposed European values presented. If it is to judge on the basis of general perception of attractiveness of the EU membership, we may state the same for the general public. In 2000, over 80 per cent of citizens were positively evaluated in regards to Croatian membership in the EU. Euroscepticism started to increase later (after 2005) (Štulhofer 2006, 139). We may assume it was purported by unpopular demands; perhaps such as cooperation with the ICTY (challenging legitimacy of Croatian war in the 1990s) and the length of negotiations.

States themselves did not have a great will to build policies of solidarity between themselves and particularly not towards the candidate states (or the refugees). Instead, the Union's *acquis* has been often perceived as a method to farm out European problems of migration and asylum to the neighbours. And unlike some other complex policies (such as administrative reform or reform of the judiciary), our policy did not only suffer from malfunctioning of state institutions, inertia or a "shallow" approach. Instead, our case had another heavy factor relating: the resistance of actors to the perceived effects of the policies. Formally accepted (with no openly declared veto players); the key institutions and the general decision makers were factual veto players to the policies of refugee protection and their expected consequences. Instead of determinate dissolution of their antagonism, the EU has worked in two directions. On the one hand, it has sought to reduce this resistance (by demanding real changes in the institutions and practices of refugee protection); yet, at the same time, it was providing the same agents and such interests with powerful space for action (i.e. with great space for a securitarian approach arising from the *acquis* itself; with high investments to security-related domains and almost exclusive empowerment of the security-oriented actors). Combined with intense communication with the Member States' chefs of interior and security who were often reported to seek a way to circumvent rather than improve the norms on refugee protection; more sensitive approaches to the issues did not get many advocates in the domestic environment. Whereas the non-state actors (organizations) had important impact on the reforms; this could not measure up with the unfortunate combination of factors working on the behalf of restrictive interpretations of the *acquis*.

As we have stated, the Commission (as a key actor to demand, monitor and assist candidate states) had quite an ambiguous role in the European and external asylum systems. On the one hand, the Commission (along with the Parliament) has been recognized as the crucial body to aim at the creation of the common European asylum system – as a system that would offer common standards of asylum and develop more appropriate levels of refugee protection. Indeed, we have seen, it was the Commission that pushed for the new *acquis*, seeking to ingrain human rights in the common norms. In many occasions, the Commission has criticized the states for leading stern policies against refugees and pled states to demonstrate solidarity *vis-à-vis* other members and *vis-à-vis* refugees. In any instance that it could, the Commission imposed itself as a counterbalance to state powers. Still, as we have stated, at the same time, the Commission accepted an existing securitized framework. It is not crucial whether it was only pragmatic (to satisfy

states) or not; the effects are the same. Its policies are more sensitive; but are still uncertain. It would be hard to neglect the fact that the Commission participates in arrangements that seek to control or decrease the population of refugees in Europe; accepts outrages external arrangements and seeks to boost control of immigration in Member States. It appears its attitude mixes diverse positions and compromises, and produces in efforts to purport both goals. While it has often been detected as the crucial advocate of human rights of refugees in the EU; it is equally true that, due to these compromises, it has a disputable position itself.

However, departing from the fact that the Commission (despite a schizophrenic agenda) still demonstrated the will to induce reforms of asylum system across a variety of states – including Croatia – we may wonder whether it has seized all of the chances it had in Croatia to induce a successful transformation. One the one hand, it is a fact that it could not do much to overturn the effects of rather negative array of factors that mixed in the process of reforms. As we have seen, due to the previous participation in intergovernmental regional initiatives aimed at migration control, securitized positions on the refugee issues were already accepted in Croatia prior to the introduction of the asylum *acquis* itself. The first parliamentary debates and communication from the stakeholders in the early period of reform demonstrated that their attitudes have already been decided at the moment that the laws have been adopted and implemented. The fact that issues remained structured under the security chapter (Chapter 24), which presumed fixed institutional settings, determined the content of the asylum framework in Croatia and limited the ability for greater changes in the domestic approach. Ambiguity of the Union's and Member States' policies took away the ability for the Commission to politicize the issue and impact decision makers too.

However, even in the given surroundings, the Commission appears to have had some viabilities that it did not seize. Our respondents (Stakeholder B 2012; Lalić 2013) estimated that – in the given scheme – the EU (or the Commission) could not have done more. As a body that takes care for the implementation and assistance, this has been done properly. However, in the dissertation, it is held that – if the Commission wants to affect the systems to a greater level – it ought to take a more propulsive role in planning the wider socialization scheme. This presumes restructuring of the framework it has so far used in the enlargement. The strategy that the Delegation took in the finalizing period, which was not pre-planned, demonstrated that reconsideration of existing projects might be useful. With limited powers to impact political elites (which perceived an impoverished credibility of threat), greater results might have been obtained with more elaborated and

properly planned scheme of assistance directed towards all important bodies and organizations in the system. The importance of socialization demonstrated in the case of the MoI's services – and particularly the transformation that was induced by the operative levels pushing for changes in the decision making structures – also showed that much can be done if the external actor plans for comprehensive strategies of twinning and assistance. Had the other actors been subject to socialization and learning; presumably greater progress could have been attained.

Furthermore, non-state organizations demonstrated that they can play a particularly useful role in the process of socialization, monitoring and assistance. With the inert state, greater funding to these organizations and their inclusion in the socialization process could be rather useful. While the inert ministries were numb when domestic actors sought to include them in the planning and implementation of the *acquis* (both the NGOs and the MoI); they have reacted quite quickly when cooperation was directly set up by the European Commission. Creating opportunities for these actors to work with experts from other states and the NGOs (under the planned European programmes) would certainly have greater effects than allowing the government to stay inert. Furthermore, the impact of socialization occurring in the MoI demonstrated that empowerment of particular actors who assist change has great effects on the content of change. Whereas cooperation with the UNHCR is a plausible step; the Commission should also consider partnership with other non-state organizations that have demonstrated important for the field. Stable funding from the EU would make them less dependant on unsecure sources of income and enable them to focus on particular tasks. As the informants noted (Lalić 2013), in the last two years, there were no projects in asylum where organizations of civil society could have applied.

Even so, one must keep in mind that these steps might only improve the results of reform; yet, proper refugee protection could hardly occur under the given scheme. More determinate changes require firstly transformation in the entire (ideational) framework of European migration and asylum, and, on top of all, strong political will amongst the elites. This could occur only if the European migration system was one of a different kind and only if refugee protection enjoyed sufficient relevance for the EU itself. Despite the efforts of some of the institutions in the EU; it does not seem probable that the regime could change – at least not in the shorter term. In the case of Croatia, limitations pertaining to the European powers to transform the states and particularly in our field created effects that will for now on be quite hard to change. With the lacking motive for transformation and the lacking power of societal actors (i.e. a lack of sensitivity in the general public and

media) to induce the government to work, it is not clear what could overturn the pattern that we have. In the following chapter, we are about to discuss what effects this has had for refugees and their wider human rights.

6 Europeanization of Asylum Policies in Croatia: Human Rights and Rights of Refugees

> When I fled apartheid in South Africa over thirty years ago… I was a political activist, white, middle class and university education… The eighties were also a time of economic crisis… The difference was that refugees then were not blamed as a contributing factor to collapsed economy… I soon went out of money and I walked into a police station. This agent advised me to go to Home Office and apply for asylum, something I hadn't considered. But I had no money so he gave me cash from his own pocket. Can you imagine that happening today, when most of refugees shy away from any authority because their stories are hardly listened to and much less believed? No one called me bogus or an economic migrant and there was no danger of my being detained or of coming to England to take locals' jobs. It was a profoundly different experience to how refugees are treated nowadays (Wiessler in Wiessler 2012).

In a recently made documentary film about the collapsing Greek asylum system, the author Matthias Wiessler – a refugee from South Africa – did an excellent job to summarize what a variety of authors today are seeking to show: in a world that is promoting human rights and democracy like never before, refugee rights somehow do not seem to fit. Filmed in 2011 and 2012 in Greece, the documentary aims to demonstrate the consequences of Europeanization of the Greek asylum system on the daily life of refugees. Giving voice to all of the key subjects involved, the author presents where the EU paradoxes have led. Frustrated by the European migration framework which led to Greece having over a million European irregular migrants and tens of thousands of (registered) asylum seekers per year,[217] the Greek government believes the crisis should not be treated as a Greek problem solely. From the other side, the EU considers Greece should take responsibility and provide migrants and refugees with what it has promised to Europe. At the same time, the system has collapsed and no one has any idea how to fix it. In the meantime, the immigrants (including asylum seekers and refugees) continue to live in critical conditions: most of them without ability to apply for protection or obtain it, without

217 In 2010, Greece had 90 percent of the total EU apprehensions for the unauthorized entry. The number of asylum seekers is much smaller due to the fact that many persons do not apply for asylum for diverse reasons: backlogs in the application process, possibility of being expulsed or forced to withdraw an application (reported to occur in Greece), etc. (Kasimis 2012; Human Rights Watch 2008).

a place to stay, social assistance, unemployed and impoverished. Leaving the question open, the author invites us to consider how the EU role should be perceived.

Quantitatively and qualitatively far from the Greek example, the Croatian case showed a quite similar underlining logic: reluctance of the government to fulfil commitments that it undertook, and the indecision of the Union to assist transformation to a greater degree, led to the unfinished system of asylum, loaded with an increasing number of issues as the numbers of seekers increased. In contrast to many states like Greece, our case had many initial advantages that could have worked for the benefit of the Croatian seekers and refugees: prior to all, a much lower number of persons needing protection, as well as the great capacity for the EU to force and convince the government to abide to its promises. Whereas on a scale of the least arranged and the best organized systems across Europe and the region, the Croatian case would probably fall somewhere in between, in this chapter we are about to see what has domestic version of asylum and migration policies brought to the lives of the asylum seekers and refugees. In particular, whereas previous chapters analysed how the system adapted to the European demands and why; here we wish to understand in which way it has affected the most crucial rights of refugees.

In doing so, we will analyse key refugee rights given under the international refugee law, as well as their broader human rights regulated with the international human rights law. As previously stated, this does not presume that we will engage in a comprehensive analysis of uniformity of domestic norms and practices within the body of international refugee and human rights law. Instead, it is in our interest to understand how the system responded to the most basic principles and ethics demanded by these conventions. Such an approach (common in refugee and migration studies) assumes appraisal of the principles in their broader meaning and understanding how the domestic system relates to the basic rights that the conventions seek to protect: most notably, human safety, freedom and dignity. Given that other rights (such as refugee specific rights – rights to fair procedures, social, economic and other rights, etc.) are devised in order to protect these most sacred human rights – at this stage we will judge the system from this angle. In doing so, we cannot stay limited to exploring how Croatian policies of asylum and migration affected refugees solely in the national boundaries, but also how they impacted refugee movements and chances for protection in the closer (or wider) neighbourhood. Whereas the analysis is still focused on the issues occurring within the Croatian territory; here the study also aims to indicate – as much as it can – regional and global implications of the implementation of European policies on asylum and migration in Croatia.

As we have seen in the Chapter 1, a large variety of authors has been rather critical over developments in the European asylum – including those occurring after the Amsterdam Treaty. As the scholars maintained, the meagre norms set in the *acquis* were to motivate states to act restrictively on refugee protection, going bellow the minimal standards given under the international refugee law (see: Bouteillet-Paquet 2003; Costello 2006; Garlick 2006; Gil-Bazo 2006; Gilbert 2004; Guild 2003; Hansen 2009a; McAdam 2007; Noll 2004; Moreno Lax 2008; Lavenex 2001; 2009; Spijkerboer 2007). This has particularly been expected in the areas which related to access of asylum seekers in the procedures (i.e. rules on entry to the territory) and policies of recognition (i.e. procedures and criteria determining the right to be given protection). Because the governments demonstrated keen to protect their territories from great numbers of asylum seekers and refugees, researchers believed the states will seize all the possibilities to keep the seekers and refugees far from their territories. The regulation on visa (in combination with carrier sanctions), readmission agreements, *safe country* concepts and the *Dublin system* were described as the most dangerous of all the norms. Giving the states ability to transfer responsibility to the third states, these policies could leave refugees devoid of international protection or link them to systems where protection was inadequate.

These dangers stemmed from the fact that the European policies did not provide guarantee that the refugee will be transferred to the state with proper asylum system. According to the authors, in the first place, the *acquis* itself did not offer sufficient legal guarantees for countries to implement the norms on protection in the proper way. Restrictive and securitized recognition policies and overly flexible guidelines on procedures allowed states to opt for rather meagre solutions. Secondly, the content of protection (i.e. rights of refugees) in the *acquis* were seen as insufficient too, suffering from poor system of social protection and lack of long-term solutions. Having the meagre norms at their disposal, states could opt for underdeveloped system of protection. This has especially been seen as a risk in the new countries of immigration which came to deal with refugee issues due to the European intervention (such as candidate states and new member states, or the old members at the edges of Europe). As stated, due to their institutional deficiencies and diverse economic conditions, they were expected to implement the standards in an inadequate way, letting refugees without adequate standards of living.

While for a long period of time the studies were virtually equivocal, expecting that the Europeanization will bring deterioration of the internationally recognized refugee rights, in the past several years, another strand of authors have commenced challenging these views.

While still limited, the number of these studies is in growth (see: Battjes 2006; Hailbronner 2008; Kaunert 2009; Kaunert and Leonard 2011a; 2011b; Storey 2008; Thielemann and El-Enany 2008; 2011). The arguments raised here are twofold. Firstly, these scholars tend to analyse legal framework given under the asylum *acquis* and the body of international refugee law, refuting the notion that the European framework works against the international legal principles. According to them, the *acquis* is in the least hand in consistency with the international law (Battjes 2006), or, as some consider, it offers improvements to the internationally recognized principles (Hailbronner 2008; Storey 2008; Thielemann and El Enany 2008; 2011). In the first case, the scholars argue that consistency with international laws may only be a consequence of improper implementation, while the norms themselves reflect principles outlined in the set of international rules (including the restrictive ones or those aimed at controlling migrations). Some scholars go father and assume that the *acquis* may actually improve the refugee protection as it offers better standards for protection (more developed and extended grounds for protection, clear procedural guidelines, new criteria for reception, etc.). According to some of the scholars (Thielemann and El Enanny 2008; 2011), if the European framework is to be blamed for being restrictive, it is so as it only reflects restrictions and deflections already built in rather imperfect international refugee law.

While scholarly work is reach in theory or empirically supported with a number of isolated illustrations from various cases, there is not yet many studies which systematically analyse the effects of the variety of norms developed under the new *acquis* in the national systems, and particularly not in the new members or candidate states. Studies have so far demonstrated that norms have been implemented with great diversity across policy areas and across national systems, thus reflecting diverse results for the internationally recognized rights of refugees (see: Gos et al. 2010; Hailbronner 2008; Heijerman 2010; Prümm and Alscher 2007; Spång 2007). The greatest problems have so far been found in the states which recently commenced dealing with refugee protection, which are also the states on the edges of Europe (see: Gos et al. 2010; Hailbronner 2008; Mavrodi 2007; Sidorenko 2007, 168–169; Toktaş et al. 2006). Where the effects of the Europeanization have been diverse, it did demonstrate that – due to the European norms – refugees were linked to the territories of the states which could not offer proper protection, thus confirming the fears of critical strands of scholars.

The sections that follow will seek to analyse how has the Europeanization of asylum systems affected refugees in the Croatian case and provide answers to questions raised in

the outlined debates. The chapter is divided in four sections. The first part (6.1) analyses the effects of the Croatian asylum system on the established rights of refugees given under the regional and international refugee law. These are divided in three parts: policies determining chances to claim protection (6.1.1); policies shaping chances to be granted protection (6.1.2) and policies deciding the content and quality of protection (6.1.3). In doing so, the section analyses how the legal solutions (domestic and European) and domestic practices affected crucial rights given under the international refugee law and what this means for the identified human rights of refugees – i.e. life and safety, freedom and dignity. Having analysed these features, in the second section (6.2), the study applies its results on the assumptions given by the strand of scholars in refugee studies who debate how has the novel (post-Amsterdam) asylum *acquis* (as well as the position and acting of the EU) impacted crucial rights given under the regional and international conventions (and their underlining principles and purpose). In the concluding part (6.3), we seek to provide conclusions on the impact of European integration in asylum and migration policies.

6.1 Croatian Asylum System and its Effects for the Rights of Refugees: Life, Safety and Dignity in the Geography of European Asylum

Without doubt, the adaptation demanded by the EU in the area of asylum has not been an easy task, and it may be stated that the domestic authorities have done a great number of complex reforms. If we remember that at the start of the project Croatia did not have even the basic parameters, we may conclude that great improvements have occurred since. The key question is whether the progress that occurred was sufficient to upgrade the rights of refugees. We may agree that some developments may be considered valuable and that an important number of actors performed great efforts to make the system function. Looking at the European realities, where some member States do not even offer some of the minimal rights (such as shelter and nutrition or basic social security; e.g. Greece) or return the seekers to zones of persecution and other harms (e.g. Greece or Italy[218]); that some states still have a much lower protection rates (e.g. Spain or Romania; see EUROSTAT News Release 2012a; 2012b); that some other states provide poor rights of integration (e.g.

218 A great number of asylum seekers were returned from Italy to African states. Like in most cases when such practices occur, the Government claims that they are irregular immigrants (Gos et al. 2010, 65).

Poland and Slovakia; see: Sidorenko 2007; Vermeersch 2005), etc.; we may agree that the Croatian case is not the "worst place", as stated by one of our respondents (Stakeholder A 2012). As the stakeholder emphasized, the system is at most frustrating for the beneficiaries or those that search to provide themselves with assistance on a daily basis; but in reality and on a larger scale, one should acknowledge the general progress that has be done in a relatively short time (Stakeholder A 2012). Such consideration may be logical when one looks at the system from the inside – judged within the values and realities established by the EU and Member States in the past several decades. However, if we are to understand the full implications of these policies on human rights, we cannot stay constrained to judge the system from the corner of the very same values that the (restricted and deflected) states' and European approach promotes. Instead, we must challenge the prevailing notions ingrained in the approach that often calls upon *realism*; yet, in reality, it justifies the risking of basic human and refugee rights.

As we shall see, despite improvements, the still uneven implementation of the international and European standards of refugee protection may have been sufficient for the negotiations to be sealed; but it has not been sufficient to protect the minimal rights of refugees and chances for fair or efficient protection. On the contrary, the model of asylum developed at the national level created for great exclusion of asylum seekers and refugees and offered them inconceivable poverty of rights. Exclusion occurred in two crucial ways. Firstly, the system enabled that the majority of persons that potentially needed protection were excluded from the ability to enjoy it. Implementing the restrictive and erroneous interpretation of key standards for refugee protection (related to entry and qualification), the system prevented the widest number of seekers to claim or obtain protection. Due to stringent rules on the redistribution of asylum migration, these persons have lost the occasion to search for protection elsewhere. The second form of exclusion relates to the isolation of persons granted protection and reduction of refugee life to mere existence, devoid of any form of quality of life that the international refugee and human rights instruments conceived of. In the sections that follow, we will focus on the effects that the domestic form of implementation of the European *acquis* brought to refugee movements, their chances for protection and the quality of life after protection has been granted (or denied).

6.1.1 Right to Seek Protection and Policies of Migration Management

In the preceding chapters we have seen that a person's chance to be granted protection depended determinately on two important aspects of migration and asylum policies: i.e. those regulating entry of asylum seekers to the territory and policies for granting protection. Croatia implemented these in a rather restrictive mode. While in the years of reform it demonstrated improvements; one could still see that full implementation of the *acquis* and the Refugee Convention as its interpretative background were not in place. How did this affect persons searching for state protection? As expected by the variety of scholars, Croatian implementation of European rules had the greatest effects for control of movements of immigrants and deteriorating effects for their protection. Where the law was supposed to protect asylum seekers from the stringent rules of migration control; this has in reality not been guaranteed. Instead of offering the right to be protected, Croatian migration control enabled that part of the seekers remains blocked in the system that offered even less capacity for protection than what the domestic system has done. While in a large extent such effects arise due to improper interpretation of the European *acquis*, somewhere it was the *acquis* itself creating these effects; or, on other occasions, it was the lack of European willingness to demand its implementation and thus allow for protection of the key rights of each refugee.

As scholars have expected (Byrne et al. 2004; Collinson 1996; Moreno Lax 2008; Lavenex 1999) European visa policies brought heavy consequences for the movements of refugees: i.e. prevention of their getaway, transfer to dangerous irregular status and entrapment in states without basic standards of protection. Covering the largest part of the globe and including most of the least safe areas (Moreno Lax 2008), the visa regime forced the majority of asylum seekers that arrived to Croatia to use irregular channels of entry. Whereas this may also be an indirect effect of restrictive visa policies of industrialized states in the past decades, without doubt, the domestic visa regime may be held to have directly demotivated regular arrival of those seekers whose countries pertained to the negative list. As one of the beneficiaries emphasized "…who would ask for visa when you know you will not get it?" (Beneficiary B 2012).

As studies would expect (Moreno Lax 2008), the greatest numbers of seekers were young males (the Croatian Red Cross and the MoI, at: Coordination for Asylum 2011). Yet, their arrival could occur only from those who had sufficient financial means obtained prior to departure (Beneficiary B 2012; Beneficiary G 2012). The poorest parts of

population, women and children (though arriving in increasing numbers) still represent a minimal proportion of the persons seeking protection in Croatia – like elsewhere. It is generally held that such structure may be considered an indirect consequence of the extensions in visa regimes and black lists, which forced people to take dangerous routes of journey and tended to keep sensitive groups of seekers in the zones of insecurity. As shown in the studies, it is extremely difficult and risky for any person, and especially women and children (and most notably, single women and unaccompanied minors) to use such routes. It is already known that thousands of immigrants die each year trying to reach Europe. Besides this, during the journey, a large number of seekers – often more then once – experience imprisonment, physical and mental violence (from political authorities in transit states, the smugglers and other subjects); rape and various modes of torture, including violent tortures aimed at ramping or forcing the person to offer information; situations of great risk to life caused by the authorities or natural environment (see: Hamood 2006; Spijkerboer 2007; Walser et al. 2011). Quite similar was reported by our respondents. The informants described the journey as a tiresome, dangerous and traumatizing experience.

> In one country, smugglers wait at border and catch you when you get return. I escape in mountains; I saw they catch many people… I don't know what happen. Many smugglers are bad, they will torture you until you find someone who send you money… If you not have, very bad (Beneficiary G 2012).

> On the border between Iran and Turkey police was shooting. I was caught by police in Iran and they put me to prison. They said I will give them money. But I didn't have. I didn't have anyone to call and ask money. They were beating me for days and kept me without food (Beneficiary F 2012).

> Boats are horrible. They are so fast and you don't have space and you don't know if you will fall out or sink because there is too many people on it. When our motor got broken, this person saw us and come to help us after three days on the sea. I don't know what happens to us if he didn't... I heard later is forbidden to help us (Beneficiary I 2012).

Visa arrangements and carrier sanctions often led to migrants' being clogged in the countries where they could have obtained the easiest passage. In the past years, for those arriving to Croatia using the land route (and the Western Balkan route) these were (and

still are) most often Turkey and Greece.[219] Due to its position and liberal visa regime, Turkey receives a large number of immigrants and seekers from the Middle East and Asian countries (including Syria, Iran, Afghanistan, Pakistan, etc.), but also Africans who are the avoiding dangerous Mediterranean route and who are believed to be headed towards the EU (EU Observer 2012). It is unknown how many irregular migrants there are in the country; yet, estimates are between 150.000 to a million overall (Kirişci 2003). On a yearly level, several thousand persons apply for asylum and in 2011 and 2012 this has been more than doubled.[220] The country offers only temporary protection for the asylum seekers who come outside of Europe and the UNHCR seeks to find the country where they should be resettled (UNHCR 2013). Nonetheless, due to backlogs, the process is slow, leaving the masses of seekers waiting for long periods (see: Kirişci 2003).

Many migrants (including asylum seekers) search to pass from Turkey to Greece, who looks to return them to Turkey. However, Turkey readmits only a small fragment of these.[221] Greece, on the other hand, has over a million irregular transit immigrants (estimate) who aim to pass to Europe (RIEAS). Among these, there are many who could not (or would not) effectuate the asylum claim due to fear of being returned, imprisoned or subject to violence from the authorities.[222] Both of the countries are overwhelmed with immigration and do not provide even a rudimentary level of protection for the seekers and refugees. Turkey has been found to send the seekers back to Iran from where they get further deported, returning to the place of their origin, thus effectuating the *refoulment*.[223]

219 A great part of the beneficiaries in Croatia arrive through Greece. According to the Western Balkan Risk Analysis Network, irregular migration in the region is increasing. Most of the immigrants arrive from Greece, with Afghans and Pakistani being numerically the most represented (Frontex 2012, 25).

220 In 2010, over 9.000 persons sought asylum, and since 2011, an increase of 60 per cent was observed. The UNHCR approximates that there could be over 22.000 persons seeking protection in 2012.

221 Greek authorities state that over 300 people cross to Greece from Turkey on a daily level; while the Turkish side claims this number is exaggerated. Turkish press informs that estimates are about 10.000 per year. In 2010, Greece demanded that 4.000 persons be readmitted to Turkey; yet, Turkey accepted only 400 (Doğan 2011). For this reason, Greece has engaged in diverse solutions. Organizations reported that seekers have been forced to withdraw their asylum claim and are sent back to Turkey or simply prevented to enter Greece using physical force (Human Rights Watch 2008).

222 Many of the immigrants are persons arriving from the unsafe zones; yet have not been allowed or have not sought to apply for asylum in Greece. Human Right Watch (2008) reported immigrants were often coerced to withdraw an asylum claim.

223 According to the Research Institute for European and American Studies, since 1995 until 2005, Turkish authorities expelled 575.000 immigrants (RIEAS). Also confirmed by our respondents.

In Greece, the seekers often have no shelter, accommodation, social assistance or basic rights (see: Amnesty International 2012; Kasimis 2012; Mavrodi 2007; Wiessler 2012). The rate of recognition of asylum is about 2 per cent.[224] After the radical right took office in Greece, it has commenced with heavy measures of combat against immigration, including deportations of immigrants (counting refugees) to the countries of origin and construction of massive detention centres and the fence on the key passage from Turkey on the river Evros (EU Observer 2012; Smith 2012). According to the European Council on Refugees and Exiles (EU Observer 2012), given that great numbers of immigrants in Turkey and Greece are refugees from the most unsafe zones, "it would be a tragedy if this actually worked as it would prevent refugees from seeking protection". NGOs expressed worry that the measure will reroute refugees to "more dangerous routes in the Western Balkans or Ukraine" (EU Observer 2012).

Whereas entry to Greece was so far facilitated by the state's inability to control its borders, it has become increasingly difficult for immigrants to leave the country upon arrival. The investments of the EU and Member States into migration control in the Western Balkan created a hoop around Greece and encapsulated the migrants situated in Greece (see: Wiessler 2012). Despite the fact that in 2010 the European Court of Human Rights condemned return to Greece (QUARN 2011); there are still hundreds of thousands of immigrants (actual and potential asylum seekers) that cannot leave the state. As reported, many get stopped already on the Albanian or Macedonian border, while others gets prevented elsewhere – in Serbia, Croatia or Hungary.

With the readmission agreements, *safe third countries* solutions and strict border controls, Croatia importantly contributes to regional migration management. As we have seen, since the authorities commenced to implement the rules on migration control at Croatian borders (the beginning of the past decade), a vast number of immigrants – defined as illegal – lost the opportunity to use Croatian territory as a transit route. Since 2004, Croatia has had several hundred asylum seekers per year (save for 2012, with more than a thousand). At the same time it has rejected, returned or readmitted thousands of immigrants yearly to the countries on the eastern borders. As regards the asylum seekers, the problem lies in the fact that one does not know how many might have been potential or

224 The UNHCR notes decisions on asylum in Greece take about one year in the first instance and from one to seven years in the second instance. In the first instance, the recognition is about 1 per cent; in the second instance is double (Kasimis 2012).

actual seekers of protection. However, as we have already established, given that the majority of these persons have previously claimed asylum in Serbia, we may assume the numbers of asylum seekers are high. Given that visa regimes and strict entry rules in practice meant the transfer of the greatest majority of seekers to irregular immigration, the rules applying to such migration movements left the act of seeking asylum at the border or in the territory as the only safeguard for being included in the procedure to be granted protection. The fact that Croatia has demonstrated readiness to reject or return asylum seekers from its territory is not only contrary to the law, but it is also dangerous for these persons. As far as the research has managed to investigate, several consequences appeared.

Where *refoulment* itself has not been proven, according to our data, return or rejection in the cases of seekers coming through countries such as Serbia (80 per cent of immigrants)[225] has resulted with several possibilities. Staying in Serbia as an asylum seeker has been described as difficult and rather expensive. Chances to be granted protection were (and are) minimal, thus causing persons' only costs in finance and time. [226] Given accommodation centres are often full, the informants noted they were demanded to either pay for their own accommodation or stay in the street (Rolandi and Alaker 2012). According to the informants (Beneficiary B 2012; Beneficiary G 2012), those that did not possess sufficient financial means were often forced to stay (although it is unknown for how long). Those that decided to leave the country have – in our results – been faced with two solutions: seek to re-enter Croatia or change the route of travel. Hungary was emphasized as a country that the seekers tended to replace for Croatia (Beneficiary G 2012). Reports corroborate this observation (Frontex 2012).

In the first case, porous parts of borderline between the states allowed seekers to regain entry. In such event, the lack of full control over the border still enabled a number of seekers to practice their right to access. However, our research learnt this solution was

225 According to the MoI, 80 per cent of the immigrants arrive to Croatia from Serbia (Zoran Ninčeno, Border Unit; in Vesić 2012). While this research has not managed to obtain information from those persons who sought entry from Bosnia and Herzegovina or Montenegro, we cannot confirm that diverse pattern would occur there. Older reports demonstrated the authorities were easily returning migrants to Bosnia and Herzegovina (Kolakovic 2002). Nevertheless, this route has never represented an important passage for asylum seekers heading to Croatia (Stakeholder A 2012; Stakeholder B 2012).

226 Since the Asylum Act has been enforced (2008), four persons (out of almost 4.000) received subsidiary protection and no one has been granted asylum. 95 per cent of seekers are reported to leave Serbia (Rolandi and Alaker 2012).

quite troublesome for migrants. On a daily level, state police returned hundreds of immigrants. Those charged for irregular entry were expulsed with prohibition of entry to Croatia and were often prosecuted in Serbia afterwards, with the fine being around 50 Euros (UNHCR 2012c). Many migrants thus risked the same consequences in the repeated rehearsal. These practices were also expensive for other reasons: the beneficiaries have emphasized using the services of smugglers as the most viable option to gain entry; yet, they demanded considerable financial means.[227] Each new trial was described as another cost for a person, thus risking that one stays clogged-up in case of failure. We may not know how many people gave up trying and what their next move was. Sometimes seekers would be reported to return to the place where they have first stayed; yet unprotected – such as Greece (Wiessler 2012).

> You spend money during trip and you have no anymore. You go, you get returned, you go again, again return… every time you pay, pay … You come to Europe and police catch and again return and another pay… It get cold and rain but you can't spend money on hotel. You must try again… (Beneficiary G 2012).

> It is bad in Serbia. No place to sleep. They tell you that you will not get positive… If you don't have money it is very bad… (Beneficiary E 2012).

According to an informant, after being returned from Croatia, many seekers decided to change their route and head to Hungary – presumably, demotivated also by the fact that illegal crossing to Croatia resulted with the expulsion decision and ban on entry. It may not be known by this research how many persons did so and what occurred in such cases. However, the reports demonstrate that Hungary recorded increasing pressure on its borders (Frontex 2012; Portal Hrvatskog kulturnog vijeća 2011). This may also be considered a consequence of rising political instability, conflicts and violence in the past year (foremost in the northern Africa and Syria; see: Frontex 2012). In 2011, Hungary noted it cannot control its border with Serbia on its own and invited Frontex to assist border surveillance (Portal Hrvatskog kulturnog vijeća 2011). According to the UNHCR (2012c), Hungary commenced treating Serbia as a *safe third country* as well. Whereas within our research it is unknown what happened with the seekers that opted for this route, data demonstrate that

227 Indeed, the Bureau for Combating Corruption and Organized Crime (USKOK) and the MoI confirmed that the smuggler services (Serbia to Slovenia) cost about 830 to 1.000 Euros per person (Vesić 2012).

Serbia officially treats Macedonia and Greece as *safe third countries*. According to the organizations, the state engages in the return to Macedonia, while it does not employ direct deportations to Greece (most likely, due to financial reasons) (Rolandi and Alaker 2012; UNHCR 2012c).

Macedonia is also an unsafe country with a less than rudimentary level of asylum system. Out of 1090 total claims, so far it has not recognized any protection status to asylum seekers which did not pertain to the regional groups (Smilevska 2012; UNHCR 2012b).[228] Most asylum seekers were reported to leave Macedonia in the weeks upon arrival. Seekers in Macedonia do not manage to obtain identification cards and are thus often treated as irregular migrants and prevented accessing the services (Smilevska 2012; United States Department of State – Office for Human Rights, Democracy and Labour 2012a, 18). The state treats Greece as a *safe third country* and rejects the applications when it establishes that the person has arrived from Greece. According to the United States State Department (United States Department of State – Office for Human Rights, Democracy and Labour 2012a, 19) the government deported the seekers to the "unknown destinations after they applied for asylum".

While direct return to the state of origin in these cases has not been observed (in other cases than the seekers from the neighbouring countries), our results point that the Croatian system contributed to other phenomena: clogging up of the seekers in particular areas and enabling large numbers of refugees to live in *orbit*. Migration control mechanisms and their improper use (by Croatia and the other states in its closer neighbourhood) led to the creation of an area where the seekers were not directly returned to the state of origin; yet, they were encapsulated in a particular zone (here Greece and the Western Balkans). In these zones, immigrants could not attain protection; or, in their search for shelter, they were unremittingly transferred from one country to another.[229] Secondly, despite the fact that the seekers were not directly deported to their places of origin; they were more than

228 In 2012, 740 applications have been filed (UNHCR 2012b). Procedural guarantees (translation and appeal) have not been secured. The state has not provided interpreters for the most common languages of the asylum seekers and the executive disregarded the Administrative Court decisions initialized upon the UNHCR intervention (United States Department of State – Office for Human Rights, Democracy and Labour 2012a, 18–19). The UNHCR (2012b) notes the country presently hosts nearly 1.660 refugees of mostly Roma ethnicity (fleeing Kosovo), with the key problem being the lack of housing.

229 A term *refugees in orbit* denotes to asylum seekers who find themselves in such a situation, i.e. where they are persistently returned from one country to another, without an ability to find protection (Boccardi 2002, 37).

often in a risk of the *chain refoulment*: i.e. being sent back to a place where they may not be safe from being returned to the state where they were under risk of persecution (or other threats to life and safety). In precise, despite the fact that Croatia did not return seekers to zones of origin, it contributed to clogging refugees in states which did so.

6.1.2 Right to Life and Safety and Qualification for Protection

Whilst the seekers that succeeded to gain entry to the Croatian asylum procedure had somewhat better chances for protection; such occurrences needed not to be most fortunate option as well. For those that managed to obtain entry to the Croatian system, we have seen, for several years, procedures were so inefficient (and/or unfair) that none of the cases was granted protection. Where national authorities claimed that all applicants were merely economic migrants seeking to stay through false application, reports demonstrated that Croatia has denied to protect persons coming from particularly unsafe zones, characterized with ongoing war conflicts, dictatorships and regimes that lacked basic respect for human rights (Iraq, Sudan, Afghanistan, etc.). Improvements induced by the European insistence, leading to institutional changes and procedural improvements allowed for certain aperture in the recognition process. However, this has still remained restrictive. As we have seen, where the EU average of recognition in the first instance decision amounts to 25 per cent (EUROSTAT News Release 2012b); Croatian is still between 10 and 15 per cent. Moreover, unlike well advanced European states, Croatia is lacking an efficient judicial system. Lacking resources, professionalization and knowledge to interpret international law (and thus refugee protection law), its appeal process can hardly be compared to the advantaged European states. At the present moment, after the second Appeal Commission has been closed down, recognition rates at the second instance is again at zero per cent.

What happens to seekers once rejected protection in Croatia? Unlike in some Member States which are (more) often engaged in the deportation of these individuals to the state from which they fled, Croatia did not practice direct removals – if the persons were coming from more distant zones. As stated by the authorities, in cases of persons arriving from the farther areas, the usual practice was to provide persons refused protection with a decision on expulsion; yet deportations did not occur (Bužinkić et al. 2010, 105). This may relate both to the fact that the authorities have been reluctant to return a person to the country where he or she could be subject to violations of their rights, as well as the fact that the state saw such solution (which would include deportation) as complicated and expensive

(Bužinkić 2012).[230] After being handed decision, the persons were regularly asked to leave the territory by themselves. What happened to them is largely unknown. However, most of them are believed to have continued on to Western Europe.

As the MoI expected, besides other reasons, developed networks of smugglers services and existing corruption still enabled many persons to cross over to the states of Western Europe (Coordination for Asylum 2011). It is unknown what happens to seekers who continue their journey. It has been reported that after having received a negative response, some re-applied for protection elsewhere, while others continued to live in irregularity, often fearing that the same response would occur in the other state (informal information, beneficiaries and stakeholders). According to an informant (informal information, stakeholder, 2012), some seekers denied protection in Croatia, re-applied in some other state of the Union and obtained protection. As explained, the fact that in past Croatia was not defined as a *safe third country* still enabled some seekers to apply elsewhere, without having been discovered that they have previously done so in Croatia. However, in the context of membership that is expected to be obtained in 2013, application of the Eurodac and the *Dublin system*[231] will mean that Member States will be able to reject the evaluation of an application due to the fact that Croatia has already provided a decision. Equally so, the Member States will be able to return the seeker to Croatia prior to the end of procedure in Croatia, thus preventing (assumedly successful) secondary movements which existed so far. Such practices were already registered to be in place by Slovenia, France and Austria (Stakeholder A 2012; Stakeholder B 2012). Despite the fact that the *Dublin system* in general does not yield a great number of returns in practice – i.e. under 15 per cent (UNHCR 2006, 1); it brings great legal insecurity to the persons who may have considered to apply for asylum in another state and allows for the prevention of movement of seekers towards other states (i.e. Croatian – Slovenian border).

230 This does not apply to seekers arriving from the countries in Croatian neighbourhood. In these situations, deportation did not provide such considerable costs and occurred on a regular basis. Due to the fact the countries have been (unofficially) mostly treated as safe – while safety was not necessarily guaranteed to all of the persons – return to the area might have represented *refoulment*, especially in the previous years of political uproars (above all, in Serbia before Kosovo's independence). Still, it seems that authorities were reluctant to return the persons when they found it credible that return would put them in risk (Bužinkić 2012). Today, the state continues to deport rejected seekers from neighbouring states. However, countries have reached greater political stability and visa free regimes in the EU attracted many of these seekers to the Member States.

231 Authorities noted that Eurodac system (i.e. a system for comparing fingerprints of asylum seekers and illegal immigrants) will be ready when Croatia joins the EU (MoI; in Coordination for Asylum 2012).

Return to Croatia or staying in Croatia after receiving a negative decision can also be a rather unfortunate option.[232] Whereas the person in such cases (mostly) stays protected from being returned to the state of his or her origin, it leads to the deprivation of rights, as irregular immigrants are placed in the group with the least protection. In the Croatian case in particular, irregular migrants have a specifically difficult position in comparison to many other states in the European Union. Besides minimal legal rights; no organizations assist these migrants. The virtual inability of the immigrant (who does not speak the language) to obtain employment makes self-subsistence rather difficult. Due to the fact that the state does not have programs for the regularization of irregular immigration and given that regularization through employment is almost equal to impossible, there is nothing to protect the person within the system (Stakeholder B 2012). This presumably also explains why the (estimated) rate of irregular immigration is still rather low. However, this may also motivate many other rejected asylum seekers who are headed to Western Europe (or those who left during the procedure) to avoid seeking asylum in other European states so as not to trigger a return to Croatia. Indeed, during the research, the author has noticed that an increasing number of seekers is relatively well informed about the possibility of being returned to Croatia (or the actual occurrence of such practices).[233] As informed (Beneficiary G 2012) some seekers felt reluctant to seek protection in the country they arrived, fearing to get returned to Croatia. In this case they would continue to live in irregularity in other states. With the growing European agenda against irregular migration, especially since the rise of the right-wing in Europe, such status can hardly be satisfactory alternative to the status of asylum (or subsidiary protection). Whilst we can hardly know how many persons have been affected by the Croatian practices, in the past eight years, over 2.500 persons sought protection in Croatia and only a negligible number of them received it (until January 10, 2013). Most of those who did not do so may be assumed to be either returned to neighbouring eastern states (when authorities managed to demonstrate persons arrived from these states) or have presumably passed on to the other states of

232 As informed, after being handed a negative decision, sometimes a person would be later discovered to have stayed in the country, contrary to expulsion order – now with an irregular status. On occasions, police would take the person to detention; yet, after some time, she would be again let go with the same order (informal information, stakeholder, May 2011). As stated by the same informant, this at times happened more than one time.

233 Such information was probably offered by the NGO and other beneficiaries in the reception and detention centres.

Europe. We may hope that a large part of these have sought asylum elsewhere while the states still had not treated Croatia as a *safe country*.

6.1.3 Right to Dignifying Life: Content of Protection and Integration Policies

While we could assume that those few persons who have received protection could be considered privileged, we are about to see that this has hardly been the case. In Chapter 4 we have revised the problems occurring once the person gets protection; yet, we have not yet discussed how this affects the persons in the system. Here we will see that their life in Croatia amounted to a mere existence, with poor sets of rights, minimal security for the future and hardly any prospect for quality of life. Where it may be considered success that the system has moved on to the point where it needs to secure rights to actually recognized categories of refugees (in comparison to previous practices of non-recognition); only for a few individuals under protection, Croatia has become some sort of new life (though still filled with lesser or greater difficulties). Several individuals have obtained employment (although a great part of these only part-time, mostly on student contracts). A few have enrolled in university education and some to a school which facilitated their integration (Croatian Red Cross; in Coordination for Integration 2012).

For the large majority, however, living under protection in Croatia boils down to what they have described as "wait wait" or "eat and sleep" (Beneficiary A 2012). For the largest part of stakeholders working in the field, the area of integration represents a field of immense frustration. As a respondent explained, whatever needs to be done becomes "incredibly difficult" (Volunteer 2012). Slow administration, state officials that are unfamiliar with the services they ought to provide and the offices that claim they are not in charge for certain tasks – all resulting in services which have no meaning for the real needs of beneficiaries – is something that has been described to represent the routine of the integration process in the state.

> Wait.. Wherever I go, they tell me wait. I wait.. I go again. I say 'I waited. I still don't have class, I still don't have job… All you do is tell me to wait. I want to learn… I want to work…' And what they say? 'Wait!' What I wait? So I go to house and I wait (Beneficiary, A 2012).

> You feel castrated. You have people in front of you, they have needs. But you just can't do any move. Each progress is so slow and so hard, even in the most basic things… When you

manage to somehow fix that they get something they were actually entitled to, you feel like you have moved the mountain. And you have just solved, for example, that he gets a monthly package of food – one that is not sufficient even for half of a month… Asylees are tired, they are demotivated of everything. When I tell them that we will try to solve the problem, they tell me to let it go (Volunteer 2012).

Indeed, most of the beneficiaries are reported to be dependant on diverse forms of assistance. The lack of language proficiency makes it rather hard for a person to find a way not only into institutions, but also into daily life. As respondents reported, even after a considerable time of residing in the state, they needed assistance of the NGOs (mostly volunteers) to provide for the things they needed for their regular life. As they explained, such a position was rather demotivating: "I live here but I always need to ask for something: assistance with the doctor, assistance with the apartment owner, internet providers… It is humiliating to be reduced to the level of a kid" (Beneficiary B 2012).

The lack of ability to get employed and insufficient social assistance leads to a situation where the recipients live on the edge of poverty. Where they report to regularly seek for solutions to be able to find a way to employment and subsistence, this is not available. The system has no will to push for answers that would enable long term solutions for the persons under protection. The hardest situation occurs after the period of two years, when recipients lose the right to accommodation and health insurance.[234] Although most persons do not manage to get employed, this assumes that they need to finance these services themselves.[235]

How does it look? Bad. It is hard. You seek to make ends meet… (Kadoić 2012)

It feels really bad when you see someone heating a fish from a can and seeking to eat little so she would not get habit to need more… That is a person that eagerly wants to work. But you cannot find work for her because she doesn't speak perfect Croatian and because she doesn't have qualification and she doesn't have this and that paper… oh.. just… It's just so depressive. That is supposed to be 'the new life' (Volunteer 2012).

234 The person maintains the right to basic health care only.

235 State provides subsidy, but recipient needs to cover the rent and other costs.

I have place to live now. Food is small but it's ok until I get work. But no one get work. Wherever I go, they say 'you don't speak Croatian', you don't have diploma. And how I speak Croatian and how I get diploma? And what when my two years go and I don't get job? How I will live? No apartment, no job… (Beneficiary F 2012).

Interestingly, despite the insufficient nutrition allowances, poor financial assistance and general conditions of poverty, most persons emphasized other issues as the most urgent. Respondents regularly expressed they found it rather hard to live without social contacts, in isolation, with a lack of self-reliance and employment. All of them stressed they needed to have *normal* life. According to one respondent (Beneficiary E 2012), among the beneficiaries, the country was also considered a place where you "go crazy". Lack of social contacts and social life, lack of employment and generally the missing "purpose of living" were emphasized as the hardest.

You wait for decision, you are scared what if you get negative, what you do, where you live. You can't go back. Then you get positive and it should be good. But it's not. Then it gets hard... (Beneficiary D 2012).

My friend tell me he think he goes crazy… I tell him welcome… I don't know what is night and what is day. It's just the same (Beneficiary E 2012).

This is not life. This is like machines in hospital. You are not live, you are not dead (Beneficiary C 2012).

I feel useless… I am useless. I was once useful. I don't feel like person now (Beneficiary B 2012).

Many persons referred to their experience in Croatia as humiliating. Some who wanted to move to the other states of Europe and search for better conditions were rather disturbed by the fact that the state does not want to provide them with their needs, but maintains they needed to stay. Some who remained persistent to seek improvement in their conditions in Croatia were rather demotivated when they felt they understood that nothing will move from the *status quo*. Most of respondents expressed it is rather degrading to be treated like an "excess" in the country. Many emphasized they perceived authorities do not want them in the country.

In the lesson of Croatian that I had with a person, we couldn't understand each other for the most part. But somehow we managed to communicate with dictionaries, google translate… At one point, we arrived to the topic of asylum in Croatia. He was trying to tell me something but he couldn't remember the words.. then he found them in the dictionary. He showed me: 'human' 'not' 'dog'. Now you tell me about dignity here (Volunteer 2012).

Why they don't let us? Here no give us nothing, no job, no *hrvatski* [Croatian], only stan [apartment] and little food. But you must stay. And I ask how I stay, what I eat, where I sleep when my *stan* will be over? No body knows (Beneficiary G 2012).

I don't know what I do. If I go and they catch me and say you were bad to escape... If I stay, what I do? I can't live without work and money. I sit at home… (Beneficiary H 2012).

They say Croatia is bad. But I like Croatia. I don't need much. Little modest but normal life. But they [government] don't want. Asylee is a problem for government (Beneficiary D 2012).

In contrast to practices existing in various other countries of Western Europe (at least prior to restrictions and securitization), where refugees were often given facilitated procedures for integration and naturalization (Goodman 2010, 33), in Croatia there is no such option.[236] The issue becomes concerning when one regards the restrictions on citizenship and the governments' attitudes in the issues of asylum – which so far have not demonstrated that they are interested in what will happen with persons under protection in Croatia in the long run. As regards the limited duration of the status, real effects cannot yet be seen since, as we have observed, none of the persons has lost the right to status (Lalić 2013) nor have the beneficiaries been able to claim citizenship. Due to restriction in the 2011 Law on Citizenship necessitating eight years of continuous residence (Zakon o hrvatskom državljanstvu 2011, Art. 8) instead of previous five (Zakon o hrvatskom državljanstvu 1991, Art. 8), the beneficiaries are still not applicable for the naturalization procedure. However, great concerns arise from the fact that Croatian citizenship laws and practices are generally rather restricted for persons without Croatian ethnic origin. As we have seen, during the 1990s, the Croatian nationalist regime used citizenship laws to

236 Croatia has not adopted the Recommendation on the Acquisition by Refugees of the Nationality of the Host Country of the Council of Europe (1984) which strongly recommended countries to implement facilitated procedures in the refugee case.

exclude persons without Croatian origin who have been residing in the state for several decades. While these have later been relaxed (under the pressure of the EU and other international organizations), the symbolic foundation to membership has not changed and practices of citizenship are still rather strict. In reality, only a minority of aliens manage to obtain Croatian citizenship.

The question is what will occur to the persons who could not return to their state of origin, but are constrained to remain in Croatia. This is specifically the issue given that the state does not facilitate their integration; yet, is indisposed to provide means for their subsistence. Not less concerning, naturalization procedures demand the immigrants to pass language and culture tests. However, as we have seen, language lessons so far have not been sufficient for the beneficiaries – in some cases, not even to learn the basics. The state has justified such limitations drawing on the limited economic means that Croatia possesses. Yet, interestingly, in contrast to persons under protection, who have the right to one semester of state financed language training; for persons of Croatian ethnic origin – without citizenship and with residence outside Croatia – the Government finances two semesters (within the same program)[237] (State Administrative Office for Croats Living Outside of the Republic of Croatia 2012). The fact that lessons for persons under protection are presently not available, as well as the fact that it is unknown when they will be available and what will happen with the beneficiaries that were denied the right to these, create a great sense of anxiety among those who deal with the area.

The question becomes even more concerning if one regards the fact that in the event of cessation of the status of protection, the right to residence will depend on one's ability of self-reliance and employment status – which has for now been unfeasible due to the lack of integration strategies. As expected in the literature, a lack of security over the duration of the status provided persons under protection with great frustration. Not knowing until when they will be allowed to stay in Croatia and where they were to live in the future brought on a great sense of instability and the inability to plan their lives – in Croatia or elsewhere. The beneficiaries found it deeply frustrating that their life was about waiting for someone else's decision. As they stated, once the frustrating period of lingering for a

237 As we have seen, lessons were so far offered under the same program. The new (left) Government renewed the arrangement as in regards for ethnic Croats. For persons under protection, the state has recently devised a new program but no financial means were provided for this in the state budget and the beneficiaries are presently unable to practice this right.

decision on asylum request was over; problems for refugees only begun. The respondents have demonstrated great fears over the future and a general lack of perspective.

> I don't know what to do. Is it better that I learn Croatian or not… Or is it good I learn some other things that I can use here and at home… I don't know. No one tell me. They say 'we don't know'. I know they don't know. Me too I don't know. So what do I do? (Beneficiary H 2012).

> It is like a small prison. You are alive and safe but… You can't start your life. My years are passing by. First waiting for decision on asylum. Now waiting if my protection will be prolonged. How can I start my life here if I don't know whether I can stay or not? I am too young to waist my years like this, I can't spend 3, 5, 8 years waiting. And if my country gets safer and I get returned in 8 years, how I will start my life there? I will be too old. It just makes me crazy. Waiting is not living (Beneficiary B 2012).

> I just wanted to feel safe again. Home was not. But I still feel worry all the time, what will be my life, how I will live, what if I don't get employ, if I lose right to stay... (Beneficiary J 2012).

The only auspicious circumstance for now is – paradoxically – the fact that the number of the persons under protection is limited. However, for those clogged in Croatia, this does not mean much. Besides this, the number of the seekers and recognized statuses is increasing and it is expected that – unless some shift in recognition policies occurs – it will only further increase. The stakeholders actually stated that they expect this will cause great problems, given that with these limited rates, the system is at the "edge" of being able to work (officials and NGOs, informal information; in Coordination for Asylum 2012).[238] Moreover, as we have reviewed in the previous sections, the fact that a person has applied for asylum in Croatia decreases his or her chances to be provided protection elsewhere: if not returned, the person may be motivated to stay unreported elsewhere, passing to the increasingly hazardous status of undocumented migrant. Paradoxically, for those that have tested Croatian integration system, this might still be more attractive option (as stated by some).

238 According to the Red Cross (Kadoić 2012), in December 2012 there were only 39 persons under protection still residing in Croatia. Others have (presumably) left to other states of Europe.

6.2 European Union and the Right of Refugees

Looking at the effects that the policies have brought, one may hardly find them easily fitting with the basic intention of the international refugee and human rights law. The reasons pertain both to the legal wording and the underlining principles of the law in question. All of the key safeguarding instruments – be it the CAT, the ECHR, the Refugee Convention or the Human Rights Declaration – demand that each person has the right to life and safety, as well as the liberty and dignity of their life. The first duty of refugee protection should thus be to protect persons from the lack of safety (and other wrongs); and then to provide refugees with conditions necessary to practice their other human rights. It appears quite clear that the Union has not made sure that Croatia fulfils these tasks. In fact, both the *acquis* and the practical position of the Member States' or the Union often worked against the logic demanded by the institute of refugee and human rights.

In the area of migration control, it was both the *acquis* and its underlining principles as well as practical positions (in the Union) which endangered the protection of international refugee rights. Where the *acquis* itself did not violate conventions in a straight line; it did "indirectly what it is not permitted to do directly" (Goodwin-Gill and McAdam 2007, 387). Pushing refugee movements outside of its frontiers, it deactivated the duties of the Members States towards the international refugee law. As some authors have argued (Battjes 2006, 6–14; Hailbronner 1996), the Convention (as the founding instrument of international refugee protection) really did envisage visa arrangements and has legally protected the right to access solely in the territory – and the borders – of participating states (United Nations 1951, Art. 33; Schedule, Par. 8–10). The *non-refoulment* clause stated it is not allowed to return or expel the person seeking protection to the territory of the state where they may be under the risk of persecution. Legally speaking, a specific formulation naming "returning" or "expelling" indeed allowed states to apply visas in a free manner, as the principle may be clearly legally defended only on the territory of the state. One cannot argue that the Convention would be able to oblige the states to the extraterritorial protection of refugees.

On the other hand, when judging the European visa regime today, one cannot ignore the effects of carrier sanctions which are central for the effectuation of its goals. Whereas the visa regime itself had the effect to prevent a persons' entry to the territory of the state, carrier sanctions did so at the seekers' home (Collinson 1996; Moreno Lax 2008). There is a striking difference between these two, if one considers that the legal right to access is

applied also to the border zones. While visas solely were needed to enter the state territory – thus leaving the chance for a person to express the need for asylum to the police officers in the border zones – sanctions for carriers created rigorous pre-departure controls and disabled seekers to arrive directly to the territory (or the border) of the chosen state. Interpreting international law (and particularly the Vienna Convention on the Law of Treaties; see: United Nations 1969, Art. 31), the scholars stressed that the legal norms necessitate to be read in good faith, with the view on the underlining purpose and aims.[239] And here the purpose was pretty clear: while the Convention allowed for the continuation of (significantly more moderate) migration control norms, it has at the same time invited the states to apply them reasonably and generously, taking care that the main principles – life, safety, freedom and dignity – remain intact. The Final Act of the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons clearly emphasized that "… considering that many persons still leave their country of origin for reasons of persecution and are entitled to special protection on account of their position…", the UN Conference of Plenipotentiaries "… recommends that Governments continue to receive refugees in their territories and that they act in cohesion to the true spirit of international cooperation in order that these refugees may find asylum and the possibility of resettlement…" (United Nations 1950, Para. IV D).

Naturally, such recommendations were aimed at safeguarding the most fundamental of all norms – the norm of *non-refoulment* – which was to be considered as "so fundamental that no reservations may be made" to its purpose (Preamble). As some have argued (Edwards 2005, 302), in the context of refugee law, the right to leave one's country and seek protection represented "two sides of the same coin". It would be counterintuitive to conclude that the Convention would welcome policies leading to exclusion of the majority of the world's population from a way to reach the territory of the participating states or demand them to do it in an extremely risky way. If it would, then its entire meaning would be dubious and could hardly be considered a proper mechanism for the protection of human rights of the refugees. In such an event, it would be secondary whether the Convention has allowed it or not; it would be necessary to rely on other instruments of refugee and human rights law. One does not necessitate a convention that would legitimize risks to central human rights.

239 Where the Vienna Convention would not apply to instruments adopted prior to its entry by force in 1980, scholars warned it is considered a source of (binding) customary law (Battjes 2006, 15).

Again, as some held (Battjes 2006, 6–14; Hailbronner 1996, 115), the readmission agreements also cannot be found contrary to the legal wording of the refugee law – this time because the refugee law did not know of such device. However, it is quite apparent that – combined with insensitive border controls and the concepts of *safe countries* – they have brought heavy infringement on the ability of persons to reach actual *safe* zones. As envisaged by a variety of critics, heavy European controls spread across the states with improper refugee protection regimes, making the right to access to procedures for granting protection subject to domestic resources and political will. Dissemination of readmission agreements in Croatia and neighbouring countries left many asylum seekers unable to claim protection at all. Some scholars maintained that the European *acquis* offered substantial guarantees that the *safe country* rules will be properly used. Referring to the provisions that set stringent conditions to protect refugees when using these tools, the authors believed that if asylum seekers were returned to zones where they could not practice their rights, it was the states to breach on the Convention, and not the European *acquis* (Thielemann and El Enany 2008).

However, if not inducing the states to engage in unlawful activities (the Council of Ministers); the European institutions (including the Commission) demonstrated inability to prevent them. Where the EU accepted that the Croatian practices of return to Serbia could not be confirmed; Hungary has, for instance, openly defined Serbia as *safe*; yet, it caused no reactions from the EU. As the Statewatch warned (2012), the Commission promised to monitor the application of the Directive (with the sanction in case of infringement); but this has not occurred. Despite the fact that the UNHCR warned Serbia should stop being treated as *safe* and despite the fact that the European Commission practically described it as *unsafe* as well (Statewatch 2012);[240] the Commission did not seek to prevent returns to Serbia from the territory of the EU.[241] Instead, it established that "readmission between the

240 "In the field of migration, Serbia has not made progress. The legislative framework largely meets EU standards but remains to be effectively implemented. Claims are still temporarily processed by the Border Police Asylum Unit, as the Asylum Office foreseen as the first instance body has not been formally established yet. The mandate of the Asylum Commission, the second instance body, expired in April 2012 and new members remain to be elected. Serbia has two asylum reception centres, but they have insufficient capacity to provide services for all asylum seekers" (European Commission 2012c, 9).

241 Hungarian Helsinki Committee reports that Hungary "routinely" returns seekers to Serbia without evaluating their claims. In 2011, 450 returns were registered (Statewatch 2012). It is unknown how many have been treated like irregular immigrant and return on this basis.

EU and Serbia functions smoothly" (European Commission 2012c, 9). Indeed, we may wonder how the Commission was supposed to act differently when the Union itself at the same time demanded Serbia to partake in European asylum and migration policies (the same arrangement as it had with Croatia) – thus, in practice, treating the state as *safe*.

The same may be said for the recognition policies. It is the fact, as scholar warned, that no international convention prescribed the duty of the state to grant protection; but merely to allow a person to present his or her case. Nevertheless, despite all of the limitations that governments wanted to keep, all the conventions made it clear that they advocate and demand that persons who may be in particular risks (i.e. persecution and others; as defined in the instruments) get protection from the participatory states. It is quite obvious why conventions did not provide that any individual who applies for asylum must be granted one. Debating the sensation of the *well-founded* fear, the drafters of the Refugee Convention made it clear that the state authorities are those to discern whether the persons' fear may be misconceived. For this reason, they assumed that each administration needs to have a method to discern for itself. At the time of drafting of the Refugee Convention, migration and refugee realities were rather diverse. Instead of debating the claims in terms of *genuine* and *false*, the drafters worried how one is to understand when the seeker's fear was down-to-earth and when the seeker has judged the situation wrong (see: Hathaway 1991, 65–97). Present realities are apparently those of different kind. Having a large amount of immigrants turned to irregularity, asylum applications may represent a way to obtain one's entry or stay in the territory that has otherwise been out of his or her reach. This places national governments in another situation, where the stated reasons for protection may not only be misconceived but also forged. However, this does not presume that (a) the administration may preventively reject the greatest part of the claims; or (b) assume that the seeker has no real reasons to ask for the safeguard from a particular state.

Firstly, as much as it may be true that state administrations do not have an easy task, state interests cannot be given precedence over human safety, freedom or life. As we have seen (Chapter 4), where the drafters of the Refugee Convention presumed that the assessment of claims needs to take in consideration statements and political realities from the area that the seeker has come from; it demanded that authorities act sympathetic towards his or her claim. The Member States and the Union reversed this demand. "Driven by an immigration control mentality, rather than one focused on the protection needs of individuals" (Gilbert 2004, 963), the European Union and the Member States spread the logic of prevention across the non-member states. Insensitive assessments and "obsession

with the false refugee [which] haunted institutions in charge of managing asylum" (Fassin and d'Halluin 2009, 310) did not only presume that the greatest number of the claims will be considered false, but also placed a burden of proof on the seeker instead of the state.

Where it may be reasonable to demand a seeker to present his or her case in a credible way; it is virtually equal to impossible that a person verifies his or her statement is correct. This is why the drafters of the Refugee Convention advised that administrations implement the rules in the most sympathetic way possible. Debating how the states were to understand who needs protection (in this case from persecution), the drafters stated that the Convention needed to offer stipulation which will "provide safe heaven to those unfortunate people whose fear of persecution was well founded" (Lord Goff, as cited in Hathaway 1991, 74). Whilst assessment of the *well-founded* fear was subjective and needed to remain at the discretion of the national administrations; the authors considered the authorities needed to judge whether there was a sound chance for the risk to be in place.[242] Indeed, various courts (as crucial guardians of the international law) usually held that one needs not to demonstrate that the risk is probable (or definite), but rather that the persecution is a *reasonable probability* which presumed that there was an *objective situation* in the country of origin which could put one in such risk (Hathaway 1991, 74–75). Where authorities can never be sure that the risks is in place, the gravity of issues related to the asylum cases presumes that suspect over credibility – if there is – should not be the critical reason for the application to be dismissed (Lunshoff in UNHCR et al. 2004). It is rather dubious whether attitudes in the security oriented organs operate with such logic. On the basis of what we have seen in our case, it would be hard to conclude they do.

Also, where it is apparent that a number of persons may seek to resort to the asylum claim to avoid being removed from the territory; often more than once, the seekers may have had *genuine* reasons for protection that the authorities could not have recognized. Firstly, as we have seen, where purely economic reasons do not qualify for protection, individuals may tend to stress on their economic situation while in reality having reasons for protection. This can often go unrecognized, unless careful examination is done. Secondly, where persons may be found presenting incorrect facts; this may be a product of fear that real reasons will not be enough (Beneficiary G 2012). *Adding* elements to their story may be a way to boost their chances not to be returned. As our research demonstrated, there is a great propensity of the seekers to accept advice during the journey,

242 See debates of the drafters in Hathaway 1991, 75–97.

from the other migrants or the smugglers themselves. Advised how to present their case, the person may speak of other reasons than that of their own; while his or her *real* case may be equally strong (informally obtained information). Research showed that governments' (and the EU's) assumptions on asylum abuse could be well overestimated. Where movements of asylum seekers have been strikingly augmented in the past decades; statistics demonstrate that they largely corresponded to the political conditions found around the globe. Comparing the rates of asylum claims across Europe, the authors have found that they reflect periods of political uproar and wars in the originating states (Hatton 2008).

Particularly due to the reasons stated above, it is of crucial relevance that states enable efficient legal assistance and proper appeals. The European *acquis* had not provided for this to be in place. As offered under the Qualification Directive (Council of the European Union 2004, Art. 15 and 39), the states were to choose when they would offer free legal assistance (in the first and second instance or only the latter) and the suspensive effect of an appeal (i.e. ability of the seeker to remain in the country and enjoy rights provided to asylum seekers).[243] States have chosen numerous options, adding to the diversity of chances available for persons to be protected (FRA 2010). In the Croatian case, as we have seen, led by the logic of economic savings, decision makers have opted to finance only mandatory legal assistance in the second instance. Where a limited number of asylum claimants in the first several years enabled the seekers to have this benefit offered by the NGOs (the CLC); the recent rise in numbers of applicant made it impossible for the NGOs to cover these needs. The European Union left the area uncovered. In the respect to appeals, the EU has enabled that Croatia introduces the suspensive effect of an appeal while ensuring its independence under the second commission for appeals. However, at the present, with the institutional change to the Administrative Court, it is somewhat uncertain what this legal remedy will mean.

With reforms occurring during the past years and introduced largely from the EU, Croatia has offered enhanced protection to persons in need. In comparison to, for instance, the Greek system that offers 2 per cent recognition or does not even accept asylum claims,

243 Without the right to stay in the country or enjoy all necessary rights (accommodation, social assistance, legal aid, etc.), the seeker may hardly be able to effectuate appeal. Without suspensive effect, the institute is void.

Croatia does not represent the worst case scenario.[244] In that sense, the chances of persons to be granted protection in Croatia are better than in the given example. Nevertheless, considering we are dealing with human lives, this is not sufficient. Because a person may be heavily damaged by domestic procedures and interpretations, one cannot compare the system with the lowest common denominator. Despite all of the progress in the Croatian procedures for recognition, we are faced with a situation where the system again most dominantly depends on the will of the executive and the ability of the state to decide treating refugees according to its pragmatic needs. Besides this, one must stay aware that the state has so far offered protection only to a handful of refugees. As a variety of critics warned, it is intolerable that a persons chances to be granted protection are fixed to the territory that he or she has arrived to – or, better say – been constrained to arrive. It is against the Refugee Convention and any other convention of human rights as it represents discrimination and inequality in front of the law and as it can be rather dangerous for humans' lives or the chance for a decent life.

The same applies to the issues of integration and rights of persons under protection. Even a simple reading of the Refugee Convention (which most elaborately sets out material and the other rights of refugees) makes it clear that the instrument could not and did not aim to load countries with obligations that they would not want to undertake or (potentially) could not fulfil. Letting the states grant refugees protection in accordance to their abilities and domestic traditions, provisions were limited to minimal guarantees. Yet, the governments agreed to offer refugees "so far as possible" for each country (United Nations 1950, Para. IV E). As we have seen, the EU *acquis* undoubtedly extended these rights, demanding from each state to provide a variety of additional services. In the beginning this related only to persons enjoying full asylum status; and after 2011 (i.e. new Qualification Directive), also to recipients of subsidiary protection. However, again, it stayed limited in several important aspects.

Firstly, one of the central aspects of the refugee status (and the Convention) pertained to the question of durable solutions for refugees (UNHCR 2005, 46). Whereas, as we have seen, the Convention has enabled states to practice return in the cases when reasons for protection ceased (Art. 1 C), it has at the same time emphasized that states shall "facilitate

244 Still, one should also take into account a rather important factor – the rates of application and immigration in the country. The question is how the policies would function had Croatia have to judge several thousand claims per year (or accept several tens of thousands of immigrants per year).

assimilation and naturalization" and "in particular make every effort" to accelerate naturalization procedures and ease "as far as possible" the charges and costs of these procedures. Where the UNHCR has supported only voluntary repatriation; the Convention has not been so decisive on this front. Debating the duty to offer full access to citizenship; the states demonstrated they did not want to give up on their right to decide who may be allowed to become long-term member and who may be renounced. When it was time to formulate a provision that was to become obliging for the signatory parties, the drafters decided for careful stipulation that obliged them to facilitate *assimilation* and naturalization, but not to grant it automatically.

> … The term 'assimilation' had, of course, a special connotation in sociology and might perhaps carry with it certain unpleasant associations. Nevertheless, in the sense it was used in context, it was an apt description of a certain stage in the development of the life of refugee. The Convention was intended to provide refugees with a means of existence and at the same time to accord more favourable treatment than that granted generally to aliens to those refugees desirous of settling in a country for a certain length of time. Its final aim was to permit the assimilation of refugees into national community by means of naturalization proceedings (French Representative; in Hathaway 2005, 982–983).[245]

The European *acquis* decided to ignore the issue of naturalization. Stating only that the state may facilitate integration, it has elaborated on the rights of states to withdraw the status (Directive on Procedure) and ignored the issue of long term solutions. While the lack of solutions on naturalization could not have been considered to breach the legal wording of the Convention (i.e. the Art. 34), it could have been interpreted to work against its spirit, which – as restrictive as it was – was intended to promote naturalization (Hathaway 2005, 990). This aim assumed that the refugees need not only the right to bare life, but also the right to a dignifying life; or as some of our refugees stated, just a "normal life like everyone else" (Beneficiary L 2012). As in our case, studies shown that it is of crucial importance for the person to have free choice about his or her future for the quality of their life to be in place. Allowing persons to stay; yet, making them unable to plan their life disables them from having a decent life.

245 The French Draft of the Refugee Convention was crucial in preparation of those provisions of the Convention which related to naturalization and integration.

Lack of such provisions made for durable solutions for refugees left to the national laws. Moreover, it appears that in practice, the EU itself (including the European Commission) commenced advocating return rather than the long term solution for persons under protection. In more recent times, the Commission commenced debating the need of the refugees to leave Europe once the reasons for protection in the originating states have ceased. Explaining that Europe needs to protect persons in need but also protect those inside; it called upon the rising level of xenophobia and racism in the Member States and concluded that other solutions may only add to rising anti-immigrant sentiments and the popularity of the far right (Hansen 2009a, 30). Indeed, it has been reported that – in comparison to previous years – states increasingly practice policies of return (Chimni 1999). Often this does not only preclude the risk for their quality of life, but also their safety. In more than one occasion, persons have been return to places where safety has not been secured and more than once this has meant the loss of life (for illustration, see: Aljazeera 2010; Conflict Monitor 2010).

However, where a variety of the well established states in the EU still provide refugees with (more or less) satisfactory conditions of life (for example, see: Ager and Strang 2008; International Association of Refugee Law Judges 2009; Valenta and Bunar, 2010; Zetter et al. 2002)[246] in Croatia, the status of protection is devoid of meaning and purpose – as it is boiled down to the preservation of bare life. Frustrations of some of the recipients, stating they are "angry" at themselves that they have not been "smart enough to try to go to another country where asylees have life" (Beneficiary G 2012), point to cheerless consequences that the European harmonization in asylum and migration brought. The situation is yet more striking if one regards the fact that the system has a total of 80 recognized protections and half of these are presently residing in Croatia. As the Representative of the European Delegation stated (Frieh Chevalier 2012), the present state of affairs is particularly unacceptable as "it is so easy" to provide a handful of persons with needed rights. Despite the frustration of the European Delegation in Croatia, the EU accepted the fact that this is the state of affairs and allowed for the refugees to be blocked in the state and returned in the future – i.e. when the *Dublin system* takes place.

246 Still, they have not done so necessarily in the case of persons that have subsidiary protection. It remains to be seen whether extensions in the rights of these group in the 2011 Qualification Directive will improve conditions for this group or negatively affect all of the recipients – perhaps motivating policies of temporality for all beneficiaries as a mean to defend the state from new pressures on asylum system.

Evidently, it would be hard to agree that such conditions do not represent the violation of refugee and human rights. Contrary to the optimistic strand of authors, the fact that the EU has allowed for differential rights of refugees and provided loose guarantees for their enforcement – while demanding at the same time stern geographical rules of the allocation of asylum migration – cannot be in peace with the international principles of refugee and human rights protection. As some authors have pointed (Gilbert 2004, 972), if the return of a person to the area of some country does not lead to the *refoulment* itself; it does not mean the Convention has not been violated. If the Convention demands that specific rights need to be secured, returning the person (or obliging her to stay – author's note) in the locality where she may not enjoy these rights presumes its infringement too. Indeed, for our purpose, to understand that the consequences for human rights have been detrimental, we do not need a stringent reading of the legal wording of the conventions. In our case, the European harmonization on asylum and migration has forced people to live in desolating conditions; while in some other states they enjoy a wide variety of rights (see: UNHCR 2007). Clearly, it may not be held that the Union has merely incorporated an imperfect array of legal norms, while responsibility for their fair implementation rests only on the states themselves.

6.3 Conclusion: Europeanization and Refugee Rights

Coming back to the debates raised by the critics and the advocates of European integration in asylum and migration, one can see that our case confirmed the thesis of critics of the European projects, who emphasized deteriorating effects of the Europeanization of asylum policies. Without doubt, the European policies of asylum had an important impact on the Croatian system of refugee protection and the human rights of asylum migrants – including those established by the international refugee law. Before all, as scholars warned (Guild 2006, 630–632; Thielemann and El- Enany 2011, 6), demanding that the state implements the *acquis*, the EU has at same time demanded that it introduces the basic mechanism from the international conventions in its domestic legislation (prior to all, the Refugee Convention), which Croatia eventually did. In doing so, the national regime became (formally) bounded by these norms; thus creating a chance for these mechanisms to be subject to judicial revision at the national and European level. Besides this, the Union has been involved in encouraging, assisting and coordinating the construction and improvement of the domestic asylum system enabling its more efficient implementation. In effect, Croatia has created a completely new system of refugee

protection with legislation following the criteria of European norms and a good part of the norms demanded from the international conventions. Before the Union had stepped in, the country had only rudimentary provisions of refugee protection in its legislation; not nearly acceptable from the prospective of refugee law. Although it has been a signatory of the Refugee Convention, not even the basic rules (such as *non-refoulment*) have been reflected in Croatian immigration law.

Even though defined in terms of minimum standards, the European asylum *acquis* brought important legal guarantees to refugees. Firstly, it identified conditions under which the person could claim state protection, making the Croatian scope of protection legally comparable to the ones that existed in the Member States with a long tradition of refugee protection. As we have seen, the definition was taken from the Convention, but was then extended to the situations of uncertainty that the Convention has not included. Secondly, the new laws (and especially the LoA 2007) defined a great array of important procedural guarantees that the state needed to safeguard to ensure a consistent application of international standards, thus breaking with the under-transparent and often inappropriate asylum procedures that were reported in the system, existing prior to the European intervention. Thirdly, the common standards demanded a minimum of adequate measures of material (and other) rights of asylum seekers and persons under protection, which as we have seen, would have been gladly diminished by the decision makers had the *acquis* not obliged them to accept them.

As we have seen, until today, the domestic system (in assistance from the EU) managed to put in practice important parts of the international and European norms. Procedures for granting asylum and reception conditions have, for instance, been lifted to a level which has not been implemented even in many Member States (Feijen 2007; 2008). Procedures for granting asylum were considerably fast, conducted in a detailed and thorough manner and generally judged progressive. The reception facility has been described as one of the most ordered in the region. All the seekers have been provided accommodation and basic material needs and the majority of them have by now been provided with the freedom to move. Recognition has risen and parts of integration policies have by now become functional (welfare policies; health care; working rights; etc.). Many of these rights have not been secured even in some other systems in the EU. This has led the EU to conclude that the Croatian system needs to improve its practices, but that it can generally be considered plausible.

However, where adaptation of the Croatian system to the European laws and demands allowed for refugees to gain new rights in Croatia; overall, the system has severely damaged refugees. As we have seen, instead of practicing their internationally defined rights, the largest numbers of asylum migrants are both prevented entry and protection, or reduced to life in insecurity, poverty and isolation. Contrary to what the advocates of the European project have posed, it cannot be held that these results do not reflect on the role of the Union in broader refugee protection. Despite the fact that each national system implemented the European norms in its own particular way, the EU is responsible for harmful effects it has brought at the national levels. This stems from the fact that the EU has (a) forced domestic systems to pertain in its asylum and migration scheme without forcing them to provide proper protection; and the fact that, as a consequence, (b) refugees are now tied to national systems without ability to change such logics, despite the fact that their rights may be violated in this scheme.

Instead of merely reflecting deflections previously introduced by the Member States themselves or by the international refugee law iteself (Battjes 2006; Thielemeann and El Enany 2008; 2011), the Union has allowed the attrition of refugee rights in a way (and an amount) that would hardly be possible had these policies stayed regulated at the national level. It has (a) created an unique network of mechanisms to discharge applicability of the international standards of refugee protection on its own territory; and it (b) made refugee and human rights dependant not only on the national policies, but also the national policies of the state to which the refugee first arrived – within or outside of the EU. In that sense, it is not only national features, but also the geographical logic of migration that dictates the chances of refugees to obtain any right. Creating such a system, the Union has not only enabled the erosion of refugee rights in a variety of regimes; but it also effectively abolished the universal validity of the Refugee Convention and any other mechanism of human rights for refugees. Making rights tied to the fixed geographic space, dictating that one's position on the world map determines the status he or she should have, it has formally and practically abolished the key value of human rights: i.e. its universal validity. Despite the fact that a variety of states today share a great number of disputed mechanisms which restrict refugee rights; it is hardly conceivable that such products could be possible without the powers of supranational organizations such as the EU. This is so because the EU – unlike the state itself – is capable to use not only monstrous resources, but also its authority to reverse migration realities on a regional and global scale.

Where the international regime of refugee protection and the Refugee Convention in particular may have been faulty in a number of respects; it was clearly designed to protect and not endanger refugees. It appears the key weakness in the Convention in this regard was that it had to account for the interests of the sovereign states – much like the European *acquis* did. However, the international refugee law did not aim to redistribute responsibility for the rates of refugees in the states or dictate the logic of refugee movements. Had it done so, it would suffer from the same ills as the European asylum does. Instead, the Convention and other instruments represented international documents obliging participatory states across the globe, and as such, it aimed to set minimal standards that the states were to respect. It would be naive to believe that the international refuge law could make such legal rules that could force the states to resign on all of the mechanisms of control, or devise standards that would not allow them to opt for the models they wanted to implement. In allowing the states to regulate modalities in their national laws, it has invited them not only to interpret its norms in a good faith, but also in a mindful and reasonable way. We do not need to study conventions to understand that it is not only illegitimate, but also paradoxical to develop the system of refugee protection, at the same time inventing mechanisms that would keep the actual refugees far from its realm; or force them to stay in the circumstances from which it aims to protect them – i.e. life insecurity, violence, lack of freedom or basic human rights etc. – all of which occurred in the cases we have seen. If the Convention demonstrated a weak point in this regard, policies that the EU has installed – declaring that these are based on the full inclusion of the Convention – represent distorted usage of the weaknesses present in the Convention. More precisely, claiming that the system is based on the full application of the Convention, without linking the norms to the safety of human lives is not only illogical, but it puts in question the entire idea of refugee protection as well.

Conclusion

Having analysed the domestic asylum system and its development stemming from the interaction between domestic and (dominantly) European actors, we may now propose the concluding remarks. As we have seen, the policies of refugee protection are constrained to function in rather an unsecure environment and particularly sensitive arrangement. Their unsafe position arises already from the fact that they pertain to the issues of human rights, which normally does not bring any specific benefit to national governments. The lack of direct benefit can regularly be compensated with the specific strengths of human rights: i.e. their legitimacy and undisputed authority (at least in theory and at least in liberal democratic parts of the world). Development of liberal democracies and human rights in national and international realms made it possible for the institute to be defended in unconventional ways: from grass root groups (including the general public) in a national context and large global organizations and international community at the multinational level. Where a number of human rights enjoy more or less undisputable support from societies and the international community in liberal democratic states, refugee protection has not been fortunate to be able to count on such support. To a certain extent defended on the international level from the governments too (i.e. conventions, declarations and state funded refugee protection organizations); each of the governments holds great restrictions, particularly when it operates at the national sites. While a number of human rights do not necessarily pose a specific threat to the presently conceived domestic needs and ideals, this could hardly be said for the issues of refugees' rights. Often perceived as a source of pressure to domestic identity, economy and labour market, it is disputed in the public too. Today it is particularly hard to have support for the issue in domestic societies, especially in largely homogenous societies (like ours) or societies where xenophobia is on rise (like many countries in the EU).

Unlike a number of other human rights, refugee protection norms necessarily call into question traditional powers of the nation states. Closely related to wider issues of migration and citizenship, refugee protection challenges the modern state which seeks to preserve powers over territory, population and membership in its realms. Despite their unquestionable link to most crucial liberal democratic ideals and human rights (such as life, freedom, safety or dignity); asylum policies are perceived to bring long-term changes to the ethnic and cultural composition of the domestic society, alternation in membership and identity concerns, as well as consequences for the state budget and fundamental

institutions. As such, the right to asylum can be all but regarded as an uncomplicated issue of widely accepted liberal democratic human rights. All these parameters were mixed in our domestic context too. Where economic motives have been stressed for the most, understanding of migration (of non-Croat origin) solely as a cost pertains to a deeper and widely shared concept of what the national community should be: i.e. a commune of members united by ethnically given bonds. In such a constellation, and mixed with already suffering social policies, national budget and weaknesses of the internal labour market; the external migrations of non-Croat population; the question was understood as a heavy threat. The European task was thus not an easy one. Demanding changes to such an unfriendly environment needed serious commitment and work on the part of the EU.

The Union, on the other hand, had its own particular context and promised to more likely add to the problem, rather than solve it. While in a number of human ritghts areas that it sought to address in Croatian case the Union had more or less certain value frame (for instance, in minority issues or sex and gender equality); in asylum issues, we have seen, this could hardly be claimed. It appears that the European Union has indeed moved from an exclusively negative stance on asylum issues, expressed in almost exclusive migration prevention aims dominating in the 1990s. In the meantime, it has added to the leverage of refugee protection and human rights in the European migration framework and actions, and induced building of new (more sensitive) laws and practices in the EU. In our case it was indeed evident that the European institutions (or, prior to all, the Commission) worked both on migration control and refugee protection. In that sense, its efforts validate what the Union's authorities have posed: that human rights in asylum issues in the EU today sit next to (previously exclusive) state control concerns.

Nevertheless, human (and refugee) rights in the European asylum and migration policies are still too weak. Prior to all, institutionally they have an amazingly unfavourable position. Member States and the Council of Ministers, as extremely powerful actors in the EU, are still not keen to lose control and powers they aim to have in this domain. On the one hand, in various occasions, these actors purported refugee sensitive laws and demonstrated concerns for their rights (otherwise there would be no such *acquis* at all). On the other hand, and in a much more emphasized manner, they have pushed for prevention, restrictions and control of refugee rights. It appears that states are more ready to count on human rights in the national domain (particularly their parliaments or courts); yet, when governments need to resign to their powers for the unsecure and porous European migration and asylum frame, they tend to opt to be in command. Such logic created for a

schizophrenic policy on asylum in the European Union; characterized by a set of conflicting, ambiguous and unclear norms, practices and goals. The working of the European Commission and the Parliament (impacted by a less ambiguous agenda of organizations such as the Council of Europe, the UNHCR and other organizations of human rights) added to the leverage of human and refugee rights; yet, they are still constrained by the powers of Member States and must compromise their own goals. Adding yet more to the contradictions in European asylum, these institutions cannot preserve refugee policies from the given precedence to the state protective concerns.

When the EU (with such an agenda) approached the candidate state like Croatia, which already suffered from a number of difficulties – insufficient resources, institutional malaise and fatigue caused by previous refugee concerns; consequences of war, state building and postponed transition (from socialism through authoritarianism to a more determinate democratic regime); and mixed with national ideals and identity quests – it does not appear that the products could have been much better than what we have found. Given the particularly hard environment in which the asylum policies were to be built; weapons that the European Union had (i.e. leverage of membership and its reputation) should have been particularly well consumed to obtain better results. Yet, here we come to other problems which were hardly unexpected. Before all, formally or factually, the institutions of the EU (and the Commission) did not question the framework in which it needed to work. While they wanted to balance between state and refugee rights; any level of (more sincere) harmony was doomed to fail in the securitarian (institutional) context it had embraced. Where the Commission may be a powerful actor in the candidate states, it cannot serve as a counterbalance in the institutional logic of security organized Justice and Home Affairs (translated to security chapter in the *acquis*). Accepting such positioning of asylum, it dominantly empowered the actors with a disputable position in the issues of human rights (i.e. security organs of participating states) and supported it on its own too (i.e. large funding and assistance as we have seen).

Due to the normative position of the asylum in the Member States and the EU, and due to severe empowerment of the named actors; the credibility of its threat could not have been different than deeply confined. While the Croatian government may have estimated wrongly that the Commission would let it remain unbothered by the issues of the asylum *acquis*; it has accurately assumed that it would not be demanded to provide full compliance in order to enter the EU. It appears that this occurs also in other policy areas, while discourse of consistent compliance remains debated only in scholarly work (and even here

decreasingly so). Nevertheless, as informed both by the literature and by our respondent from the European Union; there are definitely those policies which receive greater stringency in the national and European realms. In the context of human rights, within Croatia it appears that this happened with the issues of minority rights and war crimes. Furthermore, it also occurred in the domain of Schengen rules, like in other candidate states. Not only that the asylum issues were neglected; but the leverage of migration control policies in Chapter 24 made refugee rights not only secondary, but also often disputed.

To have better results, it would have been necessary to provide asylum issues with at least the same leverage that other human rights had in the process of negotiation and pre-accession – or, at least, it should have been debated in the public domain. Omission to do so left the government with limited or no reputation costs – both internally, as well as in regard to external actors. In domestic terms; the process of the reform missed out the chance to sensitize the general public and national media. However, this was a task that was virtually *apriori* impossible for the Union to undertake. Given that its position in migration and asylum is so widely disputed, it could hardly have had any real authority to do the task. At the same time, looking towards the international community; there is again nearly no actor to hold Croatia responsible (save for the human rights organizations), because the international community (or more precisely, other liberal democratic states) also took the road of heavy restrictions and ever growing securitization in their own asylum and migration policies.

However, a mechanism which the Union (i.e. Commission) could have probably seized much better pertains to the realms of "soft Europeanization" with other means. If it indeed aims to push on the human rights in asylum; it appears that the Commission could gain important products empowering more determinately those actors that could (at least to a certain extent) counterbalance security-oriented and restrictively positioned bodies dominating so far. Planning carefully the agenda for cooperation with all involved state institutions and providing them with a balanced (i.e. more sensitive) approach to asylum and migration, the Commission might have had more favourable effects on domestic asylum. In doing so, it would be rather fruitful to preserve pressure on the government, which – despite limited credibility – cannot be tranquil whether some consequences will appear or not. Allowing sufficient time for restructuring – yet, providing intermediary rewards to demonstrate its promises are not fruitless – could work on the behalf of reforms.

Despite all of these, and with all the efforts, it is clear that in our area, the juxtaposition of migration control (and state interests) versus refugee protection (and human rights concerns) can hardly be overturned on the behalf of the latter. Not undermining the effects of other factors destabilizing the success of reforms in asylum; interaction of these two appears to be among the heaviest constraints to the protection of refugee rights. It does not only work negatively on the governments in the candidate states; but it seriously and additionally limits the already unsure transformative power of the EU. It is a fact that in other areas too, European efforts do not have to bring complete effects. As we have seen in our case, the domestic system can produce a range of meaningless norms or practices and the same may appear in other areas too. Within the given institutional and administrative context, and changes induced from the outside, there is consistent danger to obtain "shallow" reforms and unclear results. As we have briefly stated, some other areas indeed suffered from such consequences too.

Still, there are some important particularities pertaining to our case. Many other areas may have domestic and European aims and policies more or less unambiguous. While goals of reforms demanded by the EU may not be perfectly clear; they are at least not always internally inconsistent. In that sense, policy results will depend on a variety of issues and may fall into the trap of superficial changes; but they do not have to be threatened from the inside and the outside too. Our policies suffered both from administrative and institutional weaknesses, as well as the insufficient resources (adding to "shallow Europeanization"); and were hit by the lack of internal and external legitimacy of the norms. Not only that the EU had trouble to transform the area due to domestic institutions or resistance of key actors; but it has itself suffered from the same weakness. Seeking to empower and at the same time abate the domination of security aims could not have given finer results. In that sense, our area cannot be studied on the same basis as some other policies, where the state (and the EU) does not have to deal with two crucial and heavily conflicting goals. Asylum policies thus combine a number of complicated factors that make these policies specifically sensitive: state sovereignty concerns; calculations of behaviour of other states and their effects on domestic migrants' and refugee movements (impacting domestic strategies of action); implications for the ethnic composition and society; deeply rooted images of nationhood and more instrumental economic calculations, etc.

This brings us to our final concluding remarks. Already recognized by the international community (and international refugee law); yet more important today in times of

augmented refugee movements, a solidarity approach among various states is crucial for the success of refugee rights. Without such advance and without concentrated efforts to share responsibility among various states; there is always the risk that states will aim not to become attractive countries for asylum seekers and refugees. It does not appear that such a solution (i.e. solidary approach) is very probable on the international scene. Where the Refugee Convention has strongly advocated this advance; it has not been developed so far. However, what happens in Europe is yet more reversed. Instead of managing to make its members share liability for increasing refugee protection needs in a fair manner; the countries are feverishly competing on how to transfer the problem to its neighbouring states. In doing so, the efforts to push migrants and refugees out of its yard are reaching notorious results, where the persons in need are transferred to areas where they can get no protection at all. Inside of the EU, similar dynamics occur. Blind to the effects that they produce, states are building an order where the accidental, yet fixed factors of geography, dictate a persons' most consecrated rights.

We may well admit that the Union has made important steps to meet (some) refugee needs and that it continuously seeks to build not only migration control (and relocation) instruments, but also human rights. Legislative efforts with the inclusion of organizations oriented at human rights; cooperation with the UNHCR and NGOs; creation of the European Refugee Fund and European Asylum Support Office; incorporation of asylum issues into the constitutional frame; acceptance of the Human Rights Declaration, etc. – all demonstrate positive steps undertaken by the EU. Nevertheless, it does not appear that it is anyhow possible that the EU (or part of it) establishes more fair systems of asylum in Europe – at least not in the near(er) future. In the most optimal circumstances, even if the EU could succeed to make members respond and implement the asylum *acquis*; the effects will still be inharmonious. Even if that could be conquered (which is near to impossible); the fact that remains is that locking human beings in the geographically limited locations is contrary to human freedoms and other crucial human rights. Even if all countries would have equal refugee rights; the states still have diverse cultures, employment figures, society norms, traditions, education systems, networks of immigrants' communities, and etc. One's quality of life depends on the variety of issues that a country (not only an asylum system) provide, and the Union cannot transform that.

In such circumstances, and especially because we can hardly hope for much better realities than those that we have now, redistribution of asylum migration based on the *Dublin system* is utterly unacceptable and cannot be legitimized with any state-centred

reason. Its existence is becoming especially questionable now that the states have resorted to the reestablishment of internal frontiers. If the solution becomes permanent, hopefully, the *Dublin system* may collapse too. At present, internal frontiers give yet greater (and even less legitimate) powers to the states in *Dublin zone*: while legal norms tie asylum seekers and refugees to the first state of entry; internal borders additionally hinder their ability to cross to other Member States. Without free movement in the EU, there is even less justification for the norms set in Dublin. Besides the need to abolish such a system; the Union must make sure that the seekers and refugees who have been struck by it (for example, in Greece) can effectively pass to other Member States. In this way, the ban of return to Greece protects only the fortunate minority which manages to pass heavy barriers set in the countries between Greece and the Union. Considering that the resistance of the frontier states (such as Italy and Greece) and the working of the courts add to the crisis of the *Dublin system*; it is not excluded that it will have to be replaced with some (hopefully) better solution. The same can hardly be hoped for externalization of migration controls which bring yet more devastating consequences risking human lives. It appears that – more than in any other matter – there is consensus from the Member States to combat the issues before they manage to reach their national domains. At any rate, whatever the future may bring, to believe that the European Union is a friend to refugee rights appears absurd in the given realms. If something does not radically change, the Union remains the organization that managed to abolish the universal character of human rights of refugees and spread such negative logic in an increasing variety of states – not only in Europe, but also across the globe.

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Index

Evropeizacija azilskega sistema in zaščite beguncev: hrvaška azilska in migracijska politika (daljši povzetek v slovenskem jeziku)

Evropska integracija: azilske in migracijske politike

Hrvaške oblasti do nedavnega niso bile zainteresirane za oblikovanje azilske in migracijske politike, ki bi obravnavala sodobne migracijske tokove. Zaradi vključenosti v vojni konflikt v 1990-ih letih je Hrvaška pridobila izkušnje glede sprejema in skrbi za begunce iz regije. Hrvaška je, podobno kot druge bivše jugoslovanske države, leta 1991 pristopila k mednarodnim konvencijam za zaščito beguncev, vključno s Konvencijo o statusu beguncev iz leta 1951 in njenemu Protokolu o statusu beguncev iz leta 1967. Kljub temu je bila rešitev begunske krize v 1990-ih letih na *ad hoc* ravni in oblikovana za začasno zaščito množičnega prihoda beguncev. Po stabilizaciji regije je Hrvaška ostala le tranzitna točka za imigrante na poti v EU in emigracijska država, zato ni oblikovala nove azilske in migracijske politike, ki bi naslovila sodobne trende na področju azila in migracij. Posledično sistem ob prihodu prvih posamičnih prosilcev za azil na Hrvaško leta 1997 obsegal ustreznih metod in pravnih temeljev za obravnavo njihovih zahtev, ustreznih standardov za njihov sprejem ali zadostnih pravic, ko jim je bila dodeljena zaščita. Poleg tega so bile takratne migracijske politike neučinkovite pri nadzoru migracijskih gibanj, zato so številni migranti uporabili hrvaško ozemlje za dosego zahodnoevropskih držav. Takšen razvoj dogajanja se je spremenil po letu 2000, ko se je Hrvaška odločila, da bo razvila nov niz migracijskih in azilskih politik, ki bodo oblikovane za bolj učinovito upravljanje (a) migracijskih gibanj in (b) begunskih zadev (vključno s potrebami posamičnih beguncev). Takšen razvoj hrvaške azilske in migracijske politike je v največji meri povezan z evropskim projektom, ki je namenjen uvedbi novih azilskih in migracijskih politik EU v države članice ter njena bližnja in širša okolja. Podobno kot v hrvaškem primeru, bivše države kandidatke iz CEE ali sedanje države kandidatke iz evropske soseščine niso imele namena oblikovati takšnega sistema brez zunanje spodbude. Na področju migracij je bila njihova največja težava emigracija, medtem ko njihove vlade niso bile posebno zaskrbljene glede imigracije. Kljub temu je po padcu socializma in odpiranju meja, omenjena regija, vključno z oddaljenimi območji, postala ena od vodilnih tranzitnih poti za imigrante na njihovi poti v EU. V tem okviru in z vidika širitve Unije so voditelji držav članic in institucij EU postali zainteresirani za migracijske in azilske politike na obrobju EU (Byrne et al. 2004; Lavenex 1998; 1999; Peshkopia 2005a; 2005b). Pri tem so

države v evropski soseščini skušali prepričati v (a) nadzor iregularnih migracij v smeri EU in (b) sodelovanje pri delitvi odgovornosti za zaščito prosilcev za azil in beguncev.

Države EU, kot politično in ekonomsko razvito območje, privabljajo številne prosilce za azil. V zadnjih dveh desetletjih smo priča hitremu naraščanju števila vloženih prošenj za azil v državah članicah EU. Do 1980-ih in 1990-ih let ni obstajala (sistematična) skupna politika na tem področju, ampak so države članice posamično razvijale azilske in migracijske politike. Naraščajoči migracijski pritiski so skupaj z neenakomerno delitvijo prošenj za azil in različnimi stopnjami priznavanja statusa begunca ter odpiranjem notranjih meja v okviru Schengenskega sporazuma prisilili zahodnoevropske vlade v iskanje novih rešitev (Hatton 2005; Lavenex 1998; 1999). Vprašanje nadzora imigracije je postalo posebej pomembno, ko se je Evropska skupnost odločila vzpostaviti skupni evropski trg. Evropska skupnost je za načrtovano odpravo notranjih meja potrebovala strategijo za zagotovitev učinkovitega upravljanja zunanjih meja. Pri tem je naslovila sledeče ključne zadeve: nadzor imigracije na mejah Unije, delitev odgovornosti za prošnje za azil in begunske zadeve v EU ter upravljanje imigracije in azila v njeni okolici.

Omenjeni cilji so bili najprej vključeni v Schengenski sporazum leta 1985, leta 1990 v Schengenski konvenciji ter leta 1992 v Maastrichtsko pogodbo (glej Schengenski sporazum 1985; Konvencijo o izvajanju schengenskega sporazuma 1985 in Pogodbo o EU 1992). Glede na dejstvo, da skupni notranji trg zahteva odpravo notranjih meja in posledičo večjih nadzor na zunanjih mejah, Schengenski sporazum izpostavlja potrebo po sodelovanju na področju migracij, predvsem pri nadzoru in boju proti ilegalni imigraciji (Schengenski sporazum 1985, 3-8. člen). Države članice so leta 1990 sklenile, da skupni trg potrebuje tudi metode za porazdelitev bremena prošenj za azil med članicami. Za dosego tega cilja so sprejele Dublinsko konvencijo, ki nalaga odgovornost za obravnavo prošnje za azil prvi državi, v katero iskalec azila vstopi (Konvencija o določanju države, odgovorne za obravnavanje prošenj za azil, vloženih v eni od držav članic Evropskih skupnosti 1990). To načelo je vključeno tudi v Schengensko konvencijo iz leta 1990 (Konvencija o izvajanju schengenskega sporazuma 1985, 28-36. člen). Maastrichtska pogodba (Pogodba o EU 1992, Del VI, člen K1) označi migracije in azil za področji skupnega interesa držav članic in od njih zahteva harmonizacijo politik na tem področju. Ta pogodba je področji migracij in azila uvrstila v tretji steber, kjer ima glavno vlogo pri odločanju Svet ministrov. Komisija je imela pravico do dajanja pobud, vendar so lahko države sprejele odločitve tudi brez Komisije.

V 1990-ih letih je EU razvila številne mehanizme, s katerimi je želela omejiti pritok imigrantov na svoje ozemlje. Večina mehanizmov je bila sprva oblikovana kot odgovor na splošne, predvsem ekonomske, migracije in povečanje iregularnih gibanj zaradi strožjih vizumskih pravil in kazni za prevoznike, strožjega mejnega nadzora, temeljitega preverjanja dovoljenj, strožjih pravil za bivanje na območju EU ipd. Večino desetletja so bile azilske zadeve večinoma, če ne v celoti, obravnavane z vidika zaščite držav pred imigracijo, ki bil osnovana na v nadaljevanju predstavljenih značilnostih in je le malo skrbi namenjala zaščiti beguncev. Novi evropski okvir je temeljil na novi (geografski) delitvi odgovornosti iz Dublinske konvencije, po kateri je za obravnavo prošnje za azil odgovorna prva evropska država, v katero prosilec za azil vstopil. Za povečanje učinkovitosti mehanizmov so države članice EU pričele vračati prosilce za azil v sosednje in daljne regije. Glede na ponujene ugodnosti v zameno za sprejem prosilcev za azil (npr. obeti za članstvo v EU, liberalni vizumski sporazumi in ekonomska pomoč) so zunanje države sprejele odgovornost za gibanje iregularnih migrantov na svojem ozemlju ter oblikovanje azilskih sistemov in sodelovanje pri evropski delitvi odgovornosti glede zaščite beguncev. Takšna politika je pričela veljati leta 1992 s podpisom Londonske resolucije, ki je določila pravila za vračanje prosilcev za azil (in ne le iregularnih migrantov) v varne tretje države. Za varne države so veljale tiste, ki so v celoti sprejele Ženevsko konvencijo, čeprav države v praksi razmer niso preverjale. Poleg politik iz Londonske resolucije je EU sprejela tudi drugi instrument, s katerim so države v soseščini postale odgovorne za nadzor iregularnih migracij in begunske zadeve, in sicer pogojevanje obetov za članstvo s sprejetjem celotnih evropskih azilskih in migracijskih politik. V želji po članstvu v Uniji so države kandidatke privolile v sprejetje *acquis* na področju azila in migracij ter njihov prenos v nacionalno zakonodajo in prakse (Byrne et al. 2002; 2004; Gil 2003; Grabbe 1999; 2000; 2005; 2006; Haddad 2008; Lavenex 1998; 1999; Phuong 2003).

Konec 1990-ih let se je pričel evropski okvir spreminjati. Kljub ohranitvi pomena sekundarnih gibanj v EU, so države začele razmišljati o resnejših korakih za harmonizacijo azilskih politik. Po uveljavljenem prepričanju se prosilci za azil ne bi selili med državami v iskanju boljše zaščite in razmer za bivanje, če bi bile razmere v državah članicah podobne. Poleg tega so bile evropske politike iz 1990-ih let močno kritizirane s strani strokovnjakov ter nevladnih in mednarodnih organizacij, vključno z evropskimi institucijami, kot sta Evropska komisija in Evropski parlament, zato je EU (in njena medvladna garnitura) privolila v spremembe, ki poudarjajo dimenzijo človekovih pravic. Novi okvir je bil sprejet v Amsterdamski pogodbi iz leta 1997 (Treaty of Amsterdam Amending the Treaty on

European Union, the Treaties Establishing the European Communities and Related Acts, 73. člen), ki je uvrstila azil v prvi steber ter od držav članic in Unije zahtevala, da vzpostavijo minimalne skupne kriterije za kvalifikacijo zaščite, sprejemnih razmer in procesnih zagotovil. V sledečih letih so institucije EU (sedaj na osnovi skupnega odločanja Evropskega sveta, komisije in parlamenta) sprejele več zakonodajnih instrumentov, ki so postali jedro *acquis* na področju azila in so zagotovili minimalne kriterije za vstop in bivanje prosilcev za azil v državah članicah, njihov sprejem v času postopka, minimalne zahteve v postopkih za dodelitev ali odvzem zaščite ter obseg zaščite. Ti kriteriji so bili opredeljeni v štirih kritičnih direktivah.

Direktiva sveta o minimalnih standardih za sprejem prosilcev za azil (Council of the European Union 2003a) predpisuje nov niz minimalnih standardov za sprejem prosilcev za azil in vrsto družbeno-ekonomskih pravic, ki so dostopne vsem prosilcem za azil na območju EU in v bodočih državah članicah (npr. pravico do bivanja, zdravstvene oskrbe, socialne pomoči, izobraževanja ipd.). Direktiva o kvalifikaciji (Council of the European Union 2004) je postavila skupne pogoje in kriterije za dodelitev (ali zavrnitev) statusa zaščite,[247] medtem ko je Direktiva o postopkih za dodelitev zaščite (Council of the European Union 2005) predpisala način izvajanja azilskih postopkov v državah članicah (npr. sprejemanje prošenj za azil, zbiranje podatkov in intervjuji, sprejem odločitve o dodelitvi statusa ipd.) in pravice prosilcev za azil v času postopka (pravna pomoč, prevajanje, priziv ipd.). Direktiva o kvalifikaciji je postavila tudi niz minimalnih zagotovil za osebe pod zaščito, ki veljajo za celotno Unijo in države kandidatke (pravica do zdravstvene oskrbe, socialne pomoči, izobraževanja, pravica do dela ipd.). Direktiva o združevanju družine (Council of the European Union 2003b) je vzpostavila norme za zaščito družinskih članov prosilcev za azil in beguncev, ki so namenjene ohranjanju družinske enotnosti (pravica do družitve, družbeno-ekonomske in druge pravice družinskih

247 Direktiva priznava dve obliki zaščite posameznikov. Status begunca lahko pridobijo osebe, ki so kvalificirane za zaščito iz Ženevske konvencije. Po 1. členu Ženevske konvencije je begunec oseba, ki "se nahaja izven svoje države in se zaradi utemejenega strahu pred preganjanjem na osnovi rase ,vere, narodne pripadnosti, pripadnosti določeni družbeni skupini ali določenem političnem prepričanju in ne more ali, zaradi takšnega strahu, noče uživati varstva te države". Do subsidiarne zaščite so upravičene številne druge kategorije oseb, katerim je bila zanikana osebna varnost in človekove pravice zaradi oboroženih konfliktov, preganjanja na osnovi rasne in spone usmerjenosti, grožnja s smrtno kaznijo ipd. Disertacija ne preučuje področja začasne zaščite kot skupinskega statusa ob množičnem prihodu prosilcev za azil v primeru velikih begunskih kriz na določenih (Direktiva o najnižjih standardih za dodelitev začasne zaščite v primeru množičnega prihoda razseljenih oseb in o ukrepih za uravnoteženje prizadevanj in posledic za države članice pri sprejemanju takšnih oseb; glej: Council of Europe 2001), ker takšna zagotovila še niso bila sprejeta.

članov ipd.). Navedene norme predstavljajo ključna področja evropskega azilkega sistema in preučevanja pričujoče disertacije.

Evropski okvir na področju azila in pravice beguncev: teoretične razprave

Nova evropska *acquis* na področju azila vključujejo obsežnejše pravice za begunce kakor okvir iz 1990-ih let, vendar ostaja večina strokovjakov (Bouteillet-Paquet 2003; Costello 2006; Garlick 2006; Gil 2003; Gil-Bazo 2006; Gilbert 2004; Goodwin-Gill in McAdam 2007; Hansen 2009a; Lambert 2006; Lavenex 2001; 2009; McAdam 2007; Moreno Lax 2008; Noll 2004; Phuong 2003; Rogers 2002; Spijkerboer 2007) precej kritična. Po mnenju navedenih strokovjakov je nova agenda še vedno problematična. Za začetek *acquis* niso uspela vpeljati norm, ki bi predstavljale osnovo za skupni azilski sistem v EU. Namesto tega so *acquis* zagotovila le minimalne standarde, ki so jih morale sprejeti države, medtem ko je bilo odločanje o sprejetju obširnejših rešitev prepuščeno državam. Po trditvah avtorjev ti minimalni standardi (a) niso bili zadostni za zaščito temeljnjih pravic beguncev, ki jih zagotavlja mednarodna zakonodaja za varovanje beguncev in človekovih pravic, in (b) odražajo restriktivno in varnostno logiko, ki je bila razvita v 1990-ih letih in je primarno namenjena preprečevanju prihoda ali bivanja prosilcev za azil in beguncev v Evropi. Kjer *acquis* ponujajo številne rešitve za zaščito držav pred begunci (npr. povečan migracijski nadzor), ne dajejo zadostnega jamstva osebam, ki resnično potrebujejo zaščito.

Glede na dejstvo, da so države v preteklih desetletjih usmerile interese v preprečevanje migracij in tudi tokov beguncev na svoja ozemlja, zgornji avtorji sklepajo, da bodo takšna skopa in fleksibilna *acquis* motivirale države pri vpeljavi restriktivnih rešitev; vsaka država poskuša postati restriktivna in se s tem izogniti, da bi postala privlačna destinacija. Nadalje avtorji trdijo, da sta evropska integracija in harmonizacija na področju migracij in azila otežili sodobne azilske zadeve. Medtem ko sta Evropska komisija in parlament iskala ukrepe proti prevladi državnih zaščitnih mehanizmov (migracijski nadzor) v *acquis* v bolj senzibilnem pristopu k pravicam beguncev, nista mogla zmanjšati prevlade varnostnega pogleda na azil in migracije v Svetu ministrov. Svet EU in države članice niso imele le največjega vpliva na pravne norme, ampak so tudi njihovi varnostni organi imeli velik vpliv na vsebino, interpretacijo in sprejetje *acquis* na področju azila in migracij. Takšne državne zadeve so se predvsem okrepile v okviru oblikovanja skupnega notranjega trga, kjer so notranji in varnostni organi držav članic vodili razprave in pogajanja ter odločali o

migracijskih politikah. Medtem ko je slednje oslabilo sposobnost nacionalnih parlamentov za sodelovanje ali nadzor procesov, sta Evropska komisija in parlament še vedno imela omejeno vlogo. Kljub dejstvu, da je Amsterdamska pogodba dodelila Evropski komisiji moč za odločanje o pravilih na področju azila in pravico za soodločanje (s Svetom ministrov) s Parlamentom, so te institucije še vedno potrebne za sprejetje težkih kompromisov z državami članicami in s Svetom, saj so nacionalne vlade še vedno nagnjene k ohranjanju moči in nadaljujejo z omejevanjem. Prevlada varnostnih pogledov akterjev je vodila v oblikovanje ali interpretacijo restriktivnih in varnostno orientiranih *acquis* na področju azila, ki so prvotno namenjeni preprečevanju (velikega) števila prosilcev za azil in beguncev v državah članicah. Omenjene državne zadeve so omogočile, da je evropska agenda o azilu ostala oslabljena. Čeprav je ponujala omejeno zaščito pravic beguncev, je bila še vedno osredotočena na varovanje držav pred velikimi pritiski na njihove sisteme, predvsem z vidika števila prosilcev za azil in beguncev ter posledičnih stroškov.

Avtorji izpostavljajo posebno zaskrbljenost glede sprejemanja evropskih politik v državah, ki nimajo tradicije glede zaščite pravic beguncev. Primer so države, ki so na novo postale imigracijske države in se soočajo z begunsko problematiko zaradi evropske integracije. Med takšne države spadajo tranzitne države v Južni Evropi in (bivše in sedanje) države kandidatke. Po mnenju strokovnjakov prenos *acquis* na področju azila iz EU in držav, ki imajo dolgo tradicijo zaščite beguncev, v nove demokracije predstavlja različna tveganja. Pri tem najprej izpostavljajo kompleksne in drage azilske (in migracijske) politike, ki jih bodo le-te države s težavo ustrezno sprejele, saj se soočajo s šibkimi institucionalnimi in administrativnimi kapacitetami, pomanjkanjem ekonomskih in finančnih sredstev, neustreznimi socialnimi sistemi in neizkušenostjo pri obravnavi takšnih občutljivih zadev. Dejstvo, da evropski okvir od teh držav zahteva prevzem največje odgovornosti za begunska gibanja zaradi njihovega geografskega položaja (in metod porazdelitve bremena v EU, npr. določenih v Dublinski konvenciji), je bilo predstavljeno kot pričakovana motivacija za iste države pri vpeljavi restriktivnih politik glede zaščite beguncev in s tem za zadovoljitev zahtev EU ter zmanjšanja stroškov in pritiskov na njihove sisteme.

Posledično so ti avtorji pričakovali, da bo evropska integracija na področju azila spodkopala zaščito beguncev, npr. njihove pravice iz mednarodne zakonodaje o beguncih in človekovih pravicah, kot so pravica do varnosti, življenja in dostojanstva. Pri tem poudarjajo, da so dane norme dovoljevale državam (a) preprečevanje gibanj beguncev na

njihova ozemlja in (b) jim nudile nezadostno stopnjo zaščite. Zaradi geografsko določenih pravil o porazdelitvi odgovornosti za begunske zadeve je slednje predpostavljalo, da bodo begunci vezani na nacionalne sisteme ne glede na kakovost zaščite, ki jim jo ponuja določen sistem. Poleg tega je bila verjetnost, da bo posameznik dobil ustrezno zaščito, odvisna od uporabljene migracijske poti. Po mnenju avtorjev je predvsem zaskrbljujoče dejstvo, da številni sistemi, ki so bili vključeni v agendo EU (zunanja območja in države članice na južnem in vzhodnem obrobju), niso izpolnjevali niti osnovnih zahtev za zaščito beguncev in so s tem ogrožali temeljne pravice beguncev.

Veliko avtorjev je bilo dolgo obdobje skadno glede ocenjevanja evropskega projekta na področju migracij in azil, a je zadnja leta čedalje več avtorjev začelo izzivati ustaljene poglede. Kljub omejenemu številu študij, narašča število zagovornikov evropskega okvira na področju azila (glej: Battjes 2006; Hailbronner 1996; 2008; Kaunert 2009; Kaunert in Leonard 2011; Storey 2008; Thielemann in El-Enany 2008; 2011). Za razliko od kritikov ti avtorji menijo, da lahko evropski okvir prispeva k okrepitvi mednarodno priznanih standardov zaščite. Medtem ko eni avtorji menijo, da so *acquis* najmanj skladna z normami iz ključnih mednarodnih instrumentov za zaščito (Battjes 2006), so drugi prepričani, da bi lahko raznolikost norm okrepila pravice iz mednarodne zakonodaje o beguncih (Hailbronner 2008; Storey 2008; Thielemann in El-Enany 2008; 2011). Poleg razprav o najbolj spornih rešitvah v *acquis* o azilu, kot so ukrepi za preprečevanje gibanja beguncev (vizumi, sporazumi o vračanju oseb, Dublinski sistem itd.), so ti avtorji poudarjali, da so takšne rešitve že sprejete v mednarodni zakonodaji o beguncih (npr. vizumi) ali s strani le-te niso prepovedane (sporazumi o vračanju oseb, Dublinske uredbe) (Battjes 2006; Thielemann in El-Enany 2008; 2011). *Acquis* so namesto odvračanja držav namenjena preprečevanju tekmovanja držav proti nadaljnjemu omejevanju, ki je bilo značilno za 1980-ta in 1990-ta leta. Nekateri avtorji (glej Thielemann in El-Enany 2008; 2011) omenjajo omejevanje *acquis*, vendar so se pri tem odražale le tendence azilskih politik držav članic, ki so obstajale pred evropsko intervencijo in celo slabosti mednarodne zakonodaje o beguncih. V disertaciji iščemo odgovore na ključna vprašanja iz navedenih razprav. Pred razlago namena raziskovanja je potrebno izpostaviti pomemben koncept, ki nam je pomagal pri preučevanju vplivov EU na nacionalne politike in predvsem pri razlagi zakaj in kako so domači in evropski dejavniki vzajemno vplivali na določen razvoj nacionalnih politik, npr. koncept evropeizacije in njegovi vidni teoretični postavki (racionalni institucionalizem in socialni konstruktivizem).

Koncept evropeizacije

Koncept evropeizacije se nanaša na raznovrstne dejavnike, ki so povezani z nacionalnim sprejemanjem evropskih kulturnih, verskih, ekonomskih ali političnih vrednot. Z naraščanjem vpliva evropskih pravil in politik na različne nacionalne kontekste se je večina študij osredotočila na prenos evropskega pravnega reda v nacionalne okvire, medtem ko ostali vidiki, kot je prenos kulture, niso bili pogosto zastopani v sodobnih študijah (Featherstone 2003). Čeprav obstaja nestrinjanje glede definicije pojava, v večini literature termin označuje vplive EU in njenih politik na nacionalne sisteme (glej: Featherstone 2003; Grabbe 2002; Radaelli 2003; Schimmelfennig 2005; Schimmelfennig in Sedelmeier 2005; Sedelmier 2006). Na osnovi te opredelitve skušajo študije o evropeizaciji zagotoviti odgovore na sledeča vprašanja: kako nacionalni sistemi sprejemajo okvir EU, kaj so rezultati tega sprejemanja in katere razmere prispevajo k učinkovitemu sprejetju.

Učinkovit ali pomankljiv prenos ter uveljavljanje norm skušata pojasnjevati dva glavna pristopa. Prvi pristop predstavlja šola racionalnega institucionalizma, ki išče razlago v vzorcih strateškega vedenja nacionalnih in mednarodnih akterjev pri izpolnjevanju njihovih interesov in ciljev (glej: Hughes et al. 2005; Schimmelfennig 2005; Schimmelfennig in Sedelmeier 2005; Sedelmier 2006). Ta šola je razvila vpliven koncept pogojenosti, ki se osredotoča na problematiko z vidika zunanjih spodbud, ki jih EU ponuja državam kandidatkam za sprejemanje pravil. V okviru tega koncepta so države naklonjene sprejemanju tistih zahtev, ki so pogoji za članstvo, vse dokler menijo, da imajo obeti za članstvo večjo vrednost kakor izgube, s katerimi se soočajo pri izpolnjevanju pogojev Unije. Posledično sta uspeh ali neuspeh pri izpolnjevanju zahtev v nacionalnih sistemih primarno povezana z načinom, na katerega EU opredeli določene zadeve za stroge pogoje. Drugi pristop, družbeni konstuktivizem (Börzel 2011; Börzel in Risse 2000; 2003; Checkel 2000; 2001; Jacoby 2004; Rose 1991; Risse in Wiener 1999), išče odgovore v družbenih vidikih, ki izhajajo iz sodelovanja glavnih akterjev. Namesto izpostavljanja zunanje motivacije, ki je povezana z neposrednimi koristmi, v ospredje postavlja procesa prostovoljne (in notranje, čeprav ne nujno namenske) socializacije in ponotranjenja norm in vrednot EU. Po tem pristopu nacionalni akterji norme ne sprejemajo primarno ali izključno zaradi iskanja določene praktične nagrade s strani EU, ampak ponotranjajo norme v procesih družbenega učenja in sprejemanja naukov. Pri tem je uspešno sprejemanje pričakovano takrat, ko so ponujene norme s strani mednarodnih akterjev

pozitivno ocenjene znotraj domačega sistema. Čeprav se po mnenju nekaterih avtorjev ti stališči medsebojno izključujeta, drugi avtorji (Börzel in Risse 2000; 2003; Checkel 2000; 2001; Jacoby 2004; Fearon in Wendt 2002; Schimmelfennig 2005; Schimmelfennig in Sedelmeier 2005; Tudoroiu 2008) trdijo, da se dopolnjujeta. Posledično je nastal tretji integrativni pristop, po katerem so napetosti med obema pristopoma nepotrebne, saj ju je veliko bolj koristno obravnavati kot povezana. V tem smislu lahko vsak pristop prispeva k razumevanju kompleksnih procesov, ki potekajo ob prenosu politik v nacionalne sisteme.

Hrvaški azilski in migracijski sistem: raziskovalni vzorec in metodologija

Kot rečeno sega pričetek prilagajanja hrvaških azilskih in migracijskih politik na evropski okvir na začetek zadnjega desetletja. Takšen potek je povezan s pogajanji za članstvo v EU, ki so se začela po ukinitvi avtoritarnega režima Hrvaške demokratske unije pod vodstvom Franja Tudjmana po letu 2000. Po začetku novih demokratičnih reform si je država zadala cilj priključitve EU, kar je pomembno vplivalo na politične izbire ter politike Hrvaške v naslednjih trinajstih letih, vse do uspešnega zaključka pristopnega procesa. Proces sprejemanja zahtev EU se je začel s podpisom Stabilizacijsko-pridružitvenega sporazuma z EU leta 2001, s katerim se je Hrvaška zavezala k prenosu različnih evropskih politik (določenih v 34-ih poglavjih) v nacionalni sistem. Na področju azila in migracijskih zadev je bil prvotni cilj strategije EU za Zahodni Balkan zagotoviti stabilnost in spodbuditi sodelovanje v regiji za preprečevanje dodatnih tokov beguncev.

Ko se je regija stabilizirala in postala pomembna tranzitna pot, je EU poleg vzpostavitve azilskega sistema dodala tudi cilj nadzora migracij. EU je namesto izključne stabilizacije regije želela doseči cilj transformacije območja tranzitnih držav v cijne države za migrante. Navedeni cilji so bili vključeni v stabilizacijsko-pridružitveni sporazum. Leta 2003 so se pričela pristopna pogajanja za članstvo v EU. Ker je v tem procesu potrebno sprejeti 24. poglavje – Pravosodje in notranje zadeve brez možnosti za prehodno obdobje (Feijen 2007, 502), je Hrvaška isto leto sprejela svoj prvi Zakon o azilu, ki je stopil v veljavo leta 2004. Razvoj hrvaškega azilskega sistema je nadalje podprl *twinning* projekt CARDS o reformi azila na Hrvaškem, ki je potekal med leti 2003 in 2005. Hrvaška je v tej fazi sprejela ukrepe na zakonodajnem področju ter ukrepe za izgradnjo institucij in kapacitet (oblikovanje informacijskih in dokumentacijskih sistemov, gradnjo sprejemnih centrov, usposabljanje uradnikov ipd.). Leta 2007 se je začelo izvajanje novega *twinning* projekta (Krepitev azilskega postopka: reforma o azilu II) s ciljem nadaljnega usklajevanja

hrvaškega Zakona o azilu z *acquis*. Hrvaška je v skladu s priporočili Evropske komisije julija 2007 sprejela novi Zakon o azilu, ki ga je z nadaljnjim sprejemanjem *acquis* ponovno dopolnila leta 2010. 24. poglavje je bilo uradno odprto leta 2008 in uspešno zaprto leta 2010, pri čimer je bil azilski sistem ocenjen kot zadostno zadovoljiv. Hrvaška je zaključila pristopna pogajanja decembra 2011 in se pričakuje da bo vstopila v EU julija 2013.

Glede dejanskega delovanja hrvaškega azilskega in migracijskega sistema vemo zelo malo, saj na tem področju obstaja le nekaj študij: Šprajc (2004) je preučeval vzpostavitev pravnega okvira ob začetku sprejemanja *acquis*, Lalić (2010) se je osredotočil na politike glede vstopa prosilcev za azil in njihov dostop do postopkov za dodelitev zaščite, medtem ko je Trauner (2011) preučeval procese pogajanja in sprejemanja širšega evropskega okvira za migracije. Nekatere študije obravnavajo hrvaški proces sprejemanja norm kot del primera Zahodnega Balkana (Feijen 2007; 2008; Peshkopia 2005a; 2005b). Študije so na splošno pokazale, da so bile hrvaške politike o azilu restriktivne in so jih označevale slabe kapacitete. Na tem mestu je potrebno izpostaviti, da so omenjene študije osredotočene na posamična področja in so danes zastarele, zato je za razumevanje delovanja azilskega sistema potrebno nadaljne raziskovanje. V to raziskovanje je potrebno vključiti preučevanje hrvaškega azilskega sistema, njegovo prilagoditev na zahteve EU in sposobnost zaščite beguncev. Pričujoča disertacija skuša preučevati kako so bila *acquis* o azilu sprejeta v nacionalno zakonodajo in prakse, zakaj je bil izbran določen model sprejemanja in kako doseženi rezultati vplivajo na pravice beguncev, kakor so le-te določene v mednarodni zakonodaji o beguncih in človekovih pravicah. Natančneje skušamo v disertaciji odgovoriti na sledeča vprašanja:

1. Kako so bila EU *acquis* o azilu (in pomembnih migracijskih politikah) sprejeta v nacionalni zakonodaji in praksi? Kateri model zaščite (restriktivni ali liberalni) je Hrvaška ponudila beguncem? Kako je EU prispevala k takšni interpretaciji? Katere norme je EU zahtevala ali priporočila ter kako so bile te sprejete, interpretirane in uveljavljene s strani nacionalnih akterjev?

2. S katerimi dejavniki lahko pojasnimo določen model (zakonodajo in izvrševanje) zaščite beguncev na Hrvaškem? Zakaj so nacionalne oblasti sprejele prav ta model? Kakšen vpliv je pri tem imela EU (komunikacija, zahteve, priporočila ipd.)? Kateri dejavniki na nacionalni ravni pojasnjujejo rezultate na področju zaščite beguncev in kateri vidiki so nanjo vplivali na evropski ravni? Kako so nacionalni in evropski okvir, potrebe in strategije vplivale na dosežene rezultate v hrvaških azilskih zadevah in glede zaščite beguncev?

3. Kaj prinaša sprejeti model prosilcem za azil in zaščitenim osebam na Hrvaškem? Kako so domače azilske politike in njihovi produkti vplivali na človekove pravice in potrebe beguncev? Kaj nam lahko hrvaški primer pove o (regionalni in globalni) vlogi EU pri zaščiti beguncev?

Izhajajoč iz teoretičnih predpostavk in obstoječega empiričnega znanja o prilagajanju nacionalnih azilskih sistemov na evropski okvir ter na osnovi razumevanja posebnosti hrvaškega primera pričakujemo v disertaciji sledeče rezultate in sklepe:

1. Na Hrvaškem je članstvo v EU ocenjeno kot eden od ključnih ciljev notranje in zunanje politike, pri čimer pričakovane koristi od članstva presegajo pričakovane stroške političnega prilagajanja. Kljub temu je nacionalni sistem naklonjen sprejemanju zahtev EU na načine, ki ustrezajo domačim interesom in vrednotam. Z namenom zadovoljitve evropskih oblasti ter pridobitve materialnih in nematerialnih nagrad (članstvo in ugled), na eni strani, in hkrati sledenja lastnih interesov, na drugi strani, lahko pričakujemo, da bo sistem sprejel le nujno potrebne politike EU. Slednje lahko vodi v sprejetje minimalnih standardov in restriktivno nacionalno zakonodajo in prakse.

2. Nacionalni institucionalni okvir (institucionalna dediščina, ekonomske razmere, administrativni in finančni viri ipd.) lahko obravnavamo kot dodatni dejavnik vpliva na uspešno sprejemanje norm za zaščito beguncev in politik. Glede na dejstvo, da je prišla glavna motivacija za sprejemanje azilskih politik in politik za zaščito beguncev od zunaj in ni bila notranje motivirana, lahko pričakujemo, da bodo nacionalni akterji izvajali reforme do mere, ki bo zadovoljila zahteve EU.

3. Evropske politike o azilu označujejo velike negotovosti in konfliktni cilji. Politike za zaščito beguncev so oblikovane vzporedno z zahtevami po sekuritizaciji in omejevanju azilskih zadev, ki imajo podporo večine držav članic. Glede na šibek položaj EU pri zaščiti beguncev bo slednja le stežka akter, ki bi lahko vplival na nacionalne sisteme pri preseganju negativnih predpogojev (mešanica nacionalnih interesov in institucionalnih in drugih težav). Namesto tega je pričakovano, da bo evropska *shizofrenija* na področju azila vplivala tudi na hrvaški sistem.

4. V takšnem nacionalnem in evropskem kontekstu je pričakovan razvoj varnostnih in restriktivnih tendenc, ki bodo usmerjene na preprečevanje in nadzor begunskih gibanj ter bodo imele neustrezne ali slabe rezultate za zaščito beguncev. Poleg tega bodo na gibanja beguncev na Hrvaškem in v regiji močno vplivale politike za upravljanje migracij, predvsem zaradi strogih politik EU za nadzor migracij in porazdelitev bremena. V takšni

geografsko narekovani shemi za zaščito beguncev je pričakovano, da bo prenos evropskih politik v hrvaško zakonodajo in prakso vodil v slabitev uveljavljanja temeljnih pravic beguncev.

Prvi niz vprašanj (4. poglavje) je namenjen preučevanju prilagajanja hrvaških zakonov in praks ter sprejemanja *acquis* o azilu od sprejetja prvega Zakona o azilu (2003/2004) do konca naše študije (december 2012). Pri tem smo *acquis* o azilu razdelili na štiri področja in preučevali sprejetje vsakega področja posamično. Ta področja so: 1) politike, ki določajo dostop do postopkov za dodelitev zaščite (spremembe za vložitev prošenj za azil); 2) politike, ki urejajo postopke in kriterije za dodelitev zaščite (spremembe pri dodelitvi zaščite); 3) ukrepi in prakse za sprejem prosilcev za azil (pravice prosilcev za azil, ki čakajo na odločitev države); 4) obseg in kakovost zaščite za osebe, ki jim je priznana pravica do zavetišča/zaščite. Na vsakem področju preučujemo: a) kako konsistentno je zakon sprejel *acquis* o azilu; b) kako konsistentno so bile te norme sprejete v praksi; c) v kakšne azilske politike (restriktivne ali liberalne) je sprejemanje *acquis* vodilo na Hrvaškem.

Dostop do postopkov za dodelitev zaščite predpostavlja niz zagotovil, ki določajo ali lahko oseba zaprosi za zaščito (ključna pravica beguncev v mednarodnem in evropskem begunskem pravu). Glede na dejstvo, da je izvrševanje te pravice odvisno od različnih ukrepov, ki urejajo vstop in bivanje tujcev v državi, je potrebno preučevati tudi kako so bila ta zagotovila sprejeta v nacionalnem sistemu. Dostop do zaščite (npr. možnosti za pridobitev statusa zaščite) je odvisen tudi od drugega niza ukrepov, ki določajo kateri postopki za dodelitev azila bodo uporabljeni, katere razmere in okoliščine bodo zadostile kriterijem za dodelitev zaščite in kdo lahko pridobi zaščito v določeni državi. Področje materialnih pogojev za sprejem predpostavlja niz norm, ki določajo katere družbeno-ekonomske in druge pravice (nastanitev, finančna pomoč, zdravstvena oskrba, kulturne in civilne pravice ipd.) bodo dodeljene prosilcem za azil do konca postopka. Obseg mednarodne zaščite vključuje tudi različne pravice za osebe, katerim je bil dodeljen azil ali subsidiarna zaščita. Te pravice vključujejo ukrepe, ki določajo družbeno-ekonomske, državljanske in druge pravice, ki jih lahko uveljavljajo osebe, po tem ko jim je bila priznana zaščita (bivališče, pravica do zaposlitve, socialna pomoč, zdravstvena oskrba, izobraževanje, možnosti za naturalizacijo ipd.). Glede na dejstvo, da Hrvaška do leta 2008 dodelila zaščito le enemu prosilcu za azil, se je do konca do konca leta 2012 stopnja priznanja statusa begunca ali statusa subsidiarne zaščite znatno povečala, pri čimer je bil

status priznan 80-im osebam. Razvrstitev teh različnih ukrepov, njihova interpretacija v nacionalni zakonodaji in izvrševanje v praksi prispevajo k azilskemu sistemu, ki določa kakovost zaščite beguncev. Te politike so podrobno preučevane v 4. poglavju disertacije.

V disertaciji analiziramo razvoj politik na področju azila od 1.7.2004 do 31.12.2012. Začetni datum sovpada s sprejetjem prvega Zakona o azilu, ki ga lahko označimo za obdobje začetka delovanja novega sistema, medtem ko skušamo zaradi pomembnih dogodkov v zadnjem obdobju spremljati razvoj na tem področju tudi v letu 2012. Preučevanje tematike v tem časovnem obdobju nam je omogočilo spremljanje napredka na področju azila od začetka sprejemanja evropskih zahtev do zaključka pogajanj z EU (do danes). Ker je študija namenjena razumevanju vpliva domačih in evropskih dejavnikov na različne spremembe v nacionalnem okviru, je bilo potrebno podrobno analizirati proces sprejemanja evropskih politik in praks. Glede na dejstvo, da je bil ključni okvir delovanja (predvsem normativna stališča in interesi) oblikovan na samem začetku procesa, bi reforme težko razumeli brez kompleksne študije procesa. Za ocenitev kako je sistem interpretiral *acquis* smo v disertaciji analizirali nacionalne norme o azilu in le-te primerjali z zagotovili iz *acquis*. Pri tem je bil naš cilj razumeti a) kako so bile evropske norme sprejete v nacionalni zakonodaji in b) na kakšen način so bile te vpeljane oziroma ali so bile norme interpretirane restriktivno (omejene na minimalne zahteve) ali pa so zagotavljale celovitejše rešitve za zaščito beguncev. Ker je bilo slednje opredeljeno kot pomembnejše za delovanje sistemov v bivših državah kandidatkah, predpostavljamo enako tudi za hrvaški primer.

Drugi niz vprašanj (5. poglavje) zahteva analizo medsebojnega delovanja domačih in zunanjih dejavnikov, ki lahko prispevajo k razlagi rezultatov hrvaškega azilskega sistema. Natančneje se je študija osredotočila na raziskovanje kateri domači in zunanji dejavniki so vplivali na odločanje in sprejetje azilskih politik. Pri tem so nas pri zunanjih okoliščinah predvsem zanimala stališča, zahteve in dejavnosti institucij EU in držav članic, katere so opredeljene za ključne akterje, ki so vplivali na azilske (in migracijske) politike v državah kandidatkah. Študija podrobneje analizira sledeče značilnosti: a) vrednote in interese nacionalnih in evropskih akterjev (in institucij); b) vpliv azilskih politik v pristopnih pogajanjih (v EU in na Hrvaškem); c) posebnosti hrvaških pogajanj z EU (obeti za članstvo, časovni okvir ipd.); d) nacionalne vire in okoliščine (gospodarstvo, vladavino prava, institucionalne in administrativne kapacitete, politično kulturo, civilno družbo ipd.). Te značilnosti so pomembno vplivale na politične preference in strategije akterjev (vključno z uporabo pogojenosti in prepričevalnimi strategijami) ter njihov prostor za

delovanje (omejevanje ali ponujanje možnosti za določeno delovanje). Avtorji so za razumevanje položaja izpostavljenih dejavnikov skušali razumeti kako so bili ti oblikovani v (nestabilnem in težkem) ravnovesju med zaščito beguncev in varnostnimi cilji držav ter negotovih razmeraj, ki izhajajo iz njihovih napetosti na nacionalni in evropski ravni.

Kot prikaženo v disertaciji, je EU uporabila tako mehanizme za zunanjo spodbudo (pogojenost) kakor tudi instrumente za socializacijo in prepričevanje, pri čimer je oboje podprla z različnimi programi za izgradnjo institucij in kapacitet. Pristop pogojevanja je bil vpeljan že v stabilizacijsko-pridružitvenem sporazumu in nadalje podrt z letnim procesom nadzora, neprestanim dajanjem dodatnih priporočil in zahtev (iz letnih poročil o napredku) in institucionalizacijo benchmarkinga na tem področju (pod vodstvom Sveta ministrov in Evropske komisije). Mehkejši mehanizmi, socializacija in prepričevanje, so bili vpeljani preko vzporedne komunikacije domačih akterjev z organizacijami EU ali drugimi zunanjimi akterji. Deloma za to niso poskrbele institucije EU, ampak neposredno države članice, katerih pristojne nacionalne službe (predvsem službe na področjih notranjih zadev in varnosti) so sodelovale in delile izkušnje, znanje in razumevanje (interpretacijo) norm, ki jih narekuje evropska raven. Vpliv teh akterjev na nacionalne strukture se je izkazal kot pomemben za področje azila in migracij, kjer je domačim akterjem primanjkovalo strokovnega znanja glede takšnih kompleksnih zadev in so ga pridobili s procesom učenja.

Tretji cilj analize (6. poglavje) je preučevanje nacionalnega sistema z vidika njegove sposobnosti za zaščito določenih pravic migrantov (mednarodno begunsko pravo) in njihovih temeljnih človekovih pravic (pravo človekovih pravic). Za razumevanje teh je potrebno pogledati kako hrvaški azilski sistem varuje navedene pravice: možnosti dostopa do zaščite in možnosti za dodelitev zaščite v primeru potrebe in pravic osebe do le-te. Slednje predstavimo v odnosu do njihovega osnovnega namena, to je sposobnosti zaščite temeljnih človekovih pravic – človekovega življenja, varnosti, svobode in dostojanstva. Po sklepu kako nacionalni sistem varuje ključne pravice beguncev študija skuša aplicirati te rezultate na glavna vprašanja iz študij o beguncih, in sicer kako usklajevanje azilski in migracijskih politik v EU vpliva na pravice beguncev.

V zadnjem nizu raziskovanih vprašanj (6. poglavje), ki se nanaša na vplive sprejetih politik na mednarodno priznane pravice beguncev, raziskovanje pristopa k zadevam z novega vidika. Za razliko od prejšnjega dela, kjer smo domači sistem ocenjevali v okviru *acquis*, tukaj preučujemo nacionalne zakone in prakse z vidika njihove sposobnosti za izpolnjevanje ključnih standardov za zaščito pravic beguncev in njihovih temeljnjih človekovih pravic. To poglavje skuša prikazati kako evropski okvir (zakonodaja in praksa)

posega v odnos med hrvaško zakonodajo in prakso ter mednarodno zaščito beguncev in njihovih temeljnjih človekovih pravic. Za ta namen se študija osredotoča na dve glavni vprašanji. Najprej skuša analizirati ali hrvaški model sprejemanja azilskih politik podpira ali spodkopava spoštovanje pravic, ki jih zagotavljajo mednarodne norme za zaščito pravic beguncev in človekovih pravic: Konvencija o statusu beguncev in oseb brez državljanstva, Konvencija proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju, Evropska konvencija o človekovih pravicah, Splošna deklaracija o človekovih pravicah idr. Zaradi omejenega obsega v disertacijo nismo vključili obsežne analize skladnosti hrvaškega sistema z mednarodno begunsko zakonodajo. Namesto tega smo se omejili na temeljna načela in vrednote iz teh konvencij in deklaracij ter njihove koristi za hrvaško azilsko politiko. Slednje predpostavlja razumevanje norm s širšega vidika in predvsem z vidika glavnih vrednot, ki jih skušajo konvencije in deklaracije zaščititi: človekova varnost, svoboda, dostojanstvo ipd. V pravnem jeziku skušamo prikazati povezavo med pravom (ali praksami) in produkti. Za analizo slednjega smo uporabili literaturo, ki razpravlja o vplivih azilskih politik (evropskih in nacionalnih) na človekove pravice beguncev, in pravne študije, ki razpravljajo o tej tematiki.

V drugem delu skušamo razumeti kakšno vlogo ima EU pri regionalni (ali celo globalni) zaščiti pravic beguncev: kako EU s svojimi politikami (in njihovim dejanskim sprejetjem v nacionalni sistem) vpliva na begunce oziroma ali lahko EU opišemo kot agenta, ki varuje ali spodkopava človekove pravice beguncev. Za ta namen obravnavamo kako sprejete politike vplivajo na širše (regionalne in globalne) možnosti, da begunci pridobijo zaščito, in kakovost zaščite z varovanjem vseh potrebnih človekovih pravic. Natančneje je potrebno prikazati kako so hrvaške politike na področju migracij in azila sodelovale v regionalnih mehanizmih upravljanja in porazdelitve bremena azila ter kako so te politike vplivale na možnosti beguncev za ustrezno zaščito na širši ravni. Za razumevanje slednjega je potrebno razumeti pomen lokalizacije pravic za begunce, katerih možnosti za izbiro destinacije omejujejo evropska pravila. Analiza je razdeljena na tri ključna področja, ki so v veliki meri skladna s področji s četrtega poglavja: a) varnost in dostop do učinkovitih postopkov za odločanje o zaščiti; b) sposobnost in pravico do varnega življenja; c) obseg zaščite (in integracije) ter pravico do varnosti in dostojanstva. Glede na dejstvo, da imajo standardi za sprejem le začasni vpliv na osebe, vsaj v hrvaškem primeru, jih podrobneje ne obravnavamo. Kljub temu je njihov pomen prikazan v 4. poglavju.

Za raziskovanje navedenih vprašanj smo v disertaciji uporabili teoretično znanje, ki smo ga pridobili iz študij evropeizacije (predvsem tistih, ki se osredotočajo na sprejemanje norm v državah kandidatkah) ter študij o beguncih in migracijah (študij, ki obravnavajo evropsko integracijo in njene posledice). Evropeizacija je v našem primeru opredeljena kot proces sprememb v nacionalnih, institucionalnih in političnih praksah, ki je posledica evropske integracije (Hix in Goetz 2000, 20–23). Po predstavitvi načina, na katerega se je sistem prilagodil na evropske uredbe (4. poglavje), v disertaciji preučujemo proces sprejemanja politik in norm ter ga skušamo pojasniti na osnovi predpostavk racionalnega institucionalizma in družbenega konstruktivizma (5. poglavje). Pri tem obe stališči nismo obravnavali kot medsebojno izključujoči, ampak komplementarni, in smo skušali razumeti kateri racionalni in družbeni dejavniki prispevajo k razlagi procesov prilagajanja in sprejemanja azilskih politik.

Bogate teoretične prispevke, ki jih ponujata obe šoli, smo dopolnili s spoznanji iz študij o beguncih in migracijah. Kot prikažemo, se številne značilne poteze iz študij o azilu in migracijskih zadevah prepletajo z značilnostmi, ki so skupne procesu evropeizacije. Te se našajo na specifične (in občutljive) posledice, ki jih prinašata azil in migracije za nacionalne in zunanje akterje ter njihovo dojemanje migracij (in azila) z vidika pomembnih materialnih in nematerialnih stroškov držav. Disertacija v tem smislu ne daje pozornosti le normam, ki urejajo zaščito beguncev, ampak tudi normam, ki določajo sposobnost držav za zaščito pred imigracijo (politike za upravljanje migracij) in pomembno vplivajo na begunske politike. Brez preučevanja tega vidika ne bi bilo mogoče oceniti kako so obravnavane pravice beguncev in zakaj akterji delujejo na določene načine (njihove izbire, strategije, odgovore itd.). Za razliko od drugih političnih področij, se je EU v primeru azila znašla v precej zapletenem položaju, saj poskuse za doseganje ciljev (zaščite beguncev ali zaščite držav pred imigracijo) označuje velika neodločnost in številne nejasnosti. Kot rečeno, slednje izhaja iz dejstva, da države članice še vedno niso pripravljene odstopiti od svoje moči na področjih migracij in azila, kar vpliva tudi na institucije EU in njihov pristop k tej zadevi.

V disertaciji smo uporavili kvalitativne metode raziskovanja, medtem ko smo kvantitativne podatke povzeli iz sekundarnih virov. Naše raziskovanje so omejevale različne metodološke ovire. Azilske in migracijske politike so obravnavane za zadevo nacionalne varnosti, zato se o njih odloča oziroma so sprejete z minimalnim javnim vpogledom. Slednje velja predvsem za Hrvaško, kjer vprašanje azila vse do nedavnega ni pridobilo večje medijske pozornosti. Nadaljnje ovire za naše raziskovanje so predstavljale

“nejasnosti in pomanjkanje transparentnosti v javni razpravi” (Grabbe 2000, 503). Pomanjkanje informacij je značilno predvsem področja, ki se nanašajo na a) dostop imigrantov in prosilcev za azil na hrvaško ozemlje in do postopkov za dodelitev azila ter na b) kvalifikacije za zaščito in postopke priznanja statusa. Na omenjenih področjih je na razpolago manj dostopnih informacij in na splošno pomanjkanje vpogleda akterjev, kot so nevladne in mednarodne organizacije, v postopke in prakse, ki bi lahko nadzorovale delovanje vlade (npr. v dejavnosti organov za notranje zadeve in varnost). Omenjeno je bilo značilno predvsem za prva leta delovanja sistema, medtem ko je zadnja leta dostopno več podatkov. Posledično so nekateri podatki v raziskavi neenakomerno zastopani. Čeprav področji azila in migracij še vedno označuje pomanjkanje informacij, lahko po institucionalnih spremembah leta 2007 zaznamo boljše razmere, predvsem na področju stopnje priznanja azila.

Zbiranje podatkov so oteževali tudi nekateri drugi dejavniki. Namen disertacije je predstaviti napredek od začetka leta 2004, zato je bilo potrebno sprejeti sklepe o praksah, ki so se v tem času spremenile. Kljub pomanjkanju podatkov o zgodnjih letih delovanja sistema (in minimalnemu zanimanju medijev), je zbiranje podatkov o obravnavani tematiki predstavljalo izziv. Pri raziskovanju smo zbirali podatke o napredku, ki ga je doseglo omejeno število še vedno aktivnih udeležencev. Informantom je bilo mestoma neprijetno posredovati informacije v javne namene zaradi opisovanja svojih spominov na pretekle dogodke in velikosti sistema (zelo omejenega števila udeležencev), zato so ostala nekatera vprašanja neodgovorjena. Poleg tega so bili pomembni podatki nedostopni zaradi potrebe po zaščiti osebne identitete, saj so raziskovane politike neposredno povezane s človekovo varnostjo (beguncev in prosilcev za azil).

V disertaciji smo za nadomestitev pomanjkanja omenjenih podatkov črpali podatke iz najširše možne vrste virov: a) pravnih dokumentov (zakoni, uredbe, predpisi in priporočila ipd.), b) različnih poročil, ki so jih pripravili nacionalni organi in organizacije kakor tudi telesa EU in mednarodne organizacije, c) okroglih miz, konferenc in odprtih srečanj, d) medijev (člankov, televizijskih in radijskih oddaj, dokumentarnih filmov in reportaž ipd.), ki zagotavljajo podatke o sprejemanju ukrepov in odražajo diskurz akterjev. Zbrane podatke smo dopolnili raziskovanjem, ki je temeljilo na opazovanju z udeležbo, nizu neformalnih pogovorov s ključnimi udeleženci ter intervjuji z glavnimi domačimi in evropskimi akterji.

Opazovanje z udeležbo se je začelo januarja 2012 (in se nadaljuje) v okviru volunterskega projekta (Center za mirovne študije, Zagreb) in sodelovanja pri dejavnostih,

ki se nanašajo na pomoč prosilcem za azil in zaščitenim osebam pri njihovi integraciji. Dejavnosti so vključevale pomoč uporabnikom pri komunikaciji z institucijami, vključevanjem v družbo in učenju jezika. Neformalne pogovore in intervjuje z glavnimi deležniki (državnimi in nedržavnimi akterji, nevladnimi organizacijami) in uporabniki (prosilci za azil, osebami s subsidiarno zaščito in begunci) smo opravili v obdobju med majem 2011 in januarjem 2013 na območju Zagreba, kjer se nahajajo ključni akterji in nevladne organizacije.[248] Zagreb sprejme tudi največji del prosilcev za azil in osebe s priznano zaščito običajno ostanejo v glavnem mestu. Intervjuji so bili polstrukturirani in so vključevali niz vnaprej pripravljenih vprašanj, a se je v toku raziskave izkazala za koristnejšo uporaba bolj odprtega pristopa. Pri tem pristopu so nam pripravljena vprašanja bila zgolj vodilo za intervjuje, medtem ko so se preko pogovorov izpostavljale tudi druge pomembne tematike. Navedene vire smo uporabili analizi in razlagi rezultatov glede sprejemanja azilskih politik in opisovanju posledic tega procesa za človekove pravice beguncev. Zaradi nekaterih občutljivih osebnih podatkov in nelagodnega počutja nekaterih informantov smo v disertaciji skušali prikriti njihovo identiteto, kjer smo menili, da je le-to ustrezno in etično. Predvsem uporabnike (in tudi nekatere akterje) citiramo na način, ki onemogoča razkritje njihovega statusa, saj je bilo informatom nelagodno razpravljati o določenih vprašanjih.

Za interpretacijo podatkov smo uporabili metodo kvalitativne analize podatkov, ki predpostavlja osredotočenje na "uporabo značilnosti" diskurza in "kontekstualni pomen" vsebinskih podatkov (Hsieh in Shanon 2005, 1278). Analiza zbranih podatkov v raziskavi je obsegala razumevanje konteksta ter pomena in vplivov, ki so jih imele odločitve akterjev, strategije in politični rezultati. Podatki iz teoretičnih prispevkov (študij o beguncih) so nam omogočili kontekstualizacijo diskurzov in pripovedi o tej tematiki ter vplivih in produktih politike na tem področju. Po navedbah avtorjev so takšne metode uporabljene, ko raziskava skuša podrobno razumeti raziskovalno tematiko in v primeru (posamičnih) študij primera. Literatura navaja več podkategorij kvalitativne analize podatkov. Ena od teh je konvencionalna analiza podatkov, pri kateri raziskovanje poteka brez predhodno obstoječih predpostavk in hipotez, katere se razvijajo skozi raziskovanje.

248 Notranje ministrtvo (v nadaljevanju MoI) (1); Prizivna komisija (1); Delegacija EU na Hrvaškem (1); UNHCR (2); Hrvaški pravni center (v nadaljevanju CLC) (2); Center za mirovne študije (v nadajevanju CfP) (3); Rdeči križ (2); prostovoljski CfP (1); koristniki (10). Števila v oklepajih pomenijo število intervjujanih oseb v tem organu, organizaciji ali skupini uporabnikov. Kjer so bila potrebna dodatna pojasnila, smo opravili tudi dodatne pogovore.

Takšen pristop je koristen v primeru omejenega obsega raziskav. Namesto uporabe predhodnih kategorij in podatkov raziskovalec le-te razvija skozi raziskovanje. Z uporabo te metode raziskovalec pridobi znanje in razumevanje pojava ter se "poglobi v podatke, kar omogoča nove vpoglede v tematiko" (Kondracki in Wellman ter Hsieh in Shannon 2005, 1279). Takšne raziskave navadno uporabljajo odprta vprašanja in razvijajo razumevanje tematike skozi raziskovalni proces. Strokovnjaki navajajo tudi drugo pogosto metodo kvalitativne analize podatkov, in sicer neposredno analizo podatkov. Ta oblika raziskovanja se uporablja, ko je bil predmet preučevanja že raziskan (do določene mere), kar omogoča raziskovalcu oblikovanje predhodnih hipotez. Omenjena metoda daje raziskovalcem možnost ocenjevanja in širitve že obstoječega teoretičnega znanja. Obstoječa teorija pomaga raziskovalcem pri osredotočanju na raziskovalna vprašanja in predpostavke o obnašanju spremenljivk in njihovih povezavah. Študija se začne s predhodno oblikovanimi koncepti in značilnostmi, ki se uporabljajo pri kategorizaciji rezultatov. Intervjuji navadno vključujejo odprta vprašanja, ki jih raziskovalec dopolnjuje s podrobnejšimi vprašanji o predhodno določenih kategorijah.

Naše raziskovanje je potekalo med obema opisanima metodama. Disertacijo smo osnovali na nekaj predhodno oblikovanih vprašanjih in hipotezah, ki so nam pomagala, da smo se pri raziskovanju osredotočili na določena področja azilske politike, pri določitvi načinov njihovega ocenjevanja in razumevanja njihovih produktov. Predhodno oblikovane hipoteze so nam pomagale tudi pri osredotačanju na pomembne zadeve v procesu raziskovanja in pri analizi podatkov. Pridobljeni podatki so potrdili večino hipotez iz začetku raziskovalnega procesa, vendar smo v času raziskovanja pridobili tudi podatke, ki jih nismo vključili v začetni raziskovalni okvir. Slednje velja predvsem za drugi niz raziskovalnih vprašanj, v katerem skušamo pojasniti kaj se zgodi ob sprejetju določenih politik oziroma kako akterji odgovorijo na zahteve, izzive in omejitve. V tem delu so nas novi podatki usmerjali k novim vprašanjem, tematikam in novim (bolj podrobnim) hipotezam. Nove pomembne ugotovitve smo vključili v nadaljnje raziskovanje. Disertacija je na eni strani preučevala splošne hipoteze, ki temeljijo na literaturi, na drugi strani pa vključuje tudi raznolike in podrobne podatke ter razumevanje procesov, ki so potekali v domačem kontekstu in jih lahko ali pa ne apliciramo na druge primere.

V disertaciji smo večino zastavljenih hipotez potrdili. Kot bomo predstavili v sklepnem delu, je hrvaška zakonodaja v veliki meri usklajena z *acquis*, čeprav je bil proces prilagajanja postopen (npr. spremembe zakonodaje so potekale v letih 2003, 2007 in 2010). Kljub temu so bile norme interpretirane precej restriktivno, saj velik del zakonodaje

(Zakon o azilu in Zakon o tujcih) uvaja minimalna zagotovila iz evropskega okvira. V praksi so bile norme sprejete neenakomerno. V zgodnji fazi reform je bila večina norm nedosledno sprejeta v praksi. Sčasoma je bil dosežen napredek in nekatere politike, predvsem na področjih sprejema prosilcev za azil in priznavanja statusa, so pokazale znatno izboljšanje. Druga področja, kot je dostop do postopkov za azil, so ostala nepokrita ali slabo razvita, npr. pravice oseb pod zaščito.

V raziskavi ugotovimo, da razlogi za takšno sprejetje izvirajo iz domačih in zunanjih dejavnikov. Na nacionalni ravni velja med dejavniki, ki so vplivali na (nezadosten) razvoj politik, izpostaviti negativna stališča odločevalcev ter slab institucionalni in administrativni okvir. Odločevalci so bili nenaklonjeni ideji o spremembi države v destinacijo za begunce in prosilce za azil, zato je primanjkovalo interesov za nudenje zaščite osebam, ki so bile v postopku za azil ali jim je bil status priznan. Poleg tega so poudarjali velike izdatke na področju azila in predvsem dolgoročni vpliv na ekonomske in socialne politike. Nadalje institucije, ministrstva in uradi niso izkazali potrebnega interesa in občutljivosti na tem področju. Večina ministrstev in uradov je trdila, da azil ni področje njihovega delovanja in so skušali prenesti odgovornosti na glavni pristojni organ, tj. Ministrstvo za notranje zadeve. Brez prave motivacije s strani vlade so ostala ministrstva in drugi uradi večinoma neobveščena in nedejavna.

EU je imela pomemben vpliv na razvoj reform. S svojimi zahtevami in pritiskom je izzvala (določen) odgovor hrvaške vlade, čeprav so boljši rezultati sledili po združitvi pritiska z neprestanimi dejavnostmi na področju socializacije in prepričevanja. Ti mehanizmi so bili le delno uporabljeni in niso prinesli večjih koristi za pravice beguncev. Varnostni okvir in nezadostno oblikovana agenda o spoštovanju pravic beguncev sta predpostavljala, da bodo različni akterji pridobili različni vpliv. Pri tem je prevladoval vpliv varnostnih agentov sociaizacije, ki je omogočil prevlado (že) restriktivne interpretacije zaščite beguncev in norm za nadzor migracij. Poleg tega nekatere nacionalne akterje niso dosegli vplivi socializacije in so posledično minimalno vplivali na proces. Zaradi pomanjkanja legitimnosti evropske agende je imel koncept pogojenosti omejen vpliv na odločevalce, strategije za prepričevanje pa niso bile pogoste uporabljene v pristopu k odločevalcem. Pomanjkanje politične volje je nadalje prispevalo, da se je sistem za zaščito beguncev razvil predvsem na operativni ravni in je le delno uspešen.

Rezultati sprejemanja *acquis* so na splošno negativno vplivali na mednarodno priznane pravice prosilcev za azil in beguncev. Medtem ko je Hrvaška sčasoma postala naklonjena nudenju nekaterih omejenih možnosti za zaščito (sprejetje), po dodelitvi statusa ni ponujala

standardov za varnost in dostojanstvo oseb pod zaščito. Namesto tega jim je dovolila živeti v revščini, izolaciji in brez upanja za prihodnost. Sočasno je država preprečila velikemu številu oseb, da bi dosegle območja z večjo možnostjo za zaščito (sprejem) in boljšo kakovostjo zaščite (pravice in integracija), kot so vzpostavljeni režimi za zaščito beguncev v številnih evropskih državah. Poleg dejstva, da so številni prosilci za azil in zaščitene osebe nadaljevale svojo pot v EU, je takšna realnost prinesla razbremenitev hrvaškega azilskega sistema in negotovosti za te osebe v prihodnosti (npr. nezakonit status ali možnost njihove vrnitve na Hrvaško). Čeprav so na nekaterih področjih reforme azilskega sistema dosegle napredek, je na splošno sistem zaščite ostal nezadosten. Begunci so odvisni od slabo razvitega sistema zaščite, ki jim sočasno onemogoča dostop do ustreznih standardov za zaščito drugje. V okviru pravil o geografski porazdelitvi bremena migracij in azila (npr. Dublinski sistem) in strogega migracijskega nadzora takšen pomanjkljiv razvoj azilskega sistema spodbija univerzalno veljavnost mednarodnih pravic beguncev in vodi v njihovo kršitev.

Disertacija je sestavljena iz šestih poglavij. Prvo poglavje ponuja pregled evropskih migracijskih in azilskih politik po drugi svetovni vojni in tendence po njihovi harmonizaciji konec 1980-ih in v 1990-ih letih. Nato sledi pregled glavnih strokovnih razprav o evropskem vplivu na države članice in kandidatke (študije evropeizacije) ter akademske literature, ki preučuje zaščito beguncev v toku evropeizacije. Drugo poglavje zagotavlja vplogled v teoretične, konceptualne in metodološke temelje, ki so pomembni za raziskovanje, ter izpostavi ključna raziskovalna vprašanja in hipoteze. Tretje poglavje je namenjeno razumevanju nacionalnega okvira, ki je pomemben za preučevanje reform. Namenjeno je razpravi o tematiki migracij in azila na Hrvaškem pred evropskim vplivom, pregledu poteka pogajanj z EU in predstavitvi splošnih razmer, ki so označevale azilske politike v času sprejemanja reform. Četrto poglavje je namenjeno analizi hrvaškega sprejemanja *acquis* o azilu. Zaradi omejenega obsega disertacija ne vključuje razprav o njihovem vplivu na človekove pravice beguncev, ampak preučuje kako sta se hrvaška zakonodaja in praksa prilagodili na *acquis* in kateri modeli azila so bili sprejeti. Kot rečeno, skuša peto poglavje razumeti zakaj je nacionalni sistem odgovoril na zahteve EU na določen način in kako je Unija delovala za dosego željenih rezultatov. Zadnje poglavje obravnava implementacijo evropskih azilskih politik v luči splošnih človekovih pravic beguncev in raziskuje kako so te politike vplivale na pravice beguncev v hrvaškem primeru. V šesto poglavje smo vključili tudi širše razprave o vplivih evropske

harmonizacije na pravice beguncev in svoje poglede na ključna vprašanja iz teh živahnih razprav.

Izvirni prispevek disertacije

Disertacija predstavlja doprinos k tekočim razpravam v literaturi o evropeizaciji ter akademskim razpravam na področjih migracij in azila, ki obravnavajo evropsko integracijo in njene vplive. Medtem ko so študije o evropeizaciji prisotne v obsežni literaturi, ostajajo raziskave o evropskih vplivih na države nečlanice EU omejene. Raziskovanje prikazuje velike razlike med političnimi področji in državami, pri čimer ostajajo nacionalni in zunanji dejavniki, ki vplivajo na prilagajanje in njegove rezultate, manj znani. Podrobno preučevanje tematike je potrebno za sklepanje o rezultatih prenosa splošnih pravil v nacionalni okvir in nam je omogočilo poglobljeno razumevanje razmer, ki prispevajo k pojavu opazovanih vplivov. Vsekakor študija posamičnega primera le stežka omogoča posploševanje, vendar pa zagotavlja razumevanje pojava v naravnem okolju (Heck 2004; Hsieh in Shannon 2005). Posledično so lahko ugotovitve iz analize posameznega primera dragocene za druge primere, ki potekajo v bolj ali manj podobnih razmerah.

Disertacija na enak način prispeva znanje na področju evropeizacije azilskih in migracijskih politik v državah nečlanicah EU, ki je v veliki meri zapostavljeno v migracijskih študijah. Predvsem smo preučevali pomen vodilnih razprav o normativnih zadevah EU v hrvaškem primeru in ga skušali povezati s predpostavkami iz diskurza o evropeizaciji. Slednje je pomembno za trenutni potek na področju migracij, saj se osredotoča na analizo širših (regionalnih in globalnih) vplivov zahodnoevropske normativne strukture.

Poleg tega naše raziskovanje prispeva k procesu izgradnje znanja o prenosu politike v kontekst Jugovzhodne Evrope, kjer podobno primanjkuje empiričnih raziskav. Prispevki disertacije so lahko tudi doprinos k pogosto zastavljenemu vprašanju ali so vplivi delitve Evrope na zahod in vzhod bolj odločilni kakor delitev na države članice ali nečlanice EU. Nazadnje je znanje o hrvaškem azilskem sistemu zelo omejeno, kar dokazuje malo obstoječih študij, ki so preučevale hrvaški primer predvsem v okviru raziskovanja širšega zahodnobalkanskega sistema ali pa so osredotočene le na določena področja ali so zastarele. Posledično so splošno delovanje sistema in njegovi produkti slabo znani javnosti in raziskovalcem, pogosto tudi samim odločevalcem. Pričujoča disertacija tako prispeva k osnovnemu znanju in razumevanju hrvaškega azilskega sistema.