Usklađenost zakonodavstva i prakse hrvatskih institucija s europskom pravnom stečevinom u području azila i neregularnih migracija

# POLICY IZVJEŠTAJ

Degree of Harmonization between the Legislation and Practice of Croatian Institutions with the Acquis Towards Asylum and Irregular Migration

# POLICY REPORT

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*Policy* izvještaj 'Usklađenost zakonodavstva i prakse hrvatskih institucija s europskom pravnom stečevinom u području azila i neregularnih migracija' rezultat je projekta **Immigration and Asylum Policy – Implementation of *acquis*** i nastao je u okviru višegodišnje kampanje **Hrvatska – (k)raj na zemlji**. Analiza je izrađena uz potporu organizacije **European Fund for Balkans.**

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# O Centru za mirovne studije

Centar za mirovne studije (CMS) nevladina je, neprofitna organizacija koja promiče nenasilje i društvenu promjenu povezujući **obrazovanje, istraživanje, aktivizam i rad na javnim politikama**. CMS je izrastao iz različitih oblika izravne izgradnje mira u zapadnoj Slavoniji, ponajviše kroz Volonterski projekt Pakrac, 1993. – 1997. Osnovan je 1996. u Pakracu.

Svrha osnivanja i djelovanja CMS-a jest promicanje i podupiranje vrijednosti nenasilja, društvene pravde, poštovanja ljudskih prava, snošljivosti te prihvaćanja razlika i različitosti. CMS razvija participativne procese učenja koji uključuju promišljanje, artikulaciju i razmjenu praktičnih iskustava osoba čiji je poziv transformacija sukoba i izgradnja društveno pravednih odnosa.

Ciljevi CMS-a su sljedeći: razvijanje kulture dijaloga i nenasilnog življenja, poticanje kreativne razmjene teorijskih i praktičnih pristupa mirovnom obrazovanju, transformaciji sukoba i izgradnji društvene pravde, istraživanje tema koje se odnose na izgradnju trajnog mira te obrazovanja za mir s naročitim osvrtom na iskustva iz Hrvatske i šire regije, razvijanje preporuka za razvijanje javnih politika, podupiranje umrežavanja i razmjene iskustva o izgradnji mira u Hrvatskoj i široj regiji zahvaćenoj ratom 1991. godine, pružanje informacija, potpore i partnerstva lokalnim inicijativama u nastanku čije se aktivnosti dotiču izgradnje mira, afirmiranja aktivističkog pristupa u lokalnim zajednicama, kontinuirana samoobrazovanja članova i sudionika u programima CMS-a na unapređenju vlastita razumijevanja mirovnog rada, iniciranja novih modela obrazovanja i samoobrazovanja i dr.

Centar za mirovne studije djeluje kroz dva programa: **Mirovno obrazovanje** i **Javne politike izgradnje mira**, unutar kojega razvijamo potprogram **Azila**. Program azila usredotočen je na istraživanje zakonodavstva i prakse hrvatskih institucija, direktnu zaštitu ljudskih prava tražitelja azila, azilanata i neregularnih migranata/-ica te podršku njihovoj integraciji, suradnju s međunarodnim, regionalnim, nacionalnim i lokalnim institucijama i organizacijama, te obrazovanje građana i uključivanje u podršku tražiteljima azila i azilantima.

### O RADU U PODRUČJU AZILA I NEREGULARNIH MIGRACIJA

Od 2003. godine u našem radu važnom držimo temu ljudskih prava te ljudskih prava stranaca, osobito tražitelja azila i neregularnih migranata. 2004. smo godine, kroz suradnju programa Mirovnih studija i programa Azila, izradili akcijsko istraživanje **Azil u Hrvatskoj**. Rezultati istraživanja odveli su nas u višegodišnju kampanju **Hrvatska – (k)raj na zemlji** s ciljem poticanja stručne i javne diskusije o pravima tražitelja azila te unapređenja sveukupne politike azila i suradnje mjerodavnih institucija i organizacija u području razvoja integracijskih politika. Kroz kampanju smo organizirali međunarodnu konferenciju o integracijskim politikama i sustavu azila, čije smo preporuke objavili u priručniku za integraciju **Azil u Hrvatskoj – integracijske politike**, izložbe **Azil kao ljudsko pravo**, koje su organizirane u Sisku, Slavonskom Brodu, Rijeci i Zagrebu, nekoliko okruglih stolova o pravima tražitelja azila (Stranac u mom dvorištu, Od t'ge za jug na zahod i dr.) te niz javnih rasprava, medijskih nastupa i sl. Osim toga, izravno smo radili s tražiteljima azila kroz radionice Boalovog teatra i uspostavljanje tečaja hrvatskog jezika. Relevantan je produkt naše kampanje doku-

## *The Centre for Peace Studies*

The Centre for Peace Studies (CPS) is a non-governmental, non-profit organization promoting non-violence and social change by linking education, research, activism and work on public policies. CPS grew out of various forms of direct peace-building activity in Western Slavonia, mostly through the Volunteer project Pakrac (1993-1997). CPS was founded at Pakrac in 1996.

The purpose of the foundation and activity of CPS is the promotion and support of values of non-violence, social justice, respect for human rights and tolerance and acceptance of difference and diversity. CPS develops participatory processes of learning which include consideration, articulation and exchange of the practical experiences of the people who deal with the transformation of conflicts and the building of socially just relationships.

The goals of CPS are: the development of a culture of dialogue and of non-violent living, the encouragement of creative exchange of theoretical and practical approaches to peace education, the research of topics which relate to the building of permanent peace and education for peace with particular focus on experiences from Croatia and the wider region, the development of recommendations for the development of public policies, supporting networking and the exchange of experiences about the building of peace in Croatia and the wider region affected by war in 1991, providing information, support and partnership to local emergent initiatives whose activities touch upon the building of peace, affirmation of the activist approach in local communities, continued self-education of members and participants in CPS programmes in the improvement of their understanding of peace-work, initiating new models of education and self-education etc.

The Centre for Peace Studies acts through two programmes: **Peace Education** and **Peace-Building Public Policies**, within which we have been developing a sub-programme called **Asylum**. The programme about asylum focuses on research of the legislation and practice of Croatian institutions, direct protection of the human rights of asylum-seekers, asylees, and irregular immigrants, and support of their integration, co-operation with international, regional, national and local institutions and organizations, the education of citizens, and taking part in providing support for asylum-seekers and asylees.

### *WORK IN THE FIELD OF ASYLUM AND IRREGULAR MIGRATION*

Since 2003, in our work we have considered important the subject of human rights and the human rights of foreign citizens, particularly asylum-seekers and irregular immigrants. In 2004 through co-operation between the programmes Peace Studies and Asylum we carried out the research project '**Asylum in Croatia**'. The results of the research led us to the campaign **'Croatia – E(de)nd on Earth'**, which lasted several years, and had the purpose of encouraging expert and public discussion about the rights of asylum-seekers, improvement of general asylum policy, and co-operation between relevant institutions and organisations in the field of development of integration policies. As part of the campaign we organized: an international conference about integration policies and the asylum system, the recommendations of which we published in an integration handbook '**Asylum in Croatia: Inte-**

mentarni film *Hrvatska – (k)raj na zemlji*, nastao u suradnji s organizacijom Fade-IN. Od 2005. godine redovito objavljujemo **Institucionalni vodič za tražitelje/-ice azila** na nekoliko jezika (hrvatski, engleski, francuski, turski, farsi, arapski, albanski, hindi itd.).

Od 2004. godine kontinuirano održavamo **tečaj hrvatskog jezika**, a od sredine 2006. godine, temeljem sporazuma s Ministarstvom unutarnjih poslova, tečaj redovito vode angažirani volonteri, uglavnom polaznici Mirovnih studija, članovi Centra za mirovne studije i zainteresirani građani. Prije rada s tražiteljima azila volonteri prolaze intenzivnu edukaciju, a njihov se rad prati i nadgleda (supervizija). Dosad smo održali oko 1000 sati hrvatskog jezika za oko dvije stotine tražitelja azila i azilanata. Osim volontiranja u programu tečaja hrvatskog jezika, polaznici Mirovnih studija i drugi uključuju se u rad na javnim politikama azila ili istraživačkim aktivnostima. Jedna generacija studenata Mirovnih studija organizirala je radionicu Boalovog teatra s tražiteljima azila u Kutini, koju je i javno prezentirala u Zagrebu povodom Međunarodnog dana izbjeglica 20. 6. 2008. godine pod nazivom **A**pel **Z**a **I**zlaz iz **L**abirinta.

Iako se CMS primarno ne bavi socijalnom politikom i socijalnim uslugama, primjećujemo da je **društvena uključenost** tražitelja azila i azilanata u šire društvene, ekonomske i kulturne tokove neizmjerno slaba te kao prioritet u radu vidimo razvijanje održive suradnje s lokalnim (Kutina i okolica, Zagreb) organizacijama i institucijama u pružanju informacija i socijalnih usluga tražiteljima azila i azilantima te otvaranje Prihvatilišta za tražitelje azila za takav oblik rada.

Od odobravanja prvog azila u Hrvatskoj radimo na **razvijanju integracijskih politika** za azilante, osobe koje će život provesti u Hrvatskoj i koje se suočavaju s iznimno teškim životnim uvjetima kada je riječ o usvajanju hrvatskog jezika, prilikama za zaposlenje, daljnjem obrazovanju, smještaju i kvalitetnoj zdravstvenoj i socijalnoj skrbi. CMS se ovim problemom uglavnom bavi kroz zagovaranje integracijskih politika prema institucijama te direktnom pomoći azilantima u integraciji i rješavanju svakodnevnih problema.

Osim tečaja hrvatskog jezika, podrške u integraciji azilanata, praćenja razvoja azilne politike i one prema neregularnim migracijama, tim CMS-a ove je godine završio dva novija projekta: međunarodno istraživanje i publiciranje teksta o azilu i neregularnim migracijama u Hrvatskoj kroz utjecaj transnacionalnih migracija u suradnji s Minderheiten Initiative iz Beča i partnerima iz Istanbula i Beograda, te analizu usklađenosti hrvatskih zakona i politika s europskim direktivama u području azila i neregularnih migracija, čije rezultate predstavljamo u ovom izvještaju.

Naš su rad dosad financijski podržali Nacionalna zaklada za razvoj civilnoga društva, Ured za ljudska prava Vlade RH, Ministarstvo znanosti, obrazovanja i športa, Europska komisija, Veleposlanstvo Kraljevine Nizozemske i European Fund for Balkans.

**gration Policies**', the exhibition '**Asylum as a Human Right**' which was displayed at Sisak, Slavonski Brod, Rijeka, and Zagreb, several round-table discussions about the rights of asylum-seekers (Stranger in My Yard, From Southern Sadness to Going West, and others), and a series of public discussions, media appearances and so on. As well as this we worked directly with asylum-seekers through the Boal theatre workshops and organizing courses teaching the Croatian language. A relevant product of our campaign was a documentary film 'Croatia – **E(de)nd** on Earth' made with the co-operation of the organization Fade-IN. Since 2005 we have regularly published the **Guide to Croatian Institutions for Asylum-Seekers** in several languages (Croatian, English, French, Turkish, Farsi, Arabic, Albanian, Hindu etc.).

Since 2004 we have continually organized a course teaching the Croatian language; since mid-2006, in agreement with the Ministry of Interior Affairs, the course has been regularly held by engaged volunteers, mostly attendees of Peace Studies, members of the Centre for Peace Studies, and interested citizens. Before working with asylum-seekers the volunteers go through intensive training and their work is monitored and supervised. To date we have held around 1,000 hours of Croatian language tuition for around 200 asylum-seekers and asylees. Aside from volunteering in the Croatian language course, the attendees of Peace Studies and others join in the work on public asylum policy or research activities. One generation of Peace Studies students organized a Boal theatre workshop with the asylum-seekers at Kutina, which was presented publicly in Zagreb on the occasion of International Refugee Day on 20 June 2008, and was entitled **'Appeal for a Thread out of the Labyrinth'**.

Although CPS does not primarily deal with social policy and social services, we note that the **social involvement** of asylum-seekers and asylees in wider social, economic and cultural spheres is remarkably weak, and we see, as an important priority in our work, the development of sustainable co-operation with local (Kutina and surrounding areas, Zagreb) organizations and institutions in providing information and social services to asylum-seekers and asylees, and the opening of a Centre for asylum-seekers which would help fulfil this agenda.

Since the first successful asylum application in Croatia we have been working on the **development of integration policies** for asylees, persons who will spend their lives in Croatia and who are faced with extremely difficult life-conditions in terms of the adoption of the Croatian language, employment opportunities, further education, accommodation and good-quality health and social care. CPS mostly deals with this problem through the advocacy of integration policies to relevant institutions and direct help for asylees in terms of integration and everyday problem-solving.

This year, as well as delivering courses in the Croatian language, supporting the integration of asylees, and monitoring the development of asylum and irregular immigration policies, the CPS team also finished two recent projects: the international research and publication of a text about asylum and irregular migration in Croatia under the impact of transnational migration in co-operation with *Minderheiten Initiative* from Vienna and partners from Istanbul and Belgrade, as well as an analysis of the degree of harmonization between Croatian legislation and policy and EU directives in the field of asylum and irregular migration, the

# Sažetak *policy* analize

Analiza **Usklađenost zakonodavstva i prakse hrvatskih institucija s europskom pravnom stečevinom u području azila i neregularnih migracija** usredotočena je na temeljnu usporedbu europskih direktiva i hrvatskih zakona, propisa i drugih akata u poštovanju ljudskih prava tražitelja azila te tražitelja azila neregularnih migranata. Iako se u hrvatskom zakonodavnom okviru uz potporu razvoja institucionalnih mehanizama zamjećuju brojni napreci, područje azila i neregularnih migracija iznimno je pod utjecajem restriktivnih okvira europske pravne stečevine i hrvatskog nedostatka stručnog znanja i kapaciteta za razvoj kvalitetne politike azila. Iako na pravno-regulatornoj razini u većoj mjeri govorimo o usklađenosti hrvatskog zakonodavstva s europskom pravnom stečevinom, i dalje postoje značajni prostori neusklađenosti, kao i veliki raskoraci u praksi primjene propisa. Politika azila, kao i politika države prema pojavi neregularnih migracija, kao dio sveobuhvatne migracijske politike koja, usput rečeno, u Republici Hrvatskoj nije definirana strateškim dokumentom, iznimno su nedostatne i nerazvojne s obzirom na hitne postupke donošenja novih akata, minimalne institucionalne promjene koje sadržajno ne donose značajne promjene, kao i nerazvijanje pozitivnih praksi suradnje sa zainteresiranim organizacijama civilnog društva, kako nalaže službeni Kodeks savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata.

Analiza **Usklađenost zakonodavstva i prakse hrvatskih institucija s europskom pravnom stečevinom u području azila i neregularnih migracija** iznjedrila je nekoliko glavnih preporuka:

- Unapređenje sustava zaštite ljudskih prava tražitelja azila i neregularnih migranata
- Unapređenje sustava zaštite ranjivih skupina (maloljetnih osoba, pripadnika-ica manjinskih društvenih skupina, itd.)
- Horizontalno usklađivanje hrvatskog zakonodavstva (npr. Zakon o strancima i Zakon o azilu) u području procedura, postupaka i zaštite ljudskih prava tražitelja azila
- Vertikalno usklađivanje hrvatskog zakonodavstva i prakse primjene zakonodavnih procedura s europskom pravnom stečevinom
- Osnaživanje sustava podrške, socijalnog uključivanja i integracije tražitelja azila

results of which are presented in this report.

Our work has so far been financially supported by: the National Foundation for the Development of Civil Society, the Office for Human Rights of the Government of the Republic of Croatia, the Ministry of Science, Education and Sport, the European Commission, the Embassy of the Kingdom of the Netherlands, and the European Fund for the Balkans.

## *Summary of Policy Analysis*

Our analysis, ***Degree of Harmonization between the Legislation and Practice of Croatian Institutions with the Acquis towards Asylum and Irregular Migration***, focuses on the basic comparison between EU directives and Croatian legislation, regulations and other Acts in the field of the human rights of asylum-seekers and irregular immigrants seeking asylum. Although numerous improvements can be observed in the Croatian legislative framework, including the development of institutional mechanisms, the area of asylum and irregular migration in particular is affected by the restrictive framework of the *acquis* and the lack of Croatian expertise and capacity to develop a high-quality asylum policy. Although on a legal and regulatory level we generally speak of the alignment between Croatian legislation and the *acquis*, significant areas which are not in harmony still exist as well as large gaps in the practice of the implementation of rules and regulations. The asylum policy and the policy of the government towards irregular migration have not been defined by a strategic document in the Republic of Croatia. These policies are extremely deficient and undeveloped with regard to urgent procedures of the adoption of new acts, and minimal institutional changes, the contents of which do not bring any significant change. They are affected by a failure to develop good practice of co-operation with interested civil society organizations as prescribed in the official Code for consultation with the interested public in the procedures of the adoption of laws, other regulations and acts.

The analysis ***Degree of Harmonization between the Legislation and Practice of Croatian Institutions with the Acquis towards Asylum and Irregular Migration*** has resulted in a number of main recommendations:

- To improve the system of protection of human rights of asylum seekers and irregular migrants
- To improve the system of protection of vulnerable groups (minors, members of minority social groups etc.)
- Horizontal alignment of Croatian legislation (for example the Foreigners Act and the Asylum Act) in the area of procedure, process and protection of human rights of asylum seekers
- Vertical alignment of Croatian legislation and practice of implementing legislative procedures with the *acquis*
- To enhance the system of support, social involvement and integration of asylum seekers

# Metodologija policy analize



## O PROJEKTU

Projekt Immigration and Asylum Policy – Implementation of *acquis* provodi se u Centru za mirovne studije od prosinca 2009. s ciljem izrade *policy* izvještaja o usklađenosti zakonodavstva i prakse hrvatskih institucija prema pojavi neregularnih migracija i sustavu azila s europskom pravnom stečevinom, tj. ***acquis communautaire***, sadržana u pregovaračkom poglavlju 24. pod nazivom ***Pravda, sloboda i sigurnost***. Temeljem prethodnih analiza tima Centra za mirovne studije angažirana u ovome području, uočeno je sljedeće: opetovani postupci ubrzana donošenja zakona u području regulacije azila i statusa stranaca, restriktivnost zakona i propisa prema tražiteljima azila i neregularnim migrantima, nedostatna implementacija zakona koji su prošli proces harmonizacije s europskom pravnom stečevinom, nedostatak stručnog i ljudskog kapaciteta hrvatskih institucija za punu provedbu zakona, međusobnu koordinaciju i podršku socijalnom uključivanju i integraciji spomenutoj skupini stranaca. Osim toga, zamjetna su kršenja ljudskih prava, nedostatna asistencija u integraciji i zaštita ranjivih skupina. Stoga se ova analiza usredotočila na dva problema: stupanj usklađenosti zakona i prakse s europskom pravnom stečevinom u postupcima prihvata, smještaja i zaštite neregularnih migranata tražitelja azila te pravo neregularnih migranata na azil i status tražitelja azila u punom smislu u odnosu na poštovanje ljudskih prava.

Rezultat ovog projekta, odnosno analize usklađenosti zakonodavstva i prakse hrvatskih institucija prema pojavi neregularnih migracija i sustavu azila s europskom pravnom stečevinom jest *policy* izvještaj sastavljen od nekoliko značajnih poglavlja za razumijevanje problematike neregularnih migracija i sustava azila, kao i integracije stranaca s ostvarenim azilnim statusom. Izvještaj će biti prezentiran hrvatskim i regionalnim institucijama na organiziranim stručnim i javnim raspravama te kompetentnim europskim i međunarodnim institucijama.

## O METODOLOGIJI ANALIZE

*Policy* izvještaj izrađen je na temelju polugodišnje analize usklađenosti zakonodavstva i prakse hrvatskih institucija prema pojavi neregularnih migracija i sustavu azila s europskom pravnom stečevinom.

Analiza je obuhvatila sljedeće:

- Izradu istraživačkih pitanja – prilog 1.
- *Desk-study* analizu – analizu značajnih dokumenata (zakoni, strategije, pravilnici i drugi akti) – popis dokumenata nalazi se u prilogu 2.
- Fokus grupu s tražiteljima/-icama azila u Prihvatilištu za tražitelje azila u Kutini – prilog 3.
- Fokus grupu s neregularnim migrantima tražiteljima azila u Prihvatnom centru za strance u Ježevu – prilog 3.
- Polustrukturirane razgovore s azilantima i njihovim obiteljima – prilog 3.
- Polustrukturirane razgovore s mjerodavnim institucijama – prilog 4.

# *Methodology of Policy Analysis*

### *THE PROJECT*

The project 'Immigration and asylum policy – implementation of the *acquis* has been carried out at the Centre for Peace Studies since December 2009, with the goal of creating a policy report about the degree of harmonization between the legislation and practice of Croatian institutions towards irregular migration and the asylum system and the *acquis communautaire* within negotiations on Chapter 24 under the title ***Justice, Freedom and Security***. Based on previous analyses of the Centre for Peace Studies team engaged in this area the following has been observed: repeated examples of fast-track adoption of laws in the field of asylum regulation and the status of foreign citizens, restrictiveness of rules and regulations towards asylum-seekers and irregular immigrants, deficient implementation of the laws which have been through the process of alignment with the *acquis*, lack of expertise and capacity of personnel in Croatian institutions for the full implementation of the laws, mutual co-ordination and support for social involvement and integration of the aforementioned group of foreign citizens. Apart from this, we have noted a failure to observe human rights, and deficient assistance in the integration and protection of vulnerable groups. Therefore this analysis focuses on two problems: the degree of harmonization of legislation and practice with the *acquis* in the process of adopting accommodation and protection of irregular migrants and asylum-seekers, and the right of irregular migrants to claim asylum and the status of asylum-seekers in the full sense of the word with regard to the observance of human rights.

The result of this project, i.e. the analysis of the degree of harmonization of the legislation and practice of Croatian institutions towards irregular migration and the asylum system with the *acquis*, is a policy report consisting of several chapters relevant for the understanding of the problem of irregular migration and the asylum system, as well as the integration of foreign citizens who are asylees. The report will be presented to Croatian and regional institutions in expert and public discussions organized for this purpose but also to relevant European and international institutions.

### *METHODOLOGY OF ANALYSIS*

The policy report has been made on the basis of a half-yearly analysis of the degree of harmonization between the legislation and practice of Croatian institutions towards irregular migration and the asylum system and the *acquis*.

Our analysis has comprised the following:

- the creation of research questions – Appendix 1.
- a desk-study analysis – an analysis of the relevant documents (laws, strategies, ordinances and other acts) – the list of documents is in Appendix 2.
- a focus group with asylum-seekers at the Centre for Asylum-Seekers at Kutina – Appendix 3.
- a focus group with irregular immigrants who are asylum-seekers at the Centre for Foreign Citizens at Ježevo – Appendix 3.

- Polustrukturirane razgovore s angažiranim organizacijama civilnoga društva i drugim značajnim akterima – prilog 4.
- Polustrukturirane razgovore s međunarodnim organizacijama – prilog 4.
- Polustrukturirane razgovore sa stručnjacima (odvjetnici tražitelja azila, pravnici).

Istraživačka pitanja izrađena su na temelju standarda postavljenih europskom pravnom stečevinom i međunarodnim izbjegličkim pravom. *Desk-study* analiza upotrijebljena je za analizu i sistematizaciju postojećih pravnih i političkih dokumenata u procesu standardizacije regulacije sustava zaštite ljudskih prava i razvijenosti zakonodavstva i prakse. Fokus grupe (žarišne grupe) u postupku su kolektivno usmjerenih intervjua ciljale na razumijevanje perspektive tražitelja azila i neregularnih migranata o problemu koji smo analizirali, a razgovori sa svim akterima pojedinačno vođeni su u svrhu prikupljanja većeg broja informacija, znanja, stručnih i osobnih perspektiva područja koje je analizirano.

Provedena analiza bila je participativnog karaktera i povezala je odnos politike, prakse i društvene skupine koja je dio predmeta analize. Ciljane skupine ove analize bile su sve mjerodavne institucije, organizacije i kompetentni pojedinci, uključujući stručnjake, tražitelje azila, azilante i neregularne migrante.

- semi-structured interviews with asylum-seekers and their families – Appendix 3.
- semi-structured interviews with relevant institutions – Appendix 4.
- semi-structured interviews with engaged civil society organizations and other relevant agents – Appendix 4.
- semi-structured interviews with international organizations – Appendix 4.
- semi-structured interviews with experts (barristers of asylum-seekers and legal experts).

Research questions were based upon standards established by the *acquis* and international refugee law. Desk-study analysis was used for the analysis and systematization of the existing legal and political documents as part of the process of standardizing the regulation of the human rights protection system and the development of legislation and practice. Focus groups, through a procedure of collective interviews, aimed at the understanding of the perspective of asylum-seekers and irregular immigrants about the problem we have been analysing, while individual interviews with all agents led for the purpose of collecting a large amount of information, knowledge, and expert and personal perspectives about the field under analysis.

The completed analysis was of a participatory character and it linked up the relationships between politics, practice and the social group which was the object of the study. Target groups of our analysis were all the relevant institutions, organizations and competent individuals including experts, asylum-seekers, asylees and irregular immigrants.

# Uvod u zakonodavni i institucionalni kontekst

Od 1997. godine broj tražitelja azila u Hrvatskoj raste i dosegao je broj od više od 1000 osoba. Prema službenoj statistici Ministarstva unutarnjih poslova[1] od 2007. do rujna 2010. godine u Hrvatskoj je azil zatražila 541 osoba, od kojih je 10 i dobilo zaštitu – i time status azilanta, odnosno azilantice – uz zaštitu koja je pružena i njihovim obiteljima. Najveći broj tražitelja azila u posljednje četiri godine dolazi iz Srbije, Afganistana, Pakistana, Irana, Bosne i Hercegovine te Kosova, nakon čega slijede Turska, Makedonija i Ruska Federacija. Tražitelji azila u Hrvatsku dolaze iz gotovo 50 zemalja, a na popisu istih nalaze se Češka, Slovenija, Francuska i Italija. Zamjetno je kako u posljednje četiri godine broj tražitelja azila lagano pada – od 2007. kada je azil zatražilo 170 osoba, 2008. sa 129 zahtjeva, do 2009. s ukupno 120 podnesenih zahtjeva. Do rujna 2010. azil su zatražile 122 osobe. Osim 10 dodijeljenih azila od 2007. do rujna 2010., 12 je osoba dobilo supsidijarnu zaštitu u prvostupanjskom ili drugostupanjskom postupku[2].

Područje azila regulirano je Zakonom o azilu i Zakonom o strancima te nizom pravilnika i drugih akata. **Zakon o azilu** usvojen je prvi put 1. srpnja 2003. s odgodom primjene do 1. srpnja 2004. Drugi Zakon o azilu stupio je na snagu 1. siječnja 2008., a posljednji Zakon o izmjenama i dopunama Zakona o azilu usvojen je 2. srpnja 2010. u Hrvatskom saboru. Posljednji tekst Zakona o azilu usklađen je u većoj mjeri s europskom pravnom stečevinom, obvezama koje proizlaze iz Sporazuma o stabilizaciji i pridruživanju, te postojećim međunarodnim standardima, primarno s Konvencijom o statusu izbjeglica iz 1951 (Ženevska konnvencija). Za predmet ove analize relevantan je i **Zakon o strancima** usvojen 2007., s odgodom primjene do 1. siječnja 2008., a čije su posljednje izmjene i dopune usvojene u Hrvatskom saboru 13. ožujka 2010. Oba zakona s promjenama donesena su po hitnom postupku.

Institucionalni je nositelj provedbe zakona u području azila Ministarstvo unutarnjih poslova, iako i druga ministarstva imaju mjerodavan djelokrug rada, poput Ministarstva znanosti, obrazovanja i športa, Ministarstva zdravstva i socijalne skrbi, Ministarstva gospodarstva, rada i poduzetništva, te Ministarstva kulture. Pored toga mjerodavan je i Vladin Ured za ljudska prava. Važnu ulogu ima i Ured Visokog povjerenika UN-a za izbjeglice (UNHCR). Institucionalni okvir u području azila i neregularnih migracija dopunjen je Prihvatilištem za tražitelje azila[3] i Prihvatnim centrom za strance[4] u kojima borave tražitelji azila, u potonjem neregularni migranti.

1 STATISTIČKI PREGLED DOSTAVLJEN CENTRU ZA MIROVNE STUDIJE 13. RUJNA 2010.

2 IBIDEM

3 PRIHVATILIŠTE ZA TRAŽITELJE AZILA OTVORENO JE 27. LIPNJA 2006. (WWW.MUP.HR) KAO PRIVREMENI CENTAR DO 31. PROSINCA 2008. DO DANAS NIJE NAĐENA TRAJNA LOKACIJA ZA PRIHVAT I SMJEŠTAJ TRAŽITELJA AZILA.

4 PRIHVATNI CENTAR ZA STRANCE OSNOVAN JE 1997. KAO USTROJSTVENA JEDINICA MINISTARSTVA UNUTARNJIH POSLOVA U KOJU SE SMJEŠTAJU STRANCI KOJIMA SU SUDOVI, PREKRŠAJNI ILI KAZNENI, IZREKLI PRAVOMOĆNE MJERE PROTJERIVANJA IZ REPUBLIKE HRVATSKE, A KOJI SE NE MOGU ODMAH PRISILNO UDALJITI. (WWW.MUP.HR).

## *Introduction to the Legislative and Institutional Context*

Since 1997 the number of asylum-seekers in Croatia has increased to reach a total of more than 1,000 persons. According to the official statistics of the Ministry of Internal Affairs[1] from 2007 to September 2010 541 persons requested asylum in Croatia, 10 of which received the protection of asylum-seeker status together with protection offered to their families. The largest number of asylum-seekers in the last four years came from Serbia, Afghanistan, Pakistan, Iran, Bosnia and Herzegovina and Kosovo, followed by Turkey, Hungary and the Russian Federation. Asylum-seekers in Croatia arrive from nearly fifty countries and the list includes the Czech Republic, Slovenia, France, and Italy. It is noteworthy that in the last four years the number of asylum-seekers has slowly decreased from 2007 when 170 persons requested asylum to 2008, which saw 129 requests, while in 2009 there were 120 requests submitted for asylum. By September of 2010 asylum was requested by 122 persons. Apart from the 10 successful asylum applications between 2007 and September 2010, 12 persons received subsidiary protection in either first instance or second instance proceedings[2].

The area of asylum is regulated by the Asylum Act, the Foreigners Act and a series of ordinances and other acts. The **Asylum Act** was initially adopted on the 1 July 2003 with implementation delayed until the 1 July 2004. The second Asylum Act was put into effect on 1 January 2008 and the recent Asylum Amendment Act was adopted on 2 July 2010 in the Croatian parliament. The most recent text of the Asylum Act has been mostly harmonized with the *acquis*, the obligations ramifying from the Stabilization and Association Agreement and the existing international standards, primarily the 1951 Convention relating to the status of refugees (Geneva Convention). Relevant to the subject of this analysis is the Foreigners Act adopted in 2007 with implementation delayed until 1 January 2008, amendments to which were adopted in the Croatian parliament on 13 March 2010. Both amended Acts were adopted under emergency proceedings.

The institutional carrier of the implementation of asylum legislation is the Ministry of Interior Affairs, although other ministries are competent authorities, such as the Ministry of Science, Education and Sport, the Ministry of Health and Social Care, and the Ministry of Culture. Aside from these, the Government Office for Human Rights is also a competent authority in these matters. An important role belongs to the Office of the UN High Commissioner for Refugees (UNHCR). The institutional framework in the area of asylum and irregular migration has been supplemented by the Reception Centre for Asylum-Seekers[3] and the Reception Centre for Foreign Citizens[4], the former accommodating asylum-seekers and the latter irregular immigrants.

1 STATISTICAL REPORT DELIVERED TO THE CENTRE FOR PEACE STUDIES ON 13 SEPTEMBER 2010.

2 IBIDEM

3 THE RECEPTION CENTRE FOR ASYLUM-SEEKERS WAS OPENED ON THE 27 JUNE 2006 (WWW.MUP.HR) AS A TEMPORARY CENTRE OPERATING UNTIL 31 DECEMBER 2008. TO DATE, A MORE PERMANENT LOCATION FOR THE RECEPTION AND ACCOMMODATION OF ASYLUM-SEEKERS HAS NOT BEEN FOUND.

4 THE RECEPTION CENTRE FOR FOREIGNERS WAS FOUNDED IN 1997 AS A CONSTITUENT PART OF THE MINISTRY OF INTERIOR AFFAIRS AND ACCOMMODATES FOREIGN CITIZENS TO WHOM EITHER CIVIL OR CRIMINAL COURTS HAVE ISSUED NON-APPEALABLE DEPORTATION ORDERS, AND WHO CANNOT BE DEPORTED IMMEDIATELY (WWW.MUP.HR)

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# the report

# Usklađenost zakonodavstva i prakse hrvatskih institucija s europskom pravnom stečevinom u području azila i neregularnih migracija

Pravna stečevina Europske unije, ili tzv. *acquis communautaire*, ukupna je pravna struktura regulacije zajedništva zemalja članica Europske unije s ciljem standardizacije brojnih društvenih, političkih, gospodarskih, kulturnih i drugih područja. U postupku proširenja Europske unije pravna stečevina podijeljena je u 31 poglavlje, od kojih je jedno i poglavlje 24., **Pravda, sloboda i sigurnost**, koje uključuje migraciju i azil.

Vezano uz azil i neregularne migracije značajno je nekoliko dolje navedenih dokumenata čija je analiza usklađenosti i provedbe iznjedrila svojevrsne preporuke u smjeru unapređenja zaštite tražitelja azila.

**DIREKTIVA O PRIVREMENOJ ZAŠTITI** 2001/55/EC OD 20. SRPNJA 2001. O MINIMALNIM STANDARDIMA DAVANJA PRIVREMENE ZAŠTITE U SLUČAJU MASOVNOG PRILJEVA RASELJENIH OSOBA I O MJERAMA ZA PROMICANJE URAVNOTEŽENIH NAPORA DRŽAVA ČLANICA U SNOŠENJU POSLJEDICA PRIHVATA TIH OSOBA

Ova direktiva kao mehanizam solidarnosti i zaštite odnosi se na izbjegle s područja oružanih sukoba ili manifestacije nasilja i na osobe kojima prijeti sustavno ili opće kršenje ljudskih prava, ili one koje su i same bile žrtve takvih povreda. U takvim slučajevima Direktiva ne predviđa individualno razmatranje zahtjeva za zaštitom, a osobe pod privremenom zaštitom u svakom trenutku imaju pravo na podnošenje zahtjeva za azilom. Nakon prestanka privremene zaštite uslijedit će povratak, uz uvažavanje ljudskog dostojanstva i ne ugrožavajući zdravlje povratnika.

### OPĆE ODREDBE

Direktiva predviđa kako je privremena zaštita iznimka u proceduri dodjeljivanja zaštite, a daje se u slučajevima masovnog priljeva raseljenih osoba iz trećih zemalja koje se ne mogu vratiti u zemlju ili regiju podrijetla, a kako bi se izbjegao rizik zagušivanja sustava azila. Takva se vrsta zaštite osobito daje osobama koje su napustile područje oružanih sukoba ili lokalnog nasilja te osobama koje su u ozbiljnoj opasnosti ili su bile žrtve sustavnog ili općeg kršenja ljudskih prava, dok "masovni priljev" znači dolazak velikog broja raseljenih osoba koje dolaze iz određene zemlje ili geografskog područja, bilo da je njihov dolazak bio spontan ili potpomognut, npr. preko programa evakuacije. Osim toga, privremena zaštita ne prejudicira priznavanje statusa izbjeglice prema Ženevskoj konvenciji.

Privremena zaštita, prema hrvatskom Zakonu o azilu, definirana je kao **"zaštita hitnog i privremenog karaktera odobrena u izvanrednom postupku, u slučajevima masovnog priljeva ili predstojećeg masovnog priljeva raseljenih osoba iz trećih zemalja koje se ne mogu vratiti u zemlju svog podrijetla, osobito ako postoji rizik da zbog tog masovnog priljeva nije moguće učinkovito provesti postupak za odobrenje azila, radi zaštite interesa raseljenih osoba i drugih osoba koje traže zaštitu. Raseljenim osobama... smatraju se stranci koji su bili prisiljeni napustiti područje ili zemlju svog podrijetla, odnosno koji su bili evakuirani,**

## *Degree of Harmonization Between the Legislation and Practice of Croatian Institutions with the Acquis Towards Asylum and Irregular migration*

The *acquis communautaire* represents the entire legal structure of the regulation of union between the Member States of the EU with the goal of standardizing numerous social, political, economic, cultural and other areas. In the process of EU expansion the *acquis* has been divided into 31 chapters one of which is Chapter 24, **Justice, Freedom and Security**, which includes the area of migration and asylum.

We have analyzed the degree of harmonization and implementation of the relevant documents in the area of asylum and irregular migration and have produced a set of recommendations directed at the improvement of the protection of asylum-seekers.

**COUNCIL DIRECTIVE** 2001/55/ECOF 20 JULY 2001 ON MINIMUM STANDARDS FOR GIVING TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS AND ON MEASURES PROMOTING A BALANCE OF EFFORTS BETWEEN MEMBER STATES IN RECEIVING SUCH PERSONS AND BEARING THE CONSEQUENCES THEREOF

This Directive as a solidarity and protection mechanism refers to refugees from areas of armed conflict or endemic violence and to persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights. In such cases the Directive does not envisage individual examination of the application for protection, but persons enjoying temporary protection are entitled to lodge an application for asylum at any time. After the end of temporary protection the return of the persons concerned will follow with due respect for human dignity and without endangering their health.

### *GENERAL PROVISIONS*

The Directive envisages that temporary protection is an exceptional procedure of providing protection to displaced persons from third countries in the event of a mass influx who are unable to return to their country or region of origin, in order to avoid the risk of the asylum system being overwhelmed. Such protection is given to persons who have fled areas of armed conflict or endemic violence, and persons at serious risk of, or who have been the victims of, systematic or generalised violation of their human rights; 'mass influx' means the arrival of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival was spontaneous or aided, for example through an evacuation programme. Apart from this, temporary protection does not prejudge recognition of refugee status under the Geneva Convention.

Temporary protection according to the Croatian Asylum Act is defined **as *protection of urgent and temporary character granted in extraordinary proceedings, in cases of mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, especially if there is a risk that this mass influx makes it impossible to carry out efficiently an asylum-granting procedure, for the purpose of the interest of the displaced persons and other persons seeking protection. The displaced persons are***

**posebice na poziv međunarodnih organizacija, a koji se ne mogu vratiti u trajne sigurne uvjete života zbog situacije koja prevladava u toj zemlji, uključujući osobe... kojima se omogućava međunarodna zaštita, osobito: osobe koje su napustile područje oružanih sukoba ili lokalnog nasilja, osobe koje su u ozbiljnoj opasnosti od, ili su bile žrtve, sustavnog ili općeg kršenja svojih ljudskih prava. Masovni priljev iz... odnosi se na dolazak velikog broja raseljenih osoba koje potječu iz određene zemlje ili zemljopisnog područja, bez obzira na to je li njihov dolazak spontan ili organiziran. Privremena zaštita odobrit će se na temelju odluke Vijeća Europske unije o postojanju masovnog priljeva raseljenih osoba".**

Razlika između definicije privremene zaštite iz Direktive i Zakona o azilu jest u tome što se u Hrvatskoj privremena zaštita ne definira kao iznimka u proceduri dodjele zaštite (iako ovaj element ističu kao važan i u Direktivi u poglavlju 1., članku 2. o općim pretpostavkama), te što se u Zakonu o azilu navodila samo zemlja podrijetla, no ne i regija, što je ispravljeno u Izmjenama i dopunama Zakona o azilu iz 2010., uvrštavanjem sintagme "zemljopisno područje". Važno je naglasiti kako se privremena zaštita kao jedan od oblika izbjegličkog statusa treba primjenjivati samo u situacijama hitnosti i masovnosti priljeva osoba koje su izbjegle/prognane i trebaju zaštitu. To je princip koji premošćuje jaz koji postoji između diskrecijskog karaktera određenja statusa azila te uvažavanja i poštovanja *non-refoulement* principa. No davanje privremene zaštite ni u kom slučaju ne smije ograničiti mogućnost pristupa individualnoj proceduri zahtijeva za azil (određivanja izbjegličkog statusa) i zadobivanja punog statusa azila za osobe pod privremenom zaštitom koje to zatraže, čim je prije moguće, a svakako prije same mogućnosti povratka.

Odredbe vezane uz članak 3. ove Direktive usklađene su u Zakonu o azilu, osim u sljedećem: osoba koja ima privremenu zaštitu može tražiti azil, no ne i koristiti se pravima tražitelja azila dok joj ne istekne privremena zaštite. Ograničenje prava u tom slučaju odnosi se uglavnom na primanje novčane i humanitarne pomoći, kao i besplatne pravne pomoći.

### TRAJANJE I PROVOĐENJE PRIVREMENE ZAŠTITE

Propisuje se trajanje privremene zaštite na godinu dana, uz mogućnost produljenja na šest mjeseci do najviše jedne godine. Odluku o postojanju masovnog priljeva predlaže Vijeće Europske unije na detaljno razrađenim osnovama i prema utvrđenim pravilima. Privremena zaštita prestaje istekom najduljeg dopuštenog vremena trajanja privremene zaštite ili odlukom Vijeća Europske unije, koja se temelji na činjenici da je situacija u zemlji podrijetla takva da omogućava siguran i trajan povratak uz poštovanje ljudskih prava i temeljnih sloboda, te uz obvezu države članice na poštovanje *non-refoulement* principa.

Prema Izmjenama i dopunama Zakona o azilu iz 2010., članak 84. mijenja se prema koherentnijem usklađivanju s Direktivom prilagođavajući se restriktivnijim mogućnostima za same izbjeglice: **"Privremenu zaštitu odobrava Ministarstvo na vrijeme od jedne godine. Privremena zaštita može se automatski produžiti na vrijeme od šest mjeseci, ali ne duže od godinu dana. Iznimno od stavka 2. ovoga članka, privremena zaštita može se produžiti za još najviše godinu dana ukoliko Vijeće Europske unije donese odluku o produženju privremene zaštite."** No, u ovom slučaju, osobama koje imaju privremenu zaštitu uputnije bi bilo nakon maksimalno dvije godine regulirati sigurniji i trajniji status. Osobito je to važno zbog povećanja razine prava koje mogu ostvariti te u slučajevima u kojima ni nakon dvije

***considered to be foreign citizens who were forced to flee their region or country of origin, or who were evacuated, especially on the initiative of international organizations, and who are unable to return to permanently safe or secure life conditions due to the existing situation in that country, including those persons... who are under international protection, in particular: persons who fled from areas of armed conflict or endemic violence and those persons at serious risk of, or who have been the victims of, systematic or generalized violations of their human rights. Mass influx... refers to the arrival of a large number of displaced persons, who come from a specific country or geographical area, whether their arrival was spontaneous or organized. Temporary protection will be granted on the basis of the decision of the EU Council about the existence of mass influx of displaced persons.***

The difference between the definition of temporary protection in the Directive and the Asylum Act is in that in Croatia temporary protection is not defined as an exception in the procedure of the granting of protection (although this element is emphasized as important in the Directive in Chapter 1 Article 2 of General Provisions), while the Asylum Act mentioned only the country but not the region of origin, which was corrected in the Asylum Amendment Act in 2010 by including the phrase '**geographical region**'. It is important to emphasize that temporary protection as one of the forms of refugee status should really be used only in urgent situations of mass influx of persons who have fled or have been forced into exile and need protection. It is a principle that bridges the gap that exists between the discretionary character of defining asylum status and observing and respecting *non-refoulement*. In no case can the granting of temporary protection limit the possibility of those persons under temporary protection who request it pursuing the individual procedure of asylum application (determination of refugee status) and receiving the full status of asylum, as soon as possible, and definitely before the possibility of return.

The provisions linked with paragraph 3 of this Directive have been harmonized within the Asylum Act, except in the following: the person enjoying temporary protection can seek asylum, but not enjoy the rights of an asylum-seeker until their temporary protection ends. These rights mostly refer to the receipt of financial and humanitarian aid as well as free-of-charge legal assistance.

#### *DURATION AND IMPLEMENTATION OF TEMPORARY PROTECTION*

The duration of temporary protection is prescribed to one year, with the possibility of extension by six-month periods to a maximum of a further year. The decision about the existence of a state of mass influx is proposed by the EU Council on minutely-detailed grounds and according to the established rules and regulations. Temporary protection ends when the maximum duration has been reached or by an EU Council decision based on a state of affairs in which the situation in the country of origin is such as to enable safe and permanent return with due respect for human rights and fundamental freedoms, and Member States' obligations regarding *non-refoulement*.

According to the Asylum Amendment Act of 2010, Article 84 was changed to a more coherent alignment with the Directive, adapting to more restrictive possibilities for the refugees themselves: ***temporary protection is approved by the Ministry for the duration of one year. Temporary protection can be automatically extended to a period of six months but not***

godine nije moguće rješavanje pitanja povratka za osobe pod privremenom zaštitom.

Najveće preinake prilikom izmjena Zakona o azilu dogodile su se u dijelu koji uvjetuje odobrenje privremene zaštite, a koji je izostavljen i glasi:
**"Strancima (...), odobrit će se privremena zaštita pod uvjetom da su:**
**– prije nastanka stanja iz stavka 1. ovoga članka imali prebivalište ili boravište u toj zemlji te su zbog nastalog stanja neposredno došli u Republiku Hrvatsku;**
**– za vrijeme nastanka takvog stanja zakonito boravili u Republici Hrvatskoj, a po isteku zakonitog boravka povratak u zemlju podrijetla im je privremeno onemogućen."**

U Zakonu o izmjenama i dopunama Zakona o azilu te su odredbe izostavljene i definirane tako da su usklađene s Direktivom te će se ubuduće **"privremena zaštita odobriti (...) na temelju odluke Vijeća Europske unije o postojanju masovnog priljeva raseljenih osoba"**.

## OBVEZE PREMA OSOBAMA KOJE UŽIVAJU PRIVREMENU ZAŠTITU

### DOZVOLA BORAVKA, VIZE I DRUGI DOKUMENTI

Države članice osigurat će dozvole boravka osobama koje uživaju privremenu zaštitu za cijelo trajanje zaštite, dobivanje (tranzitnih) viza te valjani dokument, na jeziku koji razumiju, o njihovu statusu. Viza se zbog hitnosti ne bi trebala naplaćivati ili bi troškovi trebali biti svedeni na minimum. Također, država će vratiti osobu koja na svojem teritoriju uživa privremenu zaštitu ako osoba boravi ili bez odobrenja nastoji ući na područje druge države članice.

U Hrvatskoj se strancu kojem je odobrena privremena zaštita izdaje iskaznica na godinu dana i može se produžavati, a obrazac je osobne iskaznice stranca pod privremenom zaštitom dvojezični, na hrvatskom i engleskom jeziku. Dio o plaćanju naknada za vize, kao i za putne isprave za osobe pod privremenom zaštitom, uopće se ne spominje u Zakonu o azilu, osim pod stavkom Dozvole za preseljenje stranca pod privremenom zaštitom iz jedne države u drugu (u članku 100. Zakona o azilu).

### Zapošljavanje i obrazovanje

Osobama koje uživaju privremenu zaštitu treba osigurati mogućnosti da se uključe u radni odnos ili da započnu samostalnu djelatnost, u skladu s pravilima struke, kao i uključivanje u obrazovne programe za odrasle, kao što su stručno osposobljavanje i stjecanje praktičnog iskustva na radnom mjestu.

Članak 13. Direktive i članak 89. kojima se određuju prava i obveze osoba pod privremenom zaštitom zadovoljavajuće su usklađeni. Manja i pozitivna promjena u Zakonu o izmjenama i dopunama Zakona o azilu ostvarena je izmjenom članka 90. koji sad dopušta da **"stranac pod privremenom zaštitom može raditi u Republici Hrvatskoj bez radne ili poslovne dozvole".**

Vezano uz obrazovanja odraslih, Zakon o azilu propisuje da **"stranac pod privremenom zaštitom ima pravo na osnovno i srednje školovanje te prekvalifikaciju i dokvalifikaciju**

***more than a year. As an exception to Paragraph 2 of this Article, temporary protection can be extended for another further year maximum if the EU Council brings a decision about the extension of temporary protection***. However, in this case, it would be more advisable to the persons who enjoy temporary protection to achieve a safer and more permanent status after this maximum period of two years. This is also extremely important because of the improved level of rights they can obtain and in cases where, even after two years, it is not possible to resolve the issue of the return of the person enjoying temporary protection.

The most considerable changes in the Asylum Amendment Act occurred in the section concerning the conditions for the granting of temporary protection, which have now been omitted, and which say:
***Temporary protection shall be granted to foreign citizens on condition that:***
***- before the creation of the situation in Paragraph 1 of this Article, they had permanent or temporary residence in that country and due to the changed situation reached the Republic of Croatia directly,***
***- during the creation of such a situation they were legally present in the Republic of Croatia, and after the end of their legal visit their return to their country of origin was temporarily rendered impossible.***

In the Asylum Amendment Act these provisions were omitted and redefined in such a manner as to be in harmony with the Directive so that in the future ***temporary protection shall be approved*** **[...]** ***on the basis of the decision of the EU Council about the existence of mass influx of displaced persons***.

### *OBLIGATIONS TOWARDS PERSONS ENJOYING TEMPORARY PROTECTION*

#### *RESIDENCE PERMITS, VISAS AND OTHER DOCUMENTS*

The Member States shall provide persons enjoying temporary protection with residence permits for the entire during of the protection, (transit) visas and a valid document, in a language they understand, about their status. The cost of visas should be free of charge or reduced to a minimum because of the urgency of the situation. Also, a Member State shall take back a person enjoying temporary protection on its territory if the said person remains on, or seeks to enter without authorization onto, the territory of another Member State.

In Croatia, the foreign citizen to whom temporary protection has been granted is issued with a card for a twelve-month period which can be extended, while the ID card format of a foreign citizen under temporary protection is bilingual, in Croatian and English. The payment of visa and travel document costs for the persons under temporary protection are not mentioned in the Asylum Act, except under the paragraph Permission for the Relocation of Foreign Citizens Under Temporary Protection from one State to another (in Article 100 of the Asylum Act).

#### *EMPLOYMENT AND EDUCATION*

The persons enjoying temporary protection should be offered the possibility of entering employment or self-employment, in accordance with the rules and regulations of their

**pod istim uvjetima kao hrvatski državljanin".** Ipak, u implementaciji ovoga načela upitno je koliko kapaciteta postoji za ostvarenje ovog prava. Program hrvatskog jezika, povijesti i kulture koji je razradilo Ministarstvo znanosti, obrazovanja i športa navodi sljedeće: **"Cijeli je program napravljen za učenike u dobi do petnaest godina. To je dobna granica za ulazak u srednju školu. To znači da je ovim programom pokrivena razina hrvatskoga kao stranoga jezika za osnovnu školu."** Programom se razrađuju načini učenja (individualni, grupni), uključivanje u hrvatske razrede (djelomično, potpuno), sadržaji i razine koje bi trebali savladati i vrijeme u kojem bi ih trebali savladati.

Izmjenama i dopunama Zakona dodan je ovaj stavak: **"Stranac pod privremenom zaštitom ostvaruje pravo na obrazovanje odraslih vezano uz zaposlenje, stručno usavršavanje i stjecanje praktičnog radnog iskustva"**, čime se i taj dio potpuno uskladio s Direktivom.

### OBRAZOVANJE MALOLJETNIKA

Države članice osobama mlađima od 18 godina, a koje uživaju privremenu zaštitu, odobrit će pristup sustavu obrazovanja pod istim uvjetima kao i svojim državljanima.

Ovaj je dio detaljnije reguliran **Pravilnikom o načinu provođenja programa i provjeri znanja tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom, radi pristupa obrazovnom sustavu Republike Hrvatske**[5]. Prema Pravilniku, školovanje stranaca pod privremenom zaštitom koji su maloljetni osigurat će se sukladno propisima koji reguliraju predškolsko, osnovno, srednje i visoko obrazovanje, pod jednakim uvjetima kao i hrvatskim državljanima, a ovisno o dobi učenika obrazovna ustanova treba procijeniti hoće li učenik biti paralelno, uz učenje hrvatskog jezika, uključen u pohađanje odgovarajućeg ili približno odgovarajućeg razreda.

Donošenje jednog ovako detaljnog propisa, uz **Program hrvatskog jezika, povijesti i kulture za tražitelje azila i azilante**[6], vrlo je važno i može služiti kao primjer za uređenje i nekih drugih područja. Ipak, važno bi bilo da se uz razvoj zakonodavstva paralelno razvija i praksa te kapaciteti potrebni za implementaciju istih.

### SPAJANJE OBITELJI

Regulativa u ovom dijelu Direktive usmjerena je na osobe koje će biti smatrane članovima obitelji, obveze država prilikom spajanja obitelji te, ako članovi uživaju privremenu zaštitu u različitim zemljama, na to u kojoj će zemlji doći do njihova spajanja.

Zakon o azilu u većem je dijelu usklađen s Direktivom. U dijelu vezanu uz definiranja članova obitelji proširuje tumačenje, pa se tako dodaje i sljedeće: **"srodnik u ravnoj lozi, ukoliko se neosporno utvrdi da je živio u zajedničkom kućanstvu s tražiteljem azila, azilantom, strancem pod supsidijarnom zaštitom ili strancem pod privremenom zaštitom."** S druge strane, u slučajevima u kojima članovi obitelji uživaju privremenu zaštitu u različitim državama, prilikom spajanja obitelji, Zakon o azilu, za razliku od Direktive, propisuje samo jedan kriterij, a to su interesi članova obitelji.

5 NN 89/08
6 NN 129/09

professional field, as well as the possibility of entering adult educational courses, such as vocational training and work experience.
Articles 13 of the Directive and Article 89 of the Asylum Act defining the rights and responsibilities of persons under temporary protection are satisfactorily harmonized. A slight and positive change in the Asylum Amendment Act was achieved by altering Paragraph 90 which now permits the ***foreign citizen under temporary protection to be able to work in the Republic of Croatia without a work or business permit***.

With regard to adult education, the Asylum Act prescribes that ***a foreign citizen under temporary protection is entitled to elementary and middle school education and re-training and additional training under the same conditions as a Croatian citizen***. However, in the implementation of this principle it is questionable how much capacity exists for the realization of this right.

The curriculum of Croatian language, history and culture created by the Ministry of Science, Education and Sport states that: ***the entire curriculum was made for students up to the age of 15. This is the lower age-limit for entering middle school. This means that this curriculum covers the elementary school level of Croatian as a foreign language***.

The curriculum prescribes methods of learning (individual, group), joining in Croatian classes (partially, fully), the subjects and levels students should have attained, and the period of time in which they should have attained them. In the Asylum Amendment Act a paragraph was added that states ***a foreign citizen under temporary protection acquires the right to adult education having to do with employment, vocational training and work experience***, and with this change this part of the Act has been totally harmonized with the Directive.

### *EDUCATION OF MINORS*

Member States shall grant to minor children enjoying temporary protection access to the education system under equal conditions as their own nationals.

This part is regulated in greater detail by ***Ordinance on the Method of Implementation of the Curriculum and Knowledge-Testing of Asylum-Seekers, Asylees, Foreign Citizens under Temporary Protection and Foreign Citizens under Subsidiary Protection for the Purpose of Joining the Education System of the Republic of Croatia***.[5] According to the ordinance, the education of underage foreign citizens under temporary protection shall be secured according to the rules and regulations referring to pre-schooling, elementary, middle and higher education, under equal conditions as for Croatian nationals, depending on the age of the student the educational institution should evaluate whether the student should attend classes in a corresponding or roughly corresponding school year while simultaneously learning the Croatian language.

The adoption of such detailed regulations, together with the ***Curriculum of Croatian Language, History and Culture for Asylum-Seekers and Asylees***,[6] is extremely important and can

5 OFFICIAL GAZETTE (OG) 89/08
6 OG 129/09

Potrebno je što je prije moguće osigurati zastupanje maloljetnika bez pratnje koji dobivaju privremenu zaštitu od pravnog zastupnika, ili, ako je potrebno, od organizacije koja se bavi skrbi i dobrobiti maloljetnih osoba, ili bilo koju drugu vrstu odgovarajućeg zastupanja. Tijekom privremene zaštite maloljetnici trebaju živjeti s odraslom rodbinom, u prihvatnim centrima s posebnim odredbama o maloljetnim osobama, u drugom smještaju pogodnu za maloljetnike ili s osobom koja se brinula za dijete za vrijeme bijega. Zakon o azilu sadržajno je gotovo potpuno usklađen s Direktivom. Unatoč tome, odredbe propisane Zakonom nisu toliko detaljne; sadrže sve važne elemente i standarde iz Direktive, no na maloljetnike koji uživaju privremenu zaštitu odnose se iste odredbe vezane uz smještaj kao i za azilante.

Važno je istaknuti kako Zakon o azilu osim prava propisanih u Direktivi regulira i neka dodatna prava. Prije svega, to su zdravstvena zaštita i smještaj. **"Zdravstvena zaštita stranca pod privremenom zaštitom uključuje hitnu medicinsku pomoć i prijeko potrebno liječenje bolesti, a za ranjive skupine i odgovarajuću medicinsku i drugu pomoć te za vrijeme trajanja privremene zaštite strancu se osigurava odgovarajući smještaj ako ne posjeduje vlastita novčana sredstva, a smještaj će se osigurati i strancu kojem je prestala privremena zaštita ako ne posjeduje vlastita novčana sredstva te ga, zbog ozbiljnih zdravstvenih razloga, nije moguće vratiti u zemlju podrijetla, ali i prilikom smještaja obitelji stranca pod privremenom zaštitom osigurat će se jedinstvo obitelji."**

Osim toga, navodi se pravo na osnovna sredstva za život i smještaj, slobodu vjeroispovijesti i vjerskog odgoja djece te informacije o pravima i obvezama. **"U roku od 15 dana od dana odobrenja Ministarstvo će pisanim putem obavijestiti stranca pod privremenom zaštitom o pravima i obvezama koje je stekao odobrenjem zaštite, na jeziku za koji se opravdano pretpostavlja da ga razumije."**

### POVRATAK I MJERE NAKON ISTEKA PRIVREMENE ZAŠTITE

Države članice trebaju poduzeti potrebne mjere kako bi omogućile dobrovoljan povratak osoba koje uživaju privremenu zaštitu ili čija je privremena zaštita završila, a pritom voditi računa o tome da im olakšaju povratak sukladno načelima sigurnosti i dostojanstva. Odluke o povratku, zbog sigurnosti, temelje se na provjerenim činjenicama i istraživačkom posjetu. U slučajevima u kojima je osobi istekla privremena zaštita, a ne želi se dobrovoljno vratiti u zemlju podrijetla, države trebaju učiniti sve kako bi se prisilni povratak proveo uz poštovanje dostojanstva te razmotriti sve osnovane humanitarne razloge zbog čega taj povratak u određenim slučajevima nije moguć ili opravdan. U slučajevima u kojima osoba ne može putovati zbog zdravstvenog stanja ili u slučajevima u kojima je riječ o obiteljima čija djeca pohađaju školu države članice produžit će dozvolu boravka za potrebno razdoblje.

Članak 87. Zakona o azilu usklađen je s ovim člankom u svemu osim u dijelu Direktive u kojemu stoji **"kako države članice mogu osigurati istraživačke posjete mjestima mogućeg povratka."**

Ono što svakako treba naglasiti jest da povratak treba uslijediti u uvjetima sigurnosti i stabilnosti, uz programe socijalne i zdravstvene pomoći, skrbi i savjetovanja za povratni-

serve as an example of a proper arrangement for other areas. However, it would be valuable and important if alongside the development of legislation the practice and capacities required for its implementation would also be simultaneously developed.

*FAMILY REUNIFICATION*

The legal framework in this part of the Directive defines the persons who shall be considered family members, the obligations of Member States towards family reunification, and, if family members enjoy temporary protection in different Member States, in which country they shall be reunified.

The Asylum Amendment Act is mostly in harmony with the Directive. In the section concerned with the definition of family members it expands the interpretation, adding ***a first-degree relative, if it can be established beyond doubt that he or she lived in the same household with the asylum-seeker, asylee, foreign citizen under subsidiary protection or foreign citizen under temporary protection***. On the other hand, in cases in which family members enjoy temporary protection in different states, concerning the question of family reunification the Asylum Act, unlike the Directive, prescribes only one criterion, namely the interests of family members.

*UNACCOMPANIED MINORS*

It is necessary, as soon as possible, to secure legal representation on behalf of an unaccompanied minor enjoying temporary protection by a lawyer or, if necessary, an organisation concerned with the welfare of underage persons, or any other type of appropriate or corresponding advocate. During the period of temporary protection minors should live with adult relatives, in reception centres with special provisions for minor persons, or other accommodation appropriate for minors, or with a person who cared for the child during the move. The contents of the Asylum Act are almost completely in harmony with the Directive. Although the Act does not outline detailed provisions, it contains all the important elements and standards in the Directive, except that the same provisions referring to the accommodation of asylees are applied to minors enjoying temporary protection as well.

It is important to point out that the Asylum Act, apart from the rights prescribed by the Directive, regulates some additional rights. Primarily these are concerned with health care and accommodation. ***Health care of foreign citizens under temporary protection includes urgent medical help and acutely-needed treatment for an illness, and, for vulnerable groups, the corresponding medical and other help,*** **and** ***during the period of temporary protection appropriate accommodation will be secured for the foreign citizen if he or she does not own does not have his or her own financial means during the period of temporary protection. Accommodation shall be also be secured to a foreign citizen whose temporary protection has ended if he or she does not have his or her own financial means, and if he or she, due to severe medical cause, cannot be returned to his or her country of origin.*** However, concerning the question of the ***accommodation of the family of a foreign citizen under temporary protection the unity of the family shall be secured***.

Apart from this, the Act lists the right to basic means for sustenance and accommodation, the right to freedom of religious practice and religious education of children, and other

ke. Tako proces povratka mora, između ostalog, uključivati aktivan angažman i suradnju nevladinih organizacija i samih izbjeglica-povratnika. Povratak uvijek treba uključivati tripartitni dogovor, s primjerom treće strane koja može biti neko nezavisno međunarodno tijelo kao što je UNHCR. Potaknuti nedobrovoljni povratak treba pak biti opcija jedino ako je zadovoljeno da je osoba imala pristup proceduri određenja izbjegličkog statusa i da su okolnosti u zemlji podrijetla takvi da omogućuju dostojan i siguran povratak, uključujući dostatna sredstva za život, posebno osnovnu zdravstvenu i psihosocijalnu skrb i pristup obrazovnu sustavu za djecu.

### PRESTANAK PRIVREMENE ZAŠTITE

Privremena zaštita može prestati ako države članice udalje osobu sa svog teritorija zbog počinjena zločina protiv mira, ratnog zločina ili zločina protiv čovječnosti, ako je osoba počinila teško nepolitičko kazneno djelo, ako je osuđena za djela protivna ciljevima i načelima Ujedinjenih naroda te ako predstavlja opasnost za sigurnost. Zakon o azilu u ovom je dijelu potpuno usklađen s Direktivom, a među ostalim sadrži i propise o razlozima uskraćivanja privremene zaštite koje ne nalazimo u Direktivi, no koji taksativno nabrajaju vrlo logične situacije te nude mogućnost pravnog lijeka u slučaju neslaganja stranca s negativnim rješenjem.

**DIREKTIVA O PRIHVATU** 2003/9/EC OD 27. SIJEČNJA 2003. O UTVRĐIVANJU MINIMALNIH STANDARDA ZA PRIHVAT TRAŽITELJA AZILA U DRŽAVAMA ČLANICAMA

Direktiva propisuje minimalne standarde za dostojanstven i kvalitetan prihvat tražitelja azila u zemljama članicama s ciljem ujednačenog razvoja zajedničkog azilnog sustava i unapređenja slobode, sigurnosti i pravde. Direktiva štiti temeljna ljudska prava tražitelja temeljem Europske povelje o ljudskim pravima. Cilj joj je pružiti informacije pojedincima i grupama te izgraditi uravnotežene odnose lokalnih zajednica i prihvatnih centara te mjerodavnih organa vlasti. Pored toga, naglašava važnost smanjenja zlouporaba instituta azila i izgradnju učinkovitih nacionalnih sustava i procedura prihvata. Direktiva uključuje sve državljane trećih zemalja i osobe bez državljanstva, kao i članove njihovih obitelji, koje su na granici ili na teritoriju pojedine države zatražile azil.

U analizi usklađenosti Zakona o azilu i drugih relevantnih zakonodavnih propisa s Direktivom i primjene odredbi Direktive u praksi zamjetna je visoka usklađenost propisa i prakse osim u slučajevima postupanja s tražiteljima azila koji su neregularno prešli granicu Republike Hrvatske, usprkos odredbama Zakona o azilu iz članka 21., koji glasi: **"Stranac koji je nezakonito ušao u Republiku Hrvatsku, a došao je izravno s područja na kojem je proganjan... neće se kazniti zbog nezakonitog ulaska ili boravka, ukoliko bez odgode podnese zahtjev za azil i ako predoči valjane razloge svog nezakonitog ulaska ili boravka"**. Autori ove analize, poput brojnih stručnjaka, uključujući i relevantne organizacije[7] angažirane u ovom području, smatraju kako je Zakon o azilu kao *lex specialis* nužno primarno tumačiti i provo-

7 TIJEKOM ANALIZE PROVEDENI SU INTERVJUI SA ZNAČAJNIM STRUČNIM PRAVNICIMA KOJI SUDJELUJU U PRAVNOM ZASTUPANJU TRAŽITELJA AZILA KOJI SE NE SLAŽU S PRAKSOM PRITVARANJA TRAŽITELJA AZILA KOJI SU NEREGULARNO PREŠLI GRANICU. ZALAŽU SE ZA PROVEDBU ČLANKA 21. I UZIMANJA U OBZIR PRIMARNE PROVEDBE ZAKONA O AZILU, A NE ZAKONA O STRANCIMA, KAKO TO MINISTARSTVO UNUTARNJIH POSLOVA ČINI.

information about rights and responsibilities. ***In the period of 15 days from the date of the approval the Ministry will inform in writing the foreign citizen under temporary protection about rights and responsibilities he or she has attained by the approval of protection, in a language that it can be reasonably assumed that that foreign citizen understands.***

#### *RETURN AND MEASURES AFTER TEMPORARY PROTECTION HAS ENDED*

Member States shall take the measures necessary to make possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended, ensuring that they facilitate their return according to the principles of security and human dignity. For security reasons decisions about the return shall be based on the full knowledge of facts and exploratory visits. In cases in which temporary protection has ended and the person does not want to return voluntarily to the country of origin, Member States shall take the measures necessary to ensure that enforced return occurs with due respect for human dignity and consider any compelling humanitarian reasons why, in specific cases, return may be impossible or unreasonable. In cases in which, due to health reasons, the person cannot travel, or in cases of families whose children attend school, Member States shall extend the residence permit for the period necessary.

Article 87 of the Asylum Act is in harmony with this article in every respect except the part of the Directive which states ***that Member States may provide exploratory visits to places of possible return***.

What needs to be emphasized is that the return should occur under conditions of safety and stability, with programmes of social and medical assistance, welfare and counselling for the persons returning. Thus the process of return should, amongst other things, include active engagement and co-operation between non-governmental organizations and returning refugees. The return should always include a tripartite agreement, for example the third party could be an independent, international body, such as UNHCR. Implementing enforced return should only be an option if the following criteria are met: If a person had access to the procedure of determining refugee status, and if circumstances in the country of origin are such that they enable a dignified and safe return, including viable means for sustenance, especially basic health and psycho-social care and access to education for children.

#### *THE END OF TEMPORARY PROTECTION*

Temporary protection can come to an end if a Member State expels a person from their territory for committing a crime against peace, a war crime, or a crime against humanity, or if he or she has committed a serious non-political crime, or if he or she has been found guilty of acts contrary to the purposes and principles of the United Nations, or if he or she poses a danger to national security. In this section, the Asylum Act is completely in harmony with the Directive, but, amongst other things, it also contains reasons for denying temporary protection which are not found in the Directive, but lists a general scheme of very logical situations, and offers a possibility of legal remedy in cases of disagreement.

diti u slučajevima nezakonita ulaska izbjeglica koji postaju tražiteljima azila, za razliku od dosadašnje prakse, u kojoj se u većem broju slučajeva provodi Zakon o strancima i mjere propisane člancima 36., 86., 100. i 102.

## PRUŽANJE INFORMACIJA TRAŽITELJIMA AZILA

Prema Direktivi, tražitelj/-ica azila ima pravo biti obaviješten/-ena u roku od najviše 15 dana od podnošenja zahtjeva za azil o predviđenim uslugama, pravima i obvezama vezanima uz prihvat. Jamči mu/joj se pravo na informacije, po mogućnosti na jeziku koji tražitelj/-ica azila razumije, o organizacijama koje pružaju pravne usluge i zastupanje i mogu mu/joj pomoći u vezi s uvjetima prihvata, uključujući medicinsku skrb. Direktiva primarno predviđa pismeno ustupanje informacija s iznimkom odgovarajućeg usmenog prijenosa informacija.

Zakon o azilu iz 2007. godine, uz Zakon o izmjenama i dopunama Zakona o azilu iz 2010., člankom 22. osigurava pomoć podnositelju zahtjeva za azil da ga što prije podnese te će ga **"obavijestiti o načinu provođenja postupka za odobrenje azila, o pravima i obvezama koje ima u tom postupku te o mogućnosti dobivanja besplatne pravne pomoći i mogućnosti obraćanja predstavnicima UNHCR-a i drugih organizacija koje se bave zaštitom prava izbjeglica, na materinjem jeziku tražitelja azila ili na jeziku za koji se opravdano pretpostavlja da može komunicirati, u roku od petnaest dana od podnošenja zahtjeva"**.

Zakonske odredbe potpuno su usklađene s Direktivom, no analiza prakse pokazuje da je još uvijek, u manjem broju slučajeva, dio tražitelja azila nedovoljno informiran – npr. u slučaju davanja adresa relevantnih organizacija koje se bave zaštitom prava izbjeglica. U praksi, objedinjeni popis takvih organizacije ne uručuje se tražiteljima azila, nego se informacije prenose uglavnom usmeno. Pored toga, u manjem broju slučajeva informacije nisu pružene na materinjem jeziku zbog nedostatka prevoditeljskih kapaciteta, a drugi jezik koji tražitelji azila najbolje razumiju katkad nije dostatan za razumijevanje relevantnih informacija.

Praksa pokazuje da se većina relevantnih informacija dobije u roku od 15 dana od dana podnošenja zahtjeva, odnosno i u kraćem periodu, osim u slučajevima u kojima su tražitelji azila neregularno ušli na teritorij Republike Hrvatske, a borave u Prihvatnom centru za strance u Ježevu, a ne u Prihvatilištu za tražitelje azila, kako je propisano Zakonom o azilu. Većina neregularnih migranata[8] do informacije da se u Hrvatskoj uopće može zatražiti azil dolazi iznimno teško, odnosno do takve informacije dolaze uglavnom od drugih stranaca smještenih u Prihvatnom centru, no ne i od osoblja, odnosno policijskih službenika i djelatnika Prihvatnog centra. Tražitelji azila koji su ujedno i neregularni migranti svjedoče o dobivanju informacija o pravnoj pomoći Hrvatskog pravnog centra i drugih službeno ovlaštenih pravnika, no uglavnom očekuju intenzivniju pravnu pomoć i češću komunikaciju s pravnicima. Općenito, tražitelji azila smješteni u Prihvatnom centru za strance nisu zadovoljni pružanjem informacija u vezi s postupkom koji se vodi glede njihova zahtjeva, kao ni razlozima smještaja u Prihvatnom centru za strance, a ne u Prihvatilištu za tražitelje

8 TIJEKOM ANALIZE RAZGOVARALI SMO S 4 TRAŽITELJA AZILA I 1 TRAŽITELJICOM AZILA KOJI SU NEREGULARNO UŠLI U REPUBLIKU HRVATSKU I BORAVE U PRIHVATNOM CENTRU ZA STRANCE U JEŽEVU.

**COUNCIL DIRECTIVE** 2003/9/EC OF 27 JANUARY 2003 LAYING DOWN MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS, OJ L 31 OF 6 FEBRUARY 2003

The Directive provides minimal standards for the dignified reception of asylum-seekers in Member States with the goal of harmonizing the development of a common asylum system and the improvement of freedom, security and justice. The Directive protects the fundamental human rights of asylum-seekers established by the Charter of Fundamental Rights of the European Union. It aims to provide full information to individuals and groups and to build harmonious relationships between local communities, reception centres and competent authorities. Apart from this, it emphasizes the importance of reducing abuse of the asylum system and building efficient national systems and procedures for reception. The Directive applies to all third-country nationals and stateless persons as well as their family members who make an application for asylum at the border or on the territory of a Member State.

In our analysis of the degree of harmonization of the Asylum Act and other relevant legislative regulations with the Directive, and of the implementation of the provisions of the Directive in practice, a high degree of harmonization of regulations and practice is noted, except in cases of handling asylum-seekers who crossed the border of the Republic of Croatia irregularly, in spite of the provisions of Paragraph 21 of the Asylum Act, which states: ***a foreign citizen who has entered the Republic of Croatia illegally, and who came directly from the area from which he or she was forced to flee... shall not be punished for illegal entry and shall stay, if he or she lodges an application for asylum without delay, and presents valid reasons for his or her illegal entry or stay***. The authors of this analysis, as well as numerous experts in this field, including the relevant organizations[7] engaged in this area, consider that the Asylum Act, as *lex specialis*, should be interpreted and implemented in the first instance in cases of irregular entry of refuges who become asylum-seekers, unlike the practice to date, in which in the largest number of cases the Foreigners Act is implemented, especially the regulations provided in Paragraphs 36, 86, 100 and 102.

### *PROVIDING INFORMATION TO ASYLUM-SEEKERS*

According to the Directive, the asylum-seeker is entitled to be informed within a reasonable period, not exceeding 15 days after he or she has lodged his or her application for asylum, about anticipated services, rights and obligations concerning their reception. It guarantees to the asylum-seeker the right to information, as far as possible in a language that the applicant might reasonably be supposed to understand, about organizations offering legal assistance and representation that could help him or her with the available reception conditions, including health care. The Directive specifies the primary provision of information in writing with the exception of appropriate oral provision.

The Asylum Act of 2007, together with the Asylum Amendment Act of 2010, ensures, in Paragraph 22, help for the asylum-seeker to enable the prompt submission of an appli-

7 THE ANALYSIS INCLUDED INTERVIEWS WITH RELEVANT LEGAL EXPERTS WHO TAKE PART IN THE LEGAL REPRESENTATION OF ASYLUM-SEEKERS AND WHO DO NOT AGREE WITH THE PRACTICE OF DETAINING ASYLUM-SEEKERS WHO CROSS THE BORDER IRREGULARLY. THEY SUPPORT THE IMPLEMENTATION OF ARTICLE 21 AND THE PRIMARY IMPLEMENTATION OF THE ASYLUM ACT, RATHER THAN THE FOREIGNERS ACT, WHICH THE MINISTRY OF INTERIOR AFFAIRS USES.

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azila. Jedan od tražitelja azila koji boravi u Prihvatnom centru za strance naveo je kako mu je otežano praćenje postupka i kako je nedovoljno informiran jer dijelove zapisnika sa saslušanja ne dobiva prevedene na jezik koji govori, nego su oni napisani na hrvatskom jeziku, koji ne razumije.

## DOKUMENTACIJA

Prema Direktivi, tražitelj/-ica azila ima pravo dobiti dokument o pravnom statusu tražitelja/-ice azila na svoje ime u roku od tri dana od podnošenja zahtjeva za azil. Ako mu/joj kretanje nije omogućeno, to treba biti navedeno u dokumentu. Iznimke su moguće u slučajevima pritvora tražitelja/-ice azila, pregleda zahtjeva za azil podnesena na granici i u kontekstu procedure odlučivanja o pravu tražitelja/-ice azila na legalan ulazak na teritorij države članice. U specifičnim slučajevima, za vrijeme pregleda zahtjeva za azil, države članice mogu izdati sličan dokument. Države članice tražitelju/-ici azila trebaju omogućiti putni dokument u slučaju ozbiljnih humanitarnih razloga za odlazak u drugu zemlju.

Člankom 76. Zakona o azilu predviđeno je izdavanje iskaznice tražitelju/-ici azila i osobi pod supsidijarnom zaštitom, a omogućuje se i izdavanje putnog lista u skladu s odredbama Zakona o strancima. Zakonom nisu predviđene iznimke koje navodi Direktiva. Tijekom analize nismo dobili nijednu informaciju koja bi potvrdila da tome nije tako, odnosno koja da je ograničenost kretanja navedena na nekoj od isprava tražitelja azila s kojima smo razgovarali.

S druge strane, tražitelji azila koji borave u Prihvatnom centru za strance, odnosno koji su neregularno ušli u Hrvatsku, ne posjeduju ovakav tip dokumenta, a kretanje im je potpuno ograničeno.

## SMJEŠTAJ I SLOBODA KRETANJA

Prema odredbi Direktive, tražitelji azila mogu se slobodno kretati na teritoriju zemlje članice ili na onom teritoriju koji im je određen pod uvjetom da se ne narušava privatnost tražitelja azila, odnosno jamči dostupnost svih blagodati koje navodi Direktiva. U skladu s nacionalnim zakonodavstvom, zemlje članice mogu odrediti specifično mjesto smještaja tražitelja azila, pazeći na javni red i interes. Zemlje članice mogu omogućiti davanje privremene dozvole za napuštanje mjesta smještaja ili određena teritorija, s time da odluka treba biti objektivna, uzeta u obzir pojedinačno, te nepristrana. Zemlje članice trebaju urediti sustav obvezna informiranja mjerodavnih organa vlasti o adresama tražitelja azila, kao i promjena istih u najkraćem roku.

Prema Članku 30. Zakona o azilu, tražitelji azila i članovi njihovih obitelji koji su došli zajedno s njima imaju pravo na boravak u Republici Hrvatskoj, a prema članku 38. tražitelji azila imaju pravo na smještaj u Prihvatilištu. Isti članak navodi da tražitelj/-ica azila može boraviti na drugoj adresi u Republici Hrvatskoj uz prethodnu suglasnost Ministarstva, o svom trošku. Prihvatilište za tražitelje azila (članak 39.) ustrojeno je Uredbom u unutarnjem ustrojstvu Ministarstva.

cation for asylum and ***information about the asylum approval procedure, the rights and responsibilities which he or she has in this procedure and about the possibility of receiving free-of-charge legal assistance and the possibility of approaching the representatives of UNHCR and other organizations that deal with the protection of the rights of refugees, in the mother-tongue of the asylum-seeker or in a language in which the applicant might be supposed to be able to communicate within 15 days of the submission of an application***.

Legal provisions are in complete harmony with the Directive, however, analysis of practice shows that, in a small number of cases, some asylum-seekers are still insufficiently informed, such as providing the addresses of relevant organizations dealing with the protection of refugees' rights. In practice, a complete list of such organizations is not given to asylum-seekers but the information about these organizations is communicated orally. Apart from this, in a small number of cases information was not provided in the mother-tongue of asylum-seekers due to a lack of interpreters, while sometimes the second language the asylum-seeker understands best is not enough for the understanding of relevant information.

Practice shows that the majority of relevant information is obtained within the period of 15 days from the application submission, sometimes even within a shorter period of time, except in cases of asylum-seekers who entered the territory of the Republic of Croatia irregularly, and who are housed in the Reception Centre for Foreigners at Ježevo, rather than in the Reception Centre for Asylum-Seekers as laid down in the Asylum Act. Most irregular migrants[8] have extreme difficulty in finding out that they can actually seek asylum in Croatia, and this information is obtained mostly from other foreign citizens housed in the Reception Centre rather than from staff or police officers. Asylum-seekers who are also irregular migrants confirm that they received information about the legal assistance available at the Croatian Law Centre and other charted legal representation, but they mostly do expect more comprehensive legal assistance and frequent communication with legal experts. Generally speaking, asylum-seekers housed in the Reception Centre for Foreigners are not satisfied with the provision of information about the procedure for their asylum application, nor are they satisfied with the reasons for being housed in the Reception Centre for Foreigners rather than in the Reception Centre for Asylum-Seekers. One of the asylum-seekers housed in the Reception Centre for Foreigners stated that his understanding of the asylum procedure was lessened by the fact that he did not receive parts of the minutes from the hearings translated into a language he speaks but in Croatian, a language that he does not understand.

### *DOCUMENTATION*

According to the Directive the asylum-seeker is entitled to receive a document certifying his or her status as an asylum-seeker issued in his or her own name within three days of an application being lodged. If he or she is not free to move around all or part of the territory of the Member State the document shall also certify that fact. Exceptions are possible in cases in which the asylum-seeker is detained during the examination of an asylum ap-

8 During the analysis we interviewed 5 asylum-seekers who entered the Republic of Croatia irregularly who are housed at the Reception Centre for Foreigners at Ježevo.

Prema članku 37. pod naslovom Obveze tražitelja azila, tražitelj/-ica azila dužan/-na je, između ostaloga, javiti da je promijenio/-la adresu Ministarstvu u roku od tri dana od dana promjene te se pridržavati uputa i mjera Ministarstva o ograničenju slobode kretanja.

U analizi prakse uočili smo kako su se ove odredbe u svim slučajevima koje dosad poznajemo, u kojima su tražitelji azila zakonito ušli u Republiku Hrvatsku, provodile bez teškoća. Tražitelji azila koji su neregularno ušli u Republiku Hrvatsku smješteni su u Prihvatni centar za strance u Ježevu sa zabranom kretanja. Posrijedi je kršenje prava tražitelja azila na slobodno kretanje.

Tražitelj azila iz Palestine svjedoči: "Ljudi i hrana u Centru su u redu, ali bilo je i 5 dana zaredom da nas nisu puštali van" (misli se na vanjske prostore Prihvatnog centra za strance poput nogometnog igrališta).

### OBITELJ

Direktiva nalaže poduzimanje odgovarajućih mjera za očuvanje obiteljskih veza, odnosno jedinstva obitelji na teritoriju u slučaju da su zemlje članice tražiteljima azila osigurale smještaj. Prema Članku 30. Zakona o azilu, tražitelji azila i članovi njihovih obitelji koji su došli zajedno s njima imaju pravo na boravak u Republici Hrvatskoj. Analiza prakse pokazuje da se ova odredba poštuje. Nemamo saznanja o praksi u slučajevima u kojima obitelji traže azil, a neregularno su ušle u Republiku Hrvatsku.

### ZDRAVSTVENI PREGLED

Zemlje članice mogu zahtijevati zdravstveni pregled tražitelja azila radi javnog zdravlja. Iako Zakon o azilu eksplicitno na navodi sličnu odredbu, zdravstveni pregled tražitelja azila detaljno je reguliran Pravilnikom o sadržaju zdravstvenog pregleda tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom. Pri prihvatu tražitelja azila organiziran je obvezan zdravstveni pregled. U Prihvatilištu za tražitelje azila otvorena je dnevna medicinska služba, te je tražiteljima azila omogućeno nužno liječenje u medicinskim ustanovama u slučaju potrebe. Svega nekoliko tražitelja azila nije bilo zadovoljno medicinskom pomoći pruženoj za vrijeme postupka, odnosno uskraćivanjem medicinske pomoći.

Tražiteljica azila iz Sudana: "Odmah sam tražila azil kad sam došla u Hrvatsku. Već sam 7 i pol mjeseci u Ježevu. Stalno sam sama, ponekad dođu neke žene, ali brzo odu. Jedina sam žena tu. Potrebna mi je neka pomoć, ali dobivam samo neke tablete bez ikakve dodatne pomoći. Crveni križ i drugi su tražili da me premjeste u Kutinu, ali policija nije dala. Ne spavam dobro."

### ŠKOLSTVO I OBRAZOVANJE MALOLJETNIKA

Direktiva nalaže da zemlje članice maloljetnicima omoguće uključivanje u obrazovni sustav prema istim uvjetima za djecu državljana sve dok mjera izgona nije primjenjiva na njih ili njihove roditelje. Maloljetnikom/-icom se smatra osoba mlađa od dobne granice propisane zakonom. Maloljetniku/-ici uključenom/-oj u srednje obrazovanje neće se odu-

plication made at the border, or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an asylum application, Member States may issue a similar document. Member States should provide the asylum-seeker with a travel document when serious humanitarian reasons require their presence in another state.

Article 76 of the Asylum Act prescribes for the provision of an ID card to an asylum-seeker and persons under subsidiary protection, and it also enables the issuing of a travel document according to the provisions of the Foreigners Act. The Act does not state any of the exceptions prescribed by the Directive. During our analysis, we had not received a single piece of information which would contradict this, in other words, we received no information to suggest that the asylum-seekers we interviewed were given documents that imposed restriction of movement upon them.

On the other hand, the asylum-seekers housed in the Reception centre for Foreign Citizens, i.e. those who entered Croatia irregularly, do not possess this type of document and their movement is completely restricted.

#### *RESIDENCE AND FREEDOM OF MOVEMENT*

According to the provisions of the Directive, asylum-seekers are free to move within the territory of the Member State or within an area assigned to them by the Member State under the condition that the assigned area does not affect the sphere of the asylum-seeker's private life and guarantees access to all benefits specified by the Directive. In accordance with their national legislation, Member States can prescribe a specific place of residence for asylum-seekers for reasons of public interest and public order. Member States shall provide for the possibility for granting applicants temporary permission to leave the place of residence or the assigned area and the decision should be objective, taken individually and impartial. Member States should regulate a system of the compulsory registration of asylum-seekers' addresses with competent authorities, and the immediate notification of such authorities about changes in address.

According to Article 30 of the Asylum Act asylum-seekers and the family members who arrived with them are entitled to reside in the Republic of Croatia, while according to Article 38 of the Asylum Act asylum-seekers have the right to be housed in a reception centre. The same Article states that the asylum-seeker can reside at a different address in the Republic of Croatia with the previous consent of the Ministry at his or her own expense. The Reception Centre for Asylum Seekers (Article 39) was founded by the Regulation about the internal organization of the Ministry.

According to Article 37, entitled Obligations of Asylum-Seekers, the asylum-seeker is, amongst other things, required to notify the Ministry about a change of address within three days of the date of the move, and obliged to abide by the recommendations and measures of the Ministry concerning restrictions on freedom of movement.

In our analysis of practice we have noted that these provisions were implemented without difficulty in all cases of asylum-seekers known to us who have entered the Republic of

zeti pravo na školovanje kad postane punoljetan/-na. Pristup obrazovnom sustavu treba se omogućiti u roku od tri mjeseca od podnošenja zahtjeva maloljetnika/-ice ili njegovih/njezinih roditelja, a period može biti produžen do godine dana kada se pruža specifičan tip obrazovanja radi facilitiranja pristupa obrazovnom sustavu.

Školovanje maloljetnog/-ne tražitelja/-ice azila opisano je u članku 32. Zakona o azilu, gdje maloljetni/-na tražitelj/-ica azila ima pravo na osnovno i srednje školovanje kao i hrvatski/-ska državljanin/-ka. Ovo pravo aktivira se najkasnije tri mjeseca od podnošenja zahtjeva za azil, odnosno u roku od godine dana ako tražitelj azila ne poznaje hrvatski jezik.

U Republici Hrvatskoj posljednjih godina, bez obzira na zakonske odredbe i druge regule, obrazovanje maloljetnika izniman je problem. Razlike u jeziku i kulturi često su nepremostive barijere za hrvatski institucionalni okvir i uključivanje djece u sustav obrazovanja. Ministarstvo znanosti, obrazovanja i športa nije preuzelo aktivnu ulogu u ovome području te ne pokazuje transparentnost u radu, a ravnatelji škola odlučuju koliko kvalitetno i na koji će se način u nastavu uključiti maloljetnici. Ako zakonska odredba govori o periodu od godinu dana zbog nepoznavanja hrvatskog jezika, valja biti svjestan činjenice da je većina zahtjeva za azil riješena prije isteka perioda od godinu dana.

### ZAPOŠLJAVANJE

Države članice odredit će razdoblje, počevši od dana podnošenja zahtjeva za azilom, tijekom kojega tražitelj/-ica azila neće imati pristup tržištu rada. Ako se u roku od godinu dana od podnošenja zahtjeva za azilom, a bez krivnje tražitelja/-ice azila, ne donese prvostupanjska odluka, države članice odlučit će pod kojim će se uvjetima tražitelju/-ici azila omogućiti pristup tržištu rada. Pristup tržištu rada neće biti onemogućen tijekom postupka žalbe sve do negativne odluke.

Zakon o azilu člankom 36. omogućuje rad tražitelju/-ici azila koji/koja pravo stječe po isteku godine dana od podnošenja zahtjeva za azil ako postupak azila nije okončan. Prema informacijama kojima raspolažemo, u praksi nijedan/-na tražitelj/-ica azila nije bio/bila zaposlen/-na, što zbog duljine postupka koje je često kraće od godinu dana, što zbog neadekvatne facilitacije kompetencija tražitelja/-ice azila i zahtjeva tržišta rada.

### STRUČNO USAVRŠAVANJE

Zemlje članice tražiteljima azila mogu pružiti mogućnost pristupa stručnom usavršavanju neovisno o tome imaju li pristup tržištu rada.

Zakon o azilu ne poznaje takve odredbe.

### MATERIJALNI UVJETI PRIHVATA I ZDRAVSTVENA NJEGA

Tražitelj/-ica azila ima pravo da mu/joj se materijalnim uvjetima prihvata omogući životni standard koji osigurava njegovo/njezino zdravlje i zadovoljenje životnih potreba odmah nakon podnošenja zahtjeva za azil. Osobito je važno omogućiti kvalitetan životni standard

Croatia legally. Those asylum-seekers who entered the Republic of Croatia irregularly are detained in the Reception Centre for Foreigners at Ježevo. This represents a breach of an asylum-seeker's right to freedom of movement.

### *FAMILY*

The Directive prescribes the taking of appropriate measures for the preservation of family ties, in other words the unity of the family, within the Member State's territory, if applicants are provided with housing by the Member State concerned. According to Article 30 of the Asylum Act, asylum-seekers, and the family-members that arrived with them, are entitled to reside in the Republic of Croatia. Our analysis of practice shows that this provision is properly respected. We have no knowledge of practice in the cases of families seeking asylum who have entered the Republic of Croatia irregularly.

### *MEDICAL SCREENING*

Member States may require medical screening for applicants on public health grounds. Although the Asylum Act does not explicitly state such a provision, medical screening of asylum-seekers is regulated in detail by the Ordinance for the Content of Medical Screening of Asylum-Seekers, Asylees, Foreign Citizens under Temporary Protection and Foreign Citizens under Subsidiary Protection. A compulsory medical screening is carried out on the occasion of the asylum seeker's reception. A daily medical service is available at the Reception Centre for Asylum-Seekers so that asylum-seekers can have necessary treatment in health institutions should they be in need of it. Only a few asylum-seekers were not satisfied with the medical assistance they were given during the procedure, or a lack thereof.

### *SCHOOLING AND EDUCATION OF MINORS*

The Directive prescribes that the Member States shall grant to minors access to the education system under similar conditions as children of nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. A minor is considered to be a person younger than the age of legal majority in the Member State. The right to education will not be withdrawn from a minor in secondary education if he or she has reached the age of majority. Access to the education system should be made possible within three months from the date the asylum application was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system.

The education of an asylum-seeker who is a minor is described in Article 32 where an asylum-seeker who is a minor is entitled to elementary and middle education as a Croatian citizen. This right is realized at the latest three months from the asylum application, or within a year if the asylum-seeker does not have a command of the Croatian language.

In the last few years, in the Republic of Croatia, regardless of the legal provisions and other regulations, the education of minors has been an exceptional problem. The differences in language and culture often represent insuperable barriers for Croatian institutions and

osobama s posebnim potrebama i osobama u pritvoru. Zemlje članice mogu uskratiti neke od materijalnih uvjeta prihvata i zdravstvene njege iz opravdanih razloga, a mogu i zahtijevati djelomično pokrivanje troškova ili pak pokrivanje troškova u cijelosti od tražitelja/-ice azila ako posjeduje sredstva ili je dovoljno dugo u radnom odnosu. Materijalni uvjeti mogu biti pruženi u naravi ili kombinacijama financijske pomoći.

Članak 14. Direktive navodi kako je potrebno osigurati adekvatan smještaj tražitelju/-ici azila: prostorije za prihvat za vrijeme pregleda zahtjeva podnesena na granici, prihvatne centre uz osiguranje primjerenih životnih standarda, te privatne kuće, stanove ili hotele prilagođene tražiteljima azila. Propisuje se nužnost očuvanja obiteljskih odnosa, mogućnost komuniciranja s rodbinom, zakonskim zastupnicima te predstavnicima UNHCR-a i drugih nevladinih organizacija koje se bave pravima izbjeglica. Zemlje članice prema Direktivi trebaju osigurati zajednički smještaj maloljetnoj djeci tražitelja azila ili maloljetnim tražiteljima azila s roditeljima ili odraslim članovima obitelji odgovornima za njih (bilo zakonski ili običajno).

Članak 38. Zakona o azilu navodi da tražitelj azila ima pravo na smještaj u Prihvatilištu, no da o svome trošku može boraviti na bilo kojoj adresi u Republici Hrvatskoj uz prethodnu suglasnost Ministarstva. Tražitelji azila koji posjeduju sredstva za uzdržavanje ili su u radnom odnosu izgubit će pravo na smještaj ako ne sudjeluju u podmirivanju troškova smještaja. Prema Pravilniku o smještaju tražiteljima azila mora se osigurati primjeren smještaj u skladu s njihovim potrebama. Isti Pravilnik nalaže da će tražitelj/-ica azila, u svrhu očuvanja jedinstva obitelji, biti smješten/-na s članovima obitelji, pri čemu će se osigurati poštovanje prava na privatnost te dostojanstvo i sigurnost. Pravilnik je usklađen s Direktivom i u dijelu koji se odnosi na smještaj maloljetnika: osigurava se primjeren smještaj za maloljetnike s pratnjom i bez nje kako u Prihvatilištu, tako i u odgovarajućim ustanovama.

U sklopu ove analize, a tijekom fokus grupa, tražitelji azila koji borave u Prihvatilištu za tražitelje azila u Kutini bili su vrlo zadovoljni uvjetima prihvata i životnim standardom u Prihvatilištu. Tražitelji azila koji pak borave u Prihvatnom centru za strance u Ježevu nisu bili zadovoljni smještajem i uvjetima života u istoj mjeri.

Direktiva propisuje i da osoblje zaposleno u smještajnim centrima mora imati odgovarajuće obrazovanje i poštovati princip povjerljivosti definiran u nacionalnoj legislativi u odnosu na sve informacije vezane uz njihov rad. Zakon o azilu ne poznaje sličnu odredbu, a nijedan dostupan Pravilnik ili Odluka za analizu ne tematiziraju kapacitet osoblja.

Zemlje članice mogu uključiti tražitelje azila u upravljanje materijalnim sredstvima i nematerijalnim životnim aspektima u smještajnom objektu kroz savjet ili vijeće koje reprezentira stanare. Iako se ovo smatra vrijednom preporukom, zakonska regulativa, uz pripadajuće pravilnike i odluke, nije ovakvo što predvidjela.

Zakonski zastupnici i savjetnici tražitelja azila te predstavnici UNHCR-a i drugih prepoznatih nevladinih organizacija trebaju imati pristup smještajnim centrima i tražiteljima azila. Ograničenje takvog pristupa može biti moguće jedino u slučajevima zaštite sigurnosti ta-

the inclusion of children in the education system. The Ministry of Science, Education and Sport does not carry out this crucial process, nor does it show transparency in its work, with school governors deciding, of their own volition, the quality and manner in which only a partial group of minors will be included in schooling. When it comes to the legal regulation which prescribes a period of a year for those minors who do not know the Croatian language, it should be borne in mind that most asylum applications are processed before that period of one year has expired.

***EMPLOYMENT***

Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market. If a decision at first instance has not been taken within one year of the presentation of an asylum application, without this delay being attributed to the applicant, Member States shall decide the conditions for granting the applicant access to the labour market. Access to the labour market shall not be withdrawn during appeals proceedings until a negative decision has been made.

Paragraph 36 of the Asylum Act enables the employment of asylum-seekers and this right expires one year after the asylum application was lodged, if the asylum procedure has not ended. According to the information we have, in practice not a single asylum-seeker was employed, because of the length of the procedure, which is often shorter than a year, or because of inadequate improvement of the necessary abilities of asylum-seekers and the requirements of the labour market.

***VOCATIONAL TRAINING***

Member States may offer asylum-seekers access to vocational training irrespective of whether they have access to the labour market. The Asylum Act does not contain such a provision.

***MATERIAL RECEPTION CONDITIONS AND HEALTH CARE***

The asylum-seeker is entitled to material reception conditions which provide him or her with a standard of living adequate for the health of applicants and capable of ensuring their subsistence immediately after the asylum application has been lodged. It is particularly important to provide adequate living standards to persons with special needs and to persons who are in detention. Member States can withdraw some material reception conditions and health care with reasonable justification and they can also request a partial or full reimbursement of costs from an asylum-seeker if he or she has sufficient means or is employed for an extended period of time. Material conditions can be provided in kind, or as a combination of different sorts of financial assistance.
Article 14 of the Directive states that it is necessary to provide adequate accommodation for asylum-seekers: premises used for housing applicants during the examination of an application for asylum lodged at the border, accommodation centres which guarantee an adequate standard of living, and private houses, flats, or hotels adapted for asylum ap-

kvih centara i tražitelja azila. Zakon o azilu predviđa temeljitu suradnju s Uredom UNHCR-a (članak 23.) u slučajevima koji se odnose na tražitelje azila i druge izbjeglice i strance općenito. Kako zakonski, tako i u praksi regulirana je otvorena suradnja Ministarstva unutarnjih poslova i UNHCR-a i Hrvatskog pravnog centra (HPC je uključen u program tražitelja azila od 2003. kao partner UNHCR-a u pružanju besplatne pravne pomoći tražiteljima azila) u pružanju pravne pomoći.

### ZDRAVSTVENA NJEGA

Direktiva propisuje hitnu osnovnu njegu i nužno liječenje, te posebnu njegu i liječenje osoba s posebnim potrebama. Tražiteljima azila prema Zakonu o azilu osigurana je zdravstvena zaštita (članak 31.), odnosno hitna medicinska pomoć i nužno liječenje, a tražiteljima azila sa specifičnim potrebama pruža se neophodan tretman. Zemlje članice mogu iznimno uspostaviti druge načine materijalnog prihvata uz opravdane razloge na što kraći period, i to samo u slučajevima u kojima je nužno procijeniti potrebe tražitelja azila, nepostojanja materijalnih uvjeta prihvata u određenim područjima, smanjenih smještajnih kapaciteta i pritvora tražitelja azila. Ipak, svi spomenuti slučajevi trebaju pokriti osnovne potrebe tražitelja azila.

Iako je zakonska regulativa i praksa hrvatskih institucija u postupku prihvata tražitelja azila usklađena s Direktivom o prihvatu, kasnije navodimo nekoliko preporuka za unapređivanje sustava azila u ovom području.

**DUBLINSKA UREDBA** – UREDBA VIJEĆA EUROPSKE UNIJE BR. 343/2003 (18. VELJAČE 2003.) KOJOM SE UTVRĐUJU KRITERIJI I MEHANIZMI ZA ODREĐIVANJE DRŽAVE ČLANICE ODGOVORNE ZA RAZMATRANJE ZAHTJEVA ZA AZIL KOJI PODNOSI DRŽAVLJANIN TREĆE ZEMLJE U JEDNOJ OD DRŽAVA ČLANICA

Uredbom se utvrđuju kriteriji i mehanizmi za određivanje države članice odgovorne za razmatranje zahtjeva za azil koji podnosi državljanin treće zemlje u jednoj od država članica. Dublinska uredba počiva na pretpostavci da u svakom pojedinom slučaju zahtjeva za azil samo jedna država članica EU-a koja je dopustila podnositelju da uđe i boravi na njezinu teritoriju može i mora biti odgovorna za cjelokupan postupak neovisna ispitivanja. (*That Member State is responsible for examining the application according to its national law and is obliged to take back its applicants who are irregularly in another Member State.)*

Osnovna svrha Dublinske uredbe postavljanje je kriterija i mehanizama za utvrđivanje države članice odgovorne za postupanje na temelju zahtjeva za azilom koji je u nekoj od država članica podnio državljanin/-ka trećih zemalja (svaka osoba koja se ne smatra državljaninom EU-a), a temeljem pravila koja tražiteljima/-icama azila nalažu da zatraže azil u prvoj europskoj zemlji na čiji teritorij stupe, neovisno o aktualnoj politici azila konkretne zemlje. Uredba uspostavlja hijerarhiju kriterija za utvrđivanje države članice odgovorne za postupanje po pojedinom zahtjevu za azil te se nastoji spriječiti da jedna osoba zahtjev za azil podnese više puta. Uredba se temelji na pretpostavci da će tražitelj/-ica azila imati jednak pristup sustavu azila i zaštitu u svakoj od država članica.

plicants. It also prescribes the necessity of preserving family ties and the possibility of communicating with relatives, legal representatives and representatives of UNHCR and other non-governmental organizations dealing with the rights of refugees. According to the Directive Member States should provide joint accommodation for minor children of asylum-seekers or asylum-seekers who are minors with their parents or with the adult family member responsible for them (whether by law or by custom).

Article 38 of the Asylum Act states that an asylum-seeker is entitled to accommodation at the Reception Centre, but he or she can reside at any address in the Republic of Croatia at their own expense with the prior approval of the Ministry. Those asylum-seekers who have their own means of sustenance or are employed will lose their entitlement to accommodation unless they participate in covering the costs of it. According to the Ordinance about the Accommodation of Asylum-Seekers appropriate accommodation shall be provided in accord with the needs of the asylum-seeker. The same Ordinance prescribes that the asylum-seeker will be accommodated with his or her family members for the purpose of preserving family unity and that his or her right to privacy, personal dignity and safety shall be respected. The Ordinance is also harmonized with the Directive in the section concerned with the accommodation of minors, in which where adequate accommodation for accompanied or unaccompanied minors is ensured, whether in the Reception Centre or other appropriate institutions.

As part of this analysis, in the focus groups, asylum-seekers housed in the Reception Centre for Asylum-Seekers at Kutina expressed overall and great satisfaction with the reception conditions and living standards at the Centre. On the other hand asylum-seekers housed in the Reception Centre for Foreigners at Ježevo did not express satisfaction with the accommodation and living conditions, nor with security (see transcript of woman from Sudan).

The Directive also prescribes that the staff employed at accommodation centres must have appropriate training and respect the principle of confidentiality defined in the national legislation relating to information linked to their work. The Asylum Act does not contain a similar provision and no available Ordinance or Decision used in this analysis deals with the subject of the capabilities of personnel.

Member States may involve applicants in managing the material resources and non-material aspects of life in the accommodation centre through an advisory board or council representing residents. Although this is considered a valuable recommendation, the legal framework stemming from the relevant ordinances and decisions does not provide for this.

Legal representatives and advisors to asylum-seekers, representatives of UNHCR and other recognised non-governmental organizations should have access to accommodation centres and asylum-seekers. Restriction of this access can only be possible in cases of protection of the security of these centres and asylum-seekers. The Asylum Act envisages a thorough co-operation with the Office of UNHCR (Article 23) in the area of issues relating to the asylum-seekers but also to other refugees and foreign citizens in general. Both legally and in practice a regulated and open co-operation between the Ministry of Interior

U okviru Uredbe postignut je dogovor:

- da su države članice odgovorne za učinkovito ispitivanje zahtjeva bilo kojeg stranca u skladu s nizom hijerarhiziranih kriterija;
- u vezi s propisivanjem odgovornosti za ispitivanje zahtjeva za azil onoj državi članici koja je imala najvažniju ulogu u podnositeljevom/-ičinom ulasku ili boravku u Uniji;
- da će odgovorna država članica biti odgovorna za podnositelja/-icu zahtjeva tijekom postupka te da će natrag primiti podnositelja/-icu koji/koja je ilegalno prešao/-la u drugu državu članicu.

Uredba se, prema članku 29., primjenjuje na zahtjeve za azilom podnesene nakon 1. rujna 2003. i direktno je obvezujuća za države članice.

**DIREKTIVA O SPAJANJU OBITELJI** 2003/86/EC OD 22. RUJNA 2003. – PRAVO NA SPAJANJE OBITELJI DRŽAVLJANA TREĆIH ZEMALJA KOJI LEGALNO BORAVE NA TERITORIJU DRŽAVA ČLANICA

Direktivom se definiraju uvjeti i kriteriji pod kojima se ostvaruje pravo na spajanje obitelji državljana trećih zemalja. Pravo na spajanje obitelji primjenjuje se kada je državljaninu/-ki treće zemlje koji/koja podnosi zahtjev za spajanje obitelji (tzv. "sponzoru") država članica izdala dozvolu boravka na godinu dana. Državljanin/-ka treba imati razumne izglede dobivanja dozvole stalnog boravka i kad su članovi njegove obitelji državljani trećih zemalja. Direktiva se ne odnosi na tražitelje azila koji su još u postupku (proceduri) odluke o statusu, ne primjenjuje se ni na strance sa supsidijarnom i privremenom zaštitom, nego prema onim državljanima trećih zemalja koji kao stranci legalno borave na teritoriju država članica. Cijelo 5. poglavlje Direktive posvećeno je regulaciji pitanja spajanja obitelji izbjeglice.

Iako ni sama Direktiva to ne propisuje, Zakon o izmjenama i dopunama Zakona o azilu propisuje i više od minimalnih standarda i člankom 48. omogućuje **"boravak u svrhu spajanja obitelji stranca pod supsidijarnom zaštitom"** koji će se odobriti **"članu obitelji koji je zajedno sa strancem pod supsidijarnom zaštitom došao u Republiku Hrvatsku, a nije podnio zahtjev za azil ili mu nije odobrena zaštita".** Spajanje obitelji za osobe sa supsidijarnom zaštitom isključivo u ovoj, a ne i u ostalim situacijama (npr. kada je član obitelji još uvijek u zemlji podrijetla, tj. nije došao zajedno s strancem), s obzirom na trogodišnji period supsidijarne zaštite i mogućnost dugoročne razdvojenosti osobe pod supsidijarnom zaštitom i njegove obitelji, predstavlja reduciranje prava na "očuvanje obiteljskog života" za osobe pod supsidijarnom zaštitom. Ovo je sugerirano Direktivom, tj. predloženo je u Izmjenama i dopunama Zakona o azilu u odredbi **Prava azilanata i osoba pod supsidijarnom zaštitom** (članak 27.) kao stavak "**održavanje jedinstva obitelji**".

Samo se spajanje obitelji u Direktivi shvaća kao neizostavan element u nastavljanju i održavanju obiteljskog života, što pomaže pri stvaranju socio-kulturne stabilnosti i ujedno olakšava integraciju, ali omogućuje i unapređenje gospodarskog i socijalnog povezivanja državljana trećih zemalja.

Pozitivni korak Zakona o azilu, koji propisuje i više od minimalnih standarda Direktive, predstavlja pravo na spajanje obitelji koje ostvaruju stranci pod privremenom zaštitom u RH. Prema članku 93. Zakona o azilu zahtjev za spajanje obitelji podnosi stranac pod

Affairs, UNHCR and the Croatian Law Centre exists (CLC has been involved in the asylum-seekers' programme since 2003 as a partner of UNHCR in providing free legal assistance to asylum-seekers) in the area of providing legal help.

***HEALTH CARE***

In the area of health care the Directive prescribes basic emergency care and essential treatment of illness and necessary medical or other assistance to applicants with special needs. According to the Asylum Act asylum-seekers are entitled to health care (Article 31), emergency health assistance and necessary treatment of illness while asylum-seekers with special needs are provided with the necessary treatment. Member States may exceptionally set different modalities for material reception conditions for a reasonable period, which shall be as short as possible, only in cases in which: there is a need for assessment of the specific needs of the applicant, there are no material reception conditions in a certain geographical area, housing capacity is exhausted, and when the asylum-seeker is detained. However, all of these cases should cover the basic needs of the asylum-seeker.

Although the legal framework and practice of Croatian institutions in the asylum procedure are in harmony with the Reception Directive, we are further listing several recommendations for the improvement of the asylum system in this field.

**COUNCIL REGULATION** (EC) NO 343/2003 OF 18 FEBRUARY 2003 ESTABLISHING THE CRITERIA AND MECHANISMS FOR DETERMINING THE MEMBER STATE RESPONSIBLE FOR EXAMINING AN ASYLUM APPLICATION LODGED IN ONE OF THE MEMBER STATES BY A THIRD-COUNTRY NATIONAL

The Regulation establishes the criteria and mechanisms for determining the Member State responsible for examining the asylum application lodged by a third-country national in one of the Member States. The Dublin Regulation rests on the assumption that in every individual case of asylum application, only one EU Member State, the one which allowed the applicant to enter and reside on its territory, can and shall be responsible for the entire process of objective examination.

The fundamental purpose of the Dublin Regulation is to lay down the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (every person who is not an EU national), based upon the rules which require asylum-seekers to seek asylum in the first EU country whose territory they enter, irrespective of the actual asylum policy of the country in question. The Regulation establishes a hierarchy of criteria for determining the Member State responsible for processing an individual asylum application and attempts to prevent multiple asylum applications by one person. The Regulation is based upon the assumption that each asylum-seeker will have equal access to the asylum system and protection in each Member State.

Within the Regulation it has been agreed that:

> an application by any foreign national, for whom a Member State is responsible

privremenom zaštitom ili član/-ica njegove obitelji koji/koja želi doći u Republiku Hrvatsku. Članu/-ici obitelji koji/koja se spaja odobrava se privremena zaštita. U slučajevima u kojima članovi obitelji uživaju privremenu zaštitu u različitim državama, prilikom spajanja obitelji uzet će se u obzir interesi članova/-ica obitelji.

### ČLANOVI/-ICE OBITELJI

Direktiva propisuje da se spajanje obitelji uvijek mora omogućiti članovima i članicama nukleusne obitelji, supružniku/-ici i maloljetnoj djeci. Maloljetnom djecom smatraju se djeca "sponzora" i njegovog/njezinog bračnog druga, uključujući djecu usvojenu u skladu s odlukom koju donosi mjerodavno tijelo u državi članici ili odluke koja je automatski provediva zbog međunarodne obveze te države članice ili se mora priznati u skladu s međunarodnim obvezama. Prema Direktivi djeca uključuju i usvojenu djecu nad kojom sponzor ili supružnik/-ica ima starateljstvo i djeca ovise o njemu ili njoj. Države članice mogu odobriti spajanje djece nad kojima sponzor i supružnik/-ica dijele starateljstvo, pod uvjetom da je druga stranka koja dijeli starateljstvo dala pristanak.

Države članice spajanje obitelji mogu odobriti i rođacima u prvom koljenu ako ih osoba uzdržava i ovisne su o njoj, odrasloj djeci koja nisu sklopila brak, a nisu sposobna brinuti se o svojim potrebama zbog zdravstvenog stanja, ali i nevjenčanom/-oj partneru/-ici s kojim/kojom je državljanin/-ka treće zemlje u dokazanoj stabilnoj i dugotrajnoj vezi.

Prema odredbama Zakona o azilu **"članom obitelji, ukoliko je ta obitelj već postojala u zemlji podrijetla tražitelja azila, azilanta, stranca pod supsidijarnom zaštitom i stranca pod privremenom zaštitom, smatra se: bračni ili izvanbračni drug prema važećim propisima Republike Hrvatske koji uređuju obiteljske odnose; maloljetno dijete koje nije zasnovalo vlastitu obitelj i ovisno je o roditeljima, bez obzira je li rođeno u braku, izvan braka ili je posvojeno; roditelj ili drugi zakonski zastupnik maloljetnog tražitelja azila, azilanta, stranca pod supsidijarnom zaštitom ili stranca pod privremenom zaštitom; srodnik u ravnoj lozi, ukoliko se neosporno utvrdi da je živio u zajedničkom kućanstvu s tražiteljem azila, azilantom, strancem pod supsidijarnom zaštitom ili strancem pod privremenom zaštitom"**.

Nadalje, prema članku 48., maloljetna djeca azilanata koja nisu zasnovala vlastitu obitelj slijede pravni položaj zakonskog zastupnika kojem je odobren azil. Članovima obitelji azilanata koji nisu navedeni u stavku 1. ovoga članka boravak se regulira sukladno odredbama Zakona o strancima, iz kojeg je vidljivo (članak 56.) kako se članovima uže obitelji za koje se može tražiti Privremeni boravak u svrhu spajanja smatraju: 1. bračni drugovi; 2. osobe koje žive u izvanbračnoj zajednici sukladno hrvatskom zakonodavstvu; 3. maloljetna djeca koja nisu zasnovala vlastitu obitelj, a rođena su u braku ili izvanbračnoj zajednici ili su posvojena; i 4. roditelji ili posvojitelji maloljetne djece. Iznimno od stavka 3. ovoga članka, članom/-icom uže obitelji hrvatskog državljanina, stranca kojem je odobren privremeni ili stalni boravak i stranca koji ima status azilanta/-ice, može se smatrati i drugi srodnik ili srodnica, ako postoje posebni osobni ili ozbiljni humanitarni razlozi za spajanje obitelji u Republici Hrvatskoj. Hrvatski je Zakon o azilu, s malim modifikacijama, prilično usklađen s Direktivom, a kad je riječ o tretiranju srodnika, i iznad standarda propisanih Direktivom.

according to hierarchy criteria, shall be examined efficiently by that Member State

- the Member State which played the most important role in the applicant's entry or residence in the EU shall be responsible for examining the application
- the responsible Member State shall be responsible for the asylum applicant during the period in which their application is examined, and it shall take back any applicant who enters another Member State irregularly.

The Regulation is, according to Article 29, applied to asylum applications lodged after the 1 September 2003 and is directly binding for all Member States.

**COUNCIL DIRECTIVE** 2003/86/EC OF 22 SEPTEMBER 2003 ON THE RIGHT TO FAMILY REUNIFICATION

This Directive determines the conditions and criteria under which third-country nationals are entitled to family reunification. It is applied when a third-country national (the 'sponsor') lodging an application for family reunification, has obtained a residence permit from the Member State for the period of a year and has reasonable prospects of obtaining the right of permanent residence, and if the members of his or her family are third-country nationals. The aforementioned Directive is not applied to asylum-seekers whose application is pending, nor to foreign citizens under subsidiary and temporary protection, but to those third-country nationals who have been legally residing on the territory of Member States as foreign citizens. The entire Chapter 5 of the Directive deals with the regulation of the issue of family reunification for refugees. Although the Directive itself does not prescribe it, the Asylum Amendment Act surpasses the minimum standards, and Article 48 enables ***residence for the purpose of family reunification of a foreign citizen under subsidiary protection*** which will be granted to ***a family member who has arrived in the Republic of Croatia with the foreign citizen under subsidiary protection, when that family member has not lodged an asylum application nor been granted protection***. Family reunification of persons under subsidiary protection exclusively applied in the above but not in other situations (for example when a family member is still in the country of origin, i.e. has not arrived with the foreign citizen), taking into account the 3 year period of the duration of subsidiary protection and possible long-term separation between the person under subsidiary protection and his or her family, represents a restriction of the right of the person under subsidiary protection to 'preserve family life', as suggested by the Directive and proposed by the Asylum Amendment Act in the provision ***The Rights of Asylum-Seekers and Persons under Subsidiary Protection*** (Article 27) as a provision ***the preservation of family unity***. Family reunification is understood in the Directive as an indispensable element in continuing and preserving family life, which helps to create socio-cultural stability and at the same time facilitates integration, but also enables and improves economic and social connections between third-country nationals.

A positive step in the Asylum Act, which surpasses the minimum standards prescribed by the Directive, is the right to family reunification granted to foreign citizens under temporary protection in the Republic of Croatia. According to Article 93 of the Asylum Act an application for family reunification is lodged by a foreign citizen under temporary protection or a member of his or her family who wishes to come to the Republic of Croatia. The family

Države članice utvrdit će tko podnosi prijavu mjerodavnim tijelima država članica za ulazak i boravak u cilju ostvarivanja prava na spajanje obitelji – podnosi li je sponzor ili član(ovi) obitelji. Prilikom ispitivanja zahtjeva za spajanje obitelji u slučaju veze državljana trećih zemalja s neoženjenim/-nom partnerom/-icom, države članice moraju uzeti u obzir, kao dokaz o obiteljskim vezama, čimbenike kao što su zajedničko dijete, prethodni suživot, registracija partnerstva i bilo koji drugi pouzdan način dokazivanja. Zakon o azilu neusklađen je s Direktivom jer u Zakonu uopće ne postoji odredba kako tretirati slučajeve u kojima ne postoje službeni dokumenti koji potvrđuju obiteljske odnose. Kako je u dosadašnjoj praksi bilo slučajeva kada nije bilo moguće nedvosmisleno utvrditi vrstu obiteljskih – bilo bračnih ili izvanbračnih veza – nužno je posebnim odredbama ili posebnim pravilnikom urediti jasniju proceduru dokazivanja obiteljskih odnosa.

Važan element Direktive jest naputak da za primjenu odredbi iz ove Direktive ne smije biti diskriminacije na temelju spola, rase, boje, etničkog ili društvenog podrijetla, genetskih karakteristika, jezika, vjere ili uvjerenja, političkog ili drugog mišljenja, pripadnosti nacionalnoj manjini, bogatstva, rođenja, invalidnosti, dobi ili seksualne orijentacije.

U Zakonu o azilu i punovažnim izmjenama i dopunama u definiciju "člana obitelji" ne ulazi kategorija **"osoba u istospolnoj zajednici"**. Istospolna zajednica treba zadovoljiti uvjete iz Zakona o istospolnim zajednicama[9] jer **Direktiva o kvalifikaciji od 29. travnja 2004. o minimalnim standardima za kvalifikaciju i status državljana trećih zemalja ili osoba bez državljanstva kao izbjeglica ili kao osoba kojima je na drugi način potrebna međunarodna zaštita, te o sadržaju dodijeljene zaštite**[10] ni na koji način ne ograničava proširenje člana obitelji i na člana istospolne zajednice. Republika Hrvatska je Zakonom o istospolnim zajednicama[11] prepoznala institut istospolne zajednice kao životne zajednice dviju osoba istog spola koje nisu u braku, izvanbračnoj ili drugoj istospolnoj zajednici, a koja traje najmanje tri godine te koja se temelji na načelima ravnopravnosti partnera, međusobnog poštovanja i pomaganja, te emotivnoj vezanosti partnera. Isto tako, navedeni Zakon u članku 21. brani svaku diskriminaciju na temelju seksualne orijentacije, te zbog toga članovi istospolne zajednice moraju uživati prava predviđena Zakonom o azilu. Istu odredbu potrebno je uskladiti i s člankom 56. Zakona o strancima koja propisuje definiciju članova uže obitelji.

## ZAHTJEVI ZA OSTVARIVANJE PRAVA NA SPAJANJE OBITELJI

Prema članku 8. Direktive o spajanju obitelji države članice mogu zahtijevati da sponzor boravi zakonito na teritoriju dvije godine, prije nego što mu/joj se pridruže članovi obitelji. Preporuke i komentari ECRE[12] nalažu kako ne bi smjela postojati dobna ograničenja za izbjeglice i njihove supružnike/-ice pri spajanju obitelji.[13] Također se problematičnim čini odredba same Direktive da djeca starija od 12 godina trebaju proći tzv. "integracijske te-

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member who is being reunited with the foreign citizen is granted temporary protection. In cases in which family members enjoy temporary protection in different countries, on the occasion of family reunification the interests of family members shall be taken into consideration.

***FAMILY MEMBERS***

The Directive prescribes that family reunification shall always be applied to members of the nuclear family, spouses and minor children. Minor children are considered to be the children of the 'sponsor' and his or her spouse, including children adopted in accordance with a decision taken by the competent authority in the Member State concerned or a decision which is automatically enforceable due to international obligations of that Member State or which must be recognised in accordance with international obligations. According to the Directive minor children include adopted children where the sponsor or spouse has custody and the children are dependent on him or her. Member States may authorize reunification of children of whom custody is shared between the sponsor and spouse provided the other party sharing custody has given his or her agreement.

Member States may authorize family reunification of first-degree relatives of the sponsor if they are supported by and dependent upon him or her, including adult unmarried children who are unable to provide for their own needs on account of their state of health but also unmarried partners with whom the sponsor is in a duly attested stable long-term relationship.

According to the provisions of the Asylum Act ***a family member, if the family concerned previously existed in the country of origin of the asylum-seeker, asylee, foreign citizen under subsidiary protection or foreign citizen under temporary protection, is considered to be: a spouse or unmarried partner in accordance with the existing regulations of the Republic of Croatia which prescribe family relationships, a minor child who has not founded their own family and who is dependent upon the parents irrespective of whether the child in or out of wedlock or adopted, a parent or other legal guardian or representative of an asylum-seeker, asylee, foreign citizen under subsidiary protection or foreign citizen under temporary protection who is a minor, a relative in the direct ascending line if it can be established beyond doubt that he or she lived in the same household with the asylum-seeker, asylee, foreign citizen under subsidiary protection or foreign citizen under temporary protection.***

Furthermore, according to Article 48, minor children of asylees who have not founded their own family have the same legal position as their legal guardian who has been granted asylum. For family members of asylees who are not mentioned in Paragraph 1 of this Article, residence is regulated in accordance with the provisions of the Foreigners Act, from which it can be seen (Article 56) that members of the nuclear family for whom Temporary Residence for the Purpose of Reunification may be requested are considered to be: 1. spouses; 2. persons who live in an unmarried union in accordance with Croatian law; 3. minor children who have not founded their own family and who were born in or out of wedlock or adopted; 4. natural or adoptive parents of minor children. With the exception of Paragraph 3 of this Article, a member of the nuclear family of a Croatian national, a foreign citizen granted temporary or permanent residence and a foreign citizen with the status of asylee

stove" prije nego što dobiju mogućnost spajanja obitelji, tj. spajanja s roditeljima. Prema članku 7. Direktive, kada je zahtjev za spajanje obitelji podnesen, država članica od osobe koja je podnijela zahtjev može tražiti da pruži dokaze da sponzor ima zadovoljavajuće uvjete smještaja koji slijede zdravstvene i sigurnosne standarde; zdravstveno osiguranje u slučaju rizika od bolesti, za sebe i članove obitelji; stabilne i redovite resurse koji su dovoljni za uzdržavanje sebe i članova obitelji, bez zahtjeva prema sustavu socijalne pomoći država članica. Države članice od državljana trećih zemalja mogu zahtijevati da su u određenom smislu usklađeni s integracijskim mjerama, tj. integrirani, u skladu s odredbama nacionalnog zakonodavstva.

Hrvatski Zakon o azilu i Zakon o strancima nisu ovako detaljni u razradi preduvjeta za spajanje obitelji niti je to regulirano posebnim pravilnikom. U Zakonu o azilu, članku 29., pravo na spajanje obitelji ne navodi se kao jedno od prava tražitelja azila. Dakle, tražitelji azila nemaju *per se* pravo na spajanje obitelji, no to izrijekom ne propisuje ni Direktiva. Prava koja se odnose na članove obitelji tražitelja azila koja proizlaze iz članka 29. sadašnjeg Zakon o azilu, kao što je, npr., sloboda vjeroispovijesti i vjerskog odgoja djece, tiču se u principu samo slučajeva u kojima su prisutni i tražitelji azila i njihova djeca, po dolasku i nakon podnesenog zahtjeva.

### SPAJANJE OBITELJI IZBJEGLICA (AZILANATA)

Za spajanje obitelji izbjeglica vrijede ista pravila kao i za državljane trećih zemalja, no države članice mogu ograničiti spajanje ako su obiteljske veze uspostavljene tek nakon ulaska izbjeglice u zemlju. Prema Zakonu o azilu spajanje obitelji za izbjeglice moguće je onda kada je obitelj već postojala u zemlji podrijetla. Za azilanta/-icu – s bračnim drugom ako je brak s azilantom/-icom zaključen, odnosno izvanbračna zajednica postojala prije podnošenja zahtjeva za azil u Republici Hrvatskoj, maloljetnom djecom koja nisu zasnovala vlastitu obitelj te roditeljima ili zakonskim zastupnikom ako je azilant maloljetan. Za stranca pod supsidijarnom zaštitom – s članom/-icom obitelji koji je zajedno sa strancem pod supsidijarnom zaštitom došao u Republiku Hrvatsku, a nije podnio zahtjev za azil ili mu nije odobrena zaštita. Ove su odredbe usklađene i sa Zakonom o strancima i člancima 48., 51. i 55., kojima se regulira spajanje obitelji za strance i, posebno, za azilante.

Člankom 11. stavkom 2. Direktive propisuje se kako tretirati slučajeve kada izbjeglica ne može pružiti službene dokaze kojima se potvrđuje vrsta obiteljskog odnosa s osobom/osobama za koju/koje se traži spajanje obitelji. Razlog uskraćivanja prava na spajanje obitelji ne smije biti baziran isključivo na nepostojanju takvog dokumenta. Države članice imaju pravo odlučiti žele li da se odobri spajanje obitelji za rodbinu u direktnoj uzlaznoj liniji, odraslu neoženjenu djecu, izvanbračne ili registrirane partnere, kao i za osobe u poligamnom braku ili malodobnu djecu supružnika/-ice. Ipak, u članku 10. stavku 2. sama je Direktiva nedorečena kad kaže da države članice mogu odobriti spajanje obitelji za druge članove obitelji ako ovise o izbjeglici.

Postavlja se pitanje kriterija izbora člana/-ice obitelji u slučajevima poligamnih brakova kada je, kako je propisano u Direktivi, dopušteno spajanje samo s jednim supružnikom. Problematično je nepravedno reduciranje mogućnosti spajanja ako ostali supružnici ovise

can also be considered a relative, if there are specific personal or serious humanitarian reasons for family reunification in the Republic of Croatia. The Croatian Asylum Act, with minor modifications, is mostly harmonized with the Directive, while, concerning treatment of relatives, it is even above the standards prescribed by the Directive.

***SUBMISSION AND EXAMINATION OF FAMILY REUNIFICATION APPLICATIONS***

Member States shall determine who is eligible to submit an application for entry and residence to the competent authorities of the Member State for the purpose of achieving the right to family reunification – whether it is the sponsor or the family member or members. When examining an application for family reunification concerning the relationship between third-country nationals and their unmarried partners, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership, and any other reliable means of proof. In the Asylum Act there is no provision whatsoever prescribing the way in which cases in which there are no official documents confirming family relationships should be treated, and this represents a degree of disharmony with the Directive. Since in practice to date there have been cases in which it was not possible to establish beyond doubt the type of family relationship, whether in or out of wedlock, it is necessary to prescribe a clearer procedure of proving family relationships, by means of specific provisions or ordinances.

An important element of the Directive is the recommendation that in the application of provisions in this Directive there shall be no discrimination based on gender, race, colour, ethnic or social origin, genetic characteristics, language, religion or belief, political or other opinion, national minority status, wealth, birth, disability, age, and sexual orientation.

In the Asylum Act and its subsequent amendments, the definition 'family member' does not include the category of ***person in a same-sex union.*** Same-sex union should satisfy the conditions in the Same-Sex Union Act[9] because the Council Directive of 29 April 2004 about minimum standards for 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[10] does not in any way limit the expansion of the term 'family member' to include same-sex union. The Republic of Croatia has recognised, in the Same-Sex Union Act[11], the institution of the same-sex union as a life-union of two persons of the same sex who are not married, not part of another extra-marital or other same-sex union, and which has lasted at least three years and which is based upon the principles of the equality of partners, mutual respect and help, and emotional attachment between the partners. Equally so, the aforementioned Act, in Article 21, prohibits any discrimination on the basis of same-sex union or homosexual orientation, which is why members of the same-sex union must enjoy the rights prescribed by the Asylum Act. The same provision needs to be harmonized with Article 56 of the Foreigners Act which prescribes who is understood to be a member of a nuclear family.

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o supružniku koji je dobio zaštitu, a s kojim su u poligamnom braku. U Direktivi se navodi kako su za izbjeglice utvrđeni povoljniji uvjeti za spajanje obitelji, koji uključuju i mogućnost spajanja obitelji širem krugu srodnika, ako su ovisni o izbjeglici te neprimjenjivanje roka od dvije godine zakonitog boravka na teritoriju države članice. Ova kontradikcija same Direktive prenesena je i u samom Zakonu o azilu, gdje je dakle moguće spajanje sa srodnikom u izravnoj lozi, ili u Zakonu o strancima, gdje se navodi **"drugi srodnik ako postoje posebni osobni ili ozbiljni humanitarni razlozi za spajanje obitelji"**, ali je pravo spajanja u slučaju poligamnog braka dopušteno samo jednom bračnom drugu, bez obzira na moguću ovisnost ostalih bračnih drugova i zajedničke djece o sponzoru. Dakako da ovo pitanje zalazi u sferu moralne filozofije i pitanja kulturnih i religijskih različitosti i vidova priznavanja kolektivnih prava. U tom smislu hrvatski zakoni ne propituju, nego slijede restriktivna određenja Direktive.

Članak 60. Zakona o strancima potpuno je preuzet i usklađen s člankom 14. Direktive. Stranac kojem je odobren privremeni boravak u svrhu spajanja obitelji ostvaruje pravo na obrazovanje, usavršavanje, rad i samozapošljavanje, sukladno odredbama ovoga Zakona. Isti je slučaj i s člankom 15. Direktive, koji propisuje mogućnost davanja autonomnog boravka strancu kojemu je odobren privremeni boravak u svrhu spajanja obitelji od najmanje pet godina, koji je prema članku 61. Zakona o strancima čak smanjen na 4 godine.

U slučaju da maloljetnik nema pratnju, u članku 10., stavku 3. Direktive stoji da će im države članice omogućiti ulazak i boravak u zemlji radi spajanja obitelji s rodbinom iz prve uzlazne linije ili s legalnim/-nom skrbnikom/-icom ili drugim/-om članom/-icom obitelji ako izbjeglica nema bliskog uzlaznog srodstva ili ako im se ne može ući u trag. Prema članku 108. Zakona o strancima **"maloljetni stranac smješta se u Centar zajedno s roditeljem ili drugim zakonskim zastupnikom, osim ako se procijeni da je za njega povoljniji drugačiji smještaj. Stroži policijski nadzor može se odrediti i maloljetniku, ali samo zajedno s roditeljem ili zakonskim zastupnikom. Ako postoji ozbiljna sumnja o maloljetnosti stranca kojeg treba smjestiti u Centar može se provesti ispitivanje starosti osobe"**. Dosadašnji Zakon o azilu ne navodi eksplicitno i precizno preduvjete spajanja obitelji maloljetnika bez pratnje (bilo maloljetnog/-ne tražitelja/-ice azila, azilanta/-ice, stranca pod supsidijarnom zaštitom ili stranca pod privremenom zaštitom) s roditeljem ili drugim zakonskim zastupnikom/-icom.

Članak 15. iz preambule Direktive nije naznačen pa time ni usklađen u Zakonu o strancima ni u Zakonu o azilu. Njime se razina prava zahtijeva i za one slučajeve spajanja obitelji u kojima naknadno dođe do promjene okolnosti bračnog statusa. U skladu s Direktivom, integraciju članova obitelji treba poticati. U tu svrhu treba potaknuti neovisan status obitelji od sponzora, a posebno u slučajevima raspada brakova i partnerstava, te uz to omogućiti pristup obrazovanju, zapošljavanju i stručnom osposobljavanju pod istim uvjetima kao i osobama s kojima su nanovo ujedinjene. Države članice mogu odbiti prijavu za upis boravka članova obitelji iz opravdanih političkih razloga, javne sigurnosti ili javnog zdravlja.

**DIREKTIVA O KVALIFIKACIJI** 2004/83/EC OD 29. TRAVNJA 2004. O MINIMALNIM STANDARDIMA ZA KVALIFIKACIJU I STATUS DRŽAVLJANA TREĆIH ZEMALJA ILI OSOBA BEZ DRŽAVLJANSTVA KAO IZBJEGLICA ILI KAO OSOBA KOJIMA JE NA DRUGI NAČIN POTREBNA MEĐUNARODNA

### *APPLICATIONS FOR FAMILY REUNIFICATION*

According to Article 8 of the Directive on Family Reunification Member States may require the sponsor to have stayed lawfully in their territory for a period not exceeding two years before having his or her family members join him or her. Recommendations and comments by ECRE[12] state that there should be no requirement for refugees and their spouses to be of a specific minimum or maximum age before family reunification.[13] Equally questionable seems the provision of this Directive that children above 12 years of age should pass the so-called **'integration tests'** before they are granted the possibility of family reunification, i.e. reunification with their parents. According to Article 7 of the Directive, when the application for family reunification is submitted, the Member State may require the person who has submitted the application to provide evidence that the sponsor has: accommodation which meets the general health and safety standards, health insurance in case of illness for himself or herself and for the members of his or her family, stable and regular resources which are sufficient to maintain himself or herself and the members of his or her family without recourse to the social assistance of the Member State. Member States may require third-country nationals to comply in a certain way with integration measures in accordance with national law. The Croatian Asylum Act and the Foreigners Act do not analyse in equal detail prerequisites for family reunification nor is it regulated by a specific ordinance. In this sense, the explanations in both Acts surpass the minimum standards prescribed by the Directive. In Article 29 of the Asylum Act, the right to family reunification is not listed of one of the rights of asylum-seekers. Therefore, asylum-seekers per se do not have the right to family reunification but neither does the Directive directly prescribe it. The rights concerning asylum-seekers' family members which stem from Article 29 of the current Asylum Act, such as, for example, freedom of religion and religious education of children, in principle relate only to cases in which asylum-seekers arrived with children and after the application has been submitted.

### *FAMILY REUNIFICATION OF REFUGEES (ASYLEES)*

For family reunification of refugees a similar procedure applies as for third-country nationals, however Member States may confine the application of this Chapter to refugees whose family relationships predate their entry. According to the Asylum Act, family reunification of refugees is possible in circumstances in which the family already existed in the country of origin. For the asylee – reunification with the spouse if he or she was married to the asylee, or formed an unmarried union before submitting the asylum application in the Republic of Croatia, with minor children who have not founded their own family, and with parents or legal guardians if the asylee is a minor. For the foreign citizen under subsidiary protection – reunification with the family member who arrived in the Republic of Croatia with the foreign citizen under subsidiary protection but who did not lodge an asylum application nor was he or she granted protection. These provisions are also in harmony with Articles 48, 51 and 55 of the Foreigners Act which regulate family reunification of foreign citizens and asylees in particular.

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Ovom se Direktivom utvrđuju kvalifikacije za status izbjeglice, prvenstveno one koje uključuju razloge i djela koji utječu na strah od progona, te razloge za isključenje i prestanak izbjegličkog statusa i statusa supsidijarne zaštite. Usmjerena je na osiguranje primjene zajedničkih kriterija za identifikaciju osoba kojima je istinski potrebna međunarodna zaštita, te na harmonizaciju procedure za dodjeljivanje zaštite među svim državama članicama Europske unije. U osnovi, Direktiva služi da bi se jednoznačno ustanovila i primijenila definicija osobe koja može dobiti status izbjeglice ili status osobe pod supsidijarnom zaštitom. Posredno se želi ograničiti pojava tzv. "kruženja" (engl. *orbiting*) tražitelja zaštite koji, zbog različitih pravnih okvira među državama, ako budu odbijeni u jednoj državi, zaštitu potom zatraže u drugoj državi ponovno podnoseći zahtjev za azil.

Pojam izbjeglice u Direktivi određen je definicijom koju navodi Ženevska konvencija, a mjere za određivanje supsidijarne zaštite koje su sadržane u Direktivi potpuno su sukladne s režimom i sustavom zaštite koji je uspostavljen u Ženevskoj konvenciji i Protokolu, tako da su komplementarne sa standardima i mjerama iz tih odredbi. Ova Direktiva uvodi institut supsidijarne zaštite i prepoznaje nedržavne elemente, poput aktera kao što su vršitelji progona ili ozbiljne nepravde. No kako se supsidijarna zaštita shvaća kao privremeni oblik zaštite, posebnu pozornost treba obratiti na prava osoba pod supsidijarnom zaštitom koja ne smiju biti reducirana u odnosu na one koji dobiju, tj. ostvare status azila. Jednako tako, uspostavljen je i princip "alternative unutarnjeg preseljenja" koji se javlja kao opcija prema kojoj se zaštita neće pružiti tražiteljima koji su je mogli potražiti u nekom drugom dijelu teritorija u zemlji podrijetla.

## OPĆE ODREDBE

U preambuli Direktive, stavak 9. propisuje da državljani trećih zemalja ili osobe bez državljanstva kojima je dopušteno ostati na teritoriju država članica – ne zbog potrebe za međunarodnom zaštitom, nego zbog diskrecijskih temelja ili humanitarnih razloga – ne ulaze u fokus ove Direktive. Ovaj stavak Direktive ističe kako država može pružiti vrstu privremenog boravka i neudaljavanja osobe čak i ako državljanin treće zemlje ili apatrid ne ispunjava uvjete iz Ženevske konvencije za puni status azila ili – prema odredbama iz ove Direktive – za status supsidijarne zaštite. Taj je princip usklađen s člankom 51., alineja 5. Zakona o strancima, koji navodi humanitarne razloge kao jednu od stavaka za odobravanje privremena boravka (strancu).

Problem same Direktive jest u tome što ne propisuje dovoljno jasne temelje i propozicije mogućeg shvaćanja "diskrecijskih osnova za humanitarne razloge", tj. ne govori ništa o mogućim slučajevima u kojima osoba zaista treba zaštitu, a nije prepoznata kao takva, te joj se tolerira privremeni (uglavnom kratkotrajni) boravak u zemlji u kojoj traži zaštitu, što je u potpunosti ostavljeno na diskrecijsku odluku mjerodavnih državnih tijela. Tako je upravo moguće kreiranje i potenciranje situacije "orbitiranja" ("kruženja") tražitelja zaštite. Institut "privremenog ostanka", prema članku 112. Zakona o strancima, koji traje šest mjeseci (uz mogućnost iznimnog produženja), nije dovoljno jamstvo da će osoba koja treba, a nije dobila status azila, supsidijarne ili privremene zaštite doista biti zbrinuta i zaštićena po prestanku mjere privremenog ostanka.

Article 11, Paragraph 2 of the Directive prescribes the way in which cases should be handled in which a refugee cannot provide official documentary evidence of the family relationship with the person or persons with whom family reunification is being requested. A decision rejecting an application may not be based solely on the fact that such a document is lacking. Member States have the right to decide whether or not to grant family reunification to relatives in the direct ascending line, adult unmarried children, unmarried or registered partners, as well as in the case of a polygamous marriage or minor children of the spouse. However, in Article 10, Paragraph 2, the Directive is itself incomplete in its provision which states that Member States may authorize family reunification of other family members if they are dependent upon the refugee.

We pose a question about the criteria for the choice of family members in cases of polygamous marriages, when, as prescribed by the Directive, only reunification with one spouse is allowed. There is a problem with the unjust restriction of family reunification in cases in which other spouses depend on the spouse who received protection and with who they are in a polygamous marriage. The Directive states that more advantageous conditions for family reunification have been established for refugees, including the possibility of the reunification of the family with a wider circle of relatives if they are dependent upon the refugee, and exception from the requirement of legal residence within the territory of the Member State for a period of two years. This contradiction within the Directive itself was also transferred to the Asylum Act in which the reunification with a relative in the direct line is possible, and in the Foreigners Act, which states that he or she can be reunified with **'a different relative if there are specific personal or serious humanitarian reasons for family reunification'**, but which also allows only one spouse to be reunited in the case of a polygamous marriage, irrespective of the possible dependence of other spouses and their common children upon the sponsor. Certainly this issue enters the sphere of moral philosophy and cultural and religious differences as well as aspects of the recognition of collective rights. In this sense, Croatian legislation does not question but follows restrictive provisions of the Directive.

Article 60 of the Foreigners Act was completely based upon and thus in harmony with Article 14 of the Directive. The foreign national to whom temporary residence has been approved for the purpose of family reunification is entitled to education, training, employment and self-employment, pursuant with the provisions of this Act. The same case is found in Article 15 of the Directive which prescribes that a foreign national with temporary residence should be granted autonomous residence for the purpose of family reunification in an interrupted period of 5 years, which is reduced to 4 years in Article 61 of the Foreigners Act.

In cases of unaccompanied minors, Article 10, Paragraph 3 of the Directive states that Member States shall authorize entry and residence for the purposes of family reunification of the minor's first-degree relatives in the direct ascending line, or his or her legal guardian or any other member of the family where the refugee has no relatives in the direct ascending line or such relatives cannot be traced. According to Article 108 of the Foreigners Act ***a foreign citizen who is a minor shall be housed at the Reception Centre together with his or her parent or other legal guardian, unless it is judged that different accommodation would be more advantageous for him or her. The minor may also be subject to ore strict police***

Samom Direktivom jasno se uvode i određuju koncepti zaštite izbjeglica *sur place*, izvora prijetnje i zaštite, unutarnje (interne) zaštite i proganjanja, uključujući razloge proganjanja. Odredbe Zakona o azilu iz 2007. s usvojenim izmjenama i dopunama 2010. koje člankom 2. definiraju pojmove i značenje pojedinih izraza – poput supsidijarne zaštite, maloljetnika bez pratnje, rase, vjere, nacionalnosti, određene društvene skupine i političkog mišljenja – usklađene su s Direktivom. Određena prava azilanata i osoba pod supsidijarnom i privremenom zaštitom poput prava na integraciju u hrvatsko društvo, prava na zdravstvenu zaštitu, prava na obrazovanje i rad stranaca pod supsidijarnom zaštitom, iako uglavnom usklađene s Direktivom, u praksi se mnogo teže ostvaruju nego što je očekivano, a postoje i primjeri nedostatna shvaćanja i implementacije pojedinih odredbi Direktive.

Neusklađenost Direktive i Zakona o azilu prisutna je u odredbama koje se tiču definicija djela proganjanja ("acts of persecution"). U preambuli, stavak 20. Direktive propisuje kako najbolji interesi djeteta trebaju biti primarna briga država članica pri implementaciji Direktive. Kod procjene aplikacije za međunarodnu zaštitu od strane maloljetnika nužno je da države članice uvaže oblike proganjanja specifične za djecu. Nadalje, u članku 9., stavku f, (Acts of persecution) navode se rodno specifična djela ili djela specifična za djecu.

U uvodnom dijelu Direktive koji se tiče članova obitelji (stavak 27.) navodi se da članovi obitelji zbog povezanosti s izbjeglicom mogu biti ranjivi prema djelima proganjanja u smislu da to može biti osnova za dobivanje statusa izbjeglice. Kako u Zakonu o izmjenama i dopunama Zakona o azilu ne postoji sličan stavak, nego se člankom 48. uređuje pravo na spajanje obitelji, tj. boravak bračnih partnera koji traže spajanje s azilantom/-icom, spajanje, odnosno boravak odobrit će se ako je brak zaključen, odnosno ako je izvanbračna zajednica postojala prije podnošenja zahtjeva za azil u Republici Hrvatskoj. Ne smatrajući *a priori* da bi priroda veze s azilantom/-icom mogla biti temelj za dobivanje punog izbjegličkog statusa za njih same, Zakonom se neopravdano reducira mogućnost dobivanja jednakovrijednog statusa za članove obitelji izbjeglice koji traži spajanje obitelji, i u tom je smislu ovdje Zakon neusklađen s Direktivom.

Iako i Direktiva naznačuje mogućnost reduciranja nekih beneficija vezano uz zdravstvenu zaštitu, ipak se u uvodu (preambula, stavak 35.) spominje kako pristup zdravstvenoj skrbi, uključujući fizičku i mentalnu zdravstvenu skrb, treba biti osiguran za korisnike izbjegličkog statusa ili statusa supsidijarne zaštite. Uz usklađenost ovog dijela novi Zakon kod određenja opsega zdravstvene zaštite ne stavlja naglasak na mentalno zdravlje. Iz dosadašnjeg iskustva rada s tražiteljima azila (kao i neregularnim migrantima tražiteljima azila) i azilantima uočljivo je kako je ovaj aspekt zanemaren i kako još nije nađeno učinkovito rješenje za zadovoljenje potreba za psihološkom i psihosocijalnom pomoći. Neregularni migranti koji su k tomu i tražitelji azila također trebaju ovu vrstu pomoći, no postavlja se pitanje u kojoj im je mjeri to omogućeno u Prihvatnom centru za strance.

### PROCJENA ČINJENICA I OKOLNOSTI U ZAHTJEVU ZA MEĐUNARODNOM ZAŠTITOM

U Zakonu o izmjenama i dopunama Zakona o azilu neopravdano je izostavljeno usklađivanje članka 8. iz Direktive (*Internal protection*), u kojem se navodi da kao dio procesa zahtijevanja međunarodne zaštite države članice mogu odrediti da podnositelj/-ica zahtjeva ne treba zaštitu ako u dijelu zemlje podrijetla ne postoji utemeljen strah od proganjanja

***control, but only together with the parent or legal guardian. If there is reasonable doubt the foreign citizen who needs to be housed at the Reception Centre is a minor, an examination of the person's age may be carried out***. The current Asylum Act does not state explicitly and precisely the pre-requisites for the family reunification of an accompanied minor (whether he or she is an asylum-seeker, asylee, foreign citizen under subsidiary protection or foreign citizen under temporary protection) with his or her parent or other legal guardian.

The provisions from Article 15 of the Directive's preamble are not present in the Foreigners Act nor the Asylum Act; thus these Acts are not harmonised with the Directive. This Article requires that the same rights be given to cases of family reunification in which the circumstances concerning marriage status have changed. In accordance with the Directive, the integration of family members should be promoted. For that purpose, they should be granted a status independent of that of the sponsor, in particular in cases of the break-up of marriages and partnerships, and granted access to education, employment and vocational training on the same terms as the person with whom they are reunited. Member States may refuse the application for family reunification on the grounds of duly justified political reasons, public safety and public health.

**COUNCIL DIRECTIVE** 2004/83/EC OF 29 APRIL 2004 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

This Directive establishes qualifications for refugee status, primarily those which include reasons for, and fear of, persecution, as well as reasons for the revocation and ending of the status and subsidiary protection. It aims to ensure the application of common criteria for the identification of persons genuinely in need of international protection, and to harmonise the procedure of the granting of protection among all EU Member States. Basically, the Directive serves to establish a singular meaning for, and to apply, the definition of a person who may be granted refugee status or the status of a person under subsidiary protection. More specifically, the Directive wishes to limit the appearance of 'orbiting' protection seekers who, due to different legal frameworks in Member States, after being refused in one Member State, request protection in another Member State, applying for asylum again.

In the directive, the term refugee is determined by the definition mentioned in the Geneva Convention, and the measures for determining subsidiary protection contained in the Directive are in complete harmony with the regime and protection system established by the Geneva Convention and the New York Protocol, and they complement the standards and measures from those provisions. This Directive introduces subsidiary protection and recognizes non-governmental elements, such as actors of persecution or serious injustice. However, since subsidiary protection is understood as a temporary type of protection, special attention should be paid to the rights of persons under subsidiary protection, which should not be restricted compared to those who are granted full asylum status. Equally so, the Directive establishes the principle of 'alternative of internal relocation' which represents an option in which protection shall not be granted to applicants who could have sought protection in a different part of the territory of the country of origin.

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ili nema stvarnog rizika od trpljenja ozbiljne ugroženosti. Za očekivati je da podnositelj zahtjeva može ostati u tom dijelu zemlje (opcija internog preseljenja i unutarnje zaštite). Iako je i ova odredba uključena u sadašnji Zakon o azilu (članak 58., alineja 3.) kao jedna od osnova za odbijanje zahtjeva za azil, ovo smatramo bitnom odredbom koja je nužna za dobro artikulirano obrazloženje razloga uskraćivanja zaštite u Izmjenama i dopunama Zakona o azilu u članku 41.: Članak 55. mijenja se i glasi, tj. nadopunjuje sljedećom stavkom: **"Prilikom meritornog rješavanja zahtjeva, uključujući i slučajeve u kojima je izostavljeno saslušanje, Ministarstvo će razmotriti sve relevantne činjenice i okolnosti posebno uzimajući u obzir: (...) 5. može li tražitelj azila dobiti učinkovitu zaštitu u drugom dijelu zemlje podrijetla u kojem ne bi imao osnovani strah od proganjanja niti bi bio izložen stvarnom riziku trpljenja ozbiljne nepravde, a od tražitelja se može razumno očekivati da ostane u tom dijelu zemlje."**

Iako je nadopunjen ovaj članak Zakona, treba upozoriti kako je i u samoj Direktivi zapravo nejasno koji su kriteriji koji bi jednoznačno pokazali da podnositelj/-ica zahtjeva koji/koja ima opravdan strah od proganjanja u dijelu svoje zemlje taj isti strah ne bi osjećao/-ala (makar i vrlo subjektivno) u drugom dijelu teritorija svoje zemlje, iako za to ne postoji dokaziva opasnost. Barem u jednom slučaju negativnog rješenja na zahtjev za azil upravo se mogućnost unutarnjeg preseljenja osobe u drugi dio zemlje iskoristio kao glavni argument za negativnu odluku na zahtjev za azil. Smatramo kako bi ovu praksu svakako trebalo izbjegavati i u tom smislu propisati standarde više od minimalnih, propisanih Direktivom. Isto tako, prema prijedlozima spomenute ECRE, ne postoje predloženi kriteriji za države članice kako da donose takve odluke, a upravo su jasni kriteriji potrebni kako bi se osigurala pravednost procedure, kao i kako bi zaista podnositelj/-ica zahtjeva mogao/mogla biti premješten/-ena u takozvana sigurna područja u zemlji podrijetla, bez rizika da bi bio/bila prisilno vraćen/-ena u područja gdje bi imao/imala opravdan strah od proganjanja. Ostale stavke, posebno one koje se tiču počinitelja proganjanja ili ozbiljne nepravde te davatelja zaštite u zemlji podrijetla potpuno su usklađene s Direktivom.

Jedno od bitnih usklađivanja Direktive i Zakona o izmjenama i dopunama Zakona o azilu tiče se pak razumijevanja razloga za proganjanje i, posebice, termina **"pripadnosti određenoj društvenoj grupi"**. U dosadašnjem zakonu prema članku 2. **"određena društvena skupina podrazumijeva osobe iz iste sredine, istih običaja ili istog društvenog položaja. Članovi te skupine dijele uvjerenja na kojima se temelji njihov identitet ili svijest te ih se ne žele odreći. Skupina mora imati poseban identitet u relevantnoj zemlji te se razlikovati od društva koje ju okružuje."** U Zakonu o izmjenama i dopunama Zakona o azilu naglasak je stavljen ne na samu razliku, nego na "percepciju" bivanja različitim od ostatka društva **("Određena društvena skupina posebno uključuje članove koji imaju zajedničke urođene osobine ili zajedničko podrijetlo koje se ne može izmijeniti, odnosno karakteristike ili uvjerenja, u toj mjeri značajna za njihov identitet ili svijest da se te osobe ne smije prisiliti da ih se odreknu, a ta skupina ima poseban identitet u konkretnoj zemlji jer ju društvo koje ju okružuje smatra različitom...")**. Ovo je vrlo bitno jer dovodi u pitanje doživljavanje vjerodostojnosti iskaza samog podnositelja zahtjeva, te je svakako važno što je ova izmjena, u ovakvom obliku, uvrštena u novi Zakon o azilu. Zakon o azilu također je usklađen sa stavkom Direktive o razlozima proganja.

### *GENERAL PROVISIONS*

Paragraph 9 of the Directive's preamble states that those third-country nationals or stateless persons who are allowed to remain in the territories of the Member States, for reasons which are not due to a need of international protection but on a discretionary basis on humanitarian grounds, fall outside the scope of this Directive. This provision indicates that a Member State may offer a type of temporary residence and exception from deportation for a person even though this third-country national or stateless person does not satisfy the conditions of the Geneva Convention for full asylum status or, according to the provisions in this Directive, for the status of subsidiary protection. This principle is in harmony with Article 51, line 5 of the Foreigners Act which states humanitarian reasons as one of the grounds on which a foreign citizen may be granted temporary residence.

The problem with the Directive itself is that it does not prescribe clear enough grounds and recommendations for the possible understanding of the 'discretionary basis on humanitarian grounds', i.e. it does not mention any possible cases in which a person who is genuinely in need of protection is not recognized as such, or in which his or her temporary (mostly short-term) stay in the country in which he or she requested protection is tolerated through a completely discretionary decision made by competent authorities. This problem is exactly what makes possible the creation and exacerbation of the situation of 'orbiting' protection seekers. The instance of 'temporary residence' which, according to Article 112 of the Foreigners Act, lasts 6 months (with the possibility of exceptional extension), does not represent enough of a guarantee that the person who is need of asylum status, subsidiary or temporary protection, and has not been granted such a status will indeed be taken care of and protected after his or her temporary stay has ended.

The Directive itself clearly introduces and determines the concepts of the protection of refugees *sur place*, the sources of harm and protection, internal protection and persecution, including the reasons for persecution. The provisions of the Asylum Act of 2007, with the Asylum Amendment Act of 2010, in which Article 2 determines the concepts and meaning of specific terms such as subsidiary protection, unaccompanied minor, race, religion, nationality, specific social groups, and political opinion, are harmonized with the aforementioned Directive. Specific rights of the asylee and person under subsidiary and temporary protection, such as the right to integration with Croatian society, the right to health care, education and employment for the foreign citizen under subsidiary protection, although mostly harmonized with the Directive, have, in practice, proven far more difficult to realize than expected, and there are examples of inadequate understanding and implementation of specific provisions of the Directive.

There is divergence between the Directive and the Asylum Act is present in relation to the provisions concerning the definition of acts of persecution. Paragraphs 12 and 20 of the Directive's preamble state that the 'best interests of the child' should be a primary consideration of Member States when implementing this Directive. When assessing applications from minors for international protection, it is necessary that Member States should consider child-specific forms of persecution. Furthermore, Article 9, Paragraph F ('Acts of persecution') mentions ***acts of a gender-specific or child-specific nature***.

Odredbe Direktive koje se tiču odbijanja i odbacivanja zahtijeva, kao i odredbe o prestanku i poništenju azila, sukladno su definirane u hrvatskom Zakonu o azilu. Također, u njemu se nalaze i sve odredbe koje se tiču dodjeljivanja statusa supsidijarne zaštite, kao i odredbi o prestanku ili poništenju supsidijarne zaštite. Manja neusklađenost koja će po Zakonu o izmjenama i dopunama Zakona o azilu biti ispravljena tiče se razloga za prestanak supsidijarne zaštite, koja je sada doslovno prevedena iz Direktive i glasi: **"Supsidijarna zaštita prestat će kada okolnosti na temelju kojih je odobrena supsidijarna zaštita prestanu postojati ili se promijene do te mjere da daljnja zaštita nije više potrebna, a... nadležno tijelo će razmotriti je li promjena okolnosti tako značajne i stalne prirode da stranac pod supsidijarnom zaštitom više neće biti izložen stvarnom riziku od trpljenja ozbiljne nepravde."**

## SADRŽAJ MEĐUNARODNE ZAŠTITE

U ovom poglavlju utvrđuju se prava izbjeglica koja uključuju zaštitu od vraćanja (*non-refoulement*), pristup informacijama na jeziku koji razumiju, održavanje načela jedinstva obitelji, dozvolu boravka, putne dokumente te pristup tržištu rada, obrazovanju, zdravstvenoj zaštiti, smještaju, programima integracije i socijalnoj skrbi. Prema članku 22. Direktive, države članice osobama koje trebaju međunarodnu zaštitu osigurat će, što je prije moguće nakon što je odgovarajući status zaštite odobren – na jeziku koji razumiju – pristup informacijama o pravima i obvezama koje se odnose na taj status. Iako ovaj stavak sam za sebe nije eksplicitno naveden u samom Zakonu o azilu, kao jedno od prava zajamčeno člankom 40. stoji: **"U roku od 15 dana od dana odobravanja statusa Ministarstvo će, azilantu ili strancu pod supsidijarnom zaštitom, na jeziku za koji se opravdano pretpostavlja da na njemu može komunicirati, pružiti opće informacije o pravima i obvezama koje stječe odobrenjem azila ili supsidijarne zaštite."**

Održavanje jedinstva obitelji u članku 23. Direktive sukladno je svim odredbama koje su navedene u Direktivi o pravu na spajanje o obitelji, a koje su unesene i primijenjene i u hrvatskom Zakonu o azilu i Zakonu o strancima. Dozvola boravka navedena u ovoj Direktivi koja se preporučuje na valjanost perioda i mogućnost produživanja od tri godine za azilante i jedne godine za osobe pod supsidijarnom zaštitom, prema Zakonu o izmjenama i dopunama Zakona o azilu viša je od standarda propisanih Direktivom jer se iskaznica za azilanta izdaje na pet godina, dok se za osobu pod supsidijarnom zaštitom izdaje na tri godine. Privremena zaštita odobrava se na jednu godinu. Ipak, Zakonom o izmjenama i dopunama Zakona o azilu nije predviđen produžetak privremene zaštite. Do sada je Zakon predviđao da se **"iskaznica stranca pod supsidijarnom zaštitom izdaje na vrijeme od godinu dana i može se produžavati"**, a sada glasi ovako: **"Iskaznica stranca pod supsidijarnom zaštitom izdaje se na vrijeme od tri godine."** Smatramo neopravdanim da je konstrukcija **"... i može se produživati"** izostavljena iz članka jer je tako sugerirano i samom Direktivom, bez obzira na to što i u ovom slučaju odredba hrvatskog zakona viša je od standarda same Direktive.

Članak 26., stavak 2. i stavak 4. ove Direktive nalaže da edukacija koja je vezana uz mogućnosti zapošljavanja kao što su prekvalifikacijski i dokvalifikacijski treninzi bude dostupna osobama koje su dobile zaštitu pod istim uvjetima kao i državljanima, te da će države čla-

In the preamble of the Directive concerning family members (Paragraph 27), they may, merely because they are related to the refugee, be equally vulnerable to acts of persecution in such a manner as to form a basis for refugee status.

The Asylum Amendment Act does not contain a similar provision, but Article 48 regulates that the right to family reunification, i.e. the residence of spouses who request reunification with the asylee, shall be granted if they were married, or formed an unmarried partnership, before they lodged an asylum application in the Republic of Croatia. Without considering *a priori* that the nature of their relationship with the asylee might represent a basis for being granted full asylum status for themselves, the Act unjustifiably restricts the possibility of receiving equal status for family members of the refugee with whom family reunification is sought, and in this sense this is where the Act is not harmonized with the Directive.

Although the Directive itself indicates the possibility of the restriction of some benefits concerning health care, the preamble (Paragraph 35) mentions access to health care, including both physical and mental health care, should be provided to beneficiaries of refugee or subsidiary protection status. This section of the new Act is harmonized, except for its failure to emphasize mental health in the scope of health care that it mentions. From the current experience of working with asylum-seekers (as well as with irregular migrants who are asylum-seekers) and asylees, it is evident that this aspect is neglected and that no efficient solution has been found so far for meeting the need for psychological and psychosocial help. Irregular migrants who are at the same time also asylum-seekers are also in need of this kind of help, but this poses the question of the possible extent to which such assistance can be offered at the Reception Centre for Foreign Citizens.

### *ASSESSMENT FACTS AND CIRCUMSTANCES IN APPLICATIONS FOR INTERNATIONAL PROTECTION*

The Asylum Amendment Act unjustifiably omits a provision that would harmonize it with Article 8 of the Directive (*Internal protection)* which states that ***as part of the assessment of an application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country*** (the option of internal relocation). Although this provision is also included in the current Asylum Act (Article 58, line 3) as one of the grounds for the rejection of asylum application, we consider this an essential provision which is necessary for a well-articulated explanation of the reasons for the denial of protection in Article 41 of the Asylum Amendment Act: Article 55 is replaced and amended by the following paragraph: **'During the assessment of the application's merit, including cases in which hearings are omitted, the Ministry will consider all relevant facts and circumstances, particularly taking into account: (...) 5. whether an asylum-seeker may obtain efficient protection in a part of the country of origin where he or she would not have any well-founded fear of persecution nor be exposed to any real risk of suffering serious injustice, and the applicant could be reasonably expected to stay in that part of the country.**'

Although this Article of the Act was amended, we should also warn that the Directive itself does not make clear which criteria would singularly indicate that the applicant who has a

nice osigurati pristup za takve programe za korisnike. U hrvatskom Zakonu o azilu samo se taksativno nabraja pravo na rad te se u članku 45. još spominje da **"azilant ostvaruje pravo na usavršavanje, prekvalifikaciju, dokvalifikaciju i specijalizaciju pod istim uvjetima kao hrvatski državljanin"**. Također, Zakon je od članka 101. do 104. između ostalih ministarstava propustio adresirati mjerodavno Ministarstvo gospodarstva, rada i poduzetništva kao jedno od ključnih aktera koji trebaju biti zaduženi za razradu i provođenje tih programa, što je trebalo učiniti kako bi se Ministarstvo više uključilo u same programe zapošljavanja azilanata.

Preporuka same Direktive jest da države članice omoguće korisnicima izbjegličkog statusa i statusa supsidijarne zaštite zapošljavanje ili samozapošljavanje prema pravilima koja se općenito odnose na struke i javnosti usluga, odmah nakon što im je status odobren. Prema Zakonu o izmjenama i dopunama Zakonu o azilu, članak 30. (odnosno izmjena članka 43. dosadašnjeg zakona) propisuje sljedeće: **"Azilant i stranac pod supsidijarnom zaštitom mogu raditi u Republici Hrvatskoj bez radne ili poslovne dozvole. Azilant i stranac pod supsidijarnom zaštitom ostvaruju pravo na obrazovanje odraslih vezano uz zaposlenje, stručno usavršavanje i stjecanje praktičnog radnog iskustva pod istim uvjetima kao i hrvatski državljanin."** Problem na koji se nailazi u praksi jest taj da sami azilanti nisu mogli pohađati tečajeve stručnog usavršavanja, što zbog realne životne situacije i egzistencijalne borbe za uzdržavanjem sebe i obitelji, što zbog nepoznavanja jezika i neprilagođenosti tih tečajeva potrebama azilanata, što zbog neusklađenosti izvođenja tečaja koji bi bio osmišljen sukladno poziciji nekih azilanata s posebnim potrebama, što zbog sporosti samog sustava da sistematski pokuša riješiti ovaj problem bez velike pomoći ili ustanova koje prate potrebe tržišta rada.

Azilant: *"U mojoj zemlji sam radio posao koji je ovdje teško pronaći... Ja sam htio da idem na neki program školovanja, kao u večernju školu ili tako nešto slično, ali su rekli da će i to teško moći... Volio bih da radim nešto s kompjuterima. Ali ne mogu si sam plaćati takav tečaj, ne znam da li MUP ili Ministarstvo gospodarstva organizira takve tečajeve, ja nisam čuo za to, a na Zavodu14 nisam uspio pohađati jedan takav tečaj, jer mi je tamo jedna službenica rekla da ja slabo pričam jezik, a ovdje sam već tri godine. Stvarno sam bio razočaran."*

Odredbama Direktive (članak 27.) propisuje se pravo na pristup obrazovanju: za maloljetnike u punom opsegu kao i za državljane, a za odrasle azilante i osobe pod supsidijarnom zaštitom pod uvjetima koji vrijede za državljane trećih zemalja koji legalno borave na teritoriju države članice. U Zakonu o azilu propisuju se mogućnosti koje su i veće od minimalnih standarda, no problem je, naravno, u implementaciji i realizaciji ovih mogućnosti. Uvođenje principa afirmativne akcije u smislu protektivnih kvota u navedenim mogućnostima nastavka studiranja, daljnjeg usavršavanja i prekvalifikacija ublažilo bi inicijalnu nejednakost između državljana i izbjeglica vezanu uz nastavak školovanja. Razumljivo, izbjeglice su zakinuti zbog nedovoljna poznavanja jezika, predznanja ili drugačijih socio-kulturnih predispozicija.

Prema članku 30. Direktive, stavku 3., koji se tiče maloljetnika bez pratnje, države članice

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well-founded fear of being persecuted in a part of his or her country of origin, would not feel the same fear (if only very subjectively) in another part of his or her country, even though there is no proven risk of danger. In at least one case of negative assessment of the asylum application, the possibility of internal relocation of the person in another part of the country was used as the main argument for the rejection of the asylum application. We are of the opinion that this practice should be avoided and in this sense one should surpass the minimal standards prescribed by the Directive. Equally so, according to the suggestions of the ECRE (mentioned above), there are no recommended criteria for Member States about the making of such decisions, and clear criteria are necessary in order to ensure not only a just procedure but also so that the applicant might be able to be transferred to the so-called safe areas of the country of origin, without the risk of enforced return to the area where he or she would have a well-founded fear of being persecuted. Other paragraphs, especially those concerning the actors of persecution, serious injustice, or protection granting in the country of origin, are completely harmonized with the Directive.

One of the essential alignments between the Directive and the Asylum Amendment Act, however, concerns the understanding of the reasons for persecution and especially the term ***belonging to a particular social group.*** **In the current Act, Article 2 states that** ***a particular social group is understood to represent persons from the same community, having identical customs or social position. Members of that group share beliefs which are the foundation of their identity or awareness and which they do not wish to renounce. The group must have a specific identity in the relevant country and thus differ from the society surrounding it***. The Asylum Amendment Act does not place emphasis on the difference itself but on the 'perception' of being different from the rest of the society (***A specific social group in particular includes members who have common innate characteristics or a common origin which cannot be altered, i.e. characteristics or beliefs that are significant to such a degree for their identity or awareness, that these persons should not be forced to renounce them, and this group has a separate identity in the relevant country because the society that surrounds it considers it different...***). This is very essential because it brings into question the perception of the veracity of the statement of the applicant, and it is of the utmost importance that this amendment was contained in the new Asylum Act. The Asylum Act is also harmonized with the Directive's provision about the reasons for persecution.

#### *QUALIFICATION FOR BEING A REFUGEE OR PERSON UNDER SUBSIDIARY PROTECTION*

The Directive's provisions concerning the refusal and rejection of an application, as well as the provisions about the end and revocation of asylum are similarly defined in the Croatian Asylum Act. Equally so are all the provisions concerning the granting of the status of subsidiary protection, but also the provisions about the end or revocation of subsidiary protection in the current Act. A minor lack of alignment, which will be corrected, according to the Asylum Amendment Act, concerns the reason for the end of subsidiary protection, which has been translated verbatim from the Directive and which states that subsidiary protection shall cease ***when the circumstances which lead to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required*** **and...** ***the competent authority shall consider whether the change of circumstances is of such a significant and non-temporary nature that the foreign national under subsidiary protection no longer faces a real risk of suffering serious harm***.

dužne su osigurati da su maloljetnici bez pratnje (*unaccompanied minors*) smješteni ili s odraslim rođacima ili sa skrbničkom obitelji ili u centrima specijaliziranima za smještaj maloljetnika ili u ostalim prostorima prikladnima za maloljetnike. Dom za odgoj djece i mladeži u Dugavama u Zagrebu kao centar specijaliziran za prihvat maloljetnika udomljuje i maloljetne tražitelje azila bez pratnje. U razgovoru s voditeljicom Odjela dijagnostike, prihvata i smještaja iz Doma za nezbrinutu djecu Dugave jasno je kako bi smještajni uvjeti ipak trebali biti primjereniji, te kako sama praksa prihvata i brige o maloljetnicima bez pratnje nije implementirana u skladu sa zakonskim odredbama.

Voditeljica: *"U prihvatnoj stanici je inače praksa pojačane zaštite i nadzora. Izvana su na prozorima rešetke tako da postoji zaštita od vanjskog svijeta i onemogućen je pristup djeci, i njihov eventualni bijeg kroz prozor ili nešto slično. Prihvatna stanica se inače nastoji zaključavati i na taj način odcijepiti od ostalog dijela zgrade i nepoželjnih gostiju. Mala je vjerojatnost da bi djeca došla u ugrozu i naravno pojačano pratimo da ne bi došlo do nekakvih sukoba i maltretiranja od strane naših državljana i djece s poremećajem u ponašanju prema njima, jer ti maloljetni stranci često nisu djeca s poremećajem u ponašanju i s te strane mislim da je jako loše zakonski riješeno da su ta djeca od prvog dana u ovakvom tipu ustanove. Mislim da prihvatna stanica, kao oblik zbrinjavanja i slučaja hitne socijalne pomoći maloljetnim strancima, treba biti posebna jedinica, i kad su u pitanju maloljetni stranci, smatram da je to ovako dosta površno riješeno. Mislim da među njima ima različite populacije, da je loše što ne znamo njihovu pozadinu, eventualnu kriminalnu prošlost i ne znamo da su eventualno bili zlostavljani, što bi u krajnjoj liniji moglo adresirati trgovanje. Mi ovdje nemamo kapacitete, ni stručne ni prostorne, niti neke druge, za dublju detekciju tako nečega, a osim toga, poprilično se kratko zadržavaju, tako da mi, zapravo, osim što uspijemo zbrinuti osnovne potrebe (hrana, higijena), ništa i ne možemo detektirati, da li su oni u prvom redu zdravstveno ugroženi... U Zakonu o strancima, još onom prvotnom, i dalje stoji da se u iznimnim slučajevima može u ustanovu socijalne skrbi staviti maloljetne strance, a iako smo mi nastojali objasniti da tamo piše iznimno, iznimka je postala pravilo. Dakle, pravilo je da se maloljetnog stranca stavi u prihvatnu stanicu. Pritom je nama najveći problem bio to da se često događalo, po mojoj procjeni prečesto i nedopustivo, da su tu smještene i mlađe punoljetne osobe (i do 30 godina). Kad su zatečeni, znali su da će bolje proći kao maloljetnici, pa se tako predstavljaju, nemaju identifikacijskih isprava, pa je nemoguće utvrditi da li je to tako, i oni budu tu zajedno s djetetom od 10-11 godina. Tako da ta priča ima više strana."*

Člankom 33. Direktive objašnjava se pristup integracijskim mjerama za pomoć pri uključivanju i integraciji osobe kojoj je odobrena zaštita u društvo zemlje domaćina. Tako se eksplicite spominje kako države članice trebaju usvojiti odredbe i osmisliti integracijske programe te stvoriti preduvjete koji garantiraju pristup takvim programima. Na zakonskoj razini u Izmjenama i dopunama Zakonu o azilu člankom 50. uređena je odredba o **"pomoći pri uključivanju u društvo"**, koja jamči: organiziranje tečajeva hrvatskog jezika, organiziranje tečajeva, seminara i drugih oblika obrazovanja i stručnog osposobljavanja, pružanje obavijesti o hrvatskoj povijesti, kulturi i državnom ustrojstvu. Ovaj se članak u Zakonu o izmjenama i dopunama Zakona o azilu mijenja i glasi: **"Radi uključivanja u hrvatsko društvo, azilantu i strancu pod supsidijarnom zaštitom omogućit će se učenje hrvatskog jezika, povijesti i kulture. Aktivnosti iz stavka 1. ovoga članka provodi ministarstvo nadležno za poslove obrazovanja. Azilant i stranac pod supsidijarnom zaštitom obvezni su pohađati upisani tečaj hrvatskog jezika, povijesti i kulture. U slučaju neispunjenja obveze iz stavka**

This chapter established the rights of refugees, which include protection from being sent back (*non-refoulement)*, access to information in a language they understand, the upholding of the principle of family unity, residence permits, travel documents, and access to the labour market, education, health care, accommodation, and programmes of integration and social assistance. According to Article 22 of the Directive, Member States shall ensure that persons in need of international protection, as soon as possible after the respective protection status has been granted, shall have access to information, in a language they understand, about the rights and obligations relating to that status. Although this paragraph *per se* is not explicitly mentioned in the Asylum Act as one of the rights guaranteed by Article 40, it is a positive change that this paragraph was inserted in the amended Act and thus ***within 15 days from the date of the approval of the asylum status, the Ministry shall provide the asylee or foreign citizen under subsidiary protection with general information about the rights and responsibilities he or she achieved with the approval of asylum or subsidiary protection in a language likely to be understood by him or her.***

The maintenance of family unity, contained in Article 23 of the Directive, is in accordance with all the provisions in the Directive on the Right to Family Reunification, which were included and implemented in the Croatian Asylum Act and in the Foreigners Act. The Asylum Amendment Act surpassed the standards prescribed by the Directive relating to residence permits mentioned in this Directive and recommended for a period of validity, with the possibility of extension, for the duration of three years for asylum-seekers and one year for persons under subsidiary protection, as ID cards are issued to asylees for a period of validity of five years, while to persons under subsidiary protection for a period of validity of three years. Temporary protection is granted for period of one year. However, the Asylum Amendment Act does not envisage an extension of the period of the duration of temporary custody. Until now the Act has envisaged that ***the ID card of a foreign citizen under subsidiary protection is issued for a period of one year and can be renewed,*** while now it states that the ***ID card of a foreign citizen under subsidiary protection is issued for a period of three years.*** We are of the opinion that the phrase...*and can be renewed* was unjustifiably omitted from the article, because it is recommended in the Directive itself, regardless of the fact that in this case the provision of the Croatian law surpasses the standards of the Directive.

Paragraphs 2 and 4 in Article 26 of this Directive prescribes that employment-related education such as vocational training shall be available to persons granted protection under equivalent conditions as nationals, and that Member States shall ensure that beneficiaries of protection have access to such programmes. The Croatian Asylum Act lists the right to work only in general and mentions it in Article 45 which states that *an asylee has the right to professional and vocational training and specialization under the same conditions as a Croatian national*. Also, Articles 101 and 104 of the Act fail to address, amongst other Ministries, the relevant Ministry of the Economy, Work and Entrepreneurship as one of the crucial actors who should be in charge of the organization and implementation of these programmes, and this should have been done in order to include this Ministry more in programmes for the employment of asylees.

**3. ovoga članka, azilant i stranac pod supsidijarnom zaštitom nadoknadit će troškove tečaja."**

U praksi su se pokazala bar tri problema na koje je potrebno upozoriti i naći načine učinkovitijeg rješavanja istih. Ni samim Zakonom, kao ni posebnim Pravilnikom nije jasnije određeno što bi se sve trebalo podrazumijevati da bismo integraciju mogli nazvati uspješnom te koje su konkretne mjere da bi se ostvarivala. U dokumentu/priručniku zvanom *Dobrodošli u Hrvatsku – Integracijski priručnik*, koji je izradilo Ministarstvo unutarnjih poslova 2009. godine, spominje se i definicija integracije po kojoj azilant ima ulogu u prihvaćanju zajednice, kao što i zajednica ima ulogu prihvaćanja azilanta. Ono što u ovom shvaćanju nedostaje jest prava dvosmjernost procesa koja se odmiče od asimilacijskog modela koji nalaže da se pridošli isključivo integrira u društvo domaćina a da društvo zemlje primitka ništa ne uči i ne usvaja od samih pridošlih. O teškoćama same integracije svjedoči i primjer jednog azilanta.

Azilant: *"Došao sam da tražim posao, svugdje sam probao, prijavio sam se na Hrvatski zavod za zapošljavanje, tamo su mi isto rekli da nema posla, da imaju dosta nezaposlenih osoba i sad je jako teško. I ne samo za mene nego i za sve vas ovdje. HZZ i televizija su rekli oko 250.000 ljudi nema posla, jako je ozbiljno u Hrvatskoj, a to su sve mlade osobe. Probao sam naći posao, nisam našao, vidim da gledaju otkud si. Imao sam problem s jezikom, imao sam problem s hendikepom i treće je bilo, otkud si, i to... Teško je. Država nema dobru integraciju da to riješe sa osobama da mogu živjeti po standardima...Ti ništa nemaš ovdje, ni familiju ni osiguranje, ako bude nešto. Vrijeme tako prolazi, nadam se da će sve biti bolje. Jako se teško ovdje integrirati."*

Uz to, problema ima i s nedostupnošću tečajeva hrvatskog jezika za one tražitelje azila koji, nakon što zatraže azil, ostaju smješteni u Prihvatnom centru za strance. Nemaju dovoljno mogućnosti učiti jezik, dok su tečajevi u Kutini dostupni tražiteljima azila. Nadalje, sasvim praktična razina problema u vezi s integracijom tiče se modela učenja hrvatskog jezika, u situacijama kada pojedini azilanti ili nisu dovoljno motivirani za učenje istoga ili zbog nedostatka vremena, uslijed posla i drugih obveza, ne stižu pohađati tečaj, koji je zasad organiziran jedino u Zagrebu. Također, Ministarstvo znanosti, obrazovanja i športa propustilo je razviti učinkovit i održiv model dodatne edukacije djece azilanata u osnovnim i srednjim školama. Trebala bi im biti omogućena dodatna poduka iz hrvatskog jezika, povijesti i kulture.

Azilant: *"Pedagozi i učiteljice u školi su jako dobre koje tamo rade, ali škola nije mogla tako pomoći, nekoliko puta su rekli da se čeka odgovor iz Ministarstva, ali da dotad sami moramo nekoga naći da radi sa njima. Ali je meni je problem zbog posla jer ne mogu sa njima raditi, a drugo: ne razumijem čitati i pisati hrvatski i latinicu. A djeca trebaju nekoga kad dođu doma da im pomogne domaću zadaću napravit, a to žena i ja ne možemo. To je za djecu i sad problem, pitali smo MUP može li netko da dođe sa njima na jednom tjedno raditi kad već nemaju dodatne sate u samoj školi."*

Pozitivna promjena mogla bi se uočiti u budućem razvijanju modela uključivanja azilanata i osoba pod supsidijarnom zaštitom u programe učenja jezika, koji bi bili više motivirajući, usklađeni s individualnim potrebama izbjeglica, i koji bi poslužili kao jedan od temelja za integraciju samih azilanata i jedan od preduvjeta za moguće dobivanje državljanstva. Iako

The Directive recommends that Member States should authorize beneficiaries of refugee and subsidiary protection status to engage in employed or self-employed activities subject to rules generally applicable to the relevant profession and to public service, immediately after the status has been granted. According to the Asylum Amendment Act, Article 30 (i.e. the amended Article 43 of the current Act): ***An asylee and foreign citizen under temporary protection may work in the Republic of Croatia without a work or business permit. An asylee and foreign citizen under temporary protection has the right to employment-related adult education, vocational training or practical workplace experience under the same conditions as a Croatian citizen***. The problem which this faces in practice is that the asylees themselves do not have the possibility of attending vocational training courses due to reasons having to do with actual life situations and existential struggle in supporting themselves and their families, with a non-existent command of Croatian and language-learning courses not being adapted to the specific needs of asylees, with the incompatibility of teaching methods which should be designed to correspond to the position of some of the asylees with special needs, with the slowness of the system itself in attempting to solve this problem systematically without large-scale assistance and without institutions monitoring the demands of the labour market.

An asylee: *In my country I had a job which is difficult to find here... I wanted to attend an education course, such as an evening class or something similar, but they told me that would be difficult to do... I would like to work with computers. But I can't pay for such a course myself, I don't know if the Ministry of Interior Affairs or the Ministry of Economics organize such courses, I haven't heard about these, and at the Employment Institute I have not succeeded to attend a single course because one of their clerks told me that I don't speak Croatian very well, and I've been here for three years. I was really disappointed.*

The Directive's provisions (Article 27) ensuring access to education for minors prescribe that it should be of the same scope as it is for nationals of the Member State, while for adult asylees, and persons under subsidiary protection within the scope of and under equal conditions as those applied to third-country nationals who legally reside on the territory of the Member State, the Directive's provisions surpass the minimal standards in the Croatian Asylum Act, but the problem lies in the implementation and realization of these possibilities. The introduction of a principle of affirmative action in terms of protective quotas within the possibilities of continuing studying and vocational training would soften the initial inequality which exists between nationals of Member States and refugees, concerning opportunities for the continuation of education, where, understandably, the refugees are disadvantaged due to an inadequate command of the language, existing knowledge and understanding, or different socio-cultural predispositions.

According to Article 30 of this Directive, Paragraph 3, concerning unaccompanied minors, states that Member States shall ensure that unaccompanied minors are placed with either: adult relatives, a foster family, centres specialized in accommodation for minors or other accommodation suitable for minors. The Residential Home for the Raising of Children and Young People at Dugave in Zagreb, as a centre specialized in the accommodation of minors, also houses unaccompanied under-age asylum-seekers. From our interview with the manager of the Department of Diagnostics, Accommodation and Reception from the Home at Dugave, it is clear that accommodation conditions should be more adequate, and

su se pitanja učenja jezika i obrazovanja pokušala urediti **Pravilnikom o načinu provođenja programa i provjeri znanja tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom, radi pristupa obrazovnom sustavu Republike Hrvatske**, kao i **Programom hrvatskoga jezika, povijesti i kulture (za tražitelje azila, azilante, strance pod privremenom zaštitom i strance pod supsidijarnom zaštitom radi pristupa obrazovnom sustavu Republike Hrvatske**[15] nedovoljno je uređeno na osmišljavanju preduvjeta da bi se sami polaznici mogli uključiti u pohađanje samog tečaja. Kako je istaknuo jedan azilant, volja za pohađanjem tečaja postojala je, ali zbog obveza jednostavno nije stizao:

Azilant: *"Jako hoću naučiti čitati i pisati latinicu i hrvatski i gramatiku savladati, no nažalost, ni za to nemam vremena. Probao sam jedno mjesec dan ići na tečaj CROATICUM-a, koji je MUP platio, ali kad sam išao učiti, nisam mogao raditi svoje smjene pa sam odustao zbog posla koji mi je ipak važniji, jer njime uzdržavam sebe i obitelj."*

Posljednji stavak članka 50. Zakona o azilu koji propisuje kako će azilanti i stranci pod supsidijarnom zaštitom u slučaju nepohađanja obveznog tečaja sami morati nadoknaditi troškove tečaja svakako je restriktivan. Osim toga, ne proizlazi iz Direktive i ostavlja dojam penalizacije, tj. sankcioniranja budućih slučajeva nepoštovanja obveza azilanata i osoba pod supsidijarnom zaštitom. No, osim što je ta odredba proizvoljna, i upitno je koliko negativno uvjetovanje može biti motivirajuće za učenje i usvajanje jezika, pitanje je kako će se to provoditi u praksi jer mnogi od onih koji možda neće imati priliku pohađati i završiti tečaj neće moći pokriti troškove (ne)pohađanja.

**DIREKTIVA O PROCEDURI** 2005/85/EC OD 13. PROSINCA 2005. O MINIMALNIM STANDARDIMA U POSTUPKU PRIZNAVANJA I ODUZIMANJA IZBJEGLIČKOG STATUSA U DRŽAVAMA ČLANICAMA

Direktiva se odnosi na državljane trećih zemalja ili apatride koji su podnijeli zahtjev za azil ili kojima je odobren izbjeglički status. Njezina je osnovna svrha ograničavanje sekundarnih kretanja podnositelja zahtjeva za azilom između država članica, do kojih dolazi zbog neujednačenih i neusklađenih pravila u postupcima za priznavanje izbjegličkog statusa u različitim državama te povećanje kvalitete prilikom odlučivanja o statusu. Direktivom se određuju postupovna jamstva za tražitelje azila te minimalni standardi koji se trebaju poštovati tijekom postupka odlučivanja o zahtjevu. Osim toga, Direktiva uspostavlja minimalne standarde i za neke posebne institute i slučajeve, kao što su neprihvatljivi zahtjevi, sigurna treća zemlja, očito neutemeljeni zahtjevi, sigurna zemlja podrijetla, naknadni zahtjevi i postupak oduzimanja izbjegličkog statusa.

## POSTUPOVNA JAMSTVA ZA TRAŽITELJE AZILA

### PRISTUP POSTUPKU

Države članice određuju mjesto na kojem će tražitelji osobno podnositi zahtjev za azil. Zahtjev za azil može podnijeti maloljetnik s pratnjom ili bez nje, odrasla osoba za sebe i

15 PRAVILNIK SE ODNOSI NA DJECU DO 15. GODINE ŽIVOTA.

that the practice of housing and care of unaccompanied minors is not implemented as it is laid down in the legal provisions.

The manager*: At the Reception Station tighter protection and control are standard practice. The windows have bars on the outside so that they are protected from the outside world and there is no access to the children, and to guard against their potential escape through a window or something similar. The Reception Station is usually locked and in that way also separates itself from the rest of the building and unwanted visitors. There is little probability that the children might be endangered and of course, we closely monitor the situation so that there are no conflicts nor any harassment of them by our nationals or by children with behavioural disorders, because these under-age foreign nationals are often not children with behavioural disorders and so from this perspective I think that the fact that these children are housed from day one in this type of institution is a bad legal solution. I think that the Reception Station as a means of providing care and urgent social assistance to under-age foreign nationals should be a separate unit and where under-age foreign nationals are concerned I think this is a rather superficial solution. I think that amongst them there are various nationalities, and it is bad that we do not know their background, possible criminal past, and we also do not know if they were maybe abused which might indicate human trafficking. Here we are not capable, in terms of expertise or space or any other capacity, to detect these matters further, and besides, they stay here for a rather short time so that we, in fact, apart from providing for their basic needs (food, hygiene), cannot detect anything at all, not even primarily the status of their health... In the Foreigners Act, the original one, it still says that in exceptional cases under-age foreign nationals may be housed in a social care institution, and even though we have attempted to explain that the law says 'exceptionally', this exception has become the rule. So, it is a rule to place the under-age minor in the Reception Station.Our biggest problem in doing this is that it has often happened, and I estimate too often and totally wrongly, that even young adults are placed here (up to 30 years of age). When they were discovered, they knew they would get a better deal as minors so they claim this is what they are, and they have no identification documents so it is impossible to establish whether it is so, and they end up staying with a ten- or eleven-year-old child. So, this story has more than one side...*

Article 33 of the Directive clarifies the approach to integration measures that aids the involvement and integration of the person granted protection into the society of the host Member State. Thus it explicitly states that Member States shall adopt provisions and design integration programmes and create pre-conditions which guarantee access to such programmes. On the legislative level, Article 50 of the Asylum Amendment Act lays down a provision about **assistance with integration into society**, which guarantees: organization of courses of Croatian language, organization of courses, seminars and other forms of education and vocational training, the provision of information about Croatian history, culture and political and social institutions and frameworks. This article is changed in the Asylum Amendment Act to state: ***asylees and foreign citizens under subsidiary protection shall be helped to learn Croatian language, history and culture for the purpose of integration into Croatian society. Activities from Paragraph 1 of this Article are implemented by the Ministry which is competent on education issues. Asylees and foreign citizens under subsidiary protection are obliged to attend courses in Croatian language, history and culture in which they are enrolled. If they fail to fulfil the obligation from Paragraph 3 of this Article, asylees and foreign citizens under subsidiary protection shall reimburse the costs of the course.***

za osobe koje su ovisne o njoj. Također, države članice dužne su osigurati i zadužiti osobu koja pruža informacije, savjetuje i usmjerava potencijalne tražitelje azila.

Zakon o azilu propisuje da se zahtjev za azil podnosi u Prihvatilištu za tražitelje azila, dok se sama namjera za podnošenje zahtjeva za azil može izraziti prilikom obavljanja granične kontrole na graničnom prijelazu ili u policijskoj upravi, odnosno policijskoj stanici. Osoba koja pruža informacije nije određena, no zadatak Ministarstva unutarnjih poslova jest obavijestiti tražitelja/-icu azila o načinu provođenja postupka za odobrenje azila, o pravima i obvezama koje ima u tom postupku te o mogućnosti dobivanja besplatne pravne pomoći i mogućnosti obraćanja predstavnicima UNHCR-a i drugih organizacija koje se bave zaštitom prava izbjeglica.

Zakon je gotovo potpuno usklađen s Direktivom. Zamjerke se odnose na nedovoljno jasne i precizne formulacije. Također, odgovornosti se daju određenoj instituciji dok se ne propisuje specifična metoda koordinacije i imenovanje osoba odgovornih za istu.

### PRAVO NA OSTANAK U DRŽAVI ČLANICI DO OKONČANJA POSTUPKA

Tražitelji azila imaju pravo boraviti u državi članici u kojoj su podnijeli zahtjev za azil do donošenja konačne odluke. To pravo ne podrazumijeva pravo na dozvolu boravka, a propisane su iznimke u slučajevima kada tražitelje treba predati osobi ili drugoj državi članici, ili na temelju obveza u skladu s europskim uhidbenim propisima ili zbog predavanja međunarodnim kaznenim sudovima. Ova odredba potpuno je usklađena sa Zakonom o azilu. Upozoravamo na problem gdje njome postupak pred Upravnim sudom (do 31. 12. 2011.) dolazi u pitanje, budući da podnošenje tužbe Upravnom sudu nema suspenzivan učinak, odnosno ne odgađa izvršenje rješenja drugostupanjskog tijela i tražitelj azila može biti udaljen s teritorija Republike Hrvatske.

### KRITERIJI ZA ISPITIVANJE ZAHTJEVA

Države članice ne smiju odbaciti ili ne uzeti u razmatranje zahtjev samo zato što nije bio podnesen u najkraćem mogućem periodu. Propisuje se donošenje odluka tek po provedenoj odgovarajućoj istrazi te individualno, objektivno i nepristrano razmatranje zahtjeva od tijela čije je osoblje specijalizirano za pravo azila i educirano upravo u tu svrhu.

Zakon o azilu ne spominje sastav, kompetencije ni način izbora osobe ili sastava koji u prvom stupnju odlučuju o zahtjevu za azil, iako predstavnici Ministarstva unutarnjih poslova tvrde kako su kriteriji jasni. U drugom stupnju u sastavu Povjerenstva nalaze se osobe iz tijela državne uprave, tijela sudbene vlasti, sveučilišni nastavnik te predstavnik nevladine udruge koji se bave promicanjem i zaštitom prava izbjeglica, čime se želi pridonijeti što većim kompetencijama za objektivno i nepristrano razmatranje zahtjeva i donošenje odluka. Smatramo kako bi trebalo još preciznije odrediti kompetencije osoba koje (i u prvom i drugom stupnju) odlučuju o zahtjevima, uzeti u obzir iskustvo koje na ovom području imaju te propisati obvezu kontinuirane edukacije i doškolavanja. Budući da je ova odredba dosta široka, propisi u Hrvatskoj odgovaraju postavljenim zahtjevima, no ipak nije regulirana obveza edukacije i njezin sadržaj, a u svrhu što objektivnijeg i nepristranog razmatranja zahtjeva. Ipak, u praksi se pokazalo da osobe koje u prvom stupnju odlučuju

The practice has at least three problems which it is necessary to point out and solve in more efficient ways. Neither the Act itself nor any particular Ordinance contains a clearer definition of what is understood to be a successful integration and what concrete measures would realize it. Furthermore, a handbook document under the title *Welcome to Croatia – Integration Handbook* designed by the Ministry of Interior Affairs in 2009 mentions an understanding of integration which states that ***an asylee has become accepted in the community, but also that you (*****the asylee*****) has accepted this community***. What this understanding lacks is a sense of the actual two-way nature of this process which moves away from the assimilation model which prescribes that the newcomer is to be exclusively integrated in the host society, without the host country society learning and adopting something from the newcomers themselves. The difficulties of integration itself are testified to by the following example of an asylee's experience.

An asylee: *I came to look for work, I tried everywhere, registered with the Croatian Employment Institute, but there they told me there are no jobs, they have lots of unemployed people and now it's very difficult. Not just for me, but for all of you here. CEI and also on the TV they said that around 250 000 people don't have a job, it's a very serious situation in Croatia, I'ts all young people. I tried to find a job, I didn't find it, I see that they look where you are from. I had the language problem, disability problem and the third problem was where are you from and things are like that. It's difficult. The state does not have a good integration policy to solve this so that people can live according to the proper standards... You've got nothing here, no family, no insurance if anything happens.Time just goes by, I hope everything will be better. It's very difficult to integrate into society here.*

In addition to this, there is the problem that courses in Croatian language are unavailable to those asylum-seekers who, having applied for asylum, remain housed in the Reception Centre for Foreigners at Ježevo. They do not achieve the same realization of the right to learn the language as the asylum seekers at Kutina. Furthermore, a purely practical level of the integration problem relates to the model of learning the Croatian language, in situations in which individual asylees are either not motivated enough to learn the language, or, due to lack of time because of work and other obligations, they fail to attend the course which has so far been only organized in Zagreb. Also, the Ministry of Science has failed to design an efficient and sustainable model of education for children of asylees in elementary and middle schools so that they can have additional lessons about Croatian language, history and culture.

An asylee*: Educationalists and teachers in school are very good, who work there, but the school could not help that way, several times they said they were waiting for a response from the Ministry but that until then we ourselves needed to find someone to work with them. But my problem is because of the work because I can't work with them and another thing I don't understand to read and write Croatian and Latin alphabet. And children need somebody when they come home to help them do their homework, and my wife and I can't do it. This is a problem for the children even now, we asked the Ministry of Interior Affairs if someone can come to work with them one a week when they don't have extra lessons at the school.*

A positive change might be noticeable in the future development of a scheme of involving asylees and persons under subsidiary protection in programmes of language learning

o zahtjevima imaju visoku stručnu spremu pravnog ili društvenog smjera te da prolaze različite edukacije.

Iz intervjua s Gordanom Valentom, pomoćnicom načelnika Uprave za inspekcijske i upravne poslove Ministarstva unutarnjih poslova RH: "Činjenica da je netko potražio zaštitu u drugoj zemlji i da mu je zaštita odbijena nije razlog odbijanja zaštite u Hrvatskoj. Svaki zahtjev razmatra se individualno, okolnosti svakog slučaja i sve te činjenice samo mogu doprinijeti da se donese odluka, ali nije nekakav isključiv razlog da bi se zbog njega automatski zahtjev odbijao i da se ne bi razmatrale okolnosti slučaja."

### JAMSTVA ZA TRAŽITELJE AZILA

Jamstva prije svega podrazumijevaju informacije na jeziku koji tražitelj azila razumije i koje bi trebale biti proslijeđene u razumnom vremenu. Osim toga, Direktiva propisuje i mogućnost komuniciranja s predstavnicima UNHCR-a, upoznavanje s pravnim lijekom u slučaju negativnog rješenja te usluge prevoditelja kako bi se zahtjev za azil mogao podnijeti, ali i u bilo kojoj drugoj fazi postupka, no svakako u slučajevima saslušanja pred ovlaštenim tijelima. Usluge prevoditelja moraju ići na teret države članice. Tražitelji azila, pravno gledano, imaju sva prava propisana Direktivom. Jezik na kojem se postupak vodi svakako mora biti onaj koji tražitelj/-ica razumije, a osim toga, Zakon o azilu navodi da će, u slučajevima u kojima je to važno, prevoditelj/-ica biti istog spola kao i tražitelj/-ica azila. U praksi dolazi do situacija kada se govori samo engleski ili samo hrvatski jezik, što se objašnjava činjenicom da je službeni jezik u postupku hrvatski, pa bi i dokumenti trebali biti na hrvatskom jeziku. Iako je hrvatsko zakonodavstvo gotovo potpuno usklađeno s Direktivom, praksa još uvijek ne slijedi propisane standarde, pa u nekim slučajevima dolazi i do kršenja osnovnih prava tražitelja azila.

### OBVEZE TRAŽITELJA AZILA

Direktiva propisuje suradnju s relevantnim institucijama kako bi se postupak odvijao nesmetano. To podrazumijeva odazivanje na pozive na vrijeme, obavještavanje o promjeni adrese i mjesta prebivališta, ali i promjene neke druge vrste, pristanak na pretraživanje stvari koje tražitelj/-ica ima uza sebe, fotografiranje te usmena ispitivanja. Zakon o azilu vrlo je detaljno, konkretno i taksativno nabrojio obveze tražitelja azila, ali i posljedice koje njihovo kršenje nosi. U ovom su dijelu Direktiva i Zakon potpuno usklađeni.

### OSOBNO SASLUŠANJE I KRITERIJI ZA PROVOĐENJE

Osobno saslušanje jedan je od preduvjeta bez kojeg se odluka ne bi smjela donijeti. Smije biti izostavljeno samo u slučajevima kada se može donijeti pozitivna odluka na temelju postojećih dokaza, kada je tijelo koje odlučuje tražitelju/-ici pomoglo popuniti zahtjev za azil, kada je na temelju kompletne istrage zaključeno da je zahtjev očito neutemeljen te kada saslušanje nije moguće zbog okolnosti koje su izvan tražiteljeve/-ičine kontrole. U navedenim slučajevima, neprovođenje saslušanja ne smije utjecati na donošenje odluke, kao ni na odbacivanje iste. Tijekom saslušanja članovi obitelji trebali bi biti izostavljeni, osim kada tijelo koje donosi odluku to ne smatra nužnim. Osobno saslušanje o zahtjevu podrazumi-

which should be designed to be more motivating, better harmonized with the individual needs of the attendants and able to serve as one of the foundations for the integration of asylees themselves, but also as one of the pre-requisites for the prospective subsequent granting of citizenship. Although an attempt to organize the language learning and education was made in the ***Ordinance about the manner of implementing the programme and tests of knowledge of the asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection, for the purpose of joining the education system of the Republic of Croatia***, as well as in the ***Curriculum of Croatian language, history and culture (for asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection for the purpose of joining the education system of the Republic of Croatia)***[14] not enough was done to solve the problem of providing pre-conditions which would enable the attending students themselves to become involved in the course. As one of the asylees pointed out, the will to attend the course was there but he could not make it because of his job:

An asylee: *I really want to learn to read and write in Latin alphabet and to master Croatian and grammar, but unfortunately I don't have time for it. I tried to go to the CROATICUM course for a month, which was paid by the Ministry of Interior Affairs, but when I went to learn I couldn't do my work shifts so I gave up because of my job which is more important to me because this is how I support me and my family.*

The last paragraph of the Article 50 of the Asylum Act, which states that an asylee or foreign citizen under subsidiary protection who fails to attend the compulsory course shall have to reimburse the costs of the course is certainly restrictive. It does not follow from the Directive, but, in fact, seems like a type of penalization or sanctioning of future cases in which asylees or foreign citizens under subsidiary protection do not fulfil their obligations. However, aside from this being an arbitrary provision in which it is questionable to what extent negative conditioning would motivate the desired behaviour (learning the language), there still remains the issue of how this mechanism will be fulfilled in practice as many of those who will perhaps not have the opportunity to attend and complete the course will also not be able to cover the costs of the course they failed to attend.

**COUNCIL DIRECTIVE** 2005/85/EC OF 1 DECEMBER 2005 ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS, OJ L 326 OF 13 DECEMBER 2005

The Directive concerns third-country nationals or stateless persons who have lodged an asylum appeal, or who have been granted refugee status. Its basic purpose is to limit secondary movements of applicants for asylum between Member States where such movements are caused by unequal and unharmonized rules and regulations in the procedures for granting refugee status in different Member States, and also to increase the quality of decisions about asylum status. The Directive determines procedural guarantees for asylum-seekers and minimal standards which should be respected during the procedure of the decision on the application. Apart from this, the Directive also establishes minimum

14 THE ORDINANCE IS AIMED AT CHILDREN OF UP TO 15 YEARS OF AGE.

jeva povjerljivost, kompetencije osobe koja ga vodi, poput kulturološke osjetljivosti, svijest o okolnostima pod kojima se saslušanje odvija te mogućnost sudjelovanja treće strane.

Članak 54. Zakona o azilu kojim se regulira ovo pitanje samo je djelomično usklađen s Direktivom. Zakon o azilu dodaje mogućnost da voditelj postupka i tražitelj budu istog spola te da Ministarstvo unutarnjih poslova može, radi utvrđivanja činjeničnog stanja, tražitelja azila saslušati više puta. Osim toga, u Hrvatskoj se javlja i pozitivna praksa, odnosno praksa koja nije propisana Direktivom, a ide u prilog tražiteljima, a to je saslušanje tražitelja azila pred drugostupanjskim tijelom. S druge strane, dio o okolnostima u kojima se provodi saslušanje, kao i kompetencije osobe koja vodi saslušanje, u Zakonu nisu regulirane, iako u postupku analize nisu zamijećene okolnosti koje bi nepovoljno utjecale na tražitelje azila.

### STATUS ZAPISNIKA NAKON SASLUŠANJA TIJEKOM PROCEDURE

Države članice trebaju osigurati vođenje zapisnika tijekom svakog saslušanja te ga učiniti dostupnim za tražitelje u slučaju žalbenog postupka. Zapisnik treba potvrditi saslušana stranka. Ako ga odbije potvrditi, u zapisnik treba unijeti razlog, no to ne smije biti uzrok odbacivanja zahtjeva. Zakon o azilu propisuje da se tijekom saslušanja vodi zapisnik, a ako je saslušanje tonski snimano, tražitelj/-ica azila tijekom preslušavanja može unijeti svoje ispravke i kraće dopune u transkript tonskog zapisa.

Tražitelj azila: *"Na prvom intervjuu nije bilo HPC-a*[16] *jer su imali neke druge obveze pa su otkazali, i u zapisniku tog intervju bilo je puno grešaka. Kada sam se žalio na to, rekli su mi da sam ispravim. Na zapisnik sam se potpisao jer su vršili pritisak, a moj ispravak je kod odvjetnika."*

Goranka Lalić, Hrvatski pravni centar: *"HPC je uključen u program tražitelja azila od 2003. kao partner UNHCR-a u pružanju besplatne pravne pomoći tražiteljima azila. Do donošenja zakona o azilu, prvog i drugog stupnja, pružali smo besplatnu pravnu pomoć i u tom smo razdoblju surađivali sa više od 90% tražitelja azila. Osim pravne pomoći bavili smo se i s drugim dijelovima izgradnje sustava azila, s obzirom da je 2003. cijeli sustav bio tek u razvoju."*

### PRAVO NA PRAVNU POMOĆ (OPSEG I ZASTUPANJE)

Direktiva propisuje mogućnost konzultiranja s pravnim/-om savjetnikom/-icom na tražiteljev/-ičin trošak. Besplatna pravna pomoć i zastupanje podrazumijeva se u slučaju negativnog rješenja, a države članice mogu je regulirati na različite načine: samo pred sudom; samo za tražitelje koji ne posjeduju dovoljno sredstava; samo ako su pružatelji one ovlaštene osobe koje su određene nacionalnim zakonodavstvom te samo ako žalba ima velike izglede da će uspjeti. Države članice i na druge načine mogu urediti to pravo te naknadu za pravne savjetnike, ali jednako tako mogu zahtijevati povrat sredstava od tražitelja u slučajevima kada se njihova financijska situacija uvelike poboljšala ili kada se to pravo temeljilo na lažnim informacijama. Pravni savjetnik i zastupnik imaju pravo na pristup informacijama koje su prikupljene u slučaju određenog tražitelja/-ice azila kojeg/koju zastupaju, a koje

16 PREMA ZAKONU O AZILU, HRVATSKI PRAVNI CENTAR (HPC) PRUŽA BESPLATNU PRAVNU POMOĆ TRAŽITELJIMA AZILA.

standards for some particular cases such as inadmissible applications, a safe third country, unfounded applications, a safe country of origin, subsequent applications and the procedure for the withdrawal of refugee status.

### *PROCEDURAL GUARANTEES FOR ASYLUM-SEEKERS*

#### *ACCESS TO THE PROCEDURE*

Member States designate a place at which asylum applications shall be made in person. Application can be made by an adult person independently for him or herself, but also on behalf of his or her dependents, and by a minor or an unaccompanied minor. In addition, Member States shall ensure that there is a person who is in charge of providing information, advice and guidance to potential asylum seekers.

The Asylum Act prescribes that asylum application shall be lodged in the Reception Centre for Foreign Citizens, while the intention to lodge an asylum application can be expressed during border control at a border crossing, or at a Police Administration Building or Police Station. With regard to the person responsible for providing information, that role is not concretely determined, but the Ministry of Interior Affairs is responsible for informing asylum-seekers about the procedure of asylum granting, and about the rights and responsibilities he or she has in this procedure, and also about the possibility of obtaining free legal assistance and the possibility of approaching the representatives of UNHCR and other organizations that deal with the protection of refugees' rights.

The Act is almost completely harmonized with the Directive. Negative comments concern instances of phrasing which are not clear and precise enough. Also, the Act places responsibility on particular institutions but without prescribing a specific method of co-ordination or indicating which persons might be responsible for it.

#### *RIGHT TO REMAIN IN THE MEMBER STATE UNTIL THE PROCEDURE HAS ENDED*

Asylum-seekers have the right to remain in the Member State in which they lodged the asylum application, until the final decision has been made. This right does not constitute an entitlement to a residence permit, and the Directive prescribes exceptions in which asylees have to be surrendered or extradited to another Member State, or pursuant to obligations in accordance with a European arrest warrant, or to international criminal courts or tribunals. This provision is harmonized with the Asylum Act verbatim. We warn about a problem: that the this provision is incompatible with procedure before the Administrative Court (until 31 December 2011), because a complaint to the Administrative Court does not postpone the implementation of the decision of a court of appeal, and the asylum-seeker can thus be removed from the territory of the Republic of Croatia.

#### *CRITERIA FOR THE EXAMINATION OF APPLICATIONS*

Member States shall not reject applications nor exclude them from examination on the sole ground that they have not been made as soon as possible. The Directive prescribes

su relevantne za slučaj. Pristup se može zabraniti u slučajevima ugrožavanja nacionalne sigurnosti, sigurnosti tražitelja azila ili sigurnosti osobe ili organizacije koja ih je provjerila. Pravni savjetnici i zastupnici imaju pravo pristupa tražiteljima u institucijama kao što su detencijski centri. Za potrebe rada te na poziv stranke imaju pravo biti prisutni tijekom osobnih saslušanja.

Besplatna pravna pomoć prema Zakonu o azilu uključuje pomoć u sastavljanju tužbe i zastupanje pred Upravnim sudom, a pravo na nju ima tražitelj/-ica azila koji/koja ne posjeduje dostatna sredstva ili imovinu veće vrijednosti. Odluku o tome hoće li tražitelj/-ica azila snositi troškove donosi Ustavni sud u rješenju kojim odlučuje o žalbi. U praksi odvjetnici mogu biti suzdržani u prihvaćanju tih slučajeva jer sve do okončanja postupka ne znaju hoće li biti plaćeni.

Iako je ovdje Zakon o azilu usvojio preporuke iz Direktive, problematično je što tražitelji azila snose troškove za "besplatnu" pravnu pomoć, a odvjetnici i pravnici ne mogu biti sigurni da će biti isplaćeni. Osim toga, iako zakonski uređeno, u praksi se javlja i problem suradnje s odvjetnicima pri dobivanju potpune dokumentacije o tražiteljevom/-ičinom slučaju.

### JAMSTVA ZA MALOLJETNIKE BEZ PRATNJE

Obvezno je što prije odrediti zastupnika/-icu za maloljetnika/-icu koji će s njim/njom prolaziti i pomoći mu/joj tijekom postupka i osigurati da maloljetnika/-icu upozna, pripremi i informira o svemu vezanom uz postupak. Tijekom saslušanja države mogu tražiti da uz zastupnika/-icu bude nazočan i maloljetnik/-ica. Zastupnik/-ica se ne mora odrediti kada je vjerojatno da će maloljetnik/-ica postati punoljetan/-na prije donošenja prvostupanjske odluke, ako si može priuštiti pravnog/-nu savjetnika/-icu, ako je (bio/bila) u braku ili ako ima 16 ili više godina. Saslušanje i pripremu odluke treba obavljati osoba koja posjeduje potrebna znanja za rad s maloljetnicima. Kako bi se provjerila dob, države članice mogu obavljati medicinske preglede, pod uvjetom da je maloljetnik/-ica upoznat/-a s procedurama te uzimajući u obzir interes djeteta.

Zakon o azilu, sa Zakonom o izmjenama i dopunama Zakona o azilu, djelomično je usklađen s Direktivom. Zakon propisuje da se zahtjev za azil maloljetnika bez pratnje rješava u najkraćem mogućem roku, no ne propisuje ništa o načinima i okolnostima utvrđivanja dobi maloljetnika, iako se u praksi putem različitih medicinskih metoda to radi.

### DETENCIJA

Tražitelj/-ica azila ne može biti smješten/-a u detencijskom centru samo zato što je tražitelj/-ica, a ako je zatvoren/-a, država treba osigurati mogućnost ubrzane procedure. Zakon o strancima propisuje da **"stranac koji zatraži azil ili supsidijarnu zaštitu nakon što mu je određen smještaj u Centru, ostaje u Centru do isteka roka na koji mu je smještaj određen, odnosno do odobrenja statusa azilanta ili supsidijarne zaštite"**, čime odstupa od standarda propisanih Direktivom i pretpostavlja tražiteljevu/-činu zlouporabu sustava. Također, ne propisuje se ubrzana procedura, već mogućnost produženja boravka. U praksi to znači

that decisions shall be made only after an appropriate examination, and that applications shall be examined individually, objectively and impartially by the authority whose personnel specializes in the right to asylum and is educated for that purpose.

The Asylum Act does not mention the composition of the body, the competencies nor how to choose a person or the body responsible for the decisions at first instance about asylum applications, although the representatives of the Ministry of Interior Affairs claim that the criteria are clear. In second instance, the Commission consists of persons from state administration bodies, court authorities, a university professor and a representative of a non-governmental organization engaged in the promotion and protection of refugees' rights, behind which lies the desire to contribute to an objective and impartial examination of applications and decision making by a more broadly competent authority. We consider that the law should determine more precisely the competencies of persons who (at first and second instance) take decisions about the applications, taking into account the experience they have in this area, and prescribe an obligation to continuous education and training for these decision-makers. Since this provision is rather general, Croatian rules and regulations correspond to the outlined requirements, however, the obligation to education for decision-makers and what it should consist of – in order to fulfil the purpose of more objective and impartial examination of applications – has not been regulated. Nevertheless, practice has shown that persons who make decisions at first instance have a university degree in law or social sciences and that they take part in various training and education sessions.

Interview with Gordana Valenta, assistant head of the Office of Inspections and Administrative Affairs of the Ministry of Interior Affairs of the Republic of Croatia: *The fact that somebody requested protection in another country and that it was refused is not a reason to refuse protection in the Republic of Croatia. Every application is assessed individually; the circumstances of each case and all these facts can only contribute to the making of the decision, rather than being some exclusive reason why an application would automatically be refused and why circumstances of the case would not be considered.*

#### *GUARANTEES FOR APPLICANTS FOR ASYLUM*

Guarantees primarily refer to information in a language the applicant for asylum understands and which shall be provided within a reasonable period of time. Aside from this, the Directive prescribes the applicant shall have the opportunity to communicate with UNHCR representatives, the option of legal remedy in the case of a negative decision, and the service of an interpreter so that the asylum application can be lodged, but also in any other phase of the procedure, in particular during interviews with the competent authorities. The interpreter's services shall be paid for out of the public funds of the Member State. Legally speaking, applicants for asylum have all the rights prescribed by the Directive. The language in which the procedure is carried out certainly has to be one which the applicant understands, and, aside from that, the Asylum Act states that in cases in which it matters, the interpreter shall be of the same gender as the asylum-seeker. In practice, there are situations when only English or Croatian are used, which is then explained by the fact that Croatian is the official language of the procedure so therefore documents should be

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da se rješenje o tome premješta li se tražitelj/-ica azila u otvoreni tip ustanove (jer im sloboda kretanja treba biti osigurana) ili ne – donosi diskrecijskom odlukom Ministarstva unutarnjih poslova.

Budući da ovaj dio nije reguliran Zakonom o azilu, već Zakonom o strancima te da je vrlo restriktivan, smatramo kako bi bilo potrebno prvenstveno tumačiti Zakon o azilu te minimalne i međunarodne standarde kojima se vrlo jasno kaže kako se tražiteljima koji nisu počinili određena kaznena ili prekršajna djela sloboda kretanja ne bi smjela ograničiti.

Intervju s Josipom Paradžikom, Odjel za nezakonite migracije u Upravi za granice:
*"Ako i dva dana prije vraćanja podnesu zahtjev, njihovo će se vraćanje odgoditi, a postupak po zahtjevu za priznavanje azila će se provesti. U tom slučaju, između ostalih okolnosti, procjenjuje se i koliko je podneseni zahtjev stvarno utemeljen na činjenicama, ima li osnove da se o njemu odlučuje u redovitom postupku, koliko bi njegov daljnji smještaj u Centru imao utjecaja na rješavanje zahtjeva, slijedom čega se odlučuje o eventualnom otpustu iz Centra i smještaju i Prihvatilište za tražitelje azila u Kutini. Ako nema osnove za premještaj, stranac ostaje u Prihvatnom centru do donošenja odluke po zahtjevu. Nije dakle riječ o pritvaranju tražitelja azila, nego se radi o pritvaranju stranca koji je u nekoj fazi readmisijskog postupka ili postupka vraćanja općenito postao tražitelj azila. Bez obzira na vrijeme, mjesto i način podnošenja zahtjeva, prava podnositelja zahtjeva ni na koji način se ne umanjuju niti se podnositelju zahtjeva uskraćuje bilo koji dio postupka."*

### POSTUPAK U SLUČAJU ODUSTAJANJA I ODBACIVANJA ZAHTJEVA

U slučaju odustajanja od zahtjeva države članice mogu odlučiti hoće li prekinuti ispitivanje ili odbaciti zahtjev. Smatrat će se da je tražitelj odustao od zahtjeva u sljedećim slučajevima: ako nije odgovorio na zahtjeve za dostavu informacija potrebnih za tijek slučaja, osim ako je u razumnom vremenu dokazao da nije on odgovoran za kašnjenje, te ako je bez obavijesti napustio mjesto prebivanja ili u razumnom vremenu odgovarao na obveze u komunikaciji s tijelima koja donose odluku. Države su slobodne same donijeti rokove unutar kojih se te aktivnosti trebaju dogoditi i nakon kojih se slučaj više neće moći obnoviti. U prethodno navedenim slučajevima Zakon o azilu upotrebljava termin *obustava postupka* te, slijedeći preporuke Direktive, uređuje mogućnost žalbe i eventualna povratka u prijašnje stanje te rokove za žalbu, ali i za mogućnost obnavljanja postupka.

### ULOGA UNHCR-A

Predstavnici UNHCR-a imaju pravo na pristup tražiteljima azila (uključujući i one u tranzitnim zonama i detencijskim centrima), pristup informacijama i individualnim zahtjevima za azil, kao i donesenim odlukama, te pravo na prezentaciju svojih stajališta u svakom pojedinom slučaju. I u ovom dijelu Zakon je potpuno usklađen s Direktivom. Osim toga, u nekim slučajevima Zakon propisuje i više od minimuma te uz UNHCR propisuje ista prava i za druge organizacije koje se bave pravima izbjeglica i ljudskim pravima, iako se to pravo u praksi do sada nije primjenjivalo u većem opsegu.

in Croatian.Although Croatian legislation is almost completely harmonized with the Directive, the prescribed standards are still not being followed in practice and there are cases of the breaking of basic rights of asylum-seekers.

#### *OBLIGATIONS OF THE APPLICANTS FOR ASYLUM*

The directive prescribes that applicants shall co-operate with the competent institutions so that the procedure is not disrupted. This refers to prompt response to the authorities, provision of information about change of residence and address, or other types of change, consent to be searched, photographed and interviewed. The Asylum Act lists the obligations of the applicants for asylum in general, concretely and in much detail, and it does the same for the consequences of disobedience. In this part, the Act and the Directive are completely harmonized.

#### *PERSONAL INTERVIEW AND ITS CRITERIA*

Personal interview is one of the pre-conditions without which no decision should be taken. Personal interview may be omitted only where the determining authority is able to take a positive decision on the basis of available evidence, where the determining authority is assisting the applicant with his or her asylum application, where, on the basis of a complete examination of information, it has been decided that the application is unfounded, and where the personal interview is not possible due to circumstances beyond the applicant's control.

In the above mentioned cases, the absence of the interview shall not affect the taking of the decision nor determine a rejection. Interviews should be normally held without the presence of family members unless the determining authority considers it necessary. The personal interview about the application requires confidentiality, and sufficient competence of the person conducting it, including cultural sensitivity and that he or she is aware of the circumstances under which the interview is conducted, as well as the possibility of the participation of a third party.

Article 54 of the Asylum Act which regulates this issue is only partially harmonized with the Directive. The Asylum Act adds the possibility that the person conducting the interview and the applicant may be of the same gender, and that the Ministry of Interior Affairs can, in order to establish facts, interview the applicant more than once. Apart from this, another example of positive practice exists in Croatia, i.e. a practice not prescribed by the Directive but advantageous for the applicants, namely the hearing of the applicant before a second-instance judicial authority. On the other hand, the unregulated parts of the Act concern the circumstances under which the interview is conducted, as well as the competencies of the person conducting it. However, our analysis has not observed any circumstances which would have adverse consequences for asylum applicants.

#### *STATUS OF THE REPORT OF A PERSONAL INTERVIEW IN THE PROCEDURE*

Member States shall ensure that a written report is made of every personal interview and make it available to the applicant in case of appeal. The report should be approved by the

## PRIKUPLJANJE INFORMACIJA

Za potrebe pojedinog slučaja države članice ne smiju izravno otkrivati podatke, ni činjenicu da je određeni zahtjev podnesen mogućim sudionicima progona, kao niti prikupljati podatke od sudionika progona kojima bi sigurnost i integritet tražitelja i njegove obitelji bila ugrožena. U Republici Hrvatskoj osobni i drugi podaci prikupljeni tijekom postupka azila predstavljaju službenu tajnu i neće se dostaviti zemlji podrijetla tražitelja azila ili drugim tijelima koja ne sudjeluju u postupku. U skladu s principom tajnosti i zaštite identiteta i sigurnosti tražitelja azila Zakon o azilu uređuje pravila prilikom prikupljanja podataka: osobni i drugi podaci prikupljeni tijekom postupka azila predstavljaju službenu tajnu i neće se dostaviti zemlji podrijetla tražitelja azila ili drugim tijelima koja ne sudjeluju u postupku.

## PRVOSTUPANJSKI POSTUPAK

Istražna procedura treba biti u skladu sa svim navedenim principima i jamstvima te završena u najkraćem mogućem periodu dovoljnom za adekvatnu i kompletnu istragu. Ako procedura potraje dulje od šest mjeseci, država je dužna ili obavijestiti tražitelja o produženju ili na njegov zahtjev reći, iako ne obvezno, u kojem će se vremenskom okviru odluka donijeti. Države članice mogu ubrzati ili dati prioritet bilo kojoj istrazi u skladu s jamstvima, a posebno ako je očito utemeljen zahtjev ili tražitelj ima posebne potrebe. Osim toga, procedura se može ubrzati ako je tražitelj azila iznio samo informacije koje nisu važne ili su od minimalne važnosti za ishod postupka; ako tražitelj očito ne zadovoljava kriterije izbjeglice; ako je zahtjev neutemeljen zbog toga što tražitelj dolazi iz sigurne zemlje podrijetla ili iz treće sigurne zemlje; ako je tražitelj dao lažne informacije ili dokumente ili je odbio dati bitne informacije ili dokumente; ako je uništio isprave za utvrđivanje identiteta i/ili državljanstva; ako je tražitelj/-ica azila zatajio/-la da je prije podnio/podnijela zahtjev za azil navodeći druge osobne podatke; ako je tražitelj/-ica azila iznio/iznijela nedosljedne, kontradiktorne, nemoguće ili nedovoljne činjenice koje zahtjev čine neuvjerljivim; ako tražitelj/-ica azila podnese novi zahtjev u kojem ne iznese nove relevantne činjenice; ako tražitelj/-ica azila već duže boravi na određenom području i bez opravdanog razloga nije prije podnio/podnijela zahtjev; ako tražitelj/-ica azila podnese zahtjev kako bi očito odgodio/-la ili spriječio/-la izvršenje odluke koja bi za posljedicu imala njegovo/njezino udaljenje; ako tražitelj/-ica predstavlja opasnost za nacionalnu sigurnost i dr.

Zakon o azilu taksativno nabraja gotovo sve razloge koji su navedeni u Direktivi na temelju kojih se može provesti ubrzani postupak. Problematično je samo što se u nekim točkama kreće iz perspektive tražiteljeve/-ičine zlouporabe sustava, a njihovo je dokazivanje gotovo nemoguće i tijekom postupka ovise o diskrecijskoj odluci, npr. **"tražitelj azila podnese zahtjev s očitom namjerom da odgodi ili spriječi izvršenje odluke koja bi imala za posljedicu njegovo udaljenje iz Republike Hrvatske."** U Hrvatskoj je broj zahtjeva koji se provode po ubrzanoj proceduri dosta nizak.

## NEPRIHVATLJIVI ZAHTJEVI

Neprihvatljivima se mogu smatrati zahtjevi u sljedećim slučajevima: kad je status dodijelila druga zemlja članica; kad se zemlja koja nije članica smatra prvom zemljom azila ili trećom sigurnom zemljom; kad je tražitelju/-ici odobren neki drugi status ekvivalentan

applicant, and where he or she refuses to approve it, the reasons for this refusal shall be entered into the file. The refusal to approve shall not prevent the examination of the application. The Asylum Act prescribes that a report is made during the interview, while in the cases in which the interview was recorded; the asylum applicant may add his or her corrections and short additions to the sound recording.

An asylum-seeker: *In my first interview there was no CLC*[15] *because they had some other obligations so they cancelled, and in the report of that interview there were lots of errors. When I complained about it, they told me to correct it myself. I signed the minutes because they were pressurizing me, and my correction is with my advocate.*
Goranka Lalić, Croatian Law Centre: *CLS has been involved in the asylum-seekers programme since 2003 as a partner of UNHCR in providing free legal assistance to asylum-seekers. Until the adoption of the Asylum Act, its first and second instance, we provided free legal assistance and in this period we co-operated with more than 90% of asylum-seekers. Apart from legal assistance, we dealt with other parts of the development of asylum-system, since in 2003 the whole system was only being developed.*

### *RIGHT TO, AND SCOPE OF, LEGAL ASSISTANCE AND REPRESENTATION*

The Directive prescribes that the applicants may consult a legal adviser at his or her own expense. Free legal assistance and representation is assured in the event of a negative decision, and Member States may regulate this provision in different ways: only for procedures before a court or tribunal; only for applicants who lack sufficient resources; only to legal advisers designated by national law; only if the appeal is likely to succeed. Member States may regulate this right and reimbursement to legal advisers in other ways. Equally so, they can demand to be reimbursed if and when the applicant's financial situation has improved considerably or if the exercise of this right was based on false information. The legal advisor and representative shall have access to such information, in the file of the applicant they represent, as is relevant to the case under examination. Access may be denied in cases in which the disclosure of information would jeopardize national security, the security of the applicant, or the security of the person(s) or organizations providing the information. Legal advisers and representatives shall have access to closed areas, such as detention facilities, for the purpose of consulting the applicant and shall be present during personal interviews when invited by the applicant.

According to the Asylum Act, free legal assistance includes assistance with the making of an appeal and representation before the Administrative Court, and is provided for those applicants who do not have sufficient financial means or highly valuable objects. The decision about whether or not the applicant will be charged for costs shall be taken by the Constitutional Court within its judgement about the appeal. In practice, this creates uncertainty for legal experts because from the time when they agree to represent an applicant until the end of the procedure they do not know whether they will be paid.

Although in this instance the Asylum Act adopted the recommendations from the Directive, the option in which asylum applicants are charged for 'free' legal assistance repre-

15 ACCORDING TO THE ASYLUM ACT, THE CROATIAN LAW CENTRE (CLC) PROVIDES FREE LEGAL ASSISTANCE TO ASYLUM-SEEKERS.

po pravima i povlasticama; kad je tražitelju/-ici dopušteno da ostane na teritoriju države članice na nekoj drugoj osnovi koja ga/je štiti od protjerivanja do ishoda postupka; kad je tražitelj/-ica podnio/podnijela isti zahtjev nakon konačne odluke; kad je u toj zemlji bio/bila prepoznat/-a kao izbjeglica i još uvijek u njoj može dobiti zaštitu ili na neki drugi način uživa dovoljno zaštite u toj zemlji, uključujući poštovanje *non-refoulement* principa. Zakon o azilu ne prepoznaje ovo kao zaseban koncept, već navedene razloge provlači kroz neke druge odredbe, tako da su neki od njih temelj za obustavu postupka, neki za očito neutemeljen zahtjev, a neki za odbacivanje zahtjeva.

Razlika između Direktive i Zakona o azilu jest u tome što Zakon o azilu detaljnije razrađuje situacije u kojima postupa prema zahtjevu, odnosno u kojima smatra da je zahtjev nepodoban za dodjeljivanje statusa izbjeglice. Ta se detaljnija analiza provodi stupnjevito, prema težini i ozbiljnosti razloga iz kojih se zahtjev ne smatra istinitim i iskrenim, ali stupnjevite su i različite posljedice i mogućnosti u svakom pojedinom pravnom institutu.

### PRVA ZEMLJA AZILA

Zemlja se može smatrati prvom zemljom azila za određenog/-enu tražitelja/-icu ako je on/ona u toj zemlji prepoznat/-a kao izbjeglica i ako u njoj dobiva zaštitu ili na neki drugi način uživa dovoljan stupanj zaštite, uključujući zaštitu od *non-refoulementa*. Ovaj termin nije prepoznat u Općim odredbama Zakona o azilu, djelomično zbog specifičnog konteksta te odredbe unutar Europske unije, a djelomično zato što je zastupljen u članku 60.: **"Zahtjev za azil odbacit će se zaključkom ako je: 1. tražitelju azila odobren azil ili slična zaštita u drugoj državi, uključujući i povlastice koje proizlaze iz poštivanja načela iz članka 3. ovoga Zakona, pod uvjetom da će biti ponovo prihvaćen u toj državi."**

### SIGURNA TREĆA ZEMLJA, SIGURNA ZEMLJA PODRIJETLA

Da bi se neka zemlja smatrala sigurnom, život i sloboda ne smiju biti ugroženi, treba se poštovati *non-refoulement* princip, postojati mogućnost dobivanja izbjegličkog statusa te mora biti propisana zabrana udaljenja i zajamčena sloboda od mučenja i nečovječnog postupanja. Propisuje se čitav niz pravila kojima se uređuje kada će se primijeniti ovaj koncept na pojedinog tražitelja, kao i procedura određivanja koje su to sigurne treće zemlje.

Sigurna je zemlja podrijetla ona čije državljanstvo ima tražitelj/-ica azila ili ako je tražitelj/-ica apatrid koji ima posljednje uobičajeno prebivalište u toj zemlji, a nije prijavio ništa na temelju čega se ta zemlja ne bi smatrala sigurnom. Zakon o azilu prepoznaje ove koncepte u gotovo istom sadržaju, razlike su neznatne i odnose se na naglašavanje sigurnosti i zaštite tražitelja. U ovom dijelu Zakon je u potpunosti napisan kako bi se prilagodio ulasku u EU i novim institucijama i tijelima koji će tada biti relevantni; npr., popis trećih sigurnih zemalja koji vrijedi u EU vrijedi i u RH.

Kao i na razini Direktive, tako i Zakon o azilu nema uspostavljenih mehanizama kojima bi se nadziralo slanje tražitelja azila u neke od ovih zemalja jer su sami koncepti rizični zbog mogućnosti stvaranja efekta lančanog vraćanja tražitelja u zemlje sa sve nižom razinom zaštite i sigurnosti. Koncept sigurne zemlje podrijetla problematičan je iz dva razloga. Prvi

sents a problem, and develops insecurity in the legal advisers about their final payment. In addition, although the law prescribes that an advisor should have access to the applicant's file in full, there are still problems with implementing this in practice.

### *GUARANTEES FOR ACCOMPANIED MINORS*

It is necessary to designate a representative to a minor as soon as possible to assist him or her with the application procedure. It shall also be ensured that the advisor can get to know the minor, and to prepare and inform him or her about everything relating to the procedure. During the interview, Member States may require the presence of the unaccompanied minor even if the representative is present. Member States may refrain from appointing a representative in cases in which the unaccompanied minor will in all likelihood reach the age of maturity before a decision at first instance is taken, if he or she can afford a legal advisor, if he is married or has been married, or if he or she is 16 or older. The interview and the preparation of the decision should be conducted by a person who has the necessary knowledge of the special needs of minors. Members States may use medical examinations in order to determine the age of unaccompanied minors but under the condition that the minor is informed about the procedure and the best interests of the child are taken into account.

The Asylum Act and the Asylum Amendment Act are partially harmonized with the Directive. The Act prescribes that the asylum application of an unaccompanied minor shall be examined in the shortest period possible, but it does not prescribe the manner and circumstances in which a minor's age may be determined, although in practice it has been done with different medical examinations.

### *DETENTION*

Asylum applicants shall not be housed in a detention facility for the sole reason that he or she is an applicant. If he or she is held in detention, Member States shall ensure that there is a possibility of speedy judicial review. The Foreigners Act prescribes that a ***foreign citizen seeking asylum or subsidiary protection after he or she was housed at the Centre shall stay in the Centre until the end of his or her period of stay or until the granting of asylum status or the status of subsidiary protection***, in which it diverges from the standards prescribed by the Directive and allows for abuse of the system by the applicant. In addition, it does not prescribe a speedy procedure but the possibility of an extended stay. In practice this means that the decision about whether or not the applicant shall be relocated to an open-type facility (because they are entitled to freedom of movement) is taken discretionally by the Ministry of the Interior Affairs.

Because this aspect is not regulated by the Asylum Act but by the Foreigners Act, and because it is very restrictive, we are of the opinion that it is necessary primarily to explain the Asylum Act and minimum international standards which clearly state that applicants who have not committed crime nor broken the law in any way should not have their freedom of movement restricted.

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je kontradikcija sa svrhom azila i poštovanjem tog ljudskog prava, odnosno određivanje individualne potrebe zaštite tražitelja azila neovisno iz koje zemlje dolaze, dok je teret dokazivanja potrebe za azilom određenog tražitelja drugi razlog.

### PONOVLJENI ZAHTJEVI

Ako tražitelj ponovno podnese zahtjev za azilom, država istragu može voditi po istim elementima kao i za prethodni ili na temelju konačne odluke žalbenog tijela. U slučajevima kada je zahtjev podnesen nakon što je prethodni bio povučen ili kada je finalna odluka donesena, provodi se preliminarna istraga u kojoj se nastoje otkriti novi elementi značajni za ishod istrage. Da bi se provela preliminarna istraga, može se propisati sljedeće: tražitelj je dužan ponuditi činjenice i dokaze kojima opravdava pokretanje nove procedure, a procedura se može pokrenuti i samo na temelju pisanog podneska. Ako je postupak azila obustavljen, a stranac podnese novi zahtjev za azil, u novom će se postupku koristiti i činjenicama, odnosno okolnostima utvrđenima u obustavljenom postupku, što propisuje Zakon o azilu. Razlika u dva propisa jest ta što Zakon o strancima nigdje ne spominje preliminarnu istragu, ali ni potrebu za podnošenjem novih i bitnih dokaza kako bi se postupak ponovo pokrenuo. Osim toga, ne postoji ograničenje u broju podnesenih zahtjeva.

### PROCEDURE NA GRANICI

Države članice mogu odlučivati o zahtjevima na granici ili u tranzitnim zonama, ako su zahtjevi ondje podneseni, ali također mogu tražitelju/-ici azila dopustiti ulazak na svoj teritorij. U tom slučaju tražitelj/-ica mora biti informiran/-a o svojim pravima i obvezama, imati dostupne usluge prevoditelja i pravnog savjetnika, biti saslušan/-a te kad je riječ o maloljetniku bez pratnje mora imati zakonskog zastupnika. Ako se ulazak ne odobri, rješenje mora sadržavati objašnjenje takve odluke. Zadržavanje na granici ili tranzitnim zonama ne smije trajati duže od četiri tjedna, a ako odluka nije donesena u tom vremenu, tražitelju/-ici se treba dopustiti ulazak na teritorij. Zakon o azilu potpuno je usklađen s propisima iz Direktive. Praksa je pokazala kako nema ograničenja i utjecaja na sam postupak kad netko u Prihvatilište za tražitelje azila dođe osobno i zatraži azil ili to učini prilikom prelaska granice pa je upućen ili dovezen u Prihvatilište, što se češće događa, prema podacima iz Ministarstva unutarnjih poslova.

### UKIDANJE IZBJEGLIČKOG STATUSA

Države članice mogu osigurati reviziju statusa izbjeglice ako se pojave nove okolnosti koje dovode u pitanje opravdanost statusa. U slučaju ukidanja statusa Zakonom se propisuje cijeli niz prava koja izbjeglica ima, kao i pravila kojih se tijela koja odlučuju trebaju pridržavati kako ne bi došlo do zlouporabe. Zakon o azilu propisuje prestanak i poništenje izbjegličkog statusa. Razlika je u okolnostima koje prethode jednom od ta dva slučaja. U prvome je riječ o okončanju okolnosti koje su bile razlogom dobivanja statusa, dok je u drugome riječ o okolnostima koje je sam tražitelj/-ica azila/izbjeglica uzrokovao/-la i time prekršio/-la zakon te je nužno da snosi posljedice. No prije poništenja ili prestanka azila, mjerodavno će tijelo upoznati azilanta/-icu s razlozima za poništenje te mu/joj omogućiti da se usmeno ili pismeno izjasni o tome zašto azil ne bi trebalo poništiti.

Interview with Josip Paradžik, Department for Irregular Migration of the Border Administration: *If they lodge the appeal up to two days before their return, their return will be postponed, and the asylum application shall be processed. In this case, amongst other circumstances, it is assessed whether the lodged application is founded on facts and how well-founded it is, is there any reason for it to be examined in a regular procedure, how their further accommodation in the Centre would affect the decision about the application, and based on that it is decided whether they may be discharged from the Centre and housed at the Reception Centre for Asylum-Seekers at Kutina. If there is no reason for their relocation, the foreign citizens remain in the Centre until the decision about their application has been taken. So, this does not represent detention of an asylum-seeker but detention of a foreign citizen who, while at some stage of his or her re-admission or return procedure, became an asylum-seeker. Irrelevant of the time, place and manner of the lodging of the application, the rights of the applicants are not in any way restricted not are the applicants denied any part of the procedure.*

### *PROCEDURE IN CASE OF THE WITHDRAWAL OR ABANDONMENT OF THE APPLICATION*

When an application has been withdrawn or abandoned, Member States may decide either to discontinue the examination of the application or to reject it. It shall be assumed that the applicant has withdrawn or abandoned his or her application in the following cases: where he or she has failed to respond to requests to provide information essential to his or her application, unless the applicant demonstrates within a reasonable time that the delay was due to circumstances beyond his or her control, and where the applicant has left without authorization the place of residence, or he or she has not within a reasonable time complied with reporting and communication responsibilities with the competent authority. Member States are free to lay down time-limits within which these actions shall take place and after which the case can no longer be re-opened. In the above mentioned cases, the Asylum Act uses the term ***suspension of procedure*** and following the recommendations of the Directive, it lays down the possibility of appeal and potential return to a previous stage, as well as the possibility of renewing the procedure.

### *THE ROLE OF UNHCR*

Representatives of UNHCR are entitled to access to asylum-seekers (including those in detention and in transit zones), access to information on individual asylum applications, as well as on the decisions taken, and to present its views in each individual case. In this section, the Act is also completely harmonized with the Directive. Aside from this, in some instances, it surpasses the minimum standards and prescribes equal rights not only to UNHCR but to other organizations dealing with refugees' rights and human rights. However, to date, these rights have not been used frequently in practice.

### *COLLECTION OF INFORMATION*

For the purposes of examining individual cases, Member States shall not directly disclose information nor the fact that an application has been made to the alleged actors of persecution, and shall not obtain information from the alleged actors of persecution which would jeopardize the security and integrity of the applicant and his or her dependants. In

Pravo na učinkovit pravni lijek obavezno je prije nego što sud donese konačnu odluku, a vrijedi za slučajeve neprihvatljivih zahtjeva, zahtjeva podnesenih na granici i tranzitnim zonama, odluka o neponavljanju istrage kod naknadnih zahtjeva, odluke o zabrani ulaska, odluke o ukidanju statusa. Osim toga, na svakoj je državi da odluči hoće li pravni lijek imati suzpenzivan učinak na prethodno donesene odluke o napuštanju vlastitog teritorija ili ne. Hrvatsko zakonodavstvo do 31. 12. 2011. pruža mogućnost žalbe na prvostupanjsku odluku te pokretanje upravnog spora pred Upravnim sudom. Nakon toga pravni lijek protiv prvostupanjske odluke ostaje samo pokretanje upravnog spora. Ako je odluka donesena u ubrzanom postupku, žalba nije moguća, već samo pokretanje upravnog spora. Nakon izmjena koje slijede, spor pred Upravnim sudom imat će suzpenzivan učinak nad prvostupanjskom odlukom. Zakon o azilu propisuje mogućnost pravnog lijeka za sve slučajeve navedene u Direktivi i u ovom su dijelu potpuno usklađeni.

**DIREKTIVA VIJEĆA** 2002/90/EZ OD 28. STUDENOGA 2002. KOJOM SE DEFINIRA POMAGANJE NEOVLAŠTENOG ULASKA, TRANZITA I BORAVKA

Ovom Direktivom uređuje se područje neregularnog ulaska, tranzita i boravka stranaca. Direktiva propisuje niz mjera koje su usmjerene na borbu protiv pomaganja pri neovlaštenom prelasku granice, ali i na suzbijanje mreža koje potiču ilegalni rad, trgovanje ljudima, seksualno iskorištavanje djece.

### SANKCIJE ZA POTICANJE, SUDJELOVANJE I POKUŠAJ ILEGALNOG PRELASKA GRANICE

Direktiva propisuje kako bi se odgovarajuće, učinkovite i proporcionalne sankcije trebale primjenjivati na sve koji potiču, sudjeluju, odnosno pokušaju namjerno pomagati, besplatno ili zbog financijske dobiti, osobi koja nije državljanin/-ka države članice pri ulasku ili tranzitu na teritorij te države. Također, svakoj državi članici daje se mogućnost da te sankcije ne provodi u onim slučajevima u kojima je cilj takvog ponašanja pružanje humanitarne pomoći zainteresirane osobe.
Uspoređujući ovu Direktivu i odredbe iz Zakona o strancima, vidljivo je kako Zakon ima potpuno razrađen sustav kazni, kako novčanih, tako i zatvorskih, za sva djela navedena u Direktivi, odnosno za pomaganje pri neregularnom prelasku, tranzitu, radu, boravku. Zakon spominje samo počinitelje određena kaznenog djela, no ne i pomagače, one koji su namjeravali počiniti kazneno djelo, iako je sudska praksa pokazala da se teže kazne izriču organizatorima, a blaže pomagačima. Zakon pak ne propisuje moguće iznimke u slučaju humanitarnog pomaganja nezakonita prelaska granice.

**DIREKTIVA VIJEĆA** 2004/81/EZ OD 29. TRAVNJA 2004. O ODOBRENJU BORAVKA IZDANOME DRŽAVLJANIMA TREĆIH DRŽAVA KOJI SU ŽRTVE TRGOVINE LJUDIMA ILI IM JE PRUŽENA POMOĆ ZA ILEGALNU IMIGRACIJU, A SURAĐUJU S MJERODAVNIM TIJELIMA

Svrha ove Direktive jest definirati uvjete za odobrenje vremenski ograničene dozvole boravka državljanima trećih država koji surađuju u borbi protiv trgovanja ljudima i pomaganja neregularnih migracija. Direktiva se odnosi na državljane trećih država koji su žrtve trgo-

the Republic of Croatia personal and other information collected during the asylum procedure represents confidential material and shall not be available to the authorities in the applicant's country of origin nor to other authorities which are not involved in the procedure. In accordance with the principle of confidentiality and protection of the identity and security of the applicant prescribed by the Directive, the Asylum Act lays down rules and regulations for the procedure of collecting information about applicants.

***PROCEDURE AT FIRST INSTANCE***

Examination procedure should be in accordance with all the above mentioned principles and guarantees, and concluded as soon as possible, without prejudice to an adequate and complete examination. Where a procedure takes more than 6 months, Member States shall ensure that the applicant concerned shall either be informed of the delay, or inform the applicant, upon his or her request, about the time-frame within which the decision is to be expected but this, however, is not obligatory for the Member State. Member States may accelerate or prioritize any examination in accordance with the guarantees, in particular if it is obvious that the application is well-founded or where the applicant has special needs. Apart from this, the procedure can be accelerated in the following cases: if the applicant presented the facts which are not relevant or of minimal relevance to the examination; if the applicant clearly does not qualify as a refugee; if the application is considered unfounded because the applicant is from a safe country of origin or a safe third country; if the applicant presented false information or documents, or withheld relevant information or documents; if the applicant destroyed the documents which prove his identity and/or nationality; if the applicant has filed another application for asylum stating other personal data; if the applicant has presented inconsistent, contradictory, improbable or insufficient facts which make the application unconvincing; if the applicant has submitted a subsequent application which does not raise any relevant new facts; if the applicant; if the applicant has failed without reasonable cause to make his or her application earlier, having had the opportunity to do so; if the applicants is making an application merely in order to delay or prevent the enforcement of an earlier decision which would result in his or her removal; if the applicant poses a threat to the national security etc.

The Asylum Act lists generally almost every cause mentioned in the Directive which may prompt an accelerated examination. The problem lies in the fact that in some instances the provisions of the Act are based on the assumption that the applicant might abuse the system, which is nearly impossible to prove and depends upon a discretionary decision during the procedure, for example where ***the applicant has lodged the application with a clear intention to delay or prevent the enforcement of the decision which can result in his or her removal from the Republic of Croatia.*** In Croatia the number of applications examined in an accelerated procedure is rather low.

***INADMISSIBLE APPLICATIONS***

An application may be considered inadmissible if another Member State has granted refugee status; if a country which is not a Member State is considered as a safe third country; if the applicant has been granted a status equivalent to the rights and benefits of refugee

vanja ljudima neovisno o tome jesu li ilegalno ušli u tu državu te na žrtve organiziranog ilegalnog prelaska granica. Države članice mogu, ali i ne moraju primijeniti odredbe Direktive na maloljetnike.

### Informiranje

Mjerodavna tijela dužna su potencijalnu žrtvu informirati o pravima i mogućnostima propisanim ovom Direktivom. Osim toga, takve informacije može pružati i nevladina organizacija koja s mjerodavnim tijelom ima razvijenu suradnju. Prema Zakonu o strancima, ali i detaljnije razrađenim smjernicama u **Protokolu za identifikaciju, pomoć i zaštitu žrtava trgovanja ljudima**[17] identifikaciju žrtve obavlja Ministarstvo unutarnjih poslova u suradnji s organizacijama civilnog društva, a kada se radi o žrtvi-maloljetniku Ministarstvo je dužno surađivati i s ministarstvom mjerodavnim za socijalnu skrb. Mobilni timovi koji su formirani za tu svrhu, među ostalim zadacima obavljaju i inicijalni razgovor sa žrtvom odmah po identifikaciji te obavješćivanje osobe o programu pomoći i zaštite. Uzimajući u obzir cijeli niz strategija, mjera i planova oko suzbijanja trgovine ljudima kao i čitav niz programa pomoći žrtvama *traffickinga* koji postoje u Hrvatskoj može se reći kako je čitavo ovo područje ne samo usklađeno s Direktivom već i detaljno zakonski uređeno.

### Prijelazno razdoblje

Žrtvama trgovanja ljudima treba osigurati razdoblje tijekom kojeg će se moći oporaviti i maknuti od utjecaja počinitelja kaznenog djela te odlučiti žele li surađivati s mjerodavnim tijelima. Također, za to vrijeme nije ih moguće protjerati, no nemaju ni pravo na dozvolu boravka. Prijelazno razdoblje može se prekinuti ako se dokaže da je žrtva aktivno, dobrovoljno i na vlastitu inicijativu ponovo stupila u kontakt s prekršiteljem.

Hrvatsko zakonodavstvo također prepoznaje prijelazni period koji traje 30 dana i u okviru kojeg stranac identificiran kao žrtva ima pravo odlučiti o svom sudjelovanju u programu pomoći i zaštite, s tim da se taj rok ne mora poštovati, iz istih razloga navedenih u Direktivi. Zakon o strancima i Direktiva gotovo su jednaki u ovom dijelu, iako je problem zamjetan u tome što Direktiva ne propisuje barem minimalno trajanje tog perioda.

### Tretman prije odobrenja dozvole boravka

Za državljane trećih zemalja koji nemaju dostatna sredstva osigurat će se prihvatljiv standard života i pristup hitnoj liječničkoj pomoći, a za posebne potrebe najranjivijih, ako je potrebno i predviđeno nacionalnim zakonom, i psihološka pomoć. Osim toga, države članice osigurat će im usluge prevođenja, tumačenja te besplatne pravne pomoći. U Hrvatskoj program pomoći i zaštite obuhvaća zdravstvenu i psihosocijalnu zaštitu, siguran smještaj, usluge prevođenja i tumačenja, pravnu pomoć te siguran povratak u državu podrijetla.

Razliku vidimo u tome što Zakon o strancima ne dijeli žrtve na manje ili više ranjive, već za sve propisuje ista prava. Budući da obuhvaća širok spektar usluga i zaštite, zamjećujemo da propisi i više nego zadovoljavaju minimum propisan Direktivom.

17 PROTOKOL ZA IDENTIFIKACIJU, POMOĆ I ZAŠTITU ŽRTAVA TRGOVANJA LJUDIMA USVOJEN JE U STUDENOME 2008. (WWW.MUP.HR).

status; if the applicant is allowed to remain in the territory of the Member State concerned on some other grounds which protect him or her against *refoulement* pending the outcome of a procedure; if the applicant has lodged an identical application after a final decision.

The Asylum Act does not identify this as a separate concept, but includes these causes in some other provisions so that some of them represent causes for the suspension of procedure, unfounded application or rejection of the application.

The difference between the Directive and the Asylum Act lies in the fact that the Asylum Act elaborates in detail those situations in which the application is considered inadequate for the granting of the refugee status. This detailed elaboration is graded according to the weight and seriousness of the reasons for which the application is not considered to be true and honest. Different consequences and possibilities in every individual legal instance have also been graded.

#### *FIRST COUNTRY OF ASYLUM*

A country can be considered to be a first country of asylum for a particular applicant for asylum if: he or she has been recognised in that country as a refugee and can still avail himself or herself of that protection; or if he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of *non-refoulement*. This term has not been recognized in the General Provisions of the Asylum Act, partially due to the specific context of this provision within the EU, and partially because it is contained in Article 60: ***An asylum application shall be rejected if 1. the applicant has been granted asylum status or equivalent protection in another country, including benefits pursuant from the principles from Article 3 of this Act, under the condition that he will be re-admitted to that country***.

#### *SAFE THIRD-COUNTRY AND SAFE COUNTRY OF ORIGIN*

In order to be considered safe, a country should satisfy the following criteria: that life and liberty are not threatened, that the principle of *non-refoulement* is respected, that there is the possibility of attaining refugee status, and that the prohibition of removal, in violation of the right to freedom from torture and inhuman treatment as laid down in international law, is respected. The Directive prescribes a whole set of rules and regulations which regulate the cases in which this concept shall be applied to an applicant and the procedures of determining which third countries as regarded as safe.

A safe country of origin is the country that the applicant is a national of, or, in cases in which the applicant is a stateless person, a country in which he or she was formerly habitually residing without reporting anything which would contradict this country being considered safe. The Asylum Act recognizes these concepts in almost the same words; the differences are only minor and relate to the emphasis on safety and protection of applicants provided by the Act. In this section, the Act was written to comply with Croatia's prospective joining of the EU and the new institutions and bodies which will become relevant upon accession, for example the list of safe third countries used by the EU is also used in Croatia.

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## IZDAVANJE I OBNOVA DOZVOLE BORAVKA

Nakon isteka prijelaznog razdoblja, ili prije, ako mjerodavne vlasti utvrde, potrebno je ili pružiti mogućnost produljenja boravka za vrijeme istrage ili sudskog postupka ili izdati dozvolu boravka ako je osoba jasno pokazala da ima namjeru surađivati te je prekinula sve veze s osumnjičenima. Dozvola boravka mora biti važeća najmanje šest mjeseci, a može se obnoviti ako su navedeni uvjeti zadovoljeni.

Zakon o strancima propisuje da će se privremeni boravak iz humanitarnih razloga odobriti strancu u sljedećim slučajevima: ako je kao žrtva trgovanja ljudima prihvatila program pomoći i zaštite; ako je maloljetnik/-ica koji/koja je napušten/-a ili je žrtva organiziranog kriminala, ili je iz drugih razloga ostao bez roditeljske zaštite, skrbništva ili bez pratnje te iz drugih opravdanih razloga humanitarne prirode. Zakon propisuje i da se dozvola izdaje na šest mjeseci do godinu dana i može se produžavati, no stranci kojima je odobren privremeni boravak iz humanitarnih razloga ne mogu podnijeti zahtjev za izdavanje odobrenja za privremeni boravak u drugu svrhu.

Zakon o strancima u ovom je slučaju usklađen s Direktivom, iako nisu propisani konkretni kriteriji na temelju kojih će se određivati istek odobrene dozvole.

## TRETMAN OSOBA S ODOBRENOM DOZVOLOM BORAVKA

Države članice osigurat će da nositelji dozvole boravka koji nemaju dostatna sredstva imaju barem jednak tretman predviđen za prijelazno razdoblje, a posebno potrebnu medicinsku i drugu pomoć za trudnice, osobe s invaliditetom ili žrtve seksualnog nasilja ili drugih oblika nasilja, te maloljetnika.

Članak 72. Zakona o strancima propisuje sljedeća prava: siguran smještaj, zdravstvenu zaštitu, novčanu pomoć, obrazovanje i rad. Iznimke su žrtve koje su u radnom odnosu ili posjeduju novčana sredstva ili su im troškovi života osigurani na drugi način pa stoga nemaju pravo na novčanu pomoć. U ovom smislu posebna skrb vodit će se o trudnicama i osobama s invaliditetom kao posebno ranjivim skupinama žrtava.

U ovom dijelu Direktiva prepoznaje mnogo širi spektar ranjivih skupina nego Zakon o strancima.

## MALOLJETNICI

Ako države članice odluče primjenjivati ovu Direktivu na maloljetnike, moraju voditi računa o najboljem interesu djeteta, a u skladu s tim, osigurat će da postupak bude primjeren dobi i zrelosti djeteta, a prijelazno razdoblje može biti produženo. Osim toga, mora se osigurati da maloljetne osobe imaju pristup odgojno-obrazovnom sustavu pod istim uvjetima kao i državljani. U slučajevima u kojima je riječ o maloljetnicima bez pratnje potrebno je poduzeti mjere za utvrđivanje identiteta, državljanstva i ustanoviti da zaista nemaju pratnju, kao i napore za pronalazak njihovih obitelji i osiguranje pravnog zastupanja.

Neither the Directive nor the Asylum Act establishes mechanisms which would monitor the return of asylum seekers into some of these countries, because the lack of clarity in the concepts involved present the risk of creating a chain of return into countries with a decreasing level of protection and security. The term 'safe country of origin' represents a problem due to two reasons. One is the contradiction with the purpose of asylum and respect for that human right, i.e. the determining of the applicant's individual need for protection should be irrespective of his or her country of origin, while the second problem is the burden of proving that an individual asylum-seeker does need asylum.

***SUBSEQUENT APPLICATION***

Where a person makes a subsequent application, the Member State may examine this subsequent application in the framework of the examination of the previous application or in the framework of the examination of the final decision of the authority of appeal. Where a person makes a subsequent application for asylum after his or her previous application has been withdrawn, or after a final decision has been taken, a preliminary examination shall be carried out as to whether new elements relating to the outcome of the examination can be found. In order to carry out preliminary examination, the following is prescribed: the applicant is required to provide new facts and evidence which justify a new application, and the examination may be conducted solely on the basis of written submissions. Where an asylum procedure has been suspended, and the foreign citizen lodges a new asylum appeal, the new asylum procedure shall also consider facts and circumstances established by the suspended procedure; this instance is not prescribed by the Asylum Act. The difference between the two laws is that the Foreigners Act does not mention a preliminary examination, or the necessity to submit new and relevant evidence in order to renew the procedure. Apart from this, there is no limitation on the number of lodged applications by one applicant.

***BORDER PROCEDURES***

Member States may decide at the border or transit zones on applications made at such locations, but they can also allow the applicant to enter their territory. In such a case the applicant shall be informed about his or her rights and obligations, shall have access to the services of an interpreter and legal assistant, shall be interviewed and have a representative appointed in the case of unaccompanied minors. In case permission to enter is refused, the competent authority shall state the reasons why the application for asylum is considered as unfounded. Detention at the border or transit zones shall not exceed 4 weeks and where a decision has not been taken within that period of time, the applicant shall be granted entry to the territory of the Member State.

The Asylum Act is completely harmonized with the provisions from the Directive. Practice has shown that the procedure is not limited nor affected by whether an applicant reported themselves in person to the Reception Centre for Asylum-seekers and lodged his or her application there, or if an applicant did this at the border and was subsequently directed or transported to the Centre, which, according to the data of the Ministry of Interior Affairs, occurs in most cases.

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U Hrvatskoj prijelazno razdoblje za maloljetnika traje 90 dana, no odluku ne donosi maloljetnik/-ica, već njegov skrbnik, vodeći računa o najboljem interesu maloljetnika/-ice te uvažavajući mišljenje maloljetnika/-ice. Osim toga, maloljetnici koji su žrtve trgovanja ljudima neće biti vraćeni ni u jednu državu ako nakon procjene opasnosti i sigurnosti postoji indicija da takav povratak ne bi bio u interesu maloljetnika/-ice.

Zakon o strancima potpuno je usklađen s Direktivom, pa i odredbe propisuju da su tijela uključena u program pomoći i zaštite žrtve-maloljetnika/-ice dužna voditi računa o najboljem interesu maloljetnika/-ice te o provođenju potrebnih mjera za utvrđivanje identiteta, državljanstva te pronalaženja ostalih članova obitelji.

### RAD, STRUČNO OSPOSOBLJAVANJE I OBRAZOVANJE

Svaka država članica određuju pravila, uvjete i procedure za izdavanje dozvola pod kojima će nositelj/-ica boravka imati pravo na pristup tržištu rada, strukovnoj izobrazbi i obrazovanju.

Zakon o strancima navodi pravo na obrazovanje i rad, ali pravo na strukovnu izobrazbu ne regulira. Također, nije propisano pod kojim uvjetima žrtva to ostvaruje, kao hrvatski državljanin ili kao stranac.

### PROGRAMI INTEGRACIJE

Žrtve imaju pravo na pristup postojećim programima koje države članice ili nevladine organizacije koje imaju sklopljen sporazum s državama članicama provode, a čiji je cilj uključivanje u normalan društveni život, uključujući, gdje je to prikladno, tečajeve za poboljšanje profesionalnih vještina, odnosno pripremu za povratak u zemlju podrijetla. U Hrvatskoj se žrtvi pruža individualni program pomoći i zaštite bez obzira na dob; izrađuje ga organizacija koja vodi siguran smještaj u kojem se žrtva nalazi u suradnji s mjerodavnim Centrom za socijalnu skrb. S druge strane, siguran povratak stranca koji ima status žrtve provodi Ministarstvo unutarnjih poslova vodeći računa o njegovim pravima, sigurnosti i dostojanstvu, a povratak, po mogućnosti, treba biti dobrovoljan.

U praksi postoji i funkcionira nekolicina organizacija koje rade sa žrtvama trgovanja ljudima, koje imaju punu podršku kako javnosti, tako i Vlade Republike Hrvatske.

### UKIDANJE DOZVOLE BORAVKA

Odobrenje boravka može se ukinuti u bilo koje doba ako uvjeti za izdavanje više nisu zadovoljeni, ako je nositelj aktivno, dobrovoljno i na vlastitu inicijativu obnovio kontakt s prekršiteljima, ako mjerodavno tijelo smatra da je suradnja žrtve prijevara ili da je tužba lažna, iz razloga zaštite nacionalne sigurnosti, ili kad mjerodavne vlasti donesu odluku o prestanku postupka. Zakon o strancima drugačije regulira ovo pitanje te propisuje da će privremeni boravak iz humanitarnih razloga žrtvi prestati: ako je izgubila status žrtve; ako se utvrdi da zloupotrebljava status žrtve ili ako to zahtijevaju razlozi zaštite javnog poretka, nacionalne sigurnosti i javnog zdravlja. U Direktivi se razlikuju dva moguća načina pre-

***WITHDRAWAL OF REFUGEE STATUS***

Member States may review the refugee status of a particular person when new circumstances arise, questioning the validity of his or her refugee status. In cases in which refugee status is withdrawn, the Directive prescribes a set of rules and regulations which have to be respected by the determining authorities in order to prevent abuse of the refugee's rights. The Asylum Act prescribes withdrawal and revoking of refugee status. The difference lies in the circumstances which precede one of these two cases. The former refers to those cases in which the circumstances which were the basis of the granting of refugee status have ended, and the latter to those circumstances which were caused by the asylum-seeker/refugee him or herself and in which he or she broke the law. However, before the revoking or end of asylum, the competent authority shall inform the asylum-seeker about the reasons for the revoking decision and ensure that he or she can explain orally or in writing why the asylum status should not be revoked.

***APPEALS PROCEDURES***

Applicants are entitled to the right to an effective remedy before a final decision is taken by a court or tribunal, and this is applied to cases in which: an application is considered inadmissible; an application was lodged at the border or in the transit zones; a decision was taken not to conduct an examination of a subsequent application; entry was refused; refugee status was withdrawn. Apart from this, every Member State shall decide whether or not the effective remedy shall suspend previous decisions about removal from its territory.

Until 31 December 2011, Croatian legislation offers to the applicants the possibility to appeal against the decision at first instance, and to initiate administrative dispute before the Administrative Court. After that date, the only remaining legal remedy for the decision at first instance will be to initiate administrative dispute. If the decision has been taken through an accelerated procedure, it is only possible to initiate administrative dispute, but not an appeal. After the scheduled alteration, the dispute before the Administrative Court shall suspend the decision at first instance. The Asylum Act prescribes legal remedy in all cases mentioned in the Directive and in this part the two are completely harmonized.

**COUNCIL DIRECTIVE** 2002/90/EC OF 28 NOVEMBER 2002 DEFINING THE FACILITATION OF UNAUTHORISED ENTRY, TRANSIT AND RESIDENCE, OJ L 328 OF 5.12.2002

This Directive regulates the area of unauthorised entry, transit and residence of foreign nationals. It a set of rules and regulations aiming to combat aiding of irregular immigration in connection with unauthorised crossing of the border but also to combat networks which encourage irregular employment, trafficking in human beings, and the sexual exploitation of children.

stanka valjanosti dozvole o boravku, ukidanje i odbijanje obnavljanja. Može se reći kako Zakon o strancima u ovom pitanju propisuje više od minimuma i manje je restriktivan od Direktive.

**DIREKTIVA EUROPSKOG PARLAMENTA I VIJEĆA EUROPE** 2008/115/EC OD 16. PROSINCA 2008. O ZAJEDNIČKIM STANDARDIMA I PROCEDURAMA DRŽAVA ČLANICA ZA POVRATAK DRŽAVLJANA TREĆIH DRŽAVA KOJI BORAVE ILEGALNO

Ovom Direktivom uređuju se pravila za razvijanje i implementaciju politika udaljenja i reparacije, povratka, detencije i zabrane ulaska nedržavljana EU-a temeljenih na zajedničkim standardima, s potpunim uvažavanjem temeljnih ljudskih prava i dostojanstva. Fokus ove Direktive brojna su transparentna i relevantna pravila o udaljenju nedržavljana EU-a. Naglašava se važnost sklapanja readmisijkih ugovora kojima bi se uredile faze vraćanja kako bi se proces vraćanja iregularnih migranata olakšao i učinio stabilnim. Tražitelji azila ne smiju se tretirati kao ilegalni imigranti sve dok negativno rješenje o njihovom statusu nije postalo pravomoćno te se sukladno tomu *non-refoulement* princip mora strogo poštovati. Dobrovoljni povratak uvijek ima prednost pred prisilnim, uvijek je prva opcija i važno je strancima dati dovoljno vremena za dobrovoljni povratak, a zemlje članice trebaju dodatno raditi na pomoći i podršci kod povratka i savjetovanju.

### DEFINICIJE, PRINCIPI I VRIJEDNOSTI

U Direktivi se nabrajaju i objašnjavaju pojedini termini poput državljanin treće države, ilegalni boravak, povratak, odluka o povratku i dr. Također, ističe se važnost poštovanja *non-refoulement* principa, najboljeg interesa djeteta, obiteljskog života te zdravlja. Zakon o strancima ne navodi većinu definicija iz ovog područja, među ostalim niti što je to prisilno udaljenje, mjera protjerivanja, napuštanje i dr. S druge strane, propisuje se *non-refoulement* princip i zabranjuje prisilno udaljenje maloljetnih stranaca. Kad je riječ o maloljetnicima, propisuje se i više od minimuma, jer Direktiva propisuje samo najbolji interes djeteta, a Zakon o strancima zabranjuje **"prisilno udaljiti maloljetnog stranca ako je to u suprotnosti s Konvencijom o zaštiti ljudskih prava i temeljnih sloboda, Europskom konvencijom o sprječavanju mučenja i neljudskog ili ponižavajućeg postupanja ili kažnjavanja i Konvencijom o pravima djece"**, što je po pravima i stupnju zaštite više od samog principa najboljeg interesa djeteta. Kad je riječ o strancu koji predstavlja opasnost za javni poredak, nacionalnu sigurnost ili javno zdravlje, prilikom donošenja rješenja o protjerivanju moraju se uzeti u obzir osobne, obiteljske, gospodarske i ostale okolnosti. Zakon o strancima u nijednom drugom slučaju ne uzima u obzir obiteljske, osobne ili druge okolnosti, a osobito iznenađuje da se te okolnosti ne uzimaju u obzir prilikom vraćanja osoba koje su zatražile azil u zemlju podrijetla i dobile negativno rješenje ili nekih drugih ranjivih skupina. Također, okolnosti vezane uz zdravlje osobe koja se protjeruje nigdje se ne spominju kao mogući čimbenici koji odgađaju protjerivanje, a stvar k tome postaje teža ako znamo da su neki od neregularnih migranata žrtve mučenja i sl. Izostanak definiranja određenih termina zakonski je propust, a među ostalim pruža mogućnost zlouporabe i neujednačenog tumačenja pojedinih odredbi.

### *SANCTIONS FOR THE INSTIGATION, PARTICIPATION AND ATTEMPT OF IRREGULAR BORDER CROSSING*

The Directive prescribes that appropriate, efficient and proportional sanctions shall be applied to any person who instigates, takes part in, or attempts to intentionally assist, for financial gain or for free, a person who is not a national of the Member State in entering or transiting through the territory of that Member State. In addition, any Member State may decide whether or not to impose these sanctions in cases in which the aim of such behaviour is to provide humanitarian assistance to the person concerned.

Comparing this Directive and the provisions from the Foreigners Act it is obvious that the latter has a completely developed system of penalties, both financial and custodial, for all acts listed in the Directive, i.e. for aiding irregular border-crossings, transit, work and residence. The Act only mentions perpetrators of a specific crime but not their accomplices, those with the intention, and others, although judicial practice has shown that more severe sentences are imposed on organisers, while more lenient penalties are imposed on accomplices. The Act does not prescribe possible exceptions in cases in which the aiding of irregular border-crossing was performed for humanitarian reasons.

**COUNCIL DIRECTIVE** 2004/81/EC OF 29 APRIL 2004 ON THE RESIDENCE PERMIT ISSUED TO THIRD-COUNTRY NATIONALS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE ILLEGAL IMMIGRATION, WHO COOPERATE WITH THE COMPETENT AUTHORITIES

The purpose of this Directive is to determine the conditions for the granting of residence permits of limited duration to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate irregular immigration. The Directive applies to third-country nationals who are victims of trafficking in human beings, irrespective of whether they entered the territory of a Member State irregularly, and also to those third-country nationals who are subjects of an action to facilitate irregular immigration. Member States may or may not apply the provisions of this Directive to minors.

### *PROVISION OF INFORMATION*

Competent authorities shall inform the person who may fall into the scope of this Directive of the rights and possibilities offered under this Directive. Apart from this, such information may also be provided by a non-governmental organisation which has developed a co-operation with the competent authority. According to the Foreigners Act, but also to the elaborately detailed guidelines in the ***Protocol for Identification, Assistance and Protection of Victims of Human-Trafficking***[16], the identification of victims is carried out by the Ministry of Interior Affairs in co-operation with civil society organizations and when the victim is a minor the Ministry is required to co-operate with the competent ministry for social care. Mobile teams, formed for this purpose, amongst other tasks conduct the initial interview with the victim immediately after their identification, and inform the victims about assist-

16 PROTOCOL FOR THE IDENTIFICATION, ASSISTANCE AND PROTECTION OF VICTIMS OF HUMAN-TRAFFICKING WAS ADOPTED IN NOVEMBER 2008 (WWW.MUP.HR).

## DOBROVOLJNI ODLAZAK

Odluka o povratku treba u svom sadržaju osigurati odgovarajuće razdoblje za dobrovoljni odlazak između sedam i trideset dana, što ne isključuje mogućnost državljana trećih zemalja da odu ranije ako im je to u cilju. Predviđa se i mogućnost produženja tog roka uzimajući u obzir posebne okolnosti pojedinog slučaja kao što su dužina boravka, djeca koja pohađaju školu te postojanje drugih obiteljskih i društvenih veza. Tijekom dobrovoljnog odlaska mogu se odrediti određene obveze u cilju izbjegavanja rizika od bijega ili sakrivanja. Ako postoji opasnost od bijega ili sakrivanja, ili ako je zahtjev za odobrenje boravka odbačen kao očigledno neosnovan ili lažan, ili ako dotična osoba predstavlja rizik za javnu ili nacionalnu sigurnost, države članice ne moraju pružiti mogućnost dobrovoljnog odlaska ili mogu odobriti rok kraći od sedam dana.

U Zakonu o strancima nigdje se ne spominje dobrovoljni odlazak, ali isti Zakon propisuje u poglavlju VI., članku 86. (mjere za napuštanje Republike Hrvatske) da **"stranac koji nezakonito boravi u Republici Hrvatskoj mora odmah napustiti Republiku Hrvatsku ili u roku koji mu je određen"** te da će se rok u kojem moraju napustiti RH dati strancu kojem je zakonit boravak prestao odlukom Ministarstva, policijske uprave, odnosno policijske stanice, osim ako je tijekom postupka prisilnog udaljenja zatražio azil, a status azilanta nije mu priznat, i ako postoje humanitarni ili drugi opravdani razlozi.

Određivanja roka za napuštanje Republike Hrvatske usklađeno je s Direktivom gdje se navodi da se **"rok za napuštanje može produžiti strancu kojeg je zabranjeno prisilno udaljiti ili strancu kojeg nije moguće prisilno udaljiti iz razloga za koje on nije odgovoran".** No čini se kako su u Direktivi mnogo bolje p(r)opisani razlozi iz kojih se nekom može produžiti rok, npr. završetak školske godine ako stranac ima dijete koje pohađa školu, obiteljska situacija i dr. Ni u Direktivi ni u hrvatskom zakonodavstvu ne definira se "ometanje udaljenja", što onda dovodi do potencijalnih zloupotreba tog termina i ekspresnog udaljenja stranaca bez mogućnosti produljenja ostanka. Zakon o strancima ne samo što ne spominje dobrovoljni povratak, koji se u svim dokumentima spominje kao prioritet, nego ne propisuje obvezu razvijanja programa kojima bi se osobe pripremile na dobrovoljni povratak.

## PRISILNO UDALJENJE

Prisilnim se udaljenjem koristi u slučajevima u kojima ne postoji rok za dobrovoljno napuštanje, ako taj rok nije ispoštovan ili ako je određeni rok istekao. Odluka o prisilnom udaljenju može biti donesena kao posebna upravna ili sudska odluka ili akt kojim se određuje udaljenje. Države se trebaju koristiti prisilnim mjerama samo kao zadnju opciju i u tom slučaju takve mjere moraju biti razmjerne i ne smije se koristiti neodgovarajućom silom, uz poštovanje dostojanstva i fizičkog integriteta državljana trećih zemalja. Države članice trebaju osigurati učinkovit nadzor sustava prisilnog udaljenja.

Zakon o strancima gotovo je potpuno usklađen s Direktivom u dijelu koji se odnosi na prisilno udaljenje, a nakon proteka roka dobrovoljnog povratka. Zakon o strancima ne propisuje upotrebu sile i njezino izuzimanje, ograničenje, proporcionalnost. Također, važno je ostaviti prostor za iznimke, odnosno trebalo bi mnogo bolje urediti mogućnost produženja roka za deportaciju, omogućiti fleksibilniji i individualniji pristup svakom od slučajeva.

ance and protection programmes. Taking into account a whole set of strategies, measures and plans aimed at eradicating human-trafficking, as well as a whole set of assistance programmes for victims of trafficking which exist in Croatia, it can be said that the entire area has not only been harmonized with the Directive but is regulated by law in much detail.

***REFLECTION PERIOD***

Member States shall ensure that the victims of human trafficking are granted a reflection period allowing them to recover and escape from the influence of the perpetrators so that they can take a decision as to whether to co-operate with the competent authorities. In addition, during this period, it shall not be possible to enforce any expulsion order against them, but it also does not entitle them to a residence permit. The reflection period may be terminated at any time if it is has been proved that the victim has actively, voluntarily and on his or her own initiative renewed contact with the perpetrators.

Croatian legislation also recognizes a reflection period, lasting thirty days, within which the foreign citizen has been identified as a victim and has the right to decide about his or her involvement in the assistance and protection programme, the difference being that this time-period does not have to be respected due to the same reasons as in the Directive. The Foreigners Act and the Directive are almost identical in this section, although a problem can be noted in that the Directive does not prescribe the minimum duration of this period.

***TREATMENT GRANTED BEFORE THE ISSUE OF THE RESIDENCE PERMIT***

It shall be ensured that the third-country national who does not have sufficient resources is granted acceptable standards of living and access to emergency medical treatment, while the special needs of the most vulnerable shall be attended to, including, where appropriate and if provided by national law, psychological assistance. Apart from this, Member States shall provide them with translation and interpreting services and free legal assistance. In Croatia, the assistance and protection programme included health and psycho-social care, assured accommodation, translation and interpretation services, legal assistance and safe return to their country of origin.

We see a difference in that the Foreigners Act does not separate the victims into more and less vulnerable but prescribes equal rights to all of them. Since it provides a wide spectrum of services and protection we note that the provisions surpass the minimum standards prescribed by the Directive.

***ISSUE AND RENEWAL OF THE RESIDENCE PERMIT***

After the expiry of the reflection period, or earlier if the competent authorities decide so, it is necessary to provide the victims with the possibility of prolonging his or her stay on the Member State's territory during investigations or judicial proceedings, or to issue a residence permit if the victim has shown a clear intention to cooperate, and if he or she has severed all relations with the suspects. The residence permit shall be valid for at least six months and may be renewed if the conditions set out above are satisfied.

Intervju s Josipom Paradžikom, Odjel za nezakonite migracije u Upravi za granice:
*"Države gdje je povratak uistinu vrlo otežan i zbog masu tehničkih razloga, odnosno nemogućnosti da se uopće dođe do dozvole za tranzitiranje preko određene zračne luke u europskim zemljama pa do činjenice da je povratak takvih osoba u zemlju podrijetla izravno protivan... zbilja je nemoguće uopće vratiti bilo koga i onda jednostavno smo primorani takvoj osobi dati mogućnost da sama izađe, da se snađe na neki način ili, ako već ne može izaći, onda ona ostaje na području RH; čime se bavi i što radi mi pokušavamo nadzirati i koliko je god moguće znati, ali njenog povratka u ovom trenutku nema, jednostavno je nemoguć. Jednako tako znate i za institut privremenog ostanka; međutim, to je institut za jednu posebnu kategoriju osoba vrlo restriktivan, vrlo rijedak i primjenjuje se doista u gotovo nerješivim slučajevima kad se uistinu radi o osobama koje je nemoguće vratiti ili zbog načela* non-refoulementa *ili zbog jednostavne činjenice da ne znate oko čije se države ono radi."*

### ODGODA UDALJENJA

Direktiva propisuje odgode u slučajevima kada bi se time narušio *non-refoulement* princip ili za vrijeme suspenzivnog učinka pravnog lijeka. Prilikom određivanja roka odgode vodit će se računa o fizičkom i mentalnom zdravlju osobe te tehničkim kapacitetima. Strancu kojeg je zabranjeno prisilno udaljiti ili strancu kojeg nije moguće prisilno udaljiti iz razloga za koje on nije odgovoran može se produžiti rok, što propisuje Zakon o strancima. Iako Zakon o strancima prati propise iz Direktive, Direktiva konkretnije definira brojne odredbe uz neizostavni kriterij individualnog, ljudskog pristupa.

### POVRATAK I UDALJENJE MALOLJETNIKA BEZ PRATNJE

Prije donošenja odluke o povratku maloljetnika bez pratnje, vodeći računa o najboljim interesima djeteta, treba se tražiti mišljenje relevantnih službi te utvrditi da će biti vraćen članu obitelji, imenovanom skrbniku ili smješten u odgovarajuću ustanovu u državi povratka.

U Zakonu o strancima ovaj je dio usklađen s Direktivom samo u stavku koji propisuje da se ne smije činiti išta suprotno konvencijama. U praksi, u određenom broju slučajeva maloljetnici bez pratnje bivaju deportirani i dostatna im se sustavna pomoć ne pruža, mjere udaljenja donose se vrlo brzo, što pretpostavlja pitanje kvalitete ispitivanja kako zahtjeva za azil, tako i mogućeg kršenja Konvencije.

### ZABRANA ULASKA

U odluci o povratku može biti sadržana i zabrana ulaska osim u slučajevima odobrenog razdoblja dobrovoljnog povratka, odnosno ako obveza povratka nije ostvarena. Duljina zabrane ulaska ovisi o okolnostima pojedinog slučaja i u načelu ne treba biti dulja od pet godina. Na žrtve trgovine ljudima ili osobe koje ilegalno prijeđu granicu, a surađuju s mjerodavnim tijelima, neće se primjenjivati ova odredba.

U Zakonu zabrana ulaska i boravka ide uz mjeru protjerivanja i spominje se samo u tom slučaju. Osim toga, rokovi zabrane mnogo su duži nego u Direktivi, pa tako Zakon o strancima propisuje najdužu zabranu u trajanju od deset godina, a Direktiva propisuje maksi-

The Foreigners Act prescribes that foreign citizens shall be granted temporary residence on humanitarian grounds in the following cases: if the victim of human-trafficking has accepted the assistance and protection programme; if he or she is an abandoned minor or underage victim of organized crime or if a minor for any other reasons has been left without the protection of parents, guardians, or accompaniment; out of other justified reasons of a humanitarian nature. This permit will be valid for a period of time between 6 and 12 months and can be extended, however foreign citizens to whom temporary residence has been granted for humanitarian reasons cannot lodge an application for temporary residence for another reason.

In this section, the Foreigners Act is harmonized with the Directive, although it does not prescribe concrete criteria for determining the period of time for which the issued permit will be valid.

***TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT***

Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment as is provided for the reflection period, and in particular provide necessary medical or other assistance to pregnant women, the disabled or victims of sexual violence or other forms of violence and minors.

Article 72 of the Foreigners Act prescribes the following rights: assured accommodation, health care, financial assistance, education and employment. Exceptions are made for victims who are employed or have financial means or any other way of covering their living expenses so that they are entitled to financial assistance. In this instance particular care shall be applied to pregnant women and disabled persons as particularly vulnerable groups of victims.

In this section the Directive identifies a broader spectrum of vulnerable groups than the Foreigners Act.

***MINORS***

If Member States decide to apply this Directive to minors, they shall take due account of the best interests of the child, and in accordance with that they shall ensure that the procedure is appropriate to the age and maturity of the child, with the option of extending the reflection period. Apart from this, it has to be ensured that minors have access to the educational system under the same conditions as nationals of the Member States. In the case of unaccompanied minors, it is necessary to take steps to establish their identity, nationality and the fact that they are unaccompanied. Also, every effort has to be made to locate their families and to ensure their legal representation.
In Croatia the reflection period for a minor lasts 90 days, however the decision is not taken by the minor but his or her guardian, taking into account the best interests of the minor and respecting his or her opinion. In addition, underage victims of human-trafficking shall not be returned to any state if after the assessment of danger and safety there is an indication that such a return would not be in the best interests of the minor concerned.

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malno pet godina. Protiv takve odluke postoji i pravni lijek, upravni spor koji ne odgađa izvršenje rješenja pa se postavlja pitanje ima li takav pravni lijek smisla. U Hrvatskoj, nakon tri godine od zabrane ulaska, stranac može tražiti ukidanje zabrane ako su prestali razlozi iz kojih je stranac protjeran i ako je podmirio troškove prisilnog udaljenja. Zakon o strancima ima restriktivnije mjere i standarde nego one propisane Direktivom.

### OBRAZAC RJEŠENJA

Odluka o udaljenju i odluka o zabrani ulaska treba biti donesena u pisanoj formi te sadržavati razloge takve odluke, kao i informacije o raspoloživim pravnim lijekovima. Na zahtjev osobe, države članice izradit će pismeni ili usmeni prijevod glavnih elemenata tih odluka na jezik koji ta osoba razumije ili se opravdano pretpostavlja da razumije. Također, države mogu odbiti prevođenje državljanima trećih zemalja koji su ilegalno ušli na teritorij i koji nisu naknadno dobili odobrenje ili pravo na boravak u toj državi članici. Osim toga, države bi trebale učiniti dostupnima generalne informacije i objasniti glavne elemente standardnog obrasca u najmanje pet jezika kojima se najčešće služe neregularni imigranti u toj zemlji. U Zakonu o strancima ne spominje se jezik na kojem je rješenje o protjerivanju napisano, ne navodi se što sve to rješenje mora sadržavati.

### PRAVNI LIJEKOVI

Direktiva državama članicama propisuje potrebu osiguravanja djelotvornog pravnog lijeka za žalbe protiv odluke vezane uz povratak ili zbog traženja da se ta odluka preispita, pred mjerodavnim sudskim ili upravnim organom ili mjerodavnim tijelom sastavljenim od članova koji su nepristrani i neovisni. Državljani trećih država u tom slučaju trebaju imati mogućnost dobiti besplatni pravni savjet, biti zastupani i, prema potrebi, dobiti pomoć pri prevođenju. Uspoređujući članak Direktive koji govori o mogućnostima pravnog lijeka vidljivo je kako se u Zakonu o strancima ne spominje besplatna ili bilo kakva druga vrsta pravne pomoći za stranca, niti nekakva posebna prava za osobe kojima se odgodi deportacija. Postoji mogućnost žalbe protiv rješenja policijske uprave, no ne postoji mogućnost žalbe na odluke Ministarstva, već samo pokretanje upravnog spora koji ne odgađa izvršenje rješenja, što znači da nije učinkovito ili smisleno.

### SIGURNOST U POSTUPKU POVRATKA

U razdoblju koje prethodi dobrovoljnom povratku nužno je poštovati sljedeće principe: jedinstvo obitelji, hitnu zdravstvenu zaštitu i nužno liječenje bolesti, pristup osnovnom obrazovanju za maloljetnike te posebnu brigu za posebne potrebe ranjivih skupina. U hrvatskom zakonodavstvu ne nalazimo odredbe koje bi bile usklađene s ovim člankom Direktive. Ne samo da je važno što je moguće prije donijeti pravila kojima će se regulirati ovo područje nego je nužno onima koji se zbog *non-refoulement* principa ne smiju vratiti u zemlju podrijetla pružiti neku vrstu dugotrajne zaštite, a ne isključivo produljivati njihov privremeni boravak.

### PRITVOR/DETENCIJA

Ovom bi se mjerom trebalo koristiti samo kada su sve druge prisilne mjere iscrpljene, i

The Foreigners Act is completely harmonized with the Directive and thus the provisions are also identical which state that all bodies included in the assistance and protection programme of underage victims should take into account the best interests of the minor, and the provisions prescribing necessary measures for establishing identity, nationality, and tracing his or her family members.

***WORK, VOCATIONAL TRAINING AND EDUCATION***

Every Member State shall define the rules, conditions and procedures for the issue of residence permits with which the holder shall be authorised to have access to the labour market, to vocational training and education.

The Foreigners Act mentions the right to education and employment but does not regulate vocational training. Also it does not prescribe under which conditions the victim can realize those rights, as a Croatian national or as a foreign citizen.

***INTEGRATION PROGRAMMES***

Victims shall be granted access to existing programmes provided by the Member States or by non-governmental organisations which have specific agreements with the Member States, aimed at the recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation for an assisted return to their country of origin.

In Croatia the victim is offered an individual assistance and protection programme irrespective of his or her age. It is designed by the organization running the accommodation facility in which the victim is housed in co-operation with the competent Centre for Social Care. On the other hand, a safe return of the foreign national who has victim status is carried out by the Ministry of Interior Affairs, taking into account his or her rights, safety and dignity, and the return should be voluntary if possible.

In practice there exist several organizations who work with victims of human-trafficking and there is the general support of the public and the Government of the Republic of Croatia for the work done on this issue.

***WITHDRAWAL OF THE RESIDENCE PERMIT***

The residence permit may be withdrawn at any time if the conditions for its issue are no longer satisfied: if the holder has actively, voluntarily and under his or her own initiative renewed contact with the perpetrators; if the competent authority believes that the victim's cooperation is fraudulent or that his or her complaint is fraudulent or wrongful; for reasons relating to the protection of national security; or when the competent authorities decide to discontinue the proceedings. The Foreigners Act regulates this issue differently and prescribes that temporary residence for humanitarian reasons shall end if the person loses the status of victim; if it is established that he or she is abusing the status of victim; or for reasons of the protection of public order, national security or public health. The Directive distinguishes between two ways in which a residence permit can be made invalid – with-

to u slučajevima u kojima je osoba subjekt povrata – kako bi se pripremila za povratak i kako bi se osiguralo udaljenje – a postoji opasnost od bijega ili skrivanja, ili u slučajevima u kojima osoba izbjegava povratak ili udaljenje. Također, svako pritvaranje mora biti što je moguće kraće, a odluku donosi upravna ili sudska vlast. Kada odluku o pritvaranju donosi upravno tijelo, potrebno je ili osigurati brzu sudsku reviziju zakonitosti te odluke ili jamčiti pritvoreniku pravo na pokretanje takvog postupka. Za svaki pojedini slučaj odluka o pritvaranju treba se revidirati u razumnim vremenskim intervalima ili na zahtjev pritvorenika, a u slučaju dužeg pritvora, odluka podliježe nadzoru sudske vlasti. Svaka država članica može odrediti trajanje pritvora, koje ne smije prelaziti šest mjeseci, s mogućnošću iznimke u slučajevima u kojima pritvorenik/-ica odbija suradnju ili kada treće zemlje kasne s potrebnom dokumentacijom.

Zakon o strancima usklađen je s Direktivom pogotovo u vezi s trajanjem pritvora od šest mjeseci, s mogućnošću produljenja za još šest mjeseci. No, problematično je što Zakon ne predviđa nikakvu sudsku reviziju rješenja o pritvaranju – nju donosi policijska uprava i protiv njega nije dopuštena žalba, ali može se pokrenuti upravni spor. Zakon o strancima propisuje da će se zadržavanje u Prihvatnom centru za strance (Centar) produžiti i ako stranac zatraži azil, a to Direktiva nigdje ne spominje pa se to čini kao primjer kršenja prava na slobodu kretanja tražitelja azila. **"Stranac koji zatraži azil ili supsidijarnu zaštitu nakon što mu je određen smještaj u Centru, ostaje u Centru do isteka roka na koji mu je smještaj određen, odnosno do odobrenja statusa azilanta ili supsidijarne zaštite."** Prema intervjuu sa zamjenicom načelnika Prihvatnog centra za strance, praksa je drugačija, a o tome hoće li se nekoga odvesti u Prihvatilište za tražitelje azila ili će ostati u Privatnom centru za strance odlučuje **"tim Centra svojom diskrecijskom odlukom"**.

### PRITVOR MALOLJETNIKA I OBITELJI

Pritvor za maloljetnike bez pratnje i obitelji s maloljetnicima smije se primjenjivati samo kao zadnja opcija i, u tom slučaju, na najkraći mogući period. Obitelji moraju imati odvojene prostorije koje garantiraju adekvatnu privatnost, dok maloljetnici moraju imati mogućnost uključivanja u slobodne aktivnosti, igru i razonodu primjerenu njihovoj dobi, te imati pristup obrazovanju. Maloljetnicima bez pratnje mora se, u najvećoj mogućoj mjeri, osigurati smještaj u institucijama koje imaju osoblje i objekte prilagođene potrebama osoba njihove dobi. U slučaju udaljenja najbolji interes djeteta mora biti primaran.

Sukladno članku 16. (Uvjeti pritvora) i članku 17. (Pritvor maloljetnika i obitelji) razrađen je i **Pravilnik boravka u Prihvatnom centru za strance**[18]. Pravilnik je usklađen s Direktivom, ali ne uređuje uvjete života za ranjive skupine u cijelosti. Npr., sukladno brojnim dokumentima, odnosno Konvencijama za zaštitu prava djece i maloljetnika, maloljetnici nikako ne bi smjeli biti smješteni u Centru. No, Pravilnik regulira uvjete za njih. Zakon o strancima propisuje i mjeru strožeg policijskog nadzora, što se nigdje u Direktivi ne spominje – strancu za kojeg postoji opravdana sumnja da će napustiti Centar, strancu za kojeg postoji opravdana sumnja da će ozlijediti sebe ili druge te strancu koji se ne pridržava pravila boravka odredit će se boravak u Centru pod strožim policijskim nadzorom do najviše 30 dana.

18 PRAVILNIK BORAVKA U PRIHVATNOM CENTRU ZA STRANCE USVOJEN JE 11. LIPNJA 2008. GODINE (WWW.MUP.HR).

drawal and non-renewal. It can be said that the Foreigners Act surpasses the minimum standards for this issue and is less restrictive than the Directive.

**DIRECTIVE** 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 2008 ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS

This Directive regulates the rules for the development and implementation of policies on removal and reparation, return, detention and entry ban for non-EU nationals based on common standards, with respect to basic human rights and dignity. The Directive focuses on numerous transparent and relevant rules for the removal of non-EU nationals. It emphasizes the importance of readmission agreements which would regulate phases of return in order to facilitate the return process of irregular migrants and make it more stable. Asylum-seekers shall not be treated as irregular migrants until a negative decision on their status has entered into force, and in accordance with that, the principle of ***non-refoulement shall be respected.***

Voluntary return should be preferred over forced return and is always the first option, and it is important to provide foreign nationals with enough time to achieve voluntary return, while Member States should improve return assistance and counselling.

***DEFINITIONS, PRINCIPLES AND VALUES***

The Directive lists and explains certain terms such as third country national, irregular stay, return, removal decision and so on. It emphasizes the importance of the principle of ***non-refoulement***, the best interests of the child, family life and health. The Foreigners Act does not contain most definitions in this area, among them forced removal, return measure, voluntary departure and others. On the other hand, it does prescribe the principle of ***non-refoulement*** and prohibits forced removal of underage foreign nationals. In relation to minors the Act surpasses minimum standards because the Directive only prescribes the best interests of the child, while the Foreigners Act prohibits ***forced removal of underage foreign nationals if it contradicts the Convention on the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Convention on the Rights of Children,*** which represents rights and degrees of protection which surpass the principle of the best interest of the child. When making the decision about the return of foreign nationals who represent a danger to public order, national security or public health, personal, family, economic and other circumstances shall be taken into account. The Foreigners Act does not take these circumstances into account in any other case and it is particularly surprising that they are taken into account upon the removal of asylum-seekers who are refused asylum and some other vulnerable groups. In addition, the Act does not mention circumstances relating to the health of a person being removed as a possible factor which may postpone removal, and the situation becomes more difficult if we know that some irregular migrants are victims of torture. The omission of definitions of particular terms is a legal failing and amongst other things it offers a possibility for abuse and the unequal interpretation of specific provisions.

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Odluku o određivanju strožeg policijskog nadzora donosi Centar. Protiv odluke može se podnijeti prigovor Ministarstvu u roku od 3 dana.

Tijekom analize, uočen je nedostatak sustava *monitoringa*[19] deportacija jer su podaci o deportacijama, odnosno udaljenju stranaca s teritorija Republike Hrvatske, teško dostupni. Samim time teško je zaključivati o politici deportacija, zemalja-odredišta deportacija i sigurnosti za strance, poštovanju *non-refoulement* principa itd.

Nadalje, odredba po kojoj se **"stranca koji nezakonito boravi ili koji je prešao ili pokušao nezakonito prijeći državnu granicu može protjerati i bez provođenja prekršajnog postupka"** predstavlja kršenje prava stranaca. Granična policija može udaljiti osobu koja je pokušala prijeći granicu, a, npr., nije odmah zatražila azil ili neki drugi oblik zaštite. Također, odredba iz članka 92. koja navodi da su **"državna tijela, pravne i fizičke osobe dužne odmah obavijestiti policijsku upravu, odnosno policijsku postaju ako imaju saznanja da stranac nezakonito boravi ili radi u Republici Hrvatskoj"** nalaže obvezu prokazivanja drugoga. Usporedbom odredbi Direktive sa Zakonom o strancima vidljivo je kako se dio o ljudskim pravima, zaštiti izbjeglica i ljudskom dostojanstvu u potonjem ne spominje u nijednoj odredbi.

19 *monitoring* označava proces praćenja.

### *VOLUNTARY DEPARTURE*

A return decision shall provide an appropriate period for voluntary departure of between 7 and 30 days, which does not exclude the possibility for the third country nationals concerned to leave earlier if that is their intention. The Directive prescribes the possibility of the extension of this period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links. During this period, certain obligations may be imposed aimed at avoiding the risk of absconding. If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter that seven days.

The Foreigners Act does not mention whatsoever voluntary departure, but the same Act does prescribe, in Chapter 6, Article 86 (Measures for Removal from the Republic of Croatia) that ***foreign citizens who are residing illegally in the Republic of Croatia shall leave the Republic of Croatia immediately or within a determined period of time*** and that the period within which they have to leave Croatia shall be communicated to the foreign citizen whose legal stay was ended by the decision of the Ministry, police administration building or police station, unless during the procedure of forced removal, he or she requested asylum and was not granted it, or if there are humanitarian or other justified reasons for it.

The means of determining the period of time for leaving the Republic of Croatia is harmonized with the Directive which states that ***the period of time for departure may be extended for third-country nationals who cannot be removed by force or to third-country nationals who cannot be removed by force for reasons for he or she is not responsible***. However, it seems that the Directive contains better regulations about reasons for the extension of this period, such as the end of the school year, if the foreign national has a child attending school, family situation, and so on. Neither the Directive nor Croatian legislation define 'hampering of the removal process', which leads to potential abuses of this term and speedy removal of foreign nationals without the possibility of extending their stay. The Foreigners Act not only does not mention voluntary return which is considered a priority in all documents, but also fails to mention the obligation to develop programmes through which persons concerned would be prepared for it.

### *FORCED REMOVAL*

Removal is used in cases in which a period for voluntary departure has not been granted, if it was not respected or if the granted period has expired. The decision about the removal may be adopted as a separate administrative or judicial decision or act ordering the removal. Member States shall use coercive measures only as a last resort to carry out the removal, and in such cases these measures shall be proportionate and shall not exceed reasonable force with due respect for the dignity and physical integrity of the third-country national concerned. Member States shall provide for an effective forced-return monitoring system.

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The Foreigners Act is almost completely harmonized with the Directive concerning forced removal after the end of the period granted for voluntary return. The Foreigners Act does not prescribe or regulate the use of force and its omission, limitation or proportion. In addition, it is important to leave some space for exceptions, or, in other words, the possibility of extending the deportation period should be better regulated, and a more individual and flexible approach to each case should be ensured.

Interview with Josip Paradžik, Department for Irregular Migration of the Border Administration:
*'there are countries to which return is very difficult indeed and because of a lot of technical reasons it is impossible to obtain permission for transit through particular airports in EU countries and there are cases in which the return of these persons to their country of origin is against the rules... It is nearly impossible to return anyone and then we are simply forced to give this person the opportunity to leave him or herself, to make do in a way or if he or she cannot leave then they stay on the territory of the Republic of Croatia; we try to control and to know as much as can about what they do, but we cannot return them, it is just impossible. Equally so, you are familiar with the option of temporary residence, however this is applied to only one specific category of persons and is very restrictive and rare and is being applied in nearly insoluble cases in which it is impossible to return the person or because of the principle of* non-refoulement *or simply because you don't know which country to return them to.'*

#### *POSTPONEMENT OF REMOVAL*

The Directive prescribes that removal may be postponed when it would violate the principle of ***non-refoulement***, or for as long as a suspension is granted in accordance with the remedy. When determining the period of postponement, the third-country national's physical state or mental capacity, and other technical factors shall be taken into account.

The Foreigners Act prescribes that a period of time can be extended to a foreign national who it is prohibited to remove with force or a foreign national who cannot be removed due to reasons he or she is not responsible for. Although the Foreigners Act follows the provisions of the Directive, the Directive is more precise in defining numerous provisions and the unavoidable criterion of an individual and humane approach.

#### *RETURN AND REMOVAL OF UNACCOMPANIED MINORS*

Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies shall be granted with due consideration being given to the best interests of the child. The relevant authorities shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the country of return.

The only part of the Foreigners Act harmonized with the Directive is the paragraph which states that nothing will be done in relation to these issues which contradicts the conventions. In practice, there are cases in which unaccompanied minors have been deported, have not received sufficient, systematic assistance, and in which removal measures were adopted speedily, which poses the question of the quality of assessment of asylum applica-

tions and the potential breach of conventions.



***ENTRY BAN***

Return decisions may also contain an entry ban, except in cases in which a period for voluntary departure has been granted, or in which the obligation to return has been complied with. The length of the entry ban depends on the circumstances of the individual case and shall not in principle exceed 5 years. This decision shall not be applied to victims of human trafficking or irregular border crossing, who cooperate with the competent authorities.

The Act includes the entry and residence ban with the removal measure and mentions it only in this instance. Apart from this, the length of the entry ban is much longer than in the Directive and thus the Foreigners Act prescribes the longest ban of 10 years, while the Directive prescribes only for a maximum 5 year ban. There is a legal remedy for this decision, namely the administrative proceeding which does not postpone the enforcement of the decision, and this fact throws into question the purpose of this legal remedy. In Croatia, 3 years into the entry ban, the foreign citizen may request for it to be withdrawn if the reasons for which he or she was banned are no longer valid, and if he or she has covered the costs of the forced removal. The Foreigners Act contains more restrictive measure and standards than those prescribed by the Directive.

***DECISION FORM***

Return decisions, entry-ban decisions and decisions on removal shall be issued in writing and give reasons for the decision as well as information about available legal remedies. Member States shall provide, upon request, a written or oral translation of the main elements of decisions related to return in a language the person understands or may reasonably be presumed to understand. However, Member States may refuse translation services to those who have irregularly entered the territory of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State. Apart from this, Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by irregular migrants entering the Member State.

The Foreigners Act does not mention the language in which the removal decision should be written, nor does it state what this decision must contain.

***REMEDIES***

The Directive prescribes that Member States shall ensure that the third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, before a competent judicial or administrative authority or a competent body composed of members who are impartial and who are independent. The third-country national concerned shall have the opportunity to obtain free legal advice, representation and, where necessary, linguistic assistance.

In comparison with the Article in the Directive which refers to legal remedies, it is obvious

that the Foreigners Act does not mention free or any other type of legal assistance for foreign nationals, nor does it mention any other particular rights for persons being deported. Although it is possible to appeal against the decision of the police administration, it is not possible to appeal against decisions taken by the Ministry but only to initiate administrative dispute which do not postpone the enforcement of the decision which means that it is not efficient or meaningful.

***SAFEGUARDS PENDING RETURN***

During the period granted for voluntary departure it is necessary to take into account the following principles: family unity, emergency health care and essential treatment of illness, access to the basic education system for minors and the necessity of attending to the special needs of vulnerable persons.

In Croatian legislation we have not found provisions with are in harmony with this Article of the Directive. Not only is it important to adopt rules which would regulate this area as soon as possible, but it is necessary to provide some sort of permanent protection to those who, because of the principle of ***non- refoulement***, are not allowed to return to the country of origin, rather than only extending their temporary stay.

***DETENTION***

This measure shall be used only in those cases where other sufficient but less coercive measures have been exhausted, and in specific cases of third-country nationals who are the subjects of return procedures, in order to prepare for the return and/or carry out the removal process, in particular when there is a risk of absconding, or the person concerned avoids or hampers the preparation of return or the removal process. In addition, any detention shall be for as short a period as possible and shall be ordered by administrative or judicial authorities. When detention has been ordered by administrative authorities it is necessary to either provide for a speedy judicial review of the lawfulness of detention or grant the detainee the right to take proceedings by means of which the lawfulness of detention shall be subject to a speedy judicial review. In every case, detention shall be reviewed at reasonable intervals of time either on application of the detainee or in the case of prolonged detention periods; reviews shall be subject to the supervision of a judicial authority. Each Member State may set a limited period of detention, which may not exceed six months, with the exception of cases in which there is lack of co-operation by the detainee or delays in obtaining the necessary documentation from third countries.

The Foreigners Act is harmonized with the Directive, especially in relation to the detention period of 6 months, with the possibility of its extension a further 6 months. However, what is questionable is the fact that the Act does not prescribe any sort of judicial revision of a detention decision, it is taken by the police administration and against it there is no appeal but only an administrative proceeding is allowed. The Foreigners Act prescribes that detention in the Reception Centre for Foreigners (Centre) shall be prolonged in cases in which the foreign citizen requests asylum, which is not mentioned in the Directive, so that it

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seems an example of the breach of the asylum-seeker's right to freedom of movement. The Act prescribes that: ***A foreign citizen who requests asylum or subsidiary protection, after he has been housed at the Centre, stays at the Centre until the end of the set accommodation period, i.e. until the granting of asylum or subsidiary protection***, while in practice, as we learn from the interview with the Deputy Director of the Reception Centre for Foreigners, the situation is different, and those who are taking a decision whether a person shall be taken to the Reception Centre for Asylum-Seekers, or stay at the Reception Centre for Foreigners, are ***the team of the Centre with a discretionary decision***.

#### *DETENTIONS OF MINORS AND FAMILIES*

Unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time. Families shall have separate accommodation guaranteeing adequate privacy, while minors in detention shall have the possibility to engage in leisure activities, including play and recreational activities appropriate to their age, and shall have access to education. Unaccompanied minors shall as far as possible be provided with accommodation in institutions provided with personnel and facilities adapted to persons of their age. In cases of removal, the best interests of the child shall be a primary consideration.

The ***Ordinance for Accommodation at the Reception Centre for Foreign Citizens***[17] has been established in accordance with Article 16 (Conditions of Detention) and Article 17 (Detention of Minors and Families). The Ordinance is harmonized with the Directive but it does not regulate entirely living conditions for vulnerable groups. For example, minors should in no case be housed at the Centre, in accordance with numerous documents, i.e. conventions on the protections of the rights of children and minors, but the Ordinance still regulates conditions for minors. The Foreigners Act prescribes a measure of more strict police control, which is not mentioned in the Directive at all: a stay at the Centre under more strict policy control for up to a period of 30 days shall be applied to foreign nationals about whom there is reasonable doubt that he or she may escape from the Centre, foreign nationals about whom there is reasonable doubt that he or she may hurt him or herself or others, and foreign nationals who do not comply with the rules of residence. The decision about the more strict policy control is taken by the Centre. Against this decision an objection can be lodged with the Ministry within 3 days.

During the conducting of our analysis, we noted the lack of a system for monitoring deportations because the data about deportations and removals of foreign nationals from the territory of the Republic of Croatia are not easily available, and thus this does not provide an understanding of the manner of deportation, country of deportation and the security of the foreign citizen and the respecting of the principle of ***non-refoulement***.

Furthermore, the provision according to which ***a foreign national who is illegally residing or who has crossed or attempted to cross the state border illegally may be removed, even without the conducting of court proceedings*** represents a breach of the rights of foreign

17 ORDINANCE FOR ACCOMMODATION AT THE RECEPTION CENTRE FOR FOREIGNERS WAS ADOPTED ON 11 JUNE 2008 (WWW.MUP.HR)

citizens. This points to the possibility that the border-police may remove a person who has attempted to cross the border and who has not immediately requested asylum or another form of protection. In addition, the provision in Article 92 which states that ***government authorities, legal and natural persons are required to immediately inform a police administration building or police station if they have knowledge that a foreign national resides or works illegally in the Republic of Croatia*** prescribes an obligation to inform upon another person. From comparing the Directive and the Foreigners Act it is obvious that the section about human rights, protection of refugees and human dignity are not mentioned in a single provision of the Act.

# Zaključak – opće preporuke

Analiza europske pravne stečevine putem direktiva upozorila je na visoku usklađenost hrvatskog zakonodavnog okvira u nekoliko faza usklađivanja. Osim toga, analiza je upozorila na usklađenost institucionalnih mehanizama kao podupirućih stupova zakonodavne prakse, ali i njihovu nedostatnu razvijenost na razini usklađenosti prakse i propisa, izgradnje stručnih i drugih kapaciteta u razvoju politike azila i neregularnih migracija, kao i u području socijalnog uključivanja tražitelja azila, a zatim i integracije azilanata. Unatoč usklađenosti većine odredbi, analiza je upozorila na nekoliko temeljnih nedostataka u azilnoj politici koje su naglašene i u okviru međunarodnopravne zaštite izbjeglica.

Iako je većina preporuka naglašena analizom svake od direktiva, u zaključku ističemo nekoliko općih preporuka. Prva od njih odnosi se na **unapređenje sustava zaštite ljudskih prava neregularnih migranata**, osobito neregularnih migranata tražitelja azila koji u Republici Hrvatskoj u velikoj mjeri ne uživaju ista prava poput tražitelja azila koji su u Hrvatsku došli zakonitim putem (iako zakonodavna podloga usmjerava na pozitivno postupanje s tražiteljima azila koji su neregularno ušli na teritorij Republike Hrvatske). Sljedeća preporuka tiče se **razvoja sustava zaštite ljudskih prava i potreba maloljetnih osoba**, pri čemu treba voditi računa o poštovanju zakonskih propisa, adekvatnim smještajnim uvjetima, programima zaštite i psiho-socijalne pomoći, regulatornim elementima u slučajevima prisilnog udaljenja. Nadalje, potrebno je vrlo **pažljivo postupati sa svim ranjivim skupinama, uključujući osobe s posebnim potrebama**, i omogućiti im što bezbolniji postupak, adekvatne programe zaštite, psiho-socijalnu i svaku drugu pomoć te izgraditi mehanizam prepoznavanja potreba ranjivih skupina jačanjem stručnog kapaciteta osoblja i organizacije rada.

Unatoč visokom unapređenju procedure traženja azila, kako na prvostupanjskoj, tako i na drugostupanjskoj razini, preporučujemo da se **pružanje besplatne pravne pomoći** proširi na sve faze postupka, kao i na onu prije prisilnog udaljenja. Ističemo preporuku **jasnog i preciznog definiranja odredbi Zakona o strancima** u slučajevima prisilnog udaljenja, mjera protjerivanja, napuštanja, neregularnog boravka, povratka, zabrana ulaska, dobrovoljnog povratka, zadržavanja i sl. Vezano uz to predlažemo razvijanje **sustava prisilnog udaljenja** s uključivim mehanizmima nadzora prisilnih udaljenja, kao i razvoja programa za pripremu osoba na povratak u zemlju podrijetla.

Ističemo da je nužno izgraditi sustav brzog i kvalitetnog **uključivanja djece tražitelja azila u hrvatski obrazovni sustav**, odraslih tražitelja azila u **sustav obrazovanja za odrasle**, kao i funkcionalno **povezivanje s tržištem rada**.

Na kraju želimo istaknuti kako sveukupni razvoj politike azila ovisi o investiranju brojnih stručnih i materijalnih resursa koji se mogu pronaći i u izvaninstitucionalnoj sferi. Potičemo državne institucije da aktivno i odgovorno preuzmu svoje uloge u **otvorenoj suradnji i razmjeni sa zainteresiranim organizacijama civilnoga društva, odvjetnicima i stručnjacima** te da **proces donošenja odluka učine participativnim i razvojnim.**

## *Conclusion – General Recommendations*

The analysis of the ***acquis*** in these Directives indicates a high degree of harmonization in the Croatian legal framework in several phases of harmonization. Apart from this, the analysis has shown the harmonization of institutional mechanisms as pillars of legal practice but also their insufficient degree of development on the levels of the harmonization of practice and rules and regulations, the building of expert and other capacities in the development of policies on asylum and irregular migrations, but also in the area of social involvement of asylum-seekers and the integration of asylees. In spite of the high degree of harmonization of the majority of provisions, the analysis has shown several fundamental failures in asylum policy, considered against the background of the protection of refugees under international law.

Although most recommendations are given within the analysis of each Directive, in this conclusion we indicate several general recommendations. The first refers to **the improvement of the system that protects the human rights of irregular migrants**, in particular irregular migrants who are asylum-seekers who largely do not enjoy the same rights in the Republic of Croatia as asylum-seekers who entered Croatia legally (although legislation directs that asylum-seekers who entered the territory of the Republic of Croatia irregularly should be treated positively). The second recommendation refers to **the development of the system that protects the human rights and needs of minors**, which should ensure that the legal rules and regulations are fully respected, the accommodation conditions are adequate, protection and psycho-social programmes exist, and the regulatory elements are present in cases of forced removal. Furthermore, **it is necessary to treat all vulnerable groups with particular care, including persons with special needs**, and to treat them in a way which is as painless as possible, and to provide adequate programmes of protection, psycho-social care and every other assistance, and to design a mechanism for identifying the needs of vulnerable groups through the enhancement of expert capacities of personnel and work organizations.

In spite of a high degree of improvement in the asylum application process, both at first and second instance we recommend that the provision of **free legal assistance** is extended to all phases of procedure as well as before forced removal. We are highlighting the recommendation to define **the provisions of the Foreigners Act more clearly and precisely** in cases of forced removal, return measures, irregular stay, return, entry ban, voluntary departure, etc.. In relation to this, we recommend that **a system of forced removal** is developed which would include mechanisms for monitoring forced removals as well as the development of programmes to prepare the persons for the return to their country of origin. We point out that it is necessary to build a system of quick and efficient **involvement of the asylum-seekers' children in the Croatian education system**, as well as adult asylum-seekers with **the education system for adults**, as well as a functional **linkage with the labour market**.
Finally we wish to point out that the all-encompassing development of asylum policies depends on the investment of numerous expert and material resources which may be found outside the frame of state institutions. We encourage state institutions to take actively and responsibly, a role in **an open co-operation and exchange with interested civil society organisations, legal advisors and experts** and **to make the process of decision-making more inclusive and evolutionary**.

# Pregled specifičnih preporuka



**DIREKTIVA O PRIVREMENOJ ZAŠTITI** 2001/55/EC OD 20. SRPNJA 2001. O MINIMALNIM STANDARDIMA DAVANJA PRIVREMENE ZAŠTITE U SLUČAJU MASOVNOG PRILJEVA RASELJENIH OSOBA I O MJERAMA ZA PROMICANJE URAVNOTEŽENIH NAPORA DRŽAVA ČLANICA U I SNOŠENJU POSLJEDICA PRIHVATA TIH OSOBA

**1.** Unaprijediti sustav zaštite i tretmana osoba pod privremenom zaštitom
**1.1.** Osobama koje imaju privremenu zaštitu nakon maksimalno dvije godine treba regulirati sigurniji i trajniji status;
**1.2.** Osobi pod privremenom zaštitom važno je osigurati pristup individualnoj proceduri zahtjeva za azil (određivanja izbjegličkog statusa) u najkraćem vremenu;
**1.3.** Nužno je razvijati programe podrške i psiho-socijalne pomoći osobama koje imaju privremenu zaštitu;
**1.4.** Po uzoru na propise o učenju hrvatskoga jezika za maloljetnike, donijeti detaljne propise za druga područja: zapošljavanje, zdravstvenu zaštitu, obrazovanje odraslih i dr.

**2.** Preciznije definirati pojedine odredbe Zakona o azilu
**2.1.** Definiciju "potaknutog povratka" treba uvrstiti kao jednu od odredbi Zakona o azilu. On treba uslijediti u uvjetima sigurnosti i stabilnosti, uz programe socijalne i zdravstvene asistencije, skrbi i savjetovanja za povratnike;
**2.2.** U najvećoj mogućoj mjeri potrebno je izbjegavati prisilne povratke osoba pod privremenom zaštitom.

**DIREKTIVA O PRIHVATU** 2003/9/EC OD 27. SIJEČNJA 2003. O UTVRĐIVANJU MINIMALNIH STANDARDA ZA PRIHVAT TRAŽITELJA AZILA U DRŽAVAMA ČLANICAMA

**1.** Uskladiti ravnopravnu proceduru prihvata za sve tražitelje azila
**1.1.** Sva prava koja imaju tražitelji azila prema Zakonu o azilu trebaju vrijediti jednako za one tražitelje azila koji su neregularno prešli granicu Republike Hrvatske (preporučuje se ovo tretirati kao prekršaj, a ne kao kazneno djelo);
**1.2.** Svi tražitelji azila trebaju boraviti u Prihvatilištu za tražitelje azila i imati jednak pristup pravnom savjetovanju, zdravstvenoj njezi i dr.

**2.** Uspostaviti sustav brze i kvalitetne facilitacije integracije djece tražitelja azila u hrvatski obrazovni sustav
**2.1.** Pri prihvatu djece tražitelja azila, preporučiti pohađanje tečaja hrvatskog jezika u Prihvatilištu;
**2.2.** Organizirati sate hrvatskog jezika i drugih nastavnih predmeta;
**2.3.** Organizirati superviziju socijalnog radnika u Prihvatilištu kao pomoć u učenju i integraciji u školu.

**3.** Uspostaviti sustav brze i kvalitetne facilitacije integracije tražitelja azila na tržište rada
**3.1.** Utvrditi kvalifikacije, znanja i vještine tražitelja azila po prihvatu te organizirati

## *Overview of Specific Recommendations*

**COUNCIL DIRECTIVE** 2001/55/ECOF 20 JULY 2001 ON MINIMUM STANDARDS FOR GIVING TEMPORARY PROTECTION IN THE EVENT OF A MASS INFLUX OF DISPLACED PERSONS AND ON MEASURES PROMOTING A BALANCE OF EFFORTS BETWEEN MEMBER STATES IN RECEIVING SUCH PERSONS AND BEARING THE CONSEQUENCES THEREOF

1. To **improve the system of protection and treatment of persons under temporary** protection

1.1. To persons who have temporary protection after the maximum of two years, a safer and more permanent status should be regulated.

1.2. To a person under temporary protection it is important to ensure access to the procedure of individual asylum (definition of refugee status) application within the shortest possible time.

1.3. It is necessary to develop programmes of support and psycho-social help to persons who have temporary protection.

1.4. Following the example of the regulations about the learning of the Croatian language for minors, adopt detailed rules and regulations for other areas: employment, health care, adult education etc.

2. More **precisely define specific provisions from the Asylum Act**

2.1. The definition "encouraged return" should be listed as one of the provisions of the Asylum Act. It should occur under conditions of safety and stability with programmes of social and medical assistance, welfare and counselling for the returning persons.

2.2. To the greatest possible extent it is necessary to avoid enforced return of persons under temporary protection.

**COUNCIL DIRECTIVE** 2003/9/EC OF 27 JANUARY 2003 LAYING DOWN MINIMUM STANDARDS FOR THE RECEPTION OF ASYLUM SEEKERS, OJ L 31 OF 6 FEBRUARY 2003

1. **To harmonize the asylum procedure for all asylum-seekers, ensuring equality**

1.1. All rights given to asylum-seekers according to the Asylum Act should be equally applied to those asylum-seekers who cross the border of the Republic of Croatia irregularly (it is recommended that this should be treated as an infringement and not a criminal offence).

1.2. All asylum-seekers should be housed at the Reception Centre for Asylum-Seekers and have equal access to legal consultation, medical care etc.

2. **To establish a system of quick and high-quality facilitation of integration of children of asylum-seekers in the Croatian education system**

2.1. Upon the reception of the children of asylum-seekers, they should be enrolled in the course Croatian Language for Asylum-Seekers at the Reception Centre.

2.2. To organise lessons in the Croatian language and other subjects

2.3. To organise supervision by the Reception Centre's social worker as well as assistance in learning and integration into school.

profesionalnu orijentaciju i savjetovanje sa stručnjakom/-kinjom u Hrvatskom zavodu za zapošljavanje;

**3.2.** Omogućiti tražitelju/-ici azila stručno usavršavanje u skladu s potrebama i proračunskim sredstvima;

**3.3.** Omogućiti tražitelju/-ici azila upoznavanje s mogućnostima volonterskog angažmana u nevladinim organizacijama i lokalnim institucijama radi stjecanja znanja i vještina;

**3.4.** Razdoblje od godinu dana koje je potrebno proći kako bi tražitelj azila dobio pravo pristupa na tržište rada skratiti na šest mjeseci, budući da u skladu s Direktivom države članice mogu same donijeti odluku o trajanju zabrane pristupa tržištu rada.

**4.** Kontinuirano graditi kapacitete – znanja i vještine osoblja koje radi s tražiteljima azila

**4.1.** Organizirati redovitu superviziju i savjetovanja osoblja koje neposredno radi s tražiteljima azila radi kvalitetnijeg prepoznavanja i odgovaranja na potrebe različitih skupina te osobnog i profesionalnog napretka;

**4.2.** Organizirati ili podržati redovite edukacije, treninge i savjetovanja osoblja.

**5.** Uključiti tražitelje azila u upravljanje resursima Prihvatilišta za tražitelje azila

**5.1.** Organizirati tjedne sastanke tražitelja azila i osoblja radi zajedničkog upoznavanja s materijalnim uvjetima, novim tražiteljima azila i ponudom programa;

**5.2.** Poticati tražitelje azila na davanje preporuka i osoblje na uključivanje preporuka tražitelja azila u unapređenje rada Prihvatilišta.

**6.** Uključiti nevladine organizacije u rad Prihvatilišta za tražitelje azila s ciljem socijalnog uključivanja tražitelja azila i pomaganja integracije azilanata

**6.1.** Objaviti godišnje pozive za suradnju s Ministarstvom unutarnjih poslova za projekte i programe socijalnog uključivanja tražitelja azila i pomaganja integracije azilanata;

**6.2.** Sklopiti sporazum među mjerodavnim ministarstvima o financiranju programa socijalnog uključivanja tražitelja azila i pomaganja integracije azilanata.

**7.** Razviti sustav prihvata i skrbi o ranjivim društvenim skupinama i osobama s posebnim potrebama

**7.1.** Urediti i donijeti pravilnike koji detaljno i specifično tumače proceduru prihvata i zdravstvene njege osoba s posebnim potrebama, s manje mogućnosti, rijetkim bolestima i sl.;

**7.2.** U rad Prihvatilišta za tražitelje azila uključiti organizacije i stručnjake za rad s osobama s posebnim potrebama svih oblika.

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**DIREKTIVA O SPAJANJU OBITELJI** 2003/86/EC OD 22. RUJNA 2003. – PRAVO NA SPAJANJE OBITELJI DRŽAVLJANA TREĆIH ZEMALJA KOJI LEGALNO BORAVE NA TERITORIJU DRŽAVA ČLANICA

**1.** Uskladiti Zakon o azilu i Zakon o strancima sa Zakonom o istospolnim zajednicama u dijelu koji se odnosi na pravo osoba u istospolnim zajednicama na spajanje obitelji pod istim uvjetima u kojima se uređuje spajanje obitelji za bračne i druge zajednice

**1.1.** U Zakonu o azilu, članku 2. integrirati alineju – **"osobe iz istospolnih zajednica"**;

**1.2.** U Zakonu o azilu, članku 48. integrirati odredbu **"Pravo na spajanje obitelji azilanata s istospolnim partnerom odobrit će se ako je istospolna zajednica postojala prije**

**3. To establish a system of quick and high-quality facilitation of integration of asylum-seekers into the labour market**

**3.1.** To establish qualifications, knowledge and skills of asylum-seekers upon reception and to organize professional orientation and counselling with an expert from the Croatian Institute for Employment.

**3.2.** To provide the asylum-seeker with the opportunity of vocational training in accordance with needs and budgetary funds

**3.3.** To enable the asylum-seeker to become acquainted with the possibility of volunteering in non-governmental organizations and local institutions for the purpose of gaining knowledge and skills.

**3.4.** To reduce, from one year to 6 months, the period of time which must pass for the asylum-seeker to be entitled to access the labour market, because, according to the Directive, the Member States are free to decide the duration of the period within which an applicant shall not have access to the labour market.

**4. To continuously develop capabilities – knowledge and skills of staff working with asylum-seekers**

**4.1.** To organise regular supervision and counselling of staff members working directly with asylum-seekers for the purpose of a better recognition of, and response to, the needs of various groups, for the purpose of personal and professional improvement.

**4.2.** To organise regular education, training and counselling of staff members.

**5. To involve asylum-seekers in the management of the resources of the Reception Centre for Asylum-Seekers**

**5.1.** To organise weekly meeting between asylum-seekers and staff members for the purpose of becoming acquainted with the material conditions, new asylum-seekers, and the programmes offered.

**5.2.** To encourage asylum-seekers to give recommendations about the improvement of the work of the Reception Centre and to encourage staff members to improve the asylum-seekers' use of the Reception Centre's resources.

**6. To include non-governmental organizations in the work of the Reception Centre for Asylum-Seekers, with the aim of social inclusion of asylum-seekers and to help with the integration of asylees**

**6.1.** To publish an annual call for co-operation with the Ministry for Interior Affairs on projects and programmes of social involvement of asylum-seekers and assistance with the integration of asylees.

**6.2.** To reach an agreement between the relevant ministries regarding the financing of a programme of social involvement of asylum-seekers and assistance with the integration of asylees.

**7. To develop a system of reception and care for vulnerable social groups and persons with special needs**

**7.1.** To organize and adopt Ordinances which specifically explain the reception procedure and health care of persons with special needs, and those who are disabled or have a rare illness.

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**podnošenja zahtjeva za azil u Republici Hrvatskoj"**;

1.3. Članak 21. Zakona o istospolnim zajednicama potrebno je uskladiti s člankom 56. Zakona o strancima u dijelu koji propisuje definiciju članova uže obitelji.

2. Urediti pravnu regulativu u proceduri dokazivanja obiteljskih odnosa u slučajevima nemogućnosti izbjeglice da potkrijepi službene dokaze kojima se potvrđuje vrsta obiteljskog odnosa s osobom/osobama za koje se traži spajanje obitelji.

3. Urediti zakonsku regulativu vezano uz zaštitu i ostvarivanje prava maloljetnih izbjeglica (azilanata, tražitelja azila, izbjeglica pod supsidijarnom ili privremenom zaštitom) te razviti jasne procedure i ograničenje neregularnih praksi detencije maloljetnih izbjeglica.

4. Unaprijediti zakonske odredbe tretiranja, stambenog zbrinjavanja i stručne skrbi maloljetnih azilanata, maloljetnih osoba pod supsidijarnom i privremenom zaštitom, neovisno o tome kada će biti ostvareno pravo na spajanje obitelji.

5. U Zakonu o azilu uskladiti odredbu Direktive po kojoj je za članove obitelji koji su se "pridružili" sponzoru nužno omogućiti samostalno ostvarenje statusa, neovisno o statusu samog sponzora.

6. Omogućiti integraciju članova obitelji i za slučajeve spajanja obitelji kada naknadno dođe do promjene okolnosti bračnog statusa.

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**DIREKTIVA O KVALIFIKACIJI** 2004/83/EC OD 29. TRAVNJA 2004. O MINIMALNIM STANDARDIMA ZA KVALIFIKACIJU I STATUS DRŽAVLJANA TREĆIH ZEMALJA ILI OSOBA BEZ DRŽAVLJANSTVA KAO IZBJEGLICA ILI KAO OSOBA KOJIMA JE NA DRUGI NAČIN POTREBNA MEĐUNARODNA ZAŠTITA I O SADRŽAJU DODIJELJENE ZAŠTITE

1. Uskladiti Zakon o strancima i Zakon o azilu u dijelovima zabrane prisilnog udaljenja

1.1. Nužno je preciznije formulirati te jasnije i pobliže povezati odredbu članka 68., stavka 3. Zakona o strancima u smislu jednoznačnog određivanja **"drugih opravdanih razloga humanitarne prirode"** s člankom 3. Zakona o izmjenama i dopunama Zakona o azilu koji se tiče zabrane prisilnog udaljenja ili vraćanja (*refoulement*);

1.2. Potrebno je precizno odrediti koji je formalni standard zaštite za osobe koje nisu mogle dobiti zaštitu prema Zakonu o azilu i Zakonu o strancima, a ne mogu biti vraćene u zemlju podrijetla.

2. U Zakonu o izmjenama i dopunama Zakona o azilu, u članku 5., stavku 6. navode se **"djela koja su po svojoj prirodi specifično vezana uz spol..."** Kako je pojam "rod" kao zajednički nazivnik puno obuhvatniji koncept izražavanja, tako bi i taj stavak Zakona trebalo potpuno uskladiti s definicijom iz same Direktive gdje se spominju "**djela rodno specifične prirode**".

3. **Prema stavku 27. preambule Direktive stoji kako članovi obitelji zbog povezanosti s izbjeglicom jesu ranjivi prema djelima proganjanja u smislu da to može biti osnova**

**7.2.** To involve persons and organizations with expertise in the work of the Reception Centre for Asylum-Seekers involving persons with special needs of all kinds.

**COUNCIL DIRECTIVE** 2003/86/EC OF 22 SEPTEMBER 2003 ON THE RIGHT TO FAMILY REUNIFICATION

1. **To harmonise the Asylum Act and the Foreigners Act with the Same-Sex Union Act i the sections relating to the right of persons in same-sex unions to family reunification on the same terms which regulate the family reunification of marriages and other unions.**

**1.1.** In Article 2 of the Asylum Act, the following line should be integrated – *persons in same-sex unions*

**1.2.** In Article 48 of the Asylum Act the following provision should be integrated: *The right to family reunification of the asylee with his or her same-sex partner shall be approved if the same-sex union existed before the asylum application was lodged in the Republic of Croatia.*

**1.3.** It is necessary to harmonise Article 21 of the Same-Sex Union Act with Article 56 of the Foreigners Act in the part which prescribes the understanding of what a member of the nuclear family is.

2. **To regulate the legal framework for the procedure of proving family relationships in cases in which the refugee is unable to submit official evidence which confirm the type of family relationship he or she has with the person with whom family reunification is sought.**

3. **To regulate the legal framework in the area of protection and realization of rights of refugees who are minors (asylees, asylum-seekers, refugees under subsidiary or temporary protection), to improve the clarity of procedures, and to limit the irregular practice of detaining refugees who are minors.**

4. **To improve legal provisions for the treatment, housing and expert care of asylees who are minors, or under-age persons under subsidiary or temporary protection, irrespective of when their right to family reunification will be realized.**

5. **To harmonise the Asylum Act with the Directive's provision which prescribes that it is necessary to grant family members who have 'joined' the sponsor a status independent of that of the sponsor.**

6. **To enable the integration of family members in those cases of family reunification in which there is a subsequent change of marital circumstances.**

**COUNCIL DIRECTIVE** 2004/83/EC OF 29 APRIL 2004 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

**za dobivanje statusa izbjeglice; stoga bi takvo određenje trebalo uvrstiti i u članak 48. Zakona o azilu.**

4. Pristup zdravstvenoj skrbi, uključujući skrb o mentalnom zdravlju, treba biti osiguran za sve korisnike izbjegličkog statusa ili statusa supsidijarne zaštite. U članke 44. i 49. Zakona o azilu treba uvrstiti pravo na **"psihološku i psihosocijalnu skrb"** uz već postojeća prava na zdravstvenu zaštitu i socijalnu skrb.

5. Iako prema članku 45. Zakona o azilu **"azilant ostvaruje pravo na usavršavanje, prekvalifikaciju, dokvalifikaciju i specijalizaciju pod istim uvjetima kao hrvatski državljanin"**, trebalo bi uvesti princip afirmativne akcije u smislu protektivnih kvota u navedenim programima. Također, nakon članaka 101. do 104. treba uvrstiti mjerodavnost Ministarstva gospodarstva, rada i poduzetništva, koje bi zajedno s Ministarstvom znanosti, obrazovanja i športa trebalo biti zaduženo za razradu i provođenje specifičnih programa.

6. **Zakonom i posebnim Pravilnikom nužno je utvrditi specifikacije smještajnih centara specijaliziranih za prihvat i smještaj maloljetnika – maloljetnih tražitelja azila, maloljetnih azilanata i osoba pod supsidijarnom i privremenom zaštitom bez pratnje.**

7. **Preporučuje se izgraditi funkcionalan decentraliziran model učenja hrvatskog jezika za tražitelje azila, azilante, strance pod supsidijarnom i privremenom zaštitom, prilagođen potrebama, sposobnosti, predznanju i motivaciji polaznika.**

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**DIREKTIVA O PROCEDURI** 2005/85/EC OD 13. PROSINCA 2005. O MINIMALNIM STANDARDIMA U POSTUPKU PRIZNAVANJA I ODUZIMANJA IZBJEGLIČKOG STATUSA U DRŽAVAMA ČLANICAMA

1. Uspostaviti više standarde od minimalnih i precizirati pojedine odredbe Zakona
1.1. Ne smanjivati standarde u slučajevima kada su nacionalnim zakonodavstvom propisani standardi viši od onih u Direktivi;
1.2. Preciznije odrediti kompetencije osoba koje (i u prvom i u drugom stupnju) odlučuju o zahtjevima, uzeti u obzir iskustvo koje imaju te propisati obvezu i sadržaje kontinuirane edukacije i dodatne edukacije u svrhu što objektivnijeg i nepristranijeg razmatranja zahtjeva;
1.3. Precizirati kriterije na temelju kojih Ministarstvo unutarnjih poslova procjenjuje provođenje ubrzanog postupka;
1.4. Dodatno regulirati okolnosti u kojima se provodi osobno saslušanje te kompetencije osobe koja ga vodi, te što je moguće više inzistirati na saslušanju;
1.5. Kada je riječ o maloljetnicima, potrebno je zakonski regulirati načine i okolnosti utvrđivanja dobi, kao i informiranja maloljetnika o tome;
1.6. Uspostaviti dodatne kriterije za određivanje sigurnih trećih zemalja te nadzorne mehanizme prilikom slanja tražitelja azila u sigurnu treću zemlju.

2. Uskladiti ravnopravnu proceduru za sve tražitelje azila
2.1. Svi tražitelji azila trebaju boraviti u Prihvatilištu za tražitelje azila i imati osiguranu slobodu kretanja;

1. **To harmonize the Foreigners Act and the Asylum Act in those parts which prohibit enforced removal**

1.1. It is necessary to formulate precisely, and to connect closely and more clearly the provision in Article 68, Paragraph 3 in the Foreigners Act, in the sense of a more singular definition of 'other justifiable reasons of humanitarian nature', with Article 3 in the Asylum Amendment Act concerning the prohibition of enforced removal or return (*refoulement*).

1.2. It is necessary to determine precisely what represents a formal standard of protection for persons who were not able to obtain protection according to the Asylum Amendment Act and the Foreigners Act and who cannot be returned to their country of origin

2. **The Asylum Amendment Act, Article 5, Paragraph 6, mentions 'acts which are sex-specific in their nature...' Since the term 'gender' as a common denominator represents a more all-encompassing concept, this Paragraph in the Act should be completely harmonized with the Directive definition which mentions 'acts of a gender specific nature'.**

3. **According to Paragraph 27 of the Directive preamble, family members may, because of their relation to the refugee, be subject to acts of persecution in such a manner that they could form the basis for refugee status, and this is why this definition should be inserted in Article 48 of the Asylum Act.**

4. **Access to health care, including physical and mental care, should be provided for all beneficiaries of refugee status or subsidiary protection status. In Articles 44 and 49 of the Asylum Act, the right to 'psychological and psycho-social care' should be inserted alongside the existing rights to health care and social care.**

5. **Although Article 45 of the Asylum Act states that 'an asylee is entitled to vocational training and specialization under the same conditions as a Croatian national', the legislation should introduce the principle of affirmative action in the sense of protective quotas in such programmes. Also, after the Articles 101 to 104, a clause should be inserted that states that the competent authorities are the Ministry of Economy, Work and Entrepreneurship, which together with the Ministry of Science, Education and Sport, should be responsible for the designing and implementation of specific programmes.**

6. **It is necessary to establish, in the Act and a specific Ordinance, specifications of accommodation centres specialized for the reception and accommodation of minors – unaccompanied under-age asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection.**

7. **It is recommended that a functional decentralized model of teaching the Croatian language to asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection should be created and adapted to the needs, abilities, existing understanding and motivation of the attending students.**

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2.2. Sukladno Europskoj konvenciji o ljudskim pravima, treba uspostaviti sustav hitnog rješavanja slučajeva u kojima su osobe lišene slobode i smještene u detencijskom centru, odnosno Prihvatnom centru za strance u Republici Hrvatskoj;
2.3. Ubrzanom procedurom koristiti se samo nakon temeljite provjere zahtjeva;
2.4. Ukinuti koncept sigurne zemlje podrijetla zbog kontradikcije sa samim smislom traženja zaštite u drugoj zemlji te individualnim, objektivnim i nepristranim razmatranjem zahtjeva.

3. Unaprijediti sustav suradnje i razmjene informacija s odvjetnicima
3.1. Uspostaviti pravila za dostavu poziva i obavijesti o deportaciji klijenta odvjetnicima u upravnom postupku, sukladno važećem Zakonu o upravnom postupku;
3.2. Odvjetnicima učiniti dostupnim svu dokumentaciju i relevantne informacije za slučaj koji vode;
3.3. Pružanje besplatne pravne zaštite tražitelju azila proširiti i na sve faze postupka, odnosno omogućiti besplatnu pravnu pomoć tijekom prvog stupnja te prije i tijekom deportacije.

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**DIREKTIVA VIJEĆA** 2002/90/EZ OD 28. STUDENOGA 2002. KOJOM SE DEFINIRA POMAGANJE NEOVLAŠTENOG ULASKA, TRANZITA I BORAVKA

1. U Zakonu o strancima istaknuti razliku između humanitarnog i ostalih oblika pomaganja pri ilegalnim prelascima granice te, u skladu s tim, regulirati sankcije za ta djela;

2. Kontinuirano implementirati programe sprečavanja praksi trgovanja ljudima, krijumčarenja ljudi, ropstva i dr.

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**DIREKTIVA EUROPSKOG PARLAMENTA I VIJEĆA EUROPE** 2008/115/EC OD 16. PROSINCA 2008. O ZAJEDNIČKIM STANDARDIMA I PROCEDURAMA DRŽAVA ČLANICA ZA POVRATAK DRŽAVLJANA TREĆIH DRŽAVA KOJI BORAVE ILEGALNO

1. Unaprijediti sustav zaštite ljudskih prava neregularnih imigranata
1.1. Zakonom propisati važnost poštovanja ljudskih prava i dostojanstva neregularnih imigranata;
1.2. Prilikom udaljenja osoba koje su dobile negativno rješenje na zahtjev za azil ili nekih drugih ranjivih skupina voditi računa o obiteljskim, osobnim ili drugim okolnostima;
1.3. Prilikom udaljenja voditi računa o zdravlju osobe koja se protjeruje kako bi se izbjegla sekundarna traumatizacija u slučaju neregularnih migranata žrtava mučenja i sl.;
1.4. Prestanak zabrane ulaska odbijenim tražiteljima azila.

2. Preciznije urediti odredbe Zakona o strancima
2.1. Uskladiti, tj. proširiti odredbe kojima se definiraju pojedine kategorije, kao što su: prisilno udaljenje, mjera protjerivanja, napuštanje, ilegalni boravak, povratak, zabrana ulaska, dobrovoljni povratak i zadržavanje, s člankom 3. Direktive;
2.2. Razviti stručne programe za pripremu osoba na povratak u zemlju podrijetla;
2.3. Urediti pitanje upotrebe sile i njezino izuzimanje, ograničenje, proporcionalnost;
2.4. Razviti mehanizme nadzora prisilnih udaljenja.

**COUNCIL DIRECTIVE** 2005/85/EC OF 1 DECEMBER 2005 ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS, OJ L 326 OF 13 DECEMBER 2005

1. **To establish standards which surpass minimum standards and to make particular provisions of the Act more specific**

1.1 Not to reduce standards where those prescribed by the national legislation surpass the standards in the Directive

1.2 To determine more precisely the competencies of persons who (at the first and second instance) make decisions about applications, taking into account the experience they have in this area, and to prescribe an obligation to attend and the contents of continuing and further education courses for the purpose of a more objective and impartial examination of applications.

1.3 To specify the criteria based on which the Ministry of Interior Affairs shall assess whether a procedure is to be accelerated.

1.4 To further regulate the circumstances in which a personal interview is conducted, and the competencies of the person conducting such interviews, and to avoid as much as possible a failure to interview applicants.

1.5 With regard to minors, it is necessary to regulate by law the manner and circumstances by which their age is established, as well as informing them about that process.

1.6 To establish additional criteria for determining safe third countries and establishing monitoring mechanisms in cases in which asylum-seekers are sent to a safe third country

2. **To harmonize equality of procedure for asylum applicants**

2.1 All asylum applicants should be housed at the Reception Centre for Asylum Seekers and should have freedom of movement

2.2 According to the European Convention on Human Rights, a system should be established for the urgent processing of cases of persons deprived of freedom and housed at a detention centre, i.e. the Reception Centre for Foreigners in the case of the Republic of Croatia

2.3 Accelerated procedure should only be used after a thorough examination of the application is completed

2.4 Abolish the concept of safe country of origin because it contradicts the very meaning of asking protection in another country and the individual, objective and impartial examination of an application.

3. **To improve the system of co-operation and information-exchange with legal advisors**

3.1 To establish rules and regulations for the communication of invitations and information about the deportation of clients to their legal advisors through an administrative procedure in accordance with the extant Administrative Proceedings Act

2.2. To ensure that legal advisors have access to all documentation and relevant information for their brief.

2.3. To extend the offer of free legal protection for asylum-seekers to other phases of the procedure, i.e. to ensure free legal assistance during proceedings at first instance, and before and during deportation

**3.** Unaprijediti sustav zaštite maloljetnih osoba

**3.1.** regulirati slučajeve deportacije maloljetnih osoba;

**3.2.** regulirati smještaj maloljetnika bez pratnje i omogućiti im odgovarajuće uvjete bez dijeljenja prostora s odraslim neregularnim imigrantima;

**3.3.** osigurati prikladan i primjeren smještaj i tretman maloljetnika neregularnih imigranata.

**COUNCIL DIRECTIVE**, 2002/90/EC OF 28 NOVEMBER 2002 DEFINING THE FACILITATION OF UNAUTHORISED ENTRY, TRANSIT AND RESIDENCE, OJ L 328 OF 5.12.2002

1. To insert in the Foreigners Act the distinction between humanitarian and other forms of assistance in irregular border crossings, and in accordance with this, to regulate the sanctions for these acts.

2. To continually implement programmes which prevent human trafficking, smuggling, slavery etc.

**DIRECTIVE** 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 2008 ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS

1. **To improve the system that safeguards the human rights of irregular immigrants**

1.1. To prescribe by law the importance of respecting human rights and the dignity of irregular immigrants

1.2. To take into account the family, personal and other circumstances in cases of the removal of persons who have not been granted asylum, and other vulnerable groups

1.3. To take into account the health of the persons being removed in order to avoid secondary trauma when the irregular migrant is a victim of torture etc.

1.4. To end the use of an entry ban for asylum-seekers who were not granted asylum

2. **To regulate the provisions of the Foreigners Act in more detail**

2.1. The provisions which define specific categories such as forced removal, return measure, abandonment, voluntary departure, irregular stay, return, entry ban, detention, should be extended and harmonized with Article 3 of this Directive

2.2. To design expert programmes to prepare the persons concerned for return to their country of origin

2.3. To regulate the issue of the use of force and its omission, limitation and proportion

2.4. To develop mechanisms for controlling forced removals

3. **To improve the system that protects minors**

3.1. To regulate cases of the deportation of minors

3.2. To regulate the accommodation of unaccompanied minors and to ensure they do not have to share living space with adult irregular immigrants

3.3. To ensure appropriate accommodation and treatment of underage irregular immigrants

# Prilozi



## PRILOG 1. ISTRAŽIVAČKA PITANJA

### ISTRAŽIVAČKO PITANJE BR. 1: U KOJOJ SU MJERI ZAKONODAVSTVO I PRAKSA HRVATSKIH INSTITUCIJA U PODRUČJU NEREGULARNIH MIGRACIJA USKLAĐENE S EUROPSKOM PRAVNOM STEČEVINOM?

1) Jesu li hrvatski zakoni i strategije u skladu s europskim direktivama?
2) Kakva je praksa prihvata, smještaja i boravka neregularnih migranata te poštovanje njihovih ljudskih prava?
3) Kako se poštuje pravo na azil neregularnih migranata?

### ISTRAŽIVAČKO PITANJE BR. 2: U KOJOJ SU MJERI ZAKONODAVSTVO I POLITIKA HRVATSKIH INSTITUCIJA U PODRUČJU SUSTAVA AZILA USKLAĐENE S EUROPSKOM PRAVNOM STEČEVINOM?

1) Jesu li hrvatski zakoni i regulative usklađene s europskim direktivama u području azila?
2) Kakva je praksa prihvata i smještaja tražitelja azila?
3) Kako izgleda procedura zahtijevanja azila?
4) Kakav je sustav zaštite izbjeglica kojima je odbijen azil?

## PRILOG 2. POPIS GLAVNIH ANALIZIRANIH DOKUMENATA

- Direktiva o privremenoj zaštiti 2001/55/EC od 20. srpnja 2001. o minimalnim standardima davanja privremene zaštite u slučaju masovnog priljeva raseljenih osoba i o mjerama za promicanje uravnoteženih napora država članica u snošenju posljedica prihvata tih osoba
- Direktiva o prihvatu 2003/9/EC od 27. siječnja 2003. o utvrđivanju minimalnih standarda za prihvat tražitelja azila u državama članicama
- Dablinska uredba – Uredba Vijeća Europske unije br. 343/2003 (18. veljače 2003.) kojom se utvrđuju kriteriji i mehanizmi za određivanje države članice odgovorne za razmatranje zahtjeva za azil koji podnosi državljanin/-ka treće zemlje u jednoj od država članica
- Direktiva o spajanju obitelji 2003/86/EC od 22. rujna 2003. – pravo na spajanje obitelji državljana trećih zemalja koji legalno borave na teritoriju država članica
- Direktiva o kvalifikaciji 2004/83/EC od 29. travnja 2004. o minimalnim standardima za kvalifikaciju i status državljana trećih zemalja ili osoba bez državljanstva kao izbjeglica ili kao osoba kojima je na drugi način potrebna međunarodna zaštita, te o sadržaju dodijeljene zaštite
- Direktiva o proceduri 2005/85/EC od 13. prosinca 2005. o minimalnim standardima u postupku priznavanja i oduzimanja izbjegličkog statusa u državama članicama
- Direktiva Vijeća 2002/90/EZ od 28. studenoga 2002. kojom se definira pomaganje neovlaštenog ulaska, tranzita i boravka
- Direktiva vijeća 2004/81/EZ od 29. travnja 2004. o odobrenju boravka izdanome

# Appendices

### APPENDIX 1. RESEARCH QUESTIONS

*RESEARCH QUESTION NO. 1: TO WHAT EXTENT ARE THE LEGISLATIVE FRAMEWORK AND PRACTICE OF CROATIAN INSTITUTIONS IN THE AREA OF IRREGULAR MIGRATIONS HARMONIZED WITH THE ACQUIS?*

1) Are Croatian laws and strategies in accordance with EU directives?
2) What is common practice like in terms of reception, accommodation and residence of irregular migrants, and respect for their human rights?
3) In what ways is the right of irregular migrants to asylum being observed?

*RESEARCH QUESTION NO. 2: TO WHAT EXTENT ARE CROATIAN LEGISLATION AND THE POLICIES OF CROATIAN INSTITUTIONS IN THE AREA OF ASYLUM SYSTEM HARMONIZED WITH THE ACQUIS?*

1) Are Croatian laws, rules and regulations harmonized with EU directives in the area of asylum?
2) What is the practice of reception and accommodation of asylum-seekers?
3) What does the procedure of asylum application look like?
4) What is the system of protection for refugees who have been denied asylum like?

### APPENDIX 2. THE LIST OF THE MAIN ANALYZED DOCUMENTS:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
- The Dublin Regulation - Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
- Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification
- Council Directive 2004/83/EC of 29 April 2004 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
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
- Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to

državljanima trećih država koji su žrtve trgovine ljudima ili im je pružena pomoć za ilegalnu imigraciju, a sudjeluju s mjerodavnim tijelima

- Direktiva Europskog parlamenta i Vijeća Europe 2008/115/EC od 16. prosinca 2008. o zajedničkim standardima i procedurama država članica za povratak državljana trećih država koji borave ilegalno
- Migracijska politika Republike Hrvatske za 2007./2008. (NN br. 109/03. i 182/04.)
- Odluka o troškovima smještaja u Prihvatilištu za tražitelje azila (NN br. 79/07.)
- Pravilnik o besplatnoj pravnoj pomoći u postupku azila (NN br. 79/07.)
- Pravilnik o hrvatskoj bazi podataka o vizama (NN br. 79/07.) i Pravilnik o izmjenama i dopunama pravilnika o hrvatskoj bazi podataka o vizama (NN br. 88/09.)
- Poslovnik o radu Povjerenstva za azil (NN br. 79/07.)
- Pravila boravka u Prihvatnom centru za strance (NN br. 79/07.)
- Pravilnik o načinu provođenja programa i provjeri znanja tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom, radi pristupa obrazovnom sustavu Republike Hrvatske (NN br. 79/2007.)
- Pravilnik o načinu utvrđivanja uvjeta za odobrenje privremenog boravka strancima u svrhu znanstvenoga istraživanja (NN br. 79/2007.)
- Pravilnik o načinu provođenja programa učenja hrvatskog jezika, povijesti i kulture te provjere znanja tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom, radi pristupa obrazovnom sustavu Republike Hrvatske (NN br. 89/08.)
- Pravilnik o obrascima i zbirkama podataka u postupku azila (NN br. 79/07.)
- Pravilnik o putnim ispravama za strance, vizama te o načinu postupanja prema strancima (NN br. 36/08.)
- Pravilnik o sadržaju zdravstvenog pregleda tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom (NN br. 79/07.)
- Pravilnik o statusu i radu stranaca (NN br. 36/08.)
- Pravilnik o smještaju tražitelja azila, azilanata, stranaca pod supsidijarnom zaštitom i stranaca pod privremenom zaštitom (NN br. 79/07.)
- Pravilnik o visini novčane pomoći tražiteljima azila, azilantima, strancima pod privremenom zaštitom i strancima pod supsidijarnom zaštitom (NN br. 79/07.)
- Pravilnik o vizama (NN br. 79/07.) i Pravilnik o izmjenama i dopunama pravilnika o vizama (NN br. 101/2009.)
- Pravilnik o viznim obrascima (NN br. 41/10.)
- Program hrvatskog jezika, povijesti i kulture za tražitelje azila i azilante (NN br. 129/09.)
- Rješenje o načinu izračuna troškova prisilnog udaljenja (NN br. 79/2007.)
- Rješenje o izmjenama i dopunama Rješenja o načinu izračuna troškova prisilnog udaljenja (NN br. 79/07.)
- Rješenje o utvrđivanju cijene osobne iskaznice za azilanta, iskaznice stranca pod supsidijarnom zaštitom te putne isprave za azilanta (NN br. 6/08. i 46/08. – ispr.)
- Rješenje o utvrđivanju cijene odobrenja za privremeni i stalni boravak te osobne iskaznice za stranca (NN br. 36/08.)
- Uredba o načinu izračuna i visini sredstava za uzdržavanje stranaca u RH (NN br. 88/09.)
- Uredba o viznom sustavu (NN br. 101/98., 15/00., 117/01., 199/03. i 30/04.)
- Uredba o izmjenama i dopunama Uredbe o viznom sustavu (NN 56/09.)

third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

- Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning irregularly staying third-country nationals
- Migration policy of the Republic of Croatia for 2007/2008 (OG no. 109/03 and 182/04)
- Decision about the Costs of Accommodation at the Reception Centre for Asylum-seekers (OG no. 79/07)
- Ordinance establishing free legal assistance in the asylum procedure (OG no. 79/07)
- Ordinance establishing Croatian visa database (OG no. 79/07) and Ordinance establishing The Amended Ordinance about Croatian visa database (OG no. 88/09)
- Rules of Procedure about the work of the Asylum Commission (OG no. 79/07)
- Rules and Regulations about the accommodation in the Reception Centre for Foreigners (OG no. 79/07)
- Ordinance establishing the manner of the implementation of the curriculum and assessment of knowledge of asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection for the purpose of access to the education system of the Republic of Croatia (OG no. 79/2007)
- Ordinance establishing the conditions for the granting of temporary residence to foreign citizens for the purpose of scientific research (OG no. 79/2007)
- Ordinance establishing the manner of implementing the curriculum of the learning of Croatian language, history and culture, and assessment of existing knowledge of asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection, for the purpose of access to the education system of the Republic of Croatia (OG no. 89/08)
- Ordinance establishing forms and databases in asylum application procedures (OG no. 79/07)
- Ordinance establishing travel documents for foreign citizens, visas and the manner of treating foreign citizens (OG no. 36/08)
- Ordinance establishing the content of health screening of asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection (OG no. 79/07)
- Ordinance establishing the status and employment of foreign citizens (OG no. 36/08)
- Ordinance establishing the accommodation of asylum-seekers, asylees, foreign citizens under subsidiary protection and foreign citizens under temporary protection (OG no 79/07)
- Ordinance establishing the amount of financial help for asylum-seekers, asylees, foreign citizens under temporary protection and foreign citizens under subsidiary protection (OG no. 79/07)
- Ordinance about visas (OG no. 79/07) and Ordinance establishing the Amended Ordinance about visas (OG no. 101/2009)
- Ordinance establishing visa forms (OG no. 41/10)
- Curriculum of the Croatian language, history and culture for asylum-seekers and asylees (OG no. 129/09)
- Decision **on the manner of calculating the cost of forced removal (OG no 79/2007)**

> Uredba o izmjeni i dopuni uredbe o viznom sustavu (NN 153/09.)
> Zakon o izmjenama i dopunama Zakona o azilu (NN br. 88)
> Zakon o azilu (NN br. 103/03.)
> Zakon o strancima (NN br. 79/07.)

## PRILOG 3. POPIS FOKUS GRUPA

> Fokus grupa s tražiteljima azila u Prihvatilištu za tražitelje azila u Kutini, 11. ožujka 2010.
– **sudjelovalo 8 tražitelja azila**

> Fokus grupa s neregularnim migrantima tražiteljima azila u Prihvatnom centru za strance u Ježevu, 29. ožujka 2010.
– **sudjelovalo 5 neregularnih migranata tražitelja azila**

> Pojedinačni razgovori s azilantima – siječanj – svibanj 2010.
– **sudjelovalo 8 azilanata i članova/ica njihovih obitelji**

## PRILOG 4. POPIS MJERODAVNIH INSTITUCIJA I ANGAŽIRANIH ORGANIZACIJA S KOJIMA SU VOĐENI RAZGOVORI

Centar za ljudska prava, 3. ožujka 2010.
Dom za nezbrinutu djecu Dugave, 1. travnja 2010.
Hrvatski Crveni križ, 1. ožujka 2010. i 30. ožujka 2010.
Hrvatski pravni centar, 28. travnja 2010.
Ministarstvo unutarnjih poslova, 11. ožujka 2010.
Ministarstvo unutarnjih poslova – Prihvatni centar za strance, 29. ožujka 2010.
Povjerenstvo za azil, 1. ožujka 2010.
Ured visokog predstavnika za izbjeglice Ujedinjenih naroda (UNHCR), 4. ožujka 2010.
Ured za ljudska prava Vlade Republike Hrvatske, 1. ožujka 2010.

> Decision **on the Amended Decision on the manner of calculating the cost of forced removal (OG no. 79/2007)**
> Decision **on the calculation of the cost of identification cards for asylees and foreign citizens under subsidiary protection and travel documents for asylees (OG no. 6/08 and 46/08)**
> Decision **on the calculation of the cost of granting temporary and permanent residence and identification cards for foreign citizens (OG no. 36/2008)**
> Provision **about the manner of calculating and amount of funds for the supporting of foreign citizens in the Republic of Croatia (OG no. 88/09)**
> Provision about the visa system (OG nos 101/98, 15/2000, 117/2001, 199/2003 and 30/2004)
> Provision about the Amended Provision about the visa system (OG 56/09)
> Provision about the Amended Provision on the visa system (OG 153/09)
> Asylum Amendment Act (OG no. 88)
> Asylum Act (OG no. 103/03)
> Foreigners Act (OG no. 79/07)

### *APPENDIX 3. LIST OF FOCUS GROUPS*

> Focus group with asylum-seekers in the Reception Centre for Asylum-Seekers at Kutina, 11 March 2010.
- **8 asylum-seekers participated**

> Focus group with irregular migrants who are asylum-seekers in the Reception Centre for Foreigners at Ježevo, 29 March 2010.
- **5 irregular migrants who are asylum-seekers participated**

> Individual interviews with asylees: January to May 2010.
- **8 asylum-seekers and their family members participated**

### *APPENDIX 4. LIST OF COMPETENT INSTITUTIONS AND ENGAGED ORGANIZATION WHO PARTICIPATED IN THE INTERVIEWS*

Centre for Human Rights, 3 March 2010
Residential Home for Orphaned and Abandoned Children Dugave, 1 April 2010
Croatian Red Cross, 1 March and 30 March 2010
Croatian Law Centre, 28 April 2010
Ministry of Interior Affairs, 11 March 2010
Ministry of Interior Affairs – Reception Centre for Foreign Citizens, 29 March 2010.
The Asylum Commission, 1 March 2010
UN Office of the High Representative for Refugees (UNHCR), 4 March 2010
Office for Human Rights of the Government of the Republic of Croatia, 1 March 2010

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**Grdešić, I.:** *Osnove analize javnih politika*, Fakultet političkih znanosti Sveučilišta u Zagrebu, Zagreb, 2006.

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# pregled analize

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# analysis overview

| DIREKTIVA O PRIVREMENOJ ZAŠTITI 2001/55/EC | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
|---|---|---|
| **OPĆE ODREDBE** | | |
| Privremena zaštita je iznimka u proceduri dodjeljivanja zaštite, a daje se u slučajevima masovnog priljeva raseljenih osoba iz trećih zemalja koje se ne mogu vratiti u zemlju ili regiju podrijetla, a kako bi se izbjegao rizik zagušivanja sustava azila.<br>Davanje privremene zaštite ni u kom slučaju ne smije ograničiti mogućnost pristupa individualnoj proceduri zahtjeva za azil. | Privremena zaštita je zaštita hitnog i privremenog karaktera odobrena u izvanrednom postupku, u slučajevima masovnog priljeva ili predstojećeg masovnog priljeva raseljenih osoba iz trećih zemalja koje se ne mogu vratiti u zemlju svog podrijetla, osobito ako postoji rizik da zbog tog masovnog priljeva nije moguće učinkovito provesti postupak za odobrenje azila, radi zaštite interesa raseljenih osoba i drugih osoba koje traže zaštitu. | Razlika između definicije privremene zaštite iz Direktive i Zakona o azilu jest u tome što se u Hrvatskoj privremena zaštita ne definira kao iznimka u proceduri dodjele zaštite. Osoba koja ima privremenu zaštitu može tražiti azil, no ne i koristiti se pravima tražitelja azila dok joj ne istekne privremena zaštita. Ta se prava odnose uglavnom na primanje novčane i humanitarne pomoći, kao i besplatne pravne pomoći. |
| **TRAJANJE I PROVOĐENJE PRIVREMENE ZAŠTITE** | | |
| Privremena zaštite traje godinu dana, uz mogućnost produljenja na šest mjeseci do najviše jedne godine. | Privremenu zaštitu odobrava Ministarstvo na jednu godine. Privremena zaštita može se automatski produžiti na šest mjeseci, ali ne duže od godinu dana. | Prema Izmjenama i dopunama Zakona o azilu iz 2010., članak 84. mijenja se, prilagođavajući se restriktivnijim mogućnostima Direktive. |
| **OBVEZE PREMA OSOBAMA KOJE UŽIVAJU PRIVREMENU ZAŠTITU** | | |
| Dozvola boravka, osiguranje vize bez naknade i dokumenata o statusu.<br>Uključivanje u radni odnos i mogućnost samostalne djelatnosti.<br>Pristup maloljetnika sustavu obrazovanja kao i državljanima, te zaštita maloljetnika bez pratnje – zastupanje, smještaj s odraslom rodbinom ili u prihvatnim centrima s posebnim odredbama. | Dozvola boravka i iskaznica koja vrijedi godinu dana i može se produžavati.<br>Omogućeno je uključivanje u radni odnos i usavršavanje.<br>Školovanje stranaca pod privremenom zaštitom koji su maloljetni osigurat će se sukladno propisima koji reguliraju predškolsko, osnovno, srednje i visoko obrazovanje, pod jednakim uvjetima kao i hrvatskim državljanima. | Zakon o azilu ne napominje pokrivanje troškova vize.<br>Stranac pod privremenom zaštitom može raditi u Republici Hrvatskoj bez radne ili poslovne dozvole.<br>Područje je regulirano "Pravilnikom o načinu provođenja programa i provjeri znanja tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom, radi pristupa obrazovnom sustavu Republike Hrvatske".<br>Zakon o azilu sadrži sve važne elemente i standarde iz Direktive, no na maloljetnike koji uživaju privremenu zaštitu odnose se iste odredbe vezane uz smještaj kao i za azilante. |
| **POVRATAK I MJERE NAKON ŠTO PRIVREMENA ZAŠTITA PRESTANE** | | |
| Omogućava se dobrovoljan povratak osoba koje uživaju privremenu zaštitu ili čija je privremena zaštita završila, a pritom se vodi računa o tome da im se olakša povratak sukladno načelima sigurnosti i dostojanstva. | Povratak treba uslijediti u uvjetima sigurnosti i stabilnosti, uz programe socijalne i zdravstvene pomoći, skrbi i savjetovanja za povratnike. | Članak 87. Zakona o azilu usklađen je s ovim člankom u svemu osim u dijelu Direktive u kojemu stoji kako " države članice mogu osigurati istraživačke posjete mjestima mogućeg povratka." |
| **PRESTANAK PRIVREMENE ZAŠTITE** | | |
| Zbog počinjena zločina protiv mira, ratnog zločina ili zločina protiv čovječnosti, ako je osoba počinila teško nepolitičko kazneno djelo, ako je osuđena za djela protivna ciljevima i načelima Ujedinjenih naroda te ako predstavlja opasnost za sigurnost. | Strancu prestaje privremena zaštita:<br>– protekom vremena na koje je odobrena,<br>– odlukom Vlade o prestanku postojanja razloga za odobrenje privremene zaštite. | Zakon o azilu sadrži propise o razlozima uskraćivanja privremene zaštite koje ne nalazimo u Direktivi. |

**PREPORUKE**

**1.** Unaprijediti sustav zaštite i tretmana osoba pod privremenom zaštitom;
- Regulirati sigurniji i trajniji status;
- Osigurati pristup individualnoj proceduri zahtjeva za azil;
- Razvijati programe podrške i psiho-socijalne pomoći osobama koje imaju privremenu zaštitu;
- Donijeti detaljne propise za područja: zapošljavanje, zdravstvenu zaštitu, obrazovanje odraslih i dr.

**2.** Preciznije definirati pojedine odredbe Zakona o azilu;
- Definiciju "potaknutog povratka" treba uvrstiti kao jednu od odredbi Zakona o azilu.

U najvećoj mogućoj mjeri potrebno je izbjegavati prisilne povratke osoba pod privremenom zaštitom.

| DIREKTIVA O PRIHVATU 2003/9/EC | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
|---|---|---|
| **OPĆE ODREDBE** | | |
| Dostojanstven i kvalitetan prihvat tražitelja azila u zemljama članicama s ciljem ujednačenog razvoja zajedničkog azilnog sustava i unapređenja slobode, sigurnosti i pravde. | Hrvatski zakonodavni okvir slijedi standarde direktive, osim kako je navedeno: „Stranac koji je nezakonito ušao u Republiku Hrvatsku, a došao je izravno s područja na kojem je proganjan ... neće se kazniti zbog nezakonitog ulaska ili boravka, ako bez odgode podnese zahtjev za azil i ako predoči valjane razloge svog nezakonitog ulaska ili boravka.“ | Visoka usklađenost propisa i prakse osim u slučajevima postupanja s tražiteljima azila koji su nezakonito prešli granicu Republike Hrvatske. |
| **PRUŽANJE INFORMACIJA TRAŽITELJIMA AZILA** | | |
| Tražitelj/-ica azila ima pravo biti obaviješten/-ena u roku od najviše 15 dana od podnošenja zahtjeva za azil o predviđenim uslugama, pravima i obvezama vezanima uz prihvat. | Tražitelja/-icu azila će se „obavijestiti o načinu provođenja postupka za odobrenje azila, o pravima i obvezama ... mogućnosti dobivanja besplatne pravne pomoći ... obraćanja predstavnicima UNHCR-a i drugih organizacija ... na materinjem jeziku ... u roku od petnaest dana od podnošenja zahtjeva“. | Analiza prakse pokazuje da je dio tražitelja azila još uvijek nedovoljno informiran o svojim pravima i mogućnostima. |
| **DOKUMENTACIJA** | | |
| Pravo na dokument o pravnom statusu tražitelja/-ice azila na svoje ime u roku od tri dana od podnošenja zahtjeva za azil. Pravo na putni dokument u slučaju ozbiljnih humanitarnih razloga za odlazak u drugu zemlju. | Izdaju se iskaznice tražitelja/-ice azila i osobe pod supsidijarnom zaštitom, a omogućuje se i izdavanje putnog lista. | Zakonodavstvo i praksa slijede standarde u potpunosti. |
| **SMJEŠTAJ I SLOBODA KRETANJA** | | |
| Tražitelji azila slobodno se kreću na teritoriju zemlje članice ili na onom teritoriju koji im je određen pod uvjetom da se ne narušava privatnost tražitelja azila. Zemlje članice mogu odrediti specifično mjesto smještaja tražitelja azila, pazeći na javni red i interes. | Tražitelji azila i članovi njihovih obitelji koji su došli zajedno s njima imaju pravo na boravak u Republici Hrvatskoj, a prema članku 38. tražitelji azila imaju pravo na smještaj u Prihvatilištu. | U Hrvatskoj većina tražitelja azila boravi u Prihvatilištu za tražitelje azila u Kutini, a manji broj onih koji su željeli živjeti izvan u skladu sa zakonskim propisima, bez problema su to i regulirali. |
| **OBITELJ** | | |
| Direktiva nalaže poduzimanje odgovarajućih mjera za očuvanje obiteljskih veza, odnosno jedinstva obitelji na teritoriju u slučaju da su zemlje članice tražiteljima azila osigurale smještaj. | Prema članku 30. Zakona o azilu, tražitelji azila i članovi njihovih obitelji koji su došli zajedno s njima imaju pravo na boravak u Republici Hrvatskoj. | Analiza prakse pokazuje da se ova odredba poštuje. |

**PREPORUKE**

**1. Uskladiti ravnopravnu proceduru prihvata za sve tražitelje azila;**

- Sva prava koja imaju tražitelji azila prema Zakonu o azilu trebaju vrijediti jednako za one tražitelje azila koji su nezakonito prešli granicu Republike Hrvatske.

**2. Uspostaviti sustav brze i kvalitetne facilitacije integracije djece tražitelja azila u hrvatski obrazovni sustav;**

- Osigurati učenje hrvatskog jezika, pomoć u učenju i superviziju;

**3.Uspostaviti** sustav brze i kvalitetne facilitacije integracije tražitelja azila na tržište rada;

- Osigurati profesionalnu orijentaciju, stručno usavršavanje, mogućnosti volonterskog angažmana u lokalnoj zajednici;
- Omogućiti pravo na rad tražitelja azila već od šest mjeseci boravka.

**4. Kontinuirano graditi kapacitete – znanja i vještine osoblja koje radi s tražiteljima azila;**

- Organizirati redovitu superviziju i savjetovanja osoblja, edukaciju i usavršavanje.

**5.Uključiti** tražitelje azila u upravljanje resursima Prihvatilišta za tražitelje azila;

- Organizirati susrete tražitelja azila i osoblja radi zajedničkog upoznavanja s materijalnim i drugim uvjetima.

| DIREKTIVA O PRIHVATU 2003/9/EC | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
|---|---|---|
| **ZDRAVSTVENI PREGLED** | | |
| Zemlje članice mogu zahtijevati zdravstveni pregled tražitelja azila radi javnog zdravlja. | Zdravstveni pregled tražitelja azila detaljno je reguliran „Pravilnikom o sadržaju zdravstvenog pregleda tražitelja azila, azilanata, stranaca pod privremenom zaštitom i stranaca pod supsidijarnom zaštitom". Pri prihvatu tražitelja azila organiziran je obvezan zdravstveni pregled. U Prihvatilištu za tražitelje azila otvorena je dnevna medicinska služba, te je tražiteljima azila omogućeno nužno liječenje u medicinskim ustanovama u slučaju potrebe. | Svega nekoliko tražitelja azila nije bilo zadovoljno medicinskom pomoći pruženoj za vrijeme postupka, odnosno uskraćivanjem medicinske pomoći. Tražitelji azila u većoj mjeri zadovoljni su zdravstvenim uslugama. |
| **ŠKOLOVANJE I OBRAZOVANJE MALOLJETNIKA** | | |
| Pristup obrazovnom sustavu treba se omogućiti u roku od tri mjeseca od podnošenja zahtjeva maloljetnika/-ice ili njegovih/njezinih roditelja, a period može biti produžen do godine dana kada se pruža specifičan tip obrazovanja radi facilitiranja pristupa obrazovnom sustavu. | U 32. članku Zakona o azilu propisuje se da maloljetni/-na tražitelj/-ica azila ima pravo na osnovno i srednje školovanje kao i hrvatski/-ska državljanin/-ka. Ovo pravo aktivira se najkasnije tri mjeseca od podnošenja zahtjeva za azil, odnosno u roku od godine dana ako tražitelj azila ne govori hrvatski jezik. | U Republici Hrvatskoj posljednjih godina, bez obzira na zakonske odredbe i druge regule, obrazovanje maloljetnika izniman je problem. Razlike u jeziku i kulturi često su nepremostive barijere za hrvatski institucionalni okvir i uključivanje djece u sustav obrazovanja. |
| **ZAPOŠLJAVANJE** | | |
| Ako se u roku od godinu dana od podnošenja zahtjeva za azilom, a bez krivnje tražitelja/-ice azila, ne donese prvostupanjska odluka, države članice odlučit će pod kojim će se uvjetima tražitelju/-ici azila omogućiti pristup tržištu rada. | Zakon o azilu člankom 36. omogućuje rad tražitelju/-ici azila koji/koja pravo stječe po isteku godine dana od podnošenja zahtjeva za azil ako postupak azila nije okončan. | Prema informacijama kojima raspolažemo, u praksi nijedan/-na tražitelj/-ica azila nije bio/bila zaposlen/-ena, što zbog duljine postupka koje je često kraće od godinu dana, što zbog neadekvatne facilitacije kompetencija tražitelja/-ice azila i zahtjeva tržišta rada. |
| **MATERIJALNI UVJETI PRIHVATA I ZDRAVSTVENA NJEGA** | | |
| Tražitelj/-ica azila ima pravo da mu/joj se materijalnim uvjetima prihvata omogući životni standard koji osigurava njegovo/njezino zdravlje i zadovoljenje životnih potreba odmah nakon podnošenja zahtjeva za azil. Osobito je važno omogućiti kvalitetan životni standard osobama s posebnim potrebama i osobama u pritvoru. | Članak 38. Zakona o azilu navodi da tražitelji azila imaju pravo na smještaj u Prihvatilištu i da im se mora osigurati primjeren smještaj u skladu s njihovim potrebama. Tražitelj/-ica azila treba biti smješten/-ena s članovima obitelji. Osigurava se i primjeren smještaj za maloljetnike s pratnjom i bez nje kako u Prihvatilištu, tako i u odgovarajućim ustanovama. | U sklopu ove analize, a tijekom fokusnih grupa, tražitelji azila koji borave u Prihvatilištu za tražitelje azila u Kutini bili su vrlo zadovoljni uvjetima prihvata i životnim standardom u Prihvatilištu. Tražitelji azila koji pak borave u Prihvatnom centru za strance u Ježevu nisu bili zadovoljni smještajem i uvjetima života u istoj mjeri. |

**PREPORUKE**

**6.** Uključiti nevladine organizacije u rad Prihvatilišta za tražitelje azila s ciljem socijalnog uključivanja tražitelja azila i pomaganja integracije azilanata;
- Unaprijediti programe socijalnog uključivanja tražitelja azila i pružanja socijalnih usluga.

**7. Razviti sustav prihvata i skrbi o ranjivim društvenim skupinama i osobama s posebnim potrebama;**
- Razviti propise koji detaljno i specifično tumače proceduru prihvata i zdravstvene njege osoba s posebnim potrebama, s manje mogućnosti, rijetkim bolestima i sl.;
- U rad Prihvatilišta za tražitelje azila uključiti organizacije i stručnjake za rad s osobama s posebnim potrebama svih oblika.

| DIREKTIVA O SPAJANJU OBITELJI 2003/86/EC | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
|---|---|---|
| **OPĆE ODREDBE** | | |
| Pravo na spajanje obitelji primjenjuje se kada je državljaninu/-ki treće zemlje koji/koja podnosi zahtjev za spajanje obitelji (tzv. "sponzoru") država članica izdala dozvolu boravka na godinu dana. | Zakon o azilu propisuje i više od minimalnih standarda i člankom 48. omogućuje "boravak u svrhu spajanja obitelji stranca pod supsidijarnom zaštitom" koji će se odobriti "članu obitelji koji je zajedno sa strancem pod supsidijarnom zaštitom došao u Republiku Hrvatsku, a nije podnio zahtjev za azil ili mu nije odobrena zaštita"<br>Pravo na spajanje obitelji ostvaruju i stranci pod privremenom zaštitom u RH. | Spajanje obitelji za osobe sa supsidijarnom zaštitom isključivo u ovoj situaciji, a s obzirom na trogodišnji period supsidijarne zaštite i mogućnost dugoročne razdvojenosti osobe pod supsidijarnom zaštitom i njegove obitelji, predstavlja reduciranje prava osobe pod supsidijarnom zaštitom za "očuvanje obiteljskog života". |
| **ČLANOVI/-ICE OBITELJI** | | |
| Spajanje obitelji uvijek se mora omogućiti članovima i članicama nukleusne obitelji, supružniku/-ici i maloljetnoj djeci. | "Članom obitelji... smatra se: bračni ili izvanbračni drug...; maloljetno dijete koje nije zasnovalo vlastitu obitelj...; roditelj ili drugi zakonski zastupnik maloljetnog tražitelja azila, azilanta, stranca pod supsidijarnom zaštitom ili stranca pod privremenom zaštitom; srodnik u ravnoj lozi ..." | Hrvatski je Zakon o azilu, s malim modifikacijama, prilično usklađen s Direktivom, a kad je riječ o tretiranju srodnika, i iznad standarda propisanih Direktivom. |
| **PODNOŠENJE I ISPITIVANJE ZAHTJEVA ZA SPAJANJE OBITELJI** | | |
| Prilikom ispitivanja zahtjeva za spajanje obitelji u slučaju veze državljana trećih zemalja s neoženjenim/-nom partnerom/-icom, države članice moraju uzeti u obzir, kao dokaz o obiteljskim vezama, čimbenike kao što su zajedničko dijete, prethodni suživot, registracija partnerstva i bilo što drugo što se može smatrati pouzdanim. | Zakon o azilu neusklađen je s Direktivom jer u Zakonu ne postoji odredba kako tretirati slučajeve u kojima ne postoje službeni dokumenti koji potvrđuju obiteljske odnose. | Kako je u dosadašnjoj praksi bilo slučajeva kada nije bilo moguće nedvosmisleno utvrditi vrstu obiteljskih – bilo bračnih ili izvanbračnih veza – nužno je posebnim odredbama ili posebnim pravilnikom urediti jasniju proceduru dokazivanja obiteljskih odnosa. |
| **ZAHTJEVI ZA OSTVARIVANJE PRAVA NA SPAJANJE OBITELJI** | | |
| Kada je zahtjev za spajanje obitelji podnesen, država članica od osobe koja je podnijela zahtjev može tražiti da pruži dokaze da sponzor ima zadovoljavajuće uvjete smještaja koji slijede zdravstvene i sigurnosne standarde; zdravstveno osiguranje u slučaju rizika od bolesti, za sebe i članove obitelji; stabilne i redovite resurse koji su dovoljni za uzdržavanje sebe i članova obitelji, bez zahtjeva prema sustavu socijalne pomoći država članica. | Hrvatski Zakon o azilu i Zakon o strancima nisu ovako detaljni u razradi preduvjeta za spajanje obitelji niti je to regulirano posebnim pravilnikom. | U Zakonu o azilu, članku 29., pravo na spajanje obitelji ne navodi se kao jedno od prava tražitelja azila.<br>ECRE1 preporučuje da ne postoji dobno ograničenje za izbjeglice i njihove supružnike/-ice pri spajanju obitelji.<br>Problematična je odredba Direktive da djeca starija od 12 godina trebaju proći tzv. "integracijske testove" prije nego što dobiju mogućnost spajanja obitelji. |
| **SPAJANJE OBITELJI IZBJEGLICA (AZILANATA)** | | |
| Za spajanje obitelji izbjeglica vrijede ista pravila kao i za državljane trećih zemalja, no države članice mogu ograničiti spajanje ako su obiteljske veze uspostavljene tek nakon ulaska izbjeglice u zemlju. | Prema Zakonu o azilu spajanje obitelji za izbjeglice moguće je onda kada je obitelj već postojala u zemlji podrijetla. | Ove su odredbe usklađene i sa Zakonom o strancima i člancima 48., 51. i 55., kojima se regulira spajanje obitelji za strance i, posebno, za azilante. |

**PREPORUKE**

**1.** Uskladiti Zakon o azilu i Zakon o strancima sa Zakonom o istospolnim zajednicama u dijelu koji se odnosi na pravo osoba u istospolnim zajednicama na spajanje obitelji pod istim uvjetima u kojima se uređuje spajanje obitelji za bračne i druge zajednice.

**2.** Urediti pravnu regulativu u proceduri dokazivanja obiteljskih odnosa u slučajevima nemogućnosti izbjeglice da potkrijepi službene dokaze kojima se potvrđuje vrsta obiteljskog odnosa s osobom/osobama za koje se traži spajanje obitelji.

**3.** Urediti zakonsku regulativu vezano uz zaštitu i ostvarivanje prava maloljetnih izbjeglica (azilanata, tražitelja azila, izbjeglica pod supsidijarnom ili privremenom zaštitom) te razviti jasne procedure i ograničenje neregularnih praksi detencije maloljetnih izbjeglica.

**4.** Unaprijediti zakonske odredbe tretiranja, stambenog zbrinjavanja i stručne skrbi maloljetnih azilanata, maloljetnih osoba pod supsidijarnom i privremenom zaštitom, neovisno o tome kada će biti ostvareno pravo na spajanje obitelji.

**5.** U Zakonu o azilu uskladiti odredbu Direktive po kojoj je za članove obitelji koji su se "pridružili" sponzoru nužno omogućiti samostalno ostvarenje statusa, neovisno o statusu samog sponzora.

**6.** Omogućiti integraciju članova obitelji i za slučajeve spajanja obitelji kada naknadno dođe do promjene okolnosti bračnog statusa.

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| **OPĆE ODREDBE** | | |
| Definira kvalifikacije za status izbjeglice, prvenstveno one koje uključuju razloge i djela koji utječu na strah od progona, te razloge za isključenje i prestanak izbjegličkog statusa i statusa supsidijarne zaštite.<br>Pojam izbjeglice u Direktivi određen je definicijom koju navodi Ženevska konvencija. | Odredbe Zakona o azilu iz 2007. s usvojenim izmjenama i dopunama 2010. koje člankom 2. definiraju pojmove i značenje pojedinih izraza – poput supsidijarne zaštite, maloljetnika bez pratnje, rase, vjere, nacionalnosti, određene društvene skupine i političkog mišljenja – usklađene su s Direktivom. | Određena prava azilanata i osoba pod supsidijarnom i privremenom zaštitom poput prava na integraciju u hrvatsko društvo, prava na zdravstvenu zaštitu, prava na obrazovanje i rad stranaca pod supsidijarnom zaštitom, iako uglavnom usklađene s Direktivom, u praksi se mnogo teže ostvaruju nego što je očekivano, a postoje i primjeri nedostatna shvaćanja i implementacije pojedinih odredbi Direktive. |
| **PROCJENA ČINJENICA I OKOLNOSTI U ZAHTJEVU ZA MEĐUNARODNOM ZAŠTITOM** | | |
| Razumijevanje razloga proganjanja: pripadnost određenoj društvenoj grupi. | ("Određena društvena skupina posebno uključuje članove koji imaju zajedničke urođene osobine ili zajedničko podrijetlo koje se ne može izmijeniti, odnosno karakteristike ili uvjerenja, u toj mjeri važna za njihov identitet ili svijest da se te osobe ne smije prisiliti da ih se odreknu, a ta skupina ima poseban identitet u konkretnoj zemlji jer je društvo koje ju okružuje smatra različitom..."). | |
| **KVALIFIKACIJA ZA STATUS IZBJEGLICE ILI OSOBE POD SUPSDISIJARNOM ZAŠTITOM** | | |
| Ova Direktiva uvodi institut supsidijarne zaštite. | "Supsidijarna zaštita prestat će kada okolnosti na temelju kojih je odobrena supsidijarna zaštita prestanu postojati ili se promijene do te mjere da daljnja zaštita nije više potrebna, a... nadležno tijelo će razmotriti je li promjena okolnosti tako značajne i stalne prirode da stranac pod supsidijarnom zaštitom više neće biti izložen stvarnom riziku od trpljenja ozbiljne nepravde." | Odredbe Direktive koje se tiču odbijanja i odbacivanja zahtijeva, kao i odredbe o prestanku i poništenju azila, sukladno su definirane u hrvatskom Zakonu o azilu. Također, u njemu se nalaze i sve odredbe koje se tiču dodjeljivanja statusa supsidijarne zaštite, kao i odredbi o prestanku ili poništenju supsidijarne zaštite. |
| **SADRŽAJ MEĐUNARODNE ZAŠTITE** | | |
| Zaštita od vraćanja (non-refoulement), pristup informacijama na jeziku koji razumiju, održavanje načela jedinstva obitelji, dozvolu boravka, putne dokumente te pristup tržištu rada, obrazovanju, zdravstvenoj zaštiti, smještaju, programima integracije i socijalnoj skrbi. | "U roku od 15 dana od dana odobravanja statusa Ministarstvo će, azilantu ili strancu pod supsidijarnom zaštitom, na jeziku za koji se opravdano pretpostavlja da na njemu može komunicirati, pružiti opće informacije o pravima i obvezama koje stječe odobrenjem azila ili supsidijarne zaštite." | Ostala prava jednako su tako zajamčena i detaljno pojašnjena Zakonom i drugim propisima. |

**PREPORUKE**

**1.** Uskladiti Zakon o strancima i Zakon o azilu u dijelovima zabrane prisilnog udaljenja;
- Nužnost jednoznačnog određivanja "drugih opravdanih razloga humanitarne prirode";
- Precizno odrediti koji je formalni standard zaštite za osobe koje nisu mogle dobiti zaštitu prema Zakonu o azilu i Zakonu o strancima, a ne mogu biti vraćene u zemlju podrijetla.

**2.** U Zakonu o izmjenama i dopunama Zakona o azilu, navode se "djela koja su po svojoj prirodi specifično vezana uz spol..." izmijeniti u "djela rodno specifične prirode".

**3.** U Zakon o azilu uvrstiti sintagmu iz Direktive da su članovi obitelji zbog povezanosti s izbjeglicom ranjivi prema djelima proganjanja u smislu da to može biti osnova za dobivanje statusa izbjeglice.

**4.** Pristup zdravstvenoj skrbi, uključujući skrb o mentalnom zdravlju, treba biti osiguran za sve korisnike izbjegličkog statusa ili statusa supsidijarne zaštite.

**5.** Iako prema članku 45. Zakona o azilu "azilant ostvaruje pravo na usavršavanje, prekvalifikaciju, dokvalifikaciju i specijalizaciju pod istim uvjetima kao hrvatski državljanin", trebalo bi uvesti princip afirmativne akcije u smislu protektivnih kvota u navedenim programima.

**6.** Zakonom i posebnim Pravilnikom nužno je utvrditi specifikacije smještajnih centara specijaliziranih za prihvat i smještaj maloljetnika – maloljetnih tražitelja azila, maloljetnih azilanata i osoba pod supsidijarnom i privremenom zaštitom bez pratnje.

**7.** Preporučuje se izgraditi funkcionalan decentraliziran model učenja hrvatskog jezika za tražitelje azila, azilante, strance pod supsidijarnom i privremenom zaštitom, prilagođen potrebama, sposobnosti, predznanju i motivaciji polaznika.

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| **OPĆE ODREDBE** | | |
| Njezina je osnovna svrha ograničavanje sekundarnih kretanja podnositelja zahtjeva za azilom između država članica, do kojih dolazi zbog neujednačenih pravila u postupcima za priznavanje izbjegličkog statusa u različitim državama te povećanje kvalitete prilikom odlučivanja o statusu. | Zakon je gotovo potpuno usklađen s Direktivom. Zamjerke se odnose na nedovoljno jasne i precizne formulacije. Također, odgovornosti se daju određenoj instituciji dok se ne propisuje specifična metoda koordinacije i imenovanje osoba odgovornih za istu. | Direktivom se određuju postupovna jamstva za tražitelje azila te minimalni standardi koji se trebaju poštovati tijekom postupka odlučivanja o zahtjevu. |
| **POSTUPOVNA JAMSTVA ZA TRAŽITELJE AZILA** | | |
| Države članice određuju mjesto na kojem će tražitelji osobno podnositi zahtjev za azil, te su dužne osigurati osobu koja informira, savjetuje i usmjerava potencijalne tražitelje azila o samom postupku. | Zakon o azilu propisuje da se zahtjev za azil podnosi u Prihvatilištu za tražitelje azila, dok se sama namjera za podnošenje zahtjeva za azil može izraziti prilikom obavljanja granične kontrole na graničnom prijelazu ili u policijskoj upravi, odnosno policijskoj stanici. | Zadatak Ministarstva unutarnjih poslova jest i obavijestiti tražitelja/-icu azila o mogućnosti dobivanja besplatne pravne pomoći i mogućnosti obraćanja predstavnicima UNHCR-a i drugih organizacija koje se bave zaštitom prava izbjeglica. |
| **DRUGA JAMSTVA ZA TRAŽITELJE AZILA** | | |
| Direktiva propisuje i mogućnost komuniciranja s predstavnicima UNHCR-a, upoznavanje s pravnim lijekom u slučaju negativnog rješenja te usluge prevoditelja kako bi se zahtjev za azil mogao podnijeti, ali i u bilo kojoj drugoj fazi postupka, no svakako u slučajevima saslušanja pred ovlaštenim tijelima | Tražitelji azila, pravno gledano, imaju sva prava propisana Direktivom. Jezik na kojem se postupak vodi svakako mora biti onaj koji tražitelj/-ica razumije, a osim toga, Zakon o azilu navodi da će, u slučajevima u kojima je to važno, prevoditelj/-ica biti istog spola kao i tražitelj/-ica azila. | U nekim slučajevima dolazi i do kršenja osnovnih prava tražitelja azila, jer u praksi dolazi do situacija kada se u postupku govori samo engleski ili samo hrvatski jezik, što se objašnjava činjenicom da je službeni jezik u postupku hrvatski, pa bi i dokumenti trebali biti na hrvatskom jeziku. |
| **OBVEZE TRAŽITELJA AZILA** | | |
| Direktiva propisuje suradnju tražitelja azila s relevantnim institucijama kako bi se postupak odvijao nesmetano. | Zakon o azilu vrlo je detaljno, konkretno i taksativno nabrojio obveze tražitelja azila, ali i posljedice koje njihovo kršenje nosi. | U ovom su dijelu Direktiva i Zakon potpuno usklađeni. |
| **OSOBNO SASLUŠANJE I KRITERIJI ZA PROVOĐENJE** | | |
| Osobno saslušanje smije biti izostavljeno samo u slučajevima kada se može donijeti pozitivna odluka na temelju postojećih dokaza, kada je tijelo koje odlučuje tražitelju/-ici pomoglo popuniti zahtjev za azil, kada je na temelju kompletne istrage zaključeno da je zahtjev očito neutemeljen te kada saslušanje nije moguće zbog okolnosti koje su izvan tražiteljeve/-ičine kontrole. | Članak 54. Zakona o azilu kojim se regulira ovo pitanje samo je djelomično usklađen s Direktivom. Zakon o azilu dodaje mogućnost da Ministarstvo unutarnjih poslova može, radi utvrđivanja činjeničnog stanja, tražitelja azila saslušati više puta. Praksa koja nije propisana Direktivom, a ide u prilog tražiteljima jest saslušanje tražitelja azila pred drugostupanjskim tijelom. | Dio o okolnostima u kojima se provodi saslušanje, kao i kompetencije osobe koja vodi saslušanje, u Zakonu nisu regulirane, iako u postupku analize nisu zamijećene okolnosti koje bi nepovoljno utjecale na tražitelje azila. |
| **STATUS ZAPISNIKA NAKON SASLUŠANJA TIJEKOM PROCEDURE** | | |
| Države članice trebaju osigurati vođenje zapisnika tijekom svakog saslušanja te ga učiniti dostupnim za tražitelje u slučaju žalbenog postupka. Zapisnik treba potvrditi saslušana stranka. Ako ga odbije potvrditi, u zapisnik treba unijeti razlog, no to ne smije biti uzrok odbacivanja zahtjeva. | Zakon o azilu propisuje da se tijekom saslušanja vodi zapisnik, a ako je saslušanje tonski snimano, tražitelj/-ica azila tijekom preslušavanja može unijeti svoje ispravke i kraće dopune u transkript tonskog zapisa. | U određenim slučajevima tražitelji zaila izjavili su da je na njih vršen pritisak u vezi s potpisivanjem zapisnika, što je svakako praksa koja se ne smije događati. |

**PREPORUKE**

**1.** Uspostaviti više zakonodavne standarde poput preciznijeg određivanja kompetencija osoba koje (i u prvom i u drugom stupnju) odlučuju o zahtjevima, uzeti u obzir iskustvo koje imaju te propisati obvezu i sadržaje kontinuirane edukacije i dodatne edukacije u svrhu što objektivnijeg i nepristranijeg razmatranja zahtjeva.
**2.** Dodatno regulirati okolnosti u kojima se provodi osobno saslušanje te kompetencije osobe koja ga vodi, te što je moguće više inzistirati na saslušanju.
**2.** Uskladiti ravnopravnu proceduru za sve tražitelje azila.
**3.** Unaprijediti sustav suradnje i razmjene informacija s odvjetnicima.

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| **PRAVO NA PRAVNU POMOĆ** | | | |
| Direktiva propisuje mogućnost konzultiranja s pravnim savjetnikom na tražiteljev trošak. Besplatna pravna pomoć i zastupanje podrazumijeva se u slučaju negativnog rješenja, a države članice mogu je regulirati na različite načine. | Besplatna pravna pomoć prema Zakonu o azilu uključuje pomoć u sastavljanju tužbe i zastupanje pred Upravnim sudom, a pravo na nju ima tražitelj/-ica azila koji/koja ne posjeduje dostatna sredstva ili imovinu veće vrijednosti. Odluku o tome hoće li tražitelj/-ica azila snositi troškove donosi Ustavni sud u rješenju kojim odlučuje o žalbi. | Iako je ovdje Zakon o azilu usvojio preporuke iz Direktive, problematično je što tražitelji azila snose troškove za "besplatnu" pravnu pomoć, a odvjetnici i pravnici sve do okončanja postupka ne mogu biti sigurni da će biti isplaćeni. U praksi se javlja i problem suradnje s odvjetnicima pri dobivanju potpune dokumentacije o tražiteljevom/-ičinom slučaju. | |
| **JAMSTVA ZA MALOLJETNIKE BEZ PRATNJE** | | | |
| Obvezno je što prije odrediti zastupnika/-icu za maloljetnika/-icu koji će s njim/njom prolaziti i pomoći mu/joj tijekom postupka i osigurati da maloljetnika/-icu upozna, pripremi i informira o svemu vezanom uz postupak. Tijekom saslušanja države mogu tražiti da uz zastupnika/-icu bude nazočan i maloljetnik/-ica. | Zakon o azilu, sa Zakonom o izmjenama i dopunama Zakona o azilu, djelomično je usklađen s Direktivom. Zakon propisuje da se zahtjev za azil maloljetnika bez pratnje rješava u najkraćem mogućem roku, no ne propisuje ništa o načinima i okolnostima utvrđivanja dobi maloljetnika, iako se u praksi različitim medicinskim metodama to radi. | Kako bi se provjerila dob, države članice mogu obavljati medicinske preglede, pod uvjetom da je maloljetnik/-ica upoznat/-a s procedurama te uzimajući u obzir interes djeteta. | |
| **DETENCIJA** | | | |
| Tražitelj/-ica azila ne može biti smješten/-a u detencijskom centru samo zato što je tražitelj/-ica, a ako je zatvoren/-a, država treba osigurati mogućnost ubrzane procedure. | Zakon o strancima propisuje da "stranac koji zatraži azil ili supsidijarnu zaštitu nakon što mu je određen smještaj u Centru, ostaje u Centru do isteka roka na koji mu je smještaj određen, odnosno do odobrenja statusa azilanta ili supsidijarne zaštite", čime odstupa od standarda propisanih Direktivom i pretpostavlja tražiteljevu/-ičinu zlouporabu sustava. | Budući da ovaj dio nije reguliran Zakonom o azilu, već Zakonom o strancima te da je vrlo restriktivan, smatramo kako bi bilo potrebno prvenstveno tumačiti Zakon o azilu te minimalne i međunarodne standarde kojima se vrlo jasno kaže kako se tražiteljima koji nisu počinili određena kaznena ili prekršajna djela sloboda kretanja ne bi smjela ograničiti. | |
| **POSTUPAK U SLUČAJU ODUSTAJANJA I NAPUŠTANJA ZAHTJEVA** | | | |
| U slučaju odustajanja od zahtjeva države članice mogu odlučiti hoće li prekinuti ispitivanje ili odbaciti zahtjev. | Zakon o azilu upotrebljava termin obustava postupka te, slijedeći preporuke Direktive, uređuje mogućnost žalbe i eventualna povratka u prijašnje stanje te rokove za žalbu, ali i za mogućnost obnavljanja postupka. | Države su slobodne same donijeti rokove unutar kojih se te aktivnosti trebaju dogoditi i nakon kojih se slučaj više neće moći obnoviti. | |
| **ULOGA UNHCR-A** | | | |
| Predstavnici UNHCR-a imaju pravo na pristup tražiteljima azila, pristup informacijama i individualnim zahtjevima za azil, kao i donesenim odlukama, te pravo na prezentaciju svojih stajališta u svakom pojedinom slučaju. | U ovom dijelu Zakon je potpuno usklađen s Direktivom. | U nekim slučajevima Zakon propisuje i više od minimuma te uz UNHCR propisuje ista prava i za druge organizacije koje se bave pravima izbjeglica i ljudskim pravima, iako se to pravo u praksi do sada nije primjenjivalo u većem opsegu. | |

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| **PRIKUPLJANJE INFORMACIJA** | | | |
| Za potrebe pojedinog slučaja države članice ne smiju izravno otkrivati podatke, ni činjenicu da je određen zahtjev podnesen mogućim sudionicima progona, kao niti prikupljati podatke od sudionika progona kojima bi sigurnost i integritet tražitelja i njegove obitelji bila ugrožena. | U skladu s principom tajnosti i zaštite identiteta i sigurnosti tražitelja azila Zakon o azilu uređuje pravila prilikom prikupljanja podataka: osobni i drugi podaci prikupljeni tijekom postupka azila predstavljaju službenu tajnu i neće se dostaviti zemlji podrijetla tražitelja azila ili drugim tijelima koja ne sudjeluju u postupku. | U ovom dijelu Direktiva i Zakon o azilu potpuno su usklađeni. | |
| **PRVOSTUPANJSKI POSTUPAK** | | | |
| Ako procedura potraje dulje od šest mjeseci, država je dužna ili obavijestiti tražitelja o produženju ili na njegov zahtjev reći, iako ne obvezno, u kojem će se vremenskom okviru odluka donijeti. Države članice mogu ubrzati ili dati prioritet bilo kojoj istrazi u skladu s jamstvima, a posebno ako je očito utemeljen zahtjev ili tražitelj ima posebne potrebe. | Zakon o azilu taksativno nabraja gotovo sve razloge koji su navedeni u Direktivi na temelju kojih se može provesti ubrzani postupak. U Hrvatskoj je broj zahtjeva koji se provode po ubrzanoj proceduri dosta nizak. | Problematično je samo što se u nekim točkama kreće iz perspektive tražiteljeve/-ičine zlouporabe sustava, a njihovo je dokazivanje gotovo nemoguće i tijekom postupka ovise o diskrecijskoj odluci, npr. "tražitelj azila podnese zahtjev s očitom namjerom da odgodi ili spriječi izvršenje odluke koja bi imala za posljedicu njegovo udaljenje iz Republike Hrvatske." | |
| **NEPRIHVATLJIVI ZAHTJEVI** | | | |
| Direktiva propisuje u kojim se slučajevima zahtjevi mogu smatrati neutemeljenima. | Zakon o azilu ne prepoznaje ovo kao zaseban koncept, već navedene razloge provlači kroz neke druge odredbe, tako da su neki od njih temelj za obustavu postupka, neki za očito neutemeljen zahtjev, a neki za odbacivanje zahtjeva. | Razlika između Direktive i Zakona o azilu jest u tome što potonji detaljnije razrađuje situacije u kojima postupa prema zahtjevu, odnosno u kojima smatra da je zahtjev nepodoban za dodjeljivanje statusa izbjeglice. | |
| **PRVA ZEMLJA AZILA** | | | |
| Zemlja se može smatrati prvom zemljom azila za određenog/-enu tražitelja/-icu ako je on/ona u toj zemlji prepoznat/-a kao izbjeglica i ako u njoj dobiva zaštitu ili na neki drugi način uživa dovoljan stupanj zaštite, uključujući zaštitu od non-refoulementa. | Ovaj termin nije prepoznat u Općim odredbama Zakona o azilu, djelomično zbog specifičnog konteksta te odredbe unutar Europske unije, a djelomično zato što je zastupljen u članku 6o. (Odbacivanje zahtjeva) | | |
| **SIGURNA TREĆA ZEMLJA, SIGURNA ZEMLJA PODRIJETLA** | | | |
| Direktiva definira koje su to odrednice potrebne da bi se neka zemlja smatrala sigurnom, Propisuje se čitav niz pravila kojima se uređuje kada će se primijeniti ovaj koncept na pojedinog tražitelja, kao i procedura određivanja koje su to sigurne treće zemlje. | Zakon o azilu prepoznaje ove koncepte u gotovo istom sadržaju, razlike su neznatne i odnose se na naglašavanje sigurnosti i zaštite tražitelja. U ovom dijelu Zakon je u potpunosti napisan kako bi se prilagodio ulasku u EU i novim institucijama i tijelima koji će tada biti relevantni; npr., popis trećih sigurnih zemalja koji vrijedi u EU-u vrijedi i u RH. | Kao i na razini Direktive, tako i Zakon o azilu nema uspostavljenih mehanizama kojima bi se nadziralo slanje tražitelja azila u neke od ovih zemalja jer su sami koncepti rizični zbog mogućnosti stvaranja efekta lančanog vraćanja tražitelja u zemlje sa sve nižom razinom zaštite i sigurnosti. | |

| DIREKTIVA O PROCEDURI 2005/85/EC | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE | PREPORUKE |
|---|---|---|---|
| **PONOVLJENI ZAHTJEVI** | | | |
| Ako tražitelj ponovno podnese zahtjev za azilom, država istragu može voditi po istim elementima kao i za prethodni ili na temelju konačne odluke žalbenog tijela. | Ako je postupak azila obustavljen, a stranac podnese novi zahtjev za azil, u novom će se postupku koristiti i činjenicama, odnosno okolnostima utvrđenima u obustavljenom postupku, što propisuje Zakon o azilu. | Zakon o strancima nigdje ne spominje preliminarnu istragu, ali ni potrebu za podnošenjem novih i bitnih dokaza kako bi se postupak ponovo pokrenuo. Osim toga, ne postoji ograničenje u broju podnesenih zahtjeva. | |
| **PROCEDURE NA GRANICI** | | | |
| Države članice mogu odlučivati o zahtjevima na granici ili u tranzitnim zonama, ako su zahtjevi ondje podneseni, ali također mogu tražitelju/-ici azila dopustiti ulazak na svoj teritorij. Ako se ulazak ne odobri, rješenje mora sadržavati objašnjenje takve odluke. | Zakon o azilu potpuno je usklađen s propisima iz Direktive. | Praksa je pokazala kako nema ograničenja i utjecaja na sam postupak kad netko u Prihvatilište za tražitelje azila dođe osobno i zatraži azil ili to učini prilikom prelaska granice pa je upućen ili dovezen u Prihvatilište, što se češće događa, prema podacima iz MUP-a | |
| **UKIDANJE IZBJEGLIČKOG STATUSA** | | | |
| Države članice mogu osigurati reviziju statusa izbjeglice ako se pojave nove okolnosti koje dovode u pitanje opravdanost statusa. U slučaju ukidanja statusa Zakonom se propisuje cijeli niz prava koja izbjeglica ima, kao i pravila kojih se tijela koja odlučuju trebaju pridržavati kako ne bi došlo do zlouporabe. | Zakon o azilu propisuje prestanak i poništenje izbjegličkog statusa. | Prije poništenja ili prestanka azila, mjerodavno će tijelo upoznati azilanta/-icu s razlozima za poništenje te mu/joj omogućiti da se usmeno ili pismeno izjasni o tome zašto azil ne bi trebalo poništiti. | |
| **ŽALBENE PROCEDURE** | | | |
| Pravo na učinkovit pravni lijek obvezno je prije nego što sud donese konačnu odluku, a vrijedi za slučajeve neprihvatljivih zahtjeva, zahtjeva podnesenih na granici i tranzitnim zonama, odluka o neponavljanju istrage kod naknadnih zahtjeva, odluke o zabrani ulaska, odluke o ukidanju statusa. Osim toga, na svakoj je državi da odluči hoće li pravni lijek imati suzpenzivan učinak na prethodno donesene odluke o napuštanju vlastitog teritorija. | Zakon o azilu propisuje mogućnost pravnog lijeka za sve slučajeve navedene u Direktivi i u ovom su dijelu potpuno usklađeni. | Hrvatsko zakonodavstvo do 31. 12. 2011. pruža mogućnost žalbe na prvostupanjsku odluku te pokretanje upravnog spora pred Upravnim sudom. Nakon toga pravni lijek protiv prvostupanjske odluke ostaje samo pokretanje upravnog spora. Nakon izmjena koje slijede, spor pred Upravnim sudom imat će suzpenzivan učinak nad prvostupanjskom odlukom. | |

| DIREKTIVA VIJEĆA 2002/90/EZ KOJOM SE DEFINIRA POMAGANJE NEOVLAŠTENOG ULASKA, TRANZITA I BORAVKA | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
|---|---|---|
| OPĆE ODREDBE | | |
| Propisuje niz mjera koje su usmjerene na borbu protiv pomaganja pri neovlaštenom prelasku granice, ali i na suzbijanje mreža koje potiču ilegalni rad, trgovanje ljudima, seksualno iskorištavanje djece. | Uspoređujući ovu Direktivu i odredbe iz Zakona o strancima, vidljivo je kako Zakon ima potpuno razrađen sustav kazni, kako novčanih, tako i zatvorskih, za sva djela navedena u Direktivi, odnosno za pomaganje pri nezakonitom prelasku, tranzitu, radu, boravku. | Svakoj državi članici daje se mogućnost da te sankcije ne provodi u onim slučajevima u kojima je cilj takvog ponašanja pružanje humanitarne pomoći zainteresirane osobe. |
| SANKCIJE ZA POTICANJE, SUDJELOVANJE I POKUŠAJ ILEGALNOG PRELASKA GRANICE | | |
| Direktiva propisuje kako bi se odgovarajuće, učinkovite i proporcionalne sankcije trebale primjenjivati na sve koji potiču, sudjeluju, odnosno pokušaju namjerno pomagati, besplatno ili radi financijske dobiti, osobi koja nije državljanin/-ka države članice pri ulasku ili tranzitu na teritorij te države. | Direktiva je gotovo u potpunosti usklađena s hrvatskim zakonodavstvom. Ipak, Zakon o strancima spominje samo počinitelje određena kaznenog djela, no ne i pomagače, one koji su namjeravali počiniti kazneno djelo, iako je sudska praksa pokazala da se teže kazne izriču organizatorima, a blaže pomagačima. | Zakon o strancima ne propisuje moguće iznimke u slučaju humanitarnog pomaganja nezakonita prelaska granice. |

**PREPORUKE**

**1.** U Zakonu o strancima istaknuti razliku između humanitarnog i ostalih oblika pomaganja pri ilegalnim prelascima granice te, u skladu s tim, regulirati sankcije za ta djela.

**2.** Kontinuirano implementirati programe sprečavanja praksi trgovanja ljudima, krijumčarenja ljudi, ropstva, ograničavanja slobode, seksualnog i drugog iskorištavanja.

| DIREKTIVA VIJEĆA 2004/81/EZ OD 29. TRAVNJA 2004. O ODOBRENJU BORAVKA IZDANOME DRŽAVLJANIMA TREĆIH DRŽAVA KOJI SU ŽRTVE TRGOVINE LJUDIMA ILI IM JE PRUŽENA POMOĆ PRI ILEGALNOJ IMIGRACIJI, A SURAĐUJU S MJERODAVNIM TIJELIMA | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
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| **INFORMIRANJE** | | |
| Direktiva propisuje dužnost informiranja potencijalne žrtve o pravima i mogućnostima. Informacije može pružati i nevladina organizacija koja s mjerodavnim tijelom ima razvijenu suradnju. | U Hrvatskoj postoji cijeli niz strategija, mjera i planova u vezi sa suzbijanjem trgovine ljudima te niz programa pomoći žrtvama traffickinga. | Ovo je područje ne samo usklađeno s Direktivom nego i detaljno zakonski uređeno. |
| **PRIJELAZNO RAZDOBLJE** | | |
| Žrtvama trgovanja ljudima treba osigurati razdoblje tijekom kojeg će se moći oporaviti i maknuti od utjecaja počinitelja kaznenog djela te odlučiti žele li surađivati s mjerodavnim tijelima. | Hrvatsko zakonodavstvo prepoznaje prijelazni period koji traje 30 dana i u okviru kojeg stranac identificiran kao žrtva ima pravo odlučiti o svom sudjelovanju u programu pomoći i zaštite. | Direktiva ne propisuje minimalno trajanje tog perioda. |
| **TRETMAN PRIJE ODOBRENJA DOZVOLE BORAVKA** | | |
| Za državljane trećih zemalja koji nemaju dostatna sredstva osigurat će se prihvatljiv standard života i pristup hitnoj liječničkoj pomoći, a za posebne potrebe najranjivijih i psihološka pomoć. Države članice osigurat će im usluge prevođenja, tumačenja te besplatne pravne pomoći. | U Hrvatskoj program pomoći i zaštite obuhvaća zdravstvenu i psihosocijalnu zaštitu, siguran smještaj, usluge prevođenja i tumačenja, pravnu pomoć te siguran povratak u državu podrijetla. | Zakon o strancima ne dijeli žrtve na manje ili više ranjive, već za sve propisuje ista prava. |
| **IZDAVANJE I OBNOVA DOZVOLE BORAVKA** | | |
| Nakon isteka prijelaznog razdoblja, ili prije, ako mjerodavne vlasti utvrde, potrebno je ili pružiti mogućnost produljenja boravka za vrijeme istrage ili sudskog postupka ili izdati dozvolu boravka ako je osoba jasno pokazala da ima namjeru surađivati te je prekinula sve veze s osumnjičenima. | Zakon o strancima u ovom je slučaju usklađen s Direktivom, iako nisu propisani konkretni kriteriji na temelju kojih će se određivati istek odobrene dozvole. | Zakon o strancima propisuje da će se privremeni boravak iz humanitarnih razloga odobriti strancu u točno određenim slučajevima te da stranci kojima je odobren privremeni boravak iz humanitarnih razloga ne mogu podnijeti zahtjev za izdavanje odobrenja za privremeni boravak u drugu svrhu. |
| **TRETMAN OSOBA S ODOBRENOM DOZVOLOM BORAVKA** | | |
| Države članice osigurat će da nositelji dozvole boravka koji nemaju dostatna sredstva imaju barem jednak tretman predviđen za prijelazno razdoblje, a posebno potrebnu medicinsku i drugu pomoć za trudnice, osobe s invaliditetom ili žrtve seksualnog nasilja ili drugih oblika nasilja, te maloljetnika. | U ovom dijelu Direktiva prepoznaje mnogo širi spektar ranjivih skupina nego Zakon o strancima | Zakona o strancima propisuje sljedeća prava: siguran smještaj, zdravstvenu zaštitu, novčanu pomoć, obrazovanje i rad, no postoje i iznimke. Trudnice i osobe s invaliditetom posebno su ranjiva skupina žrtava. |
| **MALOLJETNICI** | | |
| Države članice moraju voditi računa o najboljem interesu djeteta, a u skladu s tim, osigurat će da postupak bude primjeren dobi i zrelosti djeteta, te prijelazno razdoblje može biti produženo. Maloljetnici bez pratnje trebaju imati poseban tretman. | Zakon o strancima potpuno je usklađen s Direktivom | Zakon o strancima propisuje da maloljetnici koji su žrtve trgovanja ljudima neće biti vraćeni ni u jednu državu ako nakon procjene opasnosti i sigurnosti postoji indicija da takav povratak ne bi bio u interesu maloljetnika/-ice. |
| **RAD, STRUČNO OSPOSOBLJAVANJE I OBRAZOVANJE** | | |
| Svaka država članica određuje pravila, uvjete i procedure za izdavanje dozvola pod kojima će nositelj/-ica boravka imati pravo na pristup tržištu rada, strukovnoj izobrazbi i obrazovanju. | Zakon o strancima navodi pravo na obrazovanje i rad, ali pravo na strukovnu izobrazbu ne regulira. Također, nije propisano pod kojim uvjetima žrtva to ostvaruje, kao hrvatski državljanin ili kao stranac. | Zakon o strancima u ovom je dijelu mnogo više ograničen nego Direktiva. |

| DIREKTIVA VIJEĆA 2004/81/EZ OD 29. TRAVNJA 2004. O ODOBRENJU BORAVKA IZDANOME DRŽAVLJANIMA TREĆIH DRŽAVA KOJI SU ŽRTVE TRGOVINE LJUDIMA ILI IM JE PRUŽENA POMOĆ PRI ILEGALNOJ IMIGRACIJI, A SURAĐUJU S MJERODAVNIM TIJELIMA | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
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| **PROGRAMI INTEGRACIJE** | | |
| Žrtve imaju pravo na pristup postojećim programima koje države članice ili nevladine organizacije koje imaju sklopljen sporazum s državama članicama provode, a čiji je cilj uključivanje u normalan društveni život, uključujući, gdje je to prikladno, tečajeve za poboljšanje profesionalnih vještina, odnosno pripremu za povratak u zemlju podrijetla. | Republika Hrvatska u potpunosti je regulirala i propisala kako programe pomoći i zaštite, tako i siguran povratak žrtava. | U praksi postoji i funkcionira nekolicina organizacija koje rade sa žrtvama trgovanja ljudima, koje imaju punu podršku kako javnosti, tako i Vlade Republike Hrvatske. |
| **UKIDANJE DOZVOLE BORAVKA** | | |
| Odobrenje boravka može se ukinuti u bilo koje doba ako uvjeti za izdavanje više nisu zadovoljeni. | Može se reći da Zakon o strancima u ovom pitanju propisuje više od minimuma i manje je restriktivan od Direktive. | U Direktivi se razlikuju dva moguća načina prestanka valjanosti dozvole o boravku, ukidanje i odbijanje obnavljanja. |

| DIREKTIVA EUROPSKOG PARLAMENTA I VIJEĆA EUROPE 2008/115/EC OD 16. PROSINCA 2008. O ZAJEDNIČKIM STANDARDIMA I PROCEDURAMA DRŽAVA ČLANICA ZA POVRATAK DRŽAVLJANA TREĆIH DRŽAVA KOJI BORAVE ILEGALNO | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE |
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| **DEFINICIJE, PRINCIPI I VRIJEDNOSTI** | | |
| Direktiva nabraja i objašnjava pojedine termine poput državljana treće države, ilegalnog boravka, povratka, odluke o povratku i dr. Također, ističe se važnost poštovanja non-refoulement principa, najboljeg interesa djeteta, obiteljskog života te zdravlja. | Zakon o strancima ne navodi većinu definicija iz ovog područja. Izostanak definiranja određenih termina zakonski je propust, a među ostalima pruža mogućnost zlouporabe i neujednačenog tumačenja pojedinih odredbi. | Kad je riječ o maloljetnicima, propisuje se i više od minimuma, jer Direktiva propisuje samo najbolji interes djeteta. |
| **DOBROVOLJNI ODLAZAK** | | |
| Osiguranje odgovarajućeg razdoblja za dobrovoljni odlazak, produženje tog roka te određene obveze u cilju izbjegavanja rizika od bijega ili skrivanja. | U Zakonu o strancima nigdje se ne spominje dobrovoljni odlazak te ne propisuje obvezu razvijanja programa kojima bi se osobe pripremile na dobrovoljni povratak. | Ni u Direktivi ni u hrvatskom zakonodavstvu ne definira se "ometanje udaljenja", što onda dovodi do potencijalnih zloupotreba tog termina i ekspresnog udaljenja stranaca bez mogućnosti produljenja ostanka. |
| **PRISILNO UDALJENJE** | | |
| Države članice trebaju osigurati učinkovit nadzor sustava prisilnog udaljenja te ga upotrebljavati kao zadnju opciju. | Zakon o strancima gotovo je potpuno usklađen s Direktivom. | Bilo bi važno ostaviti prostor za iznimke, odnosno trebalo bi mnogo bolje urediti mogućnost produženja roka za deportaciju, omogućiti fleksibilniji i individualniji pristup svakom od slučajeva. |
| **ODGODA UDALJENJA** | | |
| U slučaju non-refoulement principa ili za vrijeme suspenzivnog učinka pravnog lijeka. | Strancu kojeg je zabranjeno prisilno udaljiti ili strancu kojeg nije moguće prisilno udaljiti iz razloga za koje on nije odgovoran može se produžiti rok, što propisuje Zakon o strancima. | Iako Zakon o strancima prati propise iz Direktive, Direktiva konkretnije definira brojne odredbe uz neizostavni kriterij individualnog, ljudskog pristupa. |
| **POVRATAK I UDALJENJE MALOLJETNIKA BEZ PRATNJE** | | |
| Prije donošenja odluke o povratku maloljetnika bez pratnje, vodeći računa o najboljim interesima djeteta, treba se tražiti mišljenje relevantnih službi te utvrditi da će biti vraćen članu obitelji, imenovanom skrbniku ili da će biti smješten u odgovarajuću ustanovu u državi povratka. | U Zakonu o strancima ovaj je dio usklađen s Direktivom samo u stavku koji propisuje da se ne smije činiti ništa suprotno konvencijama. | U praksi, u određenom broju slučajeva maloljetnici bez pratnje bivaju deportirani i dostatna im se sustavna pomoć ne pruža, mjere udaljenja donose se vrlo brzo, što pretpostavlja pitanje kvalitete ispitivanja kako zahtjeva za azil, tako i mogućeg kršenja Konvencije. |
| **ZABRANA ULASKA** | | |
| U odluci o povratku može biti sadržana i zabrana ulaska, a duljina zabrane ulaska ovisi o okolnostima pojedinog slučaja i ne treba biti dulja od pet godina. | Zakon o strancima ima restriktivnije mjere i standarde nego one propisane Direktivom. | Na žrtve trgovine ljudima ili osobe koje ilegalno prijeđu granicu, a surađuju s mjerodavnim tijelima, neće se primjenjivati ova odredba. |

**PREPORUKE**

**1.** Unaprijediti sustav zaštite ljudskih prava neregularnih imigranata.
**2.** Unaprijediti odredbe Zakona o strancima koje se tiču različitih kategorija sankcija te razviti stručnu potporu za povratak osoba u zemlju podrijetla.
**3.** Unaprijediti sustav zaštite maloljetnih osoba.

| DIREKTIVA EUROPSKOG PARLAMENTA I VIJEĆA EUROPE 2008/115/EC OD 16. PROSINCA 2008. O ZAJEDNIČKIM STANDARDIMA I PROCEDURAMA DRŽAVA ČLANICA ZA POVRATAK DRŽAVLJANA TREĆIH DRŽAVA KOJI BORAVE ILEGALNO | USKLAĐENOST S HRVATSKIM ZAKONODAVSTVOM I PRAKSOM | NAPOMENE | PREPORUKE |
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| **PRAVNI LIJEKOVI** | | | |
| Propisuje se potreba osiguranja odluka pred neovisnim tijelima te mogućnost besplatnog pravnog savjeta, zastupanja i prevođenja. | Zakon o strancima ne propisuje brojne mogućnosti ili prava koje nudi Direktiva. | Zakon o strancima ne spominje besplatnu ili bilo kakvu drugu vrstu pravne pomoći za stranca, niti nekakva posebna prava za osobe kojima se odgodi deportacija. Postoji mogućnost žalbe protiv rješenja koje ne odgađa izvršenje rješenja, što znači da nije učinkovito ili smisleno. | |
| **SIGURNOST U POSTUPKU POVRATKA** | | | |
| U razdoblju koje prethodi dobrovoljnom povratku nužno je poštovati određene principe. | U hrvatskom zakonodavstvu ne nalazimo odredbe koje bi bile usklađene s ovim člankom Direktive. | Važno je što je moguće prije donijeti pravila kojima će se regulirati ovo područje. | |
| **PRITVOR/DETENCIJA** | | | |
| Ovom bi se mjerom trebalo koristiti samo kada su sve druge prisilne mjere iscrpljene. | Zakon o strancima usklađen je s Direktivom vezano uz propisane rokove. | Zakon ne predviđa nikakvu sudsku reviziju rješenja o pritvaranju, a o tome hoće li se nekoga odvesti u Prihvatilište za tražitelje azila ili će ostati u Privatnom centru za strance odlučuje "tim Centra svojom diskrecijskom odlukom". | |
| **PRITVOR MALOLJETNIKA I OBITELJI** | | | |
| Pritvor za maloljetnike bez pratnje i obitelji s maloljetnicima smije se primjenjivati samo kao zadnja opcija i, u tom slučaju, na najkraći mogući period. Propisani su uvijeti koji u tim slučajevima moraju biti ispunjeni. | Pravilnik je usklađen s Direktivom, ali ne uređuje uvjete života za ranjive skupine u cijelosti. | Zakon o strancima propisuje i mjeru strožeg policijskog nadzora, što se nigdje u Direktivi ne spominje. | |

| DIRECTIVE ON TEMPORARY PROTECTION 2001/55/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS |
|---|---|---|
| *GENERAL PROVISIONS* | | |
| Temporary protection is an exceptional procedure of providing protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country or region of origin, in order to avoid the risk of the asylum system being overwhelmed.<br>The granting of temporary protection shall in no case limit the access to the individual procedure of asylum application. | Temporary protection is protection of urgent and temporary character granted in extraordinary proceedings, in cases of mass influx or imminent mass influx of displaced persons from third countries who are unable to return to their country of origin, especially if there is a risk that this mass influx makes it impossible to carry out efficiently an asylum-granting procedure, for the purpose of the interest of the displaced persons and other persons seeking protection. | The difference between the definition of temporary protection in the Directive and the Asylum Act is in that in Croatia temporary protection is not defined as an exception in the procedure of the granting of protection.<br>The person enjoying temporary protection can seek asylum, but not enjoy the rights of an asylum-seeker until his or her temporary protection ends. These rights mostly refer to the receipt of financial and humanitarian aid as well as free-of-charge legal assistance. |
| *DURATION AND IMPLEMENTATION OF TEMPORARY PROTECTION* | | |
| The duration temporary protection lasts one year, with the possibility of extension by six-month periods to a maximum of a further year. | Temporary protection is approved by the Ministry for the duration of one year. Temporary protection can be automatically extended to a period of six months but not more than a year. | According to the Asylum Amendment Act of 2010, Article 84 was changed to adapt to more restrictive possibilities outlined in the Directive. |
| *OBLIGATIONS TOWARDS PERSONS ENJOYING TEMPORARY PROTECTION* | | |
| Residence permit, provision of free of charge visa and status documents.<br>Entering employment and the possibility of self-employment.<br>Access of minors to the education system under equal conditions as nationals, and protection of unaccompanied minors – legal representation, accommodation with adult relatives or in reception centres with special provisions. | Residence permit and a card valid for a twelve-month period which can be extended.<br>Possibility of entering employment and vocational training.<br>Education of underage foreign citizens under temporary protection shall be secured according to the rules and regulations referring to pre-schooling, elementary, middle and higher education, under equal conditions as for Croatian nationals. | The Asylum Act does not mention the payment of visa costs.<br>Foreign citizen under temporary protection can work in the Republic of Croatia without a work or business permit.<br>This part is regulated by 'Ordinance on the Method of Implementation of the Curriculum and Knowledge-Testing of Asylum-Seekers, Asylum-Holders, Foreign Citizens under Temporary Protection and Foreign Citizens under Subsidiary Protection for the Purpose of Joining the Education System of the Republic of Croatia.'<br>The Asylum Act contains all relevant elements and standards outlined in the Directive, except that the same provisions referring to the accommodation of asylum-holders are applied to minors enjoying temporary protection as well. |
| *RETURN AND MEASURES AFTER TEMPORARY PROTECTION HAS ENDED* | | |
| The Directive makes possible the voluntary return of persons enjoying temporary protection or whose temporary protection has ended, ensuring that their return is facilitated according to the principles of security and human dignity. | The return should occur under conditions of safety and stability, with programmes of social and medical assistance, welfare and counselling for the persons returning. | Article 87 of the Asylum Act is in harmony with this article in every respect except the part of the Directive which states 'that Member States may provide exploratory visits to places of possible return.' |

***RECOMMENDATIONS***

**1.** To improve the system of protection and treatment of persons under temporary protection
- Regulate a safer and more permanent status;
- Ensure access to the procedure of individual asylum applicationl;
- Develop programmes of support and psychosocial help to persons who have temporary protection;
- Adopt detailed rules and regulations for other areas such as: employment, health care, adult education etc.

**2.** More precisely define specific provisions from the Asylum Act
- The definition 'encouraged return' should be listed as one of the provisions of the Asylum Act.

To the greatest possible extent it is necessary to avoid enforced return of persons under temporary protection.

| DIRECTIVE ON TEMPORARY PROTECTION 2001/55/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *THE END OF TEMPORARY PROTECTION* | | | |
| For committing a crime against peace, a war crime, or a crime against humanity, or if he or she has committed a serious non-political crime, or if he or she has been found guilty of acts contrary to the purposes and principles of the United Nations, or if he or she poses a danger to national security. | Temporary protection stops if:<br>– the period of its duration has expired,<br>– the Government has decided that the reasons for the granting of temporary protection no longer exist. | The Asylum Act contains provisions about reasons for denying temporary protection which are not found in the Directive. | |

| DIRECTIVE ON THE RECEPTION 2003/9/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *GENERAL PROVISIONS* | | | 1. To harmonize the equal asylum procedure for all asylum-seekers<br>- All rights given to asylum-seekers according to the Asylum Act should be equally applied to those asylum-seekers who cross the border of the Republic of Croatia illegally<br>2. To establish a system of quick and high-quality facilitation of integration of children of asylum-seekers in the Croatian education system<br>- Ensure the teaching of the Croatian language, learning assistance and supervision<br>3. To establish a system of quick and high-quality facilitation of integration of asylum-seekers into the labour market<br><br>- Ensure professional orientation, vocational training, the possibility of volunteering in local community<br><br>- Enable asylum-seekers the right to work within six months of their arrival<br><br>4. To continuously develop capabilities – knowledge and skills of staff working with asylum-seekers<br><br>- Organize regular supervision and counselling of staff members and proessional improvement |
| Dignified reception of asylum-seekers in Member States with the goal of harmonizing the development of a common asylum system and the improvement of freedoms, security and justice. | Croatian legislation follows the standards outlined in the Directive, except in the case when 'a foreign citizen who has entered the Republic of Croatia illegally, and who came directly from the area from which he or she was forced to flee..... shall not be punished for illegal entry and shall stay, if he or she lodges an application for asylum without delay, and presents valid reasons for his or her illegal entry or stay.' | High degree of harmonization of regulations and practice, except in the cases of asylum-seekers who have crossed the border of the Republic of Croatia illegally. | |
| *PROVISION OF INFORMATION TO ASYLUM SEEKERS* | | | |
| The asylum-seeker is entitled to be informed within a period of a maximum of 15 days after he or she has lodged his or her application for asylum, about anticipated services rights and obligations concerning the reception. | The asylum-seekers shall be informed 'about the asylum approval procedure, the rights and responsibilities... the possibility of receiving free-of-charge legal assistance, ... approaching the representatives of UNHCR and other organizations... in the mother-tongue... within 15 days of the submission of an application.' | Analysis of practice shows that some asylum-seekers are still insufficiently informed about their rights. | |
| *DOCUMENTATION* | | | |
| Entitlement to a document certifying his or her status as an asylum-seeker issued in his or her own name within three days of an application being lodged. Entitlement to a travel document when serious humanitarian reasons require their presence in another state. | Issuing of an ID card to an asylum-seeker and persons under subsidiary protection, and also enables the issuing of a travel document. | Legislation and practice follow the standards in full. | |

| DIRECTIVE ON THE RECEPTION 2003/9/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS |
|---|---|---|
| *ACCOMMODATION AND FREEDOM OF MOVEMENT* | | |
| Asylum-seekers are free to move within the territory of the Member State or within an area assigned to them by the Member State under the condition that the assigned area does not affect the sphere of the asylum-seeker's private life. Member States can prescribe a specific place of residence for asylum-seekers for reasons of public interest and public order. | Asylum-seekers and the family members who arrived with them are entitled to reside in the Republic of Croatia, while according to Article 38 of the Asylum Act they have the right to be housed in a reception centre. | In Croatia most asylum-seekers are housed in the Reception Centre for Asylum-Seekers at Kutina, and the minority of asylum-seekers who wanted to live outside the Centre in accordance with the legislation,were able to regulate it without any problems. |
| *FAMILY* | | |
| The Directive prescribes the taking of appropriate measures for the preservation of family ties, in other words the unity of the family, within the Member State's territory, if applicants are provided with housing by the Member State concerned. | According to Article 30 of the Asylum Act, asylum-seekers, and the family-members that arrived with them, are entitled to reside in the Republic of Croatia. | Our analysis of practice shows that this provision is properly respected. |
| *MEDICAL SCREENING* | | |
| Member States may require medical screening for applicants on public health grounds. | Medical screening of asylum-seekers is regulated in detail by the Ordinance for the Content of Medical Screening of Asylum-Seekers, Asylum-Holders, Foreign Citizens under Temporary Protection and Foreign Citizens under Subsidiary Protection. A compulsory medical screening is carried out on the occasion of the asylum seeker's reception. A daily medical service is available at the Reception Centre for Asylum-Seekers so that asylum-seekers can have necessary treatment in health institutions should they be in need of it. | Only a few asylum-seekers were not satisfied with the medical assistance they were given during the procedure, or a lack thereof. Asylum-seekers are mostly satisfied with the medical services. |
| *SCHOOLING AND EDUCATION OF MINORS* | | |
| Access to the education system should be made possible within three months from the date the asylum application was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system. | Article 32 of the Asylum Act prescribes that an asylum-seeker who is a minor is entitled to elementary and middle education as a Croatian citizen. This right is realized at the latest three months from the asylum application, or within a year if the asylum-seeker does not have a command of the Croatian language. | In the last few years, in the Republic of Croatia, regardless of the legal provisions and other regulations, the education of minors has been an exceptional problem. The differences in language and culture often represent insuperable barriers for Croatian institutions and the inclusion of children in the education system. |
| *EMPLOYMENT* | | |
| If a decision at first instance has not been taken within one year of the presentation of an asylum application, without this delay being attributed to the applicant, Member States shall decide the conditions for granting the applicant access to the labour market. | Paragraph 36 of the Asylum Act enables the employment of asylum-seekers and this right expires one year after the asylum application was lodged, if the asylum procedure has not ended. | According to the information we have, in practice not a single asylum-seeker was employed, because of the length of the procedure, which is often shorter than a year, or because of inadequate improvement of the necessary abilities of asylum-seekers and the requirements of the labour market. |

**RECOMMENDATIONS**

**5.** To involve asylum-seekers in the management of the resources of the Reception Centre for Asylum-Seekers

- To organize meetings between asylum-seekers and staff members for the purpose of mutual familiarization with the material and other conditions

**6.** To include non-governmental organizations in the work of the Reception Centre for Asylum-Seekers, with the aim of social inclusion of asylum-seekers and to help with the integration of asylum-holders

- To improve programmes of social involvement of asylum-seekers and provision of social services

**7.** To develop a system of reception and care for vulnerable social groups and persons with special needs

| DIRECTIVE ON THE RECEPTION 2003/9/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *MATERIAL RECEPTION CONDITIONS AND HEALTH CARE* | | | |
| The asylum-seeker is entitled to material reception conditions which provide him or her with a standard of living adequate for the health of applicants and capable of ensuring their subsistence immediately after the asylum application has been lodged. It is particularly important to provide adequate living standards to persons with special needs and to persons who are in detention. | Article 38 of the Asylum Act states that an asylum-seeker is entitled to accommodation at the Reception Centre, and that appropriate accommodation shall be provided in accord with their needs. Asylum-seeker will be accommodated with his or her family members. Adequate accommodation for accompanied or unaccompanied minors is ensured, whether in the Reception Centre or other appropriate institutions. | As part of this analysis, in the focus groups, asylum-seekers housed in the Reception Centre for Asylum-Seekers at Kutina expressed overall and great satisfaction with the reception conditions and living standards at the Centre. Asylum-seekers housed in the Reception Centre for Foreign Citizens at Ježevo were not satisfied with the accommodation and living conditions in equal measure. | - To organize and adopt Ordinances which specifically explain the reception procedure and health care of persons with special needs, and those who are disabled or have a rare illness.<br>- To involve persons and organizations with expertise in the work of the Reception Centre for Asylum-Seekers involving persons with special needs of all kinds. |

| DIRECTIVE ON FAMILY REUNIFICATION 2003/86/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *GENERAL PROVISIONS* | | | |
| The right to family reunification is applied when a third-country national (the 'sponsor') lodging an application for family reunification, has obtained a residence permit from the Member State for the period of a year. | The Asylum Act surpasses the minimal standards and Article 48 enables 'residence for the purpose of family reunification of a foreign citizen under subsidiary protection' which will be granted to 'a family member who has arrived in the Republic of Croatia with the foreign citizen under subsidiary protection, when that family member has not lodged an asylum application nor been granted protection.' Foreign nationals under temporary protection are also entitled to family reunification in Croatia. | Family reunification of persons under subsidiary protection exclusively applied in this situation, taking into account the 3 year period of the duration of subsidiary protection and possible long-term separation between the person under subsidiary protection and his or her family, represents a restriction of the right of the person under subsidiary protection to 'preserve family life.' | 1. To harmonise the Asylum Act and the Foreign Citizens Act with the Same-Sex Union Act in the sections relating to the right of persons in same-sex unions to family reunification on the same terms which regulate the family reunification of marriages and other unions. |

| DIRECTIVE ON FAMILY REUNIFICATION 2003/86/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS |
|---|---|---|
| *FAMILY MEMBERS* | | |
| Family reunification shall always be enabled to members of the nuclear family, spouses and minor children. | 'A family member is considered to be a spouse or unmarried partner...; a minor child who has not founded their own family and who is dependent upon the parents irrespective of whether the child in or out of wedlock or adopted...; a parent or other legal guardian or representative of an under-age asylum-seeker, asylum-holder, foreign citizen under subsidiary protection or foreign citizen under temporary protection...; a relative in the direct ascending line.' | The Croatian Asylum Act, with minor modifications, is mostly harmonized with the Directive, while, concerning treatment of relatives, it is even above the standards prescribed by the Directive. |
| *SUBMISSION AND EXAMINATION OF FAMILY REUNIFICATION APPLICATIONS* | | |
| When examining an application for family reunification concerning the relationship between third-country nationals and their unmarried partners, Member States shall consider, as evidence of the family relationship, factors such as a common child, previous cohabitation, registration of the partnership, and any other reliable means of proof. | There is a degree of disharmony with the Directive in that in the Asylum Act there is no provision whatsoever prescribing the way in which cases in which there are no official documents confirming family relationships should be treated. | Since in practice to date there have been cases in which it was not possible to establish beyond doubt the type of family relationship, whether in or out of wedlock, it is necessary to prescribe a clearer procedure of proving family relationships, by means of specific provisions or ordinances. |
| *APPLICATIONS FOR FAMILY REUNIFICATION* | | |
| When the application for family reunification is submitted, the Member State may require the person who has submitted the application to provide evidence that the sponsor has: accommodation which meets the general health and safety standards, health insurance in case of illness for himself or herself and for the members of his or her family, stable and regular resources which are sufficient to maintain himself or herself and the members of his or her family without recourse to the social assistance of the Member State. | The Croatian Asylum Act and the Foreign Citizens Act do not analyse in equal detail prerequisites for family reunification nor is it regulated by a specific ordinance. | In Article 29 of the Asylum Act, the right to family reunification is not listed of one of the rights of asylum-seekers.<br>ECRE[1] recommends that there should be no requirement for refugees and their spouses to be of a specific minimum or maximum age before family reunification.<br>A questionable Directive provision is that which prescribes that children above 12 years of age should pass the so-called 'integration tests' before they are granted the possibility of family reunification. |
| *FAMILY REUNIFICATION OF REFUGEES (ASYLUM-HOLDERS)* | | |
| For family reunification of refugees a similar procedure applies as for third-country nationals, however, Member States may confine the application to the refugees whose family relationships predate their entry into the Member State. | According to the Asylum Act, family reunification of refugees is possible in circumstances in which the family already existed in the country of origin. | These provisions are harmonized with the Foreign Citizens Act and with Articles 48, 51 and 55, which regulate family reunification of foreign nationals and asylum-holders in particular. |

***RECOMMENDATIONS***

**2.** To regulate the legal framework for the procedure of proving family relationships in cases in which the refugee is unable to submit official evidence which confirm the type of family relationship he or she has with the person with whom family reunification is sought.

**3.** To regulate the legal framework in the area of protection and realization of rights of refugees who are minors (asylum-holders, asylum-seekers, refugees under subsidiary or temporary protection), to improve the clarity of procedures, and to limit the illegal practice of detaining refugees who are minors.

**4.** To improve legal provisions for the treatment, housing and expert care of asylum-holders who are minors, or under-age persons under subsidiary or temporary protection, irrespective of when their right to family reunification will be realized.

**5.** To harmonise the Asylum Act with the Directive's provision which prescribes that it is necessary to grant family members who have 'joined' the sponsor a status independent of that of the sponsor.

**6.** To enable the integration of family members in those cases of family reunification in which there is a subsequent change of marital circumstances.

| DIRECTIVE ON QUALIFICATION 2004/83/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *GENERAL PROVISIONS* | | | |
| The Directive establishes qualifications for refugee status, primarily those which include reasons for, and fear of, persecution, as well as reasons for the revocation and ending of the status and subsidiary protection.<br>In the Directive, the term refugee is determined by the definition mentioned in the Geneva Convention. | The provisions of the Asylum Act of 2007, with the Asylum Amendment Act of 2010, in which Article 2 determines the concepts and meaning of specific terms such as subsidiary protection, unaccompanied minor, race, religion, nationality, specific social groups, and political opinion, are harmonized with the Directive. | Specific rights of the asylum-holder and person under subsidiary and temporary protection, such as the right to integration with Croatian society, the right to health care, education and employment for the foreign citizen under subsidiary protection, although mostly harmonized with the Directive, have, in practice, proven far more difficult to realize than expected, and there are examples of inadequate understanding and implementation of specific provisions of the Directive. | 1. To harmonize the Foreign Citizens Act and the Asylum Act in those parts which prohibit enforced removal<br>- It is necessary to formulate precisely in the sense of a more singular definition of 'other justifiable reasons of humanitarian nature.'<br>- It is necessary to determine precisely what represents a formal standard of protection for persons who were not able to obtain protection according to the Asylum Amendment Act and the Foreign Citizens Act and who cannot be returned to their country of origin.<br>2. The Asylum Amendment Act mentions 'acts which are sex-specific in their nature...' which should be changed to 'acts of a gender specific nature'.<br>3. A definition from the Directive that family members may, because of their relation to the refugee, be subject to acts of persecution in such a manner that they could form the basis for refugee status should be added to the Asylum Act.<br>4. Access to health care, including physical and mental care, should be provided for all beneficiaries of refugee status or subsidiary protection status.<br>5. Although Article 45 of the Asylum Act states that 'an asylum-holder is entitled to vocational training and specialization under the same conditions as a Croatian national', the legislation should introduce the principle of affirmative action in the sense of protective quotas in such programmes..<br>6. It is necessary to establish, in the Act and a specific Ordinance, specifications of accommodation centres specialized for the reception and accommodation of minors – unaccompanied under-age asylum-seekers, asylum- holders, foreign citizens under temporary protection and foreign citizens under subsidiary protection.<br>7. It is recommended that a functional decentralized model of teaching the Croatian language to asylum-seekers, asylum-holders, foreign citizens under temporary protection and foreign citizens under subsidiary protection should be created and adapted to the needs, abilities, existing understanding and motivation of the attending students. |
| *ASSESSMENT OF FACTS AND CIRCUMSTANCES IN APPLICATIONS FOR INTERNATIONAL PROTECTION* | | | |
| Understanding of the reasons for persecution and especially the term belonging to a particular social group. | ('A particular social group is understood to represent persons from the same community, having identical customs or social position. Members of that group share beliefs which are the foundation of their identity or awareness and which they do not wish to renounce. The group must have a specific identity in the relevant country and thus differ from the society surrounding it...') | | |
| *QUALIFICATION FOR BEING A REFUGEE OR PERSON UNDER SUBSIDIARY PROTECTION* | | | |
| This Directive introduces subsidiary prootection. | 'Subsidiary protection shall cease when the circumstances which lead to the granting of subsidiary protection status have ceased to exist or have changed to such a degree that protection is no longer required and... the competent authority shall consider whether the change of circumstances is of such a significant and non-temporary nature that the foreign national under subsidiary protection no longer faces a real risk of suffering serious harm.' | The provisions of the Directive concerning the refusal and rejection of an application, as well as the provisions about the end and revocation of asylum are similarly defined in the Croatian Asylum Act. Equally so the Act contains all the provisions concerning the granting of the status of subsidiary protection, but also the provisions about the end or revocation of subsidiary protection. | |
| *CONTENT OF INTERNATIONAL PROTECTION* | | | |
| Protection from being sent back (non-refoulement), access to information in a language they understand, the upholding of the principle of family unity, residence permits, travel documents, and access to the labour market, education, health care, accommodation, and programmes of integration and social assistance. | 'Within 15 days from the date of the approval of the asylum status, the Ministry shall provide the asylum-holder or foreign citizen under subsidiary protection with general information about the rights and responsibilities he or she achieved with the approval of asylum or subsidiary protection in a language likely to be understood by him or her.' | Other rights are equally guaranteed and clarified in the Act and other regulations. | |

| DIRECTIVE ON PROCEDURES 2005/85/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS |
|---|---|---|
| *GENERAL PROVISIONS* | | |
| Its basic purpose is to limit secondary movements of applicants for asylum between Member States where such movements are caused by unequal and unharmonized rules and regulations in the procedures for granting refugee status in different Member States, and also to increase the quality of decisions about asylum status. | The Act is almost completely harmonized with the Directive. Negative comments concern instances of phrasing which are not clear and precise enough. Also, the Act places responsibility on particular institutions but without prescribing a specific method of co-ordination or indicating which persons might be responsible for it. | The Directive defines access guarantees for asylum-seekers, and minimal standards which shall be respected during the decision procedure about the application. |
| *PROCEDURAL GUARANTEES FOR ASYLUM-SEEKERS* | | |
| Member States designate a place at which asylum applications shall be made in person. They shall ensure that there is a person who is in charge of providing information, advice and guidance to potential asylum seekers. | The Asylum Act prescribes that asylum application shall be lodged in the Reception Centre for Asylum-Seekers, while the intention to lodge an asylum application can be expressed during border control at a border crossing, or at a Police Administration Building or Police Station. | The Ministry of Interior Affairs is responsible for informing asylum-seekers about the possibility of obtaining free legal assistance and the possibility of approaching the representatives of UNHCR and other organizations that deal with the protection of refugees' rights. |
| *OTHER GUARANTEES FOR APPLICANTS FOR ASYLUM* | | |
| The Directive prescribes the applicant shall have the opportunity to communicate with UNHCR representatives, the option of legal remedy in the case of a negative decision, and the service of an interpreter so that the asylum application can be lodged, but also in any other phase of the procedure, in particular during interviews with the competent authorities. | Legally speaking, applicants for asylum have all the rights prescribed by the Directive. The language in which the procedure is carried out certainly has to be one which the applicant understands, and, aside from that, the Asylum Act states that in cases in which it matters, the interpreter shall be of the same gender as the asylum-seeker. | There are cases of the breaking of basic rights of asylum-seekers because in practice, there are situations when only English or Croatian are used, which is then explained by the fact that Croatian is the official language of the procedure so therefore documents should be in Croatian. |
| *OBLIGATIONS OF THE APPLICANTS FOR ASYLUM* | | |
| The directive prescribes that applicants shall co-operate with the competent institutions so that the procedure is not disrupted. | The Asylum Act lists the obligations of the applicants for asylum in general, concretely and in much detail, and it does the same for the consequences of disobedience. | In this part, the Act and the Directive are completely harmonized. |
| *PERSONAL INTERVIEW AND ITS CRITERIA* | | |
| Personal interview may be omitted only where the determining authority is able to take a positive decision on the basis of available evidence, where the determining authority is assisting the applicant with his or her asylum application, where, on the basis of a complete examination of information, it has been decided that the application is unfounded, and where the personal interview is not possible due to circumstances beyond the applicant's control. | Article 54 of the Asylum Act which regulates this issue is only partially harmonized with the Directive. The Asylum Act adds the possibility that the Ministry of Interior Affairs can, in order to establish facts, interview the applicant more than once. A practice not prescribed by the Directive but advantageous for the applicants is the hearing of the applicant before a second-instance judicial authority. | The unregulated parts of the Act concern the circumstances under which the interview is conducted, as well as the competencies of the person conducting it. Our analysis has not observed any circumstances which would have adverse consequences for asylum applicants. |

## RECOMMENDATIONS

**1.** To establish higher legislative standards such as to determine more precisely the competencies of persons who (at the first and second instance) make decisions about applications, to take into account the experience they have in this area, and to prescribe an obligation to attend and the contents of continuing and further education courses for the purpose of a more objective and impartial examination of applications. To further regulate the circumstances in which a personal interview is conducted, and the competencies of the person conducting such interviews, and to insist as much as possible on conducting interviews.

**2.** To harmonize equality of procedure for asylum applicants

**3.** To improve the system of co-operation and information-exchange with legal advisors.

| DIRECTIVE ON PROCEDURES 2005/85/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *STATUS OF THE REPORT OF A PERSONAL INTERVIEW IN THE PROCEDURE* | | | |
| Member States shall ensure that a written report is made of every personal interview and make it available to the applicant in case of appeal. The report should be approved by the applicant. If he or she refuses to approve it, the reasons for this refusal shall be entered into the file, but shall not be the reason for rejecting the application. | The Asylum Act prescribes that a report is made during the interview, while in the cases in which the interview was recorded; the asylum applicant may add his or her corrections and short additions to the sound recording. | In some cases asylum-seekers stated that they were pressurized to sign the report, which represents a practice that should not happen. | |
| *RIGHT TO LEGAL ASSISTANCE AND REPRESENTATION* | | | |
| The Directive prescribes that the applicants may consult a legal adviser at his or her own expense. Free legal assistance and representation is assured in the event of a negative decision, and Member States may regulate this provision in different ways. | According to the Asylum Act, free legal assistance includes assistance with the making of an appeal and representation before the Administrative Court, and is provided for those applicants who do not have sufficient financial means or highly valuable possessions. The decision about whether or not the applicant will be charged for costs shall be taken by the Constitutional Court within its judgement about the appeal. | Although in this instance the Asylum Act adopted the recommendations from the Directive, the option in which asylum applicants are charged for 'free' legal assistance represents a problem, and legal experts do not know whether they will be paid until the end of the procedure. Although the law prescribes that an advisor should have access to the applicant's file in full, there are still problems with implementing this in practice. | |
| *GUARANTEES FOR UNACCOMPANIED MINORS* | | | |
| It is necessary to designate a representative to a minor as soon as possible to assist him or her with the application procedure. It shall also be ensured that the advisor can get to know the minor, and to prepare and inform him or her about everything relating to the procedure. During the interview, Member States may require the presence of the unaccompanied minor even if the representative is present. | The Asylum Act and the Asylum Amendment Act are partially harmonized with the Directive. The Act prescribes that the asylum application of an unaccompanied minor shall be examined in the shortest period possible, but it does not prescribe the manner and circumstances in which a minor's age may be determined, although in practice it has been done with different medical examinations. | Members States may use medical examinations in order to determine the age of unaccompanied minors but under the condition that the minor is informed about the procedure and the best interests of the child are taken into account. | |
| *DETENTION* | | | |
| Asylum applicants shall not be housed in a detention facility for the sole reason that he or she is an applicant. If he or she is held in detention, Member States shall ensure that there is a possibility of speedy judicial review. | The Foreign Citizens Act prescribes that a 'foreign citizen seeking asylum or subsidiary protection after he or she was housed at the Centre shall stay in the Centre until the end of his or her period of stay or until the granting of asylum status or the status of subsidiary protection', in which it diverges from the standards prescribed by the Directive and allows for abuse of the system by the applicant | Because this aspect is not regulated by the Asylum Act but by the Foreign Citizens Act, and because it is very restrictive, we are of the opinion that it is necessary primarily to explain the Asylum Act and minimum international standards which clearly state that applicants who have not committed crime nor broken the law in any way should not have their freedom of movement restricted. | |

| DIRECTIVE ON PROCEDURES 2005/85/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *PROCEDURE IN CASE OF THE WITHDRAWAL OR ABANDONMENT OF THE APPLICATION* | | | |
| When an application has been withdrawn or abandoned, Member States may decide either to discontinue the examination of the application or to reject it. | The Asylum Act uses the term 'suspension of procedure' and following the recommendations of the Directive, it lays down the possibility of appeal and potential return to a previous stage, as well as the possibility of renewing the procedure. | Member States are free to lay down time-limits within which these actions shall take place and after which the case can no longer be re-opened. | |
| *THE ROLE OF UNHCR* | | | |
| Representatives of UNHCR are entitled to access to asylum-seekers, access to information on individual asylum applications, as well as on the decisions taken, and to present its views in each individual case. | In this section, the Act is also completely harmonized with the Directive. | In some instances, the Act surpasses the minimum standards and prescribes equal rights not only to UNHCR but to other organizations dealing with refugees' rights and human rights. To date, these rights have not been used frequently in practice. | |
| *COLLECTION OF INFORMATION* | | | |
| For the purposes of examining individual cases, Member States shall not directly disclose information nor the fact that an application has been made to the alleged actors of persecution, and shall not obtain information from the alleged actors of persecution which would jeopardize the security and integrity of the applicant and his or her dependants. | In accordance with the principle of confidentiality and protection of the identity and security of the applicant prescribed by the Directive, the Asylum Act lays down rules and regulations for the procedure of collecting information about applicants. Personal and other information collected during the asylum procedure represents confidential material and shall not be available to the authorities in the applicant's country of origin nor to other authorities which are not involved in the procedure. | In this part, the Act and the Directive are completely harmonized. | |
| *PROCEDURE AT FIRST INSTANCE* | | | |
| Where a procedure takes more than 6 months, Member States shall ensure that the applicant concerned shall either be informed of the delay, or inform the applicant, upon his or her request, about the time-frame within which the decision is to be expected but this, however, is not obligatory for the Member State. Member States may accelerate or prioritize any examination in accordance with the guarantees, in particular if it is obvious that the application is well-founded or where the applicant has special needs. | The Asylum Act lists generally almost every cause mentioned in the Directive which may prompt an accelerated examination. In Croatia the number of applications examined in an accelerated procedure is rather low. | The problem lies in the fact that in some instances the provisions of the Act are based on the assumption that the applicant might abuse the system, which is nearly impossible to prove and depends upon a discretionary decision during the procedure, for example where 'the applicant has lodged the application with a clear intention to delay or prevent the enforcement of the decision which can result in his or her removal from the Republic of Croatia.' | |

| DIRECTIVE ON PROCEDURES 2005/85/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *INADMISSIBLE APPLICATIONS* | | | |
| The Directive prescribes in which cases an application may be considered inadmissible. | The Asylum Act does not identify this as a separate concept, but includes these causes in some other provisions so that some of them represent causes for the suspension of procedure, unfounded application or rejection of the application. | The difference between the Directive and the Asylum Act lies in the fact that the Asylum Act elaborates in detail those situations in which the application is considered inadequate for the granting of the refugee status. | |
| *FIRST COUNTRY OF ASYLUM* | | | |
| A country can be considered to be a first country of asylum for a particular applicant for asylum if: he or she has been recognised in that country as a refugee and can still avail himself or herself of that protection; or if he or she otherwise enjoys sufficient protection in that country, including benefiting from the principle of non-refoulement.. | This term has not been recognized in the General Provisions of the Asylum Act, partially due to the specific context of this provision within the EU, and partially because it is contained in Article 60 (Rejection of the application). | | |
| *SAFE THIRD-COUNTRY AND SAFE COUNTRY OF ORIGIN* | | | |
| The Directive defines which criteria a country has to satisfy to be considered safe. It prescribes a whole set of rules and regulations which regulate the cases in which this concept shall be applied to an applicant and the procedures of determining which third countries as regarded as safe. | The Asylum Act recognizes these concepts in almost the same words; the differences are only minor and relate to the emphasis on safety and protection of applicants. In this section, the Act was written to comply with Croatia's prospective joining of the EU and the new institutions and bodies which will become relevant upon accession, for example the list of safe third countries used by the EU is also used in Croatia. | Neither the Directive nor the Asylum Act establishes mechanisms which would monitor the return of asylum seekers into some of these countries, because the concepts involved present the risk of creating a chain of return into countries with a decreasing level of protection and security. | |
| *SUBSEQUENT APPLICATION* | | | |
| Where an asylum-seeker makes a subsequent application, the Member State may examine it in the framework of the examination of the previous application or of the final decision of the authority of appeal. | Where an asylum procedure has been suspended, and the foreign citizen lodges a new asylum appeal, the new asylum procedure shall also consider facts and circumstances established by the suspended procedure, as prescribed in the Asylum Act. | The Foreign Citizens Act does not mention a preliminary examination, or the necessity to submit new and relevant evidence in order to renew the procedure. Apart from this, there is no limitation on the number of lodged applications by one applicant. | |
| *BORDER PROCEDURES* | | | |
| Member States may decide at the border or transit zones on applications made at such locations, but they can also allow the applicant to enter their territory. If the permission to enter is refused, the competent authority shall state the reasons why the application for asylum is considered as unfounded. | The Asylum Act is completely harmonized with the provisions from the Directive. | Practice has shown that the procedure is not limited nor affected by whether an applicant reported themselves in person to the Reception Centre for Asylum-seekers and lodged his or her application there, or if an applicant did this at the border and was subsequently directed or transported to the Centre, which, according to the data of the Ministry of Interior Affairs, occurs in most cases. | |

| DIRECTIVE ON PROCEDURES 2005/85/EC | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *WITHDRAWAL OF REFUGEE STATUS* | | | |
| Member States may review the refugee status of a particular person when new circumstances arise, questioning the validity of his or her refugee status. If the refugee status is withdrawn, the Directive prescribes a set of rules and regulations which have to be respected by the determining authorities in order to prevent abuse of the refugee's rights. | The Asylum Act prescribes withdrawal and revoking of refugee status. | Before the revoking or end of asylum, the competent authority shall inform the asylum-seeker about the reasons for the revoking decision and ensure that he or she can explain orally or in writing why the asylum status should not be revoked. | |
| *APPEALS PROCEDURES* | | | |
| The right to an effective remedy is ensured before a final decision is taken by a court or tribunal, and this is applied to cases in which: an application is considered inadmissible; an application was lodged at the border or in the transit zones; a decision was taken not to conduct an examination of a subsequent application; entry was refused; refugee status was withdrawn. Apart from this, every Member State shall decide whether or not the effective remedy shall suspend previous decisions about removal from its territory. | The Asylum Act prescribes legal remedy in all cases mentioned in the Directive and in this part the two are completely harmonized.. | Until 31 December 2011, Croatian legislation offers to the applicants the possibility to appeal against the decision at first instance, and to initiate administrative dispute before the Administrative Court. After that date, the only remaining legal remedy for the decision at first instance will be to initiate administrative dispute. After the scheduled alteration, the dispute before the Administrative Court shall suspend the decision at first instance. | |

| COUNCIL DIRECTIVE 2002/90/EZ DEFINING THE FACILITATION OF UNAUTHORISED ENTRY, TRANSIT AND RESIDENCE | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *GENERAL PROVISIONS* | | | |
| The Directive prescribes a set of rules and regulations aiming to combat aiding of illegal crossing of the border but also to combat networks which encourage illegal employment, trafficking in human beings, and the sexual exploitation of children. | Comparing this Directive and the provisions from the Foreign Citizens Act it is obvious that the latter has a completely developed system of penalties, both financial and custodial, for all acts listed in the Directive, i.e. for aiding illegal border-crossings, transit, work and residence. | Any Member State may decide not to impose these sanctions in cases in which the aim of such behaviour is to provide humanitarian assistance to the person concerned. | **1.** To insert in the Foreign Citizens Act the distinction between humanitarian and other forms of assistance in illegal border crossings, and in accordance with this, to regulate the sanctions for these acts.<br><br>**2.** To continually implement programmes which prevent human trafficking, human smuggling, slavery, freedom restriction, sexual and other abuse. |
| *SANCTIONS FOR THE INSTIGATION, PARTICIPATION AND ATTEMPT OF ILLEGAL BORDER CROSSING* | | | |
| The Directive prescribes that appropriate, efficient and proportional sanctions shall be applied to any person who instigates, takes part in, or attempts to intentionally assist, for financial gain or for free, a person who is not a national of the Member State in entering or transiting through the territory of that Member State. | The Directive is almost completely harmonized with Croatian legislation. However, the Foreign Nationals Act only mentions perpetrators of a specific crime but not their accomplices, those with the intention, and others, although judicial practice has shown that more severe sentences are imposed on organisers, while more lenient penalties are imposed on accomplices. | The Foreign Nationals Act does not prescribe possible exceptions in cases in which the aiding of illegal border-crossing was performed for humanitarian reason. | |

| ***COUNCIL DIRECTIVE 2004/81/EZ OF 29 APRIL 2004 ON THE RESIDENCE PERMIT ISSUED TO THIRD-COUNTRY NATIONALS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE ILLEGAL IMMIGRATION, WHO COOPERATE WITH THE COMPETENT AUTHORITIES*** | ***DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE*** | ***OBSERVATIONS*** |
|---|---|---|
| *PROVISION OF INFORMATION* | | |
| The Directive prescribes that the person who may fall into the scope of this Directive shall be informed about his or her rights and possibilities. Such information may also be provided by a non-governmental organisation which has developed a co-operation with the competent authority. | A whole set of strategies, measures and plans aimed at eradicating human-trafficking, as well as a whole set of assistance programmes for victims of trafficking exist in Croatia. | This area has not only been harmonized with the Directive but is regulated by law in much detail. |
| *REFLECTION PERIOD* | | |
| Member States shall ensure that the victims of human trafficking are granted a reflection period allowing them to recover and escape from the influence of the perpetrators so that they can take a decision as to whether to co-operate with the competent authorities. | Croatian legislation recognizes a reflection period, lasting thirty days, within which the foreign citizen has been identified as a victim and has the right to decide about his or her involvement in the assistance and protection programme. | The Directive does not prescribe the minimum duration of this period. |
| *TREATMENT GRANTED BEFORE THE ISSUE OF THE RESIDENCE PERMIT* | | |
| It shall be ensured that the third-country national who does not have sufficient resources is granted acceptable standards of living and access to emergency medical treatment, while the special needs of the most vulnerable shall be attended to, including psychological assistance. Member States shall provide them with translation and interpreting services and free legal assistance. | In Croatia, the assistance and protection programme includes health and psycho-social care, assured accommodation, translation and interpretation services, legal assistance and safe return to their country of origin | The Foreign Citizens Act does not separate the victims into more and less vulnerable but prescribes equal rights to all of them. |
| *ISSUE AND RENEWAL OF THE RESIDENCE PERMIT* | | |
| After the expiry of the reflection period, or earlier if the competent authorities decide so, it is necessary to provide the victims with the possibility of prolonging his or her stay on the Member State's territory during investigations or judicial proceedings, or to issue a residence permit if the victim has shown a clear intention to cooperate, and if he or she has severed all relations with the suspects. | Zakon o strancima u ovom je slučaju usklađen s Direktivom, iako nisu propisani konkretni kriteriji na temelju kojih će se određivati istek odobrene dozvole. | The Foreign Citizens Act prescribes that foreign citizens shall be granted temporary residence on humanitarian grounds in specified cases, and that foreign citizens to whom temporary residence has been granted for humanitarian reasons cannot lodge an application for temporary residence for another reason. |
| *TREATMENT OF HOLDERS OF THE RESIDENCE PERMIT* | | |
| Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment as is provided for the reflection period, and in particular provide necessary medical or other assistance to pregnant women, the disabled or victims of sexual violence or other forms of violence. | In this section the Directive identifies a broader spectrum of vulnerable groups than the Foreign Citizens Act. | The Foreign Citizens Act prescribes the following rights: assured accommodation, health care, financial assistance, education and employment, but there are exceptions. A particularly vulnerable group are pregnant women and disabled persons. |

| ***COUNCIL DIRECTIVE 2004/81/EZ OF 29 APRIL 2004 ON THE RESIDENCE PERMIT ISSUED TO THIRD-COUNTRY NATIONALS WHO ARE VICTIMS OF TRAFFICKING IN HUMAN BEINGS OR WHO HAVE BEEN THE SUBJECT OF AN ACTION TO FACILITATE ILLEGAL IMMIGRATION, WHO COOPERATE WITH THE COMPETENT AUTHORITIES*** | ***DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE*** | ***OBSERVATIONS*** |
|---|---|---|
| *MINORS* | | |
| Member States shall take due account of the best interests of the child, and in accordance with that they shall ensure that the procedure is appropriate to the age and maturity of the child, with the option of extending the reflection. Unaccompanied minors shall have special treatment. | The Foreign Citizens Acts is completely harmonized with the Directive. | The Foreign Citizens Acts prescribes that underage victims of human-trafficking shall not be returned to any state if after the assessment of danger and safety there is an indication that such a return would not be in the best interests of the minor concerned.. |
| *WORK, VOCATIONAL TRAINING AND EDUCATION* | | |
| Every Member State shall define the rules, conditions and procedures for the issue of residence permits with which the holder shall be authorised to have access to the labour market, to vocational training and education. | The Foreign Citizens Act mentions the right to education and employment but does not regulate vocational training. Also it does not prescribe under which conditions the victim can realize those rights, as a Croatian national or as a foreign citizen. | In this area the Foreign Citizens Act is much more restrictive than the Directive. |
| *INTEGRATION PROGRAMMES* | | |
| Victims shall be granted access to existing programmes provided by the Member States or by non-governmental organisations which have specific agreements with the Member States, aimed at the recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation for an assisted return to their country of origin. | The Republic of Croatia has completely regulated and prescribed assistance and protection programmes, as well as a safe return of victims. | In practice there exist several organizations who work with victims of human-trafficking and these have the general support of the public and the Government of the Republic of Croatia. |
| *WITHDRAWAL OF THE RESIDENCE PERMIT* | | |
| The residence permit may be withdrawn at any time if the conditions for its issue are no longer satisfied. | It can be said that the Foreign Citizens Act surpasses the minimum standards for this issue and is less restrictive than the Directive. | The Directive distinguishes between two ways in which a residence permit can be made invalid – withdrawal and non-renewal. |

| DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 2008 ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS |
|---|---|---|
| *DEFINITIONS, PRINCIPLES AND VALUES* | | |
| the directive lists and explains certain terms such as third country national, illegal stay, return, removal decision and so on. it also emphasizes the importance of the principle of non-refoulement, the best interests of the child, family life and health. | the foreign citizens act does not contain most definitions in this area. the lack of definition of some terms is a legislative the omission of definitions of particular terms is a legal failing and amongst other things it offers a possibility for abuse and the unequal interpretation of specific provisions. | in relation to minors the act surpasses minimum standards because the directive only prescribes the best interests of the child. |
| *VOLUNTARY DEPARTURE* | | |
| a return decision shall provide an appropriate period for voluntary departure, extension of this period and certain obligations aimed at avoiding the risk of absconding. | the foreign citizens act does not mention whatsoever voluntary departure, and it does not prescribe the obligation to develop programmes through which persons concerned would be prepared for it. | neither the directive nor croatian legislation define 'hampering of the removal process', which leads to potential abuses of this term and speedy removal of foreign nationals without the possibility of extending their stay. |
| *FORCED REMOVAL* | | |
| member states shall ensure an effective forced-return monitoring system and use forced-return only as a last resort. | the foreign citizens act is almost completely harmonized with the directive. | it would be important to leave some space for exceptions or, in other words, the possibility of extending the deportation period should be better regulated, and a more individual and flexible approach to each case should be ensured. |
| *POSTPONEMENT OF REMOVAL* | | |
| in cases of the non-refoulement principle or for as long as a suspension is granted in accordance with the remedy. | the foreign citizens act prescribes that a period of time can be extended to a foreign national who it is prohibited to remove with force or a foreign national who cannot be removed due to reasons he or she is not responsible for. | although the foreign citizens act follows the provisions of the directive, the directive is more precise in defining numerous provisions and the unavoidable criterion of an individual and humane approach. |
| *RETURN AND REMOVAL OF UNACCOMPANIED MINORS* | | |
| before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies shall be granted with due consideration being given to the best interests of the child. the opinions of the relevant authorities shall be sought in order to establish whether he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the country of return. | this part of the foreign citizens act is harmonized with the directive only in the paragraph which states that nothing will be done in relation to these issues which contradicts the conventions. | in practice, there are cases in which unaccompanied minors have been deported, have not received sufficient, systematic assistance, and in which removal measures were adopted speedily, which poses the question of the quality of assessment of asylum applications and the potential breach of conventions. |

***RECOMMENDATIONS***

**1.** to improve the system that safeguards the human rights of irregular immigrants.
**2.** to improve the provisions of the foreign citizens act which are concerned with different categories of sanctions and to develop professional support for the return of persons to their country of origin.
**3.** to improve the system that protects minors.

| DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 2008 ON COMMON STANDARDS AND PROCEDURES IN MEMBER STATES FOR RETURNING ILLEGALLY STAYING THIRD-COUNTRY NATIONALS | DEGREE OF HARMONIZATION WITH CROATIAN LEGISLATION AND PRACTICE | OBSERVATIONS | RECOMMENDATIONS |
|---|---|---|---|
| *ENTRY BAN* | | | |
| return decisions may also contain an entry ban and the length of the entry ban depends on the circumstances of the individual case and shall not in principle exceed 5 years. | the foreign citizens act contains more restrictive measure and standards than those prescribed by the directive. | this decision shall not be applied to victims of human trafficking or illegal border crossing, who cooperate with the competent authorities. | |
| *REMEDIES* | | | |
| the directive prescribes the necessity to ensure decisions before independent bodies, and the opportunity to obtain free legal advice, representation and, where necessary, linguistic assistance. | foreign citizens act does not prescribe the numerous possibilities or rights provided by the directive. | the foreign citizens act does not mention free or any other type of legal assistance for foreign nationals, nor does it mention any other particular rights for persons being deported. although it is possible to appeal against the decision, this does not postpone the decision and is neither effective nor meaningful. | |
| *SAFEGUARDS PENDING RETURN* | | | |
| during the period granted for voluntary departure it is necessary to take into account specific following principles. | in croatian legislation we have not found provisions with are in harmony with this article of the directive. | it important to adopt rules which would regulate this area as soon as possible. | |
| *DETENTION* | | | |
| this measure shall be used only in those cases where all other coercive measures have been exhausted. | the foreign citizens act is harmonized with the directive, especially in relation to the prescribed detention periods. | the act does not prescribe any sort of judicial revision of a detention decision. the decision whether a person is taken to the reception centre for asylum-seekers or the person can stay at the reception centre for foreign citizens is taken by 'the team of the centre with a discretionary decision'. | |
| *DETENTIONS OF MINORS AND FAMILIES* | | | |
| unaccompanied minors and families with minors shall only be detained as a measure of last resort and for the shortest appropriate period of time. the directive prescribes the conditions which have to be met in these cases. | the ordinance is harmonized with the directive but it does not regulate entirely living conditions for vulnerable groups. | the foreign citizens act prescribes a measure of more strict police control, which is not mentioned in the directive at all. | |

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## NOTES

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