

# Croatia and EU Asylum Law: Playing on the Sidelines or at the Centre of Events? \*

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## 1. Introduction

This chapter discusses the most important recent developments in asylum law and practice in Croatia. It concentrates on the major legal and reality challenges in the context of the recent refugee influx and, in particular, on the legal consequence of the creation of the Western Balkans route by means of discussing the decisions of the Court of Justice of the European Union in *A.S.* and *Jafari*<sup>1</sup> and in *Mengesteab*.<sup>2</sup> Despite the fact that in the past few years Croatia has been playing on the sidelines of EU asylum law and policy, the development of asylum law and practice in Croatia can only be understood in the context of EU asylum rules, the events on the Western Balkans route, and the tension between human-rights-related ambitions, on the one hand, and a combination of security concerns and xenophobic fears, on the other hand.<sup>3</sup> For this reason, the challenges discussed in this paper are the result of the interaction among four factors: first, EU-level legislative harmonisation; second, Croatian national-level legal and practical issues; third, the refugee situation in the EU and on the Western Balkans route; and fourth, the legal implications of the Western Balkans route, as interpreted by the Court of Justice of the European Union in *A.S.* and *Jafari*.<sup>4</sup>

The chapter is structured in six sections. Following the introduction, the second section explains the situation on the Western Balkan route in 2015 and 2016 by offering the timeline of events across the route. The chronological overview is followed by the third section offering valuable statistical data regarding asylum in Croatia. These two sections will enable readers to fully comprehend the fourth section discussing the discrepancy between the functioning of the Western Balkans route and the Dublin Regulation, followed by an analysis of the CJEU's

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<sup>1</sup> Case C-490/16 *A.S. v Slovenia*, 26 July 2017, ECLI:EU:C:2017:585; Case C-646/16 *Jafari*, 26 July 2017, ECLI:EU:C:2017:586.

<sup>2</sup> Case 670/16 *Mengesteab*, 26 July 2017, ECLI:EU:C:2017:587.

<sup>3</sup> For the discussion on human rights and legitimacy in EU asylum and migration law, see: I. Goldner Lang, Human Rights and Legitimacy in the Implementation of EU Asylum and Migration Law, in S. Vöneky and G. L. Neuman (eds.), *Human Rights, Democracy, and Legitimacy in a World of Disorder*, Cambridge University Press, forthcoming in 2018.

<sup>4</sup> For an interplay of national, EU-level and international law in relation to migration and asylum in Europe, see: I. Goldner Lang, *žThe European Union and Migration: An Interplay of National, Regional and International Law*, American Journal of International Law (AJIL) Unbound, forthcoming in 2018.

judgments in *A.S.* and *Jafari* and in *Mengesteab* and concluding with a discussion on the consequences of these two judgements on Croatia and on the further development of EU law. The fifth section concentrates on the most pressing recent and future legal and practical challenges related to asylum in Croatia. The concluding remarks summarises the findings and suggest that – despite the fact that Croatia has been on the periphery of EU refugee-related events, partly due to its political strength, size and geographic position – there has been a strong correlation and interaction between the developments in Croatia, other countries on the Western Balkan route and at the EU level.

## **2. Croatia and the Western Balkan Route - Timeline**

Up until September 2015 Croatia was neither an important destination nor a major transit country. This changed overnight on 15 September 2015, when Hungary closed its border with Serbia, alongside its construction of a border fence along its 175-kilometre border with Serbia. The Serbian government, consequently, decided to redirect the refugee flow to Croatia. Croatia, on the other hand, directed the refugee flow further to Slovenia, as Hungary closed its border with Croatia on 16 October 2015 and constructed a border fence along the 348-kilometre Hungarian-Croatian border. Almost at the same time, another slowing down of the Western Balkans route took place on the other side of the Croatian territory, along its border with Serbia. Here, on 20 September 2015, Croatia closed its border crossings with Serbia, consequently halting all cargo traffic from Serbia. Serbia reciprocated and Croatia responded by closing its borders to all passenger traffic. The situation became normalised over several days. However, it reflected the fragility of good neighbourly relations established between the two countries after the war in former Yugoslavia and challenged Croatian obligations towards Serbia based on the Serbian Stabilisation and Association Agreements. Relations between Croatia and Serbia soon improved and on 3 November 2015 the two countries reached an agreement to transport refugees directly from Šid in Serbia to Slavonski Brod in Croatia. From then on, the situation stabilised. Migrants were no longer crossing the border between Serbia and Croatia on foot, but they were transported by train free of charge to the reception centre in Slavonski Brod, where they were registered within several hours, and from there they were taken to Sibenj where they boarded buses or trains to Dobova or Mursko Središće in Slovenia.<sup>5</sup>

Following the German government's decision to reduce the number of asylum seekers in the country, in January 2016 Germany started allowing the entry of only those migrants who intended to seek asylum in Germany. This move was followed by Austria and it soon produced a chain reaction on the Western Balkans route by Slovenia, Croatia, Serbia and FYROM, which closed its border

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<sup>5</sup> S. Šelo Šabić and S. Borić, *At the Gate of Europe: A Report on Refugees on the Western Balkan Route*, Friedrich Ebert Stiftung, SOE Dialog Südostropa, 2017, 1-21, p. 11 (available at <http://library.fes.de/pdf-files/bueros/kroatien/13059.pdf> - last accessed on 16 October 2017).

with Greece.<sup>6</sup> Soon afterwards, in February 2016, Austria set a daily cap of 80 asylum applications and of no more than 3,200 migrant entries into its territory.<sup>7</sup> This move was followed by Croatia and Slovenia, which decided on 26 February 2016 to impose a daily cap of 580 migrants.<sup>8</sup>

The functioning of the Western Balkans route at the northern Croatian border with Slovenia was also far from smooth. On 11 November 2015 Slovenia started constructing a wire fence along its border with Croatia and, just several days later, on 19 November 2015, it decided to allow the entry of only those migrants “from countries where there is armed conflict”, thus triggering a chain reaction in Croatia, Serbia and the FYROM.<sup>9</sup> Consequently, the then Croatian minister of the interior stated that Croatia would allow in migrants from Syria, Iraq, Afghanistan and Palestinians.<sup>10</sup>

The restrictions along the Western Balkans route continued to escalate in January and February 2016. Finally, at the meeting of the heads of police services of the Western Balkans countries, held in Zagreb on 18 February 2016, it was agreed that entry would be allowed only for those individuals who had a valid travel document and a visa or a residence permit, or who were arriving from war-torn areas and were in need of international protection, provided they could prove their nationality and were in possession of a registration form issued by Greek authorities.<sup>11</sup>

On 7 March 2016 the EU heads of state or government held a meeting with Turkey to find modes of cooperation in the context of the refugee influx. The meeting led to an agreement on the outlines of the future deal with Turkey reached on 18 March 2016.<sup>12</sup> This resulted in the Statement of the EU Heads of State or Government proclaiming that “irregular flows of migrants along the Western Balkans route have now come to an end”.<sup>13</sup> In effect, from 8 March 2016 the countries along the Western Balkans route closed their borders for migration

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<sup>6</sup> Balkan states attempt to limit numbers of refugees claiming asylum, The Guardian, 20 January 2016 (available at: <https://www.theguardian.com/world/2016/jan/20/balkan-states-attempt-to-limit-numbers-of-refugees-claiming-asylum> - last accessed on 16 October 2017).

<sup>7</sup> Jennifer Rankin, Austria dismisses criticism of its plan to limit daily refugee numbers, 18 February 2016 (available at: <https://www.theguardian.com/world/2016/feb/18/austria-dismisses-criticism-of-its-plan-to-limit-daily-refugee-numbers> - last accessed on 16 October 2016).

<sup>8</sup> Jennifer Rankin, Croatia and Slovenia impose limits on refugee numbers, 26 February 2016 (available at: <https://www.theguardian.com/world/2016/feb/26/croatia-slovenia-limits-refugee-numbers-europe-greece> - last accessed on 16 October 2016).

<sup>9</sup> P. Teffer, Balkan countries close borders to economic migrants, EUobserver, 20 November 2015 (<https://euobserver.com/migration/131192> - last accessed on 16 October 2017).

<sup>10</sup> Ibid.

<sup>11</sup> Joint Statement of Heads of Police Services from the Meeting Held in Zagreb, Croatia on 18th February 2016, points 5 and 6 (available at: [https://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti\\_sastanak/joint\\_statement.pdf](https://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf) - last accessed on 16 October 2017).

<sup>12</sup> EU-Turkey Statement, 18 March 2016 (available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/> - last accessed on 16 October 2017).

<sup>13</sup> See point 2 in the Statement, available at: <http://www.consilium.europa.eu/en/press/press-releases/2016/03/07-eu-turkey-meeting-statement/> (last accessed on 16 October 2017).

flows and stated they would accept only those individuals travelling with valid documents and visas or who planned to request asylum or sought entry for humanitarian reasons.<sup>14</sup>

### 3. Croatia and the Western Balkan Route – Facts and Figures

Since the start of the refugee influx on 16 September 2015 until the closure of the Western Balkans route on 8 March 2016, an estimated 658,068 refugees and migrants – mostly from Syria, Afghanistan and Iraq, but also from other countries – transited through Croatia.<sup>15</sup> On average, there were 5,500 daily arrivals with a peak of 11,000 arrivals on 17 September 2015.<sup>16</sup> According to the Frontex report, the 764,038 detections of illegal border crossings on the Western Balkans route in 2015 dropped to 130,261 detections in 2016, which reflected the closure of the Western Balkans route in March 2016.<sup>17</sup>

Unfortunately, there are no official and publicly available data on the number of registrations and fingerprints that were taken by Croatian authorities and stored in the database during the period of the peak of the refugee influx at the end of 2015 and the beginning of 2016.<sup>18</sup> Concerns that Croatia had not been consistently fingerprinting migrants at the peak of the crisis<sup>19</sup> are reflected in the fact that the European Commission decided to initiate infringement proceedings against Croatia due to its potential violation of the Eurodac regulation.<sup>20</sup> The Commission sent a letter of formal notice to the Croatian authorities in December 2015. Not being satisfied with the Croatian response, on 14 June 2017 the Commission decided to follow up with a reasoned opinion and, depending on the Croatian response, it may decide to bring the case before the Court of Justice.

Before and during the existence of the Western Balkans route, Croatia was a transit country where migrants generally did not want to stay and apply for asylum. Few applied and they could be characterised as reluctant asylum-seekers who made an application in Croatia due to circumstances beyond their control and who aspired to leave.<sup>21</sup> Of those who applied before 2015, more than

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<sup>14</sup> Euractiv, Balkan Route 'closed' after cascade of border shutdowns, 9 March 2016 (available at: <https://www.euractiv.com/section/global-europe/news/balkan-route-closed-after-cascade-of-border-shutdowns/> - last accessed on 16 October 2017).

<sup>15</sup> Regional Refugee and Migrant Response Plan for Europe: Eastern Mediterranean and Western Balkans Route, UNHCR, 2016 (available at: <http://www.unhcr.org/577220cf7.pdf> - last accessed on 16 October 2017). See also the press release of the Croatian Ministry of Interior (available at: <https://www.mup.hr/novosti/364/priopcenje-za-javnost> - last accessed on 16 October 2017).

<sup>16</sup> See S. Šelo Šabić and S. Borić, supra note 1.

<sup>17</sup> Risk Analysis for 2017, Frontex, 2017, 1-16, p. 19 (available at: [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Annual\\_Risk\\_Analysis\\_2017.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf) - last accessed on 16 October 2017).

<sup>18</sup> Aida, Country Report: Croatia, 2016 Update, 1-86, p. 28.

<sup>19</sup> EESC fact-finding missions on the situation of refugees, as seen by civil society organisations, Mission Report – Croatia, 12-13 January 2016, 1-8, p. 2.

<sup>20</sup> Infringement Decision 2015/2197.

<sup>21</sup> M. Valenta, D. Župarić-Iljić and T. Vidović, The Reluctant Asylum-Seekers: Migrants at the Southeastern Frontiers of the European Migration System, (2015) 34 *Refugee Survey Quarterly* (2015) 95, 95.

80% would leave Croatia before their application was processed.<sup>22</sup> As a consequence, the Croatian asylum system and capacities were not designed for and neither was it used to dealing with a more significant number of asylum claims. In 2013 Croatia received 1,075 asylum applications, which represented 0.2% of the EU28 total. The number dropped sharply to 450 applications in 2014, thus representing only 0.1% of the EU28 total.<sup>23</sup> The number further dropped to only 140 first-time asylum applications in 2015 and then rose by a staggering 1413% to 2,150 first-time asylum applications in 2016, thus representing 0.2% of the EU28 total.<sup>24</sup> In relative terms, the increase experienced in Croatia from 2015 to 2016 was the largest increase in the EU28.<sup>25</sup>

If the EU experiences another huge refugee influx in the future and the EU Member States decide to respect the Dublin state-of-first-entry rule (unlike during the 2015/16 refugee influx), Croatia would have to deal with a significantly higher number of asylum claims and applicants. It would, therefore, have to increase its asylum capacities to enable a human-rights compliant and efficient processing of asylum claims.

#### **4. Dublin Transfers and the Legality of the Western Balkans Route – Consequences for Croatia**

This section aims to display the discrepancy between the functioning of the Western Balkans route and the Dublin Regulation, and to explain its consequences for Croatia. It is structured into four subsections. After the introductory subsection, illustrating the inconsistency between the law and reality, the second subsection analyses the position of Greece. The third subsection is devoted to a summarised account of the CJEU's judgements in *AS. and Jafari* and in *Mengesteab*, while the final subsection attempts to critically assess these judgments and explain their consequences for Croatia and for the further development of EU asylum law.

##### **4.1. The Western Balkans Route - Where Law and Reality Diverge**

The functioning of the Western Balkans route represents a clear departure from the Dublin state-of-first-entry rule. Art. 13(1) of the Dublin Regulation stipulates that the Member State responsible for examining an asylum application is the state whose border the asylum applicant first crossed irregularly when coming

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<sup>22</sup> J. Barberić, Asylum in the Republic of Croatia one year after accession to the European Union, New Issues in Refugee Research, Research Paper No. 273, UNHCR, January 2015, 1-12, p. 2.

<sup>23</sup> Eurostat News release, Asylum in the EU Member States, 53 (2015), 20 March 2015 (available at: <http://ec.europa.eu/eurostat/documents/2995521/6751779/3-20032015-BP-EN.pdf/35e04263-2db5-4e75-b3d3-6b086b23ef2b> - last accessed on 16 October 2017).

<sup>24</sup> Eurostat News Release, Asylum in the EU Member States, 46 (2017), 16 March 2017 (available at: <http://ec.europa.eu/eurostat/documents/2995521/7921609/3-16032017-BP-EN.pdf/e5fa98bb-5d9d-4297-9168-d07c67d1c9e1> - last accessed on 16 October 2017).

<sup>25</sup> Eurostat Statistics Explained, Asylum Statistics (available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics) - last accessed on 16 October 2017).

from a third country. If asylum rules do not apply to a third-country national, the entry conditions of a third-country national to the territory of a Member State are regulated by Art. 6(1) of the Schengen Borders Code which stipulates that the third-country national has to have a valid travel document and a valid visa. Third-country nationals should also be able to justify the purpose and conditions of their intended stay and show that they have sufficient means of subsistence, both for the duration of the intended stay and for the return journey.<sup>26</sup> Exceptionally, a third-country national who does not fulfil one or more of the above conditions may be granted entry on humanitarian grounds, on grounds of national interest or because of international obligations. However, as will be shown in the analysis of the CJEU's judgment in *A.S.* and *Jafari*, the exception based on humanitarian grounds was not applicable to the developments on the Western Balkans route.<sup>27</sup>

The migrants on the Western Balkans route were not applying for asylum either in the EU state of their first entry (Greece) or in the Western Balkans countries, among them Croatia as the second EU Member State on the Western Balkans route. Instead, they were transiting through several EU and non-EU states until they came to the EU Member State of their desired destination (mostly Germany) and applied for asylum there. On the other hand, Greece, Croatia and other countries on the Western Balkans route did not apply the Schengen Borders Code and, thus, they did not prevent the entry of irregular migrants into their respective territories, but facilitated their further movement to other states along the route. The transit of migrants on the Western Balkans route was organised by the states along the route, which sometimes (allegedly), contrary to the Eurodac Regulation, did not fingerprint and register the migrants before further transit.

Clearly, there was a tacit agreement between the Western Balkans states and the migrants transiting the route not to apply the Dublin rules. Further, there was an agreement among the states on the Western Balkans route to organise and run the route contrary to the Dublin rules. This was the direct consequence of two factors. First, it was prompted by the German willingness to take all the migrants and examine their asylum claims itself. The states on the route were allowing entry and transit of migrants as long as Germany was ready to accept them on its territory. Second, the Western Balkans route was the direct consequence of the states' realisation that the alternative to not allowing migrants' entry into their respective territories would have been to leave hundreds of thousands of migrants stranded at national borders in degrading conditions which would have led to a humanitarian catastrophe and to the respective states' breach of Art. 3 of the ECHR and Art. 4 of the Charter.<sup>28</sup>

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<sup>26</sup> Art. 6(1)(a), (b) and (c) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code).

<sup>27</sup> Art. 6(5)(c) of the Schengen Borders Code. For another exception, which is not relevant for the developments on the Western Balkans route, see Art. 6(5)(a) of the Schengen Borders Code.

<sup>28</sup> In that respect, see the statement of AG Sharpston in Case 490/16, *A.S. v Slovenia* and Case 646/16 *Jafari*, para. 174.

Therefore, the extraordinary developments on the Western Balkans route can only be understood in light of the following five circumstances: first, the extremely high number of migrants who were transiting the route in groups and not individually; second, the willingness of the migrants to take the route and not to apply for asylum in the state of first entry; third, the German open-border migration policy; fourth, the fact that the route was facilitated and run by the states; and fifth, the fact that the states on the Western Balkans route did not want to create a humanitarian crisis and breach their Convention and Charter obligations. These five factors arguably justified and legitimised the route despite the fact that it ran counter to the Dublin rules.

#### 4.2. The Western Balkans route and the Position of Greece

The migrants on the Western Balkans route entered the EU via Greece. Therefore, Greece was the state of first irregular entry under the Dublin rules. However, the Greek situation was unique in that respect, as Dublin transfer to Greece could not take place. Even though Greece was the state of first entry on the Western Balkans route, since the two groundbreaking judgments in *MSS*<sup>29</sup> and *NS*<sup>30</sup> in 2011, all Dublin transfers to Greece had been suspended due to systemic deficiencies in the Greek asylum procedures and its reception conditions.<sup>31</sup> The judgments in *MSS* and *NS* revealed the inaccuracy of the premise that all EU Member States provide an adequate level of quality and efficiency in the asylum procedure and ensure a satisfactory level of protection of asylum seekers' fundamental rights. In *MSS*, the ECtHR concluded that both Greece, as the state of the asylum seeker's first entry into the EU, and Belgium, as the transferring state, violated Article 3 ECHR (which prohibits torture, inhuman or degrading treatment or punishment) and also Article 13 ECHR (which proclaims the right to an effective remedy). On the other hand, in *NS* the CJEU relied on the EU Charter of Fundamental Rights and held that the presumption that Member States are observing the fundamental rights enshrined in the Charter is rebutted when there are systemic deficiencies in asylum procedures and in the reception conditions of asylum seekers. The Court of Justice, however, emphasised that not every violation of fundamental rights would suffice to rebut the presumption, but rather that the systemic deficiencies need to amount to a real risk of inhuman or degrading treatment of asylum seekers in the sense of Article 4 of the Charter.

The CJEU's judgment in *NS* was embraced in the process of amending the Dublin II Regulation into the currently operative Dublin III Regulation. Article 3(2) of the Dublin III Regulation, thus, explicitly states that transfer cannot be made if

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<sup>29</sup> *MSS v Belgium and Greece*, Application number 30696/09 (ECtHR, 21 January 2011).

<sup>30</sup> Joined cases C-411/10 and C-493/10, *NS v Secretary of State for the Home Department and ME and Others v Refugee Applications Commissioner and Minister for Justice, Equality and Law*, ECLI:EU:C:2011:865.

<sup>31</sup> The judgments in *MSS* and *NS* were followed by the subsequent ECtHR and CJEU judgments in *Abdullahi* (Case C-394/12 *Shamso Abdullahi v Bundesasylamt*, ECLI:EU:C:2013:813), *Tarakhel* (*Tarakhel v. Switzerland*, Application no. 29217/12 (ECtHR, 4 November 2014)) and *C.K. v Slovenia* (Case C-578/16 PPU, *C.K. v Slovenia*, ECLI:EU:C:2017:127).

there is a case of systemic flaws in the asylum procedure or in the reception conditions of the Member State responsible for processing the asylum claim, resulting in a risk of inhuman or degrading treatment. In such a case, the determining Member State has to establish whether another Member State can be designated as responsible, based on the criteria set by the Dublin Regulation. If no other Member State can be designated as responsible, the determining Member State shall become responsible for processing the asylum claim. The transformation of the Court's case-law into EU secondary legislation in the case of the Dublin Regulation is one of many instances of the EU legislator's recognition of the importance of the judgments of the Court of Justice and their inclusion into newly adopted EU legal acts.

During the existence of the Western Balkans route, the serious deficiencies of the Greek asylum system persisted.<sup>32</sup> As a consequence, based on Art. 3(2) of the Dublin Regulation - despite the fact that Greece was the state of first entry - its non-compliance with Art. 13(1) could not result in Dublin transfers to Greece.

The next EU Member State on the Western Balkans route was Croatia. An analysis of the CJEU's rulings in *A.S.* and *Jafari* in the following two subsections will show that, due to the situation in Greece, Croatia was deemed responsible under the Dublin rules. Consequently, EU Member States in which the asylum applicants, who transited the Western Balkans route, lodged their asylum application are entitled to carry out Dublin transfers to Croatia provided the three-month time limit, as interpreted by the Court in *Mengesteab*, has not been exceeded. The final subsections aim to show that one can dispute not only the Court's strict interpretation of the Dublin Regulation in *A.S.* and *Jafari*, but also its reading of the hierarchy of the Dublin criteria for determining the responsible Member State.

### **4.3. Rulings in *A.S.* and *Jafari* and in *Mengesteab***

The case in *A.S. v Slovenia* concerned a Syrian national who left Syria for Lebanon and then travelled to Turkey, Greece, FYROM and Serbia. In 2016 he crossed the border between Serbia and Croatia. Subsequently, the Croatian authorities arranged for him to be transported to the Slovenian border. Having entered Slovenia on 20 February 2016, the Slovenian authorities handed him over to the Austrian authorities, but they refused him entry to Austria. On 23 February 2016, A.S. lodged an asylum application in Slovenia. The Slovenian authorities then asked the Croatian authorities to take charge and the Croatian authorities accepted. Consequently, the Slovenian authorities decided not to examine A.S.'s

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<sup>32</sup> See the Commission Recommendations of 10 February 2016 (Commission Recommendation of 10 February 2016 addressed to the Hellenic Republic on the urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 — C(2016) 871 final), 15 June 2016 (Commission Recommendation of 15 June 2016 addressed to the Hellenic Republic on the specific urgent measures to be taken by Greece in view of the resumption of transfers under Regulation (EU) No 604/2013 — C(2016) 3805 final) and 8 December 2016 (Commission Recommendation of 8.12. 2016. addressed to the Member States on the resumption of transfers to Greece under Regulation (EU) No. 604/2013, December 8, 2016, C(2016) 8525 final).



application for asylum. A.S. challenged the decision before the Slovenian Administrative Court, which dismissed the action, but suspended enforcement pending a final decision. A.S. lodged an appeal before the Slovenian Supreme Court, which decided to stay the proceedings and make a preliminary reference to the Court of Justice of the European Union.

The Jafari sisters were Afghan nationals who left Afghanistan in December 2015 together with their children and travelled through Iran, Turkey, Greece, FYROM and Serbia. In 2016, they crossed the border between Serbia and Croatia. Subsequently the Croatian authorities organised their transport to the Slovenian border and they entered Slovenia. The Slovenian authorities issued them with police documents specifying Germany as the travel destination for one of them and Austria for the other one. On 15 February 2016 the Jafari sisters entered Austria and lodged asylum applications for themselves and their children. The Austrian authorities first asked for information from the Slovenian authorities, which responded that the Jafari sisters had not been registered in Slovenia for any purpose relevant to the application of the Dublin Regulation. Subsequently, the Austrian authorities requested the Croatian authorities to take charge. The Croatian authorities did not respond to that request, so the Austrian authorities sent them a letter dated 18 June 2016 informing them that, pursuant to Art. 22(7) of the Dublin Regulation, the responsibility for examining the asylum applications now lay with Croatia. Consequently, the Austrian authorities rejected the Jafari sisters' asylum applications and ordered their removal. Following an unsuccessful appeal to the Federal Administrative Court, the sisters lodged an appeal before the Upper Administrative Court, which decided to stay the proceedings and make a preliminary reference to the Court of Justice of the European Union.

The Grand Chamber of the Court of Justice decided both cases on 26 July 2016. In both cases the Court first established that “the term ‘visa’ refers to an act formally adopted by a national authority” and that “a visa is not to be confused with admission to the territory of a Member State”.<sup>33</sup> Further, the Court stated that “a situation characterised by the arrival of an unusually large number of third-country nationals seeking international protection” does not alter that conclusion”.<sup>34</sup> The Court, therefore, concluded that the situation on the Western Balkans route, where the authorities of one Member State tolerated entry into its territory of third-country nationals who did not fulfil the entry conditions could not be treated as a “visa” situation within the meaning of Article 12 of the Dublin Regulation.<sup>35</sup> Consequently, the responsibility for examining the asylum application could not be determined based on Art. 12 of the Dublin Regulation, stipulating that the responsible Member State is the state which issued the visa.

The Court then moved on to an analysis of the term “irregular crossing” and first ascertained that this concept is neither defined in the Dublin Regulation, nor can it be inferred from other acts.<sup>36</sup> Having said that, the Court concluded that

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<sup>33</sup> Para. 48 in *Jafari*; para. 37 in *A.S.*

<sup>34</sup> Para. 54 in *Jafari*; para. 37 in *A.S.*

<sup>35</sup> Para. 58 in *Jafari*; para. 37 in *A.S.*

<sup>36</sup> Paras. 61 and 72 in *Jafari*; para. 38 in *A.S.*

crossing the border, without fulfilling the conditions set by the Schengen Borders Code, must be considered “irregular” within the meaning of Article 13(1) of the Dublin Regulation.<sup>37</sup> It emphasised that authorising entry on humanitarian grounds, as stipulated by Article 5(4)(c) of the Schengen Borders Code, is valid only in respect of the territory of the Member State concerned and, therefore, cannot have the effect of regularising the crossing of a border of one Member State for the sole purpose of enabling the transit to another Member State in order to lodge an application there.<sup>38</sup> Similarly, the Court determined that an entry authorised in that context cannot be regarded as a visa waiver.<sup>39</sup> The Court, therefore, concluded that such an entry must be regarded as an “irregular crossing” “irrespective of whether the crossing was tolerated or authorised in breach of the applicable rules or whether it was authorised on humanitarian grounds by way of derogation from the entry conditions generally imposed on third-country nationals”.<sup>40</sup> According to the Court, the fact that such a crossing took place in the context of the arrival of an unusually large number of third-country nationals could not affect the irregular character of the crossing.<sup>41</sup> The only instance where the responsibility of the state of irregular crossing could be precluded would be the case where Dublin transfers to that state could lead to a risk of inhuman and degrading treatment of the transferee, within the meaning of Article 4 of the Charter.<sup>42</sup>

On the same day the Grand Chamber of the Court of Justice of the European Union delivered its rulings in *A.S.* and *Jafari*, it also pronounced its judgment in *Mengesteab*. The case concerned Mr Tsegezab Mengesteab, an Eritrean national, who requested asylum in Germany on 14 September 2015. On the same day the Upper Bavarian Government issued him with a certificate of registration as an asylum seeker. The German Federal Office for Migration and Refugees - which is responsible for carrying out the obligations arising from the Dublin Regulation – received the original of that certificate, a copy of it or the main information which it contained on or before 14 January 2016. On 22 July 2016, Mr. Mengesteab lodged an official asylum application before the Office. However, a search in the Eurodac system revealed that Mr. Mengesteab’s fingerprints had been taken in Italy, thus constituting evidence that Italy was the state of first entry into the EU. Consequently, the German authorities requested their Italian counterparts to take charge of Mr. Mengesteab. The Italian authorities did not respond to the request, which was equivalent to their acceptance, based on the Dublin Regulation. The German Federal Office, therefore, rejected Mr. Mengesteab’s asylum application and ordered his transfer to Italy. Mr. Mengesteab challenged the decision before the Administrative Court, claiming that his asylum request had been transferred to Germany, as the take-charge request had been made after the expiry of the three-month period provided in the Dublin Regulation. In those circumstances, the Administrative Court decided to stay the proceedings and make a preliminary reference to the Court of Justice.

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<sup>37</sup> Paras. 74 and 75 in *Jafari*.

<sup>38</sup> Para. 80 in *Jafari*.

<sup>39</sup> Para. 82 in *Jafari*.

<sup>40</sup> Para. 92 in *Jafari*.

<sup>41</sup> Para. 93 in *Jafari*.

<sup>42</sup> Para. 101 in *Jafari*.

The Court of Justice first ascertained that the asylum applicant may rely on the expiry of the three-month period, even if the requested Member State is willing to take charge of him.<sup>43</sup> The Court then continued by stating that a take-charge request cannot legitimately be made more than three months after the asylum application has been lodged, even if the request is made within two months of a receipt of a Eurodac hit.<sup>44</sup> Finally and most importantly, the Court concluded that an asylum application “is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached” the responsible authority or “if only the main information contained in such a document, but not the document or a copy thereof, has reached that authority”.<sup>45</sup>

#### **4.4. Effects of *A.S.* and *Jafari* and *Mengesteab* on Croatia and on the Further Development of EU Asylum Law**

Even though the Court – obviously intentionally – tried not to name any Member State and explicitly incriminate Croatia, in its ruling in *Jafari*, it referred to Croatia as *the* Member State whose border migrants were crossing irregularly, according to the Schengen Borders Code.<sup>46</sup> The Court’s deliberate decision to take a strict, narrow reading of the Dublin and Schengen rules – without leaving any room for exceptions caused by extraordinary circumstances – sends a clear message that the Western Balkans route was illegal under EU law. According to the Court, the exceptional number of migrants on the route could not legitimise the route and justify the Member States’ disrespect of the Dublin Regulation and the Schengen Borders Code.

The Court’s logic, which implicitly incriminated Croatia, relied on the premise that the relevant criterion for determining the responsible Member State is the criterion of “irregular crossing”. In both *A.S.* and *Jafari*, the third-country nationals in questions first irregularly crossed the EU external borders in Greece. However, Greece could not be responsible due to the systemic deficiencies in its asylum system. Even though in neither case did the Court explicitly name the responsible Member State, in both cases it thoroughly discussed and defined the criterion of “irregular crossing”. It can therefore be presumed that the Court implicitly agreed with the application of the criterion of “irregular crossing” as the correct one for *A.S.* and for the *Jafari* sisters and for the developments on the Western Balkans route in general. Consequently, the Court’s reasoning leads to the conclusion that Croatia was the responsible Member State in both cases.

However, the Court’s automatic presumption of Croatia’s responsibility is rebuttable. As suggested by AG Villalón in the earlier case *Abdullahi*,<sup>47</sup> once the Member State which should have been responsible, based on the criterion of

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<sup>43</sup> Para. 62 in *Mengesteab*.

<sup>44</sup> Para. 74 in *Mengesteab*.

<sup>45</sup> Para. 103 in *Mengesteab*.

<sup>46</sup> Paras. 74-75. in *Jafari*.

<sup>47</sup> Para. 74 in AG Villalón's Opinion in *Abdullahi*.

“irregular crossing”, has been excluded, a different criterion has to be applied. This logic starts from the premise that the criterion of “irregular crossing”, contained in Article 13(1) of the Dublin Regulation, has been exhausted by the fact that the first irregular crossing into the EU took place in Greece and that Dublin transfers to Greece could not take place due to the systemic deficiencies in its asylum system. Consequently, the same criterion could no longer be applied in finding the next Member State of irregular crossing on the Western Balkans route. If so, the Member State of the asylum application would have to allocate responsibility for examining the asylum application based on the following criteria contained in the Dublin Regulation, in their hierarchical order: visa waiver<sup>48</sup> and application in an international transit area of an airport.<sup>49</sup> If none of the Member States could be designated based on these two criteria, the responsible Member State would be the first one in which the asylum application was lodged.<sup>50</sup>

In his Opinion in *Abdullahi*, AG Villalón also pointed out the judgment in *N.S.*, where the Court referred to the transferring Member State’s obligation to apply one of the “following” criteria for determining the responsible Member State.<sup>51</sup> However, in *A.S.* and *Jafari*, the Court chose to take a different avenue, thus departing from both the Opinion of AG Sharpston in *A.S.* and *Jafari*<sup>52</sup> and from the Opinion of AG Villalón in *Abdullahi*. The Court’s reasoning, therefore, places Croatia at the centre of attention of the Western Balkans route. From that perspective, the rulings in *A.S.* and *Jafari* can be viewed as an act of scolding Croatia and the other EU Member States on the Western Balkans route and a warning not to repeat such behaviour in the future.

However, even though, when viewed independently, the rulings in *A.S.* and *Jafari* could have had serious consequences for Croatia, as they could have given the green light to other Member States on the Western Balkans route to initiate Dublin transfers for hundreds of thousands of asylum seekers, the ruling in *Mengesteab* limits the effects of *A.S.* and *Jafari* to an insignificant number of asylum seekers who transited the Western Balkans route in 2015/2016. It is obvious that the Court used *Mengesteab* to counterbalance both the impact and the moral of its rulings in *A.S.* and *Jafari*. By ascertaining that the three-month time limit for requesting a Dublin transfer starts to run not at the moment the official asylum application is lodged, but much sooner – at the moment a written document/its copy/information contained in such a document, certifying that a third-country national has requested international protection, has reached the national authority – the Court consciously disabled Dublin transfers for the major part of migrants who transited the Western Balkans route in 2015/2016. This way, the Court tried to find a compromise between the conflicting interests and responsibilities of the Member State of first irregular entry, not counting Greece, (as resulting from *A.S.* and *Jafari*) and the Member State where the

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<sup>48</sup> Art. 14(1) of the Dublin Regulation.

<sup>49</sup> Art. 15 of the Dublin Regulation.

<sup>50</sup> Art. 3(2) of the Dublin Regulation.

<sup>51</sup> Para. 107 in *N.S.*

<sup>52</sup> Opinion of AG Sharpston in C-490/16 *A.S. v Slovenia* and C-646/16 *Jafari*, 8 June 2017, ECLI:EU:C:2017:443.

asylum application is lodged (after the expiry of the three-month period, as interpreted in *Mengesteab*). The Court's ruling in *Slovakia and Hungary v Council*, decided on 6 September 2017, adds to the equation the principle of solidarity by confirming joint Member State responsibility for the mandatory relocation of the agreed quotas of asylum seekers from Greece and Italy.<sup>53</sup> This way, all the four judgments should be viewed together as the Court's attempt to strike the right balance between competing interests and responsibilities in the EU.<sup>54</sup>

Consequently, the rulings in *A.S.* and *Jafari* and in *Mengesteab*, read together, do not have a strong impact on the admissibility of the Dublin transfers of asylum seekers who transited the Western Balkans route in 2015/2016. These cases were decided in July 2017, at the time when the Western Balkans route had been closed for more than a year and at the time when the refugee influx into Europe had significantly diminished. Besides, they were decided at a time when the three-month time limit had expired for the vast majority of asylum seekers who transited the route. The importance of these rulings is primarily twofold. First, they send a clear message of the Court's disapproval and reprimand of the Member States' non-compliance with their EU law obligations. Second, they are extremely relevant for the future development of EU asylum law and the future behaviour of EU Member States in the case of a new refugee influx.

The rulings in *A.S.* and *Jafari* signal to the Member States that, in the case of a future refugee influx, the state of first entry will be responsible for allowing the entry of only those third-country nationals who either fulfil the conditions contained in the Schengen Borders Code or apply for asylum in the state of their first entry. The state of first entry would be absolved from its responsibility to examine an asylum application or to accept a Dublin transfer within the first three months of the asylum application only where that transfer would entail a genuine risk that the person concerned might suffer inhuman or degrading treatment.<sup>55</sup> Consequently, should there be a new refugee influx, the fact that the state of first entry would have to examine an exceptionally high number of third-country nationals and take care of them would create an exemption from its general responsibility to accept Dublin transfers only if such a high number of third-country nationals created a risk of inhuman and degrading treatment.<sup>56</sup> Finally, in the case of a new crisis, the Member State of first entry would not be allowed to rely on humanitarian grounds to enable or facilitate the transit of third-country nationals to other Member States.

Such a strict interpretation of the Dublin Regulation and the Schengen Borders Code might have serious implications for the Member States' behaviour in the case of a new crisis. It is highly unlikely that – following the rulings in *A.S.* and *Jafari* – Member States would allow or facilitate the creation of a new transit route through their territories, as this would breach their EU law obligations and

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<sup>53</sup> Joined Cases C-643/15 and C-647/15 *Slovakia and Hungary v Council*.

<sup>54</sup> Speech by Judge Sinisa Rodin organised by the UNESCO Chair on Free Movement of People, Migration and Inter-Cultural Dialogue at the Faculty of Law, University of Zagreb, on 31 October 2017.

<sup>55</sup> Para. 101 in *Jafari*.

<sup>56</sup> Para. 101 in *Jafari*.

enable numerous Dublin transfers to their territories. Consequently, in the case of a new refugee influx, an EU Member State such as Croatia, confronted with a high number of third-country nationals on its borders, will have to decide whether to allow or block entry, and bear the consequences of its actions either way. If it decides to admit numerous asylum seekers to its territory – without a transit route or another mechanism to distribute more evenly the arriving asylum seekers across the EU – it might exceed its asylum capacities, thus leading to inhuman or degrading treatment of those admitted and a breach of Article 4 of the Charter and Article 3 of the ECHR. On the other hand, such a Member State might decide to prevent third-country nationals, who do not fulfil the conditions contained in the Schengen Borders Code, from entering its territory by erecting border fences or a wall, as was the case with Hungary during the operation of the Western Balkans route. The creation of such barriers could redirect the passage of third-country nationals to another state, but it could leave numerous migrants stranded in inhuman and degrading conditions, again creating a breach of Article 4 of the Charter and Article 3 of the ECHR. Finally, Member States might try to find other ways to prevent third-country nationals from entering their territories, such as entering into agreements with third-countries in order to prevent third-country nationals from leaving their country of origin or current residence (e.g. the EU-Turkey Statement).

Whichever pattern of behaviour Member States choose to take, it is not likely to duplicate the Western Balkans route. However, it will raise serious humanitarian and moral questions and will not solve the problems arising from the Dublin Regulation. Therefore, the rulings in *A.S.* and *Jafari* confirm once again that the Dublin III Regulation needs in-depth structural changes, which the current Dublin IV draft does not seem to address properly. The Court of Justice cannot create miracles and solve the problems created in the EU political and legislative process. However, its responsibility for sending a message which ignores reality and which might have a serious impact on Member States' future behaviour and on the further development of EU law cannot be underestimated.

## 5. Current and Future Challenges for the Croatian Asylum System

The establishment and closure of the Western Balkans route had an impact on the number of third-country nationals entering Croatia, the number of asylum requests and of Dublin transfers to Croatia. Consequently, 2016 saw a considerable rise in asylum applications in Croatia: in 2016 there were 2,225 asylum applications, in comparison to only 210 in 2015.<sup>57</sup> In relative terms, Croatia experienced the largest increase in the number of first-time asylum applicants in the EU28.<sup>58</sup> The number of Dublin requests also rose from 24 in

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<sup>57</sup> Eurostat asylum statistics available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Main\\_statistical\\_findings](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Main_statistical_findings) (last accessed on 16 October 2017).

<sup>58</sup> Eurostat asylum statistics available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Main\\_statistical\\_findings](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Main_statistical_findings) (last accessed on 16 October 2017).

2015 to 570 in 2016.<sup>59</sup> With the exception of a ruling of the Belgian Council of Alien Law Litigation in August 2016 and a ruling of the District Court of the Hague, there were no cases of suspension of Dublin transfers to Croatia by national courts in other Member States on account of a genuine risk of inhuman or degrading treatment.<sup>60</sup> In a similar vein, in its ruling in *C.K.*, the Court of Justice ascertained that there were no substantial grounds for believing that there were systemic flaws in the Croatian asylum system.<sup>61</sup>

The upward trend of asylum applications was also visible in the increased number of unaccompanied children requesting asylum in Croatia. In 2016, there were 116 such requests, bringing about a number of practical and legal challenges associated with the unique status of unaccompanied minors.<sup>62</sup> In that context, one of the issues in 2016 was the appointment of one of the persons with whom the unaccompanied minor entered Croatia as his/her legal guardian. Such a practice was potentially risky for the child, as it was impossible to ascertain whether the person appointed as a guardian fulfilled all the standards necessary for performing his/her task. Fortunately, the Croatian authorities abandoned the practice and it is no longer performed in Croatia.<sup>63</sup>

The 2016 exponential increase in the number of asylum applications was the most likely reason for the trend of prolonged asylum procedures exceeding the 6-month period,<sup>64</sup> as prescribed by the Croatian Act on International and Temporary Protection.<sup>65</sup> Altogether, 285 first-instance and 105 final asylum decisions were reached in Croatia in 2016.<sup>66</sup> Out of the 285 first-instance decisions, 100 were positive, while 185 were rejections. The fact that all the 105 final decisions were rejections stands out and raises questions about the causes of such a high percentage of negative decisions.

The alarming number of rejections of both asylum applications and of applications for temporary/long-term stay and for the acquisition of Croatian

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<sup>59</sup> Eurostat Dublin statistics on countries responsible for asylum application, available at:

[http://ec.europa.eu/eurostat/statistics-explained/index.php/Dublin\\_statistics\\_on\\_countries\\_responsible\\_for\\_asylum\\_application#Incoming\\_Dublin\\_requests](http://ec.europa.eu/eurostat/statistics-explained/index.php/Dublin_statistics_on_countries_responsible_for_asylum_application#Incoming_Dublin_requests) (last accessed on 16 October 2017).

<sup>60</sup> AIDA Country Report: Croatia, 2016 Update, p. 31, available at:

[http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2016update.pdf) (last accessed on 16 October 2017).

<sup>61</sup> Case C-578/16 PPU *C.K. v Slovenia*, 16 February 2017, ECLI:EU:C:2017:127.

<sup>62</sup> AIDA Country Report: Croatia, 2016 Update, pp. 41-44, available at:

[http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2016update.pdf) (last accessed on 16 October 2017).

<sup>63</sup> AIDA Country Report: Croatia, 2016 Update, p. 44, available at:

[http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2016update.pdf) (last accessed on 16 October 2017).

<sup>64</sup> AIDA Country Report: Croatia, 2016 Update, p. 21, available at:

[http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2016update.pdf) (last accessed on 16 October 2017).

<sup>65</sup> Act on International and Temporary Protection, NN (Official Journal of the Republic of Croatia 70/15.

<sup>66</sup> Eurostat asylum statistics available at: [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_statistics#Main\\_statistical\\_findings](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics#Main_statistical_findings) (last accessed on 16 October 2017).

nationality in 2017 was based on the classified security reasons provided by the Croatian Security Agency (SOA). Under Article 41 of the Croatian Security Vetting Act, the Croatian Security Agency issues an opinion on the existence or non-existence of a “security obstacle” for a third-country national who resides or intends to reside in Croatia or who is applying for Croatian nationality, without informing the applicant of the reasons for its opinion.<sup>67</sup> The opinion is binding on the Croatian asylum authorities, which have to reject the application without having access to the background reasoning of the Agency. The fact that the asylum applicant or a third-country national applying for residence/Croatian nationality has no access to the Agency’s reasoning supporting its negative opinion has been criticised as a breach of the applicant’s right to an effective remedy.<sup>68</sup> Up until the beginning of November 2017, there were 76 such cases, out of which 54 were appealed before the Administrative Court.<sup>69</sup> However, the applicants and their attorney cannot access the security files, which makes the appellate procedure very difficult for them.

Another disturbing trend reported in 2016 and 2017 has been the pushbacks of several hundred migrants at the Croatian-Serbian border to Serbia, without taking an individual approach to each migrant and without enabling them to apply for asylum in Croatia.<sup>70</sup> It has been reported that, on these occasions, the Croatian police authorities beat and insulted the migrants, forcing them to take off their shoes and kneel or stand in the snow.<sup>71</sup> Upon objections, the Croatian Ministry of the Interior stated that the legally required procedures were being fully respected and that police officers had been specially trained to protect migrants’ rights.<sup>72</sup> However, if such events take place, such behaviour should not be tolerated and should be stopped immediately.

The Croatian designation of Turkey as a safe third country is another worrying fact. In 2016, Croatia adopted a Decision on the list of safe countries of origin in the procedure for granting international protection.<sup>73</sup> The list includes 10 countries, among them Turkey.<sup>74</sup> Despite the fact that Turkey is officially on the

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<sup>67</sup> Security Vetting Act, NN (Official Gazette of the Republic of Croatia) 85/08, 86/12), Article 41.

<sup>68</sup> “Report on arbitrary and unlawful practices by the Ministry of the Interior and the Security and Intelligence Agency of the Republic of Croatia related to (non)approval of international protection or status of foreigners in Croatia” prepared by NGOs *Are You Syrious?* and *Center for Peace Studies*, 26 April 2017, available at:

[https://cms.hr/system/article\\_document/doc/403/CPS\\_and\\_AYS\\_-\\_Report\\_on\\_arbitrary\\_and\\_unlawful\\_practices\\_by\\_the\\_Ministry\\_of\\_Interior\\_and\\_the\\_Security\\_and\\_Intelligence\\_Agency\\_related\\_to\\_non\\_approval\\_of\\_international\\_protection\\_or\\_status\\_of\\_foreignrs\\_in\\_Croatia.pdf](https://cms.hr/system/article_document/doc/403/CPS_and_AYS_-_Report_on_arbitrary_and_unlawful_practices_by_the_Ministry_of_Interior_and_the_Security_and_Intelligence_Agency_related_to_non_approval_of_international_protection_or_status_of_foreignrs_in_Croatia.pdf) (last accessed on 16 October 2017).

<sup>69</sup> Information provided by the Office of the Croatian Ombudsman in an interview held on 6 November 2017.

<sup>70</sup> Report of the Croatian Ombudsman for 2016, 31 March 2017, p. 196, available at: <http://ombudsman.hr/hr/component/jdownloads/send/76-izvjesca-2016/849-izvjesce-pucke-pravobraniteljice-za-2016-godinu> (last accessed on 16 October 2017).

<sup>71</sup> *Ibid*, p. 196.

<sup>72</sup> Information provided by the Office of the Croatian Ombudsman in an interview held on 6 November 2017.

<sup>73</sup> Decision on the list of safe third countries of origin in the procedure for granting international protection, NN (Official Gazette of the Republic of Croatia) 45/2016.

<sup>74</sup> The countries included on the list are: Albania, Bosnia and Herzegovina, FYROM, Kosovo, Montenegro, Serbia, Morocco, Algeria, Tunisia and Turkey.



list, according to the available reports, the designation of Turkey as a safe country has never been used in practice.<sup>75</sup>

To conclude, despite the fact that Croatia did its best and to a large degree succeeded in adapting to the increased number of migrants and asylum seekers, especially during the operation of the Western Balkans route, two crucial tendencies are noticeable. First, the upward trend in the number of asylum applications and Dublin transfers is likely to continue in the future. For this reason, one can expect that the current challenges faced in the Croatian asylum system will become even more visible and problematic, unless addressed properly. Second, the general political and social attitude towards asylum seekers and migrants remains reserved. This is also visible from the low number of relocations to Croatia based on Council Decision 2015/1601 of 22 September 2015.<sup>76</sup> Out of 968 commitments, by 3 November 2017 Croatia relocated only 18 persons from Italy and 60 persons from Greece, while formally pledging 316 places.

## 6. Concluding Remarks

This chapter has attempted to examine the most important developments in asylum policy in Croatia and place these developments in a wider European context. It has demonstrated the interconnection among the events in Croatia, on the Western Balkans route, and in the EU in general. The paper has shown that refugee-related developments in Croatia can only be understood in the context of EU asylum rules, the events on the Western Balkans route, and the tensions between the human-rights-related ambitions, on the one hand, and a combination of security concerns and xenophobic fears, on the other hand. Despite the fact that Croatia has been both geographically and politically on the periphery of the EU refugee-related events, it played an important role during the 2015/2016 refugee influx. Most importantly, the behaviour of Croatia and other countries on the Western Balkans route has had enormous implications for the further development of EU asylum law, as illustrated by the discussion of the judgments in *A.S.* and *Jafari* and in *Mengesteab*.

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<sup>75</sup> AIDA Country Report: Croatia, 2016 Update, p. 46, available at: [http://www.asylumineurope.org/sites/default/files/report-download/aida\\_hr\\_2016update.pdf](http://www.asylumineurope.org/sites/default/files/report-download/aida_hr_2016update.pdf) (last accessed on 16 October 2017).

<sup>76</sup> Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, p. 80–94.